LEGAL CONSCIOUSNESS, HUMAN RIGHTS, AND THE THAI WAR ON DRUGS

By

SUCHAT WONGSINNAK

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To Kanya and Kittikun, my great parents
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This research explores how human rights professionals and Thai citizens (who were
affected by the war on drugs in 2003) understood what happened in terms of both domestic and
human rights legalities. During the anti-drug campaign, the government relied on the rhetoric of
“kha-tad-ton,” to attribute a pattern of violence to drug dealers. It labeled anyone affected by the
war on drugs as being involved with drugs.

Eighteen aggrieved people and twelve human rights professionals were interviewed. The
research employed active semi-structured interviews that were flexible enough for the
respondents to present their own issues as well as to respond to questions prepared by the
researcher.

Because of official labels, victims were presumed to deserve their fate—they were
presumed to be involved with drugs. To overcome the presumptions, the aggrieved had to prove
that they were not involved with drugs. Their struggle for justice was limited to moving
themselves back into the mainstream by securing a legal declaration that they were undeserving
victims of the crackdown. Their experiences with the bureaucracy and the courts instructed them
about domestic law and the underlying structure of justice in Thailand. They were constrained
from pursuing justice against anyone who may have violated their rights. Their only “possible”
justice was to make a human rights claim to the National Human Rights Commission. By so doing the aggrieved took part in creating a human rights legality.

This research identifies three schemas that human rights professionals used to invoke and apply the idea of human rights. The supplemental schema grafts human rights notions “with” the domestic law to advance the individual interests of the aggrieved. The progressive schema pits the idea of international human rights “against” the state action and its domestic legal practice. Finally, the transformative schema moves the idea of human rights “outside” the realm of law. It challenges the social values and society more generally rather than the domestic law and the state specifically. The three schemas are not independent from each other but are related and can help explain how human rights awareness can be used to protect against abuses.
CHAPTER 1
INTRODUCTION

**Introduction**

“The United Nations is not my father,” said Thaksin Shinnawatra, the former Thai Prime Minister, after the United Nations expressed concern about the widespread killings during the war on drugs and wanted to send Asma Jahangir, a special rapporteur to gather information (*The Nation*, March 4a, 2003). Within the three months (February to April 2003), almost three thousand people were officially reported to be killed (see Independent Committee for the Investigation, Study and Analysis of the Formation and Implementation of Narcotics Suppression Policy 2008). Most killings were labeled as drug-related killings. The Thai rhetoric of “kha-tad-ton” was invented by the government to convince the society that drug dealers killed each other. However, human rights professionals uncovered a different story. Many people killed during the war on drugs did not have a record of involvement with drugs, and some people were killed simply because they used to be drug users (Amnesty International 2003; Human Rights Watch 2004; National Human Rights Commission of Thailand 2006a; 2006b; 2008).

The National Human Rights Commission of Thailand (NHRC), in its human rights examination reports, involved both international human rights and domestic laws, to denounce the ruthless conduct of the state authorities, especially the police, as grave human rights violations during the war on drugs. The atrocities of the war on drugs were also internationalized in many ways. The United Nations, Human Rights Watch, Amnesty International, and Asian Human Rights Commission promptly criticized and published the reports capturing the painful stories of the victims and blaming the government for demolishing the rule of law. The foreign news agencies such as Straits Times, The Singapore, Korea Herald, Herald Sun (Australia), Scotland on Sunday, CNN, Sydney Morning Herald (Australia), The Daily Telegraph (London),
to name a few, broadcast internationally the stories of the war on drugs and its atrocities. The United States also condemned the Thai government for human rights abuses in its annual report on human rights practice of Thailand (U.S. Department of State 2004).

Pressured from both within and outside the country, the Thai government tried to neutralize the critique through a promise of investigating and arresting “the unknown assailants” who killed many people during the time of the drug war. The issues were rhetorically legalized under the criminal justice where no one, until now, has been arrested and charged for the killings. To relieve the criticism, on March 3, 2003, the government held a seminar aiming to reach an understanding of the diplomats from 54 countries and the representatives of United Nations Office of Drugs and Crime (UNODC) and the Office of the High Commissioner for Human Rights (OHCHR) (Office of the Narcotics Control Board 2003a, 15).

The war on drugs is the first time in Thailand that the idea of human rights was used strategically to shift problems of “ordinary crimes” defined in domestic law to “grave human rights violation,” defined by transnational human rights condemned by international community. The push and pull of these two domains of law in action seem to be missed from both human rights study in general, and law and society research in particular. It is the ultimate goal of this dissertation trying to fulfill this knowledge gap.

**Specific Aims**

The main purpose of this dissertation is to examine the legal consciousness of people who are affected by the war on drugs and of human rights professionals whose work is related to law and justice during and after the war on drugs. The research aims to study how domestic Thai law and transnational human rights formulations have played out during and after the war on drugs in 2003. In addition, the research seeks to learn about how people understand the ways in which domestic law and transnational human rights law apply in the aftermath of the war on drugs and
how domestic law and transnational human rights law serve people who were affected by the war on drugs.

People may reject all or some of either of the legal frameworks; they may accept one to the exclusion of the other, or they may translate the frameworks so that they fit with their particular problems and situations in local communities. The different classes of socio-legal actors may see the role of law differently; the aggrieved may have a different perception or consciousness about law. This is a study of law in social practice. Therefore, the specific research questions that I attempt to answer regarding legal consciousness about law and justice within the context of the war on drugs include:

1. What legal and social experiences have the respondents (human rights professionals and the aggrieved (affected) people) learned from the war on drugs? How do they understand the legal practices that occurred during and after the war?

2. How do the aggrieved come to think in terms of rights? What do they think about their grievances? Whom do they blame for their grievances? How do they recognize the benefit of making a claim of rights?

3. How do the nature of disputes and the problems affect their struggle for justice (the aggrieved and human rights professionals) when taking into account the larger social environment?

4. How do the aggrieved draw on laws to make sense of their experience? Specifically, how do laws offer them meanings for their social life? How do other non-legal frameworks influence their perception about law? What are those non-legal frameworks?

5. How do human rights professionals translate the idea of human rights into the local setting in regard to the issues of violence, law and justice within the context of the war on drugs? How do the aggrieved contribute to the creation of a human rights legality?

Enough time has now passed since the war on drugs so that we can assess how law has operated in addressing the problems associated with it. Archival materials in Thailand will be consulted to understand what happened during the war on drugs and to provide context for this study of how people are using different legal approaches to deal with the problems that arose from the war on drugs. The study will use active interviews to learn about how socio-legal actors working in the
domestic legal and human rights systems in Thailand interpret and apply law to war-on-drug cases as well as how those who were affected (“the aggrieved”) deal with the two realms of law.

Outline of Chapters

The next chapter provides a background of Thai politics and relevant laws. To understand more nuanced relationships among law, society and justice, it is important to know something about the unique political and socio-legal structures of Thai society. The chapter also introduces information about the rampant spreading of drugs (e.g., methamphetamine) justifying the declaration of the war on drugs in 2003. Then, the chapter ends with the story of the war on drugs in aspect of legal practice and abuses of rights. Chapter 3 turns to the literature review to establish the theoretical framework for the study. Chapter 4 presents the methodology. The research relies on qualitative inquiry to understand the complicated worlds of the respondents when they talk about law and justice within the context of the war on drugs. The chapter ends with presenting the summary of the demographics of the respondents. Then, chapters 5 to 7 put up the findings of this research in detail. Chapter 5 talks about the legal practice that the respondents perceived and experienced in that time. Chapter 6 explores how the aggrieved people thought about their rights. Their struggle for justice within the bureaucracy is also presented together with their effort to make human rights claim. Chapter 7 offers more nuance perceptions and experiences with law the aggrieved people encountered. Law seems to be something that deempowers and further marginalizes them from any justice. This chapter also presents people’s reflection of self in relation to law. Chapter 8 illuminates how human rights professionals translate the idea of human rights into the local practice. Three schemas are identified from the data. Finally, Chapter 9 wraps up the research with discussion and conclusion with a reflection along with the relevant literature.
CHAPTER 2
BACKGROUND OF THE WAR ON DRUGS IN 2003

Background of Thai Politics and Laws

Politics

Thailand was formerly known as Siam until the name was changed to Thailand in 1939. Thailand shares borders with Burma in the west and north, with Laos and Cambodia in the east, and with Malaysia in the south. See the map in Appendix A. Thailand is the only country in Southeast Asia which has never been physically colonized by the Western powers. However, freedom came with a price. During the European Expansionism, Thailand was forced to engage in biased-bilateral treaties first with Great Britain in 1855, the Bowring Treaty, and followed by other powers. These treaties, among other things, created extraterritoriality. The treaties privileged foreigners to not be tried under Siam (Thai) courts. These treaties, in fact, formed semi-colonial relationships through international legal mechanisms. As noted by Horowitz (2005, 445), these treaties were unequal in several senses: “they were forced at gunpoint [and] they expressed the economic and political interests of Britain and other powers; key provisions, including extraterritoriality and restrictions on tariffs on foreign trade, were not reciprocal.” Some Western countries even insisted that they had a treaty-right to reject all Thai laws to be applied in the communities they resided (Sayre 1928, 73-4). Thus, Thailand was pressured to adopt Western legal system to regain judicial power’s independence, and to curtail a justification for colonization.

The law reform began in the reign of King Rama IV (1851-1868) and was carried on in full force by Chulalongkorn, or King Rama V (1868-1910), one of Thailand’s most revered kings. After taking the side of the Allied Powers during the WWI, Thailand successfully persuaded President Woodrow Wilson of the United States to relinquish extraterritoriality in 1920. Then,
the Thai government (King Rama VI) employed Francis B. Sayre, a former professor of international law at Harvard University and the son-in-law of President Woodrow Wilson, to help terminate these similar treaties with the European nations (Darling 1970, 205). To be a modern state, Thai kings also provided many scholarships for Thai students to study abroad. The scholarships were no longer limited to people in the royal families. Prince Rabi, a son of King Chulalongkorn, had graduated from a law school in Europe and became the first minister of the Ministry of Justice (Darling 1970, 205). He is well-known as the founder of modern Thai law. Thai government scholarships are still granted to Thai students to study abroad in various fields.

It was Pridi Ponomyong, a Thai government scholarship student studying law in France, who led the People’s Party in a bloodless revolt to abrogate King Prajadhipok (Rama VII)’s absolute status, and the absolute King became a constitutional monarch in 1932. Since then, the Thai King has been placed outside and above most political affairs (but see Suvarnajata 1994, 72-90; Winichakul 2008, 21). However, from the year 1932 onwards, Thai politics has been characterized by the dynamics of military dominance, interrupted by occasional short-lived civilian premiers (Hindley 1976, 173-74; Samudavanija 1990). From June 1932 to February 1991 (58 years and 8 months), Thailand experienced twenty three coups d’etat, both with success and failure. During that time, a military coup would occur every 2.56 years on average (Suvarnajata 1994, 143). Fifteen years from the coup in 1991, it happened again. The coup d’etat in September 2006 suggests that the military is an integral part of Thai-style democracy. In this style, military officers see themselves as guardians of a moral order rather than as evildoers for the politics (Christensen 1991, 95), but only so long as it is. The new sovereign’s orders and declarations are law. The failed coup will be cast as an evildoer and charged with the crime of
rebellion (or “kabot” in Thai). Chai-Anan Samudavanija (1982, 1-2 emphasis in original) portrays the vicious cycle of Thai politics excellently.

Successful military interventions usually resulted in the abrogation of constitutions, abolishment of parliaments, and suspension of participant political activity. Each time, however, the military re-established parliamentary institutions of some kind. While they often claimed that they had taken power from the elected representatives “in order to save democracy,” paradoxically, in their view parliament had to be abolished because the people established what they called “Thai-style democracy” with an appointed legislature designed to legitimize their own power. Soon, however, crisis would set in, leading once again to a coup situation.

The corrupted and ineffective elected government were often a justification for the military and technocrats to intervene with coups d’état (Christensen 1991; Neher 1976, 370). Public opinion usually felt deeply abject about the corrupted politicians (Dalpino 1991, 62). Thus, the public did not resist military coups with rare exception.

The protest in May 1992 was a recent exception. It is believed that many protesters were killed or brutalized or disappeared at the hands of the military, although the government in that time announced only forty people died in the May 1992 incident (Baker and Pongpaichit 2005, 243-46; Yoshifumi 2008, 31-114). The chaos subsided because of the intervention of the king and a general election that was called in that year (Yoshifumi 2008, 55-57).

People around the country also expressed strong reaction to military. It was hoped the military would learn not to get involved with politics again. As one Thai political scientist remarked:

Civil-military relations in Thailand have changed dramatically since the pro-democracy uprising in May 1992. The army has been forced to withdraw from politics and to accept civilian and democratic rule. It has had to learn to adapt to a democratic environment. The military’s traditional control over defense budgets, appointments of high-ranking officers, and defense policy has eroded, and it has had to accept that civilians now have final say in these matters. (Bunbongkarn 1999, 67)

The bloodshed of May 1992 pressured Thailand to address the challenge of setting up a stable democracy for and by people. It resulted in a process of drafting the 1997 Constitution (B.E. 2540 B.C.).
which involved people from all sectors of the society. It was the sixteenth Constitution of Thailand known as the people’s Constitution, and it guaranteed a wider range of basic rights and liberties than found in previous versions of Thailand’s constitutions (Aphornsuvan 2001, 1; Nanakorn 2002, 90).

Police Lieutenant Colonel Thaksin Shinawatra was a former Thai government scholarship student with a Ph. D. in Criminology from the U.S., who later became one of Thailand’s richest businessmen. He founded the Thai Rak Thai Party in 1998. He won landslide victories in general elections in 2001 and in 2005 which made him “the first prime minister of Thailand to complete a full four-year term in office, the first to be reelected, and the first to preside over a government composed entirely of ministers from one party” (Pongsudhirak 2008, 142). These might be viewed as good signs of a stable democracy being installed in Thai politics. In fact, apart from some populist policies novel to Thai politics (e.g., cheap health care, agrarian debt relief, village funds, etc.), he still used money and the old-style Thai politics, to control the votes (Phongpaichit and Baker 2008). For instance, the candidates who were former Members of Parliament (MPs) who joined his party were paid monthly allowances and received large campaign sums (Montesano 2001; Phatharathananuth 2008, 108). Successful in business before, Thaksin also called himself the CEO (chief executive officer) of the country, likening the nation to a company (Pongpaichit 2004). However, his critics viewed his leadership style as authoritarian, abusing power to benefit his family business and rebuffing his opponents both in business and politics (Connors 2005; Hicken 2006; Muntarbhorn 2008; Phongphaichit and Baker 2004).

The anti-Thaksin campaign gradually gained public support in mid 2004, and later intensified by media mogul Sondhi Limthongkul (in the second half of 2005). He unprecedentedly disclosed several high-level corruptions of the Thaksin administration. The
result was a big street protest against the Thaksin regime in February 2006, led by the group known as the “People’s Alliance for Democracy” (PAD) or “the Yellow Shirts” (see Pye and Schaffar 2008). In the politically divided society, the military junta, under the name “Council for Democratic Reform,” grabbed the opportunity to oust Prime Minister Thaksin Shinawatra in September 19, 2006, without public resistance (see Pathmanand 2008). Again, the military played the role of guardian for a harmonious society and the protector of the monarchy. The junta abolished the 1997 Constitution (B.E. 2540) and later replaced it with the 2007 Constitution (B.E. 2550) (for more information about the politics after the coup, see Pongsudhirak 2008).

The numerous and easy abolishment of Constitutions might imply that the rule of law has really not taken root in Thai society. Darling (1970, 210-11) noted long ago a reverse effect of Thailand’s successful modernization, which occurred too early and quickly, “The result was one of the most advanced bureaucratic systems in non-Communist Asia, but also one of the most underdeveloped political systems. The kingdom had evolved an efficient civil service, but it had made little genuine progress toward some form of constitutional rule.”

The war on drugs in 2003 discloses another episode of an “efficient Thai bureaucracy” that afforded little rule of law during the Thaksin government. To put the Thai drug problems and its war on drugs in 2003 in context, relevant features of Thailand’s effort at rule of law are reviewed. This review will provide a better understanding of the socio-legal aspects of the war on drugs.

**Laws in Books**

**Constitution and human rights**

The review begins with the 1997 Constitution (B.E. 2540), which was effective during the time of war on drugs in 2003 before being dismantled by the coup d’etat in September 2006. It is
accepted that the 1997 Constitution (B.E. 2540) celebrated the perpetuity and inviolability of fundamental human rights. For example, section 4 declared that the human dignity, rights and liberties of the people shall be protected, while section 26 instituted a positive obligation for state authorities to take into account human dignity, rights and liberties of the people when exercising power. The Constitution also posited a negative duty for state authorities not to intervene or restrict rights and liberties guaranteed by the Constitution except by virtue of provisions of the law (section 29). The intervention or restriction by laws, however, shall not pre-empt the essential substances of the rights and liberties protected by the Constitution. Equally important, a person could assert constitutional rights to defend himself in a court (paragraph 2 of section 28).

To uphold human rights as a constitutional value in practice, the 1997 Constitution also launched its first National Human Rights Commission (section 199 and 200).

It took two years to enact the National Human Rights Commission Act in 1999. Another two years were spent to get it operational. The first National Human Rights Commissioners were named in July 2001. Section 3 of the National Human Rights Commission Act defines human rights as “human dignity, right, liberty and equality of people, which are guaranteed or protected, under the Constitution of the Kingdom of Thailand or under Thai laws or under treaties [with] which Thailand has obligations to comply.” Among other things, the National Human Rights Commission has crucial powers and duties “to promote the respect for and the practice in compliance with human rights principles at domestic and international levels, to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties relating to human rights to which Thailand is a party, [and] to propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action.”
Although the Act endows the Commission to investigate human rights violations and propose remedies (sections 22-26), nowhere in the Act is enforcement guaranteed. Its last resort is to report findings of human rights investigations to the parliament and publish them (section 29-31). The Commission is prohibited from exercising its jurisdiction over matters being litigated in the courts or over matters on which the courts have already passed judgment (section 22). Understanding its limited power, Saneh Chamarik (2002, 5) the first president of the Commission diplomatically asserts two functions: “the National Human Rights Commission is to organize itself in such a way which serves not only as rights defenders, but also as social-learning promoter.”

The National Human Rights Commission was a battlefront against human rights violations during the war on drugs in 2003. The Commission actively opened another avenue for justice for people affected by the war on drugs. In its annual human rights examination reports concerning the drug war in 2003, the Commission referred to both international human rights laws, especially the International Covenant on Civil and Political Rights (ICCPR), and relevant domestic Thai laws including the 1997 Constitution, Criminal Procedure Code (CPC), and other laws related to narcotics offenses which we will now turn to.

**Justice in personam**

In this section, I provide some background of Thai criminal procedures relevant to law enforcement during the war on drugs. The purpose is to provide the idea of law in the books which is helpful to better understand law in action during the war time.

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1 However, section 257(4) of the current (2007) Constitution (B.E. 2550) resulted from the coup d’état in September 2006 adds more power to the National Human Rights Commission to “bring the case to the courts of justice for the injured person upon request of such person if it deems appropriate for the resolution of a human rights violation problem as a whole as provided by law.”
The most relevant domestic law to the war on drugs is the Thai Criminal Procedure Code (CPC) enforced in 2003. The CPC has already been revised by several amendments, especially by the amendment in 2004, after the war on drugs.

In fact, the ruthlessness of the war on drugs has not been seen much in the public debate as a failure of the justice system. Simply speaking, Thai society, except for a small group of human rights advocates, do not see the people in the justice system and the justice system itself as problems leading to the unprecedented civilian killings during the war on drugs in 2003.

The Constitution, by theory, is fundamental law and the highest law of land. Put simply, the other laws or administrative acts would be voided if contrary to the Constitution. The theory might fit well the legal practice in Western democracies like France, Germany and the United States, but in Thailand the Constitution is rather like a law of dreams (to be). Thai Constitutions, although expressing a high esteem for people’s rights and liberties, have not automatically put these principles into practice. Justice for people could be pursued only when other laws were literally revised. Vitit Muntrabhorn (2008, 4), a law professor from Chulalongkorn University, Thailand, observed that “In reality, the safeguards for ordinary people have tended to come from Criminal and Civil Codes and Criminal and Civil Procedure Codes which have remained constant for many years, rather the seemingly ever-changing nature of Thailand’s Constitution.”

Before the 1997 Constitution (B.E. 2540), the administrative officers and police were authorized to issue a criminal warrant for arrest and search, while the court could issue all of criminal warrants—warrants for arrest, search, detention, imprisonment, and release. Section 237 of the 1997 Constitution (B.E. 2540), however, abolished all power of administrative officers and police to issue criminal warrants. Thus, a person would be arrested, detained or imprisoned, and the search for the person or property in the private place could be made only when there is
the order or a warrant of the court. The same provision also supplied detail for other substantive rules of due process, relevant to law enforcement during the time of war on drugs.

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 offense 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 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 offense which is punishable as provided by law; or

2) there is reasonable evidence that such person is likely to have committed an offense 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.

However, section 335 (6) of the same Constitution included a condition that section 237 above would not be enforceable until the CPC had been literally “amended in the ways in which section 237 prescribed, but the amendment shall not be later than five years as from the date of the promulgation of the Constitution.” In fact, not until 2004 (after the drug war), seven years after promulgating the 1997 Constitution, was the CPC substantively amended in accordance with section 237 of the 1997 Constitution. Nonetheless, the literal meaning of section 335 (6) was clear: if the CPC was not revised within five years from the promulgation date of the 1997 Constitution, section 237 should, by principle, have been in force during the time of the drug war in 2003.
Section 237 required the inquiry official to bring the arrested person to the court within 48 hours in order for the court to consider whether or not there is a reasonable ground under the law for the detention of the arrested person. Nonetheless, an arrested offender perpetrating a narcotics offense may be lawfully detained for more than 48 hours. An arrested person in custody of an “narcotics control officer” under the 1976 Narcotics Control Act (B.E. 2519) does not need to be brought to court within 48 hours because a narcotics officer is not considered to be an inquiry official under the Criminal Procedure Code (CPC). In other words, as found in section 15 of the 1976 Narcotics Control Act, the narcotics control officer is distinguishable from the inquiry official (e.g., police).

The 1976 Narcotics Control Act authorizes the narcotics control officers to keep the person arrested in custody for inquiry for a period of no more than three days. The arrested person in a narcotics offense may be interrogated by two different officials at different times and under different laws. That is, after three days of custody, the narcotics control officer must deliver the arrested person to the inquiry official (e.g., police) for further proceedings under the CPC (for another 48 hours at most of custody). Therefore, the arrested person in a narcotics crime might be lawfully kept in custody for up to five days!

It should be noted that the officers from the Office of the Narcotics Control Board and other state agencies, including police, could be appointed as the narcotics control officers under the 1976 Narcotics Control Act. In fact, many police officers have two identification cards—one for being police officer and the other for being a narcotics control officer.

The old section 83 of the CPC, which was still on the book in the time of drug war, did not impose on the arresting official, as first seen in section 237 of the 1997 Constitution, the duty to notify the arrestee of the criminal charge at the time of arrest. Not until the revised version in
2004 did the CPC require the arresting official to notify the arrested offender of the criminal charge at the time of arrest, together with “notifying that the arrested person is entitled to make a statement or not, and the arrested person’s statements may be exercised as evidence in the trial of the case, and the arrested person is entitled to see and talk with lawyer or person who will be his lawyer…” (paragraph 2 of section 83 of the CPC revised in 2004). The amendment in 2004 also entitles the alleged offender to let the lawyer or the person whom he trusts to hear any interrogations with him (section 134/3 of the CPC revised in 2004). Formerly, the interrogation was often a matter only between the inquiry official and the alleged offender.

During interrogation, paragraph 3 of section 133 of the CPC prohibits the inquiry official to advise, discourage or to use any kind of fraud to prevent any person from giving statements against his free will. Section 135 forbids the inquiry official from using any deception or threat or promise to an alleged offender for inducing such person to make any particular statement. Should criminal evidence be obtained by violating these provisions, that evidence might be inadmissible at trial (section 226 of the CPC). There is an exclusionary rule.

Section 94 of the CPC also addresses searches. It requires the official to show the search warrant or, in case of a search without a warrant, to provide the name and official position of who is conducting the search to the person being searched. A search in a private place, generally, is only allowed to be done between sunrise and sunset (section 96 of the CPC). In addition, before commencing a search in a private place, section 102 of the CPC requires that “the official making the search must manifest that he has nothing concealed on his person; and as far as possible the search shall be made in the presence of the occupier of the premises, or a member of his family or failing such person, in the presence of at least two other persons requested by the
“official to attend as witness.” Failure to follow these rules, theoretically, might make materials of evidence from the search inadmissible in court (the exclusionary rule).

In all, laws in the books provide a pretty high standard prioritizing rights and liberties of people in criminal justice. The war on drugs in 2003, however, illuminated the other kind of law, law in action, where the constitutional criminal rules seemed to be less relevant.

Before turning to the 2003 drug war, it is also necessary to address some background of laws dealing with the property of the narcotics offenders because one of the main reasons for people to enter into the drug trade is money. In addition, during the 2003 drug war, the government intensively sought to confiscate all properties of people suspected of being involved with drugs. As known in the time of war on drugs, not only were the suspected killed by unknown assailants but also their property was searched and seized by the state authorities (see National Human Rights Commission of Thailand 2006a; 2006b; 2008).

**Justice in rem**

In general, the court often issues an order to confiscate instruments, equipment, vehicles, machinery or other properties that were used in or were part of the commission of a criminal offense. However, properties or benefits gained by a commission of narcotics offenses are often unreachable by the ordinary criminal law because the drug-related property has often already been transferred to other persons or transformed into other forms of assets. Thus, it is necessary to have special laws dealing with these kinds of properties or assets. The purpose of forfeiture laws is not to punish the body or person of the alleged offenders as does in the ordinary criminal law, but to diminish their financial base and disrupt the drug networks that sustain illegal activities.

For Thailand, there are two special laws dealing with properties connected to narcotics offenses—the 1991 Act on Measures for the Suppression of Offenders in an Offense relating to
Narcotics (B.E. 2534) (AMSOON), and the 1999 Anti-Money Laundering Act (B.E. 2542) (AMLA). For a narcotics offense, the aim is to secure forfeiture. Forfeiture under AMSOON relies on finding the offender guilty of the alleged-narcotics offense. Therefore, it is known as a criminal forfeiture. On the contrary, a process of forfeiture under AMLA can proceed in a civil court. The suspected offender does not necessarily have to be in custody or present at the court’s trial. In other words, criminal litigation on drug offense is not a prerequisite condition leading to a forfeiture order under AMLA.

Both laws define the properties or assets connected with the commission of narcotics offenses in a similar way. For example, those properties under AMSOON are:

money or properties or properties obtained through the commission of an offense relating to narcotics, and shall include money or properties which are obtained by means of using such money or properties to purchase or by causing in any manner whatsoever to transform such money or properties irrespective of the number of such transformation and whether or not such money or properties will be in the possession of, or transferred to or apparently evidenced on the register as belonging to other persons. (Section 3 of AMSOON)

An important point is that it does not matter how many times a property or asset “has been sold, distributed, transferred, or transformed, or found in whosoever possession, or being transferred to whomever, or bearing in registration or record under whosoever ownership” (section 3 of AMLA).

AMSOON establishes the Properties Examination Committee, which has powers and duties, among other things, to examine, seize or attach the suspicious properties of the alleged offender (section 15, 16, and 19). The person (e.g., the alleged offender or others) who claims to be the owner of the properties must adduce evidence before the Properties Examination Committee to prove that “the properties so examined are not connected with the commission of an offense relating to narcotics or transferred in good faith and for value or reasonably acquired in the course of good moral or public charity” (section 22). Failure to do so allows the Properties
Examination Committee to seize or attach such properties for no more than one year (section 22). Then, the public prosecutor will file a motion with a criminal court to order the forfeiture of those properties (early examined by the Properties Examination Committee), in addition to proffering criminal litigation against the alleged offender for his commission of narcotics offense (section 27). Thus, seizure or attachment order of the Properties Examination Committee will be voided when the public prosecutor issues a final non-prosecution order (no litigation for a narcotics offense) or the court passes the final judgment dismissing the criminal charge of the alleged offender (section 32).

Departing from the general principle of criminal law on presumption of innocence, section 29 of AMSOON takes for granted the presumption of guilt in that “if there is evidence showing that the accused or the examinee is involved or has ever been involved in the commission of an offense relating to narcotics, it shall be presumed that all money or properties possessed or acquired by him beyond his status or his capability of engaging in his occupation or other activities in good faith are the properties connected with the commission of an offense relating to narcotics” (section 29).

Like the Properties Examination Committee under AMSOON, the Transaction Committee established by AMLA has duties to restrain any suspicious transaction and seize assets involved in the commission of narcotics crimes for up to ninety days (three months) (section 34 and 48). It is a duty of “any individual who conducts any transaction or an individual who has a vested interest in the asset being seized or restrained to impart evidence to prove that the money and asset in the transaction are not related to the commission of an offense (i.e., narcotics), so that the restrain or seizure order can be withdrawn” (paragraph 4 of section 48).
Unlike AMSOON, AMLA authorizes the public prosecutor, upon request of the Secretary General of the Anti-Money Laundering Office, to file a petition in a civil court to order forfeiture of suspicious assets without necessarily setting up criminal prosecution against the alleged offender (section 49 and 59).

Like a trial for forfeiture under AMSOON in a criminal case, a trial under AMLA in civil court also accepts the presumption of guilt (and by association) as prescribed in paragraph 2 of section 51 and 52. Consider paragraph 2 of section 51.

According to this section, if the claimant in section 50, paragraph 1 is related to or used to be related to any person who committed the predicate offense [narcotics offense] or the offense of money laundering, the presumption shall be that money or assets are related to an offense or has been transferred dishonestly, whichever the case may be.

The burden of proof shifts to the citizen to show that he did not gain the property dishonestly.

Because they are based on different legal standpoints (criminal versus civil forfeitures), AMSOON and AMLA can be applied to the same properties at different times. Section 58 of AMLA clearly states:

Where the asset involved in the commission of an offense is subject to another legal process [i.e., AMSOON] which has not yet commenced or is pending or of it would be more effective to proceed under this Act, then the Government shall proceed as provided in this Act.

Simply speaking, if the forfeiture under AMSOON is terminated because the public prosecutor issues a final non-prosecution order or the criminal court acquits the alleged offender, the relevant authorities can legitimately further the forfeiture under AMLA. In practice, the Office of the Narcotics Control Board often seeks cooperation from the Anti-Money Laundering Office to implement AMLA where AMSOON is not efficient enough for the forfeiture. Thus, it might be the case that the properties are first seized or attached (by the Properties Examination Committee) up to one year at the Office of the Narcotics Control Board under AMSOON, and then seized for additional three months (by the Transaction Committee) at the Anti-Money
Laundering Office under AMLA. During the war on drugs in 2003, the relevant state authorities often applied both laws to the properties of the suspected drug dealers (see National Human Rights Commission of Thailand 2006a; 2006b; 2008).

Next, drug problems before the 2003 drug war will be explored to understand the construction of a social threat in Thai society, and then the story of the war on drugs will be introduced. At the onset, note should be taken that creating a sense of threat or moral panic frequently occurs as part of criminalization efforts (see Hagan 1980 for a review; see also Ben-Yehuda 1986).

**Drug Problems Before the War**

Thailand shares her northern border with Burma (Myanmar) and Laos, where the Golden Triangle is located. The Golden Triangle has long been one of the main areas for producing opium, heroin, and now methamphetamine and trafficking them to the world market. The mountainous region supplies a climate suited for opium growing. It also offers a political climate favorable to the drug trade. The lucrative drug trade is an important financial source for armed campaigns in the long-standing conflicts between the Burmese (Myanmar) government and the ethnic minority groups in the area’s preserve (Jelsma, Kramer and Vervest 2005; McCoy 1972; Yawnghwe 1993). Those conflicts and the drug trade have affected Thailand for many years.

Although opium holds a long history in Thai society, a profitable trading network of its derivative, heroin, began around the time of the U.S. Vietnam War (Pongpaichit, Phiriyarangsan and Treerat 1998, 89). In 1969-1970, the Golden Triangle began producing quality heroin, “first supplying US soldiers fighting in South Vietnam, and later exporting to markets in America and Europe” (McCoy 2000, 204). Stanton (1976, 562) notes that “heroin use was clearly a Vietnam phenomenon” because pre-Vietnam heroin use was uncommon for American society (emphasis in original). After the end of war, the drug-trade networks in Thailand and the Golden Triangle,
including overseas destinations, continued. The amount of heroin and opium produced in
Thailand itself is in fact peripheral compared with the Golden Triangle’s production. Thailand is
important because it offers more convenient transportation than do her neighbors. Thailand
remains the important route for the Golden Triangle’s drug exports around the world
(Cheurprakobkit 2000, 17).

The drug problems in Thailand have been aggravated by habitual corruption at all levels of
Thai bureaucracy. At the high tide of Khun Sa, the legendary heroin king of the Golden Triangle,
the former Secretary General of the Office of the Narcotics Control Board (Chavalit Yodmani)
admitted that “Khun Sa comes in and out of Thailand at will. Someone must be protecting him”
(Business in Thailand. 1989, 38; see also McCoy 1999). Studying the illegal economy of drug
trade in Thailand, Pongpaichit et al. (1998, 105-6) also found that drug trades were protected or,
sometimes, run by powerful figures in the bureaucracy, military, police, and politics. Thus,
Thailand is one of the countries in the world that faces all dimensions of the drug problem,
production, trafficking, and consumption (Cheurprakobkit 2000; Chouvy and Meissonnier 2004).

Before 1996, cannabis, heroin and opium were often the top three drugs for which people
were arrested by Thai authorities (see Table 2-1). During 1989-1995, increases for offenses
related to cannabis, heroin and opium were slight, especially when compared with the rapid
increase for methamphetamine. Methamphetamines, however, still led to fewer arrests during
those years than did the three classic drugs (cannabis, heroin and opium).

Thailand’s role in opium and heroin diminished over time. According to the International
Narcotics Control Board (2004, 55), “Thailand is no longer a major source of illicit opium and
heroin” for the world market and especially for the U.S. market. The heroin dominating the U.S.
market in 1990s came from Columbia (Jelsma 2005, 152). According to U.S. Department of
Justice (2003), heroin from the Golden Triangle (including Thailand) accounted for only 10 percent of the supply in 1999 and only 1 percent in 2002 (cited in Jelsma 2005, 153).

Table 2-1. The number of drug offenses (cases) classified by types of drugs in 1989-2002

<table>
<thead>
<tr>
<th>Year/drugs</th>
<th>Heroin</th>
<th>Opium</th>
<th>Cannabis</th>
<th>Methamphetamine (Ya Ba)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>14,479</td>
<td>3,254</td>
<td>44,652</td>
<td>921</td>
</tr>
<tr>
<td>1990</td>
<td>12,795</td>
<td>3,120</td>
<td>37,408</td>
<td>2,214</td>
</tr>
<tr>
<td>1991</td>
<td>19,335</td>
<td>3,700</td>
<td>43,754</td>
<td>3,972</td>
</tr>
<tr>
<td>1992</td>
<td>21,995</td>
<td>3,576</td>
<td>44,923</td>
<td>5,827</td>
</tr>
<tr>
<td>1993</td>
<td>23,028</td>
<td>3,453</td>
<td>48,271</td>
<td>8,397</td>
</tr>
<tr>
<td>1994</td>
<td>34,063</td>
<td>4,064</td>
<td>50,569</td>
<td>12,871</td>
</tr>
<tr>
<td>1995</td>
<td>40,902</td>
<td>3,281</td>
<td>51,709</td>
<td>20,373</td>
</tr>
<tr>
<td>1996</td>
<td>25,347</td>
<td>3,912</td>
<td>44,759</td>
<td>52,358</td>
</tr>
<tr>
<td>1997</td>
<td>17,063</td>
<td>3,960</td>
<td>34,310</td>
<td>78,714</td>
</tr>
<tr>
<td>1998</td>
<td>12,423</td>
<td>3,581</td>
<td>24,168</td>
<td>114,874</td>
</tr>
<tr>
<td>1999</td>
<td>7,872</td>
<td>3,022</td>
<td>22,720</td>
<td>154,028</td>
</tr>
<tr>
<td>2000</td>
<td>4,926</td>
<td>2,466</td>
<td>19,890</td>
<td>180,287</td>
</tr>
<tr>
<td>2001</td>
<td>3,481</td>
<td>2,293</td>
<td>20,508</td>
<td>168,591</td>
</tr>
<tr>
<td>2002</td>
<td>2,350</td>
<td>1,942</td>
<td>14,829</td>
<td>149,659</td>
</tr>
</tbody>
</table>


After the surrender of Khun Sa to the Burmese government in 1996 in return for amnesty, the drug problems in Thailand changed drastically. The price of heroin skyrocketed because of the drastic shortage of heroin (Chouvy and Meissonnier 2004, 25). His arrest was followed by an unprecedented increase of the consumption of methamphetamine (Chouvy and Meissonnier 2004, 27; Office of the Narcotics Control Board 1996, 3). In 1996, methamphetamine arrests for the first time surpassed the arrests for other drugs (see Table 2-1). Methamphetamine became the most frequent drug offense category for arrests in Thai society according to the Office of the Narcotics Control Board of Thailand (ONCB). In 1996, the United Wa State Army (UWSA), which operated in Burma or Myanmar, replaced Khun Sa as the major supplier of methamphetamine to the drug markets.
Switching from heroin to methamphetamine, the producers could utilize their heroin-supply trading network for methamphetamine, according to *The Nation* (August 6, 1999). In 1997, ONCB (1997, 17) claimed that about 2-3 million tablets of methamphetamine were smuggled into Thailand. In 2001 alone, it was estimated that about 700 million tablets were smuggled into the country (Office of the Narcotics Control Board 2001, 10). In that year, about 70 clandestine methamphetamine laboratories were located in neighboring countries (Myanmar or Burma and Laos) (9).

Myanmar is the largest producer of this drug in Southeast Asia, importing ephedrine (one of the main ingredients) from China (Treerat, Wannathepsakul and Lewis 2000, 100). For example, according to *The Nation* (March 10a, 2001), the United Wa State Army (UWSA), linked to an ethnic group residing in the Shan State of Myanmar, produced hundreds of thousands of methamphetamine tablets (called speed pills) each day during 2001. Across the Thai-Myanmar border, 87 methamphetamine laboratories were identified in 2001 with 15 different routes of smuggling drugs into Thailand (*The Nation*, March 10b, 2001). At least two of the laboratories located in Myanmar were reported at that time to be owned by Thai nationals (*The Nation*, May 9, 2001).

The Office of the Narcotics Control Board of Thailand (ONCB) once estimated that around eighty percent of the methamphetamine in the Thai market came from Myanmar (Office of the Narcotics Control Board 1997, 31; United Nations Office on Drugs and Crime 2003, 9). However, in 2000, there was a report that the big dealers employed new tactics by bringing only the pure methamphetamine powder from Myanmar and renting houses near Bangkok to make the tablets (Treerat et al. 2000, 20). This strategy reduced the likelihood of being arrested during transportation.
Actually, methamphetamines have long been known to students, laborers, farmers, prostitutes and truck drivers. Its effect is consonant with the working lifestyle of many Thai people, especially of those in the rural area. Rural people have been familiar with the similar effects of other substances such as high-caffeine drinks and pain-killing pills when working in the fields (Phongpaichit 2003; Pongpaichit et al. 1998). The overuse of these caffeine substances has an effect like that of methamphetamine; it enables people to work long hours. Thus, methamphetamine was positively perceived originally. People called it the “diligence pill,” “horse drug,” or “speed pill” (ya kha yan or ya maa in Thai). Of the total 257, 965 methamphetamine addicts in 1993, according to the Thailand Development Research Institute (1995), farmers made up the largest proportion at 65.6 percent, slum dwellers counted at 6.6 percent, while truck drivers, who are commonly believed to be the largest abusers, shared only at 5.9 percent of all the addicts (cited in Pongpaichit et al. 1998, 101). The increase in methamphetamine use before the mid-1990s derived, in part, from the economic boom in the country.

From the second half of the 1970s to the first half of the 1990s (before the Asian economic crisis), Thailand experienced with the high growth of the economy with 7.6 percent in average (Siamwalla 2000, 2). Thailand was expected to be the next NIC, the newly industrial country (Charoenloet 1991; Jansen 1991; Phongpaichit 1980). However, the economic prosperity from the industries did not reach the rural areas very much. Rather, the decline of agricultural growth transformed many farmers in the countryside to be cheap labors in the cities (Phongpaichit and Baker 1995). According to Guest (1996), the peasants’ immigration to Bangkok and the cities nearby for a better life has been pervasive since the 1970s; the group that migrated most was peasants from the northeastern provinces (cited in Korinek, Entwisle and Jampaklay 2005, 785).
Under the changing economic conditions, methamphetamines helped low-waged laborers survive long working hours. In this stage, methamphetamine was considered as an instrument rather than as a lucrative product that could have recreational uses. Consumption was often moderate; its purpose was to achieve the most efficient result while working. According to Pongpaichit et al. (1998, 102), for example, the regular consumption among the truck drivers was most often limited to one pill per day. Therefore, methamphetamine use before the economic crisis (in mid-1997) did not pose much of a moral or social threat to the society.

While these laborers got very low pay during the economic bubble, those with higher education found in the middle class enjoyed very high salaries (Siamwalla 2000, 24). Methamphetamine, therefore, played no economic role (i.e., stimulant instrument) for the middle class. After the economic crisis, and with the involvement of the middle class, the role of methamphetamine changed from an instrumental stimulant to a lucrative product. Since then, methamphetamine rapidly and successfully has penetrated all social classes, ages and professional, including adolescent students. Its use became more recreational.

An economic recession began in 1996 and culminated in mid-1997 (Lauridsen 1998; Nabi and Shivakumar 2001). In that time, Thailand experienced a financial crisis with around 2 million people losing their jobs (Phongpaichit 2003). Between August 1997 and August 1998, the real wages were shrunk by “12 percent in some regions and up to 24 percent in others” (Nabi and Shivakumar 2001, 57). The economic crisis allowed methamphetamine to play both social and economic roles. Some turned to drugs for solace, while others started drug businesses as alternative means for economic survival. Unlike other drugs, the methamphetamine market expanded very quickly through a business strategy of multilevel marketing where “one enters the yaa baa [ya ba] dealing trade by moving from the role of a consumer to that of a dealer, and then
advancing to a retailer” (Chouvy and Meissonnier 2004, 59). Put simply, according to Pongpaichit (2003), “A seller sells to a user, encourages that user to develop his own set of customers in order to generate the income for his own consumption.”

The price of ya.ba has always been much lower than that of heroin. Methamphetamine, therefore, is possible for all classes of customers. However, according to Pongpaichit et al. (1998, 109-10), “the profitability per unit of the drug is greater in the case of ya ba” than heroin. The average retail price to consumers is about twenty times the cost of producing it (107). Methamphetamine is introduced to people, especially the adolescents, as a cheap drug for recreational purposes. With cheap prices and high demand, ya ba provides an opportunity for users, including the youths, to afford their own consumption by, at the same time, playing roles of drug pushers or retail dealers. Methamphetamine (ya ba) is commonly found to be part of the social activities of the adolescents (Sattah, Supawitkul, Dondero et al. 2002; Sherman, Sutcliffe, German et al. 2009; Verachai, Patarakorn, Dechongkit et al. 2001). There is a report that drug dealers made “hart-shaped pills” to attract their youth customers (Bangkok Post, December 22, 2001). Unlike other drugs such as heroin, methamphetamine is really used for social relations, as Chouvy and Meissonnier (2004, 86) put it:

Instead, methamphetamine paves the way for users to be further socialized into their peer community. Injecting heroin, an act often done on one’s own, reveals personal and social tensions within an addict; using methamphetamine is the result of youthful curiosity combined with peer-group persuasion, and taking it is generally done for fun.

Thus, the government’s early prevention efforts aimed to reach out to a wider audience than it would have for people having problems with other drugs. In 1997, the government tried to reduce the demand side of drug problems. One strategy was to create “negative attitude against drugs in the public” (Office of the Narcotics Control Board 1997, 9). The government tried to
convince the whole nation that “combating drugs is a responsibility for all Thai people” (Office of the Narcotics Control Board 2001, 12).

As with other efforts at criminalization found elsewhere (see Hagan 1980), the media played an important role. As in other examples, (see Hollinger and Lanza-Kaduce 1988), the media helped to create a sense of threat. Ya ba abusers were portrayed in the media as dangerous criminals who are always mad; they craved hurting or killing others, especially children and women. Methamphetamine became known as the “mad drug” instead of the “diligence pill.”

One slogan publicly seen and heard often was: “one would be dead [by using/abusing it], while the dealers would be jailed [by trading it]’. In fact, Sribanditmongkol, Chokjamsai, and Thampitak (2000) indicate that death due to methamphetamine toxicity is rare. Despite the government and media campaign, these labeling efforts failed because people retained positive attitudes; methamphetamine was not viewed as addictive but as a useful drug for working, studying and entertaining (Office of the Narcotics Control Board 1997; Pongpaichit et al. 1998, 100-5).

The labeling did not succeed also because, unlike heroin, ya ba use was not limited to the marginalized sections of society; but it penetrated all socioeconomic classes (Chouvy and Meissonnier 2004, 25). While the abuse of other drugs such as heroin and cocaine was largely confined to particular social groups (e.g., the poor, artists and celebrities), ya ba transcended all segments of the society. All ages, education levels, occupations, and socioeconomic classes were reported to have experience with ya ba, but their uses were for different purposes (Chouvy and Meissonnier 2004, 66-7). For example, in 1999, according to The Nation (March 10a, 2001) Thailand’s National Primary Education Commission indicated more than 666, 000 cases of drug-related offenses (users, pushers, or addicts) committed by students. Of this, the offenders of more
than 80,000 cases were primary school children, and in numerous cases, students sold ya ba pills to their classmates in order to pay for their own habit (The Nation, March 10a, 2001).

The government acknowledged that, in 2001, about 90 percent of the addicts were youths (The Nation, August 22, 2001). In 2002, the Office of the Narcotics Control Board (ONCB) reported that 181,377 offenders were arrested with 95,908,438 methamphetamine tablets (8,631.76 Kilograms) (Office of the Narcotics Control Board 2006, 68). However, the government estimated that around 800 million tablets were smuggled into the country each year, more than enough to be consumed by every man, woman and child in the country given its population (The Nation, March 10b, 2001; August 22, 2001).

The International Narcotics Control Board (INCB), a monitoring body for the United Nations international drug control conventions, also reported that, in Thailand about “3 million people, or about 5 percent of the population, regularly abuse methamphetamine, which would make that country the world’s largest per capita consumer of the substance” (International Narcotic Control Board 2002, 15; Office of the Narcotics Control Board 2003b). Some reports claimed that methamphetamines in Thailand played “a similar role as opiates in Europe or cocaine in the Americas” (United Nations Office on Drugs and Crime 2002, 260). The data established a record of methamphetamine use in Thailand that demanded an official reaction of some kind. Indeed, the Thai war on drugs in 2003 can be seen as part of the international effort to combat drugs since methamphetamine was really a global phenomenon (see Dupont 1999; Grau 2007; Jelsma 2005). The International Narcotics Control Board (INCB) and the U.S. government often urged Thailand and other developing countries to eliminate the supply of drugs (e.g., opium, heroine, cannabis and now methamphetamine). The international community often has focused on the supply side of the problem. The U.S. government has used its economic
power to manipulate the cooperation from these countries for the benefit of the U.S. in combating drug supply, far away from home. In addition, the strategic approaches of the INCB rarely deal with the demand reduction as the subject of an international agreement. Therefore, countries like the U.S., the main markets of the drug trades, have no international responsibility to reduce consumer demand. Demand reduction is rather treated by the INCB as a domestic matter (Fazey 2003, 157).

According to its website (www.incb.org) a key function of the International Narcotics Control Board “as regards the illicit manufacture of, trafficking in and use of drugs” is to identify “weaknesses in national and international control systems” and to contribute “to correcting such situations.” Thailand has been identified as one of the major illicit drug producing and transiting countries. For example, “On February 29, 2000, former President Clinton submitted to Congress his annual list of major illicit drug producing and transiting countries eligible to receive U.S. foreign aid and other economic and trade benefits. Certified as fully cooperating and deserving of U.S. assistance are Bahamas, Bolivia, Brazil, China, Colombia, Dominican Republic, Ecuador, Guatemala, Hong Kong, India, Jamaica, Laos, Mexico, Panama, Peru, Taiwan, Thailand, Venezuela, and Vietnam” (Perl 2001, 13 emphasis added).

There is irony that international pressure may have contributed to Thailand’s efforts to control the supply of drugs through intensive law enforcement, even as those efforts may have led to human rights abuses that eventually engendered a very different international reaction. The initial international response, at least that from the INCB, was timid. In May 2004, representatives of the INCB visited Thailand to gather information about the war on drugs in 2003, criticized by both domestic and international human rights professionals for grave human rights violations. Rather than seriously examining the issue of law enforcement and the abuses of
power occurring during the drug war, the INCB naïvely accepted the Thai government’s promises to investigate the murder cases of kha-tad-ton. The killings and other violence during the war were simply unintended consequences of the Thai government’s good efforts to combat drugs, which the INCB appreciated without asking hard questions about accountability for mass murders and other abuses during the war on drugs. Consider the INCB’s own words.

The mission received detailed information from the Government regarding special committees established to investigate those cases and was informed that certain cases had already been the subject of judicial procedures. In addition, the mission was informed that criminal proceedings had been initiated against a significant number of government officials accused of corruption. The Board appreciates those efforts and trusts that the Government will continue to provide information to it regarding the progress of those investigations.

The Board was also informed that, subsequent to the “war on drugs,” the problem of methamphetamine abuse had been reduced. The Board received detailed information on the treatment of drug addicts in Thailand. The Board notes the efforts of the Government and urges it to undertake sustainable measures to address the drug abuse problem in Thailand. (International Narcotics Control Board 2004, 59 emphasis added)

Even for parts of the international community, drug control took precedent.

That mindset was already prominent in Thai society. The Thai government, long before Thaksin, has set the stage to pursue a war on drugs.

To combat the threat, the Thai government has already adjusted narcotics laws by increasing the punishment of methamphetamine offenders, setting it at the same level as that for heroin offenders (Office of the Narcotics Control Board 1998, 17). In legal terms, “ya ba” is not a “psychological substance” under the Psychotropic Substances Act B.E. 2518 (1975), but is classified in the “narcotic category I,” a dangerous narcotic, under the Narcotics Act B.E. 2522 (1979) and the Notification of the Ministry of Public Health No. 135 B.E. 2539 (1996) (specifying the names and the categories of narcotics). In section 7 of the Narcotics Act B.E. 2522 (1979), “narcotics category I” consists of dangerous narcotics such as heroin. The highest penalty for committing offenses related to “psychological substances” is twenty-years in
imprisonment (section 89 of Psychotropic Substances Act B.E. 2518 (1975)). The death penalty, however, can be applied to those who produce, import, or export “the narcotic category I” for the purpose of disposal (section 65 of the Narcotics Act B.E. 2522 (1979)).

Because of the growing acceptance of the severity of the drug problem, the criminal court had not hesitated to apply capital punishment to drug traffickers. One judge from the criminal court frankly told The Nation (July 27, 2001) that the court itself had declared war against drug traffickers (before Thaksin’s war on drugs in 2003). For example, in 2000’s first eight months alone, 34 traffickers were sentenced to death (The Nation, October 3, 2000). The evidence suggests that before the 2003 war on drugs officially began in February, punitive attitudes against drug dealers had already infiltrated the important political, legal and social institutes. Death was already an accepted punishment for those in the drug trade; Thailand was ready for government’s deadly 2003 war against drug dealers!

**The War on Drugs**

On January 14, 2003, Prime Minister Thaksin Shinnawatra delivered his anti-drug policy to chiefs of various divisions and high ranking state officers, including provincial governors, police chiefs and military personnel at Suan Dusit Rajabhat University Hall. He urged the state authorities to apply an “area approach” in which every square inch of the country would be unturned looking for drug dealers; the officials were to keep communities free of drugs “at all cost” (National Command Centre for Combating Drugs 2004, 2). From the beginning, he urged the state authorities to seek the forfeiture of properties of those who were suspiciously too wealthy compared with their normal status. He told the state authorities that casualties of drug dealers were normal phenomena of waging war (5). In his words, “I am giving state officials three months to get rid of all (illicit) drugs—from every square inch of the country” (Bangkok Post, Jan 19, 2003).
His anti-drug policy would also, he promised, re-enforce prevention and rehabilitation programs. Drug users would be treated as patients with, in the Premier’s words, a “velvet glove,” while drug dealers would be punched with an “iron fist” without mercy (National Command Centre for Combating Drugs 2004, 4). The Prime Minister, who was once a police officer, consciously encouraged the state authorities by quoting the 1950s police chief, General Phao Siriyanon: “there is nothing under the sun that the Thai police cannot do” (National Command Centre for Combating Drugs 2004, 4).

In his infamous time, General Phao Siriyanon was supplied by the CIA with modern and powerful weaponry and hardware for an anti-communist campaign within Thailand and neighboring countries. Especially, the CIA expected General Phao to assist the Kuomintang (KMT), the remnants of the Chinese government defeated and pushed southwards into the northern area of Burma (or Myanmar) by Mao’s revolutionary army in late 1949 (McCoy 1972, 127). The KMT drew its main financial source from producing opium (Bamrungsuk 1999, Ch 5; Fineman 1993, Part III). General Phao became the most powerful figure in the country securing his financial base by joining the opium trade with the KMT and by engaging in mafia types of activities. C.L. Sulzberger of *The New York Times* called him a “superlative crook,” while one respected Thai diplomat identified him as the “worst man in the whole history of modern Thailand” (McCoy 1972, 140). McCoy (1972, 140) also portrayed General Phao Siriyanon’s involvement with drug trade as being a role model for corrupted police rather than an innocent hero.

By 1955 Phao’s National Police Force had become the largest opium trafficking syndicate in Thailand, and was intimately involved in every phase of the narcotics traffic; the level of corruption was remarkable even by Thai standards. If the smuggled opium was destined for export, police border guards escorted the KMT caravans from the Thailand-Burma border to police warehouses in Chiang Mai. From there police guards brought it to Bangkok by train or police aircraft. Then, it was loaded onto civilian coastal vessels and
escorted by the maritime police to a mid-ocean rendezvous with freighters bound for Singapore or Hong Kong. However, if the opium was needed for the government Opium Monopoly, theatrical considerations came to the fore, with police border patrols staging elaborate shoot-outs with the KMT smugglers near the Burma-Thailand frontier. Invariably the KMT guerrillas would drop the opium and flee, while the police heroes brought the opium to Bangkok and collected a reward worth one eighth the retail value. The opium subsequently disappeared. Phao himself delighted in posing as the leader in the crusade against opium smuggling, and often made hurried, dramatic departures to the northern frontier, where he personally led his men in these desperate gun battles with the ruthless smugglers of slow death.

At a meeting with the high ranking state officials on January 14, 2003, former Prime Minister Thaksin also declared that “From 9 am of February 1 to 9 pm of April 30, we will take every action we can to fight illicit drugs” (The Nation, January 17, 2003). After this deadline, the inefficient governors and police chiefs would “lose their jobs” as punishment (Bangkok Post, January 19, 2003). As generally understood, this war was waged mainly against “ya ba” (methamphetamine) because the government considered it to be a threat to national security. Note that from May to December 2, 2003, the war on drugs was still declared but in only a follow-up action. The latter phase of war (May to December 2003) was not as intensive as the first-three months of the war on drugs (February to April 2003). Thus, when talking about Thaksin’s war on drugs, people generally understood that it is the war waged from February to April 2003.

Before the war on drugs was officially declared on February 1, 2003, high-ranking state officials often conveyed to their subordinates and the public that lethal measures would be appropriate to use against drug dealers. Interior Minister Wan Muhamad Nor Matha passed on messages to his subordinates, all provincial and district chiefs around the country, to make sure that they made drug dealers in their areas realize the core point of waging this war—“Tell them to stop selling drugs and leave the communities for good or they will be put behind bars or even vanish without a trace” (Bangkok Post, January 25, 2003 emphasis added). The war on drugs,
like anti-communist operations, was domestic warfare with the police deployed as the main crusaders.

Recognizing his duty, one police regional commander bragged that that “more than 10,000 anti-drug volunteers backed a plan to *shorten the lives of drug traders*.” He also gave a cold remark that “A normal person lives for 80 years. *But a bad person should not live that long*” (*Bangkok Post*, January 25, 2003 emphasis added). Police around the country, therefore, prepared for the battle. For instance, the Pratunam Chulalongkorn Police Station in Pathum Thani Province put a big advertising board at its station: “Only death [deserved] for drug trading” (*Matichon*, January 19, B.E. 2546 (2003)). The Phang Khon Police Station in Sakon Nakhon Province also laid down a coffin at its front office, ajar with a message inside, “Welcome drug dealer” (*Matichon*, February 1a, B.E. 2546 (2003)). Moreover, the Police Superintendent of Khok Samrong Police Station in Lop Buri Province ordered his subordinates to attach two types of notice to 17 houses suspected of dealing drugs in his jurisdiction and to explode a firecracker in front of those houses to shame them publicly (*Matichon*, February 1b, B.E. 2546 (2003)). One notice bore warning messages, “Do not be enemy of the nation. Quit drug trading. Be aware to be reincarnated.” The other blamed the houses’ owners with the messages, “This house [owner] traffics drugs, betrayal to the nation, [and] the enemy of the nation. Help them to be reincarnated.”

On the morning of January 31, 2003, Prime Minister Thaksin presided over the ceremony to declare officially the war on drugs in front of around 24,000 people. He appointed himself the commanding general to annihilate drugs from Thailand within three months, February 1-April 30, 2003 (*Bangkok Post*, February 1, 2003). Similar ceremonies also took place in the provinces around the country. The Interior Minister urged state officials to work with no day off between
February and April 2003 to make “drug traffickers to feel that there is no place for them and their family members to hide in Thailand” (The Nation, February 1, 2003 emphasis added).

Thaksin used monetary incentives so law enforcement would pursue the war. The government promised to pay the officers 3 baht for a drug tablet (0.08 U.S. dollars in that time), but not more than 1 million baht per case about (25, 000 U.S. dollars)² (The Nation, February 9, 2003). Prime Minister Thaksin was confident that “At 3 baht per methamphetamine tablet seized, a government official can become a millionaire by upholding the law, instead of begging for kickbacks from the scum of society” (The Nation, February 2, 2003 emphasis added). Moreover, the government, under anti-drugs and money laundering laws, agreed to apportion up to 40 percent of the value of seized assets to the arresting officials once a court ordered their forfeiture (The Nation, April 9, 2003). It is correct to say that the war on drugs reflected business thinking—i.e., “targets, incentives, and timeline” —which Thaksin had been very familiar with before becoming Thai Prime Minister (Phongpaichit 2003).

To make targets visible and the war operation measurable, on January 30, 2003, the Interior Minister had the Ministry of Interior’s Order (No. Mor Tor 0211.1/Wor 343 dated 30 January 2003, concerning the implementation of the Prime Minister’s instructions) to order regional and local authorities to supply lists of the names of drug dealers (the so-called blacklists) within their jurisdiction by February 3, 2003 later extended to February 13 (cited in Independent Committee for the Investigation, Study and Analysis of the Formulation and Implementation of Narcotics Suppression Policy 2008). Then, the Interior Minister informed the authorities to wipe out all names appearing on the blacklists by April 30, 2003, the end of the three-month war, according to the Ministry of Interior’s Order (most urgent) No. Mor Tor

² The average exchange rate in 2003 was at 40 baht for a U.S. dollar.
0211.1/Wor 436 dated 5 February 2003, concerning the change and renewal of indicators or targets of the implementation (cited in Independent Committee for the Investigation, Study and Analysis of the Formulation and Implementation of Narcotics Suppression Policy 2008). Otherwise, officials in charge of that province and district would be considered inefficient and transferred to an inactive post (*The Nation*, February 1, 2003). The sources and approaches to make the so-called blacklists were very ambiguous and little known to the public. According to *The Nation* (February 27, 2003), three sources of the so-called blacklists were complied by (1) police, (2) village headmen (Phu yai ban and Kamnan in Thai) and local administrative organizations, and (3) the Office of Narcotics Control Board. The local authorities had only two weeks to compile the lists.

There were a number of cases reported in newspapers that many people did not recognize how their names appeared in the blacklists of drug dealers. There was a report that even a 91-year-old woman in Nakhon Pathom Province found her name in the blacklist as a drug dealer (*Bangkok Post*, March 16, 2003). People often learned about it later when called by local police or told by village headmen. Some were called by the local authorities to join a rehabilitation program for drug-abusers with a promise of no criminal charges. They were asked to make a vow not to get involved with drugs. But when they showed up or reported to the local authorities, they were asked, or sometimes threatened, to sign on the statement that they were a trafficker or an abuser who surrendered to the officers (*The Nation*, February 15, 2003). Some even received official letters threatening not to guarantee their state of safety if they did not report themselves at the assigned date (see the examples of letters in *Bangkok Post*, February 23, 2003). These official letters were tallied as one way to make whole the government accountable in its war on drugs.
The National Human Rights Commission of Thailand (NHRC) also received a lot of complaints indicating similar threatening behaviors of the state authorities (see Examination Human Rights Report No. 39/B.E. 2549 in National Human Rights Commission of Thailand 2008). For example, the authorities notified one complainant to choose either to be jailed or to be kept in a cemetery. Another was told to prepare marihuana or other illegal drugs and wait to be legally searched by the police (at home); otherwise, only death would be delivered to him for disobedience. The National Human Rights Commission (NHRC), therefore, was convinced that “police are lynching blacklisted suspects to meet the drastic and swift anti-drug measures ordered by Prime Minister Thaksin Shinawatra” (The Nation, February 23, 2003). Amnesty International also reported that many people were killed on their way back home after reporting themselves to the police (Amnesty International 2003). However, police always concluded that these killings were committed by paranoid dealers killing one another.

Many people who seemed to be wealthier than their neighbors were also blacklisted or, unluckily, eventually killed. Recall Thaksin used relative wealth as an indicator of drug trafficking. The striking example is a young couple living in one of the very poor rural villages in Nakorn Rachaseema Province. They were shot dead. Local police easily found 17 methamphetamine tablets inside their pickup truck. The police later concluded in their investigating record that the couple was part of a major network of drug dealer. Police, then, were justified to confiscate their vehicles and to seize their bank accounts. Actually, they became rich over night because of winning the first prize in lottery but told nobody (The Nation, May 22, 2003). In many cases, people’s names were on the blacklists simply because they had personal conflicts with influential people, police or government officials. This included lawyers. The president of the Law Society of Samut Songkram Province, for instance, was blacklisted for drug
involvement because he used to defend the accused drug dealers in courts (Dabhoiwala 2003, 13).

A timeline was applied to evaluate and control the operation of the war crusaders during the three-month fight. The war consisted of four phases. Each had targets that had to be achieved and demanded a percentage of the blacklists, earlier submitted by each province, to be removed, according to the Ministry of Interior’s Order No. Mor Tor 0211.1/Wor 378 dated 3 February 2003, concerning the identification of indicators for narcotics prevention and control (cited in Independent Committee for the Investigation, Study and Analysis of the Formulation and Implementation of Narcotics Suppression Policy 2008).

Phase 1 required at least a 5% reduction be achieved by February 10, 2003. Phase 2 required that at least 25% reduction be achieved by February 28, 2003. By March 31, 2003, at least 50% needed to be reported (phase 3). By 30 April 2003, all drug producers and narcotics dealers must be eradicated (100% deletion, the end of phase 4). Throughout the campaign, the government often threatened to move the provincial governors and other officials into the inactive posts as punishment for underperformance for each phase of the timeline. For example, less than two weeks after the beginning of war, Prime Minister Thaksin and the Interior Minister publicly threatened to transfer governors and police chiefs of some 20 provinces out of their posts for their poor performance (The Nation, February 12, 2003; February 14, 2003).

In order to reduce the number of narcotics dealers and producers whose names appeared in the lists, Ministry of Interior authorized three methods for the state authorities to count their achievement point—i.e., arrest, extrajudicial execution, or death by other causes, according to the Ministry of Interior’s Order (most urgent) No. NCCB MOI/Wor 24 dated 15 February 2003, concerning clarification on the methods to combat drugs of NCCB Province/Provisional district,
and the Ministry of Interior’s Order (most urgent) No. NCCB MOI/Wor 78 dated 21 February 2003, specifying that only three methods are allowed for reducing the numbers of drug dealers and producers including arrest, extrajudicial execution or death (cited in Independent Committee for the Investigation, Study and Analysis of the Formulation and Implementation of Narcotics Suppression Policy 2008).

The procedure of “arrest,” including search and detention, is ruled by the Constitution, the Criminal Procedure Code (CPC), and other laws related to narcotics offenses. As mentioned early in this chapter, the lawful arrest, also the lawful search and detention, requires strict procedures intended to prevent the arbitrary use of power by the state authorities. These rules of law seemed to burden the state authorities rather than to serve them effectively in time of war. Thus, if drug dealers were not legally arrested, they were potentially targeted for death by the other two means as prescribed by the Interior Minister. The Prime Minister also affirmed that “For those who are still selling drugs, the government has set two options for them, either it is prison or a temple cemetery” (The Nation, March 24, 2003 emphasis added). For example, a man whose name appeared on the blacklist was shot dead in the market place, only 300 meters away from the police station, after his family was searched six times by the police and found nothing illegal (The Nation, December 13, 2003). Police detectives did not pay much attention to look for evidence at scene, e.g., the spent cartridges, which were eventually later picked up and turned in to police by bystanders (The Nation, December 13, 2003).

Although “extra-judicial killing” finds no definition in any law, it is widely understood that it is a result of an official carrying out his duty. In general, the Criminal Procedure Code (CPC) requires a post-mortem inquest conducted by physician specialized in forensic science together with the inquiry official (police) for all unnatural deaths (section 148). Unnatural deaths include
(1) suicide; (2) Death by the act of another person; (3) Death caused by an animal; (4) Death by accident; and (5) Death from a cause not yet known. For so-called extrajudicial killings, the law requires the local public prosecutor and an administrative official to participate in autopsies in addition to the police and the physician (paragraph 3 of section 150). Unlike other unnatural deaths, the death caused by the act of an official alleged to be an account of carrying out his duty needs to be also reviewed by the court. The intervention of the judiciary is intended to ensure justice for the killed suspect with the most independent agent in the justice system. The police who committed the so-called extrajudicial killing might bear criminal liability if his lethal force was excessive, over-reaction or not proportionate to the circumstance at that time (i.e., not in self defense).

Dr. Pornthip Rojanasunand is known as “doctor death” because she is the most outspoken and famous forensic expert in Thailand. During the war on drugs she publicly questioned the police’s decision to not summon pathologists from her agency (the Central Institute of Forensic Science) to conduct initial autopsies in drug-related murders. The police used to regularly ask her agency to participate in autopsies in the provinces of Nonthaburi, Nakhon Nayok, Pathum Thani, and Ayutthaya for other murders (The Nation, February 19, 2003). She observed that physicians from provincial or district hospitals who were called to conduct autopsies were not pathologists. They did not want to have problems with the local police. Thus, they performed only limited forensic checks that were not very useful as criminal proof (Bangkok Post, February 17, 2003).

The last way for officials to delete the blacklisted names and to achieve points with Thaksin in the war operation was to show that those blacklisted people died “by other causes,” which literally covers everything else. While due process is still at least minimally an important black-letter law issue for extra-judicial killings and lawful arrest, it becomes irrelevant if people
in the blacklists died from other causes. One convenient “other cause” was killed by drug gangs. As the Prime Minister once expressed, if drug dealers were killing each other, “that can’t be helped” (The Nation, February 26, 2003). Thus, it is not surprising that police often dragged their feet for investigating the drug-related killings. If they could attribute a death to drug gangs, they did not have to collect evidence or investigate the cases thoroughly and they could rapidly close the cases and meet their blacklist targets.

There were also many reports in the newspapers that witnesses and the relatives of the victims were often intimidated if they wanted to testify or if they asked for information about their loved ones’ cases. For example, a father of a dead son tried to ask local police about the progress in the probe into his son’s death, which the police conveniently presumed was related to a drug ring’s killings. The father received a threat from the police instead of information, forcing him and his wife to leave the community and hide in Bangkok (Bangkok Post, December 11, 2003).

Police could use the reason of “traffickers killing each other” to explain the murder cases occurring during the three months of war on drugs and to rationalize their discretion to cease investigation by putting the blame on drug dealers. It also protected the “top cop.” Not surprisingly, when the government’s final claim of victory over drugs war was publicly announced, it showed a high number of deaths where the victims were executed by unknown assailants—they conveniently died by other causes.

In the first day of the war, February 1, 2003, four suspects were shot dead and 264 people were taken into custody according to The Nation (February 3, 2003). In that time, ABAC Poll conducted by Assumption University with 1,412 residents of Bangkok, reported that “a majority,
84.2 percent, supported the campaign, although 65.3 percent voiced concern that corrupt law enforcers might take the chance to frame innocent people” (The Nation, February 3, 2003).

The daily killings after the first day of the war prompted the critics to raise concerns over the “shoot-to-kill” policy or “ying-ting” in Thai (kill and throw away). However, Interior Minister Wan Mohamad Noor Matha played down those voices, dismissing them as being worried too much about the lives of drug traffickers. He also accentuated the police theory saying that “the traffickers themselves were killing each other to prevent police from uncovering links to them” (The Nation, February 4, 2003).

Throughout the campaign, Prime Minister Thaksin both explicitly and implicitly defended extra-judicial killings as a moral necessity in the time of war. He once demeaned the oppositional concerns, “These officers do not deal in drugs. I think it’s quite unusual the drug dealers [killed by the police] are getting sympathy” (Bangkok Post, February 12, 2003). He held the critics in contempt by saying that “I realize what I am dealing with. Don’t these critics know that I have a doctorate in criminology? How can I not know what I am doing?” (The Nation, March 4b, 2003 emphasis added). He also tried to convince the public about the evil nature of the drug trade and how it works. “Pushers are killed if they try to quit or give information to police.” “The government’s strategy is to smoke out pushers, who will be eliminated by their own kind. I don’t understand why some people are so concerned about them while neglecting to care for the future of one million children who are being lured into becoming drug-users” (The Nation, March 1, 2003 emphasis added).

The Office of the Narcotics Control Board of Thailand has accepted for long time that the golden triangle produced around 700-800 million tablets of methamphetamines per year and around 80 percent of it was made available in Thai drug market (Office of the Narcotics Control
The production within Thailand is, in fact, peripheral. Thus, the victory over drugs acclaimed by former Prime Minister Thaksin did not tackle the real source of the problem located in Myanmar (Burma). Through simple logic, it was no benefit at all for drug producers in Myanmar to cross the border to kill Thai drug dealers. The police theory of killings among drug dealers seems to ring hollow.

Fifteen days after the war operation started, the deaths of alleged drug dealers reached 397 and 4,792 suspects were arrested. Of the 397 deaths, the police admitted only 15 were shot dead in their self defense or as extrajudicial killings (*The Nation*, February 17, 2003).

Although the Thai people saw daily news reporting killings related to drugs war, they still supported the government’s actions, although they did not wholeheartedly believe the police theory of “kha-tad-ton.” The Suan Dusit Poll carried out between February 15 and 23, 2003 with 8,674 people representing 846 communities nationwide, found “90 percent still back the move despite fear of being killed by either police or the drug mafia” (*The Nation*, February 24, 2003 emphasis added). There was no public outcry against the government’s war on drugs. People remained silent.

The shoot-to-kill policy also seemed to be supported by popular culture. The Thai news’ reports often presented the killing events using themes supporting the government’s version—i.e., the corpse was found at the scene with methamphetamine (ya ba) nearby or hidden on the body or in the vehicle. The reports would refer to the police theory of the drug gangs silencing their potential informers. The media coverage seemed to reinforce the moral righteousness of the hard-line approach to execute drug dealers in any means to secure the national interest.

Thaksin also successfully convinced the society through the manipulation of the mass media to impose violence on the drug dealers. In fact, he strategically and politically used the
mass media to portray his hero image but demeaned his opponents. Knowing marketing well, he repeatedly recounted and advertised his political activities every week through his own radio program, “Prime Minister talks to the people.” Oftentimes, he used this radio to condemn his condemners and to justify the violence during the war on drugs. It was widely accepted that he interfered with the independence of the mass media. The report of Thai Journalist Association dubbed the year 2002 under his administration as the “Year of Media Interference,” and the year 2003 (the year of the war on drugs) as the “Year of Concerning Media” (see Chongkittavorn 2003; Rananand 2007, 149). His political power also extended to minimize the role and image of NGOs in all social development matters (as evidently decried by some human rights professionals in this study). His political influence resulted in the difficulties for human rights professionals (most were NGOs) to rise up against the war on drugs and to struggle for justice after the war. Those rising human rights concerns were not supported by the society; there was little opposition to the war on drugs.

Associate Professor Chaiwat Satha-anan, a leading Thai political scientist warned that “in fighting drug addiction in this way, [I fear] we are becoming increasingly addicted to violence [because] the government makes us believe we have tried other ways that did not work, so violence seems to be our last resort” (The Nation, March 10, 2003). Thus, during the war on drugs, human rights concerns were not simply about the arbitrary use of violence, but also about the public tolerance for the violence. Only a few people were willing to raise these concerns during the war on drugs. At the beginning of March, around 100 leading Thai academics in various fields from universities around the country agreed to sign a statement protesting the government’s human rights abuses and demanding the public not accept the violence and unlawful methods waged in the war on drugs (The Nation, March 10, 2003).
There was also an attempt by the United Nations to send a Special Representative of the Secretary General to Thailand after news reports had been broadcast worldwide about the high number of state-authorized killings at the beginning of the war on drugs (Bangkok Post, February 12, 2003). However, the Thai government rejected the request. Asma Jahangir, Special Rapporteur of the United Nations Commission on Extrajudicial, Summary or Arbitrary Execution, also urged the Thai government to limit the use of lethal forces and to abide by law when dealing with the suspects. She demanded independent investigations in each death, but Prime Minister Thaksin paid little attention to her demand (Bangkok Post, February 27, 2003).

Amnesty International and Human Rights Watch also kept an eye on the war on drugs closely and presented their reports about human rights violations during the war. They decried Thailand’s human rights record during the war on drugs. The Asian Human Rights Commission devoted its journal, Article 2, of June 2003 to talk about the three-month’s Thai war on drugs.

The National Human Rights Commission of Thailand (which had been created by the 1997 Constitution) and other Thai human rights workers tried hard to have the government review its policy and investigate all killing cases. The National Human Rights Commission had several open letters to Prime Minister Thaksin, but got no serious response. These human rights advocates accused the government of violating national laws and of a grave violation of its international human rights obligation. Some even referred to the possibility of taking the issues of extra-judicial killings and drug-related murders to the International Criminal Court (The Nation, March 3, 2003). Some of them also equated Prime Minister Thaksin’s conduct with that of the former Field Marshal Sarit Tanarat (1959-1963), one of Thailand’s most totalitarian leaders (The Nation, March 5, 2003). During the old days of Prime Minister Sarit Thanarat, the

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3 Reports on the Thai war on drugs were found in foreign newspapers such as Straits Times, The (Singapore), The Korea Herald, Herald Sun (Melbourne, Australia), Scotland on Sunday, CNN.com, Sydney Morning Herald (Australia), The Daily Telegraph (London).
constitution provided him with a power to execute anyone without judicial proof. Hundreds of people, most accused of being communists or disrupting social orders (especially arsonists), were lawfully executed at the scene if Prime Minister Sarit said they were guilty. However, some human rights activists viewed that the daily drug-related killings in Thaksin’s regime were worse because the killings could happen at any time, place, and to anyone who simply had his name on the government’s blacklists, and the killings were excused because they were blamed on drug gangs and unidentified gunmen.

Among these active human rights workers was Pradit Charoenthaitawee. He was a National Human Rights Commissioner, who received several threatening phone calls and sometimes was stalked by strangers in jungle fatigues after he likened the Prime Minister to the former Field Marshal Sarit Tanarat. He also presented information on the unlawful killings at the United Nations’ conference on human rights in Pakistan in February 2003 (The Nation, March 7, 2003). Prime Minister Thaksin denounced him as a “whistle-blower” who would give away Thailand’s independence; Thaksin called Pradit’s behavior “sickening” (Bangkok Post, March 6, 2003; March 11, 2003). The Deputy Chief of the Internal Security Operations Command even labeled Pradit Charoenthaithawee as an ally of drug traders (Bangkok Post, March 11, 2003 emphasis added).

By the end of April, also the end of the first three-month war on drugs, according to Bangkok Post (May 1, 2003), the government announced, that a total of 1,765 big-time drug traders and 15,244 small dealers were arrested. A total of 280,207 pushers and addicts surrendered and were sent for rehabilitation. Some 15.5 million methamphetamine tablets were seized (Bangkok Post, May 1, 2003). A total of 2,274 people were killed by the end of April, but only 42 died by police acting in self defense (Bangkok Post, May 1, 2003).
After the three-month war on drugs (May to December 2003), the government turned to new targets such as hired gunmen, human traffickers and contraband smugglers to cut the vicious cycle of drug trade in the country and planned to declare the absolute victory of the war on December 2, 2003 (Bangkok Post, May 1, 2003). The number of extra-judicial executions or deaths due to other causes (e.g., killings among the drug rings) rarely happened after April 30, 2003. The drug-related killings corresponded to government actions and were seemingly controllable by the government. As observed by Pongpaichit (2003, 4), “The killings started right on cue on February 1st. They ended equally abruptly when the government backed away from this policy [after April 30, 2003].” The Independent Committee for the Investigation, Study and Analysis of the Formulation and Implementation of Narcotics Suppression Policy (2008, 16), also confirmed this pattern by comparing the period of two years before and after the 2003 war on drugs, it was found that during February-April of the year 2001-2002 and 2004-2005, the average number of murder cases was 454 per month. But during the intensive campaign to combat narcotics from February – April 2003, the average number of murder cases reached 853 cases per month, an increase of 87.89 percent per month.

In December 2003 when the government declared absolute victory over the war, according to Bangkok Post (December 2, 2003) the Interior Minister declared that a total of 82, 247 villages were free from drugs (100% achievement of the set target). A total of 327, 224 drug addicts, 48% higher than the set target of 220, 937, reported themselves for rehabilitation. For drug producers and traders, 52, 347 were arrested, slightly above the target of 51, 516. Legal action was also pursued against 1, 257 state officials suspected of being involved with drugs. Moreover, the Narcotics Control Board and Anti-Money Laundering Board seized assets from suspected drug dealers and producers worth 1.79 billion baht (44.78 million U.S. dollars in that time) from
February 1 to April 30 (Bangkok Post, December 2, 2003). The Prime Minister presented 112 awards to outstanding agencies and officials for the successful war on drugs (Bangkok Post, December 2, 2003). On December 2, 2003, Prime Minister officially declared victory over drugs saying that, “We are now in a position to declare that drugs, which formerly were a big danger to our nation, can no longer hurt us” (Bangkok Post, December 2, 2003).

It is true that seizure of methamphetamine have quantitatively decreased after the war on drugs. However, the quality of the war is like a rock pressing grasses. Grasses do not die out but wait for time to grow up again, that is, when the rock is lifted off. The drug problems, especially ya ba, recently have gradually recovered their former place in the society as seen in Table 2-2.

Table 2-2. The number of cases, offenders and amount of methamphetamine arrested in 2003-2007

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Cases</th>
<th>No. of Offenders</th>
<th>Seized Drugs (Tablets)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003 (war on drugs)</td>
<td>63,593</td>
<td>68,063</td>
<td>71,526,124</td>
</tr>
<tr>
<td>2004</td>
<td>34,900</td>
<td>38,778</td>
<td>31,263,517</td>
</tr>
<tr>
<td>2005</td>
<td>50,671</td>
<td>56,111</td>
<td>17,786,091</td>
</tr>
<tr>
<td>2006</td>
<td>59,272</td>
<td>65,378</td>
<td>13,849,816</td>
</tr>
<tr>
<td>2007</td>
<td>75,552</td>
<td>82,016</td>
<td>14,347,156</td>
</tr>
</tbody>
</table>


Next, I review the relevant literature to identify theoretical concepts or frameworks to help understand the social practice of human rights in the domestic Thai legal settings, which have been dominated by a strong authoritarian legal culture.
CHAPTER 3
LITERATURE REVIEW

Introduction

After the end of the Second World War, the dawn of international human rights law at the Nuremberg Trials manifested a distinctive break with traditional norms of state sovereignty. Before 1945, international law addressed violations of individual rights by a state only in cases of injury to aliens and violation of humanitarian law or laws and customs of war; it did not cover atrocities against the state’s own citizens (Bantekas, Mackarel and Nash 2001, 74). However, this changed when the nature and extent of the Holocaust became widely known and viewed as threatening the international peace (Lauren 2004, 25; Steiner and Alston 2000, 113). Thus, crimes against humanity were invented. Individuals could be responsible for international human rights crimes (Steiner and Alston 2000, 114).

It is generally accepted that human rights became truly internationalized when international law embraced human rights standards established by the United Nations (UN) rather than as a result of actions taken by war victors like occurred in the Nuremberg Trial (Buergenthal 1997, 703). In a sense human rights were internationalized and international law was humanized. The internationalization implies that human rights violations within the state provide jurisdiction that is not constrained by state sovereignty. It is the interest of the international community to establish human rights standards and pursue violations of those standards. The humanization of international law posits a concern for humanity (and human rights) as a fundamental principle of international relations.

Although the United Nations Charter provides only a few provisions addressing human rights,4 it implicitly and explicitly authorizes the contemporary human rights movement around

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4 Human rights principles are addressed in the second paragraph of Preamble, Article 13(1)(b), 55, 56, 62 (8), and 68.
the world (Steiner and Alston 2000, 138), the 1948 Universal Declaration of Human Rights (UDHR) was later declared to be a fundamental principle for the international community. However, the political atmosphere during the Cold War blunted the development of specific issues and protections within human rights treaties. The two principal treaties—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—were approved only in 1966. They waited another decade to enter into force. The UDHR and these two covenants are often called the “bill of rights.” Together they served as a springboard for developing other important multilateral human rights treaties.5

After the Nuremberg Trials were dissolved, no international tribunals with jurisdiction to make individuals accountable for international crimes existed until the establishment, under Chapter VII of the UN Charter, by the UN Security Council of the International Tribunals for the Former Yugoslavia (ICTY in 1993) and for Rwanda (ICTR in 1994) (Buergenthal 1997, 719). In the case of former Yugoslavia, widespread and gross human rights violations deriving from the armed conflicts between Serbian groups and other ethnic groups were reported beginning in 1991. They were seen as a threat to international peace (Bantekas et al. 2001, 83). In 1994, although the atrocities in Rwanda did not have any intentional elements of armed conflict between the Hutu government and the Rwandan Patriotic Front (RPF), the Security Council recognized that a well-planned campaign of genocide had taken place (Bantekas et al. 2001, 91).

5For example, the 1951 Convention of the Prevention and Punishment of the Crime of Genocide; The 1969 International Convention on the Elimination of all Forms of Racial Discrimination; The 1981 Convention on the Elimination of all Forms of Discrimination against Women; The 1987 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and The 1990 Convention on the Rights of the Child.
As a matter of development of human rights, crimes against humanity in Article 5 of the ICTY’s Statute dealing with Yugoslavia extended Nuremberg’s legacy. Crimes against humanity could be committed, not only in international, but also, internal armed conflicts. Crimes against humanity were even more developed in the ICTR that dealt with Rwanda. A nexus between human rights violations and an armed conflict was not required anymore. As a result, for something to be a crime against humanity within the jurisdiction of the ICTR, it needs only to be “part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds” (Article 3 of the ICTR’s Statute).6

A recent important development of international human rights law is the establishment of International Criminal Court (ICC) in 2002. A significant difference between the ICC and other previous Tribunals is that it was not imposed by the victors like the Nuremberg Tribunal or by mandate of the Security Council (i.e., ICTY for former Yugoslavia and ICTR for Rwanda). Rather it was developed through multi-negotiations involving 160 states (Robinson 1999, 43). The main jurisdictions of the ICC include genocide, war crimes, crimes of aggression, and crimes against humanity. For crimes against humanity, like those defined in the ICTR (Rwanda), the nexus to armed conflicts is not required. Unlike the ICTR (Rwanda), the ICC does not consider ethnic and political grounds as a necessary part of a “widespread or systematic attack directed against any civilian population.” While the ICTY (former Yugoslavia) and ICTR (Rwanda) supersede local judicial authorities, the ICC is complementary. This implies that the case would be brought before the ICC after the government failed to pursue the case or prosecuted it with a bad faith. Roth (1998) notes that “The complementary principle also reflects the widely shared view that systems of national justice should remain the front-line defense

6“The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds…”
against serious human rights abuse, with the ICC serving only as a backstop” (cited in Steiner and Alston 2000, 1195).

The growth of international human rights law, despite its flaws, argues Lauren (2004, 27), has provided the foundation for a new order in international criminal law and marked a profound turning point in transforming a culture of impunity into a culture of accountability. However, the world still witnesses grave human rights abuses committed with impunity. Hajjar (2004, 594) argues that “the availability of human rights was contingent on the willingness of individual state to behave and conform…” (emphasis in original). In practice, the state is not the only mechanism of enforcement. Non-government organizations (NGOs) and people around the world come to get involved with human rights in some ways. This reminds us to think about the effect and the presence in addition to the effectiveness of transnational human rights law at the social practice.

In the next section, I examine the concept of “legality” as developed in law and society research to understand the effect and the presence of human rights in the lived experiences of people.

**Legal Consciousness**

In general, the study of legal consciousness examines the role of law in everyday life at common locations like workplaces, schools, and neighborhoods (Marshall and Barclay 2003, 621). Engel (1998, 111) suggests that “The attraction of consciousness as a research topic resides precisely in the commonalities that are seen by researchers to typify the ways groups of people or entire culture approach, use and think about law.” Law is understood as an internal feature of society. It is not simply the external force acting upon the society. The study of legal consciousness shifts the theoretical paradigm of discovering the causal relationship between law and society, “toward tracing the presence of law in society” (Ewick and Silbey 1998, 35). Law, as suggested by McCann and March (1995, 210), is “less as discrete rules and official decisions
than as various modes of knowledge—as specific cultural conventions, logics, rituals, symbols, skills, practices, and processes that citizens routinely deploy in practical activity.”

Again, according to Ewick and Silbey’s *The Common Place of Law* (1998, 39), “Consciousness is understood to be part of a reciprocal process in which the meanings given by individuals to their world become patterned, stabilized, and objectified. These meanings, once institutionalized, become part of the material and discursive systems that limit and constrain future meaning making.” They name the above structural feature as “legality,” which refers “to the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what end” (22). In this sense, the study of legal consciousness is to “understand how legality is *experienced and understood* by ordinary people as they engage, avoid, or resist the law and legal meanings” (35 emphasis added). Put simply, legal consciousness is a participation in the process of constructing legality through the interplay between meanings (embedded in social structure) and action (practiced by individual). Legal consciousness engages in both human action and social constraint. Consequently, consciousness is “not an exclusively ideational, abstract, or decontextualized set of attitudes toward and about the law….Legal consciousness is produced and revealed in what people *do* as well as what they *say*” (46 emphasis in original). Thus, Engel (1998, 119) asserts that “a process in which understandings of the world interact with experiences in the world makes legal consciousness continually transformable.”

By using in-depth interviews, Ewick and Silbey (1998, 26) asked the respondents a series of open-ended questions about a wide rage of events and practices that might have “troubled or bothered” them at some point and then the narratives from the respondents were interpreted to find how legality is constructed. They found that individuals can participate to construct legality
through three forms of legal consciousness—“before the law,” “with the law” and “against the law.”

Legal consciousness of “before the law” depicts law as a separate sphere from society. It is objective, distinct, formally ordered and rational. “People who conceptualize law in this way ‘tell the law’s own story of its own awesome grandeur’, but sometimes ‘people express frustration…about what they perceive as their own powerless’ (47 emphasis in original). For “with the law” legal consciousness, on the other hand, law is understood as a game, where “the pursuit of self-interest is expected and the skillful and resourceful can make strategic gains” (514). The third type of legal consciousness, “against the law,” portrays law “as ‘something to be avoided’ and ‘dangerous to invoke’” (514 emphasis in original).

These three types of legal consciousness are not mutually exclusive. Individuals can experience and talk about all three within a one story. In Ewick and Silbey’s words (1998, 50), “legal consciousness is neither fixed nor necessarily consistent; rather it is plural and variable across contexts, and it often expresses and contains contradiction.” This contradiction is not problematic at all because “consciousness entails both ‘thinking and doing’, the complexities and contradictions within legal consciousness are what make ‘legality’ a type of social practice and therefore a producer of social structures” (224-5 emphasis in original).

Ewick and Silbey’s work (1998) inspires many scholars in law and society to study legal consciousness in more specific areas of law and specific groups of people; for example, experiences and attitudes of ordinary citizens about law and street harassment (Nielsen 2000), sexual harassment at a private university (Marshall 2003), same-sex marriage (Hull 2003), different disputing behaviors at two similar taxicab companies (Hoffmann 2003), the role of law for educational activists (Kostiner 2003), and even lesbian and gay rights (Harding 2006). These
studies often found that a legal framework or law-like procedure competes with other social frameworks to shape individuals’ legal consciousness. Moreover, legal consciousness is revealed not only through the *presence* of law but also its *absence*. For example, Neilson (2000) found that most ordinary people have some experiences with offensive speech on the street and they accept that this speech poses serious social problems. However, they oppose the legal regulation of offensive public speech except in its most extreme forms. Gender and race influence how people justify their legal consciousness against regulation. For instance, the white males disfavor legal intervention because of holding First Amendment values, while women do not want to be labeled as a victim.

The contemporary studies of legal consciousness often follow the suggestion of Kearns and Sarat (1993, 55) to “abandon the law-first perspective and [scholarship on law in everyday life] should proceed, paradoxically, with its eye not on law, but on events or practices that seem on the face of things, removed from law, or at least not dominated by law from the outset.” However, when laws are *too* decentered, the distinction between laws also drifts off and is vague. Thus, the contemporary studies rarely appreciate how people’s legal consciousness is exposed differently or similarly toward two or more different areas of law. Engel (1998, 140) suggested almost a decade ago that “Different substantive areas of law are associated with different perceptions, understandings, and behaviors and must therefore be distinguished in research on legal consciousness.”

In his own study, although he does not use the words, “legal consciousness,” Engel (1984) still examines the different perceptions and behaviors of local people in Sander County toward two different areas of legal claims—“personal injury (tort)” and “breaches of contract.” These two areas of law deal with losses or sufferings caused by the conduct of the other. They are both
legitimate in the formal legal sense, but “breaches of contract” are more accepted in social practice (Engel 1984, 575). On the one hand, the claim based on personal injury (tort) is perceived by the local people as “‘very greedy,’ ‘quick to sue,’ ‘people looking for the easy buck,’ and as those who just ‘naturally sue and try to get something [for]…life’s little accidents’” (553 emphasis in original). On the other hand, the claim based on breaches of contract is more accepted. People do not see contract plaintiffs as “‘greedy’ or ‘sue happy’ or ‘looking for the easy buck’” (575 emphasis in original).

Engel (1984) found that newcomers brought to the community the conceptions of injuries, rights, and obligation. In the meantime, the local residents viewed their society as traditionally based on “interdependencies and reciprocal exchanges among fellow residents,” which are also an element of a social contract (575). Tort litigation (personal injury) tends to threaten the traditional social order. The litigation on breaches of contract rather reinforces the traditional social order and maintains the social system of “interdependent and reciprocal exchange.” Consequently, individuals who suffered from personal injury often are assumed to take a disposition of self-sufficiency and personal responsibility, while those who are injured by the breaches of contract are socially allowed to assert an aggressive demand for compensation or remedies (558). In this sense, enforcing different legal ideas make one as an insider and the other as outsider, even though they live in the same community.

This dissertation looks at two realms of law and people’s consciousness about them. It tries to see how social actors understand and perceive the role of transnational human rights law and domestic law in the particular context of mass murders and other abuses during Thai war on drugs.
The Social Practice of Human Rights

The classic legal realist distinction between “law in the books” and “law in action” is useful to understand how human rights law works in practice. There is often a gap between the two, sometimes a wide one. Rather than focusing on the effectiveness of international human rights law (which suffers from the old gap problem), this dissertation turns to its effect and presence at a national level and in local practice. Like law in general, transnational human rights law does not simply carry substantive principles of law, but it supplies the social actors with meanings and sources of authority to make sense of their worlds. The concept of legality and legal consciousness developed in law and society is useful to see the effect and presence of transnational human rights law. However, the effect and presence of international human rights law cannot be understood by ignoring the presence and effect of domestic legal practices, especially in modern approaches like that of the ICC which sees the international law as being complementary to national/local efforts. As developed below, it is accepted that the idea of human rights is now deeply transnational (Merry 2006a, 2). One challenge is to localize it at the social practice, which requires the work of human rights professionals.

Transnational Legality

It seems that a growth of international human rights instruments equips the world with a global culture of rights. However, from an anthropological point of view, Hastrup (2003a, 16-17) responds that “it is a peculiar culture in the sense that it is declared rather than lived and that it is future oriented rather than based in tradition.” In reality, as once observed by British Foreign Secretary Robin Cook, those who murdered one person were “more likely to be brought to justice than those who plot genocide against millions” (cited in Lauren 2004, 33). This is still true for the contemporary world, which deals with grave human rights abuses and struggles to impose accountability. To focus only on such global indicators as the growth of human rights
enactments obscures the larger picture of how human rights are implemented and practiced at the local level (Halliday and Osinsky 2006, 448).

Genocide might be a relatively rare event which occurs in a divided society in which one or more ethnic groups are destroyed in whole or in part during armed conflicts. Less rare are other grave human rights violations, such as crimes against humanity, which are still witnessed around the world in different forms of criminality and victimization and not always in divided societies or societies that are falling apart. The degree of abuse is not less than that of genocide despite the fact that they erupt in times of peace. As seen in Article 7 of the ICC, crimes against humanity encompass a wide range of crimes committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” Political and ethnic grounds are not a necessary part of mens rea to commit crimes against humanity. The unique nature of these crimes which make them distinct from ordinary crimes is that they require “a widespread or systematic attack” in which a structural pattern of criminality and victimization can be recognized in some ways. Ordinary criminal law often becomes mechanically blind to such a structural nature of crimes (see Quinney 1973).

In this respect, domestic and transnational laws address the same problem with different frameworks. Often, the former marginalizes and replaces the latter in practice by individualizing criminality and victimization (see Wilson 2006). For legal positivists, the domestic law fits concepts of what law is more than does the transnational law. Domestic law represents the command of the sovereign backed by state sanctions. Still, positive domestic law may not be an effective control over structurally based large scale symptomatic crimes against humanity. Thus, if we consider only the effectiveness of international human rights instruments, their failure is obvious (see Hathaway 2002). But, despite its inefficiency, why is the human rights idea still
attractive for social struggles around the world? The extensive reference to human rights in the contemporary world reminds us to look at human rights law beyond its traditional conception of enforcement.

Acknowledging the limits of transnational human rights law, Professor Koh (1999, 1417) of Yale Law School reconceptualizes its enforcement. He proposes that “international human rights law is enforced…not just by nation-states, not just by governmental officials, not just by world historical figures, but by people with the courage and commitment to bring international human rights law home through a transnational legal process of interaction, interpretation and internationalization.” By this way, he decenters international human rights law by moving away from an instrumental to a constitutive idea of law. That shifts the focus from effectiveness. He de-emphasizes the state but emphasizes the role of active people as an enforcement agency to localize international human rights law through “a transnational legal process.” By “a transnational legal process,” he means both “the theory and practice of how public and private actors—nation-states, international organizations, multinational enterprises, non-governmental organizations, and private individuals—interact in a variety of public and private, domestic and international fora to make, interpret, enforce, and ultimately, internalize rules of transnational law” (Koh 1996, 183-4).

Donnelly (2006, 73), a political scientist, asserts that normative force is more important than material force for human rights. For him, “human rights are, literally, the rights that one has simply because one is a human being” (Donnelly 2003, 10). Human rights are equal, inalienable and universal. However, it seems that the normative power of human rights cannot comprehend the diverse and innovative uses of human rights at the social practice. In that level, “what human rights are” might be different from “what human rights mean” to social actors who carry out the
idea of human rights. Therefore, to make the processual enforcement empirical, we need to see how the idea of human rights is used, approached, and even talked about in the social practice.

The presence of human rights standards takes effect through social practice—that is how we know what constitutes human rights law. This is the study of the practice of human rights (Goodale 2007). This line of inquiry is consistent with the theoretical shift in law and society research from “law in the books” to “law in action” and from “the effectiveness of law on the society” to “the effect and the presence of law in the society.”

Goodale (2007, 24), a legal anthropologist, suggests that “At a basic level, the practice of human rights describes all of the many ways in which social actors across the range talk about, advocate for, criticize, study, legally enact, vernacularize, and so on, the idea of human rights in its different forms.” He treats the idea of human rights as a resource and schema for the practice of human rights. In this way, his conceptual image fits well with the concept of “legality” used in law and society research.

Recall that Ewick and Silbey (1998, 22) define legality as a structural feature of society which refers “to the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what end.” Like the idea of law in general, the idea of human rights can refer to “the meanings, sources of authority and cultural practices that are commonly recognized as human rights, regardless of who employs them or for what end.” This is what is meant by “transnational legality of human rights,” for this dissertation.

For law and society, to “understand how legality is experienced and understood by ordinary people as they engage, avoid, or resist the law and legal meanings” is to study their legal consciousness (Ewick and Silbey 1998, 35). Ewick and Silbey (1998, 39) refer to consciousness as “part of a reciprocal process in which the meanings given by individuals to
their world become patterned, stabilized, and objectified. These meanings or legality, once institutionalized, become part of the material and discursive systems that limit and constrain future meaning making.” Legal consciousness is a form of participation in the process of constructing legality. Ewick and Silbey (1998, 46) point that “[L]egal consciousness is produced and revealed in what people do as well as what they say” (emphasis in original). The social practice by “talking about, advocating for, criticizing, studying, legally enacting, vernacularizing and so on, the idea of human rights” is, actually, a participation in constructing “transnational legality of human rights” which might be perceived by the social actors in different forms and even in contradictory ways. In Goodale’s (2007, 26) words, “the practice of human rights is characterized by contradictions, uncertainties, and a kind of normative incompleteness, these should not be taken to represent a failure of universal human rights as a coherent legal or ethical framework, or, on a more practical level, a failure by different institutions to properly translate the idea of human rights in context...[since the legitimacy of human rights practices] does not depend on assumptions or aspirations of universality.” To understand the practice of human rights—“the many ways in which social actors across the range talk about, advocate for, criticize, study, legally enact, vernacularize, and so on, the idea of human rights in its different forms”—is to study social actors’ consciousness of human rights collectively constituting “transnational legality of human rights” in their world of social practice.

The Implication of Transnational Legality

Some scholars counter the claim that the growth of international human rights law erodes the sovereignty of the state. Actually, the state’s sovereignty is rather revised as a part of the so-called modern world (Merry 2004, 582). As observed by Pureza (2005, 268), the world is in “a transition from an international law pointed at guaranteeing co-existence (‘how to keep them peacefully apart’) toward an international law aimed at being an active instrument of cooperation
‘how to bring them actively together’)’” (emphasis in original). The state still plays a central role in new international order, especially through its autonomy of using law within its jurisdiction. This is our concern to implement transnational legality of human rights.

Human rights treaties often need the state’s duty to protect against and to prevent violations of rights. For example, Article 2 of The 1981 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) requires the state party “to respect and to ensure to all individuals within its territory…the rights recognized in the present covenant.” The provision obligates the state to erecting institutional machinery, such as police force, courts, and bodies of law, to guarantee the rights of individuals as provided by the Convention (Steiner and Alston 2000, 183). However, many provisions from the Convention prescribed in domestic criminal law do not make a violation an international crime, a subject of international law. It is a crime against the state that the state must punish (Merry 2006a, 180; Steiner and Alston 2000, 1136). Hajjar (2004, 594) observes that “human rights obtain their ‘universalizing’ character from the fact that people are subjects of states, and states are subjects of international law. Thus the establishment of human rights simultaneously revised and reinforced the state-centrism of the international order” (emphasis in original).

Therefore, it is hard to imagine that the effect and the presence of transnational human rights law are comprehensible without considering the effect and the presence of the state’s domestic legal practices. For example, although battered women in the study of Merry (2006a) accept the framework of a human rights idea as a part of their consciousness and understand a gendered violence in human rights terms, domestic legal practices expressed through the practices of legal professionals and the perception of people toward legal authorities and institutions determine whether such consciousness will be sustained and mobilized as a claim of
right. Ideally, the legalities of transnational human rights law will integrate *perfectly* with the state’s domestic legal practices. In such a perfect integration, the idea of human rights and the idea of (domestic) law become united. Human rights become a structural feature of society providing “the meanings, sources of authority, and cultural practices” to people and state authorities in their social practice and communication. This is why Merry (2006a, 3) declares at the beginning of her influential book that “[I]f human rights ideas are to have an impact, they need to become part of the consciousness of ordinary people around the world.” However, in a world that is far from perfect, the interaction between these two legalities is unpredictable. They might facilitate, compete, or even overlap with each other, depending on the specific context and situation under the consideration.

As a matter of positive law, domestic law and its practice are clearly recognized as authoritative. Transnational human rights legalities are less recognized and are sometimes considered to be “soft law” (Abbott and Snidal 2000; Chinkin 1989; see also Hart 1957). Their differences lie in what meanings and resources they provide to socio-legal actors (human rights advocates and legal professionals) and non-legal actors (the aggrieved or affected people). Thus, Halliday and Osinsky (2006, 451) are correct to claim that the most important power of human rights is “a definitional power to classify, interpret, and label the state’s practice.” In the case of gendered violence, Merry (2006a, 180) argues that human rights ideas offer a radical break from the view that violence is natural and inevitable in intimate relations. However, the power of domestic law also automatically essentializes categories and fixes identities that entail a possible solution. Thus, both powers carry what Darian-Smith (2004, 548) calls “the authority to legitimate a certain vision of the social order, to determine relations between persons and groups, and to manipulate cultural understandings and discourses.”
Vernacularization of Transnational Legality

One challenge is to bring global ideas of human rights to the local level. In this task, the role of human rights activists, both at national and local levels, as translators, is important. Human rights translators, suggested by Merry (2006a, 134), are “[i]ntermediaries who translate global ideas into local situations and retranslate local ideas into global frameworks…They foster the gradual emergence of a local rights consciousness among grassroots people and greater awareness of national and local issues among global activists.” Although ordinary people are also important, as objects and subjects of human rights struggle, they lack knowledge about international human rights law (134). Nevertheless, they are still important actors in that they translate pain, injuries and sufferings into human rights claim (134).

Two approaches have been identified for translating global ideas of human rights into local and social practices: the social service approach and the human rights advocacy approach. The social service approach led by social workers and feminist activists, offers support services to victims and offenders (138). This approach uses a variety of strategies which include prompting criminal justice professionals to implement criminal law seriously, improving safety for vulnerable people, educating the public about the problems, and even conducting survey research to support the social movement. The human rights advocacy approach is led by lawyers and political elites (138). These groups try to incorporate international standards of human rights into national law. Unlike the social service workers, human rights advocates are associated with national and transnational elites (164). Thus, they bring forth international pressure on their own government by articulating global ideas of human rights (164). These two approaches are complementary rather than contradictory. On the one hand, human rights advocates provide the standard of international human rights which social service activists can use for social service programs to advance rights at the grassroots. On the other hand, social service programs also
help encourage their clients to frame their grievances in terms international standards of rights. Both approaches provide meaning, serve as sources of authority and influence cultural practices and are central to constituting human rights legality.

However, the rights framework does not displace the other frameworks; it adds one more layer to the larger legal framework so vulnerable people can think about problems differently from their usual mode of understanding. Thus, the battered and indigenous women in Merry’s (2006a) study were both rights-bearers and injured kinsmen. The women learn that they have rights and their positive experiences with these rights in a legal system increase and sustain their rights consciousnesses.

Negative experiences undercut a human rights consciousness. In Merry’s (2006a) words (186-7), “[W]hen police fail to arrest, prosecutors [fail] to push a case forward, or probation officers [fail] to compel an offender to attend the battering program…[and] their batterers are not punished, they see there are limitations to their rights.” Consequently, they are discouraged to turn to law for help. Merry (2006a, 192) concludes that “[H]uman rights are difficult for individuals to adopt as a self-definition in the absence of institutions that take these rights seriously. Implementation is fundamental to establishing human rights consciousness” (emphasis added). Without institutions, the presence and effect of human rights law will be minimal.

For the mass killings of the Thai war on drugs, the subject of this dissertation, human rights workers at both national and local levels have tried hard to mobilize around the transnational human rights idea. It is unclear now whether national human rights advocates and local activists approach the problem differently, as suggested by Merry (2006a), or what features of the social service or advocacy approaches have been pursued. Some of the people whose loved one(s) were killed during the war on drugs made a complaint to the National Human
Rights Commission with the help and encouragement by human rights workers. However, it seems that the aggrieved turning to human rights ideas might discern the failure of ordinary legal system. In other words, because of the failure of the ordinary legal system, they might turn to global idea of human rights. This seems to be opposite to Merry’s (2006a) findings in her study of gendered violence. However, it should be noted that the uncertainties of human rights practice are not theoretically problematic since the transnational legality of human rights is constitutive and transformable. As suggested by Goodale (2007, 12-13), it is “not of a discrete system or permanent network, but only the continually emergent collection of knowledge and practices themselves.” Mass murders and human rights abuses during the Thai war on drugs provide an opportunity to study how contingent categories of meanings provided by human rights emerge and are applied to the social practices when taking the domestic legal practices into account.
CHAPTER 4
METHODOLOGY

Introduction

This study is about the roles of transnational human rights law and domestic law in the particular context of human rights abuse during the Thai war on drugs in 2003. The research does not concentrate on substantive principles of laws but their effect and presence in the lived experiences of people. The research is consonant with the intellectual effort in contemporary law and society examining the role of law in everyday lives which Ewick and Silbey (1998) called “legality.” It also contributes to the study of human rights by situating the transnational idea of human rights within social practice. At face value, the human rights and domestic legality might present competing forces that shape the legal worlds and behaviors of social actors. Legal consciousness is the analytical tool to examine this assumption and to untangle more nuanced relationships between them.

Several insights from the preceding literature review provided guidance for how to assess the legal consciousness of respondents. Following Ewick and Silbey (1998), I approached legal consciousness as a social phenomenon, contingent and revealed in what respondents do and say. Legal consciousness is less concerned with explicitly conscious attitudes but more with the subtle ways in which people use and think about law in their experienced lives that are expressed in their conversations. Thus, in-depth interviews were most appropriate to understand how people defined, evaluated, justified and reacted to laws.

Legal consciousness is captured by asking respondents not about law directly but, for example, about a wide range of situations and social relationships that occur in people’s “ordinary, daily events and transactions, [and] what they perceived as disruptions in those exchanges, and how they responded” (Ewick and Silbey 1998, 252-53). Ewick and Silbey (1998,
255) identified when and how “legal images, metaphors, terminology, or concepts were invoked” from the richness of everyday-life narrative.” In this way, the study of legal consciousness is concerned less with what people think but more with what they “think with” (Kostiner 2003, 330).

In this dissertation, however, legal consciousness does depend on the importance of laws. People were asked, among the other things, about international human rights and domestic legalities in the specific context of the war on drugs. Thus, “what people think about laws” would be mainly farmed through perceptions and experiences with the idea of international human rights and of domestic legal practice. The interview is also intended to tap the respondent’s meaning-making process to see “what they think with” to justify their behaviors as they pursue justice and/or claim human rights violations during the war on drugs. Ewick and Silbey (1998, 254) accept that their methodology’s emphasis on narrative every-life stories brings about many pages of transcription, “much of it about the mundane, trivial, and particularistic details of individuals’ lives.” They admit that they were overwhelmed by the “apparent meaninglessness” of much information (254). Narrative stories for this dissertation, therefore, are allowed to be told only if they are related to the effect and the presence of the idea of international human rights and/or domestic legal practice. To avoid being flooded out with irrelevant narrative information, this dissertation used active interviews to search relevant narratives more efficiently.

In addition to interviews, I documented relevant archival materials from newspapers, official records and annual reports of the National Human Rights Commission of Thailand (NHRC).
Data Collection

Active Interview

Generally, the semi-structured interview begins by asking general questions so that respondents can tell their stories. Probes prepared in advance help make themes and concepts of the respondents more explicit. The interviewer is guided by the schedule and set of questions but is usually not dictated by them (Smith 1995, 12). The interviewer asks specific and different types of questions to reconstruct the subjective viewpoint of the respondents. The goal is to get implicit knowledge of individuals expressed in the form of questions and answers, ready for interpretation (Flick 2002, 83-84).

The semi-structured interview assumes the respondents as a repertoire of knowledge which is excavated by the researcher. This assumption disregards, as argued by Holstein and Gubrium (1995, 2), “the most fundamental of epistemological questions: Where does this knowledge come from, and how is it derived?” Holstein and Gubrium (1995) suggest that the interview is, in fact, social interaction where both parties unavoidably get involved in meaning-making work. The parties are both active agents. In their words, “Meaning is not merely elicited by apt questioning nor simply transported through respondent replies; it is actively and communicatively assembled in the interview encounter” (4). They insisted that their “active approach might therefore be most appropriate…when the researcher is interested in subjective interpretations, or the process of interpretation more generally, even for ostensibly well-defined information” (73). Thus, in this research, the ordinary semi-structured interview was adjusted to be more active to appreciate the respondents’ meaning-making process to learn about their interpretations and their legal consciousness in respect to transnational human rights and domestic Thai legal frameworks.

For Holstein and Gubrium (1995, 56), the active interview consists of both “data about the subject matter of the research and data about how that subject matter is organized in respondents’
narrative experience.” The former deals with what is being volunteered and discussed and the latter involves how the responses are interpreted (i.e., “what they think with”). The active interview is appropriate to examine “the variability and contradictions of the experience under consideration…in relation to the interview’s interpretive circumstances” (32). For example, Holstein and Gubrium (1995, 33) exemplified that “respondents intersperse their responses to interview items with telltale phrases such as ‘speaking as a mother,’ ‘thinking like a woman,’ ‘if I were in her shoes,’ …wearing my professional hat,’ …and ‘I haven’t really thought about it’” (emphasis in original).

Challenged by the interviewer, pointed in promising directions, and at least partially aware of the interpretive terrain at hand, the respondent becomes a kind of researcher in his or her own right, consulting repertoires of experience and orientations, linking fragments into patterns, and offering ‘theoretically’ coherent descriptions, accounts, and explanations. (29 emphasis in original)

Rubin and Rubin (1995, 87) also indicated that the goal for qualitative research is not “to eliminate inconsistencies, but to make sure you [the researcher] understand why they occur.” This methodological foundation is consistent with the theoretical construction of “legality” in law and society. The respondents place their legal consciousness in different roles and contexts.

In this research, the interview guide is divided into three main topics. Each topic contains questions and probes to enhance both the breadth and depth of coverage under that topic. However, in actual interviews, I did not quote exactly the questions and probes prepared. The point is not to ask all prepared questions because the respondents’ active answers often ranged across prepared questions and cover several issues at once.

The introductory part consists of questions about demographic backgrounds of the respondents as human rights professionals and of the people who were affected by the war on drugs.
Then, the topic of law and social order aims to decipher what and how the respondents understood the events of justice, law, and rights violations during the war on drugs, including how law was used or not used in that time. The assumption is that these understandings might associate with how the respondents think about and evaluate the roles of domestic legal practice in relation to the idea of international human rights. Respondents are also asked questions about their understanding and experiences with the state authorities and other legal professionals.

Finally, the role of law in instigating social change is introduced. The language and idea of human rights are mainly examined in this part. The assumption is that invoking or thinking about human rights principles require the respondents to consider issues of justice and accountability in ways which go beyond, or even resist, the existing domestic legal formulations.

Throughout the data gathering process, interviews were conducted at times and locations that were most convenient for the subjects whenever possible—for human rights professionals, the interviews were conducted at their offices, while most of the aggrieved were interviewed at their homes. I transcribed the tapes within 24 hours after the interview and destroyed the digital records immediately. The specific names of persons, places, and other information that might identify the respondents were deleted from the transcription. All respondents’ names reported here are pseudonyms.

The Social Performance of Interview

The active interview requires collaboration between the respondent and the interviewer. Apt to the active interview is dramaturgical performance. Holstein and Grubium (1995, 17) agreed that:

Its [dramaturgical metaphor’s] narrative is scripted in that it has a topic or topics, distinguishable roles, and a format for conversation. But it also has a developing plot, in which topics, roles, and format are fashioned in the give-and-take of the interview. This active interview is a kind of a limited ‘improvisational’ performance. The production is spontaneous, yet structured—focused within loose parameters provided by the interviewer.
Therefore, throughout the interview, the respondents provided their responses in two ways. One is the responses to the direct questions (i.e., prepared questions or spontaneous questions). The other information is part of conversation where the questions were not directly asked.

Rubin and Rubin (1995, 146) suggest that the interview is not to ask all prepared questions and probes but to look at the emerging themes, concepts and ideas raised by respondents. This is because some interview partners are “self-revelatory, others more restrained and formalistic…Some are well informed, and others know little on the topic” (11). To encourage the respondents to talk, I did not bring the interview guide to the table. The coherent form of asking pertinent questions and of recoding answers in a sequent theme was also not appropriate. Thus, in the actual interview, although I prepared several main questions and probes for each topic in advance, I still allow the questions to be customized during the interview to see how respondents were talking about their understandings and experiences towards law.

For example, I interviewed an aunt of two orphans whose parents were shot dead during their way back home after leaving the police station for some business. Next day, the police came to search their office, looking for more evidence involving drug offenses. Later, all their properties, several million baht, were seized. Although I did not prepare probes asking about the property forfeiture in depth, I attentively listened to her and did not interrupt her talking about the properties. Later, I learned that nothing was left for her nephews to live their lives; therefore, she justified her need to fight for the justice to release properties from the official forfeiture. When connected to other respondents who mentioned the property and justice issues, her behavior provides one important theme: many aggrieved people became active for rights and justice struggles because they wanted their properties back but they did not actually hold any officers accountable for the killing.
To prevent the respondents (only the aggrieved people) from recalling a painful memory, I notified them that I already read and knew their stories from the annual reports of National Human Rights Commission before beginning the interview. The notice effectively helped the interview focus on talking of law and justice. While a narrative story of the killing incidents was periodically raised by the respondents to support their opinion on law and justice, it did not dominate the conversation. From the interview, it was impossible to prevent them from expressing a feeling of pain (through face, words, and voices), especially female respondents who lost their loved ones because it was really a painful experience! Thus, I did not try to block off their expression but notified them that it was my ethical responsibility to stop the interview if they felt uncomfortable when talking about it. However, no one chose to stop the interview. Rather, after I raised the concern, they, rather, tried to convince me about the injustice they encountered, although most of them and the killed persons really hated drugs and supported the war.

**Research Setting and Samples**

**Settings**

This study took place in Thailand. The interviews were conducted in Bangkok and other provinces of the North, the North-East, and the South of Thailand. All respondents are Thai. The interviews took place at their offices or homes.

**Samples**

Generally, researchers conducting a qualitative interview want to understand complex features of cultural behavior and the process that influences the behavior. Thus, respondents are not the same as each other and there is no benefit to pick them at random. Spradley (1979, 47) recommends the interviewer to find “the *encultured* informants”—“individuals who know the
culture well and take it as their responsibility to explain what it all means” (cited in Rubin and Rubin 1995, 66).

For this research about law and society, the “encultured informants” tend to be those who are competent to talk for law—they are able to apply or translate law to the cases. For transnational human rights law, Merry (2006a) suggests human rights professionals (i.e., human rights lawyers and human rights workers) as the important translators.

For domestic legal practice, the literature always conveys that law does not directly influence ordinary people. Ordinary people rarely come to get directly involved with competition over law. For example, repeat players in law often get help from legal professionals (e.g., lawyers, police, public attorney and judges) (Galanter 1974). Legal professionals often filter the ideally expected impact of law (see Kidder 1983, Ch.6). Moreover, some scholars argue that people obey law because they feel they are treated well and in a respectful manner by the police, judges, and lawyers, rather than because they merely think that law is good and sacred (e.g., Tyler 1990). Thus, legal professionals both primarily mediate the effect of law and simultaneously produce legal culture, the meanings of law available for the social practice. Included here were lawyers actively involved with issue of justice and rights during the war on drugs. They were competent to talk for domestic legal practice (i.e., legal application).

Unlike human rights and legal professionals, ordinary people seem to be enculturated (not encultured) by both laws. They seem to be less competent to talk for both laws—they are less competent to apply or translate laws to their cases. Nevertheless, this research focused on legality (the role of law in everyday life), not a positive (written) law. Again, according to Ewick and Silbey (1998, 22), legality implies to a structural feature of society which refers “to the meanings, sources of authority, and cultural practices that are commonly recognized as legal,
regardless of who employs them or for what end.” The concept of legality collapses the
distinction between the encultured and the enculturated because they all can talk about law.
Therefore, within the context of the war on drugs, the aggrieved people, who had interacted with
the state officers, got involved with (domestic) law, and lodged a claim to the National Human
Rights Commission (NHRC), were competent to talk about domestic legality and the idea of
human rights.

Samples of two groups are drawn. One is from human rights professionals (i.e., human
rights workers and human rights lawyers) and the other is from the aggrieved people who made
claims to the National Human Rights Commission of Thailand.

**Human rights professionals:** All interviews took place at their offices during or after
office hours. My rapport with a few national human rights professionals and some officers from
the Office of the National Human Rights Commission made the snowball selection possible.

I contacted and began my interview with the first three most active human rights
professionals during the war on drugs. I got their names from newspaper accounts. They became
my gate keepers helping me identify other human rights professionals (e.g., human rights
workers and human rights lawyers) who, as known among their networks, became involved with
law and justice issues of the war on drugs in some ways.

The snowball technique was used to create a social network for the interviews of human
rights professionals. To interview the respondents who were named and recommended along this
network also increased their willingness to talk (Rubin and Rubin 1995, 67-68). Note that
although there are many NGOs and lawyers who work in human rights issues in Thailand, the
number actively involved with law and justice issues related to the war on drugs was lower than
expected. Paiwan, a well known human rights lawyer who joined the National Human Rights
Commission (NHRC) to investigate human rights violation during the war on drugs, shed light on the challenge. Consider the following comment for his reason.

Interviewer: [M]y research strategy is to interview human rights professionals at both national and local [and regional] levels. Do you have someone to recommend to me? They might be NGOs, for example.

Paiwan: Not many people worked in this issue [the war on drugs] because generally they dared not to [resist the war on drugs].

Interviewer: In that time, as seen in the news, it was you, and a few human rights professionals [who publicly worked against the war on drugs]. But in the local [and regional levels] are there any?

Paiwan: No one. There were only the representatives of the villagers who lodged complaints [to the National Human Rights Commission].

Interviewer: How about the full time NGOs?

Paiwan: Almost none.

Interviewer: How about lawyers who worked in other provinces [outside Bangkok]?

Paiwan: Not many or almost none. Most are lawyers from the Lawyers Council…Not many. [Paiwan had a deep sigh]. (Paiwan/HM1/pp. 44-45)

The low number of those who were actively involved with law and justice related to the war on drugs might be because, as accepted by Santi, a human rights lawyer, most of NGOs have their own long standing issues tied to some social movement, funded by foreign-financial sources (Santi/HM5/pp. 42). The war on drugs was rather a contingent and sudden event. Therefore, it might be impossible for them to move a resource and work seriously in the issues related to the war on drugs. Tippawan, another full time professional for an NGO, accepted that because of resource constraints, her action against the war was only a side line activity (Tippawan/HF5/pp. 2). The other reason might be that, as suggested by several human rights professionals, the atmosphere of fear created by the Thaksin administration deterred not only ordinary people but also lawyers, NGOs, and even politicians from doing things against the war effort.
Finally, 12 human rights professionals were identified and interviewed. Of them, seven were human rights lawyers (having law degrees) and five were human rights workers (having other degrees). Because of the small network of human rights professionals actively working for law and justice related to the war on drugs, most of the human rights professionals seemed to know each other. Most of them used to work together at some level. Therefore, all interviews for human rights professionals were clustered at Bangkok and Chiang Mai (a northern province) only.

Aggrieved People: Most of the interviews for the aggrieved were conducted at their homes, only a few at their offices in private rooms. I obtained their names from the publicly available annual reports of the National Human Rights Commission (NHRC). The officers from the Office of the National Human Rights Commission helped me to make an initial contact with them. I, then, contacted only those who agreed with the initial contact to participate the research. Eighteen aggrieved people were identified, contacted and then interviewed.

Two cases of abuse occurred in Bangkok, eight cases in the north-eastern provinces, two cases in the North, and six cases from the rest of the country. However, most of the interviews took place in Bangkok where the aggrieved people who made a complaint to the NHRC resided or worked.

All interviews were conducted privately with the respondents, except for two interviews where their spouses also joined the interviews. One was a middle aged woman (Jandara) who fought to free her sister from jail due to a false accusation of police. The interview was joined by her husband. However, his presence did not influence her expression. For example, she frankly accepted that when she and her relatives went to talk with the public prosecutor who was responsible for her sister’s case, they would bring some kind of gift, such as seafood, for him
personally. Her husband immediately interrupted to make his wife not look too bad by noting that they gave it to him when the case was already ended. However, she insisted that she did not give him at the end but during the trial. She knew consciously what she did was morally and legally wrong. She accepted that what she did was to give something under the table to the state officers (bribery) to ask them to be nice and kind to her sister. I learned that during the time of the war it was she who played a leading role to help her sister get out of jail. I did not see her husband’s role in her conversation about her hardship in that time.

The other couple (Chana and his wife) did not have a conflict response. Rather, they both actively explained their experiences with law and justice in the same ways. Unlike Jandara’s story, Chana’s narrative always recounted his experiences in the ways in which his wife did. She also played the important role.

Analysis

My raw data included hundreds of interview pages in Thai language. With keeping the research questions in mind, I read and reread the data several times to “note core ideas and concepts, recognize emotive stories, and find [emergent] themes” (Rubin and Rubin 1995, 229). The data were initially grouped into categories in relation to the research questions. The data sheets were also created to summarize the emerging themes, concepts, and ideas raised by each respondent. The data sheets helped make comparison within and across the categories.

I brought the initial thematic structures of the categories to discuss my advisor, Professor Lonn Lanza-Kaduce. The discussions aimed to refine the discovered themes and verify the constructed categories. After several occasions of discussion, some themes were dropped off and replaced by the new ones (pulled out from the data sheets) until we both agreed on the themes and categories that offer the most accurate, detailed, yet subtle description and explanation of the phenomenon under the study.
Then, I translated the selected full quotations in Thai to English. The translation tried to keep the original (Thai) meanings, while trying to make sense for the English readers at the same time. The translation was verified through several occasions of exchange between the advisor and me to make sure that the final translated version met the two purposes above.

The main goal of analysis is not to find a majority of experience and/or perceptions of the respondents to construct a single pattern of description and explanation. Rather, the qualitative analysis recognizes the unique response of each respondent. The point is to describe and explain the phenomenon in all dimensions as much as possible with a subtle and detailed treatment. However, this study does have a general overarching theme. It refers to the general structure of legal consciousness within the Thai society because the respondents talked about law and justice at two levels. In the specific context of the war on drugs they got involved (as, e.g., a lawyer or the aggrieved). Also, as ordinary people, observers, critics etc., they have a general idea of law and justice. (This is the advantage of the active interview allowing the researcher to hear not only what people say but also how they say it.) For example, Kanchai, as a human rights professional joining the National Human Rights Commission to investigate human rights abuses during the war on drugs, expressed his ideal goal to encourage people affected by the war to make a human rights claim against the ruthless war on drugs. However, when asked about his experience in the court, he, as a lawyer, frankly accepted that he would suggest his client, like other lawyers do, not to press charges against police officers for their abuses of power (e.g., framing people as drug dealers). He justified his advice by claiming that the police officers are able to frame his client at any time.

Before presenting the full findings in next chapters, the descriptive demographic data are presented next.
Demographics

Thirty respondents were interviewed. Demographic data collected during this study include age, gender, and highest education level achieved.

Aggrieved People

Eighteen aggrieved people were interviewed. The age of the aggrieved people in the sample ranged from 35 to 72, and the mean age was 49.72.

Forty four percent of the aggrieved are male and 56 % are female. The education level of the aggrieved ranged from primary school (Prathom 4 or 6 in Thai) to a bachelor degree; 33 % completed primary school (Prathom 4 or 6), with one among them being illiterate; 17 % completed middle school; 22 % completed high school; 28 % completed diploma or higher (with one person studying a master degree).

Over 44 % involved with the war on drugs because their loved ones were killed. 22 % are those who themselves were falsely accused of being committing drug offenses. Of them, one was only searched without having experience in a court trial. 33 % are those whose loved ones were falsely accused of committing drug offenses.

Human Rights Professionals

Twelve human rights professionals were interviewed. The age of human rights professionals in the sample ranged from 37 to 61, and the mean age was 45.66. Almost human rights professionals are male. Only one is female. The education level of human rights professionals ranged from a bachelor degree to a master degree; 58 % completed bachelor degrees and 42 % had a master degree. Of them, 58 % have a law degree and 41 % have no law degree. 25 % of them used to study or had a short training abroad related to international human rights.
CHAPTER 5
DOMESTIC LEGAL POLICY AND PRACTICE

Studying the fit between legal policies set out in substantive law and legal practices used to implement those policies is a mainstay of law and society scholarship. This chapter reviews the respondents’ interpretations of how the policy on the war on drugs was translated into legal practices. The interviews with the human rights professionals are given special attention. The legal and extra-legal frames are categorized both to understand the patterns of practices used in the war on drugs that violated the rights and liberties of people and to appreciate the ways in which the authorities acted with impunity.

The first section explores how the criminalization of the victims of the war on drugs was accomplished. Human rights professionals, who are most familiar with the domestic legal practices, provide much of the insight into what happened and how it came to pass. The presumption of innocence gave way to a working presumption of guilt for anyone accused. Oral evidence, including hearsay evidence, played a major role in the accusations through blacklists and plea bargains. Evidence was planted; investigations were cursory. The criminal labeling enabled the local authorities to target victims of “kha-tat-ton” and to make a high number of arrests within the three months of the war on drugs.¹ The second section examines the legal consequences of being accused. Those who were arrested and the families of those who were killed were subject to property forfeiture and lost other benefits. They found it difficult to get their day in court to determine what happened. The third section reviews the practices that provided de facto impunity for the state authorities as they carried out the war on drugs. The final section introduces the role of money within Thai legal practice.

¹ According to Bangkok Post (May 1, 2003), the government announced that from February through April 2003 a total of 1,765 big-time drug traders and 15,244 small dealers were arrested. A total of 280,207 pushers and addicts surrendered and were rehabilitated. A total of 2,274 people were killed during the war with 42 killed by police officers acting in self defense.
Criminalization of the Victims

Kha-Tad-Ton

The most striking abuses during the three-month war on drugs were the extra-legal killings of so many people. The government expediently dismissed the killings as kha-tad-ton. The rhetoric of kha-tad-ton replaced the rule of law during the war on drugs by labeling the deceased victims as criminals (drug dealers) who were killed by others who were involved in the drug trade. However, this rhetoric does not convince human rights professionals. Rather they view the killings in the time of the war on drugs as extraordinary crimes and point to the fact that assailants were neither brought to justice nor held accountable for almost 3,000 killings during those three months.

The pattern was extraordinary in part because human rights professionals noted that the Thai police were much more efficient in making arrests in other cases of murder. The following quotation demonstrates explicitly the basic skepticism among human rights professionals.

Generally, [the police make] some progress with the investigation and at least someone is accused and even arrested. But [for the war on drugs] no one is arrested for the killings. How’s that! (Pinit/HM4/pp. 41)

The human rights professionals are also not convinced by the police’s theory of kha-tad-ton because it is unimaginable that drug gangs could kill so many with no arrests made and only do so during the three months of the government’s war on drugs. A similar pattern of killings did not occur either before or after the war on drugs. Kampon, a senior human rights professional with experience in several social justice movements both within Thailand and abroad, makes the point clearly.

If they [the police] explain the killings as “kha-tad-ton,” it is an absurd explanation. It is absurd in this sense: which [drug] gangs are able to kill 2,800 people [with no one] being arrested at all!…(Kampon/HM1/pp. 8)
The state authorities did not bother to prove the criminal guilt of those killed during the drug war because they could categorize all the killings as “kha-tad-ton.” In addition, the regular procedures to investigate the killings were also waived. The most important problem was that the police intentionally paid little attention to the development of the evidentiary records.

Human rights professionals were of two minds about the problem of proving the criminality of those killed, saying that the evidence needed to prove the killings was both difficult and not too difficult to get. Establishing the proof was difficult, according to some human rights professionals, because the killers were very professional, knowing how to elude being traced. Others saw developing the criminal evidence as not a much problem in practice. The comment and experience of Sombat, a lawyer who provided legal assistance to clients from ethnic groups at that time, demonstrated both points.² He insisted that it was not too difficult to collect criminal evidence and to look for the killers. However, if the state authorities committed the killing or the killings were involved state authorities, it was hard to get anything useful for criminal proof.

Interviewer: [C]ollecting criminal evidence, is it practically difficult?

Sombat: [I]t is not too difficult to do if the police quickly arrive at the scene and immediately compile evidence. Do not let time pass. This is a usual practice. I think it is not beyond the police’s capability. However, if the killings involved the state authorities, it is very difficult [to get useful criminal evidence]. This is because the state authorities know how to leave no trail. I did one case about torture but the victim [survived]. I checked the incident but found no clue of torture and fighting. Nothing could be used as evidence [in court]. (Sombat/HR4/pp. 6)

Paiwan and Samsen, who had joined the National Human Rights Commission to examine several killings during the war on drugs, point to the real problem of law enforcement at that time. The

² Ethnic people referred here are used interchangeably with hill tribe people. They are called “chao khao” in Thai (literally ‘mountain people’). The Thai government recognizes six groups of them: Karen, Hmong, Mien, Lahu, Akha, and Lisu (see Lewis and Lewis 1984).
police intended not to develop the evidentiary records for all drug-related murders during the war on drugs. Consider the following conversation with Paiwan.

Paiwan: Collecting criminal evidence is not difficult to do. But the hard problem is that the police [acted] like they knew nothing about investigation work. [Paiwan burst out laughing]. For example, [you tell me whether] you think this is nonsense. The victim went to report himself at the district office and he got a phone call [while there] to go out to see someone. Then, he rushed out and was shot dead, but his phone-SIM card was taken. The police did not check about it. Ah! What does this mean? When the cartridges and bullets were found at the incident… Could they track which guns were used? Yes, they could, but you know what the police told us (the National Human Rights Commission). The data system was broken down so that it could not be used to identify the guns!

Interviewer: It is not about evidence collection.

Paiwan: No, it’s not

Interviewer: It seems the police officers did not do their regular jobs, right?

Paiwan: Yes …Like I have just told you about those aggrieved people who made a complaint in 2006 [after Thaksin was ousted by the military coup]. They recounted in the complaints that they saw a group of strangers come in the village, and they saw this group drive off after they heard gun shots. This information was not in the investigating and interrogating record of the local police. So, it might take ten reincarnations to catch up with the killers! [Paiwan pounded on the table when making his point]. No ways [to arrest anyone]. We [National Human Rights Commission] also asked the [local] police why they did not put this information in its investigating and interrogating record. They became dumbfounded! In fact, people had already given this information to them. The problem was the police did not want to examine the facts. (Paiwan/HM1/pp. 29)

Samsen affirmed Paiwan’s comment and added a remark that it was state policy at that time to deliberately leave the evidentiary records underdeveloped. In his words:

Samsen: The state authorities did not pay attention to investigating the killings. When they reported the killings as ‘kha-tad-ton,’ the cases were closed.

Interviewer: Is this … [a] problem of collecting criminal evidence?

Samsen: No, it’s not. The police did not enquire about more evidence.

Interviewer: It seems the problem is not about the difficulty or ease in collecting evidence.

Samsen: Actually, this implies that the government did not have a policy to identify the unknown assailants. Why is this so? This is because, I believe, the unknown gunmen [were tied] to state authorities acting in accordance with the policy of ‘kha-tad-ton.’ (Samsen/HM1/pp. 51)
The killings were not only the most serious abuses during the war on drugs. Many others were accused of drug offenses and arrested but survived their ordeals. In order to understand what happened, the various practices of the local authorities need to be examined. The analysis turns, next, to an examination of how the Thai law and legal practices labeled some citizens as drug offenders and contributed to abuses during the war on drugs. One of the interviewed lawyers offered an overview.

Usually, the facts in the complaints by the aggrieved [to the National Human Rights Commission] were totally opposite from those proposed by the police. They gave a different picture. The aggrieved often mentioned that they were beaten or encountered several difficulties. The police proposed another scenario: They’d followed the aggrieved for such a long time. Their informers gave them the information for the location and time of drug trading. Then, they pretended to buy narcotic drugs … Finally, [when] they succeeded [in making a purchase they] arrested the aggrieved… In the interrogation stage, the aggrieved confessed. The court would set up the case by relying on the indictment of the police. To make a stronger case about the drug-related behaviors of the aggrieved, the police would come in the jail, find offenders who got punishment for abusing drugs, [and get one of them] to sign a paper indicating they purchased drugs from the aggrieved, even though they had never seen the face of the aggrieved. The signed paper was submitted to the public attorney for the court’s trial. It’s the other offenders who abuse drugs that shift the blame on the aggrieved.’ It sounds reasonable, ha! So, how is it possible for the aggrieved to rebut the accusation? (Kanchai/HM3/pp. 16-17)

**Presumption of Guilt**

Human rights professionals decried that the legal response to the mass killings and other abuses during the war betrayed the rule of law. Basic due process procedures to prove guilt gave way to practices that presumed guilt. Paiwan, a senior human rights lawyer who has a lot of trial experience with social justice issues, points to the abnormality of the legal practices during the war on drugs where the presumption of guilt superceded that of innocence. He laid out the black letter law on the presumption of innocence that was supposed to have prevailed. Although he spoke to the issue in the context of the killings, the presumption of innocence also extends to those who were merely accused and arrested.
[D]on’t forget that according to the Constitution, people are presumed to be innocent until proved [guilty] as announced by the court’s final verdict. Did those killed people have a chance to prove their innocence? …

Moreover, by law, the criminal accusation is dropped when the accused are dead. Therefore, the killed people must be considered innocent anyway, although drugs are found [at the incidents]. However, this principle was not [followed by the justice officers]. Therefore, the relatives of the victims did not qualify for a remedy [as they should have] if we use the Constitution as the foundation…” (Paiwan/HM1/pp. 41)

If the Thai Constitution would have been applied, the families of the dead (who should have been presumed innocent) should have been eligible for a remedy.

For those who were merely arrested, several human rights professionals expressed concern about court practices that did not take the presumption of innocence seriously. These respondents thought that too many judges, especially the young judges of the Court of First Instance, got caught up in the moral panic about drugs and adopted the majority’s feeling of antipathy to drug dealers. So, for example, they often imposed the maximum punishment.

Some human rights lawyers blamed the judges for presuming that accused drug offenders would always deny the criminal charges. Pleading guilty was perceived as a rare behavior for alleged drug offenders, whereas more “ordinary” criminals were likely to admit guilt. This placed those falsely accused in a difficult bind: pleading not guilty made them appear as if they were more likely to be guilty. They noted that judges, instead of opening a court hearing by inquiring about matters of innocence, began the sessions by asking leading questions and statements: ‘whether you [the defendant] would confess;” “if you [the defendant] did confess, you would be punished less than usual;” “if you [the defendant] confess, the rate of punishment will be knocked in half.” Some human rights lawyers argued that these leading questions influenced defendants to plead guilty rather than to stand trial to establish guilt or innocence.
Kanchai, a lawyer, related his experience from working with the National Human Rights Commission, an experience that seemed to be shared by several other human rights professionals. He sees both the judges and public attorneys (prosecutors) as presuming guilt.

Kanchai: The judges would presume that every offender always denies a charge. It is not presumed that every offender is innocent. Yeah, it’s a legal principle [but] in practice, the offenders are not presumed innocent…

Interviewer: You mean they presume the offenders guilty, don’t you?

Kanchai: Ah! It needs to find the way out [under the presumption of saying ‘no’]. Sometimes, the public attorney would discourage the aggrieved. ‘Do not fight. Just accept it.’ ‘Not many tablets [of drugs] wouldn’t take so long to get released [from jail].’

Interviewer: Does he not look up the facts?

Kanchai: He relies on the facts in the indictment [supplied by the police]. The public attorney does not want to have a conflict with the police. (Kanchai/HM3/pp. 16-17)

In this conversation, the presumption that the accused will deny the charges moves the case further into of the justice system, but it does not protect the rights and liberties of the people. Other interviews indicate that it is not only some public attorneys and judges who try to persuade the offenders to plead guilty. Some police and even lawyers, especially duty solicitors (free-service lawyers appointed by the court), also suggest that offenders should plead guilty and waive trial. Saijai, a 71 years old woman whose son was falsely accused of taking drugs, recalled the moment she was persuaded by the lawyer and police to give up a trial.

[After Saijai complained a lot about expenditures for her son’s defense, the interviewer asked: Why don’t you ask for assistance from the free-service lawyer appointed by the court to help you save money]?

Nonsense! The first time, I went to the court and met with one lawyer at the court. I think he was a retired police officer. I told him all about my story. He and I then went to the police station I had a problem with the other day. He talked with the Police Superintendent for long hours. When he was done talking, he told me that ‘oh it is easy to solve, madam!’ I asked him how to fix the problem. ‘Since it’s only a tablet [methamphetamine] … your son [will not be] imprisoned.’ He told me such. I glared at him. I could feel that he was very familiar with all the police over there. He told me further, ‘just make confession. Not be jailed because of only a tablet. Just be put on probation.’ I was thinking they [the free-
service lawyers] helped police. So, I never asked him to be my lawyer and never contacted him again. I searched and paid a lawyer by myself. (Saijai/AF6/pp. 64)

Perhaps the clearest demonstration that a working presumption of guilt displaced the legal presumption of innocence was seen in bail practices. The judges hardly ever granted accused drug offender temporary release on bail; the bail bond was often set at a very high price. Several human rights professionals indicated that the police and prosecutors often opposed release on bail. The judges also rarely frequently did grant release on bail. While awaiting trial, Jai was imprisoned for almost 2 years, Jandara’s sister for 6 months, Chairoj’s father for 3 months, Danai for over 5 years, and Namtip for almost 2 years. All were eventually pronounced not guilty. None of the aggrieved people interviewed in this research had been criminally accused or jailed before the war on drugs.

In narcotics offenses, the courts usually set a high price for the bail bond. Ruksa, a lawyer from Lawyers Council of Thailand, requested release on bail for his clients. Although the police did not find anything illegal during the searches, they arrested them and confiscated their properties on the same day. The court set a very high price of a bail bond for their temporary release during trial, 5 million baht (125,000 U.S. dollars in that time) for each. However, Ruksa and other lawyers from the Lawyers Council went to the Head of Judges and succeeded in reducing the bail amount.

The collateral bail bond was high at 5 million Bath. The first time, we [the Lawyers Council] tried to help by talking with the head of judges [of the Provincial Court]. We presented him with the facts we had and told him that the clients suffered a lot … in the justice system with such a high price of collateral bail bond. So, we asked for mercy from the court to reduce the price of collateral bail bond. The court reduced [the bail] but not for all of them. (Ruksa/HM2/pp. 10-11)

From Ruksa’s perspective it took a lawyer to talk with the highest figure in the provincial court to have an impact—even then the request was rejected for some clients. He may have had success (albeit limited) because he and the other lawyers worked for the Lawyers Council (a
respected bar organization). Ordinary lawyers might not have such negotiating power with the judges. As a rule, the aggrieved people who were interviewed had a hard time to make bail.

**Blacklists—a Source of Accusations by “Pointing a Finger”**

The Thaksin government enlisted local community organizations to help wage the war on drugs. Specifically, it used the “village community.” The “village community” consisted of local representatives from a variety of groups in the area. The Thaksin government had each “village community” compile a list of local people who were involved with drugs. The lists (which became known as blacklists) were submitted up the bureaucracy to the district and provisional offices under the control of the Interior Minister. The blacklists were, in turn, used to keep track of how well the war was being waged in the local vicinities. According to the aggrieved, all that it took was someone to point a finger; rumors were enough. Kitti’s father was killed shortly after he had gone to the local police and successfully got his name removed from the blacklist. Rattana, who lost her mother and stepfather to the drug war, said that “People rumored for a long time [that my parents were thought to be drug dealers]” (Rattana/ AF6/pp. 129). Ladda (AF6/pp. 122), whose husband was killed during the war on drugs, blamed the village community: “Before my husband was killed, one of his close friends noticed that we were richer than usual. . . .”

Kanchai, a professional lawyer who joined the subcommittee of the National Human Rights Commission to examine human rights abuses during the war on drug, articulated the ways in which ordinary people were officially named as drug dealers. By pointing their fingers at others, named drug offenders transformed ordinary people into drug traffickers and targets of the war.

[I]t is not easy to find evidence to arrest [the big professional drug dealers] and the witnesses [against them] are not protected effectively by the justice system. [So, no one wants to be a witness]. Therefore, [in the time of drug war] the police needed to arrest the accused people first and tried to find the evidence to back up a criminal charge later. If the police used the offenders in jails to point to you, you would become a big drug dealer. Did
those offenders have any interest with the framings? Of course not, but if they did not give cooperation, something bad might occur to them.” (Kanchai/HM3/pp. 20-21)

Paiwan described what happened bluntly.

It’s like when you were arrested with drugs, you would be asked to implicate someone on the police’s blacklist. Just point to them! (Paiwan/HM1/pp. 35)

Several aggrieved people interviewed in this research related such an experience. Danai, for example, was a local leader arrested and imprisoned awaiting trial for five years. The Court of First Instance found him guilty and sentenced him to life imprisonment. However, the Court of Appeal reversed the judgment. During the interview, he recounted several activities he did as a leader against the drugs rampant in the community. He worked closely with the local police and became acquainted with them. So, he was surprised why he was framed by the local police as the most powerful drug dealer in the region.

I still cannot imagine why I was framed ... They [police] wrote an excellent story used to frame me. A few offenders whom I helped to arrest became witnesses that confessed to the police that they traded drugs with me...My province was one of 23 provinces that was blamed [by the government] for not achieving the first periodical target of the war. My arrest helped the province reach the set target. Normally, if the target was not achieved, the Provincial Governor and the Police Superintendent would be transferred out of the area. But my arrest saved them. My province was blamed for not reaching the first period-set target on February 23, 2003, and I was arrested a few days later. (Danai/AM6/pp. 169-70)

Danai went on to decry the state authorities he used to work with.

I thought the police could protect me because I worked closely with them and the district officers all the time. We knew each other for almost 10 years. But when I was accused of involving with drugs, no one came in [to help despite my being a good citizen]. (Danai/AM6/pp. 172)

The Practice of Using Uncorroborated Evidence

The chilling account of two victims, Chana and his wife, dramatized how the role of uncorroborated evidence was used to identify suspects, label them as drug offenders, and dispose of them through kha-tad-ton. Their daughter and son-in-law were shot dead with drugs found in their vehicle. Their properties were confiscated on the day after the killing. Local police reported
in the investigating record that the couple joined with another offender who had the same last name to deal with drugs in the region. Thus, the couples were imputed to be part of a big drug network. However, after the Thaksin administration was ousted by the military coup in September 2006, the interim government’s Division of Special Investigation (DSI) reviewed the case and found that the story reported by local police was untrue.

Interviewer: In the police’s report, it said the deceased traded drugs with one offender who was jailed and had the same last name with them.

Chana’s wife: Yes, we were asked [by the DSI] whether we knew that man. They asked us to look at his picture but we had never seen him before. The picture of the deceased was also viewed by that man [who was in prison for dealing drugs]. He also did not know the deceased. Just the same last name. (Chana/AM6/pp. 160)

The use of uncorroborated evidence was also a feature in accusations that led to arrests. Indeed, the practice of relying on uncorroborated oral evidence was how the government achieved a high number of arrests during the three months of the war on drugs (February through April 2003). All the lawyers who were interviewed talked about the use of “oral evidence” to accuse and arrest people, much of which was of a hearsay nature in that it was made by third parties and was not corroborated.

One lawyer, Paiwan, laid out the black letter law on the use of uncorroborated oral evidence. He indicated that hearsay evidence could not be used to decide the guilt of the hearsay-implicated persons without other substantial evidence.

Paiwan: Then, we have to ask in general whether the public attorneys [prosecutors] should take a matter to trial [with only hearsay evidence].

Interviewer: They should investigate more about it, I guess.

Paiwan: [H]earsay evidence cannot be [used in] a lawsuit…the justice system at that time [during the war on drugs] was unusual.

Interviewer: If [the accusation is based on] hearsay evidence, the public prosecutor should return the case to the police [for more evidence], right?
Paiwan: The public prosecutor has to give a non-prosecution order. By principle, hearsay cannot be used as criminal evidence. This is the normal legal application. Without other convincing evidence, the implicated hearsay evidence alone cannot be admitted [in court] to punish people. So, I tell you it was an unusual justice system in that time...[A]lmost 30 complaints [came] under the review of the National Human Rights Commission [based on] hearsay during the war on drugs. The public prosecutor brought a criminal action against all of them. You can imagine that it took some time for a court trial. [Later during the interview, Paiwan indicates that the courts eventually dismissed all these cases].

Interviewer: I think it must be very painful when people do nothing wrong but they must be present themselves in court.

Paiwan: They [the aggrieved] must feel shameful because their neighbors know about the criminal lawsuits against them. Although they are poor, they still have to spend a lot of money to hire a lawyer. So, the victims of the war on drugs are not only the killed people. It's not. (Paiwan/HM1/pp. 36-37)

Indeed, although challenging the hearsay was necessary to prevail in court, it occasionally led to disastrous consequences as one lawyer related. Ruksa recalled about his three clients who were implicated by hearsay evidence alone. They were arrested for dealing drugs and their properties were confiscated. Having no other substantial evidence, the public prosecuting attorney sought to settle the suit against them to avoid a full-blown court case so that the weakness of the evidence would not become known. Eventually, however, the court dismissed the cases when the accuser did not appear at trial. Unfortunately, one of the clients was shot dead before he learned of the court’s ruling.

[T]he officers [were] defective in the performance of their duties and they feared being sued by the accused. Therefore, there was an effort to settle a charge in the court, even though they did not have other evidence except the hearsay implication. However, the police’s witness implicating my clients did not appear at the day of the court’s trial.” (Ruksa/HM2/pp. 6)

Paiwan, a lawyer who joined the National Human Rights Commission to examine human rights abuses during the war on drugs, argued that a provision in Thai law actually made matters worse. He discussed the role of a provision that was used to accuse ordinary people. He focused on the double-edged sword of the narcotics law. The law actually provided incentives to the accused
offenders to confess. The punishment would be reduced if their confessions yielded useful information that contributed to the suppression of narcotics. The reason this cut both ways was that it was used during the war on drugs to increase rapidly the numbers of drug offenders. An accused drug offender could name anyone and hope to receive a lighter sentence. If those accusations were taken at face value, without corroboration, the local authorities could inflate the numbers of arrests to meet government set targets. Recall that Paiwan indicated that nearly 30 cases were brought to the National Human Rights Commission in which the accused persons were implicated by the use of this kind of hearsay.

Interviewer: What is the hearsay implication you just mentioned?

Paiwan: Wait! The savage thing with which I totally disagree is that the Narcotics Act [B.E. 2522 (1979)], section 100/2 indicates that if accused persons give information benefiting the authorities [by helping] to suppress narcotics offenses, they have a right to be punished less than the [sentence] provided by law⁴...For example, when the real drug dealer is caught, the police would persuade him to implicate anyone [as part of his drug gang].

Interviewer: This means the offender gives a benefit for law enforcement?

Paiwan: Yeah! Therefore, a lot of people were implicated by hearsay evidence...

Interviewer: Did that help delete names from the blacklist?

Paiwan: To reduce the name lists. Then, the arrested person would be offered less punishment during the court’s trial because he gave information that benefited the suppression of more drug dealers. So, I tell you section 100/2 is like the double-edged sword. It facilitated the war operation by increasing quickly the high number of people arrested for drug offenses, while those who actually committed drug offenses [the original offenders] received a light punishment. In this respect, we have to ask whether the law is good or bad. (Paiwan/HM1/pp. 35-36)

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³ The full provision of section 100/2 reads that “If the Court is of opinion that any offender has given important information for the very benefit of suppressing the commission of an offense relating to narcotics to an administrative official or a police official or an inquiry official, the Court may inflict less punishment than the rate of minimum punishment as provided for such committed offense.”
Planting Evidence

Paiwan, a human rights lawyer who investigated and interrogated the state authorities for human rights abuses during the war on drugs with the National Human Rights Commissioners, recounts the ways in which the killings took place. Some of the killings came about in crowded places; drugs were seldom found at the scene or on the body of the victim under these circumstances. On the contrary, drugs were often detected when the killings occurred out of people’s sight such as in the victim’s private house. Some victims were killed on their way back home after reporting themselves to the state authorities.

Paiwan: According to the [complaints brought] to the National Human Rights Commission, we identified three patterns of killings. For those killed in deserted places, before the relatives of the victims arrived in the scene, drugs were already found [by the investigating police team]. Drugs were rarely found for those killed in the community [crowded] places.

Interviewer: Umm, drugs were not found.

Paiwan: Right. Drugs were rarely found [for the killings in the crowded places]. But all victims had their names on the blacklists… [In cases where drugs were found at the incident, it is not convincing to believe that drugs belonged to the victims. That is, the procedure to prove whether the drug container belonged to the victims [and] the proof of fingerprints [on the drug container] were exempt. The regular [ways to establish] proof disappeared from the practice. For the third case, drugs were found at the crime scene or at the body of the victims after the victims had just reported themselves to the police [at the police station] or to the district officers. The question is whether those people would take drugs with them when they intended to report themselves to state authorities.

(Paiwan/HM1/pp. 26-27)

According to most human rights professionals, drugs or other incriminating evidence found on the body of the victim or at the scene were there because the evidence was planted. Tippawan, a female human rights professional currently working on issues of justice in the South of Thailand where Muslim insurgents are operating, is explicit. In fact, she discerned similar patterns of victimization between what happened during the war on drugs and the on-going killings in the
three southern provinces of Thailand where the Muslim insurgents often clash with the state patrols.

As seen in newspapers, the pattern can be observed. That is, it is assumed wherever the killings take place, if there are no drugs there might be other illegal items [at the scene]. This is similar to what is going on now in the deep Southern provinces where the rifles are often found nearby the corpse. End! It is not necessary to investigate and interrogate the killing anymore since the victim is accused of being a terrorist comrade.

(Tippawan/HF5/pp. 3)

**Legal Consequences for the Victims of the Criminalization**

The ways in which the war on drugs was waged had legal consequences for those caught up in the legal and extralegal practices that went beyond the killings, charges, and sentences. Both the human rights professionals and the aggrieved persons spoke of these. Not only did they document the range of consequences, they also related the extent to which these consequences contributed to the suffering of the aggrieved.

**Property Forfeiture**

One of the major legal consequences was property forfeiture. The loss of property entailed both legal and personal dimensions. The property of both those killed and those arrested were vulnerable to confiscation by authorities. Because the dead victims were criminalized as drug dealers, their properties could be searched and confiscated.

However, most human rights lawyers explicitly accused the state authorities of conducting unlawful property forfeiture because the law did not give them such broad power. Some also averred that the relevant laws [the 1991 Act on Measures for the Suppression of Offenders in an Offense relating to Narcotics (B.E. 2534) or AMSOON], and the 1999 Anti-Money Laundering Act (B.E. 2542 or AMLA) put too much of the burden on the aggrieved to prove that their property was not tied to drug offenses. Due process usually places the burden of proof in
criminal cases on the state. Consider the following conversation with Paiwan, which illuminated this concern.

Interviewer: I have just interviewed one human rights professional and he raised interesting stories about property forfeiture. For example, only two tablets of methamphetamine [gave] the state authorities [reason] to confiscate all properties.

Paiwan: Even one tablet also led to property forfeiture. To talk about this, we need to see the loopholes in the laws first. The laws [i.e., AMSOON and AMLA] are upside down. That is, if the property is in doubt as being related to drugs, the laws authorize the confiscation of the property. More detestably, the aggrieved have a duty to prove that they acquired the confiscated property in good faith. Is that appropriate when the relevant state authorities have a legal power to subpoena all documents from the bank or wherever!? Thus, it should be the duty of the state authorities to prove that the property is related to drug offenses.

Interviewer: [T]he state authorities have such legal power, right?

Paiwan: The laws authorize them to do so. They can wiretap. They have the power to check private communications and to get the monetary information [of the aggrieved people] from the bank to prove whether their properties were involved with drug offenses. (Paiwan/HM1/pp. 32-33)

Paiwan explained further that property confiscation in that time received a green light from the government. The more local authorities seized in forfeiture, the more monetary reward they received. When people were killed, their properties were confiscated, so little was left for their heirs to live their lives. Thus, there was a material loss as well as the personal loss to the families.

Moreover, a few human rights lawyers explicitly discussed how the operation of property forfeiture during the war violated Thai laws. The police and ordinary state authorities did not have a legal power to initiate forfeiture. Again, Paiwan’s comments are most clear on this point.

Paiwan: The police and general district officers do not have a legal power to do forfeiture unless they are assigned [that power] in writing by the Secretary General of the Office of Narcotics Control Board or of Anti-Money Laundering Office, or by the Properties Examination Committee or the Transaction Committee.

Interviewer: But in the practice…
Paiwan: The police did forfeiture by themselves and submitted the lists of the items seized to the Office of the Narcotics Control Board and the Anti-Money Laundering Office to verify their operation. This is illegal! I tried to tell the government that this conduct is illegal. It is unlawful-property forfeiture. But the relevant authorities did nothing about it. The National Human Rights Commission also indicated in its several human rights examination reports that this was unlawful property forfeiture! (Paiwan/HM1/pp. 33)

Some human rights lawyers do not attribute such unlawful property forfeiture to ignorance; rather they take a firm stand that the state authorities deliberately violated the laws to prosecute the war on drugs. Consider the following dialogue with Samsen, a human rights lawyer who is well known for his active effort against human rights violations during the war on drugs.

Inreviewer: What about the property forfeitures?

Samsen: I think the state authorities deliberately abused the power. It is not simply an act of ignorance because all kinds of properties were seized. I think there are three [reasons the state authorities could give to do so]. First, the accused were wicked, so [the means by which] to live their lives deserved to be eliminated. In fact, the laws did not offer such a broad power to do so. The laws allow only the properties related to drug offenses to be seized. Second, it was the big mistake of the policy [of the war on drugs] to motivate the state authorities by rewarding them with some percentage of the all values of the properties forfeited. The third reason was that they had a short period of time [to carry out] the war; therefore, [the local authorities pursued] forfeiture as much as possible [and could examine what they had done later] because the government commanded. Thus, the decision to forfeit needed to be quick. Otherwise, they [the local authorities might be doubted] and they could not look like they were reluctant] to help or [they might seem] to be taking the side of the drug dealers. (Samsen/HM1/pp. 56)

As this quotation suggests, the illegal property forfeitures are closely linked to the government’s war on drugs. There was economic benefit to the authorities. Moreover, even lower state authorities feared to be labeled as helping or associating with drug dealers or appearing lax in their pursuit of drug dealers.

The property forfeiture was a very painful experience for the aggrieved. Paiwan, a human rights lawyer, recalled the stories he heard while examining human rights abuses during the war on drugs with the National Human Rights Commission. Even when the aggrieved won their property back, he found that many properties were damaged because the local police station did
not have appropriate places to keep a number of seized properties. Sometimes, the local police used the car confiscated for their own business to the point of wearing it out. Some valuable items were stolen and could not be recovered. In his words:

Oh! [He sighs.] The property forfeiture included very brutal practices. Did the local police station have a place to keep these properties? No! They just piled everything up together. Better, some items might be covered by a canvas. Are the properties vulnerable to be broken down? Sure!

Paiwan went on to describe the time line involved in recovering illegally seized properties.

Paiwan: Then, it takes some time [for a claim] to be examined by the Anti-Money Laundering Office and the Office of the Narcotics Control Board. The Anti-Money Laundering Office might spend three months for an examination, while the Office of the Narcotics Control Board might take a year. Or, the properties might be examined for a year by the Office of the National Narcotics Control Board before it found no legal basis to confiscate the properties. The properties might be submitted to be reexamined by the Anti-Money Laundering Office for another three months. During the property examinations, the properties were not taken care of as [they would have been under] normal circumstances. More savagely, what we [the National Human Rights Commission] found most is the use of the confiscated cars. Several cars were tumble-down [worn out]. Sometimes their valuable parts were stripped off, like the car bumper protector.

Interview: Was it for the sake of being not recognized?

Paiwan: No, it was not… but it [the car bumper protector] worth something. Sometimes, the car’s max alloy wheels were also taken off [because they were tradable]. The new cars became old, with a hundred thousand in mileage.

Interviewer: Did you get this information from the aggrieved?

Paiwan: Yes, and it can be easily assessed by the deteriorated condition of the cars given the recent date of the sale as evidenced by purchase documents. Therefore, the sufferings from the loss of properties are seriously painful, no less so than the physical hardships [due to the war on drugs]. (Paiwan/HM1/pp. 34-35)

Sombat, a human rights lawyer, used to assist his clients to ask for a return of their cars. His experience revealed how difficult it was to negotiate with the local authorities; ordinary people would be hard-pressed to challenge the state authorities’ actions on their own, even though the confiscations were illegal. The following exchange illustrates the issue.
Interviewer: Do you have some experience with the issue of property forfeiture?

Sombat: I asked for the return of a pick-up truck from one local police station in…[a] province. The police seized it by claiming that the car was involved with drug offenses. I asked the Police Superintendent why my client’s car was seized since he was not criminally charged and arrested. The Police Superintendent claimed that the car was seized under the Anti-Money Laundering Act. Therefore, I asked him whether he had the written authorization from the Anti-Money Laundering Office because by law the Anti-Money Laundering Office [has to issue] a written order to specifically appoint the state officers to have the power to seize the properties [for later examination]. He [the Police Superintendent], then, gave out a hue shouting at me and beating around the bush. ‘Never mind,’ I told him. ‘I will write to the Anti-Money Laundering Office to ask about your confiscation…’ The Police Superintendent asked me what I actually wanted. I responded that ‘if you find this car [was involved in] illegal activity, just pursue a legal proceeding because it’s been seized for almost two months without any criminal charge. I often saw your boys [the lower ranked police] use the car.’ Finally, he surrendered and asked me to bring the evidence of title to get the car back. There were a lot of similar cases about cars [confiscated without a charge or any record of seizure]. (Sombat/HM4/pp. 8-9)

Although Sombat’s successful negotiation might be seen as a result of the power of legal knowledge, it would be premature to draw the conclusion that legal knowledge was an effective weapon in the war on drugs. An alternative explanation might be that Sombat’s success might have turned on the nature of the interaction between people of standing—the police superintendent and a lawyer—rather then stemmed from his legal knowledge per se. Indeed, the use of legal knowledge by ordinary people to resist or challenge the power of the state authorities sometimes backfired and brought them more pain and harassment. Saijai, an aged woman whose son was falsely accused of abusing drug (one tablet), recalled what happened to her son when he tried to use legal knowledge by asking the arresting police team to show their official identification cards. Instead, he got beaten and blamed as “hau-moh” (‘tricky’ or sometimes ‘foxy’).

Getting a Day in Court

In one important way, the practice of kha-tad-ton interfered with the ability of victims to get a hearing in court. Imputing criminality to the deceased altered the death investigations. The
Criminal Procedure Code generally requires an autopsy to be performed for unnatural deaths. The public prosecutor together with the inquiry officers (i.e., the police) is to initiate the procedure. The procedure, however, changes if the unnatural death occurred under the control of the state authorities or while they were carrying out their duties. The courts are to conduct the autopsy in such circumstances. Extra-judicial executions, like those which occurred in the war on drugs, should prompt court procedures. By labeling the killings (unnatural deaths) during the war on drugs as kha-tad-ton (killings among drug dealers), the local authorities could preclude the courts from having any involvement with autopsies. In other words, kha-tad-ton categorizes those killed during the war as the victims of general unnatural death, excluding their cases from the court’s review. Ruksa, a lawyer, raised this practice.

Interviewer: [C]an you, as a lawyer, identify how the killings during the war on drugs differed from murders at other times?

Ruksa: The inquiry officer [police] has a duty to bring the criminals [the killers] to justice. However, during the war on drugs, the inquiry officers did nothing to crack down on the criminals. As seen in the news, the victims were killed by [a way of] “kha-tad-ton.” The court’s trial for their deaths was also exempt because the killings were not committed by the state authorities. By law, if their cause of death involves the state authorities, the court’s autopsy trial is needed to identify whether the action of the state authorities was lawful or their action was immoderate. But when the issue was changed to be the killings among the drug rings, the court’s intervention was excluded. It was outside judicial review. Whatever, the police were to find out who the gunmen were, but it seems nothing progressed at all. (Ruksa/HM2/pp. 11)

**Losing Other Benefits**

The criminalization of the deceased also resulted in their heirs losing some monetary benefits. For example, Bhornpan, whose sister and brother-in-law were shot dead, was annoyed with the life insurance company that denied benefit payments to the heirs because the couple were labeled as drug dealers by the police. The company told her to seek certification from the police to verify the innocence of the deceased. Bhornpan recalled that her brother-in-law had a series of conflicts with the local police over traffic matters. On the night of their deaths, the
couple was called by the police to report to the police station to resolve some matter. On their way back home, they were both killed and a package of drugs was found in their car. Therefore, Bhornpan scoffed at the prospect that the police would confirm the innocence of the killed couple. Consider her words.

[T]he insurance company refused to pay the benefits for the deaths of the couple because the cause of death involved drug offenses…The insurance company suggested that I ask for a written certification from the local police indicating that the deceased were not involved with drugs. Then, it would pay the benefit to their sons. Wow! No police would write such a certification of innocence for me because it was the police who confiscated all their properties with a charge of a drug offense. (Bhornpan/AF6/pp. 45)

In this quotation, the life insurance company accepted the conclusion of the police as true until Bhornpan proved otherwise. Thus the presumption of guilt extended beyond criminal prosecution. And it is not just the life insurance company that presumed guilt; it extended to state agencies, too, like the Comptroller General’s Department as Pintip’s experience illustrated. Pintip’s husband was shot dead and the police found one tablet of methamphetamine on the corpse, and his properties were all confiscated on the day after the killing. He was a mid-ranked civil servant; therefore, Pintip should, by law, receive remuneration for his death. But the Comptroller General’s Department refused to pay her the benefit because his death was related to a drug offense.

The Impunity of the Authorities—Practice without Accountability

The pattern of abuses and the myriad practices that contributed to the abuses suggest that local authorities acted with impunity for the most part. That conclusion is reinforced by the fact that most of the aggrieved persons who were interviewed expressively wanted to bring the officers who framed them or their loved ones to justice, but did not or could not.

Interviewer: [Y]ou won the court’s case, [but] no police officer was punished [for framing your son]. What did you think about it?
Saijai: It was not correct. They should have been punished, so they would not dare to do it again. The police officers are too chesty. Like, after someone was arrested by them but found not guilty [by the court] later, the police officers didn’t suffer punishment. Thus, the police officers would be bold to do it again. If they got some punishment, they would be careful in arresting [and criminalizing] people. In fact, the police officers are able to frame anyone. If the court finds him not guilty and acquits a charge, nothing happens to the police officers. If the court finds him guilty, he goes to jail. Only people suffer, and waste both money and [jeopardize their] health. (Saijai/AF6/pp. 69-70)

Although they wanted to pursue their abusers, they did not. Saijai has already presented one obvious reason: they all feared reprisal. In fact, the police officers are able to frame anyone.

Kanchai, a lawyer, although appointed to the subcommittee examining human rights violation during the war on drugs, bluntly indicated that he recommend his clients not to sue those responsible because his clients remained vulnerable and could have been revictimized.

So, as I told you, lawyers often advised their clients not to [fight back against] the police officer…Although you might be driving your car in a correct manner, if they [police] pull you over. Just stop! They would charge you for driving over the speed limit, although you actually drove like a turtle runs. [Just accept it]. Give them money, if they call for it. Do not argue with them. Otherwise, some tablets of ya ba might be dropped on your cushion…For myself, I would suggest you take it…[it should be your] last choice to have a problem with the police. They can frame you at any time [in any matter]. (Kanchai/HM3/pp. 22)

The victims also conveyed a sense that they needed closure. As ordinary citizens the aggrieved wanted the return of peace to their lives, something that would be delayed or maybe even elude them completely if they challenged the power of the police officers. In addition to these rather obvious reasons for reluctance to pursue their abusers, their avoidance cannot be explained merely as psychological resignation. The interviews uncovered more subtle social processes that were also at work. Despite the abusive practices that occurred during the war on drugs, there were difficulties in holding those responsible accountable.

**Preventing Professional Conflict**

In the justice system, a lawyer is the only private agent standing against those from state agencies—the police, public prosecutor, judges, and correction officers. The lawyer, therefore, as
noted by Kanchai, is “the only private actor to balance the use of the state power in the justice system. Lawyers can use law as the other state authorities do.” Moreover, even if ordinary people know the law, they cannot use it effectively without the help of a professional lawyer. This is because, as Kanchai (HM3/pp 15) notes, “law is too complicated for ordinary people to deal with.”

Not all lawyers, however, are in the same position to represent the aggrieved. Especially for local lawyers the legal world during the war on drugs was interwoven into a larger social context. According to some human rights professionals who were interviewed, challenging the abuses of power during the war on drugs held the potential for conflict. Therefore, local lawyers were reluctant and the aggrieved were hard-pressed to find a local lawyer to take their cases. The local lawyers often had good relationships with the local state authorities. They did not want to generate conflict with the authorities. Their real word shaped their professional practice in ways that constrained access to representation among the aggrieved.

Pinit, a lawyer who worked for a long time on human rights issues, was a leader of a non-government organization (NGO). His organization tried to connect the local lawyers who resided in other provinces outside Bangkok into a network to provide legal assistance to people. He observed that because of the potential for high conflict from cases during the war on drugs, ‘it was impossible to use local lawyers’ in areas outside of Bangkok (Pinit/HM4/pp. 31). Thus, Saijai, an aggrieved person, who resided in Bangkok, did not have a hard time to hire a lawyer as other aggrieved people who resided in the provinces did.

Jandara’s case is illustrative of the problems with legal representation. She tried hard to help her sister who was framed by the local police as a drug dealer. Her first lawyer came from Bangkok, although her sister stood trial in a province in the far North-Eastern region. Her lawyer
always took a flight back and forth during the court’s trial at Jandara’s expense. She used a lot of money to pursue justice for her sister. She recalled what it was like.

At the beginning, I tried to find a lawyer from the province [where her sister resided]. Actually I got one local lawyer and agreed to pay him almost 200,000 baht [5,000 U.S. dollars in that time]. Later, he told me that his relatives did not want him to take my case. He withdrew himself from my case. I have relatives living in Bangkok, so we decided to use a lawyer from Bangkok. He thought it was not a difficult case [to win]. However, the police always opposed our request for temporary release on bail. [Her sister was imprisoned for more than 6 months before the court found her not guilty].

(Jandara/AF6/pp. 26)

Lawyers as Peace Makers

In addition to defending those accused of drug offenses, lawyers played another role. Even when the aggrieved won their court cases, their lawyers often advised them not to bring charges against the police officers for his abuse of power or to sue for civil damages (tort litigation). Their lawyers had to warn them about seeking revenge against the officers that committed the abuses, even through legal means. At first thought, some of them explicitly wanted to charge the police officers for their abuse of power and sue them for civil damages. However, their lawyers reminded them to have second thoughts. Consider the words of Saijai.

Interviewer: [Y]ou told me that you wanted to sue the police officers who framed your son for drug offense, but why didn’t you do that?

Saijai: At the beginning, I wanted to get them back, so I consulted my lawyer. He did not want me to do that because my house is located like this [a remote area in Bangkok]. He feared the police might do something bad to me. ‘The police might not do it by themselves but have others to do it,’ he warned me. They can do many [bad] things to us. No one knows. Nowadays, my resentment’s still glowing. I want to sue them actually. The time for litigation’s not ended yet. I want to sue them for doing bodily harm to my son, for using excess force and for their abuse of power. (Saijai/AF6/pp. 66)

The fear of reprisal did not stop Chairoj who wanted to hold the police officers accountable for framing his father. He too wanted revenge. His lawyer advised him to drop his thoughts to sue.

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4 The average rate of exchange in 2003 was 40 baht for a U.S. dollar.
He contacted a few other lawyers, but they also refused to help him. The bottom line was that he could not find a lawyer to pursue the case.

**Waiver**

The police employed another practice that allowed them to operate with impunity and made it less likely that they would be held accountable. They would have the aggrieved sign a paper to waive the right to sue the police officers. Jandara, whose sister was falsely accused of possessing drugs, shared her experience. Her sister was taken by the police to the police station immediately after being freed from jail after winning the legal contest. The police officers asked her sister to sign a paper indicating that she would not bring charges against them.

**Interviewer:** What did your sister think at that time [about her grievance]?

**Jandara:** Let bygones be bygones because we cannot fight them anyway.

**Interviewer:** How about yourself?

**Jandara:** At first, [I thought we] should fight back. But I think my sister was correct. We are not in a big clan. We have only the two of us. My sister told me. ‘Don’t you see! Some were shot dead because they tried to fight back.’ We fear this. They do not have a human mind. My sister did nothing but she was also framed. By being detained in prison, my sister feels chastened. If we rise to fight back, we might die, or become crippled. It could be worse than what we are now. When my sister was in jail, she shivered and kept telling me all the time; ‘Help me! Help me!’ (Jandara/AF6/pp. 27)

**The Realities of Taking on the State**

The human rights professionals understood the realities of bringing charges against or suing the abusers. For example, Kanchi, a professional lawyer, compared litigation against drug offenders with that against state authorities and indicated that the officers had a lot to lose and would be highly motivated to win the case.

[I]t is not difficult to contest a lawsuit because it uses usual cross examination like other criminal cases. ‘Where did the exhibits (drugs) come from? How did you get them? What information is [there] about the implicating persons? Can the police officer’s informer be identified?’ It is a normal legal contest. But if you [the accused offender] wins the case, it means you smash their pots…The police officer would encounter more trouble in his
career…His witnesses and evidences [for other similar cases] would be less convincing…The second strike is that he fears to be sued by the aggrieved. His boss would be reluctant to help. If the boss helps, he would provide other officers as witnesses [for the court’s trial] or issue a paper to affirm that he really performed official duties. But winning or losing is a personal matter. (Kanchai/HM3/pp. 21)

Kanchai indicated that if the police officer were sued for abuse of power, he would still be defended by the public prosecutor. The aggrieved people, on the contrary, would have to find their own lawyer. Therefore, the police are often nice to the public prosecutor. In his words:

Kanchai: Then, when the police officer is sued for abuse of power [by people], who will be his defender in the court? The public prosecutor! You see. So, the police should give good care to the public prosecutor.

Interviewer: For a case of abusing power, isn’t it a personal dispute for the police officer?

Kanchai: He has to insist that he correctly carried his official duty. [So, it is not his personal misbehavior]. (Kanchai/HM3/pp. 21-22)

The police officer was still in a better position than the aggrieved in the judicial contest over abuse of power. The officer would be defended by the public prosecutor as the representative of the state, and could take the position that he was only carrying out his official duty to serve and protecting the public and doing it during a popularly supported war on drugs. The aggrieved, on the other hand, would appear to be pursuing narrow self-interests in any lawsuit for damages against a police officer. The officers would go to court in a better position than would the victim. Therefore, a lawsuit to pursue accountability for violations of rights by authorities might prove to be impractical.

**The Role of Money**

One of the realities that victims had to face was financial. The role of money highlighted important features of the practice of domestic justice. On one hand, various practices within the domestic law framework involved transactions that illustrated the extent to which lower level authorities acted with impunity. On the other hand, economic constraints precluded many from
seeking to hold those responsible for abuses accountable. Economic considerations broadened the impunity authorities enjoyed during the war on drugs.

The interviews revealed the “normalcy” of exchanges of money for services. Indeed, some aggrieved people explicitly perceived that money motivated the behaviors of law enforcement officers. The practices put those caught up on the wrong side of the war on drugs in difficult situations. Justice and injustice both had price tags for the innocent.

**Legal “Gratuities” for Better Service**

Rattana’s story explicitly illustrated the culture of gratuities that existed. She had to pay money for a law enforcement officer to bring back the pick-up truck stolen during kha-tad-ton. Her story was compelling because it reflected the blurred line between formal and informal justice. She raised the issue herself immediately after answering the basic demographic questions in the interview. Throughout the interview, she talked a lot about property and debts after her mother and stepfather were killed and accused of being drug dealers. Her responses indicated the importance of property to her and her awareness of the costs of the informal justice practices.

Rattana’s parents were shot dead at home in the early morning and a group of unknown assailants took a pick-up truck, which was surety for her mother’s installment purchase plan. Almost a year later, she received a phone call from a police officer working in a distant province. He claimed that her car was found, and he asked her for 50,000 baht (1,250 U.S. dollars) to bring it back to her. She negotiated the price down to 10,000 baht (250 U.S. dollars). She was confident that the police officer made up a story. However, she thought it was necessary to give him money for “kaa-naam-ron-naam-chaa” (a gratuity).

Rattana: In that time, a group of people called my mother to open the door. They came into the house [and shot my mother]…Then, they took my mother’s car, cash, and cell phone. No money was left for her funeral. The car had disappeared for a year…I had a salary in that time of only 7,000 – 8,000 baht (175-200 U.S. dollars). I had to pay debts for her car and house because of [purchase agreements]…Later, I got a phone call from one police
officer. He told me excitedly that he found the car, which an offender was trying to take across the border into a neighboring country. … Later, he told me that he got the car but the offender escaped arrest. The officer asked me for 50,000 baht (1,250 U.S. dollars) for his time, for kaa-nam-ron-nam-chaa [gratuity]...Through the phone, I told him that I still owed on this car. I didn’t buy it with cash. He said, ‘Oh, you didn’t buy it with cash?’ So, I let him know that the car company brought a civil action against me for 340,000 baht (8,500 U.S. dollars) that I owed. I told him I was still at my wits’ end to pay it back. Days later, he called me again, so I asked him for a reduction to 20,000 baht (500 U.S. dollars). I told him that I would borrow money from others…Then, he made an appointment to hand over the car to me at the local police station [where I resided]. Since I knew someone who used to be a police officer at this police station, he helped and asked some police officers in that station to negotiate with the officer who would return the car to me, because I could not find enough money. Finally, I paid 10,000 baht for getting the car back (250 U.S. dollars).

Interviewer: Did you notice [what] the mileage was?

Rattana: Oh, very far. It was some hundred of thousand miles.

Interviewer: Do you feel doubtful about what happened to your car?

Rattana: I think it was a police officer who took my car.

Interviewer: Why do you think so?

Rattana: Because it was the time of the war on drugs… (Rattana/AF6/pp. 126-127)

The surrender of Rattana to the informal justice was generally understood by the local authorities. In fact, when she got the first phone call about her car from the distant police officer, she consulted the junior duty police officer at the local police station. He was not surprised at all but worked with her to get the car back. Moreover, the hand-over took place at the local police station in front of many local police officers. Some friends accompanied her. It seems that everyone who was involved with or witnessed the arrangement saw it as a normal occurrence.

Interviewer: On the day of handing over the car at the local police station, did the local police officers examine what happened to the car?

Rattana: No one felt doubt or talked about it. You know, I called the junior duty (police) officer, who was responsible for my case, to tell him about the car’s return. He said, ‘Good for you.’ He congratulated me.

Interviewer: Oh! Actually, he should have asked about who the officer was, how he got the car, and whether he had recorded an arrest. Nothing?
Rattana: Nothing! The junior duty (police) officer just put in his record that the car was returned to me. That is it! Then, the [other] officer gave me a key in exchange for the money and then everyone went back to work.

Interviewer: Was anyone with you at the police station when you gave money to that officer?

Rattana: Yes! There were many people when I gave him money. My colleague also accompanied me on that day.

Interviewer: Do you think the car’s return for exchange of money like this is legal?

Rattana: I don’t know. I think it’s normal. It is ‘kaa-naam-ron-naam-chaa.’…I am glad to get the car back… (Rattana/AF6/pp. 130)

Even a brazen exchange with a police officer facilitated by other police officers to secure the return of a “stolen” car for money in public was “normal.” The police acted in a climate of impunity.

Cultural norms about “kaa-naam-ron-naam-chaa” had limits that evidently were recognized. But those limits did not prevent local authorities from trying to create opportunities for other kinds of exchanges. Local authorities merely proceeded more carefully according to the aggrieved. Chana and his wife related their experience. They lost their daughter and son-in-law during the war on drugs. They recalled that the spouses might not have been killed if they realized the police’s game. Before the spouses were killed, a few local police officers visited them and dropped a hint about how to get their names off the blacklist. In the words of Chana’s wife;

The police officers dropped a hint that the deceased should give some money to them…A few police officers made a side visit to their house and made a casual remark that if the deceased did nothing wrong, they [the police] would do their best to help, but they could not help guilty persons. In that time, my son-in-law just responded to them that he had no involvement with drugs. He swore to them. (Chana/AM6/pp. 163)

Chana’s wife came to reinterpret the purpose of the police visit as an effort to obtain money. Otherwise, the spouses would not have been killed and the local police officers would not have
made up a false story that the spouses were part of the biggest drug-trading network in the
region. The response of Chana’s wife went beyond the direct question asked.

Interviewer: How did you feel about what happened?

Chana’s wife: I wanted revenge. She was my daughter. If she was guilty, I would not be
mournful for her. In that time, they [police officers] came to see them. If they [my daughter
and son-in-law] gave them money, they might have survived. But, the spouses thought that
they did nothing wrong, so they did not pay... (Chana/AM6/pp. 163)

In the same way, Jandara came to think that her sister was illegally held for 12 days because the
police were trying to bargain over money. (The Criminal Procedure Code allowed the police to
have the accused in custody for only 48 hours.) Initially, she had no idea about practices that
allowed exchanges; her lawyer eventually explained it to her at the end of the trial.

Actually, after the case ended, I was told that at the beginning they [the arresting police
officers] wanted money, while my sister was in their custody. If I would have decided to
give them money, I think the accusation would have been dropped. But I’d have never
thought to give them money in exchange [for help] because she didn’t do anything wrong.
This is what my lawyer told me. Otherwise, by law, they [the police officers] could not
detain my sister in custody for up to 12 days. (Jandara/AF6/pp. 34)

Jandara had another experience in her pursuit of justice that revolved around money. While she
was fighting in the court for her sister, she was contacted by someone who used a threatening
tone and who claimed that she could help her sister if Jandara paid her money. Jandara refused.

Jandara: I was also contacted by a bail bond agent. She was the wife of the Police
Superintendent somewhere. She asked for 300,000 baht (7,500 U.S. dollars) with interest
for bail surety. If I didn’t do that, [she threatened that] I might be in the same situation as
my sister.

Interviewer: Were you threatened!?

Jandara: Threatened me! In that time, every pressure was put on me... (Jandara/AF6/pp.
27-28)

Jandara’s distant relatives also suggested that money be used in another way to solve the
problem.
Even our relative residing in another province with whom I talked via the telephone suggested that I bail my sister out of jail and run away forever. I did not have enough money at that time. Also I argued and said we would not escape. (Jandara/AF6/pp. 27-28)

In an ironic ending, Jandara finally related that a less blatant exchange helped her sister prevail.

Jandara: My sister’s case had to wait until the public prosecutor … moved out [to take a new post in another jurisdiction]. The justice for my sister came with the new appointed public prosecutor. If the first public prosecutor who brought litigation against my sister still worked there until the end of trial, my sister might not be free. We were lucky because of the change in public prosecutor. But if asked whether my relatives from Bangkok played tricks with the public attorney, I would say ‘yes.’

Interviewer: How?

Jandara: [She gestures like giving something under table]. It was a gift! Otherwise, [she stops a second]…It was like a kind-hearted treatment. My relatives from Bangkok would bring him sea crabs [for instance].

Jandara’s husband: They did that after, not before, the end of trial?

Jandara: No! No! We did that during the trial! (Jandara/AF6/pp. 29)

She knew consciously what she and her relatives did was morally and might-be legally wrong. She accepted that what she and they did was like a bribe. Although Jandara’s husband immediately interrupted to try to keep his wife from looking bad, Jandara insisted that she and her relatives did provide gifts during the court’s trial.

Other Costs of Pursuing Justice

All the aggrieved people who were interviewed incurred costs during their struggles for justice, especially within the bureaucratic justice system. The aggrieved visited and/or lodged complaints with various state agencies for two reasons. They wanted the higher agencies to establish their innocence, and they wanted these authorities to review the use/abuse of power of the local state authorities who framed them for involvement with drugs. However, they often became trapped in the bureaucratic loop of justice instead of prevailing. Note that formal justice from the judiciary had no connection with any justice provided by bureaucratic agencies (the
agencies under the administrative control of the government). In other words, their visits to lodge complaints had no impact on how justice proceeded in the courts. Instead, according to all of the aggrieved, the bureaucratic loop of justice added to their hardships and frustrations. They all raised concerns about expenditures and costs they incurred by visiting and making many complaints to provincial and state agencies.

Saijai’s interview provided a good example. She visited several state agencies with her son’s friends to ask for help while the public prosecutor brought a criminal action against her son for abusing drugs with, as claimed by the police officers, only one tablet of methamphetamine found during search. In addition to the fee for a criminal defense lawyer, she spent a lot of money in her mostly futile pursuit of bureaucratic justice.

Interviewer: Did you pay a lot of money in your struggle for justice?

Saijai: It’s around 100,000 baht (2,500 U.S. dollars) because I also had traveling expenses. At first, the police officers told me to bring 30,000 baht (750 U.S. dollars) to bail my son out but actually that amount was not enough for bail. So, I had to hire a surety person. I also had to pay a fee for a defense lawyer as well.

Interviewer: How much did you pay for a defense lawyer?

Saijai: 40,000 bath (1,000 U.S. dollars). I did not get a penny back [even though we won the case]. Including traveling expenses, I spent almost 100,000 baht (2,500 U.S. dollars) since I often took wrong buses and routes [when visiting the state agencies].

Interviewer: Even though you are a Bangkok resident!?

Saijai: Yeah, I haven’t traveled to anywhere except the Ramathibodi Hospital.

Interviewer: I can’t help imagining [what happened to] non-Bangkok residents [e.g., rural people]. Isn’t it hard for them?

Saijai: My God! Even me [it was very hard]! I felt I would almost die because [of all the] traveling. There were some people who went with me. For example, I had to pay my son’s colleagues travel expenses and for some hospitality because they came to help us [to prove that he was never involved with drugs]. This is my suffering. It’s too bad. I feel very angry. I don’t know how to tell anyone. (Saijai/AF6/pp. 69-70)
In this conversation, Saijai described her sense of injustice about spending a lot of money for her son even though he did nothing wrong. Her hardships were not recognized by any state agencies. Rather than endure such difficulties, many affected people from the war on drugs might have chosen to stay home and passively internalize their frustrations and pain. Consider a comment from Pachara on this point. Money was a determining factor when people surrendered their pursuit of justice.

Interviewer: Do you think we [as people] can rely on law for justice and to punish the state officers violating our rights and liberties?

Pachara: The problem is about the evidence. If we have good evidence, we might bring them to the justice. However, we are just ordinary people. Ordinary people might feel fear and then obey the state officers. They might admit their own defeat implicitly… [T]heir ways to struggle [for the justice] are less than those who have more money [the powerful]. Those big shot people have more alternative ways to fight [for the justice] than ordinary people do. Sometimes, they [ordinary people] don’t know whom they can ask for help. So, they admit their own defeat implicitly. In addition, it is said that the more they struggle [for the justice], the more they get in trouble and the more it costs them. They might not have ability to stand firm. Although it is believed that money does not matter, it actually is another factor. (Pachara/AF6/pp. 146)

In this conversation, Pachara did not simply reflect her own perception and experience but referred to the understanding of general people. She contrasted the capacity of the ordinary people to the big shot people who have more money and higher socioeconomic status. The ordinary people did not have many choices because they lacked socioeconomic resources. Therefore, they were more vulnerable and had to accept naturally their own defeat and disengage from the struggle for justice. To stand firm on the justice battleground, money was an important resource. Like Pachara, most of the aggrieved referred in some way to how a lack of money mattered.

One of the most troubling experiences with the role of money in the pursuit of justice was that of Chairoj. His father was framed for possessing two tablets of methamphetamine (ya ba). He tried to free his father from jail during the court’s trial, but the bail price was too high at
200,000 baht (5,000 U.S. dollars). He spent three months trying to raise the money and later got help from a friend of his father for bail. Every week he drove back and forth between Bangkok, where he worked, and his home town in a far northeastern province where his father was jailed. He spent a lot of his family’s savings. Among the other things, his wife later divorced him, although they had one child, not long after he won the court’s case.

Interviewer: Before you lodged a complaint [to many state agencies], did you expect to get justice?

Chairoj: I did. I told my father to be patient…My father asked me, ‘Son, let me accept a charge because I don’t want to get you in trouble. You don’t need to strive for me and waste your money anymore…’ I quarreled with my wife all the time because I had to drive back and forth [from Bangkok to a province in the North East]. I spent a lot of my family’s money. Finally, we divorced. I have never got any compensation from the government. The government has never helped me. (Chairoj/AF6/pp. 152)

The costs to pursue justice could be high. Chairoj’s father’s pragmatic assessment rang true; at some point the aggrieved may have to cut their losses and “lump it.” Those costs may constrain ordinary citizens from asserting their rights and from seeking reviews of abuses of power.
CHAPTER 6
NAMING, BLAMING, AND CLAIMING: A DECLARATORY JUSTICE¹

Naming the Problems of the War on Drugs

The Violence of Law Enforcement

When the aggrieved were asked what they thought about the war on drugs, most aggrieved people expressed that at the beginning of the war they were ‘glad,’ ‘liked’ and ‘supported’ the war because drugs, especially ya ba, posed a serious social problem for Thai society. Some recounted stories about the drug epidemic in their communities and their effort and participation to make the communities free from drugs. A few aggrieved people, at the beginning of the war, felt indifferent toward the policy since they did not have any involvement with drugs until they were caught up in the war on drugs.

After they or their loved ones were accused of drug crimes, almost all of the aggrieved agreed that the state authorities did not proceed as the aggrieved expected given their understanding of Thai law. Instead, the authorities turned the gun to those who were innocent. The problem was not the policy, but how some police carried it out. Sanan’s comment represents this perception.

A police team shot volleys of gunfire into the car of his son (and his son’s friend). His son was disabled and 5 years later died in jail because of the injuries. Sanan was not sure whether his son took drugs (ya ba) since the son did not stay with Sanan during his teenage years. The police searched the car and claimed that two tablets of drugs were found. However, with 10 bullets fired by the police officers into one car having no deadly weapons, Sanan thought the police clearly overreacted and deliberately killed his son (and his son’s friend). Consider his comment.

¹ I am indebted to Felstiner, Abel and Sarat (1981) for the conceptual framework of naming, blaming and claiming.
Interviewer: Before what happened to your son, what did you think about the war on drugs?

Sanan: Good. I liked it. I thought it was a good idea to wipe out drugs. But when something happened to me like this, I think they [police] were not seriously cracking down on drug dealers. The real drug offenders were not suppressed. Only drug users were taken. In my community, there are many drug traders. They are still doing a drug trade. [They are not caught]. Only abusers are arrested. Sometimes, some were framed for taking drugs and arrested by the police. (Sanan/AM4/pp. 92)

Jai’s comment is another example illustrating the unusual and violent practices of law enforcement against ordinary citizens.

I think the policy of the drug war was very good but it did not train the state authorities to have a higher mind than that of general people. They should be able to know right from wrong. The policy was good but not the practice. Thus, the policy did not achieve its declared goal. Now, drugs are still rampant as usual. The real drug dealers were not arrested. They [police] arrested [others]. … Several [innocent] people were arrested. So, the drug epidemic was never completely eliminated, I think.” (Jai/AM6/pp. 21)

In these quotations, Sanan and Jai identify or name the problem as one of violent law enforcement against people who did not deserve it. The following conversation with Jandara and her husband also confirms that law enforcement violating people’s rights and liberties was the real problem.

Interviewer: Before your sister was [accused], what did you think about the policy of the drug war?

Jandara’s husband: Good. We liked it. Everyone liked it…

Jandara: At the strawberry farm [where she works], in that time, those who took drugs disappeared. … Drug users have no place to buy drugs.

Interviewer: After what happened to your sister, what do you think about it?

Jandara: For me and my sister, we like the policy of Prime Minister Thaksin. What happened to us is not his fault. It is his followers. Also, it is our bad luck to meet the bad police who worked for a reward or who sought only personal benefits. (Jandara/AF6/pp. 30)
Undeserved Victims

Some aggrieved people expressed that if the violence had not happened to them or their loved ones, they would not have a problem with the war on drugs. In other words, the war itself with its violence was not seen as problematic by some of those who were most directly affected. They focused on the fact that victims did not deserve what happened to them.

For example, Pachara accepted that some level of violence was necessary to deal with drug offenses, but she thought it should have been done to only the “right” persons.

Interviewer: Before something happened to your father [killed], how did your feel about the use of ‘kha-tad-ton’?

Pachara: Before my father was killed, I were not sure whether they [the gunmen] inquired into the matter of drug offenses [that were committed by] the victims. Sometimes, the suppression of drugs needs to use tough means, but they should do more investigation for the exact information. I hadn’t thought it would happen to my father…(Pachara/AF6/pp. 143)

Chana and his wife lost their daughter and son-in-law during the war on drugs. The young couple was shot dead—shot in their heads. The police concluded that they were part of the biggest drug ring in the region. Their properties, therefore, were all confiscated the next day. However, the Division Special Investigation (DSI) found that the story of the local police was not true at all. Chana’s wife expressed her feeling that “I want revenge. [but] my daughter, if she was guilty, I would never [be] mournful for her” (Chana/AM6/pp.163)

The most extreme comment on this point is that of Kitti. His father was shot dead at home in front of many people, but no one in the community dared to be a witness about it.

Interviewer: What do you think about the war on drugs?

Kitti: I do not like it because the innocent people were killed. If they are truly guilty, I feel nothing. I think that most people killed were innocent…What makes me feel hurt is that they [police] should have gathered information until they were sure that it was this person actually dealing drugs. [They should] also examine first what properties [were involved]. The sudden shooting [without the exact information] is not correct. (Kitti/AM6/pp. 139-140)
For many who were directly affected by the war on drugs, the problem was one of poor law enforcement practices. The problem was not about the violence per se, but it was about whether it was imposed on the appropriate victims, the true drug offenders.

The Community and Fear—Community Support for Violence

Only four of the 18 aggrieved people who were interviewed reported explicitly that their communities clearly understood their grievance and believe that they (or their loved ones) were not involved with drugs as charged by the police and/or labeled by the media. Of the four cases, one respondent had a relative killed and the others were themselves falsely charged for drug offenses. Their neighbors were dominated by fear so that no one, except close relatives, provided assistance (e.g., as a witness for the aggrieved) or showed visible sympathy. For these four respondents, the position taken by those in their communities towards their grievance was not an accident. In all four cases, the killed person and the falsely accused were all community leaders who were known well by their communities. Anyone coming to their defense would have linked him or herself to someone accused of being involved with drugs in a very public way.

Danai was framed by the local police and was jailed during court proceedings for five and a half years before the Court of Appeal found him not guilty. His observations make this point well.

Interviewer: When you were [named] as a drug dealer… did the villagers believe that you were framed or did they believe you were innocent?

Danai: They believed the truth that I did not [pursue] any drug trade. But they did not dare to help. Only my older sister and my brother came to help. Others did not dare to be involved because the police threatened that if anyone came to be involved [as a witness, for example], they would be treated like my wife. They [police] did a lot of verbal threats. [His wife tried to help him prove his innocence but she was framed as a drug dealer and jailed for several months before the court found her not guilty]. (Danai/AM6/pp. 172)

While most of the aggrieved (14 of 18) were not community leaders, they reported that their communities, in that time of the war, tended to believe that they or their loved ones were
involved with drugs—they accepted the label of the police and/or the media. Bornphan, for example, perceived, in that time, that the community presumed that guilt lie not only with her deceased sister and brother-in-law (whose killings were labeled “kha-tad-ton”) but on her whole clan as well.

Interviewer: In that time, the incident was [reported] in the newspaper, labeling it as ‘kha-tud-ton.’ How much did it affect you?

Bornpan: Yes, there was broadcast on local cable news and several newspapers [carried the story].

Interviewer: Did it affect your effort for justice?

Bornpan: Of course, there was a rumor … in the community that my whole clan do drug trades. I heard it myself and someone told me. Sometimes, I felt [people] looked at us like they hated us. (Bornpan/AF6/pp. 44)

In addition, most of the aggrieved reported that their neighbors held the attitude that, “if [the accusations were] not true, they would not be killed” (Chana/AF6/pp. 158). Some even thought that “a hundred people, except for a few, might think we did it [a drug offense]” (Jandara/AF6/pp. 32). Consider the following reflection from Srisook, whose house was searched during the war even though she insisted that she used to be one of the most active community members trying to make the community free from drugs.

Interviewer: How did the police search affect you and your family?

Srisook: People haven’t wanted to be associated with me. ‘Hey! This house deals with drugs.’ I’ve stopped participating with the community to do public activities. One of my friends who joined a seminar for the White Community [free from drugs] spoke bittingly with me that ‘Hey, without trash, dogs would not shit! [a Thai idiom akin to there’s no smoke without fire]. I felt very bad because it seemed they already judge me as wrong. In that time, I felt very pressured. I looked like a mad person. Those who were not done like [I was] did not know how I suffered. My neighbor came to ask me, ‘how much I paid the police.’ I told her that I did not spend even a penny [to get free from any criminal charge]. She responded to me; ‘Don’t lie to me! When the police came in one’s house, money needs to be paid to them.’ You know. [She points to the house opposite to hers]. That house spent a lot of money to get free. So, you see, people thought I paid the police. (Srisook/AF6/pp. 58-59)
This victim felt that the community presumed her guilty; otherwise, her house would not have been searched for drugs. Srisook’s comment highlighted the well-known relationship between police and money in Thai society. The response of her annoying neighbor rings true. As discussed in the previous chapter, many Thai people get accustomed to using money to receive benefits or favors from the police.

The following comment of Jandara, whose sister was accused by the police, provides more evidence of the distrust of those named in the war on drugs among their neighbors and other citizens.

It is lucky that my sister won the court’s case. Otherwise, people might think she was a drug dealer. Even herself, she also swore to me that she did not really do it [trade drugs]. She was afraid that I would not believe her because we would meet each other [only] twice a year. She spoke repeatedly; ‘I did not do it. Help me!’ She spoke that [while] crying. (Jandara/AF6/pp. 32)

The other interesting theme raised during conversations about the community reaction was how little the community recognized the anguish felt by the respondents. Their neighbors and other citizens knew and tended to believe that the accusations were true. However, all of the aggrieved reported that their sufferings during their fight for justice and the consequences of the ordeal were rarely known by others in the community. Srisook’s comment is a good illustration of this point.

[Around one year after the incident, Srisook got a paper from the National Human Rights Commission (NHRC). It confirmed that she was officially not a drug dealer; her name did not appear on any list of offenders in any of the relevant state agencies].

Srisook: I went to the local police station. I shouted in front of the police; ‘On the day of the search, all people knew about it. But on the day I am announced innocent [by NHRC], I have only a single 4A paper sheet. I will make a copy and paste it on every electric-wire pole!’

Interviewer: During your fight for justice, what was the understanding of other people?

Srisook: They didn’t see. I walked alone to the local police station. No one knew how hard I struggled [for justice]. No one came to ask me to excuse them for misunderstanding. Ah!
People knew all about the search, but when I receive the certification of innocence, not many people talk about it. No one mention about it—‘Oh! She is fairly smart. So, those who have the similar experience like her should ask her for advice.’ You know no one [thinks like that]. (Srisook/AF6/pp. 58-59)

The aggrieved had no one but close relatives with whom to share their experiences. Even more distant relatives tended to believe the worst and did not want to be associated with the accused. Neighbors wanted to have little to do with those who were accused; they feared guilt by association. People did not want to be involved with the drug-accused families because they feared that they, too, could be accused. For example, Chana and his wife observed that others had no idea about their struggles for truth and for repossessing forfeited properties; people feared being implicated. This became obvious when they traveled to lodge complaints with various state agencies (in the provincial city and Bangkok). In his wife’s words;

Some relatives who we had not contacted for a long time thought it [the accusation] was true. Many relatives of mine were afraid that I would bring a problem to them when I asked them for accommodation [during the trips explaining the truth to several state agencies]. (Chana/AF6/pp. 166)

**Blaming the Blamers**

The aggrieved referred to a variety of causes leading to their grievances. Most of the respondents raised multiple causes of the victimization throughout the interview. Some were provided as direct responses to victimization questions, but others were raised as a part of the conversation elaborating other comments or observations. What follows illustrates the range of reasons that the aggrieved provided to explain what happened to them.

**Rumors**

Some aggrieved people referred to a conflict with others in the community that led to their being named and accused. They believe that some people in the community provided “bad” information to the relevant state authorities. Often times, a rumor would be spread throughout the
community before the killings or the official search and arrest occurred. For example, Rattana acknowledges that people in the community had spread rumors for a long time that her mother and step father were drug dealers. They were killed during the war on drugs.

Interviewer: What do you think, why were your parents killed?

Rattana: It might be because my parents were thought to be drug dealers. People rumored for a long time. I think it might be some people [in the community] gave information to the officers. (Rattana/AF6/pp. 129)

Later, during a conversion about the justice she experienced, she returned to the cause of her parents’ victimization and blamed the state officers for that.

If they were killed at another time [not in the time of the war], I would think it was a normal murder. Actually, it was rumored [for] years… that my mother ran a drug trade. But for several years, no one came to take her life. But they both were murdered during the war on drugs. I could not help thinking it was definitely done by the state officers. In the time of the war on drugs, I could not help thinking in that way. (Rattana/AF6/pp. 132)

When rumors circulated during the war on drugs, the eventual victims often contacted and/or reported themselves to the state authorities to check whether their names were on the official name lists (the black lists). Kitti’s father was rumored to be a drug dealer in the community so he went to the police. He succeeded in clearing his name from the list by giving the explanation to the district officers. His success, however, was short-lived; his life was taken later on that day.

The district officer told my father that his name was on the blacklist. Therefore, he, accompanied by my uncle who was a village assistant of another community, went to see an assistant county officer to clear his name. The assistant county officer got his name off the list. He gave confidence to my father; ‘Uncle, don’t worry anymore.’ On the same day at 3 p.m., my father was shot dead [at home shortly after celebrating his successful trip with a small drink of alcohol]. My uncle who took my father to see the assistant county officer then fled for his own life. On the funeral day, my father’s colleague [who worked in the same office] did not dare to join the ceremony. Only close relatives came. (Kitti/AM6/pp. 135)

**Conflict with the Police or Influential People**

Some aggrieved people recalled stories that they or their loved ones had a conflict with the local police or local politicians. Bhornpan, for instance, claimed that the killings of her sister and
brother-in-law partly derived from having conflicts with local police officers. She accepted that her brother-in-law had a red hot temper. In the course of running his business, he or his employees often received petty law citations from the police. Previously, he had big arguments with the police officers who charged him or his employees with things like violating traffic laws. On the day of the killing, he and his wife were called to the police station to resolve a charge against one of their employees. After having a big argument with the police, they were shot dead with hundreds of bullets on their way back home. A clean and nice package of drugs was found in their car not affected by the barrage of bullets or bloods. Then, their properties were all forfeited the next day.

Another striking example came from Namtip’s interview. She got in trouble with the local police officers by lodging a complaint with several state agencies about their abuse of power. The local police officers framed her husband as a drug dealer and arrested him. Two months later, she was arrested allegedly for belonging to the same drug ring. However, they later were freed by a court’s judgment finding them not guilty.

**Guilt by Association**

Some aggrieved people guessed that a cause of their trouble might stem having a relative who was a drug offender. For example, the local police came after Danai; Danai believed this was because his nephew was a drug dealer. He accepted that his nephew was a drug dealer, but Danai insisted that the drugs had nothing to do with him.

In this area, the big drug dealer is [he mentions the specific name]. He is my nephew, killed [not long before Danai was arrested]. ‘If he was a drug dealer, so am I?’ (Danai/AM6/pp. 169)

The association that led to a presumption of guilt could be based simply on having the same last name as an offender. Chana, whose daughter and son-in-law were shot dead with drugs found in the car, recalled that the local police officers put in the investigating record that the deceased
were members of a drug ring. The story was more convincing when the police officers claimed that the deceased joined with a known offender who had the same last name. In fact, according to a later investigation by the Division of Special Investigation, the claimed offender never knew the deceased. They were not only unrelated, they were complete strangers.

**An Embarrassment of Riches**

Some aggrieved people related their victimization to rumors in the community about their unexpected wealth. For example, Rattana recalled that people simply concluded that her mother might run a drug trade because she had a new pickup truck together with one old six-wheeler. At the same time, her mother also rebuilt the house. In fact, Rattana was her mother’s surety for the bank’s loan. Therefore, in addition to being depressed with her mother’s death, she felt very worried about her mother’s debts for which she, as her surety, must be responsible. Chana and his wife, among the others, also cast the blame for the killing to the rapid rise in wealth of his daughter and son-in-law. In that time, not many people in the community knew how the spouses got that money, so they heedlessly concluded that the spouses made profit from a drug trade.

When ordinary people had too much good fortune, people could label their wealth as being the product of trading drugs. Here’s how Ladda made sense of her husband’s victimization. At one place in the interview, Ladda clearly blamed “the village community” as contributing to her husband’s murder. Note that the Thaksin government used the village community to compile lists of people in the community who were involved with drugs. The lists were widely known as blacklists; they would be submitted through a bureaucratic line of command to the district and provincial offices which are under the control of the Interior Minister.

Interviewer: [W]hy [do you think] your husband was killed?

Ladda: In the village, there was ‘a village community’ [a representative of villagers drawn from a variety groups]. Before my husband was killed, one of my husband’s close friends gave us notice that we were richer than usual. In that time, we had a six-wheel truck, a
small sedan, and a Toyota pickup truck. They were all used cars, not new. We had some money so we purchased some land and built a small gas station. Some of money came from borrowing at interest. We resided in a rural village so we [stood out], seemed [more] outstanding than others were. Actually, we were kind of diligent people. I took extra work after office hours. Our money was never spent extravagantly. We had saved money all the time. (Ladda/AF6/pp. 122)

Police with False Information about the Victim

Several aggrieved people pointed to the police officers’ possession of wrong information about themselves or their loved ones as a cause of their problems. Jai, a community leader, was arrested with drugs supposedly found in his house. He claimed that the drugs did not belong to him. Finally, the court found him not guilty. He guessed that, among the other things, the police officers might have obtained wrong information about him because he was not familiar with the police officers who arrested him.

[T]he officers did not know me and I did not know them [either]. They might not have intended to frame me. They might have gotten some wrong information about me, so they framed me as such. Although they came to know later about me [not being a drug dealer], they could not stop what they [started]. (Jai/AM6/pp. 18)

Jandara, whose sister was arrested with drugs allegedly found during the house search, provided another example of this cause of victimization.

My sister has never had a history of involvement with drugs. I think the police officers might have gotten wrong information about her. They claimed that my sister had a lot of money flowing in and out in the bank account. (Jandara/AF6/pp. 31)

Policy Targets and Reward Incentives

Several aggrieved people explicitly blamed their plight on how the federal policy was implemented—starting at the top. They pointed to the police officers’ mission, with its official targets, during the war on drugs. They were able to relate what happened to them or their loved ones to the broader context of the war on drugs. Chairoj provided an example. His comment reflected the understanding of many aggrieved people about the war on drugs and the practices the police officers used to wage it.
Interviewer: In that time, did the police deliberately frame your father [for possessing drugs]?

Chairoj: It derived from the war on drugs. It seemed the police officers had to make a target [by arresting] at least 5 persons [for each jurisdiction]. Otherwise, it might affect their career.

Interviewer: how did you know that?

Chairoj: My uncle is a police officer and he was transferred to another police station. Before my father was arrested, [Chairoj pauses and jumps to the next sentence]. The other people at my hometown also encountered arrests in the same manner [as my father did]. They got jailed and talked to each other about this. (Chairoj/AM6/pp. 150-151)

In her interview, Pachara decried the local police officers who labeled her father’s murder as drug-related even though no drugs were found at the scene. She deciphered the practice of the police officers within the context of the war on drugs. In her words;

Interviewer: Why were many people who were killed in that time often labeled as drug-related murders?

Pachara: Some police officers just looked out for a benefit [a work record of waging the war]. It seemed easy in that time to do so. If the killing was thrown into this issue [of drug-related killing], it would fall outside of questions [about justice]. (Pachara/AF6/pp. 145)

Although people provided a variety of causes for their grievance, all of them blamed police officers in both implicit and explicit ways.

Several aggrieved provided narratives throughout their interviews that related their particular grievance to local police officers’ behavior. They believed that the police officers perceived that they could wage the war on drugs and act with relative impunity. The priority given to the war by official government policy, the targets that were set, and the various legal practices (many of which departed from the black letter law) combined to permit and encourage local police officers to make or accept false accusations against those labeled as drug dealers. Once the false accusations were accepted, there were few constraints on what the local
authorities could do, which included killing innocents as is best illustrated by the construction of kha-tad-ton.

The aggrieved attributed their victimization to an array of causes. Their attributions indicate how the broader social context contributed to their understanding of the abuses during the war on drugs. Most aggrieved people blamed both specific people in the community and the community in general as contributing to their sufferings and for seeing it as somehow deserved.

**Claiming a “Possible Justice”**

The aggrieved who were interviewed had to come to grips with what happened to them. They also had to come to grips with what they could do about it. Some avenues for relief were cut off others they knew little about. The fear of reprisal constrained their choices and influenced their actions. They were left searching for a “possible justice” rather than absolute vindication and just deserts.

**Distributing a Lot of Complaints**

The aggrieved expressed a variety of reactions and responses about their grievances and those they blamed. Most of them reported that they sought advice from their relatives, friends, employers, supervisors and even the local state authorities. For those whose loved ones were killed, they all lodged a criminal complaint at the local police station as it is a usual procedure for a murder case. However, all of them recognized that they had little hope the police officers would provide justice. Some aggrieved people recalled that they were called and interrogated by the local police officers—not about what happened to their loved ones but about drug-related-criminal behaviors of the deceased. While the criminal investigations for the murder cases were left undeveloped (attributed to kha-tad-ton), the police emphasized establishing the drug-related criminality of the deceased (to permit the kha-tad-ton attribution and to pursue property forfeiture).
Not one of the aggrieved in this research consulted NGOs to pursue justice. All aggrieved people, except Pachara and Rattana, reported that they lodged a complaint to or visited several state agencies. Pachara tried to avoid lodging a complaint to any state agencies connected to the police. She only went to the National Human Rights Commission (NHRC) because she thought it had no connection with the police. Rattana only lodged a human rights complaint with the NHRC because she had no idea where to go for the justice, after her mother and step father were killed in their home and drugs were found there.

Interviewer: What agencies did you make a complaint to?

Rattana: I lodged a complaint to only the National Human Rights Commission…I did not understand law. I didn’t know. If no one gave me a recommendation, I didn’t know how to make [a complaint]. I had no idea. I didn’t know which ways to go, whom to visit and where to ask for help. I didn’t know so I did not make [more complaints]. (Rattana/AF6/pp. 131)

Other aggrieved people who visited and/or lodged complaints to several state agencies also reported that, at the time, they did not know exactly about the power and duty of the agencies they visited. The experience of Ladda illustrates this point well.

Ladda’s husband was shot and killed at home; it was labeled as a drug-related killing (kha-tad-ton). Ladda was a middle-ranked civil servant, working at local office. She visited and lodged a complaint to several state agencies without a clear knowledge of what to do or what to expect. Like several aggrieved people, she initially hoped that the bureaucratic agencies might help her so she took a chance. Consider her following conversation.

Interviewer: Why didn’t you pursue justice from normal criminal procedures through the police and the court? I mean why did you make a lot of complaints to other state agencies?

Ladda: I just did it in random ways. If I thought where I could ask for help, I just went there. In that time, I saw the bureaucratic system as the first resort. I watched TV advertising about the agencies [where] I could make a justice complaint. Then, I visited them. Sometimes I had no idea about them. I even visited the Administrative Court but the court official explained to me that it [my grievance] was not [under the jurisdiction of the court]. (Ladda/AF6/pp. 122)
Experiencing Bureaucratic Loop of Justice

Most of the aggrieved lodged similar complaints at many state authorities. They wanted higher agencies to examine the truth about what happened and to review the use of power by the local police officers. However, the respondents experienced a bureaucratic runaround rather than justice. Complaints submitted to higher authorities did not stay there. They followed the bureaucratic line down ultimately to the local agency for review, that is, the local police station. When the local authorities finished their examination, the result would be proffered upwards through the same bureaucratic line back to the same higher agency the aggrieved made the complaint to in the first place. That agency then reported the finding to the aggrieved to complete the bureaucratic loop.

The real examiners (the local police officers) often concluded that the complaints were unfounded. For example, Jai lodged a complaint to the Royal Thai Police, the highest organization of Thai police, asking for a review of the procedures employed by the local police officers to frame him as a drug offender. He was later interrogated about his complaint by other police officers, colleagues of the police officers with whom he had a problem. After the review the Royal Thai Police concluded that the local police officers accusing (framing) him “acted in compliance with law.”

Other aggrieved people lodged complaints with the Ministry of Interior, the Provincial Governor (Damrong Dharma Center), or other state agencies. They also encountered the same runaround as Jai did, which seems to be a self-perpetuating loop of the bureaucratic justice. Consider the following separate interviews of Ladda and Chairoj.

Interviewer: Do you know how the Royal Thai Police examined your complaint?

Ladda: The Office of Royal Thai Police would pass down the complaint to the Provincial Police Region. The Provincial Police Region would submit it down District Police Station and then [down] to the local police station. The local police station would set up the police
officers to examine the complaint and then submit the examination result upwards [through the same line] to the Office of Royal Thai Police. Then, the Office of Royal Thai Police would notify me of the result of [the review]. (Ladda/AF6/pp. 122)

Chairoj: [I] complained to the parliamentary [Committee for Police Affairs]. It sent out my complaint to the police. The police officers who examined my complaint were from the local police station. They knew each other [the examiner and the named officers]. They would not help me, of course. I also made a complaint to the National Counter Corruption Commission but it passed my claim to the Provincial Police Region 3 and then to the District Police Station. Then, the team that examined my claim also included the local police officers. I am very disappointed…

Interviewer: What did you want [from making complaints]?

Chairoj: I wanted the examination of truth. If my father did it [possession of drugs], I had no problem. But they [the state agencies] always concluded that what the police officers did was lawful. (Chairoj/AM6/pp. 152-153)

**Pursuing Human Rights Justice through Declaratory Claims**

Because of the way in which the sample was selected, all of the aggrieved people who were interviewed had lodged complaints with the National Human Rights Commission (NHRC). None of them knew exactly about the power of the NHRC when they made their claims. They would learn that its judgments had little tangible benefit for the most part. Although the NHRC issued many judgments indicating the government’s violation of rights during the war on drugs, its decisions have not been **effectively** enforced. Kitti, for example, recalled that his mother went to the police station to get compensation as indicated in the NHRC’s judgment from the local police station. However, the police officers told her to go back home and wait until the killer was arrested. He accepted that the killer would never be arrested by the police (after all the murder was explained as kha-tad-ton).

Rattana’s experience also illustrates how powerless a judgment of the NHRC was.

At first I was very happy to receive the letter of judgment from the National Human Rights Commission. All troubles would be got rid of and I would get all properties [confiscated] back. I was crying in that time because I thought it [the judgment] came to save me. But until now, almost a year, I’ve got nothing. (Rattana/AF6/pp. 131)
Rattana lodged a human rights complaint with the NHRC in late 2003 but she just received the judgment in 2008. Although the judgment has not accomplished anything concrete or practical, she, at least, felt that the NHRC had not left her alone without hope.

Several other aggrieved people also learned about the unenforceability of the NHRC’s decision, but they also thought it was *better than nothing*. For example, Pachara expressed that the most desired remedy was to punish the killer. But without other ways to get any justice, the NHRC’s unenforceable decision was *better than nothing*. In her words;

Interviewer: Are laws currently enough for you to protect your rights or remedy the injury you got?

Pachara: In fact, it is impossible to remedy what I lost. *But it is still better than nothing.* Nothing could substitute my father’s life. (Pachara/AF6/pp. 147)

Before that, she insisted that the NHRC’s decision at least helped declare that her father was not involved with a drug ring; it refuted the label applied by the police and the media.

Interviewer: What did you get from making a complaint to the National Human Rights Commission [NHRC]?

Pachara: At least, I think, there was someone to help confirm that we are innocent because it [NHRC] provided a letter notifying relevant state agencies about our innocence. (Pachara/AF6/pp. 145)

Pachara’s comment signifies the importance of the human rights claim beyond the ordinary concept of enforcement. In fact, the human rights action transformed what some would see as a self-serving claim into a meaningful truth, although not one that is truly *effective*.

All aggrieved people who were interviewed struggled for some form of justice by presenting their truth claim to the bureaucracy and National Human Rights Commission (NHRC). They were ill-equipped to assert their claim in legal language against the *official* version of the local authorities. Consider Chairoj’s short comment.
Interviewer: By making claims to several agencies, what did you use to fight for justice?

Chairoj: I used truth. I did not have legal knowledge at all. (Chairoj/AM6/pp. 154)

The truth that Chairoj spoke to is the truth about the innocence of his father who was never involved with methamphetamine (ya ba). This is a bare, unrefined truth. The aggrieved people who were interviewed had to articulate as best they could what happened as they pursued justice. The following is another example of how ill-equipped they felt.

Interviewer: Do you have some legal knowledge [to make a complaint to several agencies]?

Namtip: No, I don’t. I have only confidence about our innocence [hers and her husband’s]. I made a complaint to ask them to [establish] our innocence. (Namtip/AF6/pp. 175)

Given the lack of legal sophistication, it is not surprising that several aggrieved people lodged complaints with several state agencies and the National Human Rights Commission (NHRC); they were looking for someone who would examine what happened. Agencies other than the NHRC, usually rejected their unsophisticated truth claim, sending them through the bureaucratic justice loop before accepting the legal and official versions of the police officers. The NHRC did not have the same bureaucratic structures and procedures. It processed their claims within the human rights framework.

By making human rights claims, the aggrieved people also participated in establishing a human rights record at two levels. In each particular case, the facts established could be used as a declaratory weapon to resist the label applied by the state agencies and to raise the prospect of a human rights violation. Across cases, the broader fact pattern established the systematic nature of human rights abuses. Recall from the literature review, how making human rights claims is thought to contribute to the creation of a human rights legality. Within a human rights framework, the aggrieved can talk about what happened to them as human rights violations in their own words rather than having to use the legal framing that is required in domestic law (and
which puts those who are less sophisticated at a disadvantage). Their collective stories transcend the mundane facts of what happened to each of them in isolation. The human rights framework and procedures allowed them to escape the bureaucratic loop that characterized the domestic Thai legal system which they perceived.

The aggrieved people reported using the declaratory power of their NHRC’s decision in a variety of ways. The declaration could help in tangible ways, for example, when dealing with the Narcotics Control Board or other relevant state agencies, and in their own community. Pintip spoke to how this human rights legality could help.

Interviewer: [From your] experiences with the war and justice, does it make you have a better understanding of rights and justice?

Pintip: I understand more about them. This organization (National Human Rights Commission) provided the justice and examined the truth in that we have no involvement with drugs. It could detect directly [and make available] the facts. This greatly helped me. Its decision, although it couldn’t be enforced upon the relevant state agencies, helped me a lot about [confirming] the truth. It made me more confident. At least, I submitted its decision to the Narcotics Control Board [NCB]. I think the NCB might read it because the NCB called me to explain again about the forfeited properties. I think the NHRC’s decision helped me a lot in this point. That is, I could use it as a principle to claim rights that I could rely on. (Pintip/AF5/pp. 60)

In this conversion, Pintip understood the conventional concept of unenforceability of the National Human Rights Commission (NHRC)’s decision but she strategically applied its declaratory power in creative ways. However, not all aggrieved people applied the NHRC’s decision in meaningful ways like Pintip did.

In conclusion, the aggrieved people recognized the injustice they perceived from the war on drugs. However, the problems of violence and property confiscation were not necessarily the driving reasons that led to their complaints. The “gut” issue was that they or their loved ones did not deserve to be victims. They blamed both the community and the authorities for their plight. Most of them lodged complaints to several state agencies and to the NHRC.
bureaucratic justice of agencies other than the NHRC rejected their truth claims and ratified the actions of the local police officers. Within the existing Thai justice structure, the invocation of the NHRC caused the truth claim to be processed into the universal framework of human rights at two levels. Across cases, it could be used to define the state practices as human rights violations. Although the declarations of the NHRC were largely ineffective for the individual cases, some aggrieved people could use them strategically to counter the official labels applied by the local authorities and other bureaucratic agencies in which their truth claims went nowhere up and down the bureaucratic loop.
CHAPTER 7
PEOPLE’S LEGAL CONSCIOUSNESS TOWARDS DOMESTIC LEGAL PRACTICES

The previous chapters described legal practices used in the war on drugs and how claims were constructed among the aggrieved. The aggrieved became conscious that their rights were violated and that they could seek justice. However, their rights struggle centered on establishing the truth about what happened and asking for help from the bureaucracy rather than entering into the civil and criminal legal processes to make those they blamed accountable. The declaratory claim of rights that agencies like the National Human Rights Commission (NHRC) offered were not meaningless in that winning such a claim transformed what happened into a human rights issue. Winning such claims could be used strategically against the state authorities to clear records, to secure the return of seized property, and to pursue certain benefits. The declarations, however, did little to hold those responsible accountable.

The aggrieved were discouraged from pursuing their claims against those responsible for abuses through civil or criminal legal actions despite their wanting some kind of just deserts. What emerged from their interviews was an understanding of the practice of domestic criminal justice in Thailand during the war on drugs. Perhaps what was most striking about their legal consciousness was the absence of a developed sense of the rule of law where all citizens had standing and no one was above the law. Rather their understanding was that the police constituted law unto itself. The locus of power (legal and extra-legal) lay with the authorities who could make and break law with impunity. The people were powerless, without voice, even invisible in the legal realm. Moreover, domestic law was viewed as being dependent on connections and money. The legal consciousness of those who were aggrieved by the Thai war on drugs did not separate domestic law from the persons who held legal positions. Gaining access to or influencing those persons was deemed to be beyond the means of ordinary people.
To a large degree, the aggrieved did not pursue civil and criminal legal actions because they had little appreciation of the rule of law. Even when they could articulate the rule of law, they denied that it applied to Thai law during the war on drugs. “Actually, law should control the state officers as well but [in practice] it controls only people” (Pachara/AF6/pp. 149).

Several themes emerged from the interviews that demonstrated the absence of the rule of law. One important theme was that the locus of Thai law was in police officers—the police could create law. Given the climate of impunity, that translated into making law work in any way the officers wanted without being accountable so long as the official targets for the war on drugs were met. A corollary of this theme was that ordinary people were powerless in the domestic civil and criminal legal systems. They were invisible and had no voice with which to persuade or exert influence. Part of that powerlessness was exacerbated by the role of money and the need for connections in domestic practices. Indeed, one of the themes that emerged from the interviews with those aggrieved was how the rule of law was supplanted by money and connections. Of course, cutting across all three themes was the fear of reprisal. Police were a law unto themselves in part because people felt powerless due to the threat of reprisal. Moreover, an important way to reduce that threat was through money and connections. Given the shared understanding about reprisals, notions of the rule of law were unlikely to be incorporated into the legal consciousness of the aggrieved.

**Police as the Locus of Power—They Were Above the Law**

All the aggrieved people in this research blamed the police officers to some degree for their grievances. They often raised similar themes about the police officers. They agreed that it was difficult to challenge their power because the police officers were too powerful. It was next to impossible to challenge police abuses when they did not use law at all—when they worked outside the legal system completely and attributed their actions to drug dealers as was the case
with kha-tad-ton. The aggrieved were conscious of the prospect of reprisal, which allowed the police to operate from two positions. The police were the recognized locus of legal power as they created and applied law but they were also acknowledged as occupying a position of being *above* the law.

The police officers have power and they can use their power in any form and by any means. They don’t think that [legal] power is above them. They stand above law. (Saijai/AF6/pp. 75)

The understandings of the aggrieved people were shaped by how law was used by the police officers. As Kitti (AF6/pp. 141) stated: “Law cannot be relied on…[because] the state officers *hold law.*” The aggrieved understood law in a broader sense to mean that the state officers and law were the same thing.

Introducer: What does justice depend on?

_Saijai: It’s subject to the police officers. They’re able to create law._ (Saijai/AF6/pp. 73)

Saijai’s experience was telling in regard to the position of police in legal consciousness. Her son was framed by the police officers as a drug abuser. The police officers claimed that her son confessed to the use of drugs for four months. Later, she learned that her son was beaten to get the confession. A few days after his arrest, Saijai took pictures of the bruises and marks on her son’s body. She also had him take a urine test. She gave the test results to the police to prove that her son did not use drugs. The police officers took all the documents from her and later changed the charge from abusing to possessing drugs. The police exercised the legal power and they could prevail even in the face of contrary evidence. As Saijai (AF6/pp. 74) pointed out: “[The police] got the power… [the law] sides with them.”

The aggrieved had learned first-hand about extra-legal exercises of power. Extra-legal exercises could also take the form of reprisals. The prospect of reprisal was clearly part of their legal consciousness during (and after) the war on drugs. Chana explained it this way:
I do not fear the ordinary criminals as much as I fear the police officers because they have
guns that can be used at anytime. *The ordinary criminals, after they commit crimes, just run away... But the police officers are here with us everyday...* They have ability to
fabricate a [convincing] story, which others can read, to make us [seem] guilty of crime.
(Chana/AM6/pp. 162)

Perhaps Srisook (AF6/pp. 61) conveyed the fear most graphically: “People could not keep from
peeing on themselves when seeing the police!” But the others shared her concern. Saijai
(AF6/pp. 73): “If they trump up a charge against us, how do we resolve it?” Jai (AM6/pp. 20):
“[The police] have the capacity to create false evidence...They can do anything [to you].”
Jandara (AF6/pp. 27): “[W]e’ve learned a lesson: if we rise up for justice, we might be killed or
crippled.” Kitt (AF6/pp. 138): “[I]f it’s about the police...if we spoke something about them too
much, I would be afraid they would make a counter attack on me; I fear this retaliation even now
[years after the war on drugs].”

The police were the law—the law was not an independent source that constrained or
checked police authority in the minds of the aggrieved. Moreover, the aggrieved did not
experience law in ways that allowed them to say that “no man was above the law.”

Most of the aggrieved dropped their efforts to pursue just deserts because they feared
reprisal. Their fear was not just random or individualized because its source was embedded in the
power structure. The aggrieved chose to “lump it;” they consciously internalized the suffering to
prevent more trouble and to protect themselves. Pachara’s comment depicted the concern. Her
father was shot dead but no one dared to be a witness.

I want to do more [for the justice]. The problem is that my family is fearful. They fear
getting in trouble,... My mother also reminded me that *the more we do [for the justice], the more
we would get in trouble. It would never end.* (Pachara/AF6/pp. 147)

Pachara’s mother, a rural woman, understood what could happen if they chose to struggle
beyond the *declaratory* relief they had obtained from the National Human Rights Commission
(NHRC). It helped to know when to stop pursuing the justice to prevent exposure to perpetual (or repeated) victimization.

Several aggrieved people retreated from the pursuit of criminal justice against their abusers because they discerned that the police had the greatest power when they did not use law at all. Saijai’s captured this point when she talked about the police’s fingers.

Interviewer: Whom do you want to be responsible …?

Saijai: I want the police officers responsible for it…In addition to a criminal lawsuit, I want to sue them in a civil case [i.e., tort]. They will dare not to do it again. However, I don’t take lawsuits because I fear a bad impact [in return]…If the police officers were to come by themselves, I don’t fear much. I am afraid that they will employ others because they have a lot of fingers [henchmen]. (Saijai/AF6/pp. 70)

Saijai’s metaphor about “fingers” conveyed the fear about police power. Fingers or the police’s henchmen were more frightening because these people would not be bound by any law at all.

The aggrieved understood that the police had ways to operate above the law.

Ordinary People as Powerless—They Were Under the Law

If the police were the primary locus of legal power and could operate above the law, then ordinary people must be largely powerless. By portraying the police officers as unchallengeable agents, the aggrieved also cast themselves as powerless. While the police officers could defend themselves because they served the state, the aggrieved were left as “just people” pursuing their own narrow interests. They felt they might not be visible to the state. They recognized that they were not in good positions to be able to persuade or convince others, especially in comparison to the police. An equal standing before the law was not part of the way the aggrieved people thought about the legal system.

We’re “Just People” (Who’ve been Admonished Not to “Challenge the Heavens”)

In relating her experience, Bhornpan, a simple housewife, captured dramatically the way in which the aggrieved were expected to understand their situation. Bhornpan’s sister and brother-
in-law were shot dead during the war on drugs, their house searched, and their property seized. She had been present when her sister’s house was searched and one of the officers reminded her not to even think to “challenge the heavens” (Bhornpan/AF6/pp. 43). Eventually she did challenge the authorities, however, traveling back and forth between her hometown and Bangkok to get back some of the confiscated properties.

Interviewer: Do you think the fighting with the state officers for the justice is difficult?

Bhornpan: It’s difficult because they are all in the same side. We’re just people. (Bhornpan/AF6/pp. 42)

Bhornpan did not accidentally raise the phrase about being just people in contrast to challenging the heavens. Actually, she tried to portray the power relations in the justice system; when those on high do something wrong, people should recognize they are powerless to do anything about it.

Chana, whose daughter and son-in-law were killed put it this way.

We are no match for them [police officers]. If an ordinary man killed one police officer, thousands of police officers would storm to arrest him. If we [people] were killed, they wouldn’t come [to investigate]. We can do nothing. They can write anything as they want. We lose in every way. It’s better for us to give up an attempt [for the justice]. Let bygones be bygones… (Chana/AF6/pp. 161)

Pachara also spoke to the relations of power in her interview.

For example, if law regulates the police officers … and they don’t obey, ordinary people dare not to interfere. They [the police] are the law holders. By nature, ordinary people, if they see the police officers, are in awe of them. Moreover, the police officers have power in their hands, if they use that power to cause people suffering, people have no way to oppose. (Pachara/AF6/p. 148)

In this quotation, Pachara portrayed police officers as the subjects of law (i.e., the law holders) while ordinary people were only the objects of law. As objects of law, ordinary people are not only under law but also under the control of the police officers.

Pachara went on to recognize that citizens could have standing in law at least theoretically. Her understanding of practice, however, was quite different.
Interviewer: In general, [you said] the state officers are the law holders and how about us, ordinary people?

Pachata: We have a duty to obey law.

Interviewer: Is it possible for us to use law to protect our rights and liberties?

Pachara: I think we can. We can be a law holder. However, as seen in the real world, it seems that law authorizes the state officers but we are [are assigned the role of being] law-obedient people. It’s like the state officers are entrusted to give instructions and to control us [people]. Actually, law should control the state officers as well but [in practice] it controls only people. (Pachara/AF6/pp. 149)

Patchara’s reflections went beyond her own experience and recognized that in the social structure legal behaviors are socially expected and patterned. That is, law authorizes the state officers to take note of people’s legal compliance or noncompliance. On the contrary, people are hardly expected to be able to review the noncompliance of the state officers. Saijai put it this way.

Saijai: We are under law. [She laughed]. If they [the authorities] say we’re right, we’re right; if they say we’re wrong, we’re wrong. We’re under them while they’re above us.

Interviewer: Then, do we as people have any right to use law for our benefit?

Saijai: We have, but it will make us dead tired! To get our rights is very exhausting. But the police have no tired feeling. We would get very tired to win them [our rights]. It’s different between them and us… (Saijai/AF6/pp. 75)

Some aggrieved people felt insecure when they talked about the abuse of power by the police officers. They were reluctant to use the language of rights and justice publicly, especially in front of the police officers. Consider the following conversation with Kitti, whose father was shot dead at home by unknown gunmen, a killing the local police labeled as kha-tad-ton.

Interviewer: As people, do you think it is hard to rise up [for the justice] against the state officers?

Kitti: It’s very difficult. If it is a problem between people, it’s not too hard. But to deal with these guys [the state officers] is very difficult.

Interviewer: From your experience, what makes it hard to do so?
Kitti: It’s like…we don’t know about law, so we cannot talk too much about it.

Interviewer: Apart from lack of legal knowledge, do you have other things that make it difficult for the justice?

Kitti: It’s like…if it is about the police, it’s hard to say. Like…if we spoke something about them too much, I would be afraid they would counterattack me [in some way].

(Kitti/AF6/pp. 138)

Saijai provided a good example of the difficulty in confronting the police because of the unequal power relations. Her son was arrested early one morning and beaten to get a confession of using one tablet of ya ba. After Saijai brought the hospital’s urine-test results to prove that her son was not a drug addict (and presented photographs documenting his beating), the police officers changed the criminal charge from use/abuse to possession. She recalled her son asked the arresting plainclothes policemen to show their ID cards, and that the price of claiming his right was getting kicked and punched.

The plainclothes policemen asked to search my son [while he was going out for work]. My son responded that ‘if you are police officers, please show your ID’s.’ The police officers told him; ‘You are a crafty man (hau-moh)?’ Then, [they delivered a storm] of kicks and punches to my son’s face and body. I took pictures of all the bruise marks on him. Then, one police officer said to my son, ‘In a second, you will know what charge you will get. You’ll want 10 tablets [of methamphetamines] and be jailed forever, won’t you?’

(Saijai/AF6/pp. 63)

In Thai society, “hau-moh” is a negative social label generally used to describe people who skillfully deceive others to further their own interests, especially in matters relevant to law. The police labeled Saijai’s son as “hau-moh” because he tried to raise himself to a level where he could assert his legal rights and challenge the power of the police officers. He was “uppity” and did not know his place. In practice, he did not have enough standing to make a simple, legal request, one that the police officers should have respected given “black letter” legal principles.
We’re Not Visible to the Authorities

All of the aggrieved who lost their loved ones during the war on drugs decried that the police officers did not pay much attention to the investigation of the murder; they could dismiss it by criminalizing the deceased. Several aggrieved people expressed that the state was not interested in their grievances. Chana whose daughter and son-in-law were killed related what it is like to be “just people.”

Interviewer: [Would it be difficult to arrest the gunmen] if the police officers seriously paid attention to the case and the witnesses dared to speak the truth?

Chana: …We cannot use a small piece of the stick to leverage a big log.

Chana’s wife: We’re very old and we fear! But for the murder case, I think it’s not difficult, but we don’t want to dig it up anymore.

Chana: We are no match for them [police officers]. (Chana/AF6/pp. 161)

In this conversion, Chana and his wife reflected themselves as the powerless who could not stand in comparison with the state officers. All aggrieved people expressed this feeling in some way.

The aggrieved also were aware that the cards were stacked in favor of the authorities. Kitti, for example, felt that “law is not used in its full force with the state authorities” (AM6/pp.136). Bhornpan, whose sister and brother-in-law whose bodies were penetrated with hundreds of bullets, noted how much the victims had to go it alone: “no one gives us the justice, so we have to fight and strive by ourselves” (Bhornpan/AF6/pp. 75). Siajai was more explicit about the ways in which law protected the state officers, while people were left to their own devices.

Siajai: [W]e have to have money, a good lawyer and evidence. The service lawyer at the court used to discourage me [saying] that the drug crime case was hard to win. He suggested that I give up and accept defeat. But I did not.

Interviewer: Yeah. I understand what you are talking about. You had to find a lawyer to defend yourself, while the police officers had the public prosecutor…
Saijai: The police officers lost nothing. It’s like they work for the government, but people have to find their own lawyer. We are under the law, while the police officers are above it. They have a good defense lawyer [public prosecutor]. They are the agents of the state. They have [legal] knowledge which people don’t have. People have to find money and go into debt. This is inequality! We have to find the defense lawyer by our own cost. No one helps because it seems we are not a person of the state. It’s different! People, whether they are right or wrong, have to fight for themselves alone. If they don’t have money and [convincing] evidence, they get jailed! (Saijai/AF6/pp. 75-76)

Our Words are Not Convincing

A rule of law model suggests that all parties come to the bar of justice on equal footing. That was not the conception of Thai law that emerged from the interviews. Recall from an earlier chapter that the human rights professionals noted that Thai law operated with a working presumption of guilt so that denying guilt (or “saying no”) was expected by those in the justice system. Of course guilty people would claim they were innocent. The words of the aggrieved were not convincing.

The interviews of the aggrieved revealed another shared explanation for why their grievances were not convincing. Almost all of the aggrieved people complained of the capacity of the state authorities to create “official documents.” In all the cases the police’s investigating records “established” the abuse of drugs or dealing in drugs. The public prosecutors’ complaints were generally well written and seemed to lay out accurate claims. Even some of the aggrieved spoke about how persuasive the language and logic was in the official documents. Namtip’s experience provided an illustration. Her husband was accused by the local police officers as a drug dealer. She lodged complaints to several state agencies. A few months later, she was arrested and accused as being part of her husband’s drug network. After being jailed for about six months, the court found her not guilty because the witnesses that police named did not come to the court. The public attorney did not appeal the court’s verdict.

I also think that they [police officers] wrote a good story about me. It said I sold drugs to children and I was forced to be a drug pusher by my husband. They made a good story and
in a logical way… I am still stunned how they wrote like that. They didn’t identify exactly who those children were. Their witnesses didn’t show up at the court. (Namtip/AF6/pp. 175)

Chana’s wife, who lost her daughter and son-in-law during the war, was still surprised at the time of the interview about the local police officer’s investigating record. The deceased were linked to the biggest drug-dealer network in the region. The police officers made the story more convincing by associating the deceased to one drug offender who had the same last name. The police officers claimed that they observed the behaviors of the deceased for a long time. Later the National Human Rights Commission (NHRC) and the Division of Special Investigation found that the story about the deceased was false. The drug offender who had the same last name as the deceased never knew them. Chana’s wife acknowledged that the story made up by the police officers seemed logical and convincing for people who did not know the deceased personally.

Interviewer: When those who are not familiar with the deceased read the police officer’s investigating record, do you wonder how they will understand the story?

Chana’s wife: They would be enraptured by the story. It is in very good logic… [things] are reasonably connected [to each other]… The reader would think that if it were not true, no one would have come to kill them. (Chana/AM6/pp. 162)

In this quotation, Chana’s wife indicated the fit between people’s general perception (e.g., if not true, no one would come to kill them) and the police’s well-written record that seemingly documented involvement in a drug network. Therefore, the violence perpetrated on the deceased was in keeping with societal expectations at the time. Note that the general perception of people presumed that the violence had a reasonable cause. The killers would not have been motivated to kill if the victims had done nothing wrong. The documentation allowed the victims to be blamed for the violence done to them.
Saijai’s comment also affirmed the pervasive nature of the legal practices used by the authorities.

Interviewer: Do you think in that time it was hard to struggle for justice?

Saijai: It was difficult. In that time, what the officers said was convincing because they had documents and drugs [as evidence]. Everyone liked to believe so. Because they [the police] did not have any conflict [problem] with my son before, they did not have a motivation to frame him. They never knew each other. I think people would think like this. What the police said was very firm and reasonable. While I was listening to their story [at the court’s trial], I definitely thought that my son would not be freed! [She burst out with a laugh]. (Saijai/AF6/pp. 71)

Saijai noted that unless people thought that a prior conflict existed between her son and the police, there would be no reason to doubt the official version, something that can also play out in court. Saijai accepted that the police officers were skillful in making convincing statements. At the time of the interview, she still doubted whether those statements could be overcome.

Saijai: [A]t the court’s trial, the judge asked the police officers to give a statement. It was very convincing if you listened only to their accusation.

Interviewer: You were also convinced, weren’t you?

Saijai: Oh! It was very convincing. They said like they found my son behaving suspiciously. Thus, they approached him [to search him] but he fought back. However, the court was still just and I also got some knowledge from the trial. (Saijai/AF6/pp. 65)

The official document gained power from its status of being official. On the contrary, ordinary people cannot make their own official documents. Some aggrieved people recognized that their words and evidence seemed less convincing when put against those of the officers. Jai’s comment illustrated this point. He still remembered the day he was searched and arrested at home with drugs found somewhere in his house. He strongly denied those drugs were his, but one policeman simply responded that “It’s okay if you think they are not yours. We can prove them at the court” (Jai/AM6/pp. 11). He was imprisoned for almost two years before the court
announced him not guilty. Thus, among other things, he accepted that it was hard to resolve the charge because the police’s official documents seemed more trustworthy.

Interviewer: Do you have other causes that make your fight against the state officers for the justice difficult?

Jai: Because they have capacity to create false evidence. They can compose the document claiming that you are involved with drugs … by saying groundlessly that their undercover agents gave them information. Then, they can do anything [with you]. We’re just ordinary people. We don’t know law. Our written documents seem less convincing. (Jai/AM6/pp. 20)

One of the ways that Jai’s defense countered the official record was to provide the court his drug-clean history for the previous 10 years. He related what he learned from others he met in jail regarding how hard it was to fight the allegations.

Interviewer: If as part of your life you used to take drugs but stopped it for a long time, do you think you would overcome the police’s accusation like this?

Jarun: Many people in the jail had an experience like that. They chose not to fight to free themselves.

Interviewer: Why do they not fight for justice?

Jai: Because their village headmen would not guarantee their behaviors…Some prisoners told me that they used to take drugs [in the past] but the drugs on the day of arrest were not theirs…But if they used to be involved with drugs …, even in the past few years, they would choose not to fight for justice because no one guaranteed their behaviors. If their life history was reexamined, their words and evidence would not be convincing at all. (Jai/AF6/pp. 19)

Money and Connections were Part of Law

Money and connections should play no role in justice according to a rule of law model. That was not the picture of law presented by the aggrieved who were interviewed. They saw the need for money and/or “sen-sai” (connections) to deal effectively with the police and other officials. Their consciousness of domestic law incorporated important roles for both money and connections. The pursuit of justice was entangled with both.
The Role of Money

All of the aggrieved raised, both on their own during conversation and in response to the direct questions, a variety of themes concerning money and justice. They saw money as an inherent feature of the practice of Thai law. Money was viewed as being integral to domestic law and justice.

Interviewer: Do you think law is just?

Srisook: Nope.

Interviewer: Why?

Srisook: Because … whatever people do [to pursue justice] always requires money. (Srisook/AF6/pp. 61)

A previous chapter of this dissertation reviewed the experiences that the aggrieved had with the role of money in domestic legal practices. The salience of legal gratuities and exchanges within the domestic law framework illustrated the extent to which lower level authorities acted with impunity. These experiences became engrained in the legal consciousness of the aggrieved; some became less naïve about Thai justice. Jandara expressed this transformation.

I never thought to give them [the arresting police officers] money in exchange [for help] because she [my sister] didn’t do anything wrong.” (Jandara/AF6/pp. 34)

Recall that eventually Jandara and her family learned the lesson well and were able to influence the outcome for her sister by providing gifts (sea crabs) to the prosecutor during trial.

Others recognized the normalcy of legal gratuities (“kaa-naam-ron-naam-chaa”) in the Thai justice system. In fact, the legality that would be central to a rule of law model seemed secondary. Rattana’s words captured this well.

Interviewer: Do you think the car’s return for the exchange of money … is legal?

Rattana: I don’t know. I think it’s normal. It is ‘kaa-naam-ron-naam-chaa.’ I am glad to get the car back… (Rattana/AF6/pp. 130)
The aggrieved also developed an awareness of the financial costs of pursuing justice. Economic constraints precluded many of the ordinary people of modest means from seeking accountability from those responsible for the abuses. Most of the aggrieved perceived money as one of the main factors that influenced them to abandon their pursuit of just deserts. Recall some of their observations. Chairoj’s father wanted to accept a plea and told his son not to “waste your money anymore” (Chairoj/AF6/pp. 152). Saijai (AF6/pp. 69) lamented that “only people suffer and waste both money and [jeopardize their] health.” Perhaps Pachara best summarized what the aggrieved thought about the role of money.

[I]t is said that the more they [ordinary people] struggle [for justice], they more they get in trouble and the more it costs them. They might not have the ability to stand firm. Although it is believed that money does not matter, it actually [does]. (Pachara/AF6/pp. 146)

We Have No “Sen-Sai”

In a rule of law model, justice would not be dependent on one’s connections or who one knew. The aggrieved did not see Thai law operating in this neutral way. Rather, they saw the need for money and connections to deal effectively with the police and other officials. Some explicitly raised the issue of having no “sen-sai” (no connections) as an important factor that hindered their pursuit of justice. The Thai word, “sen-sai” (connections) is well understood among Thai people, especially, when dealing with the police or the bureaucratic agents. By having no connections in the bureaucracy or with the police, it was hard for the aggrieved to get what they wanted from law and state authorities.

One aggrieved person expressed that he needed “sen-sai” so he could lobby the state agencies for compensation for his damages and to challenge the police. Ladda’s experience and words illustrated the importance of “sen-sai.” Lack of “sen-sai” discouraged her from fighting for justice. Ladda’s husband was shot dead at home and the murder was labeled as drug-related killing (kha-tad-tion). She lodged a complaint to several state agencies including the Crime
Suppression Division, the special-police unit dealing with the serious crimes. She tried to dig up the truth about the killing until she realized that her efforts were futile and dangerous because she had no “sen-sai.” Even though she was a mid-ranked civil servant at a local state office and another relative was a police constable, she did not have the necessary connections.

Ladda: [W]hen I lodged a complaint to [many] state agencies, I wanted them to examine the truth and declare to the community that our family had no involvement with drugs. This is what I wanted. For the issue of investigating the crime and arresting the killer, I think that is very difficult.

Interviewer: Why do you think it’s difficult?

Ladda: Very difficult! My husband’s relatives are just ordinary people and my relative is just a police constable. I am just a [middle ranking] civil servant. We do not have ‘sen-sai.’ No one can extend a hand to help us. (Ladda/AF6/pp. 119)

She then placed her experiences within the context of Thai society where “sen-sai” is always necessary.

Interviewer: Can’t the usual criminal justice help you?

Ladda: It cannot. The Thai society is like this...With my background, I don’t have power to force the police officers to work. I think it is very difficult to force them to work [for me]. I am not a renowned person...I often called one police officer of the Crime Suppression Division, to whom I lodged a criminal complaint, asking about the progress of the investigation. He was officially responsible for my case. [One day] he said, ‘Let me tell you frankly. Your case is only so-so and you’re not a big shot person. Your case is hard to pay attention to.’ What he said struck me dumb! He said it to me like this! We’re just people who were killed and thrown into the problem of drugs. I also contemplated what he said—if compared with the Prime Minister Thaksin’s policy on the war on drugs, my problem was like a toothpick. It’s impossible to arm wrestle with his policy. (Ladda/AF6/pp. 119-120)

Without “sen-sai” (connections), she saw herself as powerless in both the criminal justice and bureaucratic justice systems, although she was a civil servant in the bureaucracy. She was reconciled to accept her powerlessness because of the war on drugs was a more important social interest. She internalized her pain and had to suspend her pursuit of justice.
Pachara also affirmed that “sen-sai” was a pervasive practice when people had to deal with law and justice.

Interviewer: As we are people and we have law to protect our rights, are people equal?

Pachara: We must be equal before the law [by principle]. In fact, we are not equal. Discrimination still exists. The poor and the rich would be treated differently. For example, if one knows a police officer or has a relative who is a police officer, that police officer would take sides with him. (Pachara/AF6/pp. 146)

Chana’s wife noted that if she had a conflict with her neighbor, she would consult the police officer she knew first before letting things proceed into the formal justice system. She admitted that “[we] have to ask for help from a powerful figure; it’s indispensable” (Chana/AM6/pp. 162). At the time of the interview, Chana and his wife were still seeking “sen-sai” to get more compensation from the government for the death of their daughter and son-in-law. He promised to give 20% of the benefit if that person could help him lobby successful.

Interviewer: How do you feel when there were many reporters coming to interview you, including me now?

Chana’s wife: I feel like…Ah! Will they come to help us? I wonder how they will help us.

Chana: I think if anyone can help me [to get higher compensation from the government], I will give him 20%. I would like to find someone to lobby [for me or] I will get nothing. (Chana/AM6/pp. 165)

The results were strikingly different on that rare occasion when an aggrieved person had “sen-sai.” Thamrong’s brother was killed, which the police officers attributed to kha-tad-ton (drug-related killing). He recalled his initial unpleasant experience with the police officers. The police officers did not want to do the autopsy which was required by law. On his own, he was too powerless to force the police to do their job. Therefore, he asked for the help of a well-known person, Uncle Sam. Uncle Sam was the secular leader of a Buddhist group to which Thamrong belonged and used to be a national politician as well. Uncle Sam directly contacted a high-
ranking police officer and the Provincial Governor, after which the local police officers quickly did his brother’s autopsy. In his words;

Interviewer: When you contacted the police officers, did you get good help?

Thamrong: No. They didn’t give me a good cooperation. They did nothing …I tried to ask them to take my brother’s corpse for an autopsy to the hospital, but they declined to do so. At first, they asked me to cremate the corpse without doing an autopsy because they had a lot of [similar] cases to deal with. They would do paper work identifying the cause of death later…I decided to call Uncle Sam for some suggestions…Later Uncle Sam helped successfully coordinate with the police officers [and the Provincial Governor] to get the autopsy [and to remove his brother’s name from the blacklist]. (Thamrong/AM6/pp. 103)

As Thamrong’s experience illustrated, “sen-sai” can be established; it does not have to be inherited. “Sen-sai” can come from being in the same student cohort at a university or from working in the same profession, for example. Sometimes “sens-sai” can be purchased. Recall that Jandara tried to create “sen-sai” with the public prosecutor prosecuting her sister by having her relatives bring gifts such as sea crabs to him during the trial. No matter how the connections were formed, “sen-sai” was engrained into the legal consciousness of the aggrieved. It was part of law as they saw it.
CHAPTER 8
THE PRACTICE OF HUMAN RIGHTS

This chapter explores the ways in which the idea of human rights was invoked in the interviews. The focus is on the legal consciousness that developed so that the transnational human rights framework could be applied to the abuses during the war on drugs. Human rights professionals were the most important translators of the international idea of human rights into the local settings. Three schemas have been extrapolated from the interviews to show various ways in which developing a human rights consciousness can come into play: a supplemental schema, a progressive schema, and a transformative schema.\(^1\) Although these schemas are tied to this research, they contain dimensions that are consistent with contemporary understandings of the relationships between law and society, including as regards law and social change (see Ewick and Silbey 1998; Kostiner 2003). The substantive notion of these schemas borrows heavily from Merry’s (2006a; 2006b) arguments about the need to vernacularize human rights ideas at national and local levels. As such, the emphasis begins with legal consciousness and idea systems rather than other aspects of social structure and culture.

The supplemental schema was the framework that human rights professionals used to translate human rights principles into concrete cases. How did they insert the notion of human rights into domestic legal practices? Human rights professionals applied abstract ideas about human rights to humanize those practices. The supplemental schema was adapted to each individual case to help the aggrieved pursue justice. It directly deals with Merry’s (2006a; 2006b) challenge to localize transnational notions of human rights into social practice. It retains a focus on **effectiveness** (doing something to help the aggrieved individuals) by fitting the **effect**

\(^1\) I am inspired to categorize three human rights schemas by Kostiner’s (2003) legal schemas for social change (i.e., instrumental, political and cultural).
and presence of international human rights with domestic legal practices. As such, it retains some instrumentality (see Koh 1999) even as it uses transnational human rights to reconstitute domestic law. The declaratory justice victims obtained from the National Human Rights Commission (NHRC) was largely constitutive in that it provided a different way for victims (and others) to make sense of what happened and to establish the truth about what happened. It did not alter the reality of what had happened to victims under domestic Thai law. Still, it had some instrumental value for some victims in terms of securing the return of confiscated properties, dealing with the bureaucracies, and re-establishing social relations in their communities.

The progressive schema provided a framework to understand structural features of the human rights violations. Human rights violations derived directly from the Thaksin government’s policies on the war on drugs—policies which enjoyed popular support even as practices systematically violated the rights of people. The idea of human rights was translated as a different set of rules to challenge the domestic legal discourse. Law was being reconstituted. Challenges driven by the developing human rights consciousness exerted an external force on the Thaksin government’s conduct. The United Nations took note; a delegation visited; the main campaign of the war was limited to three months (so some instrumental impact was realized). The language of international human rights (e.g., crimes against humanity and state terrorism) shifted the focus away from the people and placed it on the government. The exposure of the Thai practices and violence to an international standard moved the analysis beyond each “theory” for understanding the individual cases to a unifying framework for understanding the systematic violations across cases.

The transnational human rights framework for establishing systematic violations had an international standing that provided a source of legitimacy for an otherwise powerless group of
aggrieved—a legitimacy that was missing from the individual cases. Each individual case could be easily minimized because each case was officially suspected of drug involvement and each complainant appeared to pursue his/her narrow self-interest. The human rights framework resonated with a larger international community as it refocused the analysis on the conduct of the Thai government and isolated it while providing support for the aggrieved who were otherwise largely powerless.

The progressive human rights schema gave the aggrieved a voice. Its value may have been seen most clearly after the ouster of the Thaksin regime when the new government had to suspend plans to launch a second war on drugs. A developing human rights consciousness helped reframe Thaksin’s war as involving systematic human rights violations and that newly constituted consciousness eventually served to constrain domestic practices. Thai police were no longer free to operate above the law; the same practices could no longer be employed.

The transformative schema moved law into society as human rights professionals discerned the social values that lay at the heart of the human rights violations. Thai social values also provided the cover for the impunity Thai authorities enjoyed. Human rights professionals tried to introduce the idea of human rights as an important cultural value which people could draw on to understand the violence and systematic violations in a new light. The framework could create a social space to implant the idea of human rights and transform the social values antagonist to human rights. A new legal consciousness could plant the seeds to transform society itself.

All three schemas cast human rights law as a weapon in social conflict (Turk 1976) rather than as a functional adaptation to secure order. Human rights professionals accepted that developing human rights would engender conflict and resistance. Note, however, that the
instrumental implications rely heavily on ideological, constitutive processes. They are consistent with Weberian notions of law and society in that the social meaning people give to idea systems, even if idealized (like human rights), will influence their social action or behaviors (see Lanza-Kaduce 1982; Weber 1949).

**Supplemental Human Rights Schema**

**Law Enforcement as a Problem**

Human rights professionals focused on the existing legal mechanism as playing major role in human rights violations. As such they had to use human rights to blunt the domestic practices that contributed to the abuses. As discussed in Chapter 5, human rights professionals criticized the state authorities for carelessly and quickly accusing people of involvement with drugs. The requirements related to due process were disregarded with impunity. The use of legal exceptions and of legal loopholes contributed to the widespread violation of rights during the war on drugs. Several human rights professionals clearly indicated that the justice system was ‘abnormal,’ ‘paralyzed,’ ‘turned to other ways and even ‘blind to the atrocities’ in the time of the war on drugs.

However, human rights professionals understood that these problems of legal practice were embedded in the justice system. The war on drugs just intensified the degree of the unjust treatment of the law enforcement and reinforced the inequality within the justice system. Samart, a human rights professional who worked for social justice movements among ethnic groups, asserted that justice was different for the rich and powerful figures than for the poor and the marginalized.

The problem for the ethnic groups is the inaccessibility to the justice system. The poor cannot attain the justice system…The unjust practice is everywhere…The prison is only for the poor…Therefore, the justice process is for the interest of people in the minority [the powerful people]. It is not for people in majority [the poor people]. (Samart /HM4/pp. 16)
Recall the role that money and connections seemed to make. That was part of the challenge presented to the aggrieved and the human rights professionals. They had to pursue the claims within the extant system with its differential practices.

Santi observed that the state authorities used their power cautiously with the powerful figures but carelessly with rural (ordinary) people.

The police officers would be prudent to use their power with those who have economic and political power. On the contrary, ordinary (unknown) people [taa-see-taa-saa] would be carelessly arrested [even without firm criminal evidence]. (Santi/HM5/pp. 40)

Some human rights professionals indicated that the problem of injustice also derived from legalistic and organizational traps or the “bureaucratic bite.” The state officers often utilized various laws and regulations to weaken the people’s ability to challenge their power. Many times, the state officers, especially at the local levels, had recourse to laws and regulations they themselves, sometimes, violated. The point is that many people could not effectively exert their legal claims. People would be easily trapped in laws and regulations. They could hardly escape on their own. Supplemental schema helped maneuver out of these traps. Sombat, a professional lawyer who worked with ethnic groups in the North, imparted his experience on this point.

The state officers often used law as a responding weapon. People were trapped in such legal responses all the time, such as making arrest, issuing a [trivial] criminal charge ….In any struggle against the government, people were stuck in legal traps all the time because the bureaucratic system has law and many regulations that can be used in response to people [to weaken their struggle for the justice]. (Sombat/HM6/pp. 2)

Sombat, Samart, and Weerachai shared their experiences to different degrees about how to extricate people (and their properties) from the legal traps (bureaucratic bites). For example, they negotiated with the local police officers for the return of unlawfully confiscated properties and tried to help people gain release on bail before trial (in drug offences). Often times the law enforcement officers violated their own laws. Within the supplemental schema, the problem was
how to get law enforcement and justice people to close the gap between law in books and law in action. The human rights perspective dramatized that gap.

**Human Rights as Principle**

When human rights professionals invoked the supplemental schema, they understood that norms about human rights were abstract and did not include an enforcement power if used alone. Therefore, the human rights idea was mobilized “with” the existing legal domestic mechanism. Paiwan, a human rights lawyer, expressly acknowledged this issue.

The principle is to use domestic law. The declaration [Universal Declaration on Human Rights] is abstract. It is just a concept because it has no enforcement power. It is about the concept for the struggle for justice. (Paiwan/HM1/pp. 21)

When asked about the relationship between domestic legal practice and the idea of human rights, Paiwan pointed to the importance of the idea of the universal human rights as the philosophical background for enforcing domestic law in humanized ways. The Constitution is the repertoire for the domestic practice of universal human rights.

Interviewer: I understand what you are talking about human rights. Usually, it is understood that the idea of human rights often conflicts with the domestic law.

Paiwan: [A]ctually, the domestic law should [not be seen as] conflicting with human rights principles…Do not forget that section 6 of the Constitution provides that any law conflicting or contrasting with the Constitution cannot be applied. Then, what should be the basis of [legal] interpretation? [Paiwan chortled in his throat]. The principle of liberties and freedoms which are human rights must be used as the basis of interpretation…Freedoms and liberties attached to humans when they were born are human rights. The Constitution only ratifies these fundamental freedoms and liberties. Therefore, when we have to interpret any law, we have to interpret it in the ways that support and protect these fundamental freedoms and liberties. [He chortled again]…This is the principle of human rights. (Paiwan/HM1/pp. 41)

Paiwan introduced the familiar concept of legal hierarchy. Human rights constitutes the most fundamental legal concept that the Constitution articulates as the state law. The Constitution is the highest law of land. Therefore, Paiwan took the accepted position that all domestic laws and practices should be in line with the constitutional rules, including the principle of human rights.
Legal interpretation can rely on the universal principle of human rights as the highest authoritative source. This important function of the supplemental schema for legal interpretation is perhaps most dramatically illustrated in areas where the Thai law is silent. Tippawan, a human rights professional whose work focused on equal access to justice, made the point clearly.

For torture, for example, we have to refer to relevant [international human rights] laws [because no Thai laws have a definition of torture]. (Tippawan/HF5/pp. 12)

Tippawan spoke at some length about using a supplemental human rights schema in her current work in which human rights principles supplement and work together with the application of the existing domestic legal rules.

Tippawan: We don’t go out to demand the state agencies do anything for us, but we rely on the existing legal mechanism. For example, [in a case] the public prosecutor has not made the prosecutorial order to the court to conduct the autopsy trial, even though the interrogating police officer submitted the investigating report to him. The public prosecutor avoids doing so because the murder involves state authorities [so he does not want the court to review the autopsy].

Interviewer: In this case [to make the public prosecutor do his job], do you refer to the idea of international human rights law?

Tippawan: Yes. We do. (Tippawan/HF5/pp. 12)

Tippawan noted that if the state authorities just followed the existing domestic rules of law, it would not be necessary to invoke notions of international human rights. She recognized that the domestic laws in the books provide high standards to protect the rights and liberties of people. The problem was that law in action deviated from the black letter laws in the books.

Interview: Is it necessary to claim the principle of international human rights law?

Tippawan: It’s not necessary to refer to the international human rights law at all because our Constitution and Criminal Procedure Code are full of justice standards.

Interviewer: It’s not necessary to refer!?

Tippawan: Not necessary. Just use it as a threatening weapon. In fact, if state officers practice in accord with the Thai domestic laws like the Constitution, everything would be just. We have good [domestic] rules. To claim international human rights law is like to
deter them [from deviating from the existing rules] and to remind them that they might be in trouble if they practice otherwise. (Tippawan/HF5/pp. 7)

The invocation of human rights could be applied to specific cases and specific individual state officers who did not act in accordance with prescribed rules of law. Those officers could be reminded that they could face trouble because of human rights claims. They could, for example, be the target of complaint letters accusing them of abusing the power; they might encounter protests from various human rights organizations that made their actions and the victims visible; or their behaviors might be brought to and reviewed by the Administrative Courts or the Criminal Courts. The human rights professionals saw the supplemental schema as providing a tool within the existing legal mechanism to erect a credible threat that minimized the impunity which authorities otherwise enjoyed.

**Humanization of the Legal Practice as Strategy**

Under the supplemental schema, human rights professionals graft human rights principles into the existing legal mechanism. It is a pragmatic strategy that makes use of the law in action, even if the legal practices depart widely from the black letter law or even if the law itself is flawed. The human rights professionals who relied most on this schema provided the aggrieved with rights support and legal aid. Most of these professionals operated at the local/regional level; they stood ready to help resolve the legal issues and to provide needed support and resources to the aggrieved people in the communities. They encouraged the aggrieved people to see their problems as human rights violations and to pursue claims for justice.

During the war on drugs, some human rights professionals advised the aggrieved about their rights and how to make a complaint to the National Human Rights Commission (NHRC) and other relevant state agencies. Some helped the aggrieved write letters of complaint. This research did not identify all the tactics used, in part, because the snowball sampling techniques
yielded local/regional human rights workers who worked only in the North region, primarily among ethnic tribes people, who were marginalized from the dominant Thai society. The human rights work in this region was probably different in some ways from what occurred in the rest of Thailand.

Weerachai, a local/regional human rights professional working with the ethnic groups in the North, shared his experience of rights support. He used to visit communities and helped ethnic people write the complaint letters to the NHRC.

Weerachai: It took some time for the villagers [ethnic people] to dare to make a complaint. I helped them write letters of complaint. At first…they did not dare to give me information because they did not know who I was. After awhile, I went back again to help them make a complaint to the National Human Rights Commission [NHRC].

Interviewer: In that time, how did people [ethnic groups] understand the struggle for justice?

Weerachai: They knew nothing. They did not know how to fight.

Interviewer: Then, how did you tell them?

Weerachai: I told them that they should make a complaint [to NHRC] to examine the truth. I went to talk with them several times until they dared to make a complaint…When they made complaints, they didn’t even dare to disclose their real names…(Weerachai/HM1/pp. 75)

Unlike ordinary law work where lawyers work with problems that clients present to them, human rights professionals had to first raise the consciousness of the people—the aggrieved had to learn about their rights to understand that they had a problem that was justifiable. This made human rights lawyers’ work distinct from that of ordinary lawyers. Pinit, a well known human rights lawyer, put it this way.

Human rights lawyers must give knowledge to their clients about their rights…Ordinary lawyers give nothing to their clients. We [human rights lawyers] will tell them everything. (Pinit/HM4/pp. 31)
By learning how to understand their own experiences as human rights abuses, the aggrieved and hill tribe people could gain some basic knowledge to defend themselves from illegal practices of the state authorities. Some human rights professionals sought to talk with people during and after the war on drugs to give them enough fundamental legal knowledge so the people could examine the use of power of the state authorities (e.g., the law on searches and arrests). Sombat, a local/regional human rights professional, recalled that he asked the ethnic people in the communities to stick together when the police officers came in the villages. They needed to be witnesses for each other during searches and arrests.

One goal of all the human rights lawyers was to bring some individual state authorities who abused their power to justice within the domestic system. For example, Samsen, one of the most active human rights professionals during the war on drugs, stated that he really wanted to have some state officers punished.

Actually, we think that if we could bring a few officers to justice, it would set a precedent, deterring the rest of the state officers [so they would] not allow themselves to be lackeys for the politicians. (Samsen/HM1/pp. 61)

To do so, required someone who was affected by the war on drugs to make the individual choice to bring their own lawsuit against specific officers. The fear of revictimization, however, was the main deterrent factor keeping aggrieved people from advancing claims in the domestic justice system. Accordingly, the only way to supplement domestic law was to turn to the National Human Rights Commission (NHRC).

Interviewer: Why don’t the aggrieved people rise up and demand [retributive] justice?

Supree: In fact, they were trying, but no ways were available for them. … and the society didn’t sympathize with their grievances. Several agencies of the state have become part of rights violations and supported crime. The aggrieved could not go to them to ask for help… Second, if they tried to rely on those agencies for justice, they might be revictimized because [these] people would be rocking the boat. (Supree/HM4/pp. 69)
Hill tribe people in the North\(^2\) are one of the most marginalized groups of people in Thailand. Thai people in general and the state officers more specifically still hold the old belief that the hill tribe people are involved with drug trade and deforestation. Because of their long-standing marginalization, the hill tribe people feared the state officers. Samart, a local/regional human rights professional working with the ethnic groups, observed that human rights work during the war on drugs tended to be defensive because the affected people were still in the state of fear and the public was not aware of being threatened by abuses in the war on drugs.

Interviewer: Can you tell me about the strategies you use with the issues of human rights violation during the war on drugs?

Samart: In fact, our work was rather *defensive not progressive*. In the end, …[it focused on] legal techniques such as the discretion of the judges on bail…We could not move our struggle for justice to a progressive strategy because we could not elevate people [the affected people] to understand their sufferings as a structural problem as we wanted to do. If we elevated our struggle higher than the understanding of people, we [NGOs] would surpass our subjects [people]… (Samart/HM4/pp. 19)

In this quotation, Samart indicated a limitation of human rights work: what human rights professionals want may conflict with what their subjects perceive they need. To respond to the needs of their clients for legal aid, the invocation of human rights was limited to the supplemental schema.

**Progressive Human Rights Schema**

The Oppression by the Government as a Problem

In the progressive schema, human rights professionals shifted the unit of analysis and focused on the political action of the state as a whole, not simply on individual state enforcement officers or the specific actions they took. By invoking the progressive understanding of human

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\(^2\) Hill tribe people referred here are ethnic groups who were victimized during the war on drugs. They are called “chao khao” in Thai (literally ‘mountain people’). The Thai government recognizes six groups of them: Karen, Hmong, Mien, Lahu, Akha, and Lisu (see Lewis and Lewis 1984).
rights, the war on drugs was elevated to a conceptualization of state crime and political oppression. The policy of the war on drugs became the focal point.

All human rights professionals discerned the connection between politics and the policy’s implementation. Pinit’s clearly emphasized the political control over the war on drugs.

Former Prime Minister Thaksin was different from the previous leaders in that he applied swift rewards and punishments to the state officers for their implementation of the government’s policy. This exerted very effective control [over the bureaucracy] so his policy was achieved. In the previous governments, intensive policy control like his was rarely employed. That is, if the bureaucratic agents did not accomplish the government’s policy, they would not receive any serious backlash. But the policy of the war on drugs provided that if they [the bureaucratic agencies] could not reach a set target within three months, they definitely would be transferred out of their posts. The Provincial Governors and the Police Superintendents were most vulnerable to being discharged. Then, when the officers reported [periodically] the numbers to him, Thaksin would identify [immediately] which provinces did not meet the set target. He pointed out those provinces that did not achieve a target within the assigned time. Several meetings were also held to keep track of the policy’s implementation and to periodically evaluate which provinces achieved and did not achieve the set target. Therefore, [at the end of the three month policy], all provinces accomplished the set target. (Pinit/HM4/pp. 37-38)

Supree, a human rights professional who was familiar with international human rights campaign, pointed out that the human rights violations directly derived from the policy of the war on drugs and the control exerted from the central government. It was the policy and not its implementation at the local level that was the bigger problem. As such, the abuses were systematic and not simply the errors or excesses of individuals in local law enforcement.

[The abuses were not due to] errors with the policy’s implementation … [I]t was a deliberate policy to make these things happen. It was not the error of the law enforcement either…[T]he mistake was to have this wrongful policy [of the war on drugs]. (Supree/HM4/pp. 61)

The tight policy control carried an explicit threat to the state officers responsible for implementing it. Failure to comply with the war on drugs policy meant reassignment. It also carried an implicit threat. Failure to comply made government agents vulnerable: they too could
be suspected of drug involvement and labeled as an enemy of the government. Samsen, another human rights lawyer, shared his friend’s experience to illustrate the point.

One friend of mine who was a Police Superintendent saw the blacklist which was submitted upwards from the village heads to the District Governor and to the Provincial Governor. He knew one man on the blacklist well. He was very confident that the man was not involved with drugs. However, he dared not to oppose the blacklist... Everyone [each state officer] just played it safe by passing [the blacklist along] to higher authorities... If he [certified] that the man was innocent, it was possible that he might be framed as being involved with a drug dealer or receiving money from a dealer...(Samsen/HM1/pp. 57)

Implicit in this quotation, was an understanding about the overwhelming political power of the Thaksin regime, a regime which suppressed all the opposing voices. Recall that people in the community also kept themselves away from the aggrieved people because they feared to be framed as drug offenders. Supree, a national human rights professional, more explicitly referred to political considerations and the relationship between the war on drugs and the political climate of the time.

Interviewer: …I noticed that during and after the war on drugs, not many human rights professionals came out and voiced against the war on drugs…I rarely saw them in the news.

Supree: News reporters didn’t spread our struggles...[Moreover] I considered myself as part of the Democrat Party [the leading opposition party in that time but now the government party], and many NGOs also supported this party...[In that time, my organization had sent one campaign manager to talk with both Thai Rak Thai Party (the government party in that time) and the Democrat Party (the leading opposition party)]. No one in Thai Rak Thai Party agreed with us [about stopping the war on drugs] because they got political popularity...[Then] we talked with the Democrat Party, the opposition party, to help [us] resist the war on drugs. But the Democrat Party feared to go against the overwhelming social trend supporting the war on drugs...

Interviewer: You mean social trend?

Supree: Yes because, through the mass media, it seemed everyone agreed [with the war on drugs].

Interviewer: It might be that the Democrat Party feared the loss of popularity with its voters.
Supree: Yes. It feared to lose the political vote. So, as I told you, the politicians were useless to be relied on… (Supree/HM4/pp. 64)

The progressive schema for understanding the abuses during the war on drugs placed an important focus on the Thaksin government and its policy. That schema, however, also saw that the structural arrangements reached further into politics and society itself. Neither political party would resist the abuses because of popular support for the war on drugs, and other institutions like the press and media played roles in creating and maintaining the political climate.

Several human rights professionals also paid attention to the powerlessness of the victims. The victims and their relatives did not have the socioeconomic and political resources to prevent or withstand the abuses perpetrated by the state officers and the government. For example, Kampon, a senior human rights professional, observed that many teenagers were killed in that time. Samsen accepted that many people killed during the war included small time drug abusers, but noted they did not include the big drug dealers. Moreover, from their field experiences in different occasions, Pinit, Weerachai, Samsen, Supree, and Paiwan explicitly indicated that a lot of ethnic groups were victimized. They were often killed in groups. Therefore, the official numbers of people killed during the war on drugs might be underestimated once the ethnic victims are taken into account. Consider the following comment by Paiwan, a human rights professional, who joined the National Human Rights Commission (NHRC) to investigate human rights abuses during the war on drugs.

Paiwan: It seemed the war on drugs succeeded...The problem was the killings were committed audaciously. It’s like …the killings committed in the communities were admonishments. No one dared to be a witness. Fearing audacious killings, the real drug dealers just found a hiding place temporarily. [Paiwan laughs]. It seemed the drug dealers disappeared [so the war] looked like a success. However, most people, from our examination of those who lodged the complaints to the NHRC, came from the marginalized. They did not have a voice and no one spoke for them [to declare] that they were innocent. The most savage thing was what happened to the ethnic groups, known as hill tribe people. Many of them were killed in that time…
Interviewer: I didn’t see much about their killings in the news reports.

Paiwan: It didn’t appear much in the news but there were a lot of killings…They often were killed in groups of three, four, five or even six people. They were killed a lot because the old belief [held by the society and the state officers] about hill tribe people as producers and dealers of drugs [i.e., opium in the past]… (Paiwan/HM1/pp. 22-23)

**Human Rights as Force**

By invoking the progressive human rights schema, human rights legality is used to challenge domestic law practices. The progressive schema sees the domestic law and legal practice as corrupted and politically manipulated to achieve the policy goals of the war on drugs. In this way, the idea of human rights is used as an external force in opposition to the state. It would actually criminalize the state, something which normally cannot be done using a state’s own law.

Kampon and Samen, well known human rights professionals, depicted the violence during the war on drugs less as a problem of law enforcement and more of a terrorist-like action by the government. Consider the following comment of Samsen.

This is not the problem of law enforcement, but the state itself [the government] was the law violator. It was terrorism by the state. Actually, we [NGOs] agreed with the suppression of drugs. We supported the arrest of suspects in the ways consistent with the due process of law. But we disagreed with the use [and acceptance] of kha-tad-ton. In fact, the conduct of the state in that time is like state terrorism. (Samsen/HM1/pp. 54)

In addition to applying the terrorist label to the government’s intimidating and abusive practices, other familiar concepts of international human rights law were strategically used to reframe the problem from being one of ordinary crime and law enforcement to “grave human rights abuses” imposed on civilians by their own government.

Supreee, whose human rights work has been involved with international organization, brought up the concept of command responsibility, linking Prime Minister Thaksin directly to the atrocities.
The style of shooting is not like what general gunmen do. [Supree then talked about the dress and hair styles of the killers from which their police profession could be easily identified]...Therefore, this [the shootings] were violations of people’s rights supported by the head of the government in that time...I think this was the biggest violation of rights that has ever happened in the country. It was different from other violent incidents which were just one-time uses of force by the government to suppress anti-government protestors. But the war on drugs used violence over and over within the time frame of three months, and then extended it to the end of the year 2003. I would like to state frankly that I don’t use the idea of domestic law [to understand the war on drugs] since I am not a lawyer. My background is in political science and I am rather familiar with public international law. I think … [what happened was] systematic violations of international human rights law. It’s about the command responsibility. The civilians became victims of the state-sponsored atrocity. (Supree/HM4/pp. 55-56)

Supree went on to explain how the war on drugs could be understood in the context of international human rights law.

[First]…We tried to prove that there were a high number of people killed during the war…We had our sister organization to collect news clipping reporting the killings daily within those months…Our sister organization could not complete the task. It got the killing statistics for February only. However, the number of people killed was very high. The pictures of the killings were seen in the news everyday and everywhere. Those killings were described simply as kha-tad-ton [killings among drug dealers]. Second, there were reports of the Narcotic Suppression Centre [established during the war on drugs] evaluating the success of the war with the numbers of people arrested, surrendered, and dead. These statistics would be taken into consideration as well. [Finally], it was about the command responsibility. Former Prime Minister Thaksin continuously gave an interview to reporters … [justifying] the high number of the killings. (Supree/HM4/pp. 56)

Pinit, another human rights professional, labeled the violence and killings during the war on drugs as crimes against humanity.

[I] think one way that makes people more vulnerable to being killed is to destroy their humanity. Former Prime Minister Thaksin declared to the public that ‘those people [drug dealers] kill our children. They are not human but the devil…They are not normal like us.’ This is the usual practice [dehumanization] before employing violence against any group of people… [Therefore] those people became the enemy not simply to the government but the enemy to the society. (Pinit/HM4/pp. 38-39)

Pinit pointed to the government’s logic that the violence against the victims was natural because they deserved to be killed, likening the victimization to what the Nazis imposed on the Jews.

How should those people [drug dealers] be dealt with? Their humanity was not left because they were criminals, devils and even terrorists [to the society]. Their humanity was
degraded like this. It’s like Hitler labeled Jews as a threat to Germans. They deserved to be killed. The war on drugs relied on the same logic...Former Prime Minister Thaksin marketed [this well]. That is, he used the media to rivet people’s perception to agree that those people [involved with drugs] deserved to die. (Pinit/HM4/pp. 38)

Pinit showed the importance of the blacklists. Through the lens of international human rights law, he provided insight into the role they played in identifying the specific group to be systematically targeted in the war on drugs.

Interviewer: …[Y]ou’ve talked about Nazi and Jews. In my opinion, I think Hitler identified the specific group of the victims. It was Jews. But in the Thai war on drugs, I don’t see that group of victims comparable to the Jews [in Germany].

Pinit: They were the drug dealers!

Interviewer: Were they classified as specific group of people [targeted for the violence]? 

Pinit: It does not matter whether those people were the authentic drug dealers or not. The point is to make their names appear in the blacklists first [and then eradicate them and count this as the achievement]. The way to identify them [the victims] is to put their names in the blacklist. (Pinit/HM4/pp. 39)

Those on the blacklists were systematically targeted. The blacklists defined the boundaries of who would be identified and who would be the victims. The government used the blacklists to measure its own success; achievement was accounting for a high percentage of the names from the blacklists. To complete the set target within three months, the government provided three methods of deleting persons from the blacklists: arrest, extrajudicial killings, or death by other causes. Within the progressive human rights schema, the systematic violence brought about by the government’s war on drugs policy was a grave human rights violation that constituted an international crime.

**Internationalization of the Violence as Strategy**

The progressive human rights schema sought to internationalize the abuses during the war on drugs. National human rights professionals were more familiar with the international audience than were local/regional human rights professionals. For example, Samsen, a national human
rights professional had experience with human rights abroad, including good contacts with several international agencies. He viewed the pressure from the international community as an important factor for human rights justice.

Interviewer: Which issues were the most important for you to establish justice?

Samsen: At the beginning, we protested and opposed the policy. Then, when there were many killing cases, we disseminated information to the society continuously. The most important thing was to have pressure from the international community.

Interviewer: Is this [international involvement] your strategy?

Samsen: Many international human rights organizations became shocked about why within just three months there were almost three thousand people killed. (Samsen/HM1/pp. 57)

Kampon, a senior human rights professional, recounted that he reported the mass killings during the war on drugs to Hina Jilani, the United Nations Special Representative of the Secretary-General on Human Rights Defenders.

Kampon: In fact, the killings in the Thaksin regime began with the deadly suppression of the village heads, community workers, and NGO [staff]. Around 20 of them were killed. They all were those [e.g., local leaders and environmentalists] who opposed [outside] political interference and economic powers [that were] deteriorating their local environment or taking the advantages their natural resources.

Interviewer: This happened before the war on drugs?

Kampon: Yes, it was before the war on drugs. It [eventually reached] 30 people killed. These people had been known in the society [as social activists]. Their killings were reported to Kofi Anan’s office and Kofi Anan sent Hina Jilani, a special representative, to Thailand in 2004 [to examine the killings]. When she arrived, she was very shocked to see the long lists of people killed during the war on drugs. [Kampon laughed nervously]…When she came, I reported the mass killings during the war on drugs to her immediately…Later, the UN raised 26 issues of human rights abuses to the Thai government [including the war on drugs]…I had never seen Thailand like this before. People were killed in a jumble… (Kampon/HM1/pp. 10-11)

The progressive human rights schema identified the domestic law and justice as corrupted by politics at the highest levels of government. Therefore, Kampon saw the importance of
international justice; it was necessary because the domestic justice system could not deal with the leaders of the state.

[T]he politics [in Thailand] would have ...[interfered with] the justice system all the time...It’s like the countries in the third world that could not deal with the problem of human rights violations in their countries, like the countries in Africa. Thus, ...[they need to] rely on the world community for the justice. (Kampon/HM1/pp. 17)

The main goal of the progressive human rights schema was to capture the international audience. The use of international human rights labels appealed to the international community more than did the use of more common domestic labels such as murder, homicide, or even the extrajudicial killings. Samsen, a human rights lawyer working at a national level, argued that the human rights campaign put the human rights abuses during the war on drugs under the scrutiny of the United Nations. He expected a sentinel effect: “if a government in the future has a political view to revive the issues, people will come out and reveal more information [about the atrocities]” (Samsen/HM1/pp. 58). He believed that his effort was successful within the context of Thai society where the government had rarely been reviewed by non-state agencies. At least, later governments might think twice before following the same track of Thaksin’s war on drugs.

Samsen offers a case in point to support his conclusion.

Interviewer: At what level do you think your effort was successful?

Samsen: Umm...I think it was successful, although no one was punished.

Interviewer: In what ways?

Samsen: When the Samak government rose to power [in 2008], his Interior Minister tried to follow the footsteps of former Prime Minister Thaksin by announcing a second war on drugs. But he could not do it. The failure of declaring the second war on drugs came from many factors. For example, he didn’t have personal charisma like former Prime Minister Thaksin. But I think one reason is that the state officers were not confident that if they [pursued] the second war on drugs [like they did the first one], they would not be examined [i.e., by human rights professionals, by international organizations, by the society, etc.]. Even former Prime Minister Thaksin was in the power only five years...I think the state officers would have to rethink seriously several times [before using violence the way the Thaksin regime did]. This issue [the war on drugs] is still on the [burner]. For instance, this
issue still remains before the UN. The Thai government has not answered to the UN about the war on drugs. (Samsen/HM1/pp. 58-59)

The end game for the progressive human rights schema is to hold accountable those at the highest level who were responsible for the policy and the atrocities that grew out of that policy. Pinit, a human rights lawyer, insisted on the principle of “no safe haven” for a human rights abuser. He wanted to bring former Prime Minister Thaksin to a court of law so that the charge of crimes against humanity could be examined through due process procedures.

Under the principle of accountability, it is possible that Thaksin [could defend] himself against a charge of crimes against humanity. …. He must defend himself against the charge of crimes against humanity in a court having due process. [The purpose is not] to discredit his political life. (Pinit/HM4/pp. 46)

**Transformative Human Rights Schema**

**People’s Thought as a Problem**

Both the supplemental and progressive schemas encountered cultural impediments. Recall, for example, that the initial challenge for regional and local human rights professionals was to help the ethnic peoples understand what happened and how they could translate the human rights abuses into justifiable complaints in the legal system. A legal consciousness had to be engendered so human rights principles could supplement domestic law to protect basic rights and to pursue remedies. Recall also that the Thaksin government’s violence was enabled with the help of the media and because of broad cultural support. The transformative human rights schema confronts culture head-on because the problem of human rights violation is seen as being rooted in the people’s thought—in the shared ways of thinking and values that tolerated the violence and abuses. Can the human rights consciousness transform the way people think about their rights?

An authoritarian way of thinking was identified as an underlying cultural value that contributed to tolerance of the violence and abuses. The people were used to accepting and
relying on the absolute power of their leaders to solve their problems. Pinit, a national human
rights professional, made the point clearly.

Interviewer: Then, do you think the society tolerates the violence?

Pinit: Yes. The society accepts the violence. My understanding is that …the society has not
accepted the idea of rights. Moreover, it also retains authoritarian values. That is, two
attributes could be noticed. First, they often see the powerful figures as being able to
handle any matter for them. They count on others having higher authority because [they
think] they cannot handle it by themselves...[Second] they favor absolute ways to deal
with a problem. The problem must be absolutely eliminated. This is the authoritarian way
of thinking. (Pinit/HM4/pp. 34)

The authoritarian way of thinking in this conversation fits well with the social practice of
making, finding, and establishing “sen-sai” (connections) as discussed in Chapter 7. The
aggrieved accepted that they needed “sen-sai” to make law work for them. The authoritarian way
of thinking also accommodated the leaders and the powerful figures; it invited them to take
control over all matters in society including how the society understands the social problem of
drugs and how the problem should be dealt with.

Samart, a regional/local human rights professional, referred to a culture of dependence that
led to the monopolization of drug problems by the government.

Interviewer: It seems the society didn’t decry the war, but rather supported the war on
drugs. Do you know why?

Samart: Because the society was dominated by a fear of drug dealers. The society was
dominated by fear about drug abusers, but the society didn’t find ways to resolve the
problem through participation in the communities...Ya ba [methamphetamine] was not
only a matter for the police department and the administrative officers. The society didn’t
realize this point. The society just [tacitly] consented for the police to handle the problem
[alone]. At the end, the violence was justified by people’s fear against drug offenders.
Why didn’t people think how to analyze the problem as [one] within the social structure
that exists? But they rather blamed drug abuses as inborn [as an individual] trait. Finally,
the panic over drugs was used to justify the violence of kha-tad-ton [the killings of drug
dealers]. (Samart/HM4/pp. 20-21)

As several human rights professionals implicitly and explicitly expressed, people accepted
violence as a means justified by the end (the eradication of drug dealers). They did not tolerate
the violence because they simply believed the police theory of kha-tad-ton, although it was easier to accept the official version than to face the truth about the killings attributed to drugs dealers.

To some extent, the Thai people accepted some corruption. They certainly knew of the importance of money and connections in law—something that predated the war on drugs. Samsen addressed the situation, recognizing that the Thai people did not talk and exchange the facts but used shared taken-for-granted feelings to make their judgments.

We’re [Thai people] like those in a pragmatist culture. The culture emphasizes ends, not means. For example, because it is said that everyone [the state officers and politicians] always does corruption, corruption’s not a problem if he still performs [their duties] well. Actually it shouldn’t be like that. The two concepts [corruption vs. efficiency of work] are absolutely in the conflict, but there is a misunderstanding about this all the time. It’s like we [people] do not talk to each other using academic information or facts but we utilize taken-for-granted feelings. It is a society based on the feelings and beliefs. For example, we often say that ‘there are no poor people among the diligent,’ or ‘for someone who has wealth, there is no reason for him to enrich himself illegally.’ Can you imagine!? These are silly conclusions without substance and they are deadly wrong, but Thai society has always thought like this all the time. (Samsen/HM1/pp. 56)

Recall how this tracks with the reflections of the aggrieved, whose neighbors often presumed the aggrieved would not have been framed or had loved ones killed if they did nothing wrong.

During the war on drugs and the peak of former Prime Minister Thaksin’s power, drug dealers were seen as the devils and enemies to the social security. They, therefore, deserved the violence. The cultural orientation cuts both ways. When former Prime Minister Thaksin’s power waned, he was labeled as a bad leader and traitor, and the society did not resist the military coup in September 2006 that ousted him from power. Santi put this cultural acceptance into historical context.

Generally, the society … tends to accept whatever means that can be used to solve a problem quickly. For example, in Sarit’s time [1959-1963], the alleged criminals [i.e., arsonists] were shot dead at the spot of arrest. People felt that it was worth [keeping order] for the society. People accept whoever is capable of eradicating the bad people. Therefore, the social tolerance of the military coup in 19 September 2006, ousting former Prime Minister Thaksin [when he was labeled as a traitor] is not surprising. People allowed the
After the military coup in September 2006, it appeared that everything former Prime Minister Thaksin did was wrong. The cultural swing did not reflect an enduring human rights principle. The anti-Thaksin groups wanted to destroy him politically and society turned to side with the anti-Thaksin groups. The political conflict resurrected again in the spring of 2009 when a pro-Thaksin movement mounted mass demonstrations. A transformative schema would modulate the political swings by introducing enduring basic human rights principles applicable across governments and political movements.

Supree raised one cultural feature that needs to be considered in any transformative schema. He talked about the role of Karma for the lay Buddhists as the cultural grounding for tolerance toward government initiated violence and abuses. Although he was the only one who talked about Karma, his point of view resonates well because Karma is fundamental to Thai society. Although both law and Karma lay out authoritative rules, for Supree, the rule of Karma for the lay Buddhist has a major difference from the rule imposed by the Thai legal order. The rule of Karma is not malleable; it cannot be bent by other factors, whereas the justice system is malleable and is influenced by other factors. Recall in the justice system, there is no well-developed sense of the rule of law; rather people believe that the legal system is just for some people (e.g., the rich people or those with connections) and unjust for others. As seen in the previous chapter, many aggrieved people talked a lot about the lack of money and “sen-sai” as determining factors in the justice system. Accordingly, the law does not always punish the bad people. That is not an outcome of Karma. Under the rule of Karma for the lay Buddhist the bad must receive punishment. Therefore, the rule of Karma explained what happened to the victims during the war on drugs. If some received punishment, then the victimization must have been...
deserved because they were extremely evil. The official labels and blacklists were much easier to believe given the rule of Karma in Thai society.

The point is that Thaksin used the discourse [about the war on drugs] to reinforce the foundational belief of Karma; that is, the bad had to suffer the consequences. The discourse, early on, established the label of drug dealers as devils. They were not just normal devils but the most deadly [kind of] devil because they betrayed the country. If you considered in detail Thaksin’s use of discourse in that time, there were elements that the society regards as serious [threatening social security]. They [the drug dealers and users] destroyed the country, family and our children. They were the most acutely wicked bastards. Therefore, [because they were so evil] they should receive a serious consequence in return. This way of thinking fits well with the original concept of Thai-style justice in the framework of layman Buddhists [the rule of Karma]…Karma is expected to give prompt retribution. Thaksin took advantage of this …so people did not see the violence as the problem because drug offenders were the devils who deserved to die. There was no reason [for people] to be agitated about that. (Supree/HM4/pp. 62-63)

To the extent that the rule of Karma for the lay Buddhists dominates their thinking, people will not see the urgency in adopting a rule of law framework. Immutable human rights principles that endure across political regimes and societal shifts are not as key to justice as is Karma. It helps explain why the rule of law was poorly developed in the aggrieved consciousness.

This may explain why some human rights professionals explicitly indicated that the society was not naive about the police’s theory of kha-tad-ton (the killings among drug dealers). However, the society was tolerant to the violence because the victims would not have died if they did not deserve it. Recall that some aggrieved people also reflected this point of view. One of the most active human rights professionals working against the war on drugs offered this overview.

I think at the beginning of the war, people knew that it might be the officers who committed kha-tad-ton against the alleged drug offenders. But they thought those drug offenders deserved to die. This demonstrates the fragile [position of] rule of law in Thai society. Thai people acknowledged that the wrong means [were used] to resolve the problem. Even though those means were illegal, they accepted the means to resolve the problem. In my opinion, this method does not actually resolve the problem because the problem of drugs is influenced by many factors, especially social factors which are most important. In addition, this method supports the police state. I don’t mean that the police become the most powerful. It is the totalitarian state mainly that uses its power to damage
the rule of law we [Thai society] have been building since the political reform in 1997... We might abate the drug problem in just a few years [using violence], but in the long run what we have built would be destroyed. (Samsen/HM1/pp. 55-66)

The police state as defined by Samsen contradicts the idea of human rights. Rights and liberties of people would not be taken into account when the state used its power. Might can become dominant over rights without a transformative schema where human rights is incorporated into (and therefore changes) the larger culture.

**Human Rights as a Cultural Value**

By invoking the transformative human rights schema, a legal culture could take priority over the political culture. The goal would be to embrace foundational human rights that endured across political regimes into the culture itself. In the language of a rule of law model, no one could be above the law. Kampon, a senior human rights professional, lamented the futility of the rule of law given the political culture that dominates Thai justice.

Interviewer: I understand your point that no one has been brought to the justice. How, then, does the idea of international human rights law come to help?

Kampon: It can do nothing as long as the political leaders [elected or not] do not care about human rights. Moreover, they [the leaders] deliberately violate rights of people. *In fact, it has been like this all the time [for Thailand]. They’ve never been interested in human rights. It has already become a political culture because law is meaningless.* Then, what happens is that a political resolution counts on violent means [to succeed]. (Kampon/HM1/pp. 15)

The human rights professionals also thought that ordinary people did not see law as the most effective tool to solve social problems. Several human rights professionals pointed to the defects of the justice system as one of the reasons. Pinit, a human rights lawyer having experience with long-term legal mobilization, expressed this point.

Interviewer: Why don’t people favor the normal legal procedures [to deal with drug problems]?

Pinit: If you are asking why they do not rely on law, I understand that people see the weakness of law. (Pinit/HM4/pp. 43)
Kampon and Pinit argued that Thai culture seems to pay less attention to the law and legal culture than to political and social cultural phenomena. Therefore, the translation of the human rights idea into the practice of law itself (as through the supplemental schema) might create no change at all because the major impediment to a human rights consciousness may be society itself.

Supree, who is familiar with international discourse of human rights, reflected on this point.

I look at the problem from the viewpoint of the political scientist. I think that whether the [human rights] framework will be adopted depends on the push from the society. Therefore, I try to move the society by working through the media and doing campaigns…For lawyers, they need to ratify the relevant international covenants…I think how much the process of ratification is delayed depends on the social tendency. [Without a change is society], it [human rights ratification] would be left uncompleted…For example, the process to ratify the torture convention is going very slowly. Also, we do not have the definition of torture in any Thai laws. It’s possible that the society still tolerates the practice of torture [among the state officers]… (Supree/HM4/pp. 68-69)

Supree showed concern for the direction of the change and whether he could influence the tendency toward social values supportive of human rights. He thought that the institutionalization of international human rights instruments was insufficient to change social (and domestic legal) practice. Therefore, Supree and other national human rights professionals (i.e., Pinit, Kampon, Paiwan, Tippawan, Santi and Samsen) made efforts to dispute publicly the view that the victims deserved to die. The idea of human rights had to become more than merely a diffident opinion opposing the abuses and violence. A public campaign was necessary to transform ways of thinking.

Consider the following experience that Pinit’s related.

Interviewer: Have you ever been threatened [for your stand against the war on drugs]?

Pinit: Never. But just one woman called… [to] reproach me. ... She asked me whether I had a daughter. She said, ‘what do you do if your daughter has become addicted to a drug?
You would let the drug dealers hurt your daughter like this, wouldn't you?’ (Pinit/HM4/pp. 36)

The woman accepted the war against drugs to prevent more harm. She strategically drew out the daughter as the weak victim of the strong predators, drug dealers, to try to convince Pinit that the violence was appropriate. In fact, the victims of drug dealers (especially for ya ba) are portrayed as children, the future hope of the nation who are still weak in social experience. Because Pinit understood the cultural perspective she took, he did not directly challenge her opinion. He nudged her slightly to contemplate another, different point of view by asking her how much killing should be tolerated.

Pinit went on to indicate that the most important base for human rights is the acceptance of different opinions.

[If one did anything against the war], he would be viewed as part of the same group of drug dealers…Therefore, he should be eliminated too. The way of thinking is to expel different standpoints. The current Thai society still reflects this way of thinking. This is a very important issue. It [opposing viewpoints] is the crucial foundation of human rights. Can people accept different points of view? How will they live with those having a different opinion and belief? ...(Pinit/HM4/pp. 36)

Samsen, another national human rights professional, also argued that human rights violations are embedded in the society. Therefore, he reflected that the human rights idea would be implanted in the society when the society begins to accept and respect freedom of thought which, he thinks, is always absolute beyond any limitation.

Interviewer: This is the final question I will ask you. It is said that the idea of human rights lacks the power to change society…What do you think about this statement?

Samsen: I think if we want a society of sustainable development, civilization, and peacefulness, human rights idea is very important. It needs time because the viewpoint of Thai society towards human rights is imperfect. Thai society has not appreciated human rights enough. It [the human rights principle] has still not been translated [effectively] into the society.

Interviewer: Do you mean to the practice of people’s daily life?
Samsen: Yeah, in their daily lives.

Interviewer: It seems you are talking about people’s perception.

Samsen: The respect for another’s opinion is an example. Freedom of thought is the most fundamental basis of human rights, right? It’s not just freedom of speech. Freedom of thought is the absolute right. The freedom of speech and writing can be limited under some circumstances such as in a state of war. They might be censored. On the contrary, thinking is the absolute right…The Thai society has not accepted this point [freedom of thought]. Therefore, we still confront each other [about holding different ideas]. (Samsen/HM1/pp. 61-62)

Samsen spoke to the process of translating human rights idea into the society itself. He recognized that this would need time and acknowledged that the most fundamental features of human rights run deeper than the laws themselves. In addition to time, Samsen suggested that Thai society needs the social space that allows for different perspectives, different ideas, to co-exist as a matter of the social norms (and not as a matter of law or politics).

**Spatialization as Strategy**

By invoking the transformative schema, the appropriate strategy was to try to persuade the society to make room or open a social space for the idea of human rights. National human rights professionals took on this role. They wanted to challenge the societal ways and values that supported the abuses and violence, but they recognized the difficulty of the transformative task. For example, Tippawan, a human rights professional, accepted that her efforts seemed to be less than successful.

Interviewer: Then, what are your strategies relevant to the issue of human rights that you involved with?

Tippawan: It is all about the information. We [NGOs] publicized it [the abuses]. We issued statements and held some seminars [talking about the war on drugs]. But we did things in very limited ways because the trend of the society at that time did not favor us [but supported the war on drugs]…

Interviewer: Yeah. I’ve seen in newspaper some statements and a few conferences against the war on drugs. How do you think people in that time perceived the role of human rights advocates?
Tppawan: They knew almost nothing [about us]. Also, we rarely had a chance to speak [to the public]… (Tippawan/HF5/pp. 10)

Pinit took the point further. It was necessary to speak against the violence and abuses during the war on drugs, not simply just disseminate the information, but to create a public space—to make room for the discourse.

We [human rights professionals] have to point to the principle [of human rights] no matter whom we speak against or how we would be condemned… Otherwise, no one stands up [against the violence and abuses]. This is both the strategy and the duty [of human rights professionals]. We have to rise up to protect the principle [of human rights] and not tolerate the violence. Of course, we might be pressured by others, depending on how we speak. We have to think in strategic ways as well. We should not let the aggrieved people [e.g., the victims or their relatives] speak about the violence if they will be in danger. We have to think about this in strategic ways. Not everyone can speak. Some can but some cannot because they have different social spaces and roles. (Pinit/HM4/pp. 45-46)

Pinit also used the word “dialogue” to insert ideas about human rights into society. In his words;

We tried to prevent [everyone in] society from feeling the same way. There must be someone to say that it [the violence] is not the right way. At least, there must be a [social] dialogue or argument [about what is right and wrong]. (Pinit/HM4/pp. 46)

The transformative goal of the human rights professionals, however, was a difficult one to achieve. Tippawan decried that society not only agreed with the war on drugs but also marginalized human rights professionals. Most human rights professionals realized their marginality. For example, Kampon recalled that in that time he brought some relatives of killed victims to talk at a few TV shows about their grievances. Later those TV shows were ordered to close down and he was not invited to go back on television for almost three years Santi’s comment captured the marginality of NGOs. They were criticized by the business sector and the politicians as the obstructionists—of getting in the way of national prosperity. Thaksin’s government accused NGOs of being the broker trafficking others’ poverty. His government was antagonistic to NGOs; the more popular he was, the more marginalized the NGOs and human rights professionals became.
Santi: [I]n that time, Thaksin was very popular. It didn’t matter you could consult any poll. NGOs were the organizations that should be abrogated [from the society]. Since labeled as the broker trafficking others’ poverty, NGOs became the least trusted organization.

Interviewer: So, NGOs couldn’t do their work, right?

Santi: They could not work because the social trend rejected NGOs. In addition, the international sources of funding announced [a reduction in funding over] the next five years … At the beginning of 2002, they gradually reduced financial support for the Thai NGOs … In that time, the popularity of NGOs began to recede…Thaksin didn’t pay any attention to NGOs and NGOs didn’t get much support from the society. The media also turned away from NGOs. No one answered when called by NGOs! Instead, they exalted Thaksin as a wealthy man who devoted himself to the country…

Interviewer: So, I didn’t see many NGOs come out [against the war on drugs].

Santi: Some of them were trying to. However, most of the affected people did not dare to claim their rights through NGOs or even the National Human Rights Commission because of fear. [People in] NGOs themselves feared being killed as well because in that time [Thaksin’s regime], several [local] environmentalists were killed. (Santi/HM5/pp. 42)

The transformative schema was a hard sell because it did not stop by saying the law was corrupted. It called for remaking society as well. The ultimate goal was to transform people’s thought in the ways that integrated the idea of human rights into daily social (not just legal) practice. As Samsen suggested, human rights needed to become part of “the ways of life or culture.” To move toward the transformative human rights schema, Samsen highlighted the process of learning from social practices as a crucial step for implanting human rights into society.

It is normal that we have to learn from concrete cases. It is learning from the practices in the society. For example, in Latin America, there were many people who disappeared. The relatives of the disappeared assembled to make justice claims. Because they assembled, the concept of human rights grew up. They claimed for their loved ones who disappeared. They might not have understood the concept of human rights. However, from their struggles, they came to understand more about human rights gradually. This is learning from practice. If we get more people involved in this process of learning, the culture of human rights would become better understood [in the society]. (Samsen/HM1/pp. 63-64)
CHAPTER 9
DISCUSSION AND CONCLUSION

The preceding chapters include interview data obtained from human rights professionals and the aggrieved that highlight their perceptions and experiences with legal practice and justice during the Thai war on drugs in 2003. The findings present how the respondents engaged in creating both domestic and human rights legalities within the specific context of the war on drugs but their responses can be extended to other context of state violence. To synthesize the findings, this chapter is organized in the following manner. First, it identifies how the violence and abuses were rooted in the legal practices, justice system and society itself. The fit of violence with law and society through politicization of drug problems is reviewed. Second, it examines the legal and rights consciousness of the aggrieved and how they came to understand justice and law. The aggrieved survived outside law. They developed legal consciousness against law when taking the larger social condition into consideration. Next, it discusses how the idea of human rights was vernacularized and utilized strategically by the respondents, especially the human rights professionals. Then, the last section will introduce a few points suggested for future research.

One of the overarching features of this chapter can be highlighted at the outset. It emerged from the presentation of the three schemas for how transnational human rights can be used in the struggle for justice. Each schema (the supplemental, the progressive, and the transformative) saw human rights law as an instrument. The human rights professionals recognized that conflict was a necessary part of the process and accepted that law would be used as a weapon in conflict. They presented Turk’s (1976) argument that law, rather than being a means for dispute resolution or conflict settlement, is often a weapon to advance social conflict. Turk’s (1976)
general propositions stand as a reminder to look for ways in which the Thai experience may reflect broader lessons about the inter-relationships between law and society.

**Violence, Society, and Law**

The Thai people have been familiar with methamphetamine for a long time; it was known first as the diligent drug because it was used by laborers to cope with long working hours. Later it was labeled as crazy or mad tablets (ya ba). Since 1996, methamphetamine has been officially recognized as a dangerous narcotic like heroin for which the death penalty might be invoked. It was no longer seen as an aid to diligent workers, but was presented as a threat to moral order of the society, especially its children.

This redefinition was driven by educated and professional members from the middle class (e.g., educated, professional etc.) after the Asian financial crisis (in the second half of 1990s). The economic turmoil led some Thais to trade drugs for a big profit as an alternative means of survival as the use of ya ba became recreational. Methamphetamine has abruptly changed its role from being an instrumental stimulant for work to a social drug for which there is a large market. Recall Pongpaichit (2003) observes that, “A seller sells to a user, encourages that user to develop his own set of customers in order to generate the income for his own consumption.”

Strategically marketed, methamphetamine was no longer confined to only certain labor groups but transcended all segments of social classes, including school kids. In this time people of the middle class came to feel morally threatened by drug dealers. A *relative* social consensus emerged. A moral panic against methamphetamine could be sustained because, according to Burns and Crawford (1999, 158), “evil is oversimplified (e.g., through sensationalistic media accounts of select horrific incidents).” The media would play an important role in the redefinition of methamphetamine and the creation of a social threat, not unlike that which has been documented in other criminalization efforts (see Hagan 1980). Note that since the economic
boom during 1980s and the first half of the 1990s, the political and social influence of Thai middle class increased and were spread through the developing mass media. Laothamathas (1996, 210-11) observes that in that time the Thai middle class was a “major source…of media reports and opinion… [T]he middle class, in alliance with mass media, became strategic political actors, playing the role of public opinion formers.”

Although outnumbered by rural people who elect the government, it is the middle class in Bangkok that determines the political life of the government (Englehart 2003; Laothamatas 1996). The governments (before the Thaksin regime) responded to the moral concern of Thai middle class with a variety of campaigns to demonize drug users and dealers. Drug offenders have been publicly and officially portrayed, consistent with Cohen’s (1972) notion of moral panic as “folk devils,” craving to do violence against all walks of life, especially, the weak—women, and children. The vilification of the dealers was used primarily to persuade people to refrain from using drugs. The governmental efforts addressed demand issues and included efforts to educate people or prevent use.

Earlier governments did not seriously politicize the drug problems. It was the Thaksin regime that made drug problems as part of its populist policies to justify preemptive violence against drug dealers. His struggle was to attack the suppliers. Attachak Satayanurak critically portrayed the strategies of Thaksin’s populist policies in Krungthep Thurakit (a Thai newspaper, December 20, 2002). The following quotation describes how engendering a moral panic politicized the attack so that the government was empowered and dissidents marginalized; violence could be morally justified in order to “crush the enemy for the sake of safeguarding the nation.”

In the beginning, make people so thrilled by the policy that they believe that the party works for the impoverished or majority of the nation. From there, try to make the society
feel that there are enemies trying to undermine the country and that they or their colleagues are the only ones defending the country from those enemies. Eventually he (the prime minister) and his colleagues become the individuals who speak and act on the behalf of the people and the nation.

The populist dictatorship will generate disputes and the other side of the disputes will be blamed as the enemy of the nation and society. This condition gives populist dictatorship the legitimacy to crush the enemy for the sake of safeguarding the nation, with the consent of people who believe they will benefit from the state in future. (cited in McCargo and Pathmanand 2005, 187-8)

Thaksin’s populist policies made NGO human rights professionals who were interviewed in this research decry that they were socially marginalized during the Thaksin regime. Recall that Thaksin also successfully manipulated Thai mass media for his political interests, justifying the populist policies and baffling his critics. Like the U.S. war on terror, Thaksin’s war on drugs gained public support by oversimplifying the evil and making dissent suspect, something akin to Rothe and Muzzatti’s (2004, 336) reference to the simple dichotomy: “Either you are with us or you are with the [drug] terrorists.” Human rights professionals in this research discerned the high political gains for the Thaksin’s government to wage the war and the high political loss for those who would resist his war on drugs. Even the Democrat Party, the leading opposition party in that time, chose to play a passive role because it feared to lose its political popularity.

The extent of how successful the attempt was to create a moral panic came from the aggrieved people who were interviewed in this research. Surprisingly, many aggrieved people in this research also tolerated the war. They did not reject the war itself but only objected that they were underserved victims. The war on drugs could be waged without threatening social solidarity.

The social acceptance of the war led several human rights professionals to comment about the authoritarian ways of thinking that dominated Thai society. They thought the Thai people were too dependent on the leaders (including the bureaucrats). The people too readily deferred to
the actions and deeds of the leaders (and the bureaucrats), which were presumed to be effective in resolving societal problems. One human rights professional also indicated how this deference meshed with the rule of Karma among lay Buddhists in that bad consequences would be visited on bad people. Bad things would not have happened to people during the war on drugs (which was the authorities’ laudable effort to suppress evil) if the victims were not bad. The suffering during the war could be dismissed as being just at some level. The aggrieved recognized this attribution from their neighbors who would say things like, “if they (the aggrieved) were not involved with drugs, no one would come to kill them.”

Thaksin made use of law enforcement as political instrument during the war on drugs; his government exerted intensive political control over the bureaucracy (especially from February to April 2003). Some human rights professionals indicated they had never seen any government take such absolute control of the bureaucracy as did the Thaksin regime. A clear timeline and numeric targets (quantifiable practical outcomes) were immediately and concretely applied so that compliant officials could be rewarded and noncompliant ones punished.

Like the witchcraft hunting in the Continental Europe (Currie 1973), the Thai legal system during the war on drugs was “repressive.” As experienced by human rights professionals and the aggrieved, legal actors were able to exploit various legal provisions to facilitate the false arrests and wrongful seizure of properties without any constraint by external (political, judiciary and social) institutions. Like witchcraft hunting in the Continental Europe, Thai law enforcement and the bureaucracy had “a high degree of structured interest” (e.g., received from confiscating the properties of the accused) to label and hunt down drug dealers and abusers (Currie 1973, 357). Although the law on the books authorized forfeiture, the law in action aggravated its abuse.
In some ways, the “structured interest” during the drug wars was grafted on pre-existing practices regarding “legal gratuities.” There was folk knowledge about a subculture; some of the aggrieved in this research spoke freely about the role of money and connections to access justice. The corruption, especially within police organizations, has long been widely recognized: “Low-ranking policemen are alleged to collect money in various ways and pass it on to their seniors” (Pongpaichit and Piriyarangsan 1994, 122). Pongpaichit and Piriyarangson (1994, 126) portray the police organization as “a state within the state”—their professional subculture is independent from the control of the central government. The war on drugs politically succeeded by reinforcing this subculture; it provided more opportunity for monetary rewards. Some of the ways seemed legally authorized (confiscation); others seemed normative (legal gratuities). Turk (1976, 287) warns that the gap between black-letter law (which does not countenance corruption) and the behavioral practices (where corruption is regularized) means that “law itself promotes cynicism, evasion, and defiance… even among its representatives and practitioners [including lawyers and police].”

The repressive law enforcement during the war on drugs benefited from the quasi-legal construction of kha-tad-ton, a rhetoric invented by the government and used by the police to explain the mass killings as being the result of drug dealers killing each other. As identified by some human rights lawyers, these killings effectively prevented the intervention of the court (for autopsy trial) because the kha-tad-ton rationale denied any involvement by state officers precluding the legal need for court intervention. It enabled the legal actors to avoid any factual conflict in court and protected the police. The law itself became a weapon to avoid a deeper conflict. According to Turk (1976, 284), “[L]egal power provides both the opportunity and the means to accomplish the effective denial of the reality of conflicts by making it impossible or
inordinately difficult for them to be articulated and managed.” In this sense, law itself impeded justice by protecting those with more legal power (the police) and by denying a venue where conflicts could be aired for all to see. Kha-tad-ton helped hide larger conflicts in Thai society and institutionalized flaws in the Thai justice system.

Grave human rights abuses during the Thai war on drugs did not disrupt the society because the violence and abuses fell in a nexus of government policy contrivances, unusual legal provisions, unassailable practices of legal actors, and societal features that encouraged or protected the violations. This study clearly illustrates how law and society merge. Although what happened the Thai war on drugs is necessarily contextualized in Thailand at that time, the pattern of establishing the legitimacy for the modern government to use violence and stretch its own law has parallels with other events elsewhere, including for example, the American war on drugs.

In the beginning of the American war on drugs, public opinion was politically manipulated. A moral panic was created about the threat of drugs (especially crack), resulting in demonizing the illicit drug uses (Reinarman and Levine 1997a). The American society accepted pragmatic social values where the ends justify the means. Reinarman and Levine (1997b, 1) use the term “drug scare” to “designate periods when anti-drug crusades achieved “great prominence and legitimacy.” Drugs were portrayed not simply as folk demons but as national devils. As President Bush put it in 1989, among other things, “drugs are sapping our strength as a nation:” He also drew the problem of drugs as one of threat for general people in their daily lives: “Drugs are a real and terribly dangerous threat to our neighborhoods, our friends, and our families” (Elwood 1995, 103). The law was changed to address the threat. Prison terms were lengthened; conspiracy laws were broadened; forfeiture laws extended.
In day-to-day practice law enforcement discriminally targeted “blacks and Latino crack users and low-level dealers, and inner-city residents in general,” during the course of the war (Glasser and Siegel 1997, 234). It was the war against the marginalized and it was politicized to reinforce the structural inequalities (Steiner 2001). Illegal and unreasonable searches and seizures were evidently practiced, in a racial biased fashion to make a high number of arrests. Like the pointing finger to make anyone a drug dealer, like using hearsay and uncorroborated evidence during the Thai war on drugs, some American detectives depended on “single informants for [making] dozens of cases” (Glasser and Siegel 1997, 236).

The state and local police officials were also lured by monetary incentive through the Comprehensive Crime Act of 1984, which provided that money and/or property confiscated with the federal drug enforcement authorities could be shared with state and local authorities. The state and local police officers significantly increased their arrests accordingly (Benson, Rasmussen and Sollars 1995). A bureaucratic interest competed with the public interest (the benefit for the good society) in waging the war. Dickson (1968) outlines how such bureaucratic interests came to dominate drug policies about marijuana in the United States. Those who study law and society should be mindful of such possibilities as they try to understand events. Even if the particulars differ from place to place and time to time, there is the general parallel that structured bureaucratic interests within government can play important roles in developing and enforcing drug policies.

**The Lack of Fit of Justice with Law**

Several aggrieved felt wanted revenge against the state officers whom they blamed as the main source of their grievance. However, the constraints of the existing justice structure cut off most avenues to hold those responsible accountable. Strategically they could only pursue a “possible justice” through declaratory claims (as through the National Human Rights
Commission). The resulting declarations would vindicate their innocence (or that of their loved ones); their only instrumental consequence may be in securing the return of confiscated property, winning insurance claims, or reclaiming some respectability in their communities. The declarations did little to hold their abusers accountable or prevent future abuses.

One of the prominent themes emerging from those interviewed for this research was that authorities could act with impunity. The interviewees’ experiences with law during the course of the war on drugs led them to see police officers as being above the law. The aggrieved, on the other hand, were relatively powerless and under the law. They had to operate very carefully; they feared (and had reason to fear) reprisals. Location under the law implies that they sensed tension with law.

The aggrieved (and the human rights professionals) understood that law could be used as a weapon against the aggrieved if they dared to conflict with the authorities too much (see Turk 1976). Turk (1976) proposed that weak people could not readily turn to law; those with more power can utilize law better. This may be one reason why the aggrieved settled for pursuing only a “possible justice.” Scholars have described similar binds for less powerful people in other contexts. Like the welfare poor dealing with the welfare bureaucracy, the aggrieved in this research also realized that to invoke their rights (e.g., victim rights) is to “engage in an uphill struggle to make their voices heard…” because their claims were dependent on the same justice system and the bureaucracy that were implicated in the violation of their rights (Sarat 1990, 377).

The experience of being under the law began when the aggrieved were criminalized by the state officers and stigmatized by their neighbors, as drug offenders. In other words, they became deserving of punishment because they were legally and socially classified as being involved with drugs and hence as being evil and a threat. In this respect, the means of suppression—the
violence and extralegal searches and seizures—were not problems in themselves. The problem, as seen by many of the aggrieved, was that law enforcement targeted the wrong people. The aggrieved (and human rights professionals) rejected the official label of being involved with drugs that triggered the wrongful arrests and seizures or kha-tad-ton (the supposed drug-related killings). Some of their experiences illustrate Turk’s (1976, 285) point that using law to create social categories can “sharpen old conflicts” (some were named because of prior conflicts in the community) or “produce new ones.”

Most of the aggrieved realized the labeling power of the official blacklists—they knew that their community and the society judged them as being involved with drugs. They felt that they were relocated from the center of the community (those who opposed drugs) to the margins (those who made a living from drugs). Although some neighbors felt sympathetic to the aggrieved, they were too powerless to publicly demonstrate such feelings. The aggrieved decried that no one, except their close relatives, shared their feelings about the grievance. To feel compassion for the aggrieved (e.g., being a witness) might imply taking sides with drug dealers. 

The fear of reprisal ran deep and extended beyond the aggrieved. The use (misuse) of law during the drug wars created more social divisions and conflicts much as Turk (1976) anticipated would happen when law is used as a weapon.

The importance of declaratory justice to the largely powerless victims should not be undervalued. Not only was it the most possible and immediate option available to them, it could also help them overcome the label so they could move back into a more normal life in their communities. By being declared innocent, they could begin to return to mainstream society. The aggrieved in this research made a declaratory claim to the bureaucracy and the National Human
Rights Commission (NHRC) to counter the label—to “decriminalize” and “de-stigmatizing” themselves.

Note that for those who had already been extremely marginalized (e.g., those who used to be involved with drugs or those belonging to ethnic minorities like hill tribe peoples linked to previous drug campaigns), the 2003 war on drugs furthered their marginality. Actually, the disadvantaged and the marginalized groups would rarely invoke their rights (Bumiller 1988; Engel and Munger 1996; Nielsen 2000). Therefore, it might be possible that many other affected people did not attempt to lodge a complaint or advance a claim to bureaucratic agencies or to the NHRC for even declaratory relief.

The comments of human rights professionals who worked with the ethnic groups (hill tribe people) raised the prospect that the true extent of the abuses has not been documented. Recall their observations that many of the ethnic killings occurred in small groups and that the victims and their families had to be educated about their rights first and even then were reluctant to lodge human rights claims. When they could overcome their reluctance, most of their claims came to the NHRC three years after the incident with undisclosed names. As the least powerful of all, these victims could use law the least (Turk 1976). Not even a declaratory claim with the NHRC seemed possible for most of them. Moreover, their plight holds a potential lesson. For powerless victims, treating human rights as individual choices might deter many people from pursuing recourse through the idea of human rights. As individuals, victims are in poor positions to use law. Their claims may need to be aggregated and dealt with as a pattern of victimization across a group and pursued by a human rights organization that can generate enough power to use law when there is social conflict.
In this research, the more the aggrieved struggled for justice through bureaucracy, the more they felt powerless. The runaround process within the bureaucracy informed them of the largely futile nature of their claim. The decision of the bureaucratic agencies always affirmed the practices of the local police officers as consistent with the written rules and regulations. The aggrieved often denounced that the state officers were all on the same side. All of the aggrieved who lost their loved ones during the war were convinced that the cases would have been investigated more thoroughly if they were not linked to the war on drugs. Kha-tad-ton provided an easy way for the authorities to dismiss the victims’ concerns. Routine investigations of other, ordinary murders would have precluded the need for the family members to seek help from the bureaucracy to declare their loved ones as the undeserved victims.

Engel (2005) also found the same theme of legal consciousness of Thai northern people interacting with the state authorities related to tort claim. Respondents in his study often complained that “people with [official uniform] colors,” referring to all state officers, always stuck together. Even though they did not know each other personally, they helped each other. For example, in his study, Daaw, who was injured by an ambulance driver (who wore a uniform), was investigated by the local police officer for the accident. She felt that the local police officer tried to make her accept the status of the wrongdoer rather than the victim of the accident. Her following comment is similar to others recounted in this dissertation (Engel 2005, 507).

People with colors [state officers] have…more of an advantage than we do. They think they work at the same place. They know each other. Something like that. We go to them, and we want them to help, but they don’t help us. We don’t get any thing from them. In stead, they turn around and ask us angry questions…

In Thailand, the implicit and sometimes very explicit assistance among the bureaucrats is not an unusual phenomenon. In addition, people often confuse the bureaucratic interest with the public interest and think these interests are the same thing. As mentioned previously in the discussions
of witchcraft hunting in European Continental and the American war on drugs, governmental bureaucracies have their own interests, distinguishable from the public interest. Again, Turk (1976, 285) anticipated such problems when he proposed that law can be used to “exclude or distort information essential to an adequate comprehension of [the problem] and thus can impede or prevent conflict resolution.”

The bureaucratic loop the aggrieved in this research experienced did not examine whether they or their loved ones were deserved or underserved victims. Bureaucrats asked the local officers involved whether they followed the rules and regulations. The bureaucracy disdained what the aggrieved want most (the truth) but replaced it with the rigid rules and legal language to deny their legitimate claims. Thus, the aggrieved in this research felt distrust for law (and the state authorities). They did not naively believe law was a *neutral* and *objective* means to justice. Instead, to make the state officers do their work or to enforce law, non-legal factors, especially money and sen-sai (connections), were indispensable. Without them, people reflected themselves as always powerless and invisible beings operating *under* the law. As Turk (1976) noted, law can promote cynicism.

Beyond declaratory claims, those interviewed all realized that it would be impossible to pursue retributive justice against the specific police officers within the criminal justice system. It is impossible not simply because they discerned the ineffectiveness of the justice system but they *really* also feared reprisal as the price of challenging the local police officers. Recall that the feeling of fear penetrated all social sectors within the context of the war on drugs. The role of law, in fact, receded from their consciousness when they situated themselves in the larger social environment where might is still pervasively above law. Therefore, within the existing context,
law itself did not resolve the conflict but it would bring them more and perpetual conflict with the local police officers.

Like the respondents in Bumiller’s (1988) study of discrimination, in this research the aggrieved people’s attitude to their own survival also made them internalize pain and tolerate the impunity by avoiding invoking law against the abusers. In addition to concerns about physical survival (i.e., to avoid retaliation by the officers), economic survival was another issue raised. Economic concerns made it more likely for victims to “lump it”—to internalize their grievances rather than to pursue them (see Kidder 1983). The most striking case in this regard was reported by Rattana who had to pay money for the police officer to bring back her mother’s car after being stolen by the gunmen killing her parents. She chose to give up her rights. She sacrificed legal justice to relieve herself from debts because she was the guarantor on her mother’s car loan. She had to settle because there was the possibility of pursuing the abusers was nil; she thought they were above law. Law, therefore, is not central to her and others’ survival; it was an impediment to them rather than a tool for them.

In this research, the ethic of survival is not an individual, psychological choice of turning back to a normal life by neutralizing their defeat. Survival becomes part of the social code embedded in the structure of the justice system, it is a basic imperative. No matter how a victim may want to pursue law, he or she cannot lose sight of the risks. As seen in this research, the social code of survival would be culturally reinforced by the professional (defense) lawyers. This emerged in several ways. Lawyers might discourage their clients from pressing charges against the police officers for their abuse of power, or lawyers may even reject a case entirely if a local police officer or authority is being named as a party. The lawyers’ role in screening cases may not reflect judgments about the legal merit of the case as much as other considerations. A lawyer
plays his role as double agent—as a gate keeper to help people access the justice but at the same
time to limit that access if a case challenges existing power arrangements (Blumberg 1966-
1967). This has also been seen with American lawyers in divorce proceedings (Sarat and
Felstiner 1986, 126). They exposed their clients (the aggrieved) to legal justice that is situational
where the outcome is uncertain—things that were initially unexpected by the clients (the
aggrieved). These lawyers gained power from the limitation of law to control their clients and to
screen out the cases antagonistic to the status quo and the existing power relations. The screening
role of lawyers benefited the whole justice system because it prevented the aggrieved from
realizing that the whole justice system institutionally and systematically fails to provide them the
justice (Michelson 2006; O'Barr and Conley 1988, 159). The aggrieved in this study often
individualized their problems by blaming the local police officers. Lawyers would discourage
access to the legal system for the purpose of pursuing those officers. The victims were left to
suffer and little was done to alleviate that or to prevent future abuses because the lawyers would
close off access. Perhaps that was for the best interest of the client (given the fear of reprisal), but
it may have also been in the best interest of the lawyers who are invested in the extant justice
system and its institutions.

This is not to say that lawyers might not also fear reprisal. A lack of institutional support to
guarantee the safety of their clients and themselves, lawyers turn law as a weapon to deny the
closed community.” In larger theoretical framework, law, for professional lawyers and the
aggrieved, can generates more or less conflict and should not be thought of as suppressing it
(Turk 1976, 284).

Given pressure to contend for control of legal resources, differential non-legal power can be
expected to result at least initially in corresponding differences in legal power. The
party with greater legal as well as non-legal power may then be able to increase its edge over weaker parties, even to the extreme of excluding the weaker altogether from access to the legal arena, cutting him off from even the opportunity to advance his claims and defend his interests legally.

The aggrieved and defense lawyers strategically chose to use or not use law to generate less conflict with the local police officers. Ideally, the black letter law aims to resolve conflict and restore victims. Although law in the ideal provides rights (i.e., victim rights under the criminal law and the Constitution), the social experience and the cultural assumption (the larger social environment) will be what is important to inform people’s consciousness upon how to make sense of their social life when interacting with law (Bumiller 1988; Ewick and Silbey 1998; Nielsen 2000). Within the context of the Thai war on drugs, the struggle for retributive justice against the state officers through law did not make sense at all. Because there was no developed legal consciousness about rights, authorities could violate human rights violation during the war on drugs with impunity; the abuses of the war were sustainable.

Another factor which made it difficult to challenge the authorities was the presence of the abusers (e.g., killers, torturers, and framers) in people’s daily lives. In fact, the people in general were not absolutely convinced by the theory of kha-tad-ton (the killings among drug dealers). Recall that the polls (see Chapter 2) indicated that people felt ambivalent—they supported the war, but they also feared to be killed or framed as drug offenders. All of the aggrieved in this research were also very confident that the killings and other abuses occurring to their loved ones or themselves related to state officers. Knowing that the perpetrators were state officers (but not specific names) helped preserve the environment of threat without triggering the concern from the justice system.

This situation is not unique to the Thai war on drugs. As Afflitto (2000, 91) argues in the context of Rwanda’s ethnic cleansing that impunity was structurally robust because “there was
no removal of the perpetrators from the victim pool.” The aggrieved in this research also felt that the killers and abusers stayed among them. Recall Chana’s comment. His daughter and son-in-law were shot dead and criminalized as drug dealers during the war before all their properties were confiscated but later released because the local police officers made a false story about their drug-related criminality.

I do not fear the ordinary criminals as much as I fear the police officers because they have guns that can be used at anytime. The ordinary criminals, after they commit crimes, just run away...But the police officers are here with us everyday...They have ability to fabricate a [convincing] story, which others can read, to make us [seem] guilty of crime. (Chana/AM6/pp. 162)

By illuminating the fear of police in his daily life, Chana (and others who were aggrieved) discerned that the police officers are not simply legal actors whom he could challenge through legal means (by using available law within the existing justice system).

Like other marginalized people who are daily vulnerable to police abuse of power, such as street women (Levine and Mellema 2001), the aggrieved in this study realized the real power of the police officers. Their awareness grew from what was commonplace in their daily lives, not from the black letter law or formal justice system. The power of the police officers was actually highest because they could operate under the guise of law but did not need to use law at all (their violent force was above the law). Therefore, the aggrieved, who were under the law, developed a legal consciousness which Ewick and Silbey (1998) have termed “against the law”—law was something to be avoided or rejected in their daily lives. Their reluctance to turn to law as a recourse does not imply that they have low legal consciousness (Nielsen 2000). In fact, their avoidance and rejection of law is identified because they discerned how the power of law was implicated with other non-legal forms of force used by the local police officers.
Establishment of Human Rights Legality

At the first glance, the idea of human rights seems to have had little impact on either the state or the perceptions of the aggrieved. Several aggrieved people recognized the unenforceability of the decision of the National Human Rights Commission (NHRC). They felt unsatisfied with the limited role of the NHRC. The law that was available to them could not provide an adequate remedy. People who have little direct experience with law can overestimate its potency. For example, Americans often overestimate the power and the role of the courts, for instance, in dispute resolution in small claims court (O'Barr and Conley 1988).

The aggrieved in this study had high expectations for the NHRC. The NHRC often ordered the Royal Thai Police or the government to pay compensation to the aggrieved within 60 days and voided property forfeitures that occurred during the war. However, most of aggrieved people did not experience any change after receiving its judgment. There is concern that such a pattern of negative experience with the NHRC might suppress rather than sustain a rights consciousness (see Merry 2006a). Moreover, the process within NHRC tended to individualize human rights claims and depoliticize them. The individual declarations did not highlight the pattern of abuses or link it to government policies and systematic practices. The larger problem, that can be left unlearned in human rights cases, has been identified by Wilson and Mitchell (2003, 6): “the criminal and political networks are intertwined and perpetrators are both criminal and political agents, and their violent acts are both criminal acts and human rights violation.” The Thai war on drugs reflects well how deeper dimensions of the situation were left undeveloped. To borrow the language of Hastrup (2003b, 312), the NHRC used the rigid language of law to translate “‘thick’ moral (and political) problems into ‘thin’ legal representations” (see also Wilson 1997). The NHRC focused on the language of civil rights derived from the Constitution, the Criminal Procedure Code and the International Covenant on Civil and Political Rights (ICCPR) but did
not deal directly with the institutional responsibility and systematic nature of gross human rights violations (e.g., shared intentionality of the violators that led to crimes against humanity) during the war on drugs.

Nevertheless some aggrieved people strategically used the NHRC as the basis of their claim of rights against the state agencies but not for retributive justice. They used the NHRC ruling to try to get properties back from official forfeiture (with mixed success) and to declare themselves as underserved victims. The declaratory judgment from the NHRC helped transform their injuries into human rights violations that provided some legitimacy to their claims. It was their “possible” justice. The human rights law allowed them to articulate a social category that could be used as a weapon in social conflict (Turk 1976) even if in only limited ways. Turk (1976, 285), however, also acknowledges that “‘bringing things into the open’ frequently hardens existing boundaries, cleavages, and inequities … [in a way that] makes genuine settlement more difficult.” Recall that in Thailand victims were discouraged from pursuing their claims in other venues, perhaps because people understood Turk’s (1976) point. An NHRC declaration could not remove the risk of reprisal; it could not pierce the impunity of the perpetrators; it could not completely remove the stigma of having been named in the war on drugs.

Despite their relative legal impotence, the human rights claims did contribute to the construction of a human rights legality in Thailand in two ways. First, the claims from the aggrieved constitute conscious recognition that something out of the ordinary had taken place; their grievances were not ordinary facts of life. What happened to them was an injustice related to the abuses of state power in their communities. They blamed individual officers at the local level. Polls showed that the general population recognized the potential for abuse; the aggrieved
who prevailed brought its reality home. Some consciousness was raised, even if the continued presence of the abusers in the communities tinged it with distrust against law.

Second, the human rights claims to the NHRC helped create a record of systematic and widespread human rights violations. The bare truths of the cases were processed by the NHRC through both domestic law and the international human rights norms. The NHRC could integrate all complaints and report them together as a form of collective memory.

In the larger picture, the cumulative contribution of the aggrieved would be merged with the effort of human rights professionals to place responsibility with the government in that time for violating international human rights law. Therefore, the participation of the aggrieved to engage (both consciously and unconsciously) in creating the idea of human rights at the local level ideally helped broaden awareness about official violence and state crimes, appealing to both domestic and international audiences.

The work of human rights professionals makes the idea of human rights meaningful enough for the aggrieved and the society to adopt human rights as an alternative frame of justice when dealing with the state violence (Merry 2006b; Stammers 1999; Tuijl 1999). In this study, the idea of human rights was invoked by human rights professionals through three schemas—supplemental, progressive and transformative. To borrow from Turk (1976), each of them provided a different strategy for using human rights law as a weapon in social conflict.

The supplemental schema explains the idea of human rights as a principle invoked together with the domestic law. Human rights is another tool to add to the domestic law’s tool kit. This schema involves providing legal arguments against the practices of the state authorities on a case by case basis. The idea of human rights is a threatening (symbolic) weapon (Turk 1976). If the individual officers do not pursue the rule of law ascribed by Criminal Procedure Code and the
Constitution, their individual actions can be challenged and human rights principles can be part of that challenge. In this sense, the universal principle of human rights supplies human rights professionals (especially human rights lawyers) with more ideological power to play the legal game with the state officers in the domestic legal arena. Human rights arguments can be used both to humanize the legal practice and to lessen the gap between law in the books and law in action. Legal rights formulations are supplements to various legal techniques and strategies that are employed in the respective cases. As supplemental, they will dominate the legal exchanges. Moreover, the realities of the litigants (the fear of reprisal and the need for survival in the communities) constrain human rights professionals from advancing claims that surpass their clients’ actual need to return to normal lives with no more problems. Recall that the domestic justice occurs in close communities. Therefore, ordinary lawyers who are part of those communities might not be useful to advance the cause of human rights legality. In addition, some human rights professionals at the local/regional level recognized that their work for the issues related to the war on drugs was rather defensive. They could use human rights in an individual case to help a client who had been caught up in the war on drugs.

The progressive schema pits the idea of international human rights against state actions and its domestic legal practices. In this approach, law is clearly used as a weapon in social conflict (Turk 1976). The progressive schema moves the analysis to the structural problem of political oppression by the central government. To invoke this schema, human rights professionals at the national level invoke the idea of international human rights through legal language against the government. To the extent that domestic law itself was corruptly used by the government, the idea of human rights can be utilized as an external force, a form of power directly challenging the state practices and rejecting the jurisdiction of the domestic law. By invoking this schema,
Thai human rights professionals at the national level wanted to place pressure upon the government through transnational human rights networks, along with their own (domestic) resistance to the government. Brysk (1993, 261) puts it in the context of Argentina under the last military dictatorship (1976-1983).

The state can be transformed from above and below because it may control territory, force, and resources, but it cannot monopolize information and legitimacy. Social movements that lack conventional power can turn their weakness into strength by projecting cognitive and affective information to form international alliances.

The Thai war on drugs received some response from the transnational human rights networks. Human Rights Watch and Amnesty International, for example, reported on the gross human rights violations during the war on drugs. In this way, any challenge from human rights professionals from below (from Thailand) would be “informed, sustained, and amplified by international pressure from above” (Brysk 1993, 262).

However, the challenge from Thai human rights professionals was difficult to sustain. Unlike the Argentine human rights movements, the Thai human rights efforts could not effectively mobilize the grieving families of victims in collective ways. In Argentina, human rights could be organized around family-based groups; the Argentine human rights activists were politically but not socially marginal. In the war on drugs, Thai human rights professionals (including NGOs) were not socially supported. In addition, the human rights movement during the Thai war on drugs could not establish itself collectively because human rights professionals lacked funding. Some human rights professionals in this research decried that their activities against the war on drugs seemed to be odd jobs; the organizations had been instituted for purposes other than to resist the war on drugs. The foreign sources of funding also reduced a great deal of financial support for various Thai NGOs. The international funding conditions human rights professionals to select the issues and to pattern their social movement (Merry
The NGOs in Thailand were politically and socially marginalized; they lacked adequate funding and little of that which they had was dedicated to issues arising from the war on drugs. They had little power. According to Turk (1976), they were in a weak position to use law as a weapon in social conflict.

Although the progressive schema could not yield much change, the pressure from transnational human rights regime still helped Thai human rights professionals to delegitimize the Thaksin government for committing gross human rights violations. The government recognized some threat of being blamed for human rights violations and responded to it by three forms of denial—literal, interpretive, and implicatory (Cohen 1996a). The government denied that the legal elements of crimes against humanity or other gross human rights violation were not present within the context of the war on drugs.

The government engaged in literal denial by bluntly claiming that nothing happened; the charges levied by human rights professionals (and international organization agencies) were groundless. The government often argued that no verbal and written orders mandated the state officers to kill drug dealers and innocent people. The government literally denied responsibility.

The government invented the rhetoric of kha-tad-ton and used it as interpretive denial. The rhetoric blamed the drug dealers for the mass killings. Given the history of re-labeling methamphetamines from an instrumental “diligence” drug to a threatening “mad pill”, the citizenry was tolerant of the extreme measures given the laudatory goals of the war on drugs. The war was broadly supported. The culture could accept the kha-dat-ton interpretation of the mass killings.

The role of the government could also be denied because the victims could be implicated as being involved with drugs. The implications could be made at both the aggregate level and in
individual cases. In individual cases, the investigating police officers often reported finding tablets of methamphetamine (ya ba) or other illegal items; evidence that they planted at the scene. In the very small number of cases where the state admitted that officers were involved in a death, the victim was implicated for resisting with force. In these cases the officer’s action was dismissed as legitimate self-defense. By implicating the victims, the government could deny its involvement in gross human rights abuses.

Part of the value of the kha-tad-ton rhetoric used across cases was the implication of the victims having been evil drug dealers. The government also raised implicatory denial by justifying the killings as unavoidable casualties of waging the war for a better society. It tried to convince the society that those labeled as drug dealers in the officers’ blacklists deserved the violence. The Thaksin administration also used implication to silence dissent. It oftentimes condemned its condemners as those who took sides with the drug dealers. This message also influenced the perception of the general people and other social institutions tolerating the daily killings and other violence during the war on drugs (especially the first three months from February to April 2003).

From the experiences of the aggrieved and human rights professionals, the effort for the justice was blunted because of the cultural acceptance by society generally of the state’s denial. This kind of cultural denial can be “a potent defense mechanism against acknowledging human rights abuses” (Welch 2003, 14). The cultural denial, in fact, is not “a matter of secrecy, in the lack of access to information, but an unwillingness to confront anomalous or disturbing information” (Cohen 1996b, 494). Recall that the Thai people did not naively bind completely into the theory of kha-tad-ton. They were suspect of the potential of the abuse of power. Nevertheless, there was cultural denial about what happened. Such a cultural denial can loom
large; the challenge of human rights professionals is how to vernacularize the global idea of human rights in the face of such widespread denial. This may be one of the reasons some of the human rights professionals presented a transformative schema.

Those human rights professionals, who operated at the national level, shifted their beyond the structural problem of the government and focused on the larger Thai society. They discerned that the problem of human rights violation stemmed from people’s idea system and social values. Therefore, these human rights professionals invoked a transformative schema to challenge the society itself. They backed away from legal language because the use of rights language to measure and represent harm cast the human rights violations during the war on drugs as only a matter of the perpetrators and the victims (Ross 2003). They did not want the idea of human rights to be limited by thinking that appropriate claims could come from only the victims who encountered only extreme sufferings (Woodiwiss 2006, 34). In this sense, general people can distance themselves from human rights violations because the extra-legal methods used during the war were not employed against them or their own families. Recall that for many of the aggrieved, the problem was not the systematic practices used during the war on drugs, but the fact that they didn’t deserve to be a victim. To some human rights professionals, the struggle needed to move to another plane if change was to occur.

There remains considerable ignorance in Thai society (and elsewhere) about the gross human rights violations during the war on drugs. Perhaps the locus of human rights ethics needs to change. According to Cosananund (2003, 81), a Thai law professor, “People believe that the ownership of human rights belongs to the self, not humanity in general.” The transformative schema tried to bring the issue of sufferings and justice at the marginality to the center of Thai people’s lives. It wanted to use the ethic of human rights as belonging to all humans to the center
of a social debate. The argument is that the human rights idea will generate social conflict and change. Although the language used in such a transformative debate may eschew legalese, its principles are rooted in human rights consciousness. In some ways, this schema addresses Turk’s (1976) concern that using law as a weapon may harden boundaries and cleavages that makes change and resolution less likely. It emphasizes consciousness raising about human rights but does not use typical legal strategies to pursue the change.

The challenge facing Thailand is not unique. Like the mobilization of rights consciousness for civil rights, for example, in the workplace (see e.g., Munkres 2008, 470), human rights professionals in Thailand had both to convince people about their own vulnerability (that their rights could be violated during the war) and get them to accept the rights of others “as legitimate” and to “honor mandated responsibilities to promote them.” As Merry (2006a; 2006b) would put it, they had to vernacularize human rights. In this sense, the transformative schema might try to convince general people to see themselves as survivors rather than bystanders who distanced themselves through the dichotomized legal language of victims and perpetrators. Being survivors, they need to recognize they had the good luck not be victimized during the war. Inasmuch as the general people feared abuses of power even as they supported the war, there was an opening to develop this kind of consciousness. In the transformative schema, the human rights ideal was a weapon to challenge the “common sense” of people about their irrelevance to the violence during the war. The goal was and is to mobilize the expressive dimension of human rights discourse to “challenge the way in which relations and structures of power are embedded in everyday life by providing alternative values and norms as well as morally validating the identities and perspectives of those oppressed by the existing relations and structures of power” (Stammers 1999, 1006-7; see also Merry 2006a; Engel and Munger 1996). In the process,
observers warn that almost by default, human rights activists who represent the marginalized will themselves also marginalized (see Clarke 2003). That certainly occurred in Thailand during the war on drugs where the Thaksin government took great pains to paint any dissenters to its policies and practices as outsiders taking sides with the drug dealers.

To prevent a backlash from the society, which supported the violent suppression of drugs, human rights professionals often concealed what they really wanted to challenge (the violence per se as always an unacceptable means to even laudable ends). In some ways, they too had to pursue the “possible” justice, so they settled for trying to establish the truth about what happened to entirely innocent victims. Thai society was less antagonistic to this emphasis than it would have been to naming and blaming the state and its agents for crimes against humanity. The entirely innocent victims were those whose killings did not make sense at all, those who had little to gain from involvement with drugs and who had no history of drug use. Human rights professionals often presented the striking false stories made up by local police officers who tried to label every killing as kha-tad-ton (killings among drug dealers). After the war on drugs, a few human rights professionals at the national level began bringing a few entirely innocent victims’ families to talk with the public, for example, through TV programs. But their activities were often blocked and controlled in a variety of ways by the Thaksin administration.

While the focus on entirely innocent victims (or the underserved victims in the language of the aggrieved) might appeal to the larger society, it simultaneously excluded the sufferings of other so-called gray victims, those who had some link to drugs in some ways at some part of their lives, directly or through their relatives (i.e., guilt by association). Merry (2006b, 41) suggests that “If they [human rights professionals] present human rights as compatible with existing ways of thinking [only the entirely innocent victims did not deserve violence], these
ideas will not induce change. It is only their capacity to challenge existing power relations
[violence would be deserved for no one] that offer possibilities.” Applying Merry’s (2006b)
argument to the Thai war on drugs suggests that the exclusive focus on entirely innocent victims
was incomplete. It would be less likely to challenge the social arrangements that facilitated the
violence and abuse and, therefore, less likely to bring about change. Therefore, to establish the
idea of human rights into Thai society, human rights professionals need to transcend the people’s
common sense (which rejects violence only when happening to the entirely innocent victims) to
a “good sense” of rejecting all forms of extra-legal or ultra vires violence as a means for social
ends (Hunt 1990). The argument is that only when the violence is truly challenged as
unacceptable means for human relations will a transformation in society occur. A transformative
schema, therefore, is a model for basic societal change.

**Conclusion and Suggestion for Future Research**

The social support for the war on drugs was maintained to some large extent through fear
not only of drug dealers but of the government as well. Because of the general support for the
war on drugs, it is safe to say that the people did not fear the government more than drug dealers.

The fear of drug offenders was politically manipulated as “moral panic.” The concept of
moral panic refers to not only the problem of criminality between criminals and the victims, but
it also draws concern to other people (i.e., members of the middle class as representative of
moral order) who think that a threat of crime is not far from their daily lives. They tolerate the
pre-emptive defense of the order, even if carried out in violent and undue ways. Societal
tolerance, however, could only allow the abuses during the war on drugs; it did not cause the
abuses. And the abuses did not guarantee future safety for anyone.

At some level, the most important cause of the human rights violations was the
politicization of the drug problems by the Thaksin government, as part of its populist policies
that monopolized the imposition of violence against drug dealers and demonized not only drug dealers but also the dissidents. The politicization of drug problems justified not only the state violence (through legal and non-legal practices), but it also invited the society to exert a violence of a different kind against the government-labeled drug dealers on the blacklists—through something like “ostracism.” This is why the immediate and possible justice the aggrieved sought was to move themselves back to the center of the society, something that could be accomplished by presenting themselves as “undeserved victims.”

The violence, even if it was extra-legal, was not problematic in itself; the problem, rather, was constructed as directing it at the wrong people. The rule of law was not important to how Thai people experienced social life or part of their legal consciousness. The importance of law recedes when the larger environment successfully sustains a culture of impunity for state agents who abuse human rights.

The aggrieved in this research chose, for the most part, to survive outside of the law. They feared reprisal if they chose a recourse to law to make retributive claims against the abusers. Ironically, by fearing to make claims, the culture of fear remained intact and the justice system maintained status quo. For example, the courts could appear as “just,” “neutral,” and “independent” from extra-legal influences because the conflicts never reached the court given the culture of fear. According to the aggrieved in this research, money and significant sen-sai (connections) were more important than due process. The aggrieved developed a legal consciousness against domestic law. This reality made it more difficult for human rights professionals to vernacularize the idea of human rights law and to make it a part of the lives of the victims and others in Thai society.
A consciousness against domestic law provided an opportunity for human rights professionals to bring change by introducing the human rights ideal as an alternative framework. The challenge is how to accomplish that. A supplemental schema, wherein human rights notions would be grafted into domestic law functions, may be the easiest strategy to initiate, but it may not work well. It faces a challenge in many cases because of the aggrieved people’s consciousness against law. It may be difficult for lay people to draw distinctions between domestic law (which they rejected because it contributed to their suffering) and transnational human rights formulations (which after all were found to some extent in the Thai Constitution without benefiting the aggrieved). Therefore, a human rights supplemental schema might bring the least social change because domestic legality retains a dominant role.

On the other hand, a human rights progressive schema seeks to replace domestic legality with a transnational human rights framework. It ideally challenges the existing power arrangement (and as such may be difficult and impractical to accomplish). In other contexts (like Argentina), success depended on both top-down pressure and bottom-up support. Some international organizations were willing to exert top-down pressure from the outside about the Thai human right violations. Even from the outside, however, there were mixed messages as International Narcotics Control Board essentially whitewashed the Thaksin regime’s drug suppression efforts in the immediate wake of the killings. Moreover, no bottom-up indigenous pressure could be mounted and sustained to challenge the government’s policies and practices. Efforts to do so were fraught with risk of reprisal. Such efforts were cast as aiding the drug dealers and they found little societal support.

Some of the most astute human rights professionals recognized the conundrum. To be effective, supplemental and progressive schemas would depend in Thailand on some societal
transformations. Seeking punishment of perpetrators and securing just deserts for the aggrieved would not work well without invoking a transformative schema. Only when constitutional civil liberties and the idea of human rights become part of the collective conscience can we expect a justice where abusers are held accountable and victims made whole. That is unlikely to occur if the only interested parties are those unlucky enough to be aggrieved and the perpetrators (who enjoy protection by existing arrangements). Everyone must have a stake in human rights as at least potential victims; no one who would violate human rights can be protected. To bring change, the transformative schema must integrate human rights ideals into people’s ways of thinking and acting. The important application of the transformative schema is to understand that human rights legality is enforced and re-created not in the official institutions or in a legal fashion but in the daily lives and social practices of the people themselves.

Future research should proceed in several directions. First, more research needs to be done in Thailand to understand the dimensions of what happened there in the war on drugs and what has happened since. That research should extend interviews to people who were affected by the war on drugs but who did not file a complaint to the National Human Rights Commission (NHRC). Their experiences and legal consciousness may be similar or different from that of the aggrieved in this research. More research should also be conducted among the hill tribe peoples; the extent of the suffering for the ethnic groups needs further documentation.

One of the issues that should be explored is cultural denial. What role did it play for those affected by the war who did not file a complaint? What role did it play among the ethnic groups? What role did it play in the general populace? Research should be conducted by interviewing the general population, especially the middle class and educated people, about what they knew, the nature of the threat they felt, what they denied, how they felt about the killings and abuses, and
whether their views have changed. Because cultural denial is such an important obstacle for localizing the idea of human rights, it needs to be a central focus of future research. To the extent that Thailand is currently experiencing an insurgency, similar issues could be posed about law and the suppression of this “threat.”

Research should also be conducted outside of Thailand to see whether the patterns and explanations developed here to understand the war on drugs provide insight into other instances of human rights violations or questionable legal practices, even those that may not rise to the level of gross human rights violations. For example, drug wars in other places at other times employed some of the techniques used in Thailand, if in less extreme ways. Will the schema aid our understanding of what happened in these other contexts?

Research could specifically explore how the three schemas identified in this research help understand successes and failures in dealing with other kinds of human rights violations in other places and at other times. The schemas can be refined or replaced as more studies are conducted and evidence across human rights tragedies is collected and systematically compared. The provisional lesson to be taken to the field from this research in Thailand is that the human rights idea is not actualized just by the visible hands of the professionals (i.e., state officers, lawyers, human rights professionals). To some extent, the fate of human rights lies in the hands of the many invisible people in society who can make more or less room for human rights ideas in their everyday lives.
Information Sheet
Department of Sociology and Criminology & Law
PO Box 117330
University of Florida
Gainesville, FL 32611-7330, USA

I am a graduate student from Thailand studying in the Department of Sociology and Criminology & Law at the University of Florida. I am conducting research into how people think about law as related to the war on drugs in 2003. The purpose of this study is to understand people’s opinions, perceptions and experiences about law and justice during the war on drugs and its aftermath.

Up to 100 people may be interviewed for this research study.

If you choose to participate, we shall engage in an interview which is designed to take about two hours. You do not have to answer any question you do not wish to answer and you may stop the interview at any time. With your permission, I will audio tape-record the interview. I will transcribe the tapes and put your words into writing and I will not write down any information that identifies you or others. Only I as the researcher can access the tape. The transcription will be done after each interview. I will transmit computer records of the transcribed interviews to my supervisor in the U.S. and destroy the local copies. After making the written record, the tapes will be erased and destroyed. The information from the interview will not be reported to any agency. The goal for the interview is to write academic papers only. May I tape you? (Taping will start if permission is given orally.)

The researcher will respect your confidentiality and will not identify anyone in publications or reports. Any information that identifies you by name or phone number will be destroyed upon completion of this project. You will not receive any direct benefits by participating. The participation in the interview will have no impact on legal claims pursued or advocated by you. Your alternative is to not be in this study. You will receive NO compensation for participation. The only possible risk that we anticipate is that talking about the war on drugs may bring back painful memories. You are free to withdraw your consent and discontinue participation at any time. Nothing will happen to you if you stop the questions. If you need to talk about the case in which you are involved with someone else, you can contact Kessarin Tieawwsakul at the Office of National Human Rights Commission (02-141-3937 for office hours or 089-232-7729 for 24 hours). If, at any time, there are questions about this procedure, you may contact me, the Office of National Human Rights Commission or Western Institutional Review Board at the addresses below.

The research may help us understand how law is viewed by people and how it can be utilized by them. I will be happy to share my general conclusions with you if you write to the Office of National Human Rights Commission at the address given below and request a summary. If you would like to participate, please read the following statement. You may keep a copy of this form that includes my name and contact information as well as that of my supervisor. It also includes contact information for the Office of National Human Rights Commission and the Western Institutional Review Board. WIRB is a group of people who perform independent review of research.
Thank you,

Suchat Wongsimak
Ph.D. Candidate/Interviewer <suchat@ufl.edu> or 089-004-6736

Dr. Lorna Lanza-Kaduce
Committee Chair <lkll@crim.ufl.edu> or (1) 352-392-0265 (USA)

“I have read the procedure described above. I agree to participate in the procedure, and I have received a copy of this description.”

If you have any questions or concerns about your rights as a research participant, you may contact the Office of National Human Rights Commission, The Building B, 6-7th Fl., 120 Moo 3, Chaengwattana Rd., Lakki, Bangkok 10210, Thailand (Phone: 02-141-3800; Hot line: 1377).

You may also contact Western Institutional Review Board, 3535 Seventh Avenue SW, Olympia, WA USA 98508-2029 (phone: 1-360 252-2500; email: www.wirb.com).
APPENDIX C
THAI INFORMATION SHEET

เอกสารข้อมูล
วิศวกรรมควบคุมและอาคารศูนย์วิทยาการและสุขภาพ
หุ. ป.ม. 117330
วิศวกรรมควบคุมรัฐจังหวัด
เพลิงแก้ววิชาบ.ร. รัฐจังหวัด 32611-730 ประทุมราษฎร์

คณะผู้มีสิทธิ์ที่จะใช้ข้อมูลในเอกสารนี้มี

การศึกษาวิจัย

1. รายงานการศึกษาวิจัย

2. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

3. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

4. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

5. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

6. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

7. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

8. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

9. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

10. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

11. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

12. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

13. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

14. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

15. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

16. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

17. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

18. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

19. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์

20. รายงานการเข้าสู่สถานที่ที่อยู่ของผู้มีสิทธิ์
คุณสามารถติดต่ออุทุมพรได้ที่สาย客服 ได้ที่สำนักงานคณะกรรมการดีเวลลอปเมนต์ .Trim มีผลต่อการติดต่อ 089-323-5729 (ตลอด 24 ชั่วโมง) หากคุณมีข้อสงสัยใด ๆ เกี่ยวกับกระบวนการคุณสามารถติดต่อสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ หรือสำนักงานคณะกรรมการราษฎร์biaการประชุมทางวัฒนธรรม (Western Institutional Review Board หรือ WIRB) ตามที่ระบุไว้ด้านล่าง

การศึกษาวิจารณ์สามารถจะใช้ในเวลาประชุมที่มีความคิดเห็นเกี่ยวกับกฎหมายของวิจัย และหากที่ทำการวิจัยประสงค์จะขอข้อมูลข้อความของแผนการวิจัย คุณสามารถติดต่อสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติด้วยที่อยู่ด้านล่าง หากคุณต้องการให้ความเห็นของสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติด้านที่อยู่ด้านล่าง

หากคุณประสงค์ที่จะเข้าร่วมการศึกษาวิจัย โปรดติดต่อกับพนักงานของ WIRB เพื่อให้คุณสามารถเข้าร่วมการศึกษาวิจัยได้ ทั้งนี้ คุณสามารถติดต่อได้โดยมีกระบวนการคุณสามารถติดต่อได้โดยมี

ขอขอบคุณครับ

สุทธิ วงศ์ภูมิ
นักศึกษารับปริญญา doctor มหาวิทยาลัยศรีนครินทรวิโรฒ <suchat@uf.edu> หรือหมายเลขโทรศัพท์ 089-004-6736

Dr. Linn Lanza-Kaduce
ประธานคณะกรรมการ <lkkk@erim.ufl.edu> หรือหมายเลขโทรศัพท์ (1) 352-392-0265 (โทรศัพท์รับรอง)

"คุณสมบัติในการรับการตรวจวิจัยของผู้ติดต่อของสำนักงานของ WIRB และแผนการวิจัยที่จะเข้าร่วมในการรับการตรวจวิจัย"

หากคุณมีข้อสงสัยหรือข้อขอให้กับ WIRB ที่คุณสามารถติดต่อกับสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติได้ที่สาย客服 ได้ที่ 089-323-5729 (ตลอด 24 ชั่วโมง) หากคุณมีข้อสงสัยหรือข้อขอให้กับ WIRB ที่คุณสามารถติดต่อกับสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติได้ที่สาย客服 ได้ที่ 089-323-5729 (ตลอด 24 ชั่วโมง)

Western Institutional Review Board (WIRB) เป็นสถาบันที่มีที่ตั้งที่ด้านนี้ที่ด้านนี้มีการตรวจวิจัยโดยอัตโนมัติ

wirb/wrgtrcmk/20090241/trans.03-25-2009/wirb.doc
APPENDIX D
ENGLISH INTERVIEW GUIDE

Interview Guide

By Suchat Wongsinnak

The interview does not want you to mention the particular names, locations or dates of events. With your permission, I will audio tape record the interview. I will transcribe the tapes and put your words into writing and, I will not write down any information that identifies you or others. Only I as the research can access the tape. The transcription will be done after each interview. After making the written record, the tapes will be erased and destroyed.

The purpose of this study is to understand people’s opinions, perceptions and experiences about law and justice during the war on drugs in 2000 and its aftermath. I am asking different people to share with me their experiences, concerns, beliefs, and understandings toward these issues. There is no right answer for the asked questions.

A. Introduction
   1. Could you tell me a little bit about yourself?
      Probes:
      a. Tell more about your educational and occupational background?
      b. (For human rights professionals only) What do you do as human rights advocates?
      c. (For the aggrieved only) How were you affected by the war on drugs?
         If possible, please refer to any other people by their relationship to you (e.g., son, sister, cousin, or friend) rather than their names. Please do not mention the particular locations or dates of events.

B. Law and Social Order
   2. What comes spontaneously to your mind when you hear the words, “Kha-Tad-Ton”?¹
      Probe:
      a. How has the label of “Kha-Tad-Ton” influenced how people in general understand what happened during the war on drugs?
      b. How has the “Kha-Tad-Ton” label affected your effort to secure justice?

   3. In general, how do you think what happened during the war on drugs is different from ordinary criminal cases occurring at the other times?
      Probes:
      a. How difficult do you think it is to gather the evidence needed to identify and prosecute those people responsible for rights violation during the war on drugs? Why is it difficult or easy?

¹ There are many definitions of Thai word, “Kha-Tad-Ton.” Generally as reported in newspaper, on the one hand, police often described it as the killings among drug dealers to protect police from uncovering links to them. On the other, human rights professions often criticized that “Kha-Tad-Ton” might be the killings committed by some police officers to get an achievement point in the war-on-drugs campaign.
4. It has been said that the inability to identify who committed “Kha-Tad-Ton” is the incapacity to do a justice. What do you think about this statement?

5. In general, how do you evaluate the roles of the government and of the local state authorities during the time of the war on drugs? Please do not mention the particular names, locations, or dates of events.
   Probes:
   a. How was law used during the war on drugs?

6. Overall, how effective do you think Thai law has been in helping those affected by the war on drugs?
   Probe (For human rights professionals only):
   a. Has the use of Thai law had any unintended consequences?

7. (For human rights professionals only) Do you have any idea about how the community reacted to the families of those affected by the war on drugs? Was the reaction positive and helpful to the families? Was it negative? Please do not mention the particular names, locations, or dates of events.
   Probes:
   a. How did the affected families deal with their communities?
   b. Did they have to do anything different or make adjustments to live in their communities? If so, how did they adjust?

8. (For the aggrieved only) How did the community react to your grievance and your efforts to secure justice? Again, please do not mention the particular names, locations, or dates of events.

C. Law and Social Change
9. (For human rights professionals only) How did you come to be involved with the issue of human rights violation occurred during the war on drugs?
   Probes:
   a. What are the most important issues you deal with?
   b. To what extent do you think your efforts are successful?

10. (For the aggrieved only) How did you deal with what happened in your case?
    Probes:
    a. What were the most important issues you dealt with?
    b. Did you think your efforts were successful?

11. In general, what are the advantages and the limitations of using law to address what happened during the war on drugs?
    Probes (For human rights professionals only):
    a. What kinds of problems can Thai law address?
    b. What kinds of problems can human rights law address?
12. (For human rights professionals only) From your opinion, how do the affected people understand what happened during the war on drugs?

13. (For human rights professionals only) Do the aggrieved people with whom you contacted ever change how they think about what happened during the war on drugs because of talking with you? If so, how?

14. (For the aggrieved only) Before making a claim to the National Human Rights Commission, had you ever talked with or contacted any human rights professional?
   Probes:
   a. If yes, how did that communication occur? What did the human rights professionals suggest you do?
   b. If no, did you consult anyone before making such claim to the National Human Rights Commission? If so, what suggestion did he or she give to you?
   c. In case that you consulted no one, can you tell me what motivated you to assert such claim?

15. (For the aggrieved only) How did you benefit by making your claim?

16. (For the aggrieved only) What did you learn from making claim to the National Human Rights Commission?

17. In your opinion, why are many affected people reluctant to make legal or human rights claims for their grievance?

18. (For human rights professionals only) It is said that human rights claim is just political rhetoric rather than a practical way to pursue justice and remedies. What do you think about this statement?
   Probes:
   a. How will people affected from the war on drugs benefit by making a human rights claim?
   b. Are human rights ideas necessary?
   c. Has the use of human rights law had any unintended consequences?

D. Others
19. Is there anything else that you would like to say to me?

20. Do you have any questions for me?

21. (For human rights professionals only) Could you refer me to other human rights lawyers and/or human rights workers whom you know and whom I can interview?
APPENDIX E
THAI INTERVIEW GUIDE
3. โดยทั่วไปแล้ว
คูมูลค่าสั้นเกิดขึ้นในระหว่างการที่จะควบคุมผลลัพธ์ผลิตภัณฑ์ทางสอดคล้องการสอดคล้องของคุณภาพในการผลิต

ทั้งหมดหรือบางส่วน

a. การรวบรวมผลผลิตที่จะมีผลกระทบต่อคุณภาพผลิตภัณฑ์
b. การพิจารณาผลผลิตที่จะมีผลกระทบต่อคุณภาพผลิตภัณฑ์

c. การควบคุมความเข้าใจกับการวัดตามมาตรฐานการผลิต

4. การทราบว่า

การไม่สามารถควบคุมผลิตภัณฑ์

โดยจำเป็นต้องมีการทราบความสามารถในการควบคุมการผลิตภัณฑ์ คุณภาพความคืบหน้าอย่างไรก็ตาม

5. โดยทั่วไปแล้ว

คูมูลค่าสั้นเกิดขึ้นในระหว่างการที่จะควบคุมผลผลิตภัณฑ์

ทั้งหมดหรือบางส่วน

a. การรวบรวมผลผลิตที่จะมีผลกระทบต่อคุณภาพผลิตภัณฑ์
b. การควบคุมความเข้าใจกับการวัดตามมาตรฐานการผลิต

6. โดยทั่วไปแล้ว

คูมูลค่าสั้นเกิดขึ้นในระหว่างการที่จะควบคุมผลผลิตภัณฑ์

ทั้งหมดหรือบางส่วน

a. การรวบรวมผลผลิตที่จะมีผลกระทบต่อคุณภาพผลิตภัณฑ์
b. การควบคุมความเข้าใจกับการวัดตามมาตรฐานการผลิต

7. โดยทั่วไปแล้ว

คูมูลค่าสั้นเกิดขึ้นในระหว่างการที่จะควบคุมผลผลิตภัณฑ์

ทั้งหมดหรือบางส่วน

a. การรวบรวมผลผลิตที่จะมีผลกระทบต่อคุณภาพผลิตภัณฑ์
b. การควบคุมความเข้าใจกับการวัดตามมาตรฐานการผลิต

ทั้งหมดหรือบางส่วน

a. การรวบรวมผลผลิตที่จะมีผลกระทบต่อคุณภาพผลิตภัณฑ์
b. การควบคุมความเข้าใจกับการวัดตามมาตรฐานการผลิต

ทั้งหมดหรือบางส่วน

a. การรวบรวมผลผลิตที่จะมีผลกระทบต่อคุณภาพผลิตภัณฑ์
8. (สําหรับผูทําความสัมพันธภาพ) ผูทําความสัมพันธภาพจะต้องมีความรับผิดชอบในการรักษาความสุขสุขภาพของผูใช้การให้บริการที่ดีที่สุด ทั้งหมดที่เกิดขึ้น ซึ่งหน้าที่สำคัญของผูจัดการจะต้องดูแลเรื่องดังนี้

C. กฎหมายและข้อกำหนดที่เกี่ยวข้อง

9. (สําหรับผูทําความสัมพันธภาพ) ผูทําความสัมพันธภาพจะต้องปฏิบัติตามกฎหมายที่เกี่ยวข้องและข้อกำหนดที่เกี่ยวข้อง ตามที่เกิดขึ้น ทั้งหมดที่เกิดขึ้น

 risking ความสัมพันธภาพจะต้องมีความรับผิดชอบในการรักษาความสุขสุขภาพของผูใช้การให้บริการที่ดีที่สุด

10. (สําหรับผูทําความสัมพันธภาพ) ผูทําความสัมพันธภาพจะต้องปฏิบัติตามกฎหมายที่เกี่ยวข้องและข้อกำหนดที่เกิดขึ้น

11. โดยทั่วไปแล้ว ผูทําความสัมพันธภาพจะต้องปฏิบัติตามกฎหมายที่เกี่ยวข้องและข้อกำหนดที่เกิดขึ้น

12. (สําหรับผูทําความสัมพันธภาพ) ผูทําความสัมพันธภาพจะต้องปฏิบัติตามกฎหมายที่เกี่ยวข้องและข้อกำหนดที่เกิดขึ้น

13. ผูทําความสัมพันธภาพจะต้องปฏิบัติตามกฎหมายที่เกี่ยวข้องและข้อกำหนดที่เกิดขึ้น

14. (สําหรับผูทําความสัมพันธภาพ) ผูทําความสัมพันธภาพจะต้องปฏิบัติตามกฎหมายที่เกี่ยวข้องและข้อกำหนดที่เกิดขึ้น

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15. ด้านรูปแบบการเรียนรู้ภาษาไทย

คุณได้รับประโยชน์จากการเรียนรู้ของคุณอย่างไรบ้าง

16. ด้านรูปแบบการเรียนรู้ภาษาไทย

คุณได้รับประโยชน์จากการเรียนรู้ของคุณอย่างไรบ้าง

17. ตามความเห็นของคุณ

อะไรคือสิ่งที่คุณคิดว่ามีประโยชน์สำหรับคุณในการเรียนรู้ภาษาไทย?

18. ด้านความท้าทายที่คุณได้เผชิญหน้า

กล่าวถึงว่า

การเรียนรู้ภาษาไทยมีความท้าทายอย่างไร?

19. ทั้งหมดที่คุณได้กล่าวไป

คุณสามารถเขียนได้หรือไม่?

20. คุณมีความสามารถอื่นใดไม่?

21. ด้านความท้าทายที่คุณได้เผชิญหน้า

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BIOGRAPHICAL SKETCH

Suchat Wongsinnak received his Bachelor of Arts (Public Administration) from Chiang Mai University and Bachelor degree of Law from Ramkhamhaeng University, Thailand. After graduation, he had worked as a lawyer at the Office of Administrative Courts, Bangkok, Thailand, for almost three years before rewarded the Royal Thai Government Scholarship to study Master and Ph.D. degrees in the United States. After completing the Master of Arts in political science from University of Florida, he enrolled in the doctoral program at the same university but in Department of Criminology, Law, and Society in 2005. His research interests include state crimes, critical criminology, law and society, human rights, and administrative justice.