HPTN 058: Rapid Policy Assessment for China and Thailand
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HPTN 058: Rapid Policy Assessment for China and Thailand
Introduction

The reports contained in this document represent an important milestone for the HPTN 058 Protocol implementation process. This trial entitled “A Phase III randomized controlled trial to evaluate the efficacy of drug treatment in prevention of HIV infection among opiate dependent injectors” will be the first randomized trial to compare two approaches to drug treatment as HIV prevention. Participants in this trial will be active drug injectors recruited from community settings at HPTN Sites in Chiang Mai, Thailand and Guangxi and Xinjiang Provinces, China. Recognizing the potential for trial participation to disclose the status of the drug using participant and to increase the risk of legal and social harms, the HPTN 058 protocol included the following statements:

“Given the status of illegal drug use, the associated social stigma and perceptions of drug users held by many members of the communities in which the study will be conducted, social harms could occur purely as a result of participation in a study targeting drug users. These could include discriminatory treatment and violence associated with possible disclosure of participants’ drug or sex-related behaviors or of their HIV serostatus. Prior to site activation, a review of local and national policies and practice affecting injection drug users will be conducted. The purpose of this review will be to verify that law, policies and enforcement strategies do not place participants in the research at significantly elevated risk of arrest, incarceration, physical harm, unwanted disclosure of drug use, or loss of access to health care relative to injection drug users not participating in the research.

The assessment will consist of two components. The first component will review and analyze the law relevant to injection drug use by examining laws concerning drug control, drug use, access to health care and privacy of medical information in each study country. This review will identify and collate constitutions and any treaties that have the force of law, statutes passed by the national, regional or local legislature, administrative regulations with the force of law and relevant court decisions interpreting these laws or regulations. This review will be conducted with the close involvement of independent legal experts in each study country. The second component will assess how these laws are put into practice and what possible influence they have on the risks and benefits of IDU participation in the study. Qualitative data regarding the effects of law on IDUs will be gathered, along with data on stigma, social risk, and social attitudes as they apply to IDUs. These data will be collected via interviews with key informants in the legal and public health fields as well as current and former injection drug users.

Data will be collected via standardized interview forms by independent researchers at each site. The review will provide a narrative summary and analysis of the law and its likely effects on study participants. As these laws, policies and practice strategies can be expected to change over time, this review will be updated on an annual basis for the duration of HPTN 058. (HPTN 058 Protocol, Version 1.0; Section 6.3; 7 October 2005)

The work was done by teams of independent researchers from Thailand and China using a modified approach to Rapid Policy Assessment and Response (for more information see www.rpar.org). This strategy was developed in recognition of the fact that public health, especially as it relates to vulnerable and stigmatized populations, is intimately linked to both “Laws on the Books” and “Laws on the Street.”
In this application of Rapid Policy Assessment, the protocol team asked the question “Does participating in this trial increase risk of arrest and incarceration?” The conclusions for each site are clear. Being an injection drug users brings with it a substantial amount of risk. Being in the trial does not appear to elevate this risk and may even have a protective effect provided that the study is implemented in an open manner with the approval and cooperation of local authorities.

We believe that these reports also have implications for HIV prevention research beyond this specific protocol. Globally, many of the populations most severely impacted by HIV and AIDS are vulnerable to legal and social discrimination, neglect and abuse. Consequently, as we approach the third decade of the AIDS epidemic, it is critical that prevention science continue to develop and evaluate mechanisms to protect trial participants from harms that may accrue merely by their participation in clinical trials research. We hope that these reports contribute to this ongoing effort and common goal.

For the HPTN 058 Protocol Team,

David S. Metzger, Ph.D.
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RE: HTPN 058 Rapid Policy Assessment Final Reports

Dear Dr. Metzger:

Enclosed please find Rapid Policy Assessment final reports for Guangxi and Xinjiang, China and Chiang Mai, Thailand, as commissioned by the HPTN 058 Protocol Team, along with an ancillary report examining the role of ‘law on the books’ as it affects injection drug users (IDUs) in Thailand. In accordance with the requirements of Section 6.3 of the 058 Protocol, we have conducted a two-part review of the local and national policies affecting drug users to verify that law, policies and enforcement strategies do not place participants in the research at significantly elevated risk of arrest, incarceration, physical harm, unwanted disclosure of drug use, or loss of access to health care relative to injection drug users not participating in the 058 study.

We conclude that while drug users in Thailand and China, as elsewhere, are subject to a variety of possible harms due to stigma and criminalization, these harms are not more likely to occur because of participation in this research as long as local governmental officials, particularly those in law enforcement, are involved in and approve of the project. In fact, enrollment may even have a protective effect if researchers successfully interface with local officials. U.S. Sponsors, researchers and IRBs should be aware, however, that our qualitative and quantitative research indicates that law and culture in the study areas do not always embody the privacy protections present in the United States, and widespread stigmatization of known drug users exists. Full findings and recommendations are contained in the summaries of the two reports.

We note that both formal and informal legal risks to drug users can quickly shift, particularly in the study countries. As such, we strongly recommend that the requirement of Section 6.3 that these reviews be updated on an annual basis for the duration of the study be scrupulously followed to ensure that a changing legal or political environment does not lead to unacceptable risks to study-enrolled IDUs.

With best wishes,

Scott Burris for the Rapid Policy Assessment Team
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The Social and Legal Risks for Injection Drug Users Participating in HPTN 058 in Urumqi and Heng Chien, China

A Rapid Policy Assessment

Zhang Youchun, Fu Xiaoxing, Wang Zhengzhi, Corey Davis and Scott Burris
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Acknowledgments
Summary

The National Institutes of Health has funded *HPTN 058: A Phase III randomized controlled trial to evaluate the efficacy of drug treatment in prevention of HIV infection among opiate dependent injectors* ("the 058 Trial"). The trial will be conducted at Heng Chien, Guangxi Zhuang Autonomous Region, Urumqi, Xinjiang Uighur Autonomous Region of China and Chiang Mai, Thailand. Recognizing the potential for injection drug users (IDUs) to be exposed to excess risk of arrest or other negative legal consequences by virtue of their participation in the research study, the HPTN 058 protocol requires the annual monitoring of law and its implementation related to IDUs participating in the trial. To assess the risks to IDUs of participating in the clinical trial, the HPTN 058 Protocol Team commissioned this report.

Using a Rapid Policy Assessment methodology, local researchers in China collected relevant laws and conducted interviews with 44 informants at each of the two China sites. These interviews took place between April 18 and May 19, 2006. Informants included research participants, injection drug users, public health personnel and law enforcement officials. Informants were asked about police practices in relation to drug users, research projects involving drug users and public health interventions targeting drug users.

The research produced the following key findings:

- Active drug users are subject to arrest and compulsory treatment or education through labor;
- Chinese law enforcement is conceptualized as a community enterprise, and citizens are expected to report deviant behavior and help promote rehabilitation and reintegration;
- IDUs are subject to registration and their status as current, recovering or former drug users is not generally considered to be confidential;
- Local police officers have considerable discretion in how they enforce drug laws and administrative security regulations;
- Any public health program for IDUs – Syringe Exchange Programs (SEPs), methadone replacement programs, and clinical research – cannot go forward without communication with local police;
- If there is cooperation with police, the chance of direct interference/arrests at the research site or in connection with research activities is low;
- This protective effect, however, does not extend to research participants who may have committed other crimes, or if crimes are committed at the research site;
- The police do not generally arrest IDUs just for drug use, but do use the threat of

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1 A separate report repeats this analysis for the Thailand site.
arrest to get information about dealers and, occasionally, to extort bribes;

- Given communication between researchers and police, research participation may be protective against police action;
- IDUs are a mobile population and are subject to arrest for drug possession and related crimes, so there may be a problem with retention and regular attendance;
- Stigma and discrimination vary between the two sites, with a more tolerant attitude exhibited in Heng County.

We conclude that while drug users in China, as elsewhere, are subject to a variety of socioeconomic and dignitary harms due to stigma and criminalization, these harms are not more likely to occur because of participation in this research as long as local law enforcement is involved in and approves of the process. In fact, enrollment may even have a protective effect if researchers successfully interface with local police. U.S. Sponsors, researchers and IRBs should be aware, however, that although a move towards increased privacy is underway, Chinese law and culture do not place great weight on protecting the privacy of drug users participating in research.
Introduction

1.1 Background of HPTN 058 and this Rapid Policy Assessment

HPTN 058 is a Phase III randomized controlled trial to evaluate the efficacy of drug treatment in prevention of HIV infection among opiate dependent injectors. It will recruit active drug users in two sites in China: Heng Chien, Guangxi Zhuang Autonomous Region and Urumqi, Xinjiang Uighur Autonomous Region. The total duration of the trial will be approximately four and a half years, with 1460 opiate dependent injection drug users (IDUs) enrolled. A previous study, HPTN 033, was conducted in the same sites in China between 2002 and 2005.

As a general matter, the known stigma of drug addiction and the criminalization of drug possession and sale make it reasonable to presume that drug users are vulnerable to social and legal risk as a result of participating in medical research. They could, for example, be identified as drug users by their participation in research or police could use the research site as a convenient place to apprehend drug users. While plausible, this presumption is untested as an empirical matter, and the risks depend to a considerable degree on cultural, legal and economic factors at the particular sites. Rather than base an ethical risk assessment on speculation and generalizations, the HPTN 058 research team, the responsible IRBs and other ethics advisors agreed to conduct an empirical investigation of social and legal risks to research participants at the study sites. This study, a Rapid Policy Assessment (RPA), was conducted in 2006.

The RPA addresses law and law enforcement practices as structural factors that influence the social risks that may be faced by study-enrolled IDUs. It is premised on the view that the influence of law and law enforcement practices on study-enrolled IDUs has not been adequately studied, and that this influence is significant enough to warrant examination and the use of tactics to decrease possible risks to study enrolled IDUs from legal actors. There is a paucity of evidence on the manner in which participating in a study such as the 058 Trial may affect IDU risk due to law enforcement activity. This study attempts to discern such risks and how they may be alleviated or eliminated.

Data collection was carried out by country investigators Dr. Zhang Youchun from the

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2 A third site will operate in Chang Mai, Thailand. The Thai site is the subject of a separate report.
3 Rapid Policy Assessment is a method for collecting information about how laws and law enforcement practices influence health. It was devised by a team led by Scott Burris, Patricia Case and Zita Lazzarini, with funding from the Open Society Institute and the National Institutes of Health. For more information, see www.rpar.org
China Center for Disease Control and Ms. Fu Xiaoxing from the Institute of Anthropology, Renmin University. Laws were collected by Wang Zhengzhi of the Globe Law Firm, Beijing. Zhang and Fu drafted the final report, which was edited by Davis and Burris.

1.2 Purpose of the Rapid Policy Assessment

Investigators were asked to implement a Rapid Policy Assessment (RPA) protocol at each study site prior to the initiation of HPTN 058. The RPA is designed to elicit information about how laws on drug use and other related laws are actually applied to IDUs involved in research projects.

The specific aims of this project are:

1) To use RPA tools to document laws and law enforcement practices in Heng Chien, Guangxi Autonomous Region and Urumqi, Xinjiang Uighur Autonomous Region that may increase risks faced by the injection drug user participating in the 058 Trial;

2) To compile and deliver to the 058 Trial protocol team and other stakeholders a comprehensive risk analysis based upon the findings of the RPA that clearly indicates any evidence of elevated risk to participants that may result from their screening and enrollment in the study;

3) To recommend to the protocol team strategies to reduce or eliminate possible law and enforcement related risks posed by study screening and enrollment procedures.
Research Procedures

Laws related to possible research risk were collected and analyzed by a qualified Chinese lawyer using standard legal research methods. National and local laws were collected in nine domains: drug use (including drug control laws, syringe laws, needle exchange programs and drug treatment); HIV-specific criminal exposure or transmission; criminal justice/procedure; right to health care and right to HIV treatment; reportability of HIV, AIDS, and STDs; HIV testing laws; privacy of medical information; anti-discrimination provisions, and any other laws that influence risk or stigma among drug users in a significant way.

The qualitative research team was trained on the applicable law and research procedures prior to conducting interviews. The researchers identified and recruited 44 key informants at each of the two study sites. The research protocol was reviewed and approved by the applicable Institutional Review Boards at Temple University and the China Centers for Disease Control.

2.1 Details of Interview Subjects

The RPA identifies three types of key informants:

1) **systems participants** who have a good overall view of police/health/drug systems which may impact on the transmission of HIV among IDUs;

2) **interactor participants** who interact with IDUs on a day to day basis and are able to provide information about how each system works at a practical level; and

3) **IDU participants** who describe their daily interaction with law enforcement, as well as the legal, public health, and drug treatment systems with which they interact.

Among the 44 informants, 8 were “system” informants who are higher level officials from local public health department and public security departments, or other observers who have information on how the law enforcement system works as a whole in the study location, 20 are “Interactors” who are front-line police officers, public health clinicians, research staff, treatment staff, and other functionaries who work within the system and have perhaps deeper though less broad knowledge of its workings; and 16 are injection drug users (IDUs) who meet the following criteria:

1) At least 18 years old;
2) Willing and able to provide informed consent for study participation;
3) Opiate dependent;
4) Injected opiates at least twelve times in the last 28 days, according to
self-report;
5) If female, medically unable to become pregnant or using an effective method of contraception.

These IDU inclusion criteria track those for enrollment in the 058 trial.

Among the 44 key informants interviewed in Heng Chien, 3 are Zhuang minorities, 41 are Han majorities; 6 are females (with 1 female IDU), and 38 are males. Among the 44 informants interviewed in Urumqi, 20 are Uygur minorities, 2 are Hui minorities, 22 are Han majorities; 17 females are (with 4 female IDU), and 27 males.

<table>
<thead>
<tr>
<th>Location</th>
<th>Gender</th>
<th>Ethnic group</th>
<th>Marital status</th>
<th>Living area</th>
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<td></td>
<td>M</td>
<td>F</td>
<td>Han</td>
<td>Ethnic Minorities</td>
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<td>15</td>
<td>1</td>
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<tr>
<td>Urumqi</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td>14</td>
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<tr>
<td>Total</td>
<td>27</td>
<td>5</td>
<td>17</td>
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**Table 1** Social-demographic background of the IDU informants by site

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<td>Prison official</td>
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<td>Judge</td>
<td>1</td>
</tr>
<tr>
<td>Prosecutor</td>
<td>1</td>
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<tr>
<td>Policy-makers or local authorities</td>
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<tr>
<th>Legal interactors</th>
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<tr>
<td>Police: Street-level</td>
<td>2</td>
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<tr>
<td>Prison guards</td>
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<tr>
<th>Public health systems</th>
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<tr>
<td>Narcological or drug treatment facilities: officials</td>
<td>1</td>
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<tr>
<td>NGO director of organization working with HIV</td>
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<tr>
<td>Harm reduction director</td>
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<table>
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<tr>
<th>Public health interactors</th>
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<td>Public health clinicians</td>
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<tr>
<td>Emergency/casualty department physicians</td>
<td>2</td>
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<tr>
<td>Harm reduction workers</td>
<td>2</td>
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<tr>
<td>Narcological or drug treatment facilities: staff</td>
<td>2</td>
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<tr>
<td>NGO staff working in HIV</td>
<td>2</td>
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</tbody>
</table>
2.2 Recruitment & Interview

A local research team at each site cooperated with local researchers to identify potential systems and interactor informants. By calling the informants and/or visiting their offices, the team arranged a time and confidential place to interview each informant individually.

Before the interview, the researchers explained the study and proposed role for the participant in the study. The discussion between the potential participant and the researcher included the role of confidentiality, the rights of research subjects, steps taken by researchers to protect confidentiality, and that participation is entirely voluntary. A written consent form was reviewed with the participant, and the participant was given a copy of the form if he or she desires one. After receiving the participant’s oral consent to the interview, the researchers interviewed him/her. Interviews were performed using a semi-structured guide provided and developed by the U.S. investigators.

Based on information about appropriate ways and locations for IDU recruitment developed from local researchers and the system and interactor interviews, IDUs were recruited by the research team and asked to participate in an ethnographic interview. IDU participants were recruited three ways. First, the researchers asked some of the interactor informants, such as village doctors and methadone treatment clinicians, who have close contact with IDUs to solicit their participation; secondly, the researcher visited the syringe exchange sites and methadone treatment clinics at the site and approached the IDUs about participating; thirdly, the IDUs who had been interviewed would be asked to refer their IDU contacts (snowball sampling). All the IDUs were interviewed at a private place and were identified by code only (“IDU-1”, ‘IDU-2’).

Each participant received the equivalent of US$10.00 for their time and transportation expense.

2.3 Interview Data Analysis

After finishing all the interviews the raw interviews were transcribed. These transcripts
were then summarized by the research team, and key findings were noted. After all
interviews were completed and transcribed, the research team conducted a qualitative
analysis of the data using standard research methods. That analysis is summarized in this
report.
3.1. Chinese Law on Drug Control, Treatment and Harm Reduction

Modern China has a long record of efforts to eliminate drug abuse. Eliminating drug production and use was cited as one of the highest priorities of the new Communist regime, which initiated major campaigns in this vein as early as 1950. In 1990, the National People’s Congress of China issued a law against drug use, drug smuggling, illegal drug production and drug trafficking. Drug possession, distribution and production are subject to serious punishments, including the death penalty. As to drug users, the law prescribes detention for no more than 15 days a fine of less than 2000 RMB.

Besides these penalties, the drug user could be sent to a detoxification center for 3 to 6 months’ treatment. If he/she is found to have relapsed after detoxification, he/she could be sent to a reeducation camp for up to 3 years’ ‘rehabilitation labor’. However, individual drug use, including possession of small amounts, is often handled under the Security Administrative Punishment Regulations, a set of general powers exercised by the public security organs to respond to breaches of public order deemed too minor for criminal punishment. It should be noted, however, that the measures that flow from these regulations are sometimes very similar to criminal punishment.

Drug users who are identified by the police are subject to registration, and may be entered into treatment or re-education through an administrative process. The “treatment,” which in many if not most cases can include cold-turkey detoxification, lasts between three months and one year. People in treatment facilities are expected to work. In theory they are entitled to a wage but in practice their “earnings” typically go to paying the costs of their confinement. Drug users who repeatedly relapse graduate to another sort of

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5 National People’s Congress Standing Committee’s Decision on Drug Prohibition (Adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990); Article 8.
6 Id.
administrative rehabilitation facility, the Education through Labor camp. Several hundred thousand Chinese are confined in these facilities, about a third of whom are drug users.\textsuperscript{9} Conditions in these facilities vary, but are rarely comfortable or sharply distinguishable from penal institutions. The system of administrative detention has been criticized by human rights advocates on many grounds, including the lack of due process or judicial oversight, poor conditions and unpaid labor.\textsuperscript{10}

The administrative security regulations also authorize the police to fine offenders, either instead of or in addition to commitment to a treatment or reeducation facility. The payments are not (in most cases) illegal bribes, but legitimate fines authorized by law to be charged and collected by public security officials, and which inure to the central government treasury.\textsuperscript{11}

Voluntary methadone maintenance treatment and syringe exchange have both been authorized as anti-HIV measures and operate legally in China. However, police are permitted to observe drug users at methadone facilities, and incarcerate them if they continue using illegal drugs while enrolled.\textsuperscript{12} Data are presently lacking on the questions of how effective and user-friendly these facilities are.

It should be noted that the “right to privacy” as understood in the United States does not exist in China. The national regulation covering medical recordkeeping states that physicians and other personnel are required to keep patient medical information (including status as a drug user) confidential. However, no penalty is enumerated for disclosure.\textsuperscript{13} The law governing physicians does provide that physicians may be suspended from practice or referred for prosecution if “serious consequences” result from disclosure.\textsuperscript{14} However, these provisions do not appear to extend to non-physician staff

\textsuperscript{9} See Biddulph op cit.; Peerenboom op cit.
\textsuperscript{11} See, e.g., Decision of the Standing Committee of the National People’s Congress on the Prohibition Against Narcotic Drugs, Appendix 1.
\textsuperscript{12} Notification on Cooperating with Health Department to Ensure the Smooth Implementation of Pilot Work on Community Drug Maintenance Treatment for IDUs. Article 4(2): “The local public security offices are in charge of check of the conditions of drug addicts and supervision of the treatment. And if the drug addicts break the above regulation and continue to abuse heroin, they will be sent to house of correction for drug addicts to abandon habits by local public offices.”
\textsuperscript{13} Regulation on Medical Establishment Case History Management, Article 6. (Ministry of health, 2002-09-01).
and it is unclear how these regulations coexist with the duty to report drug users. Additionally, the security bureau has the legal right to request, review, copy and subpoena or seize research records if they are required for criminal cases.  

Although failure to keep research participant information private is “forbidden,” it is unclear whether this is actually a crime and what the punishment would be. Indeed, since law enforcement officials can issue search warrants on their own authority or simply ignore legal requirements for independent oversight, it is unclear what level of protection such laws provide. Also, it should be noted that researchers may be legally obligated to report to the authorities that a research participant has tested HIV positive. However, the disclosure of this information to others is prohibited by law. Doctors who violate this law face criminal penalties, and in May of 1999, the Ministry of Health, with the approval of the State Council, published an administrative order declaring that personal information about HIV/AIDS records must be kept secret.

3.2. Local Policing in China: Theory and Practice

Policing in China in the Communist Era was based on a notion of comprehensive, grass roots social control. Public security was to be “the work of the whole people.” Social control and oversight was exercised by local bodies including the street committee, the resident committee, and the neighborhood mediation committee. This in turn was more a continuation than a departure from traditional Chinese approaches to crime prevention and social control, which depended on institutions like family, clan and village. Although economic and social change has reduced the effectiveness of these social mechanisms of observation and control, considerable social transparency remains in many places and the idea that drug addiction (or treatment or confinement) might be considered a “private” or “confidential” matter is not widely accepted. Rather, community involvement and

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15 Regulation on Medical Establishment Case History Management; Article 14. (Ministry of health, 2002-09-01).
16 Shanghai Notice on Reinforcing AIDS Prevention and Cure.
18 Shanghai Notice on Reinforcing AIDS Prevention and Cure.
20 Id.
awareness is, at least as a matter of theory or ideology, seen as important to ensure rehabilitation and reintegration.

The administration law on the books is committed largely to the discretion of local public security officers. Local agency leaders at the supervisory level and street level police have considerable leeway to decide whom to arrest and how to charge those who are detained. This discretion is, of course, constrained by the formal legal rules (though administrative law in China now allows public security branches to act with extremely limited judicial oversight) and by party leaders. So, for example, periodic crackdowns will be driven by national or regional political forces. Arrest quotas are also used as a management tool, and result in periodic bursts of arrest activity. Bribery to avoid arrest is reported, and officials may exact administrative penalties legally as described above. It should be noted that local authorities have no statutory mandate to create exemptions from national law.

In sum, drug users in China, as in most other countries, face real risks of arrest and involuntary treatment or punishment. As in other countries, this is said to protect both public order and, ultimately, the drug user, though the effectiveness of these methods in achieving either goal is unproven. China does have regulations barring physicians from revealing patient data. However, because China has a registration system for drug users and a broad view of social control through neighborhood involvement, a person’s status as a drug offender or user may become known. Thus, drug users who are identified through police action (but also simply through social means) are subject to whatever level of adverse social pressure and stigma prevails in their communities.
Key findings from the Qualitative Research

4.1. Shared findings at the two sites

The researchers found that the role of laws and law enforcement practices in structuring health risks for IDUs in Heng Chien and Urumqi share many similarities.

First, any public health program enrolling IDUs – Syringe Exchange Programs, methadone replacement programs, and clinical research – cannot go forward without cooperation with local police.

NGO staff, health researchers, and local health officials at both Heng Chien and Urumqi highlighted the importance of negotiation and cooperation with local police when implementing and operating public health programs involving IDUs. This is both because some IDUs are actively involved in drug dealing and because even non-dealing users may be arrested and enrolled in forced detoxification. Considering the harsh measurements against drug use and drug traffic taken by police at all levels, it is impossible for the health researchers and NGOs to carry out any public health programs for IDUs without cooperation and communication with local police before initiating the program:

“We have a county-level AIDS Working Committee which involves Public Health, Public Security, Education, and many other departments. It is a multi-sectoral coordinating committee on AIDS. In the committee, only the Public Security Department is the one with which we keep very close touch. It is impossible for us to initiate a program involving IDUs without sufficient communication with local police in advance.” (Public Health Department Official, Heng Chien)

“It would be too late for you to coordinate with local police after their law enforcement activities have had negative impacts on you program. Actually, we had been negotiating with the police station long before the initiation of our program.” (Community-based syringe exchange program administrator, Urumqi)

“Whether or not we will go to program sites to arrest IDUs [for confinement in a detoxification center] depends on our director’s attitude. If he tells us nothing specifically about it, we will.” (Street level police officer, Heng Chien)

Sometimes, the police may make use of clinics and program sites involving drug users to arrest them. When talking about the police’s interference in the methadone maintenance
clinic and arresting IDU-clients who were suspected of committing crimes, one treatment physician attributed this to the hospital dean’s poor communication with the police:

According to the national regulation, IDUs who are clients of the methadone clinic could be released if they are arrested and put in a detoxification center during the first 10-15 days of methadone maintenance treatment. But only one out of ten could be released in this circumstance. Sometimes, the police even come here [to the methadone maintenance clinic] to arrest our IDU clients only because they suspect that the clients are involved in criminal cases. The reason these things happened is that the hospital dean did not fully communicate with local police. If he did, these things would not have happened. (Treatment physician at methadone maintenance clinic, Urumqi)

In this circumstance, attaching high importance on negotiating and cooperating with local police when implementing programs involving drug users is likely a necessity. Local CDC and health researchers would typically explain the work and develop an understanding with the police before the initiation and during the early stage of programs involving IDU participants. Based on this understanding, the local police will not interfere with the program. Sometimes, they may even facilitate it.

“At the initiative of the syringe exchange program in July 2005, we invited the police officials and street level police of the Shuimogou District to attend and introduced the program to them. At the early stage of the program, the police did not understand the program very well. We had a regular meeting every month to coordinate the police and introduce our work to them. After a few months, the police officials agreed that they would not make use of the syringe exchange site to arrest IDUs. They even gave a list of IDUs in the district to us.” (Syringe exchange program manager, Urumuqi)

During the implementation of a program, regular negotiation and communication with the police are also very important. In Heng Chien, a peer educator working at the syringe exchange program was detained after the police got some information that there were drug dealers at the program site. Hearing the news, the health officials negotiated with the police, which resulted in the release of the peer educator. From then on, not a single IDU has been arrested by the police at the site.

“The Epidemic Prevention Station began syringe exchange program in two villages in October 2005. The peer educators who are in responsible for disseminating the clean syringes and collecting used ones are designated by the police and health department together. The police officials promised that they would not arrest IDUs at the site.” (Researcher, Heng Chien)
“We need continuing communication with the police because some street level police may not know about our work very well even if their officials understand and support for our work. Street level police are even more influential to our work. They need to be well-informed.” (Researcher, Urumqi)

Sometimes, the police officials would even be invited to be involved in programs to facilitate the program implementation. In Heng Chien, the health official of Heng Chien invited the director of the detoxification center to work as a member of Community Advisory Board (CAB) for HPTN 033 in 2002. In Urumqi, the health department director of Urumqi Detoxification Center was once a CAB member for HPTN 033.

“I know HPTN very well because I am a CAB member of the program. The program staff would report to the CAB about the program process regularly and ask for my help if they need it.” (Staff Member, Heng Chien detoxification center)

“Most of the CAB members of HPTN 033 are from related departments such as public security and public health. Obviously, the principal investigator wants them to coordinate with the program.” (Administrator, Urumqi Detoxification Center)

Second, if there is cooperation with police, the chance of direct interference/arrests at the research site or in connection with research activities is low.

The researchers and CDC staff at both Heng Chien and Urumqi think that the chances of direct interference/arrests by the police at the research site or in connection with research activities is very low if there is cooperation and communication with local police. Interference cannot, however, be ruled out. There are examples in the past of police interference at the syringe exchange program at Heng Chien and the methadone treatment clinic at Urumqi.

In Heng Chien, the police had once taken action when they heard that there were drug dealers at the syringe exchange site. They detained the peer educator at the site without communication with the health department in advance:

“Someone reported to the police that there were drug dealers at the site. Then the police went to the site and arrested the peer educator. The epidemic prevention station officials negotiated with the police. After three days incarceration, the educator was released. From then on, police never arrested IDUs at the sites.” (IDU-7, Heng Chien)
Although the Ministry of Public Security released a directive\(^ {23} \) which prohibits the police from arresting IDUs around methadone maintenance clinics, the police did make use of the clinic to arrest IDUs a few times in Urumqi because the IDU-clients had committed a crime or were suspected of committing a crime.

“The police came here (the clinic) to arrest IDU-clients because they sell drugs or commit other crimes. It is no good for our work, but it is the police’s job.” (Physician at methadone maintenance clinic, Urumqi)

“Sometimes, the police will come here to arrest our IDU-clients only because they suspect that they are involved in ongoing criminal investigations.” (Medical staffer at methadone maintenance clinic, Urumqi)

The police at both sites stated that if crime including drug injection or selling goes on at a syringe exchange program site or methadone maintenance treatment clinic, they might interfere:

“There are tens of thousand drug users in Urumqi, and only a small fraction of them participate in programs. We do not need to use known sites of programs to arrest them. But if the participants commit a crime, it is another issue.” (Supervisory police officer, Urumqi)

Obviously, this kind of action has negative effects on harm reduction programs. For instance, the IDUs who are the clients of the methadone maintenance clinic may stop attending it:

“In 2005, I began my methadone maintenance treatment. But once, the police came to the clinic to arrest someone who had committed a crime. I was scared. I stopped taking methadone after one months’ treatment.” (IDU-3, Urumqi)

In HPTN 033, there was no interference at either site by the police because of the program teams’ sufficient communication and cooperation with local police:

“We did have a few IDU-participants being arrested by the police, but it has nothing to do with our program.” (Researcher, Heng Chien)

“At the very beginning, both the researchers and the IDUs were afraid that the police would come to the clinic to arrest IDUs. But it did not happen.” (Researcher, Urumqi)

\(^ {23} \) Notification on Cooperating with Health Department to Ensure the Smooth Implementation of Pilot Work on Community Drug Maintenance Treatment for IDUs.
“In the process of HPTN033 implementation, the health sector and police developed very good relations. At first the IDUs were afraid of being arrested by the police at the program site, but it never happened.” (Treatment staff member, Heng Chien)

“All the subjects of HPTN 033 have a participant card. The police would not arrest them if they are not using drugs or selling drugs.” (Medical staffer, Detoxification Center, Urumqi)

Third, the street level police generally do not arrest IDUs solely for drug use.

Drug trafficking and drug use are considered to be serious social problems at both Heng Chien and Urumqi. Local police believe that cracking down on dealers is the key to deterring new users and moving long-term ones into rehabilitation. With this knowledge in mind, the police generally are not particularly interested in arresting IDUs just for drug use. Arrest of drug users is aimed at directing users into treatment facilities or getting information about dealers. Drug traffic and drug dealers are charged with crimes, but drug users are not, so arresting drug users has no direct connection with meeting a quota of criminal law cases. The police arrest drug users either because they have committed a crime (such as theft) or because the police are trying to identify drug dealers or, in scattered cases, to request fines. Most of the time, the IDUs being detained can trade freedom or short-term detoxification for information.

“When we arrest an IDU, we will ask him from whom he buys drugs; who else uses drugs, and so on. To avoid being put in detoxification for a long time or penalized, the IDU will tell us what we want to know. This way, we identify drug dealers.” (Street level police officer, Heng Chien)

“Once you are arrested, the police will ask who sells drugs to you, where you get the money, and who uses drugs with you. If you tell them nothing, the police will use physical violence. Nearly all the IDUs being detained will be cooperative.” (IDU-9, Urumqi)

“We seldom just arrest IDUs and put them into the detoxification center. The most important reason for us to arrest them is to find out the drug dealers behind them.” (Street level police officer, Urumqi)

During periods when the local detoxification center is full and no more beds are available, the police are sometimes especially willing to take a bribe privately and release the user. Unofficial “fines” are a way for local police officers to augment their low incomes.
“We have a very low wage and need to arrest IDUs and penalize them to make money sometimes.” (Street level police officer, Heng Chien)

“The police called my parents and asked for 2000 RMB in exchange for my release. My parents paid the money to them and I was released.” (IDU-13, Heng Chien)

“On average, we need to hand over 3,150 RMB in exchange for release or to avoid arrest. Sometimes, we can bargain with the police.” (IDU-9, Urumqi)

In recent years there has been some effort by the security authorities to reduce the occurrence of informal payments. Our IDU respondents reported that the phenomena of taking bribes from drug users in exchange for release has decreased dramatically in recent years.

“In 2003, I was arrested for the second time. After paying 3000 RMB, I was released. But I was not asked for money in 2004 when I was arrested.” (IDU-1, Urumqi)

“Formerly, the police would take money from IDUs in exchange for release or to avoid arrest. But now, they would not. They sent all the IDUs being arrested to detoxification.” (IDU-8, Urumqi)

“Before 2002, the police would take money from me in exchange for release. But once I am arrested nowadays, I will be sent to detoxification center. (IDU-15, Heng Chien)

Nonetheless, payments are still sometimes made to avoid treatment or re-education:

“If the drug users we arrested are very rich, we will penalize them (demand money) even now.” (Street level police officer, Heng Chien)

Although the police generally are not that interested in arresting IDUs just for drug use, there are exceptions, such as during periodic crackdowns.

“We take actions targeted at arresting drug users for a few times every year. For example, around International Day against Drug Abuse in June 26.” (Street level police officer, Heng Chien)

“During crackdowns, all the drug users being arrested will be sent to detoxification centers and reeducation camps after a week’s detoxification. Local detoxification
centers and reeducation camps will soon be full of drug users.” (Street level police officer, Urumqi)

Fourth, some report research participation is protective against police action.

Sometimes, research participation even proved protective against police action. During the early stage of HPTN 033 implementation in Urumqi, researchers found that some of their IDU subjects were arrested and put in detoxification centers by the police, which impacted study retention. So the researchers negotiated with local police and then came to an agreement with police that the program would issue a green card to every IDU participant. If the IDUs with cards were targeted and stopped for enquiry, the police would release them:

“In HPTN 033, the police would not arrest a drug user if he/she did not do anything illegal or have drugs.” (Researcher, Urumqi)

“A few IDU participants were even released after being detained because of injecting or buying drugs.” (Public health clinician, Urumqi)

At the early stage of the syringe exchange program at Shuimogou District of Urumqi in July 2005, the program managers coordinated with local police many times. As a result, the police officials agreed that they would not make use of the syringe exchange site to arrest IDUs:

“Our peer educators will be arrested only if they commit a crime, such as sell drugs” (Syringe exchange program manager, Urumuqi)

In Heng Chien, the police also agreed that they would not make use of the syringe exchange sites to arrest IDUs:

“In October 2005, Heng Chien CDC began syringe exchange programs in two villages. The peer educators were designated by both the police and the health department. The police officials promised that they would not arrest IDUs at the site.” (Researcher, Heng Chien)

Fifth, IDUs are a mobile population and are subject to arrest for drug possession and other crimes, so there may be a problem with retention and regular attendance.

In Heng Chien, most of the IDUs are rural young people who need to go to other places to make money. They only come back to their hometown occasionally. Although they do
not move as often as IDUs in Heng Chien, most of the IDUs in Urumqi are subject to arrest for stealing, selling drugs or other crimes, so there may be problem with retention and regular attendance.

4.2. Differences between the two sites

Though the two sites share many similarities, they have some differences that need to be mentioned.

4.2.1 Attitudes toward methadone substitution treatment

Urumqi has been providing methadone substitution treatment for IDUs for several years. Most of the IDUs have some knowledge of the treatment and mixed feelings about it. Some IDUS have tried it for a period of time, but they had concerns about side effects and the difficulty of quitting. Others feel the methadone clinic is more like a pitfall: they go there for treatment and detoxification, but meeting more and more IDUs at the clinic, they find it easier to buy drugs and easily relapse into addiction.

Heng Chien is a small county in Guangxi with serious HIV/AIDS epidemic among IDUs: among the accumulated 556 HIV/AIDS cases in Heng Chien, 348 are IDUs, 62% of the total. There is no drug treatment for IDUs at all. Most of the IDUs and their family members are enthusiastic about the prospect of methadone clinics, scheduled to be introduced in late 2006.

4.2.2. Stigma and discrimination

Reports on stigma of IDUs was also mixed: in Guangxi, people were more tolerant because of the small close nature of communities:

“The households in the village are thinly scattered in mountain areas. People in the village do not care much about others’ business.” (IDU-4, Heng Chien)

“Most of the people only hate those (IDUs) who borrow others’ money without repaying or those who steal from others.” (IDU-8, Heng Chien)

“Although I inject drugs secretly, all the villagers will know that I am a drug user soon because I keep contact with other IDUs. But they do not care too much.” (IDU-12 in Heng Chien)

“The villagers do not discriminate against IDUs very much because they seldom have wrongdoing in the village.” (Treatment staff of a village clinic, Heng Chien)
In Urumqi, there is more stigma and negative attitudes. Most of the IDUs reported stealing or other crimes during the RPA and people tended to see IDUs as criminals and pests. Once being found using drugs, the drug users would lose their jobs. Stigma and discrimination seem more serious in Urumqi than in Heng Chien. IDUs in Urumqi keep away from others and form an independent community.

“I began stealing and robbing after I became addicted to drugs.” (IDU-4, Urumqi)

“90 per cent of the IDUs will steal or rob others when they have no money to buy drugs. They are a great threat to the public security in Urumqi.” (Street level police officer, Urumqi)

“Those who are normal will not use drugs. Once a family or organization has such a vermin (drug user), the whole family or organization will be ruined”. (NGO staff member, Urumqi)

“Some of my friends ask me why we help them (people living with HIV/AIDS and IDUs). Perhaps they think it is worthless doing”. (NGO staff member, Urumqi)

“During the training, some family members of IDUs told the program staff: ‘We hope they (IDUs) die as soon as possible. They make the family suffer so much shame.’ ” (NGO director, Urumqi)

“In 1996, my boss discovered that I was an IDU and kicked me out.” (IDU-5, Urumqi)

“Once their bosses find out they are addicted to drugs, they will lose their jobs.” (Researcher, Urumqi)
Conclusion

The conduct of research involves the creation of a network composed of study participants, researchers and health authorities, police and doctors. The various members of this network regard each other with various levels of trust and apprehension. For this research to succeed, these groups must be brought together in the common goal of successful completion of the study.

As far as we can tell, IDUs at both sites participate of their own free will. There was not any report suggesting that the doctors or the police punish or coerce people who do not wish to participate. Nevertheless, conducting ethical research in China, as in other settings, requires researchers to carefully consider the welfare of their subjects and to adopt procedures that maximize autonomy and benefit while minimizing risks.

Based on our research, the RPA team makes the following recommendations:

1. The research team should work with local law enforcement, drug treatment and public health officials to promote their understanding of and cooperation with the research project. In doing so, they should:
   - emphasize the deterrent effect of arrests at the site on IDU trust and participation;
   - regard local law enforcement, drug treatment and public health officials as key stakeholders in the research, who will be in a position to influence or participate in new programs based on the research findings;
   - educate stakeholders about addiction and the benefits of treatment and access to services at every opportunity.

2. The research team should reflect upon and develop internal operating procedures for cooperating with authorities to maximize benefits and autonomy and minimize risks to participants. For example, the research team should discuss how to balance the benefits of cooperation with government authorities within the cultural and legal setting of the research sites with the important ethical goal of promoting and respecting the privacy of research participants.

3. The research team should ensure that local staff members are trained in proper privacy and confidentiality procedures and that procedures are in place to handle requests for information that may come from governmental agencies and actors.
Acknowledgments

Legal and qualitative data were collected using tools adapted by Scott Burris and Corey Davis from the Rapid Policy Assessment and Response toolkit.

The Rapid Policy Assessment and Response Tools were initially developed by Scott Burris, Patricia Case and Zita Lazzarini with the support of the International Harm Reduction Development Program of the Open Society Institute, and further refined under NIDA Grant # 5 R01 DA17002-02, Zita Lazzarini, Principal Investigator.

Wang Zhengzhi of Globe Law Firm, Beijing, collected relevant laws and regulations.

Qualitative research was conducted and the resulting data analyzed by Zhang Youchun, Fu Xiaoxing and local interviewers in the site cities. Zhang and Fu drafted the final report, which was edited by Burris and Davis.

The team thanks Wang Ruotao for his assistance in organizing and conducting the research.

Funding was provided by the HPTN through by the University of Pennsylvania.

Laws and regulations cited in the Appendix were gathered from a number of sources. Although effort has been made to use the most accurate text available, the authors take no responsibility for the accuracy of the translation.

Current versions of the RPAR tools and training materials are available on the worldwide web at http://www.rpar.org.
Appendix: Selected Law

1. Decision of the Standing Committee of the National People’s Congress on the Prohibition Against Narcotic Drugs

2. Measures for the Control of Narcotic Drugs

3. Law on Practicing Physicians of the People’s Republic of China

4. Certain Regulations on the monitoring and control of AIDS

5. Administrative Procedure Law of the People’s Republic of China

6. Administrative Punishment Law of the People's Republic of China

7. Prison Law of the People's Republic of China
Decision of the Standing Committee of the National People’s Congress on the Prohibition Against Narcotic Drugs

(Effective Date: December 28, 1990)

With a view to severely punishing such criminal activities as smuggling, trafficking in, transporting and manufacturing narcotic drugs and illegal cultivation of their mother plants and strictly prohibiting drug ingestion and injection, so as to protect citizens' physical and mental health, maintain social security and public order and ensure the smooth progress of the socialist modernization drive, the following decision is made:

1. As used in this Decision, the term "narcotic drugs" means opium, heroin, morphine, marijuana, cocaine and other narcotics and psychotropic substances that are liable to make people addicted to their use and that are controlled by relevant regulations of the State Council.

2. Whoever smuggles, traffics in, transports or manufactures narcotic drugs and comes under any of the following categories, shall be sentenced to fixed-term imprisonment of fifteen years, life imprisonment or death and shall concurrently be sentenced to confiscation of property:

   (1) persons who smuggle, traffic in, transport or manufacture opium of not less than 1,000 grams, heroin of not less than 50 grams or other narcotic drugs of large quantities;

   (2) ringleaders of gangs engaged in smuggling, trafficking in, transporting or manufacturing narcotic drugs;

   (3) persons who shield with arms the smuggling, trafficking in, transporting or manufacturing of narcotic drugs;

   (4) persons who violently resist inspection, detention or arrest, the circumstances being serious; or

   (5) persons involved in organized international drug trafficking.

Whoever smuggles, traffics in, transports or manufactures opium of not less than 200 grams but less than 1,000 grams, or heroin of not less than 10 grams but less than 50 grams or any other narcotic drugs of relatively large quantities shall be sentenced to fixed-term imprisonment of not less than seven years and shall concurrently be sentenced to a fine.

Whoever smuggles, traffics in, transports or manufactures opium of less than 200 grams, or heroin of less than 10 grams or any other narcotic drugs of small quantities shall be sentenced to fixed-term imprisonment of not more than seven years, criminal detention or public surveillance and shall concurrently be sentenced to a fine.
Whoever makes use of minors or aids and abets them to smuggle, traffic in, transport or manufacture narcotic drugs shall be given a heavier punishment.

With respect to persons who have smuggled, trafficked in, transported or manufactured narcotic drugs many times and have not been dealt with, the quantity of narcotic drugs thus involved shall be computed accumulatively.

3. It shall be prohibited for any person to illegally possess narcotic drugs. Whoever illegally possesses opium of not less than 1,000 grams, or heroin of not less than 50 grams, or any other narcotic drugs of large quantities shall be sentenced to fixed-term imprisonment of not less than seven years or life imprisonment, and shall concurrently be sentenced to a fine; whoever illegally possesses opium of not less than 200 grams but less than 1,000 grams, or heroin of not less than 10 grams but less than 50 grams, or any other narcotic drugs of relatively large quantities shall be sentenced to fixed-term imprisonment of not more than seven years, criminal detention or public surveillance, and may concurrently be sentenced to a fine; whoever illegally possesses opium of less than 200 grams, or heroin of less than 10 grams, or any other narcotic drugs of small quantities shall be punished as provided in the first paragraph of Article 8 of this Decision.

4. Whoever shields offenders engaged in smuggling, trafficking in, transporting or manufacturing narcotic drugs, whoever harbours, transfers or covers up, for such offenders, narcotic drugs or their pecuniary and other gains from such criminal activities, or whoever conceals or withholds the illegal nature and source of their pecuniary and other gains from trafficking in narcotic drugs shall be sentenced to fixed-term imprisonment of not more than seven years, criminal detention or public surveillance, and may concurrently be sentenced to a fine.

Conspirators to a crime mentioned in the preceding paragraph shall be deemed as accomplices in the crime of smuggling, trafficking in, transporting or manufacturing narcotic drugs and punished as such.

5. Acetic anhydride, ether, chloroform and other substances that are usually used in the manufacture of narcotics and psychotropic substances shall be strictly controlled in accordance with relevant regulations of the State. Illicit transportation or carrying of such substances into or out of the territory of China shall be strictly prohibited. Whoever illegally transports or carries into or out of the territory of China any substance mentioned above shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance, and shall concurrently be sentenced to a fine; where large quantities are involved, the offender shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years, and shall concurrently be sentenced to a fine; and where relatively small quantities are involved, the offender shall be punished in accordance with relevant provisions of the Customs Law.

Whoever provides other persons with substances mentioned in the preceding paragraph, while knowing that those persons manufacture narcotic drugs, shall be deemed as an accomplice in the crime of manufacturing narcotic drugs and punished as such.
If a unit commits any illicit or criminal act prescribed in the two preceding paragraphs, the person(s) directly in charge and other person(s) directly involved in it shall be punished as prescribed in the two preceding paragraphs, and the unit shall also be subjected to a fine or a penalty.

6. Whoever illegally cultivates mother plants of narcotic drugs, such as opium poppy and marijuana, shall be forced to uproot them. Whoever is under any of the following circumstances shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance, and shall concurrently be sentenced to a fine:

(1) cultivating opium poppy of not less than 500 plants but less than 3,000 plants or any mother plants of other narcotic drugs in relatively large quantities;

(2) cultivating any mother plant of narcotic drugs again after being dealt with by the public security organ; or

(3) resisting the uprooting of such mother plants.

Whoever illegally cultivates opium poppy of not less than 3,000 plants or any mother plants of other narcotic drugs in large quantities shall be sentenced to fixed-term imprisonment of not less than five years, and shall concurrently be sentenced to a fine or confiscation of property.

Whoever illegally cultivates opium poppy of less than 500 plants or any mother plants of other narcotic drugs in relatively small quantities shall be punished by the public security organ with detention of not more than fifteen days, and may also be punished with a penalty of not more than 3,000 yuan.

Persons illegally cultivating opium poppy or any mother plants of other narcotic drugs who voluntarily uproot them before harvest may be exempted from punishment.

7. Whoever lures, aids and abets, or cheats others into drug ingestion or injection shall be sentenced to fixed-term imprisonment of not more than seven years, criminal detention or public surveillance, and shall concurrently be sentenced to a fine.

Whoever forces others to ingest or inject narcotic drugs shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years, and shall concurrently be sentenced to a fine.

Whoever lures, aids and abets, cheats or forces minors into ingesting or injecting narcotic drugs shall be given a heavier punishment.

8. Whoever ingests or injects narcotic drugs shall be punished by the public security organ with detention of not more than fifteen days, and may simply or concurrently be punished with a fine of not more than
2,000 yuan, and the narcotic drugs and the instruments used for drug ingestion or injection shall concurrently be confiscated.

Whoever is addicted to drug ingestion or injection shall, in addition to being punished as provided in the preceding paragraph, be forced to quit the addiction and be subjected to treatment and education. Persons who ingest or inject narcotic drugs again after being forced to quit may be subjected to rehabilitation through labour and shall be forced to quit during the period.

9. Whoever provides shelter for others to ingest or inject narcotic drugs and sells narcotic drugs therein shall be punished in accordance with the provisions of Article 2 of the Decision.

10. For medical, teaching and research purposes, the competent department of public health administration of the state may, in accordance with provisions of laws and administrative rules and regulations, designate specific places and pharmaceutical factories to cultivate or manufacture limited quantities of, mother plants of narcotic drugs, or narcotics and psychotropic substances. Units and persons who are allowed by law to engage in manufacture, transportation, administration or utilization of State-controlled narcotics and psychotropic substances shall strictly observe the regulations of the State concerning the control of such substances.

Persons who are allowed by law to engage in manufacture, transportation, administration or utilization of State-controlled narcotics and psychotropic substances and who, in violation of relevant regulations of the State, provide such substances to persons who ingest or inject narcotic drugs shall be sentenced to fixed-term imprisonment of not more than seven years or criminal detention, and may concurrently be sentenced to a fine. Persons who provide such substances to drug smugglers or traffickers, or, for the purpose of profit, to persons who ingest or inject narcotic drugs shall be punished in accordance with the provisions of Article 2 of this Decision.

If a unit commits any illicit or criminal act prescribed in the second paragraph of this Article, the person(s) directly in charge and other person(s) directly involved in it shall be punished in accordance with the provisions of the second paragraph of this Article, and the unit shall also be punished with a fine.

11. Any State functionary who commits any crime prescribed in this Decision shall be given a heavier punishment.

Persons who were punished for crimes of smuggling, trafficking in, transporting, manufacturing or illegally possessing narcotic drugs commits a crime prescribed in this Decision again shall be given a heavier punishment.

12. Uncovered narcotic drugs, illegal proceeds from drug-related crimes, gains from such proceeds and the funds and means used for commission of the crimes shall all be confiscated. The confiscated drugs and instruments used for drug ingestion or injection shall in accordance with regulations of the State be
destroyed or disposed of otherwise. All gains from fines, penalties and confiscations shall be turned over to the State Treasury.

13. This Decision shall be applicable to citizens of the People's Republic of China who commit the crimes of smuggling, trafficking in, transporting or manufacturing narcotic drugs outside the territory of the People's Republic of China.

With respect to foreigners who, after committing the crimes mentioned in the preceding paragraph outside the territory of the People's Republic of China, have entered the territory of China, the Chinese judicial organ shall have jurisdiction and this Decision shall apply, with the exception of those who shall be extradited pursuant to the international conventions or bilateral treaties which China has acceded to or concluded.

14. Persons committing the crimes prescribed in this Decision who perform meritorious service by informing against or exposing other drug-related crimes shall be given a lighter or mitigated punishment or be exempted from punishment.

15. Citizens shall have the duty to inform against and expose illicit or criminal acts prescribed in this Decision. The State shall award persons who inform against or expose criminal activities such as smuggling, trafficking in, transporting or manufacturing narcotic drugs and persons who perform meritorious service in the prohibition against narcotic drugs.

16. This Decision shall enter into force as of the date of promulgation.
Measures for the Control of Narcotic Drugs

(Effective Date: November 11, 1987)

CHAPTER I GENERAL PROVISIONS

Article 1. These measures are formulated in accordance with the Medicine Administration Law of the People's Republic of China, for the purpose of tightening control over narcotic drugs so as to ensure their safe use in medical treatment units, medical colleges and medical research institutions.

Article 2. Narcotic drugs refer to those drugs that may cause dependence and addiction after continuous administration.

Article 3. Narcotic drugs include opium, cocaine, marijuana, synthetic anesthetic drugs and those defined by the Ministry of Public Health as addict-forming drugs, anesthetic raw herbs and the products made from them.

Article 4. The State shall strictly supervise and control the cultivation of the mother plants of narcotics and the production, supply, export and import of narcotic drugs. Narcotic drugs shall not be used except for the purpose of medical treatment, teaching and research when necessary.

CHAPTER II THE CULTIVATION OF MOTHER PLANTS OF NARCOTICS AND THE PRODUCTION OF NARCOTIC DRUGS

Article 5. The units that cultivate mother plants of narcotics must be examined and approved jointly by the Ministry of Public Health, the Ministry of Agriculture, Animal Husbandry and Fishery and the State Administration for Medicine. A copy of the report shall be sent to the Ministry of Public Security.

The units that produce narcotic drugs must be examined and approved jointly by the Ministry of Public Health and the State Administration or Medicine. Without approval, no unit or individual shall be allowed to produce narcotic drugs.
Article 6. The annual cultivation plan for mother plants of narcotic shall be examined and approved jointly by the Ministry of Public Health and the Ministry of Agriculture, Animal Husbandry and Fishery. The annual production plan of narcotic drugs shall be examined and approved jointly by the Ministry of Public Health and the State Administration for Medicine. The cultivation units and the production units shall not change the plans without authorization. The cultivation unit and the production unit must assign a person or persons with the special responsibility for the storage of the finished products, semi-finished products, poppy capsules and poppy seeds. Sale or use of these things without authorization shall be strictly prohibited.

Article 7. Narcotic drugs must be brought under strict quality control. The quality of the products must meet the standards set for medicines by the state.

Article 8. Before the development of any new kind of narcotic drugs, the research unit must first of all draw up a plan and submit it to the Ministry of Public Health for examination and approval. After the new drug is developed, the research and trial production units must go through the formalities for the approval of such new drug. The storage and use of the trial products must follow strict procedures so as to prevent their loss.

CHAPTER III THE SUPPLY OF NARCOTIC DRUGS

Article 9. Narcotic drugs shall be provided in a planned way according to the demand of medical treatment units, medical colleges and scientific research institutions.

A national supply plan of narcotic drugs shall be drawn by a department appointed by the State Administration for Medicine and submitted to the Ministry of Public Health and the State Administration for Medicine for examination and approval before it is issued for implementation.

Article 10. The plan for the setting up of a trading unit of narcotic drugs shall be put forward jointly by the administrative department of health and medicine administrative department in each province, autonomous region, or municipality directly under the Central Government and shall be examined and approved by the Ministry of Public Health and the State Administration for Medicine. The trading units shall provide narcotic drugs only to those consumer units approved by the administrative department of health and within the prescribed quota. No supply for any other unit or person is permitted.

Article 11. Poppy capsules used for medical purposes shall be supplied by the trading units appointed by the State Administration for Medicine and medicine department in each province, autonomous region, or municipality directly under the Central Government. No other unit shall be allowed to engage in such business. Poppy capsules must be allotted to the consumer units in accordance with the plan examined and approved jointly by the Ministry of Public Health and the State Administration for Medicine. Poppy capsules shall be supplied to the medical treatment units for clinical use and to the trading units designated by the administrative departments of health at or above the county level for clinical application endorsed with an office seal of their respective medical treatment units. No retail sale of poppy capsules is allowed. The
pharmaceutical factories that need poppy capsules in the production of ready made Chinese medicine must submit plans to the medicine administrative department in their province, autonomous region, or municipality directly under the Central Government for examination and then to the administrative department of health for approval before production.

Article 12. A trading unit of narcotic drugs must have a special storehouse or counter(s) with good storage conditions and assign a person or persons with special responsibility for the storage, transportation and supply of narcotic drugs.

CHAPTER IV TRANSPORTATION OF NARCOTIC DRUGS

Article 13. A permit for domestic consignment issued by the Ministry of Public Health is needed when going through shipment formalities for transporting medicinal opium. Shipment of medicinal opium from the cultivation unit to the storehouse of the State Administration for Medicine shall be escorted by the people sent by the consignor unit. Shipment of medicinal opium from the storehouse to the production enterprises shall be escorted by the people sent by the consignee unit. The number of escorts shall be decided in accordance with the regulations of the transportation department.

Permit for domestic transportation of such drugs shall be printed solely by the Ministry of Public Health.

Article 14. When consigning narcotic drugs or poppy capsules (not including medicinal opium), the production unit or the supply unit must put down clearly the words of Narcotic Drug in the blank for the name of goods on the shipping document and a seal for consignment of Narcotic Drug must be stamped in the space left for the consignor.

Article 15. The freignter unit must tighten control over the shipment of narcotic drugs and poppy capsules by dispatching the consignment promptly and shortening its storage time at the station, on the dock or at the airport. They must not be transported in open wagons on railways and, if by ship, no loading on hold surface is allowed and, if by truck, they must be securely fastened up and safely protected.

Article 16. In the event that any of the narcotic drugs or poppy capsules are found missing in the course of transportation, the freignter-unit must report the case promptly to the local public security organ and the administrative department of health for investigation.

CHAPTER V IMPORT AND EXPORT OF NARCOTIC DRUGS

Article 17. The import and export of narcotic drugs shall be handled by the units appointed by the Ministry of Foreign Economic Relations and Trade in accordance with State regulations concerning foreign trade.

No other units shall be allowed to engage in the business. The annual plan for import and export of narcotic drugs shall be subject to examination and approval by the Ministry of Public Health.
Article 18. The import of narcotic drugs needed in medical treatment units, medical colleges or medical science research institutions must be verified and approved by the Ministry of Public Health. Only after an Import License for Narcotic Drugs is granted can these units apply to go through import formalities.

Article 19. The export of narcotic drugs must be verified and approved by the Ministry of Public Health. An application and an import license which is a prerequisite to going through import formalities for narcotic drugs issued by the competent government department of the importing country must be presented before the Ministry of Public Health issues an Export License for Narcotic Drugs.

Article Import and export licenses for narcotic drugs shall be printed exclusively by the Ministry of Public Health.

CHAPTER VI THE USE OF NARCOTIC DRUGS

Article 21. Narcotic drugs shall only be used for medical treatment, in teaching at medical colleges and in medical science research. Any medical treatment unit with medical wards and with surgical or other necessary medical treatment facilities may file an application to the local administrative department of health. Upon approval by the administrative department of health at a higher level, and after the level of supply is verified, a Purchase Card for Narcotic Drugs shall be issued. The aforesaid unit may purchase the needed narcotic drugs from the designated trading units according to the fixed quota.

When the medical colleges or scientific research institutions are in need of narcotic drugs, they shall file an application to the administrative department of health at a higher level and, upon approval, may purchase these drugs from the trading units of narcotic drugs.

The Ministry of Public Health is the authority to make out the grading standard of rations.

Article 22. Narcotic consuming unit must fill out an application form for when purchasing, narcotic drugs and the supplying unit must check the various seals and the number of seals stamped on the form before supplying them with the kind of drugs on quarterly ration as stipulated in the regulations set by the Ministry of Public Health.

Article 23. The unit in need of narcotic drugs can either purchase them directly from the trading units or by mail order. In the latter case, however, the shipping documents and certificates must be sent out by registered mail. When sending the narcotic drugs by post, the sender-trading unit is required to stamp a Seal for Narcotic Drugs on the parcel form and to present to the post office the invoice with a Seal for Narcotic Drugs stamped on.

Article 24. Preparations that fall under the category of narcotic drugs must be purchased from the trading units or narcotic drugs. In case that they are not available or special preparations are needed by the medical
treatment units, the authorized consuming medical units may prepare them by themselves with approval by
the administrative department of health at or above the county level. No other unit shall be allowed to prepare
any form of anesthetic.

Article 25. The medical worker who prescribes any anesthetics for the patient must be a qualified physician
or a surgeon, who is tested to have been able to use such drugs properly.

The surgeon at the induced abortion ward who is tested to have been able to use such drugs properly may
have the right to prescribe anesthetics for the person to be operation on.

Article 26. Dosage for injection in each prescription must not exceed two days of daily dose, as for the tablet,
tincture, syrup, the dosage must not exceed three days daily dose. Administration of narcotic must not exceed
a period of seven days running. Prescription of narcotic drugs must be fully and clearly stated with signature
of the physician or surgeon on. When preparing a narcotic drug, the pharmacist and the checker are required
to sign their names and keep the prescription of the narcotic drug on file. No medical worker is allowed to
prescribe any narcotic drug for him/herself.

Article 27. In the case of a patient in serious conditions who is diagnosed by a hospital at or above county
level to be in need of narcotic drugs as a pain killer, the hospital appointed by the administrative department
of health at or above the county level may issue the patient with a Special Purchasing Card for Narcotic on the
basis of the Prescription and by checking his permanent residence booklet, and the patient may take this to the
appointed medical treatment unit to have the drug prepared. If the patient holding a Special Purchasing Card
for Narcotic is in need of a larger dose and the seasonal ration of the medical treatment unit fails to meet the
demand, additional amount of narcotic shall be made available only with the approval by the administrative
department of health at a higher level.

Article 28. Medical treatment units are required to intighten control over narcotic drugs. Any illegal use,
storage, transfer of borrowing of narcotic drugs is prohibited, Narcotic drugs must be put under the charge of
a person specially appointed for the purpose and kept in a separate place under lock. The distribution and
prescriptions of narcotic drugs must be kept in record separately from those of other medicine.

The prescriptions must be kept on file for a period of three years. The medical treatment unit shall have the
right to refuse dispensing of drugs to those who abuse them in violation of relevant rules and regulations and
shall report the case to the local administrative department of health promptly.

Article 29. In the event of an emergency case which is in need of narcotic drugs, the medical treatment unit so
involved and the trading unit of narcotic drugs are required to supply a dose of narcotic promptly for the case
only, and the necessary formalities shall be done after the event.

CHAPTER VII PENALTY PROVISIONS
Article 30. Any violation of these Measures shall be subject to penalty by the local administrative department of health according to the seriousness of the case. The penalty shall cover confiscation of all the narcotic drugs and the illegal earnings, a fine ranging from 5-10 times the illegal profits, closing down of the business or revocation of "License for Pharmaceutical Production Enterprise", "License for Pharmaceutical Business Enterprise" or "License for Medicaments".

(1) Those who, without authorization, are engaged in the production of narcotic drugs or have changed the production plan and made additional kinds of narcotic drugs;

(2) Those who are engaged in unauthorized trading business of narcotic drugs and poppy capsules;

(3) Those who supply or oversupply narcotics to any unit or person that has not been granted the permission to use the stuff;

(4) Those who prepare and sell any form of narcotic drugs without authorization;

(5) Those who are engaged in unauthorized import or export of narcotic drugs;

(6) Those who apply any new kind of narcotic drugs to patients clinically or have produced any new kind of narcotic drugs without authorization.

Article 31. Those who have taken advantage of their professional work by prescribing narcotics to other persons without complying with the rules or by prescribing narcotics for themselves, and those who are directly responsible for cheating to obtain or abusing the stuff, shall be given disciplinary sanctions by the authorities of their units.

Article 32. Those who, in violation of these Measures, cultivate poppy without authorization or take in narcotic drugs illegally shall be punished by a public security organ in accordance with the Regulations on Administrative Penalties for Public Security or other related rules.

Article 33. With respect to any one who produces, transports or sells narcotics or poppy capsules, if the circumstances are serious enough to constitute a crime, he shall be prosecuted for criminal liability by the judicial organs according to law.

Article 34. A party who is dissatisfied with the decision on an administrative sanction may, within 15 days of receiving the notification on the sanction, make a request for reconsideration to the authorities at the level next higher, which shall make a reply within 10 days of receipt of the appeal. If he is dissatisfied with the decision on reconsideration, he may, within 15 days of receiving the reconsideration decision, bring a suit before a people's court. If, upon the expiration of this period, the party has neither complied with the sanction nor has brought a suit before a people's court, the authorities that impose the sanction shall apply to the people's court for compulsory enforcement.
CHAPTER VIII SUPPLEMENTARY PROVISIONS

Article 35. The specific administration rules for the supply and use of narcotic drugs in the health and medical treatment units of the Chinese People's Liberation Army and the Chinese People's Armed Police Force shall be formulated jointly by the Ministry of Public Health, the General Logistics Department of the Chinese People's Liberation Army and the Logistics Department of the Chinese People's Armed Police Force in accordance with these Measures.

Article 36. The specific administration rules for the supply and use of veterinary narcotic drugs shall be formulated jointly by the Ministry of Public Health and the Ministry of Agriculture, Animal Husbandry and Fishery in accordance with these Measures.

Article 37. The rules for the implementation of these Measures shall be formulated by the Ministry of Public Health.

Article 38. These Measures shall go into effect as of the date of promulgation. The Provisions for the Administration of Narcotic Drugs, promulgated by the State Council of the People's Republic of China on September 13, 1978, shall become null and void on the same day.
Law on Practicing Physicians of the People’s Republic of China

(Effective Date: June 26, 1998)

Chapter I General Provisions

Article 1 This Law is enacted for the purpose of raising the level of doctors in general, improving their professional ethics and caliber, safeguarding their lawful rights and interests and protecting the people’s health.

Article 2 This Law shall apply to medical workers who have, in accordance with the law, obtained the licenses of qualified doctors or qualified assistant doctors and registered and are employed in medical treatment, disease-prevention or healthcare institutions.

“The Doctors” referred to in this Law include licensed doctors and licensed assistant doctors.

Article 3 Doctors shall observe good professional ethics and possess proficiency in medical work, display the spirit of humanitarianisms and perform the sacred duties of preventing and curing diseases, healing the wounded and rescuing the dying and protecting the people’s health.

Everybody in the community shall show respect for doctors. Every doctor shall fulfill his duties according to law and be protected by law.

Article 4 The administrative department for public health under the State Council shall be in charge of the affairs of doctors throughout the country.

The administrative departments for public health of the local people’s governments at or above the county level shall be in charge of the affairs of doctors within their own administrative regions.

Article 5 The State shall reward the doctors who have made contributions to medical treatment, disease-prevention or health care.

Article 6 Technical titles for doctors in the field of medicine shall be assessed and conferred in accordance with the relevant State regulations and so shall doctors be appointed to positions commensurate with their technical titles.

Article 7 Doctors may form or join doctors’ associations.

Chapter II Examination and Registration

Article 8 The State applies the system of examination to determine the qualifications of doctors. The system consist of examination to determine the qualifications of licensed doctors and examinations to determine the qualifications of licensed assistant doctors.

Measures for the uniform examinations determine the qualifications of doctors shall be formulated by the administrative department for public health under the State Council. Such examinations shall be arranged by the administrative department for public health of the people’s governments at or above the provincial level.

Article 9 Whoever meets one of the following requirements may take the examinations for the qualifications of a licensed doctor:

(1) having, at least, graduated from the faculty of medicine of a university and, under the guidance of licensed doctor, worked on probation for at least one year in a medical treatment, disease prevention or
healthcare institution; or
(2) after obtaining the license for an assistant doctor, having reached the level of a graduate from the faculty of medicine of a university and worked for at least two years in a medical treatment, disease-prevention or healthcare institution; or having reached the level of a graduate from the specialty of medicine of a polytechnic school and worked for at least five years in a medical treatment, disease-prevention or healthcare institution.

Article 10 Anyone who has reached the level of graduate from the faculty of medicine of a university or a polytechnic school and, under the guidance of a licensed doctor, worked on probation for at least one year in a medical treatment, disease-prevention or healthcare institution, may take the examinations for the qualifications of an assistant doctor.

Article 11 Anyone who in the way of apprenticeship, has studied traditional Chinese medicine for three years or, through years of practice in this field, proves to have mastered specialized knowledge of this field, has passed the examinations conducted by an organization specialized in traditional Chinese medicine or by a medical treatment, disease-prevention or healthcare institutions that is recognized as such by the administrative department for public health of a local government at or above the county level, and is recommended by such an organization or institution, may take the examinations for the qualifications of a licensed doctor or a licensed assistant doctor. The contents of and measures for such examinations shall be specified by the administrative department for public health under the State Council separately.

Article 12 Anyone who has passed the examinations for the qualifications of a licensed doctor or a licensed assistant doctor shall be certified as such.

Article 13 The State applies the system of registration for licensed doctors.
A certified doctor may apply for registration to the administrative department for public health of the local people’s government at or above the county level.

With the exception of the cases as provided for Article 15 of this Law, the administrative department for public health that is in charge of dealing with such application shall, within 30 days from the date of receiving the application, allow the applicant to register and grant the applicant a doctor’s license which is exclusively printed by the administrative department for public health under the State Council.
The medical treatment, disease-prevention and healthcare institutions may go through the registration procedure for all the doctors working for them.

Article 14 Doctors, upon registration, may work for medical treatment, disease-prevention or healthcare institutions at the places, for types of job and within the scopes of business as registered and engage in medical treatment, disease-prevention or healthcare in such institutions.

No one may work as a doctor without a doctor’s license obtained through registration.

Article 15 No one who is found in one of the following cases shall be registered:
(1) having limited capacity for civil conduct:
(2) having applied for registration before the expiration of two years beginning from the date when his punishment has been executed to the date when application for registration is made;
(3) having been imposed on administrative penalty with his doctor’s license revoked and less than two years beginning from the date when the penalty decide on to the date when application for registration is made; or
Any other cases which, according to the regulations of the administrative department for public health under the State Council, considered unsuited for conducting medical treatment, disease-prevention or healthcare.

Where the administrative department for public health that deals with application for registration finds that an application does not meet the requirements and thus refuses to allow the applicant to register, it shall, within 30 days from the date of receiving the application, the applicant of the matter in writing and state the reasons why. If the applicant has any objections, he may, within 15 days from the date receiving the notification, apply for a review or bring a suit to a People’s Court according to law.

Article 16 Where a registered doctor is found in any of the following cases, the medical treatment, disease-prevention or Healthcare institutions where he is working shall, within 30 days, report the matter to the administrative department for public health that allowed him to register, and the said department shall revoke the registration and withdraw the doctor’s license:

1. being dead or being announced missing;
2. being imposed on a criminal penalty;
3. being imposed on administrative penalty which calls for the revocation of the doctor’s license;
4. having failed in the reexamination taken at the expiration of suspension of the practice of medicine which is imposed according to the provisions in Article 31 of this Law;
5. having stopped working as a doctor for at least two years; or
6. Any other case which, according to the regulations of the administrative department for public health under the State Council, is considered unsuited for conducting medical treatment, disease-prevention or healthcare.

Any party who has objections to the revocation of his registration may, within 15 days from the date receiving the notification of the revocation, apply for a review or bring a suit to a People’s Court according to law.

Article 17 Where a doctor wishes to change to the registered items such as the place, the type of job and the scope of business, he shall, according to the provisions in Article 13 of this Law, go to the administrative department for public health that allowed him to register to complete the formalities for the change.

Article 18 When a doctor who has stopped doing medical work for at least two years or who is no longer in any of the cases as prescribed in Article 15 of this Law applies to take up the job again, he shall take the examinations conducted by the institutions specified in Article 31 of this Law and, after passing the examinations, reregister according to the provisions in Article 13 of this Law.

Article 19 Any licensed doctor who wishes to apply for self-employment need to have register and have worked for at least five years in a medical treatment, disease-prevention or healthcare institution and to go through the formalities of examination and approval according to relevant State regulations; he may not practice medicine on his own without such approval.

The administrative departments for public health of the local people’s governments at or above the county level shall, according to the regulations of the administrative department for public health under the State Council, constantly supervise and inspect the doctors who practise medicine on their own and, when such doctors are found to be in any cases as prescribed in Article 16 of this Law, the said department shall
immediately revoke their registration and withdraw their license.

Article 20 The administrative departments for public health of the local people’s governments at or above the county level shall publicize the name lists of the doctors who are allowed to register and those who registration is revoked and submit the name lists to the administrative departments for public health of the people’s governments at the provincial level, which shall report to the administrative department for public health under the State Council for the record.

Chapter III Regulations Regarding the Practice of Medicine

Article 21 Doctors shall enjoy the following rights in their practice of medicine:

(1) within the registered scope of business, to examine and diagnose diseases, conduct disease investigation, give medical treatment and provide relevant medical document verification, and adopt medical treatment, disease-prevention and healthcare;

(2) according to the standards set by the administrative department for public health under the State Council, to be provided with the basic medical facilities needed to do their specific medical work;

(3) to engage in medical research and academic exchange and join specialized academic organizations;

(4) to receive professional training and follow-up education in medicine;

(5) to be protected from offences against dignity and safety of the person in the course of their work;

(6) to receive their pay and other allowances and enjoy the welfare benefits according to State regulations; and

(7) to give comments and suggestions about medical treatment, disease-prevention or healthcare in the institutions they work and about the work of the administrative departments for public health and, in accordance with law, participate in the democratic management of the said institution.

Article 22 Doctors shall perform the following obligations in their practice of medicine;

(1) abiding by laws and regulations and observing rules for technical operations;

(2) devoting themselves to the profession, following professional ethics, fulfilling their duties as doctors and serving the patients conscientiously;

(3) caring for, loving and respecting the patients and preserving their privacy.

(4) endeavoring to gain professional proficiency, update their knowledge and improve their technical standards; and

(5) disseminating the knowledge of public health and healthcare and educating the patients in ways of keeping fit.

Article 23 When taking medical, preventive or healthcare measures and when signing relevant medical document verification, doctors shall conduct diagnosis and investigation themselves and fill out the medical files without delay as required by regulations; no doctor may conceal, forge or destroy and medical files or the relevant data.

Article 24 Doctors shall take immediate measures to treat emergency patients; no doctor may refuse to give emergency treatment to such patients.

Article 25 Doctors shall administer such medicines and use such disinfectants and medical apparatus as are approved by the State departments concerned.

Article 26 Doctors shall tell the patients or their relatives the truth about the patients’ condition while
avoiding any bad effect on the patients:
Doctor who wish to conduct any experimental clinical treatment shall obtain approval of the hospital authorities and consent of the patient himself or his relatives.

Article 27 No doctor may, by taking advantage of his position, demand or illegally take money or things of value from the patients or seek any other illegitimate benefits.

Article 28 In case of natural calamities, epidemics, sudden accidents resulting in heavy casualties or other emergencies that seriously endanger people’s lives or health, doctors shall accept the assignments of the administrative departments for public health of the people’s governments at or above the county level.

Article 29 Where a doctor causes a medical accident or discovers an epidemic, he shall, without delay, report to the institution where he works or to an administrative department for public health, as required by relevant regulations.

Where a doctor discovers that a patient is involved in an incident of injury or dies unnaturally, he shall report to the department concerned, as required by relevant regulations.

Article 30 Licensed assistant doctors shall, under the direction of licensed doctors, do the types of job, as registered in the medical treatment, disease-prevention or healthcare institutions.

Licensed assistant doctors who work in the medical treatment, disease-prevention or healthcare institutions of townships, nationality townships or towns may, in light of the specific medical conditions and needs, independently conduct ordinary practice of medicine.

Chapter IV Assessment and Training

Article 31 Institutions or organizations that are entrusted by administrative departments for public health of the people’s government at or above the county level shall, in conformity with standards for the practice of doctors, assess the professional levels, achievements and professional ethics of the doctors at regular intervals.

The said institution or organization shall submit the results of the assessment to the administrative departments for public health that are in charge of registration for the record.

Any doctor who is considered unqualified, shall be ordered by the administrative department for, public health of the people’s government at above the county level to suspend the practice of medicine for three months to six months and receive training and follow up medical education. At the expiration of the suspension, he shall be reassessed, and if he is considered qualified, he shall be permitted to resume the practice otherwise, his registration shall be revoked and the doctor’s license withdrawn by the said department.

Article 32 The administrative department for public health of the people’s government at or above the county level shall be responsible for guiding, inspecting and supervising, the assessment of doctor.

Article 33 Doctors who have one of the following achievements to their credit shall be commended or rewarded by the administrative department for public health of the people’s government at or above the county level:

(1) observing good professional ethics and having performed outstanding deeds in the practice of medicine;

(2) having made major breakthroughs in and outstanding contributions to medical techniques

(3) being distinguished in healing the wounded, rescuing the dying, and giving emergency treatment to
patients during natural calamities, epidemics; sudden accidents resulting in heavy casualties or other emergencies which seriously endanger people’s lives or health;

(4) having worked hard for a long time in grass-roots units in outlying or poverty-stricken areas or minority nationality regions where conditions are tough; or

(5) other achievements for which, according to the regulations of the administrative department for public health under the State Council they should be commended or rewarded.

Article 34 The administrative departments for public health of the people’s governments at or above the county level shall formulate training programs for doctors to train them in various forms and to provide them with the conditions for follow-up education in medicine.

The administrative departments for public health of the people’s governments at or above the county level shall take vigorous measures to train the medical workers who are engaged in medical treatment, disease prevention or healthcare in rural areas or minority nationality regions.

Article 35 Medical treatment, disease-prevention or healthcare institutions shall, in accordance with regulations and plans, ensure the doctors of their own institutions to receive training and follow-up education in medicine.

Medical or public health institutions which are entrusted by the administrative departments for public health of the people’s governments at or above the county level to assess doctors shall provide or create the conditions for doctors to receive training or follow-up education in medicine.

Chapter V Legal Responsibility

Article 36 Where a person obtains the doctor’s license by illegitimate means, the administrative department for health that granted the license shall revoke it; and the persons who are directly in charge and the other persons who are directly responsible shall be given administrative sanctions according to law.

Article 37 Any doctor who, in violation of the provisions in this Law, commit one of the following acts in the practice of medicine, shall be given a disciplinary warning or ordered to suspend the practice for not less than six months but not more than one year by the administrative department for public health of the people’s government at or above the county level; if the circumstances are serious, his license for medical practice shall be revoked; if such act constitutes a crime, he shall be investigated for criminal responsibility:

(1) causing serious consequences by violating the administrative rules and regulations for public health or the rules for technical operation;

(2) causing serious consequences by neglecting his duties and delaying the rescue, diagnosis and treatment of an emergency case;

(3) causing a medical accident by neglecting his duties;

(4) signing any document verification concerning diagnosis, treatment, epidemiology, birth or death without personally conducting the diagnosis, examination or investigation;

(5) concealing, forging or destroying without authorization any medical files or the relevant data;

(6) administering such medicines or using such disinfectants or medical apparatus as have not been approved;

(7) using anaesthetics, medical toxicants, or psychiatric or radioactive medicines in violation of
regulations;
(8) carrying out experimental clinical treatment without the consent of the patient or his relatives;
(9) causing serious consequences by divulging the patients’ privacy;
(10) by taking advantage of his position, demanding or illegally taking money or things of value from
the patients or seeking other illegitimate benefits.
(11) failing, to accept the assignment of the administrative department for public health under the
circumstances of natural calamities, epidemics, sudden accidents resulting in heavy casualties or other
emergencies which seriously endanger people’s lives or health; or
(12)failing to report, as required by regulations, when causing a medical accident or discovering an
epidemic, a patient who is involved in an incident of injury pr an unnatural death.

Article 38 Where a doctor causes an accident in medical treatment, disease prevention or healthcare, the case
shall be handled in accordance with law or relevant State regulations.

Article 39 Where persons set up medical institutions for the practice of medicine without permission or
non-doctors practise medicine, the administrative department for public health of the people’s government at
or above the county level shall have such acts banned and their unlawful gains and their medicines and
apparatus confiscated, and shall also fine them not more than 100,000 yuan; it shall revoke the doctor’s
license; if harm is done to patients, they shall bear the liability according to law; and if the act constitutes a
crime, the perpetrator shall be investigated for criminal responsibility according to law.

Article 40 Where a person hinders a doctor from conducting practice according to law, humiliates, slanders,
intimidates or beats up a doctor, infringes on a doctor’s personal freedom or interferes with a doctor’s normal
work of life, he shall be penalized in accordance with the provisions prescribed in the Regulations on
Administrative Penalties for Public Security; if the act constitutes a crime shall be investigated for criminal
responsibility in accordance with law.

Article 41 Where a medical treatment, disease-prevention or healthcare institution fails to fulfill its duty of
reporting the cases according to the provisions prescribed in Article 16 of this Law, thus causing serious
consequences, it shall be given a disciplinary warning by the administrative department for public health of
the people’s government at or above the county level; and the persons who are in charge of the administrative
affairs of the institution shall be given administrative sanctions by the said department according to law.

Article 42 Any member of the administrative department for public health or of a medical treatment,
disease-prevention or healthcare institution who, in violation of the relevant provisions of this law, practises
fraud, neglects his duty, abuses his power or engages in malpractice for personal gain which is not serious
enough to constitute a crime, shall be given administrative sanctions according to law; if the act constitutes a
crime, he shall be investigated for criminal responsibility.

Chapter VI Supplementary Provisions
Article 43 Where a person, prior to the date of promulgation of this Law, obtained a technical title in
accordance with relevant State regulations, in the profession of medicine and a position in the profession, the
matter shall be submitted by the institution where he works to the administrative department for public health
of the people’s government at or above the county level for confirmation before the person is granted the
doctor’s certificate. All the medical workers who are engaged in medical treatment, disease-prevention or
healthcare in a medical treatment, disease-prevention or healthcare institution shall, in conformity with the
requirements prescribed in this Law, together be examined and reported by the institution where they work to
the administrative department for public health of the people’s government at or above the county level for
registration and the issue of doctor’s licenses. Specific measures shall be formulated by the administrative
department for public health together with the personnel administrative department under the State Council.
Article 44 This Law shall apply to doctors who work in family-planning service institutions.
Article 45 Any rural doctor who provides villagers with disease-prevention, healthcare or ordinary medical
service in a rural medical and health institution and meets the relevant provisions prescribed in this Law may
obtain the doctor’s certificate or the assistant doctor’s certificate in accordance with law. With regard to rural
doctors have not obtained the doctor’s certificates or the assistant doctor’s certificates as prescribed in this
Law, the State Council shall formulate administrative measures separately.
Article 46 Measures for the application of this Law among doctors in the military shall be formulated by the
State Council and the Central Military Commission in accordance with the principles of this Law.
Article 47 Persons from abroad who wish to take the examinations for the doctor’s certificates, get registered,
engage in the practice of medicine or impart clinical instruction or conduct clinical research in the territory of
China shall apply in accordance with relevant State regulations.
Article 48 This Law shall go into effect as of May 1, 1999.
Certain Regulations on the Monitoring and Control of AIDS

(Effective date: January 14, 1988)

[Article 1] These Regulations are formulated to prevent the AIDS virus from spreading into China from abroad or from occurring and becoming prevalent in China and to safeguard the health of the people.

[Article 2] The targets of AIDS monitoring and control as referred to in these Regulations shall be:

(1) persons ill with AIDS;

(2) persons carrying the Aids virus;

(3) persons suspected of being ill with AIDS and persons who engage in intimate contact with those persons specified in items (1) and (2);

(4) blood and blood products, toxic strains of bacteria, biological tissue, animals and other items which are contaminated with the AIDS virus or suspected or being an AIDS virus carrier.

[Article 3] The various levels of the public health administrative departments shall be in charge of monitoring and controlling AIDS within their respective areas of jurisdiction.

The relevant departments, such as public security, foreign affairs, customs, tourism, education, aviation, railways and communications, and enterprises, public institutions and mass organisations shall assist the public health administrative departments to take measures to prevent the spread of AIDS.

[Article 4] All persons entering Chinese territory shall accurately complete a health declaration card and present it to the border health and quarantine station for inspection.

[Article 5] A foreigner who comes to China to settle or to stay (or to study in China) for a year or more, shall present an AIDS blood serum test certificate issued by a public hospital of the country of origin or issued by a private hospital and notarised by a public notary of the country of origin and authenticated by the Chinese embassy or consulate stationed in the said country. The certificate shall be valid for six months from the date of issue.

If circumstances do not allow a foreigner to undergo an AIDS blood serum test in his own country, he shall undergo an examination at a designated specialised public health organ within 20 days of his arrival in China.

[Article 6] A foreigner to whom the provisions of item (1) or (2) of Article 2 of these Regulations apply shall not be permitted to enter Chinese territory.
A foreigner who under the provisions of these Regulations is not permitted to enter China, but who has already arrived at a port in China, shall leave Chinese territory as soon as possible by the means of transport on which he arrived or by a means of transport of his country. If necessary, a Chinese aviation, railway or road traffic department shall arrange his departure from Chinese territory and the border health and quarantine station shall enforce isolation measures prior to his departure.

[Article 7] If, during the period a foreigner is staying in China, it is discovered that the provisions of item (1) or (2) of Article 2 apply, the local public health administrative department may request the public security department to order his immediate departure from Chinese territory.

[Article 8] A Chinese citizen who returns to settle of stay in China for one year or more after living abroad or residing abroad for one year or more (including Chinese seamen working abroad foreign vessels) shall undergo an examination at a designated specialised public health organ within two months of returning to China.

[Article 9] No unit or individual shall import or carry into China any of the items specified in item 4 of Article 2 of these Regulations. If it is essential to import such items, the matter shall be reported to the Ministry of Public Health for examination and approval.

[Article 10] Toxic strains of bacteria infected with the AIDS virus shall be retained and used by units designated by the Ministry of Public Health. No unit or individual shall exchange, deliver or use such items without authorisation.


Persons infected with the AIDS virus shall be prohibited from donating body tissue, organs, blood and semen.

[Article 12] The public health administrative departments of the various provinces, autonomous regions and directly administered municipalities shall organise the development of measures for the monitoring of AIDS. The main aspects of this monitoring work shall be to:

(1) collect, collate and analyse information on the epidemic situation;

(2) emphasise the need for mass blood serum checks;

(3) investigate and analyse the factors behind the epidemic.

[Article 13] When carrying out AIDS blood serum tests, injection syringes shall only be used once and all other equipment involved shall be properly sterilised to prevent an infection originating from such medical treatment.
[Article 14] AIDS shall be publicised as an infectious disease in accordance with State provisions.

[Article 15] If, while carrying out their official duties, such departments as civil administration, public security and the judiciary discover persons who are possible carriers of AIDS, these persons shall be sent immediately to a public health department to undergo an AIDS test.

[Article 16] Medical treatment units shall pay close attention when examining a patient and, if a person is suspected or having AIDS, shall immediately make a diagnosis and report and handle the matter.

[Article 17] If personnel engaged in sickness prevention, medical treatment or health care work positively diagnose or suspect a person of being ill with AIDS or of being an AIDS carrier, the matter shall be reported immediately to the local public health epidemic prevention station. The public health epidemic prevention station shall report the matter to its higher level public health administrative department within 12 hours of being notified.

If other persons suspect someone of being ill with AIDS, they shall report the matter to the local sickness prevention, medical treatment or health care organ. No unit or individual shall conceal or postpone the reporting of information concerning an epidemic disease.

[Article 18] When receiving personnel dispatched by a public health administrative department to undertake investigations, the relevant unit or individual shall be obliged to provide information on such aspects as the occurrence, spread and contraction of AIDS and to ensure that an accurate and complete representation of the situation is given.

[Article 19] Information on epidemic diseases reported to public health administrative departments shall be verified immediately. Attached to such information shall be a certificate of diagnoses issued by a designated specialised public health organ.

[Article 20] Reports on the state of the AIDS epidemic in China as a whole shall be issued by the Ministry of Public Health.

[Article 21] No unit or individual shall discriminate against persons suffering from AIDS, or AIDS virus carriers or their families. Relevant particulars, such as the name and address, of persons ill with AIDS or AIDS virus carriers shall not be disclosed publicly or be allowed to be spread.

[Article 22] All units and individuals shall implement the preventative measures adopted by the public health departments for the prevention and control of the spread of AIDS.

[Article 23] If a public health, medical treatment or health care organ discovers a person to whom the provisions of item 1 of Article 2 apply, isolation measures shall be adopted immediately and the person shall be sent to a treatment unit designated by a public health administrative department for medical treatment.
[Article 24] If a public health, medical treatment or health care organ discovers a person to whom the provisions of items 2 or 3 of Article 2 apply, the following measures shall be implemented in full or in part, depending on prevention requirements;

(1) detention for examination;

(2) restriction on area or activities;

(3) medical observation;

(4) regular or irregular visits for check-ups.

[Article 25] The corpse of an AIDS sufferer or AIDS carrier shall be cremated immediately.

[Article 26] Public health epidemic prevention organs shall supervise and guide the relevant departments and individuals to sterilise any secretions and excreta of an AIDS sufferer or AIDS carrier, together with other items and surroundings with which the AIDS victim is in contact and which may have become infected. If necessary, the public health epidemic prevention organ shall undertake the sterilisation.

[Article 27] When the public health, medical treatment and health care organs are implementing the measures stipulated in Articles 23 and 24 of these Regulations, the public security and other relevant organs shall provide assistance.

[Article 28] The public health administrative department shall issue a fine of between 50 yuan 3,000 yuan and enforce measures for prevention, medical treatment and sterilisation to be adopted if any nuit or individual violates these Regulations through one of the following acts:

(1) concealing and failing to report the state of a person's illness or evading examination;

(2) performing an act which spreads the AIDS virus when the person concerned knows that he is suffering from AIDS or is an AIDS carrier;

(3) concealing any item stipulated under item 4 of Article 2 of these Regulations from inspection as it is carried into Chinese territory;

(4) refusing to implement measures for the prevention and control of the spread of AIDS as stipulated in Articles 23, 24, 25 and 26 of these Regulations.

[Article 29] If these Regulations are violated, thereby causing the spread of AIDS or causing a situation which is dangerously conducive to the spread of AIDS, the judicial organs shall pursue criminal liability in accordance with the law.

[Article 30] The meaning of terms used in these Regulations is as follows:
(1) "AIDS" refers to the antibody immune deficiency syndrome;

(2) "a person ill with AIDS" refers to a person who is AIDS virus antibody positive and is clinically showing a conditional infection or a malignant tumour;

(3) "a person carrying the AIDS virus" refers to a person who is AIDS antibody positive, but shows no symptoms of the virus, or who has yet to be diagnosed as suffering from AIDS;

(4) "a foreigner" refers to a person who is not a Chinese citizen in accordance with the provisions of the Nationality Law of the People's Republic of China.

[Article 31] Fees shall be collected in accordance with regulations when measures for prevention, medical treatment or inspection are undertaken.

[Article 32] The Ministry of Public Health shall be responsible for the interpretation of these Regulations.

[Article 33] These Regulations shall take effect from the date of promulgation.
Administrative Procedure Law of the People’s Republic of China

(Effective October 1, 1990)

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Chapter I General Provisions
Article 1
For the purposes of safeguarding correct and timely trial of administrative cases, protecting the lawful rights and interests of citizens, legal persons and other organizations and ensuring and supervising the exercise of administrative power by administrative organs according to law, this Law is enacted in accordance with the Constitution.

Article 2
In case that a citizen, a legal persons or other organizations a concrete administrative action by an administrative organ or its personnel has infringed upon his or her or its lawful rights and interests, they shall have the right to initiate an action to a people's courts in accordance with this Law.

Article 3
The people's courts shall exercise judicial power independently over administrative cases, and shall not be subject to interference by any administrative organ, social organization or individual.

The people's courts shall set up administrative divisions to handle administrative cases.

Article 4
The people's court shall, in trying administrative cases, base themselves on facts and take the law as the criterion.

Article 5
The people's court shall, in handling an administrative cases, examine to determine whether or not the specific administrative act is legal.

Article 6
The people's court shall, in handling administrative cases, adopt, as prescribed by law, the systems of collegial panel, withdrawal and public trial and a system whereby the second instance is the final.

Article 7
Parties to an administrative case shall be equal before the law.

Article 8
Citizens of all nationalities shall have the right to use their native spoken and written languages in administrative proceedings.
In an area where people of a minority nationality live in concentrated communities or where a number of nationalities live together, the people's courts shall conduct the trial and issue legal documents in the language or languages commonly used by the local nationalities.
The people's courts shall provide interpretation for participants in proceedings who do not understand the language or languages commonly used by the local nationalities.

Article 9
Parties to an administrative action shall have the right to debate.

Article 10
The people's procuratorates shall have the right to exercise legal supervision over administrative proceedings.

Chapter II Scope of Case Acceptance
Article 11
The people's courts shall accept actions initiated by citizens, legal persons or other organizations against any of the following specific administrative acts:
(1). refusing to accept such administrative penalties as detention, fine, revocation of a business license or permit, order of suspension of production or business or confiscation of property;
(2). refusing to accept such compulsory administrative measures as restriction of freedom of the person or the sealing up, seizure or freeze of property;
(3). deeming that an administrative organ has infringed upon its managerial decision-making powers authorized thereto by law;
(4). deeming that the application for issuance of a permit or license conforms to the provisions of laws but an administrative organ has refused to issue it or refused to make a reply therefor;
(5). having applied to an administrative organ to perform its statutory duty in protecting the rights of the person and of property but the administrative organ has refused to perform the duty or failed to make a reply therefor;
(6). deeming that an administrative organ has failed to distribute a pension thereto according to law;
(7). deeming that an administrative organ has demanded the performance of duties in violation of laws; and
(8). deeming that an administrative organ has infringed upon other rights of the person and of property.
Apart from the provisions of the preceding paragraph, the people's court shall also accept other administrative actions which may be initiated in accordance with the provisions of relevant laws and regulations.

Article 12
The people's courts shall not accept actions initiated by citizens, legal persons or other organizations concerning any of the following matters:
(1). State acts in areas like national defense and foreign affairs;
(2). administrative rules and regulations, or decisions and orders with general binding force formulated and promulgated by administrative organs;
(3). decisions made by an administrative organ concerning awards or punishment for its personnel or concerning the appointment or removal; or
specific administrative acts that shall, as provided for by law, be finally decided by an administrative organ.

Chapter III Jurisdiction

Article 13
The grassroots people's courts shall have jurisdiction as courts of first instance over administrative cases.

Article 14
The intermediate people's courts shall have jurisdiction as courts of first instance over the following administrative cases:

(1). cases of confirming patent rights of invention and cases handled by the Customs;
(2). actions initiated against specific administrative acts taken by departments under the State Council or by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government; and
(3). grave and complicated cases in areas under their jurisdiction.

Article 15
The higher people's courts shall have jurisdiction as courts of first instance over grave and complicated administrative cases in areas under their jurisdiction.

Article 16
The Supreme People's Court shall have jurisdiction as a court of first instance over grave and complicated administrative cases in the whole country.

Article 17
An administrative case shall be under the jurisdiction of the people's court in the place where the administrative organ that initially undertook the specific administrative act is located. An administrative case which has been reconsidered and the reconsideration organization has changed the original specific administrative act also may be under the jurisdiction of the people's court in the locality where the reconsideration organization is located.

Article 18
An action initiated against compulsory administrative measures restricting freedom of the person shall be under the jurisdiction of a people's court in the place where the defendant or the plaintiff is located.

Article 19
An administrative action regarding a real property shall be under the jurisdiction of the people's court in the place where the real property is located.

Article 20
When two or more people's courts have jurisdiction over the same action, the plaintiff may have the option to initiate an action to one of these people's courts. In case that a plaintiff initiates actions to two or more people's courts that have jurisdiction over the case, the people's court that first receives the bill of complaint shall have jurisdiction.

Article 21
Where a people's court finds that a case it has accepted is not under its jurisdiction, it shall transfer the case to the people's court that has jurisdiction over the case. The people's court to which the case has been transferred may not transfer the case again to another people's court on its own.

Article 22
Where a people's court which has jurisdiction over a case is unable to exercise its jurisdiction for special reasons, a people's court at a higher level shall designate another court to exercise the jurisdiction. In case that a dispute arises over jurisdiction between the people's courts, it shall be resolved by the parties to the dispute through consultation. If the consultation fails, it shall be reported to a people's court superior to the courts in dispute for the designation of jurisdiction.

Article 23
People's courts at higher levels shall have the authority to try administrative cases over which people's courts at lower levels have jurisdiction as courts of first instance, and may also transfer administrative cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower levels for trial.

Where a people's court deems it necessary that an administrative case of first instance under its jurisdiction shall be tried by a people's court at a higher level, it may report to such a people's court for a decision.

Chapter IV Participants in Proceedings
Article 24
A citizen, a legal person or any other organization that initiates an action in accordance with this Law shall be a plaintiff.
If a citizen who has the right to initiate an action is dead, his or her near relatives may initiate an action.
If a legal person or any other organization that has the right to initiate an action has terminated, the legal person or any other organization that succeeds to its rights may initiate an action.

Article 25
Where a citizen, a legal person or any other organization initiate an action directly to a people's court, the administrative organ that took the specific administrative act shall be the defendant.
Regarding to a reconsidered case, if the reconsideration organization upholds the original specific administrative act, the administrative organ that initially took the act shall be the defendant; if the reconsideration organization has changed the original specific administrative act, the reconsideration organization shall be the defendant.
Where two or more administrative organs have taken the same specific administrative act, the administrative organs that have jointly taken the act shall be the joint defendants.
If a specific administrative act has been taken by an organization authorized by the law or regulations, the organization shall be the defendant. If a specific administrative act has been taken by an organization as entrusted by an administrative organ, the entrusting administrative organ shall be the defendant.
Where an administrative organ has been abolished, the administrative organ that carries on the exercise of functions and powers of the abolished organ shall be the defendant.

Article 26
Where one party or both parties consist of two or more persons, and their administrative cases are against the same specific administrative act or against the specific administrative acts of the same nature, and the people's court considers that the trial of the cases can be merged, this shall be a joint action.

Article 27
Any other citizen, legal person or any other organization who or which has interests in a specific administrative act against which an action is initiated may apply to participate in the action as a third party, or may participate in the proceedings upon notification by the people's court.
Article 28
Any citizen with no capacity for action shall be represented by his or her legal representatives in proceedings. In case that the legal representatives try to shift the responsibilities onto each other, the people's court may appoint one of them to represent the citizen in proceedings.

Article 29
Each party or legal representative may entrust one or two persons to represent him or her in proceedings. A lawyer, a social group, near relatives of a citizen who has initiated an action, or a person recommended by the unit to which the citizen belongs or any other citizen approved by the people's court may be entrusted as an agent.

Article 30
A lawyer who serves as an agent may consult materials pertaining to the case in accordance with relevant provisions, and may also investigate among and collect evidence from the organizations and citizens concerned. If the information involves State secrets or personal privacy, the lawyer shall keep it confidential in accordance with relevant provisions of the law.

Upon approval of the people's court, parties and other agents may consult the materials relating to the trial of the case, however, those involving State secrets or personal privacy shall be excluded.

Chapter V Evidence

Article 31
Evidence includes the following types:
(1). documentary evidence;
(2). material evidence;
(3). audio-video material;
(4). testimony of witnesses;
(5). statements of the parties;
(6). expert conclusions; and
(7). records of inquests and records made on the scene.

Any of the above-mentioned evidence must be verified by the court before it can be taken as a basis for ascertaining a fact.

Article 32
The defendant shall have the burden of proof for the specific administrative act it has taken, and shall provide evidence and regulatory documents on which the act has been based.

Article 33
In the course of legal proceedings, the defendant may not collect evidence from the plaintiff and witnesses on its own initiative.

Article 34
The people's court shall have the authority to request the parties to provide or supplement evidence. The people's court shall have the authority to obtain evidence from the relevant administrative organs, other organizations or citizens.

Article 35
In the course of legal proceedings, when a people's court considers that an expert evaluation for a specialized problem is necessary, the issue shall be entrusted to an statutory expert evaluation department.
for an expert evaluation. In absence of such a statutory expert evaluation department, the people's court shall designate one evaluation department to conduct an expert evaluation.

Article 36
Under the circumstance where evidence is likely to be cease to exist or be lost or would be difficult to obtain later on, the participants in proceedings may apply to the people's court for the preservation of the evidence, the people's court may also take measures to preserve such evidence on its own initiative.

Chapter VI Initiation of an Action and Acceptance of a Case

Article 37
Regarding to an administrative case within the scope of acceptance by the people's court, a citizen, a legal person or any other organization may first apply for a reconsideration to an administrative organ at the next higher level or to an administrative organ as prescribed by the law or regulations, and may initiate an action to a people's court if refusing to accept the reconsideration decision; also may initiate an action to a people's court directly.

In case that an application for a consideration to an administrative organ shall be made first as stipulated by relevant provisions of laws and regulations, and that an action may be then initiated to a people's court if refusing to accept the reconsideration decision, the provisions of the laws and regulations shall apply.

Article 38
Where a citizen, a legal person or any other organization applies to an administrative organ for a reconsideration, the reconsideration organ shall make a decision within two months from the day of the receipt of the application. However, cases stipulated otherwise by laws and regulations shall be excluded.

Where any applicant refuses to accept the reconsideration decision, the applicant may initiate legal proceedings to a people's court within 15 days from the day of the receipt of the reconsideration decision. If the reconsideration organ fails to make a decision on the expiration of the time limit, the applicant may bring a suit before a people's court within 15 days after the time limit for reconsideration expires, except as otherwise provided for by law.

Article 39
Where a citizen, a legal person or any other organization choose to directly initiate an action to a people's court, he or it shall do so within three months from the day when he or it comes to know that a specific administrative act has been taken, except as otherwise provided for by law.

Article 40
In case that a citizen, a legal person or any other organization misses the time limit prescribed by law due to force majeure or other special reasons, he or it may apply for an extension of the time limit within ten days after the obstacle is eliminated, the people's court shall make a decision thereon.

Article 41
The following requirements shall be met when an action to be initiated:
(1). the plaintiff must be a citizen, a legal person or any other organization that considers a specific administrative act as having infringed upon his or its lawful rights and interests;
(2). there must be a specific defendant;
(3). there must be specific claims and corresponding factual basis; and
(4). the suit must fall within the scope of cases acceptable to the people's courts and the jurisdiction of the people's court accepting to hear the case.
Article 42
When a people's court receives a bill of complaint, it shall, upon examination, file a case or make a ruling not to accept it within seven days. If the plaintiff refuses to accept the ruling, the plaintiff may appeal to a people's court at the higher level.

Chapter VII Trial and Judgment
Article 43
A people's court shall, within five days after filing a case, send a copy of the bill of complaint to the defendant. The defendant shall, within 10 days after receiving the copy of the bill of complaint, provide the people's court with the documents on which a specific administrative act has been based and submit a bill of defense. The people's court shall send a copy of the bill of defense to the plaintiff within five days after receiving it.
Failure by the defendant to submit a bill of defense shall not affect the trial of the case by the people's court.

Article 44
During the time of legal proceedings, execution of the specific administrative act shall not be suspended. Execution of the specific administrative act shall be suspended under one of the following circumstances:
(1). if suspension is deemed necessary by the defendant;
(2). if the defendant applies for a suspension of execution, and the people's court deems that execution of the specific administrative act will cause irremediable losses and suspension of the execution will not harm public interests, and thus rules to suspend the execution; or
(3). if suspension of execution is required by the provisions of laws or regulations.

Article 45
The people's court shall openly try administrative cases, unless the cases involve State secrets or personal privacy or are otherwise provided for by law.

Article 46
When the people's court hears administrative cases, a collegial panel of judges or of judges and assessors shall be formed. The number of members of a collegial panel shall be an odd number of three or more.

Article 47
If a party considers a member of the judicial personnel to have an interest in the case or to be related to it, which may affect the impartial handling of the case, the party shall have the right to demand the withdrawal of the judicial personnel.
If a member of the judicial personnel considers himself or herself to have an interest in the case or to have other relations with it, he or she shall apply for withdrawal.
The provisions of the two preceding paragraphs shall apply to court clerks, interpreters, expert witnesses and persons who conduct inquests.
The withdrawal of the president of the court as the presiding judge shall be decided by the court's adjudication committee; the withdrawal of a member of the judicial personnel shall be decided by the president of the court; the withdrawal of other personnel shall be decided by the presiding judge. Any party who refuses to accept the decision may apply for a reconsideration.

Article 48
In case where a plaintiff refuses to appear in court without justified reasons after being summoned twice by
the people's court, the court shall consider this an application of withdrawal of the case; if the defendant refuses to appear in court without justified reasons, the court may make a judgment by default.

Article 49
If a participant in the proceedings or any other person commits any of the following acts, the people's court may, according to the seriousness of his or her offense, reprimand him or her, order him or her to sign a statement of repentance or impose upon him or her a fine not exceeding 1,000 yuan or detain him or her for a period not exceeding 15 days; if a crime is constituted, criminal responsibility shall be investigated according to law:

(1). any person who has the duty to render assistance, but delays without reason or refuses to render assistance or obstructing the execution after the people's court has served him or her a notice for assistance;
(2). forging, concealing or destroying evidence;
(3). instigating, bribing or coercing others to make false testimony or obstructing witnesses from giving testimony;
(4). concealing, transferring, selling or destroying the property that has been sealed up, seized or frozen;
(5). resorting to violence, coercion or other means to obstruct the personnel of a people's court from performing their duties or disturbing the order of a people's court; or
(6). insulting, slandering, framing, beating or retaliating against the personnel of a people's court, participants in proceedings or personnel who assist in the execution of duties.

A fine or detention must be approved by the president of a people's court. Any party who refuses to accept the punishment decision may apply for a reconsideration.

Article 50
A people's court shall not apply conciliation in trying an administrative case.

Article 51
Prior to a judgment or rulings made by a people's court on an administrative case, if the plaintiff applies for the withdrawal of the case, or if the defendant amends the specific administrative act and the plaintiff, as a result, agrees and applies for the withdrawal of the suit, the people's court shall decide whether or not to grant the approval thereon.

Article 52
In trying administrative cases, the people's courts shall take the law, administrative rules and regulations and local regulations as the criteria. Local regulations shall be applicable to administrative cases within the corresponding administrative areas.

In trying administrative cases of a national autonomous area, the people's courts shall also take the regulations on autonomy and separate regulations of the national autonomous area as the criteria.

Article 53
In trying administrative cases, the people's courts shall take as reference regulations formulated and announced by ministries or commissions under the State Council in accordance with the law and administrative rules and regulations, decisions or orders of the State Council, and regulations formulated and announced, in accordance with the law and administrative rules and regulations of the State Council, by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government, by the cities where the people's governments of provinces and autonomous regions are located, as well as rules and regulations made, in accordance with laws and administrative regulations
of the State Council, by the larger cities approved by the State Council.
If a people's court considers regulations or rules formulated and announced by a local people's government to be inconsistent with regulations or rules formulated and announced by a ministry or commission under the State Council, or if it considers rules or regulations formulated and announced by ministries or commissions under the State Council to be inconsistent with each other, the Supreme People's Court shall refer the matter to the State Council for an interpretation or ruling.

Article 54
After hearing a case, a people's court shall make one of the following judgments according to the conditions:
(1). rule to uphold the specific administrative act if the evidence for taking the specific administrative act is conclusive, the application of the law and regulations is correct, and the legal procedure is complied with.
(2). rule to cancel or cancel partially the specific administrative act, or rule the defendant to make a new administrative act if the specific administrative act has been taken in one of the following circumstances:
1. found to be inadequate in essential evidence;
2. found that the application of the law or regulations is erroneous;
3. found to have violated the legal procedure;
4. found to have acted exceeding authority; or
5. found to have abused the powers.
(3). if a defendant fails to perform or delays the performance of its statutory duty, a fixed time shall be set by judgment for its performance of the duty.
(4). if an administrative penalty is obviously unfair, rule to make amendment.

Article 55
Where the people's court rules a defendant to take a new specific administrative act, the defendant may not, based on the same fact and reason, undertake a specific administrative act essentially identical with the original one.

Article 56
In trying administrative cases, if a people's court considers the head of an administrative organ or the person directly in charge to have violated administrative discipline, the court shall transfer the relevant materials to the administrative organ or the administrative organ at the next higher level or to a supervisory or personnel department; if a people's court considers that there exists a criminal act, it shall transfer the relevant materials to the public security and procuratorial organs.

Article 57
The people's court shall make a judgment of first instance within three months from the day of filing the case. If an extension of the time limit is necessary under special circumstances, it shall be approved by a higher people's court, if an extension of the time limit for trying a case of first instance by a higher people's court is needed, this shall be approved by the Supreme People's Court.

Article 58
If a party refuses to accept a judgment of first instance made by a people's court, the party shall have the right to file an appeal with the people's court at the next higher level within 15 days after the service of the written judgment. If a party refuses to accept a ruling of first instance made by a people's court, the party shall have the right to file an appeal with the people's court at the next higher level within 10 days after the
service of the written ruling. All judgments and rulings of first instance made by the people's court that have not been appealed within the prescribed time limit shall be legally effective.

Article 59
A people's court may handle an appealed case by examining the court records if it considers the facts clearly ascertained.

Article 60
In handling an appealed case, a people's court shall make a final judgment within two months from the day of receiving the appeal. If an extension of the time limit is necessary under special circumstances, it shall be approved by a higher people's court, if an extension of the time limit for handling an appealed case by a higher people's court is necessary, this shall be approved by the Supreme People's Court.

Article 61
The people's court shall handle appealed cases in light of the conditions:
(1). if the facts are clearly ascertained and the law and regulations are correctly applied in the original judgment, the appeal shall be rejected and the original judgment shall be upheld;
(2). if the facts are clearly ascertained but the law and regulations are incorrectly applied in the original judgment, the judgment shall be amended according to the law and regulations; or
(3). if the facts are not clearly ascertained in the original judgment or the evidence is insufficient, or a violation of the prescribed procedure may have affected the correctness of the original judgment, the original judgment shall be rescinded and the case shall be remanded to the original people's court for a retrial, or the people's court of the second instance may amend the judgment after investigating and clarifying the facts. The parties may appeal against the judgment or ruling rendered in a retrial of their case.

Article 62
If a party considers that a legally effective judgment or ruling contains definite error, the party may make complaints to the people's court which tried the case or to a people's court at a higher level, but the execution of the judgment or ruling shall not be suspended.

Article 63
If the president of a people's court finds a violation of provisions of the law or regulations in a legally effective judgment or ruling made by his or her court and deems it necessary to have the case retried, the president shall refer the matter to the adjudication committee, which shall decide whether a retrial is necessary.
If a people's court at a higher level finds a violation of provisions of the law or regulations in a legally effective judgment or ruling made by a people's court at a lower level, it shall have the power to bring the case up for trial itself or direct the people's court at the lower level to conduct a retrial.

Article 64
If the people's procuratorate finds a violation of provisions of the law or regulations in a legally effective judgment or ruling made by a people's court, it shall have the right to lodge a protest in accordance with procedures of judicial supervision.

Chapter VIII Execution
Article 65
The parties must perform the legally effective judgment or ruling made by the people's court. If a citizen, a legal person or any other organization refuses to perform the judgment or ruling, the
administrative organ may apply to a people's court of first instance for compulsory execution or proceed
with compulsory execution according to law.
If an administrative organ refuses to perform the judgment or ruling, the people's court of first instance may
adopt the following measures:
(1). informing the bank to transfer from the administrative organ's account the amount of the fine that
should be returned or the damages that should be paid;
(2). imposing a fine ranging from 50 to 100 yuan per day on an administrative organ that fails to perform
the judgment or ruling within the prescribed time limit, counting from the day when the time limit expires;
(3). making a judicial proposal to the administrative organ next higher to the administrative organ in
question or to a supervisory or personnel department. The organ that accepts the judicial proposal shall deal
with the matter in accordance with the relevant provisions and inform the people's court of its disposition;
and
(4). if an administrative organ refuses to execute a judgment or ruling, and the circumstances are so serious
that a crime is constituted, the head of the administrative organ and the person directly held responsible
shall be investigated for criminal responsibility according to law.

Article 66
If a citizen, a legal person or any other organization, during the period prescribed by law, neither initiates
an action nor carries out the specific administrative act, the administrative organ may apply to a people's
court for compulsory execution, or proceeds with compulsory execution according to law.

Chapter IX Compensation Liability for Infringement of Rights

Article 67
A citizen, a legal person or any other organization who suffers damage because of the infringement upon
his or her or its lawful rights and interests by a specific administrative act taken by an administrative organ
or its personnel shall have the right to claim compensation.
If a citizen, a legal person or any other organization makes an independent claim for damages, the case
shall first be dealt with by the administrative organ. If the disposition by the administrative organ is refused
to be accepted, an action may be initiated to a people's court.
Conciliation may apply to an action for compensation.

Article 68
If a specific administrative act taken by an administrative organ or its personnel infringes upon the lawful
rights and interests of a citizen, a legal person or any other organization and thus causes damage thereto,
the administrative organ or the administrative organ to which the personnel belongs shall bear the liability
for making compensation.
After having borne the liability for making compensation, the administrative organ shall instruct those
personnel who have committed intentional or gross mistakes in the case to bear part or all of the damages.

Article 69
The cost of compensation shall be included as an expenditure in the government budget at various levels.
The people's governments at various levels may order the administrative organs responsible for causing the
compensation to bear part or all of the damages. The specific measures thereof shall be formulated by the
State Council.

Chapter X Administrative Procedure Involving Foreign Interests
Article 70
This Law shall be applicable to foreign nationals, stateless persons and foreign organizations that are engaged in administrative actions in the People's Republic of China, except as otherwise provided for by law.

Article 71
Foreign nationals, stateless persons and foreign organizations that are engaged in administrative actions in the People's Republic of China shall have the same rights and obligations to action as citizens and organizations of the People's Republic of China.
Should the courts of a foreign country impose restrictions on the administrative litigation rights of the citizens and organizations of the People's Republic of China, the Chinese people's courts shall follow the principle of reciprocity regarding the administrative litigation rights of the citizens and organizations of that foreign country.

Article 72
If an international treaty concluded or acceded to by the People's Republic of China contains provisions different from those of this Law, the provisions of the international treaty shall apply, with exception of those clauses on which the People's Republic of China has announced reservations.

Article 73
When foreign nationals, stateless persons and foreign organizations appoint lawyers as their agents in administrative actions in the People's Republic of China, they shall appoint lawyers of a lawyers organization of the People's Republic of China.

Chapter XI Supplementary Provisions
Article 74
The people's court shall charge litigation fees for handling administrative cases. The litigation fee shall be borne by the losing party, or by both parties if they are both held responsible. The specific measures on the charging of litigation fees shall be made separately.

Article 75
This Law shall come into force on October 1, 1990.
Administrative Punishment Law of the People's Republic of China

(Effective October 1, 1996)

Chapter I. General Provisions
Chapter II. Types and Establishment of Administrative Punishments
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Chapter IV. Jurisdiction and Application of Administrative Punishments
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Chapter I. General Provisions

Article 1.
This law is enacted pursuant to the constitution, with a view to standardizing the establishment and administration of administrative punishments, guaranteeing and supervising the effective enforcement of executive commands by administrative organs, safeguarding public interests and social order, and protecting the legitimate rights and interests of citizens, legal persons or other organizations.

Article 2.
This law is applicable to the establishment and administration of administrative punishments.

Article 3.
The violations of the order of executive commands by citizens, legal persons or other organizations that merit administrative punishments shall be stipulated by laws, regulations or rules according to this law and the punishments are to be administered by administrative organs according to procedures stipulated in this law.
Administrative punishments are invalid without legal basis or without following legal proceedings.

Article 4.
Administrative punishments follow the principle of fairness and openness.
The establishment and administration of an administrative punishment must be based on facts and be corresponding to the facts, nature and circumstances of the offence against the law as well as the degree of its harm to society.

The rules governing the meting out of administrative punishments for offences against the law must be promulgated; rules not promulgated shall not become the basis for administrative punishments.

Article 5.

The combination of punishments and education shall be upheld in administering administrative punishments and correcting offences against the law, so as to teach citizens, legal persons or other organizations to abide by the law consciously.

Article 6.

Citizens, legal persons or other organizations to which administrative organs have given administrative punishments enjoy the rights of statement and defense. If they do not agree with the administrative punishments, they have the right to apply for administrative reconsideration or to initiate administrative proceedings.

Where citizens, legal persons or other organizations suffer losses from administrative punishments, which are illegally meted out by administrative organizations, they have the right to demand compensation.

Article 7.

Where citizens, legal persons or other organizations, which receive administrative punishments for violations of the law, cause losses to others with their offences against the law, they shall bear civil liability.

Where offences against the law constitute crime, investigation shall be conducted to determine criminal responsibility; administrative punishments are not to replace criminal punishments.

Chapter II. Types and Establishment of Administrative Punishments

Article 8.

Types of administrative punishments:
(1) warning;
(2) fines;
(3) confiscating illegally-gained income and property;
(4) ordering the suspension of production and operations;
(5) provisionally suspending or revoking permits or licences;
(6) administrative detention;
(7) other administrative punishments stipulated in laws and administrative regulations.

Article 9.
Various types of administrative punishments can be established by laws.
Administrative punishments that restrict personal freedom can only be established by laws.

Article 10.

Administrative regulations may establish administrative punishments exclusive of those restricting personal freedom.
Where the law has stipulated administrative punishments for offences against law, but specific stipulations are necessary in administrative regulations, stipulations on the behavior that should receive administrative punishments and the types and extent of punishments must be formulated within the limits provided by law.

Article 11.

Local laws and regulations may establish administrative punishments exclusive of those restricting personal freedom and revoking operation licences of enterprises.
Where the law and administrative regulations have stipulated administrative punishments on the offences against law, but specific stipulations are necessary in local laws and regulations, stipulations on the behaviour that should receive administrative punishments and the types and extent of punishments must be formulated within the limits provided by law and administrative regulations.

Article 12.

Rules and regulations formulated by ministries and commissions under the State Council may, within the limits provided by law and administrative regulations, make specific stipulations on the behaviour that should receive administrative punishments and on types and extent of the punishments.

For behaviour that has not yet been subject to any laws or administrative regulations and behaviour violating the order of executive commands as stated in the aforementioned rules and regulations formulated by ministries and commissions under the State Council, administrative punishments, such as warnings and a certain amount of fine, may be established. The amounts of the fines are to be stipulated by the State Council.

The State Council may authorize its directly subordinate organs that have the right of administrative punishment to make stipulations on administrative punishments according to the first and second paragraphs of this article.

Rules and regulations formulated by provincial, autonomous regional and municipal people's governments; people's governments of cities where provincial and autonomous regional people's governments are located; and people's governments of larger cities, with the State Council's approval, may provide specific stipulations on the behaviour that should receive administrative punishments and types and extent of the
punishments within the limits provided by law, rules and regulations.

For behaviour which has not been subject to any laws or regulations yet and behaviour violating the order of executive commands as stated in the aforementioned rules and regulations formulated by people's governments, administrative punishments, such as warnings and a certain amount of fine, may be established. The amounts of the fines are to be stipulated by standing committees of provincial, autonomous regional, or municipal people's congresses.

Article 14.

Except for the stipulations in Articles 9, 10, 11, 12 and 13 of this law, other regulatory documents are not to establish administrative punishments.

Chapter III. Organs Administering Administrative Punishments

Article 15.

Administrative punishments are administered by administrative organs with the right of administrative punishment within the limits of their legal powers.

Article 16.

The State Council or provincial, autonomous regional and municipal people's governments authorized by the State Council may designate an administrative organ to exercise the right of administrative punishment of relevant administrative organs, but the right of administrative punishment that restricts personal freedom can be exercised only by public security organs.

Article 17.

Organizations authorized by laws and regulations to manage public affairs may administer administrative punishments within the limits of their legal authority.

Article 18.

According to the stipulations in laws, rules or regulations, administrative organs may, within the limits of their legal powers, entrust organizations that meet the stipulations in Article 19 of this law to administer administrative punishments. Administrative organs shall not entrust other organizations or individuals to administer administrative punishments.

The entrusting administrative organs shall be responsible for the entrusted organizations' behavior of administering administrative punishments and bear legal responsibility for the consequences of the behavior.
Within the scope of what they are entrusted, the entrusted organizations shall administer administrative punishments in the name of the entrusting administrative organs, and shall not re-entrust any other organizations or individuals to administer the administrative punishments.

Article 19.

The entrusted organizations shall meet the following requirements:
(1) they shall be the institutions established according to law and managing public affairs;
(2) they shall have staff who are familiar with relevant laws, rules, regulations and operations;
(3) they shall be able to organize and conduct corresponding technical inspection or evaluation on offences against the law when necessary.

Chapter IV. Jurisdiction and Application of Administrative Punishments

Article 20.

Administrative punishments are under the jurisdiction of an administrative organ with administrative punishment authority under the local people's government at or above the county level in the place where the unlawful acts take place, unless otherwise specified by law or administrative regulations.

Article 21.

When the jurisdiction over a case is in dispute, the disputing parties shall refer the case for a decision to an administrative organ at a higher level which has jurisdiction over them.

Article 22.

When unlawful acts amount to crimes, the administrative organ in charge must refer the case to a judicial organ for investigation of criminal liability according to the law.

Article 23.

In carrying out administrative punishments, administrative organs should order parties concerned to correct their unlawful acts or to correct them within a specified period.

Article 24.

Parties concerned must not be given the administrative punishment of paying fine two or more times for one unlawful act.

Article 25.

Persons under 14 years of age are not to be given administrative punishments for their unlawful acts; instead, their custodians are to be ordered to discipline them. Persons over 14 but under 18 years of age are
to be given lenient or reduced administrative punishments for their unlawful acts.

Article 26.

Mentally sick persons are not to be given administrative punishments for their unlawful acts if these acts are committed when they are unable to judge or control themselves; instead, their custodians are to be ordered to keep them under close watch and to send them for medical treatment. Persons suffering from intermittent insanity shall be given administrative punishments for their unlawful acts if these acts are committed when they are mentally normal.

Article 27.

Parties concerned who meet one of the following conditions shall be given lenient or reduced administrative punishments according to the law:
(1) who voluntarily eliminate or reduce the damaging consequences resulting from their unlawful acts;
(2) who commit unlawful acts under other people's coercion;
(3) who have won credit in helping administrative organs investigate unlawful acts;
(4) other people who are given lenient or reduced administrative punishments.

Those whose unlawful acts are minor and have not resulted in damaging consequences and who promptly correct their mistakes are not to be given administrative punishments.

Article 28.

If those whose unlawful acts amount to crimes have been put under administrative detention by an administrative organ and also have been sentenced to criminal detention or prison terms by a people's court, their criminal detention or prison terms shall be reduced accordingly.

If those whose unlawful acts amount to crimes have been fined by an administrative organ and are again ordered by a people's court to pay a fine, the amount of fine shall be reduced accordingly.

Article 29.

Unless otherwise specified by law, those whose unlawful acts are not discovered within two years are not to be given administrative punishments.

The aforementioned time limit is computed from the date when the unlawful acts take place; if the unlawful acts continue or of a continuous nature, the time limit is computed from the date when the unlawful acts terminate.

Chapter V. Decisions on Administrative Punishments

Article 30.
If citizens, legal persons or other organizations shall be given administrative punishments according to the law for violating administrative management order, administrative organs must find out the facts; those whose unlawful acts are not clearly proved are not to be given administrative punishments.

Article 31.

Before making the decision to impose administrative punishments, administrative organs shall notify the parties concerned the facts, reasons and grounds on which the decision is made, as well as the rights that the parties concerned enjoy according to the law.

Article 32.

Parties concerned have the right to make a statement and to defend themselves. Administrative organs must fully hear the opinion of the parties concerned and shall verify the facts, reasons and evidence presented by the parties concerned. Administrative organs shall accept the facts, reasons and evidence presented by the parties concerned if these facts, reasons and evidence are valid.

Administrative organs must not increase punishments for the parties concerned because they have defended themselves.

Section 1. Simple Procedures

Article 33.

If, in a violation of the law where irrefutable facts can be produced and a legal basis provided for its handling, a civilian is liable to a fine of under 50 yuan and a legal person and other organizations are liable to a fine under 1,000 yuan or are liable to such administrative punishment as a warning, a decision on administrative punishment can be made on the spot. The relevant party should execute the decision on administrative punishment in accordance with Articles 46, 47 and 48 of this law.

Article 34.

When making an on-the-spot decision on administrative punishment, a law enforcement person should show his law enforcement identity card to the relevant party, fill out a numbered administrative punishment form, and give it to the relevant party on the spot.

The administrative punishment form should explicitly contain the details of the relevant party's violation of the law; the basis for the administrative punishment; the amount, time and location of the fine; and the name of the administrative department. The law enforcement person should sign or seal the completed form.
The law enforcement person should report this decision on administrative punishment to his administrative department for filing purposes.

Article 35.

If the relevant party does not agree with the on-the-spot decision on administrative punishment, he may apply for an administrative review or file an administrative lawsuit.

Section 2. General Procedures

Article 36.

Apart from meting out an on-the-spot administrative punishment in accordance with Article 33 of this law, if an administrative department discovers any behavior by a civilian, a legal person or other organizations is liable to administrative punishment, it must completely, objectively and justly investigate the case and collect the relevant evidence; if necessary, it should conduct an inspection in accordance with law and regulations.

Article 37.

When an administrative department conducts an investigation or inspection, there must be present at least two law enforcement personnel, who must produce their identity cards to the relevant party. The relevant party should truthfully answer questions and cooperate in the investigation or inspection; no obstruction is allowed. Notes must be taken during questioning or inspection.

An administrative department may conduct a sample survey in the course of collecting evidence. To prevent possible loss of evidence, and because it may be hard to obtain such evidence, it may be stored with registration on the approval of the person in charge of the administrative department. A decision should be made within seven days on how to handle it. During this period, the relevant party or other personnel are not allowed to destroy or transfer the evidence.

If the law enforcement person and the relevant party have direct common interests, avoidance is necessary.

Article 38.

After the investigation, the person in charge of the administrative department should examine the investigation results and make one of the following decisions according to the merit of each case:

(1) A decision on meting out administrative punishment to violations of law liable to administrative punishment, taking account of the seriousness of each case and its specific conditions.

(2) A decision on not meting out administrative punishment to slight violations of law that are not liable to
administrative punishment.

(3) A decision on not applying administrative punishment to a case in which the facts cannot prove a violation of law.

(4) A decision on submitting to a judicial department a case in which violations of law constitute criminal offences.

The person in charge of the administrative department should conduct a collective discussion to decide a major administrative punishment on a complicated case or a major violation of the law.

Article 39.

When administrative organs impose administrative punishments according to Article 38 of this law, they shall prepare an administrative punishments decision letter. The letter shall contain the following:

(1) the names and addresses of the parties concerned;
(2) the facts and evidence of violation of the law, regulations or rules;
(3) the type of administrative punishments to be imposed and the grounds for imposing these punishments;
(4) the manner and period of carrying out the administrative punishments;
(5) if the parties concerned do not agree with the administrative punishments decision, the channels and deadline for application for administrative reconsideration or for filing an administrative lawsuit;
(6) the name of the administrative organ that makes the administrative punishments decision and the date the decision is made.

The administrative punishments decision letter must be stamped with the seal of the administrative organ that makes the decision.

Article 40.

The administrative punishments decision letter shall be handed to the parties concerned on the spot after the decision is announced. If the parties concerned are not present, the administrative organ shall send the letter to the parties concerned within seven days, according to relevant stipulations of the civil procedure law.

Article 41.

Before making the decision of imposing administrative punishments, if the administrative organ in charge and its law enforcement personnel failed to tell the parties concerned according to Articles 31 and 32 the facts, reasons, and grounds on which the administrative punishments are imposed, or refused to hear the statement and argument of the parties concerned, the administrative punishments decision is not valid, unless the parties concerned waive their right to make a statement or defend themselves.

Section 3. Procedure of Hearing
Article 42.

Before making an administrative punishment decision for suspending production and business operations, revoking certificates or business licences, imposing relatively large fines or imposing other administrative punishments, administrative organs shall notify the parties concerned of their right to a public hearing. If the parties concerned ask for a public hearing, the administrative organ shall organize one. The parties concerned shall not bear the expenses of public hearings organized by administrative organs. Public hearings are to be organized according to the following procedure:

1. If a public hearing is requested by the parties concerned, the request shall be submitted within three days after the parties concerned are notified by the administrative organ in charge.

2. The administrative organ shall notify the parties concerned of the time and location of the public hearing, seven days before it is held.

3. With the exception of cases involving state secrets, business secrets or individual privacy, hearings shall be held in public.

4. Public hearings are to be presided over by a person appointed by the administrative organ in charge and who is not one of the investigators of the case in question. If the parties concerned deem that the person presiding over the public hearing has a direct connection to the case, they have the right to ask the person to withdraw.

5. The parties concerned may personally attend the public hearing or may ask one to two persons to represent them.

6. At public hearings, investigators present the facts and evidence of violations of law by the parties concerned, as well as suggest administrative punishments; the parties concerned defend themselves and confront the investigators.

7. A transcript on the public hearing shall be made, checked by the parties concerned, and signed by them or affixed with their seals.

If the parties concerned do not agree with the imposed administrative punishments that restrict physical freedom, the punishments shall be enforced according to relevant articles of the regulations on public security management and punishment.

Article 43.

After a case hearing, the administrative department should make a decision in accordance with Article 38 of this law.

Chapter VI. Execution of Administrative Punishments

Article 44.
After a decision on administrative punishment is made, the relevant party should execute the decision within the prescribed time limit.

Article 45.

If the relevant party applies for an administrative review or files an administrative lawsuit because he does not agree with the decision on administrative punishment, this administrative punishment still remains valid, except when there are other legal provisions.

Article 46.

The administrative department that decides on a fine should be separated from the institution that collects the fine.

Apart from the fine collected on the spot in accordance with Articles 47 and 48 of this law, neither the administrative department that decided on the fine nor its law enforcement personnel are not allowed to collect any other fines of their own accord.

The relevant party should, within 15 days after receipt of the notice on administrative punishment, pay the fine at a designated bank, which should accept the payment and directly deposit it in state treasury.

Article 47.

In cases where an on-the-spot decision is made on administrative punishment in accordance with Article 33 of this law, a law enforcement person may collect a fine on the spot if one of the following circumstances applies:
(1) A fine under 20 yuan lawfully imposed;

(2) A fine difficult to collect in the future.

Article 48.

In remote regions, in rivers and seas and in regions with poor transport facilities, if the relevant party really finds it hard to pay the fine at a designated bank after an administrative department or its law enforcement personnel make a decision on administrative punishment in accordance with Articles 33 and 38 of this law, the administrative department or its law enforcement personnel may collect the fine on the spot at the relevant party's request.

Article 49.

When an administrative department or its law enforcement personnel collect a fine on the spot, they should
use a standardized receipt of a provincial, autonomous regional or municipal financial department for the fine; if they do not produce a standardized receipt of the financial department, the relevant party has the right not to pay the fine.

Article 50.

A law enforcement person should, within two days after collection of the fine on the spot, submit the fine to his administrative department; the fine collected on a river or at sea should be submitted to the administrative department within two days from the date the law enforcement person comes ashore, and the administrative department should deliver the fine to a designated bank within two days.

Article 51.

If the relevant person does not execute the decision on administrative punishment in due time, the administrative department that made the decision on administrative punishment may take the following measures:
(1) In a case of nonpayment of a fine due, a daily surcharge of 3 per cent will be imposed on the fine;
(2) In accordance with law, the property sealed up and detained will be auctioned, or the deposit frozen will be allotted for payment of the fine;
(3) A request will be made to a people's court for compulsory implementation.

Article 52.

If the relevant party incurs economic difficulties and wishes to postpone the payment of a fine or pay it by instalments, postponement or instalment can be permitted upon application by the relevant party with the approval of the administrative department.

Article 53.

Property confiscated according to law, other than that which should be destroyed according to law, must be put up for public auction according to state provisions or handled according to relevant state provisions.

Fines, confiscated illicit earnings or revenue gained by auctioning off unlawful property must be turned over to the state treasury, and under no circumstances can any administrative organs or individuals retain the money or share it in secret, or partake of it in disguised form; under no circumstances can financial departments return fines, confiscated illicit earnings or revenue gained by auctioning off unlawful property to the administrative organs that have made decisions on administrative punishments.

Article 54.
Administrative organs should establish a sound system of supervision over administrative punishments. The people's governments at and above the county level should oversee and check administrative punishments with greater intensity.

Citizens, legal persons or other organizations are entitled to petition against or impeach administrative punishments meted out by administrative organs; administrative organs should conduct investigations seriously and take the initiative in rectifying any erroneous administrative punishments found.

Chapter VII. Legal Liability

Article 55.

Administrative organs administering administrative punishments under any of the following situations are to be ordered by superior administrative organs or the departments concerned to make corrections; and administrative punishments can be meted out to persons directly in charge and other personnel held directly responsible for these matters:

1. meting out administrative punishments without a legal basis;

2. arbitrarily changing the types and extent of administrative punishments;

3. violating the statutory procedure on administrative punishment;

4. violating the provisions in Article 18 of this law on administering administrative punishments by proxy.

Article 56.

Relevant parties punished by administrative organs are entitled to reject and impeach the punishments if there are no receipts confirming the payment of fines or the confiscation of property or receipts used for confirming the payment of fines or the confiscation of property are made and issued by non-statutory departments. Superior administrative organs or the departments concerned are to seize and destroy any unlawful receipts used and mete out administrative punishments to persons directly in charge and other personnel held directly responsible for the matters.

Article 57.

Administrative organs collecting fines by themselves in violation of the provisions in Article 46 of this law and financial departments returning fines or auction revenue to administrative organs in violation of the provisions in Article 53 of this law are to be ordered by superior administrative organs or the departments concerned to make corrections; and administrative punishments are to be meted out according to law to persons directly in charge and other personnel held directly responsible for the matters.

Article 58.

Administrative organs retaining fines or confiscated illicit earnings or property, sharing them in secret or
partaking of them in disguised form are to be ordered by financial departments or the departments concerned for reimbursement, and administrative punishments are to be meted out according to law to persons directly in charge and other personnel held directly responsible for the matters; those whose cases are so serious as to constitute a crime are liable to criminal charges according to law.

Law enforcement officers abusing their powers to ask for or accept bribes or embezzle fines, which constitutes a crime, are liable to criminal charges according to law; and administrative punishments are to be meted out according to law to those whose cases are too light to constitute a crime.

Article 59.

Administrative organs that inflict losses on the parties concerned by using or damaging property seized should make compensation according to law, and administrative punishments are to be meted out according to law to persons directly in charge and other personnel held directly responsible for the matters.

Article 60.

Administrative organs doing damage to citizens or their property or inflicting losses on legal persons or other organizations by unlawfully conducting checks or enforcing measures should make compensation according to law, and administrative punishments are to be meted out to persons directly in charge and other personnel held directly responsible for the matters; those whose cases are so serious as to constitute crimes are liable to criminal charges according to law.

Article 61.

Administrative organs which, for the sake of their own selfish interests, do not turn over to judicial organs persons liable to criminal charges and mete out administrative punishments to those concerned in lieu of criminal punishments are to be ordered by superior administrative organs or departments concerned to make corrections; administrative punishments are to be meted out to persons directly in charge of organs which refuse to make corrections; those who engage in self-seeking misconduct and shield and wink at illegal acts are liable to criminal charges in accordance with the provisions of Article 188 of the Criminal Law.

Article 62.

In cases where the legitimate rights and interests of citizens, legal persons or other organizations, public interests and social order are jeopardized because law enforcement officers are so negligent in their duties that illegal acts have gone unchecked and unpunished, administrative punishments are to be meted out to persons directly in charge and other personnel held directly responsible for the matters; those whose cases are so serious as to constitute a crime are liable to criminal charges according to the law.

Chapter VIII. Supplementary Provisions
Article 63.

The concrete method of implementation of the provisions in Article 46 of this law on the distinction between making decisions on fines and collecting fines is to be formulated by the State Council.

Article 64.

This law is to come into force as of October 1, 1996.

The provisions of laws and regulations on administrative punishments enacted before the promulgation of this law that are incongruous with this law should be revised according to the provisions of this law from the day of its promulgation, and the revisions are to be completed by December 31, 1997.
Prison Law of the People's Republic of China

(Effective December 29, 1994)

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CHAPTER V EDUCATION AND REFORM OF PRISONERS

CHAPTER VI EDUCATION AND REFORM OF JUVENILE DELINQUENTS

CHAPTER VII SUPPLEMENTARY PROVISIONS

CHAPTER I GENERAL PROVISIONS

Article 1 This Law is formulated in accordance with the Constitution for the purpose of correctly executing criminal punishments, punishing and reforming prisoners, preventing and reducing crimes.

Article 2 A prison is an organ of the State for executing criminal punishments.

Criminal punishments of prisoners sentenced to death penalty with a two-year suspension of execution, life imprisonment, or fixed-term imprisonment shall be executed in prisons under the Criminal Law and the Criminal Procedure Law.

Article 3 A prison shall, with regard to prisoners, implement the principle of combining punishment with reform and combining education with labour, in order to transform them into law-abiding citizens.
Article 4: A prison shall exercise supervision and control over prisoners according to law, and shall, in accordance with the needs of reforming prisoners, organize prisoners to engage in productive labour and conduct ideological, cultural and technical education among prisoners.

Article 5: Activities in prison administration, execution of criminal punishments, and education and reform of prisoners conducted according to law by the people's police of a prison shall be protected by law.

Article 6: A people's procuratorate shall exercise supervision in accordance with the law over the legality of activities conducted by prisons in execution of criminal punishments.

Article 7: Human dignity of a prisoner shall not be humiliated, and his personal safety, lawful properties, and rights to defence, petition, complaint and accusation as well as other rights which have not been deprived of or restricted according to law shall not be violated.

A prisoner must strictly observe laws, regulations, and rules and discipline of the prison, subject himself to control, accept education and take part in labour.

Article 8: The State shall ensure the expenditures of a prison for the reform of prisoners. The prisons' expenditures for the people's police, for the reform of prisoners, for the living expenses of prisoners, for the administration and installations of the prison, and other special expenses shall be included into the State budget.

The State shall provide production facilities and production expenses necessary for prisoners to do labour.

Article 9: Lands, mineral resources and other natural resources used by a prison according to law as well as properties of a prison shall be protected by law; no organizations or individuals shall seize or undermine them.

Article 10: The department of judicial administration under the State Council shall be in charge of the work of prisons in the whole country.

CHAPTER II PRISON

Article 11: The establishment, abolition or move of a prison shall be subject to the approval of the department of judicial administration under the State Council.

Article 12: A prison shall install one warden, several deputy wardens, and, in light of the actual needs, set up necessary working organs and provide other administrative personnel.

The administrative personnel in a prison are the people's police.

Article 13: The people's police of a prison shall strictly abide by the Constitution and the law, be loyal to their duties, enforce the law impartially, strictly observe discipline and be honest and upright.
Article 14: The people's police of a prison shall not commit any of the following acts:

1. to demand, accept or seize money or goods from prisoners or their relatives;
2. to release a prisoner without authorization or through dereliction of duty to cause a prisoner to flee from the prison;
3. to use torture to coerce a confession, or to use corporal punishment, or to maltreat a prisoner;
4. to humiliate the human dignity of a prisoner;
5. to beat or connive at others to beat a prisoner;
6. to utilize a prisoner to provide labour services for personal gains;
7. to privately deliver a letter or an article for a prisoner in violation of regulations;
8. to illegally surrender the functions and powers to supervise and control prisoners to another person; or
9. other law-breaking acts.

If the people's police of a prison commit any act specified in the preceding paragraph and the case constitutes a crime, the offenders shall be investigated for criminal responsibility; if the case does not constitute a crime, the offenders shall be given administrative sanctions.

CHAPTER III EXECUTION OF CRIMINAL PUNISHMENTS

SECTION 1 PUTTING IN PRISON

Article 15: With respect to a criminal who is sentenced to death penalty with a two-year suspension of execution, life imprisonment or fixed-term imprisonment, the people's court shall serve the notice of execution of the sentence and the written judgment on the public security organ where the criminal is in custody. The public security organ shall hand the criminals over to a prison for execution of the punishment within one month from the date of receiving the notice of execution of the sentence and the written judgment.

Before a criminal is handed over for execution of the criminal punishment, if the remaining term of his sentence is not more than one year, the criminal punishment shall be executed by the detention house instead.

Article 16: A people's court shall, in handing over a criminal for execution of the criminal punishment, serve on the prison a copy of the bill of prosecution from the people's procuratorate together with the written judgment, the notice of execution and the registration form of closing the case from the people's court. The prison shall not put the criminal in prison without receiving the above-mentioned documents; if
such documents are incomplete or have errors in the records, the people's court which passed the effective judgment shall, without delay, make them complete or correct; if any of the above-mentioned circumstances may lead to wrongful imprisonment of a person, the prison shall not accept him.

Article 17: A prison shall give physical examination to the criminals who are handed over for execution of their criminal punishments. A criminal sentenced to life imprisonment or fixed-term imprisonment may, after physical examination, temporarily not be put in prison under either of the following circumstances:

(1) if a criminal is seriously ill and needs to be released on parole for medical treatment; or

(2) if a criminal is a pregnant woman or a woman who is breast-feeding her own baby.

With respect to a criminal temporarily not to be put in prison as provided in the preceding paragraph, the decision on temporary execution outside prison shall be made by the people's court which handed the criminal over for the execution. With respect to any such criminal whose temporary execution of the sentence outside prison constitutes a danger to the society, he shall be put in prison. If a criminal temporarily serves his sentence outside prison, the public security organ in the place of the criminal's residence shall execute the criminal punishment. After the circumstances specified in the preceding paragraph under which a criminal is temporarily not put in prison disappeared, the criminal who has not completed the execution of his original term of sentence shall be handed over to a prison for imprisonment by the public security organ.

Article 18: When a criminal is put in prison, his or her body and the articles brought with him or her shall strictly be checked. The non-daily necessities shall be taken care of by the prison for the criminal or with the agreement of the criminal be returned to his or her families, and contraband goods shall be confiscated.

A female criminal shall be checked by a people's policewoman.

Article 19: A criminal may not bring his or her child with him or her to serve sentence in prison.

Article 20: After a criminal is put in prison, the prison shall inform the criminal's family members. A written notice shall be sent out within five days from the date when the criminal is put in prison.

SECTION 2 HANDLING OF PETITIONS, COMPLAINTS AND ACCUSATIONS MADE BY PRISONERS
Article 21: If a prisoner is not satisfied with the effective judgment, he may file a petition. A people's procuratorate or a people's court shall without delay handle the petitions filed by prisoners.

Article 22: A prison shall without delay handle the complaints or accusations made by prisoners, or transfer the above material to a public security organ or a people's procuratorate for handling. The public security organ or the people's procuratorate shall inform the prison of the result of its handling.

Article 23: A prison shall transfer without delay the petitions, complaints and accusations made by prisoners and shall not withhold them.

Article 24: In the course of execution of the criminal punishment, if a prison believes on the basis of a prisoner's petition that the judgment may be wrongfully made, it shall refer the matter to a people's procuratorate or a people's court for handling. The people's procuratorate or the people's court shall notify the prison of the result of its handling within six months from the date of receiving the prison's written recommendation for handling.

SECTION 3 EXECUTION OUTSIDE PRISON

Article 25: If a prisoner sentenced to life imprisonment or fixed-term imprisonment serving his sentence in prison complies with the conditions for execution outside prison as provided by the Criminal Procedure Law, he may be permitted to temporarily serve his sentence outside prison.

Article 26: For temporary execution outside prison, a written recommendation shall be made by a prison and submitted for approval to the administrative organ of prisons of the province, autonomous region or municipality directly under the Central Government. The organ granting the approval shall notify the public security organ and the people's court making the original judgment of the decision on the approval of the temporary execution outside prison, and send a duplicate of its decision to the people's procuratorate.

If a people's procuratorate considers that it is improper to apply temporary execution outside prison to the prisoner, the people's procuratorate shall send its written opinions within one month from the date of receiving the notice to the organ that approved the temporary execution outside prison. The said organ shall, upon receiving the written opinions from the people's procuratorate, conduct forthwith reexamination and reverification of its decision.

Article 27: If a prisoner temporarily serves his sentence outside prison, the public security organ in the place of the prisoner's residence shall
execute his sentence. The prison that originally held the prisoner in custody shall promptly inform such public security organ of the prisoner's performances of reform in prison.

Article 28: After the circumstances causing temporary execution outside prison disappeared, if the prisoner has not completed his term of sentence, the public security organ in charge of the execution shall without delay inform the prison to put the prisoner back into prison; if a prisoner has completed his term of sentence, the prison that originally held the prisoner in custody shall handle the formalities for the release. If a prisoner died during the period of temporary execution outside prison, the public security organ shall, without delay, inform the prison that originally held the prisoner in custody about the death.

SECTION 4 COMMUTATION OF PUNISHMENT AND RELEASE ON PAROLE

Article 29: If a prisoner sentenced to life imprisonment or fixed-term imprisonment has shown true repentance or rendered meritorious service during the term of imprisonment, his sentence may be commuted on the basis of the result of the assessment made by the prison. If a prisoner has rendered one of the following major meritorious services, his sentence shall be commuted:
(1) having stopped a grave criminal activity of another person;
(2) having reported a grave criminal activity inside or outside prison which has been ascertained to be true;
(3) having made an invention or a major technical innovation;
(4) having risked his or her life to save others in daily production or life;
(5) having made remarkable performances in fighting against natural calamities or in avoiding or removing grave accidents; or
(6) having made other major contributions to the State or the society.

Article 30: A recommendation for commutation of a sentence shall be made by a prison to a people's court. The people's court shall within one month from the date of receiving the written recommendation examine it and make a ruling thereon; if the case is complicated or the circumstances are special, the said period may be extended by one month. A duplicate of the ruling on commutation of a sentence shall be sent to the people's procuratorate.

Article 31: Where a prisoner sentenced to death penalty with a two-year suspension of execution comforms with the conditions for commutation to life imprisonment or fixed-term imprisonment as provided by the law during the period of suspension of execution of his death penalty, the prison holding the prisoner in custody shall make a timely
recommendation for commutation upon expiration of the two-year suspension of execution and report it first to the administrative organ of prisons of the province, autonomous region or the municipality directly under the Central Government for examination and verification, and then submit the matter to the higher people's court for a ruling.

Article 32: Where a prisoner sentenced to life imprisonment or fixed-term imprisonment conforms with the conditions for release on parole as provided by the law, the prison shall, on the basis of the result of its assessment, make a recommendation for release on parole to the people's court. The people's court shall, within one month from the date of receiving the written recommendation, examine it and make a ruling thereon; if the case is complicated or the circumstances are special, the said period may be extended by one month. A duplicate of the ruling on parole shall be sent to the people's procuratorate.

Article 33: Where a people's court has made a ruling on parole, the prison shall parole the prisoner as scheduled and issue him a certificate of parole. A parolee shall be supervised by a public security organ. Where a parolee during the period of parole commits any acts in violation of laws, administrative rules and regulations or the regulations of the public security department under the State Council on the supervision and control of parolees, if such acts do not constitute a new crime, the public security organ may make a written recommendation for the cancellation of parole to the people's court. The people's court shall within one month from the date of receiving the written recommendation examine it and make a ruling thereon. Where the people's court has ruled to cancel the parole, the parolee shall be handed over to the prison for custody by the public security organ.

Article 34: If a prisoner does not satisfy the conditions for commutation or parole as provided by the law, the prisoner shall not be commuted or paroled on any ground.

If a people's procuratorate considers that a ruling on commutation or parole made by a people's court is improper, it may lodge a protest within the time limit specified by the Criminal Procedure Law. With respect to the case protested by the people's procuratorate, the people's court shall try it anew.

SECTION 5 RELEASE AND RESETTLEMENT

Article 35: If a prisoner has completed service of his sentence, the prison shall release him as scheduled and issue him a certificate of release.

Article 36: After a prisoner is released, the public security organ shall
make residence registration for him on the strength of his certificate of release.

Article 37: With respect to a person released after serving his sentence, the local people's government shall assist him in resettling down. If a person released after serving his sentence has lost his ability to do labour, and has no statutory supporters or basic source of income, the local people's government shall offer him relief.

Article 38: A person released after serving his sentence shall enjoy equal rights with other citizens in accordance with the law.

CHAPTER IV PRISON ADMINISTRATION

SECTION 1 SEPARATE CUSTODY AND SEPARATE CONTROL

Article 39: A prison shall practise separate custody and separate control with respect to male adult prisoners, female adult prisoners and juvenile delinquents. In respect of the reform of juvenile delinquents and female prisoners, special consideration shall be given to their physiological and psychological characteristics.

A prison shall, with respect to prisoners, carry out separate custody and varied control on the basis of their types of crimes and punishments, terms of sentences and performances of reform.

Article 40: Female prisoners shall be under the direct control of people's policewomen.

SECTION 2 GUARD

Article 41: The people's armed police forces shall be in charge of the armed guard of prisons. The specific measures shall be prescribed by the State Council and the Central Military Commission.

Article 42: If a prison discovers that a prisoner in custody has escaped, the prison shall capture him as soon as possible. If the prison can not immediately capture the escaped prisoner, it shall notify the public security organ without delay. The public security organ shall be responsible for the pursuit and capture of the escaped prisoner, and the prison shall closely coordinate with the public security organ.

Article 43: A prison shall set up guard installations in accordance with the needs of supervision and control. The guard segregation zone around a prison shall be delimited. No one shall, without permission, enter into such zone.

Article 44: State organs, public organizations, enterprises, institutions and grass-roots organizations in the neighbourhood of a prison or its operation areas shall assist the prison in its security work.

SECTION 3 USE OF RESTRAINT IMPLEMENTS AND WEAPONS

Article 45: Under any of the following circumstances, a prison may use restraint implements:
(1) if a prisoner commits any acts of escape;
(2) if a prisoner commits any acts of violence;
(3) if a prisoner is on the way of escort; or
(4) if a prisoner commits other dangerous acts against which it is necessary to take precautions.

After the circumstances specified in the preceding paragraph disappeared, restraint implements shall not be used.

Article 46: Personnel on duty of the people's police or the people's armed police forces may, under any of the following circumstances, which can not be checked without the use of weapons, use weapons in accordance with the relevant regulations of the State:
(1) if any prisoner is assembling a crowd to make a riot or rebellion;
(2) if any prisoner is escaping or resisting arrest;
(3) if any prisoner is committing physical assault or destruction with a lethal weapon or other dangerous articles to endanger the safety of another person's life or property;
(4) if any prisoner is being seized and rescued by force; or
(5) if any prisoner is seizing a weapon by force.

Personnel who have used weapons shall report the situations in accordance with the relevant regulations of the State.

SECTION 4 CORRESPONDENCE AND MEETING WITH VISITORS

Article 47: A prisoner may, during the service of his sentence, correspond with others, but their correspondence shall be examined by the prison. If the prison discovers that the contents of a letter present a hindrance to the reform of the prisoner, the prison may detain the letter. Letters from a prisoner to the higher authorities of the prison or to the judicial organs shall be free from examination.

Article 48: A prisoner may, in accordance with the relevant regulations, meet with his relatives and guardians during the service of his sentence.

Article 49: Goods or money to be received by a prisoner shall be subject to the approval and examination of the prison.

SECTION 5 LIFE AND HEALTH

Article 50: The living standard of prisoners shall be measured by the quantity of material objects, and it shall be set by the State.

Article 51: The beddings and clothings of prisoners shall be uniformly rationed and provided by the prison.

Article 52: Considerations shall be given to the special habits and customs of prisoners of minority ethnic groups.

Article 53: Wards of a prison shall be firm, ventilated, possible for the natural light to come in, clean and warm.
Article 54: A prison shall set up medical organs and living and sanitary facilities, and institute regulations on the life and sanitation of prisoners. Medical and health care of prisoners shall be put into the public health and epidemic prevention programme of the area in which the prison is located.

Article 55: If a prisoner dies during imprisonment, the prison shall immediately inform the prisoner's family members, the people's procuratorate and the people's court. If a prisoner dies from a disease, the prison shall make a medical appraisal. If the people's procuratorate suspects the prison's medical appraisal, it may make an appraisal anew on the cause of the death. If the family members of the prisoner suspect the prison's medical appraisal, they may raise their suspicion to the people's procuratorate. If a prisoner dies an abnormal death, the people's procuratorate shall immediately conduct examinations and make an appraisal on the cause of the death.

SECTION 6 REWARDS AND PUNISHMENTS

Article 56: A prison shall establish a routine check-up system for prisoners. The result of such check-ups shall be taken as the basis for awarding or punishing prisoners.

Article 57: If a prisoner is under one of the following circumstances, the prison may commend or award him, or record a merit for him:

1. if a prisoner observes the rules and discipline of the prison, studies hard, takes an active part in labour and shows admission of guilt and acceptance of the judgement;
2. if a prisoner has stopped any law-breaking or criminal activities;
3. if a prisoner has overfulfilled his production task;
4. if a prisoner has made achievements in saving on raw materials or caring for public property;
5. if a prisoner has achieved certain success in technical renovation or passing on his production skill;
6. if a prisoner has made contributions in preventing or removing a disastrous accident; or
7. if a prisoner has made other contributions to the State and the society.

Where a prisoner sentenced to fixed-term imprisonment is under one of the circumstances specified in the preceding paragraph, if he has served more than a half of the original term of his sentence, and has always shown good performances during imprisonment and if his leaving from the prison will no longer endanger the society, the prison may, in light of the circumstances, permit him to leave the prison for the purpose of visiting his family members or relatives.
Article 58: If a prisoner has committed one of the following acts obstructing the order of supervision and control, the prison may give him a warning, demerit-recording or solitary confinement:

1. assembling a crowd to make a stir and to disturb the order of the prison;
2. abusing or beating the people's police;
3. bullying other prisoners;
4. stealing, gambling, coming to blows, or stirring up fights and causing troubles;
5. refusing to do labour though he has the ability to work or being slack in work and refusing to mend his ways even after education;
6. escaping from doing labour by means of self-injury or self-mutilation;
7. intentionally violating the operation rules in productive labour or intentionally destroying tools of production; or
8. other acts violating the rules and discipline of the prison.

The term of solitary confinement imposed on a prisoner as stipulated by the preceding paragraph shall be from seven to fifteen days.

If a prisoner has committed an act specified in the first paragraph during the service of his sentence, and if the case constitutes a crime, he shall be investigated for criminal responsibility according to law.

SECTION 7 HANDLING OF CRIMES COMMITTED BY PRISONERS DURING THE TERM OF IMPRISONMENT

Article 59: If a prisoner intentionally commits a crime during the service of his sentence, he shall be given a heavier punishment according to law.

Article 60: A criminal case committed by a prisoner in the prison shall be investigated by the prison. On the conclusion of the investigation, a recommendation for prosecution or a recommendation for exemption from prosecution written by the prison together with the case file and the evidence shall be handed over to a people's procuratorate.

CHAPTER V EDUCATION AND REFORM OF PRISONERS

Article 61: In the education and reform of prisoners, the principle of suitting education to different persons and cases and persuading prisoners through reasoning shall be implemented and the method of combining collective education with individual education and combining education by the prison with education by the society adopted.

Article 62: A prison shall carry out ideological education among prisoners in legality, morality, current situations, policies and outlook on their futures.

Article 63: A prison shall, in light of different conditions of
prisoners, carry out literacy education, primary education and junior secondary education. If a prisoner has passed due examinations, the educational department shall issue him the corresponding certificate of education.

Article 64: A prison shall carry out occupational and technical education among prisoners in accordance with the needs of production in the prison and of employment after their release. If a prisoner has passed due examination and verification, the labour department shall issue him the corresponding certificate of technical grade.

Article 65: A prison shall encourage prisoners to study on their own. If a prisoner has passed due examinations, the relevant department shall issue him the corresponding certificate.

Article 66: The cultural, occupational and technical education of prisoners shall be included into the educational plan of the area where the prison is located. A prison shall have necessary educational facilities such as class-rooms and reading-rooms.

Article 67: A prison shall organize prisoners to conduct proper sport activities and cultural recreations.

Article 68: State organs, public organizations, units of armed forces, enterprises, institutions, personage of various circles and family members or relatives of prisoners shall assist prisons in doing a good job in the education and reform of prisoners.

Article 69: An able-bodied prisoner must do labour.

Article 70: A prison shall, in the light of the individual conditions of prisoners, rationally organize them to do labour so as to correct their bad habits, to cultivate their habits of working, to acquire production skills and to create conditions for employment after their release.

Article 71: With regard to the working hours of prisoners, a prison shall make reference to the State's relevant regulations on working hours; under special circumstances such as seasonal production, the working hours may be readjusted.

Prisoners shall have the right to rest on statutory festivals and holidays.

Article 72: Prisons shall, in accordance with the relevant regulations, pay remunerations to the prisoners who take part in labour, and implement relevant regulations of the State on labour protection.

Article 73: If a prisoner is injured, disabled or killed in the course of doing labour, the prison shall handle the matte with reference to relevant regulations of the State on labour insurance.

CHAPTER VI EDUCATION AND REFORM OF JUVENILE DELINQUENTS

Article 74: Criminal punishments on juvenile delinquents shall be
executed in the reformatories for juvenile delinquents.

Article 75: The focus in the execution of criminal punishments on juvenile delinquents shall be on education and reform. Labour for juvenile delinquents shall conform to the characteristics of minors and its main objectives shall be to acquire an elementary education and production skills.

A prison shall coordinate with the State, society and educational institutions such as schools in providing necessary conditions for juvenile delinquents to receive compulsory education.

Article 76: If a juvenile delinquent has reached the age of 18 and the remaining term of his sentence does not exceed two years, he may still be kept in the reformatory for juvenile delinquents for the execution of the remaining term of his sentence.

Article 77: If matters relating to the control, education and reform of juvenile delinquents are not covered by this Chapter, the relevant provisions of this Law shall apply.

CHAPTER VII SUPPLEMENTARY PROVISIONS

Article 78: This Law shall go into effect as of the date of promulgation.
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The Social and Legal Risks for Injection Drug Users Participating in HPTN 058 in Chiang Mai, Thailand

A Rapid Policy Assessment

Indrajit Pandey, Somnaek Chatchawan, Wichulada Matanbun, Sukanya Isarangkun Na Ayuddhaya, Corey Davis and Scott Burris
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Acknowledgments
Summary

The National Institutes of Health has funded HPTN 058: A Phase III randomized controlled trial to evaluate the efficacy of drug treatment in prevention of HIV infection among opiate dependent injectors ("the 058 Trial"). The trial will be conducted at Heng Chien, Guangxi Zhuang Autonomous Region, Urumqi, Xinjiang Uighur Autonomous Region of China and Chiang Mai, Thailand. Recognizing the potential for injection drug users (IDUs) to be exposed to excess risk of arrest or other negative legal consequences by virtue of their participation in the research study, the HPTN 058 protocol requires the annual monitoring of law and its implementation related to IDUs participating in the trial. To assess the risks to IDUs of participating in the clinical trial, the HPTN 058 Protocol Team commissioned this report.¹

Using a Rapid Policy Assessment methodology, local researchers in Chiang Mai collected relevant laws and conducted interviews with 44 informants. These interviews took place between July and September 2006. Informants included research participants, injection drug users, public health personnel, law enforcement and judicial officials. Informants were asked about police practices in relation to drug users, research projects involving drug users and public health interventions targeting drug users.

The research produced the following key findings:

1. Active drug users are subject to arrest and compulsory treatment or imprisonment;
2. Interviewees report that police will sometimes beat injection drug users to obtain confessions, that arrestees are often not informed of their legal rights, and that prisons are substandard. Therefore, there is physical risk to being identified by the police as an injection drug user;
3. IDUs are often thought of as being ‘unrecovered,’ and the police are rumored to keep lists of known IDUs and round up ‘the usual suspects’ when politically convenient;
4. Even after being released from prison, the social stigma is such that IDUs may not be able to work or return to the towns from which they came;
5. Drug treatment facilities seem inadequate, and even when they exist they may be out of reach of IDUs because of cost or stigma;
6. Local police officers have considerable discretion in how they enforce drug laws;
7. Close communication between the research team and law enforcement, beginning before the trial, would be necessary to ensure that the safety of study-enrolled IDUs is not compromised by police action;
8. If there is cooperation with police, the chance of direct interference/arrests at the research site or in connection with research activities is low;
9. This protective effect, however, does not extend to research participants who may have committed other crimes, or if crimes are being committed at the research site;
10. Given communication between researchers and police, research participation may

¹ This analysis for the China sites is presented in a separate report.
be protective against police action;

**11.** IDUs are a mobile population and are subject to arrest for drug possession and other crimes, so there may be a problem with retention and regular attendance;

**12.** It is reported that heroin and opium use is much reduced in the Chiang Mai region, with the majority of new injectors using methamphetamine or a poly-drug combination. This may have implications on the ability to recruit eligible enrollees.

We conclude that while drug users in Chiang Mai, as elsewhere, are subject to a variety of socioeconomic, dignitary and physical harms due to stigma and criminalization, these harms are not more likely to occur because of participation in this research as long as local law enforcement is educated about the research and agrees to a policy of non-interference with the study. In fact, enrollment may even have a protective effect if researchers successfully interface with local police.

Sponsors, researchers and IRBs should be aware, however, that it may be difficult to guarantee both the support of the police and the anonymity of study enrollees, as several high level official informants suggested that study participants might need to carry a study identification card to protect them from police interference. We also emphasize the need for discretion in all aspects of study implementation in light of the severe social stigma associated with being known as an injection drug user in the greater community.
Introduction

1.1. Specific Aims

The specific aims of the RPA are:

1. To use RPA to document laws and law enforcement practices in Chiang Mai, Thailand that may increase risks faced by IDU participation in HPTN 058;

2. To compile and deliver to the HPTN 058 protocol team a legal risk analysis based on the findings of the RPA that clearly indicates any evidence of elevated risk to participants that may result from their screening and enrollment in the study;

3. To recommend to the protocol team strategies to reduce or eliminate possible law and enforcement related risks posed to study screening and enrollment procedures.

1.2. Background and Significance

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

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

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2 UNODC. Drugs and HIV/AIDS in South East Asia. A regional Project for reducing HIV Vulnerability from Drug Abuse (AD/RAS/02/G22).
In early 1990, it was estimated that 60 per cent of those under HIV treatment were IDUs. Although more recent statistics are not available, anecdotal evidence strongly suggests that recent efforts have not been directed at this population. In fact, it seems as though the policy of the Thai Office of the Narcotics Control Board is to direct resources to other populations.

This RPA addresses law and law enforcement practices as structural factors that influence the social risks that may be faced by study-enrolled IDUs. It is premised on the view that the influence of law and law enforcement practices on study enrolled IDUs has not been adequately studied, and that this influence is significant enough to warrant examination and the use of tactics to decrease possible risks to study enrolled IDUs from legal actors. There is a paucity of evidence on the manner in which participating in a study such as HPTN 058 may affect IDU risk due to law enforcement activity. This RPA attempts to discern such risks and how they may be alleviated or eliminated.

This research addresses two needs that have remained unmet for some years. First, researchers studying the health of IDUs (and other marginalized populations) have long recognized that laws and law enforcement practices may pose risks to study-enrolled IDUs, but for a variety of reasons have not done a great deal to directly address these factors. In a quite similar way, the recognition of the importance of structural factors in health has so far outstripped research and intervention premised on that ecological view of health. Second, concerns about the legal and other social risks are far as we are aware virtually never investigated by empirical means. RPA fills these unmet needs by providing a comprehensive examination of law, policies, and law enforcement practices as factors structuring the risks of study-eligible IDUs.

1.3 Laws and Law Enforcement Practices as Important Structural Factors in IDU Risk

A substantial body of evidence supports the hypothesis that drug-related laws and policies influence risks among IDUs. Law and law enforcement practices exert a potent, durable influence on injection risk in many places. Since many of these negative consequences arise as a function of being identified as an IDU, any force that would serve to ‘out’ such persons can have severe negative consequences.

While the purchase and possession of syringes is not a crime in Thailand, it appears unlikely that police-drug user relations are significantly different than in places that do regulate syringes. Police generally have the discretion and the dexterity to deploy a wide variety of criminal and public order laws to accomplish their street control mission, and research indicates that they do so in the area of drug use.

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7 ibid.
1.4 Rapid Policy Assessment

Rapid Policy Assessment is a method for collecting information about how laws and law enforcement practices influence health. It was devised by a team led by Scott Burris, Patricia Case and Zita Lazzarini, with funding from the Open Society Institute and the National Institutes of Health.

Rapid assessment and intervention has emerged as an important tool to guide public health interaction, particularly in areas without the resources or infrastructure to support the timely gathering and analysis of data using standard epidemiological methods. The need for “rapid assessment” of epidemiological situations has been recognized and such assessments have been implemented in a variety of settings faced with HIV outbreaks.
Research Procedures

2.1 Details of Interview Subjects

The RPA identifies three types of key informants:

1) **systems participants** who have a good overall view of police/health/drug systems which may impact on the transmission of HIV among IDUs;

2) **interactor participants** who interact with IDUs on a day to day basis and are able to provide information about how each system works at a practical level; and

3) **IDU participants** who describe their daily interaction with law enforcement, as well as the legal, public health, and drug treatment systems with which they interact.

Among the 44 informants, 8 are “System” informants who are higher level officials from local public health and public security departments, or other observers who have information on how the law enforcement system works as a whole in the study location, 20 are “Interactors” who are front-line police officers, public health clinicians, research staff, treatment staff, and other functionaries who work within the system and have perhaps deeper though less broad knowledge of its workings, and 16 are injection drug users (IDUs) who meet the following criteria:

1) At least 18 years old;

2) Willing and able to provide informed consent for study participation;

3) Opiate dependent by self-report;

4) Injected opiates at least twelve times in the last 28 days, according to self-report;

5) If female, medically unable to become pregnant or using an effective method of contraception.

These inclusion criteria mirror those for enrollment in the 058 trial.

The local research team interviewed a total of 44 key informants, as follows:

<table>
<thead>
<tr>
<th>System/ Interactor</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal System</strong></td>
<td></td>
</tr>
<tr>
<td>Prison official</td>
<td>1</td>
</tr>
<tr>
<td>Judge</td>
<td>1</td>
</tr>
<tr>
<td>Prosecutor</td>
<td>1</td>
</tr>
<tr>
<td>Policy-makers or local authorities</td>
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</tr>
<tr>
<td><strong>Legal Interactors</strong></td>
<td></td>
</tr>
<tr>
<td>Category</td>
<td>Number</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Police: Supervisory</td>
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</tr>
<tr>
<td>Police: Street-level</td>
<td>2</td>
</tr>
<tr>
<td>Prison Guards</td>
<td>2</td>
</tr>
<tr>
<td><strong>Public Health Systems</strong></td>
<td></td>
</tr>
<tr>
<td>Public health authorities</td>
<td>1</td>
</tr>
<tr>
<td>Narcological or drug treatment facility official</td>
<td>1</td>
</tr>
<tr>
<td>NGO director of organization working with HIV</td>
<td>1</td>
</tr>
<tr>
<td>Harm reduction worker</td>
<td>1</td>
</tr>
<tr>
<td><strong>Public Health Interactors</strong></td>
<td></td>
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<tr>
<td>Public health clinicians</td>
<td>2</td>
</tr>
<tr>
<td>Emergency/ casualty department physicians</td>
<td>2</td>
</tr>
<tr>
<td>Harm reduction workers</td>
<td>2</td>
</tr>
<tr>
<td>Narcological or drug treatment facilities</td>
<td>2</td>
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<tr>
<td>NGO staff working in HIV field</td>
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</tr>
<tr>
<td><strong>Research System and Interactors</strong></td>
<td></td>
</tr>
<tr>
<td>People who have at least 6 months experience staffing research study involving drug users</td>
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</tr>
<tr>
<td>Scientific investigators operating a research study with drug users</td>
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<tr>
<td><strong>Total</strong></td>
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**Table 1:** Key Informant Interviewees

<table>
<thead>
<tr>
<th>Participants or former Participants in drug user studies</th>
<th>Number</th>
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</thead>
<tbody>
<tr>
<td>New Injectors</td>
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</tr>
<tr>
<td>Female non-pregnant IDU</td>
<td>2</td>
</tr>
<tr>
<td>Locally significant minorities IDU</td>
<td>2</td>
</tr>
<tr>
<td>Other IDUs</td>
<td>2</td>
</tr>
<tr>
<td><strong>Drug users who have not been study participants</strong></td>
<td></td>
</tr>
<tr>
<td>New Injectors</td>
<td>2</td>
</tr>
<tr>
<td>Female non-pregnant IDU</td>
<td>2</td>
</tr>
<tr>
<td>Locally significant minorities IDU</td>
<td>2</td>
</tr>
<tr>
<td>Other IDUs</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>16</strong></td>
</tr>
</tbody>
</table>

**Table 2:** IDU Interviewee Demographics
2.2 Recruitment and Interview Procedure

The interview process was semi-structured and targeted to the level of the interview (system, interactor, or IDU) and covered the following topics:

1) legal;
2) criminal justice;
3) injection drug use and public health response;
4) HIV/AIDS and other communicable diseases.

Specific questions addressed enforcement of drug and syringe laws, any criminalization of HIV exposure or transmission, operation of courts and prisons, drug policy politics, criminal justice data and known or suspected risks to study-enrolled IDUs. Emphasis within the interviews varied based on the knowledge and experience of the interviewee. The RPA research tools include screening questions for each topic area that allow those interview subjects with no background or experience in a specific area to skip that area.

The researchers approached each potential subject individually and explained the goals of the study and the options available to potential participants, including the option not to participate. This discussion included the role of confidentiality, the rights of research subjects, and steps taken by researchers to protect confidentiality. At the completion of the discussion the potential subject was be given a consent form to review and with which to indicate whether or not they consent to participate.

System interviewers began their work by sending formal letters to the chosen informants to set up a time and place to meet. Most of the system interviews took place in the informants’ workplace where privacy was provided. Some interactor informants were chosen through similar means, with the rest being found through snowball methods. IDU informants were found mainly through snowball methods.

Some of the system interviewees were high ranking government officials. In such cases, the interviewees would not allow the interviewers to have the sessions tape recorded, as those officials were supposed to ask permission from their superiors before they were permitted to reveal any government confidential information, especially information on operational matters which might have some impact on future operations. The interviewers were allowed to take copious notes of these interviews and believe that the lack of oral recording allowed the interviewees to be more frank than they would have otherwise been. No such problems were encountered with the interactor or IDU interviews.

Data were collected from July to September 2006 in the Muang District, Chiang Mai Province, Thailand.

2.3 Context of the Study Area: Chiangmai Province, Thailand

The province of Chiangmai is situated in the Northern part of Thailand, approximately 750 kilometers away from Bangkok, the capital of the country. Chiangmai has a total area of 20,107 square kilometers, which makes it the second largest Province in the country. Chiangmai consists of 22 districts and 2 King Amphors.
In 2004, according to the national census statistics, the province was composed of 1,630,769 people. 312,442 are classified as “Hill tribe” members, the country’s largest minority. 45.6% of Chiangmai citizens earned their living through trading and business services, 37.0% are agricultural laborers and farmers; and the rest are general employees.

22 public health hospitals, 1 University hospital, 265 Public Health Stations, 13 private hospitals, 441 clinics and 14 community health care centers provide care. The ratio of medical staff was 1:1,982; dentist personnel was 1:7,197; pharmacist 1:7,014; and nurses 1:1,461. The number of beds per population was 1:283.

The great majority (91%) of the Chiangmai population is Buddhist, while 5.6% identify as Christian. There are 1,423 Buddhist temples and 260 Buddhist monk residences, while there are 573 Christian churches.
Legal Environment

Over the past few decades Thailand has come to incorporate extensive narcotics laws in an effort to combat its drug abuse and trafficking problem. The Narcotics Control Act of 1976 forms the pivotal penal enactment and is the cornerstone of this effort. Although Thailand has recently attempted to forge a more inclusive approach to drug use through the enactment of the Narcotics Addict Rehabilitation Act B.E. 2545 (2002), the government is still mainly reliant on a penal approach to drug use.

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

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

The Narcotics Control Act of 1976 and its subsequent amendments has had a major impact on the manner in which drugs are used in Thailand. The introduction of a harsh penal regime that bans the production, possession, consumption, sale and use of manufactured and psychotropic drugs and opium and its derivatives has resulted in a shift to heroin use through smoking and injection and an increase in the use of Amphetamine Type Stimulants (ATS). Thai law criminalizes the possession of extremely minor amounts of drugs, forcing users to carry very small quantities and ultimately leading to difficulty in drug users attaining 'highs' through less hazardous methods of administration such as oral intake and encouraging a shift to riskier methods, particularly injecting drug use. The penal regime under the Thai narcotics laws and related enactments prescribes

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


12 Act on Prevention & Suppression of Narcotics; Narcotics Suppression and Prevention Acts and others.
severe punishments, makes all offences under it cognizable and non-bailable, and also gives wide powers of search, seizure and arrest to the police.\textsuperscript{13}

IDUs in Thailand are often treated very harshly by law enforcement authorities. For example, an international NGO in a published report reported beatings of Akha villagers in Chiang-Rai and the mistreatment of other hill tribe villagers by army personnel in the Royal Thai Army (RTA) sponsored drug detoxification camp. In another documented incident, NGOs concerned with the welfare of highlanders reported that police and military units carried out several warrantless searches of villages for narcotics (under authority granted by the Narcotics Prevention and Suppression Act of 1979) in northern provinces during 2002.\textsuperscript{14} Further, under the existing Narcotics law, there is a presumption of guilt against the possessor of any drugs or apparatus for the manufacture of any drugs. The penal regime also makes any attempt or abetment punishable with the same severity as if the offence was actually committed. The Narcotics Suppression and Prevention Act in its display of power regards minimal attention to support structures within the law for de-addiction, detoxification and referral of drug users.

However, of late there has been some shift in the Thai legislative thinking and some amendments to drug related laws have been introduced focusing on support parameters and rehabilitation mechanisms. Chief among these is the “Rehabilitation of Narcotics Act, 1991” and its subsequent amendments in 2002. The amended Act of 2002 distinguishes itself from its predecessors inasmuch as it recognizes in principle that users are akin to patients and not criminals and recognizing the importance of a multisectoral approach to drug use reduction. However, this development, though positive, has proved to be largely lacking in substance or conviction, betraying a lack of sensitivity to the needs of drug users and a prejudicial view of drug use. The view bears testimony that despite reiterated principles of reform and multisectorality\textsuperscript{15} the majority of effort is still directed towards drug use and abuse are highly punitive.

The Act on Suppression and Prevention remains unaltered in accommodating the logic for which the Narcotics Addicts Rehabilitation Act of 2002 came into effect (i.e., addicts are more patients than criminals), fear of harsh criminal sanctions still stands out as the main tool of prevention and control. Studies have suggested that harsh criminal sanctions leave drug users widely exposed to exploitation, harassment, abuse and arrest by the law enforcement machinery.\textsuperscript{16} This in turn proves problematic from a public health perspective as it prevents drug users from accessing prevention, harm reduction, and treatment information and services. Moreover, legal provisions pertaining to abetment,
preparation and attempt have a severe impact on the manner in which interventions with IDUs are able to function.

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

The country’s schizophrenic approach to drug policy is evident in the conflicting laws passed and orders issued by the government. For example, in contravention of the ideas expressed by the Rehabilitation of Narcotics Act, Prime Minister Thaksin Shinawatra announced on 28 January 2003 that a 'war on drugs' would begin on February 1, and continue until April 30, at which time the country would be ‘drug-free’.\textsuperscript{17} This led to the establishment of the National Command Center for Combating Narcotic Drugs (NCCB) under the chairmanship of the Deputy Prime Minister.

Data on the impact of the Prime Minister's plan to fight narcotics shows drug users have been rendered even more vulnerable to HIV infection, abuse and stigmatization. This stepped-up government War on Drugs, characterized by extrajudicial killings, false charges and blacklisting, has had disastrous consequences.\textsuperscript{18} As a direct result of government policy, users trying to escape police arrest and forced rehabilitation were pushed further underground and away from critical support and services.

\textsuperscript{17} Ministerial Order No. 29/2546.

Key Findings From the Qualitative Research

4.1 Recent History of Drug Use and Policy in Chiang Mai

In the past, opium and heroin were plentiful and potent in Chiang Mai. Consequently, users were easily addicted to the drug and it was very difficult to stop using. In 1996, methamphetamine (Yaba) spread amongst the youth and teenagers. Later, during 1997-2001, the drug became even more widespread.

During 2001-2002, ongoing anti-drug activities became more concentrated, with the Ministry of Defense, the Ministry of Public Health and the Ministry of the Interior working together to address the drug problem. In the beginning of 2003, Prime Minister Thaksin Chinawatara declared that Thailand would be free of narcotics during his era. His narcotics policy, termed the “War on Drugs,” led to the arrest and extrajudicial killing of a great number of drug users and traffickers. Most recently, during 2005-2006, this harsh drug suppression has waned.

According to system interviewees, fully 60% of criminal charges in the past year were drug related. Of these drug charges, 95% were for methamphetamine; the other 5% were for heroin, opium, ecstasy and ‘ice’. Only 2% of drug arrests in the province are believed to be for heroin or opium. The Chiangmai prison warden estimated that 80-90% of the prisoners were charged with methamphetamine offenses. Heroin users seemed to be mostly absent from the prison, perhaps because most heroin users tend to be older. Other popular drugs were Ketamine, Methamphetamine, Crystal meth and Cocaine. However, these expensive drugs were not widely used because of their high price. The low price of methamphetamine may help explain its recent popularity.

4.2 Policing Practices

According to a police informant, the police seemed to have as many as 50-60 drug missions that were conducted on a 24 hour basis, 365 days a year. Some officers complained about the bureaucracy involved in the different organizations running drug suppression and the difficulty of arresting known drug users.

“Local citizens had asked me many times about this matter, but to take a person into jail was not an easy job. The seizure of narcotics was the first evidence to arrest people and put them in prison.” (Street-level police - Interactor)

There were also incidents where certain groups were given special treatment, and where males were treated differently than females:

“Once, I arrested a pregnant woman, but I sympathized with the woman, so I released her. I later found out that after I released her she went back to her house and started selling drugs again.” (Street-level police - Interactor)

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19 All data in this section comes from the qualitative interviews. Where appropriate, quotes from interviewees are presented.
“If IDUs were males, the search could be done immediately. But if IDUs were females, they had to be brought to the police station to be searched by female police officers.” (IDU-13)

“Policemen treated male and female differently. They arrested male IDUs, while they let female IDUs go. In my mind, I thought that women always have some privilege and extra mercy from the police authority.” (IDU-8)

There were also widespread allegations of bribery on the part of government officials, particularly police:

“It was possible that wealthy and rich IDUs could bribe the policemen with money or a mobile phone.” (IDU-13)

“Bribery could go up to the prosecutor, but not all the way to court and judge. A prosecutor could be bribed as much as ten thousand Baht.” (IDU-4)

“If pretty IDUs were arrested, they could be released through their beauty or having sex with the policeman.” (IDU-8)

“Sexual relationships with policemen became very common amongst female IDUs.” (IDU-14)

Some noted that the police would arrest those who had physical signs of drug use, even absent evidence that they were currently using drugs:

“The police looked for pale, unhealthy looking people with scars on their arms. On many occasions the police authority could not find the drug in the IDU’s bodies, but they could see injection scars on their arms.” (IDU-8)

“One day, I was arrested by the police authority due to marks on my body. The policemen took me to the police station and asked me to let them examine my urine. After the verification that I had no purple color in my urine the policemen let me go home.” (IDU-4)

There were also allegations that police planted evidence. There is even a word in the Thai language for such acts: “Yat Ya”.

“Policemen had lots of drugs and they will put the stuff into people’s pockets. Each sub-district had set a target for arresting of IDUs at least 30 cases a month.” (IDU-11)

“Firstly, after arrest, the police authority would put drug trafficking charge on IDUs. If we denied, they would torture us.” (IDU-8)

The police would sometimes coerce arrestees into being informants. This could earn their freedom, but could also be very dangerous:
“A person informed me that the police authority wanted to use drug users as spies to catch drug traffickers. One person was arrested but then released as a spy for the police.” (Harm reduction worker - Interactor)

“If found to be informants, IDUs face beating and torturing. Fire and flame were put on some parts of their bodies. The shocking of certain parts of the body such as testes and penis was also performed on when they were found to the spies of the police authority.” (IDU-8)

“Policemen usually asked IDUs to work for the police authority as spies. But most of the IDUs declined to be spies for it was very risky. So, the risk to be killed both inside and outside of the prison was equally the same.” (IDU-13)

The police seemed to believe that IDUs could not be able to stop using drugs; thus, there was a risk that the same person might be arrested even after he stopped using drugs. Therefore, when policy makers decided that a certain number of drug arrests were required, the police authority would normally go back to their old list of names of the IDUs to get the required numbers.

System interviewees normally differentiated between youth and adult and drug users and drug traffickers. The interrogation of youth is done under the supervision of a council which consists of a lawyer, psychiatrist or psychologist, prosecutor, and social worker. The punishment given to juveniles was different from that of adults and is based on environmental factors and the cause of crime concerning narcotics and other incentives. The goal was set on how to solve the problem rather than on the punishment.

The judges of juvenile court came from people from all walks of life based on their achievement and success as well as reputation. Some of them came from Non-Government Organizations (NGOs). Some punishment might concern sending the children to work in these NGOs or sending them to families where they would return to normal life and to live in their own community. The Judge interviewees stated that it was a basic principle for the court to emphasize the correction on juvenile behaviors rather than to punish them.

4.3 Interrogation Procedures

Normally, when narcotics arrests take place, the arrested persons would be delivered to the police station for interrogation. During this period of time, the arrested persons would be put in detention in the jail of the police station in the area where crime occurred. They typically remain there for approximately 2 days.

After arrest, the police are supposed to inform arrestees of their rights, for instance, the right to meet a lawyer. Additionally, some policemen might make copies of the criminal rights and gave them to the arrestee. According to procedure, before interrogation, the police authority would let the arrested persons read their rights and sign a paper acknowledging them. A Prosecutor interviewee, however, stated that this procedure was not always followed.
According to the prosecutors interviewed, use of force during interrogation is illegal. However, the current law does not allow the prosecutor to be involved in the interrogation process, except in the case of juveniles, where the prosecutor has to join the interrogation according to the law. The prosecutor reported that there is a conflict between the police and the prosecutors on the matter of the use of force by the police.

The police informants, however, claimed that there are no rules on the use of force and threats during interrogation. They reported that, before 1994, force and threat of force during interrogation were commonplace. If the police authority wanted the arrested persons to be spies for the police, they would bargain with them by using force and threatening as a mean to persuade them to cooperate.

However, in 1994, the police authority announced order article number 1212, which holds supervisors directly responsible for the actions of their subordinates. However, street-level police report that the use of force in interrogation is still a common occurrence.

“Police always use force when they arrested IDUs, particularly in the safe house or during interrogation. The using of force could be anything, kicking, beating, the use of fire and electrical short circuit or electrical shock and so on. Besides using of force, there could be other kinds of threatening such as shot gun fires. Sometimes, the police men used dogs, big dogs, to threaten me.” (IDU-9)

4.4 State of Prisons

All interviewees questioned on the matter agreed that the prisons are overcrowded, with each room packed with 40-70 prisoners. Each room had a selected leader to look after everything in the room. Prisoners are expected to refer to guards as “Master” and to bow their heads when the guards walk by. Red rice was the staple food. The red rice was still very hard and difficult to swallow, especially in the winter. Those with means, however, were able to purchase other food or have it brought in from the outside.

Health care in the prison is handled by a physician with prisoners as his assistants. It was universally described as dismal.

“The doctor did not want to give us medicine. When we caught a cold, he gave us only two tablets of paracetamal. It was difficult to get out of the prison to get medical care. A relative was required to sign the paper for outside medical treatment.” (IDU-6)

“Prisons detained prisoners without discrimination of HIV or Tuberculosis (TB). If the coughing was not so severe, we would never know that the person had TB. However, if the disease signs were clear and vivid, the prisoner warden would send the patients to the hospital. But if not a severe case, the chance that the prisoner might see the doctor would be very difficult.” (Emergency Physician - System)

Several IDUs reported that syringes were not easy to come by in prison, which leads to sharing amongst IDUs. Additionally, high-risk sexual activity was reported:
"The wage for labor in sexual activities had been paid in term of cigarettes. Nonetheless, a strong personality male prisoner would have chance to make love with a good looking young prisoner. Afterwards, they would call each other buddies. The payment could be done in some other ways, such as, taking good care of the sexual partner as protector or body guard. Thus, powerful prisoners would always have youngsters to provide sexual pleasure for them." (IDU-8)

Although HIV education was reported inside the prison, it is unclear how effective it was:

"HIV knowledge was given by the warden of the prison. Knowledge from outsiders would come to the prison 3-4 times a year. Mostly, it was preventive knowledge on HIV. It was difficult to understand exactly about the HIV disease. Some people said, if sexual intercourse had been done through anus, the disease would not come into contact with the person. Therefore, it was hard to believe the lecturers on the matter of HIV." (IDU-9)

Violence was noted, with deaths sometimes occurring as a result. There were two kinds of violence in the prison, violence between the prisoners themselves and violence between prisoners and guards:

"Violence often starts when one prison gang tries to collect money from other prisoners. They threatened each other and demanded for money as a protective mean. The amount of money required was negotiable." (IDU-4)

"I was one of the gang members and they told me to collect money from other prisoners. The payment could be done through cash or via cigarettes. This group was involved with narcotics. There were some kinds of narcotics for sale in the prison. Another kind of violence came from the conflict between the prisoners and the warden or the prison guards who could punish prisoners without rules or regulation. Beating was a common practice amongst the warden and the guards. The bates were made out of plastic pipe surrounded with rubber. Some prisoners died of this kind of beating." (IDU-8)

4.5 Police Interference in Similar Studies

Many of the Systems interviewees suggested that in order to avoid risk to IDUs the police and governmental officials must be a part of the process, and police interference in the past was noted.

"During the time of war on drugs, the police authority came to pick up our volunteers to make them serve as drug buyers. The doctor told the police that the patients were now free from consuming narcotics. However, the police authority insisted to take the patient to work for the police as drug buyer." (Scientific investigator operating a research study with drug users - System)

"In the past, the police authority used to come to [the treatment center] to arrest IDUs. Consequently, the center was afraid that their patients would not come to the
center to receive medical care and treatment. Thus, the drug treatment center wrote a letter to notify the police authority that their patients were afraid of coming to the center. Furthermore, the police authority of the police branch had kept an eye on the patients of [the clinic] for narcotics arrest. After the notification letters had been sent out the cases disappeared from the scene and the cooperation with the police was simply handled.” (Official of drug treatment center - System)

“There were some cases that the police authority arrested IDUs of the project to have their urine tested.” (Person involving a research study on drug users - Interactor)

The prosecutor suggested that there should be a list of volunteers; their names should be put in records as reference. He also believed that there should be coordination with local and national police.

4.6 Perceptions of Current Drug Policy

Most of the police interactor informants supported the “war on drugs” policy because they believed it was effective in reducing drug use. However, many of the non-police system informants were not pleased with the country’s current drug policy:

“I am not content with the war on drug policy, since it is not the way to solve the problem. I think narcotics could not be solved through law alone. Drug users are patients, not criminals. Thus, the issue must be a long term problem.” (Scientist on study working with drug users - System)

Interviewees generally believed that the punishment for narcotics offenses should be lighter than that for other offenses and noted that punishments for traffickers tended to be much higher than those for users, although users were often sentenced to “rehabilitation” and then, in some cases, prevented from returning to their homes.

“IDUs were considered to be patients and required medical treatment at the narcotics rehabilitation center. The training at the center was something like a military training.” (IDU-13)

“Since there was no room in the prison, sometimes court sent out minor cases to the rehabilitation center for cure and for treatment as well as training. Most of the activities consisted of plantation, growing trees, and agricultural activities.” (IDU-13)

4.7 Stigma and Social Attitudes

Although they are sometimes looked at as victims of peers or drug traffickers, drug users are generally held in low regard amongst non-IDU informants. The stigma is less for methamphetamine users. Heroin or opium users are considered more serious than methamphetamine users for heroin users are believed to steal belongings of the people in the village causing more trouble than the methamphetamine users.
After imprisonment, it is difficult for IDUs to reenter society. Neighbors normally gossip about their drug behaviors and make it difficult to live among them. Consequently, the IDUs may separate themselves and live their lives out of the neighborhood for they could not live with their old friends both in home and in their workplace.

“People always thought of drug users as criminals who stole their property for the sake of exchanging for money to buy drugs for use in their habits.” (Research staff involving drug users - Interactor)

“Drug addicts had been called in Thai language as “Ai Khi-ya”, but amongst the addicts, they called themselves “Chao-ya”. The community or society of drug addicts disliked and hated Ai Khi-ya and Chao-ya. They looked down upon them and discriminated them as outsiders. Therefore, drug addicts had to find friends as drug addicts; and they gather themselves into groups.” (IDU-12)

Most system interviewees viewed drug traffickers and drug users as “bad people” who destroyed their society and their community by means of making youth in the neighborhood become drug users.

“When people deserted them, drug addicts formed up their own society. If employers knew that his employees were drug addicts, they would fire them immediately for if they let addicts stay at their factories, the addicts would not be able to work for them anyway. Educational institutes, if they learned that their students were addicted to drugs, would called the parents and have them resign their children from being students at the schools.” (IDU-13)

Non-injection drug users were generally not considered to be the problem that injection drug users were, and are generally treated better.

This system of stigmatization often means that even those who are able to kick the habit have nowhere to go and may end up resuming drug use.

“The stigma of being drug users or drug traffickers was the cause of pushing the people back into their old habits of consuming drugs or trafficking drugs.” (Treatment Center worker - Interactor)

“People with HIV are stigmatized after they leave prison. They then have the stigma both of HIV and drugs. This kind of stigma had spiritual effect as well as physical effect, which attached to their minds.” (NGO staff working with HIV positive people - Interactor)
Acceptance of HIV positive individuals often depends on how the person contracted the disease. For example, wives who got infected from their husbands would be viewed with sympathy. On the other hand, people generally have little sympathy for people infected with HIV through drug use.

Physicians often viewed IDUs as HIV transmitters, although they also realize that the stigma of being identified as HIV+ would be harmful to patients. However, some also believe that if the doctor put an HIV marker on the patient’s bed, it would be good for the hospital staff, as they would be more vigilant not to be infected by the patient.

“There was no separation between HIV patients. However, the hospital workers had a secret notification among themselves to let their personnel know which patient were HIV positive. Mostly, the hospital personnel learned from interviewing and from the observation of the signs and symptoms.” (Emergency Physician - System)

4.8 Access to Health Services

Most Systems interviewees believed that currently there were enough Treatment and Rehabilitation Centers for drug users since district and local hospitals could treat and deal with drug users. However, some stated that in reality few hospitals want to accept drug users. In fact, the Northern region had only one treatment center. An official at the Chiang Mai drug treatment center reported that, during the War on Drugs, the number of patients was reduced by 50%.

“Hospitals generally set standards and criteria to avoid accepting the drug users into their patient list. Eventually, drug users would disappear from their hospitals for the difficulty in receiving the medical treatment. There are not many private clinics for drug dependence treatment in Chiangmai province; and most of them treated patients with bad manners, such as looking down upon patients. As a result, the patients did not want to go to such places.” (Harm Reduction Director - System)

“There theoretically, there were so many hospitals, but only few hospitals that admitted drug users as their patients for they were afraid of drug users to overwhelm their services.” (Scientific investigator operating a research study with drug users - System)

“Methadone was a drug of choice for use in the treatment of drug users; but the cost of treatment was very high. However, most of heroin drug users were very poor and they could not afford to have such medical treatment.” (Scientific investigator operating a research study with drug users - System)

“IDUs have some trouble accessing health services. They themselves refused to go to treatment center due to the fact that they did not want to be under restriction and regulation.” (Harm reduction worker - Interactor)
Conclusion

We conclude that while drug users in Chiang Mai, as elsewhere, are subject to a variety of socioeconomic, dignitary and even physical harms due to stigma and criminalization, these harms are not more likely to occur because of participation in this research as long as local law enforcement is involved in the process and agrees to a policy of non-interference with the study. In fact, enrollment may even have a protective effect if researchers successfully interface with local police.

U.S. Sponsors, researchers and IRBs should be aware, however, that it may be difficult to guarantee both the support of the police and the anonymity of study enrollees, as several Systems informants suggested that study participants might need to carry a study identification card to protect them from police interference. This research also found widespread stigma amongst community members, and lack of treatment resources for drug using individuals.

Based on our research, the RPA team makes the following recommendations:

1. The research team should work with local law enforcement, drug treatment and public health officials to promote their understanding of and cooperation with the research project. In doing so, they should:
   - regard local law enforcement, drug treatment and public health officials as key stakeholders in the research, who will be in a position to influence or participate in new programs based on the research findings;
   - emphasize the deterrent effect of arrests at the site on IDU trust and participation;
   - educate stakeholders about addiction and the benefits of treatment and access to health and social services at every opportunity.

2. The research team should reflect upon and develop internal operating procedures for communicating with authorities to maximize benefits and autonomy and minimize risks to participants. The research team should ensure that local staff members are trained in proper privacy and confidentiality procedures and that procedures are in place to handle requests for information that may come from governmental agencies and actors.

3. The research team should be mindful that stigmatization from community members may also be a risk factor for IDUs, as identification as an IDU may cause a person to lose his/her employment and support system. Systems should therefore be designed to minimize the chance that a person will be inadvertently identified to the community as a study member.
Acknowledgments

Legal and qualitative data were collected using tools adapted by Scott Burris and Corey Davis from the Rapid Policy Assessment and Response toolkit.

The Rapid Policy Assessment and Response Tools were initially developed by Scott Burris, Patrica Case and Zita Lazzarini with the support of the International Harm Reduction Development Program of the Open Society Institute, and further refined under NIDA Grant # 5 R01 DA17002-02, Zita Lazzarini, Principal Investigator.

Indrajit Pandey, MBA, LLB collected relevant laws and regulations.

Qualitative research was conducted and the resulting data analyzed by Somnaek Chatchawan, Wichulada Matanbun and Sukanya Isarangkun Na Ayuddhaya. Chatchawan, Matanbun and Isarangkun Na Ayuddhaya drafted the final report, which was edited by Burris and Davis.

Funding was provided by the HPTN through by the University of Pennsylvania.

Current versions of the RPAR tools and training materials are available on the world wide web at http://www.rpar.org.
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‘Law on the Books’ and High Risk Populations in Thailand

Indrajit Pandey, LLB, MBA

Edited by Corey S. Davis
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8. Prime Minister’s Order No. 29/2546 ................................................................. page 53
This assessment is meant to provide an overview of the current state of law affecting high risk populations in Thailand with an emphasis on provisions, particularly criminal law, health care law and privacy provisions bearing on injecting drug users. It is not meant to be a comprehensive accounting of all law in these areas but rather a guide to the most important provisions affecting the health and safety of high risk individuals. All statutory sections relied on and cited to in the text are reproduced in the Appendix.

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

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

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

1. Law often determines what sort of programs are available (e.g., HIV testing, needle exchange, treatment availability, 100% condom campaigns)

2. Law influences the behavior of people at risk – it can create an enabling environment for prevention, but it can also increase risk

3. “Law on the books” is often very different from “law on the streets” – good policies don’t always make for good practices

4. Practices can often be changed to promote health in particular places even if national laws on the books cannot be addressed.
RPAR takes on these realities by combining traditional legal analysis of the law on the books with rapid empirical data collection on the implementation of law in particular places. Researchers in a site city may then use a variety of tools including interviews, focus groups and surveys to find out how the law is being applied and how it influences the attitudes and behavior of people at risk.

Although RPAR was developed to include an intervention component, the RPAR tools can readily be adapted for other populations and health concerns. The modules may also be used independently. The data provided in this report comes solely from Module II of the RPAR, which is used for collection of ‘law on the books.’ More information on the RPAR can be found at http://www.temple.edu/lawschool/phrhcs/rpar.htm.
Over the past few decades Thailand has come to incorporate extensive narcotics laws in an effort to combat its drug abuse and trafficking problem. The Narcotics Control Act of 1976\(^1\) forms the pivotal penal enactment and is the cornerstone of this effort. Although Thailand has recently attempted to forge a more inclusive approach to drug use through the enactment of the Rehabilitation of Narcotics Act\(^2\), the government is still mainly reliant on a penal approach to drug use.

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

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

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

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\(^1\) The Narcotics Control Act 1976 (as amended by the Narcotics Control Act (2002).  
\(^2\) Officially Narcotics Addict Rehabilitation Act B.E.2545 (2002)  
\(^3\) UNODC. Drugs and HIV/AIDS in South East Asia. A regional Project for reducing HIV Vulnerability from Drug Abuse (AD/RAS/02/G22).  
resources to other populations: “HIV infection among the drug users peaked early in Thailand’s AIDS epidemic and are no longer regarded as a priority for action…nearly 84 per cent of infection is caused by heterosexual transmission”.

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

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

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

The Narcotics Control Act of 1976 and its subsequent amendments has had a major impact on the manner in which drugs are used in Thailand. The introduction of a harsh penal regime that bans the production, possession, consumption, sale and use of manufactured and psychotropic drugs and opium and its derivatives and encouraging a shift to riskier methods, particularly injecting drug use. The penal regime under the Thai narcotics laws and related enactments prescribes severe punishments, makes all offences under it cognizable and non-bailable, and also gives wide powers of search, seizure and arrest to the police.

IDUs in Thailand are often treated very harshly by law enforcement authorities. For example, an international NGO in a published report reported beatings of Akha villagers in Chiang-Rai and the mistreatment of other hill tribe villagers by army personnel in the Royal Thai Army (RTA) sponsored drug detoxification camp. In another documented incident, NGOs concerned with the welfare of highlanders reported that police and military units carried out several warrantless searches of villages for narcotics (under authority granted by the Narcotics Prevention and Suppression Act of 1979) in northern provinces during 2002. Further, under the existing Narcotics law, there is a presumption of guilt against the possessor of any drugs or apparatus for the manufacture of any drugs. The penal regime also makes any attempt or abetment punishable with the same severity as if the offence was actually committed. The Narcotics Suppression and Prevention Act in its display of power regards minimal attention to support structures within the law for de-addiction, detoxification and referral of drug users.

However, of late there has been some shift in the Thai legislative thinking and some amendments to drug related laws have been introduced focusing on support parameters and rehabilitation mechanisms. Chief among these is the “Rehabilitation of Narcotics Act, 1991” and its subsequent amendments in 2002. The amended Act of 2002 distinguishes itself from its predecessors inas-
much as it recognizes in principle that addicts are akin to patients and not criminals and recognizing the importance of a multisectoral approach to drug use reduction. However, this development, though positive, has proved to be largely lacking in substance or conviction, betraying a lack of sensitivity to the needs of drug users and a prejudicial view of drug use. The view bears testimony that despite reiterated principles of reform and multisectionality the majority of effort is still directed towards drug use and abuse are highly punitive.

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

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

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

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

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

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

It is in this context that this analysis was completed.

18 In May 2001, two women accused a police officer of raping them in jail while they were serving a sentence on drug charges. The officer was suspended from duty and released on bail Thailand-Country Reports on Human Rights Practices - 2002 Released by the Bureau of Democracy, Human Rights, and Labor March 31, 2003.
19 Ministerial Order No. 29/2546.
Domain I: Criminal Law
1. The Illegality of Being a Drug User
   A. Drug Control Laws
      1. Drug use, Possession and Sale
         a. Traditional Penalties
         b. Alternatives to Incarceration
      2. Status Crimes Related to Drug Use
      3. Identification & Registration of Drug Users
      4. Non-Consensual Drug Testing
   B. Paraphernalia Laws
   C. Needle Exchange Programs

A. Drug Control Laws

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

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

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

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


‘Law on the Books’ and High Risk Populations in Thailand 6
b. Alternatives to Incarceration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For details see Ministerial Regulation (Governing Rules and Procedures...
The Suspension of Prosecution and Adjudication Processes

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

1. An order of suspension of prosecution of the cases until they receive the results of the drug treatment of the cases from the sub-committee on the narcotics addict rehabilitation for those who are identified by the sub-committee as drug users or drug addicts.

2. To forward the cases to be prosecuted to the court for those offenders who are identified as neither drug users nor drug addicts.

3. Prosecution by the public prosecution officers and the sub-committee will be informed of the decision on the cases for those non-eligible to be treated under the Narcotics Addict Rehabilitation Act.

4. Prosecution by the public prosecution officers for those who have completed the treatment plan but have had their results deemed unsatisfactory by the sub-committee.

2. Status Crimes Related to Drug Use

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

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

—Odd Thanunchai, a peer educator

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

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

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

3. Identification and Registration of Drug Users

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

1. The Minister of Justice

2. The Narcotics Addict Rehabilitation Commission that is chaired by the permanent secretary of the Ministry of Justice

3. The provincial sub-committees of the narcotics addict rehabilitation in each province that are appointed by the Commission and these sub-committees are chaired by the public prosecutors as the representatives of the Ministry of Justice in the province

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27 For details see the Addicts Rehabilitation Act Section 35.
4. The investigation officers
5. The public prosecutors
6. The judicial officers
7. The directors of the Narcotics Addict Rehabilitation Centers
8. The probation officers
9. The other officers who are assigned to enforce the Act

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

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

1. to enter any dwelling place, premises or conveyance in order to search and arrest the person committed for rehabilitation in violation of section 29 or section 31, where there is a reasonable ground to suspect that such person is hidden and together with reasonable ground to believe that any delayed obtaining a search warrant would result in such person escaping;

2. to issue a letter of inquiry to or summon any person related to the person committed for identification or the person committed for rehabilitation to give statements or to submit documents or any evidence for examination constituting the consideration in the performance under section 17;

3. to testify to facts with the preview of section 17;

4. to issue an order or provide to have, the person committed for identification or the person committed for rehabilitation, examined or tested for possession of narcotic

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

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

Compulsory Registration: Broadly categorized into two types:

1. Drug abuse treatment in the correctional system and

2. Drug dependence treatment for first time offenders.

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

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

29 Informed consent (in the current context) implies that those individuals who are tested understand the risk and potential benefit of the test. Section 34 of the 1997 Thai Constitution states, “A person’s family rights, dignity, reputation or his right to privacy shall be protected. The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person’s family rights, dignity, reputation or the right of privacy, shall not be made except for the case which is beneficial to the public.”
of juvenile arrestees) for the court order to identify the drug consumption and drug addiction of the arrestee. By order of the court, the provincial sub-committee of the narcotics addict rehabilitation is responsible for identifying whether the offender is either a drug user or drug addict. The sub-committee has to investigate the biological, socio-economic background as well as the offensive behavior of the offenders within 15 days after the offenders are referred by the court. For those offenders who are identified by the sub-committee as drug users or drug addicts, the treatment plans for them have to be drawn up by the subcommittee and the report forwarded to the public prosecutors for the consideration of suspension of prosecution. For those offenders who are identified as neither drug users nor drug addicts, the sub-committee has to refer them back to the police officers or public prosecutors with the report for further consideration of the cases.

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

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

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

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

2. Diagnosis of drug consumption for those who

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

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

B. Paraphernalia Laws

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

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

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

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

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

31 For details see section 14 of the Narcotics Control Act, 1979.
C. Needle exchange programs (NEPs)

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

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

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

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

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

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

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

‘Law on the Books’ and High Risk Populations in Thailand
The Constitution of 1997 generally precludes warrantless arrests and searches. It also provides for the provision of bail, the assistance of counsel and the right against self-incrimination.

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

Section 14 of the Act grants authorized officials the powers:

1. to enter and search any dwelling place or premises on a reasonable ground to believe that any person or any group of persons suspected of committing an offence relating to narcotics is in hiding or there is property the possession of which is an offence or acquired through the commission of an offence or used or intended to used in the commission of the offence relating to narcotics or which may be used as the evidence, together with a reasonable ground to believe that any delayed in obtaining a search warrant, such person shall escape or such property removed, hidden, destroyed or transformed form original;

2. to search any person or conveyance which there is a reasonable ground to suspect that there are narcotics unlawful hidden;

3. to arrest any person who committed the offence relating to narcotics;

4. to seize or attach narcotics which there are unlawful possessed or any property which used or intended to use in the commission of the offence relating to narcotics or may be used as the evidence;

5. to search under the provisions of the Criminal Procedure Code;

6. to make an inquiry of the alleged offender in the
offence relating to narcotics;

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

Section 14/2 provides that:

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

Section 14/3 essentially allows a designated official to deputize any other person in carrying out his duties, while 14/4 allows officials to obtain information from “post, telegraph, telephone, fax telephone, computer, tool or instrument…or communication by information technology” on the same grounds as 14/2.

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

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38 As Added by section 5 of the Narcotics Control Act (No.3) B.E. 2543 (2000)
39 As added by section 9 of the Narcotics Control Act (No.4) B.E. 2545 7
40 ibid
Domain I: Criminal Law

3. Criminal Exposure and Transmission

Section 2 of the penal code states:

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

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

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

With no existing laws or case law, the matter of affirmative defense is also open for debate. However, in application of any law criminal intent is critical. Under the laws covering criminal liability (section 59, Thai Penal Code), intent under the same section is defined as “an act of consciously committing at the same time the person committing it desired or should have foreseen the consequences of such a commission.” The section further elaborates that if the person does not know the fact which is the essence of the offence, it can not be deemed he desired or that he should have foreseen the consequences of such a commission. Hence in the absence of explicit laws covering the issue, intent, knowledge (condom use and HIV status) may be used as a defense under penal law apart from other similar provisions.
Every individual has the basic right to receive health services as legally enacted in the Thai Constitution. Article 52 of the Constitution declares that:

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

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

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

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

Another crucial development towards this end is the Thai Prime Minister, Thaksin Shinawatra in televised speech (July 2005) announcing the governments’ inten-
tion to officially included ARV into the 30 Baht scheme. However the details on operationalising the plan into reality are anything but clear.
Thailand’s contemporary surveillance history is, in some respects, inverse to that of the United States. In Thailand, officials immediately adopted mandatory notification by name of both HIV and AIDS and then withdrew from this position relatively quickly. They viewed nominal notification as ineffective and unnecessary within a system in which HIV and AIDS surveillance did not facilitate treatment nor prevention efforts while perpetuating discrimination and stigmatization. Additionally, there were anecdotal reports of those whose names were reported committing suicide. As such the emphasis of surveillance in Thailand is currently to monitor trends in the epidemic.

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

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

After a few years, as the number of cases of AIDS and HIV infection rapidly expanded, officials felt that the infrastructural burdens of mandatory notification and follow-up, and the resulting discrimination against those identified, outweighed the benefits. There was no medical intervention to offer and it became impossible to visit every family. Many physicians, moreover, would respect...
patient requests not to report either HIV infection or AIDS. Official remarks that the name-based notification system suffered from about two-thirds under-reporting prompted the National AIDS Committee to drop HIV from the list of reportable diseases, while putting more emphasis on unlinked anonymous serosurveillance and estimation of AIDS populations.

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

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

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

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

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

Under the current system of reporting the information collected are for the purpose of monitoring and evaluating the maturing trend of the epidemic. The data, as explained earlier, is channeled to the Ministry of Public Health.
There are no HIV/AIDS specific laws relating to the privacy of medical information. Sections 41 (Narcotics Rehabilitation Act), 322 and 323 (Criminal Procedure code) and 16/1 (Narcotics Control Act) are the main provisions providing for punishments for unauthorized disclosure of information. The Constitution is also implicated.

Article 37 of the constitution provides that:

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

Section 322 of the Criminal Procedure Code provides that:

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

Section 323 holds:

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

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

Hence, the right to confidentiality of information is substantiated by Criminal Code 323 - 325, and the same principles are enunciated in the provisions of the Information Act B.E. 2540 and Medical Council Code of...
Conduct B.E. 2526, which is always treated with utmost importance as it is the basis of trust between patients and their medical practitioners. Thus, a patient has the rights to expect that her personal information will be kept confidential by the medical practitioner. The only exceptions are with the consent of the patient or under legal obligation. If any hospital or clinic informs HIV test results to individual company/organization or any other person without consent of the tested individual, that would amount to breach of the Constitutional right of the tested individual, a criminal offence punishable under section 323 and violative of the medical code of practice section 3 item 9, and the medical practitioner liable to lose their medical license.

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

Under Section 41 of the Narcotics Rehabilitation Act:

Any person who brought any fact or document of evidence which is a personal information derived in the execution for this Act, disclosure to other person shall be liable to imprisonment for a term not exceeding five years or to a fine of not exceeding one hundred thousand Baht or both, except that the disclosure was in the performance of duties or under the law. If the commission under paragraph one is committed by member, Secretary-General, Deputy Secretary-General and competent official, such person shall be liable to treble penalty imposed for offence that referred in paragraph one.

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

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

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

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

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

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

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

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

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

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

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

**Article 80:** The State shall protect and develop children and the youth, promote the equality between women and men, and create, reinforce and develop family integrity and the strength of communities. The
State shall provide aids to the elderly, the indigent, the disabled or handicapped and the underprivileged for their good quality of life and ability to depend on themselves.

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

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

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

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

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

The constitution by the virtue of Article 30 bans discrimination on all grounds including disability, while article 55 states that the disabled or handicapped shall have the right to receive public conveniences and other aids from the State, as provided by law. Article 80 indicates that the State shall ensure a good quality of life for persons with disabilities and improve upon their ability to depend upon themselves for health protection and quality of life.

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

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

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

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

Article 52 states that:

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

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

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

43 Committee on Economic, Social and Cultural Rights (CESCR), The right to the highest attainable standard of health: CESCR General comment 14 (22nd Session, 2000), para. 16
44 Ibid., para. 33
The same position paper found a correlation between substitution maintenance and reduced death rates for people with opioid dependence; fewer complications for pregnant women and their children; higher annual earnings and employment levels; and reduced levels of criminal activity. The paper also noted that the risks associated with substitution maintenance, such as overdose and diversion of methadone into black markets, could be minimized by low doses at the beginning of treatment and effective oversight of methadone programs respectively.

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

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

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

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

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

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

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

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

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

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

Theoretically at least methadone is provided in all district and provincial hospital and primary health care centers. All of Thailand’s 2100 district community health services are resposible for providing drug treatment, including methadone for detoxification, however, there is a high threshold of entry guidelines to methadone. And it seems that inadequate numbers of health workers undermine the capacity of these centers so it is likely that not many drug users are actually receiving methadone outside of Bangkok. Altogether in October 2004 just 58 sites were providing methadone (Thanyarak Institute data). Overall just 5.4% of all drug users treated in Thailand are opioid users. In Bangkok, there are 20 clinics in 65 health centers.\(^50\) All provide Matrix programs (even if there is no specific drug clinic). Sixteen clinics operate under the Department of Health, 2 under the Taksin hospital, and two clinics are under the Drug Abuse Prevention and Treatment Division. The number of IDUs in treatment has declined. In 2003, there were 4,430 drug user patients, and in 2004 there were 2,164 in MMT: In 2003, there were 2,183 patients, and in 2004, there were 1,584. The current year’s figures have declined further. The BMA provides monthly figures on patients in treatment, and the average for Bangkok is between 600-700 patients.

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

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

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

Section 94/1\(^51\) of the Narcotics Act of 1979 specifies that:

\[
\text{Whoever administers treatment to narcotics as being the course of his or her normal business by using medicine in accordance with the law governing}
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\(^{50}\) UNODC. World Drug Report of July 2005

\(^{51}\) As added by section 33 of the Narcotics Act B.E 2545 (2002)
medicine, by psychotropic substances in accordance with the law on psychotropic substances or by narcotics in accordance with the law governing narcotics or any methods other than the foregone ones, in the clinics which are not the clinics prescribed by this Act, whether or not benefits may be given in return, shall be punished with imprisonment from six months up to three years or a fine from fifty thousand baht up to three hundred thousand baht.

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

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

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

1. Prisoners

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

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

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

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

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


\textsuperscript{54} Human Rights Watch interview, Samut Prakhan, May 7, 2004. (case: Noi N)
a blind eye to the problem, a state of denial.

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

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

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

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

—Human Rights Watch 2004

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

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


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

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

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

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


Domain III. Specific Populations

2. Minors

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

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

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

Although Thai constitution mandates an obligation on the state for protecting children and juveniles, the
State has interpreted its protective role for children and minors living outside family structures or in violent situations as limited to providing for their institutionalization. This policy has contributed significantly to discrimination as it places minors in extreme positions of powerlessness. For instance, where children come in conflict with the law in drug related offences/abuse, the provisions of the Narcotics Addicts Rehabilitation Act of 2002, are applicable.
Members of hill tribes without proper documentation, who account for approximately half of the estimated 1 million members of hill tribes, still face restrictions on their movement, may not own land, and fall beyond the coverage and protection of labor laws, including minimum wage requirements. The law provides that citizenship is not automatically granted to children born to persons living illegally or without status in the country. However, citizenship legislation passed after the 1997 Constitution provided for expedited naturalization for persons whose families had been in the country for several generations, arrived before 1982 and could meet certain citizenship tests, including literacy in the country’s language. After an initial wave of successful citizenship applications in the late 1990s, the process has slowed down.

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

The non-legal status of these indigenous people (Highlanders), when viewed in the light of the existing unclear policy applicable to ARV allocation under the quota system puts them on a compromised platform of prioritization – citizens vs. non Thai’s (illegal migrants).
The goal of increasing public health is not incompatible with that of maintaining public order. Although the passage of the Rehabilitation of Narcotics Act is laudable and its stated goals commendable, much more needs to be done to implement the goals of offering drug users a better life through treatment and rehabilitation instead of incarceration. Thailand should quickly provide the necessary resources to implement both the spirit and letter of the Rehabilitation of Narcotics Act.
About the Author

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

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

<table>
<thead>
<tr>
<th>Offence</th>
<th>Category 1</th>
<th>Category 2</th>
<th>Category 3</th>
<th>Category 4</th>
<th>Category 5</th>
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</thead>
<tbody>
<tr>
<td><strong>Production, Importation or Exportation</strong></td>
<td>Life imprisonment For the purpose of disposal: death penalty Pure substances &gt;= 20 grams regarded as commission for the purpose of disposal</td>
<td>Imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht Morphine, opium or cocaine: imprisonment of 20 years to life and a fine of 200,000 - 500,000 Baht</td>
<td>imprisonment not exceeding 3 years or a fine not exceeding 30,000 Baht or both</td>
<td>imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht</td>
<td>Imprisonment of 2-15 years and a fine of 20,000 - 150,000 Baht</td>
</tr>
<tr>
<td><strong>Disposal or possession for the purpose of disposal</strong></td>
<td>pure substances &lt;=100 grams: imprisonment of 5 years to life and a fine of 50,000 - 500,000 Baht &gt;100 grams: life imprisonment to death penalty</td>
<td>Imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht Morphine, opium or cocaine: &lt;=100 grams: imprisonment of 3-20 years and a fine of 30,000 - 200,000 Baht &gt;100 grams: imprisonment of 5 years to life and a fine of 50,000 - 500,000 Baht</td>
<td>imprisonment not exceeding 1 year or a fine not exceeding 10,000 Baht or both</td>
<td>imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht</td>
<td>imprisonment of 2-15 years and a fine of 20,000 - 150,000 Baht</td>
</tr>
<tr>
<td><strong>Kratom Plant</strong></td>
<td>Imprisonment not exceeding 2 years and a fine not exceeding 20,000 Baht</td>
<td>Imprisonment not exceeding 2 years and a fine not exceeding 20,000 Baht</td>
<td>Imprisonment not exceeding 2 years and a fine not exceeding 20,000 Baht</td>
<td>Imprisonment not exceeding 2 years and a fine not exceeding 20,000 Baht</td>
<td>Imprisonment not exceeding 2 years and a fine not exceeding 20,000 Baht</td>
</tr>
<tr>
<td><strong>Possession</strong></td>
<td>Pure substances of less than 20 grams: imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht</td>
<td>Pure substances of not more than 100 grams: imprisonment not exceeding 5 years and a fine not exceeding 50,000 Baht</td>
<td>Pure substances of 20 grams or more shall be regarded as commission for the purpose of disposal</td>
<td>Kratom Plant: Imprisonment not exceeding 5 years and a fine not exceeding 50,000 Baht</td>
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<tr>
<td><strong>Consumption</strong></td>
<td>Imprisonment of 6 months - 10 years and a fine of 5,000 - 100,000 Baht</td>
<td>Imprisonment of 6 months - 10 years and a fine of 5,000 - 100,000 Baht</td>
<td>Imprisonment of 6 months - 10 years and a fine of 5,000 - 100,000 Baht</td>
<td>Imprisonment not exceeding 1 year and a fine not exceeding 10,000 Baht</td>
<td></td>
</tr>
<tr>
<td><strong>Deceit, threat, use of violent force or coercion of another person for consumption</strong></td>
<td>Imprisonment of 2-20 years and a fine of 20,000 - 200,000 Baht</td>
<td>Imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht</td>
<td>Imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht</td>
<td>Imprisonment of 1-10 years and a fine of 10,000 - 100,000 Baht</td>
<td></td>
</tr>
<tr>
<td><strong>Instigating another person for consumption</strong></td>
<td>Imprisonment of 1-5 years and a fine of 10,000 - 50,000 Baht</td>
<td>Imprisonment of 1-5 years and a fine of 10,000 - 50,000 Baht</td>
<td>Imprisonment of 1-5 years and a fine of 10,000 - 50,000 Baht</td>
<td>Kratom Plant: imprisonment not exceeding one year and a fine not exceeding 10,000 Baht</td>
<td></td>
</tr>
</tbody>
</table>
## 2. Regulation and Policies Related to Discrimination Based on Disability

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

<table>
<thead>
<tr>
<th>Act</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>National Education Act, 1999</strong></td>
<td>This Act protects the rights of persons with disabilities to education in accordance with their Constitutional rights. People with disabilities are entitled to early intervention services, educational materials and facilities, and government-supported home schooling. All children receive 12 years of basic schooling free of charge. Educational materials are being produced to meet the needs of target groups.</td>
</tr>
<tr>
<td><strong>Occupational Training Promotion Act of 1994</strong></td>
<td>Establishes occupational training among active workers to enable them to enter the skilled labor market as well as improve productivity of the workforce. It calls for cooperation between employers and vocational institutes to provide students with on the job training. The Ministry of Labor is responsible for implementation.</td>
</tr>
<tr>
<td><strong>Vocation Training Promotion Act 1996</strong></td>
<td>Entitles registered private enterprises to a 50 per cent tax reduction of training expenses as well as other incentives to encourage training. Established the Vocation Training Committee, a tripartite group to establish skill standards.</td>
</tr>
<tr>
<td><strong>Workers Compensation Act 1979</strong></td>
<td>Provides protection for employees disabled at work so that they receive compensation for medical expenses, prosthetic devices and equipment, and physical and mental rehabilitation. In addition, under this Act, the Social Security Office provides special occupational rehabilitation at the Industrial Rehabilitation Centre in Bangpoon, Pathum Thani Province. The Act also promotes the issue of better safety and health at work places.</td>
</tr>
<tr>
<td><strong>Social Security Act 1990</strong></td>
<td>The Social Security Act covers employees in enterprises in the private sector with 10 or more workers. Insured members are granted certain benefits (health care, rehabilitation services, income replacement, etc.) in cases of illness, disability, maternity, old age and death. Chapter 8, pertaining to unemployment benefits, is not yet enforced. Physical, mental and occupational rehabilitation expenses are covered by invalidity benefits. Social Security services include 500 baht (US$12) per month for living expenses a subsistence allowance for registered persons with disabilities.</td>
</tr>
<tr>
<td><strong>Labor Protection Act 1998</strong></td>
<td>This Act covers all aspects of labor protection including employment issues, rules on basic pay, holiday pay and overtime, remuneration including minimum wages, welfare, occupational safety and health, suspension from work, and severance pay. The Employees Welfare Fund was also established, which assists families of deceased workers, employees who resign or other cases. The Fund is used in companies with more than 10 employees where no Provident Fund has been established. There are no provisions relating specifically to persons with disabilities in the Labor Protection Act.</td>
</tr>
<tr>
<td><strong>Provident Fund Act 1987</strong></td>
<td>This voluntary fund was established to provide a legal and regulatory framework for employer-sponsored retirement savings plans for the employees of large enterprises of the private sector in the years preceding the establishment of the Social Security Act. Employees contribute between 3 to 15 per cent of their wages, and the contribute employers between or equal or greater amount up to a maximum of 15 per cent. There are no disability-specific guidelines in the Provident Fund Act.</td>
</tr>
<tr>
<td>Small and Medium Enterprise Promotion Act, February 2000</td>
<td>Established a Board of SMSE development under the Office of SMSE that oversees a fund for SMSE development and establishes a plan for SMSE development</td>
</tr>
</tbody>
</table>
4. Criminal Law Provisions (selected provisions)<sup>58</sup>

1. Penal Code

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

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

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

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


Section 14<sup>59</sup>: For the execution to control the commission of offence relating to narcotics, the member, Secretary-General, Deputy Secretary-General and competent official shall have the following powers:

1. to enter and search any dwelling place or premises on a reasonable ground to believe that any person or any group of persons suspected of committing an offence relating to narcotics is in hiding or there is property the possession of which is an offence or acquired through the commission of an offence or used or intended to used in the commission of the offence relating to narcotics or which may be used as the evidence, together with a reasonable ground to believe that any delayed in obtaining a search warrant, such person shall escape or such property removed, hidden, destroyed or transformed form original;

2. to search any person or conveyance which there is a reasonable ground to suspect that there are narcotics unlawful hidden;

3. to arrest any person who committed the offence relating to narcotics;

4. to seize or attach narcotics which there are unlawful possessed or any property which used or intended to use in the commission of the offence relating to narcotics or may be used as the evidence;

5. to search under the provisions of the Criminal Procedure Code;

6. to make an inquiry of the alleged offender in the offence relating to narcotics;

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

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

<sup>59</sup> Repealed and Replaced by section 8 of the Narcotics Control Act (No.4) B.E. 2545 (2002)
The powers execution under paragraph one (1), the competent official who searched shall performance according to the rules prescribed by the Board, and produce an innocent before enter to search, report on the reason and the result of searching in letter to the senior superior, and record the reasonable ground to suspect and reasonable ground to believe that established the capable to enter for search in the letter, given it to the possessor of dwelling place or place where searched. But if have no possessor at such place, the competent official who searched shall consign with a copy of such letter immediately as could be done. And if should be the searching in the night time after sunset, the competent official who is the chief of the searching shall be a civil servant that hold the position up-to from level of seven, or police officer that hold the position up-to from the inspector or likewise, or defense official that hold the position up-to from the commander of a company or likewise.

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

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

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

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

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

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

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

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

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

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60 As added by section 5 of the Narcotics Control Act (No.3) B.E. 2543 (2000)
61 As added by section 9 of the Narcotics Control Act (No.4) B.E. 2545 7
62 As added by section 9 of the Narcotics Control Act (No.4) B.E. 2545 7
there is a reasonable ground to believe that it will receive the information relating to the commission of of-
fence relating to narcotics from the accessing of such information;

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

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

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

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

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

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

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

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

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

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

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

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63 As added by section 6 of the Narcotics Control Act (No.3) B.E. 2543 (2000)
64 As repealed and replaced by section 7 of the Narcotics Control Act (No.3) B.E.2543 (2000)
65 As repealed and replaced by section 7 of the Narcotics Control Act (No.3) B.E.2543 (2000)
66 Compared by section 90 of the Narcotics Act B.E. 2522
67 As added by section 10 of the Narcotics Control Act (No.4) B.E. 2545 (2002)
68 As added by section 10 of the Narcotics Control Act (No.4) B.E. 2545 (2002)
69 As repealed and Replaced by section 13 of the Narcotics Act (No.5) B.E. 2545 (2002)
den, or destroyed or changed to its original condition.

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

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

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

The usage of the power under the paragraph one (2), the competent official making the search shall act in compliance with the regulation promulgated by the Committee to identify good faith before searching, to reports reasons and results to the higher superior officer or in charge. To records the reasonable grounds to believe and the competent official shall show the document to identify himself and the document authorizing the search including the reasonable cause to believe that the searching official is entitled to do so and submit a document issued to the occupier of the dwelling place, searched place, unless there is no occupier at that place, the competent official making the search shall submit the copy of such papers and documents to the occupier immediately as soon as possible.

And in case of a search made during night time, the competent official who is the chief of that search must be a civil official at position of level 7 upward or a police Chief officer or equivalent that has the rank of Lieutenant Colonel or higher.

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

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

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

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

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

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

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

70 As added by section 16 of the Narcotics Act (No.5) B.E. 2545 (2002)
Section 94/1: Whoever administers treatment to narcotics as being the course of his or her normal business by using medicine in accordance with the law governing medicine, by psychotropic substances in accordance with the law on psychotropic substances or by narcotics in accordance with the law governing narcotics or any methods other than the foregone ones, in the clinics which are not the clinics prescribed by this Act, whether or not benefits may be given in return, shall be punished with imprisonment from six months up to three years or a fine from fifty thousand baht up to three hundred thousand baht.

3. Narcotics Addicts Rehabilitation Act of 2002

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

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

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

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

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

(1) prescribing the exact territorial jurisdiction of the rehabilitation centre with the map specifying such territory attached to the Notification;

(2) prescribing the localities falling within the territorial jurisdiction of the rehabilitation centre under (1).

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

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

1. to identify the consumption or the narcotic addiction of the persons committed for rehabilitation where admitted under section 19;

2. to detain the persons committed for identification or the persons committed for rehabilitation during the identification or the rehabilitation and supervise such persons to comply with various rules, conditions and regulations;

3. to carry out the rehabilitation of the persons committed thereof in accordance with the rules prescribed;

4. to follow up the result of rehabilitation of the persons granted provisional release;

5. to prepare a report on the result of the consumption or the narcotic addiction identification, including the result of the rehabilitation to be submitted to the sub-committee of Narcotic Addict Rehabilitation;

6. to issue regulations of the rehabilitation centre for the execution of this Act;

7. to perform other duties as entrusted by the Committee or sub-committee of Narcotic Addict Rehabilitation.

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

Section 19: Any person who is alleged to consume the narcotics, consumes and have in possession narcotics, consumes and have in possession for the propose of disposal or consume and dispose narcotics of which character, type, category and quantity prescribed in the Ministerial Regulation and if he does not appear to be the alleged offender or been prosecuted for other offences which punishable with imprisonment or to be imprisoned by judg-
ment of court. The inquiry official shall transfer the alleged offender to the court within forty eight hours from the time when such alleged offender came to the office of the inquiry official for the court to consider and issue court order to transfer such alleged offender for the identification of narcotics consumption or narcotic addiction, except in exceptional circumstances other such cause that may have risen from such alleged offender or from the changing of circumstance in which case the transfer of the alleged offender can not be made to the court within the time prescribed as above.

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

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

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

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

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

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

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

In the case where the prosecutor is of the opinion that the results of the examination under paragraph one is not the requirement – entitling the alleged offender to be admitted for narcotics addicts rehabilitation under this act, the Public Prosecutor shall continue with the legal proceedings and then notify the Sub Committee on the results of such a proceeding.
If the result of identification process finds the alleged offender not to be a narcotics consumer or addict, the Sub Committee shall forward a report on the results of such an examination to the inquiry official or the Public Prosecutor for considering further legal proceedings according to laws prescribed for the purpose.

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

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

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

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

1. in the case where it is necessary to detain in restriction person committed for rehabilitation, shall transfer such person to be admitted for rehabilitation in rehabilitation centre or the locality of rehabilitation where there exists a detention system to prevent the escape;

2. in the case where unnecessary to detain in restriction under custody with strict measures, person/s committed for rehabilitation shall transfer such person to be admitted for rehabilitation in rehabilitation centre or the locality of rehabilitation as suitable and that the conditions regarding confinement area under which such a person must observe during the period of rehabilitation, shall be stipulated;

3. in the case where it is not necessary to detain the person committed for rehabilitation, any other methods for the person admitted for narcotics addicts rehabilitation to abide by under the supervision of the probation official may be formulate

4. during the rehabilitation, may require person/s committed for rehabilitation training in occupation, working on social service or to conduct any acts that is suitable to perform in order to build up stability in their lives keeping away from narcotics.

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

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

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

The extension of or reduction in, the period of rehabilitation may be made as may times as may be deemed necessary provided that each extension must not exceed six months and that in total must not exceed three years commencing from the date the person was admitted under the plan for narcotics addicts rehabilitation
Section 26: In the case where there is a reasonable ground, the sub-committee of Narcotic Addict Rehabilitation may consider temporary release to the person committed for rehabilitation in accordance with the rules, procedures and conditions prescribed by Committee.

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

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

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

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

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

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

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

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

1. probation;

2. suspension of permission of visiting rights or communication for not longer than three months;

3. solitary confinement not exceeding fifteen days for each confinement.

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

73 Section 190 Penal Code
Section 33: On the exclusive decision of the Sub-Committee on Narcotic Addict Rehabilitation that person admitted for narcotics rehabilitation has received full course of rehabilitation in accordance to the rehabilitation plan with satisfactory results, such a person shall be relieved of the alleged offence under Section 19 and the Sub Committee on Narcotics Addicts Rehabilitation shall issue its orders to release such a person and then notify the inquiring official or the Public Prosecutor who is still proceeding with the legal action against such person, as the case may be.

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

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

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

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

1. to enter any dwelling place, premises or conveyance in order to search and arrest the person committed for rehabilitation in violation of section 29 or section 31, where there is a reasonable ground to suspect that such person is hidden and together with reasonable ground to believe that the any delayed obtaining a search warrant would result in such person escaping;

2. to issue a letter of inquiry to or summon any person related to the person committed for identification or the person committed for rehabilitation to give statements or to submit documents or any evidence for examination constituting the consideration in the performance under section 17;

3. to testify to facts with the preview of section 17;

4. to issue an order or provide to have, the person committed for identification or the person committed for rehabilitation, examined or tested for possession of narcotic =;

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

4. Thai Criminal Code

Section 322: Whoever opens or takes away any sealed letter, telegram or other document belonging to another person in order to ascertain or disclose its contents, which is likely to cause injury to any person, shall be punished with imprisonment not exceeding six months or fine not exceeding one thousand baht or both.
Section 323: Whoever discloses any private secret which became known or was communicated to him by the reason of his function as a competent official or his profession as a medical practitioner, pharmacist, druggist, midwife, nursing attendant, priest, advocate, lawyer, auditor, or by reason of being assistant in such and such profession, in manner likely to cause injury to any person, shall be punished with imprisonment not exceeding six months or fine not exceeding one thousand baht, or both.

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


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

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

Men and women shall enjoy equal rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1) there is reasonable evidence that such person is likely to have committed a serious offence which is punishable as provided by law; or

2) there is reasonable evidence that such person is likely to have committed an offence and there also exists a reasonable cause to believe that such person is likely to abscond, tamper with the evidence or commit any other dangerous act.

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

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

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

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

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

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

At the inquiry stage, the suspect has the right to have an advocate or a person of his or her confidence attend and listen to interrogations.
An injured person or the accused in a criminal case has the right to inspect or require a copy of his or her statements made during the inquiry or documents pertaining thereto when the public prosecutor has taken prosecution as provided by law.

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

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

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

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

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

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**6. Civil and Commercial Law**

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

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**7. International Covenant on Economic, Social and Cultural Rights**

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

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

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

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**8. Prime Minister's Order No. 29/2546**

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

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tic problems, which threaten the nation. ...

2. Administration:

- In order to overcome narcotic drugs, there shall be the National Command Centre for Combating Drugs (NCCD), to be a command organ at the national level. There shall also be Operation Centers for Combating Drugs at different levels, to be the prevention and suppression centers for drugs in the regions. The appointed Deputy Prime Minister shall be the Director of the NCCD, who shall have the powers and duties to establish, amend or increase the number of centers or operating organs in the central and regional areas, including along the borders by land and by sea; so that they shall be responsible for the fight to overcome narcotic drugs.

- To develop structure, assemble strength, administer, direct, supply logistics, communicate, report, follow-up and evaluate the operations of the National Command Centre for Combating Drugs and the operation centers or organs for combating drugs at all levels, in accordance with the assignments made by the Director of the NCCD.

- All government agencies, local administration organs and public enterprises shall give the National Command Centre for Combating Drugs and the operation centers or organs to overcome narcotic drugs at all levels support as the highest priority. There shall be a unified and result-oriented management system to respond to the "Concerted Effort of the Nation to Overcome Drugs" policy and the action plans to overcome narcotic drugs.

- The Office of the Narcotics Control Board shall expedite the administration and support, especially in the policy-making process, technical process, legislation and regulations, and cooperate, follow-up and evaluate the fight to overcome narcotic drugs, so that it can be implemented swiftly, efficiently and effectively as planned. In any case where there are problems relating to the implementation of organs, or agencies, such shall be presented to the Director of the NCCD to consider, judge, interpret and order accordingly.

The Bureau of the Budget and the Ministry of Finance shall formulate a system and prepare the budget to support the operation and implementation of this order. They shall provide rewards or special levels of salary to the operating officials who fight to overcome narcotic drugs with outstanding performances and to the staff working at the National Command Centre for Combat
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HPTN 058: Rapid Policy Assessment for China and Thailand