

## Preliminary Report

### Independent Committee for the Investigation, Study and Analysis of the Formulation and Implementation of Narcotic suppression Policy (ICID)

#### Executive Summary

In pursuance to the Office of Prime Minister's order, the Independent Committee for the Investigation, Study and Analysis of the Formulation and Implementation of Narcotic suppression Policy (ICID) has been established and since 14 August 2007, carried out investigations of drug situations, justice process and impacts from such implementation.

Even though the missions of ICID have not been completed as it was announced before that the Committee shall carry out the work for 10-12 months, but as the current government which establishes ICID is going to relieve its duties soon and as ICID finds some of its missions have been completed, and it is appropriate to tender forth the findings to the Prime Minister and to make known to public as it has been announced by ICID.

ICID has set up subcommittees and formulated altogether five action plans including fact-finding plan, accountability of policy making plan, study of preventive measures plan, study of corrective measures plan, and study measures for building up international understanding plan. Initially, the efforts were given to investigate, study and analyze in order to acquire basic facts concerning the formulation of narcotic suppression policy and its implementation, and to provide for academic foundation useful for the identification of responsible persons, in case further inquiry will have been made and ascertained the existence and scope of damages that has been inflicted on public life, body, reputation and property of people.

After initial fact-finding and analysis, ICID agrees to make the following major points.

1. During the implementation of narcotic suppression policy from February to April 2003, 2,604 murder cases took place causing 2,873 deaths with the following detail;

The total number of murder cases was 2,559 with 2,819 deaths. Of the number, 1,187 cases were narcotic-related murder causing 1,370 deaths, 834 non-narcotic-related murder causing 878 deaths and 538 murder cases with no identified causes causing 571 deaths.

- The total number of extrajudicial execution was 45 cases causing 54 deaths. Of the number, 35 cases were related to narcotics causing 41 deaths; 2 cases were not related to narcotics causing 2 deaths; and 8 cases with no identified causes causing 11 deaths.

It is noteworthy that compared to the period of two years before and after the declaration of narcotic suppression policy, it was found that the monthly average of murder prevalence was 454 cases during February - April, 2001-2002 and 2004-2005. But during the policy to combat narcotics from February - April 2003, the average number of murder cases reached 853 cases, an increase of 87.89%.

2. The process leading to the formulation of narcotic suppression policy and its implementation as well as the formulation of targets and indicators for the project's achievement reflects unilaterally the interests of the administration which exclusively were concerned with quantitative aspects. This may have led to concerns of the infringement on human rights and the all-out efforts to achieve the goals rather than respecting the rule of law and legal state. Further inquiry should be made on this regard.

3. In pursuance to 1., existing facts have led to the conclusion of the existence of damages as a result of the implementation of narcotic suppression policy, and the case is related to the enforcement of criminal law which falls under the responsibility of the national justice system. Therefore, it is appropriate that authorized persons will get involved in further inquiry.

4. In pursuance to 3., ICID provides the following legal opinions which may pave the way for further investigation to hold persons responsible for the damages inflicted on people.

4.1 Criminal liabilities according to Penal Code: ICID deems that the crime for making other people commit the offences either by employment, or compulsion, or threat, or hire, or asking for a favor or instigation or by other means as stipulated in Section 84 of the Penal Code, needs to be ascertained through further investigation.

4.2 Whether the massive number of murder cases that took place during the period shall be treated as extrajudicial killing or not, if government officers shall be held liable for the action, further inquiry must be made to establish identities of the deceased or the involved officers, and how unlawful means was applied.

4.3 Whether damages resulted from the implementation of narcotic suppression policy should be treated as an international crime under the Rome Statute of the International Criminal Court or not, issues need to be further investigated and whether the process leading to the formulation of narcotic suppression policy could be used as an evidence to prove the intent of policy makers to inflict damages on life which is a mental element of international crime concerning crime against humanity or not.

It is noteworthy that the order for the establishment of ICID stipulates another two important missions for ICID including the proposition of corrective and remedial measures for affected parties and the study and proposition of preventive measures to avoid impacts on public life, body, reputation and property of people.

ICID is well aware of the importance and indispensability of the two missions which are being carried out as prompt as it can. ICID shall report on the missions when the work is done. It is hoped that this report helps to restore faith and confidence that people have toward the current administration as it attempts to untangle mistakes in the past and will help to build up confidence that international community has toward Thailand. It is also hoped that this report provides basic and sound information for further implementation of the new government.

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## Chapter 1

### Introduction

A sharp increase of murder cases to reach 2,604 took place during February - April 2003 during the declaration of war on drugs which caused 2,873 deaths. Compared year on year with the numbers of murder cases during the same period in 2001, 2002 and 2004 and 2005, the number of cases in 2003 rose almost 87.89% higher than the periods before and after. Initial findings can be summarized as follows;

1) The number of murder cases in which the deceased were suspected to be involved with narcotics was 1,187. Of this number, only in 29 cases were alleged offenders identified.

2) 1,372 murder cases were resulted from non-narcotic causes including quarrel, adultery, robbery, business dispute, and unidentified causes. Only in 531 cases were the alleged offenders identified.<sup>1</sup>

The incidence affects acutely the image of Thailand as a state that holds steadfastly on the rule of law. **As it happens that a large number of people were subject to murder during a particular period of time, the state is obliged to carry out the investigation.** Otherwise it can be accused of ignoring the practice of rule of law. In addition, the incidence has drawn concern among international organizations which demanded the government to undertake investigation, prosecute, and hold the offender accountable for charges related to “extrajudicial executions during the war on drugs”. The Committee overseeing International Covenant on Civil and Political Rights (ICCPR) had already received complaints from affected parties, their relatives and concerned NGOs, etc.<sup>2</sup> And with due respect to the sovereign power of state, the state is obliged as its most important rights and duties to use democratic powers to bring to justice any offender inside its territory based on the rule of law.

Therefore, the Thai government makes its intention clear to carry out an investigation into the allegations that the state has been involved with human rights abuse and abetting the breaches of the rule of law. A committee has been established to carry out fact-finding. Functioning as an independent committee, it is composed of neutral and skillful persons in justice process and human rights issues whose image is well recognized by national and international communities.

On 14 August 2007, the Prime Minister, General Surayud Chulanond, ordered the establishment of the Committee for the Investigation, Study and Analysis of the Formulation and Implementation of Narcotic suppression Policy (ICID)<sup>3</sup> to collect and verify facts about drug situation, justice process and impacts from the implementation of such policy. The ten-man

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<sup>1</sup> Preliminary report, Fact finding Sub-committee 1

<sup>2</sup> The Ministry of Foreign Affairs' most urgent letter no. Kor Tor 0200/1924, dated 20 February 2007, concerning human rights allegation against Pol. Lt. Col. Thaksin Shinawatra

committee is tasked to identify proposals for preventive and remedial measures for those who have been affected by the policy implementation and is composed of’;

1. Mr. Khanit na Nakhon                      Chairperson
2. Mr. Charan Bhakdithanakul    Committee member
3. Mr. Kraisak Choonhavan              Committee member
4. Mr. Kittipong Kittiyaraksa           Committee member
5. Mr. Kitti Limchaikit                  Committee member
6. Pol. Lt. General Wanchai Srinuannat Committee member
7. Mr. Udom Rathamarit                 Committee member
8. Mr. Uthai Arthiwet                     Committee member
9. Mr. Chanchao Chaiyanukit    Committee member and Secretary
10. Mr. Tharit Pengdith                  Committee member and Assistant Secretary

Five major components have been identified as missions of the Committee including<sup>4</sup>;

1. Collection and verification of facts plan: Basically, the plan involves efforts to collect evidence including documentary evidence, oral evidence, and material evidence. As for oral evidence, accounts from all concerned parties shall be sought including state officers, people being affected by the policy implementation, or even the government.

As for documentary evidence covering official documents including governmental directives and orders, documents obtained by the National Human Rights Commission during its investigation have also been analyzed. The latter includes opinions and recommendations concerning the drug policy implementation made by various organizations inside and outside the country, news clipping regarding the interviews given by the government leader to the press. Efforts were thus made on collecting and verifying the literary facts regarding the then narcotic suppression policy, and orders sent to different levels including documentary evidence, material evidence and concerned oral evidence.

2. Accountability of policy making plan: Basically, it aims to compile documentary evidence, material evidence and oral evidence to verify how the damages on public life, body, reputation and property had been done, in which step and protocol, in order to help narcotic suppression concerned officers and parties clear charges and accusations made by affected people, general public and international communities.

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<sup>3</sup> Office of Prime Minister order no, 215/2007 dated 14 August 2007 concerning the appointment of the Independent Committee for the Investigation, Study and Analysis of the Formulation and Implementation of Drug Suppression Policy (ICID)

<sup>4</sup> Meeting minutes, ICID SESSION 1/2007, Wednesday 29 August 2007

3. Study of preventive measures plan: As drug proliferation is still a major problem in Thailand and the world, it is therefore necessary that the government urgently undertakes narcotic suppression policy and carries out criminal policy to ensure maximum efficiency of narcotic suppression. But this has to be done without infringing upon individual rights in life, body, reputation and properties which reflects the human rights principle abiding in Thailand. The study of preventive measures plan is thus carried out to identify narcotic suppression policy for Thailand at present and in future which can be implemented as a legal state, based on the rule of law in parallel with the upholding of human rights.

4. Guideline development for remedying problems: During the implementation of narcotic suppression policy, some mistake might have occurred and led to damages on innocent people including their relatives, immediate friends and others. In order to provide justice for the implementation of narcotic suppression policy during 2003 and to compensate to those inflicted with damages caused by the policy, efforts will be made to identify remedial measures.

5. Measures for promoting international understanding: The implementation of narcotic suppression policy in Thailand in 2003 has raised concern and drawn outcries from international organizations and communities concerning the damages on public life, body, reputation and property among a large number of people as well as tainted the national image. In order to clarify the matter and to promote understanding and minimize concern as well as negative criticisms toward narcotic suppression policy in Thailand, and to abide by international obligations regarding the promotion of human rights in Thailand, it is therefore necessary for an inquiry report to be made and distributed among international communities.

To implement the five plans, six subcommittees have been established, each is led by one chairperson. There are two Fact-finding Subcommittees including the Fact-finding Subcommittee 1 chaired by Mr. Kitti Limchaikit and Fact-finding Subcommittee 2 chaired by Mr. Tharit Pengdith. The Subcommittee on Accountability for Policy Making was chaired by Mr. Charan Bhakdithanakul, Subcommittee on the Study of Preventive Measures by Mr. Kittipong Kittiyaraksa, Sub-committee on the Study of Corrective Measures by Mr. Udom Rathamarit and lastly the Sub-committee on the Study of Measures for Building up International Understanding by Mr. Kraisaak Choonhavan. But later as Mr. Kraisaak Choonhavan decided to run as a MP candidate, he asked to resign from being a committee member and chairperson of the subcommittee. He was succeeded by Mr. Uthai Arthiwet as chairperson of subcommittee.

Each subcommittee is composed of knowledgeable persons including academics, government officers, representatives from various organizations and its operation could be carried out in various forms including holding meeting, compiling oral evidence, documentary evidence, inquiry made to concerned parties, fact-finding mission, observing the well being of people affected by narcotic suppression policy, analyzing and verifying academic information and facts within and outside the country. Each subcommittee is given from 10-12 months to accomplish its task starting from the appointment date.

But it is reasonable to report initial findings to the Prime Minister, General Surayud Chulanond, though some subcommittees have not gained substantial accomplishment. For example, the Subcommittee on the Study of Corrective Measures still needed to carry out more fact-finding among affected parties who can be found throughout the country. Given the time constraint, the Subcommittees were unable to complete the tasks. In addition, the identification of preventive measures is so important to ensure compliance of good governance for narcotic suppression policy implementation by the government. And it reasonably takes longer time to complete the mission and the two subcommittees should be given more time to carry out their plans before they can make any reporting of initial finding.

Nevertheless, the Committee deems it appropriate to draft this Preliminary Report and submit it to the Prime Minister, General Surayud Chulanond, based on the collection and verification of information thus far.

## Chapter 2

### Formulation of Narcotic Suppression Policy and Its Implementation

According to testimonies and general understanding, it could be construed that the government declared the time from 1 February to 30 April 2003 and made it a national agenda for narcotic suppression policy. It was dubbed as “The Declaration of Grand Finale War on Drugs”. It was announced to public by the then Prime Minister, Pol. Lt. Col. Thaksin Shinawatra. He emphasized that government officers in all units must respond and comply to the policy stringently. Concluding from facts, the policy formulation and its implementation can be described as follows;

#### 2.1 Formulation of narcotic suppression policy

On 2 January 2003, the cabinet acknowledged and approved as proposed by the Prime Minister to address drug problem and agreed that it is a critical time for the government to carry out the operation seriously and extensively throughout the country, particularly, the suppression and arrest of narcotic producers and dealers.

Later on 4 January 2003, the Prime Minister, Pol. Lt. Col. Thaksin Shinawatra, declared through the Radio Thailand in the “Thaksin Talking to People” program that “...concerning suppression of narcotic drugs, I am preparing to overhaul the operation to launch a full-scale War on Drugs within this year”<sup>5</sup>

After the cabinet resolution was made and after declaring as such through Radio Thailand, Pol. Lt. Col. Thaksin Shinawatra held a meeting with heads of divisions and high ranking officers concerning the prevention and suppression of narcotic drug in central, regional and provincial levels to give his instructions to them on the prevention and suppression of narcotic drug at the Suan Dusit Rajabhat University Hall, Bangkok. Gist from meeting can be expounded as follows<sup>6</sup>;

1. The government treats narcotic drug as a threat to national security.

2. Every party must unite to tackle the problems in earnest. An excerpt of his speech goes “I can no longer bear with those who take narcotic drug problem for granted. I can no longer bear with corrupt people or those involved directly or indirectly with the distribution of drug, and do not care who they are.”

3. An emphasis will be given to suppression to solve narcotic problems using “Area Approach” in which the governors and commanders of provincial police will work as “buddies”. They have to think together, work as a team and get united. They have to cooperate with each

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<sup>5</sup> “Thaksin Talking to People” program by PM Thaksin broadcast on Radio Thailand and its networks countrywide on 4 January 2003

<sup>6</sup> See Minutes for the meeting to explain policy on the prevention and suppression of narcotic drug by the Prime Minister (Pol. Lt. Col. Thaksin Shinawatra), Tuesday 14 January 2003, Suan Dusit Rajabhat University Hall, Bangkok



other and their rifts will render demise to the efforts. At the provincial level, the governor shall lead the efforts to address narcotic problems in the province with the commander of provincial police as vice-chairperson. This will apply at the district level and smaller areas as well. The X - Ray will be carried in every square inch for three months starting from 1 February 2003 until 30 April 2003. They have to work seriously. At the end of three months, an evaluation will be carried out, and if it turns out that any governor or commander of provincial police, district chief officer or superintendent, has no knowledge who are traffickers in their areas, it means they are incapable.

4. Clamp down will be made on entertainment places which abet drug proliferation.

5. In two week time, every sector must get prepared, **even the traffickers have to prepare to quit. If not, they will be met with all out efforts and even get killed.** From 1 February 2003 on, we will uproot them in all areas. Just do it in earnest, and **if you fail, both the governors and commanders of provincial police have to go.**

6. The governor must bear in mind all the time that he will lead the efforts to give directives, follow up, monitor, advice and modify the strategies. There shall be no boundaries, no exclusivity among concerned government agencies in the province.

7. During the next three months, there will be no days off, no rest, but an all out responsibility. Be mindful in planning, strategizing, and working systematically, consistently and resolutely.

On 31 January 2003, the Prime Minister, Pol. Lt. Col. Thaksin Shinawatra, reiterated his determination and policy to declare this “Grand Finale War on Drugs” at the lawn of Dusit Palace, Bangkok, in which he was quoted as saying “...I ask for being the warlord to wage this Grand Finale War on Drugs, and this shall be treated as a “national agenda”. All Thai people have to unite and join in the war to fight “eye for an eye” to root out all narcotic drugs from Thailand. Government officers of all divisions must stringently adhere to their tasks concerning narcotic suppression”<sup>7</sup>

Based on the cabinet resolution and the explication of drug prevention and suppress policy, the declaration of the policy to wage Grand Finale War on Drugs was made.

## 2.2 Implementation of the policy

After Pol. Lt. Col. Thaksin Shinawatra Prime Minister declared the intention to wage Grand Finale War on Drugs, the government prepared measures to make it possible by issuing the Office of Prime Minister’s order no. 29/2003 dated 28 January 2003 on attempts to combat drug. An important directive, it spells out detail of the operation for the suppression of producers, deals and traffickers of drug and precursor, and production equipment as well as influential figures who are

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<sup>7</sup>Speech by Prime Minister (Pol. Lt. Col. Thaksin Shinawatra) during the ceremony to declare the Grand Finale War on Drug on Friday 31 January 2003, at 09.00 am at the lawn of Dusit Palace, Bangkok

involved or help to abet all narcotic movements. This will help to break down the vicious cycle and lead to a decrease in drug demand.<sup>8</sup>

To enforce the Office of Prime Minister's order, various instructions have been made to provide for establishment of organizations at two levels including;

### **1. National mechanisms**

- Office of Prime Minister's order no. 30/2003 dated 28 January 2003 concerning the establishment of the National Command Center for Combating Narcotic Drugs (NCCB) to lead the efforts to combat narcotic drug at the national level including the operation, policy formulation, directive, expedition, oversight, supervision, monitoring, and setting out coordination among operational units<sup>9</sup>

### **2. Operational level mechanisms**

- Office of Prime Minister's order no. 31/2003 dated 28 January 2003 concerning the establishment of operational units to combat drug at different levels to serve the NCCB's policy including;<sup>10</sup>

NCCB Bangkok responsible for Bangkok area

NCCB Province responsible for provincial area

NCCB Nor 1-9 responsible for Bangkok (Metropolitan Police)

NCCB District/Provisional District responsible for district and provisional district area

NCCB Tor Bhor 1-4 responsible for border area

As for the Ministry of Interior, the Ministry of Interior Command Center for Combating Narcotic Drugs (MOI NCCB) has been set up to serve the purpose including coordinating between NCCB and structures at the provincial/district level and providing guidelines of operation to NCCB Province, NCCB District/Provisional District including;

1. Area X-ray as per the most urgent order of the Ministry of Interior no. Mor Tor 0211.1/Wor 343 dated 30 January 2003 sent down to all NCCB Province, NCCB District/Provisional District. The following information is expected to be gathered<sup>11</sup>;

1) Number of producers, traffickers, and dealers

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<sup>8</sup> Office of Prime Minister's order no. 29/2003 dated 28 January 2003 on "Battles to Suppress Drug"

<sup>9</sup> Office of Prime Minister's order no. 30/2003 dated 28 January 2003 concerning the establishment of the National Command Center for Combating Narcotic Drugs (NCCB)

<sup>10</sup> Office of Prime Minister's order no. 31/2003 dated 28 January 2003 concerning the establishment of operational units to combat drug at different levels

<sup>11</sup> Ministry of Interior order no. Mor Tor 0211.1/Wor 343 on 30 January 2003 concerning implementation of the Prime Minister's instructions

- 2) Number of government officers related to narcotic trade
- 3) Number of drug dependents and drug users
- 4) Number of village/community being prepared to be part of the strengthening process to become the village/community that combats drug

All information concerning the above persons shall be sent to the Ministry of Interior within 3 February 2003 and then an extension was made to 13 February 2003.

2. Setting the targets for the three month operation: after the provincial mechanisms have received directive as to the targets they should focus, the Ministry of Interior sent down the most urgent order no. Mor Tor 0211.1/Wor 378 on 3 February 2003 concerning details of the targets in the course of three months<sup>12</sup>

1) Name list of traffickers, sellers and dealers as well as government officers involved with narcotics as of 1 February 2003 must be diminished.

2) At least 50% of the narcotic addicts must be sent for drug rehabilitation.

3) Preparation for strengthening village/community of all village/community before 30 April 2003

4) At least 80% of local populations are satisfied with the measures

Later, the Ministry of Interior sent the most urgent order no. Mor Tor 0211.1/Wor 436 dated 5 February 2003 concerning the change and renewal of indicators or targets of the implementation.<sup>13</sup>

1) The list of government officers who are involved with narcotics as of 1 February 2003 must be diminished of within 15 February 2003

2) Number of narcotic dealers and producers as of 1 February 2003 must be diminished within 30 April 2003.

3) At least 75% of the narcotic addicts must be sent for drug rehabilitation.

4) All village/community must be promptly prepared and developed into strong village/community that helps to combat narcotics within 30 April 2003.

5) At least 90% of local populations are satisfied with the measures

3. Criteria and indicators for the achievement including indicators for response to narcotic dealers include;

1) Phases of achievement are specified by the Minister of Interior including<sup>14</sup>;

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<sup>12</sup> Ministry of Interior order no. Mor Tor 0211.1/Wor 378 dated 3 February 2003 concerning the identification of indicators for narcotic prevention and control

<sup>13</sup> Ministry of Interior most urgent order no. Mor Tor 0211.1/Wor 436 dated 5 February 2003 concerning the change and renewal of indicator or goals of the implementation

Phase 1 within 10 February 2003, at least 5% must be achieved as per the list submitted to NCCB MOI as of 1 February 2003

Phase 2 within 28 February 2003, at least 25% must be achieved as per most urgent order NCCB MOI/Wor 78 dated 21 February 2003

Phase 3 within 31 March 2003, at least 50% must be achieved

Phase 4 within 30 April 2003, at least 100% must be achieved and all drug producers and narcotic dealers must be eradicated.

During Phase 3 and 4, directives were given verbally to various provinces<sup>15</sup>

2) Criteria for methods used for deducting the target numbers as per most urgent order no. NCCB MOI/Wor 24 dated 15 February 2003 and NCCB MOI/Wor78 concerning policy and guidelines on attempts to combat drug dated 21 February 2003. It was specified that in order to reduce the number of narcotic dealers and producers, the following methods are allowed including arrest, extrajudicial execution or death.<sup>16</sup>

Concluding from facts, it was found that the administration has set out process for narcotic control to utilize strict execution of criminal justice process and the policy was set out for execution at the national level whereby all concerned government agencies must collaborate. At the provincial level, the governor and commander of provincial police will together lead the efforts with the governor being in charge of the operation.

Concerning the implementation of policy, structures have been developed from the national to village level with Ministry of Interior taking the lead in the efforts and achievement indicators developed. Lists of persons involved must be established and the targets must be submitted. Efforts had to be made to reduce the numbers set out in the targets and three methods to achieve the targets were specified including arrest, extrajudicial execution or death of the persons whose names appear in the lists.

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<sup>14</sup> Please see reference in footnote 12

<sup>15</sup> Please see reference in footnote 1

<sup>16</sup> Ministry of Interior's most urgent order no. NCCB MOI/Wor 24 dated 15 February 2003 concerning clarification on the methods to combat drugs of NCCB Province/Provisional district and Ministry of Interior's most urgent order no. NCCB MOI/Wor 78 dated 21 February 2003 specifying that only three methods are allowed for reducing the numbers of drug dealers and producers including arrest, extrajudicial execution or death

## Chapter 3

### Results of the implementation of narcotic suppression policy

Based on fact-finding by ICID, it was found that in the course of narcotic suppression policy formulation and its implementation during the period aforementioned, progress reports have been made and submitted to the administration. In addition, ICID also studies impacts of narcotic suppression operation by compiling the data and compare it to relevant prevalence of criminal offence, the analysis of which may shed light on those responsible for the impacts.

#### 3.1 Results of narcotic suppression operation

During 1 February 2003 - 30 April 2003, it was found that<sup>17</sup>

1. Producers: 440 producers were arrested and charges pressed against 356 alleged offenders
2. Major narcotic dealers: 1,721 narcotic dealers were arrested and charges pressed against 2,013 alleged offenders
3. Small narcotic dealers: 14,321 small narcotic dealers were arrested and charges pressed against 15,276 alleged offenders
4. Narcotic possessors: 20,297 of those who were found to have drugs in possession were arrested and charges pressed against 20,798 alleged offenders
5. Narcotic addicts: 20,711 narcotic addicts were arrested and charges pressed against 21,874 alleged offenders
6. Total value of assets frozen was 1,608,812,612 baht
7. 42,372 narcotic dealers reported themselves to the government.
8. 1,293 government officers were arrested for charges related to drugs.
9. 197,550 checkpoints were set up.
10. 70,316 cordon and search operations were conducted.
11. Entertainment parlor search: 89,974 times
12. Border patrol to stop drug smuggling: 7,185 times
13. Border checkpoints: 6,917 times
14. Cordon and search to stop drug smuggling in border area: 1,407 times
15. 12,878 small narcotic dealers who reported themselves have attended the training to contribute goodness to the country

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<sup>17</sup> Please see footnote 1

16. Number of methamphetamine seized: 15,566,633 tablets

### **3.2 Impacts of the narcotic suppression operation**

As a result of the declaration of the Grand Finale War on Drugs, 2,604 murder cases were reported during February to April 2003 causing 2,873 deaths including;

3.2.1 Murder cases took place during 1 February - 30 April 2003: 2,559 cases and 2,819 deaths. Causes of their deaths were classified as;

- Narcotic-related murder:

1,187 cases with 1,370 deaths

Alleged offenders arrested: 29 cases

Alleged offenders identified but remain at large: 47 cases

Attempts are being made to identify perpetrators: 1,111 cases

- Non-narcotic related murder i.e. quarrel, adultery, robbery, business conflicts and non-identifiable causes: 1,372 cases with 1,449 deaths

- Alleged offenders arrested: 531 cases

- Alleged offenders identified but remain at large: 260 cases

- Attempts are being made to identify perpetrators: 546 cases

They can be classified by two major causes including;

1. Clearly identified causes: 834 cases with 878 deaths

- Alleged offenders arrested: 431 cases

- Alleged offenders identified but remain at large: 130 cases

- Attempts are being made to identify perpetrators 273 cases

2. No identified causes: 538 cases with 571 deaths

- Alleged offenders arrested: 100 cases

- Alleged offenders identified but remain at large: 130 cases

- Attempts are being made to identify perpetrators 273 cases

3.2.2 Number of extrajudicial execution during 1 February - 30 April 2003: 45 cases with 54 deaths

- Narcotic-related extrajudicial execution: 35 cases with 41 deaths

- Non-narcotic-related extrajudicial execution: 2 cases with 2 deaths extrajudicial cases

- Extrajudicial execution with no identified reasons: 8 cases with 11 deaths

### The pike of murder cases during February-April of 2001-2005

Compared to the period of two years before and after the Grand Finale War on Drugs, it was found that during February - April of the year 2001-2002 and 2004-2005, the average number of murder cases was 454. But during the policy to combat narcotics from February - April 2003, the average number of murder cases reached 853 cases, an increase of 87.89%/month.

**Table: Comparison of murder cases during February - April 2001-2005**

Year	Month			Total	Monthly average
	February Cases/arrests	March Cases/arrests	April Cases/arrests		
2001	483/177	454/192	558/232	1,495/601	498.3/200.3
2002	416/184	433/177	465/217	1,314/578	438.0/192.7
2003	1,332/453	670/454	557/394	2,559/1,301	853.0/433.7
2004	412/166	400/171	487/214	1,299/551	433.0/183.7
2005	426/170	454/193	460/185	1,340/548	446.7/182.7

In sum, initial fact-finding of impacts of the implementation of narcotic suppression policy draws a conclusion that even though the suppression and arrest of narcotic dealers and addicts has led to higher number of murder cases than normal, it should be noted that at the same time, the numbers of extrajudicial execution also increased dramatically compared to the periods prior to or after the implementation of the narcotic suppression policy. It could be construed that there must be some mistake during the implementation of the policy that has caused damages to people, and it is therefore very appropriate that efforts be made to identify those who should be held liable for initiating and implementing the policy.

## Chapter 4

### Analysis of Policy Liability

#### 4.1 Analysis of narcotic suppression policy formulation and its impacts

On 2 January 2003, the cabinet was informed and endorsed as proposed by the Prime Minister concerning response to narcotic problems, and then Pol. Lt. Col. Thaksin Shinawatra passed on policy to chiefs of various divisions and high ranking officers concerning response to narcotic problems at the national, regional and provincial levels on 14 January 2003 with the following essence;

1. The duration of the operation was set for three months from 1 February - 30 April 2003.
2. Integrated efforts shall be made with the governor as the head and commander of provincial police as deputy, and both shall operate at the provincial level. At the district level, the district chief officer and superintendent shall be responsible. At the two levels, the operation would be carried out as Area-approach.
3. X-ray efforts shall be conducted on every square inch where narcotic dealers and addicts exist.
4. Suppression, prevention and rehabilitation measures would be carried out along with the formulation of goal and indicators.
5. All divisions must systematically and consistently develop strategies and identify systematic operation.

Then, on 31 January 2003, the Prime Minister, Pol. Lt. Col. Thaksin Shinawatra, declared his determination and reiterated the policy during the declaration of the Grand Finale War on Drugs and the war which had been waged from 1 February 2003.

Deliberating the formulation of narcotic suppression policy declared by Pol. Lt. Col. Thaksin Shinawatra on 14 January 2003, ICID holds that the policy was made in haste and the implementation had been carried out with no prior assessment to find if the implementing units were ready. In particular, the timeframe set from 1 February 2003 has made implementing units rush to develop their database and carry out the policy, which has resulted in;

1. Various agencies had to quickly adjust their system to serve the policy. Given two weeks as the grace period of time, it was impossible for the local operation units to have created comprehensive and universal understanding among law enforcers at all levels.
2. The short period of time given affects a great deal the quality of database which is key to narcotic suppression operation.

#### 4.2 Analysis of the implementation of policy and its impacts



After the Prime Minister, Pol. Lt. Col. Thaksin Shinawatra, explained his policy to chiefs of various divisions and high ranking officers concerning response to narcotic problems at the national, regional and provincial levels on 14 January 2003, the government and concerned agencies have set up mechanisms to serve the purpose of the policy including the establishment of the command center at the national, regional, provincial and district levels under the name “Command Center for Combating Narcotic Drugs”. At the national level, the National Command Center for Combating Narcotic Drugs (NCCB) was set up together with the Ministry of Interior NCCB (NCCB MOI). The two mechanisms shall send commands to the provincial/district divisions and help to evaluate their operation periodically.

Results of initial fact-finding has led to ICID’s belief that;

4.2.1 The implementation of policy of central operation units has been carried out with no clear strategies and guidelines. Directives and orders had been sent down to the concerned operation units, yet all those directives and orders lacked clarity as far as the implementation of policy to serve the Grand Finale War on Drugs was concerned, particularly, the directives and orders of NCCB MOI to local units such as;

1. Directive requiring provincial authority to submit information of the x-rayed areas: In this directive, the NCCB MOI requested that the provincial authority submit to them information concerning narcotic addicts and dealers within two weeks. The directive was made by the Prime Minister without explaining the reasons for such a request, what it would be used for, and what would be the scope of the information.

2. Directive concerning the formulation of indicators: NCCB MOI set out targets for the provinces to meet and required the eradication of narcotic dealers and addicts within the province, the strengthening of village/community and the assessment of satisfaction within a short time. A few remarks can be made as follows;

2.1 All targets were concerned with quantitative rather than qualitative aspects. For example, each village/community was required to carry out operation based on the number of narcotic dealers and addicts and concerned government officers, with no regard to qualitative indicators. The quantitative targets were easy for evaluation, but made it difficult for qualitative analysis that would help to gauge successes.

2.2 The indicators were always subject to change over time, particularly, the indicators for the narcotic dealer target, the change of which has resulted in temporary confusion. Initially, based on the original indicator, the achievement could be declared after a number of people attended the “Doing Good for the Country” training as a safeguard measure. But later, the indicator was changed, and only the number of people arrested, extra-judicially killed and dead could be used to deduct the targets. The application of such indicator made it unavoidable for the response to be carried out in a certain way. In addition, there was no attempt to gauge the readiness of the implementing units. In particular, the development of database used for establishing indicators was not properly supervised and this had led to problems at the operational

level. For example, some of the target persons actually had no involvement with narcotics, but their names had been included since the beginning, then, there was no way that they could have their names delisted, and the operating units had to do anything to reach the target.

It could be summarized that the implementation of narcotic suppression policy has been carried out with no clarity, no strategies, and no clear guidelines. This has resulted in the operation units had to rush their implementation including the development of database. There was also no assessment of operation units, particularly, the quality of database used for setting the target. As a result, even people who had no involvement with narcotics had their names included in the target lists.

4.2.2 During the War on Drugs, suppression of narcotic dealers was required to reach different targets over the time including<sup>18</sup>

Phase 1: Within 10 February 2003, at least 5% of the target in the lists submitted to the NCCB MOI on 1 February 2003 must be met.

Phase 2: Within 28 February 2003, at least 25% of the target in the most urgent letter no. NCCB MOI/Wor 78 submitted to the NCCB MOI on 21 February 2003 must be met.

Phase3: Within 31 March 2003, at least 50% of the target in the lists must be met.

Phase 4: Within 31 April 2003, 100% of the target in the lists must be met.

And three options were laid out for the eradication of narcotic producers and dealers through arrests, extrajudicial execution or death. Meanwhile, punitive measures were put in place as a threat to the officers at the operational level including “if they are not defeated, both governor and commander of provincial police have to go...”.

Both the timing of the directive and the options provided for deducing the numbers and meeting the target coupled with the punitive policy in place, i.e., an intimidation that if the targets of reducing the numbers could not be met, the persons in charge would be transferred, became a major impetus to push local operational units to do the best they could to quickly reduce the numbers of narcotic dealers. Considering the guidelines laid out for reducing the numbers, it was possible that local operational units might be led to believe that without resorting to arrests and deaths, they could by no means achieve the deduction of targets.

4.2.3 Investigation and review was made on statements and interviews given by Pol. Lt. Col. Thaksin Shinawatra on various occasions including his addresses to operational units at different levels, general public, such as

“...I declare myself as the warlord to wage this Grand Finale War on Drugs and total eradication of narcotics must be treated as a “national agenda” and all government officers have to carry out their duties stringently and in earnest for the suppression and prevention of narcotics...”,

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<sup>18</sup> Please see footnote 12

"... Today I would like to reiterate to administrative officers in Bangkok and Central Plain area that we must give the deadlines to narcotic dealers, and in Thailand they could have just two options. On one hand, they may choose to go to "jail", and on the other, the "cemetery". They are not supposed to live in decent society because these people are not human beings..."

"... Within this year, all narcotics must be eradicated from Thailand and we have clear policy to eradicate drug dealers from society. They have to live in jail. They must be arrested, and if they fight back, they will be extra-judicially executed. We can't help but have to eradicate all narcotics from Thailand....".

Reading statements and interviews given by Pol. Lt. Col. Thaksin Shinawatra on various occasions, one may find attempts to communicate to concerned parties the necessity of the use of violence and could be construed as instructions for people at the operational level. Similar to conventional wars, all narcotic dealers were set to be eradicated from Thai society.

As a result of the three months of the declaration of the war on drug (1 February - 30 April 2003), 2,604 murder cases took place by both narcotic and non-narcotic reasons causing 2,873 deaths. Of this, 2,559 were conventional murder cases causing 2,819 deaths and 45 extrajudicial cases causing 54 deaths. Compared to two years prior to and after the Grand Finale War on Drugs, it was found that the monthly average of murder case prevalence was 454 during February - April, 2001-2002 and 2004-2005. But during the policy to combat narcotics from February - April 2003, the average number of murder cases happened at 853 cases or an increase of 87.89%/month.<sup>19</sup> That means, year on year, the number of death toll in 2003 was much higher than in other years.

Delving deeper into the deaths of people, it was found that deaths took place in all areas of the country. The pattern happened as all provinces were required to create a list of narcotic dealers and attempt to reduce number of narcotic dealers in the blacklist using the methods laid out as aforementioned.

#### **4.3 Policy liabilities from the implementation of policy and its impacts on people**

Based on initial fact-finding, the correlation of the deaths of people during February 2003 - April 2003 and the declaration of the War on Drugs could be established;

(1) The death toll of civilians during the declaration of the War on Drugs and its implementation during February-April 2003 was higher than normal monthly average during the two years prior to and after.

(2) The mortality of civilian took place in a great number and spread across the country.

(3) There was no inquest and inquiry as to the deaths that occurred during the time.

(4) Causes of the deaths of the civilians were found to be intentional and were described as related to narcotics. Based on the facts, ICID concludes that the deaths of these civilians were

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<sup>19</sup> Please see footnote 1

likely related to the initiation of the narcotic suppression policy. And based on the initial fact-findings and the statistics of murder cases, it could be construed that the damage stemmed from fallacies in the implementation of narcotic suppression policy, and there must be persons who can be held liable for the damage. In the next chapter, ICID shall elaborate on legal liability of the persons in charge.

## Chapter 5

### Analysis of Legal Liability

Concluding from the facts and initial analysis, ICID found fallacies in the implementation of narcotic suppression policy that has led to damage to people and given rise to concerns and demands from international agencies and the world community for investigation of human rights violation that might happen during the period.

ICID deems it proper to ponder the results of the fact-findings against legal instruments related to liability in order to identify those who should be held liable for the implementation of the policy. Based on the rule of law and as a legal state, the criminal policy must be informed by conventional criminal principles, the Constitution of the Kingdom of Thailand and international obligations concerning human rights, universal human rights principles and international mechanisms which are accepted by the world community as the guidelines for investigating administrative actions that result in both policy and criminal liability. Related laws include;

#### **5.1 Criminal liabilities as per the Penal Code**

In this case, to implicate any person for criminal liability, all facts must have been thoroughly examined to establish that such a criminal action has been committed. And for the person alleged for committing the offence, all evidence must be established beyond doubts that the person really has committed the crime. The facts must have been derived with certain objectivity to prove that the person has the intention to commit the offence, or because of his negligence, the offence has been committed.

In addition, in an attempt to analyze criminal liability of a person, facts must have been thoroughly examined to establish that the person had the intention to commit the offence. In other word, it must be proven that the person commits the offence despite knowing the elements of crime and at the same time, the offender is set to gain from results or is aware of the consequences of the commission.

As for the question whether or not the chief of the administration during that time can be held liable for the dramatic increase of murder cases during the three months of implementing narcotic suppression policy or not, and in particular, the accusation that he was promoting the commission of the offence through employment, compulsion, threat, hire, asking for a favor or instigation or by other means as stipulated in Section 84 of the Penal Code. At the moment, ICID holds that further fact-finding and inquiry must be made as to acquire evidence that proves whether or not there were instructions or advertisements or directives or orders that instigated government officers to carry out the abuse, arrest or to use unlawful measures during the arrests.

## 5.2 Extrajudicial Killing

Death caused by the act of law enforcers allegedly during their operation or death that occurs during custody arranged by law enforcer who claims to perform his duty is generally known as “extrajudicial execution” and according to the Criminal Procedure Code, an inquest has to be conducted for such mortality<sup>20</sup>.

The post-mortem inquest must be conducted by competent officers with the presence of public prosecutor and administrative officials who has the rank of deputy district officer or its equivalent of the locality who shall hold the inquest together with the inquiry official and physician.

After the inquest has been held, the inquiry official shall make the file of inquest and send it to public prosecutor within 30 days for the date of knowing the matter. If there arises necessity, the period of time may be extended but the grounds for the extensions of time and the necessity thereof have to be written down in the file of inquest.

Where having the file of inquest, the public prosecutor shall apply by motion to the Court of First Instance of the locality where such corpse is for examination and order as to who the deceased was, the place, time, cause, and circumstances of such death, if it was caused by the act of any person, it shall be stated as far as it could be ascertained, who was the alleged offender within 30 days from the date of receiving the file. If there arises necessity, the period of time may be extended not more than twice for the period not more than 30 days each, but the grounds for the extensions of time and the necessity thereof have to be written down in the file of inquest.

The aforementioned paragraph deals with the case of extrajudicial execution, death caused by the act of an official alleged to be on account of carrying his duty or a person has died whilst being kept in custody by an official alleged to be on account of carrying his duty. Concerning extrajudicial execution, one criticism was made that “...it was a revival of ancient tradition which permits rulers to carry out punishment in whatever form he likes regardless of the rule of law or moral...”.

According to the number of extrajudicial cases that took case during the months of February - April 2003 which peaked 45 cases, it implies that government officers at the administrative or operational levels took due process of law for granted and simply exercised their power recklessly, particularly, the exercise of their political power, in order to allegedly serve their ultimate goal to bring safety, peace and prosperity to society. There arises the need to investigate whether all extrajudicial execution has been carried out in strict compliance of applicable laws or not. Based on results of initial investigation, it was found that narcotic suppression policy implemented during War on Drugs from February - April 2003 has brought about extensive damage to public life, body, reputation and property and has led to extensive number of extrajudicial execution. Such an abuse of policy stemmed from that the policy makers and the

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<sup>20</sup> Criminal Procedure Code, Section 150

policy enforcers did not care for the principle of legal state. And if the finding leads to the conclusion that such extrajudicial execution has been carried out illegally, the competent officers must be held criminally liable including those officers who performed the action and those who by their negligence of duty and malfeasance has made the extrajudicial execution possible. In both instances, the officers must bear the criminal liability.

### **5.3 Liability as per international criminal law**

As for criminal liability according to international criminal law, the Rome Statue of the International Criminal Court defines genocide, crime against humanity, war crime and the crime of aggression as international crime which involves abuse of human rights. According to the conclusion made in the preceding chapter, the abuse of policy implementation has led to extensive damage to people and given rise to grave concern among international community regarding the violation of human rights that had occurred during the period. Therefore, it is proper to draw on international criminal law to analyze the abuse of policy and criminal liability as per the international criminal crime, in particular, crime against humanity. The Rome Statue of the International Criminal Court stipulates elements of crime against humanity to include attack directed against a large number of civilians, or systematic attack directed against any civilian population with the knowledge of the attack.

Based on initial fact-finding, ICID found that there was a dramatic increase of murder cases during the time and the murder has been carried out systematically and extensively causing a number of lives and it could be attributed to the abuse of narcotic suppression policy implementation. Nevertheless, it could not be ascertained if the administrative leader intended to let the abuse happen. ICID holds it necessary to make further investigation on this end.

In sum, as for criminal liability, ICID deems that current facts are insufficient to make any judgment, but it plans to carry out more inquiry. But based on the arising facts, it was clear that criminal offence has been committed either by the provisions of the Penal Code or by the definition of crime against humanity. By expediting further fact-finding, ICID believes it can ascertain as to who should be held liable for the arising damage.

## Chapter 6

### Liabilities According to International Obligations

#### 1. A brief introduction of international criminal law

Prior to the existence of the Rome Statute of the International Criminal Court, one of the most important events related to international criminal law and international crimes was the murder committed by the Nazi party members against Jewish descendents known as “genocide”, and it was treated as crime against humanity. In addition, the German government led by Adolf Hitler was found to have committed war crime as well.

Prior to and during the World War II, the genocide and crime against humanity committed by the Nazi party members of the Third Reich during the high time of Adolf Hitler were widely noted. The commission of the crime was also carried out extensively and systematically. For example, the murder of Jewish descendants, torture and human experiments carried out among detainees in the Nazi’s ghettos.

At the end of World War II, all war criminals were tried for murder and crime against humanity as well as war crime by the International Military Tribunal in Nuremberg during which many people involved in the abetting of war were convicted.

It could be said therefore that international criminal law and international crimes took precedence during the events that developed under the leaderships of Adolf Hitler.

And as the Federal Republic of Germany was established in 1945 after the end of World War II, all the remaining Nazi party members who had fled were rounded up and tried in the court of justice of the Federal Republic of Germany. Some of them were later convicted. In addition, the rest of the Nazi party members were hunted down by justice system in relevant countries including Adolf Eichmann who was arrested in Argentina and was tried at the court of justice in Jerusalem, Israel.

It should be noted that the Federal Republic of Germany attempted to express their sincere responsibilities to the world community. Many of those who were involved with the violation of international criminal law were tracked down and convicted. Similar to criminal law in other countries the prescription for all criminal liabilities in Federal Republic of Germany is 15 years. As a result, cases that took place before 1945 were not actionable due to the expiry of the period of prescription and the remaining cases faced the same situation. Therefore, in order to solve this expiry of the period of prescription, the government of the Federal Republic of Germany proposed a law to extend the period of prescription and it was endorsed by the Bundestag.

Essentially, the law provides that commission of most severe offences including murder shall no longer have the period of prescription. However a motion was tendered to the Constitutional Court concerning the ex post facto effect of the law. The court was asked to rule



whether the law for the extension of the period of prescription was in contravention of the Constitution or not. Eventually, the Constitutional Court of the Federal Republic of Germany ruled that the prescription extension law was not a criminal law, but a criminal procedure law and therefore it could have retrospective effect. The Court further ruled that cases that were precluded by prescription before the extension law became effective shall be treated as cases that were no longer actionable and efforts to pursue the cases shall be not permitted. In sum, cases that were not precluded by prescription were then actionable.<sup>21</sup>

As said, the events reflected the efforts to push for the trial of murder which is tantamount to genocide and the commission of crime against humanity and is in breach of international criminal law and criminal law. Both offences are treated as international crimes according to the current legal system.<sup>22</sup>

## **2. The Rome Statute of the International Criminal Court**

In the aftermath of World War II, the commission of international crimes still took place in various countries. In order to provide for prosecution of offender of international crimes at the international level, the United Nations endorsed the Rome Statute of the International Criminal Court which became effective on 1 July 2002.

Crimes within jurisdiction of the International Criminal Court include;

- (1) The crime of genocide
- (2) Crimes against humanity
- (3) War crimes and;
- (4) The crime of aggression<sup>23</sup>

## **3. Definition of offences of crime against humanity**

The formulation of narcotic suppression policy and its implementation has led to abuse of powers and damages on public life, body, reputation and property of a large number of people, as well as caused panic regarding the ramification on rights and liberties and drew grave concerns among international community as stated in the order for the establishment of ICID. Such an act could be considered in light of international crimes as it is tantamount to committing crime against humanity. It is therefore appropriate to come to terms with definition of crime against humanity.

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<sup>21</sup> Please see for example, Harro Otto, Grundkurs Strafrecht : Allgemeine Strafrechtslehre, 7. Auflage, München 2004, Randnummer 10 - 12

<sup>22</sup> s. Rome Statute of the International Criminal Court, Article 5

<sup>23</sup> s. Rome Statute of the International Criminal Court, Article 5

“Crime against humanity” is defined in the Rome Statute of the International Criminal Court as, for the purpose of this Statute, “crime against humanity” means any of the following acts when committed as

part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- ( i ) Enforced disappearance of persons
- ( j ) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.<sup>24</sup>

Considering items listed from (a) to (k) under the definition of crime against humanity, the mistake in the formulation of narcotic suppression policy and its implementation which has resulted in the loss of lives among a large number of civilian population could be treated as the commission of murder as per Article 7 (a).<sup>25</sup> It is therefore appropriate to consider the implication of crime against humanity on the issue.

According to the Rome Statute of the International Criminal Court), murder means any act committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.<sup>26</sup>

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<sup>24</sup> s. Rome Statute of the International Criminal Court, Article 7

<sup>25</sup> s. Rome Statute of the International Criminal Court, Article 7 (a)

<sup>26</sup> s. Rome Statute of the International Criminal Court, Article 7

The term “widespread attack” is theoretically described as the loss of human lives in a quantitative sense. In other word, it was an action with intent to cause the deaths of a large number of people, whether it was done on numerous occasions or on one occasion.<sup>27</sup>

The term “systematic attack” is theoretically described as the loss of human lives in qualitative understanding. In other word, it is an action stemming from premeditated policy or plan, which is not only intended to fulfill the elements of murder crime, but is also carried according to the policy or plan that reflects systematic attack of human beings. Nevertheless, systematic attack may not always stem from premeditated policy.<sup>28</sup>

4. It was concluded from the facts that the mandate of ICID is to “perform fact-finding, study and analysis of all relevant facts concerning the formulation and implementation of narcotic suppression policy which has led to damages on public life, body, reputation and property had been done, and identify those who should be held liable for such an action.”

To implement the order, ICID has done the following;

#### **4.1 Concerning fact-finding of the policy**

ICID made inquiry into two major facts including;

- (1) Fact concerning the explication of the policy and;
- (2) Fact concerning the implementation of the policy

A conclusion could be drawn from the fact-finding including;

##### **4.1.1 Fact-finding concerning the explication of policy**

After the policy had been formulated by the administration, a meeting was held on 14 January 2003 for the explication of policy concerning narcotic prevention and control among chiefs of government divisions, governors, commanders of regional police, commanders of provincial police, superintendents and concerned executive officers. Essence of the policy explication could be summarized as;

(1) During the explication of narcotic prevention and control policy on Tuesday 14 January 2003, the Prime Minister quoted the word by Pol. Gen. Pao Sriyanond that **“Under the Sun, there is nothing that Thai police cannot do”** and **“I am confident that Thai police can handle this”**. He further said that **“All action shall be done with merciless use of brute force”**.<sup>29</sup> And before, it was said that the suppression of narcotics must be done in earnest even though there might be some loss of lives.<sup>30</sup>

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<sup>27</sup> Please see, for example, Kai Ambos, Internationales Strafrecht, München 2006, Randnummer 184, S. 213

<sup>28</sup> Please see, for example, Kai Ambos, Internationales Strafrecht, München 2006, Randnummer 184, S. 213

<sup>29</sup> Please see reference in footnote 6

(2) And on 23 March 2003, the Prime Minister stated during the explanation of policy that “drug dealers are destined to either prison or monastery”.<sup>31</sup>

(3) Concluding from the facts, it was found the Prime Minister also declared a number of times during the broadcast of the “Thaksin Talking to People” his intention to use violence against civilian population.

In sum, the explication of policy to officers at the operational level and the addresses to general public has been conducted so imprudently. The explanation and the announcements were made to indicate an intention to promote the use of violence against people, instead of upholding the rule of law and the act as a legal state under the representative democracy in which the state is supposed to provide for protection of its people against intervention of state powers and other powers.

#### 4.1.2 Facts concerning the implementation of the policy

The policy has been implemented through the establishment of Command Centers for Combating Narcotic Drugs at different levels, in central region and the province.<sup>32</sup>

- (1) In order to combat narcotics, the Ministry of Interior ordered NCCBs at different levels in the province to create name lists indicating the numbers of narcotic producers, dealers and sellers and officers involved with narcotics as of 1 February 2003, and the lists shall be submitted to the Ministry of Interior within 3 February 2003. NCCBs were supposed to report to the Ministry of Interior every 15 days, and it was changed to every 10 days later.
- (2) Indicators used by Ministry of Interior to gauge the success were the eradication of narcotic producers, dealers and sellers as well as officers involved with narcotics whose names appeared in the lists as of 1 February 2003. One major benchmark was the eradication of officers involved with narcotics within 15 February 2003, and narcotic producers and dealers within 30 April 2003.<sup>33</sup>
- (3) Fulfillment of the targets had to be measured periodically including;

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<sup>30</sup> Please see cabinet resolution dated 2 January 2003 on “Response to Narcotics”

<sup>31</sup> Please refer to an Preliminary report by the Sub-committee on Accountability for Policy Making

<sup>32</sup> Office of Prime Minister’s order no. 30/2003 dated 28 January 2003 concerning the establishment of the National Command Center for Combating Narcotic Drugs (NCCB), Office of Prime Minister’s order no. 31/2003 dated 28 January 2003 concerning the establishment of operational units to combat drug at different levels, Office of Prime Minister’s order no. 75/2003 concerning the establishment of the National Command Center for Combating Narcotic Drugs (NCCB) in pursuance to the Office of Prime Minister’s order no. 105/2003 concerning the adjustment of the composition of the Bangkok Command Center for Combating Narcotic Drugs

<sup>33</sup> Please see reference in footnote 12

- **Phase 1** within 10 February 2003, at least 5% must be achieved as per the list submitted to NCCB MOI as of 1 February 2003
- **Phase 2** within 28 February 2003, at least 25% must be achieved as per most urgent order NCCB MOI/Wor 78 dated 21 February 2003
- **Phase 3** within 31 March 2003, at least 50% must be achieved
- **Phase 4** within 30 April 2003, at least 100% must be achieved and all drug producers and narcotic dealers must be rid off

During Phase 3 and 4, directives were given verbally to various provinces.<sup>34</sup>

(4) In addition, the Ministry of Interior sent down the instruction that after the suppression of narcotic dealers/producers, the numbers in the lists could be deducted. Deduction of the numbers as far as the suppression of narcotic dealers/producers was concerned was possible through three scenarios, i.e., being arrested, extrajudicial killing and death (due to various causes).<sup>35</sup>

(5) As a result of the operation by the state concerning suppression of narcotics, the number of murder cases related to narcotics has peaked 1,187 during the months of February to April 2003 causing

1,370 deaths with the following detail;

- In 29 cases, 187 alleged offenders were arrested
- Perpetrators identified but remain at large: 47 cases
- Attempts are being made to identify perpetrators: 1,111 cases

Concerning extrajudicial execution, 35 cases were believed to have connection to narcotics and caused 41 deaths.<sup>36</sup>

In sum, both the formulation of indicators and targets and the timeframe for achievement reflects the desire of the administration to simply fulfill quantitative aspects. It has thus led to imprudent implementation aiming concertedly to materialize the policy with no regard to the rule of law and the principle of legal state. Under representative democracy, state

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<sup>34</sup> Please see reference in footnote 1

<sup>35</sup> Ministry of Interior's most urgent order no. Mor Tor 0211.1/Wor 1605 dated 7 February 2003 concerning the compilation of information of NCCB Province, Ministry of Interior's most urgent order no. NCCB Mor Tor/Wor 24 dated 15 February 2003 concerning clarification of attempts to combat drug by NCCB Province/Provisional District and Ministry of Interior's most urgent order no. NCCB Mor Tor/Wor 78 dated 21 February 2003 concerning policy and guidelines for the attempts to combat drugs

<sup>36</sup> Please see an Preliminary report by Fact finding Subcommittee 1

apparatuses are supposed to exercise their powers carefully in order to avoid the infringement on rights and liberties as well as public safety.

#### 4.2 Acquired facts and conclusions

Concluding from the facts, it was found;

(1) The explication of policy was made with intent to provoke improper response. By quoting the former police chief during the Police State, the speaker was attempting to encourage the audience to use forces as it is known that during the reign of the former police chief, rampant exercise of powers was used to crush opposition parties. And the phrase that goes “drug dealers are destined to either prison or monastery” could be interpreted as the encouragement for the use of brute force to implement the policy, as a result of which damages have occurred.

(2) Targets and indicators given during the tight schedule of operation could be interpreted as reflecting imprudence in the assignment of tasks to operation units, and therefore, it has caused damages after the implementation.

(3) Among all murder cases that took place, 1,111 cases were related to narcotics without the perpetrators being identified. The number was unusually high, and despite that, the state has failed to respond to the abnormality. As a result, it caused concerns regarding human rights at the national and international levels as a large number of civilian populations have been killed, yet, the state showed neither eagerness nor enthusiasm to carry out due investigation.

(4) The number of cases in which alleged offenders were identified was unusually low as well. All these cases should have been handled by the inquiry officers from the Department of Special Investigation (DSI) to ensure fairness to all concerned parties, even though they may not be counted as special cases.<sup>37</sup> But as it happened so, it reflected a lack of interest by the state to encourage inquiry officers to perform their duties in earnest to identify perpetrators of crimes against civilian population and their negligence is very unusual for the government under representative democracy.

(5) Based on the results of fact-finding by ICID, by written orders, the government instructed various agencies to create name lists of people who were believed to have connection to narcotics. Once the government received the lists of the individuals, it thus ordered the operation to deduct the names, and in so doing, the officers at the operational levels were instructed to perform their duties in order to exclusively achieve the quantitative success with no regard to the rule of law or the principle of legal state. In addition, the Prime Minister reiterated on many occasions to general public and narcotic suppression officers that the policy must be carried out with brute force. **It could be construed that the loss of a number of lives could largely be**

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<sup>37</sup> By the resolution of the Committee on Special Investigation, DSI can be assigned to handle all these cases. Please see Special Investigation Act B.E. 2547 (2004), Section 21 (2)

attributed to the action of state officers, particularly, officers at the low ranking level or at the operational level.<sup>38</sup>

(6) Nevertheless, academically, the act of officers at the low ranking level and at the operational level believed to have caused a large number of deaths clearly stemmed from their response to the state policy. Therefore, the act of officers at the low ranking level and at the operational level cannot be taken to be his own, but the act of another.<sup>39</sup>

Academically speaking, those policy makers are behind the murder of civilian population and should be held liable as offender for crime against humanity. The low ranking officers can be treated merely as supporters and can be held liable just for that particular offence. The low ranking officers can be held liable simply as supporters of the offence.

(7) As a result of imprudence of those behind the formulation and instruction of policy and a lack of check and balance, the implementation of such policy has led to a large number of deaths and disappearances, and they may be held liable as “offender” as explained earlier. Even though it could not be established as to who were officers at the low ranking level and at the operational level to have committed the crime, but the fact shall not be treated as an impediment to efforts to press charges of crime against humanity against those who were behind such policy. In other words, the adjudication of crime of “offender” must be held as foremost always.<sup>40</sup>

## **5. Legal opinion based on fact-finding and analysis of the commission of crime against humanity**

As a usual number of deaths have occurred, the exercise of political powers must be examined whether or not it has been done so carelessly and resulted in the deaths. And as the case is related to domestic laws, therefore, adjudication of the case therefore falls directly on the responsibility of domestic justice process, and it is not appropriate that ICID shall pursue the issue. In this report, ICID shall simply focus on facts concerning those who were behind the policy who could be held liable as “offender” of crime against humanity, the efforts of which may be useful for the government in their attempts to build up international understanding and to address arising concerns.

### **5.1 Hypotheses for making the legal opinion**

Considering the formulation of policy dubbed as “iron fist policy” that abets the merciless use of brute force such as the practice in a police state in the past<sup>41</sup> and the response to the aforementioned “iron fist policy”, the “offender” (responsible for the mistake in the policy

<sup>38</sup> Please see statement by lawyers concerning “silencing murder” released on 4 March 2003 asking the government to use justice process to solve drug problems in accordance to the legal government and protection of innocent life.

<sup>39</sup> Please Khanit na Nakhon, *Criminal Law: General Concepts*, Winyouchon Publishing House, Second edition, 2004, pp. 328

<sup>40</sup> Please see “Thinking Process in the Adjudication of Criminal Liabilities” by Khanit na Nakhon, *Criminal Law: Offenses*, Winyouchon Publishing House, Ninth edition, pp 882

implementation<sup>42</sup>) shall be held liable for the commission of crime against humanity according to the Rome Statute of the International Criminal Court (a) which states that the commission of the crime is completed with;

- (1) Elements of crime for crime against humanity
- (2) The act is unlawful or lacks legitimacy
- (3) The act is blameworthy

And it has to be considered in light of the structure of crime.<sup>43</sup>

**a. The act fulfilling three physical elements of crime against humanity**

Physical elements of crime are composed of;

- (1) Attack against civilian population
- (2) Widespread attack or systematic attack against civilian population and
- (3) The act or attack is tantamount to murder

The deceased in this case can be clearly identified as civilian population. Therefore, the first physical element is fulfilled as the act was committed with intent on attacking civilian population.

The next issue to be deliberated is whether the act could be construed as widespread attack or systematic attack against civilian population or not.

As it was concluded that a large number of deaths have occurred as a result of the “iron fist policy”, the case should be treated as widespread attack, as it has brought about losses in quantitative sense. And the plan to create name lists and the orders for the deduction of the names in the lists has caused losses which could be attributed to “qualitative understanding”, as the implementation had been carried out according to policy laid down systematically by the government. Even though acquired evidence suggested no intent for such losses to happen in the first place, but the mistakes actually arose and also took place systematically. Therefore, the act could be treated as systematic attack.<sup>44</sup>

The next issue to be deliberated is whether the loss of life of a large number of people could be treated as “murder” or not. Murder means “the unlawful killing of a human being by another with malice aforethought, either expressed or implied.”<sup>45</sup>

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<sup>41</sup> Please see reference in footnote 6

<sup>42</sup> Please see reference in footnote 31

<sup>43</sup> Please see Khanit na Nakhon, Criminal Law: General Concepts, Winyouchon Publishing House, Second edition, 2004, pp. 86-99

<sup>44</sup> Please refer to the definition of “widespread or systematic attack” as explained in 3.



Concluding from the fact-finding, ICID could yet to draw a clear conclusion if the deaths of a large number of people have occurred as a result of carelessness or by other actions. However, as a large number of deaths occurred, the government has failed to make investigation, which is an unusual response of a state under the government of the rule of law and legal state.

The next issue is whether the mental elements of crime against humanity have been fulfilled or not. The mental element in this case is intent.<sup>46</sup>

"Intent" is composed of two elements including knowledge of elements of crime and desire to have the actual consequences of elements of crimes.<sup>47</sup>

On the issue of intent, the formulation of "iron fist policy" was carried out by the offender who knew or was aware of the attack, and knew or was aware of the possible loss of a number of lives. And the offender should have envisaged such a loss.

Nevertheless, it is recommended that further inquiry should be made in order to ascertain mental elements of the commission of crime against humanity.

#### **b. Legal violation**

The next issue is whether the act of offender was lawful or not. After the act of the offender has been clearly identified as fulfilling both physical and mental elements of crime against humanity, further efforts shall be made to ascertain if the "act was carried out with justification" or not.<sup>48</sup> It was found there was no whatever justification that may provide for such an act committed by the offender. Therefore, the act of offender was unlawful.

#### **c. Blameworthiness or Schuld**

The last issue is whether the act of offender was blameworthy or considered "schuld" or not.<sup>49</sup> Blameworthiness or schuld (viciousness) means the blameworthiness of the determination of the intent.<sup>50</sup> A person who could be blamed or labeled as "schuld" must have the conscience or is a person who could differ between the right and wrong.<sup>51</sup> Concerning the conscience or the offender's ability to differentiate between the right and wrong in this case, no facts have led to the

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<sup>45</sup> BLACK'S LAW DICTIONARY explains "Murder. The unlawful killing of a human being by another with malice aforethought, either expressed or implied.

<sup>46</sup> In other word, committed with knowledge of attack

<sup>47</sup> Please see Khanit na Nakhon, *Criminal Law: General Concepts*, Winyouchon Publishing House, Second edition, 2004, pp. 162 - 164

<sup>48</sup> Please see Khanit na Nakhon, *Criminal Law: General Concepts*, Winyouchon Publishing House, Second edition, 2004, pp. 179

<sup>49</sup> Please see Khanit na Nakhon, *Criminal Law: General Concepts*, Winyouchon Publishing House, Second edition, 2004, pp. 93 - 94

<sup>50</sup> Please see Khanit na Nakhon, *Criminal Law: General Concepts*, Winyouchon Publishing House, Second edition, 2004, pp. 221

conclusion that the offender might not be able to differentiate between the right and wrong. Also, no evidence has been found to provide for grounds of “excuse” such as the “necessity for excuse”.<sup>52</sup> Therefore, the offender shall be blamed or said to have committed “schuld” as per the legal implication.

## **5.2 Conclusion of legal opinion**

In conclusion for the legal opinion, the formulation and implementation of “iron fist policy” was based on intent to eradicate all the persons involved with narcotics. Instructions were made for the creation of name lists and deduction of the names in the lists in haste. Public relations and advertisements were made to inform civilian population of the possible use of brute force to handle the issue. And it later turned out that a large of number of civilian population have lost their lives. Nevertheless, the adjudication based on international criminal law and the implication of the Rome Statute of the International Criminal Court on charges of crime against humanity needs to be carried out based on further inquiry.

## **6. The Rome Statute of the International Criminal Court and Thailand**

Concerning the issue of Thailand and the Rome Statute of the International Criminal Court, Thailand’s ascension to the Rome Statute of the International Criminal Court was made during a diplomatic meeting in Rome<sup>53</sup>, but the Statue has not been ratified by the Parliament yet. Nevertheless, Thailand is due to perform moral duty or moral obligation to the world community as a member state of the United Nations.

Please note that the explanation above was simply an attempt to establish the grounds to prove the commission of crime against humanity. Further adjudication has to be made by prosecution agencies at the national or international levels, and this has to be carried out carefully.

## **7. Criminal liabilities of supporters**

Considering crime of supporters, it was found that officers at the low ranking level and at the operational level were simply “supporters” and based on current fact-finding, ICID could draw just a conclusion that the formulation of policy and commands had been made to create name lists and to deduct people from the name lists and that deaths had occurred. But efforts to identify officers who have led to the deaths need to be further carried out to ascertain the facts. And without cooperation from normal justice process in the country, the task to establish the facts shall be extremely difficult as the murders were related to domestic legal apparatuses. Most

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<sup>51</sup> Please see Khanit na Nakhon, *Criminal Law: General Concepts*, Winyouchon Publishing House, Second edition, 2004, pp. 221

<sup>52</sup> Please see Khanit na Nakhon, *Criminal Law: General Concepts*, Winyouchon Publishing House, Second edition, 2004, pp. 247 - 251

<sup>53</sup> Please see Pornchai Danwivat, *International Criminal Law*, Winyouchon Publishing House, August 2001, pp. 115

importantly, ICID is not authorized to carry out inquiry and have no tools and resources for the task.

## Chapter 7

### Conclusion and Recommendations

After fact-finding efforts, the Independent Committee for the Investigation, Study and Analysis of the Formulation and Implementation of Narcotic suppression Policy (ICID) would like to present a Preliminary Report as follows;

During the months of February - April 2003, the Prime Minister, Pol. Lt. Col. Thaksin Shinawatra, instructed for the implementation of forceful narcotic suppression policy known as the Grand Finale War on Drugs. In the course of policy implementation, the country's leader has resorted to various methods of commands to provoke and instigate government officers and concerned parties to be aware of the severity of narcotic problems. Has the narcotic suppression policy been implemented under the rule of law, praises would have been garnered. But in reality, it turned out that the country's leader instilled among law enforcers wrong impression that they had absolute powers to employ whatever methods to quell narcotics. In addition, the country's administration made his intent clear that should the law enforcers fail to deliver as to his policy instruction, they would face consequences as to their ranking merits. Such policy formulation has put pressure on law enforcers to implement the policy. And as the law enforcers felt it was their predicament to carry out the policy whether they were convinced or forced to do so, but the implementation of the policy was done with flaws including the rush to create name lists of people involved with narcotics, the policy that forced officers at the low ranking level to deduct the names of people involved with narcotics in a short period of time, and most importantly, confusion between the implementation that aims to maximize output and the implementation under good governance. One among many grave impacts of the implementation of war of drugs policy is the loss of a massive number of civilian lives in just three months.

Apart from inflicting directly damages on civilian population in Thailand, impacts from the flawed implementation of narcotic suppression policy also caused severe ramifications on the country as a whole. Thailand became a subject of criticisms by international community and demands have been made to the Thai government to investigate and identify persons responsible for the action.

ICID finds that in light of both Penal Code and international criminal obligations concerning crime against humanity, a criminal offence has been committed as a result of the implementation of the policy (of war on drugs). But the offender has to be identified through further investigation. In addition, efforts should be made to develop preemptive measures against narcotic suppression policy which have repeatedly been abused. Most importantly, studies have to be made to identify remedies for affected people. The two proposals are part of ICID's mandate and the results shall be reported in the complete report later.

Hereby the report is presented concerning the inquiry that has been done by ICID thus far. Results of further work, particularly, the corrective and preventive measures shall be reported in due time.

Mr. Khanit na Nakhon	Chairperson
Mr. Charan Bhakdithanakul	Committee member
Mr. Kraisak Choonhavan	Committee member
Mr. Kittipong Kittiyaraksa	Committee member
Mr. Kitti Limchaikit	Committee member
Pol. Lt. General Wanchai Srinuannat	Committee member
Mr. Udom Rathamarit	Committee member
Mr. Uthai Arthiwet	Committee member
Mr. Chanchao Chaiyanukit	Committee member and Secretary
Mr. Tharit Pengdith	Committee member and Assistant Secretary

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