The Offences Relating to Terrorism in Thailand

Isra Samandecha

Submitted in accordance with the requirements for the degree of

Doctor of Philosophy

The University of Leeds

Centre for Criminal Justice Studies

School of Law

January 2018

The candidate confirms that the work submitted is his/her own and that appropriate credit has been given where reference has been made to the work of others.

This copy has been supplied on the understanding that it is copyright material and that no quotation from the thesis may be published without proper acknowledgment.

Acknowledgements

Firstly, I would like to express my sincere gratitude towards my primary supervisor, Professor Emeritus Clive Walker (QC), for the continuous support toward my Ph.D. study, for his patience, motivation, extraordinary kindness and immense knowledge. His guidance has helped me throughout the time that I have spent doing this research. Thanks for being the best teacher and for believing in me. I could not have imagined having a better advisor and mentor for my Ph.D. study. During the three years that I have studied with him, I have been the luckiest person in the world. Also, I would like to thank my second supervisor, Professor Peter Whelan, for his insightful comments and encouragement. Life blessed me with the opportunity to meet Professor Peter Whelan when I was in the second year of my studies. The two years spent working with him have been a very great experience. Wihout his precious support, it would have been very difficult to conduct this research. My sincere thanks also go to Professor Susanne Karstedt, who was my second supervisor during my first year.

Most importantly, I would like to give special thanks to my father, Ayut Samandecha, who has played the greatest roles in my life. In the academic aspect, he has been my personal Thai laws advisor. His knowledge and experience have helped me immensely in accomplishing this research. More importantly, he is my official financial supporter. I would even dedicate the success of this research to my father. He actually deserves to get a Ph.D. more than me. In real life, he is a wonderful father, the best possible role model, and the person who inspired me to study criminal law. Equally, I would like to express my heart-felt gratitude to my lovely mother, Jintiya Samandecha, for her love, unconditional support, unremitting encouragement and understanding. No matter how hard I live in this world, I always feel that my mother is on my side. I am also forever indebted to my elder sister, Jariya Samandecha, who has been a great English teacher and most helpful advisor in various aspects; her idea to support me to study a Ph.D will never be forgotten. To my family, you should know that your love and support are worth more than I can express on paper.

Besides my family, I would also like to thank my special person, Fon Kanitchanun (Sopapun) Kala, for her valuable help and encouragement. I also thank her for proving that love can overcome any obstacle.

Abstract

The proliferation of terrorism laws and counter-terrorism strategies reflect how important it is for all states to fight against terrorism. Terrorism is a severe criminal phenomenon that widely impacts on a state's security and that of its citizens. It is a serious ongoing problem for Thailand, and it has become one of the biggest challenges for the Thai government today. Terrorism in Thailand is currently taking place in the southern part of the country, mainly in the three provinces of Pattani, Yala, and Narathiwat. Thus, the state's capability to deal with terrorism becomes vital. Apart from examining how terrorism laws and counter-terrorism policies have been established, the focus shall be placed further on whether such programmes have been working effectively and legitimately. This research examines Thailand's counter terrorism strategies in so far as they have legal impacts in criminal law, including criminal offences, criminal procedure laws, and special military laws which have been applied in the south of Thailand. Critical account will be taken, in particular, with regard to notions of 'efficacy' and 'legitimacy'. These objectives will be achieved through detailed legal document analysis in Thailand and fieldwork responses by participants such as police officers, prosecutors, judges, defence lawyers and NGOs. A subsidiary aspect of the research is to draw some lessons from the England and Wales experiences of counter terrorism laws.

Table of Contents

Chapter 1 .... **1**

Introduction **1**

1.1 The Background to the study 1

1.1.1 Terrorism in the international context 2

1.1.2 Terrorism in the regional context 3

1.1.3 Background to Thai terrorism 5

1.1.4 Background factual situation (including ‘signal crimes’) 7

1.1.5 Thai politics and the Southern Thailand conflict 10

1.2 Thesis 16

1.3 Research objectives 17

1.4 The originality of the research 19

1.5 Methodology 21

1.5.1 Doctrinal research 22

1.5.2 Qualitative and quantitative research 23

1.5.3 Interview not observation or focus group 27

1.5.4 Sampling strategy 29

1.5.5 The Process of gaining access for the fieldwork 34

1.5.6 Data analysis strategy 36

1.5.7 Research methodology: policy transfer 42

1.6 Ethical issues 46

1.6.1 Informed consent 47

1.6.2 Confidentiality and safeguarding the participants from harm 48

1.6.3 Data protection and retention strategy 48

1.7 Thesis outline 49

1.8 Conclusion 50

Chapter 2 .... **52**

The Background to Terrorism in Thailand **52**

2.1 Introduction 52

2.2 Definition of terrorism 53

2.2.1 Terrorism and the offences of treason and *lèse-majesté*...................... 55

2.2.2 Political unrest in Bangkok 58

2.2.3 Political unrest in Bangkok compared to the South Thailand insurgency 62

2.3 Constitutional laws and unrest in Southern Thailand 64

2.3.1 Constitutional approaches relating to the South of Thailand.................. 65

2.3.2 An Institutional framework of relevant bodies under the Thai Constitutions 70

2.3.3 The future Thai Constitution 78

2.4 The Pattani State before its inclusion within Siam....................................... 80

2.4.1 From Langkasuka to Pattani 80

2.4.2 The spread of Islam in Pattani.. 81

2.4.3 The fall of the Pattani Kingdom and its incorporation into Siam 82

2.4.4 The Anglo-Siamese Treaty of 1909 83

2.5 Pattani after becoming a part of Siam... 85

2.5.1 Pattani under Siam's Rules... 85

2.5.2 Pattani and Islamic law 86

2.5.3. The origins of Muslim separatism in Pattani since 1909 88

2.6 The current situation in Pattani as a province of Thailand Kingdom............. 91

2.6.1 Terrorism organizations 91

2.6.2 Contemporary conflict 97

2.7 Conclusion 101

Chapter 3 105

The Criminal Law and Counter-Terrorism in Thailand 105

3.1 Introduction 105

3.2 The notions of 'efficacy' and 'legitimacy' 106

3.2.1 The notions of 'efficacy' and 'legitimacy' in the context of criminal law .106

3.2.2 The notions of 'efficacy' and 'legitimacy' in the context of criminal processes 107

3.3 Background principles and concepts of criminal law in Thailand 108

3.3.1 Rule of law and criminal law 109

3.3.2 The principle of responsibility 116

3.3.3 The principle of proportionality 119

3.3.4 The principle of minimal criminalization 122

3.3.5 The harmful nature of the prohibited action 124

3.3.6 Convictions 127

3.4 The structure of criminal offences in Thai criminal law 128

3.4.1 External element *(Actus Reus)* 128

3.4.2 Internal element *(Mens Rea)* 129

3.5 The functions of criminal law in counter-terrorism 130

3.5.1 Precursor impact 130

3.5.2 Net-widening 139

3.5.3 Lowest common denominator of rights 144

3.5.4 Mobilisation function 147

3.5.5 Denunciatory function 149

3.5.6 Symbolic solidarity 153

3.6 Conclusion 160

Chapter 4 163

Criminal Processes and Counter-Terrorism in Thailand 163

4.1 Introduction 163

4.2 The notions of ‘efficacy’ and ‘legitimacy’ in the contexts of criminal processes 164

4.3 General principles of Thai criminal procedure law 165

4.4 Accusatorial system in Thai criminal procedure 166

4.5 Thai Criminal Justice Organizations 169

4.5.1 Royal Thai Police 169

4.5.2 Office of the Attorney General 172

4.5.3 The Courts of Justice 174

4.6 Thai Criminal Procedure for Terrorism Charges 176

4.6.1 Investigations 176

4.6.2 Laws of arrest 185

4.6.3 Detention 189

4.6.4 Interrogation 194

4.6.5 Search powers 200

4.6.6 Criminal prosecution 203

4.6.7 Thai Judicial performance 210

4.7 Conclusion 223

Chapter 5 227

Special Laws and Counter-Terrorism in Thailand 227

5.1 Introduction 227

5.2 The background of the special laws in countering terrorism 228

5.3 Investigation and interrogation under the special laws 234

5.4 Arrest and search under the special laws 239

5.5 Detention under special laws 243

5.6 Trial process under special laws 247

5.7 The relationship between military officers and criminal justice officers (police and prosecutors) under the special laws 250

5.8 Immunity of officials under the special laws 252

5.9 Legitimacy and the application of the special laws 256

5.9.1 Human Rights and the special laws 257

5.9.2 Reflection on legitimacy in the context of the rule of law 263

5.9.3 Reflection on legitimacy in the context of constitution 264

5.10 Efficacy and the application of the special laws 268

5.11 Conclusion 272

Chapter 6 275

Conclusion 275

6.1 Introduction 275

6.2 Research findings 277

6.2.1 Criminal law 277

6.2.2 Criminal procedure law 281

6.2.3 The special laws 286

6.3 Reflection on methodology 290

6.4 Policy transfer lessons from England and Wales 294

6.5 Final comments 297

Bibliography 301

Appendix A 316

Interview schedules 316

Appendix B 333

Information Sheet 333

Appendix C 334

Informed Consent Form 334

Consent Letter 336

List of Tables and Figures

Figure 1.**1** Map of the southern provinces of Thailand……………………………..5

Figure 2.1 Terrorism offences in Thailand……………………………………...…54

Figure 2.2 Overlapping of the offences of terrorism, treason and *lese majeste*...57

Figure 2.3 Percentage of people who voted for the draft of the 2016 Constitution in three provinces of Pattani, Yala and Narathiwat……………………………………79

Table 2.**4** Main insurgent groups in Southern Thailand……………………………94

Figure 2.**5** Numbers of incidents regarding the southern Thailand insurgency in four provinces; Pattani, Yala, Narathiwat and Songkhla between 2004 and 2012…....99

Figure 2.**6** Types of criminal acts regarding south Thailand insurgency occurring in four southern provinces; Pattani, Yala, Narathiwat and Songkhla between 2004 and 2012…...100

Figure 2.**7** The numbers and categories of deaths in southern Thailand insurgency between 2004 and 2012……………………………………………..………..…101

Figure 3.1 Pyramid of Strategies of Responsive Regulation…………………..…123

Figure 3.2 The prosecution rate of offences relating to terrorism (Section 135/1) compared with 'precursor offences' between 2013-2015 in Pattani, Yala, and Narathiwat Provinces……………………………………..……………………………138

Figure 3.3 Overall views towards the existing criminal law on counter-terrorism…………………………………………………………………………………161

Figure 4.1 The Courts of Justice in Thailand…………………………………...……..175

Figure 4.2 Thai Criminal Procedure Processes…………………………...……...176

Figure 4.3 Terrorist investigation outcomes occurring between 1 August 2012 and 31 July 2013 in Pattani, Yala, and Narathiwat Provinces…………………………..181

Figure 4.4 Number of criminal cases (beside terrorist charges) occurring between 1 August 2012 and 31 July 2013 in Pattani, Yala, and Narathiwat Provinces……...182

Figure 4.5 Prosecution rates in terrorist charges between 1 August 2012 and 31 July 2013 in Pattani, Yala, and Narathiwat Provinces……………………….……183

Figure 4.6 Prosecution Process……..…………………………………………..203

Figure 4.7 Conviction rate for terrorist charges between 2003 and 2009 in Pattani, Yala, and Narathiwat…………………………………………………………208

Figure 4.8 Periods of time taken in terrorism cases in Pattani between 2011-2013…………………………………………………………………………...….215

Figure 4.9 Periods of time taken in terrorism cases in Yala between 2011-2013……………………………………………………………………………....216

Figure 4.10 Periods of time taken in terrorism cases in Narathiwat between 2011-2013…………………………………………………………………………….216

Figure 4.11 Overall views towards the existing criminal procedure law on counter- terrorism………………………………………………………………….225

Figure 5.1 Special Laws as applied in Three Provinces of Southern Thailand……………………………………………………………………………….230

Figure 5.2 Numbers of suspects arrested by the military compared to the police (2005-2012)……………………………………………………….....241

Figure 5.3 Detention process under the special laws……………………………246

Figure 5.4 Types of human rights violation occurring during the arrest process under the application of the special laws (2009-2011)……………………………..258

Figure 5.5 Types of human rights violation occurring during detention under the application of the special laws (2009-2011)………………………………………258

Figure 5.6 Types of human rights violation occurring during interrogation under the application of the special laws (2009-2011)………………………………………259

Figure 5.7 Human rights violations during normal criminal process in 2009-2011 (in investigation and interrogation)…………………………………….……………260

Figure 5.8 Torture complaints received by National Human Rights Commission nationwide in 2007-2013 by region………………………………………….…260

Figure 5.9 Numbers of officials alleged to have committed torture or other ill-treatment, by agencies of alleged perpetrators (2007-2013)……………………261

Figure 5.10 Numbers of officers alleged to have committed torture or other ill-treatment, by agencies of the alleged perpetrators and by region (2007-2013)……………………………………………………………………………….262
Figure 5.11 Numbers of torture complaints in the southern borders provinces received By the Muslim Attorney Centre (2007-2013)……………………………………..………………………………………….262
Figure 5.12 Amounts of incidents occurring where the special laws has applied (2004-2012)…………………………………………………………268
Figure 5.13 Conviction rates of terrorism cases between 2010 and 2011…………………………………………………………………………..……270
Figure 5.14 Overall views towards the special laws on counter-terrorism…………………………………………………………………………...…274
Figure 6.1 Terrorism interventions under the Terrorism Act 2000……………...296

List of cases

Thai cases

Prosecutor v Abdulloh Yusoh case No. (1164/2552)

Prosecutor v Areepeng Jayle case No. (1689/2550)

Prosecutor v Asmadee Jaymoh case No. (505/2555)

Prosecutor v Madaoh Kader case No. (249/2552)

Prosecutor v Mahalee Latay case No. (200/2552)

Prosecutor v Mator Shay case No. (2229/2554)

Prosecutor v Muhammad Sukri Uma case No. (225/2552)

Prosecutor v Refundee Nuyala case No. (69/2556)

Prosecutor v Suhaiming Lomo case No. (20300/2551)

Prosecutor v Sukiman Kubaru case No. (335/2552)

Prosecutor v Soho Hengsana case No. (3257/2555)

Prosecutor v Tuware Dorko case No. (1711/2556)

UK cases

O'Hara v Chief Constable of the RUC [1997] AC 286

R v Ahmed and Ahmed [2010] EWCA Crim 1551

R v G and J [2009] UKHL 13

R v Kahar [2016] EWCA Crim 568

R v Karim [2011] EWCA Crim 2577

R v Sultan Muhammed [2009] EWCA Crim 2653

R v Zafar [2008] EWCA Crim 184

T. v. Secretary of State for the Home Department [1996] AC 742

Table of Legislation

Thai Legislation

Act on Certain Offences against Air Navigation B.E. 2521 (1978)

Act of Compensation for the Injured Person and the Accused in the Criminal Case B.E.2544 (2001)

Act of Courts of Justice B.E.2543 (2000)

Act on Diplomatic Privileges and Immunities of B.E. 2527 (1984)

Act of Establishment of Defence B.E.2551 (2008)

Act on Establishment of Administrative Court and Administrative Court Procedure

B.E. 2542 (1999)

Act of Public Prosecutor Department and Public Prosecutor B.E.2553 (2010)

Act on the Administration of Islamic Organizations B.E. 2540 (1997)

Act on Prevention and Suppression of Piracy B.E. 2534 (1991)

Announcement of the Council of Ministers Thailand No. 1/2548, 1/2550

Anti-Money Laundering Act of B.E. 2542 (1999)

Anti-Terrorist Financing Act B.E. 2556 (2013)

Constitutions of the Kingdom of Thailand 1946, 1978, 1997, 2007, 2014, 2016

Emergency Decree on Public Administration in State of Emergency B.E.2548 (2005)

Extradition (Thailand) Act B.E. 2551 (2007)

Hazardous Substance Act B.E. 2535 (1991)

Internal Security Act B.E. 2551 (2008)

Martial Law B.E. 2457 (1914)

Military Procedure Act B.E. 2498 (1955)

Muslim Family Law of Act Thailand B.E. 2489 (1946)

Organic Law on Ombudsman B.E. 2552 (2009)

Royal Thai Police Act B.E. 2547(2004)

UK Legislation

Anti-Terrorism, Crime and Security Act 2001

Aviation Security Act 1982

Counter-Terrorism Act 2008

Counter-Terrorism and Security Act 2015

Crime and Disorder Act 1998

Criminal Justice Act 2003

Crime and Security Act 2010

Extradition Act 2003

Explosive Substances Act 1883

Firearms Act 1968

Police and Criminal Evidence Act 1984

Justice and Security (Northern Ireland) Act 2007

Prevention of Terrorism Act 2005

Prosecution of Offences Act 1985

Terrorism Act 2000

Terrorism Act 2006

Others

Anglo-Siamese Treaty of 1909 (Bangkok Treaty of 1909) Signed at March 10, 1909. Bangkok

ASEAN Convention on Counter Terrorism 2007

ASEAN Mutual Legal Assistance Treaty 2004 (UNTS No. 271)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (UNTS No. 1465)

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971 (Montreal Convention) (UNTS No. 177)

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (UNTS No. 29004)

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons 1973 (UNTS No. 15410)

Convention on Mutual Assistance on Criminal Matters between the Member States of theEU concerning Joint Investigation Teams (OJ 2000 C 197/1))

Council of Europe, European Convention on Extradition 1957 (CETS No.24)

Council Decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA))

Council Framework Decision on Combating Terrorism (2002/475/JHA, 13 June 2002)

Council Framework Decision on a European Arrest Warrant (2002/584/JHA, 13 June 2002)

European Police Office (Europol Convention), OJL 316/P 0002

European Convention on the Suppression of Terrorism 1977 (CETS No. 90)

European Council Framework Decision of 13 June 2002 on Combatting Terrorism (No 2002/475/JHA, OJL 164/3)

International Convention for the Suppression of Terrorist Bombings 1997 (UNTS No.37517)

International Convention for the Suppression of the Financing of Terrorism 1999 (UNTS No.38349)

International Convention against the Taking of Hostages1979 (UNTS No.1316)

International Covenant on Civil and Political Rights (ICCPR) (UNTS Vol.999)

United Nations Security Council Resolution 1267 (15 October 1999) (S/RES 1267)

United Nations Security Council Resolution 1373 (28 September 2001) (S/RES 1373)

United Nations Security Council Resolution 1989 (17 June 2011) (S/RES 1989)

United Nations Security Council Resolution 2178 (24 September 2014)

(S/RES 2178)

Chapter 1

Introduction

1.1 The Background to the study

Terrorism is a major challenge for the international community and nation states. The world has witnessed several incidents of terrorist attacks, such as the 9/11 attacks in the United States in 2001, the 2002 Bali bombings, the Madrid and London transport bombings in 2004 and 2005, the Paris terror attacks in 2015, and the Brussels bombings in 2016. As a result of these incidents, many civilians were killed and wounded. Given the tangible nature of the threat posed by terrorist activities, it is obvious that terrorism is a danger in the modern world that no state can ignore. Consequently, many states have responded by implementing counter-terrorism measures. In this regard, criminal law seems to be a vital mechanism to deal with terrorism.[1] Counter-terrorism policies which include criminal law elements have proliferated across the world, and they have impacted on the relationship between the state and society.[2] Yet, amid the high demand to enact or amend counter-terrorism laws and policies, few states have paused to consider whether they were essential and productive.[3] As Donkin and Bronitt said, 'states rarely justify the adoption or evaluate the effects of new counter-terrorism initiatives by reference to informed research'.[4]

This study focuses on the examination of Thailand's counter terrorism strategies with reference mainly to the criminal law, criminal procedure law, and special laws which have been applied in the south of Thailand, and having regard to notions of 'efficacy' and 'legitimacy'.[5] It is clear that terrorism in the south of Thailand (mainly in Pattani, Yala, and Narathiwat provinces) impacts the state's security and

---

[1] Walker, C. (2012) 'The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law' in Masferrer, A. (ed.) *Post 9/11 and the Sate of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer. pp. 121-146.

[2] Ramraj, V. Hor, M. Roach, K. and Williams, G. (2012) *Global Anti-Terrorism Law and Policy*. (2nd edn). Cambridge. Cambridge University Press. p.1.

[3] Bronitt, S., Legrand, T., Stewart, M., (2015) 'Evidence of the Impact of Counter-Terrorism Legislation' in Lennon, G and Walker, C. *Routledge Handbook of Law and Terrorism*. London. Routledge. pp. 297-312.

[4] Bronitt, S. and Donkin, S. (2013) 'Critical Perspectives on the Evaluation of Counter-Terrorism Strategies: Counting the Costs of the War on Terror in Australia' in Masferrer, A and Walker, C. *Counter-Terrorism, Human Right and the Rule of Law: Crossing Legal Boundaries in Defence of the State.* Cheltenham. Edward Elgar. p. 170.

[5] The meanings of 'Efficacy' and 'Legitimacy' are elucidated in section 1.2 (Thesis).

economy, but it is still unclear whether the state has applied an effective and fair strategy and legal regime to prevent and deal with the threat of terrorism.

1.1.1 Terrorism in the international context

After the events of 9/11, there were multiple efforts to instal and enhance coordinated measures to combat terrorism at the international level. The United Nations became the leading global body involved in the fight against terrorism. As a result, the Security Council resolutions adopted under Chapter VII of the UN Charter placed legal obligations on states that went beyond the requirements of previous international conventions.

The United Nations had been striving for several years to find some effective solutions for dealing with the threat of terrorism, as it regards terrorism as a serious threat to mankind.[6] UN approaches to combat terrorism began in the 1960s,[7] especially in terms of law making activities for specific types of attack.[8] However, a broader approach has been taken in the contemporary era, and it is important to refer to the United Nations Security Council Resolution 1373 (2001), which was passed following the 11 September terrorist attacks on the United States. The existence of the Resolution 1373 was conceived as the establishment of novel binding rules of international law of counter-terrorism rather than mere commands for a specific situation.[9] Resolution 1373 is a counter-terrorism measure that strives to hinder terrorist groups in several effective ways. For instance, all the UN member states are encouraged to share their intelligence on terrorism groups in order to assist in preventing international terrorism, and all states are prohibited from condoning terrorism.[10] In addition, Resolution 1373 established the Counter-Terrorism Committee (CTC) to monitor the implementation of Resolution 1373 and to encourage all states to implement a number of measures in order to counter the threat of terrorism. These include, for example, the suppression of the provision of

---

[6] Powell, C.H. (2012) 'The United Nations Security Council, Terrorism and the Rule of Law' in Ramraj, V. Hor, M. Roach, K. and Williams, G. (2012) *Global Anti-Terrorism Law and Policy*. (2nd edn). Cambridge. Cambridge University Press. pp. 19-23.

[7] See Saul, B. (2006) *Defining Terrorism in International Law*. Oxford. Oxford University Press. pp. 193-213.

[8] White, N. (2012) *Counter-Terrorism International Law and Practice.* Oxford. Oxford University Press. pp. 54-82.

[9] Szasz, P. (2002) 'The Security Council Starts Legislating'. 96 *American Journal International La*w. p. 901.

[10] See United Nation General Assembly Resolutions 40/61 of 9 December 1985; 49/60 of 9 December 1994; UNSCR 1368 of 12 September 2001 and UNSCR 1373 of 28 September 2001.

safe havens, sustenance or support for terrorists, increasing state legal and institutional capability to curtail all forms of financial support for terrorist groups, and cooperating with other states in certain criminal procedures such as the investigation, arrest, detection, extradition and prosecution of those involved in such acts.[11] Moreover, Resolution 1373 requests all states to become parties to the relevant existing international counter-terrorism legal instruments as soon as possible. On 8 September 2006, the UN Global Counter-Terrorism Strategy was adopted by the UN General Assembly to widen national, regional and international efforts to counter-terrorism.[12] The 2006 strategy aims to enhance states' ability to prevent and combat terrorism as well as to ensure respect for human rights and the rule of law.

In 2014, the Security Council unanimously adopted Resolution 2178 to specifically deal with 'foreign terrorist fighters' who participate or attempt to participate in an armed group that has been officially designated as a terrorist organization, and this notably links to the establishment of the group, Islamic State in Iraq and Syria. One of its key requirements is to stop an individual who is believed to be a 'foreign terrorist fighter' from crossing their borders and to prosecute, rehabilitate, reintegrate 'returning foreign fighters'.[13] All party states are obliged to adopt such measures and strive in their domestic laws to suppress, prosecute and penalise individuals travelling for the purpose of committing or getting involve in terrorist acts.[14]

1.1.2 Terrorism in the regional context

Terrorism can also be understood as a regional problem, including for Southeast Asia. It has been claimed by Enders and Sandler that 'terrorist activity is likely to come from the Middle East and Asia, where Islamic religious communities are more concentrated'.[15] They also noted a 17 per cent increase in the lethality of terrorist incidents per quarter during the post-Cold War era, as compared to the preceding two decades.[16] Nevertheless, this thesis argues that there remain other types of

---

See http://www.un.org/en/sc/ctc/

[12] See UNGA Resolution 60/288, http://www.un.org/en/terrorism/strategy-counter-terrorism.shtml#plan

[13] Article 4 of UNSCR 2178.

[14] Article 6 of UNSCR 2178.

[15] Walter Enders and Todd Sandler, ' Distribution of Transnational terrorism among Countries by income and Geography After 9/11' *International Studies Quarterly* 50, no. 2 (2006) pp. 367-393.

[16] Enders, W. and Sandler, T. (2000) ' Is Transnational Terrorism Becoming More Threatening?' *Journal of Conflict Resolution.* Vol. 44 no. 3, p. 329.

terrorism which are related to ethnicity and complex political problems such as southern Thailand conflict.[17] In the context of the Association of Southeast Asian Nations (ASEAN), the threat of terrorism has raised the strong concerns of many states in the region. These threats of terrorism represent a vital issue that needs to be considered in the context of Southeast Asian security and the activities of ASEAN.

The threat of terrorism related to the activities of separatist and religious groups has long existed in many Southeast Asian states. Thailand, Indonesia, the Philippines and other countries in the region have been the sites of terrorism for many decades. For example, on the southern islands of the Philippines, Abu Sayyaf and the Moro Islamic Liberation Front (MILF) have been fighting to create an Islamic state, and this situation is quite similar to the insurgency in southern Thailand.[18] In Indonesia, in addition to the Bali attack in 2002, there was a bomb blast in Bali on 12 October 2012, with the loss of 202 lives. This attack was committed by JI (Jemaah Islamiyah), an enduring Southeast Asian militant Islamist terrorist organization which was founded formally in 1993.[19]

According to ASEAN's Convention on Terrorism 2007, all ASEAN states are encouraged to combat, prevent, and suppress terrorism in all forms through regional cooperation.[20] In practice, comprehensive security and the strengthening of resilience have been the key concepts adopted by ASEAN to tackle the threat of terrorism.[21] Emmer has suggested that the principle of national and regional resilience is another strategy applied by ASEAN to increase the ability of its member states to combat terrorism.[22] The concept of resilience has been focused on the inward-looking approach to domestic regime security and regional stability. The concept might be considered as a shared approach to domestic and regional security, and it is also believed that the stability of each member state and of the

---

[17] The root causes of the southern Thailand terrorism is examined in Chapter 2.

[18] See Abuza, Z. (2005) 'The Moro Islamic Liberation Front at *Studies in Conflict & Terrorism* 28(6) pp. 453-479; O'Brien, M. (2012) 'Fluctuations Between Crime and Terror: The Case of Abu Sayyaf's Kidnapping Activities' *Terrorism and Political Violence* 24(2), pp. 320-336; Ozerdem, A. and Podder, S. (2012), 'Grassroots and Rebellion: A Study on the Future of the Moro Struggle in Mindanao, Philippines' *Civil Wars*,14(4), pp. 521-545

[19] See Barton, G. (2005) Jemaah Islamiyah: Radical Islamism in Indonesia. Singapore: Singapore University Press; Oak, G.S., (2010) 'Jemaah Islamiyah's Fifth Phase: The Many Faces of a Terrorist Group' Studies in Conflict and Terrorism vol.33, pp.989-1018.

[20] See Article 1 of ASEAN Convention on Terrorism 2007. Available at http://asean.org/asean-convention-on-counter-terrorism-completes-ratification-process/

[21] Emmers, R. (2009) 'Comprehensive Security and Resilience in Southeast Asia: ASEAN's Approach to Terrorism'. *Pacific Review,* 22:2, pp. 159-177.

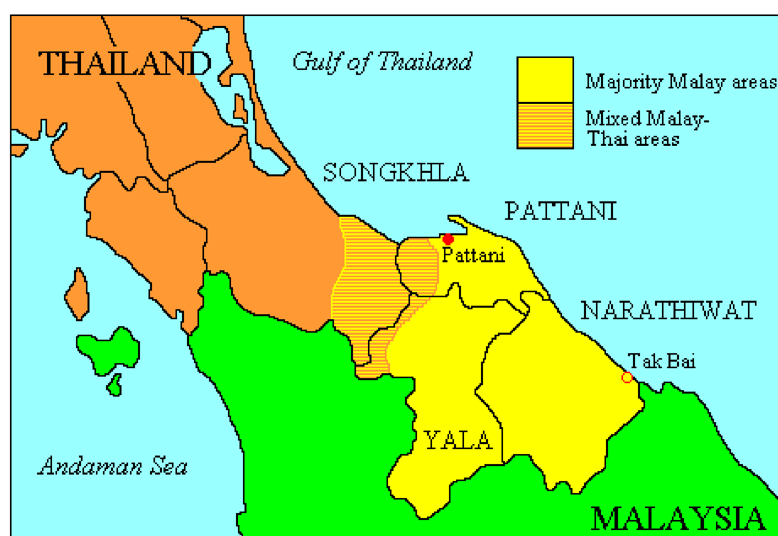
[22] Ibid.

ASEAN region is a necessary contribution towards international peace and security. Furthermore, multilateral collaboration between the ASEAN member states is deemed to be another important tactic in combating terrorism, and it is claimed to have produced many successful outcomes in the past.[23] The ASEAN response has also focused on specific political, economic, and social problems at various levels, thereby offering a broader alternative to the concept of state security based on national defence against external military threats.

1.1.3 Background to Thai terrorism

Terrorism is a serious problem for Thailand, and it has become one of the biggest challenges for the Thai government today. The most serious campaign of terrorism in Thailand is currently taking place in the southern part of the country, mainly in the three provinces of Pattani, Yala, and Narathiwat which are indicated in Figure 1.1.

Figure 1.1 Map of the southern provinces of Thailand



The situation in southern Thailand arguably represents one of the most serious conflicts in Southeast Asia, with approximately 5,500 people dead and nearly 10,000 wounded as a result of violence in this area since 2004.[24] Between 2009 and 2013, approximately 1,500 people were killed and 3,200 people wounded,

---

[23] AMMTC (2002) Joint Communiqué of the Special Ministerial Meeting on Terrorism, ASEAN Ministerial Meeting on Trans-national Crime (AMMTC), Kuala Lumpur, 20–21 May.

[24] Office of Public Prosecution Region 9 (2012) The *Effectiveness of Prosecution of National Security Charges and the protection of Citizen's right: A Case Study of the Four Bordering Provinces in Southern Thailand (Songkla, Pattani, Yala, Narathiwat)*. Bangkok. Asia Foundation. pp. 6-10.

which means an average of approximately 30 deaths and 60 wounded per month over those four years.[25]

The statistics above, produced by the Office of Public Prosecution Region 9 in its the paper, *Research on the Effectiveness of Prosecution of National Security Charges and the Protection of Citizen's Rights*: *A Case Study of the Four Bordering Provinces in Southern Thailand 2012,* indicated that terrorism in southern Thailand is one of the nation's largest problems. There are several insurgent groups behind the current violence in southern Thailand, such as Barisan Revolusi Nasional (BRN), the New Pattani United Liberation Organisation (PULO), PULO 88, BRN-Congress, BRN-C, Barisan Isalam Pembangunan Pattani, Gerakan Mujahidin Islam Pattani (GMIP).[26] BRN and New PULO are considered the most powerful groups, and they play an important role in controlling the large number of incidents in the area, which have been executed with the primary aim of creating an Islamic state in the region.[27] The details of these separatist groups will be explored in Chapter 2.

It has been commonly hypothesized that the root cause of the conflict is related to the distinct nature of the ethnicity, culture, and religion of the people in the area.[28] In addition, a report released by Amnesty International in 2009 demonstrated that Thai security forces in the southern provinces had practiced torture systematically.[29] Ultimately, the Thai Muslim people in the area feel that they are treated as second class citizens.[30] On this point, researchers such as Santi Deelee and Sookrasom have claimed that the Thai government has become a fundamental cause.[31] As

---

[25] The statistics are provided by the Isra News Agency website. [Online]. [Accessed 2/8/2015]. Available at http://www.isranews.org/south-news/stat-history.html
[26] See Liow, J.C. and Pathan, D. (2010) *Confronting Ghosts: Thailand's Shapeless Southern Insurgency*. Double Bay. Lowy Institute for International Policy. pp. 7-23. See also Helbart, S. (2015) *Deciphering Southern Thailand's Violence* Singapore, Yusof Ishak Institute.
[27] Barter, S.J. (2011) 'Strong State, Smothered Society: Explaining Terrorist Violence in Thailand's Deep South'. *Terrorism and Political Violence*, 23:2, 213-232.
[28] Montesano, M. & Jory. P. (2008) *Thai South and Malay North, Ethnic Interactions on a Plural Peninsula*. Singapore. NUS Press. p. 19.
[29] Amnesty International. (2009) *Thailand: Torture in the Southern Counter-Insurgency*. [Online]. [Accessed 9 February 2014]. Available from http://www.amnesty.org/en/library/asset/ASA39/001/2009/en/45c12270-dcd6-11dd-bacc-b7af5299964b/asa390012009eng.html#1.Introduction%20and%20Summary|outline
[30] Barter, S.J. (2011) 'Strong State, Smothered Society: Explaining Terrorist Violence in Thailand's Deep South'. *Terrorism and Political Violence*, 23:2, pp. 213-232.
[31] Deelee, S. (2007) *Solutions of Terrorism Problem in Southern Thailand*. Master of Political Science Thesis, Bangkok. Thammasat University. p. 4. See also Sookrasom, A. (2006) *'Terrorism in Thailand: Prevention, and Suppression Measures*. Master of Law Thesis. Bangkok. Thammasat University. pp. 126-128.

stated by Tan-Mullins, an interview with a person who lived in the violent area revealed that

> 'Fighting is useless; the government is the main problem. They always see us as terrorists, just because we are not Thai Buddhists but Muslims. How can we fit into a country when our rights to practice an alternative religion are violated? Maybe we should change the government and the idea of national religion? Bleach ourselves fair?'[32]

The Thai government is currently striving to find relevant solutions and policies to reduce the levels of violence, and these measures include enacting laws, attempts at negotiation, and establishing the National Reconciliation Commission (NRC).[33] However, McCargo has criticized the NRC because

> 'At the most basic level, there was a lack of trust and openness among the Commission's members which curtailed frank discussions. The political dimensions of the conflict were seen as off-limits, for a variety of cultural and historical reasons, the NRC produced a report that emphasized the issues of justice, but failed to engage with the core questions underpinning the violence'.[34]

Clearly, the existing violent situation in the southern part of Thailand represents a very serious and complex problem for the government to resolve in order to restore peace to the area. The details of terrorism in Thailand are explained fully in chapter two. Specifically, that chapter examines the contexts of the social cultures, ethnic identity, and religion as these are hypothesized by this study as the root cause of terrorism in Thailand.

1.1.4 Background factual situation (including 'signal crimes'(

In the context of the south Thailand insurgency, there are two important incidents that need to be taken into account which together might constitute 'signal crimes'.

---

[32] Tan-Mullins, M. (2009) 'Armed Conflict and Resolutions in Southern Thailand', *Annals of the Association of American Geographers,* 99:5. p. 925.
[33] McCargo, D. (2010) 'Thailand's National Reconciliation Commission: a flawed response to the Southern Conflict'. *Politics and International Studies*. 22: 1, pp. 1-5.
[34] Ibid.

A signal crime can be clarified as an incident that widely affects people to perceive themselves to be at risk of harm and generates fear in the public.[35]

The first incident was called the 'Krue Se Mosque Raid', which took place on April 28, 2004 at Krue Se Mosque, Pattani Province, Thailand.[36] The violence began when assailants, who were accused of being Muslim insurgents, attacked a police and military checkpoint and then seized Krue Se mosque as their refuge. The police and army troops surrounded the Krue Se mosque and made several attempts to enter by using tear gas, but the assailants launched a counter-attack with gunfire. After a nine hour siege, the police officers and army troops launched a final armed attack. Consequently, all of the insurgents inside the Krue Se mosque were killed. As a result of this serious incident, 107 insurgents and five members of the security forces were killed, according to the reports given by the Thai authorities.[37]

As there were many deaths in this incident, the Thai government was questioned about inappropriately using excessive force and heavy weapons on the assailants.[38] The Thai Government, at that time led by the former Prime Minister Thaksin Shinnawatra, said that the violence was started by the insurgents, and that the security officials had been acting under the orders of General Pallop Pinmanee. The Government thus provided an inadequate response to this incident. In this regard, Brad Adams, Asia director at Human Rights Watch, stated that 'The Krue Se Raid stands as testament to the failure of Thailand's leaders to make justice a priority in the south', and that 'The authorities have ignored the recommendation of the fact-finding commission to start judicial proceedings against those responsible'.[39] In addition, it was observed by the lawyers who represented surviving injured persons that prosecutors have used delaying tactics in the investigation proceedings, offering excuses such as not having documents ready. Moreover, the police officers and soldiers who were summoned in civil suits have

---

[35] Fielding, N. and Innes, M. (2002) 'From Community To Communicative Policing: 'Signal Crimes' And The Problem Of Public Reassurance' *Sociological Research Online*, vol. 7, no. 2, available at http://www.socresonline.org.uk/7/2/innes.html.[Accessed 14 February 2015].
[36] See http://www.nationmultimedia.com/specials/takbai/p2.htm.[Accessed 20 June 2016].
[37] Human Rights Watch Thailand. (2006) *Thailand: Investigate Krue Se Mosque Raid.* [Accessed 1 March 2014]. Available from http://www.hrw.org/news/2006/04/27/thailand-investigate-*krue-se-mosque-raid*
[38] See Online News. *The Nation*, Shattered by horrific events. Nationmultimedia.com. 29 April 2006. [Accessed 24 March 2016].
[39] http://www.hrw.org/news/2006/04/27/thailand-investigate-krue-se-mosque-raid. [Accessed 14 February 2015].

not appeared, claiming that they had been relocated to other districts or had to work on other assignments.[40]

Another 'signal' incident, commonly referred to as the 'Tak Bai Incident', took place on October 25, 2004 in Narathiwat Province.[41] In detail, there were approximately 1,500 protestors, most of whom were Muslims, gathered in front of Tak Bai Police Station, Narathiwat province, to protest against the unfair detention of six Muslim men. After several hours of the demonstration, a large amount of protesters attempted to cross the police barriers and enter into the Police Station. At the first stage, police officers attempted to quell their efforts by using tear gas against the protestors; however, the situation became more severe, as a large number of protestors started throwing rocks. Then, the police made a decision to fire into the air, and later into the crowd at head height. As a result of the police's action, seven protesters were shot dead at the scene. In addition, it appeared that there were 78 people who had been either suffocated or were crushed to death during their transportation to the detention area. Approximately 1,200 people were then held in military custody for several days without suitable medical treatment.[42] As a consequence, most of them suffered serious injuries, and many required amputation of their limbs.[43] There were 58 Muslim protestors charged with having allegedly committed criminal offences, whereas no Thai officials were charged. Brad Adams, Asia director of Human Rights Watch, commented that 'despite overwhelming evidence, the Thaksin government refused to prosecute those responsible for the deaths and injuries at Tak Bai and to compensate the victims appropriately'. Even though Thai officials have paid financial compensation to some Tak Bai victims and their families, Human Rights Watch and Amnesty International have stated that the compensation is not enough.[44] Natalie Hill, Deputy Director of the Asia Pacific Program of Amnesty International, has stated that 'Giving money to some of the victims does not free Thai authorities from their responsibility to

---

[40] See Online News. *Matichon Online*. [2006] Available at http://www.matichon.co.th/. [Accessed 27 March 2014].

[41] Puaksom, D. (2008) *Thai South and Malay North, Of a Lesser Brilliance: Pattani Historiography in Contention*. Singapore. NUS Press. p. 71.

[42] Human Rights Watch Thailand. (2006) *Thailand: New Government Should Ensure Justice for Tak Bai. Two Years after Killings, No Security Personnel Have Been Prosecuted.* [Online]. Available from http://www.hrw.org/de/news/2006/10/23/thailand-new-government-should-ensure-justice-tak-bai. [Accessed 2 March 2015].

[43] Ibid.

[44] Ibid.

prosecute those responsible for unlawful killings at Tak Bai and deaths resulting from their appalling ill-treatment during transport'.[45]

While the terrorism threat is one of the most serious problems in Thailand, the government should not exercise their power without any limitation.[46] The excessive use of power by the government could even encourage terrorists to commit more incidents, and this could lead to a worse situation.

1.1.5 Thai politics and the Southern Thailand conflict

As well as the severe mishandling of specific incidents, Thai politics provide another vital factor to explain the nature of this serious conflict. The root causes of the southern Thailand conflict have been linked to the distinct nature of the ethnicity, culture, and religion of the people in the area which was once an independent state.[47] In 1980, democratic development was the policy applied by General Prem Tinsulanon, who was Thailand's Prime Minister representing the Democrats' Party. Prem's policies increased the political participation of the Muslim people in southern Thailand, and there were several attempts to improve relations with the Malay government and also the countries of the Middle East.[48]

The crucial fulcrum for democratic progress in Thailand was the promulgation of the 1997 Constitution.[49] This constitution was known as 'the People's Constitution', as it was the first constitution that had been drafted by a special assembly, and most of its members were directly elected for this purpose. In other words, it was the first time in Thailand's political history that Thai citizens were directly and indirectly linked to the process of making the constitution. The Constitution of 1997 emphasized the rule of law and citizen participation in various stages, and it reflected the fundamental rights and issues that were important for supporting

---

[45] Ibid.
[46] See also Finogenov v. Russia, Application nos. 18299/03 and 27311/03, 20 December 2011; Tagayeva v. Russia, Application no. 26562/07, 13 April 2017.
[47] Abuza, Z. (2009) *Conspiracy of Silence. The Insurgency in Southern Thailand.* Washington D.C. United States Institute of Peace Press. pp. 11-13.
[48] Melvin, N. (2007) Conflict in Southern Thailand Islamism, Violence and the State in the Patani Insurgency. *SIPRI Policy*, Paper No. 20. Stockholm International Peace Research Institute. pp. 28-29.
[49] The 1997 Constitution of Thailand was enacted on 11 October 1997 to replace the 1991 Constitution. The 1997 Constitution can be found at http://www.constitutionnet.org/files/Paper_on_the_1997_constitution_2.pdf

democratic development.[50] Of course, this constitution was also concerned with the insurgency in southern Thailand in that it provided several relevant provisions, including considerations of liberty, equality or recognition of a wide range of human rights, school administration, and the decentralization of government powers.[51] According to Section 38 of the Thai Constitution of 1997,

> 'A person shall enjoy full liberty to profess a religion, a religious sect or creed, and observe religious precepts or exercise a form of worship in accordance with his or her belief; provided that it is not contrary to his or her civic duties public order or good morals. In exercising the liberty referred to in the above paragraph, a person is protected from any act of the state, which is derogatory to his or her rights or detrimental to his or her due benefits on the ground of professing a religion, a religious sect or creed or observing religious precepts or exercising a form of worship in accordance with his or her different belief from that of others'.[52]

Based on this principle, Thai Muslims were protected and supported by the Thai government in several ways, to the same degree as Thai Buddhists, including in their liberty of religion, equality, and political rights. Consequently, many Muslims began to pay more attention to the political process, and consequently several Muslim politicians were elected to the legislature. In 2002, there were seven Senators and 21 Muslim members of the House of Representatives, and one of them, Mr. Wanmuhamadnoor Matha, a Thai Muslim member, became Deputy Prime Minister.[53]

In order further to promote Islamic affairs and the status of Muslims in the country, the Act on the Administration of Islamic Organizations was also promulgated in 1997. This Act provided for the Central Islamic Committee of Thailand, with the Committee being chaired by the Chularajamontri (Shiekul Islam or Grand Mufti) with a role as a state adviser on Islamic affairs.[54] Generally, the duties and powers of the

[50] Munger, F. (2007) 'Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand'. *Cornell International Law Journal*: Vol. 40. p. 455.
Available at: http://scholarship.law.cornell.edu/cilj/vol40/iss2/5 [Accessed 25 March 2016].
[51] See Chapter 3 of the Thai Constitution 1997.
[52] See Section 38 of the Thai Constitution 1997.
[53] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politic in Malay World.* Islamic Culture Foundation of Southern Thailand. Songkhla. Winyoochon. p. 266.
[54] See Act on the Administration of Islamic Organizations 1997, Sections 6-11.

Chularajamontri are concerned with providing advice and conveying opinions to the government relating to Islamic affairs, or to provide decisions based on Islamic rules. This Act could be understood as indicating that the government had increased its concern for Muslim people, and had attempted to recognise Islamic affairs through the appointment of the Chularajamontri.

The next tactic for supporting Muslims in the country was reflected through educational support. Even though Thai governments in the past had attempted to remove Muslim schools and required all citizens to use Thai as the official language, these negative approaches were abrogated under the 1997 Constitution.[55] According to Section 42 of the 1997 Constitution,

> 'A person shall enjoy academic freedom. Education, training, learning, teaching, researching and disseminating such research according to academic principles shall be protected; provided that it is not contrary to his or her civic duties or good morals'.[56]

Consequently, many Muslim schools were thereafter legally established in southern Thailand, especially in Pattani and Narathiwat. Furthermore, after the National Education Act 1999 was enacted, Muslim students were able to choose between public schools or private Islamic schools (Ponoh or Pondok) from the primary level. It could therefore be considered that this concept provided more opportunities for Muslims to establish and attend Muslim schools in Thailand, which obviously differed from previous Thai government policy. Even though the 1997 Constitution was replaced by the 2007 Constitution, none of these principles have been removed.

Furthermore, the 1997 Constitution expanded individual and group rights and established major court reforms and new institutions to guarantee accountability under law, including the Administrative Court and Constitutional Court.[57] Next, several forms of citizen participation under the 1997 Constitution should be mentioned. There were decentralisation of power, fiscal control and electoral

---

[55] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politic in Malay World.* Islamic Culture Foundation of Southern Thailand. Songkhla.Winyoochon. pp. 301-309.
[56] See Section 42 of the Thai Constitution 1997.
[57] Munger, F. (2007) 'Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand'. *Cornell International Law Journal*: Vol. 40 p. 463.
Available at: http://scholarship.law.cornell.edu/cilj/vol40/iss2/5 [Accessed 25 March 2016].

democracy.[58] The 1997 Constitution also ensured 'the right to information and the ability to participate in government decisions relating the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community, as provided by law'.[59] The right to participate in the decision-making process of State officials in the performance of administrative functions which affect or may affect his or her rights and liberties was also protected.[60]

The 2007 Constitution was another charter that encouraged public participation policies. It emphasised the public's participation at both national and local levels by placing a responsibility on the State through directive principles to encourage public participation in the formulation of social and economic development policies.[61] For instance, the state is required to promote and support public participation in the process of making political decisions, and in the formulation of plans for socio-economic development and the provision of public services.[62] The 2007 Constitution further emphasised public participation in examining the use of State power at all levels.[63] This approach is based on the notion that democratic values will be more easily increased if the majority is drawn into the decision-making process and policy enforcement.[64] In principle, the initiative to allow citizens to participate and become involved in the process of reviewing the use of the state's power was considered a positive sign of democratic development. In practice, however, there was a concern whether this approach was working, and whether it offered a solution to the problem of south Thailand. Further discussion of the Thai Constitutions and public participation in the context of southern Thailand's troubles can be found in Chapter 2.

To better understand the role of Thai politics towards the violence in south Thailand, Thaksin's policies should be examined further. Four years after the promulgation of the 1997 Constitution, Thaksin was elected as Prime Minister in 2001. He claimed that solving the conflict in southern Thailand was an important

[58] See the Thai Constitution 1997, Sections 282-290.
[59] See the Thai Constitution 1997, Sections 56-59.
[60] See the Thai Constitution 1997, Section 60.
[61] Harding, A. and Leyland, P. (2011) *The Constitutional System of Thailand: A Contextual Analysis.* Portland. Hart. p. 135.
[62] See the Thai Constitution 2007, Section 87.
[63] Ibid.
[64] Harding, A. and Leyland, P. (2011) *The Constitutional System of Thailand: A Contextual Analysis.* Portland. Hart. p.136.

task.[65] He immediately launched several policies and changed the security arrangements to deal with the conflict, based on his belief that the 'violence was no longer political in character, but essentially criminal'.[66] Consequently, key officials in the areas concerned were replaced by his associates, and Prem's policy of political engagement was also rescinded.[67] Based on his belief that this conflict was related to criminality rather than politics, Thaksin mainly focused on adjusting police powers so that the police could take the primary role for solving the violence in southern Thailand, with the army working alongside.[68] This change shows that Thaksin ignored Prem's successful policy by shifting towards security powers and using the criminal law system as the primary tools for dealing with the problem.

After Thaksin's policy was implemented, the number of incidents increased gradually. According to the Thai Ministry of Interior's statistics, the quantity of cases related to violent incidents increased from 50 in 2001 to 75 in 2002 and to 119 in 2003.[69] It seemed that Thaksin's policy of relying on security powers, especially the police's powers, did not work well. Later, Thaksin responded to the rising violence by providing new legislation, the Emergency Decree on Public Administration in an Emergency Situation, B.E. 2548 (2005), which empowered the Prime Minister to announce a state of emergency and impose curfews in the affected areas.[70] However, it was argued by the former Prime Minister Arnan Panyarachun that the increased powers held by the authorities to control the situation in southern Thailand did not represent a suitable approach.[71] Furthermore, he also criticized the fact that there were many cases in which innocent people had been arrested instead of the real criminals, thus reflecting the ineffective work of the authorities, and which might lead to increased violence.[72] The details of the Emergency Decree 2005 will be examined in Chapter 5.

---

[65] Melvin, N. (2007) Conflict in Southern Thailand Islamism, Violence and the State in the Patani Insurgency. *SIPRI Policy*, Paper No. 20 Stockholm International Peace Research Institute. pp. 28-29.
[66] Ibid.
[67] Ibid.
[68] McCargo, D. (2005) 'Network Monarchy and Legitimacy Crises in Thailand'. *Pacific Review.* Vol.18 (4). Routledge. pp. 514-515.
[69] International Crisis Group (2005) *Southern Thailand: Insurgency Not Jihad*. *Asia Report.* No. 98. 18 May 2005. p. 16.
[70] Bruce, N. 'Thai Shift of Power by Decree Draws Fire'. *International Herald Tribune*, 19 July 2005.
[71] Ibid.
[72] Ibid.

In the same year, the National Reconciliation Commission or NRC was also established by Prime Minister Thaksin Shinawtra; it was chaired by the former premier Arnan Panyarachun. The Commission consisted of 50 members drawn from a variety of sectors.[73] Seven members were from the political sector; 17 members came from civil society in the local area comprising of Islamic council presidents, Muslim scholars and academics, 12 members were from civil society outside the area, and 12 members came from the security forces and civil service. The primary task of the NRC was to investigate the rise of violence occurring in the southern border provinces of Thailand and also to provide policy recommendations to the government.[74] It soon appeared that the NRC's adopted policy was contrary to Thaksin's strategy, as the NRC proposed that peaceful methods, such as negotiations or an unarmed army, might decrease the tense situations in the affected areas, whereas Thaksin believed that the stricter enforcement of security laws would be a better approach.[75]

Nevertheless, aside from using security laws, successive Thai governments have attempted to resolve the problem by peaceful negotiations, although it was difficult for these to be pursued as there were often no clearly designated representatives from the other side. However, on February 28, 2013, Lieutenant- General Paradorn Pattanatabut, the chairman of the Thai National Security Council (NSC), signed an agreement for formal peace talks with Ustaz Hassan Taib, a representative of the Barisan Revolusi Nasional (BRN).[76] The first formal talks were held at the Malaysian capital, Kuala Lumpur, where Malaysia had appointed Dato Sri Ahmed Zamazin Bin Hasim, the former director of the Malaysian External Intelligence Organization, as the facilitator. The primary aim of the Thai side in the negotiations was to reduce the level of violence in the area; in contrast, BRN's side demanded the withdrawal of troops, the release of insurgent prisoners, and the participation of outside groups in the peace process, including the Organization of Islamic Cooperation (OIC) and ASEAN. The talks reached no firm conclusions. It was stated by the Thai side that 'granting independence to militant groups operating in southern Thailand is unacceptable, and everything must be negotiated under the

---

[73] McCargo, D. (2010) 'Thailand's National Reconciliation Commission: A Flawed Response to the Southern Conflict'. *Politics and International Studies*. Routledge. p. 77.
[74] Ibid. pp. 81-83.
[75] McCargo, D. (2007) *Rethinking Thailand's Southern Violence*. Singapore. NUS Press. p 169.
[76] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politic in Malay World.* Islamic Culture Foundation of Southern Thailand. Songkhla. pp. 360-361.

law and the Thai constitution'.[77] It would be fair to say that these first peace talks failed to solve the conflict, as within a month of the talks, the violence resumed. For example, there were eight bombings in Yala in March 2013.[78]

This section has attempted to explain in outline the south Thailand problem in terms of Thai political and cultural contexts and the relevant legal contextualisation. As for the latter, it is considered that exploring the Thai constitutional context is instructive and worthwhile in order to better understand the nature of the southern Thailand problem. Thus, in Chapter 2, there will be further discussion of the successive Thai Constitutions within the context of the southern Thailand problem both in theory and practice. This will include the examination of relevant policies and institutional frameworks relating to the response to the insurgency and the oversight mechanism for the protection of human rights.

1.2 Thesis

The purpose of this thesis is to examine, analyse and offer a critique regarding Thailand's counter-terrorism strategies with special reference to the use of criminal offences. It is hypothesized that existing measures to fight terrorism reveal several errors in both the substantive laws and legal enforcement processes which need to be remedied. The overall aim of this study is to examine the existing counter terrorism measures in particular with respect to criminal law and criminal procedure law in Thailand based on an analysis and critique reliant on the notions of 'efficacy' and 'legitimacy'. It further aims to propose solutions for improving Thai counter-terrorism strategies by drawing upon lessons learned from the UK's counter terrorism legislation, where appropriate. The analysis and critique of the existing counter-terrorism strategies applied in Thailand are not restricted to documentary access. Fieldwork data derived from criminal justice officers, such as police officers, prosecutors, judges, and relevant non-governmental actors such as defence lawyers and NGOs, are also utilised.

It is hypothesized in this study that the notions of 'efficacy' and 'legitimacy' are appropriate ways to measure the impacts of Thailand's counter-terrorism efforts. However, the terms 'efficacy' and 'legitimacy' may be defined in several different

---

[77] Abuza, Z. (2013) 'The Upcoming Peace Talks in Southern Thailand's Insurgency'. *CTC Sentinel* Vol.6. Issue 3. p. 19.
[78] Ibid.

ways. Generally, the notion of efficacy can be defined as the capability to achieve a desirable result. For instance, in terms of criminal law, efficacy could relate to suppressing crime, providing security, or the efficacy of protecting citizens or the state. Specifically, in the context of criminal law in counter-terrorism, the term, 'efficacy', can be reflected through its functions in dealing with terrorism. In this regard, there are at least six potentially effective criminal law techniques in counter terrorism, namely: precursor impact, net-widening, applying the lowest common denominator of rights, the mobilisation function, the denunciatory function, and enhancing symbolic solidarity.[79] These techniques can be regarded as outcomes against which to measure whether the use of criminal law in counter terrorism is effective or not. For the notion of 'legitimacy', this study has focused on the concepts of the rule of law and human rights, and the Thai Constitution.

In terms of fieldwork, this research seeks to explore how these laws (criminal law, criminal procedure law and special laws) work in practice in Thai society. In this way, the roles and reflections of relevant criminal justice officers such as police, prosecutors, and judges are considered. A qualitative study based on semi-structured interviews is the prime strategy for this aspect of the research. However, the research also draws upon a quantitative approach. Therefore, relevant statistics such as amounts of terrorist cases, conviction rates, and data regarding human rights violations as a result of the special laws and so on are also considered.[80]

1.3 Research objectives

This research has several important objectives in pursuance of the foregoing thesis. Firstly, it seeks to examine what terrorism means in Thailand, and it attempts to explain its root causes. To better understand terrorism in Thailand, this research offers explanations based on the terrorists' motivations, their purposes, their targets and their methods. Therefore, the first research question focuses on the historical background of terrorism in Thailand. Furthermore, the research seeks to draw a comparison between terrorist offences in the south and criminal offences regarding political unrest in Bangkok.

---

[79] Walker, C. (2012) 'The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law'. in Masferrer, A. (ed.) *Post 9/11 and the Sate of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer. pp. 129-146.

[80] The elaboration of qualitative and quantitative research techniques can be found in Section 1.5 'Methodology'.

Secondly, the research focuses on the role of criminal law, which is conceived as the main strategy for dealing with terrorism in Thailand. It seeks to answer whether the criminal law has the capability to deal with terrorism alone or at least primarily, or if it needs other mechanisms to work alongside. Thus, in terms of 'efficacy', the study carries out an examination of the issue whether the criminal law could achieve the goals of preventing, supressing, and averting crimes of terrorism. Regarding the notion of 'legitimacy', the research explores how the criminal law is applied in the contexts of the rule of law, human rights protection and the Thai constitution.

Thirdly, the research seeks to examine the operation of the overall criminal justice system in dealing with terrorism charges. The term, 'efficacy', in this sense covers the examination of the police's abilities in the investigation process, especially in fact-finding and in bringing terrorist suspects into the criminal justice process. The study undertakes a comparison between the amount of cases in which the police successfully found suspects and evidence in offences of terrorism, and the numbers of cases of other criminal offences during the same period and the same areas. Subsequently, the study aims to explore the effectiveness of criminal prosecution as well as the roles of the public prosecutors in court trials of terrorists. It has been hypothesized in this research that effectiveness in this sense might be reflected by the conviction rate. Also, the research attempts to examine efficacy in the judicial process. It includes examination of the standard of evidence and the abilities to deliver high quality judgments within a reasonable time. For the notion of 'legitimacy', the study seeks to examine whether the rule of law, human rights and the Thai constitution have been properly applied in all the criminal processes related to charges of terrorism.

Fourthly, the study seeks to examine the legitimacy of the application of the special laws in countering terrorism. As the use of the special laws has been widely criticised as a derogation of human rights and contradiction of the legal rights offered by the normal criminal procedure law, the study places a highlight on the concept of 'legitimacy'. On this point, it seeks to explore the rights of terrorist suspects held under the special laws and explores whether human rights violations have been perpetrated by the police or military. In the context of the rule of law, the concept of being 'accountable under the law', which is one of the most important elements, is examined. In particular, it aims to explore whether there exists a suitable method to review officials' powers in using the special laws. After this, the

study explores the special laws based on the concepts of the criminal justice system recognised by the Constitution, especially the presumption of innocence, speedy criminal processes, and the rights of suspects in the pre-trial process.

In accordance with the aims and objectives described above, this chapter now discusses the originality of this study and what distinguishes it from other studies with regard to the Thai terrorism laws, as well as providing a literature review. Subsequently, it will explain the research methodologies. Finally, the scope of the research and the overall structure of the thesis will be outlined.

1.4 The originality of the research

This thesis seeks to explore, analyse, critique and provide suggestions to improve the existing legal rules and counter-terrorism strategies employed in relation to terrorism in Thailand. The originality of this study is represented in the focus of the research as well as in the depth and modes of its study.

Firstly, there has been no previous study which has attempted to examine counter-terrorism strategies, with particular regard to the criminal law and criminal procedure law in Thailand, from a legal perspective. To date, there have been several studies related to terrorism in Thailand in the context of human rights and politics. One example is *Terrorism in Thailand concerning human rights and humane treatments in counter terrorism measures after the 9/11 incident in 2001* which was written by Therdsahyam Boonyasana as a Ph.D. thesis at Thammasat University Thailand in 2012. In addition, several studies relating to terrorism in Thailand in the field of political science have been produced, in particular the history of terrorism which was written by Santi Deelee (2007) as a master of political science thesis at Thammasat University Thailand.[81]

There has been much less research carried out into the phenomenon from the legal perspective. Most of the criminal law books, research, and journals in Thailand are mainly restricted to normal criminal offences or normal criminal proceedings. For example, the book, *Thai Criminal Law 1,* written by Kiatkajorn Watjanasawat,[82] provides an in-depth study of the theories and principles of normal criminal offences, but the book mentions very little about terrorism law in Thailand.

---

[81] Deelee, S. (2007) *Solutions of Terrorism Problem in Southern Thailand*. Master of Political Science Thesis, Bangkok. Thammasat University.
[82] Pol Siam Printing 2010

An exceptional example of legal research carried out regarding the phenomena of terrorism in Thailand is *Terrorism in Thailand: Measures of Prevention, and Suppression* by Sookrasom (written as a Master of Law thesis, Thammasat University Thailand).[83] The work was produced in 2006 and mainly examines the Thai laws and domestic measures concerning terrorism in southern Thailand. The study examined the offences relating to terrorism in Thailand, and also analysed some criminal offences within the special laws such as the Emergency Decree of 2005. However, it excluded criminal processes in terrorism cases. It is also now a decade out of date.

Although some Thai scholars, such as Delee and Sookrasom, have suggested that the development of criminal law would be a proper solution for the terrorism occurring in southern Thailand,[84] there is not any research that specifically aims to examine in depth the actual and potential role of criminal law and criminal procedure law. Consequently, this limited literature has left a large gap for this research to explore whether the existing criminal law and its criminal procedures are sufficient to deal with terrorism in the south of Thailand as a prime strategy, or whether other mechanisms should be applied alongside.

The second claim for the originality of this research is based on its fieldwork. This research is a socio-legal study that not only examines technically the texts of the laws relating to terrorism, but also has regard to the efficacy and legitimacy of criminal law and criminal procedure law, and the practical roles of relevant criminal justice officers by integrating a socio-legal approach to exploring how these laws work in practice in Thai society.[85] This research thus strives to examine the phenomenon of terrorism in Thailand from legal and practical perspectives. The study is related to the country's history, its political aspects, the legal details, and also embraces a social perspective.

The main materials for the study were legislative sources, such as the provisions of offences relating to terrorism in Thailand, the Thai criminal procedure law and the special anti-terrorism laws. In addition, the Thai Supreme Court's judgments,

---

[83] Sookrasom, A. (2006) *Terrorism in Thailand: Prevention, and Suppression Measures.* Master of Law Thesis. Bangkok. Thammasat University. pp. 126-128.
[84] Ibid.
[85] Banakar, R. and Travers, M. (2002) *An Introduction to Law and Social Theory*. Oxford. Hart Publishing. pp. 1-15.

together with the statistics relating to terrorism offences from both police offices and prosecutor offices, are considered. However, the originality of this research is also manifested in terms of the additional research methods employed in collecting the data related to terrorism offences. The data in this field was mainly collected from practitioners, such as police officers, prosecutors, judges, defence lawyers, and NGOs. The details of these research methods are described in methodology section below. Data collection with respect to anti-terrorism laws in Thailand is uncommon, and this thesis is broader in scope than previous studies. For instance, the study called *Research on the Effectiveness of Prosecution of National Security Charges and the Protection of Citizens' Rights: A Case Study of the Four Bordering Provinces in Southern Thailand 2012 (Songkla, Pattani, Yala, Narathiwat)* published by the Asia Foundation[86] examined the efficacy of criminal proceedings mainly confined to the prosecution process against national security charges (including terrorism offences). This study makes use of this quantitative data but additionally contributes highly important and significant qualitative data to make further sense of the quantitative data and also the legal doctrinal materials.

1.5 Methodology

As already indicated, this research has adopted a socio-legal approach[87] which examined the legal texts of the laws relating to terrorism, and integrated a socio-legal approach to explore how these laws were implemented and comprehended in the southern Thai setting. This study thus seeks to present a comprehensive study of the impact of Thailand counter-terrorism strategies in the context of 'efficacy' and 'legitimacy'. In more detail, four types of research approaches were applied: doctrinal documentary analysis, qualitative study with semi-structured interviews, a quantitative approach, and a policy transfer study.

Most of the terrorist offences in Thailand are committed in the three bordering provinces in the southern part of Thailand (Pattani, Yala, and Narathiwat), and these locations represented 99 per cent of all terrorist offences committed in

---

[86] Office of Public Prosecution Region 9 (2012) The *Effectiveness of Prosecution of National Security Charges and the protection of Citizen's right: A Case study of the Four Bordering Provinces in Southern Thailand (Songkla, Pattani, Yala, Narathiwat).* Bangkok. Asia Foundation. pp. 1-5.

[87] For further explanation of the socio-legal study, see Banker, R. & Travers, M. (2005) *Theory and Methods in Socio-Legal Research*. Oxford. Hart Publication. pp. 9-13.

Thailand.[88] Therefore, the fieldwork of this research was mainly conducted within those provinces, as they were the main resource of information concerning the implementation of terrorism offences. Further explanations of each methodological approach will now be provided.

1.5.1 Doctrinal research

This study seeks to explore the impact of the Thai counter-terrorism measures. Specifically, it primarily considers the provision of 'offences relating to terrorism' in the Thai Criminal Code Sections 135/1 to 135/4 and criminal procedure law. In addition, the research also examines other relevant legislation, such as special laws that have been enforced alongside the normal criminal procedure law in southern Thailand (namely, the Internal Security Act 2008, the Emergency Decree on Public Administration in State of Emergency 2005, and the Martial Law 1914). The research materials alongside the doctrinal research include the case statistics relating to police officers, public prosecutors and provincial courts and also qualitative interviews; these techniques are described in subsequent headings.

The main materials for this doctrinal aspect of the research are (1) relevant legislation, (2) parliamentary records and parliamentary papers, (3) official government reports, (4) non-government organization studies (especially from Thailand Amnesty and Human Rights Watch), (5) academic literature. This study relies on original legal texts, legal statutes and legal documents in both Thailand and the United Kingdom which are relevant to the research topic. The data was accessed through the Leeds University Library as well as the National Library of Thailand, the library at the Supreme Court of Thailand, and the library of the Attorney General Office in Bangkok, Thailand. Online databases and online legal services were also utilized; for instance, Westlaw and Lexis Nexis, were used for case laws and articles, law journals, law reviews and other legal information resources related in the UK. In addition, Thai online newspapers were also utilised such as Isranews and the Nation, since many incidents and even court cases are not formally reported.

---

[88] Office of Public Prosecution Region 9 (2012) *The Effectiveness of Prosecution of National Security Charges and the protection of Citizen's right: A Case study of the Four Bordering Provinces in Southern Thailand (Songkla, Pattani, Yala, Narathiwat).* Bangkok. Asia Foundation. p. 28.

1.5.2 Qualitative and quantitative research

Qualitative research is a manner of inquiry applied in various academic disciplines, especially in the social sciences.[89] The main goal of the qualitative method is to gather an in-depth understanding of human behaviour and the reasons that govern such behaviour. This type of method might be applied for investigating the whys and hows of decision-making, when there is focus on sample groups. In addition, this method provides deep and rich information in its contextual data.[90] The qualitative approach can be used to seek empirical data to test the research hypotheses.

The qualitative method was mainly selected in this research methodology, as it offered several advantages. The clear strength of qualitative research is its ability to obtain particular information about the opinions, values, and behaviours in both legal and social contexts. This method is also useful in exploring certain sensitive factors relating to social norms, religion and ethnicity.[91] It is important to note here that the terrorism law in Thailand is directly related to sensitive issues such as religion and ethnicity. In this regard, the qualitative approach was adapted in order to gain the opinions of experts whose job it is to apply the law against terrorism in practice. The nature of the qualitative method provided insight into the relation between policy and practice. Qualitative study designs are likely to work effectively with a small amount of cases. David Silverman has stated that 'qualitative researchers are prepared to sacrifice scope for detail, and the detail in this phrase is found in the precise particulars of such matters as people's understandings and interactions'.[92]

The qualitative method has been applied in this research in order to achieve valid and reliable findings. In this sense, when conducting research into the efficacy and the legitimacy of the Thai anti-terrorism laws applied in the southern part of Thailand, the qualitative method has allowed the researcher to undertake in-depth, semi-structured and face-to-face interviews with the relevant criminal justice officers, members of NGOs and defence lawyers. The following points can be used to underline the validity and reliability of the findings.

---

[89] Denzin, K. & Lincoln, S. (2005) *The Sage Handbook of Qualitative Research* (3rd ed.). Thousand Oaks, CA: Sage. pp. 22-23.
[90] Mason,J. (1996) *Qualitative Research*. London. Sage. p. 4.
[91] Ibid.
[92] Silverman, D. (2005) *Doing Qualitative Research, A Practical Handbook.* London. Sage. pp. 9-10.

First, as the researcher sought a clear and deep understanding of the impact of the Thai anti-terrorism laws, the qualitative approach helped the researcher to gain in-depth and rich information from the participants through face-to-face interviews, as previously discussed. Specifically, in terms of 'efficacy', the interviews with the participants provided an understanding of their views towards the existing anti-terrorist laws (criminal law, criminal procedure law and the special laws), which have been working to deal with terrorism in practice, and whether the laws are sufficient to deal with terrorism, or if they need other mechanisms to work alongside them. In terms of the 'legitimacy' of the Thai anti-terrorism laws, the interviews with the selected participants helped the researcher to understand their views towards the values affected by the laws and their impact in the contexts of the rule of law, the Thai Constitutions and human rights. For example, several questions regarding the satisfaction of the participants regarding human rights protection in cases of terrorism were raised.

Second, employing the qualitative approach by using face-to-face interviews allowed the participants to provide suggestions on the issue of applying criminal law as a primary counter-terrorism measure. The aim of interviewing the participants was not only to understand how the Thai anti-terrorism laws have been functioning in practice, but it sought further to understand how they could be improved both in terms of 'efficacy' and 'legitimacy', based on the participants' views. It was believed that the opinions gained through interviewing experienced people who had applied the laws in practice could yield rich and deep information, and that their suggestions would be of great benefit for further development in this field. This method is considered very important to understand the impact of Thailand's anti-terrorism laws as well as the operational needs of the relevant interviewed participants. Importantly, this quest for reformulation and improvement cannot so easily be achieved through the use of a quantitative approach that would focus on numbers and statistics.

Qualitative study can provide a deeper and richer understanding of the social contexts than would be gained from purely quantitative data. This is due to qualitative study's being able to construct an intimate relationship between the researcher and the participants, and the qualitative researchers attempting to

regard how social experience is made and given meaning. [93] In contrast, quantitative studies emphasize the systematic empirical investigation of social phenomena through numerical data, statistics, or mathematics. Nevertheless, there are certain drawbacks to qualitative research that need to be acknowledged. Qualitative research may seem to be subjective research as it might be influenced by the researcher's opinion, and it is possible that the researcher will interpret the research based on his or her biased opinions.[94] By contrast, quantitative research appears to be objective research, allowing the researcher to measure and analyse harder data. [95] In this regard, quantitative research has often been explained as being value-free, whereas qualitative research is depicted as biased. [96] On this point, the researcher attempted to avoid any bias in conducting the interviews. For instance, interviews were conducted with a wide range of people who are involved in the Thai criminal justice system. Furthermore, interviews were not restricted to officials, but were also conducted with NGOs such as Thailand Human Rights Watch and the Muslim Attorney Council.

The quantitative research method is deductive in exploring its relationship between the theory and research by providing a method to test a given theory based on set parameters. In this regard, quantitative research has tended to be applied in scientific research to deal with hard data and numbers which are stable.[97] Accordingly, it can be seen that quantitative research is reflected as an objective approach which provides findings that apply measurements to social life. On the other hand, qualitative research is regarded as a more subjective approach because it is influenced by the researcher's own interests or values.[98] In this way, qualitative research is more suitable for this study, which is based on a set thesis and involves the application of values.

However, in this research, the quantitative research method was also applied. Both qualitative and quantitative research approaches each have their benefits and drawbacks, as previously discussed. Nevertheless, they can be effective when

---

[93] Ibid.
[94] Mason,J. (1996) *Qualitative Research.* London. Sage. pp. 4-5.
[95] Bryman, A. (2008) *Social Research Method.* Oxford. Oxford University Press. p. 391.
[96] Silverman, D. (2005) *Doing Qualitative Research, A Practical Handbook.* London. Sage. p 1.
[97] Bhattacherjee, A. (2012) *Social Science Research: Principles, Methods and Practices.* Text Book Collection. Tampa. University of South Florida. p. 139.
[98] Ibid.

utilised in combination with each anothe r.[99] In this study, the qualitative method was applied to identify factors relating to the impact of the application of the anti-terrorist laws in practice. For example, it was applied to understand better the feelings, satisfactions, and suggestions of the participants using the laws. Then, the quantitative approach was used to understand the overall achievements of legal enforcement to deal with terrorism, based on statistics and numerical data. This includes, for instance, exploring the success rates of police investigations in terrorism charges and conviction rates through comparisons with normal criminal charges such as murder or offences relating to property.

The numerical data used in this research was data not generated by the researcher but which was compiled and published by the Office of Public Prosecution, Region 9. This data included, for example, the research *The Effectiveness of Prosecution of National Security Charges and the Protection of Citizens' rights: A case study of the four bordering provinces in southern Thailand (Songkhla, Yala, Pattani, Narathiwat)* Asia Foundation. This research gathered statistics regarding terrorism cases prosecuted mainly in the three provinces of Pattani, Yala, and Narithiwat. Furthermore, the researcher also gained relevant data from governmental websites such as the official websites of the Prosecutor and Police Offices of Pattani, Yala, and Narathiwat.

In this way, secondary quantitative data was gathered and used for this research instead of collecting primary data. This is because collecting primary data would not have been the most efficient and effective method for this research, since it would be very time-consuming. On the other hand, applying the available secondary data was easier and time-saving. However, there are some concerns regarding the accuracy and validity of the secondary data used in this research. In this regard, there are two issues which might affect the accuracy and validity of the prime data used in the research, namely, *The Effectiveness of Prosecution of National Security Charges and the Protection of Citizens' Rights: A Case Study of the Four Bordering Provinces in Southern Thailand (Songkhla, Yala, Pattani, Narathiwat).* First, this research was undertaken by a group of prosecutors who have been working in the areas. The research made on behalf of the Prosecutor Office (Region 9), which is the main organization that holds the relevant statistics and directly responsible for prosecuting terrorism cases in the three provinces, should be able to generate

[99] David, L., Appiah-Yeboah, A., Salib, P. and Rupert J., 'Merging Qualitative and Quantitative Data in Mixed Methods Research: How To and Why Not' (2007). *Ecological and Environmental Anthropology* (University of Georgia). Paper 18. pp. 19-20.

correct and valid data but the possibility of bias in interpretation is evident. Second, this research was officially published by the Asia Foundation, which is an independent organisation and therefore suggests some level of independent verification.

1.5.3 Interview not observation or focus group

There are three main types of qualitative methods, namely the interview, participant observation, and the focus group. Each method is regarded as effective for collecting a particular type of information for a particular purpose, but the interview approach is considered the most appropriate for this research. Interviews can be described as a method of collecting data, opinion, and information through asking a series of relevant questions.[100] Generally, interviews represent a formal dialogue or meeting between interviewers and interviewees where personal interaction occurs. They are an effective way to obtain information from personal perspectives, opinions, histories, and experiences. The interview approach is a useful method to gain rich information about participants' opinions, feelings, and perceptions. Another benefit of using the interview method is that the interviewer can encourage the participant to open up and probe for further explanations whenever there are unclear or unexpected answers. Nevertheless, it can be difficult for the interviewer to establish a good rapport with all of the participants, so it is possible that certain participants may not answer honestly.[101] However, this method could also help with research questions that are related to sensitive topics or intangible factors, such as social norms, ethnicity, and religion.[102] This is of direct relevance to this study, as terrorism in Thailand is directly related to several sensitive topics such as religion and ethnicity.

In principle, the qualitative research interview approach can be mainly divided into three categories: structured, unstructured and semi-structured.[103] In this research, the semi-structured interview was applied. This type of the interview approach begins with a framework of themes to be explored, and the interviewer can prepare a list of issues and questions to be asked of the participants. In other words, in-depth interviewing is a very useful tool for gaining detailed data on pre-ordained

---

[100] Davies, P., Francis, P. and Jupp, V. (2011) *Doing Criminological Research.* London. Sage. p. 103.
[101] Ibid.
[102] Ibid.
[103] Ibid.

topic, as this largely deductive approach (though it canot rule out unexpected elements of induction) targets personal perceptions and generates data that can provide insights into individual experiences.[104] Face to face interviewing can obtain deep and rich information, due to the participants being more likely to respond to questions privately rather than openly. The interview approach, therefore, was applied in this study, as it could produce benefits for the researcher to gain in-depth and rich information about the terrorism laws in practice, and which included certain sensitive topics.[105]

Participant observation is another qualitative method. It is effective for obtaining data about human behaviours. Although observation might be a useful tool in some types of research for gaining rich and deep information, it was not suited to this study. One of the clear drawbacks is that it is time-consuming.[106] It is possible that the high quality of observational work on the criminal justice system might take many months, which is much longer than the interview approach. Another criticism of observational work is that it is difficult to carry out observational work at official places (courts, prosecutor offices, and police stations), as it might disturb others people and officials working there. In addition, when the participants know that they are under observation, it is possible that they will change their behaviours, and then the researcher may obtain faulty information. Consequently, the observational study approach was rejected for this research.

The focus group is another common type of qualitative method. Generally, this approach is used when the researcher is required to examine a topic in detail.[107] The participants are organised in a group with a given topic to discuss, and the researcher plays the role of facilitator. Focus groups also allow participants to discuss their views and reveal their responses. This approach is therefore very useful, as it could take a researcher beyond the snapshot view typically obtained from interviews and questionnaires.[108] However, the focus group approach was also rejected in this research. Most of the participants in this research are officials with tight timetables, for example, judges, prosecutors, and police officers. So it would be difficult to organise as it could disturb the participants' timetable.

---

[104] Denscomb, M. (2003) *The Good Research Guide: For Small- Scale Research Project*. Maidenhead. Open University Press. p. 189.
[105] Ibid.
[106] Davies, P., Francis, P. and Jupp, V. (2011) *Doing Criminological Research.* London. Sage. p. 70.
[107] Ibid.
[108] Ibid. p. 64.

1.5.4 Sampling strategy

This research applied a strategy of 'purposive sampling'. This type of sampling is constructed to serve a very specific need or purpose, where the researcher has particular interviewee profiles in mind. Walter has explained that 'in purposive sampling, the sample is selected based on what we know about the target population and the purpose of the study. The researcher exercises his or her judgment or knowledge of a population and the aims of the research to select a sample'. [109] One consequence is that generalisation in qualitative research is problematic as the scope of the findings is restricted to scrutinised population, which may not yield generalised findings. [110] In this research, the purposive sampling involved police officers, public prosecutors, judges, defence lawyers and NGOs. According to the concept of purposive sampling, interviewees were selected because they are expected to be information-rich.[111]

Purposive sampling is a technique in which respondents are selected in a non-random manner based on their expertise in the phenomenon being studied.[112] For example, in order to understand the impacts of criminal law and criminal procedure law in cases of terrorism, the researcher can sample groups of police officers, prosecutors and judges who are familiar with the provisions and practices to be researched. The advantage of this strategy is that experts tend to be more familiar with the subject matter than non-experts, and responses from a sample of experts can be considered more credible than a sampled cohort that involves both experts and non-experts.[113]

In this research, any claims of generalisation were not possible because of the small sample size (28 interviewees). The main aim of applying a qualitative study in this study is not to generalize but rather to yield a rich, contextualized understanding of some aspect of human expertise and experience through the intensive study of particular cases. Also, the aim of purposive sampling in this study is to focus on the particular characteristics of relevant expert groups, which would enable the researcher to more effectively answer the research questions.

---

[109] Walter, M. (2010) *Social Research Methods.* (2nd ed). Oxford. Oxford University Press. p. 138.
[110] Bryman, A. (2008) *Social Research Method.* Oxford. Oxford University Press. p. 391.
[111] Patton, M (2002) Q*ualitative Research and Evaluation Methods*. London. Sage. p. 40.
[112] Bhattacherjee, A. (2012) *Social Science Research: Principles, Methods and Practices.* Text Book Collection. Tampa. University of South Florida. pp. 69-70.
[113] Ibid.

Where relevant, quantitative sampling is needed, a large-scale population is randomly selected based on their representative and informative abilities with the aim of generalising the phenomenon to the representative population.[114] Nevertheless, this approach would not have been the most effective strategy for either generating data for this research, as the pursuit of a representative sample demands a large-scale population to be constructed, which is time-consuming and difficult to finish within the limited time frame of this study.[115]

Table 1.2 below records the fieldwork participants. As mentioned earlier, most of the terrorist offences were committed in the three bordering provinces in the southern part of Thailand (Pattani, Yala, and Narathiwat). Accordingly, the fieldwork of this research was conducted within those provinces.

[114] Bryman, A. (2008) *Social Research Method.* Oxford. Oxford University Press. p. 391.
[115] Mason,J. (1996) *Qualitative Research*. London. Sage. p. 92.

Table 1.2 Fieldwork Participants (28 people in total)

Pattani Province	**Narathiwat Province**	**Yala Province**
Police officers (2) - Head of Provincial Police - Investigator	Police officers (2) - Head of Provincial Police - Investigator	Police officers (2) - Head of Provincial Police - Investigator
Public Prosecutors (2) - Expert Public Prosecutor - Provincial Chief Public Prosecutor	Public Prosecutors (2) - Expert Public Prosecutor - Provincial Chief Public Prosecutor	Public Prosecutors (2) - Expert Public Prosecutor - Provincial Chief Public Prosecutor
Judges (2) - Judge of the provincial court - Senior judge	Judges (2) - Judge of the provincial court - Senior judge	Judges (2) - Judge of the provincial court - Senior judge
Defence Lawyers (2) - Senior defence lawyer - Defence lawyer who has experience in terrorism cases	Defence Lawyers (2) - Senior defence lawyer - Defence lawyer who has experience in terrorism cases	Defence Lawyers (2) - Senior defence lawyer - Defence lawyer who has experience in terrorism cases
Non-Governmental Organizations in Bangkok (NGOs) (4) - Amnesty International Thailand - Thailand Human Right Watch - Muslim Attorney Centre (MAC) (in Pattani) - Office of the National Human Rights Commission of Thailand		

The fieldwork participants were selected based on their experiences with terrorist cases, and their responses were not restricted to exploring the efficacy and legitimacy of the criminal justice system in only one province (where they work), but also in a broader context. For example, the researcher could raise a question regarding the impact of criminal law in counter terrorism or how effective and fair is the provision of criminal procedure law in general. Next, the more detailed reasons

why these individuals, institutions and organisations were selected will be explained below. Interview questions were annexed at Appendix A.

1.5.4.1 Police officer interviews

Police officers were selected for interviewing in this study, due to the fact that they are the main mechanism for enforcing the law against terrorists. In terms of ‘efficacy’, police officers who mainly applied the criminal law in practice could yield to the researcher an understanding of how the criminal law has functioned in practice, and what it has accomplished as the main tool for countering-terrorism. In terms of ‘legitimacy’, the interviews with police officers furnished the researcher with an understanding of how terrorist suspects were treated during custody, and whether their legal rights were appropriately offered.

Specifically, the interview questions covered all aspects of police officer duties in dealing with terrorism charges, including questions relating to arrests, interrogations and detentions. The targeted police officers were selected according to their experience and positions, and interviews were carried out only with those police officers who have had experience of dealing with terrorism cases.

1.5.4.2 Prosecutor officer interviews

Prosecutors were interviewed in this research as they are also a key element in applying the laws regarding terrorism. Moreover, this study has sought to understand the relationship between prosecutors and police officers in dealing with terrorist cases. It has sought to understand how they worked together in pre-trial processes on terrorism charges. The interviews carried out with the prosecutors have yielded information to help one to understand the context of ‘efficacy’ rather than ‘legitimacy’. They were considered by this study to be a key source of rich data regarding the effectiveness of the police investigations in terrorism cases. Furthermore, prosecutors who are considered as legal experts who applied both criminal law and criminal procedure law could provide practical information related to terrorist charges. As there was a specific Public Prosecutor Department to deal with the charges of terrorism (Pattani 2), the interviews were conducted at this place.

1.5.4.3 Judge interviews

The purpose of interviewing judges was to explore the efficacy of the design of ‘offences relating to terrorism in Thailand’, as well as to examine the roles of judges in conducting the cases. It has sought to explore whether the existing criminal laws on countering terrorism were sufficient in practice. The interviews conducted with judges enabled the researcher to understand how the laws relating to terrorism were applied in trials and also the performances of legal professionals. In terms of ‘legitimacy’, the researcher sought to examine how terrorist suspects were treated during a trial, and whether the trial was conducted in accordance with the concepts of the rule of law and the Thai constitution.

1.5.4.4 Lawyer interviews

Interviews with defence lawyers were considered vital for this study. The defence lawyers’ views concerned certain important issues about which the researcher might not have been able to gain insight from the criminal justice officers, such as the rights of defendants in terrorism cases, human rights violations during detention, and so on. Thus, the defence lawyers’ points of view were regarded as valuable and they were important informants for the data analysis, to be weighed together with the information gained by the governmental side, such as the police and prosecutors. This strategy was designed to avoid any bias that would result from considering only one side of the terrorism process. The interviews were conducted with lawyers who regularly had clients in terrorist cases and who were experienced in the court proceedings relating to terrorism cases.

1.5.4.5 Non-Governmental Organization (NGOs) interviews

The last category of interviewee encompassed NGOs. The information gathered from the NGOs was valuable in addressing the issues of ‘legitimacy’ rather than ‘efficacy’. The interviews were conducted through the following Non-Governmental Organizations: Amnesty International Thailand, Thailand Human Rights Watch, Muslim Attorney Centre (MAC) and the Office of the National Human Rights Commission of Thailand. The purpose of these interviews was to understand their points of view regarding the anti-terrorist laws in the context of the protection of certain rights and the rule of law. Their points of views were very helpful to understand why human rights violations occurred as a result of the application of the special laws. In this regard, the interviews with NGOs generated rich data for

addressing one of the questions of the research regarding the legitimacy in the application of the special laws.

1.5.5 The Process of gaining access for the fieldwork

In this part, the steps and difficulties experienced before entering the field and arranging the interviews will be explained. All access to the different institutions was initiated by directly contacting those selective institutions both by email and telephone. It is important to emphasise here that accessing governmental or non-governmental institutions for the purpose of conducting research is common in Thailand, and there are many researchers who have carried out their research in this way. Traditionally, in order to gain access to any governmental department, a consent letter from the director is required. Hence, this part will focus on the researcher's access to the fieldwork participants.

1.5.5.1 Access to police officers

As mentioned beforehand, access to any governmental department by convention requires consent to be granted by the institutions or directors in order to facilitate access to the requested department and arrange appointments with officials. After the researcher received the initial permission from the directors of each police station via phone or email, the researcher was invited to meet the directors at their respective police stations (for the three provinces of Pattani, Yala and Narathiwat). During the meetings, the participants were selected by the directors based on their experience in cases of terrorism. Regarding the locations for interviewing, the researcher proposed that coffee shops would be a suitable place for carrying out the interviews, and this offer was agreed by all of the directors. As for the time of conducting the interviews, most of the participants required a time slot after work or at the weekends. The researcher observes here that all of the directors and the participants showed their willingness in allowing the researcher to conduct the interviews. For example, one of the directors remarked that the research topic was very interesting, and that it would enhance the Thai criminal justice system when dealing with terrorism.

1.5.5.2 Access to public prosecutors

The Special Department Prosecution (Pattani 2) was established in 2013 to specifically deal with terrorism offences in the three provinces of Pattani, Yala and Naratiwat. Thus, as the first step, the researcher directly made contact with the

Head of this Department via phone. After receiving the initial consent to conduct the interviews, the Head of the Department selected the potential prosecutors (from three provinces) for the interviews based on their experiences in terrorist cases. Regarding the locations for interviewing, the researcher again proposed that coffee shops would be a suitable place for interviews, and this offer was accepted by the Head of the Department. However, one of the interviewed prosecutors requested to give the interview in his office for the reason of security.

1.5.5.3 Access to judges

The researcher directly contacted the Head of each of the Provincial Courts (contact numbers can be found on their websites). The researcher fully explained the purposes of the research to the Heads via telephone, and all agreed that the researcher could conduct the interviews. The researcher then visited the three Provincial Courts (Pattani, Yala and Naratiwat) to carry out the interviews with the judges selected by the Head of each Provincial Court, based on their experience of cases involving terrorism. During the interviews with the participants, no hesitation or obstacles for the interviews were encountered. However, the researcher's offer to conduct the interviews in a coffee shop was rejected by all of the participants. They all explained that the interviews can only be made in the court (a meeting room) as indicated in the Code of Judicial Conduct.[116]

1.5.5.4 Access to defence lawyers

The initial access to the defence lawyers in the three counties of Pattani, Yala and Narathiwat was started by directly contacting the Muslim Attorney Council (MAC), which was formed in 2004 by Muslim lawyers who wanted to provide legal aid in cases of security charges (including terrorism cases). Among all the interviewed groups, the defence lawyers were the most enthusiastic group to be involved in the interviews. It can be seen that the Muslim Attorney Council (MAC) voluntarily arranged the appointments and locations for conducting the interviews across the three provinces of Pattani, Yala and Narathiwat. Most of the interviews with the defence lawyers were carried out at coffee shops and in hotel lobbies.

1.5.5.5 Access to NGO members

As previously mentioned, the researcher conducted interviews with members of Amnesty International Thailand, Thailand Human Rights Watch, Muslim Attorney

[116] See Code of Judicial Conduct Thailand (Chapter 5) B.E.2552 (2009).

Centre (MAC) and the Office of the National Human Rights Commission of Thailand. The initial access was started by sending emails to their organisations to explain the researcher's background and to outline the research aims. However, several of them failed to reply, so the researcher contacted them again by phone (contact numbers can be found on their websites). As observed with the defence lawyers' group, gaining access to them was made considerably easier because of the tremendous help provided by the Muslim Attorney Council (MAC), whereas access to the NGO members was slow; they explained their reaction mainly by reference to pressure of work. After receiving the necessary permission from the organisations, the authorities of each organisation selected the participants for the interviews, which were done at coffee shops and in hotel lobbies.

1.5.6 Data analysis strategy

The study has utilised qualitative research for the purpose of generating a valid method of data collection, but it is also necessary to consider how to derive credible and valid conclusions from that data. Credibility relates to the accuracy and the truth gained from the participants' information as well as the researcher's interpretations,[117] whereas, validity concerns the accuracy of the research findings, and considers whether it is generated from a reliable and accurate interpretation of the social context to which it refers.[118] The researcher reflected upon these attributes and attempted to secure these values to ensure the collection of worthwhile information.

The sincerity of the interviewees could not be objectively measured, but the high level of flexibility and comfort granted to the interviewees during the interviews should be highlighted. As described in the section on ethics below, the researcher ensured that all of the interviewees, both from the governmental side and non-governmental side, voluntarily participated and were supplied with the information sheets and given appropriate time to read and raise questions throughout the process. The research clarified that any participant could choose not to answer any question, and that their identity would be anonymous. Confidentiality and anonymity are explained in the section about ethics below. All of the participants involved in this study displayed apparent openness in answering the questions. Nevertheless, some of them refused to be recorded on tape, and so note-taking was employed

[117] Flick, U. (2006) *An Introduction to Qualitative Research.* London. Sage. p. 370.
[118] Hammersley, M. (1990) *The Dilemma of Qualitative Method: Herbert Blumer and the Chicago Tradition*. London. Routledge. p. 57.

instead. The researcher realised that to obtain information relating to terrorist cases would be difficult, as the researcher is not a criminal justice officer. However, most interviewees expressed the wish that this study should enhance the Thai criminal justice system when dealing with terrorism.

Regarding the data analysis strategy employed in this research, content analysis was applied. Content analysis is the systematic analysis based on the content of a text in a quantitative and qualitative manner; for example, who says what, why, to what extent and with what effect.[119] Content analysis is generally conducted according to the following steps. First, when there are several texts to analyse, the researcher initiates by sampling a selected set of texts from the population of texts for analysis. This method is not done randomly, but the texts that have more relevant content should be chosen selectively. The second process is called 'unitizing'. In this step, the researcher identifies and utilises working rules to separate each text into segments that can be treated as separate units of analysis. The third step is called 'coding'. In this step, a coding technique is applied based on the themes the researcher was searching for. For the final step, the coded data is analysed to consider which themes occur most often, in what contexts, and how they were connected to each other. However, content analysis has some limitations that need to be considered. One general criticism of content analysis is that it lacks a set of systematic universal processes that would allow the analysis to be replicated by other researchers.[120] In addition, the sampling of content must be done consciously and carefully in order to avoid bias on the part of the researcher.

In terms of research reliability, this is concerned with the consistency, repeatability and stability of the informant's accounts, as well as the researcher's capability to collect data accurately.[121] Reliability in quantitative research refers to the exact replicability of the processes and results. However, defining reliability in qualitative research is challenging. The core of reliability for qualitative research lies with consistency.[122] Silverman has suggested five approaches in developing the reliability of method and results. These are: refutational analysis, constant data

[119] Bhattacherjee, A. (2012) *Social Science Research: Principles, Methods and Practices.* Text Book Collection. Tampa. University of South Florida. pp. 115-116.
[120] Ibid.
[121] Bryman, A. (2008) *Social Research Method*. Oxford. Oxford University Press. pp. 391-392.
[122] Carcary, M. (2009) 'The Research Audit Trial – Enhancing Trustworthiness in Qualitative Inquiry'. *Electronic Journal of Business Research Methods*. Volume 7 Issue 1, (pp. 11 - 24), available online at www.ejbrm.com

comparison, comprehensive data use, inclusion of deviant cases, and the use of tables.[123] Nevertheless, qualitative researchers have realised the difficulty in reproducing social phenomena due to the challenges in replicating the exact conditions under which evidence is primarily collected.[124] Even if the same interviewees were involved in a later similar survey, it is unlikely they would give identical answers. In this regard, their understanding of the key points may have further changed or developed after the initial research process. Nevertheless, if similar research were conducted with significant care, one would anticipate that the results would not be entirely distinct. Therefore, the point regarding reliability needs to be conceptualised in context when conducting qualitative studies.[125]

In terms of research validity, this is related to considering whether the measures applied in the study are consistent.[126] One of the controversial issues regarding the quality of qualitative research is related to transparency, as it seems difficult to record precisely what the researcher has done and what the adopted analysis method of the research was to reach the conclusion.[127] Such a concern was also raised by Seale, who stated that 'Social researchers and other writers in the human sciences are increasingly encountering a problem that is also a more widespread feature of social relations in late modernity: lack of trust in authority'.[128]

The important point in qualitative research is to achieve a congruence of understanding between the informants and the researcher and to ensure that the research is credible.[129] This task involves demonstrating that the research design has accurately identified and explained the phenomenon under investigation.[130] There are many suggested guidelines to develop the validity of qualitative studies. For instance, Mason refers to the need to explain the validity of data generation, which is concerned with how suitable a specific research process is for answering

---

[123] Silverman, D. (2009) *Doing Qualitative Research.* (3rd edn). London. Sage. p. 472.
[124] Ibid. 114.
[125] Ibid.
[126] Bhattacherjee, A. (2012) *Social Science Research: Principles, Methods and Practices.* Text Book Collection. Tampa. University of South Florida. pp. 36-37.
[127] Bryman, A. (2008) *Social Research Method.* Oxford. Oxford University Press. pp. 391-392.
[128] Seale, C. (1999) *The Quality of Qualitative Research*. London. Sage. p. 19.
[129] Lewis, J. (2003) *Design issues. In Qualitative Research Practice – A Guide for Social Science Students and Researchers*. London. Sage. pp. 47-76.
[130] Carcary, M. (2009) 'The Research Audit Trial – Enhancing Trustworthiness in Qualitative Inquiry' *Electronic Journal of Business Research Methods*. Volume 7. Issue 1, (pp. 11 - 24), available online at www.ejbrm.com

the research questions as well as providing explanations.[131] Next, the validity of the researcher's interpretations has also to be considered. This is concerned with how convincing the data analysis method and the researcher's interpretations are. Furthermore, Lewis and Ritchie recommend that it is worth determining the qualitative study's internal and external validity.[132] The internal validation is developed by applying a constant comparative process and by realising the importance of deviant cases in obtaining a better understanding for theory development; whereas the external validation is enhanced through triangulation and respondent validation.[133]

The researcher should present the appropriate extracts of the information in the research report by explaining processes in the interviews, which were elaborated and reviewed to enhance the comparability of the different informants. In addition, the researcher should formulate the method of analysing and conceptualising the information with a standardised set of measurements.[134] Accordingly, standardising field notes (for example, following the same conventions on how to write notes and transcription) could enhance the validity of the data.[135] Moreover, a reflective understanding on how the data has emerged and how it has impacted the findings are needed, as described below.

In order to achieve validity through semi-structured, face to face interviews, the process should be recorded and deliberately transcribed, and then systematically analysed to yield a valid record. The validity of the research is also reflected in the structured interviews schedules, which are reproduced in Appendix A of this thesis.

Qualitative research is generally believed to be subjective, because it is based on the researcher's perspectives of what is determined relevant or important, which are influenced by the values of the researcher.[136] Thus, the qualitative findings might be oriented toward the contextual interpretation of the explored social world from the perspective of the researcher. Thus, at least to increase transparency throughout the fieldwork, the researcher provides full descriptions in detailing the

---

[131] Mason, J. (2002) *Qualitative Researching*. (2nd edn). London. Sage. pp. 6-10.
[132] Lewis, J. (2003) *Design issues. In Qualitative Research Practice – A Guide for Social Science Students and Researchers*. London. Sage. pp. 47-76.
[133] Ibid.
[134] Bryman, A. (2008) *Social Research Method.* Oxford. Oxford University Press. p. 31.
[135] Silverman, D. (2001) *Interpreting Qualitative Data: Methods for Analysing, Talk, Text and Interactive.* London. Sage. p. 230.
[136] Bryman, A. (2008) *Social Research Method.* Oxford. Oxford University Press. p. 391.

social phenomena. The standard of quality research has to be determined and features tape recordings, transcriptions, field notes and reflexivity. This part explains the productive ways by which the research attempts to organise and review the generated materials involving four important steps: producing a record, coding, sorting data and theming data.

1.5.6.1 Producing a record

The interviews were audio-recorded when the participants agreed. Recording is a vital tool for accurately gaining information and interview comments, and the records can then be evaluated by the researcher. These recorded data were then transcribed into a text file. Nevertheless, the researcher did not solely depend on audio-recording: note-taking was also employed, as the researcher was aware that solely relying on tape-recording could lead to certain problems, such as the running out of the tape recorder's battery.[137] Moreover, field notes can provide extra valuable information about the relevant atmosphere that tape recordings cannot, such as information about the interview locations, body language, and differing interview atmospheres.[138] After the interviews were conducted, the researcher then focused on gathering the relevant documents obtained by the participants, tape recordings from the interviews, and the transcripts; all were processed in ways which ensured confidentiality, data protection, and privacy.[139]

1.5.6.2 Manual coding

A manual coding process was applied to the most relevant and interesting data that was able to provide insights into the research questions. In this process, a code in qualitative inquiry is defined as 'a word or short phrase that symbolically assigns a summative, silent, essence-capturing or evocative attribute for a portion of language-based or visual data'.[140] The manual coding was utilised as this study is a small-scale work, and it is the first piece of empirical research undertaken by the researcher. In such circumstances, it has been suggested by Saldana that manual coding should be used in preference to a computing programme (such as NVivo).[141] Furthermore, the NVivo programme might not be suitable for this study due to the fact that the interviews were conducted in the author's native language (Thai), while

---

[137] Noaks, L. Wincup, E. (2004) *Criminological Research. Understanding Qualitative Methods.* London. Sage. pp. 50-51.
[138] Denscombe, M. (2003) *Good Research Guide: For Small-Scale Research Projects.* Maidenhead. Open University Press. pp. 189-190.
[139] Further explanation can be found in the Section 1.6 Ethical Issues.
[140] Saldana, J. (2009) *The Coding Manual for Qualitative Researchers*. London. Sage. p. 3.
[141] Ibid. p. 22.

the programme is only available for data spoken in English. In this regard, coding analysis manually was considered more suitable than using a computer programme for this project. The manual coding in this study was a handwritten transcription of the recorded interviews, from which the researcher, after deep reflection, extracted selected important and relevant data which best matched the research questions, applying them in connection with the research arguments either as specific quotes or as more combined reflections, trends, and insights.

1.5.6.3 Collecting and sorting the code

The codes were categorized into diverse patterns and segments. At this stage, the analysis involved the separation of the codes into manageable parts. Nevertheless, the method of data segmentation is not an interpretation of the meaning of the data, so it cannot answer the research questions.[142] In this sense, the segmented data has to be reconstructed in order to achieve a comprehensive meaning that is capable of interpreting the social phenomena which the study sought to explore.

Accordingly, the researcher compiled the codes, and then put them in a schedule. The schedule was divided into separated columns, and each was named and included one of the research objectives. Then, the codes were sorted in the relevant columns for capturing the general themes. These were then cross-referenced with different interviewees and cohorts of interviewees.

1.5.6.4 Theming data

The researcher started the method of interpreting materials by considering the participants responses, questions, transcripts and filed notes. Then, the researcher concentrated on the participants' statements and identified the theme of words as they expressed. The next step was to put those words into a theoretical framework (based on the thesis and research objectives) to explain the phenomenon.

At this stage, the researcher remained open and flexible, as there had not been any previous research which could be used as a reference point. During the initial data collection, this approach kept the researcher open to any unexpected new data-generating source. In addition, the researcher attempted to be reflexive and active during the method of data generation. In this regard, reflexivity is a concept that explains the relationship between the research data and the researcher.

[142] Coffey, A. and Atkinson, P. (1996) *Making Sense of Qualitative Data: Complementary Research Strategies.* London. Sage. p. 62.

Researcher reflexivity is a vital part of the qualitative process, as it recognises that a researcher is not a neutral observer or data collector in the construction of knowledge.[143] Rather, the interpretation of the fieldwork data emanates from the evidence found in the field.[144]

1.5.7 Research methodology: policy transfer

The concept of policy transfer was another method utilised for this research. Policy transfer is described 'as a process of examining knowledge about policies, administrative arrangements, institutions and ideas in one political setting as applied in the development of policies, administrative arrangements, institutions, and ideas in another political setting'.[145] Policy transfer can be used as a method to understand the movement of political ideas and policies.[146] Adapting policy transfer into a conceptual work can enhance the understanding of ideas such as what are the motivations of policy-makers related to the policy transfer process.[147] To understand the concept of policy transfer, Dolowitz has stated that 'there are basically four different degrees of transfer; copying which involves direct and complete transfer; emulation, which involves transfer of the ideas behind the policy or program; combinations, which involve mixtures of several different policies; and inspirations, where policy in another jurisdiction may inspire a policy change, but where the final outcome does not actually draw upon the original'.[148]

It is worth emphasising at the outset that this aspect of the study was not designed to compare in all aspects Thai law and practices to the UK counter-terrorism equivalents. Rather, it sought to explore specific contrasts that would be helpful as a comparative reference to the Thai counter-terrorism strategies either to provide explanations of existing provisions and practices or to offer models for future reform. This study applied the policy transfer concept, and thus it is not designed to draw a comparison between all the legal aspects of Thailand and the UK, due to the substantial legal and social differences between both countries. Rather, it sought to

---

[143] Gray, D. (2009) *Doing Research in the Real World.* (2nd edn). London. Sage. p. 498.
[144] Mason,J. (1996) *Qualitative Research.* London. Sage. p. 6.
[145] Dolowitz, D. and Marsh, D. (2000) 'Learning from abroad: The role of policy transfer in contemporary policy-making'*. Governance an International Journal of Policy, Administration and Institutions.* Volume 13, Issue 1. pp. 5-10.
[146] Jones, T. and Newburn, T. (2007) *Policy Transfer and Criminal Justice. Exploring US Influence over British Crime Control Policy.* Maidenhead. Open University Press. pp. 1-8.
[147] Ibid.
[148] Dolowitz, D. and Marsh, D. (2000) 'Learning from abroad: The role of policy transfer in contemporary policy-making'*. Governance an International Journal of Policy, Administration and Institutions.* Volume 13, Issue 1. pp. 13-17.

examine the effectiveness and legitimacy of selected UK approaches, and then strived to transfer the ideas that were appropriate for incorporation into Thai laws and practices.

The project of policy transfer remained worthwhile because of the attraction of the UK as a model for study. This attractiveness arises for two broad reasons. One is that the researcher was based in the UK and so had ready access to a rich amount of information and materials on UK counter terrorism strategies, laws, and practices. The second reason is that the UK is one of the foremost countries in the world when it comes to experience of terrorism and developing in response counter terrorism strategies, laws, and practices.[149]

Policy transfer study can offer certain advantages for this research. Nelken has stated that 'Comparative sociology of law cannot go it alone. Progress in this field requires learning from and collaborating with many others disciplines, including comparative law, history, international relations, political science, anthropology, and cultural studies'.[150] The policy transfer method is seen as a very useful mechanism for the research, as it can be applied to the study of the differences and similarities between the laws and counter-terrorism strategies applied by Thailand and the UK.

The application of the concept of policy transfer helped the researcher to realise the certain differences between the UK and Thailand in dealing with terrorism could be explored for the benefit of the thesis, especially in terms of offering up models for reform of Thai laws and practices. Differences emerge first at a strategic level, whereby the UK has clear statements of its policies (described below), whereas Thailand does not. Thus, the UK Countering International Terrorism Strategy (CONTEST) is worthy of examination because it is widely admired and emulated elsewhere in the world, and so it offers a worthwhile lesson for Thailand to learn from. The UK strategy was published in 2006,[151] and was amended several times afterwards.[152] Therefore, the UK's Counter-Terrorism Strategy (CONTEST)

---

[149] Walker, C., 'Terrorism and Criminal Justice: Past, Present and Future' (2004) *Criminal Law Review.* pp. 311-327; Roach, K. (2011) *The 9/11 Effect* (Cambridge. Cambridge University Press).

[150] Nelken, D. (2002) *An Introduction to Law and Social Theory.* Portland Oregon. Hart Publishing. p. 66.

[151] Walker, C. (2011) *Terrorism and the Law*. Oxford. Oxford University Press. pp. 7-10.

[152] Home Office, *Pursue, Prevent, Protect, Prepare: The United Kingdom's Strategy for Countering International Terrorism* (Cm 7547, London, 2009) para 7.07. See also Home Office, *Countering International Terrorism* (Cm 6888, London, 2006), *The United Kingdom's Strategy for Countering International Terrorism* (Cm 7833, London, 2010). Compare the

represents very useful material for this research study in the absence of any equivalent in Thailand.

A second worthwhile area for exploration is structural and organisational in terms of how the respective states deal with terrorism offences through responsible organizations. In the UK, the establishment of the special police units (the Counter Terrorism Command and Counter Terrorism Units) and prosecutors (the Counter Terrorism Division of the CPS) reflect how to deal effectively with terrorism threats and criminal charges. The reason behind the establishment of those bodies was to enhance the state's ability in dealing with terrorism more systematically and effectively.

In Thailand, Special Operations Unit 'Naraesuan 261' was set up in 1983' by a Thai Cabinet Resolution with the aim of counter-terrorism.[153] In practice, however, their role in counter-terrorism seems unclear.[154] Most of terrorism cases in the south have been dealt with 'normal' police officers both for pursuing and investigating processes as the same as other types of criminal offences.[155]

In 2013 the Office of Public Prosecutor (Pattani 2) was established by an Announcement of the Office of the Attorney General No 1858/2556 to specifically deal with terrorist charges in all areas of Pattani, Yala and Narathiwat provinces. The establishment of this institution reflect the requirement of developing a specialist criminal justice system to handle terrorism charges. The concept behind the establishment of the Office of Public Prosecutor (Pattani 2) would consider similar to the function of the UK Counter Terrorism Division of the CPS. However, the researcher realized that the Office of Public Prosecutor (Pattani 2) was established to be responsible to consider whether evidence compiled by police officers (from the three provinces) in terrorism charges is sufficient to bring a prosecution to a court. The Office of Public Prosecutor still differs from the UK model because there is no any special power to intervene in police investigations unlike the power in the UK Counter Terrorism Division of the CPS. This example

---

previous absence of campaign planning under Operation Banner (Army Code 71842, London, 2006) paras 409,536.

[153] http://www.nationreligionking.com/police/borderpatrol/paru/naresuan261/ [Online] [Accessed 14 February 2015].

[154] The information were derived from the interviews with the police officers at Yala, Pattani and Narathiwat provinces (P.O.Y.5), (P.O.P.2) and (P.O.N.4).

[155] See further information at Chapter 4.

would show that there remain significant differences in terms of anti-terrorism laws and institutional frameworks of both states.

A third area for exploration of policy transfer, most relevant to this thesis, is that there are specific offences and some specific criminal procedures for facilitating terrorism charges in UK law and practice. However, In Thailand, offences relating terrorism were enacted in the Thai Criminal Code as the same as other types of criminal offences such as offences against life, body and property, and there is no special procedure to deal with terrorism offences. The researcher realized these differences could be potentially instructive for testing Thai laws and practices and also for identifying models for reform. For instance, the research examined the UK special law of arrest under Section 41 of the Terrorism Act 2000 which allows a constable to arrest a person whom reasonably suspected to be a terrorist without a warrant.[156] In this regard, as the Thai criminal procedure law does not provide any power to arrest a suspected terrorist without a court warrant.[157] The study sought to examine whether the Section 41 of the Terrorism Act 2000 could work in the southern Thailand's situation.

The concept of policy transfer was considered appropriate for this research. Specifically, it could help the researcher to explore similarities and differences between the doctrinal materials in the two jurisdictions, and this tactic also guided the researcher to better understand the content and range of the fieldwork data.[158] The technique of policy transfer was also applied between the impact of criminal law in Thailand and the role of the UK Counter-terrorism Strategy in terms of efficacy and legitimacy.

As stated at the outset of this section, this research applied the concept of policy transfer rather than a systematic and comprehensive comparison. Policy transfer will be more selective (in terms of topics covered) and purposive (to assist with the analysis where relevant) than a comparative law exercise. One reason for this limitation to policy transfer is that the underlying legal systems of Thailand and the UK are very different. The legal system in Thailand is based on civil law, while the UK's is based on common law. There are also major differences between the two jurisdictions in terms of history, politics, customs, geography, religion, morals and ideology. Therefore, the research sought to explain both the Thai and the UK

---

[156] See further information at Chapter 4.
[157] See Thai Criminal Procedure Code Section 80.
[158] Adams, M & Bomhoff, J. (2012) *Practice and Theory in Comparative Law.* Cambridge. Cambridge University Press. p. 4.

approaches to counter terrorism only for the purposes of selective policy transfer and not to provide equal step by step explanations of each jurisdiction. As well as the broad differences in legal systems, the two jurisdictions have markedly different approaches to the utilisation of criminal law in counter-terrorism, though they are closer in terms of seeking to achieve broad goals of legitimacy and efficacy. Although almost any policy or law can be transferred from one jurisdiction to another, subject to the issue and situation involved, it is possible to classify policy transfer into six general categories, all of which have relevance to this study: policy aims, contents and instruments, ideologies, ideas and attitudes, programs, and negative lessons.[159] However, it should be noted that not all of transfers are successful.[160] Thus, it is vital to explore which factors are related to policy failure. In this sense, it was explained by David P. Dolowitz that there are at least three main factors which would conduce to policy failure.[161] Firstly, there is 'unknowledgeable transfer'; this occurs when the borrowing system has inadequate information about policy, institutions and how it works in the originating system. Secondly, there is 'incomplete transfer'. It occurs when vital elements that made the policy or institutions a success in the originating system may not be fully transferred. Lastly, there is 'inappropriate transfer'. It relates to inadequate consideration accorded to the differences between social, economic, ideological and political contexts in the borrowing and transferring systems. In summary, it was suggested by Richard Rose that the export and import of programs including laws by lesson-drawing is valid only when systematic care is considered under what situations and to what extent a programme in place in one country could work in another country.[162]

1.6 Ethical issues

Qualitative research involves human participants and so should assure that the project is designed and conducted to high ethical standards.[163] In other words, researchers who conduct the research relating to human participants have a normative responsibility to ensure that they recognize and protect the participants' rights. Another clear responsibility of the researcher is credibility, and the credibility of the research needs to be considered to ensure that the researcher produces a

---

[159] Dolowitz, D. (2000) *Policy Transfer and British Social Policy Learning from the USA?* Buckingham. Open UP. pp. 22-23.
[160] Ibid. p. 33.
[161] Ibid.
[162] Rose, R. (1993) *Lesson-Drawing in Public Policy: a Guide to Learning across the Time and Space*. New Jersey. Chatham. p. 20.
[163] University of Leeds Research Ethics Policy January 2013, University of Leeds, UK.

true result. In this regards, credibility can be achieved in many ways, as already discussed in section 1.5.6 Data Analysis Strategy.

At the first step, the researcher followed the British Society of Criminology Code of Ethics (BSC) when conducting the fieldwork.[164] The BSC code provides rules for carrying out professional research. The aim of this code is to encourage the researchers to behave ethically by enhancing the awareness of ethical considerations during the fieldwork. The research also followed the Leeds University procedure by applying for ethical review through the research support administration.[165]

This part discusses the principal ethical considerations that arose in practice during the process of conducting interviews with research participants in southern Thailand. The study sought to apply the ethical standards when conducting fieldwork by complying with the BSC code and the Leeds University procedure.

1.6.1 Informed consent

One of the basic ethical principles, which is often expressed in social science, is informed consent.[166] It aims to ensure that any involved participants should be strictly voluntary, which means that the research subjects should be informed of the nature and consequences of their participation. Before interviewing, the researcher provided all participants with information sheets[167] regarding the research aims and objectives, and the participants were also informed of the reason why they were selected for the interview. Also, the researcher informed the participants about their rights, and that they could withdraw their consent for interviewing within 28 days after the interview was made without negatively affecting the relationship between the researcher and the participants.[168] The participants had sufficient time to consider the details of the information form and raise any concerns before the participants were required to sign the consent form.

---

[164] British Society of Criminology Code of Ethics for Researchers in the field of Criminology. Available at http://www.britsccrim.org/ethical.htm.
[165] Ethical Review: What's the point? (Research and Innovation Service: University of Leeds, UK, February 2012) available at http:/researchsupport.leeds.ac.uk/images/uploads/docs/Ethics ForResearchweb.pdf.
[166] Davies, P., Francis, P. and Jupp, V. (2011) *Doing Criminological Research*. London. Sage. pp. 283-284.
[167] See Appendix B.
[168] Research Governance Guide University of Leeds available at www. leeds.ac.uk/hsphr/rgf/ethics%20consent. htm.

1.6.2 Confidentiality and safeguarding the participants from harm

Personal anonymity and confidentiality were protected. The researcher informed the participants about how the information materials would be applied and kept.[169] The researcher ensured that all the data gained from the participants has been protected. This is one of the most important of the researcher's duties, to ensure that any confidential data will not be revealed to unauthorized persons. Moreover, the anonymity of all the participants was guaranteed by coding their identity and not disclosing their names in the thesis. In addition, according to professional standards, the study made sure not to interview relatives or persons connected to the researcher.

Another important ethical principle is that no individual should be harmed by the research.[170] The information gained from the personal perspectives, was written in a non-harmful fashion, in order to allow the participants to feel comfortable. All participants were offered the right to withdraw the consent within 28 days after the interview was made as listed in the Appendix B.

1.6.3 Data protection and retention strategy

To ensure the confidentiality of the data collected and proper data management, the researcher followed the rule of the Leeds University Information Security Management System (ISMS) which provides the policy on safeguarding data, storage, backup, and encryption.[171] In order to secure data gained from fieldwork, Cryptainer was used. Transcripts and audio-recordings were stored on Leeds University security software so as to avoid any unacceptable disclosure that would harm the confidentiality protection.[172] The retention strategy is to delete the information gained by the participants after the successful completion of the research. This strategy was informed in advance to assure the participants about the data storage operation.

---

[169] Noaks, L.& Wincup, E. (2004) *Criminological Research. Understanding Qualitative Method.* London. Sage. p. 50.
[170] Davies, P., Francis, P. and Jupp, V. (2011) *Doing Criminological Research.* London. Sage. pp. 283-284.
[171] Information Security Management: Policy on Safeguarding Data Storage, Backup and Encryption, available at http://campus.leeds.ac.uk/isms/.
[172] Flick, U. (2006) *Introduction to Qualitative Research.* London. Sage. p. 50.

1.7 Thesis outline

This thesis is composed of six chapters, including an introduction and a conclusion. This part summarises the content of each chapter. After this introduction, Chapter Two 'the Background to Terrorism in Thailand', aims to explore the root causes of terrorism in southern Thailand. It seeks to examine this issue with reference to the social cultures, ethnic identity, and religion. The chapter aims to provide the essential background knowledge regarding the current phenomenon of terrorism in Thailand.

Chapter Three, 'the Criminal Law and Counter-Terrorism in Thailand' aims to explore whether the criminal law in Thailand can operate as the prime mechanism to deal with terrorism, or whether it needs other mechanisms to work alongside it. For the first part of this chapter, the general principles of the Thai criminal law on counter-terrorism are discussed, and then the second part highlights the roles and functions of the Thai criminal law in dealing with terrorism.

Chapter Four, 'Criminal Processes and Counter-Terrorism in Thailand', examines the Thai criminal justice system in dealing with terrorism charges based on the notions of 'efficacy' and 'legitimacy'. Regarding efficacy, this chapter considers the three steps of criminal processes; investigations, prosecutions, and trials. In terms of 'legitimacy', this chapter seeks to understand whether the Thai criminal justice system has fully complied with three aspects of human rights, the rule of law, and the Thai constitution.

Chapter Five, 'Special laws and Counter-Terrorism in Thailand', examines the roles and powers of three special laws, which are: the Internal Security Act 2008/2551, Emergency Decree on Public Administration in State of Emergency 2005/2548 and Martial law 1914/2457. These special laws are currently applied alongside regular criminal offences and procedure law in south Thailand. These special laws are also examined through the notions of 'efficacy' and 'legitimacy'.

Chapter Six encompasses 'Conclusion and Suggestions'. This chapter concludes the research findings and reflects on the methodology and future research.

The date of original submission of the thesis was July 2016 and the thesis reflects materials up to that date.

1.8 Conclusion

This chapter explained the background to the study from three perspectives: terrorism in the international context, in the regional context and in southern Thailand. The chapter also outlined the research aims to explore Thailand's counter terrorism strategies, especially criminal law, criminal procedure law, and the special laws which have been applied in the south of Thailand, with reference to the notions of 'efficacy' and 'legitimacy'.[173] In addition, this chapter illustrated the research methodologies that were applied in achieving the research objectives and outlined in depth the structure of the empirical research which was undertaken in Thailand. The emphasis was placed to the qualitative research approach, which was applied to gain information from selected samples of relevant professional respondents (28 in total who were purposively sampled). For the qualitative research approach, the data collection method used in this research was in-depth, face-to-face, semi-structured interviews that yielded information on the topic from key participants (the police officers, the prosecutors, the judges, the defence lawyers, and the NGOs members). Furthermore, quantitative research method was also applied to gain relevant data such as outcomes of police investigations in terrorism charges and conviction rates in terrorism cases. Finally, the concept of policy transfer was also deployed to find strategies, laws and practices that function legitimately and effectively in the UK, and then considered whether it is possible to adapt them into Thailand.

This chapter also highlighted the access to the field for each category of participants. The researcher found that requests to access both governmental and non-governmental institutions for conducting research are common for Thailand. However, the letter of approval from the directors was required. There was no major difficulty during conducting interviews with the selected participants. The participants were willing to be a part of the study. The researcher found that accessing to the prosecutors was easier than other groups. The Head of the Special Department Prosecution (Pattani 2) kindly arranged the meetings with the selected prosecutors (three provinces) for the researcher.

---

[173] The meanings of 'Efficacy' and 'Legitimacy' were defined in section 1.2 (Thesis).

In this chapter, the concept of policy transfer was also explained. As discussed, this research used the concept of policy transfer rather than systematic comparison to the UK's anti-terrorism laws. The main purpose of applying the concept of the policy transfer in this study was to find strategies, laws and practices that effectively function in the UK, and then considered whether it is possible to adapt them into Thailand.

In terms of ethical issues, the researcher followed the British Society of Criminology Code of Ethics (BSC) when conducting the fieldwork.[174] Before interviewing, the researcher provided all participants the information sheets regarding the research aims and objectives, and the participants were also informed the reason why they were selected for the interviews. Also, the researcher informed the participants about their rights, and that they could withdraw their consent for interviewing within 28 days after the interview was made without negatively affecting the relationship between the researcher and the participants.[175] Personal anonymity and confidentiality were protected, and the researcher informed the participants of how the information materials would be applied and kept. The promises have been fully adhered to in the delivery of this research.

[174] British Society of Criminology Code of Ethics for Researchers in the field of Criminology. Available at http://www.britsccrim.org/ethical.htm.

[175] Research Governance Guide University of Leeds available at www. leeds.ac.uk/hsphr/rgf/ethics%20consent.htm.

Chapter 2

The Background to Terrorism in Thailand

2.1 Introduction

The main objective of this chapter is to achieve an understanding of the root causes of terrorism in southern Thailand. To do so, this chapter must explore the history of the province of Pattani, which was once an independent state. Currently, Pattani is a province in the southern part of Thailand, located near the border with Malaysia. Pattani is the main area for prolonged political violence in Thailand. Therefore, the history of Pattani is crucial for explaining the conflict in the southern part of Thailand, as the primary aim of terrorists in the southern part of Thailand is to set up Pattani as an independent and predominantly Muslim state and to secede from Thailand.[176] It should be noted that the name 'Pattani' is the Thai adaption from 'Patani' in the Malay (Jawi) language.[177]

Accordingly, this research necessarily examines the social cultures, ethnic identities, and religions in Pattani. To understand better the history of Pattani, this chapter will examine three periods: the first period concerns the state of Pattani before it became a part of Siam (Thailand's former name); the second period relates to Pattani as a part of Siam (Thailand in the past); and the final period concerns the current phenomenon of terrorism in Pattani as a province of Thailand.

The chapter also explores the problems in southern Thailand in the context of the constitutional laws. It seeks to explore whether these approaches have met the demands of the local population and contributed to a political settlement. It should be noted here that it is vital to address the 1997 and 2007 Thai Constitutions in the context of the south Thailand problem. They not only provided for several rights and duties, but also constructed a new institutional framework which was directly and indirectly connected to the nature of the problem. Although both Constitutions are no longer enforced, the effects of their enforcement still remain central to the problem. The chapter begins with a discussion of definition of terrorism (section 2.2). Then, the constitutional laws of Thailand will be explored (section 2.3), before the history of Pattani is related (section 2.4).

---

[176] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politics in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand. pp. 55-68.
[177] Ibid.

2.2 Definition of terrorism

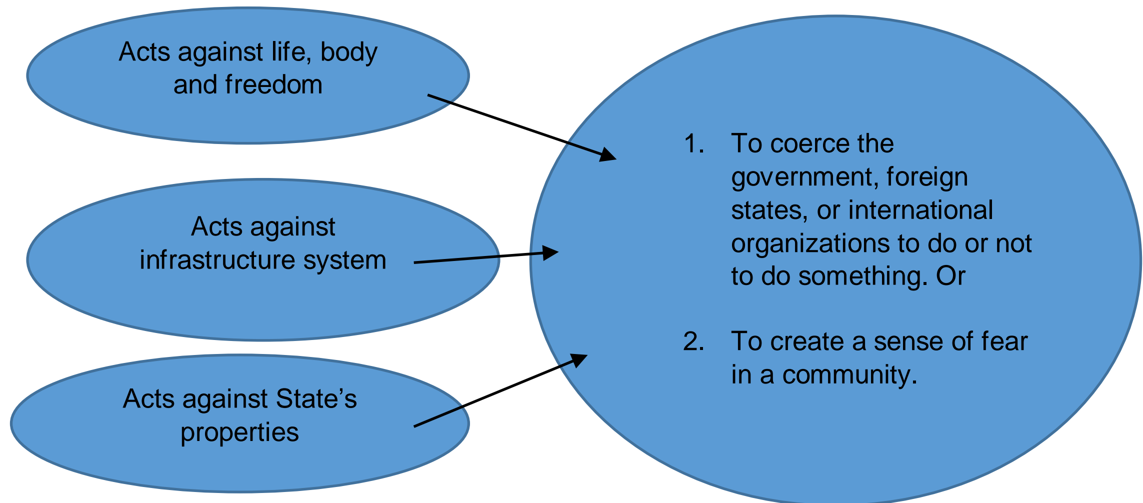
Before discussing the causes of terrorism in southern Thailand, it is important to understand the definition of terrorism. The general meaning of terrorism can be defined as 'the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear'.[178] Regarding this definition, it is clear that the purpose of terrorism is to achieve a political end, and this is one of the elements that distinguishes normal criminal offences from terrorist offences.[179] For example, a gang robbery might also terrorize, but without attempting to achieve political ends, it is not regarded as an offence of terrorism. As for the target, the threat of terrorism aims to generate terror in a broader audience such as the general public or a particular community within the wider population.[180] One of the clearest examples occurring is the car bomb in an open market in Saiburee, Narathiwat, Thailand which happened on 21 September 2012. As a result of this attack, 5 people were killed and almost 40 people wounded, most of them civilians.[181] As regards the methods, the core of terrorism is to use violence of several differing types in order to cause terror.[182] Basically, violence is considered to involve perpetrating significant and usually physical harm on a human being or even property. According to the definition of terrorism discussed above, it is clear that the violence occurring in southern Thailand nowadays can be called 'terrorism' as it is the use of violence for achieving political ends.

In terms of statutory definitions, the Thai Criminal Code specifies the term, 'terrorist offences', based on the two elements of 'actions' and 'intentions' (see further Figure 2.1). Firstly, there are three specified criminal acts amounting to 'terrorist offences', which are as follows: (1) acts against the life, body and freedom of a person; (2) acts against the public transportation system, the telecommunication system or infrastructure; and (3) acts against any state properties. Secondly, these three specified acts must be committed with the intention of applying force against the Thai government or any foreign state, or international organizations.[183]

---

[178] Walker, C. (2011) *Terrorism and the Law.* Oxford. Oxford University Press. pp. 34-40.
[179] Ibid.
[180] Ibid.
[181] SBS NEWS. (2013) 'Five dead after car bomb in Thai market'. [Online] Available from: http: / / www. sbs. com. au/ news/ article/ 2012/ 09/ 21/ five-dead-after-car-bomb-thai-market. [Accessed 5 May 2014].
[182] Ibid.
[183] See the Thai Criminal Code Section 135/1.

Figure 2.1 Terrorism offences in Thailand[184]



It can be seen that the acts amounting to offences of terrorism in accordance with the Thai Criminal Code are rather widely drawn, involving acts committed against a person, governments and its properties. For this reason, there could be some concern about how they are distinguished from other general criminal acts, such as offences relating to life, body and property. The crucial point in this regard is that terrorist offences require special intentions to coerce the Thai government, or other state's government or international organizations to do something or not to do something. It is true that committing acts against life, body and freedom can be a criminal act and can be punished under the Thai Criminal Code, yet without the special intentions to coerce such institutions, they would not be specified as 'terrorist offences'. Thus, the special intention to coerce the government of Thailand or any state or international organizations is the key point to differentiate between terrorist offences and other general criminal offences.

It is clear that offences of terrorism have been associated with unrest relating to political demands. In such cases, there would be a question whether or not an act of demonstration or protest taken for demanding something from the state may be called a terrorist offence. In this regard, Section 135/1 clearly states that 'any act done in the demonstration, assembly, or protest taken for the purpose of calling for assistance or justice in accordance with the Constitution does not represent the commission of terrorist offences'. However, it should be further discussed in such a case whether, if there is violence occurring as a result of a protest demanding the

---

[184] Ibid.

state to do something, this violence would be considered as amounting to a terrorist act or not. To analyze this fact, the above concept of considering 'acts' and 'intentions' needs to be adhered to. If the violence carried out in a protest is considered within the three categories of (1) acts against the life, body and freedom of a person, (2) acts against the public transportation system, or infrastructure, (3) acts against any state's properties, and it was done with the intention of coercing the state or the government, then it does represent the commission of a terrorist offence.

2.2.1 Terrorism and the offences of treason and *lèse-majesté*

When considering the definition of Thai terrorist offences, an offence of treason, which contains some overlapping elements in certain legal contexts, should also be considered. According to the Thai Criminal Code, both offences are enacted within the same category of 'offences against internal state security'.[185] The nature of both offences is similarly designed to protect state security by means of wide prohibitions and severe punishments. The offence of treason is provided in Section 113 of the Thai Criminal Code.

> 'Whoever does any harm or threatens that any harm will be done for any of the followings purposes is said to be guilty of treason:
>
> (1) Abolish or change the Constitution.
>
> (2) Abolish the legislative power, the executive power or the judicial power under the Constitution.
>
> (3) Separate the territory of the Kingdom or seize administrative power in any part of the Kingdom'.

It can be considered that both the offences of terrorism (Section 135/1) and the treason offence (Section 113) are basically related to the motivation of political ends. In this regard, Section 113(3), which stipulates an act committed for separating the territory of the Kingdom, would be deemed as the most similar type to the intention to the offence of committing terrorism in southern Thailand. Thus, in principle, it is possible that committing an act of terrorism to threaten the state and requiring the separation of the Kingdom would also be deemed to be treason. However, compared to the nature of the offences of terrorism, it can be seen that

---

[185] See the Thai Criminal Code Title I.

offences of terrorism require two broader aspects; either to coerce the state, foreign states, or international organizations, or causing fear in a community. Thus, one significant difference between those two offences is that committing terrorism requires a stronger sense of generating public fear, whereas the offence of treason does not require such impact.

The violence committed in southern Thailand has always been prosecuted under the offences of terrorism rather than treason. This trend can be explained by two possible reasons. Firstly, the types of violence occurring in the south of Thailand are bombs, motorcycle bombs, and car bombs,[186] which have all generated a sense of insecurity in the local community. Secondly, in so far as the nature of the offences committed in southern Thailand has impacted the wider economy and society, it might be easier for a prosecutor to prove the intention of causing fear in a community. In other words, prosecuting for terrorist offences would make things easier for a prosecutor as regards the standard of proof. In contrast, the proof of intentions specified in Section 113 (treason), such as to abolish or change the Constitution or to abolish the executive power, are considered more difficult to prove without concrete evidence of a grand design.

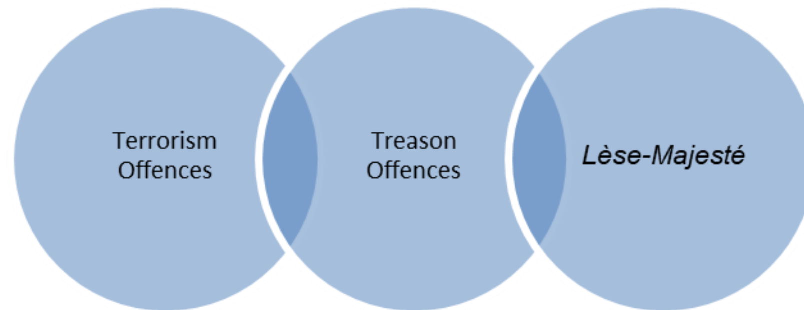
Next, when considering the offence of treason, further reference should be made to the offence of *lèse-majesté*. The nature of *lèse-majesté* law is considered different to the offence of treason. An act amounting to the *lèse-majesté* law is one that defames, insults, or threatens the King, Queen, or Heir-apparent.[187] Compared to the nature of the treason offence that aims to protect the state's security, the *lèse-majesté* law was more narrowly designed to protect the King, his immediate family and the institution of the monarchy itself, both current and historical.[188] The proximity of the *lèse-majesté* law to the offence of treason arises because the King, the monarchy, and the state come to be perfectly identified with each other, and so all offences committed against the state are potentially offences against the King and the monarchy, and vice versa.[189] An offence against the King and the monarchy in earlier phases of Thai national history was sometimes in practice

---

[186] Croissant, A.)2007('Muslim Insurgency, Political Violence, and Democracy in Thailand'. *Terrorism and Political Violence.* 19:1,1-18. pp. 3-5.
[187] See the Thai Criminal Code Section 112.
[188] Leyland, P. (2010) 'The Struggle for Freedom of Expression in Thailand: Media Moguls, the King, Citizens Politics and the Law'. *Journal of Media Law*. 2 (1). p. 125.
[189] Ibid.

deemed to be a form of treason.[190] Thus, for the official state narrative, *lèse-majesté* is considered an equal manner of committing what might be termed 'cultural treason'.

Figure 2.2 Overlapping of the offences of terrorism, treason and *lèse-majesté*



As shown in Figure 2.2, the *lèse-majesté* law does not directly overlap with the terrorism offences because of its clearly different nature. However, as the *lèse-majesté* law does provide protection to the King and the Monarchy, who are considered by the Thai nation to be as important as the security of the state, in this aspect the *lèse-majesté* law could possibly be deemed to represent the same level of prohibition as the offences of terrorism and treason.

By comparison to the offences of terrorism and treason, the *lèse-majesté* law has been much more widely condemned in terms of its limitation of human rights.[191] There are three points to be discussed here. Firstly, there is no clear definition of the words 'defames', 'insults' and 'threaten', and as the nature of the offence has been strictly designed to protect the King and the Monarchy, anything that would be considered as defaming or insulting to the King, or anything that would cause the

[190] Streckfuss, D. (1998) *The Politics of Subversion: Civil Liberties and Lèse-Majesté.in the Modern Thai State*. Phd. Dissertation. University of Wisconsin. p. 134.

[191] Streckfuss, D. (2011) *Truth on Trial in Thailand: Defamation, Treason, and Lèse-Majesté*. Abingdon, Routledge. pp. 5-20; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Summary of cases transmitted to Governments and replies received*, A/HRC/17/27/Add.1, 27 May 2011, paras. 2155-2156.

people to diminish their faithfulness or loyalty to the King, can be regarded as an offence.[192]

Secondly, the offence can be committed entirely without criminal intent.[193] In any ordinary Thai defamation law, the prosecution carries the burden of proof. If a defendant is able to show that there was not any ill intent when he acted or spoke, then it does not represent the commission of defamation.[194] This means that if a statement is expressed in good faith without criminal intent, then it is exempt from guilt under the ordinary Thai defamation laws. However, in a *lèse-majesté* case, no such similar defence has been given. For example, the case of *Kosai Mungjaroen* in July 1957, when the court refused to accept that the defendant was fairly reporting the news, the court stated that 'if the statement by the defendant had been heard by an audience, the King's reputation would be damaged, and this was sufficient to secure a conviction'.[195] Accordingly, it is widely stated that telling the truth in Thailand can be a risky business.[196]

Thirdly, the offence provides for disproportionate punishments, stipulating a wide range of punishments from three to fifteen years of imprisonment. The maximum punishment of 15 year of imprisonment is considered very repressive for an offence involving speech rather than action. However, this feature also reflects how important the King and the Monarchy are viewed in the law.

2.2.2 Political unrest in Bangkok

This next section further explores the definition of terrorism in the context of political unrest in Bangkok. It seeks to understand similarities and differences to the southern Thailand insurgency.

To understand violence in Thailand as a result of the political context beyond the province of Pattani, selected important political incidents in Bangkok will be now analysed. This political unrest in Thailand in the last decade has mainly been based around the conflict between two groups, namely the 'Red Shirts' and the 'Yellow

---

[192] Leyland, P. (2010) 'The Struggle for Freedom of Expression in Thailand: Media Moguls, the King, Citizens Politics and the Law'. *Journal of Media Law* 2 (1). p. 127.
[193] Ibid.130.
[194] See the Thai Supreme Court judgments No. 2180/2531, 2155/2531 and 1734/2503.
[195] Streckfuss, D. (1998) *The Politics of Subversion: Civil Liberties and Lese Majeste in the Modern Thai State.* Phd. Dissertation. University of Wisconsin. p. 454.
[196] Terwiel, B. (2011) *Thailand's Political History: From the 13th Century to Recent Times.* Bangkok. River Books. pp. 317-322.

Shirts'. The 'Red Shirt' group comprises supporters of Thailand's former Prime Minister, Thaksin Shinawatra. This group first called itself 'the Democratic Alliance against Dictatorship (DAAD)' to indicate their opposition to the coup of 2006, and only later, in 2009, was the name changed to the United Front for Democracy against Dictatorship (UDD).[197] Most of these 'Red Shirt' supporters come from the lower and middle classes of Thai society. By way of contrast, the 'Yellow Shirts,' or the People's Alliance for Democracy (PAD), consists of mostly the middle and upper classes, especially from Bangkok and the southern areas. It is claimed that this group is supported by certain factions of the Thai military and also includes members of the Democrat Party, who are seen as Thaksin's opponents.[198] The most notable political violence occurred between 2003 and 2008. At that time, the Thai government was led by Thaksin Shinawatra, who was claimed to have engaged in abuses of power, conflicts of interest.[199] However, the political conflict at this time was expressed in the form of peaceful protests, and there were few violent incidents in Bangkok.

In 2005, the Yellow Shirt groups claimed that Thaksin had abused his powers and called for the dissolution of Parliament, whereas the Red Shirts still supported him. The amount of protests for both sides greatly expanded, and they occupied main streets and shopping areas in Bangkok. As a result of this situation, Thailand came to face extreme economic problems in the sectors of trade, investment and tourism. Then, in 2006, a coup d'état was conducted by the Royal Thai Army, with the alleged aim to bring peace to Bangkok and Thailand; Prime Minister Thaksin was at the time in New York. After the coup d'état had taken place, the Thai Constitution was abrogated, and Parliament was dissolved. This caused great dissatisfaction to the group supporting Thaksin (the Red Shirts).

Between 2007 and 2008, there were several occasions of political unrest in Bangkok, such as the closing off of parliament and official places, and even shootings and bombings.[200] These incidents were linked to both groups, and most

---

[197] Chachavalpongpu, P (2013) 'Thailand's Red Networks: From Street Forces to Eminent Civil Society Coalitions'. *Occasional Paper Series*. Southeast Asian Studies. University of Freiburg (Germany). No.14. p. 7.
[198] Crispin, S (2008) 'Thai protests turn nasty'. *Asia Times.* [Online] Available from http://www.atimes.com/atimes/Southeast_Asia/JH27Ae02.html [Accessed 2 June 2014].
[199] Matichon Newspaper (2002) 'Thaksin Shinawatra, *Lese Majeste* in Thailand'. [Online] [Accessed 2 February 2015].
[200] Khanthong, T (2008) 'Tolerance winning the day at Government House - for now'. *The Nation Newspaper.* [Online] Available from

prosecutions were via the normal range of criminal offences, such as offences relating to public order or offences relating to causing public danger.[201] However, a notable situation developed on 25 November 2008, when the Suvarnabhumi International Airport was occupied by the Yellow Shirt Group. As a result of this seizure, all flights were cancelled, and there were also three explosions near the passenger terminal, as a consequence of which several people were injured.[202] The leaders of the Yellow Shirt group were prosecuted for terrorism offences (Sections 135/1 and 135/2).[203] To date, this is the first and only one case regarding political unrest in Bangkok that has been prosecuted via charges of terrorism.

In 2010, there were 25 deaths as a result of shootings, grenade attacks and bombings near the Red Shirt protest areas.[204] The protest in 2010 was organized by the Red Shirts and called for Prime Minister Abhisit Vejjajiva (the leader of the Democrat Party) to dissolve Parliament and set up an election soon. The military attempted to take control of the situation by using rubber bullets and tear gas. Nevertheless, the military's attempt was not successful as there were several explosions and further confrontations between protestors and the military. As a result of this confrontation, more than 30 people were killed and 800 people were injured in the clashes.[205]

Recently, between 2013 and 2014, there have been important protests organized by the Yellow Shirt group and Suthep Theugsuban, who was a former Democrat Party member, with the primary aim of blocking the Amnesty Bill.[206] Most of the protestors believed Thaksin to be highly corrupt and guilty of destroying Thailand's democracy, and should therefore not be allowed to return to the country under

---

http://www.nationmultimedia.com/2008/08/29/opinion/opinion_30081793.php. [Accessed 6 June 2014].

[201] See Provincial Criminal Court Cases No. 246/2551 and 26/2551.

[202]The Nation (2008) '4 bomb attacks rock Bangkok' [Online]. Available from http://www.nationmultimedia.com/2008/11/26/headlines/headlines_30089454.php [Accessed 6 June 2014].

[203] See Criminal Case no. 973/2556.

[204] Saengpassa, C. (2010) 'Keeper shot dead at zoo believed a victim of political violence'. *The Nation* [Online]. Available from http://www.nationmultimedia.com/home /2010/04/15 / national/Keeper-shot-dead-at-zoo-believed-a-victim-of-polit-30127197.html. [Accessed 6 June 2014].

[205] The Australian News (2010) 'Bullets killed Thai Red-Shirt protesters'.[Online] Available from http://www.theaustralian.com.au/news/world/bullets-killed-thai-red-shirt-protesters/story [Accessed 10 June 2014].

[206] Bangkok Post (2013) 'Suthep declares 'people's revolt' 30 November 2013. [Online] Available from http://www.bangkokpost.com/news/politics/382361/suthep-declares-people-revolt. [Accessed 20 June 2014].

amnesty.[207] Consequently, the number of protests increased, and there were several criminal acts, such as seizures of government buildings, shootings, arson and bombings.[208] Even though Yingluck Shinawatra, the leader of the Pheue Thai Party and the Prime Minister at the time (as well as the sister of Thaksin), declared a state of emergency in Bangkok,[209] the situation seemed to worsen, as there were further deaths and woundings. For example, on December 2013, a month after the protests started, there were 28 deaths and more than 800 wounded from criminal acts occurring during the protests, such as bombings, shootings and cases of arson.[210] Most of the criminals were prosecuted via normal criminal charges such as offences relating to public order, homicide, and so on.

Regarding the political situations occurring in Bangkok, it might be argued that the political unrest in Bangkok should be included in the general definition of terrorism as explained above, as involving 'the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear'.[211] Both actors (Red Shirts and Yellow Shirts) have attempted to achieve their political aims by force. The Red Shirts' purpose is to call for democracy and elections, whereas the Yellow Shirts seek new anti-corruption standards. Nevertheless, the criminals behind the political unrest in Bangkok have rarely been prosecuted under the terrorism offences Section 135/1-135/4 of the Thai Criminal Code.

One of the possible reasons for not applying the offences relating to terrorism to the criminal acts in political unrest in Bangkok is that in Section 135/1, the final paragraph provides that 'Any act done in a demonstration, assembly, protest, opposition, or action taken for the purpose of calling for assistances or fairness from the State, which is the exercise of liberty in accordance with the Constitution, is not the commission of an offence of terrorism'. However, it might be argued that this

---

[207] Young, J. (2014) 'Turmoil in Thailand - Corruption and a Political Struggle'. *Voice of America*. [Online]. [Accessed 15 March 2015]. Available at http://www.voanews.com/a/turmoil-in-thailand-corruption-and-a-political-struggle/1857954.html

[208] Wongruang, P & Thip-Osod, M. (2013) 'One killed as 'V-Day' eve violence erupts'. *Bangkok Post Newspaper* [Online]. Available from http://www.bangkokpost.com/news/local/382474/one-killed-as-v-day-eve-violence-erupts.

[209] The Telegraph (2014) 'Protest-hit Thailand declares state of emergency'. [Online]. Available from http://www.telegraph.co.uk/news/worldnews/asia/thailand/ 10586935/Protest-hit-Thailand-declares-state-of-emergency.html [Accessed 1 July 2014].

[210] Bangkok Post (2014) 'Cool heads must prevail'. [Online]. Available from http://www.bangkokpost.com/opinion/opinion/410014/cool-heads-must-prevail [Accessed 14 July 2014].

[211] Walker, C. (2011) *Terrorism and the Law*. Oxford. Oxford University Press. pp. 34-40.

exception cannot apply to the more serious forms of protest in Bangkok in the last decade, as there have been several instances of violence and significant numbers of dead and wounded, as previously discussed. Another reason is that punishments of those alternative 'normal' offences are still severe, with the severest being the death penalty. Furthermore, the political violence in Bangkok has generally involved a huge number of actors, so it may be unjust to be selective in terms of charges and it may be counter-productive to the aim of a political settlement. The final reason is that the 'specific normal offences' can easily be investigated and applied to those behind the political violence. Thus, the violent situations resulting from the political unrest in Bangkok have generally been prosecuted as normal criminal offences, as has been mentioned above.

However, arising from the incident of the Suvarnabhumi Airport seizure, the leader in this case (Mr. Sonthi Limthongkul) has been exceptionally prosecuted for a terrorist offence.[212] One of the possible reasons is that the act of seizing the airport fits well under the Section 135/1(2), which provides that 'carrying out any act to cause serious damage to the public transportation system, telecommunication system, or infrastructure system which is provided for public interest with the intent to terrorize or force the Thai government'. According to Section 135/1(2), the act of seizure is thus defined as terrorism.

2.2.3 Political unrest in Bangkok compared to the South Thailand insurgency

Although the violence occurring as a result of the political unrest in Bangkok might be called terrorism, in the same way as the insurgency in southern Thailand has been so labelled, there are certain differences that need to be highlighted. The first point is the motivation of actors. The motivation in the case of political unrest is simply related to internal political demands, such as calling for a new constitution or dissolving Parliament, whereas, the motivation behind the conflict in southern Thailand is directly related to the more fundamental demand for self-administration or even self-determination based on the differences of ethnicity, religion and culture. For a criminal prosecution in the cases related to the south Thailand insurgency, one of the key duties of prosecutors is to prove without reasonable doubt that terrorists (offenders) are aiming at, or planning to achieve, secession

[212] See *Matichon News* [Online] [Accessed 15/12/2015]. Available at http://www.matichon.co.th/news_detail.php?newsid=1437386261

from the kingdom of Thailand or to widely generate fear within the public.[213] In this case, the motivation might be another important point to understand why the criminal acts occurring in southern Thailand are prosecuted as terrorist offences, while the criminal acts that result from political unrest have been prosecuted as normal criminal offences. Thus, it can be concluded here that the motivation of the offender might be the important point to distinguish between the application of normal criminal offences and terrorism offences. The details of the causes of the southern Thailand insurgency can be found in later sections of this chapter.

The second point of distinction is concerned with the period of the conflict. The situation in southern Thailand can be called a prolonged conflict, as it started more than a century ago and is still ongoing, whereas the periods of political conflict in Bangkok have been considerably shorter. For example, the conflict that resulted from the proposal of the Amnesty Bill pardoning Thaksin Shinawatra started in 2013 and terminated in 2014.

The third issue concerns the actors behind the conflicts. The criminal acts related to the south Thailand insurgency have often been committed by extremists or terrorists who have been trained to use heavy weapons and have been associated with paramilitary groupings. In contrast, the main actors behind the political violence in Bangkok are basically civilian protestors or transient armed groups.

A final distinction can be made regarding the types of attacks and their targets. For the violence in southern Thailand, the attacks have included various tactics such as arson, bombings, shootings, plus raids to seize arms and steal guns, and their targets have generally been civilians and officials. On the other hand, the attacks that have occurred as a result of the political unrest in Bangkok are generally characterised by occupying government buildings, shootings, bombings, and setting fire to important places such as shopping centres, airports and official workplaces.

In the light of these distinctions, this research focuses only on the terrorism in southern Thailand. It does this for a number of reasons. Firstly, the core of the research is to examine the roles of criminal law (in particular to offences relating to terrorism in Section 135/1-135/4), which is the main strategy for dealing with

---

[213] See Supreme Court Decisions of Thailand. Cases no. 3021/2554, 17053/2555 and 2346/2555. See also Section 135/1 of the Thai Criminal Code.

terrorism in south Thailand. In contrast, the violence occurring as a result of political unrest in Bangkok is considered in practice as within the scope of normal criminal offences in Thailand. Regarding criminal prosecution in practice, violence as a result of political unrest has been prosecuted as a normal criminal offence, such as murder or offences relating to public order.[214] Secondly, the offences relating to terrorism in Thailand were amended in the Thai Criminal Code with the specific aim of dealing with domestic terrorism in south Thailand, and this is related to one of the key research objectives: to measure how this law works in practice. The third and final reason is that terrorism in south Thailand seems to represent the most serious and most protracted prolonged conflict in the country, with approximately 5,500 people dead and nearly 10,000 wounded as a result of violence in this area since 2004.[215] Based on these reasons, the research thus focuses on terrorism in the south of Thailand rather than political unrest in Bangkok.

2.3 Constitutional laws and unrest in Southern Thailand

The extreme south of Thailand, where the minority Malay-Muslim population is concentrated, presents an on-going political problem.[216] Although the origins of the problem in the south of Thailand can be traced back historically, the policies launched by the successive governments have contributed to the increasing violence since 2004.[217] This region is among the poorest areas of the country,[218] and it has given rise to several serious political problems; namely, ethnic grievances, cultural differences and distrust towards officials.[219] This section thus highlights the southern Thailand problem within the context of the constitutional laws, and attempts to explore whether its approaches have met the demands of the local population and contributed to a political settlement. It should be noted here that it is vital to address the 1997 and 2007 Thai Constitutions in the context of the south Thailand problem. They provided for several rights and duties which were directly and indirectly connected to the nature of the problem. Although both

---

[214] See Supreme Court Decisions of Thailand. Case No. 1224/2556.
[215] Office of the Public Prosecution Region 9 (2012) *Research on the Effectiveness of Prosecution of National Security Charges and the Protection of Citizens' Rights: A Case Study of the Four Bordering Provinces in Southern Thailand* (Songkhla, Pattani, Yala, and Narathiwat). Songkhla. Asia Foundation. pp. 66-68.
[216] Harding, A. and Leyland, P. (2011) *The Constitutional System of Thailand: A Contextual Analysis.* Portland. Hart. p. 142.
[217] Ibid.
[218] Leyland, P. (2009) 'Thailand's Troubled South: Examining the Case for Devolution from a Comparative Perspective'. *Australian Journal of Asian Law.* Vol. 11(1) 1-29. p. 5.
[219] McCargo, D. (2012) *Mapping National Anxieties: Thailand's Southern Conflict.* Copenhagen. NIAS. pp. 126-128.

Constitutions are no longer enforced, the effects of their enforcement still remain regarding the south Thailand insurgency. Therefore, both the 1997 and 2007 Constitutions are still worthy of exploration in this context. This section is thus divided into three parts; the first part concerns the policies (certain rights and duties) relating to the problem of southern Thailand provided by the 1997 and 2007 Constitutions. The second part concerns the institutional frameworks behind both Constitutions. The final part provides an analysis of the south Thailand problem within the context of the future Constitution.

2.3.1 Constitutional approaches relating to the South of Thailand

The nature of southern Thailand's unrest is linked to the history, religion and identity of the majority of its local people, who reflect Muslim culture and Malay (Jawi) ethnicity.[220] The root of this conflict has been presented through many layers of complexity, and this includes the economic deprivation felt by Muslim people who have restricted employment chances, as well as the alienation felt among the Muslim people affected by the strict policies of the recent governments.[221] This alienation also includes the resentment of by the local people towards the deliberate attempt to settle Buddhists in these provinces, as much as the dissatisfaction felt by local Muslims regarding the systematic discrimination experienced in imposing relevant policies and official positions.[222] Furthermore, the restriction of political and educational rights of local Muslim people has also been regarded as a cause of the unrest. For example, there have been attempts to establish a Thai national identity, together with a policy to impose a Thai national curriculum in the area's schools.[223]

To start the discussion of the constitutional attempts to allay the problem in the south of Thailand, the concept of decentralisation provided by the 1997 and 2007 Constitutions of Thailand needs to be referred to. It should be noted that Thailand is a highly centralised state, in which power has typically been concentrated in Bangkok, yet at the same time there was a constitutional commitment to decentralisation.[224] It was stated in the 1997 Constitution that:

---

[220] Leyland, P. (2009) 'Thailand's Troubled South: Examining the Case for Devolution from a Comparative Perspective'. *Australian Journal of Asian Law.* Vol. 11(1) 1-29. p. 1.
[221] Ibid.
[222] Ibid.
[223]Abuza, Z. (2009) *Conspiracy of Silence: The Insurgency in Southern Thailand.* Washington D.C. United States Institute of Peace Press. pp. 13-14.
[224] Connors, M. (2007) *Democracy and National Identity in Thailand*. Copenhagen. Nias. pp.153-174.

> 'The state shall give autonomy to the locality in accordance with the principle of self-government according to the will of the people in the locality'.[225]

This notion of decentralisation was further affirmed by the 2007 Constitution, which provided that:

> 'The state shall decentralize powers to localities for the purpose of the independence and self-determination of local affairs and encourage the provinces which have the potential to develop large scale administrative organizations by placing emphasis on the aspirations of the people in such provinces'.[226]

To discuss matters in the context of the southern Thailand problem, the concept of promoting autonomy to localities was a positive approach to allow divergent people to take part in self-government. The state was required to give autonomy to localities in a manner that reflected local demands. In this sense, it was a worthy strategy to give Muslim people in the area an opportunity to have more political opportunities. Consequently, any policy launched by the local administration would be better placed to satisfy a substantial majority of the Muslim community. The concept of decentralising powers to a local government sounds worthwhile in principle. However, one can express concern at whether the process was fair and transparent, as Thailand is characterised by a top-down system of local politics, mainly without political parties, and where the widespread practice of vote-buying has permitted influential cliques to predominate.[227] In this sense, it has been observed that the candidates elected to councils at Provincial Administrative Organization (PAO) level have tended to have shared personal business interests, and simultaneously the PAO tends to spend a large proportion of its budget on large-size infrastructural projects.[228] This would be a reflection of the fact that the degree of transparency in local politics requires substantial improvement. It has been viewed that the level of accountability of local politics demonstrated in Thailand is very poor, and the relevant organizations at a local level such as

---

[225] See Section 282 of the 1997 Constitution of Thailand.
[226] See Section 78 (3) of the 2007 Constitution of Thailand.
[227] Harding, A. and Leyland, P. (2011) *The Constitutional System of Thailand: A Contextual Analysis*. Portland. Hart. p. 133.
[228] Ibid.

Provincial Administrative Organization (PAO) tend to serve the collective and individual benefits of their own members.[229]

In this regard, both the 1997 and 2007 Constitutions revealed their worthy principles of the decentralization of powers to local governments with the aim of meeting local demands. In practice, however, there still existed a question regarding the accountability of such local politiies, such as the appointment and election of local leaders, as well as the issue of conflicts of interests between local politicians and relevant organizations.[230] Of course, the success at a local political level would bring a convenient stepping-stone to national politics. Although both Constitutions provided certain guidelines for examining and overseeing the powers exercised by local administration with the enforcement of ethical standards,[231] there were no simple ways to attract candidates who were a broad representation of their community. In this regard, it has been suggested that success at the local political level in Thailand to achieve a more participatory form of decentralisation should be made via the assistance of NGOs, academic institutions and a comprehensive programme of 'capacity building', which is to include the provision of education and training for politicians and officials both in the theory and practice of local governance.[232]

Next, the matter of constitutional rights in criminal procedure will be examined. This issue is considered extremely vital and relevant to the problems in southern Thailand, where there have been many claims of human rights abuses occurring in the criminal process.[233] The concept of 'due process' rights being accorded to an accused person was recognized by both Constitutions. In this regard, an accused person was guaranteed the right to life and liberty, the right not be tortured or subjected to inhumane punishments, or to arbitrary arrest or search, the right to meet a lawyer, the right to a speedy, continuous and fair trial in a criminal case, and the right to the presumption of innocence.[234]

---

[229] Arghiros, D. (2002) 'Political Reform and Civil Society at the Local Level: Thailand's Local Government Reforms' in McCargo, D. (ed), *Reforming Thai Politics*. Copenhagen. NIAS. p. 225.
[230] Suwannathat-Pian, K. (2011) 'The Monarchy and Constitutional Change since 1972'. in McCargo, D. (ed), *Reforming Thai Politics*. Copenhagen. Nias. pp. 57-69.
[231] See Sections 282, 287, 78 and 87 of the 2007 Constitution of Thailand.
[232] Nelson, M. (2002) 'Thailand Problems with Decentralisation'. in Nelson, M. (ed), *Thailand's New Politics.* Bangkok. KPI and White Lotus Press. p. 223.
[233] See further information at Chapters 4 and 5.
[234] See Sections 31-33 of the 2000 Constitution of Thailand and Section 40 of the 2007 Constitution of Thailand.

Another important constitutional approach relevant to the southern political violence is related to the legal protection of equality, races, genders and religions. It clearly stated in the 1997 Constitution of Thailand that:

> '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'.[235]

As explained previously, the root cause of the problem in the south of Thailand can be explained within the contexts of ethnic and religious differences. The 1997 Constitution of Thailand could be considered to provide good legal protection of the Muslim minority in the south regarding the right to religious profession. The majority of the Thai people are Buddhist, whereas Muslim people represent the majority in the southern provinces of Thailand. The total population of the three provinces of Pattani, Yala and Narathiwat then was calculated at 1,748,868 people, and most were Muslim, with only around 350,000 being Buddhists.[236] It should be noted that in the early part of 2007 there was a campaign of protests and demonstrations led by Buddhist monks and organisations against Thailand's new constitution which they claimed would proclaim Buddhism as the country's national religion.[237] However, this depiction was denied. The 2007 Constitution of Thailand did not provide for Buddhism as the country's national religion. Instead, it affirmed the rights and freedoms of religion as provided under the former 1997 Constitution.[238] In this way, it did reflect a sense that Buddhism, which is the religion of the majority of the Thai people (90 per cent), was under threat from a resurgent and militant Islam concentrated in the three southernmost provinces.[239]

---

[235] See Section 30 of the 1997 Constitution of Thailand.
[236] McCargo, D. (2012) *Mapping National Anxieties: Thailand's Southern Conflict*. Copenhagen. NIAS. p. 17.
[237] Ibid.
[238] Section 38 of 1997 Constitution and Section 37 of 2007 Constitution of Thailand provided that 'A person shall enjoy full liberty to profess religion, religious sect or creed, and observe religious precept or exercise a form of worship in accordance with his or her belief; provided that it is not contrary to his or her civic duties, public order or good morals'.
[239] McCargo, D. (2012) *Mapping National Anxieties: Thailand's Southern Conflict*. Copenhagen. NIAS. p. 17.

Next, the policies regarding education will be discussed. The rights to, and the equality of, the education of people in the southern areas are considered very important in two main aspects. Firstly, these areas are among the poorest in the country, with a high rate of unemployment.[240] For this reason, the unrest in the area would be a cause of this problem and an obstacle for the development of education. Secondly, there are concerns whether the education system in these three provinces is carried out in the right way. The emphasis here should not be restricted to concerns about the standard of the curriculum, but it should further consider whether schools and other academic institutions have been providing an appropriate role, especially given the operation of Muslim schools. According to the Ministry of Education of Thailand, in 2004 there were more than 500 private Islamic schools in south Thailand, including more than 2,000 teachers and 25,000 students.[241] Most of those Islamic schools are registered under the Ministry of Education, but some are beyond governmental supervision and funded by private donations especially provided by teachers (Ustaz) who have graduated from religious studies in Pakistan and Middle East countries.[242] Accordingly, there are concerns about the use of these academic institutions as a base to develop and recruit young and radical Muslims.

Within the Constitutions of Thailand, there were positive attempts to promote rights and equality regarding education for Thai citizens. For example, the 1997 Constitution, Section 42 provided that:

> ‘A person shall enjoy academic freedom’.

Also Section 43 provided that:

> ‘A person shall enjoy an equal right to receive the fundamental education for the duration of not less than twelve years which shall be provided by the State thoroughly, up to quality, and without charge’.

Moreover, these principles were affirmed by the 2007 Constitution. The concept of providing free education for citizens throughout the country is considered vital to

---

[240] See Website of Department Industrial Promotion, Thailand (Economic Development in Three Southern Provinces 2015) [Accessed 19/12/2016]. Available at http://strategy.dip.go.th/

[241] Croissant, A.)2007(‘Muslim Insurgency, Political Violence and Democracy in Thailand’. *Terrorism and Political Violence.* Vol.19:1,1-18. p. 8.

[242] Ibid.

ensure the basic rights of the Thai people. In addition to this, Muslim private schools in the area can use Yawi (a Malayan Language). Accordingly, suitable laws and policies could contribute to a positive feeling towards Muslim people in the south to obtain a fair chance in education without discrimination.

While most of educational policies provided by the 1997 and 2007 Constitutions reflected the rights to education, there was a lack of effective delivery and supervision. It has been revealed by one research project, *An Educational Management Model of Basic Education Schools for Peace in the Southern Border 2015,* that the failure of the educational system in the three provinces could be a cause of the unrest.[243] It was thus observed that there existed an inconsistency between the school's curriculum provided by the Ministry of Education and local histories, and certain school activities did not match the local culture.[244] A clear example of this is the activity called 'teacher's worship' on National Teacher's Day (every 16 January). This activity comes from the Buddhist way of worshipping teachers to show a student's respect. However, the act of worshipping humans or human institutions is forbidden for Muslims.[245]

It can be seen that the 1997 and 2007 Constitutions represented a good attempt to promote equality in education, and this policy would greatly benefit Muslim people in the south where a feeling of both social and economic deprivation does exist. In terms of educational rights and equalities, both constitutions were considered sufficient on paper. Nevertheless, there was a lack of suitable application and inspection. Accordingly, better standards of education could raise the standards in the south of Thailand, and at the same time it would protect young local Muslims and draw them away from being disaffected and recruited as new terrorists.

2.3.2 An Institutional framework of relevant bodies under the Thai Constitutions

As part of its mission of institutional rebuilding, the 1997 Constitution started to construct a new shape for its main institutions in order to provide a basis for stable government, to deal with corruption, and to protect human rights.[246] Accordingly, a

---

[243] Wittayanont, N. (2015) *An Educational Management Model of Basic Education Schools for Peace in the Southern Border*. Bangkok. Kasetsart University. pp. 154-155.
[244] Ibid.
[245] Ibid.
[246] Leyland, P. (2007) 'Thailand's Constitutional Watchdogs: Dobermans, Bloodhounds or Lapdogs'? *Journal of Comparative Law.* 2 (2). p. 153.

new set of watchdog organisations was established under this Constitution. The organisations were designed to primarily deal with the malfeasance and corruption associated with political matters, and these were to include the Election Commission,[247] the National Counter-Corruption Commission,[248] the State Audit Commission[249] and the Anti-Money Laundering.[250] Within the purview of law and administration, a process involving Administrative Courts and an Ombudsman Office were applied in order to protect citizens' rights in certain matters.[251] In addition, the National Human Rights Commission was introduced in order to deal with the abuses of human rights.[252] Lastly, a Constitutional Court was set up to patrol the boundary of the entire constitutional scheme.[253] This section aims to explore those bodies in the context of the southern Thailand problem. It will attempt to examine how those bodies have functioned; in particular in their oversight roles and their mechanisms for protecting human rights abuses.

2.3.2.1 The National Human Rights Commission of Thailand (NHRC)

The National Human Rights Commission of Thailand (NHRC) was established under the 1997 Constitution with its main duties to protect human rights.[254] The NHRC has broad powers to examine and report the commission or omissions of acts that violate human rights or which do not comply with obligations under international treaties to which Thailand is a party.[255] The NHRC also has powers to propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of laws, rules or regulations for the purpose of promoting and protecting human rights.[256] It could be considered that the functions of the NHRC were passively restricted to the roles of examining any human rights violations or observing any rule or regulation that might be counter to the concept of human rights. However, after the 1997 Constitution was replaced by the 2007 Constitution, the NHRC powers were expanded emphatically. This included a far more active role to bring a case to the Courts of Justice, on behalf of the aggrieved person after receiving a request, and having considered it

[247] See Sections 136-148 of the 1997 Constitution of Thailand.
[248] See Sections 297-302 of the 1997 Constitution of Thailand.
[249] See Section 312 of the 1997 Constitution of Thailand.
[250] This organisation was not established directly under the 1997 Constitution but under the Anti-Money Laundering Act 1999.
[251] See Sections 196 and 276 of the 1997 Constitution of Thailand.
[252] See Section 199 of the 1997 Constitution of Thailand.
[253] See Section 255 of the 1997 Constitution of Thailand.
[254] See Section 200 of the 1997 Constitution of Thailand.
[255] Ibid.
[256] Ibid.

appropriate, to submit the case for correcting the problem of human rights violation.[257] In this regard, the right to bring a case related to human rights violation to a court by the NHRC seems to have been seen an appropriate function, given that there existed multiple claims of human rights abuses caused by the application of security laws.[258] This process would be deemed an important mechanism to facilitate an injured person to take a case to court. However, after the 2007 Constitution was replaced by the 2014 (interim) Constitution, the power to submit a case of human rights violation to a court was abolished.

Regarding the southern Thailand problem, the role of the NHRC was clear in terms of overseeing a certain law or any act that might be counter to human rights or a constitutional concept. An example of this occurred when the government of that time passed a 'state of emergency' decree, which came into force on 16 July 2005, to take control of the situation in the south.[259] The NHRC expressed its disagreement and called for the law to be abolished, citing the reason that the law violated many of the basic human rights provided by the Constitution.[260] Consequently, the government partly amended the decree: for example, a court's approval was required for issuing arrest warrants. It should be noted here though that the NHRC does not have the sole function of rectifying human rights violations. It also has a responsibility to investigate when appropriate, but in practice other bodies such as legislative, executive and judicial organs have direct responsibility for enforcing and maintaining human rights.[261]

Nevertheless, in Thailand, where the military functions as a government, and where there were many claims of human rights abuses caused by the military and special laws,[262] the role of the NHRC, which is the main body for protecting the human rights of the country's citizens, should be clearer and stronger. At present, the NHRC has very limited chances to intervene in the work of the military, and this can be explained by two main reasons. Firstly, after the 2007 Constitution was abolished, certain powers of the NHRC to represent an injured person to submit a case to a court were abolished. This restricted the role of the NHRC to one of

---

[257] See Section 257 (4) of the 2007 Constitution of Thailand.
[258] See further information at Chapter 5.
[259] The Decree was issued under Section 218 of the 1997 Constitution of Thailand.
[260] Leyland, P. (2007) Thailand's Constitutional Watchdogs: Dobermans, Bloodhounds or Lapdogs? *Journal of Comparative Law.* 2(2), p. 172.
[261] Harding, A. and Leyland, P. (2011) *The Constitutional System of Thailand: A Contextual Analysis.* Portland. Hart. p. 229.
[262] See further information at section 5.9.1 Chapter 5.

serving a passive role in the oversight of an act of human rights violation, or any law that might be in conflict with the Constitution. Secondly, it could be seen that the Thai government has tended to rely upon the application of the special laws to control the problems happening in the south of Thailand,[263] and at the same time those laws have provided certain methods of protection to the user of the law. Consequently, the clear role of the NHRC was limited to survey or report any human rights abuses occurring as a result of the use of the special laws. However, its role could be considered as extremely passive and having little impact on the work of the military, who enjoyed great protection from the special laws. For example, the Emergency Decree of 2005 was to protect both the military and the police from civil and criminal liabilities as a result of damages caused in the application of the law.[264] Furthermore, officials exercising powers under this Emergency Decree should not be subject to the jurisdiction of the Administrative Court.[265]

2.3.2.2 Constitutional Court of Thailand

A constitutional court is a high court that deals primarily with constitutional law, and its main duty is to ensure that the principles and rules of the constitution are upheld.[266]The Thai Constitutional Court was first established under the 1997 Constitution.[267] It was designated as the final arbiter regarding constitutional questions, and thus it possessed an important function at the core of the whole constitutional system.[268] For instance, as a means of judicial protection, the findings of watchdog organisations such as the Office of the National Anti-Corruption Commission needed the confirmation of the Constitutional Court before any decision could have binding effect. More importantly, any decision made by the Constitutional Court bound all governmental institutions and individuals.[269] Yet after the military coup of 2006, the Constitutional Court terminated and was replaced by the (interim) Constitutional Tribunal, thereby preventing challenges regarding the legitimacy of the coup. All pending cases from the former Constitutional Court were transferred to the Interim Constitutional Tribunal.

---

[263] See further information at Chapter 5.
[264] See Section 17 of Emergency Decree 2005/2548.
[265] Ibid.
[266] Ginsberg, T. (2003) *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge. Cambridge University Press. pp. 34-36.
[267] See Section 255 of the 1997 Constitution of Thailand.
[268] Harding, A. and Leyland, P. (2011) *The Constitutional System of Thailand: A Contextual Analysis*. Portland. Hart. p. 162.
[269] See Section 268 of the 1997 Constitution of Thailand.

Next, the Constitutional Court was again introduced under the 2007 Constitution of Thailand. In principle, it might be said that the nature of both versions of the Constitutional Courts had not been changed, as both were granted final authority over all matters regarding constitutional interpretation.[270] This power was gained directly through several provisions of the respective Constitution, and indirectly by reference from criminal or civil courts where a constitutional problem occurred, or by a reference from the Prime Minister or the National Assembly.[271]

Although the Constitutional Court's powers under the 2007 Constitution seemed to be more enhanced, the core powers of both versions still remained similar. These were, for example, the inclusion of certain powers to strike down legislation and emergency decrees, to rule on references from the Courts regarding constitutionality, and for impeachment proceedings against holders of public office. However, one clear change was that the Constitutional Court under the 2007 Constitution had an added power to hear petitions from individuals alleging a violation of rights.[272] This constitutional power could be seen as a beneficial approach to protect citizens whose rights and liberties guaranteed by the Constitution were being violated. In contrast, the Constitution Court under the 1997 Constitution did not allow a citizen to directly submit any case regarding the violation of rights. In this matter, the process of submitting petitions against the violation of rights could be started by the Ombudsman.[273]

In the situation of the southern Thailand problem, the role of the Constitutional Courts (both from 1997 and 2007 Constitutions) had a minimal impact. The commission of offences relating to terrorism, provided in Sections 135/1-135/4, falls under the jurisdiction of a criminal court, whereas the jurisdiction of the Constitutional Court has tended to consider matters in the wider context of the legitimacy or validity of the law. For example, in consideration of whether any law, rule and regulation is contrary or inconsistent with the constitutional law, the Court is empowered to resolve any disputes among the official bodies.[274]

---

[270] See Section 268 of the 1997 Constitution of Thailand and Section 154 of the 2007 Constitutional of Thailand.
[271] See Section 264 of the 1997 Constitution of Thailand and Section 211 of the 2007 Constitutional of Thailand.
[272] See Section 212 of the 2007 Constitution of Thailand.
[273] See Section 198 of the 1997 Constitution of Thailand.
[274] See Section 214 of the 1997 Constitution of Thailand.

The explicit role taken by the Constitutional Court regarding the counter-terrorism law of Thailand was made clear in 2004 when the President of the Senate and the President of House of Representatives requested the Constitutional Court to clarify whether the provision of offences relating to terrorism (Sections 135/1-135/4) added in the Criminal Code was a violation of human rights. The Court deemed that the provision did not violate human rights, and further stated that the provision had been considered important to protect the state's security and compliance with the constitutional law.[275] Accordingly, the offences relating to terrorism can be legally enacted in the Criminal Code. This is a clear example of how to understand the role of the Constitutional Court in reviewing the validity of the law at the outset. After the law has been legally enforced, the role of the Constitution Court seems to be reduced. This is in contrast to the function of the Administrative Court, which tends to be active after the law has been applied. The role of the Administrative Court is discussed in the next section.

2.3.2.3 Administrative Courts

There had been several attempts to establish administrative courts in Thailand, but they were finally introduced under the 1997 Constitution.[276] To respond to the constitutional law, the Act on the Establishment of Administrative Courts and Administrative Courts Procedure 1999 was enacted. The Administrative Courts then began to operate from 2001 by replacing the Petition Council of the Council of the State. Unlike the functions of the Constitutional Court, which are primarily restricted to considering the content of the law and whether it violates the Constitutional, the roles of the Administrative Courts are intended to examine officials and official bodies in exercising their powers. For example, the Administrative Courts have powers over a dispute in relation to an unlawful act by an administrative agency or state officials neglecting their official duties, or performing their duties with unreasonable delay.[277] Moreover, the Administrative Courts also have powers to hear cases regarding administrative contracts and tort claims against public bodies.[278]

In principle, the role of the Administrative Court is considered a valuable mechanism to function alongside other watchdog organisations to fill a certain gap

---

[275] Thai Constitutional Court Ruling No. 29-30/2547.
[276] See Section 276 of the 1997 Constitution of Thailand.
[277] See Section 9 of the Act on Establishment of Administrative Courts and Administrative Courts Procedure 1999.
[278] Ibid.

in the grievance chain by providing full legal redress against official organisations.[279] However, the role of the Administrative Courts regarding the problems occurring in southern Thailand has been considered very marginal. It is true that the behaviour of a police officer and a prosecutor working in the criminal justice system lies under the jurisdiction of the Administrative Courts. If a criminal justice officer exercises his powers unlawfully or in bad faith, or in a manner indicating unfair discrimination, an injured person may bring a case against such official to the Administrative Court.[280] In practice however, although there were several claims regarding the unlawful behaviour of officials in terrorism cases,[281] there were no cases brought to the Administrative Court. An injured person with a claim of human rights violated by official sources tended to bring the case to the National Human Rights Commission.[282]

This phenomenon can be explained from two positions. Firstly, it is assumed that an injured person who generally possesses limited legal knowledge may be not aware of how to start a case in the Administrative Court. Alternatively, they may be fearful of being regarded as an enemy of the official, or concerned with possible repercussions after initiating the case. Thus, reporting a case to the NHRC would be easier and represent a better choice for initiating a case against officials.

Secondly, officials performing under the special laws, in particular the Emergency Decree on Public Administration in the State of Emergency 2005/2548, are greatly protected by immunities from the law on administrative procedure and the law on the Establishment of Administrative Courts.[283] This means that any damage caused by officials under this Act cannot be sued for in the Administrative Court. This approach stands in clear contrast to the normal concept of Thai administrative law, which allows any individual who suffers from the exercise of any unlawful powers by government institutions or officials to file a lawsuit to the Administrative Court, in accordance with Section 5 of the Administrate Procedure Act 2539. In addition, it might also violate the concept of the 2007 Thai Constitution Section 60, which

---

[279] Harding, A. and Leyland, P. (2011) *The Constitutional System of Thailand: A Contextual Analysis*. Portland. Hart. p. 195.
[280] See Section 9 of the Act on Establishment of Administrative Courts and Administrative Courts Procedure 1999.
[281] See further information at Chapter 5.
[282] Source: National Human Rights Commission of Thailand by Official Website of Office of the Human Rights Commission of Thailand. [Online] [Accessed 29/3/2015]. Available at http://www.nhrc.or.th/en/
[283] See Section 16 of the Emergency Decree on Public Administration in the State of Emergency 2005/2548.

ensures the rights of its citizens to sue government institutions or officials regarding the exercise of unlawful powers.

2.3.2.4 The Office of the Thai Ombudsman

The Office of the Thai Ombudsman (OTO) was established in the 1997 Thai Constitution.[284] Alongside other watchdog bodies, the main function of the OTO is to build good governance.[285] Specifically, the OTO is empowered to determine and investigate complaints when a state official at any level breaches the law or exceeds its jurisdiction.[286] For example, the OTO is granted powers to investigate when the action or inaction of a public body or official causes damage, harm, or injustice to an individual or to the general public. In this regard, the wide jurisdiction of the OTO to instigate investigation and fact-finding might be considered as overlapping with the roles of the NHRC. Indeed, both the OTO and the NHRC were established with a similar approach to examine the exercise of the state's powers and to maintain human rights. As there was no clear difference in the terms of the functions of both organizations, it can prove problematic in practice. In 2012 there were a total of 325 petitions lodged with the OTC, and it was discovered that there were 65 repeat petitions lodged with the NHRC as well.[287] This problem indicates the unclear and overlapping powers of both the OTC and the NHRC. Moreover, there exists no neutral organisation to allocate such repeated petitions.[288]

In terms of the southern Thailand problem, the role of the OTC is again indicated to be very marginal. The OTC does actually possess certain powers to consider and investigate performances or omissions of state agencies and their officials, which includes police officers and prosecutors.[289] However, its role was designed in a very passive way. Without a petition lodged by an injured person, the investigating role of the OTC will not be initiated. In contrast, the OTC has tended to be in receipt of petitions from injured people as a result of the political protests that were suppressed by the police in Bangkok.[290]

---

[284] See Section 196 of the 1997 Thai Constitution.
[285] See http://www.ombudsman.go.th/10/index1.asp [Accessed 5/1/2017].
[286] See Sections 197 of the 1997 Thai Constitution and 244 of the 2007 Thai Constitution.
[287] Rukhamte, P. (2014) *The Thai Ombudsman*. Bangkok. King Prajadhipok's Institute. p. 83.
[288] Ibid.
[289] See Section 244 of the 2007 Constitution of Thailand.
[290] Rukhamte, P. (2014) *The Thai Ombudsman*. Bangkok. King Prajadhipok's Institute. p. 83.

2.3.3 The future Thai Constitution

After the draft of the 2016 Constitution of Thailand was accepted by 61.35 per cent of the Thai voters through a constitutional referendum, held on 7 August 2016, it is expected that the new Constitution will be officially enforced within 2017.[291] Although the 2016 draft has contributed many changes in terms of general political concepts, this section narrowly aims to explore only matters relevant to the southern Thailand insurgency. By comparing the former constitutions of Thailand (1997 and 2007), there has not been much change in terms of relevant rights and liberties relating to the southern Thailand insurgency. Rights in criminal procedure law are provided in the same pattern with the former 1997 and 2007 versions,[292] including rights to fair trial, due process, the presumption of innocence, and fair punishments.[293]

There is a minor change in terms of the rights and liberties in religion freedoms. Every person is guaranteed by this 2016 draft the right to profess any religion in the same way provided in the prior constitutions. However, the 2016 draft further states that the liberty to profess the religion 'shall not be prejudicial to the security of the state'.[294] This is the first time the constitution clearly mentions the state's security as a reason to restrict a person's liberty to religion. In this context, the attention is of course paid to the southern Thailand problem where there are claims of using Islamist concepts and Muslim schools for brainwashing young Muslims.[295] At the same time, it can be considered that the Thai's government has rightly become concerned about extremism arising through religion and education to attract new terrorists in southern Thailand. This issue is deemed vital and sensitive, but the draft constitution does not provide enough certainty to cope with this problem, nor has it been followed up with clear legislation to deal with 'terrorism radicalisation' in southern Thailand.

In terms of the institutional framework, the general structure of the relevant bodies provided by the 2016 draft has not been much changed. Similar to the former Constitutions, there exist Constitutional Courts, Administrative Courts, the

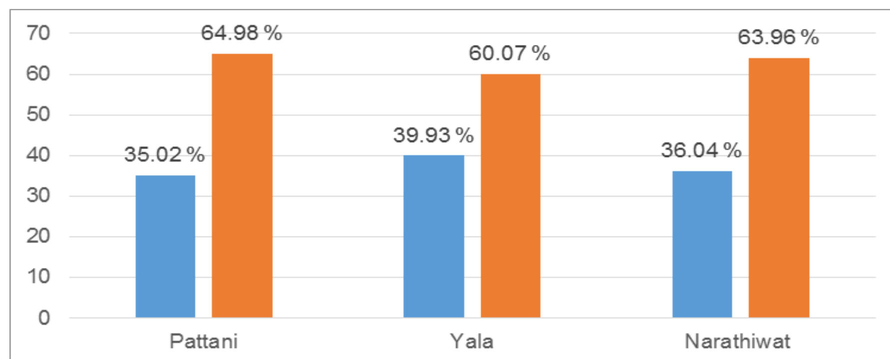
---

[291] The information can be found through the website of Office of the Election Commission of Thailand. Available at http://www.ect.go.th/ [Accessed 10/12/16].
[292] See Sections 27-29 of the draft of the 2016 Constitution of Thailand.
[293] Ibid.
[294] See Section 37 of the draft of the 2016 Constitution of Thailand.
[295] Smith, A. (2004) 'Trouble in Thailand's Muslim South: Separatism, not Global Terrorism'. *Asia-Pacific Center for Security Studies*. Vol 3. pp. 3-4.

Ombudsman and the National Human Rights Commission. However, it can be observed that certain powers to maintain human rights vested in the National Human Rights Commission seem to be reduced from the 2007 version. For example, the power to bring a case relating to human rights violation on behalf of an injured person has been abolished. As described earlier, the power to bring a case on behalf of an injured person is potentially very helpful and important for the southern Thai situation where there are many claims regarding human rights violation. The withdrawal of this function thus reflects a downgrading of human rights protection in Thailand, and at the same time the process of bringing a human rights case to a court would become more difficult for an injured person.

While the majority of the Thai voters agreed with the 2016 draft, more than 60 per cent of three provinces of Pattani, Yala and Narathiwat voted 'no' for this 2016 draft as illustrated by Figure 2.3 below.

Figure 2.3 Percentage of people who voted for the draft of the 2016 Constitution in three provinces of Pattani, Yala and Narathiwat[296]



*Blue = Yes

*Orange = No

There are several points that would possibly offer reasons behind the majority 'no' vote. Firstly, the degree of democracy in the 2016 draft is considered much lower than the former ones. For example, the election process (from 1997 and 2007 Constitutions) for senates, which was considered as democratic, has been replaced

[296] See official website of the Office of the Election Commission of Thailand. Available at http://www.ect.go.th/

by the appointment process.[297] In addition, the 2016 draft allows parties to nominate up to three potential Prime Ministers,[298] and this means that the Prime Minister could be from outside of a party and not elected. Secondly, the government has been given a wider power to enact any law that restricts human rights. Section 26 of the draft allows the government to enact a law that results in the restriction on rights and liberties of a person as long as it complies with the conditions stipulated in the Constitution or the rule of law. This reflects a very broad power of the government to enact a law without any check and balance. Thirdly, there is no concrete proposal or solution for the southern Thailand insurgency. It might be argued that solving the problem in southern Thailand may not be the prime purpose of this 2016 draft. It rather seeks as a priority to fight against corruption and dissolve political conflicts in Bangkok but not in the south.[299] In other words, it seems that constitutional development has not been decisive in solving the problems of the south. The main reasons for the constitutional change have tended to relate to other problems.

2.4 The Pattani State before its inclusion within Siam

This next section explores the history of the province of Pattani. The story of Pattani is crucial for explaining the conflict in the southern part of Thailand. It will be examined in three periods: the first period concerns the state of Pattani before it became a part of Siam (Thailand's former name); the second period relates to Pattani as a part of Siam; and the final period concerns the current phenomenon of terrorism in Pattani as a province of Thailand.

2.4.1 From Langkasuka to Pattani

The state of Pattani was established around the 15th century after gradually replacing Langkasuka,[300] which was an ancient Hindu Malay kingdom. The Pattani kingdom at that time covered the four provinces of the modern Thai provinces of Pattani, Yala, Narathiwat, and parts of Songkhla, together with the northern part of

---

[297] Section 107 of the 2016 draft Thai Constitution provides that 'The Senate shall consist of two hundred members selected among themselves of persons who possess knowledge, expertise, experience, profession, or common characteristic or interest, or who work or have worked in diverse fields of the society'.
[298] See Section 88 of the 2016 draft Thai Constitution.
[299] See the preamble of the 2016 draft Thai Constitution.
[300] Teeuw, A. & Wyatt. D. (1970) *Bibliotheca Indonesica, Hikayat Pattani the Story of Pattani*. The KoninkliJk Instituut Voor Taal-, Land- En Volkenkunde. pp. 1-5.

modern Malaysia: Kedah and Pahang.[301] It is believed that the Pattani kingdom was prosperous and was one of the main centres of trade in Southeast Asia.

2.4.2 The spread of Islam in Pattani

In this early period, Pattani grew and expanded, influenced by Islam.[302] Pattani was called one of the cradles of Islam in Southeast Asia.[303] By the fifteenth century, Islam was one of the major religions in South East Asia, including in the Patani kingdom.[304] At that time, however, most of the Siamese people remained Buddhist, and Buddhism remained the national religion for Siam. Consequently, Islam was always regarded as a minority religion from the Siamese perspective.

The exact time of the spread of Islam in Pattani has not been established so far. However, d'Eredia, writing in 1613, claimed that Islam was adopted in Pattani before being introduced in Malacca. In addition, Thanet Aphornsuvan, a Thai scholar, has explained the spread of Islam in Pattani in the following terms:

> 'As early as the ninth century, Indian and Arab merchants had settled in Malacca, Aceh, and the Malay Peninsula including the area of Pattani kingdom and southern part of Siam. From there Islam spread to others parts of South East Asia like Sumatra, Java, Borneo, and Kalimantan. The kingdoms and cities in that period were influenced by a mixture of Hindu, Buddhist, and Islam practices. Ethnic communities were centered according to their religious and cultural practices. Unlike in Persia and the Arabian heartland, Islam in Southeast Asia did not operate exclusively as the dominant cultural force in the region, chiefly because Islam arrived after the region had already flourish with a tapestry of beliefs and practices coming from Hinduism, Buddhism, and Confucianism, on top of the widespread and common local practices of ancestral worship and animism'.[305]

---

[301] Ibid.
[302] Aphornsuvan, T. (2007) *Rebellion in Southern Thailand: Contending Histories.* Singapore. ISEAS. pp. 13-14.
[303] Teeuw, A. & Wyatt. D. (1970) *Bibliotheca Indonesia, Hikayat Pattani the Story of Pattani.* The KoninkliJk Instituut Voor Taal-, Land- En Volkenkunde. p. 4.
[304] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politics in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand. pp. 55-68.
[305] Aphornsuvan, T. (2007) *Rebellion in Southern Thailand: Contending Histories.* Singapore. ISEAS. p. 14.

Before the arrival of Islam in Pattani, Buddhist and Hindu people played an important role as the foundation of the region's political and social development. Even though there were a lot of Arab Muslim traders sailing through the islands of Southeast Asia and Pattani, there were few Muslim communities until the late thirteenth century.[306] The spread of Islam after the thirteen century could be observed from language. The language of the Muslim Pattani people was called 'Yawi', and it was used among the people of the Malay ethnic group.[307] It had been used in several provinces such as Pattani, and the Narathiwat provinces in the southern part of Thailand and Malaysia. There were two major Muslim dynasties in Pattani at that period, the first being the Pattani dynasty, and the second the Kelantan Dynasty.[308] It is believed that Pattani at that time had a closer relationship with Muslim Malay Kelantan in the south than the Siamese people in the north.[309]

2.4.3 The fall of the Pattani Kingdom and its incorporation into Siam

Before 1869, Pattani existed largely in a state of peace.[310] It was never attacked by its enemies, including the Siamese. However, the state of Pattani slowly declined as a result of the decay of its economic system. The state of Pattani was one of the great commercial areas for international trading, especially via sea carriage. The economy of Pattani was reliant on European traders, such as the Spanish and the Portuguese. However, most of these European traders gradually departed, and as a result the economic status of Pattani gradually declined.[311]

In 1870, the Raja Muda of Siam took his army from Bangkok to Pattani in order to complete his mission to control the sovereignty and the freedom of Pattani.[312] On the Pattani side, the status of the state was weak. It was clear that at that time that Pattani was not ready to enter into a war, due to lack of weapons and inexperience in how to fight wars.[313] These points indicate that the position of Pattani at that time was extremely weak, and these were the reasons why the Raja of Siam selected this particular period to attack Pattani. The battle between the Siamese and the

---

[306] Ibid.
[307] Deelee, S. (2007) *Solutions of Terrorism Problem in Southern Thailand.* Master of Political Science Thesis, Bangkok. Thammasat University Thailand. p. 4.
[308] Ibid.
[309] Aphornsuvan, T. (2007) *Rebellion in Southern Thailand: Contending Histories.* Singapore. ISEAS. p. 15.
[310] Syukri, I. (1985) 'History of the Malay Kingdom of Pattani (Sejarah Kerajaan Melayu Patani)'. *International Studies Southeast Asia.* Vol. 58. p. 39.
[311] Ibid.
[312] Ibid. p. 42.
[313] Ibid.

Pattani people continued for several days, and Siam won the war.[314] This was the first defeat in the Pattani kingdom's history. Moreover, it represented the loss of independence of the kingdom, and the sovereignty of the Raja of Pattaniwas abolished.[315] Consequently, Pattani fell under Siam's rule.

The period from 1868 to 1919 was the most important period in the development of Siam in the era of reform under King Chulalongkorn, or Rama V. For the Siamese people, that period represented a great time in the history of Siam. Thanet Apornsuvan has explained that:

> 'Between 1868 and 1919 King Rama V steered the kingdom away from Western colonialism and managed to transform the country into a modernized and civilized nation in the eyes of the west. The inclusion of the Pattani Kingdom into Siam was a gradual transformation, providing political control and political incorporation. The Muslim people in Pattani were forced into becoming Siamese citizens by the Siamese policy of that time'.[316]

According to the policy imposed by King Chulalongkorn or Rama V of Siam in 1902, the people of Pattani were required to adopt aspects of the Siam national culture such as dress, language, and even religion.[317] It was clear that by 1902 King Chulalongkorn, or Rama V of Siam, had started an intensive policy to force Muslim Pattani people to become Siamese.[318]

2.4.4 The Anglo-Siamese Treaty of 1909

The Anglo-Siamese Treaty of 1909 (the Bangkok Treaty of 1909) was a treaty between the Kingdom of Siam and the United Kingdom which was signed on March 10, 1909, in Bangkok.[319] This treaty fixed the boundary between Siam and Malaya (a British colony). It has been hypothesised that this treaty was one of

---

[314] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politics in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand. pp. 360-361.
[315] Deelee, S. (2007) *Solutions of Terrorism Problem in Southern Thailand.* Master of Political Science Thesis. Bangkok. Thammasat University Thailand. p. 6.
[316] Aphornsuvan, T. (2007) *Rebellion in Southern Thailand: Contending Histories.* Singapore. ISEAS. p. 15.
[317] Barter, S.J. (2011) 'Strong State, Smothered Society: Explaining Terrorist Violence in Thailand's Deep South'. *Terrorism and Political Violence*, 23:2, 213-232.
[318] Ibid.
[319] The United Kingdom and Siam Treaty. (1909). Treaty Series, No. 19. Signed at March 10, 1909. Bangkok.

the causes of conflict in southern Thailand. According to article 1 of the Anglo-Siamese Treaty,

> 'The Siamese Government transfers to the British Government all rights of suzerainty, protection, administration and control whatsoever which they possess over the states of Kelantan, Terengganu, Kedah, Perlis, and adjacent islands. The frontiers of these territories are defined by the boundary protocol annexed hereto'.[320]

As a result of this treaty, the mainly Muslim people from Kelantan, Terengganu, Kedah, and Perlis were did not remain in Siam but became governed as part of Malaya.[321] On the other hand, most of the Muslims in Pattani and Satun, which remained part of Siam, were disappointed, as they preferred to be independent or even to belong to Malaya.[322] For the Pattani and Satun people, this situation was not acceptable, and consequently there were several individuals from both Pattani and Satun who protested to the Siamese Government in Yala province in the south of Siam.[323] It could thus be said that an alliance of Anti-Siamese groups emerged soon after the singing of the 1909 Anglo-Siamese Treaty. In contrast, for the Siamese Government, this treaty was referred to as a victory, showing they could successfully negotiate with a powerful country such as the United Kingdom to control Pattani and Satun.[324]

One of the main reasons behind signing the Anglo-Siamese Treaty of 1909 was linked to the British East India Company. Prior to the late 19th century, the company was interested in trading in the Malay Peninsula, and attempted as much as possible to steer clear of Malay politics. Nevertheless, the northern Malay states at that time, especially Kelantan, Terengganu, Kedah, and Perlis, were influenced by Siam, and the company was preventing from trading in peace.[325] Consequently, a secret treaty known as the Burney Treaty was signed by the British through the Company directly with the King of Siam in 1826 (there were no Malay representatives present during the making of the agreement). In brief, the British accepted Siamese sovereignty over Kelantan, Terengganu, Kedah, and Perlis. In

---

[320] See Article 1 of the Anglo-Siamese Treaty 1909.
[321] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politics in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand. pp. 253-255.
[322] Ibid.
[323] Ibid.
[324] Ibid.
[325] Ibid.

return, the Siam British ownership of Penang and Province Wellesley and Siam also allowed the British East India Company to trade freely in Kelantan and Terengganu.[326]

Eighty-three years later, there was a new treaty, the Anglo-Siamese Treaty of 1909, or the Bangkok Treaty. There are two possible reasons why the Anglo-Siamese Treaty of 1909 was made. Firstly, Malaya belonged to the British, and at that time Britain was a powerful state that wished further to expand its colonies. Its aim was to extend its territory in the Malay Peninsula as much as possible. It should be pointed out here that the 19th and early 20th century was a period of colonialism, and powerful states like the British, Spain, the French and the Dutch were attempting to establish colonies, including in Southeast Asia. Secondly, the King of Siam at that time had agreed to sign the treaty due to Siam wishing to avoid any war or antagonism with the British. A further point of note here is that the Siam of that time had been invaded by the French in 1907, who were attempting to expand the eastern border of the Indochinese Union, and consequently Siam paid more attention to protecting its eastern border and fighting the French military rather than fighting against the British.[327] Thus, the British could use the instability caused by the French to further its interests.

2.5 Pattani after becoming a part of Siam

2.5.1 Pattani under Siam's Rules

After the abolition of Pattani sovereignty, the state of Pattani was slowly absorbed as a part of Siam, and Pattani's citizens became Siamese.[328] The Siamese administration at that time was an autocracy which was conducted under the authority of the Raja, and power was centralized in Bangkok. Siamese officials were therefore sent to Pattani in order to control Pattani in the name of Siam. Thus, it was clear that from 1909 Pattani was a part of Siam. Therefore, residents were forced to pay taxes as revenue to the Kingdom of Siam. It might well be said that the needs of the Muslim people of Pattani were ignored by the Siamese

[326] Ibid.
[327] Ibid.
[328] Syukri, I. (1985) 'History of the Malay Kingdom of Pattani (Sejarah Kerajaan Melayu Patani)'. *International Studies Southeast Asia.* Vol. 58. p. 63.

government in that period.[329] There were some schools in Pattani, but only for the benefit of Siamese children, and there were no Malay schools at that time.[330] Clearly, the Siamese government of that time paid more attention to Buddhist citizens, whereas the Pattani people, especially those who were Muslim, felt like they were treated as if they were second class citizens of the state of Siam.[331]

2.5.2 Pattani and Islamic law

The name of 'Siam' was changed to 'Thailand' in 1949 by the military dictatorship of Field Marshall Luang Phiboonsongkram.[332] 'Thailand' means 'land of the free' as, throughout its history, Thailand is the only Southeast Asian country that never has been colonized. Thus, after 1949, all of Thai citizens in all religions have been called 'Thai'. The majority of the Muslim people in Thailand live in the southernmost provinces of Pattani, Narathiwat, Yala and Satun, and most of them are of an ethnic Malay background.[333] About ninety nine percent of the Muslim people in Thailand are Sunni Muslims.[334] The number of Muslim people has been calculated as five percent of the Thai population.[335]

As Muslim people were a majority in southern Thailand, the Thai government enacted the Act on Application of Islamic Law in the provinces of Pattani, Yala. Narathiwat, and Satun in 1946. Its initial preamble stated that: 'Whereas it is desirable to require the courts of first instance in the Provinces of Pattani, Narathiwat, Yala and Satun to apply the Islamic Law to the actions involving Islamic family and succession in which both the plaintiffs and the defendants are Muslim or, if the actions are non-contentious, the petitioners are Muslim'. The important reason for enacting this law is to reflect differences in culture between Thai-Buddhism and Thai-Muslim people in south Thailand. For example, through Muslim culture in the south, a man can have more than one wife, while a Buddhism man can have only

---

[329] Leyland, P. (2009) 'Thailand's Troubled South: Examining the Case for Devolution from a Comparative Perspective'. *Australian Journal of Asian Law*. Vol. 11(1) 1-29, ISSN 1443-0738. p. 6.
[330] Ibid.
[331] Mullinsa, T.M. (2009) 'Geographies of Peace and Armed Conflicts and Resolutions in Southern Thailand'. *Annals of the Association of American Geographers.* 99(5) p. 925.
[332] Cavendish, R. (1999) 'Siamese officially renamed Thailand', *History Today*. Vol. 49. Issue 5, p. 1.
[333] Girling, J. (1981) *Thailand: Society and Politics*. Ithaca. New York. Cornell University Press. p. 265.
[334] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politics in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand. pp. 253-258.
[335] The data were derived from the website of National Statistical Office of Thailand (2013) Available at www.nso.go.th

one. The Thai government thus enacted the Muslim family law which allows a Muslim man to legally have four wives.[336]

Another primary aim of the Act of 1946 in the south of Thailand was related to the nature of the court in the first instance. According to Sections 3 and 4, which were regarded as key parts of this Act,

> 'When addressing an action involving Islamic family or succession in which both the plaintiff and the defendant are Muslim or, if the action is non-contentious, the petitioner is Muslim, a court of first instance in the Province of Pattani, Narathiwat, Yala or Satun shall adhere to the Islamic Law on the family and succession in lieu of the pertinent provisions of the Civil and Commercial Code, save those governing succession prescriptions, whether the cause of action comes to pass prior to or following the coming into force of this Act'.[337]

In addition, Section 4 provided that:

> 'When addressing the action under Section 3, the chamber of the court of first instance shall consist of one Dato ('Dato' means a Muslim judge) and other judges. The Dato shall be competent to decide the questions of Islamic laws and to sign the judgments adopted in pursuance of his decisions. The decisions of a Dato on the questions of Islamic laws in any action shall be final with respect to that action'.

In practice, the Islamic laws applied in those four provinces are family law and inheritance law. As there are different ethnic backgrounds and religious beliefs as described above, the law is viewed as suitable for the distinctive sub-group of resident who profess Islam. This is the reason why Islamic law has been applied in the four province areas. For other civil cases, such as contract, tort, or other obligations or a criminal case, they must operate in accordance with national Thai (non-Muslim) law.

At the same time, according to Thai Constitutions 1946 and 1978, Buddhism was the official region for Thailand.[338] Regarding the southern Thailand conflict, these

---

[336] See Section 53 of Muslim Family Law of Act Thailand. B.E. 2489 (1946).
[337] See Section 3 of Act on Application of Islamic Law in the provinces of Pattani, Yala, Narathiwat and Satun 1946.
[338] See the Thai Constitutions 1946 and 1978.

constitutions did not provide any concrete policy to deal with the distrust of Pattani. After the 1997 Constitution of Thailand was promulgated, Buddhism is constitutionally no longer the official religion of the country, even though over 90 % of the Thai citizens are Buddhist.[339] All people who were born in Thailand are of Thai nationality, and in this sense he or she is endowed with equal rights and duties, regardless of religion, family status or the nationality of his or her parents. Based on the 1997 Constitution, all Muslim people who were born in Thailand are constitutionally Thai citizens and enjoy freedom of religion as guaranteed by the Constitution.

According to Section 37 of the Thai constitution 1997, the freedom to profess in any religion for Thai people is protected, and consequently both Muslim and Buddhist in Thailand are Thai citizens with equal rights and liberty guaranteed by the Thai Constitution. However, it is argued that most of Muslim in southern Thailand, especially those who live in Pattani, Yala, and Narathiwat, still feel distinct from Buddhists, and still feel threatened by the pursuit of policies which are designed with the majority population (Buddhists) in mind.[340]

2.5.3. The origins of Muslim separatism in Pattani since 1909

Thailand has faced separatist movements ever since the Pattani state was annexed to Siam.[341] The root causes of the unrest are directly related to the dissatisfaction of the Muslim Pattani people towards the Siamese (Thai) government, including the ethnic, cultural and religious distinctiveness between Buddhist Thai and Muslim Malay people in the area.

Turning back to 1923, the Pattani people started an opposition movement by refusing to pay taxes to the Siam government of that time.[342] Consequently, rebellions originated from villagers at Ban Namsai, in the Mayo district in Pattani, where people refused to pay their taxes and rents to the Siamese government.[343]

---

[339] See Section 10 of the Constitution of the Kingdom of Thailand 1997.
[340] Deelee, S. (2007) *Solutions of the Terrorism Problem in Southern Thailand*. Master of political science thesis. Bangkok. Thammasat University Thailand. p. 66. See also Mullinsa, T.M. (2009) 'Geographies of Peace and Armed Conflicts and Resolutions in Southern Thailand'. *Annals of the Association of American Geographers.* 99(5) p. 925.
[341] Bajoria, J. & Zissis, C. (2008) 'The Muslim Insurgency in Southern Thailand'. *Council on Foreign Relations*. [Online Journal]. Available from http://www.cfr.org/thailand/muslim-insurgency-southern-thailand/p12531 [Accessed 15 July 2014].
[342] Syukri, I. (1985) 'History of the Malay Kingdom of Pattani (Sejarah Kerajaan Melayu Patani)'. *International Studies Southeast Asia Series.* Vol. 58. p. 64.
[343] Apornsuwan, T. (2004) 'Origins of Malay Muslim 'Separatism' in Southern Thailand'. *Asia Research Institute Working Paper.* Series No. 32 pp.18-22.

This showed that the main cause that led to the rise of this movement was related to the oppressive Siamese administration. Most Pattani felt that they were being ignored by Siamese government, and that the administration did nothing to benefit the Muslim people of Pattani. In the same year (1923), Muslims in Pattani established a movement that called for freedom against the Siamese government.[344] This movement had no official name, but it was led by Tungku Abdulkadir, who was the last Raja (king) of Pattani. It can thus be said that the movement to demand freedom for the Muslim people in Pattani began in 1923. However, after a fight between the Muslim Pattani movement and troops of the Siamese police in the area of Mayul (Rakak), the movement was suppressed by the kingdom of Siam. Most of the Muslim people involved in this movement were arrested by police officers and sent to Bangkok under the charge of treason, and then they were prosecuted in Bangkok and were imprisoned.[345]

To understand better the Muslim separatists in southern Thailand, the story of 'Haji Sulong's rebellion' next needs to be taken into account. Haji Sulong (Sulong bin Abdul Kadir bin Mohammad el Patani) created the Patani People's Movement, and was leader of the Muslim separatists in Pattani.[346] Thanet Apornsuwan, a Thai scholar, commented that 'politically, the appearance of Haji Sulong in the Muslim movement was very significant, making it a new departure from the old history of the Malay Muslims' political activism'. Between 1940 and 1947, Haji Sulong became the symbol of the Malay Muslims fighting against the unfair and discriminatory policies of Thai state.[347] Haji expressed as his life mission to create a separate Islamic republic in Pattani. In 1947, Haji and his supporters attempted to negotiate with the Siamese government several times, but the negotiations failed.[348] Between 1947 and 1948, several violent incidents occurred in Pattani, and Haji Sulong was identified as the key person behind those acts of violence. However, in 1948 Haji Sulong together with his supporters and other religious leaders were arrested on treason charges, and eventually they were sentenced to three years' imprisonment. The case was appealed by prosecutors, requesting more severe punishment of Haji and his associates. At this stage, the prosecutors cited evidence

---

[344] Syukri, I. (1985) 'History of the Malay Kingdom of Pattani (Sejarah Kerajaan Melayu Patani)'. *International Studies Southeast Asia Series.* Vol. 58. p. 64.
[345] Ibid.
[346] Apornsuwan, T. (2004) 'Origins of Malay Muslim 'Separatism' in Southern Thailand'. *Asia Research Institute Working Paper*. Series No. 32 pp. 18-22.
[347] Jory, M. and Micheal, J. (2008) *Thai South and Malay North. Ethnic Interactions on a Plural Peninsula.* Singapore. NUS Press. p. 97.
[348] McCargo, D. (2008) *Tearing Apart the Land, Islam and Legitimacy in Southern Thailand.* Ithaca. Cornell University Press. pp. 60-63.

that Haji as a leader of separatist movement was planning a rebellion.[349] The Appeal Court agreed with the prosecutors, and then the three year sentence was increased to seven years. Nevertheless, the Appeal Court considered that due to the defendants being willing to cooperate in both investigation and the trial process, the punishment of seven year jail should be reduced to four years and eight months. The Supreme Court of Thailand confirmed.[350]

Haji Sulong was released in 1952, and then he returned to Pattani. In 1954, the Police Special Branch Office in Songkhla province reported that Haji mysteriously disappeared with his eldest son Wan Othman Ahmed.[351] Even though there was no sufficient evidence to explain the disappearance or the death of Haji Sulong, the public believed that he and his eldest son has been killed by the Thai police.[352] Since the death of Haji, his goals and ideas still bear an influence on Muslim people to create a new state of Pattani.

Between 1940 and 1950 the Siamese government promoted a policy of assimilation in order to develop closer relationships between the Buddhist and Muslim people in the area. In this regard, the Thai government forced Muslim inhabitants to adopt Thai names instead of Muslim ones, and also required the Thai language to be the official language.[353] However, some of the Muslim people of Pattani resisted the assimilation policy, and responded to the government by setting up groups or separatist movements with the primary purpose of seeking secession from the Kingdom of Siam, thus leading to renewed violence in the Pattani area. Between the 1960 and 1980, this violence was largely confined to the areas of Pattani, Yala, Narathiwat, and certain parts of Songkhla.[354] It can thus be observed that between the 1960s and 1980s, some of the Muslim people of Pattani showed their clear aim to secede from Siam, and regarded the Siamese government as their opponent.

In 1980, the policy of assimilation was reversed by the Thai government under General Prem Tinsulanonda, the Thai Prime Minister at that time. The reason for reversing the assimilation policy could be explained on the basis that the campaign did not work to force Muslim people in southern provinces to adapt Thai culture and

---

[349] Jory, M. and Micheal, J. (2008) *Thai South and Malay North. Ethnic Interactions on a Plural Peninsula.* Singapore. NUS Press. p. 121.
[350] Ibid.
[351] Ibid.
[352] Ibid.
[353] Bajoria, J. & Zissis, C. (2008) 'The Muslim Insurgency in Southern Thailand'. *Council on Foreign Relations*. [Online Journal]. Available from http://www.cfr.org/thailand/muslim-insurgency-southern-thailand/p12531 [Accessed 15 July 2014].
[354] Ibid.

reject their Muslim culture. In the same year, Prem, a Buddhist who was born in southern Thailand (Songkhla province), provided a new policy of support for cultural rights and respect for the religious distinctiveness of southern Thailand. In addition, he cooperated with the Malaysian government to maintain good relationships between the countries and to increase the security capability in the southern border area.[355] As a result of Prem's policies, the situation in Pattani seemed to have improved. Between 1980 and 2000, there were few incidents related to separatist movements in southern Thailand. For example, between 1998 and 1999, there were fewer than five cases of terrorism.[356]

In summary, when the assimilation policy was enforced between 1940 and 1950, the resistance expanded widely, and consequently several acts of violence occurred in the Pattani areas. However, in 1980 the assimilation policy was cancelled and the Thai government at that time adopted a conciliatory political strategy, with more respect for the diversity of different cultures and religions. Subsequently, the violence that had been happening in the Pattani area clearly declined. Thus, it could be concluded that the sensitivity of the Thai policies on local diversities which were enforced to deal with the southern Thailand insurgency were reflected through the amount of terrorism incidents.

2.6 The current situation in Pattani as a province of Thailand Kingdom

2.6.1 Terrorism organizations

To facilitate better understanding of the situation in the south of Thailand, this section discusses the main actors behind the violence. There are several groups behind the violence in southern Thailand; these groups can be called political separatist groups, with a clear aim to secede from the Kingdom of Thailand,[357] though links to criminal groups are also frequently alleged by the authorities.[358] It should be noted that after the assimilation campaign was adopted between 1940-1980, there were more than 50 armed groups operating in south Thailand

---

[355] Ibid.
[356] Sookrasom, A. (2006) *Terrorism in Thailand: Prevention, and Suppression Measures.* Master of Law Thesis. Bangkok. Thammasat University. pp. 126-136.
[357] McCargo, D. (2008) *Tearing Apart the Land, Islam and Legitimacy in Southern Thailand.* Ithaca. Cornell University Press. pp. 168-169.
[358] 'Many separatist militants operated in a gray zone of crime on the one hand, and Malay-Muslim ethnic/religious consciousness on the other, which facilitated recruitment from criminal gangs for separatist groups and vice versa.': Human Rights Watch, *No One Is Safe: Insurgent Attacks on Civilians in Thailand's Southern Border Provinces* (2007) https://www.hrw.org/reports/2007/thailand0807/3.htm

especially in Pattani province. There are now two powerful groups which play important roles behind the violence in the south of Thailand, and these are PULO (Pattani United Liberation Organization) and BRN (Barisan Revolusi Nasional).[359]

PULO (Pattani United Liberation Organization) is the most powerful separatist group.[360] It was founded on 22 March 1968 by Kabir Abdulrahman, an Islamic Pattani scholar educated in the Middle East.[361] In 1968 PULO was formed to oppose the assimilation policies of the Thai government.[362] The organization has divided into three factions since 1992.[363] The first faction was headed by Haji Sama-ae Thanam, who controlled the PULO Army Command Council for supporting Kabir Abdul Rahman, the founder of PULO.[364] The second faction was headed by Dr. Arong Muleng, who played a large role as policy-maker. Since 1976, PULO had recruited large numbers of new members from several classes of the society, such as teachers, regional leaders, or even local politicians.[365]

It was claimed that the main strategy for recruiting new members involved selecting young Muslim people and giving them indoctrination with radical Islamic teachings and military training.[366] Some of them were said to be sent to train with the PLO (Palestinian Liberation Organization), IRA (Irish Republican Army), and MILF (Moro Islamic Liberation Front). After completing their training they returned to southern Thailand and led the fight against the Thai military.[367] The third faction was established according to the original charter of PULO. The organization at that time had a large number of supporters from inside and outside the country. PULO has been one of the more successful separatist groups, as it can be seen that there were several countries and organizations that supported this organization; for

---

[359] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politics in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand. p. 66; See also Helbart, S. (2015) *Deciphering Southern Thailand's Violence* Singapore, Yusof Ishak Institute.
[360] Barter, S.J. (2011) 'Strong State, Smothered Society: Explaining Terrorist Violence in Thailand's Deep South'. *Terrorism and Political Violence*, 23:2, 213-232. See also McCargo, D. (2008) *Tearing Apart the Land, Islam and Legitimacy in Southern Thailand*. Ithaca. Cornell University Press. p. 2.
[361] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politics in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand. pp. 360-361. See also Abuza, Z. (2009) *Conspiracy of Silence the Insurgency in Southern Thailand*. Washington D.C. United States Institute of Peace Press. p. 18.
[362] Tan, A. (2009) *The Politics of Terrorism A Survey*. London. Routledge. p. 198.
[363] Ibid.
[364] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politics in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand. pp. 360-361.
[365] Ibid.
[366] Leyland, P. (2009) Thailand's Troubled South: Examining the Case for Devolution from a Comparative Perspective. *Australian Journal of Asian Law.*Volume 11(1) 1-29. p. 7.
[367] Ibid. 347.

instance, the PLO in 1976, the Syrian Government in 1976, and Libya's Government in 1977.[368] Currently, PULO is divided into several sub-groups, such as New PULO or PULO 88, with the same primary aim of achieving independence. It has been found that most of the violence in the southern part of Thailand is related to PULO.[369]

The BRN (Barisan Revolusi Nasional) is another important separatist group with its primary aim to establish an independent Pattani state.[370] The BRN was founded on March 13, 1963 by Haji Abdul Karim Hassan and Haji Amin Tohmena.[371] The group is well known for its emphasis on violence, and it is one of the leading groups behind most of the violence in southern Thailand since 2007.[372] The group is divided into three main factions. The first faction is the BRN Congress, which is the military wing and has played the biggest role in the military aspect until the present.[373] The second faction is the BRN ULAMA, which is concerned with policy and political and religious activities.[374] The last faction is the BRN Coordinate, the main role of which is concerned with international political interaction with Malaysia.[375] In August 2007, according to a Human Rights Watch report, it was revealed that 'BRN has emerged as the backbone of the new generation of separatist militants; there were more than seven thousand youth members in the Pattani area'.[376] Currently, the BRN still plays an important role behind the violence in southern Thailand.[377]

Furthermore, there are some other separatist groups linked to the violence in south Thailand such as GMIP (Gerakan Mujahideen Islam Pattani), and the Ronda

---

[368] Ibid.
[369] Barter, S.J. (2011) 'Strong State, Smothered Society: Explaining Terrorist Violence in Thailand's Deep South'. *Terrorism and Political Violence*, 23:2, 213-232.
[370] Leyland, P. (2009) Thailand's troubled south: examining the case for devolution from a comparative perspective. *Australian Journal of Asian Law.*Vol. 11(1) 1-29. p. 7.
[371] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politics in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand. p. 356.
[372] McCargo, D. (2008) *Tearing Apart the Land, Islam and Legitimacy in Southern Thailand.* Ithaca. Cornell University Press. pp. 168-169.
[373] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politics in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand. pp. 360-361.
[374] Ibid.
[375] Ibid.
[376] McCargo, D. (2008) *Tearing Apart the Land, Islam and Legitimacy in Southern Thailand.* Ithaca. Cornell University Press. pp. 168-169.
[377] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politic in Malay World.* Islamic Culture Foundation of Southern Thailand. Songkhla. pp. 360-361.

Kumpulan Kecil (RKK).[378] In addition, some experts have observed that the violence in the four southernmost provinces of Thailand might be influenced by foreign Islamist groups such as al-Qaeda and Jemaah Islamiyah.[379] In the last decade, the insurgency committed by the Pattani guerrilla groups has been severe. During this period, more than 3500 individuals have been killed, including Buddhist and Muslim people.[380] The overall picture in regard to insurgent groups is represented in Table 2.4 below.

Table 2.4 Main insurgent groups in Southern Thailand

Organization	Formed / status	Characteristics
BRN (Barisan Revolusi Nasional)	1963 / active	BRN is a powerful group which linked to many incidents. Today the organization is divided into three factions: BRN Congress (military), BRN Uluma (politics) and BRN Coordinate (International policy). [381]
BNPP (Barisan Nasional Pembebasan Pattani- Pattani National Liberation Front)	1963 / inactive	BNPP is an Islamic separatist organization operating in northern Malaysia and connected to South Thailand insurgency. The group is supported by religious elites in Pattani areas, and it remains operational.[382]

---

[378] Croissant,A. (2007) 'Muslim Insurgency, Political Violence,and Democracy in Thailand'. *Terrorism and Political Violence.* Vol.19:1,1-18, p. 5.

[379] Ibid. See also Abuza, Z. (2009) *Conspiracy of Silence*: *The Insurgency in Southern Thailand*. Washington DC. United States Institute of Peace; Liow, J.C. and Pathan, D. (2010) *Confronting Ghosts: Thailand's Shapeless Southern Insurgency*. Double Bay. Lowy Institute for International Policy.

[380] Porath, N. (2010) 'Civic Activism Continued through Other Means': Terror-Violence in the South of Thailand. *Terrorism and Political Violence*. 22:4. pp. 581-600.

[381] Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politics in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand. p. 66.

[382] Croissant, A. (2007) 'Muslim Insurgency, Political Violence and Democracy in Thailand. *Terrorism and Political Violence.*19:1,1-18. p. 5.

PULO (Pattani United Liberation Organization)	1968 / active	PULO is a powerful separatist organization. PULO has strong militants with- many members from several classes of society.[383]
Bersatu (Berisan Kemerdekaan Pattani- United Front for Independence of Pattani)	1989 / inactive	Bersatu is a Muslim movement based in Pattani. It is an umbrella organization, which was found by a faction of PULO and BRN.[384]
GMIP (Gerkan Mujahideen Islam Pattani)	1995 / inactive	The group was established by Afghan veterans. The group's aim was to set up an Islamic state.[385]

To understand terrorism in southern Thailand more deeply, it shall now be analysed under three aspects: purpose, target, and method. As for purpose, terrorism has two broad purposes: to gain supporters and to coerce opponents.[386] Terrorists in the south of Thailand involve violence motivated by political ends, ideology, and religion.[387] In this regard, secession from the Kingdom of Thailand, or becoming a part of Malaysia, might be said to be the primary aims of the terrorists in south of Thailand. It is based on their belief that these particular areas used to be linked to Malay territory, and moreover most of the Thai-Muslim people in those provinces feel that many governmental developmental projects (such as economic and educational opportunities etc.) have tended to benefit only Thai-Buddhists.[388] These ideas lead to the serious concern among Thai-Muslim people about the injustices and human right abuses by the central authority when they raise objections.

As for target, the insurgency committed by terrorist groups in south of Thailand involves violence that mainly targets key members of the civilian population such as

---

[383] Barter, S.J. (2011) 'Strong State, Smothered Society: Explaining Terrorist Violence in Thailand's Deep South'. *Terrorism and Political Violence*, 23:2, 213-232.
[384] Thai News Agency (2006) '20 insurgent bombs in Yala banks, killing 1, injuring 18' *Thai News Agency Newspaper.* [Online] [Accessed 15 March 2015].
[385] Croissant, A. (2007) 'Muslim Insurgency, Political Violence, and Democracy in Thailand'. *Terrorism and Political Violence,* 19:1, 1-18.
[386] English, R. (2009) *Terrorism How To Respond*. Oxford. Oxford University Press. p. 66.
[387] Office of the Public Prosecution Region 9 (2012) *Research on the Effectiveness of Prosecution of National Security Charges and the Protection of Citizens' Rights: A Case Study of the Four Bordering Provinces in Southern Thailand (Songkla, Pattani, Yala, Narathiwat).* Bangkok. Asia Foundation. pp. 66-68.
[388] Baker, C & Phongpaichit, P. (2005) *A History of Thailand.* Cambridge. Cambridge University Press. pp. 172-174.

local government officials, schoolteachers, doctors, nurses, and Buddhist monks.[389] In addition, terrorist groups also aim to damage personal property and public property such as airports, hospitals, markets, shopping centre, schools, courts and temples as well.[390] Because of this situation, more than 1,200 teachers and educational officials requested to transfer out of the violent areas during the last decade.[391]

As for method, the current militants in south of Thailand in the past decade have established various tactics such as arson, bombings, shootings and raids to seize arms.[392] From 2004, the groups of terrorist have developed new bombing tactics by focusing on government buildings such as courts, hospitals, schools and also private residences of the Thai Government Officials.[393] Recently, the motorcycle bomb has been the signature tactic of terrorist groups in southern Thailand.[394]

In terms of international support, the situation has been reviewed by Asia-Pacific Centre for Security Studies in 2004. It claims that some Pattani's separatists are connected to the global Islamic community, for example, some of separatist leaders have received military training in Afghanistan and Libya.[395] In this sense, the GMIP (Gerkan Mujahideen Islam Pattani), which is a separatist organization founded in 1986 and then headed by an Afghan veteran, Nasoree Saesaeng, is a clear example to show that this conflict is linked to international influences.[396] In addition, the southern Thailand insurgency is linked to Malaysia. There are approximately 100,000 people in Pattani areas who are both Thai and Malaysian citizens and hold both Thai and Malaysian identification cards.[397] Even though the Malaysian government does not support the southern Thailand insurgency, there is a lot of sympathy from Malaysian people who live in the north.[398] In addition, it was

---

[389] Deelee, S. (2007) *Solutions of the Terrorism Problem in Southern Thailand.* Master of political science thesis. Bangkok. Thammasat University Thailand. pp. 41-42.
[390] McCargo, D. (2011) *Mapping National Anxieties: Thailand's Southern Conflict.* Copenhagen: NIAS Press. pp. 33-35.
[391] The Nation Newspaper (2014) 'Jane's Intelligence Review'. [Online] September 2, 2004. [Accessed 15 March 2015]. Available at http://thenationonlineng.net/
[392] Croissant, A. (2007) 'Muslim Insurgency, Political Violence, and Democracy in Thailand'. *Terrorism and Political Violence,* 19:1,1-18.
[393] Ibid. p. 3.
[394] Ibid.
[395] Smith, A. (2004) 'Trouble in Thailand's Muslim South: Separatism, not Global Terrorism'. *Asia Pacific Security Studies.* Vol3. p. 3.
[396] Makarenko, T. (2004) 'Terrorism and transnational organised crime' in Smith, P.J. (ed.) (2004) *Terrorism and Violence in Southeast Asia.* Armonk. M.E. Sharpe. pp.181-182.
[397] Story, I. (2007) 'Malaysia Role in Thailand's Southern Insurgency'. *Terrorism Monitor.* Vol.5 Issue: 5. pp. 1-3.
[398] Ibid.

revealed by Ian Story that 'there have been allegations that local Malaysian police in Kelantan turn a blind eye to the presence of Malay Muslim militants'.[399]

2.6.2 Contemporary conflict

The latest bout of serious conflict started on April 28, 2004, when assailants attacked a police and military checkpoint and then seized Krue Se mosque as their refuge.[400] The police and army troops surrounded the Krue Se mosque and made several attempts to enter by using tear gas, but the assailants launched a counter-attack with gunfire. After a nine hour siege, the police officers and army troops launched a final attack by using gunfire. Consequently, all of the insurgents inside the Krue Se mosque were killed. As a result of this serious incident, there were 107 insurgents and five members of the security forces killed, according to the reports given by the Thai authorities.[401] The Thai Government, at that time led by Thaksin Shinnawatra, was questioned about inappropriately using excessive force and heavy weapons on the assailants, but the government gave no official response. According to Asia director at Human Rights Watch, Brad Adams, 'The Krue Se Raid stands as testament to the failure of Thailand's leaders to make justice a priority in the south …. The authorities have ignored the recommendation of the fact-finding commission to start judicial proceedings against those responsible'.[402] Thus, as described in chapter 1, the 'Krue Se mosque incident' was seen as one of the main causes of the contemporary conflict since 2004.[403]

Another important incident, also described in chapter 1, took place on October 25, 2004 in Narathiwat Province. It was called 'Tak Bai Incident'. There were approximately 1,500 Muslims protestors gathered in front of Tak Bai Police Station, Narathiwat province, to protest against the unfair detention of six Muslim men. After several hours of the demonstration, a large amount of protesters attempted to cross the police barriers and enter into the Police Station. At the first stage, police officers attempted to quell their efforts by using tear gas against the protestors;

---

[399] Ibid. Extradition is also difficult, such as in the case of a subsequent GMIP leader, Jehkumir Kuteh/Abdul Rahman Ahmad: Emmanuel, T., 'Malaysian police nab top Thai militant' *New Straits Times* January 27, 2005, p. 1.

[400] Puaksom, D. (2008) *Thai South and Malay North, Of a Lesser Brilliance: Patani Historiography in Contention.* Singapore. NUS Press. p. 71.

[401] Human Rights Watch Report (2006) 'Thailand: Investigate Kru Se Mosque Raid'. [Online] Available from http://www.hrw.org/news/2006/04/27/thailand-investigate-krue-se-mosque-raid [Accessed 15 July 2014].

[402] Ibid.

[403] Puaksom, D. (2008) *Thai South and Malay North, Of a Lesser Brilliance: Patani Historiography in Contention.* Singapore. NUS Press. p. 71.

however, the situation became more severe, as a large amount of protestors started attacking by throwing rocks. Then, the police made a decision to fire into the air, and later into the crowd at head height. As a result of the police's action, seven protesters were shot dead at the scene. In addition, it appeared that there were 78 people who had been either suffocated or were crushed to death during their transportation to the detention area. Approximately 1,200 people were held in military custody for several days without suitable medical treatment.[404] As a consequence, most of them suffered serious injuries, and many required amputation of their limbs.[405]

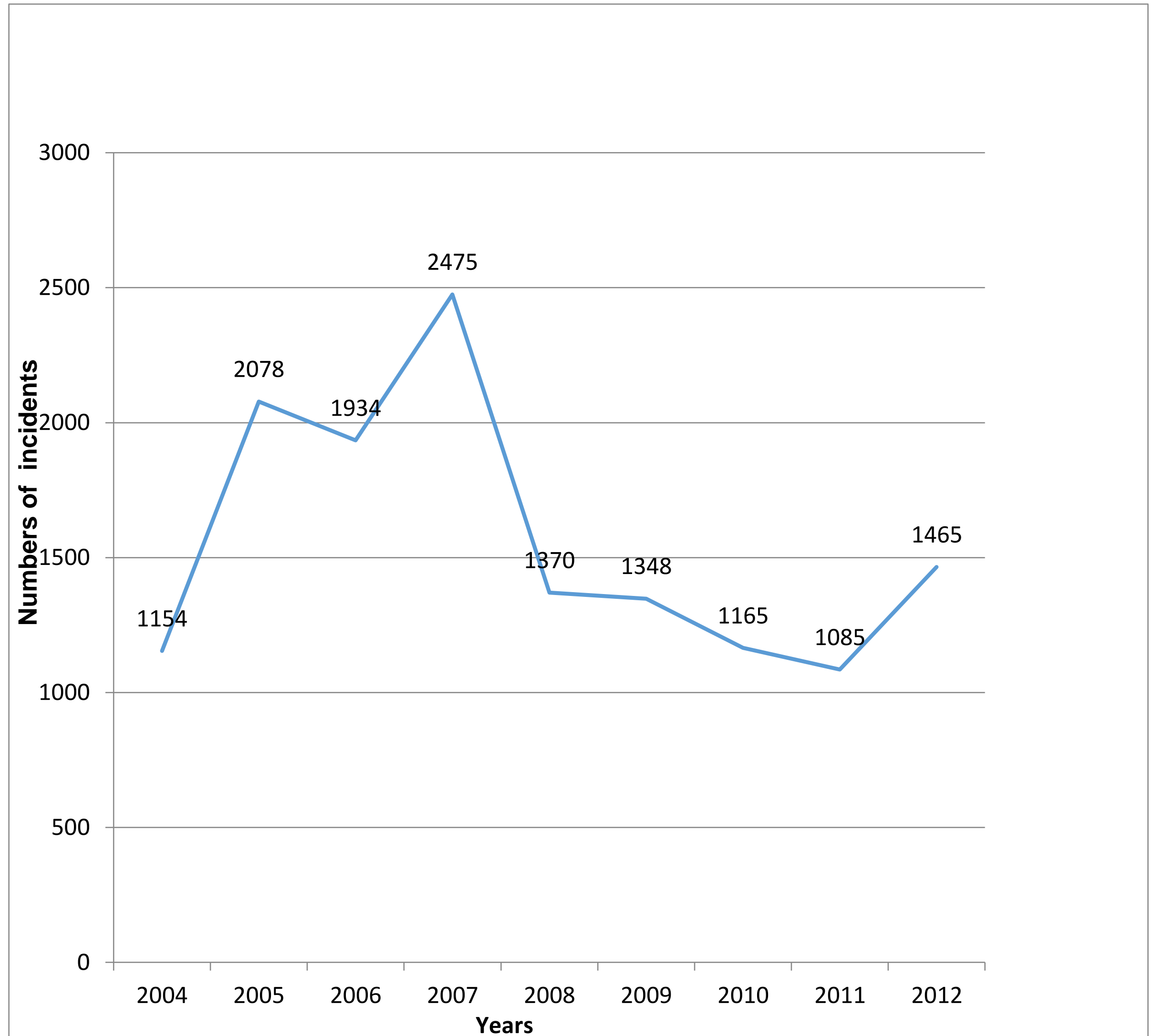
There were 58 Muslim protestors charged for having allegedly committed criminal offences, whereas no Thai officials were charged in the trial.[406] Brad Adams, Asia director of Human Rights Watch, commented that 'despite overwhelming evidence, the Thaksin government refused to prosecute those responsible for the deaths and injuries at Tak Bai and to compensate the victims appropriately'. He further commented that 'if Thailand's new government wants to show that justice in the south is a priority, then addressing Tak Bai will be a key test'.[407] Thus, one of the important causes which led to the serious conflict in south Thailand was the government's action.

To better understand the types of attacks and the death tolls as a result of south Thailand violence, this section provides charts which illustrate numbers of incidents of the southern Thailand insurgency (Figure 2.5), types of offences (Figure2.6), and death tolls occurring in four southern provinces of Thailand; Pattani, Yala, Narathiwat, and Songkhla between 2004 and 2012 (Figure 2.7).

---

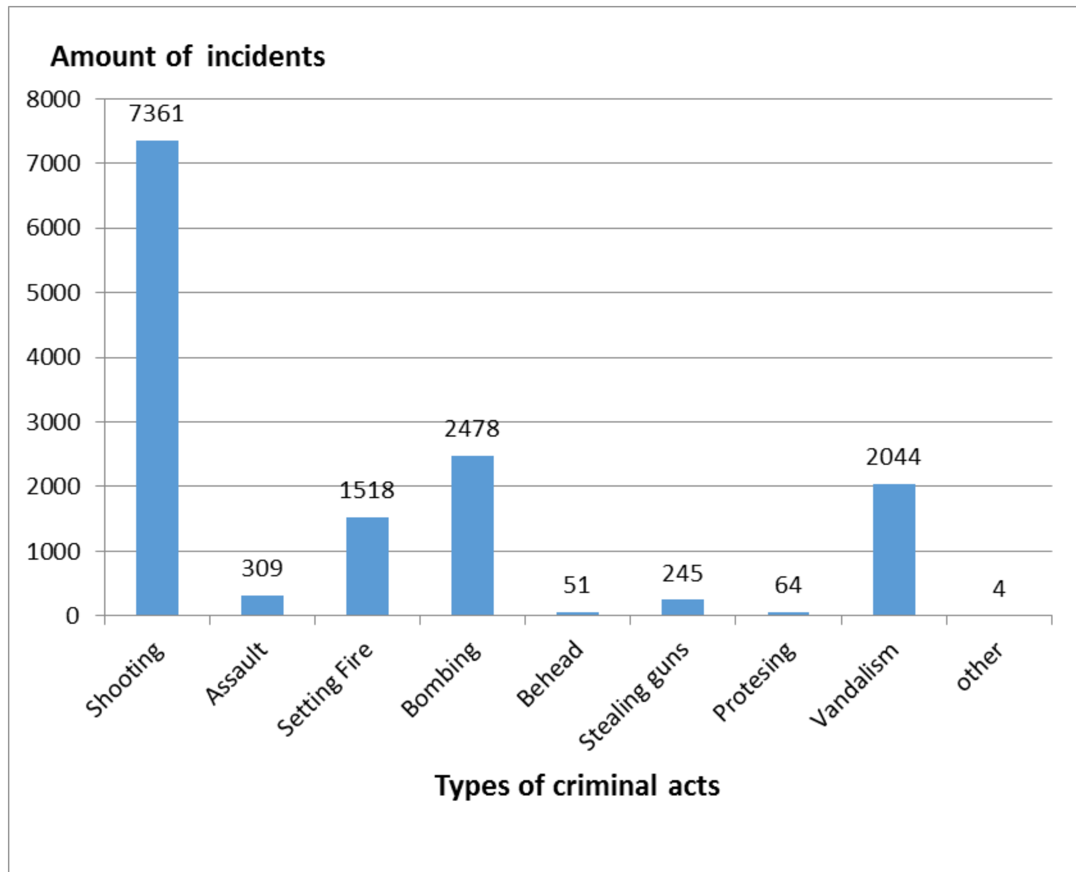
[404] Human Rights Watch Thailand (2006) 'Thailand: New Government Should Ensure Justice for Tak Bai. Two Years after Killings, No Security Personnel Have Been Prosecuted'. October 25, 2006. [Online] Available at http://www.infozine.com/news/stories/op/storiesView/sid/18577/
[405] Ibid.
[406] Ibid.
[407] Ibid.

Figure 2.5 Numbers of incidents regarding the southern Thailand insurgency in four provinces; Pattani, Yala, Narathiwat and Songkhla between 2004 and 2012.[408]



[408] The statistics of numbers of cases regarding the insurgency occurring in Pattani, Yala, Narathiwat and Songkhla provinces between 2004 and 2012 were provided by Deep South Watch (DSW), an organization which established 2006 with the purpose of raising awareness about the insurgency in south Thailand. Available at http://www.deepsouthwatch.org/

Figure 2.6 Types of criminal acts regarding south Thailand insurgency occurring in four southern provinces; Pattani, Yala, Narathiwat and Songkhla between 2004 and 2012.[409]



According to Figure 2.6, there were in total 14,074 criminal acts which occurred during 9 years between 2004 and 2012.

[409] The statistics of criminal acts relating the insurgency occurring in Pattani, Yala, Narathiwat and Songkhla provinces between 2004 and 2012 were provided by Deep South Watch (DSW), an organization which established 2006 with the purpose of raising awareness about the insurgency in south Thailand. Available from www.deepsouthwatch.org/english.

Figure 2.7 The numbers and categories of deaths in southern Thailand insurgency between 2004 and 2012.[410]

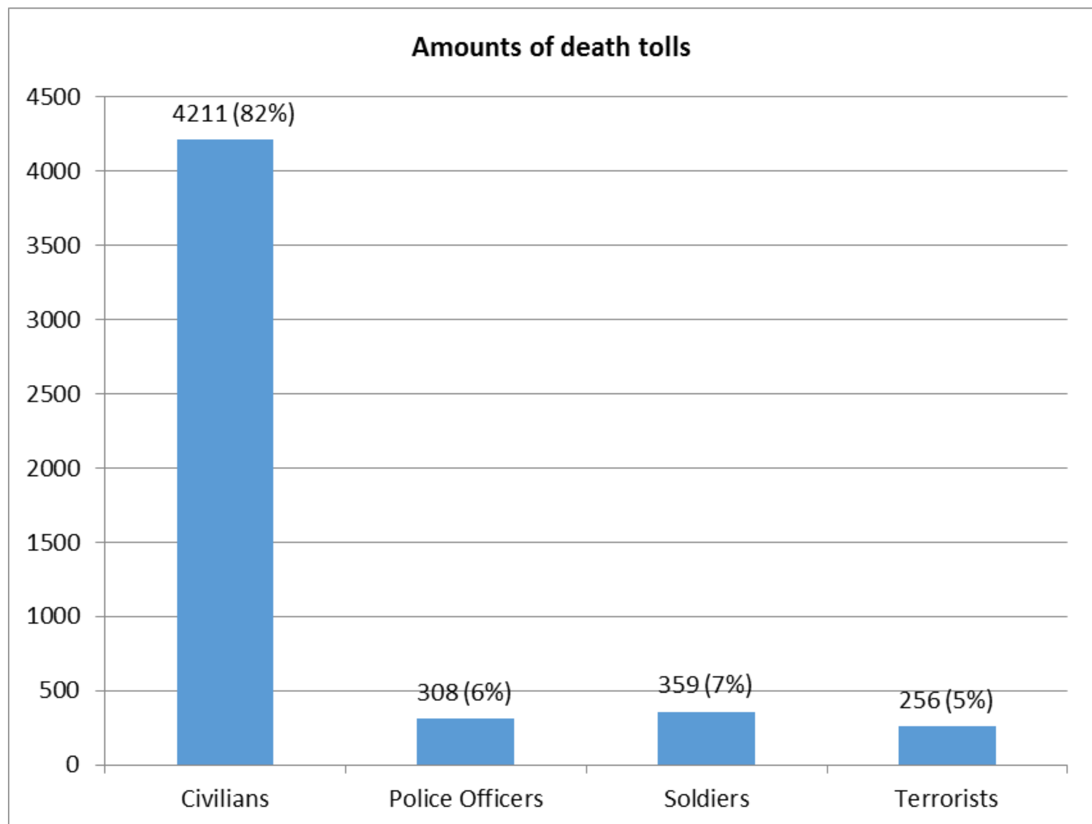


Figure 2.7 illustrates the amounts of deaths in south Thailand insurgency between January 2004 and March 2012. It shows that civilians were the main victims of terrorism in the south of Thailand, reflecting their availability as 'soft' targets.

2.7 Conclusion

In this chapter, the Thai constitutional approaches have been explored in the context of the southern Thailand insurgency. The research has revealed that both the Thai Constitutions of 1997 and 2007 contained potentially positive policies, which would be considered as potential mechanisms to allay the problems existing in the south of Thailand. Although both Constitutions are no longer enforced, the effects of their enforcement still remain. They have not only provided certain rights and liberties for Thai citizens, but also established several important watchdog bodies to enable the oversight of the exercising of official powers and to maintain human rights. In terms of constitutional rights and liberties, this research has found

---

[410] Information of death tolls in southern Thailand insurgency between 2004 and 2012 in Pattani, Yala, Narathiwat and Songkhla provinces were provided by Deep South Watch Organization (DSW) at www.deepsouthwatch.org/english.

that in principle both Constitutions have sufficiently provided the necessary rights and liberties for the Thai people, including in the south.[411]

However, in practice the research has also found that the impacts of the relevant watchdog bodies are weak and so should be improved. The first facet of the problem appears to exist at a structural manner, as there are unclear and overlapping powers for each body. For instance, the wide jurisdiction of the Office of the Thai Ombudsman, being responsible for the investigation and fact-finding relating to the grievances lodged by the public who have made complaints regarding the practices of state officials at all levels, as well as maintaining human rights, might be considered as overlapping with the roles of the National Human Rights Commission (NHRC).[412]

The second matter concerns the increasingly passive position of the National Human Rights Commission. The NHRC seems to be a vital body in overseeing the functions of criminal justice officers in the areas and for promoting and protecting human rights. However, after the 2007 Constitution was abolished, the role of the NHRC has been greatly reduced. For example, the power to submit a case of human rights violation to a court on behalf of an injured person was abolished. Furthermore, there are limitations on intervening in the functions of criminal justice officers, as they are protected by the special laws (as described in chapter 5. This research would suggest, given the situation in southern Thailand, where there were many claims of human rights abuse in criminal process, the roles of these watchdog bodies should be clearer, and not only restricted to carrying out surveys or reports, but also taking affirmative action, such as the powers to bring a case to court.

A third point of concern exists regarding the roles of the Thai Constitutional Court and the Administrative Courts. In fact, both courts were designed as a positive attempt to scrutinise the exercise of official powers and the legality of a law. However, as the evidence compiled by the chapter has shown, those roles have been very marginal to the context of southern Thailand, due to the fact that the

---

[411] See Sections 31-33 of the 2000 Constitution of Thailand and Section 40 of the 2007 Constitution of Thailand.

[412] Rukhamte, P. (2014) *The Thai Ombudsman*. Bangkok. King Prajadhipok's Institute. p. 83.

officials working in the areas have been greatly immunised by the application of the special laws.[413]

Overall, the Constitution has achieved a limited impact in the role of conflict resolution. However, more specific provisions in the constitution regarding criminal procedure, for instance, the treatment of detainees, will be assessed further later in this thesis.

Next, this chapter has explored the root cause of terrorism in the south of Thailand. It concentrated on the examination of the history of Pattani, the main area for violence and the main target of terrorists nowadays. Without a basic understanding of Pattani's history, it would be hard to understand fully the current serious conflict in the southern Thailand. The former Pattani state and Siam had long intersecting histories, and the conflict between them occurred since 1909 when Pattani was annexed to the Siam state by the Anglo Siamese Treaty 1909.[414] The study found that the conflict is mainly related to the differences of ethnicity, religion, and culture. After Pattani was transferred to Siam, most of the Pattani people felt discomforted and claimed that they were treated as second class citizens, and the Siamese's government at that time paid more attention to Thai-Buddhists.[415] A poor standard in Siamese's administration was generally experienced. Consequently, several separatist organizations were formed with their aim to bring back their own sovereignty which would allow them to reflect distinct ethic, religious and cultural differences. Thus, the conflict has a longer history and deeper roots than issues such as relative poverty or unemployment,[416] albeit that they may also reflect (and exacerbate) that history of marginalisation and even antagonism.

Although some Thai politicians have comprehended this conflict and its root cause, it has proven very difficult to find a solution for the southern Thailand's conflict, and so it has endured for many generations. In this regard, it has been suggested that the basic problem to be resolved is how to reconcile the divergent requirements of

---

[413] See Section 16 of the Emergency Decree on Public Administration in the State of Emergency 2005/2548.

[414] Deelee, S. (2007) *Solutions of Terrorism Problem in Southern Thailand.* Master of political science thesis. Bangkok. Thammasat University Thailand. p. 4.

[415] Mullinsa.T.M. (2009) 'Geographies of Peace and Armed Conflicts and Resolutions in Southern Thailand'. *Annals of the Association of American Geographers.* 99(5) p. 925.

[416] Compare Abuza, Z. (2009) *Conspiracy of Silence*: *The Insurgency in Southern Thailand.* Washington DC. United States Institute of Peace; Liow, J.C. and Pathan, D. (2010) *Confronting Ghosts: Thailand's Shapeless Southern Insurgency.* Double Bay. Lowy Institute for International Policy; Helbart, S. (2015) *Deciphering Southern Thailand's Violence* Singapore, Yusof Ishak Institute.

Buddhists, the majority of the whole country, and Malay Muslims, the majority in the conflict areas but a minority in the Thai state overall.[417] In reality, it seems that the relevant politicians have concluded that the conflict is insufficiently a priority for them to take decisive action or that decisive action would come at too great a political cost in their own constituencies for effective solutions to be offered. In any event, it is not the agenda of this thesis to determine broad political and constitutional solutions, and so this inquiry will not be taken further. Instead, the focus will turn to counter terrorism responses, especially those by way of criminal law. At least those should be designed in a way which does not exacerbate the conflict but instead offer fair and effective reactions to continuing political violence.

[417] Leyland, P. (2009) 'Thailand's Troubled South: Examining the Case for Devolution from a Comparative Perspective'. *Australian Journal of Asian Law*. Vol.11(1). 1-29.

Chapter 3

The Criminal Law and Counter-Terrorism in Thailand

3.1 Introduction

Criminal law plays an important role in dealing with the threat of terrorism, and many governments have come to regard it as the main response to such a threat.[418] It acts as a mechanism to assist in preventing terrorists' threats as well as in responding to attacks.[419] One of the most important aspects of criminal law in counter-terrorism is that it allows for prescient intervention before an act of terrorism is committed.[420] In this regard, in dealing with terrorism, it is posited that criminal law can serve at least six functions; precursor impact, net-widening, lowest common denominator of rights, mobilisation function, denunciatory function, and symbolic solidarity.[421] It can be observed that several states have enacted new anti-terrorism laws which provide specific offences relating to terrorism[422] or have amended their criminal law to respond more effectively to terrorism, especially in the post 9/11 period.[423] Nevertheless, the creation of new criminal offences relating to terrorism and the enhanced power of intelligence of law enforcement agencies has raised some controversies particularly concerning efficacy and legitimacy.[424]

As the core aim of this thesis is to examine whether the criminal law in Thailand can operate as the prime mechanism to deal with terrorism, or whether it needs other mechanisms to work alongside it, so this chapter seeks to examine critically the roles and functions of the Thai criminal law in dealing with terrorism. This chapter firstly defines the notions of 'efficacy' and 'legitimacy' both in terms of criminal law

---

[418] Walker, C. (2012) 'The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law' in Masferrer, A. (ed.) *Post 9/11 and the State of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer. pp. 121-146.
[419] Ruddock, P. (2007) 'Law as a Preventive Weapon against Terrorism'. in Lynch, A. (ed.) *Law and Liberty in the War on Terror.* Sydney. Federation Press. pp. 3-8.
[420] Walker, C. (2012) 'The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law' in Masferrer, A. (ed.) *Post 9/11 and the State of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer. pp. 121-146.
[421] Ibid. These six functions will be discussed in section 3.5 'The functions of Criminal law in Counter-Terrorism'.
[422] Roach, K. (2007) 'The Case for Defining Terrorism with Restraint and without Reference to Political or Religious Motive'. in Lynch, A. (ed.) *Law and Liberty in the War on Terror.* Sydney. Federation Press. pp. 39-48.
[423] Cornall, R. (2007) 'The Effectiveness of Criminal Laws on Terrorism'. in Lynch, A. (ed.) *Law and Liberty in the War on Terror.* Sydney. Federation Press. pp. 49-57.
[424] Ibid.

and criminal procedure law at sections 3.2 and then explores the general principles of the Thai criminal law at section 3.3. The structure of criminal offences in Thai criminal law is discussed at section 3.4. Lastly, the chapter highlights the roles and functions of the Thai criminal law in countering terrorism with some references to British anti-terrorism legislation will be provided at section 3.5. This chapter excludes an analysis of the application of the special laws on counter-terrorism, as that analysis will be conducted later in Chapter 5.

3.2 The notions of 'efficacy' and 'legitimacy'

3.2.1 The notions of 'efficacy' and 'legitimacy' in the context of criminal law

The notion of 'efficacy' regarding Thai criminal law in countering terrorism in this chapter refers to the capability of Thailand's criminal law (especially offences relating to terrorism, Sections 135/1-135/4 of the Thai Criminal Code) to deal with terrorism. The exploration regarding the efficacy in this regard would indicate how effectively the law has been applied to fight against terrorism, and whether it is sufficient to play a major role in countering terrorism in the south of Thailand. Specifically, the notion of the efficacy of the Thai criminal law in this chapter can be examined through a consideration of certain functions to be secured by counter-terrorism. For example, the efficacy of the criminal law on counter terrorism can be measured through its ability to enable prescient intervention before a terrorist crime is committed. This perspective can be considered to be the criminalisation of acts in preparation for terrorism.[425] Furthermore, the term 'efficacy' concerns how effective criminal law has been in its function to avert people from committing crime. It also considers whether Thai criminal law can be used as a strategy to mobilize people to assist as part of counter terrorism. In a wider sense, the notion of efficacy can be referred to how effective criminal law can boost symbolic solidarity behind a state and its own citizens or with the international community.

The notion of the 'legitimacy' of Thailand's criminal law in this chapter in part depends on the concept of the 'rule of law'. Specifically, the study seeks to understand whether Thai criminal law, with regard to terrorism offences, has clearly

[425] Walker, C. (2012) 'The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law' in Masferrer, A. (ed.) *Post 9/11 and the State of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer. pp. 121-146.

defined the acts of criminal offences and its punishments within the concept of 'legality'. Also, the study seeks to understand whether the offences and penalties are clear and relevant in order to enable citizens to understand them. Another important principle under the notion of the rule of law is the concept of 'equality' before the law. One of the most significant aspects of criminal law is to act fairly and to guarantee that all people are treated equally.[426] This notion is considered to be relevant to the current circumstances in the southern area of Thailand, where there exist multiple layers of political problems related to ethnicities and religions. Therefore, this chapter seeks to explore whether the criminal law has been applied legally or if there are other influential matters such as race, ethnicity and religion. In addition to the concept of 'legality', it seeks to understand further whether the criminal law has been applied in accordance with the concepts provided in the Thai Constitutions and with the notion of human rights.

3.2.2 The notions of 'efficacy' and 'legitimacy' in the context of criminal processes

The efficacy and legitimacy of the Thai criminal procedure law in counter-terrorism are explored further in chapter 4. However, it is important to explain these notions at the outset of this chapter. The notion of efficacy in this context refers to the impact of the overall criminal justice system in dealing with terrorism charges. In particular, it is considered in three steps. Firstly, it is concerned with the efficacy of the police in the investigation process, especially in fact-finding and in bringing suspects into the criminal justice process. To this point, this research provides data of the total number of terrorist cases that occurred between 1 August 2012 and 31 July 2013 and seeks to explore the numbers of cases in which the police successfully identified suspects. In addition, it will draw a comparison between the number of cases where police successfully identify suspects in terrorism offences and the number of cases of other criminal offences during the same period and in the same areas. It is submitted that this can be seen to reflect the efficacy of the police in the investigation process. Secondly, it considers the effectiveness regarding criminal prosecutions as well as the roles of the public prosecutors in court trials. It is hypothesized in this research that effectiveness of criminal law in this sense might be reflected by achievements of police officers, its roles in a trial and of course the conviction rate. Lastly, the research considers efficacy in the judicial process. In this sense, an effective judicial process might include a high

---

[426] Petchsiri, A. (2013) *Criminal Law Theories.* Bangkok. Winyoochon. pp. 60-62.

standard of evidence examination, and the ability to deliver high quality judgments within a reasonable time.

For the notion of 'legitimacy' in criminal proceedings, this research attempts to carry out an examination via the three standards of human rights, the rule of law, and the Thai constitution. In this regard, a fair criminal procedure shall be deemed to be one that has complied with those three notions. It might therefore be said that an effective criminal procedure law is not restricted only to convicting an offender, but it should also guarantee the preservation of the rights of the injured parties, the victims, the witnesses, and also the offenders. Regarding the notion of human rights, this research seeks to explore how the Thai criminal justice system protects the rights of a terrorist accused at both pre-trial stage (in particular during detention) and the trial stages. For the notion of the rule of law, the research seeks to explore the independence and impartiality of the judiciary. In addition, the research explores whether the criminal justice officials (police officers, prosecutors and judges) are accountable under the law, which is one of the important requirements of the rule of law.[427] Lastly, within the context of constitutionality, the research seeks to explore the concepts of Thai Constitution with reference to the criminal justice system such as due process and a speedy trial.

3.3 Background principles and concepts of criminal law in Thailand

The Thai Criminal Code has been codified since 1908.[428] Before the Siamese (Thai) Criminal Code was promulgated, the substantive laws on crimes were mostly prescribed in the Three Seal Code, the *Kot Mai Tra Sam Duang*, or the 1805 code.[429] The Siamese Criminal Code was codified by a Royal Commission on codification, which was established in 1897.[430] The Commission consisted of several legal experts, both native and foreign.[431] The 1908 Criminal Code was

---

[427] Wajjanasawat, K (2010) *Principles of Criminal Procedure Law in Thailand.* (5th edn). Bangkok. Jirachakarn. pp. 10-11.
[428] Kraivixien, T. (1967) *The Legal System in the Administration of Justice in Thailand.* Bangkok. Thai Bar Association. p. 4.
[429] Kyaw, A. (1988) Crimes against Religion in the Penal Codes of Burma, Thailand and the Philippines. *Journal of Siam Society.* Vol 76. p. 219.
[430] Kraivixien, T. (1967) *The Legal System in the Administration of Justice in Thailand.* Bangkok. Thai Bar Association. p. 4.
[431] Kyaw, A. (1988) Crimes against Religion in the Penal Codes of Burma, Thailand and the Philippines. *Journal of Siam Society.* Vol 76. p. 219.

influenced by the Codes of India, French, Belgium, Japan, Italy and Hungary.[432] The Code was published in three languages: English, French and Thai.

Even though there are several methods which have been used to deal with terrorism such as criminal law, military powers or administrative powers, the regular criminal law has been applied as the main policing mechanism for dealing with terrorism in south Thailand, as mentioned earlier. Therefore, it is necessary to understand its general principles and concepts. This section explores the general doctrines of criminal law in Thailand, namely: the rule of law, the principle of responsibility, the principle of proportionality, the principle of minimal criminalisation, and the harmful nature of the prohibited action, and convictions. Then the following section will examine the roles of criminal law in counter-terrorism.

3.3.1 Rule of law and criminal law

One of the important general doctrines is the rule of law. It is directly related to criminal law by containing principles such as that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land'.[433] This is a basic legal principle, and one aspect of it can be called the non-retroactivity principle.[434] The core of this principle is that a person should never be convicted or punished of any criminal offence unless there are previously declared offences governing the conduct in question.[435] In substantive law, the rule of law cannot be satisfied without a clear legal provision.

In this regard, the concept of 'legality' shall be examined. The principle of legality in criminal law is one of the important criminal law concepts in Thailand.[436] It is a legal ideal that requires criminal offences and penalties to be clear in order to enable citizens who wish to obey the law to understand them and be confident that they will not unwittingly break the law.[437] As criminal law affects citizens' rights and liberties,

---

[432] Ibid.
[433] Ashworth, A. & Horder, J. (2013) *Principles of Criminal Law.* (7th edn). Oxford. Oxford University Press. p. 57.
[434] Ibid.
[435] Ibid.
[436] Wajanasawat, K. (2006) *Criminal Law 1.* (3rd edn). Bangkok. Thai Barrister Publisher. pp. 9-14.
[437] Herring, J. (2012) *Criminal Law Text, Cases, and Materials.* (5th edn). Oxford. Oxford University Press. pp. 10-11.

so citizens should be explicitly informed what they can do or what is prohibited.[438] In other words, this principle is based on the requirement of certainty of the law, and this concept can basically be found in all legal systems. In addition, the criminal law must be accessible to the public.[439] The criminal law must not be unknown or unclear, but must be open to the public.[440] In this way, the public is thus able to distinguish what is a lawful or unlawful act. This principle is related to the description of the offence. The criminal law has to clearly define criminal offences and their respective punishments. For instance, the Criminal Code, Section, 288 stipulates that 'A person who murders another person shall be imprisoned by death or imprisoned from fifteen years to twenty years'. It could be observed that the language of this provision clearly defines the act punishable by the offence.

Regarding Thai terrorism offences, Section 135/1(2) seems to provide ambiguous language regarding acts of terrorism. It provides that

> 'It is an offence to commit any act to cause serious injury to a transportation-system, or communication-system'.

This provision would raise a question about what is the meaning of 'transportation system' or 'communication system', and whether it includes as terrorism acts against a single specific vehicle such as a train or bus. For example, an act of violence (bombing) committed at a public bus terminal which affects many bus services might be included in the meaning of 'transportation system or communication system' in accordance with Section 135/1(2) Thai Criminal Code. On this point, one leading case clarified that the offence of terrorism in Section 135/1(2) must not be interpreted broadly. It is designed to deal with a criminal who carries out destruction towards a 'transportation system or communication system' such as by putting a bomb on the railway, not merely damage to a sole particular vehicle.[441]

---

[438] Meenakanist, T. (2014) *General Principles of Criminal Law.* Bangkok. Thammasat University. p. 15.

[439] Nakorn, K (2005) *General Principles of Thai Criminal Law.* (2nd edn). Bangkok. Thammasat University. pp. 50-51.

[440] Wajanasawat, K. (2006) *Criminal Law 1.* (3rd edn). Bangkok. Thai Barrister Publisher. pp. 9-14.

[441] Thai Supreme Court Judgment No. 2115/2552 (2008).

The research raised the concept of 'certainty of the law' with the interviewed participants in order to understand whether the terrorist offences (Sections 135/1-135/4) have been enacted in a clear manner and so in accordance with the rule of law. One police officer stated that:

> 'The provision of terrorism offences has been clearly and sufficiently enacted. There is not any obscure phrase, and they should enable people to understand them just like other offences'. **P.O.N.3.12**

Another police officer made a similar response:

> 'The provision is clearly enacted. Since I have worked in this field for nearly a decade, I have never heard anyone point out a problem regarding the description of this law'. **P.O.P.2.12**

A prosecutor responded that:

> 'I am satisfied with the certainty of the law. Both the internal and external elements of the offences are clearly presented'. **P.P.N.4.19**

A judge replied that:

> 'The provision of terrorist offences has been enacted without any ambiguous phrase. This provision is applicable in the same way as other offences'. **J.P.2.8**

However, another prosecutor provided a contrasting sentiment, namely that:

> 'The provision of terrorism offences appears to be very broad without clear and specific prohibited criminal acts. The terms regarding 'causing damage to telecommunication system and infrastructure' are considerably very broad. In some cases, these broad elements would lead to a problem in achieving the standard of proof'. **P.P.P.2.19**

Another judge said that:

> 'The description in the provision is clear enough. However, it might be better to add a clear definition of terrorism at the outset to enable people to understand its meaning as a legal term'. **J.Y.5.8**

However, the responses made by defence lawyers were more negative still. One of the defence lawyers said that:

> 'The provision of terrorism offences is very broad. There appears to be overlap with other offences in the Criminal Code, such as treason and offences relating to public order'. **D.L.N.3.18**

Another lawyer stated that:

> 'The provision is obscure and too wide. Another concern is that the provision also provides a very wide range of punishments'. **D.L.Y.6.18**

When the notion of 'certainty' of the provision of terrorism offences was raised with the NGOs members, most of them explained that their legal knowledge was limited.

One of the interviewed NGOs working in the area stated that:

> 'I am not sure about the certainty of the law, but what does concern me now is that the offences of terrorism seem to be the main strategy for the government to separate people in these areas into two groups, good and bad; and people who have been charged with these offences are immediately held to be enemies of the state, even though they have not been convicted by a court'. **N.G.O.3.36**

By considering the participants' comments above, there are two different perspectives emerging. Police officers, prosecutors and judges have tended to be satisfied with the certainty of the legal meaning of terrorism. Most of the participants from this group agree that the provision has been enacted in a clear manner that would allow people to understand the law. However, the comments from both defence lawyers and NGOs members indicate that they are not satisfied with the level of certainty of the terrorism offences. The researcher would agree with the latter group, as the provision of offences relating to terrorism does appear to be very broad. For instance, without the stated interpretation made by the Supreme Court, it would be tough to understand the terms of 'damaging public transportation or infrastructure system'. This reflects that the law relies too much upon the court's discretion to clarify any obscure prescription. Furthermore, the broad offences

relating to terrorism appear to overlap with the offence of treason under the Thai Criminal Code, as they share the same external and internal elements.[442]

Another aspect of the concept of 'legality' is the principle of 'no crime nor punishment without law'.[443] The Thai Criminal Code has adopted this internationally recognised principle and provides in Section 2 that:

> 'A person shall be criminally punished only when such person commits an act the law in force at the time makes the act an offence and punishable'.

The Constitution of Thailand B.E. 2550 (2007) also guaranteed this principle in Section 39:

> 'No person shall be criminally punished unless he has committed an act which the law in force at that time of commission provides it an offense, and the punishment to be imposed on such person shall not be heavier than that provided by law'.

This means that criminal liability has to be in accordance with law promulgated prior to the commission of crime. The court cannot punish a person more than the punishments provided by the law in force at the time the crime is committed.

All criminal offences must be stated explicitly with clear punishments in order to avoid any misunderstanding by the public and the courts. To better understand this sense, Lord Bingham specified the guiding principles that:

> 'No one should be punished under a law unless it is sufficiently clear and certain to enable him to know what conduct is forbidden before he does it; and no one should be punished for any act which was not clearly and ascertainably punishable when the act was done'.[444]

---

[442] See further information in Chapter 2, Section 2.2.1 'Terrorism and the Offences of Treason and *lèse-majesté* '.
[443] Meenakanist, T. (2014) *General Principles of Criminal Law*. Bangkok. Thammasat University. p. 15.
[444] Bingham, T. (2011) The Rule of Law. London. Penguin Books. pp. 55-59. Retrospective punishment is more specifically forbidden under the UN International Covenant on Civil and Political Rights, Art.15.

Accordingly, the rule of law requires that the law about crimes and punishments should be written in clear phrases without ambiguity. As regards crimes, the broad definition of 'terrorism' often creates ambiguity, as has already been described in relation to Section 135/1(1)-(3) of the Thai Criminal Code. In relation to punishments, the heavy sentences allowed for terrorism offences should be subject to sentencing guidance so as to ensure proportionate treatment.[445]

Another important principle relating to criminal law which is required by the rule of law is the concept of equality before the law. It is one of the most important aspects for the criminal law to act justly and to ensure that all people are treated equally. This is based on the concept that everyone should be equal before the law.[446] This concept aims to assure that everyone is subject to the same requirements of justice.[447] In other words, nobody stands above the law, and everyone is under the law, whatever their rank or condition. Furthermore, in the criminal law context, laws can be seen as just only when they are applied consistently. Therefore, all laws must be applied in the same way in similar cases. Furthermore, the laws must be applied without discrimination, and personal characteristics such as race, religion, sex, and ability must not be relied on for the purposes of discrimination. For example, in the southern part of Thailand, most of the accused terrorists are Muslim adherents who are regarded as a minority in the country; nevertheless, they must not suffer discrimination and must be treated in the same way as any Buddhists who may have been accused.

Under the concept of 'equality before the law' in the context of the application of the law on terrorism, one of the interviewed police officers commented that:

> 'As I am the main official enforcing the law, I strongly believe that everyone is equal before the law, not only in provisions of terrorism but also in other kinds of offences. The key thing is to consider whether a crime is committed or not, irrespective of the consideration of ethnicities, nationalities or religions'. **P.O.Y.6.10**

---

[445] Compare in England and Wales, *R v Kahar* [2016] EWCA Crim 568. However, the Sentencing Council of England and Wales has not yet pronounced on terrorism sentences.
[446] Bingham, T. (2011) *The Rule of Law,* London. Penguin Books. pp. 55-59. See also United Nations Universal Declaration of Human Rights 1948 Article 7 'All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination'.
[447] Ibid. pp. 4-9.

A prosecutor commented on this issue to the effect that:

> 'The law is fairly enacted to deal with terrorism across the country, but it is unfortunate that this crime is concentrated on the three southernmost provinces where the majority is Muslim. Personally, this is not a fault of the law. The nature of the committing of terrorism here can be explained by the political and historical backgrounds'. **P.P.N.3.19**

A judge replied that:

> 'It is clear by the description labelled on the law on terrorism that there is no discrimination. Everyone is treated equally and under the same rule. It is impossible to enact any law to specifically enforce against someone. The law must be fairly enacted and applied to any person who commits a crime. Anyone who commits terrorist offences under the Criminal Code must be prosecuted without any exemption'. **J.N.4.8**

However, a defence lawyer responded that:

> 'I am fine with the substantive criminal law on terrorism. There is nothing of any concern regarding the notion of equality in this provision. The law itself cannot be enforced without a certain official's powers. So what I am more concerned about is the exercise of the officers' powers, not about the criminal law'. **D.L.Y.5.18**

One NGOs member stated that:

> 'I have doubts about the terrorism law. I always feel that the law has focused on charging Muslim people in these areas. For example, based on my experience, if a Muslim person here committed a motorcycle bomb attack in a market without injuring anyone, it is probable that he would be charged with terrorist offences. In contrast, if this kind of action had been committed by a Buddhist in the north, he would be charged with other lower degree offences. The commitment of terrorism sounds very bad, and it impacts widely not only on the suspects but also on their family. Muslim people who have been charged with this type of offence have been judged by the society as enemies of the state, although no court judgment has been made'. **N.G.O.3.6**

Most of the interviewed participants seemed to be satisfied with the provision of terrorism, in particular about the notions of ‘generality’ and ‘equality before the law’, which represent a positive compliance to the concept of ‘legitimacy’. The researcher also agreed with the majority of the interviewed participants on this point, as there is no specification that the law is intended to apply to only the Muslim people living in the south. The same as with other offences, the law is intended to be applied irrespective of race, ethnicity and religion. The provision of offences of terrorism is not restricted to being enforced in these areas. However, as the majority of terrorist offences in this country have been committed in these areas, it is to be objectively expected that the law on terrorism will be more frequently used in that region.

3.3.2 The principle of responsibility

Section 59 of the Thai Criminal Code reflects the principle of responsibility in providing that:

> ‘A person shall be criminally liable only when such person commits an act intentionally, except in case of the law provides that such person must be liable when such person commits an act by negligence…’.

Although criminal law can apply to omissions in some circumstances,[448] most of criminal offences in Thailand require an ‘act’. Without an act to fulfil the external element of an offence, there would be only thought to commit a crime, and the criminal law does not punish people for having mere thoughts. Furthermore, according to Section 59 of the Thai Criminal Code, a person shall only be guilty regarding conduct for which he or she is responsible. In this sense, it means that a person should not be held guilty for conduct over which he or she has no control.[449] For example, if a person who is suffering from an epileptic fit commits a crime, he may not be held guilty for his conduct, which he could not control. The ‘act’ in the Thai Criminal Code means ‘the willed movement of body or muscle’, and this means that a person acts consciously and realises what he is doing.[450]

---

[448] See Ashworth, A. (1989) ‘The Scope of Criminal Liability for Omissions’. 105 *Law Quarterly Review*. p. 424.
[449] Nakorn, K. (2005) *General Principles of Thai Criminal Law.* (2nd edn). Bangkok. Thammasat University. p. 69.
[450] Meenakanist, T. (2014) *General Principles of Criminal Law.* Bangkok. Thammasat University. pp. 37-38.

Nevertheless, in some cases, there might be no act committed directly against persons or their property, such as being a member of a terrorist organization (Section 135/4), or being a member of a criminal association (Section 229). These are considered acts against state security and public order. In addition, 'possession' can also be considered an 'act' and can constitute a criminal offence if is stipulated by the law that the possession of an item is the commission of the offence. For example, this is the case with the possession of drugs, or counterfeit money. However, the Thai criminal law does not clearly criminalise the act of possession for terrorist purposes. A comparison can be drawn from UK anti-terrorism legislation. The Terrorism Act 2000 (Section 57) stipulates that a person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism. The term 'article' is clarified in Section 121 to cover 'substance and any other thing'. Thus, the articles possessed in this regard will often be lawful in themselves and commonplace, for example, wires, batteries, or rubber gloves.[451] This differs from the possession of firearms or explosive materials like bombs or grenades, where other more specific offences apply (Explosive Substances Act 1883, Section 4, and Firearms Act 1968, Sections 16-21).[452]

When the researcher raised in the fieldwork the legitimacy of offences regarding possession for terrorist purposes, and whether emulating Section 57 of the Terrorism Act 2000, would be desirable, most of the interviewees agreed with the concept in general, although several of them said that it would be hard to apply in practice. For example, one police officer stated that:

> 'The offence of 'possession for terrorist purposes would be helpful in averting and preventing crime. However, in practice we have no power to search terrorist suspects' premises without a court permit, and the process to get the court warrant takes around 1-2 working days, which is sufficient for the suspects to conceal the evidence'. **P.O.N.3.11**

A prosecutor replied that:

> 'The offence of possession for terrorist purposes sounds good, but it might be difficult to apply in practice, as most of the suspects would deny that

---

[451] Walker, C. (2014) *Blackstone's Guide to The Anti-Terrorism Legislation*. (3rd edn). Oxford. Oxford University Press. p. 217.
[452] Ibid.

> those articles were to be used for a terrorist purpose. However, we do have offences regarding the preparation of terrorism in Section 135/2 (2) which includes collecting forces or arms, and I think this is sufficient'. **P.P.Y.5.20**

One defence lawyer stated that:

> 'It is acceptable to enact this type of law. However, the issue to be concerned about is the proof of possession. I am concerned that the offence of possession for terrorist purposes would extend the term of offences relating to terrorism, and it is easier for someone to be charged with the offence. **D.L.P.1.19**

However, another defence lawyer argued that:

> 'I do not agree with the offence of possession for terrorist purposes. Many people's lives will be distracted by the law. The offence of criminalising possession for terrorist purposes is too wide and impacts upon too wide a range of people. For example, many local people here are agriculturists and possess chemical fertilizer, which can possibly make a bomb. I am afraid that if this offence is applied, most of them would possibly be charged'. **D.L.Y.6.19**

One judge provided a contrasting insight, saying that:

> 'I do agree with the offence of possession for terrorism. It would enhance the criminal law to work actively to preserve public security. It does not make sense if someone possesses certain materials for making bombs. If the law can intervene with a suspect at this stage, the amounts of terrorism offences would be greatly reduced'.**J.P.2.9**

One NGO member also provided contrasting sentiments, arguing that:

> 'The offence of possession for terrorism comes closer to human rights restrictions. This kind of offence would lead to tension between locals and officers. The local people in these areas may feel that the law strictly places a focus on criminalising them. It seems unfair if the law tends to focus on us'. **N.G.O.3.36**

In summary, there is a variety of comments about the notion of creating a special offence of possession for terrorist purposes. Those in support seek a more active and extensive form of criminal law, while opponents are concerned about how fairly the law will be used and the limits on the police powers for making searches. Reflecting on this range of arguments and also on the jurisprudence and practices around Section 57 of the Terrorism Act 2000,[453] the researcher takes the view that the offence of possession for terrorist purposes could be used legitimately as a preventive means to criminalise any preparative act for committing terrorist offences. Consequently, a new offence could enable Thai criminal law to function more proactively and could possibly avert acts of terrorism. As the application of the offence of possession for terrorist purposes is directly connected to certain powers of police officers to make a search, there should be consistency between the criminal substantive law and criminal procedure law. Thus, to make workable the offence of possession for terrorist purposes, the Thai criminal procedure should provide more powers to facilitate police searches.[454]

3.3.3 The principle of proportionality

This next general doctrine is related to fair punishment. This means that the criminal punishment should fit the crime.[455] In this regard, to understand proportionate punishment, both ordinal and cardinal proportionality shall be considered. Ordinal proportionality requires that a punishment should fit the seriousness of the offence, in the sense that its severity should be commensurate with the severity of punishments of other crimes.[456] In other words, it is a comparative approach. It indicates that persons convicted for crimes with distinct seriousness should suffer punishments correspondingly rated based on its severity. Cardinal proportionality requirements relate the way punishments non-relatively or intrinsically comport to certain offences. The focus is placed on the question of how crime scales and punishments scales should be connected.[457]

[453] See Walker, C. (2014) *Blackstone's Guide to The Anti-Terrorism Legislation*. (3rd edn). Oxford. Oxford University Press. pp. 217-220.
[454] Further information regarding Thai criminal procedure law can be found in Chapter 4.
[455] Wajanasawat, K. (2006) *Criminal Law 1*. (3rd edn). Bangkok. Thai Barrister Publisher. pp. 10-14.
[456] Ryberg, J. (2004) *The Ethics of Proportionate Punishment: A Critical Investigation*. Dordrecht. Kluwer Academic. pp. 13-14.
[457] Ibid.

The criminal sentence is a vital factor that reflects the seriousness of the offence.[458] It would be wrong if judges imposed lesser criminal penalties for murder than for assault. This example of murder and assault is an easy example, as it is clearly known that the criminal sentence served for murder should be higher than for assault. Nevertheless, there are certain other offences which may raise an argument about which offence is more or less serious than another. To deal with this issue, according to the general doctrine of Thai criminal law, what is required is a way of grading the degree of harm suffered by the victim.[459] In Thailand, the seriousness of the harm should be gauged by the degree of the victim's suffering.[460] A basic example regarding this issue is shown in Sections 295 and 297 of Thai criminal code. According to Section 295,

> 'Whoever causes injury to the other person in body or mind is said to commit bodily harm, and shall be punished with imprisonment not exceeding two years or fined not exceeding four thousand Baht, or both'.

This Section concerns the general act of committing bodily harm, which is provided for in wide terms without reference to the degree of harm. To consider whether a criminal commits general bodily harm or grievous bodily harm, it is necessary to assess the result of the criminal's act. The impact on the victim is the most important factor to be considered here. Section 297 provides that:

> 'Whoever commits bodily harm, and thereby causes the victim to suffer grievous bodily harm, shall be punished with imprisonment of six months to ten years. Grievous bodily harm is exemplified as follows: deprivation of sight, deprivation of hearing, cutting of the tongue or loss of the sense of smelling, loss of genital organs or reproductive ability, loss of an arm, leg, hand, foot, finger or any other organ, permanent disfiguration of the face, abortion, permanent insanity, infirmity or chronic illness which may last throughout life'.

---

[458] Herring, J. (2012) *Criminal Law Text, Cases and Materials.* (5th edn). Oxford. Oxford University Press. p. 13.
[459] Wajanasawat, K. (2006) *Criminal law 1.* (3rd edn). Bangkok. Thai Barrister Publisher. pp. 22-25.
[460] Nakorn, K (2005) *General Principles of Thai Criminal Law.* (2nd edn). Bangkok. Thammasat University. pp. 120-125.

Thus, it could be concluded that Thai criminal law focuses on the impact of the crime on the victim, and this is an important factor for imposing a sentence.[461]

Since the offences of terrorism enacted in the Thai Criminal Code (Section 135/1) have indicated a very wide range of penalties, from the minimum rate of a fine to the maximum of the death penalty, the researcher raised this feature with the interviewed participants in order to understand how they feel towards such a wide range of penalties, in particular as to whether the range is fair or not, which is considered an important element under the concept of 'legitimacy'.

A judge said that:

> 'It is common for Thailand's criminal law to provide a wide range of penalties, not only for terrorist offences, but also for other severe offences such as murder. It means that a court is given great powers to use discretion when deciding the most appropriate penalty. All of the given penalties must be deliberately considered and must be weighted together with the nature of the committing of the crime, its result, and the background of the defendant'. **J.P.2.8**

A prosecutor explained that:

> 'Offences relating to terrorism are considerably wide. A terrorist, an instigator, a supporter and the principals can be charged with this offence, and both in the attempting or the completing stages. So, it is fair that the law provides such a wide range of penalties'. **P.P.P.2.19**

A police officer pointed out that:

> 'It is not important about the range of penalties. I believe that a court will impose a penalty commensurate with the degree of commitment'. **P.O.N.4.12**

A defence lawyer said that:

> 'I agree with the wide range of penalties provided in the criminal code. Personally, there is nothing to be concerned about regarding the level of fairness in criminal law; the problem is about the criminal processes'. **D.L.P.1.18**

---

[461] Ibid. p. 155.

Finally, a member of NGO replied that:

> 'I do not care much about the range of penalties. It is of course fair if a real terrorist is sentenced, but how to make sure in this point'. **N.G.O.1.16**

In this way, the interviewed participants indicated that the wide range of penalties available for terrorist offences is acceptable. To consider the fairness regarding the punishment of offences of terrorism, the criminal processes and the courts' discretion are considered more important factors affecting legitimacy. The researcher likewise appreciates that there are many levels of terrorist actions, levels of involvement, and potential impacts, and this is a reason why the law imposes such a wide range of penalties. As stated by the judge interviewed above, factors such as the nature of the commission, the results, the damages and the background of a defendant must be considered.

Unlike England and Wales, Thailand has no specific commission on sentencing. In this regard, Sentencing Council for England and Wales was set up to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. The primary role of the Council is to issue guidelines on sentencing which the courts must follow unless it is in the interests of justice not to do so.[462]

3.3.4 The principle of minimal criminalization

This principle requires that the criminal law should be used only as a last resort.[463] This principle provides that although the state can decide to criminalise almost anything, the state needs an extraordinary rationale to enact a criminal provision, which directly relates to fundamental rights and liberties.[464] It means that the states's objective must be essential, and the law must be the least restrictive means to attain it. In this regard, the concept further requires that criminal laws should not be over-inclusive, proscribing instances of act beyond those that serve the compelling state's interest, and at the same time, criminal laws should not be applied under-inclusive, and should be applied evenly to each situation of conduct the state has serve compelling interest to proscribe.

---

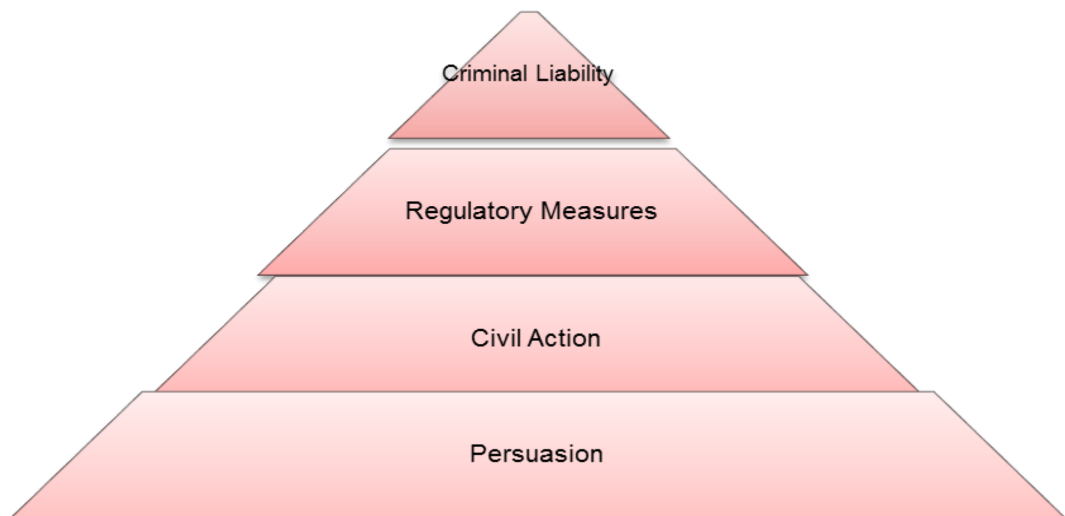
[462] See https://www.sentencingcouncil.org.uk/; Criminal Justice Act 1972, s.172.
[463] Husak, D. (2004) The Criminal Law as Last Resort. *Oxford Journal of Legal Studies*, Vol 24. No. 2 pp. 207-235. Available at http://ojls.oxfordjournals.org/content/24/2/207.full.pdf
[464] Ibid.

Regarding this point, Andrew Ashworth has suggested some factors that need to be taken into account when considering whether new offences should be enacted.

> 'First, the behaviour in question is sufficiently serious to warrant intervention by the criminal law. Second, the mischief could be dealt with under existing legislation or by using other remedies. Third, the proposed offence is enforceable in practice. Fourth, the proposed offence is tightly-drawn and legally sound. Lastly, the proposed penalty is commensurate with the seriousness of the offence'.[465]

To better understand the policy of minimal criminalization, reference will be made to 'the 'Pyramid of Strategies of Responsive Regulation', as created by Ian Ayres and John Braithwaite, and set out in Figure 3.1.

Figure 3.1 Pyramid of Strategies of Responsive Regulation[466]



According to this chart, even though the state has several ways to maintain public order, such as applying civil action or imposing regulatory measures, a criminal penalty shall be applied when only necessary.

However, this principle of minimal criminalization has been applied in Thailand in a limited way. It can be seen that the application of criminal law seems to be the first priority to deal with terrorism in practice, as one police officer stated that:

---

[465] Ashworth, A. (2000) Is the Criminal Law a Lost Cause? *Law Quarterly Review*. 116:225.
[466] Ayres I, Braithwaite J. (1992) *Responsive Regulation: Transcending the Deregulation Debate*. Oxford. Oxford University Press. pp. 16-22.

> 'Criminal law with severe penalties is an appropriate way to deal with terrorism in the south, which widely impacts the state's security'. **P.O.P.1.23**

One prosecutor added that:

> 'The threat of terrorism aims to produce terror in a broader audience such as a community, and thus it must be dealt with criminal law which is considered as the strong state's power. At least, severe criminal punishments would deter a potential terrorist'. **P.P.P.2.30**

These remarks indicate that criminal law is readily considered as the suitable state's power to deal with terrorism in the south of Thailand. Nevertheless, it can be seen that Thailand has relied much upon the application of criminal law without other strategies being sufficiently considered or applied alongside. In this regard, reference shall be made to the UK's CONTEST strategy in particular to 'Prevent' and 'Protect'.[467] Key objectives under 'Prevent' are to respond to the ideology of extremism and the threats, to prevent people from being drawn into terrorism and ensure that they are given suitable advice and support, and to work with specific sectors where there are risks of radicalization which need to address.[468] Next, objectives under 'Protect' are to strengthen broader security, to reduce the vulnerability of transport network, to increase the resilience of critical infrastructure, to improve protective security for crowded places and people at specific risk from terrorism and improve security in key oversea locations.[469] In this regard, this UK approach would represent a good reflection of the policy of minimal criminalization as discussed earlier, and shows that there are other ways apart from criminal law to apply counter-terrorism strategies.

3.3.5 The harmful nature of the prohibited action

To understand this concept, it shall firstly be considered what the notion of 'harm' means. In this sense, the 'harm principle' by John Stuart Mill shall be examined. According to Mill's principle, people can do whatever they want as long as their

---

[467] Home Office, *Countering International Terrorism* (Cm 6888, London, 2006).
[468] CONTEST the United Kingdom's Strategy for Countering Terrorism. Annual Report for 2015. The Secretary of State for the Home Department. Cm 9310. pp. 15-21. See also Counter-Terrorism and Security Act 2015, Section 26.
[469] Ibid.

actions do not harm any other individual.[470] In other words, the only actions that can be limited are those that create harm to others. This principle might be used as a claim in support of the decriminalization of victimless crimes such as drug use, gambling, and prostitution, as these kinds of acts are committed with consent and may be viewed as not harming others. For the meaning of harm, Mill provided several types of actions that he determined as being 'harmful', namely:

> 'Encroachment on their rights; infliction on them of any loss or damage not justified by his own rights; falsehood or duplicity in dealing with them; unfair or ungenerous use of advantages over them; even selfish abstinence from defending them against injury – these are fit objects of moral reprobation, and, in grave cases, of moral retribution and punishment'.[471]

This statement might be considered as wide-ranging. Nevertheless, we can understand that the notion of rights is key in Mill's conception of harm. 'Harm' is an act that damages the rights of someone. In this sense, any action which is defined as harmful must affect the rights of others.[472] Thus, the person who suffers from harm in this regard must be another (and not himself). However, for the issue of who suffers from harm, Mill pointed out that it was not limited to individuals, as a state can also suffer from harm.[473] For example, a state can be suffering harm when a citizen refuses to tax, as the state relies on the money raised by taxes to take care of their citizens. This might also include certain criminal offences against the security of the state, such as treason.

In criminal law, the harm that is proscribed should be higher in degree than in civil law.[474] Criminal law contains provisions prohibiting serious types of violence and dishonesty; examples include murder, manslaughter, rape, assault and so on. These types of offences are regarded as severe, and they have an impact on both individuals and the public. Thus, it could be considered that criminal law is one of the most important tools used by the government to prevent and censure crimes. As criminal law deals with crimes by proscribing serious forms of violence to protect

---

[470] Mill, J. (1985) *On Liberty*. Harmondsworth. Penguin. pp. 32-35.
[471] Ibid.
[472] Oliveira, M. (2012) *Harm and Offense in Mill's Conception of Liberties*. Faculty of Law. University of Oxford. p. 13.
[473] Mill, J. (1985) *On Liberty*. Harmondsworth. Penguin. pp. 32-35.
[474] Simester, A. et al. (2010) *Simester and Sullivan's Criminal Law Theory and Doctrine.* (4th edn). Oxford. Hart. pp. 2-5.

the public, this is an obvious distinction from civil law, where the latter deals with disputes between individuals. Most of the civil law provisions are related to private rights such as contracts, torts, property, and marriage and so on. Nevertheless, sometimes the same act could lead to both civil and criminal liability. For example, if Mr. A intentionally kills Mr. B, it is a commitment of the offence of murder according to Section 288 of the Thai Criminal Code.[475] At the same time, Mr. A shall be liable for civil law, which is tort according to Section 420 of the Thai Civil Law Code.[476] Another important issue from this example relates to a difference in the degree of the punishment. As Mr. A has committed the offence of murder, he might be given the severest penalty, the death penalty, or be imprisoned according to Section 288 of the Thai Criminal Code. Meanwhile, in a civil case he would be liable only to pay compensation for his wrongdoing. It might be said here that the idea of crime is directly related to the public interest, as criminal acts are generally more severe and have a greater impact on society than civil counterparts.[477] This feature is also reflected in the rule that if a victim forgives his attacker, he then can stop his civil suit for any compensation.[478] In contrast, in criminal matters, even though he may forgive his attacker, he cannot stop the prosecution of such attacker, except in the case of a compoundable offence.[479] This is based on the grounds that criminal offences are not purely a private matter, although they are related to private matters.

In Thailand, terrorism is regarded as potentially involving criminal offences with severe penalties due to the high level of harm. The harm is to the victims who may be killed or injured by terrorism attacks and have their property damaged. In addition, the offences relating to terrorism are enacted within the category of 'offences against internal state security'.[480] In this regard, the state is also affected by terrorist attacks as the state has an interest on behalf of the public in securing stability, providing security and the triumph of its own ideology, which should ideally reflect values such as the rule of law, human rights, and democracy.

---

[475] Thai Criminal Code, Section 288 provides that 'Whoever, murdering the other person, shall be imprisoned by death or imprisoned as from fifteen years to twenty years'.
[476] Thai Civil and Commercial Code, Section 420, provides that 'A person who, wilfully 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 therefore'.
[477] Simester, A. et al. (2010) *Simester and Sullivan's Criminal Law Theory and Doctrine.* (4th edn). Oxford. Hart. pp. 2-5.
[478] Wajjanasawat, K. (2010) *Principles of Criminal Procedure Law in Thailand.* (5th edn). Bangkok. Jirachakarn. p. 5.
[479] See Thai Criminal Procedure Code, Section 36 (3).
[480] See the Thai Criminal Code Title I.

3.3.6 Convictions

Another important feature regarding criminal process is the conviction. A conviction is the major distinctive culmination of criminal law.[481] It is the result of a criminal prosecution which concludes through the judgment that the defendant is found guilty.[482] A conviction has a crucial effect for society, as it is a public condemnatory statement that the defendant is to be made culpable for an unlawful act.[483] By way of contrast, the defendant's moral culpability in civil cases is of a lesser nature and is not necessarily a matter of public interest. The salient legal breach by the defendant perpetrated against the claimant is the important point to be considered.[484] Thus, it could be concluded that the civil verdict is made for the interests of an individual claimant, which is not related to the public. In contrast, a criminal verdict is a form of formal public censure or community condemnation which is directly related to the interests of the public.[485] It could be considered that criminal law is used as a powerful and condemnatory response by the state, and this might be called a symbolic function of criminal law that cannot be found to the same extent in civil law. This function (along with the consequences of conviction) may be reflected in the burden of proof in a criminal case. In Thailand, the burden of proof in a criminal case is placed on the prosecution, who must demonstrate that the defendant is to be found guilty before a court.[486] As for the standard of proof, it is the duty of the prosecution to prove the guilt of the offender beyond reasonable doubt.[487]

When the doctrine of convictions is applied to terrorism offences, there are two ideas to be discussed. One is that the definitive statement involved in a conviction is very helpful to the state, since the state is trying to send a strong message of condemnation to the defendant, to the group and to the sympathisers. However, the second point is that the strong message can work persuasively only when the conviction is seen to be obtained legitimately. This consideration may conduce

---

[481] Simester, A. et al. (2010) *Simester and Sullivan's Criminal Law Theory and Doctrine.* (4th edn). Oxford. Hart. p. 4.
[482] Nakorn, K. (2005) *General Principles of Thai Criminal Law.* (2nd edn). Bangkok. Thammasat University. p. 144.
[483] Simester, A. et al. (2010) *Simester and Sullivan's Criminal Law Theory and Doctrine.* (4th edn) Oxford. Hart. p. 4.
[484] Ibid.
[485] Ibid.
[486] Nakorn, K. (2005) *General Principles of Thai Criminal Law.* (2nd edn). Bangkok. Thammasat University. p. 144.
[487] Wajanasawat, K. (2009) *Criminal Procedure law.* (3rd edn). Bangkok. Thai Barrister Publisher. pp. 86-90.

against special measures which alter the burden or standard of proof or other essential features. As this point relates to criminal procedure law, it will be examined again in Chapter 4.

3.4 The structure of criminal offences in Thai criminal law

As discussed in the earlier sections, criminal law can be considered as a system of prohibition and censure. This section focuses on major elements of crimes which are twofold; harm and fault. In Thai criminal law, the concepts of external element and internal element have been applied to formulate an offence.[488] According to Section 59 of the Thai Criminal Code, for a criminal to be served for criminal liability, it must be proven beyond reasonable doubt with a combination of external element or *actus reus* (guilty act) and internal element or *mens rea* (guilty mind).[489]

3.4.1 External element *(Actus Reus)*

Regarding Thai criminal law, the external element consists of conduct, result or omission.[490] The conduct itself might be criminal without achieving the result itself. For instance, an attempt offence does not require a result. For example, Mr. A intended to kill Mr. B by shooting Mr. B, but Mr. A missed the target. In this case, even though Mr. B was not hit by the bullet and is still alive, Mr. A might be charged the attempt of murder according to Sections 288 and 80 of Thai Criminal Code. In addition, the external element might be concerned with the result of the conduct. In some circumstances, the conduct itself is not regarded as criminal, and thus what needs to be considered is its result. For example, throwing a stone is not a crime, but if it hits a person, in this regard, it might amount to a crime.[491] Next, sometimes an omission can be considered as the external element. Normally, a person will not liable for failing to act.[492] Nevertheless, it might be a criminal case of omission when a defendant fails to act, where he or she is under a duty to do so; for example, if a father sees his child drowning in a pool, but he does not do anything to help, and finally his child dies. The father in this example commits a guilty act based on his

---

[488] Ibid. pp. 59-69.
[489] See Thai Criminal Code, Section 59.
[490] Wajanasawat, K. (2006) *Criminal Law 1.* (3rd edn). Bangkok. Thai Barrister Publisher. pp. 120-129.
[491] Thai Criminal Code, Section 300 provides that 'Whoever, committing the act by negligence and such act to cause the grievous bodily harm to the other person, shall be imprisoned three years or fined not out of six thousand Baht, or both'.
[492] Herring, J. (2012) *Criminal Law Text, Cases, and Materials.* (5th edn). Oxford. Oxford University Press. pp. 72-74.

omission according to Section 374 of the Thai Criminal Code[493] due to the fact that a father has a duty to take care of his child according to Section 1564 of Thai Civil Code.

3.4.2 Internal element *(Mens Rea)*

The internal element *(mens rea)* is the legal term that is used for describing the element of a criminal offence relating the state of mind of the defendant.[494] Offences may require intention, or recklessness, or negligence, or knowledge. In a murder case, for example, according to Section 288 of the Thai Criminal Code, a person must intentionally cause another's death (with punishment by the death penalty, imprisonment for life, or imprisonment for between fifteen and twenty years). Thus, this means that someone who causes another's death by an unforeseeable accident does not deserve punishment as a murderer. But negligent conduct can be an offence. For example, according to Section 291 of the Thai Criminal Code,

> 'Whoever, committing an act by negligence, and that act causing the other person to die, he or she shall be imprisoned for not more than ten years or fined not more than twenty thousand Baht'.

For this offence, there is no requirement to prove a defendant's intention. The defendant will be found guilty when he or she commits an act by negligence, and causes another's death.[495] In addition, there are sometimes not just the requirements to prove a defendant's intention, recklessness, negligence, or knowledge. For example, in property offences, dishonesty needs to be considered. Section 334 of the Thai Criminal Code, which is concerned with property offences, provides that 'whoever, dishonestly taking away the thing of other person or which the other person to be co-owner, it is said to commit the theft, he or she shall be imprisoned for not more than three years or fined no more than six thousand baht'.

---

[493] Thai Criminal Code, Section 374 provides that 'whoever, to see other person in danger of life, which oneself may help so without the danger to oneself or the other person, but oneself does not assist, shall be imprisoned not out of one month or fine no more than one thousand baht or both'.

[494] Ashworth, A. (2003) *Principles of Criminal Law.* (4th edn). Oxford. Oxford University Press. pp. 160-161.

[495] Thai Criminal Code, Section 59 paragraph 3 provides an explanation of the act of negligence that 'To commit an act by negligence is to commit an offence unintentionally but without exercising such care as might be expected from a person under such condition and circumstances, and the doer could exercise such care but did not do so sufficiently'.

It could be seen here that the internal element for this offence requires it to be proven that the defendant has dishonestly taken other's property. In addition, some offences require special intent. For example, for offences relating to terrorism Sections 135/1-135/4, the offences require special intent 'for threatening or enforcing Thai Government, Foreign Government or International Organization'. Therefore, merely having intent to cause a specific act is not sufficient to fulfil the elements of the offences, as the terrorism offences require those additional special intentions.

It might be concluded that the role of the external element *(actus reus)* is to identify conduct that is considered by criminal law as harmful. Thus, the external element of an offence tells us which conduct we can or cannot do. On the other hand, the internal element *(mens rea)* is an important factor for us to decide whether or not the defendants should be blamed for their wrongful acts.

3.5 The functions of criminal law in counter-terrorism

As mentioned in the introduction to this chapter, the criminal law plays various important roles in dealing with terrorism. Although the Thai government has applied several methods to cope with the threat of terrorism, such as special military laws, executive powers, criminal law remains the vital mechanism. The criminalization approach attempts to avoid treating terrorist suspects or prisoners as meriting special recognition or conditions.[496] It requires that terrorist suspects must not be treated as offenders with political motivations which deserve a special status.[497] In dealing with terrorism in this way, criminal law can serve at least six functions, as outlined below.[498]

3.5.1 Precursor impact

The first and foremost notion is that criminal law can allow for prescient intervention before a terrorist crime is committed. In this regard, it shall be referred to by the term 'precursor crime'. 'Precursor crimes' can be defined as the criminalisation of

---

[496] Walker, C. (2014) *Blackstone's Guide to The Anti-Terrorism Legislation*. (3rd edn). Oxford. Oxford University Press. p. 211.

[497] Walker, C. (2011) *Terrorism and the Law.* Oxford. Oxford University Press. p. 203.

[498] Walker, C. (2012) 'The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law'. in Masferrer, A. (ed.) *Post 9/11 and the State of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer. p. 133.

acts in preparation for terrorism.[499] It can be seen that the terrorist threat nowadays has developed its tactics to damage and coerce the public more severely, such as in suicide attacks, the threat or use of nuclear weapons, chemical biological weapons, and so on. Criminal law, as a major mechanism to deal with such threats, should respond by preventing or averting the anticipatory risk of terrorism.[500] By comparison, traditional criminal law in practice generally intervenes after a crime is completed rather than before, and there are also several barriers to early intervention in terms of admissibility, proof, and disclosure.[501] The concept of precursor crime is an important issue to consider in the context of terrorism offences. It is based on the grounds that terrorist attacks are ultimately criminal acts, but their harmful effects are potentially more severe than for other criminal acts. Thus, the powers to intervene before the offences regarding terrorism are committed are very important.

In Thailand, the principle of precursor crimes can be found in the Thai Criminal Code, Section 135/2(2), which provides that:

> 'Whoever collects forces or weapon, procures, or gather properties, receive the training for terrorism, does any preparation or conspires to commit acts of terrorism or any offence which is a part of the plan for committing acts of terrorism, incites the people to participate in acts of terrorism, or assist by any means to keep in secret when knowing that there is a person who prepares to commits acts of terrorism. Such person shall be liable to imprisonment from two years to ten years and a fine of forty thousand baht to two hundred thousand baht'.[502]

Thus, the operation of criminal law based on this section can be seen as playing an active role by aiming to prevent and avert the anticipatory risk of terrorism. In others words, preparation for committing terrorism or collecting forces, weapons, gathering properties, and receiving training for terrorism are regarded as complete offences relating to terrorism.

---

[499] Ibid.
[500] Dershowitz, A. (2006) *The Case for Pre-Emption.* New York: W.W. Norton. pp. 88-89.
[501] Chesney, R. and Goldsmith, J. (2008) 'Terrorism and the Convergence of Criminal and Military Detention Models'. *Stanford Law Review* (60). pp. 1084-1088.
[502] See Section 135/2 (2) Thai Criminal Code.

To consider whether Thai criminal law achieves ‘efficacy’ and ‘legitimacy’ through ‘precursor crimes’ such as the foregoing, there are two notions that need to be discussed. The first point concerns whether the precursor offences in the Thai Criminal Code are properly enacted or not. In this regard, the principles of ‘legality’ or ‘clarity’ are engaged and have already been discussed to some extent.[503] The second point relates to the rate of prosecution in preparatory offences. It is hypothesised that a high rate of prosecution in preparatory offences would indicate the efficacy of the precursor crime concept.

Firstly, as discussed earlier, the principle of legality requires certainty in the law. Offences and penalties must be clear and relevant in order to enable citizens to understand them. On the one hand, Section 135/2(2) seems to be a suitable precursor offence, as it deals with a wide range of preparatory acts, such as (1) collecting forces or arms, (2) procuring or gathering property related to terrorism, (3) giving or receiving training for terrorism, (4) committing any offence in a part of a plan to terrorize, (5) abetting people in any part of terrorization, and (6) concealing information of terrorism. On the other hand, it could be criticised and considered that Section 135/2 is vague and too broad. For example, there is no clear definition for the term of ‘training for terrorism’. The researcher raised this issue with the interviewed participants.

On this point, one of the police officers suggested that:

> ‘The law on terrorism lacks clarity. The definition of ’terrorism’ in the Criminal Code is still vague, and I do not understand the term of training for terrorism in Section 135/2, whether it covers moral training or is restricted only to the physical training for terrorism’. **P.O.P.1.9**

Another police officer provided a sentiment that:

> ‘The term training for terrorism should involve both physical and moral training. A person who provides moral training for committing terrorism should be charged with Section 135/2, the same as an instigator’. **P.O.Y.6.9**

A defence lawyer said that:

---

[503] See section 3.3.1. (Rule of law and criminal law).

> ‘It would be better if the law further explains the terms of causing damage to the public transportation, telecommunication system, infrastructure system, and of course what the clear meaning is of training for terrorism. As the criminal law is directly related to the basic rights and liberties of the people, the criminal law must be clearer and should not rely so much upon a court’s interpretation’. **D.L.Y.5. 20**

A judge commented that:

> ‘I agree that the provision of offences of terrorism in the criminal code has been enacted in a very broad manner. Section 135/2 aims to criminalize any act done for facilitating a terrorist commission. In my opinion, the term ‘training for terrorism’ should be strictly translated as physical training, such as weapon using and making instructing, and not cover moral training’. **J.P.2.8**

Another judge said that:

> ‘There has been no Supreme Court decision made over the issue of training for terrorism. However, Section 135/2 does not aim to deal with moral training; it aims to criminalize acts for facilitating a terrorist commission. If you asked me about whether the law is clear, I would say that Section 135/2 is too broad, but this is not the problem, as in practice this Section has been very rarely used. Most of the terrorists here have been charged with acts of engendering fear in the public, such as car bombs, under Section 135/1’. **J.N.3.8**

One of the prosecutors also made the same point regarding the term ‘training for terrorism’ that:

> ‘The term ‘receiving training for terrorism’ should not further include moral training or education. Terrorism training in Section 135/2 aims to criminalise physical training such as armed training. In practice, there are many cases we know in which most of the young terrorists have been influenced by their private Islamic schools (Ponoh or Pondok) in committing crime, yet we cannot prosecute them through Section 135/2 until we have evidence that they are physically trained to be terrorists. However, this does not mean that moral training for committing terrorism is legal. Any person or a school

> teacher can be prosecuted if they act as an instigator in committing crimes based on the combination of Sections 84 and 135/1 Thai Criminal Code'. **P.P.Y.6.20**

Based on the majority of the interviewed criminal justice officers, it can be observed that the term 'terrorist training' is vague, and this reflects a deficiency under the concept of legality. At the same time, most of the interviewees believed that training for terrorism should also relate to moral training or education of terrorists and the radicalization of potential terrorists.[504] A comparison can be drawn here with the UK Terrorism Act 2006, Section 1 which relates to 'direct and indirect encouragement of terrorism' and provides as follows:

> 'This Section applies to a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences'.

According to Terrorism Act 2006, for the purposes of Section 1, the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which(a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences; and (b) is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances'.[505] Aside from criminal law, the Counter Terrorism Act and Security 2015, Part V, responds to the ideological challenge of terrorism and imposes a duty of specified public authorities to take action to prevent people for which they have responsibility from being drawn into terrorism.[506]

The offence of preparation of terrorism in the Terrorism Act 2006, Section 5 is considered a good reflection of the precursor objective. The offence occurs if, with the intention of (a) committing acts of terrorism; or (b) assisting another to commit such acts, a person engages in any conduct in preparation for giving effect to that

---

[504] The information was derived through the criminal justice officers (P.P.Y.5. and P.O.N.4.).
[505] See Terrorism Act 2006, Section 1 (3).
[506] See Blackbourn, J. and Walker, C., 'Interdiction and Indoctrination: The Counter-Terrorism and Security Act 2015' (2016) 79(5) *Modern Law Review* 840–870.

intention. The scope of this offence is deliberately broad, save that the object of attention must be 'acts' rather than 'say', the continued existence of a proscribed organization.[507]

In terms of training for terrorism, a comparison can be also made here with the UK's Section 54 of Terrorism Act 2000 and Section 6 of the Terrorism Act 2006 which are seen as clear 'precursor' offences regarding terrorism training.[508] According to Section 54 of Terrorism Act 2000, a person commits an offence when he provides instruction, or receives instruction or training in the making or using of firearms, radioactive material, or weapons designed, or adapted for the discharge of any radioactive material, explosives, or chemical, biological or nuclear weapons.[509] Moreover, there are other important precursor offences in the UK regarding possession for terrorist purposes in Terrorism Act 2000, which are Section 57 (possession of items) and Section 58 (collection of information). Regarding the possession of items in Section 57, a person commits an offence when he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.[510] For the standard of proof, it must be proved beyond reasonable doubt that a defendant has knowledge of the presence of, and possesses an item with the aim for terrorism.[511] For an offence regarding the collection of information in Section 58, a person commits an offence when he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism. There are two different types of *actus reus* here: collecting or making a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism; or possessing a document or any record containing information of that kind.[512] In terms of the standard of proof, it must be proven beyond reasonable doubt that the defendant is aware of his or her control over or possession of the document or record.[513]

It can be seen that Section 54 of the Terrorism Act 2000 provides a clear description of training for terrorism, with specific examples of actions. This reflects a

---

507 Walker, C. (2014) *Blackstone's Guide to The Anti-Terrorism Legislation*. (3rd edn). Oxford. Oxford University Press. pp. 212-215.
508 Ibid.
509 See Terrorism Act 2000, Section 54.
510 See Terrorism Act 2000, Section 57.
511 Walker, C. (2014) *Blackstone's Guide to The Anti-Terrorism Legislation*. (3rd edn). Oxford. Oxford University Press. pp. 217-225.
512 See Terrorism Act 2000, Section 58.
513 Ibid. 491.

high standard in legality even though dealing with a broad ‘precursor offence’. Thus, it has been stated by Kent Roach that Section 54 of the Terrorism Act 2000 is a good example of the expansionist tendencies of modern terrorism law that deal with ‘inchoate offences’ such as attempted conspiracy or remote connections with actual acts of terrorism.[514] In contrast, Section 135/2(2) of the Thai Criminal Code lacks a clear definition as discussed, and this may lead to several problems for the operations of police officers.

According to Section 6 of the Terrorism Act 2006, offences around training are amplified, and they relate to techniques other than specified weaponary.[515] By Section 6 (1), an offence comprises providing instruction or training with knowledge that the recipient intends to use the skills in terrorism even if that is not the intention of the provider.[516] It is an offence under Section 6 (2) when receives instruction or training. Section 6 (3) describes the relevant skills which are the subject of the instruction or training. They must relate to (a) the making, handling or use of a noxious substance, (b) the use of any method or technique for doing anything else that is capable of being done for the purposes of terrorism, in connection with the commission or preparation of an act of terrorism or Convention offence or in connection with assisting the commission or preparation by another of such an act or offence; and (c) the design or adaptation for the purposes of terrorism, or in connection with the commission or preparation of an act of terrorism or Convention offence, of any method or technique for doing anything. By Section 6 (4), the instruction or training in terrorism or Convention offences can be provided to a target audience or to the world in general (through the internet).[517] It can be observed that Section 6 of the Terrorism Act 2006 is not confined to training in weapons and so has become more frequently used than Section 54.[518]

Secondly, reflecting upon the efficacy of the ‘precursor crime’ principle, it is necessary to consider the rate of prosecution. As the core concept of ‘precursor crime’ is to avert or prevent crime, it could be said that a high rate of prosecution in preparatory offences might reflect the efficacy of precursor crimes. However, the information based on the criminal justice respondents who were interviewed has

---

[514] Roach, K. (2014) ‘Terrorism’ in Dubber, M & Hornle, T. (eds). *Oxford Handbook of Criminal Law.* pp. 16-17.
[515] Walker, C. (2014) *Blackstone’s Guide to The Anti-Terrorism Legislation.* (3rd edn). Oxford. Oxford University Press. pp. 213-214.
[516] R. v Da Costa [2009] EWCA Crim 482, paras 13-18.
[517] Walker, C. (2014) *Blackstone’s Guide to The Anti-Terrorism Legislation.* (3rd edn). Oxford. Oxford University Press. pp. 213-214.
[518] Ibid.

indicated that the prosecution rate in precursor offences such as terrorist training or preparatory offences was viewed by them as unsatisfactory.

One of the prosecutors commented that:

> ‘For the last two years (2013-2014), I have never prosecuted terrorist suspects based on training or preparatory offences, as most of the terrorist offenders were arrested after committing crimes’. **P.P.N.3.19**

Another police officer stated that:

> ‘In practice, it is a very tough task to arrest a suspect before committing a crime. One of the problems we have faced is that we have no active power to make a search or arrest terrorist suspects without court warrants’. **P.O.Y.5.10**

A defence lawyer indicated a similar sentiment to the above interviewees, namely that:

> ‘Most of my clients were charged with the offence of terrorism based on Section 135/1 (the crime is completely committed). I think in practice it is difficult for police officers to arrest a terrorist in advance, as the law does not facilitate it’. **D.L.Y.6.18**

A judge said that:

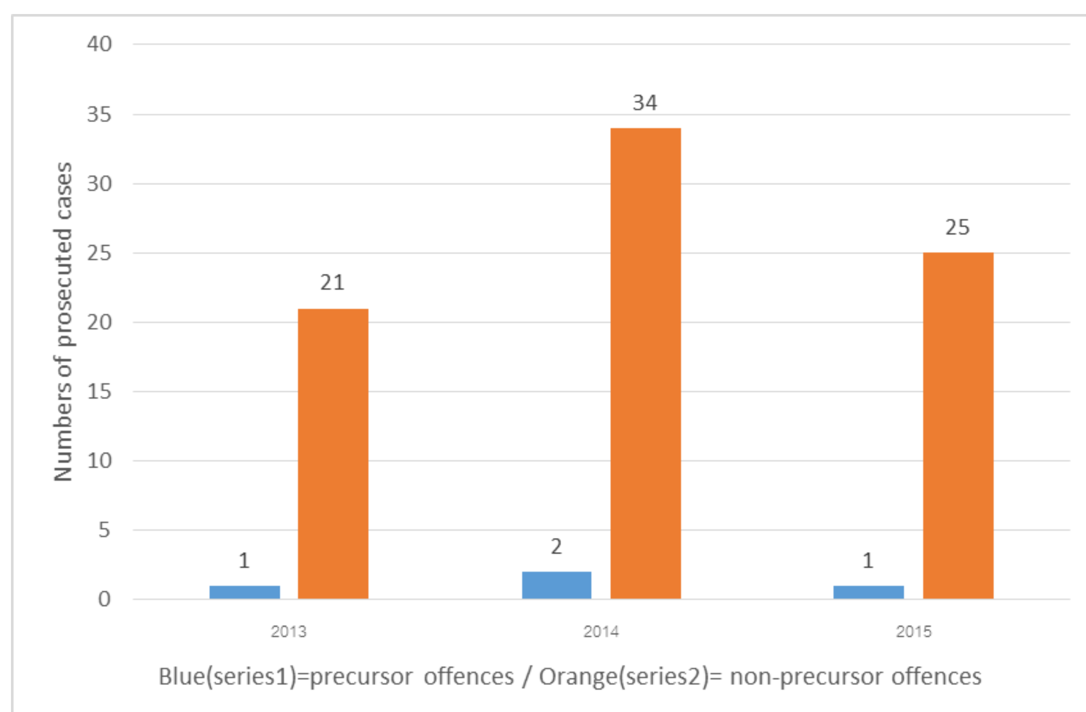
> ‘In fact, the criminal law seems insufficient to deal with terrorism in the south. The act of terrorism is considered more severe and complicated than other crimes. I would further say that the reason why we never think to add more offences or enhance officials’ powers is because of the existence of the special laws, which are stronger, to deal with terrorism’. **J.P.2.8**

These answers could indicate the inefficacy of utilising precursor concepts in dealing with terrorism. Even though there are some sections that criminalise acts of preparation for terrorism with the purpose of intervention of the terrorists’ suspects before committing crimes, the police officers cannot utilise such sections to deal with suspects, and most of the terrorist suspects have been arrested after fully accomplishing their attack plans, because of the limitation of police power derived from criminal procedure law to intervene at early stages of terrorist plots. In

particular, according to the Thai Criminal Procedure Code, Section 80 a police officer is not allowed to make an arrest without a warrant in a case where he reasonably believes someone to be a terrorist. The power to make an arrest without any warrant emerges only when offences of terrorism are committed in the presence of a police officer. The further exploration of police powers can be found in Chapter 4.

Most of the interviewed participants have indicated that the Thai criminal law lacks the powers to deal with terrorism in advance, and this view is underlined by Figure 3.2 which shows that non-precursor crimes are much more common.

Figure 3.2 The prosecution rate of offences relating to terrorism (Section 135/1) compared with 'precursor offences' between 2013-2015 in Pattani, Yala, and Narathiwat provinces.[519]



*precursor offences in the figure 3.2 cover preparatory offences, training offence, collecting for terrorist purposes (Section 135/2(2) and a membership offence (Section 135/4).

This graph illustrates a very low level of application of 'precursor offences' that have been prosecuted between 2013 and 2015. Most of acts of terrorism have been prosecuted using Section 135/1, which is considered as the main terrorism offence.

---

[519] The statistics were compiled by the official websites of Provincial Public Prosecutor of Pattani, Yala, and Narathiwat. [Accessed 8/2/2016] Available from http://www.ptani.ago.go.th/ , http://www.yala.ago.go.th/web and http://www.nara.ago.go.th/

Precursor offences have been very rarely used to prosecute. There was only one case in 2013 and in 2015, and two cases in 2014. Based on this data, it could be said that the Thai criminal law (offences relating to terrorism in Thailand) has failed to use the criminal law as 'preventing' or 'averting' the anticipatory risk of terrorism.

To enhance the capability of applying precursor crimes, there may be two responses. The first response would be to add the catalogue of precursor offences based on the UK Terrorism Act 2000, Sections 54, 57 and 58, and Terrorism Act 2006, Section 5, as discussed above. Another response is related to police powers. The law should provide more powers in facilitating the police in detecting, investigating and preventing terrorism threats. As this point relates to criminal procedure law, it will be discussed again at Chapter 4, section 4.5.2.

3.5.2 Net-widening

Another important function of criminal law in counter terrorism is net-widening. There can be net-widening so that peripheral suspects can be neutralised. A key aspect of net-widening in several jurisdictions arises through the use of the 'broad' term 'terrorism'.[520] In Thailand, the use of the legal term 'terrorism' can be found in the Anti-Terrorist Financing Act 2013 which provides that:

> 'Terrorism means the acts constituting an offence of terrorism under the criminal code, or the criminal acts within the scope of a terrorism-related international convention or protocol to which Thailand is a party or which is recognised by Thailand, whether the acts are committed inside or outside the Kingdom'. [521]

There are two observations to be made regarding the legal term of 'terrorism' provided by this section. The first is that this Act requires the consideration of the provision of 'offence relating to terrorism Section 135/1' in the Criminal Code. It means that in order to define the term of 'terrorism' in Thailand, both Section 3 of the Anti-Terrorist Financing Act (2013) and Section 135/1 of the Thai Criminal Code must be considered. It should be noted here that the Section 135/1 of the Thai

---

[520] Walker, C. (2012) 'The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law' in Masferrer, A. (ed.) *Post 9/11 and the State of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer. p. 133.

[521] See Anti-Terrorist Financing Act (2013), Section 3.

criminal code provides only the acts (elements) amounting to 'terrorism', and there is no section that gives a clear definition of 'terrorism' in the Thai Criminal Code.[522] The second observation concerns the phrase 'the criminal acts within the scope of a terrorism-related international convention or protocol to which Thailand is a party or which is recognised by Thailand'. This phrase means that in order to define acts of terrorism, Thailand relies on international conventions and protocols.[523] Regarding this point, a reference must also be made to Section 135/4 of Thai Criminal Code which provides that:

> 'Whoever may be a member of a body of persons of whom there is a resolution or notification subject to the Security Council of the United Nations Organization designated as a body of persons that have committed an act of terrorization, and the Thai Government has notified to acknowledge the notification or resolution of the aforesaid, such person shall be imprisoned for not more than seven years and fined not more than one hundred and forty thousand Baht'.

Regarding this Section, the Thai government has no legal power to proscribe a group. It relies on the Security Council of the United Nations in order to identify groups regarding terrorism.

When the researcher raised the issue regarding Section 135/4 during the fieldwork, it was found that this Section in practice has rarely been applied, or even has never been applied. One of the prosecutors stated that:

> 'Most of the terrorists here have been prosecuted based on Sections 135/1-135/2, mainly due to their acts of bombing, and murdering. It seems that both the police and the military officers have paid most attention to dealing with terrorist suspects based on their actual commitment, rather than

---

[522] See Thai Criminal Code, Section 135/1.

[523] Thailand is the party of Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971 (Montreal Convention), Convention on Offences and Certain Other Acts Committed On Board Aircraft (the Tokyo Convention 1969), Convention for the Suppression of the Unlawful Seizure of Aircraft 1971 (Hague Convention), Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons 1973, International Convention against the Taking of Hostages 1979, and International Convention for the Suppression of Terrorist Bombings 1997.

concentrating on the member offence (Section 135/4), and thus the Section is rarely applied'. **P.P.P.1.19**

A judge added that:

> 'In practice, it is difficult to enforce Section 135/4, which aims to criminalize a member of designated terrorist groups because we lack any effective intelligence. I have observed that the criminal justice officials here lack any cooperation with other relevant governmental bodies, such as the Anti-Money Laundering Office or the Ministry of Foreign Affairs. The criminal justice officers here seem to pay much more attention to merely criminal acts, such as bombings, rather than dealing with the membership offence'. **J.Y.5.16**

A police officer said that:

> 'Section 135/4 sounds very novel to me. I would accept that I do not understand much about it. I am not sure whether it has been used in practice, and I am certain that there are many officials who do not understand the nature of the offence'. **P.O.N.3.8**

A defence lawyer indicated that

> 'As traditional Thai criminal justice officers, they do not like to do the investigation in advance. I mean that they are passive and always wait until a crime has been completely committed, and only then do their functions start. So, Section 135/4 is hardly ever used. It seems that it has been enacted for fulfil certain requirements, but it cannot work in practice'. **D.L.Y.5.22**

It can be seen here that most of the interviewed participants have adopted the same sentiment towards the use of Section 135/4, namely, that the Section is rarely ever applied and seems to be perceived as unimportant. The main problems are, firstly, due to the limitation of police powers to deal with the offence, while at the same time, police officers seem to pay more attention on Sections 135/1-135/2, mainly related to acts of bombing, and murder which generate more harm to the public. Secondly, there appears to be a lack of effective intelligence, which would allow intervention under Section 135/4. Therefore, most of the interviewed NGOs members stated that they have very limited knowledge of the legal provision under

Section 135/4, and they could not provide any precise views regarding this offence. However, one of them made an interesting point, that:

> 'The offence of membership of a terrorist group seems useless here. I also do not understand why this offence has been enacted and how it works in this area. I believe that the police might know who is a member of terrorist groups such as Pulo and BRN, but what is the next process? This seems unclear in practice. I have never heard that anybody was charged with this kind of offence'. **N.G.O.3.14**

It might thus be concluded that the creation of Section 135/4 could have been designed to show that Thailand has complied with an international obligation, rather than being intended as a practical measure in the fight against terrorism. There is also a question regarding whether Section 135/4 is correctly applied within the aim of United Nations Security Council Resolution 1267. The aim of this Resolution is to encourage all states to freeze funds or other financial resources pertaining to the Taleban (and later al Qa'ida) because of their involvement in terrorism.[524] Section 135/4 aims to deal with a member of a group linked to terrorists, thus it might be criticised that this Section differs from the purpose of United Nations Security Council Resolution 1267, which is merely related to the financial assets of individuals named in the resolution.

Comparing the UK law on terrorist organisations, reference may be made to Section 3 of the Terrorism Act 2000, which relates to a proscribed group. This Section empowers the Secretary of State to proscribe organizations

> 'The Secretary of State may by order
>
> (a) Add an organisation to Schedule 2;
>
> (b) Remove an organisation from that Schedule;
>
> (c) Amend that Schedule in some other way'.[525]

It should be noted here that the power to designate a proscribed group in Britain is a legal power of the Secretary of State, which differs from Thailand, as the latter relies on designation by the Security Council of the United Nations. In addition,

[524] See UNSCR 1267, adopted unanimously on 15 October 1999, as amended by UNSCR 1333 (2000), 1989 (2011) and 2253 (2015).
[525] See Terrorism Act 2000, Section 3.

according to Part II of the Terrorism Act 2000, the powers regarding the proscription of terrorist organizations have been extended beyond the Irish context.[526] Most of the organizations which have been listed are now non-Irish, and relate to jihadist terrorism.[527] Furthermore, there are further lists of designated persons and groups only for the purpose of countering terrorism financing. These are provided for under the Terrorist Asset-Freezing etc. Act 2010, the Afghanistan (Asset-Freezing) Regulations 2011 (SI 2011/1893) and the ISIL (Da'esh) and Al-Qaida (Asset-Freezing) Regulations 2011 (SI 2011/2742).[528] In these ways, various aspects of net-widening in UK laws against terrorist organisations have occurred, but there is no evidence of any pressing need to follow these examples in Thailand.

Next, net-widening can be found through the extension of powers by according extra-territoriality on relevant criminal offences. According to Section 7 of Thai Criminal Code,

> 'Whoever commits the following offences outside the Kingdom shall be punished in the Kingdom, namely;
>
> (1/1) an offence in respect of terrorization, as prescribed by Section 135/1, Section 135/2, Section 135/3 and Section 135/4'.[529]

Even though offences relating to terrorism in Thailand may be committed in foreign jurisdictions, the actors can be prosecuted in Thailand according to Section 7 of the Thai Criminal Code. In addition, according to Section 135/1, the victims of terrorism are not restricted to Thai citizens or the Thai government, but this extends further to the Government of any foreign State or any international organization. Section 135/1 provides that:

> 'Whoever does any act amounting to any of the following criminal offences:

---

[526] Walker, C. (2014) *Blackstone's Guide to The Anti-Terrorism Legislation*. (3rd edn). Oxford. Oxford University Press. pp. 39-47.

[527] There are 71 international terrorist organisations proscribed under TA 2000. For example, Abu Sayyaf Group, Al Qa'ida, Boko Haram, Hizballah Military Wing and Jeemah Islamiyah and 14 organizations in Northern Ireland that were proscribed under previous legislation. See https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2

[528] See Walker, C. (2014) *The Anti-Terrorism Legislation.* (3rd edn). Oxford. Oxford University Press, Chapter 3.

[529] See Thai Criminal Code, Section 7.

(1) Doing harm or doing any act to endanger the life or to cause serious danger to the body or freedom of any person ;

(2) Doing any act to cause serious damage to public transportation system, telecommunication system or infrastructure system which is provided for public interest;

(3) Doing any act to cause damage to any property of any State or of any person, or to the environment, which causes or is likely to cause material economic damage.

Where such act is done with intent to terrorize or force the Thai Government, the Government of any foreign State or any international organization to take any action or not take any action which may cause serious damage or a disturbance, by means of causing scare to the people, is said to commit the offence of terrorism and shall be liable to the death penalty, imprisonment for life or imprisonment from three years to twenty years and a fine of sixty thousand baht to one million baht'.

Section 135/1 provides for a wide range of penalties, which start from a fine of sixty thousand baht and extend up to the application of the death penalty. In this sense, the principle of proportionality, which relates to a fair punishment, needs to be considered. According to the principle of proportionality, as previously mentioned, an offence should be relevant to its level of punishment. The wide range of punishments apparent in Section 135/1 may lead to a wide range of discretion of judges, prosecutors, and police officers. As a result, this may raise several concerns regarding the fundamental rights and freedoms of an accused, which could include, for instance, the period of pre-charge detention.[530]

3.5.3 Lowest common denominator of rights

The next function served by criminal law in counter-terrorism is the attempt to decrease to the lowest level the traditional safeguards for individual rights within criminal law. Criminal law is used to reduce certain 'obstructive' technicalities in two

---

[530] See Thai Criminal Procedure Code, Section 87: 'In the case of offence liable to the maximum imprisonment for a term not less than ten years, irrespective of whether it be liable to any rate of fine also, the court shall be permitted to order several successive detentions not exceeding twelve days each, but the total period shall not be in excess of eighty four days'.

ways.[531] Firstly, it is expected to favour the prosecution by reducing any laws that protect defendants and increase the likelihood of non-conviction. Secondly, criminal law might be amended to deal with any problem regarding criminal proof which arises from the damaging disclosure of secret information, sources and data.

This technique has not been applied in Thailand. In this regard, comparison can be made to England and Wales approaches. A main feature of this tactic is related to the use of reverse burdens in special precursor criminal offences.[532] The problematic issue is related to membership offences and the offences of possession Sections 57 and 58 of the Terrorism Act. In order to uphold the prosecution's attempt to meet the rule of proof beyond reasonable doubt, these offences allow several presumptions to be made.

Section 57 (possession for terrorist purposes) of the Terrorism Act 2000 provides that:

> '(1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.
>
> (2) It is a defence for a person charged with an offence under this Section to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism.
>
> (3) In proceedings for an offence under this Section, if it is proved that an article
>
> (a) was on any premises at the same time as the accused, or
>
> (b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public, the court may assume that the accused possessed the article, unless he proves that he did not know of its presence on the premises or that he had no control over it'.

Section 58 (collection of information) of the Terrorism Act 2000 provides that:

---

[531] Walker, C. (2012) 'The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law' in Masferrer, A. (ed.) *Post 9/11 and the State of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer. p. 136.

[532] Ibid.

(1) A person commits an offence if

(a) He collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or

(b) He possesses a document or record containing information of that kind.

(2) In this Section 'record' includes a photographic or electronic record.

(3) It is a defence for a person charged with an offence under this Section to prove that he had a reasonable excuse for his action or possession.

These offences raise some concerns regarding the boundaries of 'reasonable excuse' for possession, which is a defence under Section 57(2) and 58(3). In this regard, the House of Lords in *R v G,* clarified that the excuse must be reasonable under the phrase of Section 58(3), depended on the intrinsic nature of the information.[533] In this case, it was stated that

> 'The aim was to catch the possession of information which would typically be of use to terrorists, as opposed to ordinary members of the population. So, to fall within the Section, the information must, of its very nature, be designed to provide practical assistance to a person committing or preparing an act of terrorism. Because that is its nature, Section 58(3) requires someone who collects, records or possesses the information to show that he had a reasonable excuse for doing so'.[534]

As mentioned above, the technique to switch the burden of proof through the application of terrorism offences cannot be found in Thailand. Consequently, prosecutors carry the burden of proof, and a defendant carries a benefit of assumption. In this sense, Sections 57 and 58 of the Terrorism Act 2000 would be a worthwhile lesson to Thailand regarding the use of terrorism offences to reverse the burden of proof, and this technique could be used to facilitate prosecution. Nevertheless, it might be argued that the application of these offences (Sections 57 and 58) might contravene legitimacy by making offences out of equivocal actions or even creating thought crime, though these dangers have been reduced by later

[533] [2009] UKHL 13 at paras.75,77.
[534] Ibid. para 43.

court decisions.[535] Given the codified system of laws in Thailand, much greater care would need to be taken with the initial drafting of any equivalent offences.

3.5.4 Mobilisation function

The next function of criminal law within the service of counter-terrorism lies in the conscription of the public into counter-terrorism. In other words, the criminal law can be utilised to force people to assist as part of counter-terrorism work. The law shall impose a certain duty to protect citizens and also the state. As a consequence, special criminal offences should encourage a proactive 'informer society'. Regarding this point, there are several concerns that need to be considered. Firstly, it is directly related to individual human rights regarding private information. Secondly, this demand may lead to social tensions. Thirdly, there is a problem concerning the risk of intervention, and then the dangers are increased of false accusations.

In Thailand, there is no provision that specifically deals with terrorist information. Thus, it is not an offence if a person refuses to pass on information about terrorism. But in the UK, Section 38B of the Terrorism Act 2000 imposes a duty to impart information. According to this Section, it is an offence if a person fails to reveal information relevant to terrorism without any lawful excuse.[536] Thus, a person may commit this offence (Section 38B) through inactivity.[537] For instance, the offence is committed when a person denies answering a police questions regarding terrorism. By Section 38 B(4), it is a defence if a person can prove a 'reasonable excuse' for not making the disclosure. In this regard, the defence of 'reasonable excuse' is generally related to fears of reprisal.[538] This offence encourages people to share their intelligence.

When the researcher raised the idea of enacting a law like Section 38B of the Terrorism Act 2000, most of the interviewees disagreed.

One senior judge replied that:

> 'Offences regarding terrorist information are not suitable to be applied in the southern Thailand situation. This type of offence seems to be effective in

---

[535] *R v Kahar* [2016] EWCA Crim 568.
[536] See the UK Terrorism Act 2000, Section 38.
[537] Walker, C. (2010) Conscripting the Public in Terrorism Policing: Towards Safer Communities or a Police State? *Criminal Law Review.* pp. 441-456.
[538] Ibid.

helping investigators' work, especially in terms of pursuing suspects, but I do not think it will work in practice. Most cases involving terrorism have occurred in the three southern provinces, where the majority is Muslim, and some may speak Yawi; but most of the Thai criminal justice officers are Buddhist, and most of them cannot speak Yawi. I believe that these religious and cultural differences could lead to less effective cooperation or obstacles in exchanging information about terrorism in practice'. **J.P.2.8**

Moreover, one of the Muslim public prosecutors replied that:

> 'The disadvantages of the terrorist information offences far outweigh the advantages. Terrorism in the southern part of Thailand is mainly based on religious and social discrimination, and all of the suspects have been Muslim. Thus, it is possible that those Muslim people may question why the law treats them differently to Buddhists with regard to this kind of offence, and why they have the duty to inform the police about terrorist information, as well as why the criminal liability tends to focus on only Muslim people'. **P.P.Y.6.19**

Furthermore, an NGO official who works in the area added that:

> 'Of course, the enactment of an offence regarding terrorist information would enhance the police investigation's abilities, but these kinds of offences at the same time explicitly interfere with the right to privacy. There are many ways to improve the efficacy of police intelligence, but the creation of these offences would only be applied as a last resort'. **N.G.N.1.11**

In contrast, the majority of the interviewed police officers agreed with the concept of 'terrorist information offences'. One of them provided the statement that:

> 'An offence relating to terrorist information would enhance the efficacy of our intelligence, and it would increase our potential to acquire the relevant evidence to support a prosecution. This would be a key improvement in the Thai criminal justice system in countering terrorism. However, the punishment of the offence must not be severe'. **P.O.Y.6.11**

Another police officer added that:

> 'One of the main problems we are facing here is lacking intelligence. We always get helpful information through military units. However, it would be better if we could get more information from the people in the areas'. **P.O.P.1.11**

Meanwhile, a defence lawyer said that:

> 'The terrorist information offences are of course helpful to develop the police's investigation. However, we do not need these offences at the moment, as the nature of the offences seems to focus on discriminating against Muslim people in these provinces. I would suggest that this type of offence should be applied to narcotics offences, which are spread right across the country. Then, we could take on more people to play the part of information givers.' **D.L.P.2.19**

Based on these comments made by the interviewees, the potential benefit of the offence of terrorist information is clear in facilitating the investigators to pursue terrorist suspects and access evidence. However, most of the interviewees showed their concerns in terms of problems arising from its enforcement regarding possible religious and social discrimination in the areas. The researcher considers in the same manner, together with most of the interviewed participants, that the offences relating to terrorist information would be very helpful to the police's investigation work. However, as this kind of offence has never been applied in Thailand before, and the offence seems to place a focus on the Muslim population, which would lead to a concern of discrimination, the offence would thus possibly generate a negative result rather than any positive outcomes. Furthermore, the enforcement of the offence of terrorist information would raise a strong concern regarding the human rights issue, as the law aims to criminalise people who merely possess information.

3.5.5 Denunciatory function

The next facet of criminal offences in the context of counter–terrorism concerns the denunciatory impact. The principle behind the denunciatory function is the objective to express society's disapproval of the crimes that have been committed.[539] In other words, criminal offences which have been provided in the criminal code reflect the behaviours that are disapproved of by society. A classic example in this regard is

---

[539] Hirsch. A. (1993) *Censure and Sanctions.* Oxford. Clarendon Press. pp. 6-10.

that a state can denounce its political enemy by charging the most serious offences against the state such as treason.[540]

In order to consider whether or not Thai criminal law achieves the denunciatory function, the question shall be determined through two aspects. Firstly, the level of criminal sentence should be relevant. This is a vital factor that reflects how serious the offence is.[541] Terrorism offences might be given the most severe penalty, and as a result, people may fear its punishment and avoid committing crimes. Secondly, the low crime rate could reflect the efficacy of the denunciatory impact, as when this function works, it is possible that people are sufficiently warned to avoid committing crime by the severe penalties. Thus, the rate of crime may be decreased.[542]

In Thailand, the function of denunciatory in criminal offences can be found in the 'offences relating to the security of the kingdom'.[543] For example, Section 113 of Thai Criminal Code which is related to an offence of treason provides that:

> 'Whoever commits an act of violence or threatens to commit an act of violence in order to:
>
> 1. Overthrow or change the Constitution;
> 2. Overthrow the legislative power, the executive power or the judicial power of the Constitution, or nullify such power; or
> 3. Separate the Kingdom or seize the power of administration in any part of the Kingdom, is said to commit treason, and shall be punished with death or imprisonment for life'.

Next, Section 114 of the Thai Criminal Code is related to acts of preparatory in committing a treason offence. It provides that:

> 'Whoever, collecting the forces or arms, or otherwise making the preparations or conspires to commit the insurrection, or committing any offence as the part of the plot committing the treason, or instigating the

---

[540] Walker, C. (2012) 'The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law' in Masferrer, A. (ed.) *Post 9/11 and the State of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer. p. 140.

[541] Herring, J. (2012) *Criminal Law Text, Cases, and Materials.* (5th edn). Oxford. Oxford University Press. p. 13

[542] The information regarding the conviction rates can be found in Chapters 4 and 5.

[543] The 'offences relating to the security of the kingdom' were enacted in Thai Criminal Code (Chapter 2), Sections 107-135/4.

> private persons to commit the insurrection, or Knowing that there are the persons to commit the treason and making any act to assist in keeping such secret intention to commit such treason, shall be punished by imprisonment as from three to fifteen years'.

By comparison, the principal UK offences of treason can be found in the Treason Act 1351. For many years, there has been little interest in these offences.[544] One reason is because in 1998 the death penalty for committing treason was abolished.[545] Another indication of disinterest is that the offence of sedition was abolished by the Coroners and Justice Act 2000, Section 73.[546] However, the offence of treason remains in being and has been discussed as worthwhile in the House of Commons, particularly regarding the application of the offence of treason to British Jihadists who return from Iraq and Syria.[547] It has been stated by Mr. Hollobone (MP for Kettering) that:

> 'We all have witnessed on television the beheading by a British jihadist of British and American aid workers, and given that the offence of treason still exists, but has not been used since 1946, will the Foreign of Secretary ensure that British jihadists who return from Iraq and Syria are prosecuted for the offence of treason'.[548]

Even though the last prosecution for treason in the UK took place in 1946, when William Joyce was hanged for Nazi propaganda broadcasts,[549] the offence of treason still exists and may still be enforced.[550] The offence of treason is a severe and emblematic offence. Unlike other offences such as murder, the offence of treason is so serious and the defence of duress cannot be applied, so it is one of the more serious offences a British person can commit.[551]

Instead of the use of treason, denunciation is currently achieved in the UK through severe sentencing of convicted terrorists under other offences.[552] In this regard, it

---

[544] Hansard House of Commons. Vol.586.Col482, 16 Oct 2014.
[545] See Crime and Disorder Act 1998, Section 36.
[546] Hansard House of Commons. Vol.586.Col482, 16 Oct 2014.
[547] Ibid.
[548] Ibid.
[549] *Joyce v DPP* [1946] AC 347. See generally Law Commission, *Working Paper No. 72. Second Programme, Item XVIII. Codification of the Criminal Law. Treason, Sedition and Allied Offences* (London, 1977).
[550] BBC News, (2014). Treason charge idea considered for UK Jihadists. [Online]. 17 October. [Accessed 3 Nov 2014]. Available from http://www.bbc.co.uk/news/uk-29655099
[551] Hansard House of Commons. Vol.586.Col482, 16 Oct 2014.
[552] Walker, C. (2011) *Terrorism and the Law.* Oxford. Oxford University Press. Chap.6.

should be noted that in Thailand Section 135/1 likewise provides heavy penalties. One reason for providing severe penalties, such as the death penalty and life imprisonment, in this Section is to warn people that those acts are definitely unacceptable by our society, and also to prohibit them repeating any crime by applying the most severe criminal punishment. Consequently, the crime potential can be reduced by denunciation, and this is another factor that reflects the effective nature of criminal law.

When, during his fieldwork, the researcher raised the issue concerning the death penalty for charges of terrorism, most of the interviewed criminal justice officers agreed with that stance. For instance, one of the interviewed prosecutors said that:

> 'Terrorism offences are one of the most severe acts against the state's security, and thus they should be served with the heaviest penalty'. **P.P.N.4.20**

Another judge made a similar point, namely that:

> 'The death penalty is a warning sign to prevent a future criminal. In terrorism charges, only a defendant who causes severe acts, such as murder or killing via bombs, would serve the death penalty. Nevertheless, the age of a defendant and recidivism are also to be considered'. **J.Y.5.9**

In addition, another experienced lawyer stated that:

> 'The idea of invoking the death penalty for charges of terrorism is acceptable, but consideration should be instead placed to the standard of evidence examination in a trial, and the punishment should be commensurate with the degree of a criminal act. Based on my experience, there have been many cases in which the court has issued the death penalty in terrorism charges, but there were some obscure points regarding evidence examination'. **D.L.N.3.18**

However, an NGO who works in the area disagreed, noting that:

> 'The death penalty would not be a solution. It also violates human rights. Terrorism here is motivated by ideologies, and thus a proper sentence with moral training programs would be a better answer'. **N.G.P.1.10**

One police officer said that:

> 'I think that the death penalty is commensurate with the nature of offences relating to terrorism. Compared to other severe offences that carry the death penalty, such as murder or bombing, I think it is fair to impose the maximum penalty on a terrorist'. **P.O.N.3.10**

Regarding the issue of the punishment of terrorist offences, the researcher has observed that most of the interviewed participants accept that terrorism is a heinous crime and commensurate with the maximum punishment of the death penalty. In this sense, they seem to be satisfied with the current criminal law, to use the strongest punishment as a warning sign to deter a future criminal. The researcher would agree on this issue that severe penalties for offences of terrorism are important. The deterrent function of the heaviest penalties could effectively deter a potential criminal from committing a crime, as they would be in fear of suffering such harsh punishment and be hesitant to commit a crime. Without severe penalties, crimes such as terrorism might escalate. At the same time, however, the application of the death penalty should be considered to involve severe potential drawbacks. For example, what if the conviction involves a mistakes or miscarriage of justice? If the prisoner has been executed, then it cannot be remedied. Reference must be made here to the UK's experience. Since 1942, no terrorist has been executed as to avoid the dangers of creating 'martyrs' or miscarriage of justice in terrorism cases.[553] The death penalty was abolished in Great Britain by the Murder (Abolition of Death Penalty) Act 1965 and for Northern Ireland by the Northern Ireland (Emergency Provisions) Act 1973. Nevertheless, a further ground for continuing to abjure the capital punishment in terrorism cases is the negative experience of wrongful convictions in many prominent terrorism cases in the 1980s which undermined confidence in the criminal justice system.[554]

3.5.6 Symbolic solidarity

The final function of criminal law in the context of counter-terrorism concerns the expression of symbolic solidarity. Criminal law can boost symbolic solidarity behind a state and its own citizens or with the international community.[555] The concept of symbolic solidarity in this section places a highlight on the expression of symbolic solidarity with the international community and solidarity with citizens.

---

[553] Walker, C. and Starmer, K. (1999) *Miscarriages of Justice*. London. Blackstone Press. Ch 2.

[554] McCartney, C. and Walker, C. (2013) 'Enemies of the Sate and Miscarriages of Justice'. *Delhi Law Review*. XXXII. pp. 19-20.

[555] Walker, C. (2011) *Terrorism and the Law.* Oxford. Oxford University Press. p. 204.

Criminal law can bolster symbolic solidarity with the international community. In this regard, the UN 1373 Resolution and the UNSCR Resolution 2178 (2014) on Foreign Terrorist Fighters shall be discussed. The key feature of the 1373 Resolution is to criminalise offences of terrorist financing according to sub paragraph 1 (a) 'state parties are required to take steps to suppress the financing of terrorism'. In compliance with the UN 1373 Resolution, the Thai Cabinet approved on 5 August 2003 two draft amendments of the CriminalCode (terrorism offences Sections 135/1-135/4) and the Anti-Money Laundering Act to prescribe financing of terrorism as a predicate offence under the Anti-Money Laundering Act and to empower the Anti-Money Laundering Office (AMLO) to freeze suspicious funds concerning terrorism as required by the UNSC Resolution 1373.[556]

Even though Thailand claimed to be fully complying with sub paragraph 1 (a) of the 1373 Resolution by enacting specific terrorism offences into the Criminal Code, especially Section 135/2, which deals with the financing of terrorism, the CTC deemed that this response did not adequately cover all the requirements of Resolution 1373, in particular with regard to criminal supporters, attempts and international findings.[557] Regarding this point, there are two main aspects that need to be considered. Firstly, in the drafting process of Sections 135/1-4 of the Thai Criminal Code, Thailand had taken into consideration the requirements under sub-paragraph 1(a) of 1373 Resolution as well as Article 2 of the International Convention for the Suppression of the Financing of Terrorism 1999.[558] This means that both international counter terrorism bodies had influenced Thailand at the outset of enacting its domestic legal measures on counter terrorism. Secondly, in order to consider the offences of terrorist financing in Thailand, the Section 135/2 of the Criminal Code should not be solely considered alone. Section 135/2 (2) provides that:

> 'Whoever collects forces or arms, provides or compiles any assets, gives or receives training relating to terrorism, makes preparations or conspires to commit a terrorist act, or instigate the people to partake in committing a

---

[556] Sookrasom, A. (2005) *The Terrorism Offences in Thailand: Prevention and Suppression Measures.* Master of Law Thesis Thammasat University.Thailand. pp. 55-62.
[557] Thailand's Country's Report to CTC on 25 September 2003 (Submitted pursuance to paragraph 6 of Resolution 1373, 2001).
[558] See Sookrasom, A. (2005) *The Terrorism Offences in Thailand: Prevention and Suppression Measures.* Master of Law Thesis Thammasat University.Thailand. pp. 55-62.

terrorist act, or does any act to conceal knowledge of the commission of a terrorist act'.

This section covers a person who engages in both financing and arms involvement. Although this section includes act of training, preparation, conspiring and instigations of terrorism, the general chapter of the Thai Criminal Code (Attempt, Principals and Supporters) should be also noted. The general chapter in the Criminal Code covers general principles such as 'principals, supporters, attempts, and so on shall be applied to all offences provided in the Criminal Code.[559] Consequently, a person who is a supporter or attempts to provide funding relating to terrorism, shall be punished under the Thai Criminal Code.[560] Although Section 135/2 itself does not cover terrorist offences occurring in another country, as previously stated, the terrorist offences which were enacted in the Criminal Code shall be read together with the general part especially Section 7 of the Criminal Code which clearly provides that terrorism offences Sections 135/1-135/4 shall be criminalised and punishable under the Criminal Code, irrespective of whether the terrorist acts take place within or outside the Kingdom, and this includes the acts of being a supporter and making attempts.

Next, the UNSCR Resolution 2178 (2014) on Foreign Terrorist Fighters deals with 'foreign fighters' who attempt to participate or participate in an armed group that has been officially designated as a terrorist organization, and this notably links to the establishment of the group Islamic State in Iraq and Syria. It calls for states to adopt new measures dealing with 'foreign fighters' involved in a terrorist organization. One of its key features is to stop an individual who is believed to be 'foreign terrorist fighters' from crossing their borders and to prosecute, rehabilitate, reintegrate 'returning foreign fighters'.[561] All party states are obliged to adopt such measures and ensure by their domestic laws to suppress, prosecute and penalise individuals travelling for the purpose of committing or involving in terrorist acts.[562]

In Thailand, at the time of writing this thesis, there is no concrete measure or legislation to implement this Resolution. One of the possible reasons would be that the nature of the 2014 Resolution is primarily to deal with international terrorism by

---

[559] Further explanation of the Thai criminal law principles can be found in Chapter 3.
[560] See Thai Criminal Code, Sections 135/2 (2) and 88.
[561] See Article 4 UNSCR 2178.
[562] See Article 6 UNSCR 2178.

averting people to go abroad, but terrorism in southern Thailand is mainly based on the religious and ethnic conflicts which are indigenous to the area. However, the failure to implement the 2014 Resolution reflects Thailand's failure to express symbolic solidarity with the international community. Thailand has paid inadequate attention to the UNSCR 2178 through its absence of responsive legislation to prevent suspected foreign terrorists from entering or transiting through Thailand's territory. Likewise, there is no legislation to deal with radicalisation and recruitment to terrorist groups, which is a requirement of articles 15-16 of the UNSCR 2178. It should be noted here that Section 135/4, which relates to members of terrorist organisations, does not meet the requirements of the UNSCR 2178. This is because the latter aims to fight preventively against 'terrorist ideology' through the encouragement of relevant local communities and non-government actors to apply this strategy,[563] whereas section 135/4 contains nothing about tackling the radicalisation aspect of terrorism.

In contrast, the UK Counter Terrorism and Security Act 2015 ('CTS Act 2015'), Part I, has been enacted to reduce the ability of people to travel abroad to participate in terrorist activities and returning to the UK. Basically, this Act increases the ability of operational agencies in monitoring and controlling actions of people who pose a threat. Section 1 allows police constables to retain a person's travel documents, yet they are not allowed to arrest the person. Also, the Secretary of the State is empowered under Section 2 to impose a temporary exclusion order on an individual if certain conditions are met. The existence of this Act can be regard as strengthening the UK's Counter Terrorism Strategy 'CONTEST' in particular to Prevent.[564]

The CTS Act 2015 was conceived as 'panic legislation' for preventing the flow of foreign terrorists to participate in and support jihadist organisations.[565] Nevertheless, the legislation is not a wholly novel response to interdict people who aim to be outgoing 'foreign terrorist fighters'. Prior to the 2015 Act, other legal measures had been already applied. These involved the Terrorism Prevention and Investigation Measures Act 2011 (TPIMs Act 2011), a Foreign Travel Restriction Order under the Counter Terrorism Act 2008, the power to arrest terrorist suspects

[563] See Articles 15-16 UNSCR 2178.
[564] Rehman, J. and Walker, C. (2012) 'Prevent Responses to Jihadi Terrorism'. in Ramraj, V. et al., *Global Anti-Terrorism Law and Policy*. Cambridge. Cambridge University Press. pp. 242-245.
[565] See Blackbourn, J. and Walker, C., 'Interdiction and Indoctrination: The Counter-Terrorism and Security Act 2015' (2016) 79(5) *Modern Law Review* 840–870.

without warrant under Section 41 of the Terrorism Act 2000, and examinations under Schedule 7 of Terrorism Act 2000.[566]

Regarding further the concept of international symbolic solidarity, consideration can be given to official action the context of ASEAN. A good example of 'symbolic solidarity' among the ASEAN countries is the existence of the ASEAN Convention on Counter Terrorism 2007, which aims to provide cooperation guidelines for its member states in counter-terrorism in the regional context.[567] However, as ASEAN has no specific permanent body to monitor whether each member state has properly implemented the ACCT 2007, and the Thai military government seems to prefer to rely on its domestic laws, it seems that the ASEAN approach to countering terrorism has had very minimal impact on Thailand, as mentioned by the relevant people below.

One of the senior judges mentioned that:

> 'ASEAN convention on counter terrorism has less impact on the Thai's counter terrorism strategy which basically relies on the special laws. The Thai military government shows their confidence to solve the problem by the application of the special laws in particular to the Emergency Decree 2005. I think that the ratification of the ASEAN Convention 2007 is just a political way to show the national responsibility in compliance with international community, and there is nothing happening in practice'. **J.Y.1.8**

One police officer noted that:

> 'I believe that the ASEAN Convention has had very minimal impact on our work here. In fact, we do not know much about its principles'. **P.O.Y.5.28**

A defence lawyer further stated that:

> 'I have not seen any concrete criminal cooperation between the Thai criminal officials and other ASEAN members. From my perspective, they have the confidence to deal with the southern problem by emphasising that the southern problem is just a domestic matter'. **D.L.N.4.30**

---

[566] Walker, C. (2014) *Blackstone's Guide to The Anti-Terrorism Legislation*. (3rd edn). Oxford. Oxford University Press. Chap.7.
[567] Razak, A. (2013) The ASEAN Convention on Counter-Terrorism 2007. *Asia Pacific Journal on Human Rights and the Law* (1&2). pp. 93-147.

An NGO member said that:

> 'I have realised the importance of the cooperation between ASEAN members to allay the problem in southern Thailand. As an NGO staffer, I have worked closely with other NGOs both from the internal and international organisations. I have found that we need further development on this point'. **N.G.O.1.36**

When, during his fieldwork, the researcher raised the question regarding criminal cooperation within the ASEAN, it appears that Thailand has less interaction with other ASEAN members, as the following statements show.

One of the senior prosecutors working in Pattani explained that:

> 'Within the ASEAN, the only country we have cooperated with in terms of the development of the laws of countering terrorism is Indonesia. Every year a group of public prosecutors from these areas (Pattani, Yala, and Narathiwat) will be sent to Indonesia for a week to participate in counter terrorism conferences held by Indonesia's Prosecutor Department'. **P.P.P.2.35**

Another police officer replied that:

> 'Although the development of international policy is vital to improve the state's ability to deal with terrorism, the Royal Thai Police seems to ignore this issue. For example, formal and informal mutual criminal cooperation to share intelligence in terrorist cases has not been smoothly done, especially with Malaysia. To solve this, the relationship with the Malaysian police and their government must be immediately improved'. **P.O.Y.4.28**

This is another reflection of the fact that the Thai government and the Royal Thai Police seem to rely more on domestic laws to deal with terrorism in the south, without having any clear international legal framework. This indicates a failure of the Thai government in terms of its international criminal operations with neighbouring states, in particular with Malaysia.

The second point is related to solidarity within citizens. This concept reflects whether criminal law allows citizens to take action or to be aided as part of counter-terrorism work. As mentioned, In Thailand, the criminal law's function regarding the

idea to conscript the public into counter-terrorism has remained undeveloped.[568] The Thai criminal law is mainly applied as an element for further prosecution rather applying to impose a certain duty to protect or to assist the state. The clear example is that there is no provision that specifically deals with terrorist information like Section 38B of the Terrorism Act 2000.[569]

Another aspect of solidarity is related to measures helping victims through criminal justice. In the UK, the Criminal Injuries Compensation Scheme 2012 is a government funded scheme designed to compensate blameless victims of violent crime (including terrorism attacks).[570] The condition of granting compensation is based on the 'balance of probabilities', and not the criminal standard of 'beyond reasonable doubt'.[571] More specifically, there is the scheme under the Crime and Security Act 2010, Sections 47 to 54, for any victim who suffered from overseas terrorism. A person who is eligible to claim for compensation of terrorist attacks abroad must be a British, EU, EEA or Swiss citizen, or a member of the UK armed forces (or a close relation or family member) or have lived in the UK for 3 years immediately before the terrorist incident happened. It is not necessary that an eligible person for this scheme shall be directly suffered from a specific act of terrorism. A witness to a specific act of terrorism where a loved one was injured, or a partner or close family member of someone killed in a specific act of terrorism, is also able to claim under the scheme.[572]

In Thailand, two classes of claimants - wrongfully accused and a victim of a crime - are eligible to claim for compensation. The Act of Compensation for the Injured Person and the Accused in the Criminal Case B.E.2544 (2001) allows an accused person to claim for compensation provided under Section 20 he is (1) stated by final judgment to be innocent (2) prosecuted by a public prosecutor and (3) detained during a trial. Next, persons injured by crimes are also able to claim for compensation under this Act but restricted under Section 17 to damages from only two kinds of offences, which are sexual offences and offences against life and body.[573] It can be seen that in Thailand, there is no specific provision for compensation for a victim in terrorism cases like in the UK. In addition, the injured

[568] See Section 3.5.4 Mobilisation Function.
[569] Ibid.
[570]https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243480/9780108512117.pdf [Online] [Accessed 19/4/2017].
[571] Ibid.
[572] https://www.gov.uk/compensation-victim-terrorist-attack [Online] [Accessed 19/4/2017].
[573] Act of Compensation for the Injured Person and the Accused in the Criminal Case B.E.2544 (2001), Section 17.

person suffering from special terrorism offences is unable to claim for compensation since they are not listed under Section 17.

3.6 Conclusion

Thai criminal law has been employed as a prime mechanism for dealing with terrorism in southern Thailand. However, its role appears to be one of 'passively' dealing with terrorists after the commission of a crime.[574] Among the six functions of criminal law in counter-terrorism already mentioned, Thai criminal law has shown its highest effort in dealing with the implementation of 'precursor crimes'. This is reflected by the wide range of the criminalisation of preparatory offences, training offences, collecting for terrorist purposes Section 135/2(2) and membership offences Section 135/4. However, based on the fieldwork information, it has been revealed that those provisions have rarely been applied.[575] This indicates that the criminal law has failed to intervene with terrorist suspects at the preliminary stages.

This research has found that the Thai criminal law has reflected a low level of efficacy when dealing with the terrorism occurring in the south of Thailand, based on an analysis of those six functions. The specific references to the UK Terrorism Act 2000 have provided a worthwhile lesson to Thailand in developing its criminal law, in particular concerning the analysis of the precursor impact, the use of the criminal law as a form of net-widening, and the use of the criminal law as a mechanism for international symbolic solidarity. However, most of the interviewed criminal justice officers showed their confidence in the current criminal law as the main mechanism for fighting against terrorism, as illustrated in the table below.

[574] See Figure 3.2 above.

[575] Information was derived through the interviews with criminal justice officers. See section 3.5.1 'Precursor Impact'.

Figure 3.3 Overall views towards the existing criminal law on counter-terrorism.

Jobs	Satisfaction	Dissatisfaction
Police Officers	6	0
Prosecutors	4	2
Judges	5	1
Defence Lawyers	3	3
NGOs	2	2

It appears that the existing criminal law seems to be sufficient for the relevant criminal justice officers to deal with terrorism in practice. Nevertheless, it should be noted that the role of the criminal law has been greatly reduced by the application of the special laws, which are often far more powerful and prominent in terms of the functions of preventing and pursuing terrorist suspects.[576] For this reason, as the criminal law has functioned together with the special laws, it is understandable why most of the interviewed criminal justice officers still have trust in the criminal law. The co-function of those strategies could conceal some weaknesses in the criminal law.

Regarding the legitimacy of the criminal law, the researcher considers that the current criminal law is satisfactory in terms of its 'generality' and 'equality'. There is not any sign that the law is intended to apply only to Muslim people in the south, based on the fieldwork interviews. The provision of terrorist offences is not restricted to being enforced in these areas. However, as the majority of the offences of terrorism committed in this country have been carried out in these areas, it is to be expected that the law on terrorism should be frequently used in that context. Furthermore, the severe level of punishment given to the offence was also acceptable to the majority of the interviewed participants. Most of them agree that a heavy penalty would be a factor to deter a potential terrorist. However, one of the concerns relating to the legitimacy of the criminal law on terrorism is that it lacks clarity. Most of the defence lawyers and NGO members emphasised that the law is enacted in a very broad manner and provides too much discretion to the court. For example, the terms of damaging public transportation or infrastructure system appear to be unclear. However, police officers, prosecutors and judges have tended

[576] The examination of the special laws can be found in Chapter 5.

to be satisfied with the certainty of the provision of terrorism, without any refinements. Most of the participants from this group agree that the provision is sufficient and is enacted in a clear manner, which would allow people to understand the law.

Lastly, the research has discovered the tendency of the Thai criminal law to be used as the main mechanism for criminal prosecution rather than being used in a preventive function or for averting crimes. This indicates that the Thai criminal laws play a very passive role in counter-terrorism, and this is also connected to the limited policing powers for intervening with suspects in advance.[577] In this sense, the UK's law on terrorism goes too far for Thailand's criminal law in various aspects. It has been observed that the nature of the UK terrorism law has been applied under the aphorism 'prevention is better than cure'. Apart from the criminalisation of a wide range of activities associated with terrorism, the UK's terrorist law also usefully conscripts the public into counter terrorism in order to defend themselves. This would be a beneficial lesson for Thailand to learn in order to enhance its criminal laws regarding counter-terrorism.

[577] Commentary on Thai Criminal Procedure Law and Policing can be found in Chapter 4.

Chapter 4

Criminal Processes and Counter-Terrorism in Thailand

4.1 Introduction

The previous chapter was concerned with the Thai criminal law in the context of counter-terrorism. This chapter examines the criminal procedure law as well as the roles of criminal justice officers with reference to terrorism offences. This chapter aims to understand and evaluate the criminal justice process of Thailand when dealing with terrorism charges. Ultimately, this chapter strives to answer one of the main research questions of this thesis: whether the criminal procedure law when dealing with terrorism charges in Thailand is effective and legitimate. The setting for this inquiry is that Thai government has applied the 'normal' Thai criminal procedure law as a main mechanism to deal with terrorism, but has also devised special laws which are: the Emergency Decree on Public Administration in State of Emergency 2005/2548; the Internal Security Act 2008/2551; and Martial Law 1914/2457 to deal with terrorism in the southern Thailand. The discussion of the 'special laws' applied against terrorism in the southern of Thailand can be found in Chapter 5. This chapter deals with 'normal' procedures.

As noted, the 'normal' Thai criminal procedure law is the prime legal measure that has been used to deal with charges of terrorism. It governs the adjudication process of criminal law, which includes allegations, lodging a complaint, making investigation, preliminary examinations, prosecutions, examination of evidence, conviction, making appeals, and related processes.[578] The law is designed to empower criminal justice officials to function in fact-finding and in imposing a just verdict, and where guilt has been determined, punishment.[579] At the same time, the criminal procedure law can be seen as a proper restraint on the officials' powers. In this regard, offences relating to public administration and offences relating to public justice in the Criminal Code could be applied to officials who use their powers excessively.[580]

---

[578] Jaihan, N. (2004) *General Principles of Criminal Procedure Law*. (8th edn). Bangkok. Winyoochon. pp. 15-18.
[579] Wajjanasawat, K (2010) *Principles of Criminal Procedure Law in Thailand.* (5th edn). Bangkok. Jirachakarn. pp. 10-11.
[580] Thai Criminal Code, Part 2, Sections 136-205. For example, offences committed in Judicial Office.

Conversely, the special counter-terrorism laws can be defined as legal measures which have been employed to work alongside the normal criminal procedure law to deal with terrorism in specific areas of the southern provinces (Pattani, Yala, and Narathiwat). The standard criminal procedure law applies in all areas of the country and covers all types of criminal charges.[581]

The first part of this chapter explains the terms 'efficacy' and 'legitimacy' in the context of criminal processes as well as principles of Thai criminal procedure law in the context of terrorism charges. The second part examines Thai criminal justice organizations, and the roles and powers of criminal justice agencies (the police, the prosecutors and the judges) relying upon the notions of 'efficacy' and 'legitimacy'.

4.2 The notions of 'efficacy' and 'legitimacy' in the contexts of criminal processes

As previously explained in chapter 3, the notion of efficacy in the context of this chapter refers to the practical impact of the overall criminal justice system in dealing with terrorism charges. It is explored in three stages. Firstly, it is concerned with the efficacy of the police in the investigation process, especially the effectiveness in fact-finding and in bringing suspects into the criminal justice process. The research seeks to understand whether the existing criminal procedure law, especially laws of arrest, detention, interrogation and search powers, are sufficient to deal with terrorism cases. Further, this research provides and analyses data of the total numbers of terrorist cases that occurred between 1 August 2012 and 31 July 2013 and to explore the numbers of cases where the police successfully identified suspects to be charged. Further, it will draw a comparison between the number of cases where the police successfully identified suspects in terrorism offences and the number of cases of other criminal offences during the same period and in the same areas. This comparison might be seen to shed light on the efficacy of the police in the investigation process.

Secondly, the chapter considers effectiveness regarding criminal prosecutions as well as the roles of the public prosecutors in court trials. It is hypothesized in this research that effectiveness in this sense might be reflected by the achievements of prosecutors, their roles in a trial and (but not exclusively) the conviction rate.

---

[581] The definition of 'the special laws' is explained in Chapter 5 (Section 5.2 The background of the special laws in countering terrorism).

Thirdly, the research considers efficacy in the judicial process. In this sense, an effective judicial process might include a high standard of evidence examination, and the abilities to deliver high quality judgments within a reasonable time.

For the notion of 'legitimacy' in criminal proceedings, this research attempts to carry out an examination via the three normative foundations of human rights, the rule of law, and the Thai constitution. In this regard, a fair criminal procedure is deemed to be one that has complied with those three notions. It might therefore be said that an acceptable criminal procedure law is not restricted only to convicting an offender, but it should also guarantee the preservation of the rights of the injured parties, the victims, the witnesses, and also the offenders. Regarding the notion of human rights, this research seeks to explore how the Thai criminal justice system protects a terrorist accused at both pre-trial in particular to detention and also at the trial stages. For the notion of the rule of law, the research explores whether the criminal justice officials (police officers, prosecutors and judges) are accountable under the law. Then, the research seeks to explore the independence and impartiality of the judiciary. Lastly, within the context of constitutionality, the research seeks to explore the relevant concepts of Thai Constitution with reference to the criminal justice system such as due process and a speedy trial.

Due to the limitations of the fieldwork research, which was confined to interviews with only 28 participants, the research is unable to generate results regarding 'legitimacy' and 'efficacy' for the entire criminal justice system. Nevertheless, the interviews were valuable even if selective, and so this chapter will explore, analyse, critique and provide suggestions based on those interviews, and will use the interviews to reflect further upon the impact of the current Thai criminal procedure when dealing with terrorism.

4.3 General principles of Thai criminal procedure law

Criminal procedure law in Thailand places an emphasis on the balance between the state's power to bring a criminal within the criminal process and the protection of human rights and liberties.[582] Thai Criminal Procedure Code provides several Sections empowering officials to search and arrest an accused in order to bring him

---

[582] Wajjanasawat, K (2010) *Principles of Criminal Procedure Law in Thailand.* (5th edn). Bangkok. Jirachakarn. pp. 7-8.

within the criminal process.[583] Nevertheless, there are also various Sections concerning the protection of human rights and liberties: for example, the Sections regarding due process, fair trial, the presumption of innocence, and so on. These concepts are in compliance with the notions of the Thai Constitutional Law as discussed in Chapter 2.[584] In other words, it could be said that Thai criminal procedure law empowers and facilitates an official's powers in order to bring a criminal to trial, while Constitutional law limits such powers, as well as guaranteeing human rights protection. One important example is that Thai criminal procedure law allows the police to arrest a suspect without warrant in accordance to Section 78 of Thai Criminal Procedure Code. However, at this stage, the suspect is still presumed innocent until a judgment is made by the court according to the principle provided by Section 39 of the Thai Constitutional Law.[585] In Thailand, it can be said that achieving a fair balance of the state's power in criminal process and the protection of human rights is the prime precept of Thai criminal procedure law.[586]

4.4 Accusatorial system in Thai criminal procedure

The accusatorial system is the mode of criminal justice used in Thailand's criminal process.[587] There are four key aspects regarding the working of the accusatorial system in Thai criminal procedure. Firstly, there are duties for gathering evidence placed on both parties.[588] In this sense, both prosecutors and offender have to present their evidence to convince the court. Secondly, the judges play a passive role in the trial. In the main, the judges' role is to evaluate both parties' evidence and to oversee the process to ensure that it conforms to the rules. Nevertheless, in some circumstances the judges may play active roles in the trial. For example, Section 175 of the Criminal Procedure Code provides that 'when the prosecutor has already taken the evidence, if it is deemed expedient the court shall demand the file of the inquiry from prosecutors for further consideration'.[589] Thirdly, decision making as to how the case is to be presented is left in the hands of both parties. For

---

[583] See Thai Criminal Procedure Code, Part 5, Sections 77-105.
[584] See Chapter 2, section 2.3.1. See also Sections 27-29 of the draft of the 2016 Constitution of Thailand.
[585] The Thai Constitution 2550 (2007) Section 39 provides that 'It shall be presumed that the accused is not guilty, and before a final verdict of guilt is handed down, it is prohibited to treat the accused as he or she is guilty'.
[586] Reuchai, K. (2011) *Criminal Procedure Law.* (6th edn). Bangkok. Thammasat University. pp. 5-12.
[587] Wajjanasawat, K (2010) *Principles of Criminal Procedure Law in Thailand.* (5th edn). Bangkok. Jirachakarn. pp. 10-11.
[588] Ibid. 562.
[589] Thai Criminal Procedure Code, Section 175.

example, the prosecutor may decide to withdraw a case even though there is enough evidence to support a criminal charge. However, where the accused pleads guilty, the court can accept the plea only for the criminal charges where the minimum of punishment of imprisonment is lower than five years.[590] Fourthly, before a verdict is made, an offender is presumed innocent.[591] For the standard of proof, the prosecutor has to prove beyond a reasonable doubt that the offender has committed an offence.[592] In contrast, the offender seeks to provide reliable proof that the prosecutor's evidence is unreliable and so seeks to cast a reasonable doubt.[593]

At the pre-trial stage, both police officers and public prosecutors play important roles. Principally, the police officers have full responsibility for any investigation. When a complaint is lodged by a victim of a crime, the police have the responsibility to initiate the investigation and to determine whether there is sufficient evidence for lodging the case with the public prosecutor in the next stage. In contrast, Thai public prosecutors are not empowered to investigate.[594] According to Section 121 of the Thai Criminal Procedure Code, the responsibility for investigation is restricted to police officers, whereas the public prosecutor's roles are limited to check whether the police investigation is being conducted in the correct manner and complies with due process.[595]

In the trial stage, the judges play many important roles. They assess the presented evidence, interpret the law, and conduct all the proceedings in accordance with due process. All criminal cases are heard by judges sitting without a jury,[596] so the

---

[590] Thai Criminal Procedure Code, Section 176.

[591] According to Section 39 of the Thai Constitution B.E.2540 (2000), provided that 'An offender shall be presumed innocent until proved guilty'.

[592] Jaihan, N. (2004) *General Principles of Criminal Procedure Law*. (8th edn). Bangkok. Winyoochon. pp. 142-145.

[593] Khositsurankahul, V. (2010) *The Adversary System on Criminal Procedure in Thai Courts; A Case Study of Prosecution by Public Prosecutors* (Master of Law Thesis). Bangkok. Thammasat University. pp. 34-35.

[594] Reuchai, K. (2011) *Criminal Procedure Law.* (6th edn). Bangkok. Thammasat University pp. 16-20.

[595] Wajjanasawat, K (2010) *Principles of Criminal Procedure Law in Thailand.* (5th edn). Bangkok. Jirachakarn. pp. 123-124.

[596] According to the Act of Courts of Justice 2543 of Thailand, Thai judiciary is entrusted with certain powers to hear both questions of law and facts in the case. In the Court of First Instance, there can be only one judge to hear the case where the punishment is less than three year imprisonment, for over three year imprisonment, there should be two judges. The Appellate and Supreme Court require three judges in the trial.

judges in Thailand's criminal proceedings act as 'trier of the facts'.[597] They have to consider whether the parties' evidence is reliable and which witnesses are telling the truth.

Next, this system will be considered in terms of its compliance with the notion of the 'rule of law'. One rule of law requirements regarding criminal proceedings is its guarantee that a government exercises its power fairly and within legal limitations.[598] The criminal proceedings should also secure liberty and justice for all citizens.[599] In this regard, it might be considered that the Thai criminal system provides a clear structure for each criminal procedure stage. The police are responsible for the investigation at the initial stage, whereas the public prosecutors are empowered to check the police investigation and guide the police, while the judges play important roles in the examination of the facts and determining the evidence at the trial stageas well as dealing with legal interpretation.

In terms of legitimacy regarding Thai criminal procedure, one should note the equality of the parties in a criminal trial. In any criminal procedure in Thailand, the Criminal Procedure Code provides both the plaintiff and accused or offender with significant rights in the criminal process.[600] In this regard, the basic rights of the plaintiff in a criminal case are, for example, the rights to file a lawsuit to a court, the right to make an appeal to a higher court, or the right to withdraw a case.[601] Various rights of an accused are assured by both Thai criminal procedure law and the Thai Constitution, such as the right to appoint a lawyer to represent one in a trial, the right to be informed by the police who make an arrest about the type of charge, the right to be silent in this stage and so on.[602] Before a court's verdict is made, the offender is presumed to be innocent.[603] Another aspect to reflect the notion of legitimacy is the roles of the judges. In Thai criminal procedure, the judges play

---

[597] Khositsurankahul, V. (2010) *The Adversary System on Criminal Procedure in Thai Courts; A Case Study of Prosecution by Public Prosecutors.* (Master of Law Thesis). Bangkok. Thammasat University. pp. 34-35.
[598] United Nations (2004) United Nations Rule of Law, Report of the secretary –General: the rule of law and transnational justice in conflict and post-conflicts societies. [online] [Accessed 10 December 2014].
[599] Wajjanasawat, K (2010) *Principles of Criminal Procedure law in Thailand.* (5th edn). Bangkok. Jirachakarn. p. 5.
[600] Likasitwattankul, S. (1998) *The Application of Criminal Procedure Code.* (2nd edn). Bangkok. Winyoochon. pp. 9-10.
[601] Jaihan, N. (2004) *General Principles of Criminal Procedure Law* (8th edn). Bangkok. Winyoochon. pp. 100-115.
[602] See Thai Criminal Procedure Law Section 134/4. See also Reuchai, K. (2011) *Criminal Procedure Law.* (6th edn) Bangkok. Thammasat University. pp. 115-116.
[603] See the Thai Constitution 2550 (2007), Section 39.

neutral and independent roles in the trial.[604] The judges, acting as referees, have to conduct the case with fairness and unbiased. In this sense, judges play a passive role and consider equally both parties' evidence.

4.5 Thai Criminal Justice Organizations

While this chapter seeks to examine the efficacy and legitimacy of the criminal processes in countering terrorism in Thailand, it is insufficient to carry out the examinations solely via analysis of the legislation. It is necessary also to highlight the roles and powers of the criminal justice agencies which apply those laws, namely: the police, the prosecutors and the judges. This section aims to outline the powers of these criminal justice organizations and their officials, since all impinge on the application of the law in terrorism cases.

4.5.1 Royal Thai Police

According to the Royal Thai Police Act B.E. 2547 (2004), the primary responsibility of the Royal Thai Police (RTP) is to prevent and suppress crime, as well as to maintain public order through the enforcement of the Kingdom's laws. The RTP is a unitary agency under the direct command of the Office of the Prime Minister, and it has been given powers to operate throughout the entire state in maintaining peace and securing the safety of the nation's citizens and their property.[605] According to the Royal Thai Police Act B.E. 2547 (2004), there are three main units, each of which is categorized by its duties. Firstly, the Administrative Units are charged with administrative and staff matters. Their duties involve planning, staffing, reporting, and preparing budgets.[606] Secondly, the Operational Units are primarily responsible for working according to the Criminal Procedure Code and various criminal laws. The third point concerns the Auxiliary and Special Service Units, who are charged with advising and helping the operational units in order to enhance their efficacy and performance.[607] Overall, these various personnel engage in two types of policing roles, namely administrative and judicial policing. The judicial police play an important role in criminal investigations, whereas the administrative police are confined to a preventive role to maintain public order and to deal with administrative

---

[604] Wajjanasawat, K (2010) *Principles of Criminal Procedure Law in Thailand.* (5th edn). Bangkok. Jirachakarn. pp. 200-201.

[605] Royal Thai Police Act B.E. 2547 (2004), Section 6.

[606] Royal Thai Police Official Website (2014). [online] [Accessed 30/1/15] Available from http://www.royalthaipolice.go.th/

[607] Ibid.

matters. In this research, focus is given to the judicial police, whose tasks are related to investigations and criminal processes.

When the researcher raised questions about the role of the Royal Thai Police in the counter-terrorism strategy, most of the interviewed police officers showed dissatisfaction in their responses and replied that there is no clear counter-terrorism strategy or policy followed by the Royal Thai Police. They perceive that that the military play a greater role in this regard.

For instance, one of the interviewed police officers stated that:

> 'Dealing with terrorism seems not to be a primary concern for the Royal Thai Police. We don't have any specific terrorism strategy led by the Royal Thai Police. Terrorism cases are treated as a 'normal offence' without any special process. Most of the counter terrorism policies here have been launched by the military'. **P.O.N.4.30**

Another police officer added that:

> 'The Royal Thai Police allows us (in each provincial police station) to deal with terrorism here according to our own strategies. There are no special tactics or requirements from the Royal Thai Police'. **P.O.P.2.30**

When the researcher raised sought to clarify the role of the Royal Thai Police with prosecutors and judges, their responses were similar to the police officer's comments above. For example, one judge said:

> 'It seems that the Royal Thai Police ignores the police officers functions in countering terrorism here. As I have worked in many provinces before, I have seen that police officers here live with difficulty and higher risks. They are lacking in security and budgets'.**J.N.3.16**

One prosecutor commented that:

> 'The Royal Thai Police has a minimal role compared to the Military. Countering terrorist strategies has been initiated by the Military, while the Royal Thai Police seems to focus on dealing with other crimes'. **P.P.P.1.35**

A defence lawyer said that:

> 'I have seen nothing about the role of the Royal Thai Police in countering terrorism here. When there has been news on the media about the situation to report, the Military always took that responsibility'. **D.L.P.2.11**

The above suggests that in practice the Royal Thai Police has paid minimal attention to the problem of terrorism in southern Thailand, and operate without any specific strategy to facilitate police work in the context of counter-terrorism. At the same time, it may be said that the police role in counter terrorism has been greatly reduced by the existence of the special laws.

Comparison might be made to the UK, which has the special police units (the Counter Terrorism Command and Counter Terrorism Units) and special prosecutors (the Counter Terrorism Division of the CPS) to deal with terrorism cases.[608] The roles and functions of the CTC are clearer than Thai special police. The CTC was established in 2006 with primary roles in detecting, investigating and preventing terrorism threats.[609] The operation of the CTC in dealing with terrorism extends to the threat of terrorism at national and international levels as well as supporting the National Counter Terrorism Network.[610] Next, the relationship between the CTC and the Counter-Terrorism Division (CTD) of the Crown Prosecution Service (CPS) is crucial. The CTD is responsible to advise the CTC regarding terrorism investigations (especially after an arrest), and it is generally consulted while the evidence is being compiled.[611] The police (CPC) are generally the first authority to deal with terrorism offences, and they have full responsibility for the investigation. At the next stage, the case will be consideredby the CTD for considering whether there is sufficient evidence to bring proceedings. Advice or explanations can be given to the police, provided that they are complied with the CPS national guidance. Basically, the police can request advice on areas of concern, and such request might be one or more of the following; informal advice, early investigative advice, pre-charge advice and charge decision.[612] The relationship between the police and prosecutors in the UK is different from Thailand. It can be seen that the prosecutors in the UK can assist the police's work in early stage of the investigation through

---

[608] See Official Website of Metropolitan Police. Specialist Operations. Counter Terrorism Command. [Online] [Accessed 16/3/2015] At http://content.met.police.uk/Article/Counter-Terrorism-Command/1400006569170/1400006569170
[609] Ibid.
[610] Ibid.
[611] The duty to advice police derives from Section 3(2) e of the Prosecution of Offences Act 1985. See also Lord Carlile, *Operation Pathway* (Home Office, London, 2009). Available at http://www.statewatch.org/news/2009/dec/uk-carlile-report-on-terr-raids.pdf
[612] Ibid.

their advice. This might be viewed as a good systematic check and balance in the investigation process. The investigation can be reviewed by the prosecutors to maintain the due process. As a result, prosecutions are more likely to be soundly based and be successful.[613] For instance, in 2015, 40 terrorism cases were prosecuted in Great Britain, and there were 38 convicted cases.[614]

4.5.2 Office of the Attorney General

The Office of the Attorney General in Thailand is an independent Agency primarily responsible for prosecuting and litigating criminal cases throughout the state.[615] In addition, the Office is also appointed as 'state's lawyer' (in administrative cases), to defend officials who are charged with offences relating to their duties.[616] In international legal matters, the Office serves as the Central Authority for dealing with extradition and for giving advice to the state regarding international treaties.[617] The Office of the Attorney General is established by the Act of Public Prosecutor Department and Public Prosecutor B.E.2553 (2010):

> Sections 7:
>
> The Office of the Attorney General shall be a government agency which is independent in personnel administration, budget administration and other activities, and shall enjoy legal personality.
>
> Section 21:
>
> A public prosecutor shall be independent in faithfully and fairly ruling on lawsuit institution and discharging duties under the Constitution and laws.

---

[613] See HM Crown Prosecution Inspectorate, *Report of the Inspection of the Counter Terrorism Division of CPS Headquarters* (2009); Hemming, S., 'The Practical Application of Counter-Terrorism Legislation in England and Wales: A Prosecutor's Perspective' (2010) 86(4) *International Affairs* 955.

[614] See Home Office, *Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search, Great Britain 2015.* Available at https://www.gov.uk/government/publications/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-december-2015/operation-of-police-powers-under-the-terrorism-act-2000-and-subsequent-legislation-arrests-outcomes-and-stop-and-search-great-britain-quarterly-u

[615] See Section 14 the Act of Public Prosecutor Department and Public Prosecutor B.E.2553 (2010).

[616] Ibid.

[617] Kesornsirichareon, S. (2000) 'Roles and Functions of Public Prosecutors in Thailand'. *Public Prosecutor Journal.* Vol2. p. 290.

The public prosecutors are ensured independent powers in using discretion regarding criminal prosecution by the law.[618] In this regard, the public prosecutors who exercise their powers regarding criminal prosecution faithfully and fairly shall be protected in accordance with Section 21 of the Act of Public Prosecutor Department and Public Prosecutor B.E.2553 (2010).[619]

In criminal matters, the roles of the Thai public prosecutors are limited to applying prosecution discretion based on the evidence gathered by police, as well as representing as a plaintiff in a trial. The Thai public prosecutors have no powers in the investigation process, as the Thai Criminal Procedure Code separates the powers of investigation and prosecution.[620] Accordingly, the police have sole powers in the investigation process without intervention either by public prosecutors or the courts. As this issue concerns the notion of legitimacy in investigation, this issue will be examined again in the section 4.6.1 entitled ‘Investigation’ below.

4.5.2.1 Office of Public Prosecutor 2, Region 9 (Pattani 2)

The Office of Public Prosecutor 2, Region 9, was established by an Announcement of the Office of the Attorney General No 1858/2556 in 2013 to specifically deal with terrorist charges. All prosecutions of terrorism are required to be lodged with the public prosecutors of this office. For example, any cases of terrorism that have occurred in Yala or Narathiwat should be prosecuted only by the prosecutors of this office. It has been claimed by Mr. Sopon Tipbumroong, Head of Public Prosecutor of this Office, that the Office has been established in order to enhance the capability of the prosecutors to deal with terrorism charges, and the Office is regarded as a specialist information centre regarding terrorism.[621] In addition, a requirement of the public prosecutors in this office is ten years of experience, as it has been claimed that terrorist cases are more complex than other normal cases.[622] Most of the interviews with prosecutors were conducted at this Office, and their responses regarding ‘efficacy’ and ‘legitimacy’ of the Thai criminal processes can be found in section 4.6.6 Criminal Prosecution.

---

[618] Wajjanasawat, K (2010) *Principles of Criminal Procedure Law in Thailand*. (5th edn). Bangkok. Jirachakarn. pp. 224-226.

[619] The duties of the public prosecutors in Thailand are not restricted to criminal litigation; their functions are also concerned with civil and administrative cases, as provided for in Section 14 of the Act of Public Prosecutor Department and Public Prosecutor B.E.2553 (2010).

[620] See Thai Criminal Procedure Code, Sections 120 and 121.

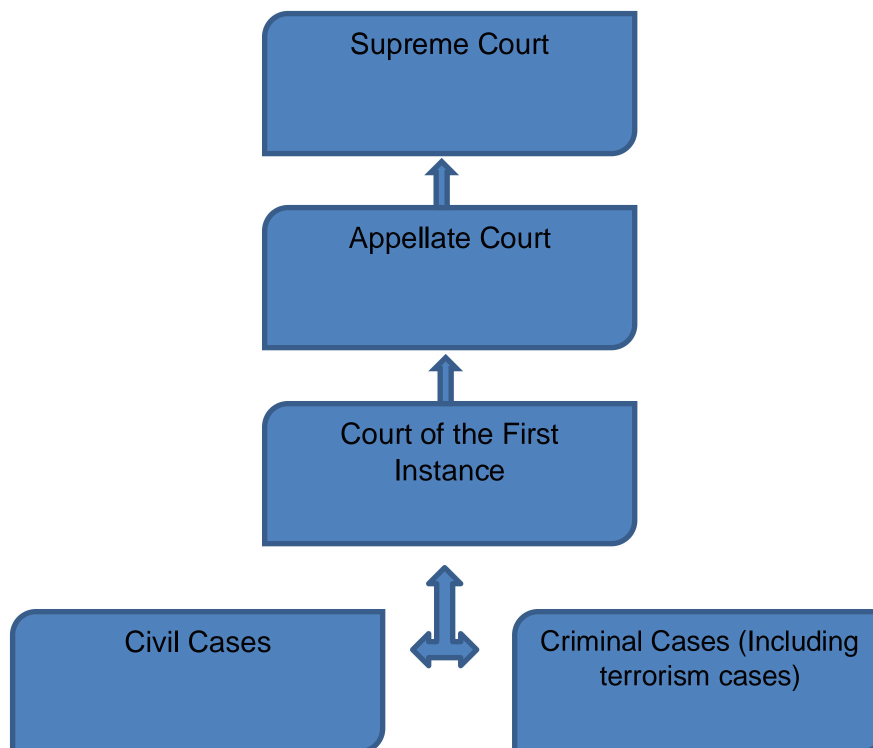
[621] *Prachathai Newspaper*. Revealing of Unlawfully and Detention by Office of Public Prosecutor 2, Region 9 (Pattani). [Online]. [Accessed 8/3/2015].

[622] Ibid.

4.5.3 The Courts of Justice

The Thai Constitution has divided the Thai courts into four categories.[623] The first category is the Constitutional Court, which considers issues of whether or not a provision or a bill is inconsistent with the constitutional law. Secondly, there are the Courts of Justice, which deal with civil cases and criminal cases. Thirdly, the Administrative Court is the court for considering administrative disputes between State organs and the private sector. Finally, there is the Military Court, which has a jurisdiction over cases where a military officer is concerned.[624] Since this research examines the criminal justice system in particular to terrorism cases, the focus is therefore given to the Courts of Justice which have jurisdiction over all criminal matters. The main provision empowering judges in criminal trials is the Act of Courts of Justice B.E.2543 (2000), and this Act constructs the court levels as represented in Figure 4.1.[625]

Figure 4.1 The Courts of Justice in Thailand



[623] See the Thai Constitution 2550 (2007) Chapter X.
[624] Wayuparb, P. (2010) *Explaining the Thai Judicial System and the Act of Courts of Justice B.E.2543*. Bangkok. Winyoochon. p. 28.
[625] Section 1 of the Act of Courts of Justice B.E.2543 (2000).

Figure 4.1 shows the hierarchy of the Courts of Justice in Thailand, beginning with the Court of the First Instance, then the Appellate Court, and the top level is the Supreme Court. As mentioned, the jurisdiction of the Court of the First Instance covers both civil cases and criminal cases. In these courts, a criminal case can be heard by only one judge.[626] However, the power of a judge in this regard is very limited; for example, only one judge can consider a criminal case where the maximum punishment of the offence does not exceed three years imprisonment.[627] If the maximum for the criminal offence is over three years imprisonment, the Act of Courts of Justice B.E. 2543 (2000), Section 26, requires at least two judges to hear the case. As some terrorism offences are considered to be felonies with a maximum punishment of the death penalty, in the Court of the First Instance there must be two judges in the trial. For the Appellate Court and the Supreme Court, there needs to be three judges in the trial, applying the majority rule when rendering a judgment according to the Act of Courts of Justice B.E. 2543 (2000), Section 27. The Thai Constitution B.E. 2550 (2007) ensures the independent power of the judges in Section 197 according to the following measure;

> ‘A judge is free and independent to make adjudication, correctly, justly, and quickly in accordance with the Constitution and the law’.

As a result, both judicial institutions and individual judges are supposed to be able to perform their professional duties without interference by other government branches.[628] Nevertheless, there are some critics about independence and accountability of the Thai judiciary. For instance, it has been said that judges in the Thai Constitutional Court are susceptible to political influence.[629] In this regard, the suspension of the constitution and the military rule would be a relevant factor.[630]

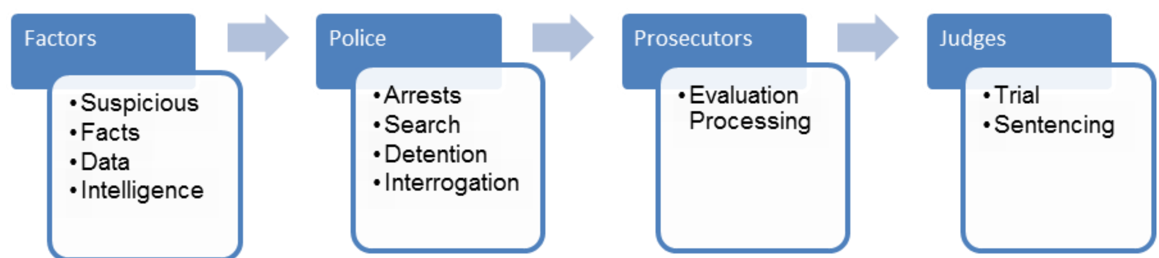
---

[626] The Act of Courts of Justice B.E.2543 (2000), Section 25.
[627] Criminal offences with a maximum punishment below three years’ imprisonments are mostly petty offences such as vandalism or defamation, or criminal offences against properties Sections 267-398 of the Thai Criminal Code.
[628] Wayuparb, P. (2010) *Explaining the Thai Judicial System and the Act of Courts of Justice B.E.2543.* Bangkok. Winyoochon. pp. 14-15.
[629] Pimental, D. (2016) *Balancing Judicial Independence and Accountability in a Transitional State: The Case of Thailand.* University of Idaho. Bepress. pp. 6-12.
[630] Mérieau, E. (2016) Thailand’s Deep State, Royal Power and the Constitutional Court (1997–2015). *Journal of Contemporary Asia,* 46:3. pp. 445-466.

4.6 Thai Criminal Procedure for Terrorism Charges

Following on from the examination of the roles and duties of criminal justice agencies carried out above, this section seeks to understand the criminal proceeding through linking investigations, prosecutions and court hearings and sentencing, as shown overall in Figure 4.2.

Figure 4.2 Thai Criminal Procedure Processes



4.6.1 Investigations

The investigation is defined by the Thai Criminal Procedure Code as the search for facts and evidence, which an administrative or police official has made in accordance with his power or duty, in order to preserve public order and to ascertain the particulars of an offence.[631] Investigations can be conducted before and after an offence has been committed.[632] In order to actively preserve public order and security, an investigation may begin before an attack has been committed, while investigation after the attack has been committed involves the process for searching for facts and evidence.

However, based on the interviews held with police officers, investigations were always conducted after terrorist acts had been committed. One of the senior police officers stated that:

> 'It is nearly impossible to conduct investigations in advance or before terrorist offences are committed. The nature of terrorism here is guerrilla warfare, and it is difficult to predict crimes. Basically, investigations do exist

[631] See Section 2 of the Thai Criminal Procedure Code.
[632] Jaihan, N. (2004) *General Principles of Criminal Procedure Law*. (8th edn). Bangkok. Winyoochon. pp. 103-104.

as soon as a police officer receives a complaint by an injured person, or when the police are informed about such crime'. **P.O.P.5.20**

Another police officer stated that:

> 'The police in these three provinces have to do the investigations both for cases of terrorism and all other offences. We are also lacking the police officers to do such tasks, so making any investigations in advance is almost impossible here'. **P.O.N.4.20**

One prosecutor commented on the investigation process that:

> 'In general, the Thai police have tended to focus on finding evidence after a crime is committed, rather than seeking the intelligence to avert crimes, which seems to be the military's job. In practice, it is important for the police to find as much evidence as possible and send it to us, and this could reflect on the effectiveness of the investigation'.**P.P.Y.6.10**

Another judge pointed out on this issue that:

> 'As I was a former police officer, I knew that it is hard to conduct an investigation in advance, as most of the police have to spend their time pursuing a suspect as well as in finding evidence. Also, the numbers of police officers here are not sufficient. Personally, I feel that the special counter-terrorism police unit might be a great solution'. **J.N.3.15**

It appears that the task of investigation into terrorist cases in southern Thailand is mainly utilized for gathering evidence after a crime is committed for a future prosecution, rather than proactively preserving public order and security. At the same time, it shows that amounts of police officers seem insufficient in practice which limits police intelligence and thereby the ability to preempt a crime.

Regarding the *post hoc* investigations into terrorism cases, the interviewed judge commented that:

> 'In terrorism cases, I have been a judge for nearly 10 times and most of them were dismissed for lacking witnesses. This would show a failure in the investigation in finding evidence. Although the prosecutors have performed

> well in trials, they cannot win without concrete evidence compiled through an investigation'. **J.P.1.20**

Furthermore, the efficacy of the police investigations into terrorist cases should be addressed within the context of the prosecutors' views. One of the experienced prosecutors admitted that:

> 'I am not satisfied with the investigations in cases of terrorism. Compared with the other types of criminal offences, terrorism investigations have shown many errors through case files; for example, containing weak evidence, lacking a key witness, and apparent errors in criminal charges. Thus, I generally ordered a re-investigation'. **P.P.N.4.10**

Another prosecutor provided a similar opinion, noting that:

> 'There is big gap in terms of the quality of evidence between terrorist cases and other crimes during investigations. One of its clear distinct points is time consuming. Also, as terrorist suspects and a witness cannot be found, we have to make an order for terminating the investigation'. **P.P.P.1.10**

On this point, in terms of effective crime investigations, it has been suggested by Professor Kanit, a former Attorney-General in Thailand, that the effectiveness of the crime investigation process could be established if one of the following elements is present: firstly, a witness who can identify the perpetrator; or secondly, physical material which links to a suspect and an offence or thirdly, a confession by a perpetrator.[633] In other words, if the police can lawfully obtain one of those elements, there is a prospect that the offender can be convicted. Specific to terrorism offences, as described in chapter two, the main difference between normal criminal offences and terrorism offences is the consideration of the special intention of the suspect.[634] It should be noted that the proof of the special intentions to create a sense of fear in a community or to coerce the Thai Government, a foreign Government or an international organization is the key point to consider whether the offender should be tried for terrorism charges or not.[635] Therefore, police officers who conduct an investigation into terrorism charges must gather all

[633] Nakorn, K. (2010) 'Effective Crime Investigation'. *Prosecutor Journal.* 20(4) pp. 23-32.
[634] See Chapter 2, Section 2.2 (Definition of Terrorism).
[635] See Thai Supreme Court Judgment No. 2071/2555 (2012).

the relevant evidence in order to prove that an alleged offender has those intentions.

When the issue of the 'investigation' was raised with NGOs staffers and defence lawyers, most of them highlighted the notion of 'legitimacy' rather than 'efficacy'. For example, one of the defence lawyers specifically commented on human rights protection in investigations, namely that:

> 'Before arresting any suspect, the police must obtain concrete evidence to prove that the given person is a potential terrorist, and minimise the human rights restrictions. In practice, their strategy is to arrest a wider group of potential suspects then release the innocent. I have always heard the phrase 'arrest first, then release'. This is of course violating the human rights of the people concerned. Consequently, there are many innocent people who become involved in the process'. **D.L.P.1.25**

Another defence lawyer stated that:

> 'In practice, they do not seem to be complying strictly with the rules. I understand that finding evidence is important, but maintaining the law and upholding human rights are much more vital. Also, the police should care more about minimizing witness intimidation'. **D.L.N.4.25**

One NGOs staffer working in the areas stated that:

> 'I think that the police's image here is not good. I know the police have always failed to find suspects because of the lack of intelligence and failure of cooperation from locals. The police should immediately develop its abilities in investigations. I have observed that most of the locals here do not trust the police and feel unsafe to be a part of the process. There have been many cases in which witnesses have disappeared without clear explanation, and I have assumed that it is because they were somehow connected to the criminal processes'. **N.G.O.3.6**

These views from the NGO staffers and the defence lawyers above, which state that the investigations made by police officers need to be more developed in terms of legitimacy, stand in contrast with the opinions gained through the interviews conducted with the police. All of the police officers have insisted that they strictly

comply with the law as well as in protecting human rights. For example, one police officer stated that:

> 'As I am the head here, I can guarantee that all of the police officers here are well trained and act in accordance with the law. In investigations, I accept that cases of terrorism are much more difficult than other crimes. However, the first priority is to maintain the law and human rights. There is no need to exercise any abuse of powers towards terrorist suspects, and we have no direct hatred or racist attitudes towards them'. **P.O.Y.5.21**

To understand the failure of the criminal justice process, which is perceived by most observers other than the police, in particular during the investigation process, three main possible factors need to be explained. The first one is related to the difficulty in finding evidence. As for the nature of the commitment of terrorist acts, described in chapter two, most of the crimes are motorcycle bombs or car bombs committed by well-trained perpetrators, and these produce adverse situations for the police in collecting evidence. In addition, it is very difficult to find witnesses as most of them fear reprisals from terrorist groups in these areas and avoid getting involved in the process.[636] Accordingly, it is a very difficult task for the police to conduct effective investigations in terrorism charges. The second point is related to the feelings of distrust by the locals towards the officials.[637] Even though the police force is empowered to issue a summons for any person who may be considered as useful in an enquiry, most people refuse to participate in this stage, as they are fearful of officials because there are claims of abuse of powers, and also there are insufficient concrete measures to protect witnesses.[638] There might also be an obstacle in negotiating between officials and local people because, as described in chapter two, most of the officials are Buddhist and speak Thai, whereas the local people are Muslim in the majority and speak Yawi.[639] The last point is that there are

---

[636] Office of Public Prosecution Region 9 (2014) *Research on Effectiveness of Criminal Justice System in Dealing with Security Charges in Pattani, Yala, and Narathiwat Provinces.* Songkhla. Asia Foundation. pp. 5-10.
[637] See further explanation at Chapter 2 (Section 2.4).
[638] Jutharat, U. (2010) *An Analysis of Criminal Justice in Three Southern Borders: Problems and Solutions.* Bangkok. Winyoochon. pp. 18-19
[639] Yawi (in Thai) or Jawi (in Malay), (بهاس ملايو كلنتن) is a dialect of the Malay language spoken in the Malaysian state of Kelantan and the neighbouring southernmost provinces of Thailand Pattani, Yala and Narathiwat. See also Baker, C. & Phongpaichit, P. (2005) *A History of Thailand.* Cambridge. Cambridge University Press. pp. 172-174.

insufficient numbers of police officers to deal with terrorism cases in practice as stated by the interviewed participants.[640]

To understand better the efficacy of police's task especially in investigation, the quantitative data of the total amounts of terrorist cases that occurred between 1 August 2012 and 31 July 2013 in the three provinces of Pattani, Yala, and Narathiwat will next be analysed. In particular, this inquiry aims to explore the proportions of cases in which the police successfully gathered evidence and found suspects, and this might be seen to reflect the effectiveness of the police in the investigation process. Furthermore, the research also provides the number of cases in which the police failed to bring suspects into the criminal justice system and ordered a stop to the investigation. This might be considered as inefficacy in the investigation process. The data is set out in the figures below.

Figure 4.3 Terrorist investigation outcomes occurring between 1 August 2012 and 31 July 2013 in Pattani, Yala, and Narathiwat Provinces.[641]

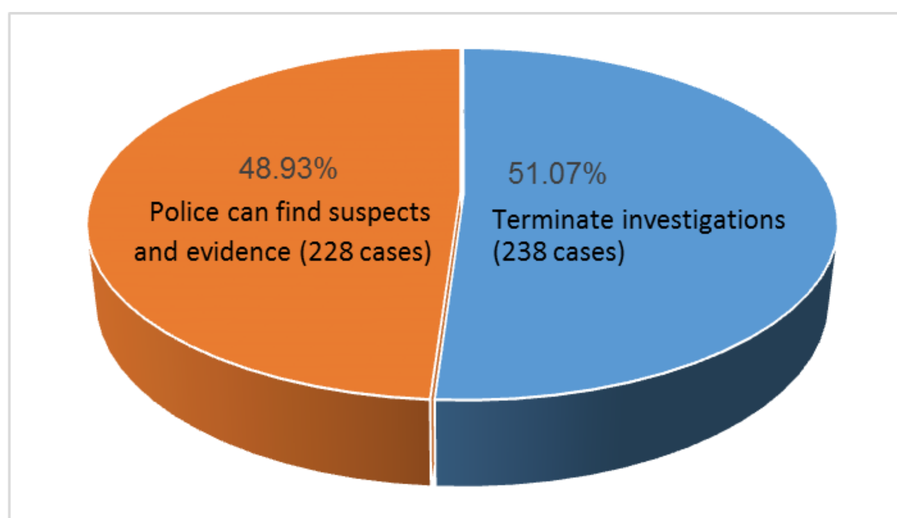


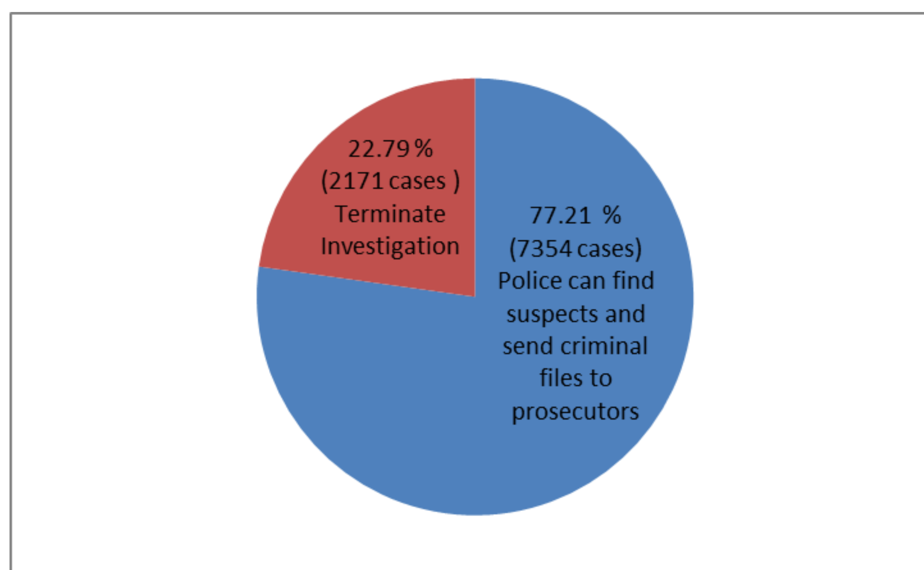
Figure 4.3 shows the total number of cases of terrorism that occurred in those three provinces (1 August 2012-31 July 2013), in total, 466 cases. There were 238 cases where the police could not find evidence or were not able to bring a suspect into the criminal process, which count for more than half of the total amount. This could

[640] See the interviewed participant comments from the judge (J.N.3).
[641] Office of Public Prosecution Region 9 (2014) *Research on Effectiveness of Criminal Justice System in Dealing with Security Charges in Pattani, Yala, and Narathiwat Provinces.* Songkhla. Asia Foundation. p. 75.

reflect the inefficacy of the police in the investigation process. There were 228 cases that were sent to the public prosecutors, whereas another 238 cases were terminated at this stage.

In order to understand better the effectiveness of the police in dealing with terrorism cases in the investigation process in the three provinces, there should be comparisons made with the overall amounts of other criminal cases beside terrorism charges (such as murder, manslaughter, rape, offences against properties and so on) during the same period and in the same areas.

Figure 4.4 Number of criminal cases (beside terrorist charges) occurring between 1 August 2012 and 31 July 2013 in Pattani, Yala, and Narathiwat Provinces.[642]



There were 9,525 cases that occurred in those three provinces during the same period as in Figure 4.3. It could be said that Figure 4.4 shows a high level of the effectiveness of the police in investigating other criminal charges, such as offences against life and body or property compared to terrorism offences, as provided in the previous table. It might be stated that conducting investigations into these types of criminal offences appears to be easier than in terrorism offences. There were more than 75 percent of total cases in which the police were able to find suspects and evidence, cases which were then lodged with the public prosecutors, whereas the police failed to find suspects in less than a quarter of cases. This shows a clear

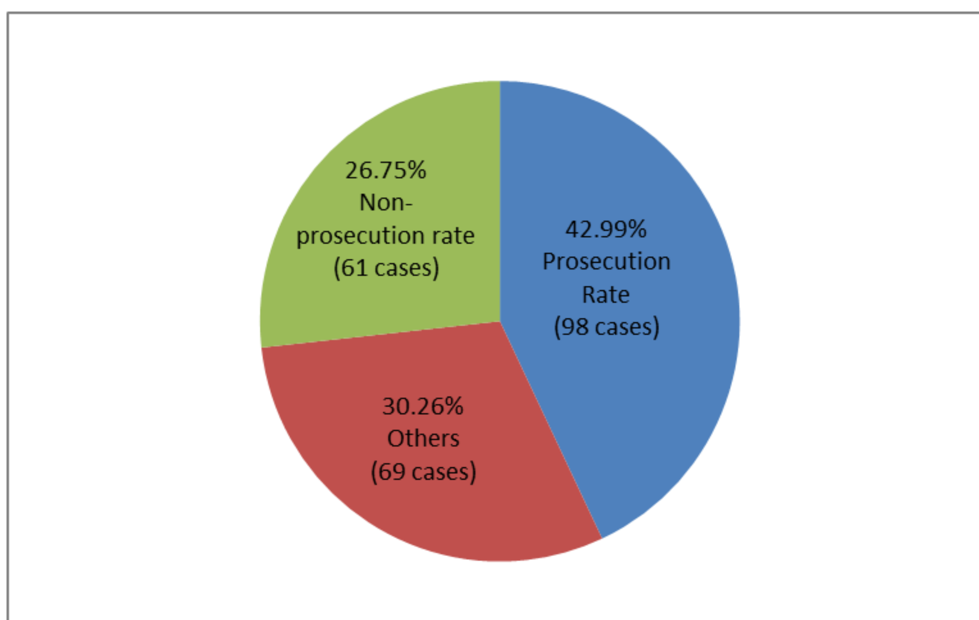
---

[642] The Data (case statistics) were compiled by the official websites of Offices of Pattani, Yala, and Narathiwat provincial public prosecutor. [Accessed 25/2/2015] Available from http://www.ptani.ago.go.th/ , http://www.yala.ago.go.th/web/, http://www.nara.ago.go.th/

distinction between terrorist offences and other criminal offences at the stage of the investigation process.

Returning to Figure 4.3 above, there were 228 terrorist cases in which suspects were identified, and these were lodged with the public prosecutors for further prosecution decisions. This analysis next considers those terrorist cases that were prosecuted and taken to trial (as shown in Figure 4.5).

Figure 4.5 Prosecution rates in terrorist charges between 1 August 2012 and 31 July 2013 in Pattani, Yala, and Narathiwat Provinces.[643]



It should be noted that the 'others' in Figure 4.5 means, firstly, the cases in which the public prosecutors returned the case file to the police for additional investigation; and secondly, cases in which there is an allegation of murder by the police. This eventuality requires the Director-General of the Public Prosecution Department to order a prosecution or non-prosecution according to Section 143 of the Thai Criminal Procedure Code. Overall, Figure 4.5 reflects the continued inefficacy of the criminal justice process in the pre-trial process towards terrorism charges. Out of the 228 cases sent to the public prosecutors, based on the discretion of the public prosecutors, there were only 98 cases (from 228) that were continued to trial. In 61 cases, which represent 26.75 percent, there were orders of non-prosecution by prosecutors, as insufficient evidence was presented to

---

[643] Office of Public Prosecution Region 9 (2014) *Research on Effectiveness of Criminal Justice System in Dealing with Security Charges in Pattani, Yala, and Narathiwat Provinces.* Songkhla. Asia Foundation. p. 75.

prosecute the accused. According to the Bureau of Counter Terrorism, US Department of State (2013) Country Reports on Terrorism, most terrorism prosecutions in Thailand failed to prove the necessary element of specific intent and therefore secured only convictions for less serious offences.[644] These points could also be seen as a reflection of the inefficacy of the police in the investigation process.[645] In this regard, two possible causes of the problem shall be discussed. Firstly, it is related to institutional weakness. For example, there may be insufficient numbers of police officers or insufficiently specialised officers to deal with terrorism cases in practice. Based on the information derived from the interviewed police officers, the prosecutors and judges, most of the police officers who are responsible for terrorist investigations have not much experience in this kind of offence, and some of them had just moved into the areas only a few months before.[646] It was revealed by one of the police officers that in order to bring about an effective investigation in terrorist cases, it is a necessary requirement to have an experienced officer who has practiced terrorism cases for many years and understands local cultures, religion and the local language (Yawi).[647] However, most police officers involved in such work nowadays come from other parts of the country, and most of them do not understand much about the Thai-Muslim culture in the areas.[648] Moreover, most of the police officers in the affected areas (Pattani, Yala, and Narathiwat) are not willing to take on the responsibility to work in the areas as it requires them to move out of their home areas.[649] Hence, there are not sufficient police officers to work in the areas, although there is extra money available for officers who work in these three provinces.[650]

Secondly, it is possible that investigative powers are inadequate.[651] For example, there is no special power to facilitate police officers to deal with terrorists. The law treats terrorist offences at the same level as other crimes. Accordingly, police

---

[644] Available at http://www.state.gov/j/ct/rls/crt/2013/224821.htm [Accessed 1/12/2015].
[645] Office of Public Prosecution Region 9 (2014) *Research on Effectiveness of Criminal Justice System in Dealing with Security Charges in Pattani, Yala, and Narathiwat Provinces.* Songkhla. Asia Foundation. p. 75.
[646] See further information at Chapter 4 (Section 4.6 Thai Criminal Procedure for Terrorism Charges).
[647] Ibid.
[648] The information was derived from the interview with the police officer at Yala province (P.O.Y.5.).
[649] The information was derived from the interview with the police officer at Pattani province (P.O.P.1).
[650]The information was derived from the interview with the police officer at Pattani province (P.O.P.2).
[651] See section 4.6.1 Investigation.

officers cannot arrest terrorist suspects without a court warrant which can produce delays and evidential thresholds which hamper police effectiveness.[652]

4.6.2 Laws of arrest

An arrest is one of the most important state's powers in the criminal justice system, and at the same time, it directly affects rights and liberties of person.[653] The basic purpose of the arrest is to bring suspects into the criminal justice process.[654] In terms of legality and human rights regarding arrest process, both the Thai Constitution and Criminal Procedure Code provide rules to protect an arrestee. According to Section 32 of the Thai Constitution (2007);

> 'The arrest and detention cannot be made without Court order, Court writ, or other causes as prescribed by the law'.

In addition, the Criminal Procedure Code provides two reasons for issuing an arrest warrant: (i), when there is reliable evidence that anyone is likely to have committed the criminal offence, and such offence is subject to maximum imprisonment exceeding three years; or (ii), when there is evidence as may be reasonable to anyone of someone who is likely to have committed the criminal offence and to evade justice.[655] This section is the guideline for judges to issue the arrest warrant, and it reflects the notion of the rule of law regarding judicial discretion that judges shall not exercise their discretion beyond the constraints set down by the law.[656]

There is no special arrest power in regard to terrorism in Thailand, unlike in the UK, where police officers are allowed to arrest a terrorist suspect without any warrant in accordance with Section 41 of Terrorism Act 2000, a power which is deemed crucial in the terrorism policing powers.[657] The law provides such powers to a police officer for the purposes of interrogating suspects and uncovering further evidence

---

[652] See Criminal Procedure Code Section 80. See also 4.6.2 Laws of arrest.
[653] Wajjanasawat, K (2010) *Principles of Criminal Procedure Law in Thailand.* (5th edn). Bangkok. Jirachakarn. p. 260.
[654] Walker, C. (2014) *Blackstone's Guide to the Anti-Terrorism Legislation*. (3rd edn). Oxford. Oxford University Press. p. 158.
[655] Thai Criminal Procedure Code, Section 66.
[656] Likasitwattankul, S. (1998) *The Application of Criminal Procedure Code*. (2nd edn). Bangkok. Winyoochon. pp. 136-137.
[657] Walker, C and Vladek S. (2015) 'Detention and Interrogation in Law and War'. in *Routledge Handbook of Law and Terrorism*. London. Routledge. p. 171.

and facilitating searches.[658] However, it does not mean that a UK police officer can arrest terrorist suspects subjectively without any restraint. It is stated in Section 41(1) of Terrorism Act 2000 that:

> 'A constable may arrest without a warrant a person whom he reasonably suspects to be a terrorist'.

To determine what is the 'reasonableness' of the suspicion in this regard, the case of *O'Hara v United Kingdom* shall be referred to. The House of Lords in O'Hara provided that

> 'As for the components of reasonable suspicion, it is considered to be both a genuine and subjective suspicion in the mind of arrestor that the arrestee has been involved in terrorism and also objectively reasonable grounds for forming such a suspicion'.[659]

In this sense, the UK law provides wide powers to its police in counter-terrorism, and this is reflective of applying a policing strategy to actively preserve public order and security that authorizes powers to police officers to take preemptive action before the attack has been committed, a method that cannot be found in Thailand.

It is again observed that the role of the Thai police seems to be very limited and passive by comparison. Police officers cannot arrest someone without a court's authorization, except when the offence is committed in an officer's presence.[660] When set against the power of the UK police under the Terrorism Act 2000, it indicates a large gap in powers for dealing with terrorist suspects in terms of arrest. The Thai criminal procedure law does not allow a police officer to make an arrest without a warrant in a case where he just reasonably believes someone to be a terrorist. The power to make an arrest without any warrant emerges only when offences of terrorism are committed in the presence of a police officer, in accordance with Section 80 of the Thai Criminal Procedure Code. Yet this scenario rarely happens, as most terrorism offences in southern Thailand are committed covertly as part of 'guerrilla warfare'.[661] In this sense, the law appears to fail to

[658] Walker, C. (2011) *Terrorism and the Law*. Oxford. Oxford University Press. p. 142.
[659] O'Hara v Chief Constable of the RUC [1997] AC 286.
[660] Thai Criminal Procedure Code, Sections 78 and 80.
[661] See further explanation in Chapter 2, section 2.2 (Definition of Terrorism).

address the current terrorist situation, and it seems to hinder the Thai police when dealing with terrorist suspects, especially as the process of securing a court warrant takes around two working days.

However, when the researcher raised the acceptability of these limited powers of arrest, most of the police officers agreed with the existing law and thought that it was a fair requirement. One of the interviewed police officers replied that:

> 'We do not need any extra powers to arrest a suspect without a warrant. The existing rules are sufficient, and I believe that court permission is a good way to monitor and review a police officer's power in conducting arrests'. **P.O.P.2.16**

Another police officer added the same sentiments, namely that:

> 'Although the court warrant process takes around 1-2 days, and it seems to delay investigating tasks, it is a good strategy for reviewing the police's power. Without this checking process, the image of the police here would be questioned'. **P.O.Y.6.16**

Another prosecutor noted:

> 'Without a court warrant, the power of arrest can easily be abused to harm any other rights. This does not mean that we do not trust the police, but this state's power is closely related to human rights, and thus it should be reviewed by a court which is considered more reliable'. **P.P.N.4.13**

According to the responses above, it seems that the limitations in the law of arrest in counter-terrorism are not problematic in the perception of the relevant agencies. Most of the interviewed police officers seem to be satisfied with the existing powers of arrest, which require a court warrant. Most of the interviewed police officers tended to be concerned about the notion of the 'legitimacy'. They regarded a court's arrest warrants as a good strategy to review their work and give it authoritative endorsement. At this point, it also reflects that the police here are highly aware of their role in making an arrest and how it affects human rights, and thus the court's warrants could answer any human rights criticisms regarding their powers of arrest in practice. In addition, the researcher considers that the alternative special laws (as will be described in chapter 5), which are considered much stronger in pursuing

a suspect, would be another reason to make the interviewed police officers feel comfortable about the existing limits in the 'normal' criminal procedure law.

As mentioned above, in some circumstances the Thai Criminal Procedure Code (Section 80) allows police officers to arrest a person without warrant in the following cases: firstly, when the offence is committed in the presence of police; secondly, when the person has been found by the circumstance suitable to believe that such person is likely to cause a danger to a person or property of other by having instrument, arms, or material else; and thirdly, when there is the cause for issuing an arrest warrant, but the circumstances make it necessary to take action immediately without an arrest warrant.[662]

The arrest is directly related to rights and liberties of person, thus, it must next be discussed in the context of human rights. Any person who was arrested is still presumed innocent until a judgment is made by the court according to the Thai Constitution 2007, Section 39, and the draft of the 2016 Constitution of Thailand, Section 29. Thus, an arrestee must not be treated as a convict. In addition, the police officer must notify the charge and the rights for the arrested person, for example, the rights to meet and talk to a trusted person (family) or a lawyer, the rights to let a lawyer participate in an interrogation, and the rights to contact with family or relatives.[663]

However, when the issue of legitimate conduct in regard to human rights in the arresting process was raised with the NGOs staffers and the defence lawyers, most of them were critical. For example, one of the defence lawyers stated that:

> 'Most of my clients have told me that they were not even informed of the right to contact a lawyer and were treated as an offender, not innocent. Thus, speaking personally, the police officers need to improve their role in the arrest of suspects. Their work is vital in the initial process of any criminal proceeding. If there is an error at the outset, then it is also hard to trust the rest of the process'. **D.L.N.3.27**

One NGO staffer said that:

---

[662] Thai Supreme Court Judgment No. 3031/2546 stated that 'police officers can conduct arrest without warrant as it appeared that the suspect is fleeing by planning to go abroad'.
[663] Thai Criminal Code, Sections 84 and 7/1.

> 'It might be better if the police officers here could develop the exercise of their powers of arrest in practice by strictly complying with the criminal procedure law, in particular to fully informing the suspects of certain rights. I do believe that there have been human rights violations occurring at this stage'. **N.G.O.3.6**

This reflects the fact that the court's permission (arrest warrants) seem insufficient to ensure that the arresting process is carried out fairly and legally in practice. In response, it is true that the court's warrant would be a good strategy to review the powers of the police at this stage. However, it is just a legal process to ensure proof that the police would be able to convince a court that there is sufficient evidence to arrest a potential suspect. The most important point here is that a police officer should strictly follow the criminal procedure law when arresting and pay greater attention to protecting a suspect's rights after the decision to arrest such as informing of charges and delivering legal rights to contacts.

4.6.3 Detention

The Thai Criminal Procedure Code requires the police to inform a suspect charged with a criminal offence twice before detention, as provided by Sections 83 and 84 as follows:

> Section 83
>
> 'In cases when an official is the arrester, the charge must be immediately notified to the arrestee. If there is a warrant, it must be shown to the arrestee, who shall be informed that he or she is entitled to make a statement or not, and this statement might be used as evidence in the trial'.

According to this Section, the police who conduct an arrest must notify an arrested person of the criminal charge without any exemption, and whether there is an arrest warrant or not. In the next step, the arrested person must be brought to the nearest police station immediately, and at the police station, the police must inform the suspect of the criminal charge as provided in Section 84:

> 'The arrestee must be brought to the police station without delay

(1) At the station, the police who conduct the arrest must notify the charge and explain the details in respect of the cause of arrest. If there is a warrant, it must be shown and explained to the arrestee'.

After informing the suspect of the charge, there are two choices for the police; the first is to release the arrestee, and the second is to bring the arrestee to court to seek remand for further interrogation. For the latter, the police have to bring the arrested person to the court within forty-eight hours of the arrestee arriving at the station, as provided in Section 87, paragraph three. For the court, discretion regarding the periods of detention is based on the levels of criminal punishments of the charge.[664] For example, in the case of maximum imprisonment of not more than six months, the court is empowered to grant one successive remand for a period not greater than seven days.[665] In terrorism offences, since the maximum term of punishment can be death, the court is empowered to grant several successive remands, but each period must not exceed twelve days and the total time must not be greater than 84 days.[666] The purpose of the detention in this stage is for interrogating the suspects, and compiling evidence. The detention place is generally a police station.

The researcher raised the issue regarding the duration of detention (84 days as the maximum) with the interviewed criminal justice officers, and most of them seemed to be in agreement with it.

One police officer stated that:

> 'The 84 day detention is reasonable. This period is both for the police to find further evidence, witnesses, or even to catch a criminal; and also for a prosecutor to make a consideration whether the case has sufficient evidence to be brought to trial. Actually 84 day period is not too long for terrorism cases that contain complicated issues and the lack of a witness'. **P.O.P.2.17**

A prosecutor further added that:

---

[664] Thai Criminal Procedure Code, Section 87 paragraph 4.
[665] Ibid. para 4.
[666] Ibid. para 6.

> 'The detention period aims to allow both the police and the prosecutors to prepare evidence at this pre-trial stage. However, in practice police officers have often taken much more time to find evidence, and in most cases a principal criminal cannot be found. Thus, I agree with the 84 day period. If the detention period is shortened, I am certain that the police's job would be harder, and this reflects the difficulty in finding evidence'. **P.P.Y.5.23**

When the matter of the 84 days of detention was raised with the judges, most of them replied that it is too long, although acceptable. For example, one judge said that:

> 'The 84-day detention period has been applied to the highest level of criminal offences, including terrorism. It appears to be too long; yet in practice that lengthy period seems not enough for both the police and the prosecutors to do their jobs'. **J.N.3.21**

It can be argued that the main reason why the majority of the criminal justice officers accepted the lengthy 84-day detention is acceptance of the claim that terrorist cases involve difficulties in finding evidence. To find admissible evidence for further prosecution in terrorism cases amounts to a very tough task for police officers, especially when there is a lack of a witness.[667] Thus, most of the interviewed criminal justice officers agreed with the 84 day detention period. This stance could be said to reflect a failure of the police's ability to gather evidence at this stage through community cooperation. In practice, the police should detain suspects for less than 84 days, as they have to give time to the prosecutors for considering the prosecution decisions. However, it has been revealed by the *Research on the Effectiveness of the Criminal Justice System in Dealing with Security Charges 2014* that in practice the police took a very long time in interrogating suspects and compiling evidence, due to its difficulty and complexity, so there is little time for prosecutors to consider the prosecution decision. Thus, if the police detain a terrorist suspect for 83 days for interrogating and compiling evidence, then there is only one day allowed for prosecutors to make any decision.[668]

---

[667] See section 4.6.1 Investigation.

[668] Office of Public Prosecution Region 9 (2014) *Research on Effectiveness of Criminal Justice System in Dealing with Security Charges in Pattani, Yala, and Narathiwat Provinces.* Songkhla. Asia Foundation. p. 105.

In terms of legitimacy, the long period of detention directly impacts on the rights and freedom of the suspects, although at this stage they are fully offered rights such as the rights to consult a lawyer, meet with their family, or have access to medical treatment.[669]

A defence lawyer pointed out regarding the lengthy 84 days of detention that:

> ‘Most of my clients were detained for 84 days pending their trial. This is too long a period of time, and of course violates a detainee’s right to be granted a speedy and fair process’. **D.L.Y.5.25**

Another defence lawyer stated that:

> ‘I think this reflects the failure of the Thai criminal justice system in balancing between convicting an offender and protecting their human rights. I believe that the delayed process contributes to the injustice’. **D.L.Y.6.30**

One NGO staffer said that:

> ‘The 84 days detention period is too long and derogates from the basic rights of a terrorist suspect; and the criminal process should be done effectively and rapidly. The long detention period leads to injustice, and undermines the fairness of the criminal justice system for dealing with terrorism at the pre-trial process’. **N.G.O.1.25**

It can thus be seen that, while the majority of the criminal justice officers agree with the 84-day detention period, most of the defence lawyers and the NGO staffers stand in contrast on this issue, with the main criticism being that the 84 days of detention destroys the basic rights and freedoms of a detainee.

A comparison can be made with the UK, where the police are allowed to detain a terrorist suspect for up to forty-eight hours in accordance to Section 41(3). The period may be expanded for judicially authorized periods of up to fourteen days after the initial arrest. Nevertheless, it has been revealed that most of the detentions occurring in Britain are much shorter; for instance, 43 per cent were less than

---

[669] Thai Criminal Procedure Code, Sections 134/1-134/4.

twenty four hours and only 10 per cent lasted between seven and fourteen days.[670] In addition, in the UK, the detention for terrorist suspects must be reviewed by a senior police officer. At the reviewing stage, the officer could authorize a suspect's continued detention for obtaining further evidence, preserving relevant evidence, and making a decision about the deportation or charging of the suspect.[671] After 48 hours, a judicial warrant is required for detaining a suspect without charge.[672] A court could issue a warrant based on these following reasons: (a) to preserve relevant evidence and (b) the investigation is being conducted diligently and expeditiously.[673]

Based on this comparison, and especially having regard to endorsement of the Terrorism Act scheme by the European Court of Human Rights,[674] the period of 84 days for detaining a terrorist suspect should be considered too lengthy and as having illegitimate impacts upon the basic rights of a detainee. This stage of treatment of Thai terror suspects demands that there should be improvements both in terms of 'efficacy' and 'legitimacy'. It is understood that carrying out investigations into terrorism cases might be considered much more difficult than investigating into normal crimes.[675] However, this is not a reasonable excuse to allow the legal process of detaining a suspect for up to 84 days pending a trial. The experience in the UK above could be a positive lesson for the Thai criminal justice system to take more consideration of rights protection by reducing the detention period. In addition, the 84 days' detention seems to violate the concept of the Thai Constitutional Law 2007, article 40, which guarantees that all citizens shall have the right to access a speedy judicial process. Apart from reducing the detention period, establishing a special police unit for dealing with cases of terrorism, the same as the Special Department Prosecution (Pattani 2), could help the police's work in terrorist cases, and would possibly be a factor in enhancing the effectiveness of their investigations and might thereby reduce reliance on very lengthy detention periods.

---

[670] Walker, C and Vladek S. (2015) 'Detention and Interrogation in Law and War' in *Routledge Handbook of Law and Terrorism*. London. Routledge. p. 172.
[671] See Terrorism Act 2000, Schedule 8, para 23.
[672] See Terrorism Act 2000, Section 41(3).
[673] See Terrorism Act 2000, Schedule 8, para 32.
[674] See the European Court of Human Rights of Section 41 detention. See also the relevant recent cases: *Sher and Others v. United Kingdom*, App no, 5201/1120/10/2015 and *Magee, Duffy, and Magee v. United Kingdom*, App no. 2689/12,2906/12,29891/12 May 2015.
[675] See Chapter 2, section 2.2 (Definition of Terrorism).

4.6.4 Interrogation

Any interrogation must be conducted by the police according to the provisions of the Criminal Procedure Code for the purpose of ascertaining the facts which may, depending on the verdict of the court, prove the guilt and secure the punishment of the offender.[676] One of the important issues here regarding the interrogation is the police's powers to conduct the interrogation. According to Sections 19, 20 and 21, when a criminal offence has been committed within the territorial jurisdiction of any police official, the police in such jurisdiction shall have the power to conduct an interrogation.[677]

As there is no special Police Unit to deal with terrorism offences, unlike in the UK, Thailand's police officers are responsible for interrogating terrorist suspects without any special tasking process.

One of the police officers stated that:

> 'All criminal offences, including terrorism, are treated under the Criminal Procedure Code. In interrogation, we use the same set of questions, such as questions of personality and questions regarding the committing of the crime. Terrorist suspects are fully informed of their rights under the Criminal Procedure Code, and they are treated equally with other crime suspects'. **P.O.P.2.22**

As described, the power to interrogate suspects is applied under a territorial jurisdiction rule.[678] This means that if a terrorist offence occurred within the areas of Pattani province, the Pattani police station is authorized for conducting the investigation and interrogation. This pattern differs for the prosecution process, as all of the terrorism cases' files from Pattani, Yala, and Narathiwat provinces will only be sent to the Office of Public Prosecutor 2, Region 9 (Pattani), and only the prosecutors from this Office are empowered to prosecute terrorist suspects before the court.

Interrogation is an important process for criminal proceeding. It is provided in Section 120 of Thai Criminal Procedure Code that:

---

[676] Thai Criminal Procedure Code, Section 2(11).
[677] Thai Criminal Procedure Code, Sections 19-21.
[678] See Sections 17-21 of the Thai Criminal Procedure Code.

'A public prosecutor is prohibited to enter an action to a court without the interrogation having been made'.

As for an acceptable outcome, interrogation should be discussed in terms of efficacy and legitimacy. Regarding the notion of efficacy, the law provides several powers to the police at this stage to collect all kinds of evidence. For example, they are empowered to issue a summons to the injured person or to issue a summons to a person who possesses any article which may be used as evidence.[679] In addition, for the purpose of collecting evidence, the police possess the powers to examine an injured person or the alleged perpetrator.[680] Those powers for police all facilitate the finding of evidence. Nevertheless, the limitations on police powers in this stage should be also considered. For instance, in inspecting the body of an injured person, the consent of the injured person is required. If an injured person or alleged person is female, a female officer shall be responsible. In addition, in terms of searching for evidence, it is prohibited to search in a private place without a search warrant or a court order, and the officer must try to avoid causing damage and disorder as far as possible.[681]

When the researcher raised the extent of investigation powers with interviewed police officers, most of them replied that they had received sufficient powers in the interrogation process. For instance, one senior police officer noted that:

'The law on interrogation enables us to work in practice, so we do not need any other additional powers'. **P.O.P.1.18**

The above appears to reflect that the existing laws provide sufficient powers for police officers at this stage, without any need for further requirements. When the issue of interrogation was raised with the interviewed prosecutors, the majority also agreed that the existing system does provide sufficient powers at this stage. However, one prosecutor provided an interesting suggestion that:

'There should be a Special Police Unit for cases of terrorism, and this Unit should have certain powers to carry out interrogations in terrorist cases

[679] Thai Criminal Procedure Code, Section 133.
[680] Ibid.
[681] Thai Criminal Procedure Code, Sections 92 and 99.

> across three provinces. This should make the police force's work more unified and more effective'. **P.P.P.2.35**

The above prosecutor's comment about setting up a special police unit to be responsible for all terrorism cases has been endorsed previously, as it should help to increase expertise and experience around interrogations. A special police unit with experienced police officers could enable the process to be more systematic in its co-operation with the Special Prosecution Department (Pattani 2) for terrorism charges alone.

In terms of legitimacy regarding interrogation process, it is necessary to refer to the concept of human rights protection in criminal process under the Thai Constitution, which states that:

> 'In a criminal case, the suspect has the right to a speedy, continuous and fair interrogation'.[682]

Reflecting the constitutional concept above, the Thai Criminal Procedure Code emphasizes this point by providing several protections for a suspect. The key provision concerning the protection of the rights of an alleged person is Section 134, which provides that the alleged offender is entitled a speedy and impartial interrogation. In this stage, the police must give the opportunity to the alleged offender to clear up the charge. Levels of the legal protection according to Thai Criminal Procedure Code rely on the severity of punishments. According to Section 134/1, in the case where the punishment is death or in the case of the alleged person aged not more than eighteen years on the date when the police issued the charge, the police shall ask the alleged person whether they have retained a lawyer or not, and if not, the State shall procure a lawyer. For the case where the punishment is imprisonment and the alleged person has no lawyer, the State must procure a lawyer.

Furthermore, Section 134/4 provides that:

> 'Before interrogating the alleged offender, the police officer must inform that
>
> (1) The alleged offender has the right to remain silent.

---

[682] See Thai Constitution 1997, Section 241. See also Thai Constitution 2007, Section 40 and the draft of the 2016 Constitution of Thailand Section 29.

(2) The alleged offender is entitled to invite a lawyer and a trusted person to attend during the interrogation'.

Section 134/4 can be viewed as the key provision to protect the alleged offender's rights during the interrogation process. In this regard, any statement given by the alleged offender before having been informed the rights above will not be admissible as evidence in proof of such person's guilt.[683]

To reflect further on the legitimacy of the police interrogation process in terrorist cases, interview data derived from the interviewed participants shall now be considered.

An experienced defence lawyer stated that:

> 'Based on my experience, most police officers did quite well in the interrogation process. Suspects were not treated as criminals, and they were fully informed of their rights under the Criminal Procedure law. I have never experienced any torture or police malpractice in this stage'. **D.L.N.4.23**

An NGO staff member replied that:

> 'There were not many claims about police malpractice in the interrogation process. In general, the police performance is reliable at this stage, and I can realize the development of the police's work in terms of human rights protection over the recent years'. **N.G.O.3.26**

Another defence lawyer commented that:

> 'Based on my experiences of appearing at interrogations, I have seen that the police officers have always strictly informed the suspects' rights provided by the law, and I am quite satisfied at this stage. However, there should be an improvement in terms of fact-finding at this stage. It seems that the police just find evidence to prove a suspect's guilt only, but indeed the law does require them to prove a suspect's innocence as well'. **D.L.Y.5.6**

One senior defence lawyer said that:

---

[683] See Thai Criminal Code, Section 134/4.

> 'During the last five years, there have been very few claims regarding torture in police custody. I believe that the image of police has been improved. As I have often attended an interrogation at police stations, I have never found police malpractice of terrorist suspects. This shows an advanced improvement in terms of professional performance, and I am satisfied'. **D.L.Y.6.11**

One prosecutor said that:

> 'I think the police have done quite well at this stage. As the law provides very helpful rights to a suspect, such as the right to have a lawyer attending at the interrogation, I think it is not easy that any police malpractice would have occurred at this stage'. **P.P.N. 3.13**

A judge remarked that:

> 'I have seen the development of the police's performance in interrogations, not only in terrorism cases but for all types of offences. At present, there have not been many claims that the police have done wrong at this stage'. **J.P.2.20**

Based on the interviewees' comments above, most of them appear to be satisfied with the police's performance during the interrogation process. One possible reason behind this would be that the law does provide helpful rights to a suspect in the interrogation process, such as the rights to bring a trusted person and to have a lawyer attending the process of interrogating. While limited numbers of selective interviewees from the three provinces cannot be claimed to represent the entire interrogation process, it is notable that the majority of the interviewed participants seemed to be satisfied with the interrogation process as shown. They also underlined signs of some improvement in terms of fairness during the interrogation process, in particular regarding terrorism cases.

In Thailand, police interrogations of terrorist suspects are not required to be tape-recorded. Comparison shall be made to England and Wales provisions in this area. In England and Wales, tape-recording is required in police interrogations, especially

in terrorism cases.[684] Questions then arise as to whether recording would be feasible in Thailand and its potential impact.

When the idea of making a video recording during interrogation was raised with the interviewed criminal justice officers, the majority disagreed.

One prosecutor stated that:

> 'It is a counterproductive strategy. A recording is easy to be manipulated. To protect the suspects' rights during interrogation, the role of a defence lawyer appearing at this stage is considered enough'. **P.P.N.4.31**

A senior judge further added that:

> 'Tape recording is useful when there are a lot of claims regarding the police malpractice in the interrogation. However, we have heard little about any problem at this stage'. **J.Y.5.22**

However, these interview data seem contradictory to information compiled by Amnesty International 2014 regarding the Thailand's implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[685] The document revealed that human rights abuses such as ill-treatment often occurred in the Thai criminal pre-trial processes in particular during interrogations arising from the South Thailand conflict.[686]

However, this does not mean that the information gained from the interviewed participants entirely contradicts the Amnesty International 2014 survey. The Amnesty International document was about all types of criminal offences across the country, whereas the research interviews were conducted in the three provinces and were at this point restricted to terrorism cases handled by the police. Nevertheless, in the light of the Amnesty International findings, it must be accepted

---

[684] Home Office, Police and Criminal Evidence Act 1984. Codes of Practice E and H. (London TSO, 2006). p. 18. See also, Terrorism Act 2000, Schedule 8 para.3.
[685] Amnesty International, Thailand Submission to the United Nations Committee against Torture 52nd Session 28 April -23 May 2014 pp10-14. [Online] [Accessed 1 March 2015]. Available at https://www.amnesty.org/en/documents/ASA39/003/2014/en/. It quotes the National Human Rights Commission Investigation Report No 275-304/2553, Rights in Judicial Process in Case of Examination on Complaints that there are Torture and other Inhumane Treatments or Punishments in the Southern Border Provinces, 15 September 2010, available at: http://www.nhrc.or.th/2012/wb/en/news_detail.php?nid=536&parent_id=1&type=highlight.
[686] Ibid. See also Chapter 5, section 5.9.1 (Human Rights and the Special Laws).

that there is no room for complacency. Better recording practices would allow the behaviour of the police to be monitored and would thereby reveal whether it is routinely legitimate or not.

4.6.5 Search powers

The main powers of search are provided in Thai Criminal Procedure Code.[687] Nevertheless, other special laws such as the Martial Law 1912 and the Internal Security Act 2008 also empower searches.[688] As mentioned, this part examines only general criminal procedure powers in the Criminal Procedure Code.

According to Section 57 of Thai Criminal Procedure Code, a police officer can arrest, detain, imprison, or search a person or property in the private place when there is a criminal warrant issued for that purpose. In this regard, search powers shall be examined into two aspects; search of places; and search of persons.

Firstly, the general concept in search of places is provided in the Thai Constitution 2007 (B.E. 2550) in the part of 'rights and liberties of person of dwelling Section 33,' which states that

> 'The entry into dwelling without consent of its processors or the search thereof is prohibited, except by the court order or virtue of law'.

It is prohibited to search in private place without a search warrant or court's order.[689] However, in order to enhance the effectiveness in criminal justice system in collecting evidence, the Criminal Procedure Code provides some exceptional circumstances when the police can conduct searches without warrant in the following cases; firstly, in the case of a call for help from inside the private place or where any other voice or circumstance shows that there is danger occurred in such private place; or secondly, in case of an offence appearing in the presence of the officer which occurs in the private place; or thirdly, in case of the person who has committed in the presence of the officer, is being followed closely behind to arrest and takes refuge or there are serious grounds for suspecting that person to have

---

[687] Thai Criminal Procedure Code, Sections 91-105.
[688] An analysis of searches powers in the special laws can be found in Chapter 5.
[689] See Thai Criminal Procedure Code, Sections 92- 95.

entered into hiding within such private place; or lastly, in case of such private place where the arrested person is host and there is the arrest warrant.[690]

Only the court is empowered to issue an order or criminal warrants such as arrest warrants and search warrants.[691] Police officers have no power to issue those warrants, although before 2003 both courts and police officers were empowered to issue arrest and search warrants.[692] However, the law was amended to empower solely the courts with the reason that the court is a more reliable institution.[693]

Secondly, the general concept of search of persons is provided in Section 93 of Thai Criminal Code, which also applies to a terrorism case. It allows for the police to conduct a search upon the body of any person when there is a reasonable suspicion that such person is carrying any article which is likely to be used or has been obtained through the commission of an offence or whose possession constitutes an offence. This Section empowers police officers to take discretion to search persons without the approval or warrant from the courts.

It has been said that these Sections are very useful, and seem to be effective, as they enhance the ability of police officers in the fact-finding process.[694] Especially, in practice Section 92 (search of places power without warrant) has been very often used in searching suspects' dwellings or their private property, and this Section seems to be working as there were many cases where the officials found evidence or weapons that linked to the criminal's plan which can thus be preempted.[695] On the other hand, if the law requires search warrants to be provided by the court in all circumstances, this process takes time, and it is possible that all relevant evidence would dissipate.

When the researcher raised this issue of whether or not the existing law of search is sufficient to deal with cases of terrorism in practice, most of the interviewed police officers stated that it is sufficient. For instance,

---

[690] Ibid.
[691] Ibid.
[692] See Sections 66-68 of the Thai Criminal Procedure Code.
[693] Wajjanasawat, K (2010) *Principles of Criminal Procedure law in Thailand.* (5th edn) Bangkok. Jirachakarn. p. 300.
[694] Ibid. p. 316.
[695] Office of the Public Prosecution Region 9 (2012) *Research on the Effectiveness of Prosecution of National Security Charges and the Protection of Citizens' Rights: A Case Study of the Four Bordering Provinces in Southern Thailand* (Songkla, Pattani, Yala, and Narathiwat). Songkhla. Asia Foundation. pp. 44-46.

> 'I am satisfied with the law on searches. We have received enough powers to conduct searches on both a person and dwellings in practice'. **P.O.P.2.18**

Then, the researcher raised the question of whether or not the condition of getting a court's warrant for searching is an obstacle in practice. Most of them accepted that it would delay their work in the investigation, but they all agreed that the court's permission is very important to guarantee that their work is checked. For example, one police officer noted that:

> 'Without a court's permission to make a search, our task would be questioned a lot in terms of legitimacy. The court's permission is a condition to advance our work in terms of legality. I am certainty that the existing law in sufficient'. **P.O.N.3.22**

This reflects that the police officers here seemed to be aware of their performance in conducting an investigation. They tend to think that receiving a court's permission amounts to a good checking process, and accordingly their performance would be less criticised.

However, the researcher has observed that the interviewed police officers have paid very minimal attention to the context of 'efficacy', in particular to how effectively the law on searching would allow them to find evidence.

In terms of legitimacy at the searching stage, the researcher raised the issue with the defence lawyers of whether or not the police's performance is compliant with the constitutional concepts and criminal procedure law as mentioned above.

One defence lawyer said that:

> 'According to the law, the police can carry out a search without warrants, but this rule should be applied strictly as an exception. In practice, the police (plain clothes officers) usually conduct a search without warrants, and this could lead to a level of untruthfulness with a community'. **D.L.P.1.23**

Another lawyer remarked that:

> 'I would require the police to show a court's warrant every time when searching. I have been informed in many cases that the police have ignored

> this process, and generally people always allow them to make a search as they feel fearful'. **D.L.P.2.30**

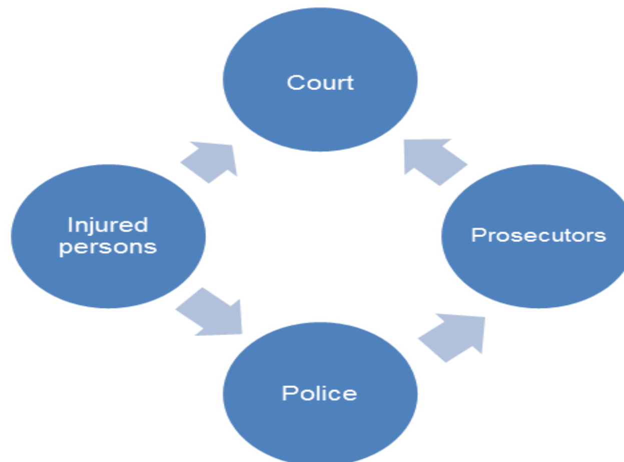
It can be seen that the comments given by the defence lawyers imply that police's performance still needs to be improved. Although most of the interviewed police officers claimed that receiving a court's search warrant would increase the legitimacy of operations, in practice police performance is still required to be improved.

Overall, the law on searching seems to be legitimate and does embody the aim of minimising human rights abuses. However, this will only work in practice if the police should comply strictly with the law. To better ensure this is the case, it might be suggested that searches should be carried out by uniformed police officers, and that searching without warrants should be done strictly as an exception according to law parameters.

4.6.6 Criminal prosecution

In Thai criminal procedure, public prosecutors and injured persons have rights to file a lawsuit to a court as shown in Figure 4.6.[696]

Figure 4.6 Prosecution Process



There are two choices for the injured person to begin the case: either by lodging a complaint to a police, following which the case will be sent to the public prosecutor; or to directly file a lawsuit in a court through a private lawyer.

[696] Thai Criminal Procedure Code, Section 28.

The injured person can prosecute an offender for many kinds of charges, for example, offences relating to life, injury, and petty offences such as offences of property. In contrast, a public prosecutor exclusively can prosecute serious offences.[697] The reason for the limit which requires a public prosecutor to prosecute offences against the state is that most of those kinds of criminal offences are severe and affect not only an individual but also society and the state. Therefore, public prosecutors, as state officials, should have the primary role.[698] The right to prosecute of both public prosecutors and injured persons is independent.[699] An injured party may apply by motion to the court to be a joint-plaintiff in the case where a public prosecutor has already initiated prosecution.[700] In a case where there are joint-parties (an injured party and public prosecutors), the law provides more privileges to public prosecutors to conduct the case.[701] For example, according to Section 32 of the Criminal Procedure Code, if the public prosecutor considers that the injured person may cause the damage to the case, the public prosecutor may apply to the court to order the injured person to end involvement.

In terms of efficacy in the criminal prosecution, Thai public prosecutors make prosecution decisions primarily based on the evidence gathered by the police. Therefore, an effective police investigation is vital. Unlike the UK, the Thai public prosecutors have no powers to be more actively involved in the investigation process. Their roles in this stage are restricted to inspect the file and to give written and oral instructions to the police officer who conducts the investigation in order to ensure the legality of the case.[702] After the investigation file has been sent to the prosecutor, the prosecutor has to consider whether there is enough evidence to prosecute the alleged offender. In this step, if the prosecutors consider that there is insufficient evidence to prove the offender's guilt to the court, they would generally order non-prosecution order, or they may request the police to conduct further investigation.[703]

---

[697] Wajjanasawat, K (2010) *Principles of Criminal Procedure Law in Thailand*. (5th edn). Bangkok. Jirachakarn. p. 333.
[698] Nakorn, K. (2010) 'Roles and Authorities of Prosecutors'. *Prosecutor Journal.* 19(4) pp. 56-60.
[699] Jaihan, N. (2004) *General Principles of Criminal Procedure Law*. (8th edn). Bangkok. Winyoochon. pp. 165-166.
[700] Thai Criminal Procedure Code, Section 30.
[701] Wajjanasawat, K (2010) *Principles of Criminal Procedure law in Thailand*. (5th edn). Bangkok. Jirachakarn. pp. 300-301.
[702] Ibid.
[703] See Thai Criminal Procedure Code, Section 143.

Since all evidence and witnesses are gathered only by police, the public prosecutors have limited chances to examine and verify such evidence and may therefore find it hard to detect when the police fabricate or bring in misleading evidence such as evidence as a result of bribery or prejudice against an offender or victim.[704] Consequently, this can lead to abuse of power by police. In this regard, it has been revealed by Somjai Kesornsiricharoen, a Senior Public Prosecutor, International Affairs Department, Office of the Attorney General, that:

> 'It is a very difficult task for the public prosecutors in the court trial, as they have no chance to become familiarized with the evidence and are not in a position to observe the effectiveness and legality of the investigation from the beginning. Even when the witnesses revere their testimony, public prosecutors have no way to determine which testimony is true'.[705]

In reaction, the researcher raised the question regarding the notion of allowing the prosecutors to intervene in the police investigation. Most of the interviewed officers endorsed the idea. One of the prosecutors stated that:

> 'Allowing a prosecutor to intervene a police's investigation is of course a good way to improve the effectiveness and fairness both in pre-trial and trial processes. Prosecutors would act as a police's advisor in conducting investigation, and at the same time prosecutors can become more familiarized with the compiled evidence, which would assist them in performing in a trial'. **P.P.N.3.7**

Another prosecutor provided the same sentiment that:

> 'I support this idea. Especially in terrorist cases, it is better to allow the prosecutors to play a part in the investigation for two reasons: firstly, for advising the police in terms of due process, and secondly for allowing the prosecutors to understand a case and evidence at the outset'. **P.P.Y.6.8**

Another senior judge added that:

---

[704] Kesornsirichareon, S. (2000) 'Roles and Functions of Public Prosecutors in Thailand'. *Public Prosecutor Journal*. Vol2. pp. 280-283.
[705] Ibid.

> ‘To enhance the efficacy of criminal justice in the pre-trial process, the prosecutors should be empowered to join an investigation as soon as possible. The prosecutors can act as reviewers for the police investigation, and at the same time the period of assessment of the evidence gathered by the police should also be extended, which would benefit the prosecutor in better understanding the evidence’. **J.Y.5.26**

According to the interview comments above, the notion of allowing the prosecutors to intervene in the police investigation seemed to be supported by most of the official participants. Accordingly, it should be adopted as another possible factor to enhance the efficacy and legitimacy of the Thai criminal justice system to deal with terrorism cases at this stage.

To measure the efficacy of the roles of the public prosecutors in terrorist cases, an analysis should be made of the trial stage rather than the pre-trial stage, where public prosecutors have minimal roles. At the trial stages, prosecutors play the major role in presenting the evidence gathered by the police officers. However, based on the interviews, the role of prosecutors in some aspects has been criticised. Thus, it was reported by a senior judge that:

> ‘In most of the terrorist cases in which I participated as a judge, I found that the prosecutors were not familiar with the evidence gathered by the police, and this is a clear loophole leading to a dismissal. At hearings, it is common to see a defendant’s lawyer show a higher level of experience and able to destroy the prosecutors’ claims. However, the major reason for dismissal has not been due to a defence lawyer holding better evidence, it is because the prosecutor cannot meet the standard to prove guilt beyond any reasonable doubt’. **J.P.1.16**

Another senior judge added that:

> ‘We consider a case based on the quality of the evidence presented to the court. I have participated as a judge in terrorism cases around ten times, and all of those cases were dismissed as lacking in evidence to prove the defendants’ guilt. Some prosecutors have both experience and good skills, but without admissible evidence or witnesses, they can never win a case’. **J.N.4.16**

These findings suggest that the inefficacy of the prosecutors in the trial stages is connected back to the investigation process, and this can be explained as follows. Firstly, the prosecutors are not familiar with the evidence that has been gathered solely by the police. At this stage, the police have fully powers to gather all of evidence without any reviewing input by prosecutors. Accordingly, prosecutors have no chance to examine evidence as it is being collected. The interview data suggested that to allow a prosecutor to intervene a police's investigation would be a positive solution to increase their effectiveness at trial processes. At least, they would be more familiar with the evidence, which would possibly benefit them in their presentations at the trial.

The second point relating to the inefficacy of the prosecutors concerns the limited period of time for making prosecutorial decisions. According to Section 87 of the Thai Criminal Procedure Code, a prosecution decision must be made within 84 days after the terrorist suspect has been detained. In other words, the law requires that both investigations and prosecutorial discretion must be carried out within 84 days after the suspect has been detained. However, in practice, it has been revealed that the police took up a very long time in investigations for interrogating suspects and compiling evidence, due to its difficulty and complexity, and thus only a little time is left for the prosecutors to make their prosecution decision.[706]

Thirdly, the evidence gathered by the police reflects the weak quality of their work in terrorism cases. As previously discussed in section 4.6.1 above, most of the interviewed prosecutors commented that they were not satisfied with the investigations in cases of terrorism. By comparing with other types of criminal offences, terrorism investigations have shown many errors; for example, containing weak evidence, lacking a key witness, and reflecting apparent errors in the choice of criminal charges.[707] Accordingly, these factors would be explained why the prosecutors cannot meet the standard to prove guilt beyond any reasonable doubt in most terrorism cases, as stated by the judges above.

To explore further the efficacy of the prosecution process in terrorist charges, the conviction rates should next be considered. During 2003-2009, the prosecution

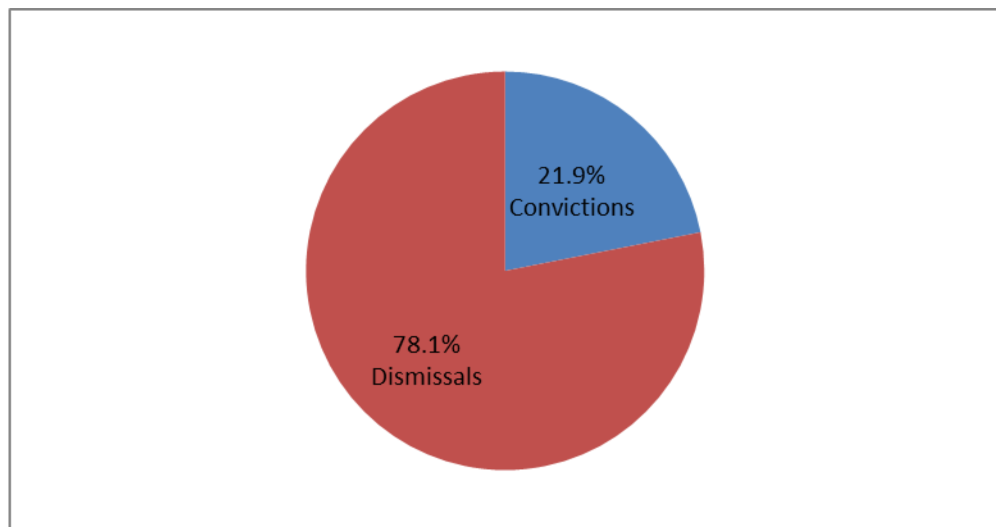
---

[706] Office of Public Prosecution Region 9 (2014) *Research on Effectiveness of Criminal Justice System in Dealing with Security Charges in Pattani, Yala, and Narathiwat Provinces.* Songkhla. Asia Foundation. p. 105.

[707] Comments from the prosecutors at section 4.6.1 (P.P.N.4 and P.P.P.1).

process seemed to be mostly unsuccessful in dealing with terrorism offences. It was revealed by the Office of Regional Public Prosecution Region 9 that there were 618 cases that were prosecuted, and another 584 cases that were categorised as requiring additional investigation due to lack of evidence.[708] From the 618 cases that were prosecuted, there were only 135 cases in which the courts convicted the accused, as shown in Figure 4.7.[709]

Figure 4.7 Conviction rate for terrorist charges between 2003 and 2009 in Pattani, Yala, and Narathiwat.



This shows a failure of terrorist offence prosecutions, as the conviction rate in the periods represented is low compared to the dismissal rate. The main reason for this problem was the lack of evidence to prove the accused's guilt.[710] Moreover, it was revealed through the country report of the Bureau of Counter-Terrorism (in the US Department of State) on terrorism 2013 in Thailandthat Thailand admitted to unsuccessful prosecution in terrorist charges as being a significant problem.[711]

To explore the term 'legitimacy' in the prosecution process and prosecutors's roles, the notion of 'legitimacy' in this sense refers to Thai Constitutional Law 2007 (Section 255) and the Act of Public Prosecutor Department and Public Prosecutor 2010, which highlight that a public prosecutor must be independent, be neutral, and

---

[708] Ayut, S. (2010) *Evidence Law for Public Prosecutors in Southern Areas*. Songkhla. Office of Public Prosecutor Region 9. p. 19.
[709] Ibid.
[710] Ibid.
[711] Bureau of Counter Terrorism, US Department of State (2013) *Country Reports on Terrorism 2013 (East Asia)* . [Online] [Accessed 1/12/2015] Available at http://www.state.gov/j/ct/rls/crt/2013/224821.htm

be fair and technically proficient in making decisions on prosecution institution and executions.

Most of the interviewed defence lawyers argued that the prosecutors in a trial did not always meet these standards. One problem was that prosecutors always treated them as their enemies, and they aimed to convict the suspect rather than try to prove the truth. As one of senior defence lawyers stated that:

> 'In a trial process, prosecutors have never accepted the evidence to prove that a suspect was not guilty. It seems that their goal is to jail a suspect more than proving the truth. I understand that a dismissal would be a reflection of a prosecutor's failure. However, the most important thing is to prove the truth'. **D.L.Y.1.30**

The defence lawyer's assertion as to the proper role of public prosecutors is broadly correct.[712] The main objective of prosecution is to prove the truth rather than merely seek a conviction. It is understood that cases involving terrorism contain sensitive security issues, and there are difficulties in terms of finding evidence. Seemingly, these factors may apply pressure on the prosecutors to achieve the goal in proving a defendant's guilt rather than seeking the truth so that their 'success rate' looks better and more equivalent to the rate for 'normal' crimes.

Conversely, most of the interviewed judges seemed to be satisfied with the legitimacy of prosecutors. For instance, one judge provided the following:

> 'I have seen that most of the prosecutors here are well-trained in terms of ethics under their own profession. Their role is to protect an injured person's benefit. I have never experienced any prosecutor doing any wrongdoing in a trial'. **J.P.2.16**

Another judge said:

> 'To measure how fairly the prosecutors have performed in a trial is difficult. However, as their own standing is to be a representative for an injured person to convict an accused defendant, I think they have done well'. **J.N.4.16**

[712] See Thai Constitutional Law 2007, Section 255.

Though the interview data is not unequivocal, the comments provided by the defence lawyers indicate that there is room for improvement in the performance of prosecutors in regard to legitimacy. The idea of being a finder of truth rather than a seeker of convictions should be strengthened whether there is a major deficiency or not. One might turn to policy transfer and turn to the governance of the CPS in English and Wales.[713]

4.6.7 Thai Judicial performance

In Thailand's criminal justice system, criminal proceedings in the trial are oral and open to the public.[714] When the accused and the public prosecutors appear before the court, the court shall read out and explain the charge to the accused; after that the defendant will be asked whether or not he has committed the crime, and what will be the defence. Then, the public prosecutors shall provide a list of witness and documents to both court and the accused. As mentioned, the Thai Criminal Procedure Laws require the court to sit in public and in the presence of the accused, as specified by Section 172:

> 'The trial and the process of taking evidence must be conducted in open court and in the presence of the accused'.

However, there are some exceptions when the trial might be held in camera; for example, criminal cases relating to rape, youths, or for specific reasons to protect victims and witnesses according to Section 177. These exceptions might be considered as protection of human rights of victims and witnesses.

The Thai Criminal Procedure Law provides important rights to the accused in a trial. These first concern legal aid for an accused, as provided in Section 173. Because of the high rate of expense in hiring a lawyer to represent an accused, the state must procure a lawyer for any accused who requires one. In cases where the punishment is death (including terrorism offences), before starting the trial the court shall ask the accused whether there is a hired lawyer or not, and if

---

[713] In England and Wales, this idea is reflected in the CPS code para.2 (https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf)

[714] Jaihan, N. (2004) *General Principles of Criminal Procedure law*. (8th edn). Bangkok. Winyoochon. p. 18.

not, the court shall appoint one.[715] For the case of punishment levels which involve imprisonment, the court shall procure a lawyer when an accused requires one.[716] The court shall pay the lawyer who is appointed.[717]

The Thai judiciary system allows the accused to plead guilty to the charge, according to the rule in Section 176 that:

> 'If the accused pleads guilty to the charge, the court may render a conviction without taking any further evidence. However, in cases where the minimum punishment for the charge is imprisonment from five years upwards, the court must hear the witness until it is satisfied that the accused is guilty'.

For charges where the minimum punishment exceeds five years, as in cases of most terrorist offences, the court cannot immediately sustain a conviction even when the accused pleads guilty. Instead, the court shall continue to hear the witness and conduct an examination of the evidence until it is satisfied that the accused is actually guilty.

As for efficacy in the judicial process, the metrics should reflect the ability of judges to deliver a high standard of judgment within a reasonable period of time.[718] The high quality of the judicial process is reflected by the high standard of the examination of evidence.[719] The court is obliged to explain what criteria or standards have been used in making decisions, especially in the key point of whether or not the prosecutors' evidence is sufficient to prove the accused's guilt.[720] The reasons used to justify conviction or acquittal of an accused have to be clearly explained, and in the case of issuing a sentence, the proportionality principle must be applied.[721] As Thailand follows the civil law system, a judgment does not become a binding precedent. In practice, however, where a similar case has been heard previously in the Supreme Court, the lower court usually follows the reasons

---

[715] See Thai Criminal Procedure Code, Section 173 para1.
[716] Ibid. para 2.
[717] Ibid. para 3.
[718] Reuchai, K. (2011) *Criminal Procedure Law*. (6th edn). Bangkok. Thammasat University pp. 95-110.
[719] Ibid.
[720] Ibid.
[721] Jaihan, N. (2004) *General Principles of Criminal Procedure Law.* (8thedn). Bangkok. Winyoochon. pp. 200-215.

given in Supreme Court judgments.[722] In contrast, the low quality of judgments might be considered to flow from a lack of clarity in the standards being applied (including the standard of proof) or the judgment based on those standards.[723]

The participants' views about the clarity of the court judgments suggest considerable satisfaction on the key point of why an offender was convicted or dismissed. On this point, one defence lawyer provided an interesting objection, namely that:

> 'A lower court has tended to strictly follow the Supreme Court decisions. There were many cases when a lower court claimed that the higher court had ruled in a certain way, so it was binding on a lower court to make the same decision. I would not accept this reason though, because the Supreme Court judgment is not law here and not automatically binding on a lower court. The higher court decisions are just a guideline for a lower court'.
> **D.L.Y.5.30**

The above criticism could reflect that Thailand, while a civil law country, has been practically influenced by the common law systems in which a court judgment is considered law and binding on a lower court.

As for the legitimacy in judicial process, attention should be paid to the standard of protection for the accused both in terms of the statutory requirements and in practice. In terms of statutory requirements, there are several rights that are offered to the accused. These include, for example, the presumption of innocence, the right to have lawyers provided by the court in serious criminal charges (or for those aged under 18) according to Section 172, the right to be heard in an open court, and the right to make an appeal to a higher court.[724] The Thai judicial process is required to give a fair chance to the accused to prepare their defence. The status of both prosecutors and accused should be equal.[725] More specifically, the notion of a fair chance refers to the right to disclosure of documents, the right to have a translator,

---

[722] Wayuparb, P. (2010) *Explaining the Thai Judicial System and the Act of Courts of Justice* B.E.2543. Bangkok. Winyoochon. p. 45.
[723] Ibid.124.
[724] See Thai Criminal Procedure Code, Sections 172-181.
[725] Jaihan, N. (2004) *General Principles of Criminal Procedure Law*. (8th edn). Bangkok. Winyoochon. pp. 198-199.

as well as the protection of lawyer confidentiality.[726] Furthermore, the examination of the evidence shall be conducted in open court, and the accused also has the right to call and examine witnesses, to the same degree as the public prosecutors.[727]

In practice, most of the official participants believed that the accused's protection in a trial is sufficiently protected. For example, one prosecutor said:

> 'I am very satisfied with the standard of the accused's protection at this stage. The court is neutral and fair in conducting a case. Also, an accused is well protected and given a fair chance to access a free lawyer'. **P.P.P.1.33**

One judge claimed that:

> 'The law provides several protections for both a plaintiff and a defendant. Our main task is to conduct a hearing alongside those rules and to bring justice'. **J.Y.6.24**

The issue of the accused's protection was also endorsed by NGOs' staffers and defence lawyers. One lawyer said that:

> 'Apart from the delay in the judicial process, I accept that an accused is well protected by the system in terms of an open-hearing, the rights to meet a lawyer and family, and the presumption of innocence'. **D.L.Y.6.20**

One NGO staffer stated that:

> 'Compared to other criminal procedure processes, I would say that the trial stage is the most trustworthy. An accused seems to receive sufficient rights in a court trial. I believe that most of the abuses that occurred were in the pre-trial processes, rather than during the trial processes'. **N.G.O.3.30**

---

[726] See Thai Criminal Procedure Code, Sections 172 and 173.
[727] Ibid.129.

Based on the interview comments, the protection of the accused seems to be sufficient, but it should be borne in mind that criticizing a court would possibly amount to an offence of contempt of court, which affects the responses.[728]

Considering further the notions of ‘efficacy’ and ‘legitimacy’ in Thai judicial process, the speed of the trial is another important issue to be considered. As provided in the Thai Constitution, any person shall have the rights to access to judicial process quickly.[729] Nevertheless, it has been revealed by research of Department of Prosecutor Region 9 regarding the effectiveness of prosecution in security cases in Songkhla, Pattani, Yala, and Narathiwat (2013) that most of the terrorism cases have tended to take a longer time than average especially in the investigation and prosecution stages.[730] This research also provided statistics between 2010-2013 regarding security charges in those three provinces, for example, amounts of terrorism cases occurring, amounts of cases that have been prosecuted, and dismissal and conviction rates. This research suggested that one of the main reasons that contributes to the delay in criminal process in terrorism charges is a difficulty in collecting evidence.[731] This directly affects defendants who are in custody where the court denies bail.[732] The research made a comparison about periods of criminal trial (since suspects were arrested until the court verdicts were made) between the general criminal cases (such as murder, manslaughter, or offences against properties) and terrorism charges section 135/1-135/4, and the research has found that terrorism cases took a longer than average period to complete.[733]

The court is obliged to deliver a judgment within a reasonable time.[734] However, it is hard to explain what the ‘reasonable time’ is, as each trial may be faced with distinct difficulties. There are several factors that could contribute to a delay in the

[728] See Thai Civil Procedure Code Sections 30-33. See, for example, Thai Supreme Court Judgment No.8005/2551, the lawyer was prosecuted for criticizing the judges as unfair.
[729] See the Thai Constitution 2550 (2007), Chapter 3 Part 4.
[730] Office of Public Prosecution Region 9 (2014) *Research on Effectiveness of Criminal Justice System in Dealing with Security Charges in Pattani, Yala, and Narathiwat Provinces.* Songkhla. Asia Foundation. p.137.
[731] Ibid.
[732] See for example Thai Supreme Court Judgment No.264/2554. The case took nearly five years, from 2005 to 2010, from when the offender was arrested until the Supreme Court issued the sentences.
[733] Office of Public Prosecution Region 9 (2014) *Research on Effectiveness of Criminal Justice System in Dealing with Security Charges in Pattani, Yala, and Narathiwat Provinces.* Songkhla. Asia Foundation. pp. 101-109.
[734] Reuchai, K. (2011) *Criminal Procedure Law*. (6th edn). Bangkok. Thammasat University pp. 95-110.

judicial process, and these should be considered in the context of three stages. The first period is the time since the accused was arrested until the lawsuit was lodged with prosecutors. This stage concerns police tasks in compiling evidence. As examined previously, the police can lawfully detain suspects in terrorism charges for a period not exceeding 84 days, according to Section 87 of the Criminal Procedure Code. The second period concerns from when the lawsuits were lodged by the police with the prosecutors until they were prosecuted. In this regard, the prosecutors are by law required to prosecute the accused within 84 days from when they were arrested. The third period is between the accused being prosecuted and the court judgments being made. A speedy trial reflects the efficacy of the judicial process, and this is recognized by Section 40 of the Thai Constitution 2007. However, it does not mean that courts that cannot contribute to a speedy trial are considered as reflecting low efficacy, due to each criminal case having its distinct complexity, such as multiple witnesses or complex legal issues.

The data below concern the three provinces of Pattani, Yala, and Narathiwat between 2011 and 2013, only in the cases which were finalized in the Court of First Instance. Between 2011 and 2013, there were 9 cases which were finalised at the Pattani Provincial Court (the Court of First Instance), 33 cases were finalised at the Narathiwat Provincial Court, and 8 cases at the Yala Provincial Court.[735] For the periods of criminal processes, Figures 4.8 to 4.10 selects five cases from each Provincial Court as examples below.

Figure 4.8 Periods of time taken in terrorism cases in Pattani between 2011-2013.[736]

Cases No.	Crime Occurrences	Arrested	Prosecutors received files	Prosecuted	Judgments were rendered	Total times
296/2555	22 December 2008	27 Feb 2011	8 April 2011	21 April 2011	8 Feb 2012	364 days
751/2555	8 May 2006	22 Jan 2010	10 March 2010	9 April 2010	30 March 2012	799 days
3065/2554	25 June 2008	9 Dec 2010	4Feb 2011	8 March 2011	15 Dec 2011	433 days
1181/5556	9 May 2010	4 April	5 June 2011	10 June	29 May	787

[735] Ibid. pp. 150-165.
[736] Ibid.

		2011		2011	2013	days
1662/2556	21 July 2008	10 Jan 2011	11 Feb 2011	14 March 2011	16 July 2013	887 days

Figure 4.9 Periods of time taken in terrorism cases in Yala between 2011-2013.[737]

Cases No.	Crime Occurrences	Arrested	Prosecutors received files	Prosecuted	Judgments were rendered	Total times
2366/2555	24 Sept 2007	24 Feb 2008	20 May 2008	23 May 2008	13 Oct 2011	1324 days
633/2555	2 August 2007	13 Jan 2009	14 Jan 2009 (additional investigation)	21 December 2010	21 March 2012	1486 days
1462/2555	27 Feb 2008	15 July 2008	22 April 2009	12 Feb 2010	28 June 2012	1445 days
1766/2555	19 Feb 2009	20 March 2009	10 April 2009	5 May 2009	25 July 2012	1224 days
2074/2555	21 Oct 2007	19 December 2009	25 December 2009	11 March 2010	28 August 2012	1014 days

Figure 4.10 Periods of time taken in terrorism cases in Narathiwat between 2011-2013.[738]

Cases No.	Crime Occurrences	Arrested	Prosecutors received files	Prosecuted	Judgments were rendered	Total times
1685/2555	14 Jan 2008	20 June 2008	4 July 2008	14 July 2008	8 July 2011	1277 days
1874/2555	31 Jan 2008	12 March 2008	5 May 2008	20 May 2008	29 July 2011	1235 days

[737] Ibid.
[738] Ibid.

2652/2554	28 Oct 2005	9 Oct 2008	10 December 2008	25 Jan 2009	28 Oct 2011	1479 days
2736/2555	20 April 2008	28 June 2008	16 August 2008	4 July 2008	14 Sept 2012	1564 days
2541/2555	28 August 2010	23 Oct 2010	4 Jan 2011	14 Jan 2011	28 August 2012	675 days

Reflecting on these data, it was found that the shortest period is during the process of making prosecution decisions, whereas the longest period is in the court trial which took nearly four years for some cases. The Pattani Provincial Court showed an ability to contribute to a relatively speedy trial compared to Yala and Narathiwat courts. It might be because Pattani is a big province with more judges and criminal officials. Next, two other stages that took very long periods were investigation process and court hearings. In some cases investigation process took over 3 years (751/2555).[739] Arrests and other criminal charges such as offences against properties or offences against life or body were achieved much more quickly. For example, generally within two or three weeks after the crime occurrence, the police could find suspects or evidence, and judgments were delivered within a year after crimes occurred.[740] This shows a distinction in lengths of criminal processes between terrorism charges and other charges as the process in terrorism charges take nearly double the time. The difference between the time taken to process terrorism cases compared to non-terrorism is clear, but it may not show inefficiency. Rather, it may show complexity and limited powers and limited public cooperation.

When the research raised the question of how the participants feel towards the delays in judicial processes in cases of terrorism, the participants provided a variety of responses.

One judge said:

> 'I would consider that terrorist cases contain more difficulties in terms of fact finding in a hearing, but the main factor leading to the delay is because of postponement trial date requests from both parties. The court is being

[739] Thai Supreme Court Judgment No. 751/2555.
[740] See Judgments No. 8784/2556 (offences against life), 1287/5554 (offences against body and property), and 4587/2554 (offences against life).

> neutral. If the request for postponement made by a prosecutor is granted, then a defendant shall have the right to do so'. **J.P.1.21**

One prosecutor stated:

> 'I think that requesting a case's postponement is common, and this could lead to a delay. In practice, there were some problems, so we were required to postpone a case, such as a witness was not ready to appear in a trial or could not be found'. **P.P.P.2.32**

One defence lawyer provided the same sentiment that:

> 'Nobody wants to get involved as a witness in terrorism cases. We always have problems when a witness has refused to appear in court, so we need to make a request for postponement'. **D.L.P.2.21**

However, another defence lawyer argued that the main factor leading to delays is related to the criminal justice official's culture and also a lack of resourcing:

> 'I think that the Thai criminal justice system takes a very long time at every stage, from the police stage until the court hearing. To speed up the criminal process is not their first priority. Next, I consider that the quantity of judges is currently not sufficient for the numbers of criminal cases, which tend to be higher each year'. **D.L.N.3.30**

An NGO staffer responded that:

> 'As I am not a lawyer, I could not clearly explain the factors leading to the delays in the judicial process. But I think that the delayed judicial process is considered unfair for both parties. The law needs to be amended in this regard'. **N.G.O.1.36**

Based on the comments above, time-consuming judicial process in terrorism charges can be explained by two main factors. Firstly, many people refused to present as witnesses in trial as they fear intimidation and reprisals. Secondly, both prosecutors and defence lawyers accepted that they often requested postpone the court's trial date as a device to delay proceedings. Therefore, without a statutory

limitation of time, the trial process will continue to impact the rights and freedoms of the defendants. Thus, to balance the efficacy of the criminal justice system in a terrorism case, and the rights and freedom of terrorism suspects in the system, it would be a positive step to specify a limitation of time for the trial as well as in the pre-trial processes.

In this regard, reference shall be made to England and Wales provisions in this area. Prosecution of Offences (Custody Time Limits) Regulations 1987, S.I. 1987/299 provides that

> 'Under regulations 4 and 5 of the 1987 Regulations, unless the court extends the time limit the maximum period during which the defendant may be in pre-trial custody is
>
> (a) in a case which can be tried only in a magistrates' court, 56 days pending the beginning of the trial;
>
> (b) in a magistrates' court, in a case which can be tried either in that court or in the Crown Court
>
> > (i) 70 days, pending the beginning of a trial in the magistrates' court, or
> >
> > (ii) 56 days, pending the beginning of a trial in the magistrates' court, if the court decides on such a trial during that period;
>
> (c) in the Crown Court, pending the beginning of the trial, 182 days from the sending of the defendant for trial, less any period or periods during which the defendant was in custody in the magistrates' court'.
>
> 'Under Section 22(3) of the Prosecution of Offences Act 1985, the court cannot extend a custody time limit which has expired, and must not extend such a time limit unless satisfied
>
> (a) That the need for the extension is due to
>
> > (i) the illness or absence of the accused, a necessary witness, a judge or a magistrate,
> >
> > (ii) a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more defendants or two or more offences, or

(iii) some other good and sufficient cause; and

(b) That the prosecution has acted with all due diligence and expedition'.

4.6.7.1 Evidence Law

Evidence law encompasses the rules which govern the admissibility, quality, and proof of facts and opinions in criminal procedure.[741] In Thai criminal procedure, the most admissible evidence derives from a witness.[742] Any material, documentary, or oral evidence likely to prove the guilt or the innocence of the accused is admissible, but evidence must not be obtained through any inducement, promise, threat, deception, or other unlawful means according to Section 226 of Thai Criminal Procedure Code.[743]

The court has to exercise its discretion in determining and weighing all adduced evidence in the trial. According to Section 227 of Thai Criminal Procedure Code, no judgment of conviction can be delivered unless and until the court is fully satisfied that an offence has actually been perpetrated and that the accused has committed that offence. Where there is a reasonable doubt exists as to whether or not the accused has committed the offence, the benefit of doubt shall be given to the accused.[744] All evidence is taken by the court; either within the court precincts or outside based on the nature of evidence according to Section 229 Thai Criminal Procedure Code.

4.6.7.2 Forensic Science

It has been revealed by the research in 2013 of Department of Prosecutor Region 9 regarding the effectiveness of prosecution in security cases that more than fifty percent of the terrorism cases in the court of first instance were dismissed as a result of the lack of a witness to prove the guilt of the offender.[745] One solution might be for the courts tend to rely more on the forensic evidence in terrorism cases.[746] There are some cases in which the forensic evidence has been used such

---

[741] Wajjanasawat, K (2010) *Principles of Criminal Procedure Law in Thailand.* (5th edn). Bangkok. Jirachakarn. pp323-324.
[742] Ratnakkorn, S. (1998) *The Evidence Law.* (4th edn). Bangkok. Nitibannagarn. p. 144.
[743] Ibid. p. 149.
[744] Ibid.
[745] Office of Public Prosecution Region 9 (2014) *Research on Effectiveness of Criminal Justice System in Dealing with Security Charges in Pattani, Yala, and Narathiwat Provinces.* Songkhla. Asia Foundation. pp. 139-144.
[746] Ibid.

as DNA, tissue, skin, or hair, and these types of evidence are considered reliable.[747] In 2013, there was a leading case which the court decided to rely solely on forensic evidence. In this case, no witness appeared in the trial, but the court indicated that the offender could be found guilty based on the sole forensic evidence (DNA found at the scene); this was the first time for a court to convict the offender based on the forensic evidence alone.[748]

Forensic science can play an important and growing role in the criminal justice system.[749] In the United Kingdom, forensic evidence has become one of the most effective criminal investigative strategies. For example, a National DNA database was created in the 1990s.[750] Forensic science can be considered an important element to provide resources to help the police at the investigation stage and to detect crime, as well as assisting the court in considering the fact-finding.[751] In addition, it has been revealed by 'an initial analysis of forensic evidence used in the prosecution of terrorism cases in Britain between 1972 and 2008' that forensic evidence plays an important role in prosecution, and it has a significant relationship with a sentence length.[752]

However, the use of forensic evidence in the criminal justice system is not unproblematic in the UK's experience. The first concern is the collection of material in the initial possession by the police, which may lead to unexpected contamination. The second concern is the expertise limits of professional scientists.[753] A third matter concerns the translation into proof of forensic evidence. In other words, it may lead to misunderstandings by both lawyers and science experts about how

[747] Office of Public Prosecution Region 9 (2014) *The Application of Forensic Evidence of Prosecution in Security Cases*. Bangkok. Asia Foundation. pp. 1-5.
[748] Thai Supreme Court Judgment No. 578/2555 (2012).
[749] Walker, C. and Stockdale, R. (1999) 'Forensic Evidence'. In Walker, C. and Starmer, K. (1999) *Miscarriages Justice: A Review of Justice in error*. London. Blackstone Press. p. 119.
[750] See Home Office Circular No. 16/95, National DNA database 1995.
[751] Walker, C. and Stockdale, R. (1999) 'Forensic Evidence'. in Walker, C. and Starmer, K. (1999) *Miscarriages Justice: A Review of Justice in error*. London. Blackstone Press. p. 121.
[752] Thornton, A; Heinrich, D; Morgan, R; Bouhana, N; (2012) 'An initial analysis of forensic evidence used in the prosecution of terrorism cases in Britain between 1972 and 2008. *Policing: A Journal of Policy and Practice,* 7 (1) 96, 10.1093/police/pas064.
[753] Walker, C. and Stockdale, R. (1999) 'Forensic Evidence'. in Walker, C. and Starmer, K. (1999) *Miscarriages Justice: A Review of Justice in error*. London. Blackstone Press. pp. 127-129.

forensic material can be translated into proof.[754] The last matter concerns the lack of funds for the defence in the testing of forensic science.[755]

In Thailand, the use of forensics has been encouraged since 2008, as the Thai Criminal Procedure Code added that forensic evidence is admissible evidence.[756] The application of forensic evidence in the Thai criminal justice might thus be considered as having a future positive potential.[757] Equally, in cases of terrorism, there have been some cases in which the court misused forensic evidence in order to prove an accused's guilt (cases No. 3508/2555, 1329/2555, and 3149/2555). So, there are several concerns regarding the application of forensic evidence, and they are similar to the UK's lessons. The first concerns the lack of professional experts and the fact that the knowledge of Thai criminal justice officers is limited and these might lead to mistakes being made in the collection of forensic evidence.[758] The second concern pertains to the insufficient budget.[759]

In practice, most of the interviewed judges accepted that the application of forensic evidence has the potential to be a key method to prove a defendant's guilt. As one of the senior judges explained:

> 'The nature of forensic evidence itself is admissible, and it can be solely proved to convict the defendant. However, it does not mean that every case that contains forensic evidence can completely convince the court. We basically consider three points; (1) the process of how to get that evidence (2) the storage of it, and (3) importantly, the relationship between the evidence and the defendant'. **J.P.1.26**

Another judge added that:

> 'Prior the existence of the application of forensic evidence in terrorist cases, the main evidence presented by the prosecutor's side was a defendant's confession at interrogation, but this cannot solely determine the guilt. At the

---

[754] Ibid.
[755] Steventon, B. (1993) 'The Ability to Challenge DNA Evidence'. *Royal Commission on Criminal Justice Research Study.* No 9.
[756] Thai Criminal Procedure Code Sections 226 and 227.
[757] Siengsung, S. (2013) *The Admissibility of Forensic Evidence in the Criminal Case in Thailand.* Pathumthani. Rangsit University. pp. 5-10.
[758] Ibid.
[759] Ibid.

> present, the role of forensic evidence is prominent. However, I have found that the problem concerns knowledge about this field of criminal justice, which among officers and judges is very limited'. **J.N.4.26**

Nevertheless, regarding the level of knowledge about forensic evidence, the head of Public Prosecutor 2 Pattani (the special Department dealing specifically with terrorist prosecutions) argued that:

> 'After this special Department was established, there has been a big improvement in terms of prosecutor performances in cases of terrorism. There have been several conferences, and courses, both domestic and international, have been held to strengthen our prosecutors in terms of forensic evidence; for example, conferences with doctors and experts, and with prosecutors in Indonesia'. **P.P.P.1.35**

The above indicates that all of the interviewed prosecutors and judges have accepted the importance of using forensic evidence in terrorism cases. However, the capability of the relevant criminal justice officers to deal with forensic evidence appears to be limited. Thus, use of forensic evidence has the potential to enhance the work of police in the investigation stage especially where a suspect and a witness are hard to be found. However, the application of forensic evidence is insufficiently regulated in Thai law and practice and more work need to be done to avert miscarriages of justice.

4.7 Conclusion

The main aim of this chapter was to examine critically the Thai criminal procedure law in terrorism cases based on the notions of 'efficacy' and 'legitimacy'. The research found that among all criminal procedure stages, the police's investigation has shown the lowest standard both in terms of 'efficacy' and 'legitimacy'. In terms of reasons, the first is related to the limited policing powers of dealing with terrorists. There is no special power to facilitate police officers to deal with terrorists. The law treats terrorist offences at the same level as other crimes. For example, police officers cannot arrest terrorist suspects without a court warrant. The comparison with the UK laws (such as Section 41 of the UK Terrorism Act 2000) provides a clearer stance of effective strategies when dealing with terrorists both in the preventive strategy and when dealing with suspects. The UK's laws aim at

facilitating the police in detecting, investigating and preventing terrorism threats, whereas the Thai police seem to be very passive, restricted to dealing with suspects and evidence only after a crime has committed.

The second point is related to the lack of experienced police officers. Terrorist offences contain complicated legal and factual issues, and without experienced officers, they are difficult to resolve. The research undertaken here would suggest that there should be a special police unit designed to recruit and train police officers specifically to deal with terrorism offences occurring in the south of Thailand, the same as the Special Prosecutor Department (Pattani 2) which was established in 2013.

Thirdly, in terms of the efficacy in investigation process, it is clear that the roles of police in finding evidence in the early stage of investigation process should be improved as the Figure 4.5 indicated that more than half of the terrorism cases that occurred between 1 August 2012 and 31 July 2013 failed in as the sense that the police could not find suspects and evidence.

In terms of the 'legitimacy' of the investigations, although most of the interviewed criminal justice officers seemed to be satisfied with the roles of the police at this stage, further improvements were urged by the NGO staffers and the defence lawyers, in particular regard to human rights protection in the arresting and searching processes. Within the investigation process, based on most of the interviewed participants both from officials and non-officials, the interrogation stage appears to be the most satisfactory in terms of 'legitimacy', as abuses of power were said to be rare at this stage.[760] At the same time, the researchsuggests that better standard setting and resourcing would impart a significant improvement.

However, the researcher takes the view that in terms of efficacy, public prosecutors have not been granted sufficient powers to participate in the investigation stage. This exclusion might also affect 'legitimacy', as it becomes hard to determine whether the police fabricate or accept misleading evidence. Based on the interviews with the judges and prosecutors, most of them agreed that it would be a good idea to allow prosecutors to intervene the police's investigation.[761] In this way, prosecutors would also act as a police's advisor in conducting and reviewing

[760] See section 4.6.4 Interrogation.
[761] See section 4.6.6 Criminal prosecution.

investigation, as occurs in the UK. Such a role might affect the levels of dissatisfaction shown by prosecutors (and NGOs) in Figure 4.11.

Figure 4.11 Overall views towards the existing criminal procedure law on counter-terrorism

Jobs	**Satisfaction**	**Dissatisfaction**
Police Officers	3	3
Prosecutors	2	4
Judges	3	3
Defence Lawyers	0	6
NGOs	0	4

It appears that the existing criminal procedure law on counter-terrorism seems to be insufficient to deal with terrorism cases effectively or legitimately in all respects. All defence lawyers and NGO staffers, plus the majority of prosecutors, saw the need for the existing law to be improved. As discussed earlier, both defence lawyers and NGO staffers expressed strong concerns under the notion of 'legitimacy' in particular regard to human rights protection at the arresting and searching processes, while most of the public prosecutors highlighted the requirement to intervene at the police investigation process, as they believed that this method would develop their work both under the notions of 'efficacy' and 'legitimacy'.[762] It should be noted here again that, due to the limitations of the research to conduct interviews with only 28 participants, the research is unable to generate broader findings regarding legitimacy in the criminal process.

Another important feature to be evaluated concerns the 84-day detention period. Both police officers and prosecutors thereby receive a lengthy period of time to do their jobs before a trial commences. Yet, the law does not pay sufficient attention to protecting a detainee's rights, in particular the right to receive a speedy trial, which is affirmed by the Thai Constitution.[763] In practice, most of the interviewed police officers and prosecutors accept that the 84-day detention period is lengthy, but they argue that it is necessary and should not be reduced, claiming that working on

[762] Comments by the prosecutor (P.P.Y.6.8).
[763] See Thai Constitution 2007 Article 40.

terrorist cases is much more difficult than other crimes.[764] However, account must also be taken of the unsatisfactory results both in investigations and prosecutions.[765] Therefore, enhancing the effectiveness of the investigation process should be weighted alongside the protection of a suspect. It is understood that supporting an investigation into terrorism cases might be considered to require more than conducting an investigation into normal crimes.[766] However, it is not proportionate, in the light of international practice and international human rights framworks, to allow the police to detain a suspect for up to 84 days pending a trail. In addition, the 84 days of detention seems to violate the concept of the Thai Constitutional Law 2007 article 40, which guarantees that all citizens shall have the right to access a speedy judicial process. Therefore, establishing a special police unit for dealing with cases of terrorism, the same as the Special Department Prosecution (Pattani 2), could aid the police's work in terrorist cases, and possibly it would shorten the time taken in investigations.

In trial processes, the Thai criminal procedure law has shown a better standard both in terms of 'efficacy' and 'legitimacy'. In practice, the judicial stage is considered to be more trustworthy than the pre-trial process, based on most of the participants' comments.[767] However, this research has found that this stage has been subject to major delays.[768] As discussed, there are two possible reasons leading to the delays: firstly, a witness has refused to appear at the trial; and secondly, both parties have requested the postponement of a court trial as a means of delaying the court hearing. Without a statutory limitation of time during the trial, the detriments to the rights of the defendants will continue. Therefore, to balance the effectiveness of the criminal justice system in a terrorism case, and the rights of terrorism suspects in the system, it would be a positive step to indicate a limitation of time for the trial as well as in the pre-trial processes.

---

[764] See section 4.6.3 Detention.
[765] See section 4.6 Thai Criminal Procedure for Terrorism Charges.
[766] See Chapter 2 (section 2.2 Definition of Terrorism).
[767] See section 4.6.7 Thai Judicial Performance.
[768] Ibid.

Chapter 5

Special Laws and Counter-Terrorism in Thailand

5.1 Introduction

Thailand has applied both 'normal' criminal procedure laws and 'special' laws in counter-terrorism. The roles and functions of 'normal' criminal procedure laws were discussed in chapter four. This chapter highlights the roles and powers of three special laws, which are: the Internal Security Act 2008/2551, Emergency Decree on Public Administration in State of Emergency 2005/2548 and Martial law 1914/2457. These special laws are currently applied alongside 'normal' criminal procedure law in south Thailand (Pattani, Yala, Narathwat and four districts of Songkhla), where terrorism often takes place. In this regard, the so-called special laws mean a law that is applied solely against terrorism activities, in contrast to the 'normal' criminal procedure law, which is the standard law applicable in all areas of the state and against all types of activities. The Thai government has applied the special laws alongside criminal procedure law based on the rationale that the 'normal' criminal procedure law alone cannot cope when dealing with terrorism.[769]

As one of the research questions of this thesis is to explore the 'efficacy' and the 'legitimacy' of Thailand's counter-terrorism, it is necessary to examine the powers and the roles of these special laws. Specifically, the context of efficacy is examined based on two aspects. First, in order to explore the efficacy of the special laws in general, the study aims to make a comparison between the number of incidents occurring before applying the special laws and after applying the special laws in the areas. It aims to measure what the special laws have achieved in terms of crime control. Second, the study seeks to explore the effectiveness of the special laws within the context of the criminal justice system. It is assumed by the study that the conviction rate might be one of the important measures in measuring the efficacy of the criminal justice system. Thus, this part seeks to examine the efficacy regarding the application in the investigation process of the special laws in fighting terrorism through analysis of the conviction rates.

---

[769] Announcement of the Council of Ministers Thailand No. 205/2549 (2006) provided that 'in order to increase the state's ability to deal with the southern Thailand problem, the application of the special laws is required'.

Next, the research seeks to examine the application of the special laws in the context of 'legitimacy', which specifically refers to the notions of human rights, the rule of law, and compliance with the Constitution. Within the context of human rights, the study focuses on the rights of suspects, and attempts to explore whether there are any violations during official custody. In the context of the rule of law, the concept of being 'accountable under the law', which is one of the most important elements, will be examined. In particular, it seeks to explore whether any effective method applies to review officials' powers when using the special laws. Lastly, the study seeks to analyse the special laws based on the criminal justice system standards recognised by the Constitutional Law, for example, the presumption of innocence, speedy criminal processes, and the rights of suspects in the pre-trial process.

Aside from this critique, this chapter seeks to provide an overview of the structure of each law by considering the content of the provision and the powers of the officials. At the present the three special laws have been applied in all areas of Pattani, Yala, and Narathiwat.[770] The main officials who are responsible for using these special laws are military officers. Specifically, the main authority for the Internal Security Act 2008/2551 and Martial law 1914/2457 is military, whereas the Emergency Decree on Public Administration in State of Emergency 2005/2548 empowers both military and police.

Due to the limitation of publications regarding the application of the special laws and the restricted opportunities to conduct interviews with the military, the analysis of this chapter has been made primarily based on the relevant legislation as well as interviews with police officers, prosecutors, judges, defence lawyers and NGO staffers.

5.2 The background of the special laws in countering terrorism

As mentioned above, there are three sources of special laws in countering terrorism. Firstly, the Internal Security Act 2008/2551 has been applied in three southern provinces since 2008.[771] This Act has been applied as a mechanism of the Executive to maintain public order both in a time of peace and in a time of

[770] Ibid.
[771] Wichawut, A. (2009) *Application of Legal Measures against Terrorism in Thailand's Three Southernmost Provinces.* Bangkok. Thammasat University. pp. 6-7.

disorder.[772] This law can be enforced whenever the Cabinet deems it necessary to maintain public order or to control the situation. It is not necessarily restricted to being applied to deal with the terrorist threat in the south, as this law has been used to cope with protestors as a result of political unrest in several other provinces, such as Bangkok in 2009-2010.[773] The law was basically designed to establish an Internal Security Operations Command, called 'ISOC' for short, with the role and power of a decision-maker regarding counter-terrorism strategy.[774] This 2008 Act is mainly related to military executive functions, and there are not many provisions affecting criminal procedures.[775]

Secondly, the Emergency Decree on Public Administration in State of Emergency Decree 2005/2548 has been in operation since July 2005 under Section 218 of the 1997 Constitution.[776] The law can be enforced whenever the Prime Minister considers that there is a situation which affects public order or state security, and this includes war or the commission of offences relating to terrorism (Section 135/1-135/4 Criminal Code).[777] The declaration of a state of emergency in this regard shall be enforced throughout the period designated by the Prime Minister, but must not exceed three months. Exceptionally, in a case of necessity, the Prime Minister may announce successive extensions not exceeding three months each, according to Section 5 of the Emergency Decree. In practice, this Emergency Decree has been continuously enforced, as there is an announcement from the Council of Ministers every three months to extend the period of law enforcement.[778] This law empowers both the military and the police in the functioning of the criminal justice process. It provides several Sections for facilitating the officials in the tasks of supressing and investigating crimes.[779]

---

[772] Yomjinda, D. (2010) *Analysis of Internal Security Law of the Kingdom of Thailand*. Bangkok. Thammasat University. p. 69.
[773] *Matichon Newspaper*. Thailand under the Internal Security Act 2008/ 2551. [Online]. 3 December 2010. [Accessed 2 February 2015]. Available from http://www.matichon.co.th/index.php
[774] Yomjinda, D. (2010) *Analysis of Internal Security Law of the Kingdom of Thailand*. Bangkok. Thammasat University. p. 69. See also Section 5 of the Internal Security Act 2008/2551.
[775] See Internal Security Act 2008, Section 5. See also Figure 5.1 'Special Laws in Counter Terrorism in Three Provinces of Southern Thailand'.
[776] The Decree was issued under Section 218 of the 1997 Constitution of Thailand.
[777] The Announcement of the Council of Ministers No. 1/2548 (2005) stated that all areas of Pattani, Yala, and Narathiwat are emergency situation.
[778] Asawin, A. (2012) *The Effectiveness of Prosecution of National Security Charges and the Protection of Citizens' Rights: A Case Study of the Four Bordering Provinces in Southern Thailand (Songkhla, Yala, Pattani, Narathiwat).* Bangkok. Asia Foundation. pp. 10-11.
[779] See Figure 5.1 'Special Laws in Counter Terrorism in Three Provinces of Southern Thailand'.

Thirdly, the Martial Law 1914 basically empowers the military authority to act in superior status over the civil authority. In other words, this law is intended to switch powers in the criminal justice process away from the police towards a military authority. Regarding the conditions for enforcing this Martial law, according to Sections 2 and 4 of the law, the King and the General are empowered to declare Martial Law in the case where there is war or riot. Nevertheless, the enforcement of this law is not restricted to those aspects, as it was declared in Bangkok after the coup d'état in 2006 and 2014 as a military mechanism to maintain peace.[780]

The key provisions in the three special laws are as represented in Figure 5.1:

Figure 5.1 Special Laws as applied in Three Provinces of Southern Thailand

Source of Laws	Internal Security Act 2008/2551	Emergency Decree on Public Administration in State of Emergency 2005/2548	Martial Law 1914/2457
Conditions to enforce	In the situation where it is necessary to maintain public order or to fight terrorism (ss 3,7 and 15)	When the Executive considers that there is a situation that affects public order or state security, or of war or terrorism (s 4)	War or Riot (s 4)
Main Authorities	ISOC (military) (s5)	Military officers and Police (s 15)	Military Officers (s 6)
Powers conferred	To conduct criminal investigation To inspect any suspects, material including message, letters	To arrest and detain any suspect (not exceeding 30 days) To issue a summons To seize any material or weapons To search, remove or	Military officers have superior powers than police in criminal investigation To arrest a suspect

[780] Catherine, E. Thailand Military Announce Coup. *CNN News.* [Online]. 23 May 2014. [Accessed 13 February 2015]. Available from http://edition.cnn.com/2014/05/21/world/asia/thailand-crisis-up-to-speed/

	and so on. To prohibit any person to enter in some restricted areas. To prohibit assembly or meeting (ss 7, 15, 16 and 18).	destroy any structure or buildings without warrant (ss 9-12).	To search a suspect To inspect any suspects, including message, letters and so on. To prohibit transportation To prohibit any assembly or meeting Military Court is empowered to hear criminal cases (ss 9-12).
Periods of enforcement	Depending on Executive decision (s 5)	3 months for a declaration (it can be extended for three months) (s 5. para 2)	Depending on the Military (s 4)
Accountability	All actions under this Act shall not be subject to the Administrative Court or the Court of Justice (s 23).	An injured person can file a lawsuit in the Court of Justice, but not in the Administrative Court (ss 16, 17).	All actions under Martial Law shall not be subject to the law on administrative procedure, or the Court of Justice (s 16).

The special laws applied in the south of Thailand can be seen to contain some overlapping powers; for example, they all empower military officers to conduct arrests and searches but without any clear limits. Under these special laws, military officers enjoy such broad powers as ‘criminal enforcement officers’ to conduct criminal investigations, to issue summons, or to arrest and to detain terrorist

suspects. These special powers cannot be found in the normal criminal procedure law, where policing powers are very limited and bound by court oversight.[781]

Although the Emergency Decree 2005/2548 empowers both the military and the police, in practice the main authority is the military. One of the interviewed police officers explained that:

> ‘Under the special laws, the powers of investigation and interrogation are switched to the military officers, and what we can do is just assist them and receive arrested suspects for further prosecution’. **P.O.Y.5.7**

A prosecutor stated that:

> ‘In these three provinces where the special laws have been applied, the military have played key roles in pre-trial processes. They are responsible for both pursuing suspects and finding evidence to support a criminal case’. **P.P.P.2.13**

These responses indicate that the police’s powers in investigating terrorism offences under normal criminal procedure law, as described in Chapter 4, have been reduced by military intervention through the application of the special laws. However, it does not mean that the police’s powers under normal criminal procedure law have been terminated. Their powers do still exist, but they are subject to the military’s orders. It was stated by an interviewed defence lawyer that:

> ‘In these three provinces, both military and police officers are responsible for dealing with terrorist suspects. I have observed that the military has played a far more active role than the police in protecting and pursuing a terrorist suspect’. **D.L.Y.6.30**

An interviewed judge commented that:

> ‘The requirement to enforce the special laws here is understandable. In these areas, the normal criminal procedure law has functioned together with

[781] For further explanation, see at Chapter 4 (section 4.6 Thai Criminal Procedure for Terrorism Charges).

> the special laws. Thus, both the military and the police are considered as criminal justice officers in these areas'. **J.N.4.26**

One NGO staffer added that:

> 'I have seen that the special laws, especially the Emergency Decree 2005, have been used more frequently to deal with terrorist suspects in recent years. There were many cases in which arrests and searches have been conducted by the military through the special laws'. **N.G.O.3.31**

Based on these comments, it can be observed that there exist dual functions of both normal criminal procedure law and the special laws in countering terrorism, but there is no clear guideline for using these dual strategies or for demarcating between police and military. At the same time, it is implied that the application of the special laws seems necessary, to be enforced alongside the normal criminal procedure law, as the latter is depicted to be unduly weak in dealing with terrorist suspects.

In conclusion, though the need for extra special powers is widely recognised in an 'emergency', including in international law,[782] a principle of 'police primacy' should also be stated, perhaps in administrative arrangements between police and military. Police primacy is desirable since the police are more likely to have legitimacy amongst the local population and are more likely to be able to exploit criminal justice solutions to terrorism rather than executive solutions.[783] Police primacy has been adopted in other long standing counter-terrorism operations such as in Northern Ireland in 1976.[784] In Thailand, as explained in the next section, military primacy rather than police primacy is applied.

---

[782] See ICCPR Article 4; see also Chowdhury, S.R., (1989) *The Rule of Law in a State of Emergency*. London. Pinter. pp. 15-25; Oraa, J. (1992) *Human Rights in States of Emergency in International Law*. Oxford. Clarendon Press. pp.120-138; Sajó, A.(2004) *Militant Democracy*. Utrecht. Eleven International Publishing.

[783] Urban, M. (1992) *Big Boys' Rules: The Secret Struggle against the IRA.* London. Faber and Faber. p. 17. See also Walker, C, 'The Role and Powers of the Army in Northern Ireland' in Hadfield, B (ed), *Northern Ireland Politics and the Constitution* (Open University Press, Buckingham, 1992) pp. 112, 114–15.

[784] Ibid. p.112.

5.3 Investigation and interrogation under the special laws

Beginning with the investigation stage, according to Sections 6, 8 and 9 of the Martial Law, Sections 11 and 15 of the Emergency Decree, and Sections 16 and 19 of the Internal Security Act, military officers are empowered to conduct criminal investigations in the designated areas. Particularly, both Section 15 of the Emergency Decree and Section 19 of the Internal Security Act state that when those special laws are in force, military officers enjoy the authority of a police officer acting under the Criminal Procedure Code. This means that military officers may legally conduct investigations and interrogations the same as police officers in the affected areas. However, it does not mean that under the special laws, the police powers in conducting investigations and interrogations are automatically terminated. The police can still exercise such powers but only when receiving approval by military officers.[785] Thus, it is clearly demonstrated that under these special laws, the military officers enjoy greater superiority to the police. Generally, the military's function in Thailand is restricted to maintaining the state's sovereignty, in particular regarding war.[786] Accordingly, when the special laws are applied, the military officers possess a dual function in protecting the state's sovereignty as the main duty, and the other one being as an officer of criminal justice, the same as the police.

Critically, regarding the notion of efficacy, two main points need to be considered regarding the application of the special laws to give powers to the military in this context. The first concern is related to the ability of military officers to conduct investigations and interrogations. In the normal situation, police officers who have obtained the powers to conduct investigations and carry out interrogations are required to hold a Bachelor of Law degree and are required to attend compulsory courses regarding the guidelines about investigations and interrogations.[787] This contrasts with military officers, who are not required to be law graduates, and who have had no special instructions regarding the procedures of investigations and interrogations. Consequently, the level of efficacy of the investigations conducted by military officers is jeopardised, as this task is not familiar to the military officers. The second concern is related to the overlapping of powers between the police and the military officers, as both have conferred powers to be responsible for such

---

[785] See Internal Security Act 2008, Section 15 and Martial Law 1914, Section 6.
[786] See Act of Establishment of Defence 2008, Section 8.
[787] According to Royal Thai Police Act 2547, police officers who can conduct criminal investigation must have graduated with an LL.B.

tasks. In response to this point, the military is held to be predominant over the police in conducting investigations, as empowered under Section 16 of the Internal Security Act which provides that the military can order the police to perform or refrain from any specific activity including the responsibility for investigations and interrogations.[788]

On this point, one interviewed police officer who works in the area explained the relationship with the military in the following way:

> 'The military plays a major role here. They are the decision-makers behind the counter terrorism strategy. In most cases, when terrorism offences have occurred, we need to inform the military and assist them'. **P.O.N.3.7**

Another police officer noted that:

> 'Most of the investigations and interrogations have been carried out by military officers. The work of the military and the police at this stage is completely separated. The military officers are bound by the ISOC's decision, and they are specifically dealing with counter-terrorism, whereas the police officers have tended to maintain public order and prevent crimes in general'. **P.O.Y.6.7**

It appears that the roles of the police force under the special laws are restricted to assisting the military to share intelligence, while military officers are legally empowered as an 'investigative authority' who have full powers to conduct investigations and interrogations independently in terror crimes going beyond the normal criminal procedure law. To assess the effectiveness of the military's investigations in terrorism cases, one of the interviewed prosecutors replied that:

> 'The roles of the military officers in investigations are concrete. In practice, there were many cases where military officers successfully obtained key evidence and arrested suspects at this stage. I strongly agree that the military roles under the special laws are very necessary in the investigation process, while police powers through the normal criminal procedure law are considered insufficient'. **P.O.P.2.7**

Another prosecutor stated that:

---

[788] Section 18(1) the Internal Security Act 2008/ 2551.

> 'In investigations, the military officers have shown a high ability to find a suspect generally within a week, whereas police officers normally took a month or longer'. **P.P.Y.5.13**

Based on the information from the interviewed participants, the military officers and their powers through the special laws seem to play a vital role in criminal investigations, and this reflects the fact that the normal criminal procedure law alone is insufficient to deal with terrorism in the south of Thailand. The limited powers derived from the normal criminal procedure law impact on the capability of the police in the investigation process.[789] However, instead of revising the normal criminal procedure law by enhancing police powers in countering terrorism (or even conferring on the police added special powers), the government has chosen to utilise the special laws for the military as the preferred solution to support the weaker 'normal' criminal procedure law. However, the benefit of utilising the special laws in the investigation of terrorism cases should be weighed against the impacts of human rights derogations. Most of the interviewed defence lawyers and NGOs working for human rights disagreed with the use of the special laws, especially by the military. For example, one NGO staff member said that:

> 'The application of the special laws has raised a strong concern regarding human rights abuses. This is also a factor that increases the problem here, as it strongly encourages people here to distrust officials, especially the military. When the military have required people to help in finding evidence, most of the locals have refused due to their distrust'. **N.G.O.3.28**

A defence lawyer also voiced a familiar sentiment, namely that:

> 'The effectiveness of using the special laws to fight terrorism is still obscure, but its drawbacks are very clear. This kind of military power to deal with suspects without any checking process and beyond criminal procedure law has violated the rule of law. These laws facilitate officials in abusing their power. It is acceptable if the law is applied for a short period of time, but in practice it is continually applied as a general law'. **D.F.L.2.30**

---

[789] For further explanation, see Chapter 4, (4.6.1 Investigations).

It seems that the special laws have been applied as the state's strongest weapon to deal with terrorism. The laws provide extra powers in the investigation process in order to procure evidence and bring a suspect into the criminal system. However, the research found that the protection of suspects' rights during detention and the checking and balancing processes are still doubted, due to the military not being subject to prosecutors' or judicial reviews. The statistics regarding the human rights abuses in this regard can be found at section 5.9.1 below.

According to Section 11 (2) of the Emergency Decree 2005, a military officer is empowered to interrogate any terrorist suspect, the same as police officers. Unlike the normal criminal processes, no concrete rights are offered to a suspect who is interrogated by the military. In this sense, it would raise a question concerning the notion of 'legitimacy'. It may be questioned whether a suspect is treated fairly and has obtained the appropriate rights, such as the right to consult with a lawyer, to meet family, or to have medical access, as guaranteed by the Thai Constitution and Criminal Procedure Code. To further explore this issue, one defence lawyer explained that:

> 'I have been told by most of my clients who were arrested and interrogated by the military that they have never even had a chance to meet their family and no right to meet a lawyer during the interrogation process, and this totally differs from the application of the normal criminal procedure law, where police officers have strictly followed the rules'. **D.L.N.4.30**

Furthermore, the special laws do not specify the place for conducting an interrogation. Accordingly, the place for carrying out the interrogation subjectively depends on the military, and this point raises a strong concern regarding the possibility of human rights abuse at this stage. One of the NGO staffers stated that:

> 'If suspects are interrogated by police, then they will be interrogated at a police station. In contrast, if the interrogation is carried out by the military, nobody knows what is going on nor even the place to conduct the interrogation'. **N.G.O.1.26**

Another NGO staffer added that:

> 'For a terrorist suspect, the interrogation process is the riskiest stage of possible human rights abuse. The interrogation can be done at military camps or even in a forest'. **N.G.O.4.26**

Based on the comments from the non-official respondents above, it appears that the interrogation processes raise strong concerns about the observance of 'legitimacy'. There are three main points to be considered here. Firstly, the special laws provide certain powers for the military to interrogate a suspect, but without any clear guidelines about the venue where it is to be held. Secondly, important rights are not secured to a suspect at this stage, which obviously differs from the normal process. Lastly, there is not any checking and balancing process from another governmental branch. Accordingly, it can thus be concluded that the interrogation process conducted through the Emergency Decree 2005 has the greater potential to cause violations under the concept of 'legitimacy', and the interviews above suggest that this damage to legitimacy occurs in reality.

At the same time, the foregoing picture of military primacy may need some correction, for it was argued by one prosecutor that in practice most of the terrorist suspects were interrogated by the police through the application of the normal criminal procedure law.

> 'Most of the terrorist interrogations here have been done by police officers under normal criminal processes. Although the military is allowed to carry out an interrogation, their primary job is to pursue a suspect'. **P.P.P.2.35**

This report indicates that Thailand's counter-terrorism strategy in practice is based on a hybrid-function between the normal criminal procedure law and the special laws. As a result, the military can still enjoy their powers without any clear restrictions at this stage. Both the investigation and the interrogation can be conducted by the military. Consequently, the Thai government has concentrated on pursuing terrorist suspects with less regard for the protection of human rights and without judicial accountability. Accordingly, the balance between efficacy and legitimacy needs to be reworked. As stated earlier, the aim of police primacy and not military primacy should be stated, at least in administrative terms and preferably

in law. The military should be allowed a power of arrest and a short period of detention to allow a transfer of the suspect to the police. In addition, if the military continue exceptionally to be deployed as criminal investigation officers, then they must be subjected to training requirements and express rights must be granted to suspects equivalent to those applying to police detainees.

5.4 Arrest and search under the special laws

When the special laws are applied, military officers automatically become criminal justice officers who lawfully enjoy power to conduct an arrest as explained above.[790] In particular, under Section 11 of the Emergency Decree 2005, military officers are given the power to conduct arrests:

> 'After the declaration of this Emergency Decree, the military officers shall be entitled:
>
> (1) To arrest and detain any suspect'.

Section 12 of the Emergency Decree provides that:

> 'To arrest any suspect pursuant to the announcement under Section 11 (1), the competent authority shall seek the permission of the jurisdictional court or Criminal Court'.

Based on the provision, an arrest can be made by a military officer. However, just as in the normal criminal procedure law, there is no power to conduct an arrest without a warrant. Both military and police officers require a court's permission to execute an arrest. However, it has been argued by most of the defence lawyers and NGO staffers that, in practice, the majority of terrorist suspects have been arrested by the military without a warrant, and the military's power in this aspect seems to be disconnected from the court's review.

In this regard, one of the defence lawyers who is currently working in the area pointed out that:

[790] Section 6 of Martial Law 1914 and Section 11 of Emergency Decree on Public Administration in State of Emergency 2005/2548.

> 'The military's search and arrest powers here are not bound by criminal procedure law, so their powers are rather subjective. In practice, anyone who is believed to be connected to terrorist incidents or terrorist groups will be arrested without warrant. The military's preferred way is to arrest not only the terrorist suspects but also their relatives or friends, and most of them have been arrested without warrants by military officers'. **D.F.L.5.30**

On this point, the military's arresting powers engage a strong concern about human rights protection, since they fail to incorporate any basic rights of an arrested person as guaranteed by the Thai Constitution (both 1997 and 2007)[791] and also article 9 of ICCPR, which states that:

> 'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law'.

Furthermore, an interviewed NGO staff member, working for human rights in the south of Thailand, showed a feeling of distrust against the application of the special laws by stating that:

> 'I do not agree with empowering military officers to conduct arrests or to investigate in southern Thailand. I believe in using police officers through the normal criminal justice process by conducting arrests based on justifiable evidence and court warrants, but the military officers are not doing so. In December 2012, around 250 people who lived in the same village were all arrested by military officers, based on the Emergency Decree 2005, and suspected as terrorists. This sounds strange but was real. However, most of them were soon released as there was insufficient evidence to prove their guilt. This shows the strong power of the military officers in this stage, that they could arrest any suspicious people without warrants and without checking and balancing processes'. **N.G.O.3.29**

This story also reveals the military tactic of arresting terrorist suspects for gaining further evidence by arresting first then releasing when there is not enough evidence. This absolutely violates the Thai Constitution 2007 principle of protecting

---

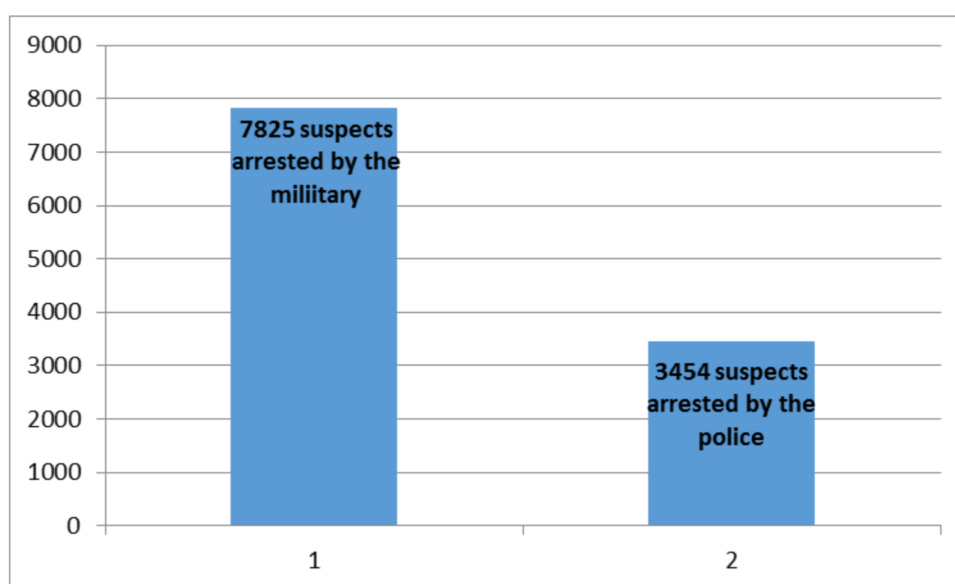
[791] See Chapter 4 (Section 4.6.2 Laws of arrest).

rights and liberties in the arresting process. Section 32 of the Thai Constitution 2007 states that

> 'The arrest and detention of a person shall not be made except by an order or warrant issued by the Courts.
>
> In the case where there is an action affecting rights and liberty under paragraph one, the injured person, public prosecutor or any person acting for the benefit of the injured person shall have the right to bring a lawsuit to the Courts so as to stop or nullify such action and to impose appropriate measures to alleviate the damage occurred therefrom'.

Moreover, legal rights under the normal criminal procedure law such as the right to be informed by an arrester about the type of charge or the right to be silent are not granted. In order to understand better the roles of military and police in the process of arresting people for terrorist offences, statistics regarding numbers of terrorist suspects who were arrested by each agency shall next be explored in Figure 5.2.

Figure 5.2 Numbers of suspects arrested by the military compared to the police 2005-2012.[792]



These figures show that the military has played a more important role in the process of arresting people, in particular for terrorist offences. One of the main

[792] The statistics were compiled by Public Prosecutor Office Region 9 Pattani. [online] [Accessed 5/4/15] Available at http://www.region9.ago.go.th/

reasons why the number of terrorist suspects arrested by the military outweigh by almost double the number arrested by the police is due to the application of the special laws, especially Section 11 of Emergency Decree on Public Administration in State of Emergency 2005/2548.

Next, regarding special search powers, both the Martial Law 1914, Section 9, and the Emergency Decree 2005, Section 11(4), provide certain powers to the military for conducting searches. Section 9 of Martial Law 1914, which is the main provision regarding search powers, provides that

> 'The powers to make a search are as follows:
>
> (1) To inspect or search things which may be under compulsory requisition or to be prohibited, seized or stayed in, or things which the possession thereof is illegal, including search the body, vehicle, dwelling place, building or any place and any time'.

Section 11 (4) of the Emergency Decree provides that:

> 'The military shall be entitled to search, remove or destroy any structure or building'.

According to these Sections, military officers are empowered to undertake searches without a warrant and again without any judicial review or checking and balancing process from another governmental branch.

However, when the issue of the search powers through the special laws was raised with interviewees, most of the criminal justice officers accepted it and regarded it as a necessary tool in conducting an investigation. For example, one prosecutor said that:

> 'The power to search without a warrant in these areas is of course a necessary power for dealing with suspects in advance. Although this method may raise many concerns of human rights abuses, it is still considered important, and it has been proved to be successful in several cases. For example, weapons or instruments have been discovered at this stage'. **P.P.P.2.35**

A judge also added that:

> 'I understand that the work of the military in counter terrorism requires an active manner, and thus the application of the special laws is needed. The power to make a search without a warrant is deemed appropriate for a situation where the normal criminal procedure law seems insufficient'. **J.Y.5.26**

As for the analysis of the researcher, these search provisions once again prioritise the military's function in suppressing crime. By contrast, since the police are required to obtain a search warrant from a court, their required process takes time and consequently evidence may be harder to collect or even may disappear. Therefore, these laws greatly prioritise the military in conducting searches, and there is no government branch to review the military powers in this aspect, so it is possible that military officers can use these provisions as a mechanism for the abuse of powers. The information regarding the abuse of powers in this stage is provided at section 5.9 of this thesis ('Legitimacy and the application of the special laws'). Comparisons also need to be made with the normal criminal process regarding the powers of search, in which in order to avoid any arbitrary use of power by the police search, the search can be carried out only when there is a warrant issued by a court.[793] In conclusion, the reforms set out at the end of section 5.3, for example, in terms of police priority and training, need to be considered here.

5.5 Detention under special laws

The Emergency Decree on Public Administration in the State of Emergency 2005/2548 is the main provision regarding the special powers of detention. It should be noted again that this Emergency Decree provides special powers for both the military authorities and the police to carry out detentions. Thus, in the areas where this Emergency Decree has been applied, the police are at the same time empowered by both the normal Criminal Procedure Code[794] and this Emergency Decree.[795] The main distinction is that the Emergency Decree allows for detention without charge for 30 days, whereas the normal criminal process allows the police to detain suspects, after notifying them of the charges, for the maximum 84 days for

---

[793] Further explanation of search powers in accordance to the Thai criminal procedure law can be found in Chapter 4.
[794] See Thai Criminal Procedure Code, Section 92.
[795] See Emergency Decree on Public Administration in State of Emergency Decree 2005/2548, Section 12.

pending a trial.[796] Nevertheless, in the affected areas, the role of the police in this early stage of criminal justice has been extremely reduced as a result of the application of Section 6 of the Martial Law 1914, which stipulates that:

> 'The civil authority (includes police) shall act in compliance with the requirements of the military authority'.[797]

Consequently, the majority of the detention tasks have been conducted by the military authority, which offers another reflection that the military plays a more important role than the police in the criminal justice system in cases of terrorism.

Regarding the details of the powers of detention, it is stipulated by Section 12 of the Emergency Decree 2005/2548 that:

> 'The arrest and detention of any suspect pursuant to the announcement under this Act, the competent authority may detain suspects for not more than 30 days. The suspects must be held in a designated place not being a police station, detention chamber, prison or penal institution, and the suspects may not be treated as a convict'.

There are four main features that need to be mentioned. Firstly, the order of detention is merely based on the officials' discretion (often issued by military authority). This Section greatly empowers the officials to use their discretion to decide whether or not to detain suspects without any court review. It can also be observed that this provision does not provide any guidelines regarding the exercise of discretion or even any example of a likely situation for issuing a detention order. The second point is related to the detainee's rights. When suspects are detained under this law, their status at this stage is obscure. A comparison should be made here with the normal criminal procedure law, whereby once suspects are informed of the charge, their status is changed to one of accused.[798] After that, they will be informed of several rights in accordance with Sections 7/1 and 134 of the Criminal

---

[796] See Thai Criminal Code, Section 87. For further information, see Chapter 4 (section 4.6.3. Detention).

[797] Wichawut, A. (2009) *Application of Legal Measures against Terrorism in Thailand's Three Southernmost Provinces*. Bangkok. Thammasat University. p. 112.

[798] See Thai Criminal Procedure Code, Section 134.

Procedure Code, such as the right to meet a lawyer, the right to access legal counsel, the right to the presumption of innocence and so on.[799]

Regarding the rights of suspects according to the special laws, one of the NGO staff commented that:

> ‘When suspects were arrested through the application of the special laws, in particular to the Emergency Decree 2005, their rights to be protected by criminal procedure law were definitely gone. Based on my personal experience, most of the suspects who contacted me were not informed of their proper rights by military officers, and they even do not know whether they have right to meet a lawyer’. **N.G.O.1.22**

Although the special laws seem to be helpful in terms of pursuing terrorist suspects to a greater level of efficacy, the weak level of human rights protection, through the absence of the right to meet a lawyer and the right to have access to medical treatment, is a clear deficiency.

The third point is concerned with the place of detention, as it remains unclear where suspects may be held; the law only provides mention of prohibited places.[800] However, it has been revealed by the Muslim Attorney Centre Foundation (MAC) that generally suspects are being held at safe houses that are far from the public and are kept secret.[801]

Regarding the place of detention, one of the defence lawyers pointed out that:

> ‘Most of my clients have told me that they were held at military camps or forests far from towns. They were isolated without any rights to meet a lawyer or their families’. **D.L.P.1.30**

---

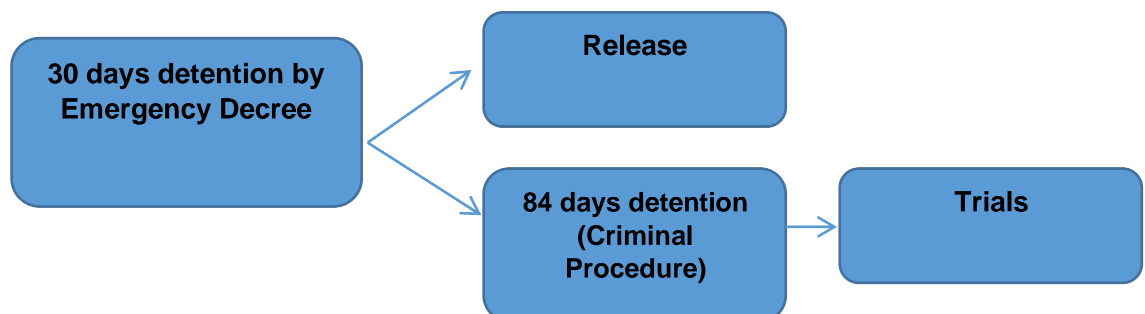
[799] Ibid.

[800] Emergency Decree on Public Administration in State of Emergency Decree 2005/2548, Section 12.

[801] Arware, P. (2009) *Problems Arising from Special Laws in Southern Thailand*. [Online]. [Accessed 5/4/15]. Available at http://www.deepsouthwatch.org/blogs/MuslimAttorneyCenter

The final point concerns the duration of the detention process. The law stipulates that the maximum duration of detention is 30 days.[802] This stage is called pre-charge detention, and interrogations are generally undertaken at this stage by the military officers.[803] After the interrogation is completed, there are two choices for the military authorities. The first option is to release the suspect if there is insufficient evidence, and the second is to send the suspect to a police station. Some consideration needs to be placed on the latter choice, which means that the powers of the military in the criminal process derived by the special laws (in particular to the Emergency Decree, Section 12) are automatically terminated.[804] At the same time, the normal criminal process, in accordance with the Criminal Procedure Code, then begins. Consequently, the suspects will be informed of the charges and their rights by the police, subject to Sections 7/1 and 134 of the Criminal Procedure Code.[805] Importantly, the duration of detention in accordance with Section 87(6) of the Thai Criminal Procedure Code, which may not exceed 84 days for a terrorism offence, is also started. Thus, terrorism suspects can be detained under the powers of the Emergency Decree Section 12 for 30 days (pre-charge detention) plus another 84 days through the normal criminal procedure laws, which is equal to 114 days, or almost four months, as illustrated below in Figure 5.3.

Figure 5.3 Detention process under the special laws



Reflecting on the foregoing analysis, the detention process under the special laws violates human rights in several aspects. As guaranteed by the ICCPR article 9, a

---

[802] See Emergency Decree on Public Administration in State of Emergency Decree 2005/2548, Section 12.
[803] Yomjinda, D. (2010) *Analysis of Internal Security Law of the Kingdom of Thailand.* Bangkok. Thammasat University. pp. 30-34.
[804] Ibid.
[805] After the suspects are informed of the charges, their status is 'accused'. They thus obtain several rights such as the right to meet a lawyer, family, and trusted person, the right to be presumed innocent, the right to medical treatment, and so on. See Sections 7/1 and 134 the Thai Criminal Procedure Code.

person detained on a criminal charge shall be brought promptly before a court within a reasonable period of time for the further stages of either trial or release. Furthermore, the detention process under the special laws offers no right to appeal to a court. The 30 days of detention under the special laws, plus the 84-day detention period of the normal criminal procedure law, are too long for a terrorist suspect to be detained without any reviewing process and amount to detention without trial which should only be allowed in a situation of declared emergency. Unlike an arrest, a detention order does not require any judicial review or warrant. This effectively means that the military could detain any terrorist suspect based on their own discretion. This absolutely violates the principle provided by the Thai Constitutions of 2016 and 2007, which both guarantee that 'detention of any person shall not be permitted, except by a court order or warrant'.[806] This detention stage rests too much upon the military's discretion, and raises a strong concern about its 'legitimacy' because of the breach of the right to not be arbitrary detained.[807] Instead of applying the special laws as a supportive strategy to increase the capability of the state's counter-terrorism strategy, the application of the special laws here seems to indicate a negative impact on the community, in particular with regard to the fairness and legitimacy of the law.

5.6 Trial process under special laws

According to Section 7 of the Martial Law 1914, the Military Court is empowered to hear criminal cases:

> 'Within the area under the Martial Law, the Military Court may be empowered to conduct the trial and adjudicate the criminal case committed within the area and under the period of the application of the Martial Law'.

This switches the jurisdiction of the Courts of Justice (Provincial Courts) for hearing criminal cases to the Military Court, in accordance with Section 7 of the Martial Law 1914/2457. Nevertheless, it is not compulsory that all criminal cases should be transferred to a Military Court; the choice is based on the ISOC's decision.[808] This aspect is the main distinction compared with all of the other special laws that have

---

[806] See the Thai Constitution 2016, Section 25 and the Thai Constitution 2007 Section 32.
[807] See ICCPR, Article 9 (3).
[808] Yomjinda, D. (2010) *Analysis of Internal Security Law of the Kingdom of Thailand*. Bangkok. Thammasat University. pp. 112-115.

been applied in south Thailand, as this Martial Law provision alone empowers military officers at the pre-trial process, such as investigation, as well as empowering the Military Court to use its power over criminal cases. In this regard, it seems to violate the precept of the Thai Constitution (2007) in Section 40 (rights to a fair trial) for three main reasons. Firstly, the judges in the Military Court are not independent from the executive.[809] Secondly, the judges in the Military Court are senior military officers who are not familiar with hearing criminal matters.[810] Lastly, there is only a military Court of First Instance, which means that no party has any right to invoke an appeal.[811] Even though the Martial Law 1914 allows the Military Court to exercise its power over criminal cases, the Court of Justice remains the main organization to hear criminal cases in the areas.[812]

On this point, an interviewed senior judge explained that:

> 'The majority of terrorism cases in southern Thailand have been prosecuted in the Court of Justice (provincial criminal courts) even though the military courts may have jurisdiction over terrorism cases. The reason behind this phenomenon is that terrorist cases contain both complicated legal and factual issues, and thus military courts with a senior military officer being a judge would not be a suitable institution to hear this kind of case'. **J.Y.5.26**

Another judge said:

> 'All terrorist cases over the last five years (in Pattani, Yala and Narathiwat) have been tried by the Court of Justice (criminal court), the same as other crimes. In practice, the military court does exist only for cases that are deemed unusual, such as having a wide impact on the public or a direct connection to military officers'. **J.P.1.26**

These opinions have been affirmed by most of the defence lawyers and the NGO staffers interviewed. Accordingly, it can be concluded that the roles of military officers under the special laws have been restricted in trial processes.

---

[809]http://www.lrwc.org/thailand-trials-of-civilians-in-military-courts-violate-international-fair-trial-rights-statement/ See also http://www.ohchr.org/EN/newyork/Documents/FairTrial.pdf p.15
[810] See Military Procedure Act 2498, Section 11.
[811] Ibid.
[812] Yomjinda, D. (2010) *Analysis of Internal Security Law of the Kingdom of Thailand.* Bangkok. Thammasat University. pp. 112-115.

The minimal role in trial processes of the special laws would appear to indicate that the Thai government still has trust in the normal criminal procedure law at trial level. Although this study has found in Chapter 4 that there are some aspects that need to be improved in a trial process, such as reducing the lengthy period of detention and the process of making judgments, the Thai government seems to have ignored these shortcomings by placing more emphasis on reforms about dealing with terrorist suspects at the early stage of the process. The researcher likewise considers that the Court of Justice is the proper organization to hear a terrorist case in the south of Thailand. However, it would be better if the special laws could be utilized to enhance both the pre-trial and the trial processes. One such reform is that there should be a specific court to hear only terrorism cases by experienced judges. This proposal was agreed by most of the interviewed participants, both non-official and official. For example, one prosecutor stated:

> 'Now, there is a specific Prosecution Department for cases of terrorism at Pattani, and I found that our work on terrorism case files has been greatly improved, so I would agree that there should be the establishment of a specific court for terrorist cases as well, in order to enhance the capabilities of the judicial process'. **P.P.Y.5.35**

One senior judge provided the following comment:

> 'The number of terrorist cases here has been increasing year by year. Consequently, a specific court for terrorist cases sounds sensible, and it would strengthen our judicial system. In practice, there are many judges who have been moved from other parts of the country, and some of them do not understand the local and Muslim cultures. Therefore, a specific court for terrorism, led by experienced judges, would possibly be a good solution'. **J.N.3.26**

One defence lawyer noted that:

> 'I agree with the idea of a specific court for cases of terrorism in these areas. It would unify the criminal justice officers in their work, and at the same time it would facilitate us (lawyers) in terms of work and transportation. **D.L.P.2.30**

Based on the comments above, the idea of establishing a specialist court within the normal criminal procedure system to deal with terrorism cases would be a positive way of enhancing the criminal justice system.

5.7 The relationship between military officers and criminal justice officers (police and prosecutors) under the special laws

Under the Emergency Decree on Public Administration in the State of Emergency 2005/2548, the military authority is empowered to conduct investigations and interrogations the same as the police in any normal criminal process, as provided in Section 6:

> 'The competent authorities under this Emergency Decree or persons invested with the same authority as them shall become the officers under the Criminal Code and shall enjoy the authority of police officers under the Code of Criminal Procedure'.

Based on this provision, the military has full powers for conducting those pre-trial processes, and in some stages such as the arresting and detention processes, the military obtain greater powers than the police, as they can exercise their powers without any check by a court or a prosecutor.[813] Although the special laws empower the military to function in the investigation process as explained, it does not mean that the powers of the police, as derived through the normal criminal procedure laws, are automatically terminated. The normal criminal procedure laws thus function alongside the special laws. As both the military and the police have powers of responsibility during this early criminal process, there might be problems regarding an overlapping of powers. Regarding this point, it is stated by Section 6 of Martial law 1914 that:

> 'Within the area of the Martial Law, the military authority shall have superior power over the civil authority (includes police) in regard to military operations, desistence or suppression, or maintaining public order. The civil authority shall act in compliance with the requirements of the military authority'.

---

[813] The military is empowered to conduct search and arrest in accordance to Section 11 of Emergency Decree on Public Administration in State of Emergency Decree 2005/2548.

Thus, it is necessary for the police to comply with the military's orders. For example, the military can order the police to continue or stop conducting certain criminal investigations through the application of this provision. As for the next step, when the investigations and interrogations have been completed, basically a case file will be lodged with the police together with a physical transfer of the suspects.[814] In this sense, the normal criminal process will be started as discussed, and after that point the role of the military will be terminated. However, it is not compulsory for the military to lodge a case file with the police in all situations, since no provision stipulates as such.[815] Instead, a case file might be lodged directly with the prosecutors.

However, one of the prosecutors commented on this relationship, pointing out that:

> 'In practice, the prosecutors have less contact with military officers. We generally receive case files from police officers as the normal criminal process. Even though military officers might be deemed as criminal justice officers in this stage, they are independent and not under the supervision of prosecutors, like police officers. Thus, we cannot order them to conduct supplementary investigations when their case files are deficient'. **P.P.Y.6.35**

Even though the Section 6 of the Martial Law 1914 indicates the military's status as being superior to the civil authority, the military has no power to intervene with prosecutors in exercising the prosecution decision. In this regard, the right of criminal prosecution is reserved for the prosecutors, who are independent and free of any interference from other branches of government.[816]

As discussed previously, the role of police officers where the application of the special laws has been enforced is restricted to one of assisting the military and is subject to the military's orders. However, in practice it was argued by most of the defence lawyers that the function of the military's work under the special laws is rarely connected to the police. One lawyer accordingly noted that:

> 'I have observed that the relationship between them is unclear. I have rarely seen cooperation within counter-terrorism between them'. **D.L.P.1.30**

---

[814] Yomjinda, D. (2010) *Analysis of Internal Security Law of the Kingdom of Thailand*. Bangkok. Thammasat University. p. 89.
[815] Ibid. p. 101.
[816] Section 7 of Public Prosecutor Organ and Public Prosecutor Act 2553/2010.

Another lawyer also stated that:

> ‘In these areas, or even in this country, the military is predominant. Nobody dares to intervene in their work. The military plays an important active role in countering-terrorism; while the police seem to concentrate on maintaining the public’s security in general’. **D.L.Y.5.26**

One NGO staffer commented that:

> ‘I do not see much cooperation between the police and military. Their work seems to be independent, with their own strategy’. **N.G.O.2.31**

Although the special laws widely empower both the military and the police to take an active role in countering terrorism, in practice the military seem to take much more responsibility than the police. The roles of the military here are very clear in this pre-trial process. Their roles start from the powers to conduct an arrest, detain and interrogate a terrorist suspect, and it can be observed that only the process of arresting a suspect requires any judicial review, as stipulated by the Emergency Decree 2005 Section 12. However, as commented by most of the defence lawyers and NGO staffers, in practice the military’s way of arresting is often conducted without a court’s warrant, which indicates that the military plays a greater role and involves unclear cooperation with other governmental branches.

5.8 Immunity of officials under the special laws

Besides bestowing extensive powers on officials in criminal pre-trial processes, such as search and arrest, the special laws also provide immunity for officials from their performance. In other words, officials who exercise powers through the special laws may enjoy legal protection from both civil and criminal suits from an injured person. These immunities may be necessary since several provisions, such as Section 12 of Emergency Decree on Public Administration in State of Emergency 2005/2548 that allows for making an arrest, and Section 9 of the Martial 1914 which allows for searching people and properties, are considered to be potential violations of the constitutional rights of individuals. By contrast, under normal conditions, when the special laws are not applied, both the military and the police should be responsible for their excessive use of powers, in particular offences relating to public officers.[817] Also, they might be subject to review by the Administrative Court

---

[817] Thai Criminal Code, Sections 147-166.

in accordance with Section 9 of the Act on the Establishment of Administrative Court and Administrative Court Procedure B.E. 2542/1999.[818] However, officers who use powers derived from the special laws are immune and might not be made subject to those offences or the Administrative Court.

Regarding the immunity provided by the special laws, each law provides for several ranges of levels in an official's immunity. Firstly, the Emergency Decree on Public Administration in the State of Emergency 2005/2548 is considered to offer the highest level of protection. The limitation of officials' liability is provided for in Section 17 of Emergency Decree 2005/2548:

> 'The competent authorities under this Emergency Decree shall incur no civil, criminal or disciplinary liability for their performance of duties to suppress or prevent any unlawful act, if such performance is rendered in good faith, does not give rise to discrimination and does not exceed the reasonability or necessity of the circumstances'.

The level of legal protection stipulated by this provision is considered very high, as it fully protects officials (both military and police) from civil and criminal liabilities. Thus, any official who causes damages as a result of using powers derived from the Emergency Decree 2005 shall not be subject to civil and criminal liabilities. Furthermore, officials exercising powers under this Emergency Decree shall not be subject to the jurisdiction of the Administrative Court. This is clearly stated in Section 16 of the Emergency Decree 2005:

> 'The ordinances, announcements, orders or actions under this Emergency Decree shall not be subject to the law on administrative procedure and the law on the establishment of administrative courts and procedure thereof'.

Secondly, the Martial Law 1914 also provides for the limited liability of military officers causing damages as a result of their performance of duty under the Martial Law. This is provided in Section 16 of the Martial Law 1914, namely that:

---

[818] Section 9 of the Act on Establishment of Administrative Court and Administrative Court Procedure B.E. 2542/1999 allows an injured person to action against a public officer who excessively use of power.

> 'No compensation or indemnity for any damage which may result from the exercise of powers of the military authority because all powers are exercised by the military authority in the execution of this Martial Law with a view to preserving, by military force, the prosperity, freedom, peace, and internal or external security for the king, the Nation and the religion'.

It can be observed here that this provision clearly provides a limitation on the civil liabilities for the military authorities, although there is no provision for protecting them against criminal liability.[819] On this point, it is possible that the military authorities might be subject to criminal liability whenever they commit an offence regarding their performance. However, as the three special laws have been applied together in the areas, the military should also obtain protection from the Emergency Decree 2005 in criminal liability as discussed above. This also illustrates the high legal protection provided by the special laws, as an officer may be protected by several provisions at the same time.

Lastly, the Internal Security Act 2008/2551 seems to provide a minimum level of protection for the military authorities. This may be because the primary aim of this Act is to establish an Internal Security Operations Command, called 'ISOC' in brief, having the authority and responsibility to the internal security operations in the role of a decision-maker; and there are not many provisions giving powers to the military in the exercising of criminal matters. However, there is one provision that protects the military authority from the power of the Administrative Court, as provided in Section 23:

> 'All actions under this Act shall not be subject to the law on administrative procedure'.

Although there is no provision to protect the military authorities from civil and criminal liabilities, they can be protected from such liabilities by the Emergency Decree 2005 as discussed above.[820] Regarding Section 23 of the Internal Security Act 2008/2551, it means that any wrong caused by officials under this Act cannot be litigated in the Administrative Court. This stands in contrast to the concept of the

---

[819] Yomjinda, D. (2010) *Analysis of Internal Security Law of the Kingdom of Thailand*. Bangkok. Thammasat University. pp. 55-56.

[820] Emergency Decree on Public Administration in State of Emergency 2005/2548, Section 17.

Thai administrative law, which allows an individual who suffers from the exercise of any unlawful powers by government institutions or officials to file a lawsuit to the Administrative Court, in accordance with Section 5 of the Administrate Procedure Act 2539. As a result, Section 23 of the 2008/2551 Act might also violate the concept of the Thai Constitution (2007) Section 60, which ensures the rights of its citizens to sue government institutions or officials regarding the exercise of unlawful powers. On this point, the Office of the National Human Rights Commission of Thailand has requested the Office of the Prime Minister to launch a policy to remedy the wrongs suffered by innocent people who have been affected by the application of the Internal Security Act 2008/2551.[821]

When the issue of the immunity for officials under the special laws was raised with the participants, most of them seemed to be dissatisfied, especially the defence lawyers and NGO staffers, who considered that the official's powers must be accountable before the law and compliant with the notion of 'legitimacy'. For instance, one defence lawyer said:

> 'The certain immunity given by the special laws embodies the encouragement of official abuses'. **D.L.P.1.26**

One NGO staffer added that:

> 'This reflects an unfair situation in these areas. Officials can do nothing wrong, especially, in this country, where the military is predominant'. **N.G.O.3.34**

These comments were also accepted by most of the prosecutors and judges, which indicate that the exercising of powers under the special laws should be examinable under judicial review. However, most of the police officers represented the only one group who agreed with the greater immunity offered by the existing special laws. For example, one stated that:

> 'That legal immunity is necessary for us in practice. Without such immunity, it would be very difficult for us to function in practice, as our work comes so close to impacting upon the citizens'. **P.O.P.2.26**

[821] Office of the National Human Rights Commission of Thailand (2010): Policy Recommendations and Suggestions for Improvements Special Laws Related to the Internal Security Act 2008/2551. [Online]. [Accessed 25/4/2015]. Available at http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/NHRC-NationalHumanRightsCommission-eng.pdf

This statement reflects clearly that most of the participants realise that wide immunities powers could facilitate officials in the abuse of their powers, and most of them support a more accountable strategy to examine such powers. However, the comment made by the police officer above is also a good indication of another aspect, namely that the immunity given by the special laws, such as rights not to be subject to the Criminal and Administrative Courts, are necessary to avoid negative impact on their work in practice.

Nevertheless, the researcher takes the view that the broad legal immunities might lead to an abuse of powers of officials, and inevitably reflect a lack of legality and violate the precepts of the Thai Constitution. Also, this method stands in contrast to the concept of international human rights law, which provide that there should never be immunity from torture.[822]

5.9 Legitimacy and the application of the special laws

This section seeks to examine the application of the special laws in the context of 'legitimacy', which specifically refers to the notions of human rights, the rule of law, and the Constitution. Within the context of human rights, the study focuses on the rights of suspects, and attempts to explore whether there are any violations during official custody. Regarding this point, it has been stated by the National Human Rights Commission (NHRC) that between 2007 and 2013 over 75 percent of all complaints about torture received by the NHRC have come from those three provinces, and with specific reference to the action of torture by the military and the police.[823] It seems that human rights violations are a prime concern regarding the application of the special laws. In the context of the rule of law, the concept of being 'accountable under the law', which is one of the most important elements, will be examined. In particular, it seeks to explore whether there is an effective method to review officials' powers in using the special laws. Lastly, it seeks to discuss the special laws based on the criminal justice system concepts recognised by the

---

[822] See *R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 3)* [2000] 1 AC 147; Chigara, B. (2002) *Amnesty in International Law: The Legality under International Law of National Amnesty Laws* Harlow. Longman; Lessa, F. and Payne, L.A. (eds) (2012) *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* Cambridge. Cambridge University Press.

[823] Amnesty International, Thailand Submission to the United Nations Committee against Torture 52nd Session 28 April -23 May 2014. [Online]. [Accessed 2/8/2015]. Available at https://www.amnesty.or.th/sites/default/files/attachments/thailand-_submission_to_the_un_committee_against_torture_11_april_final.pdf

Constitutional Law; specifically, the presumption of innocence, speedy criminal processes, and the rights of suspects in the pre-trial process.

5.9.1 Human Rights and the special laws

The use of special laws is closely related to human rights violations against suspects, as the laws provide certain powers to authorities without any effective review of those powers.[824] For example, under the 2005 Emergency Decree, the military authority may arrest suspects without informing them of the reasons or the charges, and can detain suspects for up to 30 days in a safe house; they can also refuse access to lawyers and to allow suspects' family to be present during this stage.[825] These remove important safeguards for suspects in criminal process.

On this point, one NGO staffer who works for human rights protection in southern Thailand stated that:

> 'We do not believe in the criminal justice system under the application of the special laws. We have encountered several cases of military officers abusing their powers toward terrorist suspects. It has been observed that most of the terrorist suspects who were detained by military officers were injured, and some were sent to a hospital in the military camp. Most of the injured suspects told us that they were tortured in several ways; for example, they were detained in a hot container for several hours, and they suffered from suffocation'. **N.G.O.4.31**

This information is consistent with one of the interviewed defence lawyers who worked in the area. He claimed that:

> 'I insist that human rights abuses by military officers in southern Thailand still exist. There are several tactics used to force suspects for obtaining further evidence or confessions. Based on my client's experiences, he was forced to undergo both physical and oral abuse whenever he denied a

---

[824] Pongsapitch, A. (2013) 'Security Sector Reform and Governance, The Case of Southern Thailand'. *Asia Security Policy Initiative Series Working Paper* (50). 22 July 2013. Bangkok. Chulalongkorn University. pp. 9-14. See also http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/THIndex.aspx.
eg Human Rights Council, Report of the Working Group on the Universal Periodic Review: Thailand (A/HRC/19/8 , 08/12/2011, and A/HRC/19/8/Add.1, 06/03/2012).

[825] Emergency Decree on Public Administration in State of Emergency 2005/2548, Section 12.

military officer's order. He was tortured by electricity, and in terms of verbal abuse, generally which referred to his religion; for example, he was questioned on why he became a terrorist, and if this was because of his god'. **D.F.L.2.24**

To better understand this point, statistics between 2009 and 2011 regarding the violation of human rights in the criminal process through three stages of arrest, interrogation and detention should now be considered as in Figures 5.4-5.6.

Figure 5.4 Types of human rights violation occurring during the arrest process under the application of the special laws (2009-2011).[826]

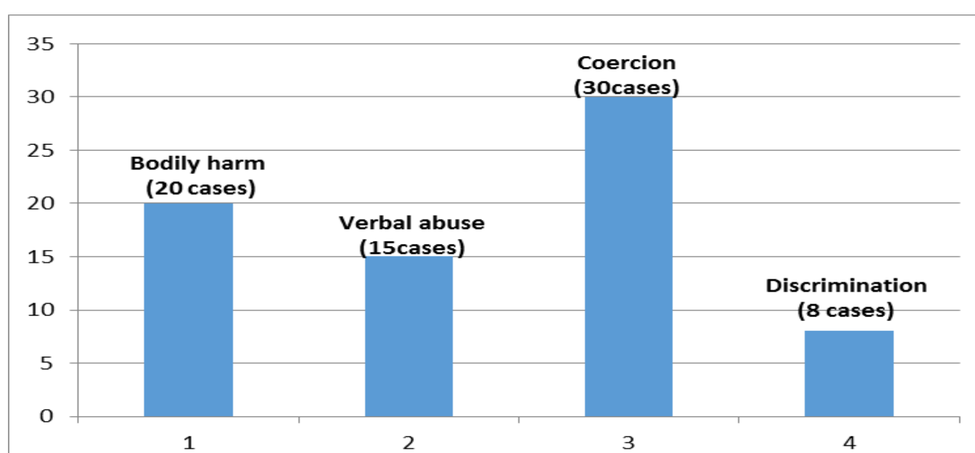
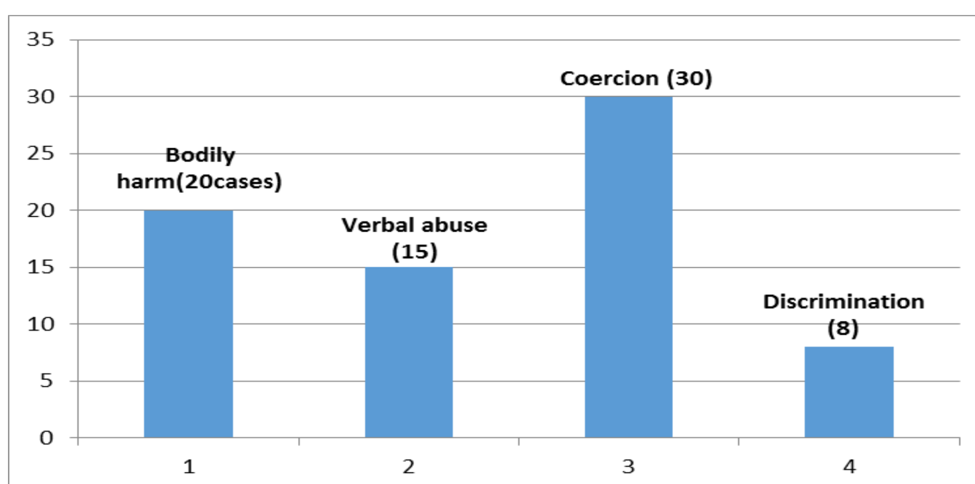


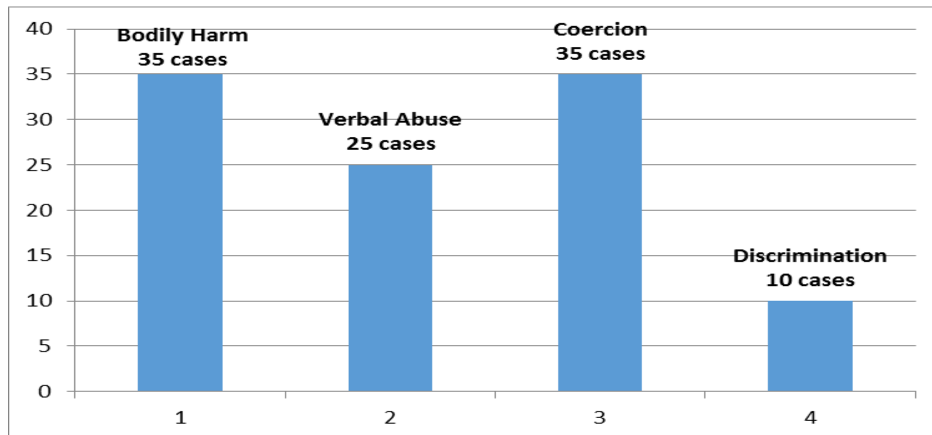
Figure 5.5 Types of human rights violation occurring during detention under the application of the special laws (2009-2011).[827]



[826] The statistic was compiled by the Research 'Case Audit, the Application of Special Laws in Southern Thailand' by Muslim Attorney Centre (MAC) and American Bar Association Rule of Law Initiative (ABA ROLI) 2011. [Online] [Accessed 25/5/2014]. Available at http://th.macmuslim.com/

[827] Ibid.

Figure 5.6 Types of human rights violation occurring during interrogation under the application of the special laws (2009-2011).[828]



These figures illustrate the various abuses of powers during the arrest, detention, and interrogation processes conducted by the authorities when applying the powers of the special laws (Martial Law 1914 and the 2005 Emergency Decree).[829] There were human rights violations in all of the criminal pre-trial processes, especially the interrogation.[830] The most common way of abusing power is through the 'coercion' of suspects.[831] The action of bodily harm includes several forms of physical torture, such as beatings, electric shocks, exposure to extreme temperatures and attempted asphyxiation.[832] It should be noted here that discrimination in the figures refers to national and religious discrimination. The main reason for committing such wrongdoing is to extract confessions and to gather intelligence.[833]

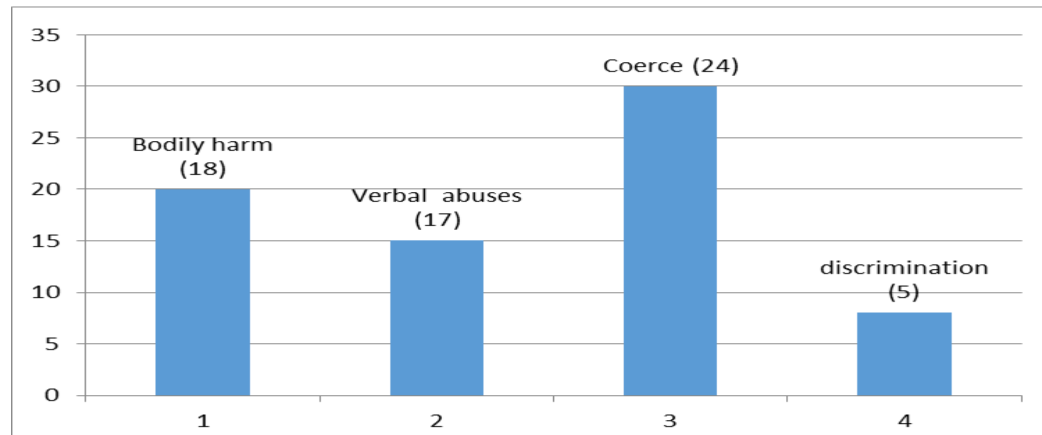
Next, in order to better understand the human rights violations carried out in accordance with the special laws, a comparison needs to be made with the statistics of human rights violations committed under the normal criminal process during the same period (2009-2011). It should be noted that offences relating to

---

[828] Ibid.
[829] Ibid.
[830] See http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/THIndex.aspx.
eg Human Rights Council, Report of the Working Group on the Universal Periodic Review: Thailand (A/HRC/19/8 , 08/12/2011, and A/HRC/19/8/Add.1, 06/03/2012).
[831] The coercion means the use of force to persuade someone to do something that they are unwilling to do, for example, the use of force to gain a confession during interrogation.
[832] Amnesty International Thailand: *Torture, Inhuman Southern Counter-Insurgency, Human Rights*. Country's Report on Human Rights Practice for 2013 Thailand. [Online]. [Accessed 1/5/2015]. Available at https://www.amnesty.or.th/sites/default/files/attachments/re_-_iccpr_submission_thailand_eng.pdf
[833] Pongsapitch, A. (2013) 'Security Sector Reform and Governance, The Case of Southern Thailand'. *Asia Security Policy Initiative Series Working Paper*. (50). Bangkok. Chulalongkorn University. pp. 9-14.

terrorism Sections 135/1-135/4 can be subject to the special laws or the normal criminal procedure law, and this depends on a military decision, as discussed before.

Figure 5.7 Human rights violations during normal criminal process in 2009-2011 (in investigation and interrogation).[834]



It can be seen in Figure 5.7 that the rates of human rights violation during normal criminal process were lower than the rates of human rights violation during the special laws. Also, the most common way of abusing power is through the 'coercion' of suspects. In addition, to better understand the human rights violations through torture and ill-treatment during the criminal process, the statistics provided by National Human Rights Commission and the Muslim Attorney Centre are next explored in Figures 5.8 to 5.11.

Figure 5.8 Torture complaints received by National Human Rights Commission nationwide in 2007-2013 by region[835]

Regions/years	2007	2008	2009	2010	2011	2012	2013	Total
Southern border provinces (Pattani, Yala,	9	8	10	21	16	16	13	93

[834] The statistics were compiled by the Research 'Case Audit, the Application of Special Laws in Southern Thailand' by Muslim Attorney Centre (MAC) and American Bar Association Rule of Law Initiative (ABA ROLI) 2011. [Online] [Accessed 25/5/2014]. Available at http://th.macmuslim.com/

[835] Source: National Human Rights Commission of Thailand in the 134 cases mentioned above, there are 188 victims. Among the 188 victims of torture, 174 are men, and 14 are women. Five victims did not survive the abuses and died, 183 suffered different levels of injuries.

Narathiwat and four districts of Songkhla)								
South	1	5	3	1	-	-	-	10
North	2	2	1	1	-	2	-	8
North-East	-	1	-	1	3	-	-	5
East	-	-	1	-	1	-	-	2
West	2	-	-	-	-	-	-	2
Central	2	3	2	3	1	2	1	14
Total	16	19	17	27	21	20	14	134

Figure 5.9 Numbers of officials alleged to have committed torture or other ill-treatment, by agencies of alleged perpetrators (2007-2013).[836]

Alleged perpetrators / years	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**Total**
Police	10	15	8	8	7	8	3	59
Military	8	5	8	15	15	11	12	75
Prison Officers	-	-	2	5	-	3	-	10
Others (immigration police, security volunteers)	1	-	-	1	-	1	1	4
Total	20	20	18	29	22	23	16	148

[836] Source: National Human Rights Commission of Thailand by Official Website of Office of the Human Rights Commission of Thailand.[online] [Accessed 29/3/2015]. Available at http://www.nhrc.or.th/en/

Figure 5.10 Numbers of officers alleged to have committed torture or other ill-treatment, by agencies of the alleged perpetrators and by region (2007-2013).[837]

Alleged Perpetrators/ Regions	Central	North	North East	East	West	South	Southern Borders	Total
Police	12	6	5	1	1	8	26	59
Military	-	-	-	1	-	-	74	75
Prison Officers	1	2	-	-	-	2	5	10
Others (immigration police, security volunteers)	1	-	-	-	1	-	2	4
Total	14	8	5	2	2	10	107	148

Figure 5.11 Numbers of torture complaints in the southern borders provinces received By the Muslim Attorney Centre (2007-2013).[838]

Provinces/ years	2007	2008	2009	2010	2011	2012	2013	Total
Pattani	-	-	20	27	14	9	7	77
Narathiwat	-	-	19	30	34	15	25	123
Yala	25	88	22	6	2	12	25	180
Songkhla	-	-	-	-	-	1	1	2
Total	25	88	61	63	50	37	58	382

According to Figure 5.8, torture practices occurring in the southern Thailand represented very high compared to other parts of the country, and this leads to a concern of human rights abuses in official custody. According to Figures 5.9 and 5.10, the numbers of the police officers and the military officers to have committed torture or other-ill treatment were very high compared to other agencies. It should

[837] Source: National Human Rights Commission of Thailand by Official Website of Office of the Human Rights Commission of Thailand.[online] [Accessed 29/3/2015]. Available at http://www.nhrc.or.th/en/

[838] Source: Muslim Attorney Centre, Thailand. Official Website [Accessed 29/3/2015]. Available at http://th.macmuslim.com/

be noted that after the Internal Security Act was enforced in 2008, the numbers of the military officers to have committed torture were also increased. According to Figure 5.11, after 2008, the numbers of torture complaints in the southern borders provinces represented very high. On this point, it can be considered that the application of the special laws has been relevant to human rights abuses in the southern Thailand.

5.9.2 Reflection on legitimacy in the context of the rule of law

The concept of the rule of law in Thailand emphasises that 'government officials shall be accountable under the law'.[839] In Thailand, the 1997 Constitution set up the mechanisms for dealing with cases of misconduct, acts that exceed authority and violations of human rights committed by government officials.[840] In this regard, government officials are liable under the criminal law (offences of maleficence in judicial office Sections 200-205 in the Thai Criminal Code) and the Act on Liability for Wrongful Act of Official B.E.2539/1996 for any misconduct. Furthermore, acts that exceed authority, misconduct, and violation of human rights committed by officials shall be brought to the attention of the Ombudsman.[841] Under the 2009 Organic Law on Ombudsman, the Ombudsman is empowered to consider and investigate complaints against officials regarding official acts of human rights violation or exceeding limits of their authority. Next, the action can be brought to the Administrative Court.[842]

However, Section 17 of Emergency Decree 2005/2548, Section 16 of the Martial Law 1914 and Section 23 of the Internal Security Act 2008/2551 seem to violate the rule of law, as they provide the immunities already described.

On this point, one of the defence lawyers voiced objections:

> 'The special laws bestow great and wide powers to officers here. The strongest concern is that there is not any judicial review or checking process. Moreover, the laws provide immunity for any officials who have

[839] Pakeerat, W. (2009) 'The Concepts of Rule of Law'. *Political Science Journal.* 30(1). Bangkok. Thamamsat University. pp. 182-195.
[840] See Chapter 2 (section 2.3.2 An Institutional Framework of Relevant Bodies under the Thai Constitutions).
[841] See Sections 1-5 Organic Law on Ombudsman 2009 (Thailand).
[842] See Act on Establishment of Administrative Court and Administrative Court Procedure B.E. 2542/1999, Section 9.

> exercised their derived powers, so their illegal actions could not be brought to court'. **D.F.L.2.30**

Another NGO said that:

> 'The military here has tended to enjoy its powers. As a result of the powers and immunity of the special laws, no one can intervene with them. This is an absolute breach of the rule of law'. **N.G.O.2.28**

Any damage caused by officials under the Emergency Decree 2008 cannot be sued for in the Administrative Court.[843] This is in contrast to the normal coverage of the Thai administrative law that allows an individual who suffers from any unlawful powers exercised by government institutions or officials to file a lawsuit to the Administrative Court in accordance with Section 5 of the Administrate Procedure Act 2539.

5.9.3 Reflection on legitimacy in the context of constitution

There are several legal protection principles which are recognised by the Thai Constitution. This section seeks to explore whether the application of the special laws comply with those Constitutional rules. Under the Thai Constitution, any arrest or detention must be made by a court's order or warrant or upon other exemptions provided by the Criminal Procedure Code.[844] Generally, a court may issue a warrant of arrest or detention based on evidence shown that the accused has committed an offence, and there is a sufficient ground to believe that he will escape or interfere with the evidence.[845] This rule is recognised by Section 32 of the Thai Constitution in order to protect people from any arbitrary arrest and detention. However, the 2005 Emergency Decree seems to violate this rule.[846] It allows officials (both police and military authority) to conduct arrest and detain suspects without warrant or a court's order.[847]

---

[843] See Emergency Decree on Public Administration in State of Emergency 2005/2548, Section 16.

[844] According to Section 80 of the Thai Criminal Procedure Code, 'An arrest can be made without warrant when a criminal offence is committed in the presence of the police'.

[845] See Section 32 Thai Constitution 2007. See also the Regulations of the President of the Supreme Court on Rule and Procedure Relating to the issuing of the Order or a Warrant B.E.2548/2005.

[846] Wichawut, A. (2009) *Application of Legal Measures against Terrorism in Thailand's Three Southernmost Provinces*. Bangkok. Thammasat University. pp. 25-33.

[847] See Emergency Decree on Public Administration in State of Emergency Decree 2005/2548, Section 12.

Another important point to be considered is related to a fair and a speedy criminal procedure. The Thai Constitution recognises this concept in both pre-trial process (interrogation) and in the trial process. It is recognised by the Thai Constitution Sections 40(3) and (7):

> (3) 'A person shall have the right to fair and speedy trial for his or her case'.
>
> (7) 'In a criminal case, an accused shall enjoy a right to a speedy investigation, interrogation, and a trial'.

Moreover, the Thai Criminal Procedure Code also reaffirms such rights by stipulating that 'when the accused is charged, he is entitled to be fair and speedy interrogated'.[848] It is clear that both the Thai Constitution and Criminal Procedure Code aim to protect the fundamental rights and liberties of suspects at this stage.

Regarding this legal protection concept, the focus shall be given to arrest and detention without warrant under the 2005 Emergency Decree. According to the 2005 Emergency Decree, officials are empowered to arrest any suspects and can detain such persons without informing them of the charge for a period not exceeding 30 days.[849] As this Emergency Decree does not provide for a clear process of arrest and detention, this may raise some questions regarding the rights of suspects; for example, what is the status of the suspects after being arrested, where is the place of detention, and is there a right to meet a lawyer?

One of the defence lawyers expressed the view that:

> 'Most of my clients who were detained by the military in 30 day detentions said that they were never informed of their rights to contact a lawyer or their family. They did not even know where they were detained'. **D.F.L.2.25**

After 30 days of pre-charge detention under this Emergency Decree, if the officials consider that there is necessity to extend the detention period, the officials shall bring the suspect to a court for the issuing of a detention warrant. Thus, the suspect in this regard shall be detained under the Emergency Decree

[848] See Thai Criminal Procedure Code Section 8(1).

[849] See Emergency Decree on Public Administration in State of Emergency Decree 2005/2548, Section 12.

2005/2548 for not exceeding 30 days at the first stage, but might be detained for another 84 days under Criminal Procedure Code (after informing of charges), which equals a total of 114 days, or almost four months. This reflects a lack of efficacy in a speedy criminal process as guaranteed by the Constitution Section 40 (3). Therefore, it has been requested by the Office of the National Human Rights Commission of Thailand that the detention powers derived from this Emergency Decree should be abolished as it violates the rights of the suspects in the criminal process; instead, the Criminal Procedure Code should be used immediately after the suspect is arrested.[850]

The application of the special laws in countering terrorism reflects severe human rights derogations. However, when the researcher raised the possibility of the abolition of the special laws and enacting a specialist criminal process for terrorist offences, the vast majority of interviewees showed scepticism and disagreed. For example, one of police officers gave the opinion that:

> 'That is not a good idea. Terrorism in Thailand is caused by very sensitive problems based on the differences of ethnicities, religions, and cultures. All of the terrorist suspects are Muslim, and if we treat them in criminal proceedings differently from other crimes, this would raise a feeling of double standards among Muslim people, which would also rekindle their feelings of being second class citizens'. **P.O.P.1.30**

Another police officer added that:

> 'There is no meaning to re-establishing terrorist offences with their own proceedings. In practice, terrorism cases have been dealt with by special laws such as the Emergency Decree 2005, and it is sufficient'. **P.O.Y.5.10**

However, one of the interviewed prosecutors argued that:

> 'I agree with the idea of creating a specific criminal procedure law for terrorism. The existent criminal procedure laws cannot effectively deal with terrorism. One of its clear drawbacks is the limitation of police powers in the

---

[850] Office of the National Human Rights Commission of Thailand (2010): Policy Recommendations and Suggestions for Improvements Special Laws Related to the Internal Security Act 2008/2551. [Online]. [Accessed 25/4/2015]. Available at http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/NHRC-NationalHumanRightsCommission-eng.pdf

> preventive function. There were many cases where police officers failed in gathering evidence and arresting suspects as a legal obstacle. We need a new specific Act that empowers the authorities to work more actively'. **P.P.N.4.30**

A judge said:

> 'There should be a specific criminal procedure law for terrorism. One simply reason is that the existing law does not go far enough to facilitate officials in practice'. **J.P.2.26**

However, one defence lawyer argued that:

> 'The current criminal procedure law is sufficient. There are certain legal rights for a terrorist suspect at all stages, which are very necessary, and at the same time it is a very efficient strategy to restrict and review an official's powers'. **D.L.N.4.30**

Based on the comments made above, there are two different sentiments emerging towards the idea of creating a specific law under non-emergency criminal process for cases of terrorism. The requirement for facilitating officials functioning effectively in practice would be the main reason for the group supporting the idea. As discussed in Chapter 4, the existing criminal procedure law seems to be passive and is considered insufficient for dealing with terrorist cases, especially in gathering and finding evidence.[851] However, another group who consider that the specific terrorism law should not exist prefer the normal law, especially in terms of full legal rights being offered to a suspect. The researcher takes the view that, when compared with the special laws; the existing criminal procedure law displays much better protection of human rights and effective reviewing processes. However, this does not mean that it is sufficient to deal with terrorist cases in practice. From a suspect's perspective, the Thai criminal procedure law indicates a better standard of legal rights protection, but from an official's perspective, it is found to be insufficient and even obstructive, with many further powers being required.[852]

This research suggests that the further use of the special laws to cope with terrorism in the three southernmost provinces of Thailand would not be an

[851] See further exploration at Chapter 4 (section 4.6 Thai Criminal Procedure for Terrorism Charges).
[852] Ibid.

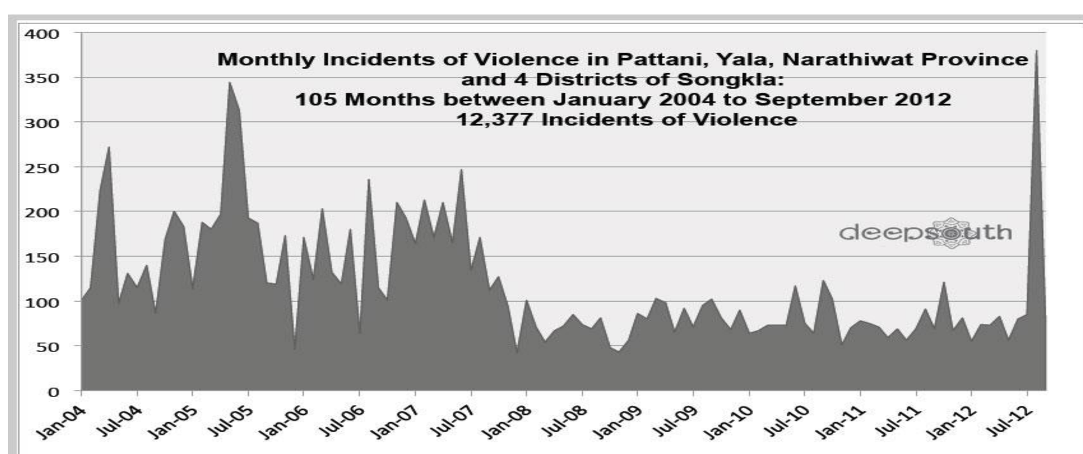
appropriate solution, due to their weak standard of human rights protection. The normal criminal procedure law should be applied as the main strategy for bringing terrorist suspects into the system, but the police powers (search and arrest) should be augmented.[853]

5.10 Efficacy and the application of the special laws

This section seeks to explore the efficacy of the application of the special laws. The Internal Security Act 2008/2551 is generally intended to establish an Internal Security Operations Command, called 'ISOC' in brief. This has the authority and responsibility for the internal security operations, and most of the officials' functions relating to criminal system are given by the Emergency Decree on Public Administration in State of Emergency 2005/2548 and the Martial Law 1914. Thus, the notion of efficacy in this regard places an emphasis on the Emergency Decree on Public Administration in State of Emergency 2005/2548 and Martial Law 1914. The context of efficacy is examined based on two aspects.

Firstly, in order to explore the efficacy of the special laws in general, the study aims to make a comparison between the amounts of incidents occurring before applying those special laws and after applying the special laws in the areas, as illustrated in Figure 5.12 below.

Figure 5.12 Amounts of incidents occurring where the special laws has applied (2004-2012)[854]



[853] See Chapter 4 (Criminal Processes and Counter-Terrorism in Thailand).

[854] The data are derived from Deep South Watch (DSW) website, an organization which established in 2006 with the purpose of raising awareness about the insurgency in south Thailand. [Online] [Accessed 10/3/2015] Available at http://www.deepsouthwatch.org/

Figure 5.12 indicates the total amounts of incidents occurred between January 2004 and September 2012 in Pattani, Yala, Narathiwat and four districts of Songkhla. It should be noted that the Emergency Decree came into force in 2005 and then the Internal Security Act was applied in 2008. It can be observed that after the Internal Security Act has been applied in 2008, the total amounts of incidents generally declined. This might reflect the effectiveness of using the special laws in counter-terrorism. Nevertheless, the researcher takes the view that the application of the special laws does not represent the only potential variable during this period. Other factors may involve such as political factors (peace initiatives) or resources available (numbers of police and military) or growing experience. However, there was a high rate of the incidents in July 2012.

Secondly, the study seeks to explore the effectiveness of the special laws within the context of the criminal justice system. It is assumed by the study that the conviction rate might be one of the important measures in clarifying the efficacy of the criminal justice system. Thus, this part seeks to examine the efficacy regarding the application of those special laws in fighting terrorism through the statistics of conviction rates. This part concerns only cases where the special laws had been used in the investigation process. Between 2010 and 2011, there were 100 cases finalised in the Court of the First Instance, and of those 72 cases resulted in dismissal, whereas there were only 28 cases that ordered a conviction, as illustrated below in Figure 5.13.

Figure 5.13 Conviction rates of terrorism cases between 2010 and 2011[855]

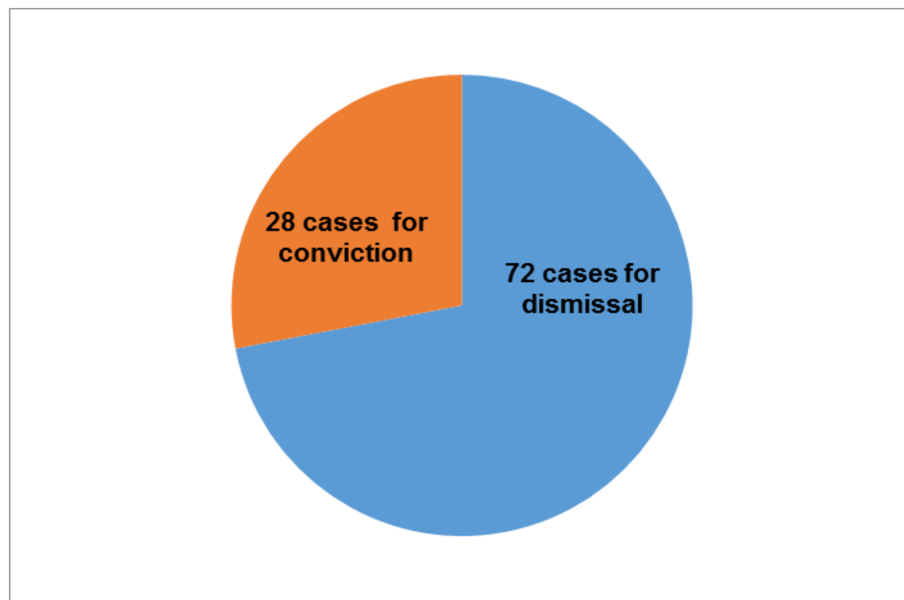


Figure 5.13 indicates that the conviction rate is quite low compared with the dismissal rate. It should be noted here again that this Figure shows the conviction rated based on the cases where the military authorities were responsible for the investigation and interrogation processes through the application of the special laws. The main reason for the low rate of conviction is that there was insufficient evidence to present in trials.[856] Comparison should be made between the investigations made by the police in accordance with the normal criminal procedure law between 2003 and 2009, which indicates a 21.9 percent conviction rate and 78.1% for dismissal.[857] This is almost the same as the Figure above. Furthermore, lack of evidence was also a reason given for contributing to the low conviction rate.[858] In this regard, it can be considered that police are just as ineffective as military, but also that all the shortcuts and extra powers in the special laws do not render noticeably different outcomes. On that point, one might argue that terrorism cases are harder to process than normal cases, so parity represents a good achievement.

---

[855] The statistic was compiled by the Research 'Case Audit, the Application of Special Laws in Southern Thailand' by Muslim Attorney Centre (MAC) and American Bar Association Rule of Law Initiative (ABA ROLI) 2011. [Online] [Accessed 25/5/2014]. Available at http://th.macmuslim.com/

[856] Ibid.

[857] For the efficacy regarding the investigation and prosecution in terrorism cases can be found in Section 4.6.6 of Chapter 4.

[858] Ayut, S. (2010) *Evidence Law for Public Prosecutors in Southern Areas.* Office of Public Prosecutor Region 9. Songkhla. pp. 20-22.

When the issue of the efficacy of the special laws was raised with the participants, only two groups, the majority of police officers and prosecutors seemed to be satisfied, while the rest required further developments and changes. For instance, one police officer noted that:

> 'The effectiveness of the special laws is very clear in terms of investigation and pursuing a suspect. I think the normal process cannot cope with the threat of terrorism in practice. The special laws have thus become very necessary'. **P.O.N.3.10**

One prosecutor added that:

> 'The benefits of the special laws are concrete in practice. Before the offences are committed, the special laws can be applied as a preventive means of deterring a potential terrorist crime. After offences have been committed, the special laws have shown their ability to pursue a suspect and gather evidence. I accept that the functions of the special laws have much facilitated the process of gathering information before prosecuting'. **P.P.Y.5.30**

However, the majority of the rest, such as the judges, NGO staffers and defence lawyers, considered that the efficacy of the special laws is unclear, especially when considering them together with the notion of fairness. For example, one judge said that:

> 'I cannot tell how effective the special laws are without considering their weak protection of human rights. Their functions in dealing with a suspect are clear in some aspects. However, their weak protection of rights and obscure reviewing methods are much clearer'. **J.P.1.26**

This assessment was agreed by most of the defence lawyers and all of the NGO staffers, who argued that the special laws should be abolished. For example, one NGO staffer said that:

> 'I think the application of the special laws has generated more negative impacts on the locals here. As the nature of the special laws has provided very wide powers to officials without any effective reviewing method, and there is much news about officials abusing their powers, these factors have strongly raised the feelings of distrust among the locals here'. **N.G.O.2.31**

Based on the comments above, the police group seems to be satisfied with the application of the special laws under the notion of 'efficacy'. The possible reason behind this sentiment would be that the police's work has directly obtained the benefits from using the special laws. In other words, the special laws facilitate police officers in their investigations with extra powers and a certain degree of legal immunity. In addition, the prosecutors are another group who believe that the special laws are effective. Although the prosecutors have not been given any extra powers under the special laws, they have indirectly obtained certain benefits from such laws. At least, the application of the special laws would conceivably generate more chances to find suspects and accumulate evidence, which would benefit their prosecuting process. However, in contrast, the judges, NGO staffers and defence lawyers all seem to be dissatisfied with the special laws. Although most of them have accepted that the special laws provide certain positive functions in the investigation, they insist that their abolition is required, due to their weak protection of human rights. The researcher agrees with the latter group that the special laws have raised many concerns under the notion of 'legitimacy', and thus changes (such as no immunity for torture or police priority) or even abolition are needed. In this sense, the efficacy of the special laws cannot be the sole consideration, as the notion of its 'legitimacy' must also be weighed together.

It should be noted that the efficacy of the special laws in the judicial process cannot be explored as the special laws are basically applied in the pre-trial process (investigation and interrogation), and even though the Martial Law 1914 empowers the Military court to hear criminal cases in the applied areas, the Court of Justice (provincial court of each province) is the main organisation to undertake this duty. Regarding the efficacy regarding the judicial process in cases of terrorism, an assessment can be found in Chapter 4 (section 4.6.7).

5.11 Conclusion

The study found that officials tend to opt for the powers derived from the special laws, especially Emergency Decree 2005/2548, in investigation processes.[859] In this regard, the roles of police in investigation as provided in the Thai Criminal Procedure Code are usually switched to the military officials where the special laws are applied. One of main reasons to use the three pieces special laws is that the

[859] See Figure 5.2 'Amounts of suspects who were arrested by the military compared to the police during the seven years between 2005 and 2012'.

Thai government considered that the normal powers in the Criminal Procedure Code are too weak to deal with terrorism.[860] It is said to be difficult for the police to exercise their powers derived from the Criminal Procedure Code in conducting investigations. As a solution, those special laws are applied in countering with terrorism in affected areas, and these laws might be considered as the Executive's prime legal mechanism to fight terrorism. The distinction of those special laws is that they greatly increase the officials' powers, in particular the powers for arresting, detaining and searching suspects. Nevertheless, the study has also identified one of the main problems in this strategy, namely that the special laws are applied without the recognition of human rights and liberties. The rights and liberties of citizens in these areas are as important as the duty of the state to suppress terrorism. Although terrorism is the enemy of the state's security and the right to life of citizens, the fight against it must be restrained within the scope of the principles of fairness and legitimacy.[861] Thus, the state must ensure fundamental rights and constitutional safeguards for both citizens and enemies.

It could be argued that the normal criminal procedure law, as examined in Chapter 4, keeps a better balance between the state's power in bringing suspects to criminal justice and suspects' legal rights. There are multiple rights that safeguard suspects especially in the pre-trial stage. The given rights are for example, right to contact a lawyer privately, right to remain silent, right to be presumed innocent and so on. In contrast, according to the application of the special laws, these important rights are removed. Consequently, official malpractice might be encouraged to occur during this stage. Evidence to support this argument is based upon the Figures 5.5-5.7 which showed that there were high rates of human rights violations during official's custody. In addition, there is no concrete remedy process to protect injured people from officials' powers. This might lead to an abuse of powers of officials, and reflects a lack of legality and violates the precepts of the Thai Constitution.

---

[860] Announcement of the Council of Ministers Thailand No. 1/2548 and 1/2550.
[861] Masferrer, A. (2015) 'Counter-Terrorism, Emergency, and National Laws'. in Lennon, G and Walker, C. *Routledge Handbook of Law and Terrorism.* London. Routledge. p. 51.

Figure 5.14 Overall views towards the special laws on counter-terrorism

Jobs	Satisfaction	Dissatisfaction
Police Officers	5	1
Prosecutors	4	2
Judges	1	5
Defence Lawyers	0	6
NGOs	0	4

Based on Figure 5.14, the majority of police officers and prosecutors have responded that the application of the special laws is necessary to play a part in countering terrorism. The strong powers afforded to the police in the investigation processes, allied with strict legal immunities, are the main reasons behind this satisfaction. In contrast, the application of the special laws has, at the same time, raised serious concerns about the notion of 'legitimacy', in particular with regard to human rights abuses. Both the statistics and the interview comments reflect the negative impacts of the special laws. Accordingly, the majority of the judges, NGO staffers and defence lawyers have argued for their abolition, as shown in the Figure above.

This chapter has answered one of the research questions, namely, whether the special laws have produced a higher level of efficacy to bring terrorist suspects into the criminal system compared to the normal criminal procedure law powers. However, the benefit of using the special laws to secure efficacy should be weighed against its prominent drawbacks, namely, the abuse of human rights and the rule of law, as discussed. This research suggests that the further use of the special laws to deal with terrorism in the south of Thailand would not be a wise solution, due to their weak standard of human rights protection. This point raises serious concerns to both internal and international organizations regarding human rights protection in the criminal justice system. Instead, the normal criminal procedure law should be applied as the main strategy for bringing terrorist suspects into the system, but the police powers (search and arrest) should be increased.

Chapter 6

Conclusion

6.1 Introduction

The main purposes of this thesis were to examine the workings of the Thai criminal justice system as applied to counter-terrorism and to analyse and assess the reliance upon the criminal law within counter-terrorism based on the notions of 'efficacy' and 'legitimacy'.[862] As Thailand has selected criminal law as its main strategy in the fight against terrorism, the research sought to explore its efficacy and legitimacy and attempted to find out whether the criminal law has been sufficient by itself to deal with terrorism, or whether it needs modifications or other mechanisms to work alongside it. In addition, the research sought to examine whether the Thai criminal procedures and the special laws have been applied in an appropriate way to deal with cases of terrorism in terms of efficacy and legitimacy. This doctoral project was carried out based on legal doctrinal analysis, and it also integrated field research in order to explore the views of Thai criminal justice officers, defence lawyers and NGO staffers towards terrorism cases in practice.

As explained in Chapter 1, there are three main claims for the originality of this research. Firstly, there has been no study which has attempted to examine counter-terrorism strategies with a focus on criminal law, criminal procedure law and the special counter-terrorism laws in Thailand from a legal perspective. Secondly, the originality of this research lies in its fieldwork. This project involves a socio-legal study that examines the legal texts of the laws relating to terrorism, in particular based on the efficacy and legitimacy of criminal law and criminal procedure law, as reflected by the practices of relevant criminal justice officers, and integrates a socio-legal approach to exploring how these laws work in practice in Thai society.[863] This research not only considered the theoretical aspects of the laws, but also highlighted an in-depth analysis based on the performances of the criminal justice officers who use the laws in practice in order to discover whether or not the laws and the relevant officers have sufficient capabilities to deal with terrorist offences and can act appropriately. Other professional groups who interact with criminal justice officers were also interviewed. Thirdly, originality is derived from the application of the concept of policy transfer which helped the researcher to explore

---

[862] The notions of 'efficacy' and 'legitimacy' were clarified in Chapter 3 (Section 3.2).

[863] Banakar, R. and Travers, M. (2002) *An Introduction to Law and Social Theory*. Oxford. Hart Publishing. pp. 1-15.

similarities and differences between the jurisdictions, and this tactic also guided the researcher to better understand the content and range of the fieldwork data.[864] The technique of policy transfer was applied between the impact of criminal law in Thailand and the role of the UK Counter-terrorism Strategy and consequent special laws in terms of their efficacy and legitimacy. The concept of policy transfer represented a technique of more limited impact than the doctrinal inquiry or the fieldwork. It must be distinguishged from any attempt to apply systematic and comprehensive comparison.

In response to these research questions, this study set out to achieve three key objectives. Firstly, the study attempted to address the role of criminal law in counter-terrorism in Thailand. The main purpose here was to assess whether the Thai criminal law is sufficient for dealing with offences of terrorism, and to understand how it fits with other counter-terrorism strategies. In this regard, in dealing with terrorism, it is posited that criminal law can serve at least six functions: precursor impact, net-widening, lowest common denominator of rights, mobilisation function, denunciatory function, and symbolic solidarity.[865] The nature of each within Thailand has been explored. Secondly, the study attempted toanalyse and assess Thai criminal procedure law in relation to terrorist cases based on the notions of 'efficacy' and 'legitimacy'. It was concerned with all criminal processes from investigations, arrests, detentions, interrogations, prosecutions and trials. Thirdly, the study sought to examine the powers and the roles of the special laws in the context of 'efficacy' and 'legitimacy', in particular to explore whether there have been any human rights violations within the application of the special laws processes.

After conducting an analysis of the interviews conducted with 28 participants, including the police officers, the prosecutors, the judges, defence lawyers, and NGO staffers, the study yielded a number of findings that were highly relevant to the research objectives. These findings indicated a significant distinction between the laws in documents and the laws in practice. However, as explained in the methodology, it should be noted that due to the limitations of the fieldwork research, which was confined to interviews with only 28 participants, the research was

---

[864] Adams, M & Bomhoff, J. (2012) *Practice and Theory in Comparative Law.* Cambridge. Cambridge University Press. p. 4.

[865] Walker, C.)2012('The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law' in Masferrer, A.)ed.(*Post 9/11 and the State of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer. pp. 121-146.

unable to generate results regarding 'legitimacy' and 'efficacy' for the entire criminal justice system. Nevertheless, the interviews were valuable even if selective, and they provided a fuller and more accurate reflection than previously available upon the effectivenss and legitimacy of the current Thai criminal procedure when dealing with terrorism.

This concluding chapter will summarize these findings in relation to the research objectives mentioned above, and several reflections on the adopted research methodology will be presented. It will also highlight the key propositions made from an analysis of the terrorism laws in England and Wales in order to develop in the future Thailand's criminal justice in cases of terrorism. Finally, the chapter will end with final remarks in relation to the likely future of the Thai criminal justice system in handling terrorist cases.

6.2 Research findings

As explained in Chapter 1, the research questions of this thesis were to examine the workings of the Thai criminal justice system as applied to counter-terrorism and to assess it based on the notions of 'efficacy' and 'legitimacy'.[866] Specifically, for the criminal law, the research sought to answer whether the criminal law could achieve the goals of preventing, supressing, and averting crimes of terrorism. For the criminal procedure law and the special laws, the research sought to examine the operation of the overall criminal justice system in dealing with terrorism charges. The term, 'efficacy', in this sense covers the examination of the relevant criminal procedure law and the special laws as well as the roles of the criminal justice officers with reference to terrorism offences. For the notions of 'legitimacy', the study sought to examine whether the rule of law, human rights and the Thai constitution have been properly applied in all the criminal processes related to charges of terrorism.

This section will summarize the findings in relation to the research objectives mentioned above.

6.2.1 Criminal law

As set out in the introduction (Chapter1), the research focused on the role of criminal law, which is conceived as the main strategy for dealing with terrorism in

[866] See Chapter 1 (Section1.3 Research objectives).

Thailand. It sought to answer whether the Thai criminal law has the capability to deal with terrorism. This research found that the roles of criminal law (in the shape of offences relating to terrorism Sections 135/1-135/4) in counter terrorism in Thailand are limited. Among the six functions of criminal law in counter-terrorism (precursor impact, net-widening, lowest common denominator of rights, mobilisation function, denunciatory function, and symbolic solidarity),[867] the Thai criminal law has made its strongest effort in dealing with the implementation of 'precursor crimes'. This is reflected by the criminalisation of a wide range of preparatory offences, training offences, collecting for terrorist purposes via Section 135/2(2) and membership offences in Section 135/4.[868] In this way, the preventive function of criminal law operates to some extent within Thai criminal law. For example, the offences relating to terrorism in Thailand can deal with a person who commits terrorism offences at an early stage, such as in its preparation, or in its attempt.[869] However, there have not been many cases in which criminal law has been actually able to deal with alleged terrorists before the offences have been carried out.[870] In this regard, the research considered that to enhance the capability of applying precursor crimes, there may be two responses.

The first response would be to add to the catalogue of precursor offences based on the UK Terrorism Act 2000, Sections 54, 57 and 58, and Terrorism Act 2006, Section 5, as explored in Chapter 3. For example, in terms of training for terrorism, the Thai criminal law (Section 135/2) is vague and without clear definition for the term of 'training for terrorism'. The UK's Section 54 of the Terrorism Act 2000 and Section 6 of the Terrorism Act 2006 are seen as a clear 'precursor offence' regarding terrorism training.[871] For example, Section 54 describes certain prohibited acts of instruction and receiving training for terrorism. According to this Section, a person commits an offence when he provides instruction, or receives instruction or training in the making or using of firearms, radioactive material, or weapons designed, or adapted for the discharge of any radioactive material, explosives, or

---

[867] Walker, C.)2012('The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law' in Masferrer, A.)ed*.) Post 9/11 and the State of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer. pp. 121-146.

[868] See further details at Chapter 3 (Section 3.5.1 Precursor Impact).

[869] See Sections 135/1-135/4 and the Thai Criminal Code, Section 80.

[870] See Chapter 3 (Figure 3.2 the prosecution rate of offences relating to terrorism (Section 135/1) compared with 'precursor offences' between 2013-2015 in Pattani, Yala, and Narathiwat provinces).

[871] See Terrorism Act 2000, Section 54 and Terrorism Act 2006, Section 6. See further details at Chapter 3 (Section 3.5.1 Precursor Impact).

chemical, biological or nuclear weapons.[872] Moreover, there are other important precursor offences in the UK regarding possession for terrorist purposes in Terrorism Act 2000, which are Section 57 (possession of items) and Section 58 (collection of information).

Another response is related to police powers (search and arrest powers). The research has found that although the substantive criminal law has aimed to deal with terrorist suspects in advance, in practice it is very difficult to be successful due to the limited policing powers.[873] Thus, the restricted powers derived from normal criminal procedure law provide very limited powers to police officers in their investigative functions, so that police officers in many cases have no powers of intervention against an alleged crime in its early stages. For instance, Thai police officers cannot conduct any arrest or search of perceived terrorists or their properties without warrants, and only the court can issue such warrants.[874] Consequently, police officers generally play a role after terrorist offences have been committed as a result of these legal limits. There seems to be some inconsistency between criminal law and criminal procedure law, as the scope of criminal law is relatively wide, whereas the criminal law enforcement powers of the police officers are relatively narrow. This limit is the prime reason why the special laws that empower officers in the preliminary phases of terrorism are considered to be necessary in dealing with the situation.

As a result, this research found that the Thai criminal law has reflected a low level of efficacy when dealing with the terrorism occurring in the south of Thailand, based on an analysis of those six functions. Nevertheless, although the current format of criminal law in counter terrorism in Thailand do not appear to be sufficient to deal with terrorism due to the lack of a preventive function, most of the criminal justice officers who were interviewed still had faith in the law, and claimed that there should not be any change in this substantive law.[875] It seems contradictory that the existing criminal law is perceived to be sufficient in the opinions of the relevant criminal justice officers to deal with terrorism in practice, whereas the law itself

---

[872] Ibid.

[873] See further details at Chapter 4 (Section 4.6 Thai Criminal Procedure for Terrorism Charges).

[874] According to Section 80 of the Criminal Procedure Code, ‘police officers can conduct arrest without the court warrant when terrorism offences have been committed in the presence of the police officers’. See further details at Chapter 4 (Section 4.6.2 Law of Arrest).

[875] See Figure 3.3 ‘Overall views towards the existing criminal law on counter-terrorism’.

shows significant weaknesses, which require further developments.[876] By way of explanation, the research further explained that as the criminal law has functioned alongside special laws granted mainly to the military, which are considered much stronger in dealing with terrorist suspects, so it is understandable why most of the interviewed criminal justice officers still have trust in the criminal law. In other words, the co-function of those strategies could conceal some weaknesses in the existing criminal law. The researcher takes the view that this dichotomy may be convenient for the police and the maintenance of the legitimacy of the police, but it has the disadvantage of entrenching military involvement in counter-terrorism. Most of the complaints are about the military.[877] Soldiers are less well trained than police to deal with civilians and have a different culture. So it might be better to expand police powers, as was concluded to be the case in Northern Ireland where the policy of 'police primacy' took over in 1976.[878]

Under the notion of 'legitimacy', the researcher found that the current criminal law is satisfactory in terms of its 'generality' and 'equality'. Based on the fieldwork interviews, there is not any sign that the law is intended to apply only to Muslim people in the south. The provision of terrorist offences is not restricted to being enforced in these areas. Nevertheless, as the majority of the offences of terrorism committed in Thailand have been carried out in these areas, it is to be expected that the law on terrorism should be frequently used in that context. Moreover, the severe level of punishment given to the offence was also acceptable to the majority of the interviewed participants. Most of them accepted that a harsh penalty should be an element to deter a potential terrorist. However, one of the concerns relating to the legitimacy of the criminal law on terrorism is that it lacks clarity. Most of the NGO members and defence lawyers emphasised that the law is drafted in a very wide manner and relies too much upon on the court's discretion. For example, the terms of damaging the public transportation or infrastructure system within the offence relating to terrorism Section 135/1(2) appear to be unclear.[879] By contrast, police officers, prosecutors and judges have tended to be satisfied with the certainty of the provision of terrorism, without any refinements. Most of the participants from

---

[876] See further exploration of the Thai criminal law at Chapter 3.
[877] See Chapter 5 (Section 5.9 Legitimacy and the application of the special laws).
[878] *The Diplock Report*: Report of the Commission to Consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland (Cmnd 5185, London, 1972). See further 'The Role and Powers of the Army in Northern Ireland' in Hadfield, B., Northern Ireland: Politics and Constitution (1992, Open University Press, Buckingham.) pp. 110-129.
[879] See details at Chapter 3 (Section 3.3.1 Rule of law and criminal law).

this group argued that the provision is sufficient and is enacted in a clear manner, which would allow people to understand the law.

Overall, the researcher discovered the tendency of the Thai criminal law to be used as the main mechanism for criminal prosecution rather than being used in a preventive function or for averting pending crimes.[880] This situation indicates that the Thai criminal laws play a very passive and reactive role in counter-terrorism, and this is also connected to the limited policing powers (concerning both search and arrest) for intervening against suspects in advance. Therefore, greater consistency between the criminal law and criminal procedure law in counter-terrorism is required.

6.2.2 Criminal procedure law

According to the research questions regarding the criminal procedural law set out in Chapter 1, the research sought to examine the operation of the overall criminal justice system at both pre-trial and trial stages in dealing with terrorism charges. In the context of 'efficacy', the research sought to examine the police's abilities in the investigation process, especially in fact-finding and in bringing terrorist suspects into the criminal justice process. Then, it sought to explore the effectiveness of criminal prosecution as well as the roles of the public prosecutors in court trials of terrorists. Next, it sought to examine efficacy in the judicial process. It included the abilities to deliver high quality judgments within a reasonable time. For the notion of 'legitimacy', the study sought to examine whether the rule of law, human rights and the concepts from the Thai constitutions have been properly applied in all the criminal processes related to charges of terrorism.

In terms of pre-trial processes, the research found that the investigation process is vital, but the current system reflects inefficacy in several aspects. To understand the apparent failures of the investigation process, three main possible factors need to be explained.

The first finding is related to the nature of the commission of terrorist acts in those three provinces. Most of the crimes are motorcycle bombs or car bombs placed by well-trained perpetrators, and these led to adverse situations for the police in

---

[880] See Chapter 3 (Section 3.5 The functions of criminal law in counter-terrorism).

collecting evidence. As previously discussed in Chapter 4, the existing law seems to be very limited and passive. It does not allow the police to deal with terrorist suspects especially in the matters of fact-finding and pursuing suspects. For example, police officers cannot arrest someone without a court's authorization, except when the offence is committed in an officer's presence.[881] Accordingly, it is a very difficult task for the police to conduct effective investigations in terrorism cases. Furthermore, it is very difficult to find witnesses as most of them fear reprisals from terrorist groups in these areas and avoid getting involved in the process.[882] This situation also reflects the weak standard of the witness protection programme under the Thai criminal justice system.[883]

The second finding concerns the lack of experienced police officers. Based on the information derived from the interviewed police officers, the prosecutors and judges, most of the police officers who are responsible for terrorist investigations have not much experience in this kind of offence, and some of them had just moved into the areas only a few months before.[884] Moreover, most of the police officers in the affected areas (Pattani, Yala, and Narathiwat) are not willing to take on the responsibility to work in the areas as it requires them to move out of their home areas.[885] Hence, there are not sufficient police officers to work in the areas, although there is extra money available for officers who work in these three provinces.[886]

The final finding concerns an apparent disunity among police officers and prosecutors. As Thai criminal procedure law does not allow prosecutors to play a part in the investigative processes, there is a power granted to police officers to conduct investigations without any checking process by the prosecutors, and this has led to insufficient contact between them at this stage. In practice, the prosecutors will be informed when the case file has been finished and sent to them by the police officers. Arguably, this could be considered to be an obstacle for the

[881] Thai Criminal Procedure Code, Sections 78 and 80.
[882] Office of Public Prosecution Region 9 (2014) *Research on Effectiveness of Criminal Justice System in Dealing with Security Charges in Pattani, Yala, and Narathiwat Provinces.* Songkhla. Asia Foundation. pp. 5-10.
[883] Ayut, S. (2010) *Evidence Law for Public Prosecutors in Southern Areas*. Songkhla. Office of Public Prosecutor Region 9. pp. 20-22.
[884] See further information at Chapter 4 (Section 4.6 Thai Criminal Procedure for Terrorism Charges).
[885] The information was derived from the interview with the police officer at Pattani province (P.O.P.1).
[886]The information was derived from the interview with the police officer at Pattani province (P.O.P.2).

prosecutors for two main reasons. Firstly, in most terrorism cases, an investigation conducted by police officers typically contains a lot of errors in practice relating to both criminal substantive and procedure laws.[887] For example, if there is no admissible evidence, or there is a fault regarding criminal charges, these become the prosecutors' tasks for the next step to correct these faults by ordering a supplementary investigation.[888] Consequently, this would delay the criminal justice system overall, and create extra work for the prosecutors who will need to review the case file twice. Secondly, in practice, the prosecutors have very limited time for weighing the evidence to consider whether or not it is sufficient to prosecute a terrorist suspect. In this stage, the Thai criminal law allows for both the investigation and prosecution processes to be completed within a maximum of 84 days after a suspect has been detained, and those two stages are tied together.[889] Though this is a maximum limit it is extraordinarily long in comparative terms (including in comparison to the UK which normally allows 14 days or 28 days in an emergency),[890] it should be realised that police officers consume most of the time while finding evidence in terrorism cases, which is tougher than finding evidence in normal crimes, as described in Chapter 4 (section 4.6). In some cases police have taken up to 83 days in this stage, consequently, there is only one day left for the prosecutors to make a prosecution decision, which is not considered to be enough.[891] If both investigation and prosecution cannot be made within 84 days after the suspect has been detained, the suspect must be temporarily released.[892] Both police officers and prosecutors are aware that to release a terrorist suspect in this stage would reflect a failing in the criminal justice in the pre-trial process, and it is also very difficult to bring back a suspect into the criminal justice system.[893] Thus, to avoid this problem, prosecutors may send terrorist suspects to trial even though there is not enough evidence compiled by the police in the investigation, so that terrorism suspects are at least still in the criminal process.[894] Nevertheless, it might not be a positive strategy for prosecutors to send most of the terrorist suspects to court when there are doubts about the admissibility of evidence, as it was shown that in the last five years the dismissal rates in terrorist cases have been much higher than the conviction rate, and one of the evident reasons was that the

[887] The information was provided by the senior public prosecutor who currently works in Pattani (P.P.P.2).
[888] See the interviews conducted with prosecutors at Chapter 4.
[889] See Section 87 of Thai Criminal Procedure Code.
[890] See Protection of Freedoms Act 2012, ss.57, 58.
[891] See the interview conducted with prosecutors Chapter 4.
[892] See Section 106 of the Thai Criminal Procedure Code.
[893] See the interviews conducted with prosecutors at Chapter 4.
[894] Ibid.

prosecutors lacked enough evidence to prove that the defendants were guilty.[895] Consequently, this has directly affected the defendant's rights and freedoms.

The study suggested that it would be a positive measure to allow the prosecutors to take some responsibility in the investigation and interrogation processes by acting as 'advisor' and 'reviewer' for the police. Consequently, this role would enhance both the efficacy and the fairness at this very important initial stage. In terms of effectiveness, prosecutors who are considered as legal experts could advise the police regarding evidential requirements or about criminal charges, and this would be helpful for the police officers who are often lacking experience in cases of terrorism. Furthermore, the role of the prosecutors in the investigation process can be also switched to becoming one of a reviewer of the police's investigations. As was described in Chapters 4 and 5, one of the main concerns regarding the police's investigation process is the infringement of suspects' rights, and there have been many cases involving police abuses of powers at this stage without any internal or external check by other governmental branches. If the law empowers the prosecutors to serve as a reviewer in the investigation or empower them to attend interrogations, this would help to alleviate human rights concerns in investigations and interrogation, as there would be a checking method available to the prosecutors.

Next, the lengthy 84 days detention period arises as the most controversial aspect of the law under the notion of 'legitimacy'. The research found that the long period of detention directly impacts on the rights and freedom of the suspects, although at this stage they are fully offered rights such as the rights to consult a lawyer, meet with their family, or have access to medical treatment.[896] It is understood that carrying out investigations into terrorism cases might be considered much more difficult than investigating into normal crimes.[897] Nevertheless, detention of a suspect for up to 84 days is well out of line with laws in other jurisdictions and must raise doubts about compliance with rights to liberty either in the Thai Constitution, article 40 (which guarantees that all citizens shall have the right to access a speedy judicial process) or in international law (as guaranteed by the ICCPR, article 9, a person detained on a criminal charge shall be brought promptly before a court within a reasonable period of time for the further stages of either trial or release).

---

[895] See Chapter4 (Section 4.6.6 Criminal Prosecution).
[896] Thai Criminal Procedure Code Sections 134/1-134/4.
[897] See Chapter 2 (Section 2.2 Definition of Terrorism).

Reflection upon the UK experience could offer a positive lesson for the Thai criminal justice system and would require it to take more consideration of rights protection by reducing the detention period.[898] Furthermore, in the UK, the compilation of full and accurate records of the treatment of a detainee is an important element of ensuring propriety and humanity.[899] According to PACE rules, a custody record must be kept, though individual police officer identification data[900] and the enhanced risk assessments will not be included.[901]

Overall, this research study found that the trial-process in terrorism cases displayed better quality in terms of 'legitimacy' than in the pre-trial processes. At this stage, it has shown a better standard in protections of the rights and freedoms of suspects during criminal procedures reflected by both legislation and the court professionals. Based on the interviews conducted with the criminal justice officers, the defence lawyers and the NGO staffers, terrorist suspects were treated fairly and properly protected by criminal procedure law in most terrorist cases. For instance, it was claimed that all suspects of terrorism were initially offered rights to access a free lawyer, rights to an open trial, rights to remain silence, and rights to a fair trial.[902] These are vital rights to protect defendants in trials.

However, one negative feature under the notion of 'legitimacy' in the trial process is that most of the terrorism cases during the court procedures consume much more time than other types of criminal cases - almost double or more.[903] This has directly affected terrorism suspects' right to liberty, assuming most are held in remand. Based on the interviews made with defence lawyers, prosecutors have often delayed cases by asking the court to postpone the trials when they have not been ready to present evidence in the court, or even when they have had insufficient evidence to convince the court.[904] Thus, to balance the effectiveness of the criminal justice system in a terrorism case, and the rights and freedom of terrorism suspects in the system, it would be a positive step to indicate a limitation of time for the trial as well as in the pre-trial processes. In this regard, the statutory limitation of time of

---

[898] See Chapter 4 (Section 4.6.3 Detention).
[899] Walker, C. (2014) *Blackstone's Guide to the Anti-Terrorism Legislation.* Oxford. Oxford University Press. Chapter 5.
[900] PACE Code H, para 2.8.
[901] PACE Code H, para 3.8.
[902] See Chapter 4 (Section 4.6.7 Thai Judicial Performance).
[903] See Chapter 4 (Figure 4.11).
[904] See Chapter 4 (Section 4.6.7 Thai Judicial Performance).

England and Wales, set by the Prosecution of Offences (Custody Time Limits) Regulations 1987,[905] would be a worthwhile example for the Thai criminal justice system.[906]

In terms of 'efficacy' in the trial process, this research found that trial failure was often related to the inability to bring the witness into court to give evidence in the trial.[907] As mentioned in earlier chapters, the Thai criminal justice system has mainly relied on witnesses in proving the defendant's guilty. Yet in practice, as a result of the inefficacy of the witness protection measures, the majority of the witnesses of terrorism would not dare to have any involvement in the system. This has resulted in the high dismissal rate over the last five years for cases of terrorism in southern Thailand.[908] However, the tendency of the conviction rate in terrorist cases is expected to see improvements as 'forensic evidence' has begun to be applied since 2013, instead of mainly relying on witnesses to provide the bulk of the evidence in the trial.

Nevertheless, the Thai criminal justice system, even after resorting to forensic evidence, has shown various defects that need to be remedied. Even though the forensic evidence is admissible and can be used solely to prove a terrorist defendant's guilt, the Thai criminal justice system does not have enough experts in this field.[909] Based on the interviews conducted with police officers, prosecutors, judges and defence lawyers, all of them have reported that forensic evidence is the key to the future and a more reliable mechanism than a witness to prove guilt; but they do not have sufficient expertise or facilities.[910]

6.2.3 The special laws

As set out in Chapter 1, the research sought to examine the role of the special laws applied in the three southernmost provinces of Thailand. As the use of the special laws has been widely criticised as a derogation of human rights and contradiction of the legal rights offered by the normal criminal procedure law, the study highlighted the concept of 'legitimacy'. On this point, it sought to explore the rights of terrorist

---

[905] S.I. 1987/299.
[906] Ibid.
[907] See Chapter 4 (Section 4.6.7.1 Evidence Law)
[908] See Chapter 4 (Section 4.6.6 Criminal Prosecution).
[909] See further explanation regarding the forensic evidence on terrorism charges at Chapter 4 (Section 4.6.7.1 Evidence Law).
[910] Ibid.

suspects held under the special laws and explored whether human rights violations have been perpetrated by the military. In the context of the rule of law, the concept of being 'accountable under the law', which is one of the most important elements, was examined. In particular, it sought to explore whether there exists a suitable method to review officials' powers in using the special laws. After this, the study explored the special laws based on the concepts of the criminal justice system recognised by the Constitution, especially speedy criminal processes and the rights of suspects in the pre-trial process.

As explained in Chapter 5, the application of the special laws has been restricted in the pre-trial processes. The research found that the special laws, especially the Emergency Decree on Public Administration in State of Emergency 2005/2548. have provided several special powers for facilitating the tasks of suppressing and investigating crimes, for example, the power to search without warrant and the power to detain a terrorist suspect without charge (or warrant) up to 30 days.[911] These powers are considered by most of the interviewed criminal justice officers as the necessary tool for functioning alongside the normal criminal procedure law, in particular to investigation processes.[912] Nevertheless, the Thai criminal justice system, in the pre-trial processes under the special laws, indicated some significant drawbacks. One of the greatest concerns is related to human rights abuses regarding the use of the special laws during detention.[913] Although the researcher did not conduct an interview with any terrorist suspect who has been held in custody, he obtained interview data regarding human rights abuses in officials' custody, based on the input of the defence lawyers and the NGO staffers, as well as accessing publications and statistics from reliable sources both internal and external to the criminal justice system.[914] All of those various sources of information indicated that human rights abuses towards terrorist suspects still exist in the Thai criminal justice system.[915] However, based on the police officers' interviews, any human rights abuses of suspects of terrorism were strongly denied, as they claimed that they reacted to the terrorist suspects in the same as they did any other criminal suspects, in other words, without discrimination and fully providing them with their legal rights, such as the rights to meet a lawyer, family and to have access to medical treatment. The interviewed police officers also argued that there is no need

[911] See further explanation at Chapter 5 (Sections 5.4 Arrest and search under the special laws and 5.5 Detention under the special laws).
[912] Ibid.
[913] See further explanation at Chapter 5 (Section 5.5 Detention under the special laws).
[914] See Chapter 5 (Tables 5.5-5.12).
[915] See Chapter 5 (Section 5.9.1 Human Rights and the Special laws).

to exercise any abuse of powers towards terrorist suspects, and they have no direct hatred or racist attitudes towards them.[916]

The research further found that military officers play more active roles in terrorist investigation processes than police officers in the areas where the special laws were enforced. As described in Chapter 5, military officers are responsible for pursuing terrorist suspects and acting as detectives in finding evidence. Based on the interviews with the criminal justice officers, military powers via the special laws are considered to be necessary to deal with terrorist cases. One of the interviewed prosecutors insisted that 'the criminal procedure alone cannot deal with cases of terrorism we need the special laws, and it would be very tough to find evidence to prove in the trial'.[917] This would appear to show how the criminal justice officers lack confidence about the normal criminal procedure laws for dealing with terrorism. Thus, it seems that solely relying on police powers through the normal criminal procedure law is not enough, and in practice most of the evidence and the suspects are found by military officers.[918]

Although the military authorities have shown their importance in pursuing suspects and gathering evidence, their image regarding fairness is strongly questioned, as it has been found that there have been several cases in which human rights abuses occurred when terrorist suspects were being held in military custody.[919] This information was obtained from both defence lawyers and NGO staffers who work in the areas, and this information was consistent with other international sources, such as United Nations and Human Rights Reports, which have indicated that the human right abuses have often occurred during military custody.[920]

This research discovered that there are two main reasons why human rights abuses were often occurring in the military's custody. Firstly, the special laws, especially the 2005 Emergency Decree, provide excessive powers without any checks and balances or reviewing processes. By way of example, according to Section 12 of the 2005 Emergency Decree, the military authority could detain terrorist suspects in a safe house or at certain undisclosed places without a warrant and without informing them of any charges for up to 30 days. Consequently, these

---

[916] See further information at Chapter 4 (Section 4.6.1 Investigation).
[917] See Chapter 5 (Section 5.3 Investigations and Interrogation under the Special Laws).
[918] The further information and relevant statistics can be found in Chapter 5 (Figure 5.2).
[919] See Chapter 5 (Section 5.9.1 Human Rights and the Special Laws).
[920] Ibid.

measures remove important safeguards for suspects to meet a lawyer, to be informed of a charge, or even to meet their family during this stage. Based on interviews with defence lawyers and NGO staff who are working in these areas, it has been claimed that human rights abuses by the military authorities were occurring during the 30 day detention period through the powers derived from Section 12.[921]

Secondly, the military authorities are not regular officers of criminal justice, and their knowledge and training about legal provisions and practice is limited. This research would suggest that it might be wrong to allow a military authority to take the prime responsibility in all pre-trial processes in cases of terrorism. Their powers should be limited to pursuing a suspect and perhaps to collecting evidence at the scene of arrest, whereas all the criminal processes after a suspect has been found should remain within the police officers' powers as usual. However, in practice the military authorities have often conducted interrogations related to terrorist charges, as amounting to almost 50 percent in the number of terrorist case interrogations.[922] Yet, the military authorities do not have sufficient training or facilities to conduct interrogations in terrorist cases that involve complicated factual and legal matters. As a result, their involvement raises the main concerns about abusive treatment of detainees. Based on information from the defence lawyers and the NGO staffers, it was claimed that most suspects who were held in military custody were not properly informed of their legal rights, and some were even abused in various ways during their detention by military officers.[923]

This research suggested that it would be a positive development to abolish the three special laws (Martial Law 1914/2457, the Emergency Decree on Public Administration in State of Emergency 2005/2548 and the Internal Security Act 2008/2551), as their disadvantages far outweigh the advantages. At most, they should be allowed a power of arrest and a short period of detention to allow a transfer of the suspect to the police.[924]A second best solution is that if the military

---

[921] Ibid.
[922] The information was gained from the interviewed police officer (P.O.P.1). See also section 5.3 Investigation and interrogation under the special laws.
[923] See interviews with defence lawyers and NGO staffers at Chapter 5.
[924] An example of an arrest power and short period of detention for the military is in Northern Ireland – see Justice and Security (Northern Ireland) Act 2007, Section 22. See also Walker, C. (2014) *Blackstone's Guide to the Anti-Terrorism Legislation.* (3rd edn). Oxford. Oxford University Press.chap. 9.

continue exceptionally to be deployed as criminal enforcement officers, then they must be subjected to training requirements and express rights must be granted to suspects equivalent to those applying to police detainees. The application of the special laws involves a lack of accountability, and the military officers have not enough knowledge to be a part of the criminal justice system, especially in the investigation process.

The researcher takes the view that though the need for extra special powers is recognised, a principle of 'police primacy' should also be stated, perhaps in administrative arrangements between police and military. Police primacy is desirable since the police are more likely to have legitimacy amongst the local population and are more likely to be able to exploit criminal justice solutions to terrorism rather than executive solutions.[925] Police primacy has been adopted in other long standing counter-terrorism operations such as in Northern Ireland in 1976.[926] In Thailand, as explained in Chapter 5, military primacy rather than police primacy is applied.

6.3 Reflection on methodology

Alongside documentary and doctrinal techniques, this research utilized qualitative and quantitative approaches. This section evaluates and reflects on the original and substantial qualitative aspect, in which the study applied face to face interviews based on purposive sampling with 28 interviewees. Police officers, prosecutors, judges and other relevant professionals such as defence lawyers and NGO staff, volunteered to take part in this study, and they provided open responses, with apparent enjoyment of the opportunity to talk about their experiences and work. As the main research question was to find out whether the Thai criminal justice system as applied to terrorism cases achieves efficacy and respects fairness, the interview strategy with both governmental and non-governmental sides successfully helped in uncovering deep and rich data that served to answer the research questions more fully and accurately.

---

[925] Urban, M. (1992) *Big Boys' Rules: The Secret Struggle against the IRA*. London. Faber and Faber. p. 17. See also Walker, C, 'The Role and Powers of the Army in Northern Ireland' in Hadfield, B (ed), *Northern Ireland Politics and the Constitution* (Open University Press, Buckingham, 1992) pp. 112, 114–15.

[926] Ibid. p.112.

In terms of the pre-trial process, both experienced police officers and police officers who are currently working in the areas (Pattani, Yala, and Narathiwat provinces) were especially important informants. The study highlighted how the officers exercise their powers towards terrorism suspects, and how they have applied the law in practice. Furthermore, the study also considered the efficacy of the police officers in gathering evidence in terrorism cases.

To measure the efficacy and fairness in the trial-process, the study also interviewed prosecutors and judges. The prosecutors yielded deep information relating to strong and weak points in their work, which could precisely answer one of the research questions regarding 'the efficacy' of the Thai criminal justice system in dealing with terrorist cases. For example, an investigation process in a terrorism case that does not allow prosecutors to intervene until after the police have completed most of their work leads to inefficacies in the demonstration of evidence at trials by prosecutors, due to the prosecutors being allowed to consider the amassing of evidence as it is developed during the investigation. This is because all of the evidence is gathered by the police officers alone, and the prosecutors are informed only when an investigation is finished, leaving very limited time to consider the prosecution's decision. This represents one of the most significant features which cause inefficacies in Thailand's criminal justice system.

The judges were selected for research interviews, as their comments could precisely reflect upon the 'fairness' and 'effectiveness' of the criminal system towards terrorist cases during trials. Nevertheless, there was a difference in the interview outcomes as between the judges' interviews and prosecutors' interviews, as the latter group highlighted the notion of efficacy, while the judges' interviews were focused on the notion of fairness and the rights of the defendants during trials. The possible reason why most of the interviewed prosecutors highlighted the notion of efficacy is that their main mission seems to be to get the case into the court, and as discussed in Chapter 4, the conviction rate is considered as the key performance indicator of their endeavour.[927]

The interviews with the defence lawyers and the NGO staffers generated further information about human rights and abuses of powers during the criminal process. The strategy of conducting interviews with the defence lawyers was especially

[927] The information was gained through the interview with the defence lawyer (D.L.Y.1). See also Chapter 4 (section 4.6.6 Criminal Prosecution).

aimed at obtaining information about human rights abuses occurring during police custody. Since terrorist suspects were not selected as participants in this study, it was expected that their defence lawyers would provide helpful information regarding terrorist suspects' rights and freedoms during the criminal process. Furthermore, the study also conducted interviews with the NGO staffers who have dealt with, and helped, suspects of terrorism who were charged with terrorist offences in the south of Thailand. In this respect, there were two types of interviewed the NGO staffers.[928] These two types of NGO were very helpful in answering one of the research questions of 'fairness' in the Thai criminal justice system, and the human rights abuses resulting from the application of the special laws. This research found that among all the interviewed NGO groups, the Muslim Attorney Council (MAC) was the most enthusiastic group to be involved in the interviews, probably because the main purpose of this research is considered similar to their aim of reforming the criminal justice system in terrorist cases in the three southernmost provinces.[929] It can be seen that they voluntarily arranged the appointments and locations for conducting the interviews and provided very helpful information both in the contexts of 'efficacy' and 'legitimacy'.

The study also utilized the quantitative approach alongside qualitative methods. Although the researcher did not generate original statistics, the availability of data compiled and published by the Office of Public Prosecution, Region 9 was very valuable and could be analysed in ways which enriched the documentary and qualitative studies. Regarding the notion of 'efficacy' in the context of the Thai criminal justice study, the research analysed the statistics relating to terrorist cases during recent years. For example, in order to measure the efficacy of the police's task in the investigation process, the study provided the number of terrorism cases in which the police successfully gathered evidence and identified suspects compared to the number of cases in which the police failed to bring suspects into the criminal justice system and ordered a stop to the investigation.[930] Accordingly, this type of method was able to yield rich information and was able to reflect one of the research questions relating to the efficacy of the police in investigations. Regarding the notion of 'legitimacy', the research has data regarding the numbers

[928] See further information at Chapter 1 (Section 1.5.4 Sampling strategy).
[929] The information was derived through a member of the Muslim Attorney Council (MAC).
[930] See Table 4.4, Chapter 4.

of terrorist suspects who have claimed to have been tortured and suffered ill-treatment during the officers' custody.[931]

To reflect on the multiple strategies applied in this research, the research has found that both the interviewed data and the statistical data have suggested the same result: namely, the Thai criminal justice system displays inefficacy in dealing with terrorism charges as discussed in Chapters 3-5. The research suggests that there is room for improvement in the performance of the relevant criminal justice officers as well as the system in regard to 'legitimacy' in terrorism cases. The research has found that the majority of the official participants seemed to be satisfied with the standard of the Thai criminal justice study in terms of 'legality', whereas the statistical data provided contrary indicators. One of these examples is that most of the interviewed criminal justice officers were satisfied with the legal protection given in the pre-trial processes and claimed that the current criminal and criminal procedure laws are sufficient to deal with terrorism charges, as mentioned in Chapters 3 and 4. This information stands in contrast with the high rate of human rights violations in the criminal process, as provided in Chapter 5. According to the data provided in Chapter 5 (tables 5.5-5.10), police malpractice during the pre-trial process was still a very significant problem for the Thai criminal justice system. This converse information would seem to imply that the majority of the Thai criminal justice officers are rather too optimistic regarding the current system and fail to take rights seriously. This finding points to the need for better training and better monitoring for the Thai criminal justice officers. In this regard, reference should be made to programmes applied to the Police Service of Northern Ireland (PSNI). The Police Service of Northern Ireland has developed programmes to ensure that all its officers and staff understand the principles of human rights and the obligations placed upon them.[932] This is reflected in the policies, planning and practice of the Service. Also, there is the Northern Ireland Policing Board to monitor the performance of the Police Service in complying with the Human Rights Act 1998. The Board's Human Rights Advisors have developed a monitoring framework for human rights, which allows the Board to measure the Police Service's performance against human rights standards.

[931] See Chapter 5 (Section 5.9.1 Human rights and the special laws).
[932] https://www.psni.police.uk/inside-psni/our-policies-and-procedures/ [online] [Accessed 27/9/2017].

As previously stated, due to the limitation of the fieldwork research, which was confined to 28 participants, it was not possible to generate results regarding 'legitimacy' and 'efficacy' for the entire criminal justice system. However, the interviews were valuable even if selective, and their responses could reflect further upon the impact of the current Thai criminal procedure in terrorism cases. Accordingly, in this research, any claims of generalisation were not possible because of the small sample. Importantly, however, the main aim of this study was not to generalize but rather to yield a rich, contextualized understanding of some aspect of human expertise and experience through the intensive study of particular cases. Also, the aim of purposive sampling in this study was to focus on the particular characteristics of relevant expert groups, which would enable the researcher to answer more effectively the research questions.

No major difficulty was encountered during the interview process. The participants were very willing to be a part of the study. As stated in Chapter 1, conducting interviews with criminal justice officers and non-official participants (NGO staffers and defence lawyers) is rather common in Thailand. All of them showed their willingness in allowing the researcher to conduct the interviews. The researcher provided the consent form with information sheets[933] regarding the research aims and objectives, and the participants were also informed of the reason why they were selected for the interview and the right to withdraw the consent within 28 days after the interview was made as listed in the Appendix B. However, one major concern in conducting the interviews relates to the safety of the researcher and interviewees. As described, the three provinces of Pattani, Yala and Narathiwat are potentially dangerous places. To ensure safety during conducting the interviews, the researcher avoided rural places where terrorist crimes often take place, and the venues for the interviews were in the city, and mostly were coffee shops and hotel lobbies, which were considered safe places.

6.4 Policy transfer lessons from England and Wales

The first and foremost point to be discussed is related to the different perspective on the roles of criminal law in counter terrorism in both states. According to UK law, the anti-terrorism legislation fully endorses various forms of intervening before a complete crime is committed, including by means of precursor crimes. There are several sections formulated by the Terrorism Act 2000 and Terrorism Act 2006 to

[933] See Appendix B.

intervene against suspects in the very early stages; for example, there are preparatory offences, training offences, and the collection of materials or informantion for terrorism. These approaches toward the anticipatory risk of the Terrorism Act 2000 also involve the concept of conscripting the public in counter-terrorism by imposing the duty to disclose any terrorist information.[934] It is a legitimate strategy for the law to require citizens to play a part and to impose a duty to divulge knowledge, based on a precautionary basis.[935] On the one hand, this preventive strategy of criminal law might enhance the capability of the state to deal with offences of terrorism at the very earliest stages, based on intelligence, and this strategy would also reflect the efficacy of utilizing criminal law for preventing terrorism. On the other hand, conscripting the public into counter-terrorism could lead to social tensions due to confidentiality being a necessary element of social interaction, and it might violate the human right to privacy.[936]

In contrast, the Thai criminal law on counter terrorism seems to play a very passive and reactive role compared to the UK laws. Even though there are precursor offences such as training, collecting and preparing for terrorism offences,[937] the role of the Thai criminal laws on counter terrorism is restricted as an element for further prosecution. As discussed, the prosecution rate for these precursor offences is very low,[938] and this indicates the inefficacy of utilizing criminal law as a preventive tool in countering terrorism. In addition, there is no law imposing a duty on citizens to be a part of counter terrorism comparable to Section 38B of the Terrorism Act 2000 (disclosure of information). At this point, the role of Thai criminal law in counter terrorism shows a low level of efficacy in terms of the mobilization function.

Secondly, another difference between British law and Thai criminal law on counter terrorism exists regarding the consistency between criminal offences and police powers derived from criminal procedure law. The Terrorism Act 2000 formulated both criminal offences and police powers within a single Act. Alongside the several precursor offences, the Terrorism Act 2000 allows a police officer to actively intervene against suspects; for example, by searching persons and property, or by

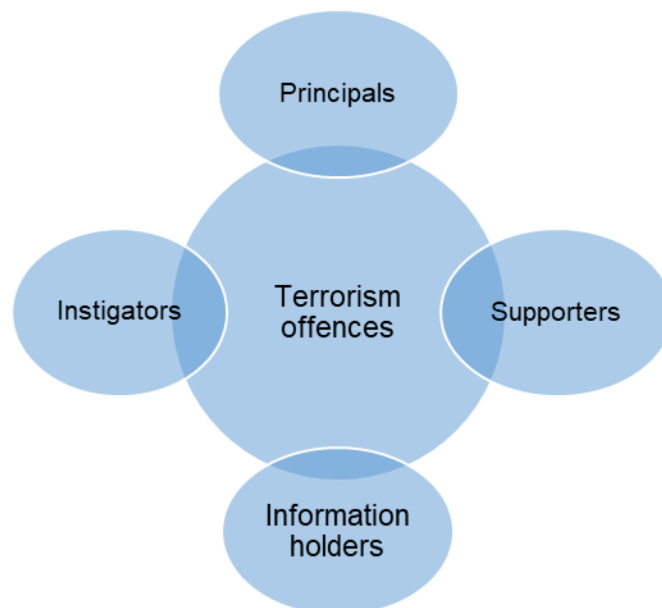
---

[934] See further details at Chapter 3 (section 3.5 The functions of criminal law in counter-terrorism).
[935] Stern,J & Weiner, J. (2006) 'Precaution against Terrorism'. *Journal of Risk Research.* Vol. 9 (4). p. 393.
[936] Walker, C. (2010) Conscripting the Public in Terrorism Policing: Towards Safer Communities or a Police State? *Criminal Law Review*. p. 441.
[937] See Thai Criminal Code, Section 135/2 (2).
[938] The information derived through an interview with the senior prosecutor. P.P.Y.1. See also Chapter 3 (Table 3.2).

arresting without a warrant.[939] In contrast, there has been less consistency between terrorism offences and criminal procedure law in Thailand. The Thai criminal procedure law does not facilitate the police in an active way. For example, police officers cannot arrest terrorist suspects without a court's warrant.[940] On this point, even though the criminal law aims to criminalize acts of attempts, collection or preparation for terrorism,[941] it is very difficult for a police officer to intervene and arrest suspects at that stage due to the limitation of police power.

The third difference is related to the impact of criminal law on counter terrorism. It has been observed that the Terrorism Act 2000 has been used to deal with terrorism offences on a much wider scale than in Thailand. The law does not aim to deal solely with the principal, but also covers surrounding people; for example, the supporters (funders[942] or members of groups[943]) or persons who have information (and who may be relatives and friends). The point is illustrated by Figure 6.1 below.

Figure 6.1 Terrorism interventions under the Terrorism Act 2000



In this regard, the range of 'terrorism offences' in UK law is much broader than in Thai criminal law. It is a reflection of the concept of 'net-widening' through the use of 'terrorism offences' to criminalize the principal and a range of relevant secondary actors. In other words, the UK anti-terrorism legislation criminalizes a wide range of

---

[939] See Terrorism Act 2000, Part V.
[940] See the Thai Criminal Procedure Code, Section 80.
[941] See Sections 80, 83 and 135/1 of the Thai Criminal Code.
[942] See Terrorism Act 2000, Pt.III.
[943] See Terrorism Act 2000, Pt.II.

activities associated with terrorism. By way of contrast, the Thai criminal law places the highlight on a terrorist principal rather than relevant secondary actors.

The last point of difference is related to organisational formations which transact criminal procedure laws relating to counter-terrorism. Apart from increasing police powers to deal with a terrorist suspect in advance, the research found that establishing a specialist police unit for dealing with cases of terrorism, like the Counter Terrorism Command and Counter Terrorism Units of the UK, would be a positive regime to improve the Thai policing on counter-terrorism. In the UK, the special police units and special prosecutors (the Counter Terrorism Division of the CPS) have displayed good levels of cooperation in dealing with terrorism cases. In this context, prosecutors act as both 'advisors' and 'reviewers' for the police's work. In general, the police can request advice on areas of concern, and such request might be one or more of the following; informal advice, early investigative advice, pre-charge advice and charge decision.[944] It can be seen that the prosecutors in the UK can assist the police's work in early stage of the investigation through their advice. This involvement would be a worthwhile design for the Thai criminal justice system on counter-terrorism. Accordingly, as for the notion of 'legitimacy', this might be viewed as a good systematic check and balance in the investigation process, while under the notion of 'efficacy', this would potentially be a factor of developing the prosecutors' role in a trial, as at least they have more chances to know evidence since the early stage of investigations, and this method would possibly help the prosecutors in achieving their goal of proving a defendant guilt. At trial processes, in the UK, there is also some specialism at the court level. Cases are allocated to specific courts so that expertise can be gained.[945] Accordingly, this design would be another possible factor to enhance the efficacy and legitimacy of the Thai criminal justice system to deal with terrorism cases at the trial stage.

6.5 Final comments

This part will provide final remarks in relation to the likely future of the Thai criminal justice system regarding terrorist cases, and will offer some assessment of future prospects. This research has found that the special laws have tended to be applied

---

[944] See Official Website of Metropolitan Police. Specialist Operations. Counter Terrorism Command. [Online] [Accessed 16/3/2015] At http://content.met.police.uk/Article/Counter-Terrorism-Command/1400006569170/1400006569170

[945] Management of Terrorism Protocol, CPD XIII Listing Annex 4: Case management of terrorism cases, https://www.justice.gov.uk/courts/procedure-rules/criminal/practice-direction/2015/crim-practice-directions-XIII-listing-2015.pdf

as the main method for coping with terrorism in southern Thailand. Although the special laws have been proven to achieve significant outcomes in pursuing terrorist suspects, they are also the main factor behind the derogation of human rights. In this way, military officers tend to apply their powers without any checking and balancing processes. Consequently, this situation raises strong concerns regarding 'legitimacy' and stokes up further conflict in the areas. In this regard, the research suggests that the concept of police primacy and not military primacy should be stated, at least in administrative terms and preferably in law. The military should be allowed a power of arrest and a short period of detention to allow a transfer of the suspect to the police.[946] In addition, if the military continue exceptionally to be deployed as criminal investigation officers, then they must be subjected to training requirements and express rights must be granted to suspects equivalent to those applying to police detainees.

Next, it is expected that the application of forensic evidence will play a more important role in court hearings in the future. As was discussed in Chapter 4, the emergence of forensic evidence is related to the incapability of bringing a witness before a court.[947] The use of forensic evidence is considered admissible. During the last five years, there has been a tendency for the courts to rely on forensic evidence to convict defendants.[948] Thus, it is possible that forensic evidence will be applied more frequently in terrorism cases. However, the research has found that Thailand still lacks experts in this field, and knowledge about forensic evidence by criminal justice officers needs to be developed. Thus, the research suggests that the future study of the application of forensic evidence to southern Thailand's terrorism would be worthwhile for the Thai criminal justice system.

Recognising that terrorism involves political motives and objectives, it might be worth reflecting finally on the broad political situation in southern Thailand, while noting that this political theme was not any part of the research thesis, objectives or fieldwork. Nevertheless, it can be accepted that in order to quell the conflict in the southern of Thailand, political solutions, such as the devolution of political power, must be explored. The area of the current Pattani, Narathiwat and Yala was once

---

[946] An example of an arrest power and short period of detention for the military is in Northern Ireland – see Justice and Security (Northern Ireland) Act 2007, Section 22. See also Walker, C. (2014) *Blackstone's Guide to the Anti-Terrorism Legislation*. (3rd edn). Oxford. Oxford University Press. Part 9.
[947] See Chapter 4. (Section 4.6.7.1 Evidence Law).
[948] Ibid.

an independent state.[949] Although the proposal to decentralize political power to pacify the southernmost problem is not novel,[950] this reform represents an enduring prospect. In 2011, during the election campaign, the former Thai Prime Minister Yingluck announced that the Pheu Thai Party would establish a special administration for the southernmost provinces called 'Pattani Mahanakorn' (Greater Pattani City).[951] However, this idea was dropped after the Pheu Thai Party failed to win any seats in the southernmost provinces.[952]

In the spirit of policy transfer, it is worthwhile to refer to some aspects of the devolution of powers from the UK to Northern Ireland and the efforts towards the reform of policing and the de-escalation of security measures as part of the Peace Process in 1998.[953] Although the political systems and the causes, organisation, and traditions of terrorism in the southern of Thailand and Northern Ireland are very different, there are some important points from Northern Ireland that might be pertinent to southern Thailand's problem. For instance, the pattern of devolution in the case of Northern Ireland is based on a compulsory system of power-sharing between the Unionist and Nationalist communities.[954] This power-sharing concept is based on the principles of cross community support, which means key decisions have to be taken based on the majority of each community.[955] This situation appears similar to the situation in southern Thailand, where there are two different communities (Buddhists and Muslims). This approach would confront the basic problem of how the divergent aspirations of those groups can be accommodated. Thus, devolution with a compulsory sharing power system might be one way to address some of the political aspects of the southern Thailand's conflict. The platform of consensual power-sharing might also be used to address further subsidiary issues such as police reform and security law reform, as well as social and cultural divisions. However, the proposed policy transfer of power-sharing to

---

[949] See further explanation at Chapter 2 (Section 2.4).
[950] International Crisis Group (2012) Thailand: The Evolving Conflict in the South. Asia Report N°241 – 11 December 2012.pp. 18-25. Available at http://www.refworld.org/pdfid/50c71dd512.pdf
[951] Ibid.
[952] *The Nation Newspaper* 'Yingluck Promises Peace in the South',15 June 2011.[Online]. [Accessed 20/5/2015].
[953] See Belfast Agreement 1998 (Cm.3883, London, 1998). See also Walker, C.(2001) 'The Patten Report and Post-Sovereignty Policing in Northern Ireland' in Wilford, R., (ed.), *Aspects of the Belfast Agreement*. Oxford. Oxford University Press. pp. 142-165. Also, Mulcahy, A.(2006) *Policing Northern Ireland: Conflict, Legitimacy and Reform*. Devon. Willan. pp. 89-107. Blackbourn, J. (2015) *Anti-Terrorism Law and Normalising Northern Ireland*. London. Routledge. pp. 30-68.
[954] Leyland, P. (2009) 'Thailand's Troubled South: Examining the Case for Devolution from a Comparative Perspective'. *Australian Journal of Asian Law*. Vol. 11(1) 1-29.
[955] Ibid.

Thailand is not straightforward. First, Thailand is a highly centralized country, and it has been stated by consecutive Constitutions that Thailand is an indivisible Kingdom.[956] As McCargo stated, 'autonomy has long been a taboo term in the Thai political lexicon'.[957] So, the process of changing or amending the constitution is not an easy one. Second, it will be difficult to arrange power-sharing when one faction represents 4.2% of the population (Muslim) and the other 94.6% (Buddhist).[958] Thus, the prospects for constitutional change are not good, and a third adverse factor in Thailand is that the conflict is less organised so that it becomes difficult to achieve any form of representative dialogue. By contrast, in Northern Ireland, there are disciplined paramilitary groups and sophisticated political representatives (such as the IRA and Sinn Fein). Fourth, concessions are being sought not between local factions (as in Northern Ireland) but between a local faction and the national majority, so there is a much more unequal balance of power in Thailand than in Northern Ireland.

Therefore, it is more likely that criminal law, criminal procedure law, and the special laws will play the more feasible pathway to deal with the terrorism occurring in the south of Thailand. In any event, a lesson from Northern Ireland is that residual terrorism and associated criminality is likely to persis long after any 'peace' settlement.[959] Yet, this research has found that there are many concerns regarding these laws; and their ability to deal appropriately with the problem is still underdeveloped. Thus, regardless of any political settlement, the Thai government should enhance the criminal law, criminal procedure law and relevant special laws in terms of their efficacy and legitimacy. Security reform and normalisation should become a part of the process of providing conciliation in the conflict in south Thailand rather than remain an aggravating factor in that conflict.

---

[956] See Article 1 of the Thai Constitution 2007.
[957] McCargo, D. & Jitpiromsri, S. 'A Ministry for the South? New Governance Proposals for Thailand's Troubled Region', *Contemporary Southeast Asia*, 30.3 (2008), 403-428.
[958] See Official Website of Thai National Statistical Office. Available at http://www.nso.go.th/ [Accessed 5/1/2018].
[959] Blackbourn, J. (2015) *Anti-Terrorism Law and Normalising Northern Ireland*. London. Routledge. pp. 30-68.

Bibliography

Abuza, Z. (2009) *Conspiracy of Silence the Insurgency in Southern Thailand.* Washington D.C. United States Institute of Peace Press.

Abuza, Z. (2013) 'The Upcoming Peace Talks in Southern Thailand's Insurgency'. *CTC Sentinel.* Vol.6 (3).

Acharya, A. (1991) The Association of Southeast Asian Nations: Security Community of Defence Community? *Pacific Affairs*. Vol 64 (2).

Acharya, A. and Gunaratna, R. (2012) *The Terrorist Threat from Thailand: Jihad or Quest for Justice?* Potomac Books Inc.

Adams, M and Bomhoff, J. (2012) *Practice and Theory in Comparative Law.* Cambridge. Cambridge University Press.

Andreas, P. and Nadelmann, A. E. (2006) *Policing the Globe: Criminalisation and Crime Control in International Relations*. Oxford. Oxford University Press.

Apornsuwan, T. (2004) 'Origins of Malay Muslim 'Separatism' in Southern Thailand'. *Asia Research Institute Working Paper 32.* Southeast Asian Studies Program Thammasat University.

Aphornsuvan, T. (2007) *Rebellion in Southern Thailand: Contending Histories.* Singapore. ISEAS.

Arghiros, D. (2002) 'Political Reform and Civil Society at the Local Level: Thailand's Local Government Reforms' in McCargo, D. (ed), *Reforming Thai Politics*. Copenhagen. NIAS.

Arware, P. (2009) *Problems Arising from the Special Laws in Southern Thailand*.[Online] Available at http://www.deepsouthwatch.org/blogs/MuslimAttorneyCenter

Ashworth, A (2000) Is the criminal law a lost cause? *Law Quarterly Review*. 116 :225.

Ashworth, A. & Horder, J. (2013) *Principles of Criminal Law.* (7th edition). Oxford. Oxford University Press.

Ashworth, A. & Redmayne, M. (2005) *The Criminal Process*. Oxford. Oxford University Press.

Ashworth, A., Emerson, B. and Macdonald, A. (2007) *A Human Rights and Criminal Justice*. London. Sweet and Maxwell.

Ayres I & Braithwaite J (1992) *Responsive Regulation: Transcending the Deregulation Debate*. Oxford. Oxford University Press.

Ayut, S. (2010) *Evidence Law for Public Prosecutors in Southern Areas.* Songkhla. Office of Public Prosecutor Region 9.

Bajoria, J. & Zissis, C. (2008) ‘The Muslim Insurgency in Southern Thailand’ [Online Journal] *Council on Foreign Relations*. Available from http://www.cfr.org/thailand/muslim-insurgency-southern-thailand/p12531

Baker, C & Phongpaichit, P. (2005) *A History of Thailand.* Cambridge. Cambridge University Press.

Baker Review, Independent Review of the United Kingdom's Extradition - Arrangements (https://www.gov.uk/government/publications/independent-review-of-the-united-kingdoms-extradition-arrangements) and Government Reply (Cm 8458, 2012).

Banakar, R. and Travers, M. (2002) *An Introduction to Law and Social Theory*. Oxford. Hart Publishing.

Banker, R. and Travers, M. (2005) *Theories and Method in Socio-Legal Research*. Oxford. Hart Publication.

Bangkok Post (2014) ‘Cool Heads Must Prevail’ [online]. Available from http://www.bangkokpost.com/opinion/opinion/410014/cool-heads-must-prevail

Barter, S.J. (2011) ‘Strong State, Smothered Society: Explaining Terrorist Violence in Thailand's Deep South’. *Terrorism and Political Violence*, 23:2, 213-232.

BBC News (2014) Treason Charge Idea Considered for UK Jihadists. [Online] 17 October. Available from http://www.bbc.co.uk/news/uk-29655099.

Beckman, RC. (2005) ‘International Responses to Combat Maritime Terrorism’. in Ramraj, V. et al., *Global Anti-Terrorism Law and Policy.* Cambridge. Cambridge University Press.

Bennett, C. and Howlett, M (1992) ‘The Lessons of Learning: Reconciling Theories of Policy Learning and Policy Change’, *Policy Sciences* Vol.25.

Bentham, J. (1996) *An Introduction to the Principles of Morals and Legislation.* Oxford. Clarendon Press.

Bhattacherjee, A. (2012) *Social Science Research: Principles, Methods and Practices. Text Book Collection.* Tampa. University of South Florida.

Bingham, T (2011) *The Rule of Law.* London. Penguin Books.

Blackbourn, J. and Walker, C.(2016) ‘Interdiction and Indoctrination: The Counter-Terrorism and Security Act 2015’. 79(5) *Modern Law Review.*

Blackstock, J., Hodgson J.S., Cape, E., Spronken, T. and Ogodorova, A. (2014) *Inside Police Custody: An Empirical Account of Suspects' Rights in Four Jurisdictions.* Cambridge. Intersentia.

Boonchalermvipak, S. (2008) *Thai Law History*. (8th edn). Bangkok. Winyoochon.

Bowling, B. (2011) *Global Policing*. London. Sage

British Society of Criminology Code of Ethics for Researchers in the field of Criminology. Available at http://www.britsccrim.org/ethical.htm.

Bronitt, S., Legrand, T., Stewart, M. (2015) 'Evidence of the Impact of Counter-Terrorism Legislation'. in Lennon, G and Walker, C. *Routledge Handbook of Law and Terrorism*. London. Routledge.

Bruce, N (2005) 'Thai Shift of Power by Decree Draws Fire'. *International Herald Tribune* 19 July 2005.

Bryman, A. (2008) *Social Research Method*. Oxford. Oxford University Press.

Bures, O.(2009) 'Europol's Fledgling Counterterrorism Role'. *Terrorism & Political Violence* 20 (4).

Burns, M. G.(2007) 'Estimating the Impact of Maritime Security: Financial Trade-Offs Between Security and Efficiency'. *Journal of Transportation Security* 2013 Vol. 6 (4) 329-338.

Carcary, M. (2009) 'The Research Audit Trial – Enhancing Trustworthiness in Qualitative Inquiry'. *Electronic Journal of Business Research Methods.* Vol.7 (1).

Catherine, E. (2014) 'Thailand Military Announce Coup'. *CNN News.* [Online]. 23 May 2014.

Cavendish, R. (1999) 'Siamese Officially Renamed Thailand'. *History Today*. Vol 49 (5).

Chachavalpongpu, P (2013) 'Thailand's Red Networks: From Street Forces to Eminent Civil Society Coalitions'. *Occasional Paper Series*. Southeast Asian Studies at the University of Freiburg (Germany) Vol.14.

Chalk,P. (2001) 'Separatism and Southeast Asia: The Islamic Factor in Southern Thailand, Mindanao, and Aceh'. *Studies in Conflict & Terrorism.* Vol 24 (4).

Chesney, R. and Goldsmith, J. (2008) 'Terrorism and the Convergence of Criminal and Military Detention Models'. *Stanford Law Review* Vol. 60 (4).

Chevallier-Govers, C. (2012) 'Antiterrorism Cooperation between the EU and ASEAN'. *European Foreign Affairs Review*, Vol.17(1).

Chik, A., Isamali, S. & Laoman, A. (2013) *Patani, History and Politic in Malay World.* Songkhla. Islamic Culture Foundation of Southern Thailand.

Chowdhury, S.R. (1989) *Rule of Law is a State of Emergency*. London. Pinter.

Christian, J. (1941) 'Anglo-French Rivalry in Southeast Asia: Its Historical Geography and Diplomatic Climate'. *Geographical Review*, Vol. 31 (2).

Coffey, A. and Atkinson, P. (1996) *Making Sense of Qualitative Data: Complementary Research Strategies.* London. Sage.

Connors, M. (2007) *Democracy and National Identity in Thailand*. Copenhagen. NIAS.

Cornall, R. (2007) The Effectiveness of Criminal Laws on Terrorism. in Lynch, A. (eds.) *Law and Liberty in the War on Terror.* Sydney. The Federation Press.

Crispin, S. (2008) ‘Thai Protests Turn Nasty’. [Online] *Asia Times.* Available from http://www.atimes.com/atimes/Southeast_Asia/JH27Ae02.html.

David, L., Appiah-Yeboah, A., Salib, P. and Rupert J., ‘Merging Qualitative and Quantitative Data in Mixed Methods Research: How To and Why Not’ (2007). *Ecological and Environmental Anthropology* (University of Georgia). Paper 18.

Davies, P., Francis, P. and Jupp, V. (2011) *Doing Criminological Research.* London. Sage.

Davis, A. (2004) ‘Ethnic Divide Widens in Thailand’. *Jane’s Terrorism & Security Monitor*. 17 November 2004.

Deelee, S. (2007) *Solutions of Terrorism Problem in Southern Thailand*. Master of Political Science Thesis. Bangkok. Thammasat University Thailand.

Denscomb, M. (2003) *The Good Research Guide: For Small- Scale Research Project*. Maidenhead. Open University Press.

Denzin, K. & Lincoln, S. (2005) *The Sage Handbook of Qualitative Research* (3rd edn.). Thousand Oaks. CA: Sage.

Dershowitz, A. (2006) *The Case for Pre-Emption.* New York: W.W. Norton.

De Silva, Sir D., *Report of the Patrick Finucane Review* (2012-2013 HC 802).

Dolowitz, D. P. (2000) *Policy Transfer & British Social Policy.* Buckingham: Open UP.

Dolowitz, D.P. & Marsh, D. (2000) ‘Learning From Abroad: The Role of Policy Transfer in Contemporary Policy-Making’. *Governance an International Journal of Policy Administration and Institutions.* 13(1): 5-24.

Emmers, R. (2003) ‘ASEAN and the Securitization of Transnational Crime in Southeast Asia’. *Pacific Review*. 16(3), 419-438.

English, R. (2009) *Terrorism How To Respond*. Oxford. Oxford University Press.

Enders, W. and Sandler, T. (2000) ‘Is Transnational Terrorism Becoming More Threatening?’ *Journal of Conflict Resolution.* Vol. 44 (3) 307-332.

Ethical Review: What’s the point? (Research and Innovation Service: University of Leeds, UK, February 2012) available at

http:/researchsupport.leeds.ac.uk/images/uploads/docs/EthicsForResearch web.pdf.

Evans, M. and Davies, J. (1999) ‘Understanding Policy Transfer: a multi-level, Multi-Disciplinary Perspective’, *Public Administration* 77(2): 361-385.

Feeley, M. (2001) ‘Three Voices of Socio-Legal Studies’ *Israel Law Review*. Vol. 35.

Fielding, N. and Innes, M. (2002) ‘From Community to Communicative Policing: 'Signal Crimes' and The Problem Of Public Reassurance'. *Sociological Research Online,* Vol 7 (2).

Flick, U. (2006) *An Introduction to Qualitative Research.* London. Sage.

Foley, F. (2013) *Countering Terrorism in Britain and France: Institutions, Norms and the Shadow of the Past.* Cambridge. Cambridge University Press.

Fuston, J. (2010) Malaysia and Thailand’s Sothern Conflict: Reconciling Security and Ethnicity Contemporary Southeast Asia: *A Journal of International and Strategic Affairs* Vol.32 (2).

Galletta, A. (2013) *Mastering the Semi-Structured Interview and Beyond*. New York. New York University Press.

Ginsberg, T. (2003) *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge. Cambridge University Press.

Girling, J. (1981) *Thailand: Society and Politics.* Ithaca. New York. Cornell University Press.

Goldsmith, A. (2007) *Crafting Transnational Policing*. London. Hart.

Gray, D. (2009) *Doing Research in the Real World*. (2nd edn). London. Sage.

Hadfield, B. (1992) *Northern Ireland Politics and the Constitution*. Buckingham. Open University Press.

Hall, P.A. (1993) ‘Policy Paradigms, Social Learning and The State: The Case of Economic Policymaking in Britain’, *Comparative Politics* 25(3): 275-96.

Hansard House of Commons. Vol.586.Col482, 16 Oct 2014.

Hammersley, M. (1990) *The Dilemma of Qualitative Method: Herbert Blumer and The Chicago Tradition*. London. Routledge.

Harding, A. and Leyland, P. (2011) *The Constitutional System of Thailand: A Contextual Analysis.* Portland. Hart.

Hastings, J. (2010) *No Man's Land: Globalization, Territory, and Clandestine Groups in Southeast Asia*. Ithaca. Cornell UP.

Heiduk, F.(2014) ‘In it Together Yet Worlds Apart? EU-ASEAN Counter-Terrorism Cooperation after the Bali Bombings’. *Journal of European Integration* 2014; 36: 697-713

Helbart, S. (2015) *Deciphering Southern Thailand's Violence* Singapore, Yusof Ishak Institute.

Henry,M. & Hart, Jr. (1958) 'The Aims of the Criminal Law'. *Law and Contemporary Problems.* Vol 23. Available at: http://scholarship.law.duke.edu/lcp/vol23/iss3/2

Herring, J. (2012) *Criminal Law Text, Cases, and Materials.* (5th edn). Oxford. Oxford University Press.

Hirsch. A. (1993) *Censure and Sanctions.* Oxford. Clarendon Press.

Hollway, W. & Jefferson, T. (2000) *Doing Qualitative Research Differently*. London: Sage.

Home Office, *Prevent Strategy* (Cm8092, 2011): Lord Carlile, *Report to the Home Secretary of Independent Oversight of Prevent Review and Strategy* (London: Home Office, 2011).

Home Office, Counter Terrorism Powers: Reconciling Security and Liberty in an Open Society (Cm 6147, London 2011).

Home Office, *Countering International Terrorism* (Cm 6888, London, 2006), *The United Kingdom's Strategy for Countering International Terrorism* (Cm 7833, London, 2010).

Home Office, *Pursue, Prevent, Protect, Prepare: The United Kingdom's Strategy For Countering International Terrorism* (Cm 7547, London, 2009).

Hudson, J. and Kim, B. (2014) 'Policy transfer using the 'gold standard': Exploring policy tourism in practice', *Policy & Politics* 42(4): 495-511.

Hufnagel, S.(2013) *Policing Cooperation Across Borders*. Surrey. Ashgate.

Husak, D. (2004) The Criminal Law as Last Resort. *Oxford Journal of Legal Studies*, Vol 24 (2) pp.207-235. Available at http://ojls.oxfordjournals.org/content/24/2/207.full.pdf

Jaihan, N. (2004) *General Principles of Criminal Procedure Law.* Bangkok. Winyoochon.

Jeffery, R. and Kim, H. (2014) *Transitional Justice in the Asia-Pacific*. Cambridge. Cambridge University Press.

Jeshurun, C. (1977) *The Contest for Siam 1889 - 1902: A Study in Diplomatic Rivalry*. Kuala Lumpur: Penerbit Universiti Kebangsaan.

Jones, T. and Newburn, T. (2007) *Policy Transfer and Criminal Justice. Exploring US Influence over British Crime Control Policy.* Maidenhead. Open University Press.

Jory, P. & Montesano, M. (2008) *Thai South and Malay North, Ethnic Interactions on a Plural Peninsula*. Singapore. NUS Press.

Jutharat, U. (2010) *An Analysis of Criminal Justice in Three Southern Borders: Problems and Solutions*. Bangkok. Winyoochon.

Kesornsirichareon, S. (2000) The Role and Function of Public Prosecutors in Thailand. *Public Prosecutor Journal*. Vol.2.

Khanthong, T (2008) 'Tolerance Winning the Day at Government House - for now' *The Nation Newspaper Online.*

Khositsurankahul, V. (2010) *The Adversary System on Criminal Procedure in Thai Courts; A Case Study of Prosecution by Public Prosecutors (Master of Law Thesis).* Bangkok. Thammasat University.

King, C. and Walker, C. (2014) *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets.* Farnham. Ashgate,

King, N. and Horrocks, C. (2010) *Interviews in Qualitative Research*. London. Sage.

Kraivixien, T. (1967) *The Legal System in the Administration of Justice in Thailand.* Bangkok. Thai Bar Association.

Kraska, P. and Neuman, L. (2007) *Criminal Justice and Criminology Research Methods.* New York. Prentice Hall.

Kyaw, A. (1988) Crimes against Religion in the Penal Codes of Burma, Thailand and the Philippines. *Journal of Siam Society.* Vol 76.

Lee, D. (2009) Politics of Anti-Terrorism Policy in Southeast Asia: A Comparative Study of the Philippines and Indonesia. *Pacific Focus Inha Journal of International Studies.* Vol.XXIV, No2. 247-269.

Legrand, T. (2012) 'Overseas and Over here: Policy Transfer and Evidence-Based Policy Making', *Policy Studies* 33 (4), 329–48.

Lemieux, F. (2010) *International Police Cooperation: Emerging Issues, Theory and Practice*. Cullompton. Willan Publishing.

Lewis, J. (2003) *Design issues. In Qualitative Research Practice – A Guide for Social Science Students and Researchers*. London. Sage.

Leyland, P. (2007) 'Thailand's Constitutional Watchdogs: Dobermans, Bloodhounds or Lapdogs'? *Journal of Comparative Law.* 2 (2).

Leyland, P. (2009) 'Thailand's Troubled South: Examining the Case for Devolution from a Comparative Perspective'. *Australian Journal of Asian Law*. Volume 11(1) 1-29.

Leyland, P. (2010) 'The Struggle for Freedom of Expression in Thailand: Media Moguls, the King, Citizens Politics and the Law'. *Journal of Media Law*. 2 (1).

Likasitwattankul, S. (1998) *The Application of Criminal Procedure Code*.

Second Edition. Bangkok. Winyoochon.

Liow, J.C. and Pathan, D. (2010) *Confronting Ghosts: Thailand's Shapeless Southern Insurgency*. Double Bay. Lowy Institute for International Policy.

Liu, J. (2013) *Handbook of Asian Criminology.* New York. Springer.

Lynch, A. (2007) *Law and Liberty in the War on Terror.* Sydney. The Federation Press.

Macken, C. (2011) *Counter-Terrorism and the Detention of Suspected Terrorists.* London. Routledge.

Masferrer, A. (2012) *Post 9/11 and the Sate of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer.

Masferrer, A. (2015) 'Counter-Terrorism, Emergency, and National Laws'. In Lennon, G and Walker, C. *Routledge Handbook of Law and Terrorism.* London. Routledge.

Mason,J. (1996) *Qualitative Research*. London. Sage.

Matichon Newspaper (2010) Thailand under the Internal Security Act2008/ 2551. *Matichon.* [Online]. 3 December. [Accessed 2 February 2015]. Available from http://www.matichon.co.th/index.php

McFarlane, M.A. and Canton, R. eds (2014) *Policy Transfer in Criminal Justice: Crossing Cultures, Breaking Barriers*. Basingstoke. Palgrave Macmillian.

McCargo, D. (2005) 'Network Monarchy and Legitimacy Crises in Thailand'. *Pacific Review*. Vol.18 (4). Routledge.

McCargo, D. (2007) *Rethinking Thailand's Southern Violence*. Singapore. NUS Press.

McCargo, D. (2008) *Tearing Apart the Land, Islam and Legitimacy in Southern Thailand*. Ithaca. Cornell University Press.

McCargo, D. & Jitpiromsri, S. (2008) 'A Ministry for the South? New Governance Proposals for Thailand's Troubled Region', *Contemporary Southeast Asia*, 30(3).

McCargo, D. (2010) Thailand's National Reconciliation Commission: A Flawed Response to the Southern Conflict. *Politics and International Studies* 22(1).

McCargo, D. (2011) *Mapping National Anxieties: Thailand's Southern Conflict*. Copenhagen: NIAS Press.

McCartney, C. and Walker, C. (2013) 'Enemies of the Sate and Miscarriages of Justice'. *Delhi Law Review*. XXXII.

Meenakanist, T. (2014) *General Principles of Criminal Law*. Bangkok.

Thammasat University.

Melvin, N. (2007) ‘Conflict in Southern Thailand Islamism, Violence and the State in the Patani Insurgency’. *SIPRI Policy Paper Stockholm International Peace Research Institute*. No. 20.

Mensah, T.(2004) ‘The Place of the ISPS Code in the Legal International Regime WMU’. *Journal of Maritime Affairs*. Vol 3 (1) 17-30.

Mérieau, E. (2016) ‘Thailand’s Deep State, Royal Power and the Constitutional Court (1997–2015)’. *Journal of Contemporary Asia,* 46:3.

Metaparti, P.(2010) ‘Rhetoric, Rationality and Reality in Post-9/11 Maritime Security’. *Maritime Policy and Management*. Vol 37 (7).

Mill, J. (1985) *On Liberty*. Harmondsworth. Penguin.

Monateri, P. (2012) *Methods of Comparative Law*. Cheltenham. Edward Elgar.

Mossberger, K. and Wolman, H. (2003) ‘Policy Transfer as a Form of Prospective Evaluation: Challenges & Recommendations’, *Public Administration Review* 63(4): 428-438.

Mullinsa.T.M. (2009) ‘Geographies of Peace and Armed Conflicts and Resolutions in Southern Thailand’. *Annals of the Association of American Geographers.* 99(5).

Munger, F. (2007) ‘Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand’. *Cornell International Law Journal*: Vol. 40.

Nakorn, K (2005) *General Principles of Thai Criminal Law.* (2nd edn). Bangkok. Thammasat University.

Nakorn, K. (2010) ‘Effective Crime Investigation’. *Prosecutor Journal Thailand.* 20(4).

National Audit Office (2013) *The Regulatory Effectiveness of the Charity Commission*. UK. The Stationary Office.

Nelken, D. & Feest, J. (2001) *Adapting Legal Cultures*. Oxford. Hart.

Nelken, D.(2002) *An Introduction to Law and Social Theory*. Portland Oregon. Hart Publishing.

Nelken, D. (2010) *Comparative Criminal Justice.* London. Sage.

Nelson, M. (2002) ‘Thailand Problems with Decentralisation’. in Nelson, M. (ed), *Thailand’s New Politics.* Bangkok. KPI and White Lotus Press.

Newburn, T., Williamson, T., &Wright, A. ed. (2007) *Handbook of Criminal Investigation.* Cullompton. Wilan Publishing.

Noaks, L. & Wincup, E. (2004) *Criminological Research. Understanding Qualitative Method.* London. Sage.

Official Website of Ministry of Foreign Affairs of the Kingdom of Thailand. Available

at http://www.mfa.go.th/main/th/organize

Office of Public Prosecution Region 9 (2012) The *Effectiveness of Prosecution of National Security Charges and The protection of Citizen's right: A Case study of the Four Bordering Provinces in Southern Thailand (Songkla, Pattani, Yala, Narathiwat).* Bangkok. Asia Foundation.

Office of Public Prosecution Region 9 (2013) *The Research Regarding the Effectiveness of Prosecution in Security Cases in Songkhla, Pattani, Yala, and Narathiwat.* Songkhla. Asia Foundation.

Office of Public Prosecution Region 9 (2014) *Research on Effectiveness of Criminal Justice System in Dealing with Security Charges in Pattani, Yala, and Narathiwat Provinces.* Songkhla. Asia Foundation.

Oliveira, M. (2012) *Harm and Offense in Mill's Conception of Liberties*. Faculty of Law. University of Oxford.

Ong-Webb, G. (2006) *Piracy, Maritime Terrorism and Securing the Malacca Straits.* Institute of Southeast Asian Studies. Singapore. ISEAS.

Oraa, J. (1992) *Human Rights in States of Emergency in International Law*. Oxford: Clarendon.

Ormerod, D. (2011) *Smith and Hogan's Criminal Law.* Oxford. Oxford University Press.

Page, E. and Mark-Lawson, J. (2007) 'Outward-Looking Policy Making', in H. Bochel & S. Duncan (eds) *Making Policy in Theory and Practice*. Bristol: Policy Press.

Pakeerat, W. (2009) 'The Concepts of the Rule of Law'. *Political Science Journal.* 30(1) Bangkok. Thammamsat University.

Patton, M. (2002) Q*ualitative Research and Evaluation Methods*. London. Sage.

Petchsiri, A. (2013) *Criminal Law Theories*. Bangkok. Winyoochon.

Pimental, D. (2016) *Balancing Judicial Independence and Accountability in a Transitional State: The Case of Thailand.* University of Idaho. Bepress.

Pongsapitch, A. (2013) 'Security Sector Reform and Governance, The case of Southern Thailand'. in *Asia Security Policy Initiative Series Working Paper*. Chulalongkorn University.

Porath, N. (2010) 'Civic Activism Continued through Other Means: Terror-Violence in theSouth of Thailand'. *Terrorism and Political Violence*. 22(4).

Powell, C.H. (2012) 'The United Nations Security Council, Terrorism and the Rule of Law'. in Ramraj, V. Hor, M. Roach, K. and Williams, G. *Global Anti-Terrorism Law and Policy*. (2nd edn). Cambridge. Cambridge University Press.

Praist, P. (2001) *International law*. Bangkok. Thammasat University.

Puaksom, D. (2008) *Thai South and Malay North, Of a Lesser Brilliance: Pattani Historiography in Contention*. Singapore. NUS Press.

Public Accounts Committee, *The Charity Commission* (2013–14 HC 792).

Rabasa, A. (2005) *Political Islam in Southeast Asia: Moderates, Radical and Terrorists*. London. Routledge.

Ramraj, V. Hor, M. Raoch, K. and Williams, G.(2012) *Global Anti-Terrorism Law and Policy*. (2nd edn). Cambridge. Cambridge University Press.

Ramakrishnan, R. (2013) *In Custody: Law, Impunity and Prisoner Abuse in South Asia.* New Delhi. Sage.

Ratnakkorn, S. (1998) *The Evidence Law*. (4th edn). Bangkok. Nitibannagarn.

Razak, A. (2013) 'The ASEAN Convention on Counter-Terrorism 2007'*. Asia Pacific Journal on Human Rights and the Law* (1&2) 93-147.

Razak, A. (2012) *'Terrorism and the Rule of Law: Rethinking the Asean Ways and Responses*'. (Doctoral Thesis). Leeds. School of Law Leeds University.

Reichel, P. (2005) *Handbook of Transnational Crime and Justice*. London. Sage Publication.

Reiner, R. and Spencer, S. (1993) *Accountable Policing: Empowerment, Effectiveness, and Equity (Human Rights).* London. Institute for Public Policy Research.

Rehman, J. and Walker, C. (2012) 'Prevent Responses to Jihadi Terrorism'. in Ramraj, V. et al., *Global Anti-Terrorism Law and Policy*. Cambridge. Cambridge University Press.

Research Governance Guide University of Leeds available at www. leeds.ac.uk/hsphr/rgf/ethics%20consent.

Reuchai, K. (2011) *Criminal Procedure Law.* (6th edn). Bangkok. Thammasat University.

Roach, K. (2011) *The 9/11 Effect: Comparative Counter-Terrorism*. Cambridge .Cambridge University Press.

Roach, K. (2014) 'Terrorism' in Dubber, M & Hornle, T. (eds) *Oxford Handbook of Criminal Law.* Oxford.

Romero, J. (2003) 'Prevention of Maritime Terrorism: The Container Security Initiative'. *Chicago Journal of International Law*; VOL 4, 2 597-606.

Rose, R. (2005) *Learning from Comparative Public Policy: A Practical Guide.* Abingdon. Routledge.

Rose, R. (1993) *Lesson-Drawing in Public Policy: A Guide to Learning across Time and Space*. New Jersey. Chatham.

Royal Thai Police Official Website (2014) [Online] [Accessed 30/1/15] Available from http://www.royalthaipolice.go.th/

Rukhamte, P. (2014) *The Thai Ombudsman*. Bangkok. King Prajadhipok's Institute.

Ryberg, J. (2004) *The Ethics of Proportionate Punishment: A Critical Investigation*. Dordrecht. Kluwer Academic

Ryder, N. (2015) *The Financial War on Terrorism: A Review of Counter-Terrorist Financing Strategies since 2001*. London. Routledge.

Saisunthon, J. (2010) *International Law*. Bangkok. Thammasat University.

Saldana, J. (2009) *The Coding Manual for Qualitative Researchers*. London. Sage.

Saul, B. (2014) *Research Handbook on International Law and Terrorism*. Cheltenham. Edward Elgar.

Saul, B. (2006) *Defining Terrorism in International Law*. Oxford. Oxford University Press.

Scharf, M. (2015) *Prosecuting Maritime Piracy Domestic Solutions to International Crimes.* Cambridge. Cambridge University Press.

Seale, C. (1999) *The Quality of Qualitative Research*. London. Sage.

Seddon, J. (2005) *Freedom from Command and Control: A Better Way to Make the Work Work.* Buckingham: Vanguard.

Sheptycki, J.(2000) *Issues in Transnational Policing*. London. Routledge.

Schiff, D. (1976) 'Socio-Legal Theory: Social Structure and Law'. *Modern Law Review* 39 (3).

Silverman, D. (2005) *Doing Qualitative Research, A Practical Handbook.* London Sage.

Siengsung, S. (2013) *The Admissibility of Forensic Evidence in the Criminal Case in Thailand*. Pathum. Rangsit University.

Sidel, J. (2007) 'It Is Not Getting Worse: Terrorism is Declining in Asia'. *Global Asia* Vol2 (3). Winter.

Silva, D. (2012) *The Report of the Patrick Finucane Review. The Rt Hon Sir Desmond De Silva QC.* Vol1. London. The Stationary Office

Simester, A.P. & Sullivan, G.R. (2010) *Criminal Law Theory and Doctrine*. (4th edn). Portland. Hart Publishing.

Simon, S.(2011) 'Safety and Security in the Malacca Straits: The Limits of Collaboration'. *Asian Security*; 7: 27-43.

Simon, H. (1957) *Administrative Behaviour: A Study of Decision-Making Processes in Administrative Organizations*. New York. The Free Press.

Siripong, P. (2013) *The Basic Concepts of Terrorism Legislation in Thailand (Doctoral Thesis).* Bangkok.Thammasat University.

Smith, A. (2004) ‘Trouble in Thailand’s Muslim South: Separatism, not Global Terrorism’. *Asia--Pacific Center for Security Studies*. Vol.3(10).

Sookrasom, A. (2006) *Terrorism in Thailand: Prevention and Suppression Measures* (Master of Law Thesis). Bangkok. Thammasat University.

Steventon, B. (1993) ‘The Ability to Challenge DNA Evidence’. *Royal Commission on Criminal Justice Research Study No 9.*

Story, I. (2007) ‘Malaysia Role in Thailand’s Southern Insurgency’. *Terrorism Monitor* Volume: 5 (5).

Streckfuss, D. (1998) *The Politics of Subversion: Civil Liberties and Lese Majeste in the Modern Thai State*. Phd. Dissertation. University of Wisconsin.

Struett, M. (2014) *Maritime Piracy and the Construction of Global Governance.* London. Routledge.

Suwannathat-Pian, K. (2011) ‘The Monarchy and Constitutional Change since 1972’. in McCargo, D. (ed), *Reforming Thai Politics.* Copenhagen. NIAS.

Syukri, I. (1985) ‘History of The Malay Kingdom of Pattani (Sejarah Kerajaan Melayu Patani)’. *International studies Southeast Asia Series* Vol. 58.

Tan, A. (2009) *A Handbook of Terrorism and Insurgency in Southeast Asia.* Cheltenham. Edward Elgar Publishing.

Tan-Mullins, M. (2009) ‘Armed Conflict and Resolutions in Southern Thailand’. *Annals of the Association of American Geographers,* 99:5, 922-931.

Teeuw, A. & Wyatt. D. (1970) *Bibliotheca Indonesica, Hikayat Pattani the Story of Pattani.* The KoninkliJk Instituut Voor Taal-, Land- En Volkenkunde.

Terwiel, B. (2011) *Thailand’s Political History: From the 13th Century to Recent Times.* Bangkok. River Books.

The Australian News (2010) ‘Bullets killed Thai Red-Shirt protesters’ 13 April 2010 [Online] Available from http://www.theaustralian.com.au/news/world/bullets-killed-thai-red-shirt-protesters/story-e6frg6so-1225852976016?nk=3ecb1e8fa1fc5ac0351f386945f0ce2d

The Nation (2008) ‘4 bomb attacks rock Bangkok’ [online] Available from http://www.nationmultimedia.com/2008/11/26/headlines/headlines_30089454.php [Accessed 6 June 2014].

The Telegraph (2014) ‘Protest-hit Thailand declares state of emergency’ 21 January 2014 [online] Available from http://www.telegraph.co.uk/news/worldnews/asia/thailand/10586935/Protest-hit-Thailand-declares-state-of-emergency.html [Accessed 1 July 2014].

Thomas, P. (1997) *Socio-Legal Studies.* Aldershot. Dartmouth.

Thornton, A; Heinrich, D; Morgan, R; Bouhana, N; (2012) An Initial Analysis of Forensic Evidence used in the Prosecution of Terrorism Cases in Britain between 1972 and 2008. *Policing (Oxford): A Journal of Policy and Practice,* 7 (1).

Urban, M. (1992) *Big Boys' Rules: The Secret Struggle against the IRA*. London. Faber and Faber.

Wajjanasawat, K. (2010) *Principles of Criminal Procedure Law in Thailand.* Bangkok. Thai Barrister Publisher.

Walker, C.P. and Starmer, K. (1999) *Miscarriages of Justice.* London. Blackstone Press.

Walker, C. and Stockdale, R. (1999) 'Forensic Evidence'. In Walker, C. and Starmer, K. *Miscarriages Justice: A Review of Justice in Error*. London. Blackstone Press.

Walker, C.(2004) 'Terrorism and Criminal Justice: Past, Present and Future'.*Criminal Law Review.*

Walker, C. (2009) *Blackstone's Guide to the Anti-Terrorism Legislation*. (3rd edn). Oxford. Oxford University Press.

Walker, C. (2010) Conscripting the Public in Terrorism Policing: Towards Safer Communities or a Police State? *Criminal Law Review.*

Walker, C. (2011) *Terrorism and the Law*. Oxford. Oxford University Press.

Walker, C. (2012) 'The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law'. in Masferrer, A. *Post 9/11 and the Sate of Permanent Legal Emergency Security and Human Rights in Countering Terrorism*. London. Springer.

Walker, C. (2014) *Blackstone's Guide to the Anti-Terrorism Legislation*. (3rd edn). Oxford. Oxford University Press.

Walker, C and Vladek S. (2015) 'Detention and Interrogation in Law and War'. In *Routledge Handbook of Law and Terrorism*. London. Routledge.

Walter, M. (2010) *Social Research Methods.* (2nd edn). South Melbourne. Oxford University Press.

Ward, V., Smith, S., House, A. and Hamer, S. (2011) 'Exploring knowledge Exchange: a Useful Framework for Practice and Policy'. *Social Science and Medicine* 74(3): 297-304.

Wayuparb, P. (2010) *Explaining the Thai Judicial System and the Act of Courts of Justice B.E.2543*. Bangkok. Winyoochon.

Wells, C. and Quick, O. (2010) *Lacey, Wells and Quick Reconstructing Criminal*

Law: Text and Materials- Law in Context. Cambridge. Cambridge University Press.

Wichawut, A. (2009) *Application of Legal Measures against Terrorism in Thailand's Three Southernmost Provinces*. (Master of Law Thesis). Bangkok. Thammasat University.

Wittayanont, N. (2015) *An Educational Management Model of Basic Education Schools for Peace in the Southern Border*. Bangkok. Kasetsart University.

Yomchinda, D. (2010) *An Analysis of Internal Security Law of the Kingdom of Thailand*. (Master of Law Thesis). Bangkok. Thammasat University.

Young, J. (2014) 'Turmoil in Thailand - Corruption and a Political Struggle'. *Voice of America*.

Appendix A

Interview schedules

A. Interviews with police officers

Note: The italicised notes will be mentioned to the interviewees as an introduction to each section and to help guide the conversation.

At the beginning, I would like to start by asking you some personal questions about your background and your duties; the purpose is to set your answer in the context of your professional profile.

Section One: Professional Profile

Please tell me:

A1. Could you specify your age band? (20-29/30-39/40-49/50+)

A2. What is your current job title?

A3. How long have you been in this current position?

A4.How long have you been involved in terrorism cases and what proportion of your work is taken up by terrorism cases?

Section Two: Work Relationships

The following questions seek explanations about your work relationships by having you discuss your relationships with same-rank colleagues, superior officers, and with public prosecutors in regard to terrorism cases only.

Regarding your work relationship with your same-rank colleagues,

A5. Are you satisfied with the performance of colleagues' roles in investigation processes in terrorism cases? Please explain and give examples if possible.

Regarding your work relationship with public prosecutors,

A6. Do the prosecutors influence the way you work in the police station in terrorism cases?

- If so, in what ways do prosecutors influence the way you work?
- How often?
- How useful you find their involvement in your job?

A7. Do the military influence the way you work in investigation processes in terrorism cases?

- If so, how?
- As both police and military have powers in investigation of terrorism cases, is there any overlapping or conflicting role?
- How useful or unhelpful do you find their involvement in terrorism cases and in what ways, if any?

A8. Which of these four colleagues (same rank colleagues, superior officers, public prosecutors, and military) most affect the way you work at the police station in terrorism cases? Please explain and give examples if possible.

Section Three: The roles of the criminal law in counter terrorism

A9. Are the Criminal Code sections 135/1-135/4 (offences relating to terrorism) sufficient to deal with terrorism offences?

A10. Are you satisfied with the application of the criminal law in terrorism cases?

A11. Would it be helpful to add these following new offences into the Thai Criminal Code?

- Failure to disclose information about terrorism
- Membership
- Possession of articles or information offences
- Incitement to terrorism
- Preparation to terrorism

A12. Do you have any other comment on the Thai criminal law in terrorism cases?

- Should there be any changes?

Section Four: The Criminal Procedure Law and Terrorism

A13. Is there any difference between the application of general criminal offences (such as murder, offences against properties and so on) and terrorism offences under section 135/1-135/4 in terms of police procedures?

A14. After terrorist suspects are taken to the police station, what are the next steps which you take?

A15. After notifying charges at the police station, the police can detain a suspect for 48 hours. Do you think it is the appropriate period - too short/too long?

- What happens during 48 hours at the police station?

- What happens after that?
- Do you agree with the maximum 84 day detention stipulated by section 87 Thai Criminal Procedure Code?

A16. As the Thai criminal procedure law provides that arrest, search and detention warrants must be issued by only a court, what do you think of this requirement and the process involved?

I would like to ask your opinion regarding the legal framework affecting police powers.

A17. Does the Criminal Procedure Law on arrest and detention provide you with sufficient powers to deal with terrorism investigations?

A18. Do you have anything else would you like to say regarding the criminal procedure laws affecting terrorism investigations?

Section Five: Efficacy in the criminal justice system in terrorism cases

A19. How effective do you think the criminal justice system is in dealing with terrorism?

- Cooperation with AMLO (Anti-Money Laundering Office)

A20. How effective do you think the criminal justice system in deterring people from committing terrorism offences?

A21. How effective do you think the criminal justice system is at balancing the rights of suspect/offender with the rights of the victim?

Section Six: Legality in the criminal justice system in terrorism cases

A22. Regarding interrogation and detention in terrorism cases, what internal checks or external checks to ensure legality such as by supervisors or prosecutors exist during these processes?

A23. How fairly do you think terrorist suspects are treated by the criminal justice system compared to suspects who are charged with normal offences?

A24. How fairly do you think the criminal justice system balances the rights of the offender with the rights of the victim in terrorism cases?

A25. Do you think it would be a good idea to audio or video record an interrogation in a terrorism case?

A26. Do you think that terrorist suspects receive sufficient rights during the criminal processes (including at the police station)?

- Right to contact family
- Right to see doctors
- Right to access lawyers
- Right to access medical facilities and treatments

Section Seven: Cooperation with Malaysian Government and Police

A27. Are there any international cooperation bodies, formal or informal contacts, or conferences or meetings with the Malaysian Government officials and police in regard to counter-terrorism?

A28. Would it be helpful to strengthen criminal cooperation and mutual legal assistance to deal with terrorism in the south Thailand with the Malaysian Government agencies or with ASEAN?

Section Eight: Conclusion

A29. Is there any document (such as guidance or standard forms) relating to my research which you could pass on without breaching any official rule?

A30. Do you have anything else you would like to add, which we might not have discussed?

B. Interviews with Lawyers

Note: The italicised notes will be mentioned to the interviewees as an introduction to each section and to help guide the conversation.

At the beginning, I would like to start by asking you some personal questions about your background and your duties; the purpose is to set your answer in the context of your professional profile.

Section One: Professional Profile

Please tell me:

B1. Could you specify your age band? Is it (20-29/30-39/40-49/50+)

B2. How long have you been involved in terrorism cases and what proportion of your work is taken up by terrorism cases?

Section Two: Defence Lawyer Roles in Terrorism Cases

The following questions are intended at having you discuss your roles toward a terrorist suspect at a police station and your role in a trial.

B3. How and when do terrorist suspects (or the police on their behalf) contact you?

B4. How often do you visit the police station to provide legal advice to terrorist suspects and at what point in the investigation?

Regarding your roles in the police station

B5. What is your role in the police station?

- Do you talk to your clients privately?
- If yes, where? And what circumstances?
- How often?
- If not, please clarify.

B6. Are you allowed to attend the police interrogation?

B7. Are you allowed to access to the police/prosecution files?

In considering your relationship with police officers when you visit the police station,

B8. What are the police officers' attitudes regarding legal advice requests?

B9. Are there any issues or difficulties regarding your presence at the police station?

Regarding your roles in the court trial in terrorism cases

B10. What is your role in the court trial, and is there any difference between terrorism cases and non-terrorism cases?

B11. How effective and fairly do you think police perform in terrorism cases?

B12. How effective and fairly do you think prosecutors perform in terrorism cases?

B13. How effective and fairly do you think judges perform in terrorism cases?

B14. Do you think that you have an important role at the trial?

- Do you have sufficient time to talk with your clients before the trial?
- Do you have sufficient time and resources to prepare the case?

Next I would like to ask about payment,

B15. How do you get paid for giving legal advice to suspects at the police station and representing in the court?

- Is there a fixed fee?
- Who pays your fees?
- Is the fee adequate?
- Is it the same rate with normal offences?
- Does it allow for forensic testing or the employment of expert witnesses?

B16. Do you differentiate between terrorism cases and normal offences in your willingness to provide legal advice?

B17. What do you think of the idea of state payment of legal fees in serious offences including terrorism offences?

Section Three: The roles of the criminal law in counter terrorism

B18. Are the Criminal Code sections 135/1-135/4 (offences relating to terrorism) sufficient to deal with terrorism offences? Are they fair?

B19.Would it be helpful to add these following new offences into the Thai Criminal Code?

- Failure to disclose information about terrorism
- Membership
- Possession of articles or information offences
- Incitement to terrorism
- Preparation of terrorism

B20. Do you have anything else you would like to comment on about the Thai criminal law in terrorism cases?

Section Four: The Criminal procedure law and terrorism

B21. How effective do you think the criminal justice system is at dealing with terrorism cases promptly and efficiently?

B22. How effective do you think the criminal justice system is at balancing the rights of terrorist offenders with the rights of the victim?

B23. Have you ever come across any cases of police abusing their powers of detention in terrorism charges?

- If yes, in what ways?
- How often?

B24. Do you think that the police differentiate between terrorist suspects and normal suspects in regards to how they are treated?

B25.Does the criminal procedure law provide you with sufficient opportunities to deal with official malpractices in the criminal processes?

B26. Do you think a defence lawyer can make an impact on behalf of a terrorist suspect?

B27. Do terrorist suspects receive sufficient rights during the criminal processes (including in the police station)?

- Right to contact family
- Right to see doctors
- Right to access lawyers
- Right to access medical facilities and treatments

B28. Do you think it would be a good idea to audio or video record an interrogation in a terrorism case?

Section Five: Conclusion

B29. Is there any document (such as guidance or standard forms) relating to my research which you could pass on without breaching any official rule?

B30. Do you have anything else you would like to add, which we might not have discussed?

C. Interview with public prosecutors

Note: The italicised notes will be mentioned to the interviewees as an introduction to each section and to help guide the conversation.

At the beginning, I would like to start by asking you some personal questions about your background and your duties; the purpose is to set your answer in the context of your professional profile.

Section One: Professional Profile

Please tell me:

C1. Could you specify your age band? Is it (20-29/30-39/40-49/50+)

C2.How long have you been a public prosecutor?

C3. How often are you involved in terrorism cases and what proportion of your work is made up of terrorism cases?

Section Two: Work Interaction and Relationship with the Police

In this section, I would like to know the way you work and your relationship with the police in terrorism cases

C4. At what point in the criminal investigation do you first have contact with the police in a terrorism case?

- Are you informed every time the police detain terrorist suspects?

C5. What are your roles as a supervisor over the police in the investigation process in a terrorism case? Is it the same as for a normal crime?

C6. How would you describe your work relationship with the police in a terrorism case? Is it the same as for a normal crime?

C7. Do you think that police should be more or less monitored in a terrorism case?

C8. Do any difficulties arise with the process of monitoring police at this stage?

C9. Do you think the idea of audio or video recording of the police interrogation would be worthwhile or not?

Section Three: Evaluating Police's Roles in Terrorism Cases

This section *is aimed at finding out about your viewpoints of the police work in terrorism cases*

C10. How effective and fairly do you think the police act in investigation in terrorism cases?

- In terms of time of detention and bringing the case to trial in a reasonable time
- In terms of quality of evidence and disclosure of evidence

C11. Are there any differences in the quality of evidence or disclosure of evidence provided by the police between terrorism cases and normal criminal offences?

C12. Have you ever come across cases of police abusing their powers in terrorism cases?

C13. Do you have anything else you would like to add, which we might not have discussed, related to police investigations in terrorism cases?

Section Four: Roles of Public Prosecutors in the Trial

In this section, I would like to ask about your roles in the court trial in a terrorism case

Regarding your roles in the court trial,

C14. How effective and fairly do you prosecutors perform in terrorism cases?

C15. Do you think the conviction rate in terrorism cases is satisfactory or not?

- Is the conviction rate related to the quality of evidence?
- Is the conviction rate related to a lack of a witness to present in court?
- Do you have any ideas or suggestions to affect the conviction rate?

C16. Do you think that you have an important role at the trial?

- Do you have sufficient time to prepare the case?
- Do you have sufficient resources to gather forensic evidence or employ expert witnesses?

C17. Are there any differences between terrorism cases and normal criminal cases in the court trial?

- Standard of proof?
- Burden of proof?

C18. Are there any peculiarities or difficulties arising in the trial in terrorism cases?

Section Five: The roles of the criminal law in counter terrorism

C19. Are the Criminal Code sections 135/1-135/4 (offences relating to terrorism) sufficient to deal with terrorism offences? Are they fair?

C20. Would it be helpful to add these following new offences into the Thai Criminal Code?

- Failure to disclose information about terrorism
- Membership
- Possession of articles or information offences
- Incitement to terrorism
- Preparation to terrorism

Section Six: The Criminal Procedure Law and Counter Terrorism

C21. Is there any difference between general criminal offences (such as murder, offences against properties and so on) and terrorism offences in section 135/1-135/4 in terms of police procedures?

C22.After notifying charges at the police station the police can detain a suspect for 48 hours; do you think it is appropriated period?

- What happens during 48 hours at the police station?
- What happens after that?

C23. According to section 87 paragraph 6 the Thai Criminal Procedure Code, terrorist suspects can be detained up to 84 days for pending their trials. What do you think about this period of time?

C.24. As the Thai criminal procedure law provides that arrest, search and detention warrants must be issued by only a court, what do you think of this process?

C25. As the Thai criminal law strictly applies the concept of double jeopardy, what do you think about the retrial concept for serious offences (including terrorism offences)?

C26. Do you think that normal criminal procedure law alone can or should deal with terrorism cases?

Section Seven: Efficacy in the criminal justice in terrorism cases

C27. How effective do you think the criminal justice system is in dealing with terrorism?

C28. How effective do you think the criminal justice system is in ensuring that terrorism cases come to trial?

C29. How effective do you think the criminal justice system is at balancing the rights of offender with the rights of the victim?

C30. How effective do you think the criminal justice system is at ensuring the innocent are acquitted and the guilty are convicted?

Section Eight: Legality in the criminal justice in terrorism cases

C31. Regarding an interrogation and detention in terrorism cases, is there any internal check or external check at these processes? Do you have a role in imposing checks?

C32. How fairly do you think terrorist suspects are treated by the criminal justice system compared to normal offences?

C33. How fairly do you think the criminal justice system balances the rights of the offender with the rights of the victim in terrorism cases?

Section Nine: Conclusion

C.34 Is there any document (such as guidance or standard forms) relating to my research which you could pass on without breaching any official rule?

C.35 Do you have anything else you would like to add, which we might not have discussed?

D. Interviews with Judges

Note: The italicised notes will be mentioned to the interviewees as an introduction to each section and to help guide the conversation.

At the beginning, I would like to start by asking you some personal questions about your background and your duties; the purpose is to set your answer in the context of your professional profile.

Section One: Professional Profile

Please tell me:

D1. Could you specify your age band? Is it (20-29/30-39/40-49/50+)

D2. How long have you been a judge?

D3. How often are you involved in terrorism cases and what proportion of your work is made up of terrorism cases?

Section Two: Roles of Judges in the Trial of terrorism cases

In this section, I would like to ask about your roles in the court trial of terrorists

D4.How effective and fairly do judges perform in terrorism cases? Is it different to normal trials?

D5. What do you think about low conviction rate in terrorism charges?

- Is this related to the quality of evidence or what?
- Is this related to a lack of a witness to present in court?

D6.Are there any differences between terrorism cases and normal criminal cases in the court hearing?

- Standard of proof?
- Burden of proof?

D7. Are there any difficulties arising in the court trials in terrorism cases?

- Quality or quantity of Evidence
- Forensic evidence and expert witnesses

Section Three: The roles of the criminal law in counter terrorism

D8.Are you satisfied with the roles and functions of the criminal law in terrorism case?

D9. Would it be helpful to add these following new offences into the Thai Criminal Code?

- Failure to disclose information about terrorism
- Membership
- Possession of articles or information offences
- Incitement to terrorism
- Preparation to terrorism

Section Four: The Criminal Procedure Law and Counter Terrorism

D10. Is there any difference between general criminal offences (such as murder, offences against properties and so on) and terrorism offences section 135/1-135/4 in terms of the criminal procedures?

D11. As the Thai criminal procedure law provides that arrest, search and detention warrants must be issued by only a court, what do you think of this process?

D12. Are sections 135/1-135/4 (offences relating to terrorism) sufficient to deal with terrorism offences or are other mechanisms such as the three special laws needed to work alongside normal offences?

D13. As the Thai criminal law strictly applies the concept of double jeopardy, what do you think about the retrial concept for serious offences (including terrorism offences)?

D14. What do you think about the special laws in functioning alongside criminal procedure law?

- Are there any difficulties arising when the criminal procedure law and the special law are both applied?

D15. Do you think that the normal criminal procedure law alone can deal with terrorism?

Section Five: Efficacy in criminal justice in terrorism cases

D16. How effective do you think the criminal justice system is in dealing with terrorism?

D17. How effective do you think the criminal justice system in deterring people from committing terrorism offences?

D18.How effective do you think the criminal justice system is at balancing the rights of offender with the rights of the victim?

D19. How effective do you think the criminal justice system is at ensuring the innocent are acquitted and the guilty are convicted?

Section Six: Legality in the criminal justice in terrorism cases

D20. Regarding an interrogation and detention in terrorism case, are the internal checks or external checks (such as by prosecutors) at these processes sufficient or insufficient?

D21. How fairly do you think terrorist suspects are treated by the criminal justice system compared to normal offences?

D22.Do you think it would be a good idea to audio or video record an interrogation in a terrorism case?

D23. How fairly do you think the criminal justice system balances the rights of the offender with the rights of the victim in terrorism cases?

D24. Do terrorist suspects receive sufficient rights during the criminal processes (including at the police station)?

- Right to contact family
- Right to see doctors
- Right to access lawyers
- Right to access medical facilities and treatments

Section Seven: Conclusion

D25. Is there any document (such as guidance or standard forms) relating to my research which you could pass on without breaching any official rule?

D26. Do you have anything else you would like to add, which we might not have discussed?

E. Interviews with NGOs

Note: The italicised notes will be mentioned to the interviewees as an introduction to each section and to help guide the conversation.

At the beginning, I would like to start by asking you some personal questions about your background and your duties; the purpose is to set your answer in the context of your professional profile.

Section One: Professional Profile

Please tell me:

E1. Could you specify your age band? Is it (20-29/30-39/40-49/50+)

E2. What is your current job title?

E3.How long have you been working at this organisation?

Then I would like to ask about the roles of the organization and campaigns

E4. What is the role of your organization regarding the application of criminal law toward terrorism cases in the south Thailand?

- Are there any particular campaigns (on policies or laws or in regard to individual cases) which your organisation has engaged in?
- What has your organisation achieved?

E5**.** Could you indicate with examples your activities in regard to terrorism issues, for example?

- Submissions on legislation to parliament or to inquiries
- Submissions to international bodies at the UN or other international organisations
- Connections with other NGOs (both domestic and international) in their campaigns or investigations

Section Two: Legality and human rights regarding criminal law and criminal procedure law against terrorism cases in Thailand

E6.How fairly do you think terrorist suspects are treated by the criminal justice system?

E7. Have you ever come across any cases of criminal justice officers abusing their powers in terrorism charges?

- If yes, in what ways?
- How often?
  - What was your reaction?

E8 Do you think that the police differentiate between terrorist suspects and normal suspects in regards to how they are treated?

E9. In pre-trial process, do you think that the Thai criminal procedure law provide sufficient rights to a terrorist suspect?

- If not, please explain

E10. According to the criminal procedure law, an interrogation does not require to be recorded. Should the law require recording during interrogation?

E11. Do terrorist suspects receive sufficient rights during the criminal processes (including at the police station)?

- Right to contact family
- Right to see doctors
- Right to access lawyers
- Right to access medical facilities and treatments

E12. How fairly do you think the criminal justice system balances the rights of the offender with the rights of the victim in terrorism cases?

E13. How fairly do you think the criminal justice system performs overall in terrorism cases?

Section Three: Evaluating criminal justice officers' roles in Terrorism Cases

In this section, it is aimed at finding out about your viewpoints of criminal justice officers in terrorism cases

E14. How effective and fairly do you think the police perform in investigation in terrorism cases?

E15.How effective and fairly do you think public prosecutors perform in terrorism cases?

E16.How effective and fairly do you think judges perform in terrorism cases?

E17.How effective and fairly do you think defence lawyers perform in terrorism cases?

E18. Do you ever intervene in individual cases? If so

- How does your intervention arise? Family request?

- Do you receive sufficient information from criminal justice officers regarding terrorism cases? Is there any difficulty in accessing the information?

- What is the attitude of the police to your intervention?

E19.Have you ever come across cases of police abusing their power in terrorism cases?

E20.Have you ever come across cases of public prosecutors abusing their power in terrorism cases?

E21.Do you have anything else you would like to add, which we might not have discussed, related to your work viewpoint of criminal justice officers' work?

Section Four: Legality and human rights regarding the application of the three special laws toward terrorism cases

E22. In pre-trial process, do you think that the special laws provide sufficient rights to a terrorist suspect or not?

E23. Do you think that the military differentiate between Muslim terrorist suspects and Buddhists in regards to how they are treated?

E24. How fairly do you think the criminal justice system under the special laws balances the rights of the offender with the rights of the victim in terrorism cases?

E25. As the detention period of a terrorist suspects is provided by the Emergency Decree as being 30 days plus 84 days, what do you think about this period?

E26. How fair do you think the criminal justice system under the special laws is overall?

E27. Are they any specific methods to review the military in enforcing the special laws?

E28. Have you received any information about human rights violations carried out during the application of the special laws?

- If yes, by what process and how?
- How often?
- Who is the most claimed as a perpetrator?
- What was your involvement?

E29. Do you have anything you would like to add or suggest about the application of special laws in countering terrorism?

Section Five: Evaluating the military roles and the application of the special laws toward Terrorism Cases

In this section, it is aimed at finding out about your viewpoints of military and the special laws in terrorism cases

E30. How effective and fairly do you think the military perform in terrorism cases?

E31. How effective and fairly is the application of special laws (the Internal Security Act 2008/2551, Emergency Decree 2005/2548, and Martial Law 1914/2457)

E32. Do you receive sufficient information from the military regarding terrorism cases?

E33. Is there any difficulty in accessing the information?

E34. Have you ever come across of cases of military abusing their power in terrorism cases?

- If yes, how?
- How often?
- In what ways?
- What was your reaction?

Section Six: Conclusion

E35. Is there any document (such as guidance or standard forms) relating to my research which you could pass on without breaching any official rule?

E36. Do you have anything else you would like to add, which we might not have discussed?

Appendix B

Information Sheet

I am Isra Samandecha, a doctoral candidate at the Centre for Criminal Justice Studies, University of Leeds, United Kingdom. I am currently researching under the supervision of Professor Emeritus Clive Walker and Proffessor Peter Whelan. The title of my thesis is 'The offences relating to terrorism in Thailand'. The primary purpose of this research is to examine, analyse and offer a critique of the roles of Thai criminal law and criminal procedure with regard to terrorism in Thailand. The research seeks to answer whether Thai criminal law in Thailand can be the prime strategy to deal with terrorism, or it needs other mechanisms to work alongside. Specifically, the laws will be examined in the notions of 'efficacy' and 'legality'.

To help realised the research objectives, you are kindly invited to provide your experiences and views on the issue matter the research. Your contribution is extremely vital because your position, knowledge and expertise would help provide clarity to issues involved. Nevertheless, taking part in this research interview is entirely voluntary. All information will be held in confidence, and a participant can also withdraw the consent within 28 days after the interview is made as indicated in the consent letter.

Appendix C

Informed Consent Form

Before deciding to take part in this research, please read the information sheet carefully. If you decide not to participate in this research, there will be no disadvantage to you of any kind and thank you for your consideration.

The aims of the research

1. The research seeks to examine what terrorism means in Thailand, and it has attempted to explain its root causes.

2. The research seeks to answer whether the criminal law has the capability to deal with terrorism alone, or if it needs other mechanisms to work alongside. In terms of ‘efficacy’, the study carries out an examination of the issue whether the criminal law could achieve the goals of preventing, supressing, and averting crimes. Regarding the notion of ‘legitimacy’, the research explores how the criminal law was applied in the contexts of the rule of law, human rights protection and the Thai constitution.

3. The research seeks to examine the operations of the overall criminal justice system in dealing with terrorism charges.

4. The study seeks to examine the application of the special laws in countering terrorism. It seeks to explore the rights of terrorist suspects held under the special laws and explored whether human rights violation have existed in military custody.

The respondents

The samplings of respondents are divided into 5 main groups; 1) police officers, 2) prosecutors, 3) defence lawyers, 4) judges, 5) NGOs. These respondents are

selected based on their experiences and direct contribution to the subject matter of the research.

What will the respondents be asked to do?

The researcher aims to conduct a face to face interview which will no longer than 1 hour. Please be aware that you may decide not to take part in this research without any disadvantage to yourself.

Can Participants change their mind and withdraw from the project?

All participants can withdraw from participation in this research without any adverse within 28 days after the interview has been made.

What data or information will be collected and what use will be made of it?

You will be asked to answer questions regarding to Thai criminal justice system in counter-terrorism in the south of Thailand. All information and data provided by participants are solely meant for the current research undertaking, and they will not be used in any way and by whatever means to support other research agendas.

The data collected will be securely stored will be stored in Leeds University security software to secure them completely to avoid any unacceptable disclosure that would invade the participants' confidentiality. At the end of the project, any personal information will be destroyed immediately.

What if participants have any questions?

If you have any questions regarding the research project, please feel free to contact either:-

1. Isra Samandecha, School of Law, University of Leeds, LS2 9JT, Leeds, United Kingdom, +60 7731589699, or email at lwis@leeds.ac.uk.
2. Professor Emeritus Clive Walker at C.P.walker@leeds.ac.uk or
3. Professor Peter Whelan at p.whelan@leeds.ac.uk

Consent Letter

[The offences relating to terrorism in Thailand]

I agree to participate in an interview being conducted by Isra Samandecha under the supervision of Prof. Clive Walker and Prof. Peter Whelan of the University Of Leeds. I have made this decision based on the information I have read in the information sheet.

As a participant in this study, I realize that I will be asked to answer several questions and I may decline answering any of the questions, if I so choose. All information which I provide will be held in confidence and I will not be identified in any way in the final report. I understand that I may withdraw this consent within 28 days after the interview is made.

I further understand that if they reveal evidence serious crimes, this may be revealed to appropriate authorities. I also understand that I may contact if I have any concerns or comments resulting from my involvement in this research.

Participant’s Signature: ……………………..

Participant’s Name:…………………………..

Date ………………………..