



Thailand

Submission of the International Harm Reduction Association, Asian Harm Reduction Network, the Open Society Institute Public Health Program, Canadian HIV/AIDS Legal Network and Thai AIDS Treatment Action Group to the UN Universal Periodic Review Twelfth session of the UPR Working Group of the Human Rights Council Human rights violations associated with Thailand's anti-drug laws

Executive Summary

Human rights violations committed in the name of drug control are common in Thailand, including the unlawful application of the death penalty and the denial of the highest attainable standard of health and numerous concerns with respect to compulsory treatment. Capital punishment is regularly imposed on people convicted of drug-related offences and the government has failed to adequately deliver evidence-based interventions that are proven to reduce the transmission of blood-borne viruses and bacterial infections. There are also concerns with respect to the number of women in prison, particularly for drug-related offences.

The Death Penalty and the Right to Life

Thailand's Narcotics Act, B.E. 2522 1979 allows for the discretionary imposition of the death penalty for 'Any person who produces, imports or exports the narcotics of category I . . . [if] committed for the purpose of disposal.'ⁱ Section 66 of the Act stipulates that any person who 'disposes of or possesses for disposal' drugs classified as category I in excess of 20 grams is liable to receive the death penalty.

The last known judicial execution for a drug offence in Thailand was in August 2009. Moreover, the government reportedly disclosed that as of August 2010, there were 339 people on death row for drug-related offences, of whom 68 were women.ⁱⁱ

Capital punishment is significantly restricted under international law to those offences termed 'most serious crimes'.ⁱⁱⁱ For more than two decades UN human rights bodies have interpreted this article in a manner that limits the number and type of offences for which execution is allowable under international human rights law explicitly excluding drug offences.^{iv} This principle has been articulated in the International Covenant on Civil and Political Rights, to which Thailand acceded in 1996^v and has been supported by the highest political bodies of the United Nations. The Economic and Social Council of the United Nations (ECOSOC) endorsed a resolution in 1984 upholding nine safeguards on the application of the death penalty, which affirmed that capital punishment should be used 'only for the most serious crimes'.^{vi} The 'most serious crimes' provision was specified to mean crimes that were limited to those 'with lethal or other extremely grave consequences'^{vii} and was also endorsed by the UN General Assembly.^{viii}

In 1996, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote of his concern that Thailand maintained in its 'national legislation the option to impose the death penalty for economic and/or drug-

related offences'.^{ix} In 2005, the Human Rights Committee urged Thailand to 'review the imposition of the death penalty for offences related to drug trafficking in order to reduce the categories of crime punishable by death.'^x

Last year, Thailand changed its position on the UN vote on the Moratorium on the use of the death penalty from opposition to abstention. It is hoped that this represents a potential shift in policy. However, Thailand must abolish its capital drug laws and commute the sentences of those on death row to bring its national policies in line with Article 6(2) of the International Covenant on Civil and Political Rights.

Compulsory Drug Treatment

Thailand's Narcotic Addict Rehabilitation Act B.E. 2545 (2002) establishes the framework for the 'treatment' of people who use drugs in Thailand. Section 19 prescribes that people who are alleged to consume or possess (for consumption or disposal) less than a certain quantity of controlled substances of particular types be transferred to court within 48 hours – or 24 hours if the suspect is less than 18 years of age.^{xi} The suspect will be tested for drugs and authorities will decide – via a urine test and criminal record check^{xii} – whether or not to refer the case to a Committee, after which period the prosecution is suspended.^{xiii} The accused is then detained awaiting the Committee's assessment of drug dependency, which is supposed to take place within 15 days but regularly extends as long as 45 days,^{xiv} or even much longer.^{xv} During this time, the accused is held in prison with no medication provided to manage withdrawal symptoms, which raises numerous concerns.^{xvi}

The Committee on Economic, Social and Cultural Rights has stated explicitly that, "States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees...[to] curative and palliative health services."^{xvii} The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment has also noted that, "[W]ithdrawal symptoms can cause severe pain and suffering if not alleviated by appropriate medical treatment" and that "denial of medical treatment and/or absence of access to medical care in custodial situations may constitute cruel, inhuman or degrading treatment or punishment and is therefore prohibited under international human rights law."^{xviii}

If a person is determined to have a dependency, initial treatment orders can be made for up to six months and can be extended for six-month periods after such term has been completed for a maximum of three years.^{xix} If the Committee determines that the treatment has been completed to their satisfaction, the person will be released without charge but if such treatment is not completed satisfactorily, the criminal prosecution can be revived.^{xx}

The system is overseen by the Department of Probation but the custodial treatment centres are run by the military, the Ministry of Public Health, the Ministry of Interior, the police force and the Bangkok Metropolitan Administration.^{xxi} There are variations in how these centres are managed based on the agency in charge but one thing they have in common is that people in custodial treatment programs have no right to choose their treatment or have input into their treatment plans.^{xxii} This is contrary to an ethical requirement which improves treatment outcomes, according to the World Health Organization (WHO) and UNODC.^{xxiii}

There have been disturbing reports within these centres of chaining and beatings^{xxiv} or people being made to roll on gravel.^{xxv} Such treatment is a violation of the prohibition of cruel, inhuman and degrading treatment or punishment.^{xxvi}

According to the Thai government, as of June 2009, there were approximately 46,500 people in either compulsory treatment facilities or receiving treatment while serving his or her sentence in prison.^{xxvii}

Injecting Drug Use, HIV/AIDS, and the Right to Health

In addition to failing to enforce a rights and health-based approach to drugs, Thailand is falling short of respecting, protecting and ensuring the right to the highest attainable standard of health of people who use drugs. Asia accounts for a quarter of all injecting drug use in the world, and in many Asian countries HIV epidemics are driven primarily by unsafe injecting practices.

Guidelines from the World Health Organization, UNAIDS and the United Nations Office on Drugs and Crime emphasise the importance of harm reduction within a comprehensive package for people who inject drugs.^{xxviii} The commitment of UN member states to key harm reduction interventions such as HIV prevention measures is enshrined in political declarations on HIV/AIDS adopted by the General Assembly in 2001 and 2006,^{xxix} as well as most recently in the Millennium Development Goals summit outcome document.^{xxx} In late 2009, the General Assembly also adopted a Political Declaration on drug control which yet again reaffirmed the importance of measures to address injection driven HIV epidemics.^{xxxi}

Current and former UN Special Rapporteurs on the right to health have stated that harm reduction is essential in realising the right to the highest attainable standard of health for people who use drugs.^{xxxii} Two of the core HIV-related harm reduction interventions are needle and syringe programmes and opioid substitution therapy (e.g. with methadone or buprenorphine).^{xxxiii} However, in Thailand, there are only ten needle and syringe services operating across the country. These are NGO-run, receive no government support and are regularly threatened with closure. The Reference Group to the UN on HIV and Injecting Drug Use estimate that only 0.2% of people who inject drugs in Thailand are currently accessing needle and syringe programmes.^{xxxiv} Opioid substitution therapy prescribing has been integrated into the National Healthcare Scheme, and as of 2010, there were 147 sites. Less than 5000 people are currently accessing OST in the country, the vast majority receiving methadone.^{xxxv} However, current policy restricts treatment to a two year duration which contradicts international best practice on OST provision.

There are more than 160,000 people who inject drugs in Thailand.^{xxxvi} HIV prevalence among people who inject drugs reaches over 40 percent.^{xxxvii} However, of the 75,000 people who inject drugs that are living with the virus, only 2 in 100 currently receive life-prolonging antiretroviral treatment.^{xxxviii} Similarly, Hepatitis C prevalence is estimated to be 90 percent among people who inject drugs and may be as high as 98.8 percent in Bangkok.^{xxxix}

This responsibility to respect, protect and ensure the right to health extends to incarcerated populations. According to the WHO, prisons are places where, "Two of the greatest public health problems facing all societies overlap: the epidemic of HIV/AIDS and the pandemic harmful use of psychotropic substances such as alcohol and illegal drugs."^{xl}

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health recommended that states, 'Ensure that all harm reduction measures (as itemized by UNAIDS) and drug-dependence treatment services, particularly opioid substitution therapy, are available to people who use drugs, in particular those among incarcerated populations.'^{xi} This has been recognised time and again by the UN Committee on Economic Social and Cultural Rights,^{xii} and the Human Rights Council, in 2009, has also recognised harm reduction as an essential element of the right to health in the context of HIV/AIDS.^{xliii}

Thailand has one of the highest incarceration rates in the region^{xliv} yet there are no harm reduction services available at all in prisons. The failure of states to implement comprehensive harm reduction measures in places of detention—including needle/syringe programmes and opioid substitution therapy—violates the state's obligations in international human rights law.

Women in Prison

The Thai government has taken a leading role on the promotion and adoption of the United Nations standards for the treatment of women prisoners and non-custodial measures for women offenders (Bangkok Rules). However, there are some concerns that the government's national policies toward women offenders may not reflect these proclaimed standards.

Out of a total number of 212,058 prisoners in Thailand there are 30,020 women currently serving prison sentences.^{xlv} According to Thailand's Ministry of Justice, male prisoners represent 86 percent of the total prison population whereas female prisoners constitute almost 14 percent of the prison population.^{xlvi} According to the Department of Corrections, 56.42 percent of the prison population is serving sentences for crimes related to drugs. In particular, out of 30,020 female prisoners 17,170 of them are in prisons for drug-related crimes.^{xlvii} The number of women imprisoned for drug-related offences had increased from 6,581 in 1997 to 28,286 in 2002, which constitutes more than a four-fold rise in five years.^{xlviii} That number has since decreased but drug offenders remain a majority of those in prison in Thailand.

This is a cause for concern. As the Special Rapporteur on violence against women recommended to the United States in 1999, such high numbers should inspire exploration of alternatives to imprisonment or custodial sentences.^{xlix} At the time, she wrote, 'The Special Rapporteur also believes that many of the drug-related offences for which women are incarcerated in the United States may be more appropriately handled by a community-based system of welfare and social support.'ⁱ

Similarly, when reviewing the United Kingdom of Great Britain and Northern Ireland, the Committee on the Elimination of Discrimination against Women expressed its concern at the number of women 'imprisoned for drug-related offences or because of the criminalization of minor infringements, which in some instances seem indicative of women's poverty.'ⁱⁱ At the time, the Committee recommended, 'that the Government intensify its efforts to understand the causes for the apparent increase in women's criminality and to seek alternative sentencing and custodial strategies for minor infringements.'ⁱⁱⁱ

It is recommended that the government of Thailand explore similar options.

ⁱ Narcotics Act, B.E. 2522 (1979), ch. 12: http://en.oncb.go.th/file/information_narcotics.html (last accessed 27 January 2011); International Federation for Human Rights (FIDH) (March 2005) *The Death Penalty in Thailand*. n411/2, p. 19.

ⁱⁱ (As of mid-2010) *Death Penalty Thailand* (16 August 2010) 'Latest Statistics for Prisoners Condemned to Death in Thailand' Available at: <http://deathpenaltythailand.blogspot.com/>. Information credited to Department of Corrections, Bangkok.

ⁱⁱⁱ Article 6(2), International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty Resolution 1984/50; UN General Assembly (14 December 1984) Human rights in the administration of justice. Resolution A/RES/39/118.

^{iv} See for example, UN Human Rights Committee (8 July 2005), Concluding observations: Thailand. CCPR/CO/84/THA, para. 14; UN Human Rights Committee (29 August 2007) Concluding observations: Sudan. CCPR/C/SDN/CO/3, para. 19; UN Commission on Human Rights, Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur, submitted pursuant to Commission on Human Rights resolution 1996/74, 24 December 1996, E/CN.4/1997/60; UN Human Rights Council (29 January 2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. A/HRC/4/20, para. 51-52; UN Human Rights Council (14 January 2009) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/HRC/10/44, para. 66.

^v United Nations Treaty Collection (date of last access: 27 January 2011) available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&lang=en

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^{vii} *ibid*

^{viii} UN General Assembly (14 December 1984) Human rights in the administration of justice. Resolution A/RES/39/118.

^{ix} UN Commission on Human Rights, Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur, submitted pursuant to Commission on Human Rights resolution 1996/74, 24 December 1996, E/CN.4/1997/60.

^x UN Human Rights Committee (8 July 2005), Concluding observations: Thailand. CCPR/CO/84/THA, para. 14.

^{xi} Richard Pearshouse, Canadian HIV/AIDS Legal Network "Patients, not criminals? An assessment of Thailand's compulsory drug dependence treatment system" (1 May 2009) 14 *HIV/AIDS Policy & Law Review* 1, p. 12

- xii Canadian HIV/AIDS Legal Network, *Compulsory Drug Treatment in Thailand: Observations on the Narcotic Addict Rehabilitation Act B.E. 2545* (January 2009), p. 10
- xiii Sec. 19. *Narcotic Addict Rehabilitation Act, BE 2545* (2002)
- xiv Canadian HIV/AIDS Legal Network, *Compulsory Drug Treatment in Thailand: Observations on the Narcotic Addict Rehabilitation Act B.E. 2545* (January 2009), p. 9;
- xv Open Society Institute Public Health Program, *Detention as Treatment: Detention of Methamphetamine Users in Cambodia, Laos, and Thailand* (March 2010), p. 26
- xvi Canadian HIV/AIDS Legal Network, *Compulsory Drug Treatment in Thailand: Observations on the Narcotic Addict Rehabilitation Act B.E. 2545* (January 2009), pp. 10-11; Open Society Institute Public Health Program, *Detention as Treatment: Detention of Methamphetamine Users in Cambodia, Laos, and Thailand* (March 2010), p. 25
- xvii Committee on Economic Social and Cultural Rights, "General Comment No. 14: The right to the highest attainable standard of health," August 11, 2000, UN Doc E/C.12/2000/4, para 34
- xviii UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, 14 January 2009, A/HRC/10/44, paras. 57, 71.
- xix Sec. 33. *Narcotic Addict Rehabilitation Act, BE 2545* (2002)
- xx Sec. 25. *Narcotic Addict Rehabilitation Act, BE 2545* (2002)
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- xxiv Open Society Institute Public Health Program, *Detention as Treatment: Detention of Methamphetamine Users in Cambodia, Laos, and Thailand* (March 2010), p. 27
- xxv Canadian HIV/AIDS Legal Network, *Compulsory Drug Treatment in Thailand: Observations on the Narcotic Addict Rehabilitation Act B.E. 2545* (January 2009), p. 25.
- xxvi U.N. standards state that "[c]orporal punishment ... and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences": United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955, U.N. Doc. E/5988 (1977), para. 31. Note that according to Article 7 of the ICCPR: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." This right is absolute and non-derogable. WHO and UNODC note that "[i]nhumane and degrading practices and punishment should never be part of treatment of drug dependence": UNODC/WHO, *Principles of Drug Dependence Treatment: Discussion Paper*, 2008, p. 9.)
- xxvii Ministry of Foreign Affairs, Kingdom of Thailand, Questionnaire for the Secretariat of the Working Group on Arbitrary Detention on the issue of detention of drug users (undated) Available at: http://www.mfa.go.th/humanrights/index.php?option=com_content&view=article&id=66:answers-to-questionnaire-for-the-secretariat-of-the-working-group-on-arbitrary-detention-on-the-issue-of-detention-of-drug-users-&catid=35:un-resolution&Itemid=73
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- xxx United Nations Development Programme, 2010 MDG Summit Outcome, A/65/L.1 (17 September 2010)
- xxxi UNGA res 64/182, 30 March 2010.
- xxxii Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report to the General Assembly (main focus: the right to health and international drug control, compulsory treatment for drug dependence and access to controlled medicines), UN doc. A/65/255; Foreword, "Harm Reduction and Human Rights: The Global Response to Drug Related HIV Epidemics," <http://www.ihra.net/GlobalResponse>.
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