

**WOMEN, INCARCERATION  
AND DRUG POLICY IN  
THAILAND:  
PROMOTING HUMANE AND  
EFFECTIVE RESPONSES**





# WOMEN, INCARCERATION AND DRUG POLICY IN THAILAND: PROMOTING HUMANE AND EFFECTIVE RESPONSES

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## INTRODUCTION

In 2009, the United Nations Office of Drug and Crime (UNODC) produced a report assessing 100 years of drug control since the 1909 Shanghai Opium Commission, where governments convened for the first time to discuss an international approach to drug-related problems.<sup>ii</sup> The report identified and recognised the negative ‘unintended consequences’ of drug control policies: the creation of a criminal black market; the shift of policy focus from public health to law enforcement; the balloon effect, with drug law enforcement in one geographical area resulting in diversion of illicit drug production to other areas; policing pressure on one type of drug leading to the use of alternative drugs; and, the marginalisation of and stigmatisation against people who use drugs.<sup>iii</sup>

Almost a decade after this UNODC report, the negative consequences of drug control continue to be suffered by a growing number of women incarcerated for drug-related offences worldwide, particularly in South East Asia where Thailand has by far the largest prison population including the highest numbers of females in prison (over 80% are held for drug offences).<sup>iv</sup> This policy guide aims to provide civil society organisations and stakeholders in Thailand with information and policy recommendations on the situation of women incarcerated for drug-related offences.

## METHODOLOGY

In 2018, the International Drug Policy Consortium, in partnership with Ozone Foundation in Thailand, LBH Masyarakat in Indonesia and NoBox Transitions in the Philippines, embarked on a project called ‘Women, incarceration and drug policies in South East Asia: Promoting humane and effective responses’.

The project aims to encourage reforms towards reducing the levels of incarceration of women for drug offences. To achieve these aims, the project comprises activities to increase civil society engagement; gather support for proportionate sentencing and a reduction of death penalty sentences especially for low-level, non-violent drug offences; increase understanding of the number and profile of women incarcerated for drug offences and its wider socio-economic consequences; and to promote alternatives to incarceration.

The project partners in Indonesia, Thailand and the Philippines conducted research studies on women incarcerated for drug-related offences. To carry out this research, Ozone Foundation worked with Mahidol University to conduct a study on the situation of women incarcerated for drug offences in Thailand in 2018. The study collected quantitative data from 315 women inmates of the Correctional Institution for Addicts in Pathum Thani province. Qualitative data was gathered from six formerly incarcerated women from the Fang district of Chiang Mai and five prison officials.

Ozone Foundation also consulted civil society organisations involved in women's rights, drug policy reform and prison reform, as well as affected communities including women who use drugs in the process of analysing the research findings. After the research study concluded, consultations were held with national stakeholders including relevant government agencies, academic experts, civil society organisations and affected communities to discuss the research outputs and elaborate recommendations for national policy reforms. This policy guide is a consolidation of the outcomes of these project activities in Thailand.

## GLOBAL TRENDS ON WOMEN INCARCERATED FOR DRUG OFFENCES

In its 2018 Global Prison Trends report, Penal Reform International found that over 714,000 women were incarcerated in facilities around the world as of November 2017, according to the Fourth Edition of the World Female Imprisonment List. These include pre-trial detainees or remand prisoners and those that have been convicted or sentenced.<sup>v</sup> While women only represent 6.9% of the world's prisoners, they constitute the fastest growing prison population with particularly high rates of imprisonment for drug offences. According to the World Female Imprisonment List, between 2000 and 2017, the global female prison population increased by 53.3% compared to 19.6% for male prisoners. In 2017, Thailand had the world's fifth highest numbers of incarceration of women in the world, the second highest in Asia, and the highest in South East Asia (see Table 1).

**TABLE 1: Highest incarceration rates of women worldwide**

	Country	Number of women and girls incarcerated as of September 2017
1	United States	about 211,870
2	China	107,131 (plus an unknown number in pre-trial and other forms of detention)
3	Russian Federation	48,478
4	Brazil	44,700
5	Thailand	41,119

6	India	17,834
7	Philippines	12,658
8	Vietnam	11,644
9	Indonesia	11,465
10	Mexico	10,832
11	Myanmar	9,807
12	Turkey	9,708

In 2013, the UN Commission on Crime Prevention and Criminal Justice estimated that globally one in five prisoners were incarcerated for drug offences.<sup>vi</sup> However, the proportion of women incarcerated for drug offences was significantly higher than that of men, with the highest percentages to be found in Latin America and South East Asia.<sup>vii</sup> In countries like Brazil,<sup>viii</sup> Costa Rica,<sup>ix</sup> Peru<sup>x</sup> and Venezuela,<sup>xi</sup> more than 60% of women in prison are incarcerated for a drug offence. In the Philippines and Thailand, this proportion reaches 60% and 82% respectively.<sup>xii</sup>

The many concerns faced by women held in detention or prison include drug dependence and mental health problems which are often linked to histories of abuse and trauma, vulnerability to sexual abuse by correctional personnel and other prisoners, reproductive healthcare needs, being primary caretakers of young children but separated from them, and barriers to maintaining contact with and/or visitations by family members visitation, eg. due to the remote location of women prisons. It is also more difficult for women with a history of incarceration for drug offences to find employment, housing and financial support when they return to their communities,<sup>xiii</sup> due to the high level of stigma attached to involvement in the illicit drug trade or any drug-related activity.

Despite the rising numbers of women incarcerated for drug offences worldwide – and especially in South East Asia – because women and girls only represent less than 10% of the prison population on average, their characteristics and specific needs have largely been unrecognised and ignored by decision makers in the implementation of drug laws and within the criminal justice system.

### Box 1. International guidelines and recommendations for women incarcerated for drug offences

The **2016 United Nations General Assembly Special Session on the World Drug Problem** (UNGASS) concluded with an Outcome Document that addresses human rights abuses in the name of drug control, including gender-specific issues faced by women incarcerated for drug-related offences,<sup>xiv</sup> and calls on member states to:

- Mainstream a gender perspective into and ensure the involvement of women in all stages of the development, implementation, monitoring and evaluation of drug policies and programmes, develop and disseminate gender-sensitive and age-appropriate measures that take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem and, as States parties, implement the Convention on the Elimination of All Forms of Discrimination against Women (para 4. g)
- Encourage the taking into account of the specific needs and possible multiple vulnerabilities of women drug offenders when imprisoned, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (para 4. n)

In 2016, the UN Commission on Narcotic Drugs adopted **Resolution 59/5 ‘Mainstreaming a gender perspective in drug-related policies and programmes’**. The resolution called on member states to consider the specific needs of women and girls in implementing drug policies in line with the international drug control conventions, and:

*‘to take into consideration the specific needs and circumstances of women subject to arrest, detention, prosecution, trial or the implementation of a sentence for drug-related offences when developing gender-specific measures as an integral part of their policies on crime prevention and criminal justice, including appropriate measures to bring to justice perpetrators of abuse of women in custody or in prison settings for drug-related offences’* (emphasis added).<sup>xv</sup>

The same resolution also instructs UN member states to draw from the provisions of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),<sup>xvi</sup> the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)<sup>xvii</sup> and the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules). These UN Standard Minimum Rules include key guiding principles regarding women deprived of liberty:

#### **The Nelson Mandela Rules**

- Rule 28. In women’s prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

- Rule 48 (2). Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.
  - Rule 58(2). Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.
  - Rule 81.
- (1) In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.
  - (2) No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.
  - (3) Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.

### **The Bangkok Rules**

- Rule 60. Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.
- Rule 61. When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds.
- Rule 62 The provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women's access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes.

### **The Tokyo Rules**

- 1.5. Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

These international guidelines and recommendations require more efforts by UN member states to be adequately implemented at national level.

## DRUG POLICY IN THAILAND

Thailand's drug policy is highly punitive and focused on a zero-tolerance approach to people who use and sell drugs, although couched in terms that describe people who use drugs as 'patients' or 'victims' rather than 'criminals'. However despite this rhetoric, Thailand's drug laws prescribe criminal penalties for drug-related offences, including for drug use and possession, as well as compulsory rehabilitation in detention for people caught using drugs.<sup>xix</sup>

The prevailing drug laws in Thailand include the Narcotics Act B.E.2522 (1979) which has undergone several amendments over the years. This law defines drugs as 'any form of chemical or substance which, when consumed by inhalation, smoking, injection or by any other means, causes significant physiological or mental effect such as need of continual increase of dosage, withdrawal symptoms when deprivation of the narcotics, strong physical and mental need of dosage and deterioration of health in general'.<sup>xx</sup> The Narcotics Act also classifies drugs into five categories, whereby criminal penalties for drug-related offences, including consumption and possession, vary according to which category the drugs belong to. Category 1 carries the heaviest penalties in terms of fines and imprisonment, including the penalty of death:

- Category 1 for drugs that are described as 'dangerous' and absolutely prohibited, including heroin, amphetamine, methamphetamines, ecstasy and lysergic acid diethylamide (LSD)
- Category 2 for 'ordinary' substances like morphine, cocaine and medicinal opium
- Category 3 for medicines that contain substances included in category 2
- Category 4 consists of chemical precursors or chemicals used for producing drugs included in categories 1 and 2
- Category 5 covers substances which are not included in previous categories, such as cannabis and kratom.<sup>xxi</sup>

The Narcotic Addict Rehabilitation Act (2002) provides for a diversion to treatment scheme for people charged with consumption, consumption and possession, consumption and possession for disposal, and consumption and disposal.<sup>xxii</sup> After arrest, the person's case is sent to court for consideration. If the person arrested is over 18, the court must decide within 48 hours; if the person arrested is below 18, the court is given 24 hours. The court is responsible for determining whether the accused qualifies for diversion to treatment, and whether to issue an order referring the person to a subcommittee comprising representatives from the Ministry of Justice, Department of Probation, medical doctor, psychologist, social worker and drug treatment experts. If that is the case, the subcommittee then assesses whether the person is a 'consumer or addict' within 15 days, with a possible extension of up to an

additional 30 days when necessary for the subcommittee to decide, but not exceeding 45 days. During this period of assessment by the subcommittee, the person is detained in prison if over 18, and in juvenile facilities if under 18. If urine test results for drug use come up positive, the subcommittee may issue a treatment order involving programmes under detention or non-detention conditions which are described as “voluntary”.<sup>xxiii</sup> It must be noted that in accordance with international standards, for example the WHO Addiction Severity Index, assessments of drug dependence cannot be made on the basis of a urine test alone.<sup>xxiv</sup>

It is problematic that several of the rehabilitation in detention centres are run by military and law enforcement agencies, and so-called “patients” are ordered to be held there for a period of 3 - 6 months, with the possibility of extension upon review by the subcommittee. In these detention centres, “rehabilitation” involves intensive physical exercise, vocational training, therapeutic community group discussions and lectures on the evils of drugs.<sup>xxv</sup>

Thailand’s drug laws impose the death penalty on some drug offences and while 309 people (233 males and 76 females) were sentenced to death for drug offences as of December 2018,<sup>xxvi</sup> Thailand had accepted recommendations to review its imposition of the death penalty for offences related to drug trafficking and to commute death sentences after its Universal Periodic Review in 2016.<sup>xxvii</sup>

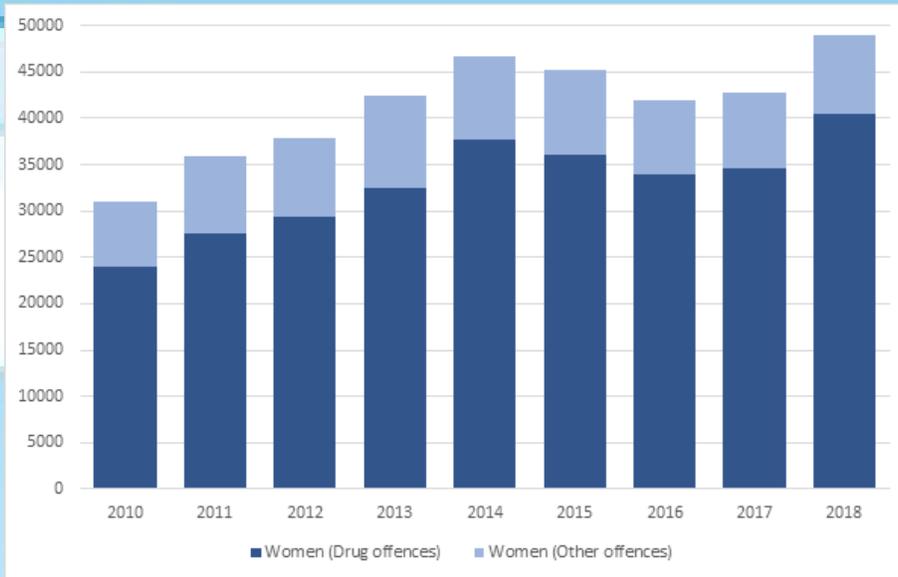
In January 2017, the National Assembly introduced amendments to the Narcotics Act B.E.2522 (1979) which removed mandatory sentencing (including of the death penalty) and reduced penalties for possession, import/export and production for the sale of drugs.<sup>xxviii</sup> The legislative amendments also led to a significant shift in the burden of proof from the defendant to the prosecutor. Before the amendments, the intent to sell was established when someone was caught in possession of drugs that met or exceeded the stipulated quantity thresholds, resulting in mandatory sentencing for the import, export, distribution or sale of drugs for which far higher penalties (including the death penalty) applied compared with sentences for consumption and possession without intent to supply. The legislative amendments provide more latitude for defendants to prove the absence of intent to sell or supply drugs and for judges to determine the appropriate sentence. These changes are expected to help ensure proportionate sentencing and reduce levels of incarceration for drug offences (see Table 2 on the changes to the penalties imposed for various drug offences on the Narcotics Act).<sup>xxix</sup>

**TABLE 2. Reforms to the Thailand Narcotics Act, with effect from January 2017**

Drug offence	Penalty under the Narcotics Act B.E.2522 (1979)	Penalty under the amendments to the Narcotics Act B.E. 2545 (2002) (5 <sup>th</sup> Edition)
Article 15(3) outlines the quantity thresholds that apply in relation to offences involving the production, sale, import, export or possession of drugs	Penalties apply from 20g or more in purity of a substance in Category 1	Penalties apply according to these quantity thresholds:  (1) LSD – 0.75mg to 300mg or more in purity (2) Amphetamine or its derivatives – 375mg or more in purity, or 1.5g or more in total weight (3) Up to 3g in purity of any drugs under Category 1 (except for drugs under (1) and (2)).
Article 65 Production for sale, import or export of drugs in Category 1	If over the quantity threshold in article 15(3):  i. Death penalty, or ii. life imprisonment and THB 1 million – 5 million fine where quantity exceeds threshold  If under the quantity threshold in article 15(3):  i. 4 – 15 years imprisonment or THB80,000 – 300,000 fine, or both	Quantity exceeds thresholds in article 15(3):  10 years to life imprisonment and a fine of THB 1 million – 5 million, or death penalty  Amended law does not specify under what circumstances (eg. quantity thresholds) the lower penalty range may apply:  4 – 15 years imprisonment or THB80,000 – 300,000 fine, or both
Article 66 Sale or possession for sale of a Category 1 drug	For less than 100g in purity: 5 years to life imprisonment, and THB50,000 – 500,000 fine	For less than 3g in purity: 4 – 15 years imprisonment OR THB80,000 to 300,000 fine OR both  For 3g to 20g in purity: 4 years to life imprisonment and THB400,000 – 5 million fine  For more than 20g in purity: life imprisonment and THB1 million to 5 million fine OR death penalty
Article 67 Possession of drugs	Where quantity threshold in article 15(3) is not met:  4 – 15 years imprisonment, or THB20,000 - 200,000 fine, or both	1 – 10 years imprisonment OR THB20,000 – 200,000 fine OR both

While it may be too early to evaluate the impacts of these drug law reforms, official data show that the numbers of people held in prison for drug offences, while having decreased in 2016 for women, started rising again from 2017 (see Table 3.). As of 2018, the numbers of men and women in prison, as well as the numbers of men and women held for drug offences, are the highest they have ever been since at least 2010 (see Tables 3. and 4.). While 75% of men were held in prison for drug offences, 82% of women were held for drug offences, as of 2018 (see Table 5.). Most men and women are held for low-level offences, ie. consumption and possession offences (see Table 6.).

**TABLE 3. Numbers of women in prison for drug offences, and for other offences: 2010 - 2018**



**TABLE 4. Numbers of men in prison for drug offences, and for other offences: 2010 - 2018**

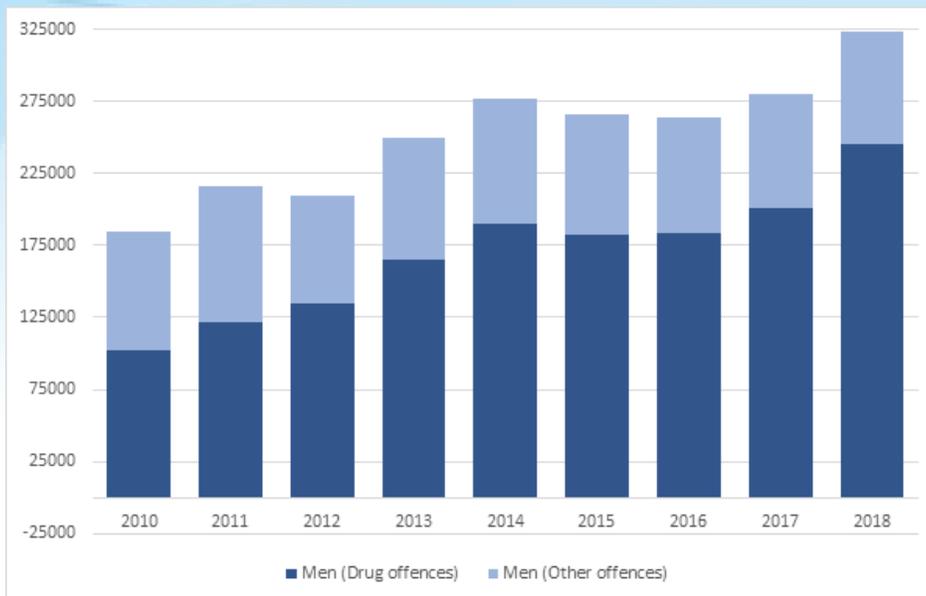


TABLE 5. Numbers and percentage of men and women in prison for drug offences: 2010 - 2018

Year	Number of female prisoners	Number of female prisoners held for drug offences	% of female prisoners held for drug offences	Number of male prisoners	Number of male prisoners held for drug offences	% of male prisoners held for drug offences	Number of male and female prisoners	Number of male and female prisoners held for drug offences	% of male and female prisoners held for drug offences
2010	31,017	24,015	77.42%	184,980	102,398	55.35%	215,997	126,413	58.52%
2011	35,888	27,573	76.83%	215,924	121,410	56.22%	251,812	148,983	59.16%
2012	37,919	29,416	77.57%	209,845	134,940	64.30%	247,764	164,356	66.33%
2013	42,458	32,433	76.38%	250,285	165,534	66.13%	292,743	197,967	67.62%
2014	46,615	37,766	81.01%	276,383	189,994	68.74%	322,998	227,760	70.51%
2015	45,201	36,060	79.77%	266,422	182,634	68.55%	311,623	218,694	70.17%
2016	41,936	33,879	80.78%	264,107	183,765	69.57%	306,043	217,644	71.11%
2017	42,772	34,532	80.73%	279,862	200,852	71.76%	322,634	235,384	72.95%
2018	49,004	40,416	82.47%	323,975	245,080	75.64%	372,979	285,496	76.54%

Source: Thailand Department of Corrections, [http://www.correct.go.th/rt103pdf/report\\_index.php](http://www.correct.go.th/rt103pdf/report_index.php)

**TABLE 6. Numbers of men and women in prison for drug offences, according to type of drug offence: 2010, 2014, 2016, 2017 and 2018**

No.	Type	2010		2014		2016		2017		2018	
		M	F	M	F	M	F	M	F	M	F
1	Consumption	1,101	230	8,150	544	11,103	1,202	11,950	1,213	17,495	1,910
2	Possession	9,349	2,006	25,994	5,984	10,917	1,431	14,031	1,292	20,010	1,971
3	Consumption and possession	7,141	1,327	13,835	2,923	8,508	1,291	11,299	1,777	16,786	2,434
4	Selling	23,359	7,127	38,240	9,698	30,784	6,445	31,948	7,620	37,406	8,711
5	Possession for sale	34,068	7,287	57,641	10,767	75,370	16,394	80,574	15,855	93,420	16,615
6	Other (eg. production, import and export)	750	213	2,555	197	13,891	1,784	11,137	1,205	17,133	2,237
	<b>Total</b>	<b>75,768</b>	<b>18,190</b>	<b>146,415</b>	<b>30,113</b>	<b>150,573</b>	<b>28,547</b>	<b>160,939</b>	<b>28,962</b>	<b>202,250</b>	<b>33,878</b>

Source: Thailand Department of Corrections, <http://www.correct.go.th/rtnew103/index.php?&page=1>

In addition to the numbers of people in prison, any evaluation of the impact of Thailand's drug laws should also assess the conditions of prison and detention facilities in Thailand. In 2014 and 2015, the UN's Committee Against Torture and the Committee on Economic, Social and Cultural Rights (CESCR) respectively raised several concerns relating to conditions of detention in Thailand, including ongoing allegations of torture, high levels of overcrowding, use of shackling and solitary confinement. The CESCR subsequently recommended the need to ensure adequate living conditions including adequate access to healthcare and efforts to prevent malnutrition.<sup>xxx</sup>

## THE OZONE FOUNDATION AND MAHIDOL UNIVERSITY STUDY ON WOMEN, INCARCERATION AND DRUG POLICY IN THAILAND

The research conducted under the Ozone Foundation study sought to build upon the research already conducted by the Thailand Institute of Justice in 2013 on the profiles of women in prison in Thailand (see Box 2.). As a result, the research focussed on the experience of women charged with drug offences in the criminal justice system.

### A. SENTENCING PROFILE OF WOMEN IN PRISON FOR DRUG OFFENCES

The key characteristics of the 315 women who participated in the research study conducted by Ozone Foundation, in terms of their experience of the sentencing process were:

- a. Virtually all of the women (99.7%) were charged with drug offences
- b. The women had spent an average of 4.37 years in prison, with the minimum time spent in prison at 1.05 years and the maximum at 10.87 years
- c. 72% of the women were convicted for possession of drugs with intent to sell
- d. 68% of the women convicted for possession with intent to sell were charged as main offenders, while 15% were charged as co-offenders
- e. 17% of the 315 women reported that they were pressured to admit to crimes that they did not commit, for example to take the blame for their partner or co-offender

- f. Over half of the 315 women involved in the research study – 55% – had been previously charged and imprisoned. 96% of those with a previous charge, had been charged with possession of drugs with intent to sell.
- g. 90 respondents had husbands or romantic partners who have also been sentenced, or are currently undergoing legal proceedings, for drug-related crimes. Of these 90 respondents, 15 women reported that they did not commit the crimes charged against them.
- h. Eight women were sentenced for one to two years in prison for drug possession for consumption purposes.

## **BOX 2. BACKGROUND AND CHARACTERISTICS OF WOMEN IN PRISON IN THAILAND: RESEARCH BY THE THAILAND INSTITUTE OF JUSTICE**

In February 2013, the Thailand Institute of Justice (TIJ) carried out pilot research among women in prison in Thailand held in six correctional facilities and prisons, which included survey responses from 533 women and 34 individual interviews. At that time, there were 36,649 women held in 129 prison facilities in Thailand.<sup>1</sup> The purpose of the survey conducted was to learn about the background and characteristics of women held in prison and correctional institutions in Thailand.<sup>1</sup> The findings showed that most of the women respondents were from a background of low education levels, had children and became involved in drug offences for financial reasons or to support their family. In addition, most of them (45% of survey respondents) did not have legal representation during their trial. A summary of the main findings from the TIJ research are included:

- a. Literacy: 65% said they had some or major problems with reading. About one-third said they had no problem reading or writing Thai.
- b. Age groups: the majority (43% of survey respondents) were 26 to 35 years of age. The next largest group (24%) were 36 to 45 years of age.
- c. Marital status: 23% single, 23% married, and 22% separated.
- d. 99% were of Thai nationality.
- e. About 82% (436) of survey respondents had children.
- f. Education levels: 9% had less than primary school education, 34% completed primary school, 32% completed secondary school, and 12% completed high school. 9% completed vocational or certificate training, and only 3% completed a college degree.
- g. Work history before imprisonment: 55% were the sole carer of self/children/family. 33% both inmate and partner was working. 11% did not work.
- h. Legal representation: 45% did not have a lawyer during trial, 26% had a private attorney, 17% were represented by a public defender, 3% had a volunteer lawyers, and about 10% had not yet been tried.
- i. Issues leading to offence: 27% financial reasons, 23% to support family, 15% “bad judgment,” 11% drug use or dependence
- j. Drug use history: 21% dependent on drugs, 47% drug use was involved in current offence, 10% treatment for substance abuse problems.

Official records show that 11% of women in prison were repeat offenders, with 87% of them previously convicted for drug offences (35% for use, 40% for possession and 45% for sales).

Source: Thailand Institute of Justice (2014) *Women prisoners and the implementation of the Bangkok Rules in Thailand*, [https://drive.google.com/drive/folders/17yqJh3YGhsjoYIEwHn0\\_9JvveN00HWoX](https://drive.google.com/drive/folders/17yqJh3YGhsjoYIEwHn0_9JvveN00HWoX)

## B. ACCESS TO LEGAL AID

Over 90% of the 214 study respondents who were charged as main offenders, made their confessions during the stage of arrest or investigation. Over 90% of their cases were decided at the general civil court level, and very few women filed appeals to an Appeals Court or the Supreme Court. Most of those who claimed that they had not committed the crimes for which they were charged, convicted or sentenced (47 out of the 315 study respondents) also said that their confessions were made during the arrest (64.8%) and investigation stage (77.8%) of the proceedings. Of the 266 respondents (84% of all the study respondents) who made confessions at the arrest stage, 90.6% did not appoint a lawyer. Of the 44 respondents that did not confess at the arrest stage, 29.5% appointed a private lawyer and 11.4% were represented by a volunteer lawyer.

Eight women were sentenced for one to two years in prison for drug possession for consumption purposes. Their cases were concluded at the general civil court without further legal proceedings. Some of the reasons given for not going through any further legal proceedings were that their lawyers advised them that it would be 'useless to go on', and they could not afford further legal services. One woman was advised by a lawyer to confess to the offence in order to receive a lighter sentence.

The Justice Fund Act B.E. 2558 (2015) provides for government funds to be used for legal assistance for those who cannot pay for legal services. Section 9 provides that this fund may be spent on:

- (1) the provision of assistance to people in litigation
- (2) the petition for temporary release of the accused or the defendant
- (3) the provision of assistance to a person whose human rights have been violated or a person affected by the violation of human rights, and
- (4) the provision of legal knowledge to the people.<sup>xxxii</sup>

Among the study's 315 respondents, however, only two women were able to request and access this fund to pay for their legal services. Very few of the women (45 women, representing 14.3% of the respondents) were aware of the existence of the Justice Fund and the fact that it could provide support for their legal proceedings. The study further revealed that only a very small portion were able to appoint their own attorneys during the legal proceedings.

In-depth interviews with prison officials further indicated that most of the women in prison were not able to understand the details of their case or did not have the opportunity to read their case. Combined with the finding that most respondents confessed to the offences they were charged with during arrest or investigation, with no assistance from lawyers, it can be concluded that there is a strong need to ensure that women charged with drug offences are aware of their legal rights and able to access legal advice and representation from the stage of arrest.

Box. 3 outlines the international guidelines and recommendations on access to legal aid.

### BOX 3. INTERNATIONAL GUIDELINES AND RECOMMENDATIONS ON ACCESS TO LEGAL AID

The right to have legal representation and to have access to free legal assistance is guaranteed in the International Covenant on Civil and Political Rights<sup>1</sup> and was further reinforced in the **Mandela Rules**,<sup>1</sup> which provides:

‘If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.’ (Rule 119 No. 2, Revised Standard Minimum Rules for the Treatment of Prisoners).

The **UNGASS 2016 Outcome Document** also includes provisions on the right to a fair trial and access to legal assistance in para 4 (o), exhorting member-states to:

‘Promote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings, including practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment and to eliminate impunity, in accordance with relevant and applicable international law and taking into account United Nations standards and norms on crime prevention and criminal justice, and *ensure timely access to legal aid and the right to a fair trial*’ (emphasis added).<sup>1</sup>

In an ‘**Information note for criminal justice practitioners on non-custodial measures for women**’, the UNODC called on judges, prosecutors and the police to ensure that those who appear before them who cannot afford a lawyer and/or are vulnerable are provided with access to legal aid.<sup>1</sup> This is one way in which criminal justice practitioners can contribute to ensuring that the specific needs of women in the criminal justice system are met.

The **United Nations Principles and Guidelines on Legal Aid** outlines the specific steps that states need to take to ensure access to legal aid for women in Guideline no. 9:

‘Implementation of the right of women to access legal aid: States should take applicable and appropriate measures to ensure the right of women to access legal aid, including:

- (a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice;
- (b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims;
- (c) Providing legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization and other such services, which may include the translation of legal documents where requested or required’.<sup>1</sup>

## C. WOMEN WHO USE DRUGS

86.3% of the 315 women respondents revealed that they were using drugs before they were incarcerated. The types of drugs used according to the respondents were methamphetamine (known locally as ‘yaba’) (82.8%), crystalline methamphetamine (known locally as ‘ice’) (76.3%), cannabis (32.6%) and heroin (7.5%). The high proportion of women with a history of drug use indicates a strong need for access to harm reduction and drug dependence treatment services in prison (see Box 4.).

The TIJ research on women in prison conducted in 2013 found that of the 129 prison facilities in Thailand, 23 facilities had set up therapeutic communities (TC) programmes for people dependent on drugs, including two of the six facilities that were the subject of the TIJ study: Chiang Mai Correctional Institution for Women and Pathum Thani Correctional Institution for Female Drug Addicts. Women in prison had to fulfil certain criteria to be admitted into a TC programme such as: less than 30 years of age and first-time offender with a sentence of between 1.5 to 10 years. The Department of Probation is responsible for following up with them about their progress, after their release from prison. There is no opioid substitution therapy, needle/syringe programmes, nor pharmacotherapy treatment for detoxification and withdrawal, available in prisons in Thailand.<sup>xxxii</sup>

### BOX 4. INTERNATIONAL GUIDELINES AND RECOMMENDATIONS FOR WOMEN’S ACCESS TO DRUG-RELATED HEALTH SERVICES IN PRISON

The **Bangkok Rules** specifies approaches to women who use or are dependent on drugs and held in prisons or detention facilities in rule 6 (4):

‘Research in a number of countries has found that a large proportion of women entering prison have a drug dependency. Drug offences are one of the most common category of crimes committed by women and drugs are often key to women’s offending behaviour. Some research also indicates that women prisoners are more likely to be addicted to harder drugs than male prisoners. It is therefore important to diagnose any treatment needs for drug dependency on entry to prison, in order to provide the requisite healthcare services, as early as possible during detention and imprisonment, taking into account that drug dependency is a recognised underlying factor that can lead to conflict with the law and therefore to re-offending following release, if left untreated.’<sup>xxxiii</sup>

The **UNGASS 2016 Outcome Document** also requests member states to:

- a. take a health-centred approach to drugs

“Recognize drug dependence as a complex, multifactorial health disorder characterized by a chronic and relapsing nature with social causes and consequences that can be prevented and treated through, inter alia, effective scientific evidence-based drug treatment, care and rehabilitation programmes, including community-based programmes, and strengthen capacity for aftercare for and the rehabilitation, recovery and social reintegration of individuals with substance use disorders, including, as appropriate, through assistance for effective reintegration into the labour market and other support services.” (para 1(i))

b. ensure voluntary access to treatment

“Encourage the voluntary participation of individuals with drug use disorders in treatment programmes, with informed consent, where consistent with national legislation, and develop and implement outreach programmes and campaigns, involving drug users in long-term recovery, where appropriate, to prevent social marginalization and promote non-stigmatizing attitudes, as well as to encourage drug users to seek treatment and care, and take measures to facilitate access to treatment and expand capacity”. (para 1(j))

“Promote effective supervision of drug treatment and rehabilitation facilities by competent domestic authorities to ensure adequate quality of drug treatment and rehabilitation services and to prevent any possible acts of cruel, inhuman or degrading treatment or punishment, in accordance with domestic legislation and applicable international law”. (para 4(c))

c. implement measures to minimise the health and social harms associated with drug use

“Invite relevant national authorities to consider, in accordance with their national legislation and the three international drug control conventions, including in national prevention, treatment, care, recovery, rehabilitation and social reintegration measures and programmes, in the context of comprehensive and balanced drug demand reduction efforts, effective measures aimed at minimizing the adverse public health and social consequences of drug abuse, including appropriate medication-assisted therapy programmes, injecting equipment programmes, as well as antiretroviral therapy and other relevant interventions that prevent the transmission of HIV, viral hepatitis and other blood-borne diseases associated with drug use, as well as consider ensuring access to such interventions, including in treatment and outreach services, prisons and other custodial settings, and promoting in that regard the use, as appropriate, of the technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users, issued by the World Health Organization, the United Nations Office on Drugs and Crime and the Joint United Nations Programme on HIV/AIDS”. (para 1(o))

d. ensure access to treatment in prisons and detention

“Ensure non-discriminatory access to health, care and social services in prevention, primary care and treatment programmes, including those offered to persons in prison or pretrial detention, which are to be on a level equal to those available in the community, and ensure that women, including detained women,

have access to adequate health services and counselling, including those particularly needed during pregnancy”. (para 4(b))

“Enhance access to treatment of drug use disorders for those incarcerated and promote effective oversight and encourage, as appropriate, self-assessments of confinement facilities, taking into consideration the United Nations standards and norms on crime prevention and criminal justice, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),<sup>17</sup> implement, where appropriate, measures aimed at addressing and eliminating prison overcrowding and violence, and provide capacity-building to relevant national authorities”. (para 4(m))

#### D. CARE-GIVING RESPONSIBILITIES

Over 70% of the women involved in the study were mothers, while the rest also had responsibilities as daughters, sisters or nieces to support their parents or relatives. Among those who had children, the average number of children was 2, with 1 as the minimum and 6 as the maximum.

#### BOX 5. ADDRESSING STIGMA AND DISCRIMINATION AGAINST WOMEN ACCUSED OF DRUG OFFENCES

The stigma and discrimination faced by women incarcerated for drug-related offences also extends to their own families and communities and many of them risk rejection and being ostracised even after their period of incarceration is over, making it much more difficult for women to be reintegrated back in society after imprisonment. This has led the UNODC to conclude that: ‘What is clear is that women’s contact with the criminal justice system has more negative consequences on them than it does on men, exacerbating both their economic vulnerability and their social exclusion’.<sup>xxxiv</sup>

In its 2018 World Drug Report, the UNODC noted that, ‘While there is little evidence to determine whether there is discrimination against women (in comparison with men) at the sentencing level, some studies suggest that judges and other criminal justice officials do not consider gender inequalities. This is based, in part, on the misconception that the principle of equality before the law does not allow accounting for the distinctive needs of women in order to accomplish substantial gender equality’.<sup>xxxv</sup>

## E. ACCESS TO FAMILY VISITS

The women respondents reported that their major concern while being incarcerated was not being able to be with their families. This was especially the case for women who had children. 16% said that no one knew that they were in prison, so they did not get any visitors. Some respondents also said that they had instructed their families not to visit because of the distance of the prison from their homes.

The study respondents who were interviewed for the qualitative data-gathering revealed that, while incarcerated, they participated in occupational skills-building activities. This gave them hope for a new life for when they got out of prison. Some of them admitted that they might become involved in drug-related activities again after release from prison, especially when confronted with problems such as stigma and lack of employment opportunities (see Box 5.).

Similarly, the prison officials who were interviewed during the research reported that the major concern of the female prisoners was the inability to see their families while incarcerated. They also raised the issue of reintegrating into society post-incarceration and re-offending as a major concern.

## RECOMMENDATIONS

The research results, as well as the consultation conducted with national stakeholders in Bangkok in June 2018,<sup>xxxvi</sup> point out some important policy concerns for the protection of the rights of women incarcerated for drug offences in Thailand. The recommendations below are derived from these discussions.

### 1. ACCESS TO LEGAL ASSISTANCE

Thailand already has a mechanism in place to provide legal assistance to people who cannot afford to pay for a lawyer, thanks to the Justice Fund. However, the low number of women accessing the fund, alongside the high rates of women who confessed at the arrest or investigation stage without legal assistance, and who had no legal representation during their trial, combined with the extremely high rates of women in prison for drug offences, highlights a need to raise awareness about the existence of the Justice Fund and the process by which it may be requested for women accused of drug offences in situations of socio-economic vulnerability.

In addition, more efforts are needed to ensure that women arrested and charged with drug offences are aware of their legal rights and ability to request legal advice and representation, especially before they confess to committing the offence. Such efforts are particularly important

in light of the 2017 amendments to the Narcotics Act that give more discretion to judges in making sentencing decisions.

## 2. ALTERNATIVES TO INCARCERATION

Thailand has some of the highest numbers of women incarcerated for drug-related offences in the world. In addition, long terms of imprisonment are imposed even for the ‘offence’ of consumption, as well as for low-level and non-violent offences, namely possession. The Ozone and Mahidol study shows that many women held in prison confessed to the offence at the moment of arrest or during the investigation phase, and most of them did so with no access to legal advice. Thus, the introduction of alternatives to incarceration at these stages of the legal proceedings may be helpful, for example diversion to treatment and harm reduction options which do not involve detention for people who use drugs or dependent on drugs. In addition, since most women in prison are mothers, consideration of alternatives to incarceration is particularly important to ensure that their children and dependents continue to receive a level of necessary care.

### BOX 6. INTERNATIONAL GUIDELINES AND PRINCIPLES ON ALTERNATIVES TO INCARCERATION

Section III of the **Bangkok Rules** focusses on the need to ensure non-custodial measures for women, in particular:

- The provisions of the Tokyo Rules shall guide the development and implementation of appropriate responses to women offenders. Gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed within Member States’ legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities. (Rule 57)
- When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and typical backgrounds. (Rule 61)
- The provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women’s access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes. (Rule 62)

The **UNGASS Outcome Document** includes a paragraph dedicated to alternatives to incarceration and punishment, para 4(j):

“Encourage the development, adoption and implementation, with due regard to national, constitutional, legal and administrative systems, of alternative or additional measures with regard to conviction or punishment in cases of an appropriate nature, in accordance with the three international drug control conventions and taking into account, as appropriate, relevant United Nations standards and rules, such as the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)”

The UNODC ‘Information note on non-custodial measures for women’ also emphasizes the need for pre-trial alternatives to be implemented for women offenders whenever appropriate and possible. The Note calls on prosecutors and judges to ensure that bail amounts are fair, and the economic situation of women is given due consideration. Alternatives to monetary bail should also be given some thought.<sup>xxxvii</sup> The Note also outlines opportunities for non-custodial measures in the trial and sentencing stages, stating further that non-custodial alternatives to punishment are especially appropriate for minor drug-related offences. Sentencing alternatives should be applied whenever possible in such a way as not to separate women offenders from their families and communities. Courts are enjoined to take note of the women’s specific characteristics, including mitigating factors like the absence of a previous criminal record and the non-severity of the supposed criminal conduct in light of women’s caretaking responsibilities and background.

### 3. ADDRESSING STIGMA AND DISCRIMINATION

Women incarcerated for drug-related offences frequently experience different layers of stigma and discrimination in Thailand, in ways that seriously inhibit their chances of successful reintegration after release from prison including employment, which in turn can lead to higher rates of recidivism (highlighted as a serious concern amongst prison officials in this research study). Such stigma and discrimination also pose barriers to women who use drugs and dependent on drugs accessing health and harm reduction services, in prison and in the community. Different institutions in the criminal justice system can help mitigate the stigma and discrimination experienced by women incarcerated for drug-related offences:

- i. Judges, prosecutors, and lawyers can intervene before women are sent to trial or to prison by facilitating access to legal aid, diverting women offenders from prosecution, helping prevent excessive pre-trial detention and ensuring that gender-specific needs are taken into consideration during trial and sentencing.
- ii. Prison officials could adopt gender-sensitive practices to address the specific needs of women prisoners.

- iii. Legislators and policy makers may remove mandatory sentencing and provide the judiciary with discretion to take into account the individual circumstances of the case, including mitigating factors such as the vulnerability and care-giving responsibilities of women offenders.
- iv. Legislators and policy makers may also introduce reforms to remove criminal penalties and decriminalise certain acts, in particular for drug use and possession for personal consumption, for which a health-centered rather than criminal justice approach should be taken. Taking such steps is consistent with Thailand's efforts to shift towards a health and human rights approach to drug use and dependence, including with the shifting of responsibility for drug treatment from the Ministry of Justice to the Ministry of Health in 2018.<sup>xxxixxi</sup>

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## ENDNOTES

<sup>i</sup> Mary Catherine was the Regional Coordinator for the International Drug Policy Consortium's 'Women, Incarceration and Drug Policy in South East Asia Project' from September 2017 to December 2018. She is the Executive Director of StreetLawPH, a non-government organisation working for humane drug policies and access to justice for vulnerable groups in the Philippines.

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