

# Review of Laws and Policies on Drugs

## Thai Civil Society Coalition for Harm Reduction (12D Network)

### Executive Summary

HIV prevalence amongst people who inject drugs has been consistently increasing in Thailand. High levels of prevalence can be attributed to unprotected sex and intravenous drug use, and occurs amongst vulnerable populations such as sex workers, migrant workers and men who have sex with men (MSM). These vulnerable groups are also prone to other blood-borne diseases such as hepatitis A, B and C.

The problem has become more acute since 2011, when the Government led by Miss Yingluck Shinawatra adopted a policy to accelerate the suppression of drug supply and demand through the establishment of the “United Thais against Drug Threats” operation and its affiliated centre. Many civil society organisations are concerned about the effectiveness of the government’s drug control policy as it follows an approach that has been repeatedly implemented despite evidence that it has been worsening drug-related problems. Networks of people who use drugs and non-government organisations (NGOs) working on HIV and drug use issues therefore met to review the situation. Initial research found that the policy has hindered efforts to tackle the issues of drug use and HIV. PSI Thailand, the Foundation for AIDS Rights (FAR) and the Thai Network of People Living with HIV/AIDS (TNP+) conducted a review of the government’s drug policy and the application of rights-based approaches and harm reduction strategies.

Four key areas were covered by the review, including (1) human rights principles regarding people who use drugs and HIV, (2) human rights violations resulting from the implementation of drug control policies, (3) policy and laws both in favour and against human rights protection and drug treatment, and (4) analysis and recommendations.

**Part I:** The report reviews all major principles and human rights standards related to people who use drugs and people living with HIV/AIDS (PLWHA) including equal, non-discriminatory treatment, the protection of human dignity, the right to justice processes, the right to health, HIV prevention, treatment and care, and the right to treatment.

Such rights are enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Declaration of Commitment on HIV/AIDS and the Declaration of Sexual Rights. Domestically, human rights principles are an integral part of Thailand’s Constitution and the National Human Rights Plan.

## Part II: The rights of people who use drugs

Based on the experience of networks of people who use drugs, concerned NGOs, the Independent Inquiry Committee's report on the monitoring, study and analysis of the development of drug control policy and its implementation, causing harm to people's life, health, reputation and property, and the reports of the National Human Rights Commission (NHRC) investigating human rights violations, we initially found that drug control policies which seek to achieve rapid and quantitative results tend to lead to human rights violations. These policies tend to rely on the application of specific laws that emphasize seizures and arrests as successes. Such practices have led to many complaints being made regarding human rights violations during raids and efforts to identify and arrest people who use drugs, such as forced urine tests.

In addition, law enforcement officers have been reported to physically abuse drug user suspects, demand bribes or force them to become informants in exchange for avoiding arrest or prosecution.

Meanwhile, the government has not issued any clear policy or measures to protect the rights of people who use drugs or address rights violations resulting from the implementation of drug control policy.

## Part III: An overview of laws and policy concerning drug use and HIV/AIDS

In Thailand, the implementation of policies in the field of drug prevention, supply reduction, and treatment and rehabilitation has been found to be problematic. The laws have not been revised to respond to emerging problems and the national action plans do not adequately set out how human rights principles and concepts are to be implemented. Drug policies and action plans also urge the escalation of supply reduction efforts with an emphasis on achieving quantitative results. As a result, people who use drugs suffer from the impacts of such policies instead of being treated as "patients". For example;

According to the Office of the Narcotics Control Board (ONCB), around 1.2 million people in Thailand engage in illicit activities relating to drugs. As a result, the ONCB set a goal to treat at least 400,000 people who use drugs each year, with the aim of eliminating drug use within three years.

According to our research, laws and policy can have a negative or a positive impact on the implementation of human rights principles and harm reduction measures. For example:

### **Policies conducive to human rights protection and harm reduction:**

- (1) The National Human Rights Master Plan, which contains national human rights protection mechanisms
- (2) The National Strategy for the Prevention of, and Response to, Problems relating to HIV/AIDS
- (3) The Policy for the Prevention of, and Response to, Problems relating to HIV/AIDS in Vulnerable Populations
- (4) A harm reduction policy, and a policy that considers people dependent on drugs as patients in need for treatment
- (5) A policy for the treatment of PLWHA and that promotes the provision of substitution therapy, including with methadone, for people dependent on drugs
- (6) The White ("drug-free") Factory Policy, which seeks to reduce negative impacts on people who use drugs.

### **Policies not conducive to human rights protection and harm reduction:**

- (1) Drug control policy that emphasises mass arrests of people who use drugs and forces them to enter rehabilitation programmes
- (2) Though the government announced a new policy to promote evidence-based voluntary drug dependence treatment, there is no clear policy on harm reduction, no fundamental revision of laws to treat people dependent on drugs as patients, and a lack of harm reduction measures being implemented on the ground
- (3) A lack of oversight in implementing drug control policies that have an effect in overcoming HIV/AIDS problems and negative impacts on people who use drugs.

In Thailand, there are specific laws in favour of human rights protection. These include the Constitution of the Kingdom of Thailand, the National Human Rights Act B.E.2542 (1999), the National Health Act B.E.2550 (2007), the National Health Security Act B.E.2545 (2002), the Social Security Act B.E.2533 (1990), Labour Protection Laws, the Governmental Information Act B.E.2540 (1997), and the Penal Code's Chapters on the Protection of Life, Body, Rights and Liberties and Privacy.

However, although a number of laws seek to protect human rights and respond to problems relating to HIV/AIDS and drug use, some of them should be revised to ensure equal and ease of access to treatment and harm reduction services.

In addition, certain laws have been found to undermine human rights protections, in particular, the Narcotic Act B.E.2522 (1979, amended in 2002), the Psychotropic Substances Act B.E. 2518 (1975), the Decree on Controlling the Use of Volatile Substances B.E. 2533 (1990, amended in 2000), and the Narcotics Suppression Act B.E.2519 (1976, amended in 2002).

Although the Narcotic Addicts Rehabilitation Act B.E. 2545 (2002) is intended to enhance access to treatment and rehabilitation for people dependent on drugs, the implementation of certain provisions of the law are dependent on other drug laws. People who use drugs are consequently treated as offenders – if a person tests positive to certain drugs, he or she is forced to undergo compulsory treatment, if this is recommended by authorised officers. The individual will then be exonerated and exempted from prosecution, unless he or she fails the rehabilitation programme.

In addition, the treatment and rehabilitation process falls under the mandate of the Department of Probation which has no expertise in the area of health and drug dependence. Finally, Thailand's treatment and rehabilitation system fails to embrace harm reduction measures, human rights principles, and the meaningful participation of people who use drugs and civil society.

## **Part IV: Analysis and Recommendations**

### **Analysis**

The major issues that have emerged following this law and policy review can be summarised as follows:

(1) Thailand's drug control policy has undermined efforts to address issues related to HIV/AIDS and drug use, particularly amongst people who use drugs. Indeed, instead of targeting large-scale producers and traffickers, the government has invested its efforts towards rounding up people who use drugs and forcing them to undergo compulsory rehabilitation programmes. The more efforts put into achieving rapid and quantitative results, the greater the violations of the rights of people who use drugs.

According to principles of human rights and medical science, people dependent on drugs should receive evidence-based and voluntary treatment, not punishment.



(2) Existing drug laws need to be reviewed, as they currently misdirect the focus of law enforcement resources towards people who use drugs and low-level dealers, rather than on dangerous and violent high-level traffickers and organised criminals. In addition, these laws are inadequate to address the harms associated with drug use. Indeed, the current legal procedures focusing on search, arrests, prosecution and the harsh punishment of people who use drugs have not deterred drug use or reduced the scale of production and trafficking. However, they have driven people who use drugs underground, leading to unsafe drug use practices and creating barriers to accessing harm reduction and drug dependence treatment programmes.

(3) The government does not have a clear harm reduction policy, despite the fact that harm reduction measures are explicitly included in the action plan of the National Committee for the Prevention and Solution of HIV/AIDS. This unclear position has affected coordination among government agencies, which is necessary for the implementation of harm reduction and drug dependence treatment measures.

(4) Although the government has declared that people who use drugs may enter rehabilitation programmes voluntarily, existing laws and regulations have not been amended to clarify this position. Evidence demonstrates that the effectiveness of humane and evidence-based drug dependence treatment programmes depends largely upon the will and readiness of people who use drugs to undergo treatment. Coerced treatment should therefore be removed from government policies.

Drug dependence treatment programmes should contain three inter-related types of therapy – medical treatment, dependence treatment, and psycho-social treatment. Thailand's rehabilitation programmes are unsuitable because they are compulsory – people are forced into treatment if they violate certain drug laws. Studies have showed the limits and ineffectiveness of forcing people dependent on drugs into rehabilitation programmes.

(5) Officers and agencies responsible for drug control are unwilling to support needle & syringe programmes (NSP). They consider NSPs to be illegal, even though such programs are one of the nine harm reduction measures recommended by the United Nations.

The opinion piece released by the Council of State stating that NSPs may be unlawful is but one example showing the refusal of government agencies to support key harm reduction measures. At the same time, some local public health agencies reported that they were unsure about the legality of NSP, even though the initiative has been supported by the Global Fund and is a proven method to address the HIV epidemic among people who use drugs.

(6) The government has not established any policy to raise awareness and educate society properly about drug use. No effort has been undertaken to change social attitudes and reduce discrimination and stigma against people who use drugs. There are no accountability mechanisms established to ensure government's implementation of measures in compliance with the Second National Human Rights Master Plan and other action plans related to people who use drugs. Human rights protection mechanisms are therefore missing and the government has failed to develop measures to protect and provide reparation to people who use drugs who are victims of human rights violations.

Lastly, the current National Human Rights Committee does not act proactively and fails to provide policy recommendations on human rights, for example the right to justice for people who use drugs, despite many complaints having been made about rights violations during police searches, arrests and/or interrogation. These failures have compromised the capacity of national human rights mechanisms to monitor and review the exercise of power by the state.

## **Recommendations for short-term and long-term policy reform**

### **Short-term policy reform**

The research team recommends the following to the government:

(1) Thailand's harm reduction policy should be clarified, and drug control agencies (ONCB, Royal Thai Police) and rehabilitation agencies (Disease Control Department, Ministry of Public Health, Department of Probation) should be trained to acquire the knowledge and expertise necessary for the effective implementation of harm reduction measures. Supervisory mechanisms should be established to ensure the development and implementation of policy measures with the participation of civil society, along with protection measures that will ensure that people working in drug dependence treatment centres (in both public and private sectors) and harm reduction organisations are protected from arrest and prosecution.

(2) More government funds should be allocated to networks of people who use drugs and civil society organisations promoting harm reduction and working in collaboration with government agencies at the local and national levels. Sustainable governmental funding is instrumental in enabling access to these life-saving health services for people who use drugs.

(3) Ensuring that policies to address the HIV epidemic among people who use drugs do not allocate disproportionate resources and responsibilities to agencies like the Department of Corrections. Joint action plans should be developed to ensure fair distribution and allocation of financial resources, and the integration of knowledge and expertise at management levels in terms of assessing drug dependence, rehabilitation, treatment, and delivery of opioid substitution therapy, as well as anti-retroviral treatment.

(4) Ensure coordination among the national HIV/AIDS mechanisms which have successfully launched efforts to promote harm reduction as a response to the expanding HIV epidemic among people who use drugs, through the organisation of meetings or the creation of educational programmes to promote awareness of harm reduction and to support the implementation of the National AIDS Committee's strategic plan.

### **Immediate policy reforms, including the revision of drug control and drug dependence treatment laws**

(1) Review the structure, mechanisms and legal procedures related to the Narcotic Addicts Rehabilitation Act B.E. 2545 (2002), in particular the clauses related to other drug laws and imposing compulsory rehabilitation for people who use drugs. All procedures and regulations regarding drug testing, treatment, rehabilitation, custodial rules and temporary release, and other regulations that continue to be traditionally implemented, should be reviewed in order to promote treatment and rehabilitation instead of criminalisation.

(2) Change the period for which people arrested for suspected drug use are detained while drug tests are being completed, as the maximum of 45 days' detention is far too long.

(3) Drug testing should not be conducted by the subcommittee designated by the Narcotic Addict Rehabilitation Act but rather by public health authorities or hospitals, entities that are deemed capable of conducting such tests, as explained in studies conducted by the ONCB.

(4) Revise or restructure Thailand's drug dependence treatment programmes, in order to ensure that they are entirely voluntary and that treatment centres provide comprehensive services.

(5) Integrate harm reduction principles in the laws dealing with drug dependence treatment and rehabilitation.

### **Long-term recommendations**

#### **Recommendations to national human rights bodies**

(1) The subcommittee for the promotion and protection of AIDS rights under the National AIDS Prevention and Alleviation Committee should compile cases of rights violations of people who use drugs and collaborate with the National Human Rights Commission (NHRC) to develop monitoring mechanisms and propose policy proposals.

(2) Networks of people who use drugs and civil society organisations working on human rights, HIV/AIDS and drug use should coordinate with the NHRC and the Ministry of Justice's Rights and Liberties Protection Department to monitor the implementation of the Second National Human Rights Master Plan and to ensure that HIV/AIDS and drug issues are included in the evaluation of the Second National Human Rights Master Plan in order to improve it and expand social awareness of HIV transmission among people who use drugs.

### **Recommendations to the government**

(1) Encourage people who use drugs to express their opinions freely without fear of arrest, discrimination or harassment from police officers or society in general.

(2) Make specific efforts to raise awareness and to educate society about the situation and issues concerning drug use, with an aim to prevent discrimination or stigmatisation, which can largely undermine any measure that would aim at reducing the harms associated with drug use.

(3) Review policy processes and practices regarding the treatment and rehabilitation of people dependent on drugs. Such programmes should be comprehensive and designed to respond to the specific social and health needs of each person in need of treatment. Such programmes should be aimed at enabling patients to conduct their life meaningfully and with dignity, in full respect of their human rights.

### **Recommendations to the National AIDS Prevention and Alleviation Committee**

(1) Raise awareness and educate society about drugs, the nature of drug dependency, evidence-based treatment measures, and scientific knowledge. These campaigns should be specifically carried out among staff working in the field of drug treatment in public and private sectors.

(2) Coordinate the work of national AIDS entities involved in drug use issues, based on harm reduction principles, and organise meetings and training sessions on harm reduction to support the implementation of the strategic plan of the National AIDS Committee.

(3) Accelerate efforts to integrate harm reduction into the action plans of narcotic control agencies, public health agencies, and civil society, local administration and community-based organisations.

### **Recommendations on drug law reform**

All concerned sectors should be involved in the revision of laws from design to implementation. All sectors should be open to working together, learning from evidence and best practice, and developing laws that can be used to effectively address problems. However it should be acknowledged that legal tools are not the only resource that can be used to address the problem. As an initial step, it is recommended that:

(1) Drug laws that criminalise drug use should be revised in order to move away from a justice rationale and approach drug use as a health and social issue instead.

(2) Laws concerning the treatment and rehabilitation of people who use drugs should be revised in compliance with the following principles:

(2.1) These laws should no longer be linked to the criminal justice system, but clearly state that people dependent on drugs are patients, and not criminals.

(2.2) Rehabilitation services should be offered voluntarily to people who use drugs, and include a range of treatment options, including medical therapy and psycho-social treatment.

(2.3) Human rights and harm reduction should be the guiding principles to addressing drug-related problems, and this should be clearly reflected in applicable laws.

(2.4) Social assistance should be provided for people undergoing treatment or rehabilitation in order to help mitigate the impact of drug dependence and treatment upon employment and to ensure that they can conduct their lives peacefully and happily with their families.

(2.5) Legal mechanisms should be made available so that people who use drugs and civil society organisations can work to enhance access to public services for people who use drugs.

(3) The Social Security Act B.E. 2533 (1990) should be revised to extend its coverage to long-term methadone maintenance treatment, and to become compliant with clauses in the National Health Insurance Act B.E. 2545 (2002).

(4) Civil society networks and organisations working on HIV/AIDS and drug issues should develop proposals or a draft law to reinforce the prevention, treatment and rehabilitation of people who use drugs based on human rights principles. Their efforts should be coordinated with the work of the Law Reform Commission to develop more suitable laws in future.

(5) People who are found to have both tested positive for drug use and to be a low-level dealer should be eligible to treatment and rehabilitation as well as psycho-social services as a patient. With regards to their involvement with drug dealing (small amounts as determined by legal limits), they should not be given a criminal conviction, but instead given the chance to change their attitude through performing duties such as community service. Criminal punishment is not effective in deterring drug use, whereas evidence-based treatment can offer an effective solution for people dependent on drugs.

### **Recommendations from the 12 D network (Thai Civil Society Coalition for Harm Reduction)**

1. Clear measures and procedures should be developed for law enforcement officers in order to prevent violations of the human rights of people who use drugs and their families.

2. The boot camp rehabilitation system operated by the military, police and administrative officers, as well as prison-based rehabilitation and other forced rehabilitation methods, should be abolished.

3. Harm reduction measures should be adopted and promoted as evidence-based and scientifically and academically proven methods for preventing the health harms associated with drug use. Such measures have been adopted by the Department of Disease Control and the Department of Medicine, the Ministry of Public Health and many civil society organisations for quite some time. However, certain pilot programmes continue to face obstacles due to existing laws and policy.

4. The entire rehabilitation system should be reviewed, and the agencies responsible for implementing it should be reassessed. Any rehabilitation measures that have shown to fail and violate human rights should be terminated.

5. The spirit of the Narcotic Addict Rehabilitation Act B.E. 2545 (2002), in particular the concept that “people dependent on drugs are patients”, should be respected and promoted. The concept should be strictly enforced and any laws that are shown to be obstacles to the implementation of that principle should be reviewed. This message should be made clear to all agencies and be understood by them, in order to achieve collaboration in their implementation of the government’s policy.

HIV/AIDS and drug use are interwoven with issues relating to social development and social inequalities. It is therefore essential to contextualise the issue of HIV and drugs with social concerns, the ultimate goal being to enhance the quality of life and access to justice for all, including people who use drugs. In addition, human rights principles should be protected in an effort to promote open-mindedness to understand, respect, accept, and encourage each other to provide unconditional protection for the lives of others. The ultimate goal of policies, laws and social measures should be geared towards respecting the values and dignity of human beings.