

In collaboration with AHRN Federation Partners, supported by Open Society Foundation



# Thailand Law and Policy Update

By ASIAN HARM REDUCTION NETWORK & Partners

## Current Situation

It is estimated that between one and three million people use drugs in Thailand.<sup>1</sup> As a major trafficking hub, Thailand experiences significant drug-related crime and imprisonments for narcotics-related crimes make up nearly 70% of sentences, with over 175,000 arrests in 2010 alone.<sup>3</sup> Seizures of narcotics and psychotropic substances in recent years continue to increase in both volume and quantity.<sup>4</sup>

Over the past thirty years, Thailand's approach to drug policy has been overwhelmingly one of criminalization and punishment instead of treatment and care. Despite advocacy, changing norms, and international pressure, the situation in Thailand remains little

improved. This review examines and analyzes existing laws and policies which affect drug policy and harm reduction in the country as well as recent events and changes in policy which affect the drug policy and harm reduction movements in Thailand.

## Current Laws

### Thai Constitution

The 2007 Thai Constitution enshrines the right to health and proscribes discrimination on the basis of "physical or health condition".<sup>5</sup> According to section 51, services related to public health "shall be provided thoroughly and efficiently," including the free eradication and prevention of contagious diseases.<sup>6</sup> These sections form the foundation for the justification of harm reduction services in the country.<sup>7</sup>

<sup>1</sup> Law & Policy Review 2008 ii, Thai government estimates (1.2 million)  
<sup>2</sup> Office of the Narcotics Control Board, Ministry of Justice. (2010). *Thailand Narcotics Control: Annual Report 2010*, p. 16.  
<sup>3</sup> *Ibid*  
<sup>4</sup> *Constitution of the Kingdom of Thailand (2007)*, s. 30, 51.  
<sup>5</sup> *Ibid*, s. 51  
<sup>6</sup> *Psychotropic Substances Act (1975)*, Schedule 3:  
<sup>7</sup> *Psychotropic Substances Act (1975)*, s. 15(3), 17(3).

*8* Narcotics Control Act (1976), s. 11.; *9* *ibid.*, s. 14.; *10* *ibid.*, s. 14.; *11* Kaplan, K. and Schleifer, R. (2007). *Deadly denial: HIV/AIDS treatment for people who use drugs in Thailand*. Human Rights Watch and the Thai AIDS Treatment Access Group, p. 24.  
*12* Pandey, I. and Burtis, S. (2008). *Unkept promises: Law on the books and high risk populations in Thailand*. Rapid Policy Assessment  
*13* Narcotics Act (1979), ch. 12.; *14* Narcotics Act (1979), ss. 15-18.  
*15* *ibid.*, s. 65, s. 76; *16* *ibid.*; *17* *ibid.*, s. 91. and Response; *18* Narcotics Act (1979), s. 94.; *19* *ibid.*, s. 98.; *20* *ibid.*, s. 94(1);

## International Conventions

Thailand has signed and ratified the three international conventions on narcotic substances: The single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971), and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

## The Psychotropic Substances Act (1975)

Passed in 1975, the Psychotropic Substances Act regulates the production, sale, distribution, consumption, and other matters related to psychotropic substances. Psychotropic substances are categorized by schedule and regulated accordingly. Most relevant for harm reduction is the categorization of buprenorphine as a Schedule III substance.<sup>8</sup> Individuals may, with a medical prescription, take in or out of Thailand a quantity of buprenorphine to be used for personal consumption. This quantity cannot exceed the quantity of a 30-day prescription.<sup>9</sup>

## The Narcotics Control Act (1976)

The Narcotics Control Act established the Office of the Narcotics Control Board (ONCB) and sets out the duties and powers given to the ONCB, government officials, and police with regards to fighting the drug trade.<sup>10</sup> They are given a wide scope to search, seize, and arrest, as well as to force suspects to undergo drug testing.<sup>11</sup>

Furthermore, ‘property’ related to narcotics use for all intents and purposes drug paraphernalia, including needles and syringes, can be used as evidence of drug crimes.<sup>12</sup> This has serious implications for harm reduction services and practitioners, who can be charged with narcotics offenses on the basis of their work. While a memorandum from the National Police Office makes clear that the possession of needles and other equipment for injection cannot be cause for arrest, its instructions are rarely honored.<sup>11</sup>

## The Narcotics Act (1979)

The Narcotics Act regulates licit and illicit substances left out of the Psychotropic Substances Act, notably amphetamines, opioids, and cocaine. Narcotics are divided into five categories based on severity; penalties and

punishments are scaled accordingly. Category I is most severe, including heroin and methamphetamine, while Category V, which includes kratom plant and cannabis, is least.<sup>12</sup> The Narcotics Act further establishes quantities determined to be ‘commercial,’ though quantities under this threshold can still lead to more severe punishment if authorities determine the purpose of possession was for retailing, wholesaling, or distribution.<sup>13</sup> Quantities are determined by pure substance, not preparation.<sup>14</sup> Penalties for trafficking range from less than two years in prison or a fine of less than 40000 THB (about 1333 USD) for the disposal of kratom plant to fines of five million THB and/or life imprisonment for the most severe violations involving Category I drugs.<sup>15</sup> The death penalty is also reserved for some Category I crimes.<sup>16</sup>

The Narcotics Act furthermore covers penalties for consumption. As with production and trafficking offenses, the severity of punishment varies with the category of narcotics. The harshest punishment, for consumption of Category I and II narcotics, prescribes a prison sentence of six months to three years, a fine of between ten and sixty thousand baht, or both.<sup>17</sup>

Section 94 allows for immunity from prosecution in cases where a PWUD has applied for treatment before arrest, provided that (s)he has “*strictly complied with the rules of the medical establishment.*”<sup>18</sup> More thorough provisions for treatment in place of incarceration are elucidated in the Narcotic Addict Rehabilitation Act. Anyone convicted three times for consumption in accordance with Section 91 and 92 is forced to undergo mandatory detoxification treatment.<sup>19</sup>

Of particular concern for harm reduction services is Section 94/1, which states that:

*“Any person who, in the ordinary course of business, gives treatment to a narcotics addict by using drugs under the law on drugs, psychotropic substances under the law on narcotics, or gives treatment to narcotics addict by any other means, which does not take place in the medical establishment prescribed by this Act, whether or not a consideration is obtained, shall be liable to imprisonment for a term of six months to three years or to a fine of fifty thousand to three hundred thousand baht.”<sup>20</sup>*

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<sup>21</sup> Kaplan, K. and Schleifer, R. (2007), p. 13; <sup>22</sup> *Narcotic Addict Rehabilitation Act (2002)*.  
<sup>23</sup> Narcotics Control Rehabilitation Act  
<sup>24</sup> UN/AIDS. (2012). *Thailand launches new AIDS strategy to 'Get to Zero'*. Retrieved from <http://www.unaids.org/en/resources/presscentre/featurestories/2012/june/20120622thaizero/>.  
<sup>25</sup> The Bangkok Post. (2012 7 February). *Chalerm: Death to drug dealers. Retrieved from <http://www.bangkokpost.com/news/local/278565/drugs-chalerm-seeks-swift-death-penalty>*. The Bangkok Post. (2012 16 April). *Chalerm drug execution plan queried. Retrieved from <http://www.bangkokpost.com/news/local/288995/>*.  
<sup>26</sup> Asian Harm Reduction Network Blog. (2012 20 February). *Thailand's disturbing new war on drugs: An interview with Karyn Kaplan*. [Web log]. <http://new.ahrn.net/interview-karynkaplan/>.<sup>26</sup> 3500 THB = 110 USD (July 2012).

This has grave implications for harm reduction and its practitioners, who can feasibly be punished harshly for treating PWUD.

### Narcotic Addict Rehabilitation Act, BE 2545 (2002)

The *Narcotic Addict Rehabilitation Act* of 2002 replaces the *Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics* from 1991. In the decade following the first act, incarceration in Thailand nearly tripled, largely due to the overwhelming number of prisoners sentenced for drug crimes.<sup>21</sup> Partly in response to severe overcrowding, the 2002 act adopts a much less harsh approach to dealing with PWUD accused of narcotics offences. Persons convicted of drug consumption were now offered an alternative to prison through treatment centres, including voluntary centres, compulsory detention, and institutionally-based systems of treatment.<sup>22</sup>

While the Act ostensibly provides care in place of punishment, the realities of many treatment centres attest to the limitations of a single law within a coercive, criminalization-based system. Human rights advocates from across the globe have raised their voices against the gross human rights violations and abuse taking place in many centres.

### Recent developments

#### 2012-2016 National AIDS Strategy

Thailand recently launched its National AIDS Strategy for the coming five-year period and will be disseminating it shortly. As the main document guiding HIV/AIDS policy, its direction and priorities greatly impact policies and services on the ground. A key objective of the new strategy is its ambitious goal to reduce by two thirds new HIV/AIDS infections by 2015.<sup>23</sup>

#### Expediting the death penalty for drug crimes

In February of this year Deputy Prime Minister Chalerm Yubamrung ordered a legal evaluation into the possibility of expediting the executions of persons convicted of narcotics-related crimes. Chalerm has

proposed overriding the current policy, which already precludes those convicted of drug crimes from appealing to the Supreme Court, in order to carry out all executions within 15 days of sentencing.<sup>24</sup> The clear violation of the Thai Constitution of such a proposal, combined with the violent, populist rhetoric used by Chalerm has concerned many activists fearful of a return of policies echoing those of the failed “war on drugs” declared by former Prime Minister Thaksin Shinawatra in 2003.<sup>25</sup> Experts further fear the effect such heated rhetoric has on the government’s tolerance for harm reduction. With mass media and public opinion still solidly against harm reduction interventions, strong proclamations pushing for even harsher penalties makes expanding services into new areas particularly challenging.

#### Decentralizing treatment

Following the extensive criticism levied on Thailand’s compulsory drug treatment programs, the government recently announced an initiative intended to decentralise treatment by putting it in the hands of local communities. On the subdistrict level, 3500 THB<sup>26</sup> per drug user will be given to the community to create treatment programs for local PWUD. Each subdistrict will be given money to treat up to 50 cases. No trainings or guidelines have accompanied the dispersal of money. Harm reduction specialists have expressed dismay at the proposal, arguing that local subdistricts are not equipped to establish treatment centres, resulting in substandard and inadequate care. Experts predict that it will be ‘chaotic’ at the subdistrict level without any guidance and doubt most subdistricts can use the money effectively. The initiative is part of a government effort to put 400,000 PWUD - one-third of the government’s estimate of 1.2 million nationally - into treatment each year.

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## HARM REDUCTION SAVES LIVES