



Women, Incarceration and Drug Policies in South East Asia: Promoting Humane and Effective Responses

A Policy Guide for Thailand

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Introduction

In 2009, the United Nations Office of Drugs and Crime (UNODC) produced a report assessing one hundred years of drug control since the 1909 Shanghai Opium Commission. The report identified and recognized 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; enforcement in one geographical area resulted to diversion of illicit drug production to other areas; pressure on one type of drug led to the promotion of the use of other alternative drugs; and, the marginalization of and stigmatization against persons who use drugs.¹

Almost a decade after this UNODC report, these negative consequences of drug control continue to be suffered by a growing number of women incarcerated for drug-related offenses worldwide, and particularly in South East Asia. 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

¹ United Nations Office on Drug and Crime, A Century of International Drug Control, United Nations Vienna, 2009.

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 offenses. The project also seeks to increase civil society engagement; gather support for proportionate sentencing and reduction of death penalty sentences especially for low-level, non-violent offenses; increase understanding of the extent and profile of women incarcerated for drug offenses and its wider socio-economic consequences; and to promote alternatives to incarceration.

To these ends, the project partners in three countries in South East Asia conducted research studies on women incarcerated for drug related offenses. They also provided workshops and meetings for civil society organisations involved in women's rights, drug policy reform and prison reform. National stakeholder's consultations were held for relevant public institutions, organisations and communities to come together and discuss the research outputs while sharing their best practices, experiences and challenges as well as provide 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 2015 Global Prison Trends report, Penal Reform International found that while women comprised 6.5 percent of the world's prisoners – over 660,000 women as of 2013 – they constitute the fastest growing prison population with particularly high rates of imprisonment for drug offences. The proportion of women incarcerated for drug offences is significantly higher than that of men, with the highest levels of incarceration of women to be found in South East Asia.²

This number has significantly increased between 2015 and 2017. The Fourth Edition of the World Female Imprisonment List states that more than 714,000 women and girls are held in penal institutions throughout the world as of September 2017. These include pre-trial detainees or remand prisoners and those that have been convicted or sentenced.³

While women make up only about 2 to 9 percent of countries' total prison population, subject to some exceptions, the number of women in prison is increasing at a faster rate than the number of men incarcerated. 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.

² Penal Reform International (2015), Global Prison Trends 2015, <http://www.penalreform.org/resource/global-prison-trends-2015/>

³ Walmsley, Roy, World Female Imprisonment List 4th Edition (2017), Institute for Criminal Policy Research, Birkbeck University of London.

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	About 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

The female prison population levels in Brazil, Indonesia, the Philippines and Turkey have risen particularly sharply between 2015 and 2017 while Thailand is the fifth country with the highest numbers of incarcerated women in the world (see Table 1).

Some concerns faced by women in incarceration include mental health problems with histories of abuse and trauma, vulnerability to sexual abuse by correctional personnel and other prisoners, reproductive health care needs, being primary caretakers of young children and having to leave them, and lesser face-to-face contact with their families because of the location of women’s prisons. It is also more difficult for women with a history of incarceration to find work, housing and financial support when they return to their communities.⁴

However, despite the rising numbers worldwide and in South East Asia, since women and girls represent less than ten percent of the prison population on average, their characteristics and gender-specific needs have largely been unrecognized and ignored.

Drug Policies in Thailand

Thailand’s drug policy has been described as being generally punitive and focused on a zero-tolerance approach to users and distributors of illicit drugs although couched in terms that describe the user as a patient or victim and not a criminal. However, despite this rhetoric,

⁴ Wendy Sawyer, “The Gender Divide: Tracking Women’s State Prison Growth,” Prison Policy Initiative, January 9, 2018, https://www.prisonpolicy.org/reports/women_overtime.html

Thailand's narcotics laws prescribe criminal penalties for drug-related offences including use and possession.⁵

The prevailing drug laws in Thailand include the Narcotics Act B.E.2522 (1979) which has gone through several amendments over the years. This law defines narcotics 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.”⁶

The law also classifies narcotics into 5 categories:

- category 1 for narcotics that are described as “dangerous” and absolutely prohibited like heroin;
- category 2 for “ordinary” narcotics like morphine, cocaine and medicinal opium;
- category 3 for medicines that contain narcotics of category 2;
- category 4 consists of chemical precursors or chemicals used for producing narcotics of categories 1 and 2; and
- category 5 which are not included in previous categories like cannabis and kratom.⁷

The 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.⁸

The Narcotics Act also provides for compulsory treatment for those who have been convicted for drug consumption for the third time on top of the penalties of fine and imprisonment:

“Section 98. An offender who has been convicted of the offence under Section 91 or Section 92 for the third time shall, upon his release, be detained by the competent official, upon order of the Minister at a medical establishment specifically established by the Notification of the Minister, and such person shall be given a treatment until he has obtained a certificate from the competent official designated by the Minister to the effect that he has received a complete treatment in accordance with the rules and regulations for the control of treatment and disciplinary rules of the said medical establishment.”⁹

On the other hand, the Narcotic Addict Rehabilitation Act (2002) created a diversion scheme for those charged with drug consumption and other minor offences where they may be sent

⁵ James Windle, “Drugs and Drug Policy in Thailand,” *Improving Global Drug Policy: Comparative Perspectives and UNGASS 2016*, Brookings Institute, Washington, 2015.

⁶ <http://narcotic.fda.moph.go.th/english/wp-content/uploads/2012/11/Narcotics-Act-B.E.2522.pdf>

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

to treatment instead of prison even at the first offense, provided the amount of drugs involved are small enough for them to qualify for diversion. After arrest, a 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 has to determine if the accused is qualified for diversion by deciding whether or not to issue an order referring the person to a subcommittee. The subcommittee must then assess if the person is a narcotics "consumer or addict" within 15 days, with a possible extension of up to an additional 30 days when necessary for the subcommittee 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 18.¹⁰

If prior drug use is shown by urine test results, the subcommittee may then issue a treatment order involving programmes in detention or voluntary treatment centers. It has been reported that the more frequent or "hard core" users are sent to intensive custodial treatment centres which could be very strict and from which it could be very difficult to escape. On the other hand those who are dependent but not "hard core" may be sent to non-intensive custodial centres where there is less monitoring by guards and weekend home visits are allowed.¹¹

In 2011, the government adopted the Kingdom's Unity for Victory Over Drugs Strategy to "put an end to the nation-wide spread of drug abuse. It called for government officials to "work with compassion in dealing with [drug users] and giving them a second chance to be back on track and reintegrating to their families and societies." The strategy called for users to be treated as patients instead of criminals, who needed to be properly treated and given a chance to reintegrate into society with systematic after-care service.¹²

Treatment is provided in three settings: community outpatient treatment, compulsory detention centres and treatment in prisons. If a person is caught and arrested with less than 100mg of heroin, 500mg of methamphetamine, or 5 grams of marijuana, the judge can forward the case to a committee with both criminal justice and medical personnel. The committee will then assess if the person needs treatment as an outpatient or in compulsory detention centers. Compulsory detention centers are usually run by the military and users stay for a period of 3-6 months but the detention period can be extended upon review by the committee. Treatment involves intensive physical exercise, vocational training, therapeutic community group discussions and lectures on the evils of drugs.¹³

Thailand's drug laws impose the death penalty on some drug offences and while there were over 200 people sentenced to death for drug offences as of 2017, Thailand accepted recommendations to review its imposition of the death penalty for offences related to drug

¹⁰ <https://idpc.net/publications/2013/11/idpc-briefing-paper-drug-control-and-harm-reduction-in-thailand>

¹¹ Ibid.

¹² James Windle, "Drugs and Drug Policy in Thailand," *Improving Global Drug Policy: Comparative Perspectives and UNGASS 2016*, Brookings Institute, Washington, 2015.

¹³ Ibid.

trafficking and to commute death sentences after its Universal Periodic Review in 2016.¹⁴ Furthermore, the National Assembly introduced amendments to the Narcotics Law in January 2017 which reduced penalties for possession, import/export and production for the sale of drugs. The law reforms also removed the mandatory death penalty for the offence of selling drugs.¹⁵

The legislative amendments also change how the guilt of someone accused of drug offences is determined. Whereas before the amendments the intent to sell is automatically assumed when someone is caught in possession of drugs and sentences are mandatory, the wording of the law has been changed to a presumption of intent which could be rebutted by evidence. There is now more latitude to prove the absence of intent to sell or supply. Judges are also given more discretion to determine the penalty. These changes are expected to help ensure more proportionate sentencing.¹⁶

The Ozone Foundation and Mahidol University Study on Women, Incarceration and Drug Policy in Thailand

Early in 2018, Ozone Foundation Thailand partnered with Mahidol University to conduct a study on the situation of women incarcerated for drug offences in Thailand as part of the IDPC regional project. The study collected quantitative data from 315 women inmates of the Correctional Institution for Addicts in Pathum Thani province. Qualitative data was gathered from 6 formerly incarcerated women from the Fang district of Chiang Mai and 5 prison officials.

Data from the World Prisons Brief shows the following trends on female prison populations in Thailand ¹⁷:

Year	Number of female prisoners	Percentage of total prison population
2000	35,803	17.4%
2005	28,452	17.2%
2010	29,175	14.6%
2015	44,152	14.4%
2018	43,829	13.3%

Thailand is second only to the United States with the highest rates of female incarceration in the world and 82 percent of women prisoners are incarcerated for drug offences.¹⁸

¹⁴ Gen Sander, "The Death Penalty for Drug Offences: Global Overview 2017", Harm Reduction International, 2018 <https://www.hri.global/files/2018/03/06/HRI-Death-Penalty-Report-2018.pdf>

¹⁵ Ibid.

¹⁶ Patcharavalan Akbar and Gloria Lai, "Thailand amends drug law to reduce penalties and ensure more proportionate sentencing," IDPC, 15 February 2017. <https://idpc.net/blog/2017/02/thailand-amends-drug-law-to-reduce-penalties-and-ensure-more-proportionate-sentencing>

¹⁷ <http://www.prisonstudies.org/country/thailand>

¹⁸<https://gpinvestigations.pri.org/a-us-style-drug-war-brings-a-terrible-cost-thai-prisons-packed-full-of-women-f25086769bcd>

As of 2018, the Department of Corrections reported that there were already over 35,000 women incarcerated for drug offences in Thailand. The women respondents have already spent an average of 4.37 years in prison with the minimum time in prison at 1.05 years and the maximum at 10.87 years. Over half of them – 55 percent – had already been previously charged and imprisoned, in other words, more than half of them are repeat offenders.

Experiences with the criminal justice system

Over 70 percent of the study's respondents were convicted on drug possession with intention to sell. 68 percent of the women were charged as main offenders while 15 percent were charged as co-offenders. 17 percent of them reported that they were compelled to admit to crimes that they did not commit.

There were 90 respondents whose husbands or partners have also been sentenced or are currently under legal proceedings for drug related crimes. Of these 90, 15 women reported that they did not commit the crimes charged against them.

Eight (8) women were sentenced for 1-2 years for drug possession for own consumption purposes. All of their cases were concluded at the general civil court without further legal proceedings. Some of the reasons given for not having any further legal proceedings were that it was "useless to go on," as suggested by the lawyers and one was advised by a lawyer to confess with the objective of receiving a lighter punishment.

Drug Use

86.3 percent of the women respondents revealed that they were using drugs before they were incarcerated. The types of drugs used according to the respondents were "Yaba" (82.8 percent), "Ice" (76.3 percent), "Marijuana" (32.6%) and "Heroin" (7.5%). Yaba and Ice are both methamphetamines.

Caring responsibilities

Over 70 percent of the women involved in the study were mothers while the rest also had roles as daughters, sisters or nieces with the responsibility of supporting 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.

Life in Prison

The women respondents reported that their major concern while being incarcerated was not being able to be with their families. This is especially true for those who have children. 16 percent said no one knows that they are in prison so they do not get any visitors. There were also some who said they have 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 skill building activities. This gives them hope for a new life when they get out of prison. Some of them admitted they were not confident about not becoming involved in drug-related activities again when they were released from prison, especially when they are confronted with problems.

Prison officials who were interviewed said tensions coming from not seeing their families was the major concern of the female prisoners. They also raised the issue of returning or re-offending prisoners as a major concern.

Policy Concerns and Recommendations

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 for 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." ¹⁹ (emphasis supplied)

The same resolution also instructs 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)²⁰, the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)²¹ and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)²².

The 2016 United Nations General Assembly Special Session (UNGASS) on drugs also produced an Outcome Document that sought to address human rights abuses in the name of drug control including gender-specific issues faced by women incarcerated for drug-related offences, enjoining member-states to:

"4.g 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;

¹⁹ Commission on Narcotic Drugs, Resolution 59/5: Mainstreaming A Gender Perspective on Drug Related Policies and Programmes, 2016. https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_59/Resolution_59_5.pdf

²⁰ https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

²¹ <https://www.un.org/ruleoflaw/blog/document/united-nations-standard-minimum-rules-for-non-custodial-measures-the-tokyo-rules/>

²² https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

4.n 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); ”²³

Several policy concerns and recommendations arose from the research study on the situation of women incarcerated for drug offences in Thailand as well as from meetings with national stakeholders and civil society organisations:²⁴

1. Access to legal assistance
2. Access to health care and services
3. Alternatives to incarceration
4. Stigma and discrimination
5. Health centered approach to drug use.

²³ <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

²⁴ Ozone Foundation, Meeting with national stakeholders on Women, Incarceration and Drug Policy, 27-28 June 2018, Bangkok, Thailand.

The Mandela Rules:

Rule 1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

Rule 2. The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.

Rule 3. In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.

The Bangkok Rules:

Basic principle

Rule 1 In order for the principle of non-discrimination embodied in rule 6 of the Standard Minimum Rules for the Treatment of Prisoners to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory.

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.

A. Access to legal assistance

The Ozone and Mahidol study showed how very few women in Thailand who are incarcerated for drug offences were able to access legal services for their defense. Most of them confessed to the crimes charged during arrest and investigation with no assistance from lawyers.

The study further reveals that only a very small portion were able to appoint their own attorneys during the legal proceedings. Over 90 percent of those who were charged as offenders and 80 percent of those charged as co-offenders made their confessions during arrest or investigation procedures. Most of those who claimed that they did not commit the crimes for which they were charged, convicted and sentenced also said that their confessions were made during the arrest (64.8 percent) and investigation stage (77.8 percent) of the proceedings.

Very few of the women were aware of the existence of the Justice Fund made available by the government which could provide support for legal proceedings. Only two women among the study respondents said they requested and received support from the fund. Over 90 percent of the cases were decided at the general civil court level while very few brought their cases to Appeals Court and the Supreme Court.

The right to have legal representation and to have access to free legal assistance is guaranteed in the International Covenant on Civil and Political Rights²⁵ and reinforced in the Revised Standard Minimum Rules for the Treatment of Prisoners or the Mandela Rules²⁶ 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)

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.²⁷ This is one way for criminal justice practitioners to contribute in ensuring that the specific needs of women in the criminal justice system are met.

In Thailand, there is a law providing a Justice Fund for legal assistance for those who cannot pay for legal services:

Justice Fund Act B.E. 2558 (2015)

Section 9. The money of the Fund shall be spent in the following matters

- (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;
- (4) the provision of legal knowledge to the people.²⁸

Among the study’s respondents in the prison, two women were able to request and access this fund to pay for legal services. Very few of the women, however, were aware of the existence of the Justice Fund which could provide support for legal proceedings. There is clearly a need to

²⁵ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²⁶ https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

²⁷ UNODC Information note for criminal justice practitioners on non-custodial measures for women offenders, 2015

²⁸ <http://www.jfo.moj.go.th/Eng/>

raise awareness about the existence of the Justice Fund and how it may be accessed and requested.

B. Access to health services and treatment for incarcerated women who use drugs

The UNGASS Outcome Document provides:

4.b 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;

The Bangkok Rules contain provisions on access to personal hygiene and medical services including gender specific health care, as well protection for the safety and security of women prisoners.²⁹

C. Alternatives to incarceration

Thailand has some of the highest numbers of women incarcerated for drug-related offences in the world. The Ozone and Mahidol study shows that most of these women confess to the offence at the moment of arrest or during investigation. Thus, the introduction of alternatives to incarceration at these stages of the legal proceedings may be helpful.

The UNODC Information Note on Non-Custodial Measures for Women emphasize 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 are given due consideration. Alternatives to monetary bail should also be given some thought.³⁰

The Note also outlines opportunities for non-custodial measures in the trial and sentencing stage 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.³¹

²⁹ https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

³⁰ UNODC Information note for criminal justice practitioners on non-custodial measures for women offenders, 2015
https://www.unodc.org/documents/justice-and-prison-reform/Information_note_BKK_Rules.pdf

³¹ Ibid.

The UNGASS Outcome Document on alternatives to incarceration:

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);
(<https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>)

D. Addressing stigma and discrimination

Women incarcerated for drug-related offences frequently experience different layers of stigma and discrimination.

In the 2018 UNODC World Drug Report, the UNODC notes that there has been a disproportionate increase in the rates of women being imprisoned in many countries including for low-level drug-related offenses. The 2018 World Drug Report further recognizes 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.”³²

Unfortunately the stigma and discrimination against women incarcerated for drug-related offences also extends to their own families and communities and many of them risk rejection and being ostracized even after their period of incarceration is over, making it much more difficult for women to be reintegrated back in society after imprisonment, thus leading the report 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.”³³

Different institutions in the criminal justice system can help mitigate the stigma and discrimination experienced by women incarcerated for drug-related offences.

Judges, prosecutors, and lawyers can make interventions before women are sent to trial or to prison by facilitating access to legal aid, diverting women offenders from prosecution, helping

³² UNODC 2018 World Drug Report: Women and Drugs Drug use drug supply and their consequences, United Nations, June 2018.

³³ Ibid.

prevent excessive pre-trial detention and ensuring that gender-specific needs are taken into consideration during trial and sentencing.

Prison officials could adopt gender sensitive practices to address the specific needs of women prisoners. Legislators and policy-makers may remove mandatory sentencing and provide the judiciary with discretion to take into account the circumstances of the offense, and the vulnerability and caring responsibilities of women offenders. Legislators and policy makers may also introduce reforms to remove criminal penalties and decriminalize certain acts.³⁴

E. Health centered approach to drug use

In 2017 the National Assembly approved several amendments to the Narcotics Law that could pave the way for a health-centered approach to drugs. In the process of pushing for changes in the law to protect the rights of women who use drugs and women who are incarcerated for drug offences, it is important to take note of these provisions from the 2016 UNGASS Outcome Document:

On a health-centered approach to drugs:

“1.i 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;”³⁵

On voluntary treatment:

“1.j 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 longterm recovery, where appropriate, to prevent social marginalization and promote nonstigmatizing attitudes, as well as to encourage drug users to seek treatment and care, and take measures to facilitate access to treatment and expand capacity;

4.c 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

³⁴ UNODC Information note for criminal justice practitioners on non-custodial measures for women offenders, 2015.

³⁵ <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

treatment or punishment, in accordance with domestic legislation and applicable international law;”³⁶

On access to treatment in prisons and detention:

“4.m 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),¹⁷ implement, where appropriate, measures aimed at addressing and eliminating prison overcrowding and violence, and provide capacity-building to relevant national authorities;”³⁷

On effective criminal justice responses:

“4.o 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;”

These above-quoted provisions from the 2016 UNGASS Outcome Document may provide guidance to law and policy makers as well as implementing agencies on strategies to reduce the levels of incarceration for drug offences in Thailand, especially for women.

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³⁶ Ibid.

³⁷ Ibid.