During the 2nd UPR cycle, Thailand received only one recommendation specifically addressing drug use and HIV, to “reinforce the harm reduction of measures targeting drug users in order to avoid adverse health effects, including increased HIV infections and hepatitis”, made by Colombia, which it supported. It also received a total of 54 recommendations related to the rights of people living with HIV (PLHIV) and Drug Users, of which it supported 47 and noted seven. These recommendations are mainly focusing on the right to health and access to social services for vulnerable groups.

While HIV and drug use are prevalent in Thailand, the government claimed to made progress by launching the ‘2017-2030 National Aids Strategy’, adopting the ASEAN Declaration of Commitment on HIV and AIDS. It also made amendments to legislation regulating drug use, possession, and dispose; and provided positive prospects for the promotion and protection of drug users’ human rights. However, our assessment demonstrates that the Thai government has partially implemented five recommendations, and persistently failed to implement 49 recommendations since its last UPR. As a consequence, PLHIV and drug users continue to face severe human rights violations, and to experience stigma and discrimination in all aspects of their lives. Drug users face even harsher conditions due to Thailand’s highly punitive approach to drug use: individuals caught using or selling drugs face detention and even death penalty, and are denied access to essential healthcare.

REALITIES ON THE GROUND

Challenges Cases, Facts, Comments

Challenge 1: Lack of legal framework to protect the Rights of PLHIV and Drug Users

Section 4 of the 2017 Constitution stipulates Thai people enjoy equal protection under the Constitution and Section 27 guarantees that all people are equal before the law. It also ensures that unjust discrimination on the ground of health condition is prohibited. Further, under Sections 47 and 55, people’s right to healthcare is guaranteed. However, in reality, PLHIV and Drug Users do not receive formal protection and they face severe discrimination.

Even though Thailand counted 470,000 PLHIV in 2019, the country does not have any legislation in place specifically protecting PLHIV and Drug Users from discrimination, nor does it have any comprehensive and all-inclusive anti-discrimination law.

Instead of being protected under Thailand’s legal framework, Drug Users face severe stigmatisation due to Thailand’s punitive approach towards drugs and legislation regulating drugs, defining Drug Users as criminals rather than as patients. Such legislation includes the Psychotropic Substances Act, 1975, the Narcotics Control Act, 1976, and the Narcotics Act, 1979.

PLHIV and Drug Users face severe human rights violations, are stigmatized and discriminated against due to a lack of legal framework protecting their rights.

In 2017, the 5th Thai National Health Examination Survey, measuring people’s perception towards PLHIV, concluded that 76.9 percent of the respondents was hesitant to take an HIV test, fearing people’s reaction in case of a positive result. Due to stigma and discrimination, PLHIV are often rejected by Thai society, and they experience social isolation and depression. For instance, the Cremation Association refuses to admit HIV-positive people, denying them the access to the organisation’s benefits.

Transwomen Who Use Drugs (TWUD) are especially vulnerable and marginalized as they faced an intersectional layer of stigma and discrimination. Due to their gender identity and the misconception of drug users, they are discriminated against in daily life and viewed as criminals. With a sense of insecurity and unworthiness, TWUD are often unwilling to speak out their concerns or seek help from others in face of human rights violations, such as harassment and violence from law enforcement.
Drug users are cast as criminals and not patients. The “war on drugs” launched in 2003 worsened Drug Users’ situation, by punishing the consumption, possession, or disposal of drugs with imprisonment, fines, or death penalty. As of December 2020, 62% of the people on death row were related to drug offences. Meanwhile, since September 2021, the criminal responsibility age is 12 years old, meaning that children can face harsh punishment for drug offences.

Moreover, due to disproportionate penalties and sentencing under the 1979 Narcotics Act, over-incarceration becomes a serious issue in Thailand. Thailand’s prisons are amongst the world’s most overcrowded, with about three people in prison for each available space. The statistics show that over 80% of people in prison are incarcerated for drug offences.

Drug Users do not benefit from legal groundings for harm reduction or treatment. In contrast to the WHO Addiction Severity Index, substance dependency is frequently determined only by a urine test. Many cases of people compelled to take urine sample for drug testing have been registered in Thailand. Similarly, warrants were issued in the Collective Arrest Case to search for unlawfully opened bars, but officers abused their authority and coerced people to do drug tests.

Under these Acts, consumption, possession, disposal, and possession for the purposes of disposal, production, import and export of drugs are punishable by imprisonment and/or fines, while death penalty may also be imposed in some cases.

Please see our UPR Factsheet on Prison Conditions in Thailand for more information.

### Challenge 2: PLHIV face employment discrimination

**PLHIV continue to face persistent discrimination in all aspects of employment:** during the recruitment process, as well as at the workplace, notably due to the lack of anti-discrimination provisions in national legislation.

Section 15 of the Labour Protection Act provides that employers shall provide equal treatment to men and women workers, however, it does not mention any other population groups, such as PLHIV or Drug Users. Only in Article 5.6.1 of the Thai Labour Standards on Corporate Social Responsibility in Thai businesses, developed by the Ministry of Labour, it is provided that “discrimination in respect of employment, payment of wage and remuneration, providing welfare and opportunity for training and development, promotion, termination of employment or retirement, and so on, due to HIV/AIDS (among others) is prohibited”. However, as these are voluntary guidelines for businesses, they do not guarantee the protection of PLHIV.

**Businesses fear that PLHIV will incur greater operational costs, and due to a lack of knowledge regarding HIV, they are also concerned about the safety of their customers and employees.** Interviews conducted with human resources professionals of companies listed on the Stock Exchange of Thailand showed that 48.3% would not hire PLHIV based on their HIV-positive status. As PLHIV are not included in Section 15 of the Labour Protection Act, and they are subject to unconsented HIV screenings during the recruitment process and throughout their employment. If their HIV-positive status is disclosed, their employment is terminated.

**A representative case is that of a 29-year-old technical engineering graduate who was forced to resign after undergoing a mandatory blood test revealing that he was HIV positive.** People whose parents are HIV-positive are often scared to get blood tests, considering that they might miss out on employment opportunities. Another concrete example is the case of the Bank for Agriculture and Agricultural Cooperatives which conducts blood tests for HIV, without informing people about it, and rejects them if they test positive.

### Challenge 3: HIV-positive students face barriers in accessing education and sex education in schools

In spite of Thailand’s ratification of the Convention on the Rights of the Child (CRC) and its General Comment No. 3, HIV-positive children experience barriers while accessing education. Also, sex education is considered a taboo, encouraging unsafe sexual practices and contributing to an increase in the HIV rate among youth.

**On 28 August 2012, three students living with HIV from the Nursing Sciences, Christian University, filed complaints with the National Human Rights Commission of Thailand (NHRCT) after the university rejected them claiming that the school had to protect its patients from HIV infection.**
REALITIES ON THE GROUND

**Challenge 4: PLHIV and Drug Users face barriers in accessing healthcare services**

Although HIV services and treatments can be accessed for free, PLHIV lack access to information and fear discrimination, preventing them from accessing healthcare services. Thailand made efforts to improve its response to AIDS by integrating HIV services into its Universal Health Coverage Scheme, including antiretroviral therapy which can now be accessed for free and is offered to PLHIV immediately after they are diagnosed with HIV. However, PLHIV and Drug Users experience strong and persistent stigma and discrimination when accessing healthcare services. Facing stigma and discrimination, key populations at high risk of transmitting HIV, including Men who have Sex with Men (MSM), Drug Users, sex workers, and transgender people, have avoided using healthcare services, and have been refused healthcare due to their HIV status.

Due to social stigma, many people start antiretroviral therapy late, and, although HIV treatment is free of charge, Drug Users are not eligible. In 2017, 8% of sex workers, 5% of MSM, and 6% of transgender persons claimed to avoid healthcare services, and reported to have faced discrimination by healthcare workers in all healthcare settings.

As part of Thailand’s national Prevention of mother-to-child transmission of HIV program, routine HIV counselling and testing for pregnant women and their partners takes place. However, women are unaware of their right to reject the testing. In instances, Women Living with HIV are forced to sign a sterilisation agreement form in exchange of receiving medical services, a practice that violates fundamental human rights and is considered an act of torture, as per the UN Special Rapporteur on Torture Report (2013).

Among Drug Users, the fear of arrest or detention, if they access healthcare services and HIV treatment, make them resist seeking medical assistance. As a result, harm reduction services are extremely important. However, the Government’s punitive approach undermines Drug Users’ access to it. For instance, due to insufficient financing, the number of Needle and Syringe Programs (NSPs), which aim to reduce the risk of HIV transmission, has decreased, and Drug Users received just ten clean needles and syringes on average in 2018.

**Challenge 5: The impact of COVID-19 on PLHIV and Drug Users**

The outbreak of COVID-19 led to new challenges for PLHIV and Drug Users. Freedom of movement restrictions hampered outreach activities, limiting community-led HIV testing and reducing access to HIV medication and assistance.

In the case of Drug Users who had been detained and were about to be released, they were freed in a vulnerable state, since they were homeless, and lacked access to any preventive measures or care, being therefore highly exposed to COVID-19.

In some cases, hospitals directly delivered antiretroviral drugs to patients. However, many PLHIV preferred not to receive medication packages, fearing that others might find out about their HIV status. Also, persons who needed Methadone Maintenance Treatment on a regular basis had difficulty obtaining it, either owing to lockdown limitations or a lack of methadone clinics in their communities.

No access to information of COVID-19 vaccines for people living with HIV and drug users have been released.

**RECOMMENDATIONS**

**1. On Challenge 1: Lack of Legal Framework to protect the rights of PLHIV and Drug Users**

In line with the 2015 Concluding Observations of the Committee on Economic, Social and Cultural Rights to Thailand, adopt a comprehensive anti-discrimination law that prohibits discrimination on all grounds, including against PLHIV and drugs users.
Implement effectively the 2017-2030 National Strategy on AIDS by collaborating with civil society and international partners to ensure that the general population and especially key populations are well-informed about their rights and the HIV services they have access to, notably by raising awareness and organising educational campaigns in the view of reducing HIV-related stigma and discrimination.

In accordance with the 2017 Human Rights Committee’s Concluding Observations to Thailand, and in accordance with the principles of proportionality and the rule of law, abolish the death penalty for all-drug related offence and review the criminalization of drug offences, to lower sentences by amending the Psychotropic Substances Act, the Narcotics Control Act and the Narcotics Act.

On Challenge 2: PLHIV face employment discrimination

In line with the UN Guiding Principles on Business & Human Rights, Thailand’s National Action Plan on Business & Human Rights and the ILO Recommendation 200, the Thai government must regulate Thai companies, both in the public and private sectors, to adopt HIV/AIDS friendly policies ensuring zero discrimination and stigmatization of workers living with HIV, to protect the rights of PLHIV at the workplace, and to forbid the mandatory HIV testing by companies at all stages of recruitment and after recruitment.

On Challenge 3: HIV-positive students face barriers in accessing education and sex education in schools

In accordance with Section 54 of the 2017 Constitution and the General Comment No.3 of the UN Committee on the Rights of the Child, guarantee that children affected by HIV can stay in school and receive quality education.

In line with the 2015 Concluding Observations of the Committee on Economic, Social and Cultural Rights to Thailand, strengthen the sexual and reproductive health education programmes, and ensure the accessibility, availability and affordability of sexual and reproductive health services.

On Challenge 4: PLHIV and Drug Users face barriers in accessing healthcare services

In line with Sections 47 and 55 of the 2017 Constitution, urgently train healthcare workers to provide effective services to PLHIV and drug users so that they can freely access healthcare services, without fear of stigma and discrimination.

In accordance with the 2015 Concluding Observations of the Committee on Economic, Social and Cultural Rights to Thailand, protect and don’t punish drug users. Instead, apply a human rights-based and evidence-informed approach to drug abuse, which should include preventive measures, harm-reduction programmes and provision of appropriate health care, psychological support and rehabilitation.

On Challenge 5: The impact of COVID-19 on PLHIV and Drug Users

Adopt a gender-sensitive approach to COVID-19, that account for marginalised and vulnerable communities, including PLHIV and Drug Users, notably by reinforcing and extending access to health services and social protection schemes.

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