

1. Status of Implementation Concerning the Death Penalty

- 1.1. Since the last Universal Periodic Review (UPR) cycle in 2016, the number of individuals on death row has gradually declined. At the end of 2016, 426 people were on death row,¹ compared with 257 individuals in March 2021.² In 2019, His Majesty King Maha Vajiralongkorn granted 243 pardons to those under death sentences who had exhausted their final rights of appeal.³ Thailand has also removed the death penalty as a mandatory punishment for selling prohibited narcotic substances.⁴
- 1.2. In 2016, Thailand accepted a total of 187 recommendations, including recommendations to review the imposition of the death penalty for offences relating to drug trafficking,⁵ to commute death sentences with a view to abolish the death penalty⁶ and to take concrete steps towards abolition.⁷
- 1.3. However, Thailand only noted recommendations aimed at ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (the ICCPR),⁸ failed to adhere to its ICCPR article 6(2) obligation to only impose the death penalty for ‘the most serious crimes,’⁹ and hasn’t acted upon the call to establish an official moratorium on the death penalty.¹⁰

2. Domestic Legal/Human Rights Framework

Thai Constitution

- 2.1. The Constitution of the Kingdom of Thailand, adopted in 2017, is the supreme law of Thailand¹¹ and enshrines the dignity and equality of the Thai people.¹² The Constitution provides a right to liberty of the person and a right to life.¹³ The Constitution also prohibits torture, brutal acts or cruel or inhumane punishment.¹⁴ Additionally, the Constitution provides that all people are equal before the law with respect to their rights and liberties regardless of personal characteristics, such as race, language or sex.¹⁵ The Constitution also provides a number of procedural rights for those accused of criminal offences, including the right to be presumed innocent until proven guilty and the right not to make self-incriminating statements.¹⁶

National Human Rights Plan

- 2.2. In the previous UPR cycle, Thailand implemented the 3rd National Human Rights Plan for 2014-2018. The National Human Rights Commission of Thailand hoped that as a result of the positive developments made in implementing the National Human Rights Plan that the Thai Government would ‘take steps towards abolishing [the death penalty] in the future’.¹⁷ However, Thailand has not yet finalised the 4th National Human Rights Plan for 2018-2022. This is despite statements that drafting, and consultation are underway.¹⁸ Thailand has adopted the National Action Plan on Business and Human Rights¹⁹ and was the first country in Asia to do so. Nevertheless, this does not deal with the human rights issues surrounding Thailand’s retention of the death penalty. A dedicated plan is needed to ensure domestic prioritisation of these issues.

Access to Justice and Fair Trial Rights

- 2.3. Although the right to a fair trial is protected by domestic and international human rights law, there are challenges to the guarantee of a fair trial in Thailand.
- 2.4. Human rights groups and lawyers report that police interrogations are likely to be conducted without a lawyer being present.²⁰ Reports also indicate that suspects may be tortured by police officers to obtain confessions.²¹ Across Thailand, accused individuals are not always provided with legal aid.²² In small or remote provinces, the right to an interpreter and the right to be present at trial may be denied.²³ In October 2019, Chief Judge Kanakom Pianchana attempted suicide in open court to protest ‘rampant interference in judicial discretion by his superior’.²⁴ The Chief Judge revealed to the court that his superiors were pressuring him to impose the death penalty upon an accused, despite the Chief Judge’s concerns about an apparent lack of evidence.²⁵ The Chief Judge also held concerns that the accused’s confessions were obtained as a result of harsh detention conditions.²⁶

3. International Legal Framework

Core International Human Rights Instruments

- 3.1. Thailand has acceded to eight of the nine core international human rights instruments.²⁷ In particular, Thailand acceded to the ICCPR on 29 October 1996 and the *Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (the CAT) on 2 October 2007. Article 6(1) of the ICCPR protects the ‘inherent right to life’ of every human being which is to be protected by law and not arbitrarily interfered with. ICCPR art 6(1) recognises that the death penalty should only be imposed for ‘the most serious crimes’ and must only be carried out pursuant to a final judgment rendered by a competent court.
- 3.2. ICCPR art 10 also provides that those deprived of their liberty shall be treated with humanity and respect for dignity and that the purpose of the penitentiary system is to reform and rehabilitate offenders.²⁸ Fair trial rights are guaranteed by ICCPR art 14. These include the right to have a fair public trial by a competent court or tribunal,²⁹ the right to be presumed innocent until proven guilty,³⁰ the right to be informed promptly of the charges faced,³¹ to have access to defence,³² to be tried without delay,³³ and the right not to be compelled to confess guilt.³⁴ These fundamental rights connected with the imposition of the death penalty are not to be construed or invoked to delay or prevent the abolition of the death penalty.³⁵ Article 2 of the CAT imposes an obligation on Thailand to take measures to prevent acts of torture within territory under its jurisdiction. For the purposes of the CAT, ‘torture’ is defined to mean ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted’.³⁶ The obligation to eradicate torture and other ill-treatment as defined under the CAT extends to situations of custody and control, including prisons.³⁷ Thailand has not yet signed and acceded to the Second Optional Protocol of the ICCPR, yet it remains open for them to do so. Acceding to the Second Optional Protocol would demonstrate Thailand’s formal commitment to the abolition of the death penalty on a global stage.

4. Global Trend Towards Abolition

4.1. The current global trend towards the abolition of the death penalty is promising. Between 2018 and 2019, confirmed executions dropped by five per cent globally, cementing a year-on-year decrease since 2015.³⁸ Further, several retentionist countries including Egypt, Iran, Japan and Singapore significantly decreased the number of confirmed executions.³⁹ This global trend towards abolition is evident in the substantial majority of states supporting the UNGA resolution calling for a moratorium on the use of the death penalty. In 2020, 123 countries supported the moratorium, 24 states abstained, and 38 states opposed it.⁴⁰ In particular, Djibouti, Jordan, Lebanon, South Korea and the DRC voted in favour of the resolution for the first time, having abstained in the 2018 vote. At the most recent moratorium vote in December 2020, Thailand abstained.⁴¹ Thailand also abstained in 2016 and 2018.⁴² Opportunities exist for Thailand to take concrete steps towards the death penalty's abolition through open dialogue with the international community.

5. Retention of the Death Penalty

Capital Crimes in Thailand

5.1. Many of the offences listed in Table 1 do not meet the threshold of 'the most serious crimes' as required by ICCPR art 6(2). For example, the Thai Government amended the law concerning anti-corruption to allow the death penalty to apply in cases of economic crimes.⁴³ Further, in May 2019, the Thai Parliament amended the Criminal Code rendering rape leading to death a capital crime.⁴⁴ Drug-related offences continue to represent a disproportionate number of death sentences.⁴⁵

Table 1: List of offences that are punishable with the death penalty.⁴⁶

Crimes	Legislation	Section
Offences relating to weapons	<i>Firearms, Ammunition, Explosives, Fireworks and Imitation Firearms Act, B.E. 2490</i>	78
Offences against liberty	<i>Criminal Code</i>	312 bis (3), 313 and 314
Malfeasance in office	<i>Criminal Code</i>	148, 149, 201 and 202
Offences relating to public danger	<i>Criminal Code</i>	218, 220, 222 and 224
Terrorism	<i>Criminal Code</i>	135(1), (2), (3)
Offences relating to sexuality	<i>Criminal Code</i>	277 bis (2), 277 ter (1) and (2), 280(2), 283(3) and (4), and 285

	<i>Prevention and Suppression of Prostitution Act, B.E. 2539</i>	12(2) and (3)
Offences against property	<i>Criminal Code</i>	339(5), 339 bis (5), 340(5), 340 bis (5), 340 bis (6), and 340 ter
Offences relating to drugs	<i>Narcotic Act, B.E. 2522</i>	65, 66(2) and 93(5)
Offences against life	<i>Criminal Code</i>	108, 109(1) and (2), 110(3), 111, 132 and 288
Offences relating to security	<i>Criminal Code</i>	111, 113, 119, 121, 122, 124(3), 127(2), 128 and 129
	<i>Martial Law</i>	13-19, 27(1), 29(1), 30(1), 31(1), 36(1), 38(1), 42(1), 43(1), 46(1).
Offences relating to economic crimes	<i>Anti-Corruption Act</i>	13

Women on Death Row in Thailand

- 5.2. It has been reported that approximately ninety percent of women on death row in Thailand are facing the death penalty for drug-related offences, compared to 46 percent of men.⁴⁷ Often women engage in drug-related offences to provide for and protect their family and dependents, or traffic drugs under duress.⁴⁸ Most of these women are at the lowest level of the drug trade, yet face the most severe punishment.⁴⁹ Lawyers and non-for-profit organisations in Thailand have found that the majority of women on death row are poor and illiterate.⁵⁰ Accordingly, many women are unaware of their legal rights and cannot pay for legal representation.⁵¹ These women are therefore more vulnerable to discrimination and coercion, to the extent that women may sign confessions which they ‘neither wrote, nor understood’.⁵²

Deterrence

- 5.3. During the second UPR cycle, the National Human Rights Commission of Thailand recommended that the Thai Government increase the public’s knowledge of the death penalty’s lack of deterrent effect.⁵³

6. Executions in Thailand

- 6.1. Thailand carried out its most recent execution in June 2018 when 26-year-old Theerasak Longji was executed by lethal injection after being convicted of robbery resulting in death. The imposition of the death penalty reversed a de facto moratorium in place since 2009, when two men were executed by lethal injection for drug-trafficking offences.⁵⁴

7. Treatment of Prisoners

Minimum Standards for the Treatment of Prisoners

- 7.1. Pursuant to the Mandela Rules, prisoners are to be treated ‘with the respect due to their inherent dignity and value as human beings’.⁵⁵ Prisoners must not be subjected to, and must be protected from, torture and other cruel, inhumane or degrading treatment or punishment.⁵⁶ Prolonged or indefinite solitary confinement is prohibited because it constitutes cruel, inhumane or degrading treatment or punishment.⁵⁷ The Mandela Rules also make clear that the use of chains, irons or other restraints are ‘inherently degrading’ and should be prohibited.⁵⁸ Such restraint should only be used as an instrument of last resort, where such measures are authorised to prevent escape, injury or damage to property.⁵⁹ Prisoners with religious beliefs should also have the ability to practise their religion whilst in prison.⁶⁰ The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) also provide that women should have access to free sanitary products and regular water supply to maintain personal hygiene.⁶¹

Treatment of Individuals on Death Row

- 7.2. Individuals on death row in Thailand may be subject to conditions in violation of the above rules. For example, individuals on death row can be subjected to prolonged solitary confinement.⁶² Prior to 2013, individuals on death row could be shackled for up to their entire detention.⁶³ Despite steps taken by the Thai Government in May 2013 to unshackle 500 prisoners, this practice has not necessarily been entirely discontinued.⁶⁴ Individuals on death row cannot attend religious services which are available to other prisoners.⁶⁵ Women on death row in Thailand live within the general prison population which is attended by significant overcrowding, and it is reported that women may be forced to take turns sleeping on the bare floor.⁶⁶ Moreover, women on death row are not given the opportunity to participate in work programs, unlike the general female prison population.⁶⁷

Treatment of Individuals in General Prison Population

- 7.3. Thai prison populations far exceed their capacity, giving rise to serious concerns as to the treatment experienced by the prison population.⁶⁸ Widespread reports highlight poor sleeping conditions, inadequate ventilation and sanitation and a limited ability to access medical attention.⁶⁹ Medical attention for pregnant women is especially poor with many pregnant women having to give birth alone and women having limited access to sanitary and menstruation products.⁷⁰

- 7.4. Reports demonstrate that prisoners may be prone to abuse by officials.⁷¹ Thai laws allow government officials to use their discretion to apply restraints on prisoners, such as ‘heavy leg irons’.⁷²
- 7.5. Despite the ability for prisoners to make complaints, they are often investigated in a ‘superficial nature’.⁷³ Further, independent inspection bodies and other non-governmental organisations are unable to freely visit prisons, speak to inmates or assess conditions.⁷⁴

8. Recommendations

8.1. We recommend that Thailand:

- Take steps to ensure procedural safeguards for those accused of crimes, with a view to maintaining and enhancing access to legal aid for all.
- Take legislative steps to ensure that only ‘the most serious crimes’ are subject to the imposition of the death penalty.
- Take legislative steps to abolish the mandatory death penalty for all crimes under Thai law.
- Establish an official moratorium on the imposition of the death penalty.
- Vote in favour of the next UNGA resolution calling for a moratorium on the imposition of the death penalty.
- Abolish the death penalty before the next UPR cycle.
- Sign and ratify the Second Optional Protocol to the ICCPR.
- Immediately commute all death sentences and take steps for their transfer into the general prison population.

1 Amnesty International Global Report, Death Sentences and Executions 2016, p.18

2 Department of Corrections, Thailand (23 March 2021)

3 Amnesty International Global Report, Death Sentences and Executions 2019, p.31

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- 4 United States of America, State Department, *Thailand Human Rights Report* (2019) (*Thailand Human Rights Report*) p.3.
- 5 Ibid.
- 6 The National Human Rights Commission of Thailand, *Investigation Report No. 283/2018* (2018) p. 2.
- 7 *Thailand Human Rights Report* p. 3.
- 8 Recommendation 159.1 - Namibia; Recommendation 159.2 - Austria, Montenegro, Panama, Poland, Portugal, Slovenia, Spain, Turkey.
- 9 Recommendation 159.26 - Spain; Recommendation 159.27 - Timor-Leste.
- 10 Recommendation 159.22 - Australia; Germany.
- 11 *Constitution of the Kingdom of Thailand* s 3.
- 12 Ibid s 4.
- 13 Ibid s 28.
- 14 Ibid s 28.
- 15 Ibid s 27.
- 16 Ibid s 29.
- 17 National Human Rights Commission of Thailand, *UPR Submissions* (2016) (*NHRC UPR Submissions*) para 2.
- 18 Amnesty International, *Thailand: Time to Abolish the Death Penalty* (2017) (*Amnesty International Report 2017*) p. 4.
- 19 National Action Plans on Business and Human Rights, 'Thailand' (2019) <<https://globalnaps.org/country/thailand/>>.
- 20 *Thailand Human Rights Report*, p.7
- 21 Ibid p. 4.
- 22 Ibid p. 9.
- 23 Ibid
- 24 Ibid p. 8.
- 25 Ibid
- 26 Deutsche Welle, 'Thailand Judge Dies in Apparent Suicide Protesting Judicial System' (7 March 2020) <<https://www.dw.com/en/thailand-judge-dies-in-apparent-suicide-protesting-judicial-system/a-52675907>>.
- 27 United Nations Human Rights Office of the High Commissioner, 'The Core International Human Rights Instruments and Their Monitoring Bodies' (2021) <<https://www.ohchr.org/en/professionalinterest/pages/coreinstruments.aspx>>.
- 28 Ibid art 10(1), (3).
- 29 Ibid art 14(1).
- 30 Ibid art 14(2).
- 31 Ibid art 14(3)(a).
- 32 Ibid art 14(3)(b).
- 33 Ibid art 14(3)(c).
- 34 Ibid art 14(3)(g).
- 35 Ibid art 6(6).
- 36 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* art 1(1).
- 37 Committee against Torture, *General Comment No 2* para 15.
- 38 Amnesty International, *Death Sentences and Executions* (2019) p. 7.
- 39 Ibid p. 7, 54.
- 40 United Nations, 'Voting Summary: Moratorium on the Use of the Death Penalty' (2020) <<https://digitallibrary.un.org/record/3894866?ln=en>>.
- 41 Ibid.
- 42 United Nations, 'Voting Summary: Moratorium on the Use of the Death Penalty' (2018) <<https://digitallibrary.un.org/record/1656169?ln=en>>; United Nations, 'Voting Summary: Moratorium on the Use of the Death Penalty' (2016) <<https://digitallibrary.un.org/record/855172?ln=en>>.
- 43 Wipaporn Natigirachord, *The Abolition of the Death Penalty: A Case Study of Appropriate Offenses* (2020) (Natigirachord) p. 576.
- 44 *Criminal Code Amendment Act* (No. 27) 2019.

45 Natigirachord p. 577.

46 Ibid.

47 Union for Civil Liberty, 'Women, Imprisonment and the Death Penalty in Thailand' (2018) p. 11.

48 Harm Reduction International, 'The Death Penalty for Drug Offences: The Impact on Women' (Briefing Paper) (March 2019) p. 2.

49 Ibid p. 1.

50 The Cornell Centre o the Death Penalty, *Judged for More than Her Crime* (2018), p. 18.

51 Ibid.

52 Ibid.

53 NHRC UPR Submissions p. 4.

54 Amnesty International, 'Thailand: Country's First Execution Since 2009 a Deplorable Move' (2018) <[https://www.amnesty.org/en/latest/news/2018/06/thailand-countrys-first-execution-since-2009-a-deplorable-move/#:~:text=The%20Thai%20government%20must%20immediately,implementation%20of%20the%20death%20penalty."&text=This%20is%20the%20first%20execution,of%20no%20executions%20since%202003](https://www.amnesty.org/en/latest/news/2018/06/thailand-countrys-first-execution-since-2009-a-deplorable-move/#:~:text=The%20Thai%20government%20must%20immediately,implementation%20of%20the%20death%20penalty.)>.

55 *United Nations Standard Minimum Rules for the Treatment of Prisoners* rule 1.

56 Ibid.

57 Ibid rule 43(1).

58 Ibid rule 47(1).

59 Ibid rule 47(2).

60 Ibid rules 65-67.

61 *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* rule 5.

62 United Nations Human Rights Office of the High Commissioner, *Drug-related Offences, Criminal Justice Responses and the Use of the Death Penalty in South-East Asia* (Report) (2018) p. 27.

63 World Coalition Against the Death Penalty, 'Living Conditions on Death Row: Detailed Factsheet' (Factsheet) (2018) p. 5.

64 Death Penalty Worldwide, 'Death Penalty Database' (2015) <<https://dpw.pointjupiter.co/country-search-post.cfm?country=Thailand>>.

65 Ibid.

66 Penal Reform International and The Cornell Centre on the Death Penalty Worldwide, *Prison Conditions for Women Facing the Death Penalty* (Report) (2018) p. 3.

67 Cornell Centre p. 5.

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74 International Federation for Human Rights p. 5.