



**ANTI
DEATH
PENALTY
ASIA
NETWORK**



**Thailand's Compliance with the Convention on the Elimination of All Forms of
Discrimination Against Women
Suggested List of Issues Prior to Reporting Relating to the Death Penalty**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996
and

The World Coalition Against the Death Penalty

for the

**85th Session of the Committee on the Elimination of Discrimination Against Women
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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

Anti-Death Penalty Asia Network (ADPAN) is a regional network of organizations and individuals committed to working towards abolition of the death penalty in the Asia Pacific. Its role is to create wider societal support for abolition of the death penalty in the Asia Pacific region through advocacy, education and network building.

Capital Punishment Justice Project (CPJP) stands for a world without the death penalty. Based in Australia, we work with our international and local partner organizations, volunteers, our board, the Australian public and key stakeholders to develop legal and policy solutions that help save lives.

EXECUTIVE SUMMARY

1. Thailand has one of the largest proportions of women on death row in the world, and nearly all of those women have been sentenced to death for drug-related offenses. While commutations have slowly reduced the number of women under sentence of death, courts continue to use capital punishment. The gender dimension of the death penalty in Thailand is multifaceted. Many women sentenced to death have experienced trauma and gender-based violence, as well as precarious employment and the stress of having multi-generational dependents at a young age, but courts typically are not permitted to consider such mitigating factors at sentencing. Women charged with capital offenses, including foreign nationals, face violations of their fair trial rights. Detention conditions for women sentenced to death in Thailand do not comply with international human rights standards. Prison overcrowding persists, and women lack access to basic hygiene necessities such as clean water for washing and sanitary napkins. Moreover, women under sentence of death are not eligible for many educational or vocational programs in detention.
2. This report provides suggested questions for the Government of Thailand and suggested recommendations for the Committee to consider as it prepares its List of Issues Prior to Reporting and its Concluding Observations for Thailand.

Thailand fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

3. The Committee in its 2017 Concluding Observations recommended that Thailand “[s]trengthen the gender responsiveness and gender sensitivity of the justice system, including by . . . providing systematic, capacity-building training to judges, prosecutors, lawyers, police officers and other law enforcement officials on the Convention.”¹ As this report explores, this recommendation is particularly relevant with respect to women sentenced to death and at risk of being sentenced to death in Thailand.
4. Under Thai law, approximately 60 offenses are eligible for the death penalty.² Approximately half of those offenses are identified in the Criminal Code, including crimes such as attacks on the monarchy and murder.³ Approximately one quarter of those offenses are military crimes, such as collusion with the enemy, and the remaining one quarter fall under other laws, such as laws relating to drug offenses, possession of illegal weapons, trafficking, and prostitution.⁴

¹ Committee on the Elimination of Discrimination Against Women, *Concluding observations on the combined sixth and seventh periodic reports of Thailand*, UN Doc. CEDAW/C/THA/CO/6-7 (July 24, 2017), ¶ 11(d).

² Vitit Muntarbhorn, *Slowly moving away from the death penalty*, Bangkok Post, Apr. 22, 2021, <https://www.bangkokpost.com/opinion/opinion/2103711/slowly-moving-away-from-the-death-penalty> (last visited Sept. 29, 2022).

³ Vitit Muntarbhorn, *Slowly moving away from the death penalty*, Bangkok Post, Apr. 22, 2021, <https://www.bangkokpost.com/opinion/opinion/2103711/slowly-moving-away-from-the-death-penalty> (last visited Sept. 29, 2022).

⁴ Vitit Muntarbhorn, *Slowly moving away from the death penalty*, Bangkok Post, Apr. 22, 2021, <https://www.bangkokpost.com/opinion/opinion/2103711/slowly-moving-away-from-the-death-penalty> (last visited Sept. 29, 2022).

5. The Cornell Center on the Death Penalty Worldwide has conducted extensive research into women facing the death penalty for drug-related offenses.⁵ The study explained how Thailand’s legal system criminalizes those offenses and subjects offenders to the death penalty:

Thailand punishes a range of offenses with death, including drug-related offenses. It is a capital crime in Thailand to produce or distribute “category one” drugs, or to possess category one drugs for distribution, as long as the quantity of drugs exceeds the amount defined in the sentencing guidelines. By law, courts presume that defendants in possession of more than a statutory amount of category one drugs intend to distribute them. In practice, to rebut the presumption and avoid a possible death sentence, defendants must sometimes prove beyond a reasonable doubt that they did not intend to distribute the drugs. This practice violates the presumption of innocence and fair trial standards.⁶
6. In 2021, Thai courts issued at least one death sentence for a drug-related offense.⁷ In July and December 2021, the King commuted death sentences of a total of 64 people, including at least four women convicted of drug trafficking.⁸ Thailand’s most recent execution took place in 2018.⁹
7. According to Amnesty International, as of the end of 2021, 158 people were known to be under a sentence of death in Thailand, down from 235 at the end of 2020.¹⁰ According to FIDH, the number of people under sentence of death has dropped from 435 in January 2017 to 177 in December 2021.¹¹
8. According to the Cornell Center on the Death Penalty Worldwide, “women make up 13% of [Thailand’s] total death row population, one of the highest proportions anywhere in the world.”¹² The number of men under sentence of death during that period dropped from 364 to 152 (a 58% drop), while the number of women under sentence of death dropped from 71 to 25 (a 65% drop).¹³ In 2021, however, the male death row population declined at a much steeper rate (33%) than the female death row population (14%).¹⁴

⁵ Cornell Center on the Death Penalty Worldwide, *“No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁶ Cornell Center on the Death Penalty Worldwide, *“No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 47 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁷ Amnesty International, *Death Sentences and Executions 2021* (2022), at 15.

⁸ Amnesty International, *Death Sentences and Executions 2021* (2022), at 37.

⁹ Vitit Muntarbhorn, *Slowly moving away from the death penalty*, Bangkok Post, Apr. 22, 2021, <https://www.bangkokpost.com/opinion/opinion/2103711/slowly-moving-away-from-the-death-penalty> (last visited Sept. 29, 2022).

¹⁰ Amnesty International, *Death Sentences and Executions 2021* (2022), at 27.

¹¹ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 17, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

¹² Cornell Center on the Death Penalty Worldwide, *“No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 47 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

¹³ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 17, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

¹⁴ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 16, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

9. The Cornell Center on the Death Penalty Worldwide characterizes Thailand as a “high application” death penalty state for drug-related offenses.¹⁵ As of December 2021, drug-related offenses accounted for 62% of the country’s death row population.¹⁶ Between 2017 and 2021, the proportion of people on death row for drug-related offenses increased from 49.08% to 62.14%.¹⁷
10. According to research by the Cornell Center, in Thailand “drug convictions underlie a greater proportion of death sentences among women than men.”¹⁸ Of the 33 women on death row in early 2021, 94% had been convicted of drug-related offenses, while only 60% of their male counterparts had been convicted of drug-related offenses.¹⁹ By the end of 2021, 86% of women on death row had been convicted of drug-related offenses.²⁰ In Thailand, women incarcerated for drug-related offenses make up 84% of the overall female prison population.²¹ The Cornell Center’s research found that “the majority of women on death row for drug offenses are low-level offenders without criminal histories and are less likely than men to have a criminal record.”²² The study also shows that women tend to be involved at the lowest level of the drug trade, leaving them with fewer ways to negotiate their sentences (through information exchange, for example) than their male counterparts.
11. According to Samantha Jeffries, the experiences of women imprisoned in Thailand for drug-related offenses include “trauma, disordered family lives, other adverse life experiences, deviant friendships, addiction (and other mental health problems), male influence and control, limited education, poverty, and familial caretaking responsibilities.”²³ The Cornell Center

¹⁵ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 15 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

¹⁶ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 17, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

¹⁷ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 18, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

¹⁸ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 16 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

¹⁹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 16 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

²⁰ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2021* (2022), at 33, available at https://www.hri.global/files/2022/03/09/HRI_Global_Overview_2021_Final.pdf (last visited Sept. 29, 2022).

²¹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 15 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

²² Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 47 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

²³ Samantha Jeffries et al., *Expectations and Experiences of Women Imprisoned for Drug Offending and Returning to Communities in Thailand: Understanding Women’s Pathways into, Through, and Post-Imprisonment*, Laws, June 22, 2020, at 2.

reports that “the vast majority of women on death row [in Thailand] are . . . indigent and illiterate.”²⁴

12. In 2017, the Committee recommended that Thailand “[c]reate more opportunities for women to gain access to formal employment, in particular by promoting the equal sharing of domestic and family responsibilities between women and men and providing sufficient and adequate childcare facilities,” and “[e]nsure the rights of women in the informal employment sector are effectively protected, including by ensuring adequate coverage of labour and social security protections.”²⁵
13. The Cornell Center found that economic insecurity, particularly the overrepresentation of women in “precarious work,” can create pathways to committing drug-related offenses.²⁶ The Cornell Center report cites “[a] series of studies from Thailand [that] showed the financial impact of early caregiving responsibilities among women who were later incarcerated for drug offenses. Many faced caregiving responsibilities early in life and had to leave school early either to support their parents or their families—often after marrying and having children as teenagers. These caregiving responsibilities severely curtailed their future employment prospects.”²⁷ The most common pathway to drug-related offending, these researchers found, was “economic familial provisioning.”²⁸ As a result of childhood poverty, they had to abandon their studies, resulting in limited job prospects. As they faced growing financial responsibilities toward their parents and their own dependents, they experienced heightened anxiety. An acquaintance aware of their precarious economic situation would offer them a job transporting drugs, and, as the Cornell Center explained, “[t]he women saw the job as a solution to the pressing problem of how to support their families.”²⁹
14. The Committee in 2017 also recommended that Thailand “[i]ncrease the availability, accessibility and quality of essential services and support to victims of gender-based violence.”³⁰ Such services and supports are essential to reduce the influence of gender-based violence on some women’s trajectories with relation to drug-related offenses.
15. Intimate relationships can also play a role in women’s decision to traffic drugs. According to the Cornell Center’s research, “[i]n Thailand, where there is the most available data, one study

²⁴ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 18, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

²⁵ Committee on the Elimination of Discrimination Against Women, *Concluding observations on the combined sixth and seventh periodic reports of Thailand*, UN Doc. CEDAW/C/THA/CO/6-7 (July 24, 2017), ¶ 37(a)-(b).

²⁶ Cornell Center on the Death Penalty Worldwide, *“No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 20 (Sept. 2021), <http://files.server.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

²⁷ Cornell Center on the Death Penalty Worldwide, *“No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 20 (Sept. 2021), <http://files.server.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

²⁸ Cornell Center on the Death Penalty Worldwide, *“No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 21 (Sept. 2021), <http://files.server.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

²⁹ Cornell Center on the Death Penalty Worldwide, *“No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 21 (Sept. 2021), <http://files.server.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

³⁰ Committee on the Elimination of Discrimination Against Women, *Concluding observations on the combined sixth and seventh periodic reports of Thailand*, UN Doc. CEDAW/C/THA/CO/6-7 (July 24, 2017), ¶ 21(c).

of 16 women imprisoned for drug offenses found that a quarter of the female respondents reported that they were manipulated into trafficking drugs by their romantic partners.”³¹ None of their 18 male counterparts in the study reported such manipulation.³² Another study found that for women imprisoned for drug-related offenses in Thailand, “victimization appears to be an experience that carries more weight in shaping women’s pathways to prison” because incarcerated women are typically victimized earlier in their lives and more frequently.³³

16. Gender-based violence may influence a woman’s likelihood to engage in drug-related offenses, as well as her likelihood of facing criminal consequences. The Cornell Center reported that according to one study of people imprisoned in Thailand for drug-related offenses, 22% of the women reported that they had experienced domestic violence, while none of their male counterparts had.³⁴ Another study found that half of the women surveyed reported having experienced domestic violence, while none of their male counterparts had.³⁵ The Cornell Center explains that “[a]buse may increase a woman’s likelihood of offending in a number of ways. An abusive partner may coerce or manipulate a woman into engaging in drug-related activities. Financial control is an extremely common feature of abusive relationships and increases the chance women will commit a crime out of economic need. Past trauma often makes individuals more susceptible to suggestions, and trauma can also lead to mental health issues.”³⁶ According to the Cornell Center, “[o]ne hallmark of cases where a male partner influences or manipulates a woman into committing a drug offense is that she bears the brunt of the risk and the criminal consequences. This may occur in part because the male codefendant has access to more financial resources, or is more able to provide useful information about the drug trade to law enforcement if he faces criminal charges. . . . In addition, male scammers who organize drug couriers face a low risk of detection, while women who are their scam victims are often caught while crossing international borders.”³⁷

³¹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 25 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

³² Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 25 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

³³ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 25 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022) (internal quotation marks omitted).

³⁴ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 25 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

³⁵ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 48 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

³⁶ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 25 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022) (footnotes omitted).

³⁷ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 26 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

Romance scams

17. One gender dimension of the death penalty that may be relevant in Thailand is the prevalence of romance scams as a pathway to drug-related offenses.³⁸ According to the Cornell Center, “scammers work to maximize financial gain,” and therefore “they tend to manipulate women into transporting large amounts of drugs that result in drug trafficking charges rather than simple possession.”³⁹ The scammers typically “initiate a romantic relationship over the internet and groom victims over a period of time,” often claiming to live in a different country, and therefore requesting international travel on the premise that it will enable the victim and the scammer to be together.⁴⁰ These scammers “often engage in psychological coercion similar to non-physical forms of domestic violence,” such as accusing the victim of not loving the scammer if she fails to comply with his requests.⁴¹
18. According to analysis from the Cornell Center:

[W]omen who fall prey to drug trafficking romance scams are likely to be poor. In the market of fake online relationship, scammers involved in drug trafficking are able to profit from victims who have no money, while financial scammers can only profit from victims who are able to send them money. For that reason, drug trafficking scammers are more likely than other scammers to pursue poor victims. In addition, scammers sell each other “sucker lists,” which compile details about people who have fallen prey to a scam in the past.⁴²
19. In a study of victims from Thailand and three other Asian countries, 90% of victims of online financial romance scams were women.⁴³ As the Cornell Center observes, “[r]esearch shows that individuals who become victims of romance scams are more likely than the average person to have ‘idealized’ views about love,” demonstrating that, “in the context of entrenched gender norms, women are more susceptible to romance scams than men.”⁴⁴

³⁸ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 26 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

³⁹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 26 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁴⁰ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 26 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁴¹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 26 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁴² Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 26 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁴³ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 26 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁴⁴ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 27 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

Fair trial rights

20. The Cornell Center study showed that court-appointed lawyers in Thailand “are under-resourced, receiving only about 8,000-50,000 baht (about USD \$250-\$1,600) to defend a capital case. Their lack of resources hinders their ability to rebut the presumption that their clients intended to distribute the drugs in their possession and to investigate and present applicable mitigating circumstances.”⁴⁵ According to the Cornell Center, women in Thailand commonly perceive that legal aid providers lack gender sensitivity.⁴⁶ Legal aid lawyers in Thailand reportedly are less likely than their private peers to engage in good practices such as arguing in favor of pre-trial release and advising the client privately before she comes into contact with justice officials.⁴⁷
21. The Cornell Center’s study highlights that most women on death row worldwide, as is the case in Thailand, come from extremely disadvantaged socio-economic backgrounds, and many are illiterate. These characteristics amplify the disadvantages they face in receiving less adequate legal representation. Foreign nationals charged with capital drug-related offenses face additional fair trial violations.
22. The Cornell Center study explains that the Thai legal system creates barriers to sentencing authorities considering the multitude of gender-related factors that may be relevant to determining a female offender’s level of culpability and an appropriate penalty.⁴⁸ Thai judges may consider only “the mitigating factors enumerated in confidential mandatory-sentencing guidelines, which do not include mitigating factors such as poverty, caregiving responsibilities, or a history of gender-based violence.”⁴⁹ Those confidential mandatory-sentencing guidelines, called the *yee-tok*, are unique to each court and accessible only by judges.⁵⁰ Appellate courts “strictly enforce the prohibition against [considering] non-enumerated mitigating factors.”⁵¹

Foreign nationals

23. The Cornell Center notes that while Thailand does not provide public data about the number of foreign nationals on death row, “[r]egional and international trends . . . suggest that a

⁴⁵ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 48 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022) (footnotes omitted).

⁴⁶ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 32 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁴⁷ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 32 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁴⁸ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 48 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁴⁹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 48 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁵⁰ Pascal Tanguay, *Thailand: The overcriminalization of meth, a failed moral crusade*, World Prison Brief, June 17, 2021, available at <https://www.prisonstudies.org/news/thailand-overcriminalization-meth-failed-moral-crusade> (last visited Sept. 29, 2022).

⁵¹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, at 48 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

substantial number of women on death row for drug offenses are likely noncitizens.”⁵² Among the country’s overall prison population, “we know that as of 2017, 66% of incarcerated female foreign nationals had been convicted of drug-related offenses, compared to 45% of men.”⁵³ The report continues: “[W]omen foreign nationals incarcerated in Thailand have reported that consular officials were not notified of their arrest and that they did not receive consular assistance. Those who do not speak English fluently have further reported that courts failed to provide them with adequate interpretation services during trial. As a result, they did not understand the legal process, court procedures, or their sentences. Additionally, courts do not provide interpreters to help defendants communicate with their lawyers outside of the courtroom, impeding lawyers’ ability to mount an adequate defense.”⁵⁴

Detention conditions

24. In 2017, the Committee recommended that Thailand “[t]ake urgent measures to reduce the number of women in detention, including by applying non-custodial sentences and addressing the root causes of delinquency among women, including poverty.”⁵⁵ The Committee also recommended that Thailand improve conditions in women’s detention facilities in accordance with the Bangkok Rules and the Nelson Mandela Rules to address overcrowding “and to ensure the provision of adequate facilities and services, in particular for pregnant women and women detained with their children.”⁵⁶
25. There is little evidence to suggest that Thailand has squarely addressed the problem of overcrowding in women’s detention facilities or otherwise improved detention conditions for women, including women sentenced to death. During the day, women under sentence of death in Thailand live with the general prison population; they “sleep in separate dormitories only if the prison has the capacity to divide sleeping areas.”⁵⁷ Prisons are “severely overcrowded”; in some prisons there is so little space that women “take turns sleeping on the bare floor,”⁵⁸ and

⁵² Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 48 (Sept. 2021), <http://fileserv.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁵³ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 16 (Sept. 2021), <http://fileserv.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022) (footnotes omitted).

⁵⁴ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 48 (Sept. 2021), <http://fileserv.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022) (footnotes omitted).

⁵⁵ Committee on the Elimination of Discrimination Against Women, *Concluding observations on the combined sixth and seventh periodic reports of Thailand*, UN Doc. CEDAW/C/THA/CO/6-7 (July 24, 2017), ¶ 45(a).

⁵⁶ Committee on the Elimination of Discrimination Against Women, *Concluding observations on the combined sixth and seventh periodic reports of Thailand*, UN Doc. CEDAW/C/THA/CO/6-7 (July 24, 2017), ¶ 45(b).

⁵⁷ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 48 (Sept. 2021), <http://fileserv.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁵⁸ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 21, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

“often develop back and leg pain because they must sleep without moving onto their sides.”⁵⁹
“Women spend around 14 hours per day in extremely crowded cells.”⁶⁰

26. “Prisons also lack women’s health services. Women report that they need to purchase their own sanitary napkins, although they have very limited opportunities to earn money in prison.”⁶¹ FIDH interviewed women who reported that sanitary napkins became even more scarce during the COVID-19 pandemic, when family visits were prohibited, prompting some women to wear the same sanitary pad for several days in a row and to wash and reuse the same sanitary pad many times.⁶² According to the Cornell Center, “[i]n Thailand . . . , inmates have reportedly given birth alone in prisons.”⁶³
27. FIDH recently conducted interviews with former prisoners to document detention conditions.⁶⁴ A woman formerly detained in Chiang Mai Women’s Correctional Institution reported that the showers use a pipe system, by which the water runs in three brief rounds, sometimes as brief as 15 seconds.⁶⁵ The water is collected in a concrete tank below the showers and is then recycled “to be used over and over.”⁶⁶ One former prisoner there said that when she was admitted, she received half a tube of toothpaste in a plastic bag, three sanitary pads, half a face towel, and a tiny bag of detergent.⁶⁷ A woman formerly detained at the Central Women’s Correctional Institution said that the institution had cockroaches everywhere as well as “rats as big as kittens trying to dig around for some food. It was unbearably filthy.”⁶⁸
28. Some detention facilities in Thailand have drug rehabilitation programs, but it is not clear whether such programs are available to women under sentence of death.⁶⁹ Research by the Cornell Center found that women on death row in Thailand are typically “excluded from most

⁵⁹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 48-49 (Sept. 2021), <http://files.server.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022); FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 29, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁶⁰ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 21, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁶¹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 49 (Sept. 2021), <http://files.server.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022) (footnotes omitted).

⁶² FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 39, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁶³ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 5, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁶⁴ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁶⁵ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 33, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁶⁶ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 33, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁶⁷ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 34, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁶⁸ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 34, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁶⁹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 31 (Sept. 2021), <http://files.server.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

prison programming with a focus on re-entry,” including work programs.⁷⁰ The Cornell Center reports that women on death row who cannot work “are more susceptible to depression as they have less to take part in and form fewer meaningful relationship with other female[s]” in detention.⁷¹ One woman interviewed by FIDH reported that “she did not receive any help after informing a prison guard about her depression and suicidal thoughts.”⁷² Another woman reported cruel treatment of women with psycho-social disabilities; when they would display neuro-divergent behavior guards would tie them up and even subject them to electric shocks.⁷³

29. Women detained in Thai prisons report degrading experiences such as being required to sit on the floor when talking to prison guards and when prison guards walked by.⁷⁴ They report that failing to address guards and officers as “sir” and “madam” could result in punishment.⁷⁵
30. Another challenge women face is the distance between their detention facility and their home.⁷⁶ As the Cornell Center observes, “[s]ince Thailand has few women’s prisons, women are often detained far from home, hindering their family’s ability to visit.”⁷⁷ Prison authorities typically remove children born in prison from their mothers at or before the age of one.⁷⁸
31. FIDH reports that, even though the Thai Department of Corrections reports that approximately 4,000 people in Thailand’s detention facilities identify as transgender, as one former detainee explained, “[t]hey treat everyone only as male or female prisoners, with no such thing as LGBTIQ people,” noting that LGBTIQ people in detention were housed “in the same sleeping dormitory with . . . male prisoners, and using the same bathrooms that male prisoners used.”⁷⁹

⁷⁰ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 31 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022); *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 23, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁷¹ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 4, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁷² FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 37-38, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁷³ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 38, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁷⁴ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 31, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁷⁵ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 31, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁷⁶ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 49 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁷⁷ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 49 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁷⁸ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 49 (Sept. 2021), <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁷⁹ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 39-40, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

32. FIDH reports that prison guards and officials sometimes threaten female detainees who complain about detention conditions.⁸⁰ A prison guard warned one former detainee not to make her complaints public after she reported to her lawyer about poor living conditions in the prison.⁸¹ A prison director threatened to sue a detainee after she complained about unjust treatment by prison authorities during a video call with her lawyer.⁸²

Suggested questions and recommendations

33. The coauthors suggest the following questions for the Government of Thailand:

- How many women are currently under sentence of death? For each woman, please provide demographic data such as age, ethnicity, nationality, age of any dependent children, as well as their crimes of conviction. In what circumstances may these women be kept in solitary confinement? To what extent do their detention conditions differ from the general conditions of detention for women in their prison? Do they have access to specialized treatment programs for women substance abusers, in accordance with the Bangkok Rules?
- How does the prison service ensure compliance with the Bangkok Rules?
- What efforts are underway to ensure that, consistent with international human rights standards, no person is sentenced to death except for in a case in which the person intended to kill and did in fact kill?
- What policies and procedures are in place to ensure that any person charged with a capital offense has access to qualified legal counsel with prior experience in capital cases, and to ensure that their legal counsel has adequate resources to conduct investigations and hire experts to mount an effective defense? What training is available to capital defense counsel representing women regarding gender-specific defenses and mitigation in capital trials, encompassing trauma, gender-based violence, economic pressures, and family caretaking responsibilities?
- What training is available to judges and other judicial officers presiding over criminal proceedings, particularly in capital cases, to educate them about the importance of considering gender-specific defenses and gender-specific mitigation in capital trials, including trauma, gender-based violence, economic pressures, and family caretaking responsibilities? What training is available for judges and other judicial officers presiding over criminal proceedings, particularly in capital cases, regarding gender-based discrimination, domestic violence, gender-based violence, and tactics of coercive control that can lead to women committing death-eligible offenses.
- What measures are being taken to facilitate the presence of women in the judiciary?

⁸⁰ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 43, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁸¹ FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 43, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

⁸² FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 43, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

- To what extent does the criminal legal system accommodate the language needs of ethnic minorities and foreign nationals charged with capital offenses, including, for example, interpreters, reading materials in their first language, access to case documents in their first language, and the ability to make additional telephone calls with family members living in other countries?
- Describe the policies and procedures of Thai embassies tasked with providing consular assistance to Thai nationals charged with capital offenses abroad.
- What efforts are underway to prevent online “romance scams” that target women with the aim to lure them into transporting drugs and what support and services are available to victims of such scams?
- What steps has the State Party taken to alleviate crowding in detention facilities and to increase the use of alternatives to detention?
- What mechanisms are in place to facilitate the ability of people in detention to make anonymous complaints about their conditions of detention with entities that have the capacity to conduct independent and impartial investigations? How do authorities ensure that people raising such complaints do not face reprisals from prison authorities?
- Please provide comprehensive statistical information concerning the number of complaints of abuse filed against prison authorities, investigations conducted, and disciplinary or other measures taken against wrongdoers.
- How have prison authorities expanded access to sanitary napkins for people in detention who need them?
- What programming, such as education and training, is available to the general prison population but not to women under sentence of death?
- What limitations or constraints does the State Party impose on the National Human Rights Commission of Thailand or the Ombudsperson if they wish to conduct visits to places of detention?
- Please describe the procedures in place to ensure compliance with the Vienna Convention on Consular Relations when individuals are suspected of committing capital offenses.
- What efforts have authorities in the Department of Corrections made to provide appropriate detention facilities and services for transgender people, lesbian and bisexual women, and intersex and gender non-conforming people?

34. The coauthors suggest the following recommendations⁸³ for the Government of Thailand:

- Abolish the death penalty and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards.

⁸³ Many of these recommendations come from the Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, at 60-61 (Sept. 2021), <http://fileservr.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022), *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 35-36, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>, and FIDH, *Thailand: Annual Prison Report 2022* (Mar. 2022), at 46-49, available at <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf> (last visited Sept. 29, 2022).

- Commute the sentences of every woman sentenced to death for an offense that does not involve an intentional killing committed by the woman.
- Take steps to provide fair trial and due process safeguards in capital cases involving women defendants, including by providing them with access to effective legal representation and safeguards prohibiting admissibility of evidence obtained through torture or ill-treatment.
- Ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women's safety and security pre-trial, during admission to any detention facility, and while incarcerated. Ensure that staff in all prisons receive adequate training on international standards, particularly the Nelson Mandela Rules and the Bangkok Rules.
- Design prison infrastructure that accommodates women's specific needs, including their privacy.
- Ensure that all menstruating persons in detention have free and ample access to sanitary napkins and other menstrual products.
- Prohibit detention facilities from re-using water used for bathing without first purifying it.
- Regularly provide and publish transparent information on the number of women sentenced to death and on death row, disaggregated by age, age of dependent children (if any), nationality, ethnic group, crime(s) of conviction, date of conviction, and date of execution (if applicable), to facilitate analysis of the demographics of women on death row.
- Implement policies based on principles of harm reduction to address the harms associated with drug use, in tandem with decriminalization of activities related to the personal use and possession of drugs.
- Codify gender-specific defenses and mitigation in capital trials, encompassing trauma, gender-based violence, economic pressures, and family caretaking responsibilities.
- Require that the prosecution prove all the elements of drug-related offenses beyond a reasonable doubt, including, for drug trafficking, knowledge of the type and quantity of drugs and intent to traffic the drugs—without the use of legal presumptions.
- Implement systems for defendants to have access to trained interpreters and ensure that they are available at all stages of a criminal case, including during interrogations, private conversations with counsel, court hearings, and post-trial proceedings.
- Provide defendants who cannot afford to hire their own attorney with court-appointed lawyers who have the training, experience, and resources necessary to provide effective, gender-sensitive legal representation. Ensure that defense counsel is available at all stages of the criminal process, including during

interrogations, pretrial investigations, appeals, and other post-trial proceedings, including up to the day of execution. Require that court-appointed attorneys in capital cases have prior experience in capital cases. Ensure that defense counsel has adequate resources to prepare for trial, including to conduct investigations and hire experts.

- Reconsider the sentences of persons who did not receive effective legal representation at trial.
- Provide support to Thai citizens who are at risk of being sentenced to death, or who have been sentenced to death, abroad.
- Create mandatory trainings for judges hearing criminal cases regarding gender-based discrimination, domestic violence, gender-based violence, and tactics of coercive control that can lead to women committing death-eligible offenses.
- Implement legislative reforms to prevent application of the death penalty when women who experience gender-based violence act against their abusers.
- Ensure that judges accord mitigating weight to defendants' experiences of trauma, gender-based violence, economic pressures, duress, and family caretaking responsibilities at sentencing.
- Improve prison conditions for women and gender minorities by meaningfully implementing the Bangkok Rules.
- Ensure that conditions of detention for women on death row are not worse than conditions of the general prison population.
- Ensure that all people in detention have access to harm reduction and educational programs, regardless of their sentences.
- House women in detention facilities that are as geographically close to their homes as possible and encourage family contact.
- Forbid the use of solitary confinement for women on death row, except when in compliance with the Nelson Mandela Rules.
- Ensure women on death row have access to dependent children through visitation.
- Ensure careful adherence to the best interests of children whose mothers are detained. If a young child remains with their parent on death row, ensure the child receives health care, recreational opportunities, and appropriate educational services. If a child is not detained with their parent, place them in care consistent with the best interests of the child and ensure that they are able to regularly visit their parent who remains in detention.
- Allow independent inspection bodies, including the National Human Rights Commission of Thailand and the Ombudsperson, unfettered access to all detention facilities.
- Allow non-governmental organizations and intergovernmental organizations with a relevant mandate to conduct visits to places of detention, interview people in detention, and assess conditions without undue hinderance.

- Ensure that transgender people in detention are detained in facilities consistent with their gender identity and expression and that they receive appropriate services and support.