



## SAFE ABORTION IN THAILAND

### Brief Assessment of the Implementation of the 2nd Cycle UPR Recommendations

In its 2nd UPR cycle, no recommendations were made in direct relation to access to safe abortion in Thailand. However, it received five recommendations addressing the right to the highest attainable standard of health and women's rights to healthcare service, including sexual and reproductive health, all of which were supported by Thailand. The recommendations include: progressively developing the health system for all segments of the society (Iraq); facilitating access to health services for all the population in the Thai territory (Madagascar); further strengthening measures to ensure equal access to health services for all, while giving special attention to the needs of children, women and the elderly (Sri Lanka); accelerating efforts to achieve the targets on reducing infant mortality rate and achieving universal healthcare scheme, including improvement of the maternal health in remote areas (Bhutan); reducing infant mortality rate and improve maternal health care in remote areas (Nigeria); continue the reduction of maternal and infant mortality rates and continue with the national plan for the development of children and youth (Bahrain).

However, based on our assessment, Thailand has not followed through with any of the supported recommendations since the last UPR, therefore failing to ensure access to safe abortion services for people with an unwanted pregnancy. In February 2020, Sections 301 and 305 of the Criminal Code criminalizing abortion in all cases were ruled unconstitutional by the Constitutional Court. Section 301 sanctioned “any woman causing her own abortion or allowing another person to cause it” for an imprisonment of no more than three years or a fine not exceeding 60,000 Thai Baht, or both; while Section 305 permitted abortion in two exceptional cases: pregnancy arising from rape or risk to the mother’s health. In January 2021, the Parliament eventually passed an amendment to both Sections, and the Amendment entered into effect on 7 February 2021, allowing abortion on request until the 12th week of pregnancy. This is indeed an important legal milestone for Thailand, but the amendment is, however, not fully in line with international human rights standards; **as beyond 12 weeks of pregnancy, undergoing abortion remains a crime.** Under international human rights law, everyone, including people with an unwanted pregnancy, has a right to life, a right to health, and a right to be free from violence, discrimination, and torture or cruel, inhuman and degrading treatment. Denying people with an unwanted pregnancy their right to access safe abortion amounts to violating their fundamental human rights aforementioned. **More recently, on 28 September 2021, International Safe Abortion Day, a group of UN Experts reminded the world that abortion is essential healthcare and a human right.**

The voices of the people and civil society groups were ignored, despite the fact that more than 38,990 people signed [Tamtang’s petition](#) to fully decriminalize abortion in Thailand. It was them who had initiated the amendment process by submitting a complaint to the Constitutional Court on the constitutionality of the provisions in the criminal code, after a medical staff from the Referral System for Safe Abortion Network (RSA), which was under the cooperation with the Ministry of Public Health, was charged with violating Sections 301-305.

**Abortion remains a ‘taboo’ subject in Thailand due to strong social and religious stigma, coupled with the lack of availability, accessibility and affordability of abortion facilities.** People with an unwanted pregnancy who are unable to easily access safe abortion services resort to unsafe black-alley options, which put their lives and health in danger. According to a report by the Thailand’s Women and Reproductive Rights Foundation, **the estimated number of women seeking underground abortion is about 200,000 per year, 40% of which resulted in health complications.** A fatality rate is estimated at 300 deaths per 100,000 abortions, a deeply troubling statistic when compared to less than one death in 100,000 abortions in developed countries. Official statistics also show that over the past decade, more than 300,000 women have sought medical treatment from Thai state hospitals for incomplete operations of pregnancy termination that were performed underground. Nearly 100,000 of them suffered severe health complications and infections afterwards. **In 2019 alone, 673 women received treatment of health complications resulting from unsafe abortion, costing the National Health Security Office (NHSO) over 6 million baht.**



# REALITIES ON THE GROUND

## Challenges

## Cases, Facts, Comments

### Challenge 1: Lack of Access to Information on Safe Abortion Services

**Access to legal abortion services is not made readily, immediately and easily available for those who need them due to the lack of public information about the services.**

The lack of information not only hinders the immediate access to abortion, which simultaneously narrow down the remaining pregnancy period permitted for abortion, but also subjects pregnant women to more unnecessary health risks and increased service fee. The government's failure to make the information publicly and easily accessible for all can also result in the clients being rejected, stigmatized and looked down upon by health facilities that still do not agree with abortion rights.

**According to Tamtang Group, women who consulted them about their unwanted pregnancies and those who shared their experiences undergoing abortion, all agreed to have spent a tremendous amount of time searching for information related to abortion services.** Most of the information they were able to access was provided by dealers of illegal self-induced abortion pills, not by medical professionals from authorized abortion services.

In addition, more than 99% of the women who reached out to Tamtang Group and those who had attended safe abortion training organized by the group said they were unaware of the 3,000 THB financial support provided by the National Health Security Office (NHSO) to any women seeking abortion, despite the fact that this policy has been adopted by the NHSO since 2016.

Furthermore, as per the data collected from approx. 11,800 women who called the national hotline counseling service 1663 for unwanted pregnancies, between 1 March 2021 to 20 June 2021, 61 of them were denied abortion services at public hospitals on the ground that the hospitals had never been informed of the amended criminal code allowing abortion under 12 weeks of pregnancy. The public hospitals also affirmed that abortion was still an illegal operation. Some of the women who were denied access to abortion services confirmed they did not receive any information on the referrals of their cases and ended up having to search for information on their own until they found the number of the hotline service 1663.

Between April and June 2021, Tamtang Group surveyed women who consulted them about their unwanted pregnancies; ten of them confirmed having been denied abortion services, with one of them recalling that she was treated badly and looked down upon by a nurse. A doctor even threatened to expose her request for abortion to a professor at her university.

### Challenge 2: Lack of Availability of Safe Abortion Services across Thailand

Safe abortion services are not available in sufficient numbers in every province across Thailand, making it difficult and time-consuming for women who need the services to access the facilities, especially during the COVID-19 pandemic when travel options were limited.

**Currently, Thailand has 80 authorized abortion services facilities, covering only 40 of the total 77 provinces of the country; 161 doctors who are members of the Referral System for Safe Abortion Network (RSA); and 619 multidisciplinary volunteers.** Of the total 80 abortion service providers nationwide, only four facilities can perform late termination of pregnancy beyond 20 weeks.

In addition to the insufficient number of abortion services throughout the country, each facility providing abortion services also has different conditions and terms of services. Some facilities only provide access to abortion for early pregnancies, while others would only serve adolescent teens. Some also reserve their abortion services for the population of their own district or province only, or limit their services to few cases per week. These ununiformed policies and practices make it more difficult for women to access safe abortion services.

**Due to the travel restrictions during the COVID-19 pandemic,** some RSA volunteer doctors have used up a remote online system to deliver abortion pills and provide advices for self-management and medication. Although the results of this new system come out satisfactory, the Department of Health has yet to adopt clear guidelines or official policies to support this form of online abortion services.



# REALITIES ON THE GROUND

## Challenges

## Cases, Facts, Comments

### Challenge 3: Abortion beyond 12 weeks still criminalized under the Criminal Code

Although the amendment to Sections 301 and 305 of the Criminal Code, which criminalized abortion in all circumstances, is a step in the right direction for the women’s full enjoyment of sexual and reproductive rights in Thailand, the Amendment still criminalizes abortion beyond 12 weeks, a relatively small period of gestational limit for women to make a well-informed decision over their bodies.

**Furthermore, most young persons with an unwanted pregnancy may not realize they are pregnant within the 12 first weeks of pregnancy, but would realize it within the first 24 weeks.** Therefore, the amendments to the Criminal Code do not respond to the needs and realities of persons with an unwanted pregnancy, as beyond 12 weeks of pregnancy, they would still be casted as criminals and could undergo unsafe abortions, which can be detrimental to their lives and health.

**For Thailand to fully decriminalize abortion, the access to safe abortion services shall not be regulated under the Criminal Code but shall be regulated under a Health Code or via the enactment of a specific abortion law, ensuring persons with an unwanted pregnancy can exercise their sexual and reproductive health and rights and can make informed-decision over their body. #MyBodyMyRights**

In February 2020, Sections 301 and 305 of the Criminal Code criminalizing abortion in all cases were ruled unconstitutional by the Constitutional Court. Section 301 sanctioned “any woman causing her own abortion or allowing another person to cause it” for an imprisonment of no more than three years or a fine not exceeding 60,000 Thai Baht, or both; while Section 305 permitted abortion in two exceptional cases: pregnancy arising from rape or posing risks to the mother’s health. In January 2021, the Parliament eventually passed an amendment to both Sections, and the Amendment came into effect on 7 February 2021, allowing abortion on request until the 12th week of pregnancy.

After this period, women can undergo authorized abortion procedures only if they fulfill one of the criteria set by the Medical Council of Thailand and Ministry of Public Health. Any person who has their pregnancies beyond 12 weeks terminated without fulfilling any of the criteria is still criminalized by Section 301 of the Criminal Code, with six months of imprisonment and/or a fine up to 10,000 Thai Baht as punishment.

Although this is indeed an important legal milestone for Thailand, the amendment is still not fully in line with the international human rights standards guaranteeing that the right to health of a person with an unwanted pregnancy is prioritized. On the contrary, the Constitutional Court’s ruling acknowledged the right of the fetus, suggesting that despite the ruling, the court still adopts a pro-life stance. Therefore, the revised provisions in the Criminal Code do not comply with international human rights standards recognizing abortion as an essential healthcare and a human right. Abortion shall be fully decriminalized.

## RECOMMENDATIONS

### 1. On Challenge 1: Lack of Access to Information on Safe Abortion Services

- 1.1. In line with the 2016 General Comment No. 22 on the right to sexual and reproductive health of the Committee on Economic, Social and Cultural Rights, **make readily available and easily accessible evidence-based information and education in different languages about sexual and reproductive health of women and girls, including the location and information on safe abortion services by 2022.**
- 1.2. **Inform personnel under the Ministry of Public Health of the amendments to the Criminal Code allowing for safe abortion within 12 weeks of pregnancy and provide the necessary training to healthcare professionals so that those seeking abortion will have immediate, unhindered and informed access to safe abortion services by 2022,** in line with the CESCR General Comment No. 14 on the Right to the Highest Attainable Standard of Health.

### 2. On Challenge 2: Lack of Availability of Safe Abortion Services across the Country

- 2.1. In line with the 2016 General Comment No. 22 on the right to sexual and reproductive health of the Committee on Economic, Social and Cultural Rights and the 2017 CEDAW Committee’s Concluding Observations to Thailand, **increase the number of healthcare facilities that provide safe abortion services, make them available and accessible in sufficient numbers across the country within three years,** especially the facilities that are capable of performing abortion for late pregnancies, such as those beyond 12 weeks.
- 2.2. In line with the 2016 General Comment No. 22 on the right to sexual and reproductive health of the Committee on Economic, Social and Cultural Rights, **allocate proper budgets for safe abortion facilities to ensure the quality and accessibility of the services by 2022,** so that the amendments to the criminal code allowing for abortion within 12 weeks of pregnancy are effectively implemented - especially during the COVID-19 pandemic with regards to remote counseling services.

## RECOMMENDATIONS

### 3. On Challenge 3: Abortion beyond 12 weeks still criminalized by the Criminal Code

- 3.1.** In line with the 2018 General Comment No.36 of the Human Rights Committee on the right to life and international human rights standards recognizing access to safe abortion services as essential healthcare and a human right, **fully decriminalize abortion by repealing Sections 301-305 of the Criminal Code; and enact a specific abortion law by 2023, recognizing the right to safe abortion and regulating access to safe abortion services within 24 weeks of pregnancy for persons with an unwanted pregnancy, guaranteeing the exercise of their right to sexual and reproductive health and rights, and their right to decide over their body.**



## REFERENCES

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