



THAILAND

Joint UPR Submission to the UN Universal Periodic Review

39th Session of the UPR Working Group

Safe Abortion in Thailand

Submitted on 25 March 2021

Submission by:

Tamtang is a human rights feminist group giving all women in Thailand (and Thai women outside Thailand) access to non-biased information needed about access to safe abortion. Tamtang advocates for the right to safe abortion in Thailand, where despite abortion being legal under certain conditions, many procedures are still taking place 'underground' due to stigma, lack of information and provider refusal. Since 2011 Tamtang has offered information about safe abortion and reproductive health on its website and free counselling hotline/messaging service.

Manushya Foundation is a women-led and innovative non-profit organization with the goal to reinforce the power of local communities, in particular women human rights defenders, so they can advance their human rights and fight for equality and social justice. Manushya means "Human Being" in Sanskrit; it was founded in 2017 to engage, mobilise and empower local communities across Asia to be at the center of decisions and policies that affect them by: connecting humans through inclusive coalition building and; by developing strategies focused at placing local communities' voices at the centre of human rights advocacy and domestic implementation of international human rights obligations and standards. Manushya Foundation strengthens the solidarity and capacity of communities and grassroots to become Agents of Change fighting for their rights and providing solutions to improve their lives, their livelihoods and the human rights situation on the ground.

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1. Introduction

- 1.1. In this submission, the authors examine the compliance of the Thai Government with the recommendations received during the 2nd UPR cycle of Thailand, particularly in relation to women's rights to healthcare services, particularly sexual and reproductive health. The authors then draw specific, measurable and result-oriented recommendations to address to ensure that women in Thailand are enabled to access safe abortion services without discrimination or facing punishments.
- 1.2. During the 2nd UPR cycle, the Thai government received six recommendations related to rights to access to healthcare, particularly sexual and reproductive health, which the government all supported. However, our assessment demonstrates that the government has not implemented any of the recommendations since its last UPR, therefore failing to ensure girls' and women's right to access safe abortion services.
- 1.3. The authors are deeply concerned with Thailand's policies regulating safe abortion, which are not aligned with international human rights standards. The authors are also concerned with the religious and social stigma on abortion, which remains a controversial issue in Thailand, and with the lack of access to safe abortion, due to stigma, discrimination, lack of infrastructure, and high cost related to it. We are concerned that girls and women who are unable to legally access safe abortion services resort to underground abortions, which are often unsafe and pose threats to the mother's health and lives. According to a report by the Thailand's Women and Reproductive Rights Foundation, the estimated number of women seeking underground abortion is 200,000 a year.¹ This results in a 40 percent complication rate and a fatality rate 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.² Official statistics also show that over 300,000 women have sought medical treatment from Thai state hospitals for incomplete abortions, over the past decade. Nearly 100,000 of them suffered severe complications and infections.³ In 2019, there were 673 women who received treatment of abortion complications which cost National Health Security Office (NHSO) about 6 million baht.
- 1.4. This submission indicates that women are unable to adequately access safe abortion services in Thailand, resulting in violations of their human rights, in the following manner:
- Section 2 discusses the legal framework regulating abortion services
 - Section 3 discusses the lack of access to safe abortion services
 - Section 4 discusses the lack of information regarding safe abortion services and procedures
 - Section 5 discusses the religious and social stigma on abortion that prevents girls and women from undergoing abortion
 - Section 6 includes recommendations to the Thai government, addressing the challenges and rights violations discussed in foregoing sections

Section 2: The legal framework regulating abortion services

- 2.1. In order to ensure that women are enabled to access their right to healthcare services, including safe abortion services, Thailand's legal framework needs to be supportive of abortion. However, during



its 2nd UPR cycle, the Thai government did not receive any recommendation specifically addressing legislation regulating safe abortion. This is problematic because in Thailand, until early 2021, women who underwent abortion were being criminalized under Section 301 of the Penal Code which stated that ‘any woman, causing herself to be aborted or allowing the other person to procure the abortion for herself, shall be imprisoned not more of three years or fined not more of sixty Baht, or both’.⁴ Even though Section 305 provided exceptions in case of rape or health concerns, doctors still refused to perform abortion in such cases.

- 2.2. In February 2020, the Constitutional Court ruled that Section 301 of the Penal Code are both unconstitutional because they only punish women, breaching the constitutional principles of equality and liberty. The Court also stressed that the Sections resulted in illegal abortions which have endangered many women. Therefore, the government committed to amending both Sections before 13 February 2021. To amend the Section, two proposals were submitted to the Cabinet: (1) The Cabinet submitted a proposal which would permit abortion ‘on demand’ up to 12 weeks, whereas later, abortion can only be legally undergone for specific reasons. (2) Another proposal was submitted by the opposition Move Forward Party, which would allow women to terminate their pregnancies within the first 24 weeks of their pregnancy.⁵ Late January 2021, the Parliament passed that an amendment to the Sections of the Penal Code that came into effect on 7 February 2021, regulating abortion, permitting women to terminate their pregnancy during the first 12 weeks.⁶
- 2.3. While the new law is a step in the right direction of legalizing abortion, the authors continue to be concerned regarding the legislation because abortion remains a crime under the penal code, when undergone beyond 12 weeks. Further, women and girls are still denied the right to decision-making over their own body and regarding their own pregnancy and their rights to reproductive health continue to be violated. According to the new law, women can only legally terminate their pregnancy during the first 12 weeks. After that, women are able to legally undergo abortion if they fulfill one of the criteria set by the Medical Council of Thailand (MCT) and Ministry of Public Health (MOPH): if the pregnancy poses a threat to the mother’s physical and/or emotional health, if there are fetal abnormalities or if the pregnancy is the result of sexual assault, in these cases the gestational age (GA) is not limited. There is a gestational limit, allowing abortion between 12-20 weeks of gestation only after a woman obtain “Option Counseling” from the registered counselor office⁷. However, women who seek to terminate their pregnancy beyond 12 weeks and do not fulfill any of the criteria will still be criminalized and could be sentenced to six months in jail, and a fine of up to 10,000 Thai Baht (THB).⁸ Therefore, the new law fails to ensure that all women are enabled to legally undergo safe abortion.
- 2.4. The authors are concerned that under the new regulations underground and unsafe abortions will continue. While the new regulations allow abortions up to 12 weeks, it may need to be seen whether in practice, women will also be able to undergo abortion services. Women wishing to undergo abortion still face barriers such as fear and social stigma.⁹ Unfortunately, the penalties provided to women seeking abortion beyond 12 weeks of their pregnancy will maintain the stigma of abortion in Thailand.¹⁰ Therefore, women’s groups continue to advocate for full legalization of abortion, so that all women are enabled to access safe abortion services without discrimination.

Section 3: Lack of access to safe abortion services

- 3.1. During its 2nd UPR cycle, Thailand did not receive any recommendation specifically addressing the provision of safe abortion services in Thailand, even though many challenges regarding this are observed, as explained below. These challenges have severe consequences for women and girls wishing to undergo abortion: as women and girls face challenges accessing safe abortion services,



the only option available to them is turning to unqualified providers or knock-off abortion pills. According to a report by the Thailand's Women and Reproductive Rights Foundation, the estimated number of women seeking underground abortion is 200,000 a year.¹¹ This results in a 40 percent complication rate and a fatality rate 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.¹² Official statistics also show that over 300,000 women have sought medical treatment from Thai state hospitals for incomplete abortions, over the past decade. Nearly 100,000 of them suffered severe complications and infections.¹³

- 3.2. One of the challenges faced by women and girls in accessing safe abortion services is that doctors are unwilling to perform abortions due to moral concerns, even when women are legally permitted to undergo abortion.¹⁴ That the medical community in Thailand commonly has a pro-life stance, is also demonstrated by the fact that many universities do not teach how to safely perform an abortion. Therefore, even with the new legislation allowing for women and girls to legally terminate their pregnancy up to 12 weeks (as explained in Section 1), it needs to be seen whether doctors are willing to comply with the new law and perform abortions.
- 3.3. If medical facilities refuse to perform abortions, they are expected to refer eligible patients to another facility. However, they do not always do so, and there is neither legislation stopping them from simply turning away a woman seeking to terminate a pregnancy nor a national plan to change the attitude of the doctors towards safe abortion.
- 3.4. With very few facilities officially providing abortion, reproductive health referral networks are an important mechanism to help women get easy access to safe abortion services. It has been estimated that of roughly 40,000-50,000 gynaecologists in the country, only about 125, or about 0.2 percent of them are part of Referral System for Safe Abortion.¹⁵ In 2020, There were about 80 facilities in Thailand: 52 governmental hospitals, 2 private hospitals and 25 private clinics and 140 doctors (gynaecologists and others). Among 52 Governmental hospitals, rules set up by each hospital about providing abortion vary, including setting up the committee to consider case by case, limiting the service to girls under 20 only, providing services to people in their province or sub-province only, providing services in cases of rape or fetus anomaly only or setting a limit on the number of abortions per weeks. 25 private clinics can provide abortion in the first 12 weeks of pregnancy only according to the MDC. There are only 2 hospitals in Thailand that can provide abortion up to 24 weeks of pregnancy. In light of different rules, women who are pregnant over 12 weeks need to travel long distances to access the facilities.
- 3.5. Abortion Pill has been registered as the essential medicine in Thailand since 2013 under the category of E1 for the abortion within 9 weeks later extended to 24 weeks in 2015. It requires a prescription from doctors and is not available over the counter. The Thai government is in charge of the distribution of medical abortion pill to hospitals in the network of NHSO. Thus, access to abortion pill is hindered by government regulations and inadequate facilities rather than availability or supply in the market.
- 3.6. Women and girls seeking to terminate their pregnancy also have to deal with the barrier to cost. To illustrate, a vacuum aspiration procedure can cost up to 5,000 THB, while pills used to induce abortion typically cost about 500 THB, an amount roughly 1.5 times of Thailand's daily minimum wage. Even though NHSO provides 3,000 THB to cover abortion costs, people are unaware of this.¹⁶
- 3.7. Women and girls seeking to undergo safe abortion also have to deal with the barrier of distance. For women living in rural areas, this can be an insurmountable challenge, as to undergo safe abortion,



they may require travelling long distances, up to 400 kilometres, which they are often unable to do. Currently, out of over 1,000 hospitals and clinics, there are only about 100 in the entire country that are considered pro-choice and offer safe abortion services. Those facilities are far from evenly dispersed, with most located in major cities. There are three facilities in Bangkok, two clinics in Chiang Mai and one in Phuket. Therefore, the majority of provinces have no facilities at all, thus being extremely limiting to women located in other cities. For example, in the Isaan region (Northeastern Thailand) only one hospital provides safe abortion services. However, even the hospitals that offer safe abortion services have regulations and exceptions in place: only some districts are being covered, and people have to obtain an ID card. There is the need for at least one hospital in each province to offer safe abortion services, and also more campaigns to let people know that they can get safe and legal abortion services for free under universal healthcare coverage.¹⁷

- 3.8. Additional challenges in accessing safe abortion services are faced by marginalised women, including migrant women. They are often unaware of safe abortion services available, and are not covered by the NHSO, Social security and Act for Prevention and Solution of the Adolescent Pregnancy Problem of 2016. This is particularly problematic as many girls from Lao PDR get pregnant in Thailand.¹⁸
- 3.9. The government still considers the unplanned pregnancy as the problem of teenagers in spite of the fact that girls under 19 account for only 16 percent of all the women¹⁹ This perception also misled the contraception policy as now the NHSO only provides free contraceptive implants for girls under 20 and women who have had an abortion. For the women who fall outside of the criteria, such as those who have children, they need to pay by themselves when seeking contraceptive implants. The implementation of the Act for Prevention and Solution of the Adolescent Pregnancy Problem of 2016 is problematic as many facilities still require girls who access reproductive health services between 15-20 years to provide permission from their parents, in conflict with Article 5 of the act that indicates that girls from 10-20 years can take a reproductive health decision as well as a regulation issued by the MOPH stating that girls from 15-20 can access the abortion service without their parent's permission. For the women living with HIV, the government aims mainly to prevent the vertical transmission by treatment of mother and child whereas the safe abortion for women living with HIV was not addressed in the Prevention of Mother to Child Transmission Program (PMTCT)
- 3.10. During COVID-19, women face more barriers in accessing abortion services due to travel restrictions and limited health services in lockdown. Yet, demand for safe abortion is observed to be increasing. MOPH has drafted a policy on Telemedicine of abortion pills since the peak of the pandemic last year (April 2020) but failed to put it into practice until now.

Section 4: Lack of information regarding safe abortion services and procedures

- 4.1. During its 2nd UPR cycle, Thailand did not receive any recommendation specifically addressing women's right to information regarding safe abortion services and procedures in Thailand, even though many challenges regarding this are observed, as evidenced below.
- 4.2. Generally, Thai people are unaware of safe abortion services that are available. In schools, students are not being taught about safe abortion either. Consequently, if students find themselves pregnant, they do not know where to seek help. The organisation HingHoyNoy does receive cases regarding teenage pregnancies through Facebook, however, Facebook does not allow content related to abortion. This severely impedes peoples' ability to access information about safe abortion services and procedures.²⁰



- 4.3. When medical practitioners and nurses perform abortions, often they do not provide the patient with information on the procedure or the method employed. Therefore, women have no knowledge of how abortions are performed, and which methods were used, even after undergoing the procedure. This clearly violates women's right to information, which is significant for them to ensure that they are able to make informed decisions regarding their pregnancy.
- 4.4. The Thai government, through the Department of Health of the Ministry of Public Health as well as the National Health Security Office has made little efforts to provide more information about abortion services and their procedures. It established a network of doctors, nurses, and multidisciplinary staff to provide abortion services. The National Health Security Office also allocated a budget of 3,000 THB per abortion, without setting an age limit. However, the problem remains as services are not promoted by any means. While the information on safe abortion services and procedures can be found on the MOPH website, the relevant document is intended for internal use. Due to the lack of promotion of safe abortion services, societal attitudes towards abortion remain unchanged and health providers continue to be reluctant to promote services. Women seeking safe abortion services rely on t NGO's hotline such as Tamtang and 1663 to be referred to facilities. Even the law was revised, the situation remains the same.

Section 5: Religious and social stigma on abortion prevents girls and women from undergoing abortion

- 5.1. Though yearly around 300,000 to 400,000 legal and illegal abortions are performed in Thailand, abortion remains taboo and is considered sinful under Thai Buddhist beliefs.²¹ Consequently, women undergoing abortion are being stigmatized and demonized. This results in women and girls facing challenges accessing safe abortion services, and it discourages conversations and education on the issue. While stigma on abortion severely affects girls' and women's ability to access safe abortion services, this was not specifically addressed by any of the recommendations the Thai government received during its 2nd UPR cycle.
- 5.2. Given that approximately 94 percent of Thailand's population identifies as Buddhist, much of the debate around abortion stems from religious traditions and social thought. Abortion is considered to be murder under Buddhist precepts, which states that thou shall not kill living things. Therefore, women who undergo the procedure often wonder if they would be able to have kids again, if they are murderers or if they have committed a crime. Women feel guilty for not being 'good', shamed and depressed, with people around them reminding them of their sin, thus they carry lifelong guilt for choosing abortion.
- 5.3. These Buddhist beliefs of abortion as sinful and murder are also the reason that (1) medical practitioners still refuse to perform abortions or promote safe abortion services (as described in Section 3); (2) women and girls do not dare seek help out of shame; (3) the lack of confidentiality around women seeking abortion and the stigmatization of those using contraceptive implant or sterilization; (4) schools continue to kick pregnant teens out and fail to help girls who had an abortion, and (5) the government offers them no help. Even if abortion would be completely legalised, religious beliefs and the social stigma will have to be addressed so that acceptance towards safe abortion will be reached.



Section 6: Recommendations to the Thai Government

Manushya Foundation and Tamtang Group make the following specific recommendations to the Thai government and call on the government to guarantee that all women and girls have access to and are enabled to undergo safe abortion, without facing discrimination and stigma.

6.1 Regarding the legal framework regulating abortion services

a. According to paragraph 8 of General Comment No.36 (2018) by the Human Rights Committee on the right to life, voluntary termination of pregnancy must not be regulated if such measures violate the right to life of a pregnant woman or girl. Restrictions on the ability of women or girls to seek abortion must not, jeopardize their lives, subject them to physical or mental pain or suffering, discriminate against them or arbitrarily interfere with their privacy.

b. According to paragraph 8 of General Comment No.36 (2018) by the Human Rights Committee on the right to life, refrain from regulating pregnancy or abortion in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions, with abortion laws should be revised accordingly. For this, the state should not take apply criminal sanctions against women and girls undergoing abortion or against medical service providers assisting them in doing so, compelling women and girls to resort to unsafe abortion.

6.2 Regarding the lack of access to safe abortion services

a. According to paragraph 8 of General Comment No.36 (2018) by the Human Rights Committee on the right to life, remove existing barriers that deny effective access by women and girls to safe and legal abortion, including barriers caused as a result of the exercise of conscientious objection by individual medical providers.

b. According to paragraph 8 of General Comment No.36 (2018) by the Human Rights Committee on the right to life, provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl are at risk, and where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or is not viable.

c. According to paragraph 8 of General Comment No.36 (2018) by the Human Rights Committee on the right to life, ensure the availability of, and effective access to, quality prenatal and post-abortion health care for women and girls in all circumstances, and on a confidential basis.

d. In line with Concluding Observation 39 of the Concluding observations on the combined sixth and seventh periodic reports of Thailand by the Committee on the Elimination of Discrimination against Women (2017), strengthen measures to reduce maternal mortality, including by ensuring the availability and accessibility of adequate sexual and reproductive health-care services.

e. According to Concluding Observation 30 of the Concluding observations on the combined initial and second periodic reports of Thailand by the Committee on Economic, Social and Cultural



Rights (2015), take preventive measures to address the problem of unsafe abortions, protect and promote access to safe abortion services through a specific program, strengthen availability and affordability of sexual and reproductive health services to everyone in Thailand regardless of nationality, especially in rural areas. Ensure that migrant workers covered by social security enjoy the same right to safe abortion service as Thais.

f. Ensure full protection against discrimination based on race, age, health, religion and ensure that women and girls seeking safe abortion do not suffer from discrimination from service providers. This is particularly important as women still experience stigma and discriminatory practices when accessing safe abortion services in Thailand, including services and treatments being denied.

6.3 Regarding the lack of information regarding safe abortion services and procedures

a. According to paragraph 8 of General Comment No.36 (2018) by the Human Rights Committee on the right to life, effectively protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions. In particular, by ensuring access to quality and evidence-based information and education in different languages about sexual and reproductive health, providing them with a wide range of affordable contraceptive methods, and preventing the stigmatization of women and girls seeking abortion.

b. In accordance with the Preventable Maternal Mortality and Morbidity and Human Rights developed pursuant to resolution 11/8 of the Human Rights Council (2009), preventing maternal mortality and morbidity requires the effective promotion and protection of the human rights of women and girls, in particular their rights to life, to be equal in dignity, to education, to be free to seek, receive and impart information, to enjoy the benefits of scientific progress, to freedom from discrimination, and to enjoy the highest attainable standards of physical and mental health, including sexual and reproductive health.

6.4 Regarding the religious and social stigma on abortion that prevents girls and women from undergoing abortion

a. In line with the Preventable Maternal Mortality and Morbidity and Human Rights developed pursuant to resolution 11/8 of the Human Rights Council (2009), collect disaggregated data, including data disaggregated by age, rural or urban location, disability, religion, health, and other relevant criteria, in relation to maternal mortality and morbidity, to ensure effective targeting of policies and programmes to address discrimination and the needs of disadvantaged and marginalized women and adolescent girls, to permit effective monitoring of policies and programmes, including through the adoption of national-level targets and indicators reflecting the main underlying causes of maternal mortality and morbidity, and through the development of appropriate health programmes.



Annex: Assessment of implementation of UPR recommendations received during the 2nd UPR Cycle of Thailand, particularly in the context of safe abortion services

Theme: Improvement of maternal and infant health			
158.151 Continue to develop the health system through the strengthening of the right to enjoy health for all segments of the society (Iraq); Source of position: A/HRC/33/16 - Para. 158	Supported	E42 Access to health-care (general) Affected persons: - general	Status: Not implemented Source: Paragraph 2.1-5.3
158.152 Facilitate access to health services for all the population in the Thai territory (Madagascar); Source of position: A/HRC/33/16 - Para. 158	Supported	E42 Access to health-care (general) Affected persons: - general	Status: Not implemented Source: Paragraph 2.1-5.3
158.154 Further strengthen 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); Source of position: A/HRC/33/16 - Para. 158	Supported	E42 Access to health-care (general) Affected persons: - women - children - older persons	Status: Not implemented Source: Paragraph 2.1-5.3
158.153 Accelerate its efforts to achieve the targets on reducing infant mortality rate and achieving universal health-care scheme, including improving of the maternal health in remote areas (Bhutan); Source of position: A/HRC/33/16 - Para. 158	Supported	E42 Access to health-care (general) E41 Right to health - General Affected persons: - children - women - persons living in rural areas	Status: Not implemented Source: Paragraph 2.1-5.3
158.156 Reduce infant mortality rate and improve maternal health care in remote areas (Nigeria); Source of position: A/HRC/33/16 - Para. 158	Supported	E42 Access to health-care (general) E41 Right to health - General Affected persons: - children - women - persons living in rural areas	Status: Not implemented Source: Paragraph 2.1-5.3
158.155 Continue the reduction of maternal and infant mortality rates, and continue with the	Supported	E42 Access to health-care (general) E41 Right to health -	Status: Not implemented Source: Paragraph 2.1-5.3



<p>national plan for the development of children and youth (Bahrain); Source of position: A/HRC/33/16 - Para. 158</p>		<p>General E21 Right to an adequate standard of living - general Affected persons: - children - youth</p>	
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Endnotes

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² Kamheang Chaturachinda, Unsafe Abortion in Thailand: Roles of RCOG, *Thai Journal of Obstetrics and Gynaecology*, Vol.22, pp.2-7, January 2014, available at: <https://he02.tci-thaijo.org/index.php/tjog/article/view/16705/15519>.

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- ¹⁷ This information has been obtained from civil society groups in Thailand working on women's rights during a CERD and UPR workshop in November 2020.
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