

Hit & Run



Sex Worker's Research on Anti trafficking in
Thailand

by Empower Foundation 2012

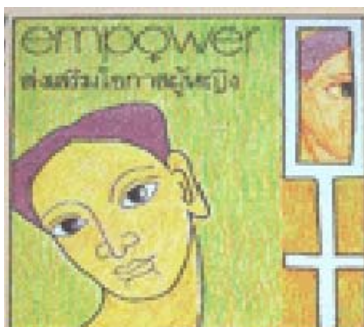
Hit & Run

The impact of anti trafficking policy and practice on Sex Worker's Human Rights in Thailand

by

RATS-W Team

empower foundation



Supported by Mama Cash

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MIDA TAPESTRY



The 'Mida Tapestry' is a 10 meter piece of cloth with 13 embroidered panels sewn along its length. The panels depict how women experience raid and rescue missions. Each panel is hand embroidered by migrant sex workers and is an important part of our research documentation.

It is an art work and a document that best speaks to and from the migrant sex worker community.

Images from the tapestry have been used throughout our written report.

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Introduction to our story



We travel for days up the mountains, across rivers, through dense forest. We follow the paths that others have taken. Small winding paths of dust or mud depending on the season.

I carry my bag of clothes and all the hopes of my family on my back. I carry this with pride; it's a precious bundle not a burden. As for the border, for the most part, it does not exist. There is no line drawn on the forest floor. There is no line in the swirling river. I simply put my foot where thousands of other women have stepped before me. My step is excited, weary, hopeful, fearful and defiant. Behind me lies the world I know. It's the world of my grandmothers and their grandmothers. Ahead is the world of my sisters who have gone before me, to build the dreams that keep our families alive. This step is Burma. This step is Thailand. That is the border.

If this was a story of man setting out on an adventure to find a treasure and slay a dragon to make his family rich and safe, he would be the hero. But I am not a man. I am a woman and so the story changes. I cannot be the family provider. I cannot be setting out on an adventure. I am not brave and daring. I am not resourceful and strong. Instead I am called illegal, disease spreader, prostitute, criminal or trafficking victim.

Why is the world so afraid to have young, working class, non-English speaking, and predominately non-white women moving around? It's not us that are frequently found to be pedophiles, serial killers or rapists. We have never started a war, directed crimes against humanity or planned and carried out genocide. It's not us that fill the violent offender's cells of prisons around the world. Exactly what risk does our freedom of movement pose? Why is keeping us in certain geographical areas so important that governments are willing to spend so much money and political energy? Why do we feel like sheep or cattle, only allowed by the farmer to graze where and when he chooses? Why do other women who have already crossed over into so many other worlds, fight to keep us from following them? Nothing in our experiences provides us with an answer to these questions.

Instead of respect for our basic human rights under the [United Nations Human Rights Council](#) we are given "protection" under the [United Nations Office on Drugs and Crime](#). We are forced to live with the modern lie that border controls and anti-trafficking policies are for our protection. None of us believe that lie or want that kind of protection. We have been spied on, arrested, cut off from our families, had our savings confiscated, interrogated, imprisoned and placed into the hands of the men with guns, in order for them to send us home... all in the name of "protection against trafficking". It's rubbing salt into the wound that this is called helping us. We are grateful for those who are genuinely concerned with our welfare ... but we ask you to listen to us and think in new ways.

After "raid or rescue" we will walk the same path again, facing the same dangers at the same border crossings. Just like the women fighting to be educated, fighting to vote, fighting to participate in politics, fighting to be independent, fighting to work, to love, to live safely... we will not stay in the cage society has made for us, we will dare to keep crossing the lines.

Who we are and what we did..... METHODOLOGY

Empower Foundation

Empower is a Thai sex worker organization started by Ms Chantawipa Apisuk, a group of sex workers and activists in Patpong, Bangkok's in 1984. Empower promotes the human rights of sex workers and provides a space for us to own, belong, organize and assert our rights to education, health, access to justice and political participation. More than 50,000 sex workers have been a formal part of Empower over the last 27 years. Our members include sex workers from Thailand and migrant sex-workers mainly from Mekong countries such as Laos, Burma¹, China, and Cambodia. Empower currently has centers based in 11 provinces in Thailand reaching over 20,000 sex workers regularly. All centers are largely led and managed by sex workers. In each area Empower is part of the sex worker community.

¹ In this report the name Burma is used for Myanmar, as migrant sex workers from Burma do not accept the military regime's legitimacy in changing the country's name and they still call home 'Burma'.

Why do research on anti-trafficking?

Sex workers in Thailand must be one of the most researched groups in the world. For decades individuals and groups have made their way to Empower to complete a PhD, make a documentary, write an article, or fulfil their grant terms. We have lots of experience with research.

For the past ten years sex workers in Thailand have had our human rights violated under the guise of implementing anti-trafficking law and policy. We have experienced an onslaught of slander vilifying our entire industry; violent police raids on our workplaces, arbitrary detention, forced rehabilitation in government shelters and deportation. We have continually advocated for reform and human rights protections especially for migrant sex workers. Despite these efforts our industry is still over represented in anti-trafficking raids and misrepresented as inherently violent, exploitative and an equivalent to human trafficking. People still do not know about or understand how current anti-trafficking practices are not only abusing the rights of individuals, but are a huge barrier to our efforts to further reduce exploitation in our industry.

In 2010 Empower decided to undertake a nation-wide community research project to identify and document the impact of the current Thai anti-trafficking law, policy and practice, on sex workers in Thailand, and to develop relevant and achievable solutions. Our secondary aims were to strengthen knowledge and awareness amongst our community about our legal and human rights; and to build our skills to design, carry out and collate research for use in our human rights advocacy.

How we did it

Soon after we decided to do our research Empower was introduced to a human rights impact assessment tool that was developed in 2010 by the Netherlands human rights institution, Aim for Human Rights and the European anti-trafficking network La Strada International.² The tool - The Right Guide - provided us with an internationally recognized instrument to help us measure the human rights impact of anti-trafficking policy and practice.

Initially we imagined a small team of three or four women would make up the research team, undertaking interviews etc. working under the project name RATS-W. We thought the team would be comprised of two sex worker leaders, a legal advisor and someone with experience in research and documentation.

However when we introduced the research idea at a project design and planning meeting of 90 sex workers held in Empower Nontaburi, it quickly became apparent that many more sex workers wanted to be directly involved. By the end of the research 206 Thai and migrant sex workers had become part of the RATS-W project; leading the research consultations, interviewing, giving expert testimony, investigating and undertaking the analysis and preliminary documentation. The 206 sex workers who worked on the project can be divided into 170 research partners; 36 research leaders coordinated by a research working team of four. They are all referred to herein as research leaders, research partners or sex workers interchangeably.

(A summarized list of contacts can be found in the Appendix)

² Aim for Human Rights 2010 The Right Guide

It was decided to limit the scope of our research to women from the Mekong countries of Thailand, Laos, Burma, China, and Cambodia doing sex work in Thailand. We didn't include men or transgender sex workers as to date they have not been targeted for anti-trafficking interventions or generally mentioned in the discourse. Although we are aware they are also impacted by anti-trafficking interventions, we do not know sex workers from overseas countries well enough to invite them to join us for this kind of project at this stage.

Our research team and partners collected information from thirteen provinces, nine of which had Empower Centers, with many located in border areas of Thailand.³

In each centre migrant sex workers used storytelling to explore, describe and analyze the current situation with special reference to:

- home situation and decision making
- experiences of travelling to and within Thailand
- conditions within their workplaces
- relationships with local police other authorities and Non Government Organizations (NGO)
- experience and knowledge of trafficking and/or the anti-trafficking law
- knowledge of their rights under Thai law

Our research partners in each centre had a wide range of relevant experiences. This included women who had been 'rescued' by mistake and detained for up to two years; women arrested and deported as a result of anti-trafficking raids; women who were currently in situations that fit the legal definition of human trafficking, if not the spirit; women who had been reluctant witnesses in trafficking court cases and women who really had been trafficked in the past.

The sex worker leaders in each centre also contributed additional general information on the local sex industry conditions and issues. This information was based on the knowledge gained from years of experience of providing weekly outreach visits with the local sex worker communities.

The research team also made outreach visits in each area to visit the bars, brothels and restaurants where women were working. Cross border visits were made by the research team to three areas – two in Burma (Tachileik and Kawthaung) and one in Laos (Savannakhet).

The research partners arranged interviews with five convicted or alleged traffickers. Three of these were employees at a Karaoke bar, who were arrested in an anti-trafficking raid and were currently on trial; one was an individual charged with the trafficking of minors for exploitation of prostitution; and one was a karaoke bar owner who had been threatened by police with being charged with trafficking in the past.

Sex workers also conducted interviews with local bar owners, police, immigration officials, government officials and NGO staff in the same areas. Visits were made to two government women's shelters: Baan Kredtrakarn in Bangkok, and Baan Song Khwae in Phitsanalouk, northern Thailand.

³ Empower centers are located in: Thai-Burma border (Mae Sot, Mae Sai); northeast provinces and near the Laos border (Ubon Ratchathani, Udon Thani, Mukdahan) Chiang Mai, central Thailand (Samut Sakhon, Nonthaburi and Bangkok) South (Phuket and Krabi)

In addition, the research team collected written data from government departments including the police, attorney generals, anti-trafficking and social welfare departments. Members of the research team also attended a number of regional and provincial level committee meetings, hosted by government officials and NGO working in the area of trafficking prevention.

Early in the research period two anti-trafficking raids were conducted in the north of Thailand.

A total of 30 women working in the sex industry were apprehended in these raids and faced the usual array of abuses and miscarriages of justice. Our research team and sex worker leaders from the areas involved documented the lived experience and impact on human rights of those who were involved in the raids and rescue. This process also included advocating for the rights of those apprehended as well as maintaining contact with the anti-trafficking NGO involved along with police, shelter staff and court officials. Empower also recorded the impact on families and supported them in their efforts to contact the women. The findings and evidence collected during this process have become a core part of our research.

Our research project was supported by Mama Cash as part of our Empower Chiang Mai grant. Thank you ma ma cash



What we found: EXECUTIVE SUMMARY

The impact of the Thai Suppression of Human Trafficking Act BE 2551 (2008), associated policies and practices on the human rights of sex workers in Thailand.

Our research did not set out to measure, prove or disprove the existence of human trafficking within the sex industry in Thailand. There is already a plethora of wildly contradictory reports on the subject. More significantly, as the leading sex worker organization working on the ground for the past 30 years, we already were well aware that human trafficking has been steadily disappearing from the sex industry in Thailand over the last 15 years.

Instead we set out to measure the impact of anti trafficking law and practices on the human rights of women who are accused of being trafficked and other women who are not trafficked, but severely affected by anti-trafficking measures.

The old days of all young girls forced to work in locked brothels are past. That is very old fashioned thinking. All we have now is a few teenagers who are where they should not be.
Anti Human Trafficking Division 4

We have now reached a point in history where there are more women in the Thai sex industry who are being abused by anti-trafficking practices than there are women being exploited by traffickers.

It is recognized internationally that anti-trafficking law, policy and practice should adhere to core human rights principles and *at the very least* do no harm to victims or others who might be caught up in trafficking interventions.

Despite this principle our research has shown that since the enactment of the Thai Suppression of Human Trafficking Act BE 2551, July 2008, dozens of the fundamental human rights to women are violated by its implementation. These violations have been perpetrated by both State and non-state actors against migrant sex workers, as well as women who were classified as victims of trafficking.

Our findings revealed that these violations are embedded in the interpretations or practices of 10 sections of the Suppression of Human Trafficking Act, they occur regularly and are nationwide.

There is also abuse by omission where certain human rights protections and entitlements that are stipulated under the Suppression of Human Trafficking Act are not being met by either State or NGO agencies.

Furthermore some elements of anti – trafficking practice in Thailand are in breach of other national laws, such as the Witness Protection Act 2003 and various protections in the Thai Penal Code.

All human beings are born with certain equal and inalienable rights. These rights are protected by and enshrined in Thai Constitutional and National laws; plus in the regional and international treaties that have been signed and ratified by the Thai Government. Being at odds with the Suppression and Prevention of Prostitution Act 1996 or breaching the Immigration Act 1979 does not change our fundamental rights; including our right to be seen as persons under the law and protected by the multitude of other laws that exist in Thailand.

Suppression of Human Trafficking Act BE 2551 (2008) Section 4: Definitions
“Exploitation” means seeking benefits from prostitution or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labor or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such persons consent.

Devil in the Details?

Problems with the definition of trafficking under the Act

There seems to have been no effort made to refine and adapt the definitions from the UN Protocol to suit local conditions and needs. Prostitution (sex work), appears prominently in the definition. Apart from begging, it is the only occupation singled out thereby implying it is a distinct form of trafficking. As the definition of trafficking already includes forced labour and sexual exploitation there is confusion as to what then constitutes trafficking for prostitution? When does seeking to benefit from prostitution become exploitation or trafficking? Under the current anti trafficking law, deciding on exploitation in prostitution is completely subjective and in the eye of the beholder.

For example: “I buy my disabled brother a wheelchair from my earnings,” he clearly *benefits*... but is this exploitation?

“My employer collects 20% of the money I charge for my services.” Is this exploitation?

Highlighting the word ‘prostitution’ implies that prostitution in and of itself is the crux of the problem, rather than whether women are forced or exploited within prostitution.

The confusion between sex work and trafficking remains a barrier to effective responses and identification of trafficked persons. It also hinders efforts to tackle the real concerns sex workers have about our working conditions, as we risk that the response to workers complaints will be increased raid and rescues not improved labour standards. Labelling all migrant sex workers as victims of trafficking effectively makes it impossible for sex workers to take a pro-active role in addressing human trafficking in our industry. We are all at risk of arrest detention and for the migrants among us, deportation so cannot be as effective as we could be.

In practice many anti-trafficking organizations, networks and the media continue to fuel the confusion and increase stigma, perpetuating the myth that trafficking and child sexual abuse in the Thai sex industry is widespread.

Sex workers are targeted for far more interventions than workers and communities in other industries. Moreover the sex worker community has been primarily targeted using punitive criminal justice strategies rather than education and awareness strategies. Sex workers are discriminated against under the Act.

RATSW posed the following question to Senior Police of the Anti- trafficking Division, Northern Thailand (Chiang Rai); who had been through various specialist trainings on anti- trafficking law and response:

RATSW: If a woman agrees to go to work in a brothel but ends up sent to a factory and forced to sew, is that trafficking? Would you rescue her?

Police: No that is not trafficking. We wouldn't rescue her. That is called an opportunity. If she really wanted to she would have to get out herself, come back to the border and start again.

Collecting evidence or creating crime?

Suppression of Human Trafficking Act Section 27.4: Police may enter dwellings or premises in order to seize evidence of trafficking in persons.

Clause 27.4 was predominately included in the Act to give police powers to enter private homes to assist women trafficked into domestic work. However it is much more commonly used to authorize police to go on undercover operations in Entertainment Places.

Typically plain clothed police will pose as customers and specifically ask to buy sexual services from migrant girls under 18 years of age. These entrapment operations in Entertainment Places are frequent and occur throughout the country carried out by corrupt police looking to extort money, as well as police on anti-trafficking or anti-prostitution assignments.

In 2003 the National Human Rights Commission of Thailand recognized that police entrapment often leads to serious human rights violations, especially against women in the sex industry and recommended it should only be used under a clear and precise system that prevents such human rights abuses. However instead of stopping the practice of entrapment or developing adequate safe guards, under the Suppression of Human Trafficking Act 2008, use of entrapment by police and NGOs has increased and appears to be a routine practice that continues unmonitored regardless of the negative consequences for sex workers and entertainment place workers.

In our research, the use of entrapment has resulted in at least two incidents of minors deciding to sell sex for the first time then being detained and later deported.

Both of the girls were entrapped by police and falsely identified as being victims of trafficking on the basis of their immigration status, age and the fact that they were working in an Entertainment Place, where sex workers were also employed. Neither of them were working as sex workers; and they did not want to be assisted by the government welfare department nor rescued from their working or living situation.

“These NGOs are making the problem. They come pretending to be customers, asking everywhere for young girls and waving big money around. Pretty soon people start looking to hire younger girls to meet the demand.”
Jay, Brothel owner, Chiang Mai.

The practice of entrapment to collect proof of trafficking not only leads to spurious and inaccurate evidence, it also promotes the sexual exploitation of minors, and is an assault on the human dignity of young women working in the entertainment industry in Thailand.

I came to Chiang Mai about 4 months beforehand. I was staying with my aunty and working in the karaoke bar. When I applied for the job no one asked my age and I never thought to mention it. I didn't know it was important. I wasn't ready to go with customers. I felt too shy. There was no pressure from anyone, it was up to me. It just meant I didn't earn as much as the others. Then this guy came in three nights in a row. He said I looked very young and he wanted me to go with him. Even though he offered to pay a lot I refused for the first two nights. Then I don't know why but on the third night I thought well, he seems nice and it would be good to have some more money. So I agreed to go with him. Big mistake. He turned out to be a policeman and I was arrested and locked up for 8 months.

Tip, research partner, Chiang Mai

Nearly a century of RAIDS: time to stop?

Suppression of Human Trafficking Act Section 27: Police can enter dwellings or premises without a warrant to discover and rescue a trafficked person and to seize evidence of trafficking in persons.

Police raids are terrifying traumatic events for all involved. Raids are not a new phenomenon as Thai police have been raiding Entertainment Places since the late 1920s, for almost 100 years. Generally Thai law demands that, apart from exceptional circumstances, police raids must be conducted in daylight hours between 6am and 6pm, as they are frightening and potentially dangerous operations for people in the premises and for police themselves.

However raids on Entertainment Places are traditionally carried out in the night and our research shows that raids in response to instances of suspected human trafficking in the sex industry are regularly carried out around 11pm or later. According to tradition usually large numbers

of armed police arrive at the Entertainment Place, enter and apprehend all women on the premises and any other workers present e.g. doorman, cashier, manager. Any women who attempt to run away, often from fear and confusion, are chased and controlled by force. It is not unusual for women to be injured in police raids while trying to escape. Since 2008, under the Section 27 of Suppression of Human Trafficking Act the police have been free to conduct such raids simply by gaining permission from a senior authority without having to have a warrant. This means they have extensive powers to enter and search, not limited by warrant conditions. Police may use Section 27 to gain access to the premises, then once inside they are able to insist on carrying out other searches such as urine tests for drug use, immigration checks, copyright licensing etc.

Suppression of Human Trafficking Act Section 29: Suspected victims of human trafficking can be held in custody for 24 hours, then the court can grant permission to extend the detention for a further 7 days.

All women who are apprehended in a raid are taken by police to the local police station where they are questioned by NGO workers and police in an attempt to ascertain whether they are indeed victims of trafficking in need of rescue or undocumented migrant sex workers in need of punishment. The interview process often doesn't begin until midnight and can take a few hours to complete. Migrant sex workers all reported that they were never given to understand why they were being interviewed and not one woman had ever been made aware of her lawful rights as a suspect, victim or as a witness. These rights include the right to know what one has been charged with; the right to call a trusted person or family member; the right to legal representation; the right to speak to a lawyer in private; and the right for a trusted person or lawyer to sit in on all interviews with police. Neglecting to inform people of these rights is in direct breach of rights enshrined both in the Thai Constitution and under the Thai Penal Code.

It is common practice for police to hand each woman a printed copy of her rights and have her sign if she is able, or otherwise authorize it with her thumb print. However, there is no attempt to verbally translate the document or read these rights to the women, who are generally not literate in Thai.

In much the same way women are compelled to authorize written statements, confessions, lists of belongings etc without being able to verify what they are agreeing to.

" It was so late. I was scared, tired and confused. I just put my thumb print to anything because I thought the quicker I did this the quicker I'd get out of there. Besides once the police have caught you, you just do what you're told. I never knew there was a choice"

Som, Mae Sai

There are no trained translators employed at police stations, or as part of the Anti Human Trafficking Division or the Ministry of Social Development and Human Security. Anti-trafficking NGOs may have volunteers they can call on, though they are also not trained translators. Women feel these amateur translators often have inadequate language skills and bring their own attitudes and agendas about sex work to the interviews.

In addition work colleagues, friends, employers and families are anxious and worried but unable to make contact with their loved one, and she in turn is effectively prevented from contacting them. This becomes even more important when they may be able to provide important evidence of age or other information that could make victim identification and assistance more rapid, efficient and accurate. In more general terms raids also disrupt migrant sex workers access to rights such as right to education and essential health and social services.

Organizations providing access to education and health for migrant sex workers can be shut out of areas for months after such raids as employers and workers try to keep a low profile to avoid further police activity. Ironically such organizations are the ones most likely to uncover exploitation, including trafficking and be in a position to assist those affected.

**Suppression of Human Trafficking Act Section 56
Privacy and Media: No person shall take, circulate or publish a picture of a trafficked person that might lead to their identification at anytime. In addition no one shall disseminate or publish information disclosing the history, place of work, home, or education of the trafficked person**

Photos and details of police raids, especially those raids on Entertainment Places implemented under the Suppression of Human Trafficking Act appear regularly in mainstream printed media, television and online. The photos are taken during the raid and subsequent police questioning, all without consent. There is even a lack of any implied consent, as often women are pictured making obvious and overt attempts to avoid or refuse being photographed. At times the media include photos of the women with black strips across their eyes, which simply makes them appear as criminals and fails to protect their confidentiality. To protect against recognition South East Asian faces need the bottom half of the face obscured not the eyes. News agencies commonly publish photos, and the name and address of the workplace, which is specifically prohibited under Section 56.

The media also plays a large role in perpetuating an inflated picture of trafficking of young women in the Entertainment Industry in Thailand. They routinely publish reports with sensational photos and headlines that give the number of women apprehended as the number of victims rescued. In actual fact our research has found that the ratio is around 6 to 8 non- trafficked migrant sex workers arrested, detained and deported for every persons classified as a victim of trafficking.

For example in the two raids we followed during our research, a total of 30 women were originally apprehended and of these 5 were finally classified as victims of trafficking (these five continue to deny that they were trafficked and it is likely that the number will decrease again). The headlines from one paper read 14 Burmese girls rescued from a brothel raid. When in fact over the following 24 hours it turned out to be three rescued and eleven arrested. By this time the news has moved on but the image of large numbers of trafficked girls in brothels remains in the public psyche fuelling misinformation, misplaced interventions and more abuses.

Suppression of Human Trafficking Act Section 33: The Ministry of Social Development and Human Security must provide assistance to trafficked persons, including medical treatment undertaken with the opinion of the trafficked person sought and providing that human dignity and the differences in sex, age, nationality, race and culture of the trafficked person be taken into account.

All women who are apprehended in raids routinely undergo mandatory medical tests with no information provided to them as to why the tests are required, and no genuine opportunity to refuse these testing procedures. There are no trained translators employed by hospitals where these tests are taken. Screening includes blood tests for infectious diseases, including HIV and internal vaginal examinations for sexually transmitted infections. Both exams are only enforceable under Thai National Security laws and/or if directly ordered by the court for specific purpose. In all other situations, mandatory testing is a serious breach of rights under the Thai Constitution.

There is no clear process, procedure or evidence of whether women are informed of their results or not; when that might be; or if HIV treatment is ever offered.

It is also unclear who else has access to their test results but our research proved that the results are not kept confidential as we were spontaneously given the results of medical exams of one group of women.

It is impossible to say why these tests are carried out as part of the anti-trafficking response. In addition these tests are discriminatory; as they not routinely performed for other suspected trafficking victims e.g. men trafficked into the fishing industry. They are a further affront to the dignity and rights of migrant women.

Defiant damsels in no distress

Our research found that women apprehended in raids since 2008 have overwhelmingly stated they came independently to Thailand and are working voluntarily in work they have chosen to do. They do not experience their work as exploitation and don't feel they have their freedom of movement restricted. Those who have taken loans and owe money to employers are not in systems defined as debt bondage. They may have various concerns about their working conditions but these are not a part of human trafficking. The only exceptions to this seem to be when women go along with the scripted story presented to them of being tricked and forced; in the mistaken hope they will avoid punishment and be released from custody. Once they discover this is not the case they often make a new statement. Generally women fiercely deny they have been trafficked and routinely give their age as over 18 years.

Anti-trafficking agencies place themselves in the bizarre situation of having to commit acts of violence and human rights abuses on the women and girls they rescue, in order to try and prove a crime has occurred, despite the denial and lack of cooperation from alleged victims.

What on earth has the state of our vaginas got to do with whether we are trafficked or not?

Lek, RATS-W team

People don't seem to take into account or understand that being asked why you are a sex worker is a loaded question. The question asks are you just a bad woman, or are you a good girl made bad? Answer one way and you may be treated with disgust. The other way may get you pity. It's a hell of a choice. One answer makes you a criminal, the other makes you a victim ...either way you end up in a cage.

Empower

Suppression of Human Trafficking Act Section 4: anyone procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving a child for the purpose of exploitation is guilty of trafficking in persons. Child means any person under eighteen years of age.

Unlike some other occupations where minors as young as 13 may work, albeit with special conditions applied, it has been illegal for anyone under 18 years to work in an Entertainment Place in Thailand since the enactment of the Entertainment Place Act BE 2509 in 1966. Furthermore the Prevention and Suppression of Prostitution Act BE 2539 of 1996 introduced harsh penalties for people guilty of involving children under 15 years or minors aged 15-18 years in prostitution. If the person apprehended in an anti-trafficking raid is under 18 years then this is automatically defined as exploitation and consent to work etc is irrelevant.

Although Empower agrees sex work is an adult job that requires physical and emotional maturity, our research shows the methods used to estimate women's ages and the subsequent treatment to be a human rights abuse.

Most migrant workers have been denied their right to migrate and work legally either by their home country or Thailand or both. In a 'raid and rescue' operation migrant sex workers who appear to the rescue team to be over 18 years and/or can produce documentation showing proof of age are charged under the Prostitution Act 1996, the Immigration Act 1979 and/or the Alien Working Act 2008. They are then released or deported depending on their immigration status.

Young women giving their age as 18 or older without documented proof of age at hand are automatically disbelieved. There is no attempt made to secure such proof via the family or other sources, instead the women are sent for bone and dental age assessments.

Age assessment is not mandated under the Suppression of Human Trafficking Act although it is covered at provincial level under MOUs on anti-trafficking activities in Thailand which predate the Act. The 2008 Act does however mandate the need to respect the fundamental human rights of victims of trafficking which includes the right to informed consent in medical treatment. The Act also requires that medical treatment for trafficking victims must be undertaken considering the opinion and human dignity of the trafficked person. In practice women are treated as dishonest and subjected to a bewildering series of x-rays, not related to their health or well being. Many who are sub-sequentially told they are younger than they stated are outraged, frustrated and indignant. Others are shaken and confused. All experience it as an assault on their human dignity.

The use of dental and bone examinations to determine the age of victims of trafficking is highly questionable practice in terms of human rights. Moreover estimating age solely on dental and bone x-rays is not credible scientific practice.

This practice is unacceptable as bone and dental testing is an unreliable measure to determine the specific age of persons between 16-20 years old. In the US and Europe, forensic bone and dental tests are never used as stand-alone age assessment tools as it is recognized that they can be incorrect by a period of up to 5 years. So called standard bone x-ray procedures are especially inappropriate to assess the age of young migrant women in Asia, as the age baseline used within these tests is based on a study of American children in the 1940s. It has been proven that significant variations in bone age will occur due to factors such as race, ethnicity, socio-economic and nutritional status.

International Anti-Trafficking Guidelines requires that assessment of alleged victims should be undertaken by trained and qualified individuals who should consider the following:

- the verification of the victim's age should be take into account:
- the physical appearance of the victim and his/her psychological maturity,
- documentation,
- checking with embassies and other relevant authorities,
- consensual medical examination and opinion
- the victim's statements

Given the unreliability and inconclusiveness of forensic testing procedures, it is now recognized that accurate age assessment must include additional processes such as longer periods of in- depth observations and input from experts from the same culture and background as those being assessed.

The age assessment procedure relies heavily upon the principle within both international and national anti- trafficking guidelines, of presumption of age and victim status.⁶ In general terms it encourages people to be treated as under 18 if doubt exists. While this principle is intended to protect young people ñin our situation it is being used to violate human rights. The principle and practice of age verification is being used to contradict the stated truth of young women who are working in the entertainment industry. The practice in its present form essentially forces them to accept a false identity as a victim of trafficking. This practice violates the core principle of rights-based support for victims.

One of the women in the raid we followed was detained for over 10 months because her tests estimated her age as 16 years. When we were finally able to obtain her documents she was 20 years old, exactly as she had stated at the time of the raid and at every other opportunity given to her

Bearing Witness

Suppression of Human Trafficking Act
Section 27: Police can summon any person to give a statement or evidence of trafficking
Section 27: paragraph 3 and 4: Criminal Procedure Code shall apply: Witness testimony can be taken promptly and used instead of witness physical presence at the trial.
Section 31: The Court shall hear the statements of witnesses promptly.

Non-trafficked migrant sex workers without immigration documents who are apprehended in 'raid and rescue' operations are frequently compelled to be witnesses, which is lawful under the Suppression of Human Trafficking Act 2008. However the Act also requires the prosecutor to take the witness testimony promptly, if necessary by invoking the Criminal Procedure Act and recording the witness testimony prior to the trial if long delays are likely.

In reality migrant sex workers are being held against their will, in detention in police cells or women's shelters, whilst awaiting the court hearings for weeks and months. Migrant sex workers have been detained as witnesses for periods up to a year, due to delays in the court hearings. This amounts to arbitrary detention. The police do not provide women with their legal and basic human rights and entitlements.

The accused trafficker however has a lawyer, either hired at his own cost or appointed free by the court. Women and girls who have been trafficked are represented by the public prosecutor, and in some cases also have a legal advocate provided by an NGO. However, the women held in custody as witnesses are not provided with any independent legal advice or representation. They are unable to contact family, friends or outside agencies, and those in shelters are forced to join education and training activities whether they want to or not. They have no real access to compensation or remuneration. They are restricted from any outside contact until they have testified in court; and have no access to seek redress for this injustice.

Legal Limbo Dance of nine women detained in police cells in Chiang Mai for over a month:

RATSW: Can they have a lawyer?

Police: No they don't need a lawyer they're not victims or defendants, they're just witnesses.

RATSW: So can they be released?

Police: No they're illegal aliens

RATSW: So they can be deported?

Police: No, they have to stay as witnesses

RATSW: Can they have a lawyer?

According to Thai law migrant sex workers could be enrolled as voluntary witnesses under the Witness Protection Act 2003 which mandates that witness have the right to protection, proper treatment; necessary and appropriate remuneration from the State.⁷ Under the Witness Protection Act women would be entitled to safe accommodation (outside of a police cell), daily living allowance, legal advocacy and support, training, education and protection.

Caged

Suppression of Human Trafficking Act

***Section 33:* The Ministry of Social Development and Human Security must provide assistance to trafficked persons, including medical treatment undertaken with the opinion of the trafficked person sought and providing that human dignity and the differences in sex, age, nationality. Race and culture of the trafficked person be taken into account.**

***Guideline 2.6:* in the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking: States must ensure that trafficked persons are not in any circumstances held in immigration detention or other forms of custody.**

Women and girls apprehended are not consulted about their place of detention, have no choice about which place they go to and cannot leave once they are there. There is no independent complaints mechanism accessible to women in the shelters.

The conditions in Thai shelters are highly problematic across a wide range of human rights issues. Restrictions on freedoms, quality of care and punishments are all major areas of concern.

As far back as 2009 the Global Alliance Against Traffic in Women raised concerns at the Twelfth Session of the Human Rights Council.

In brief major violations within shelters identified in our research include but are not limited to the following:

Dignity: Adult women are referred to and spoken to like children and in many ways treated as such. They are given chores, scolded and dressed in the uniform clothes.

Access to family: There is no attempt to create ways for migrant women and girls to have access to their family. In at least one instance family members were told they could only make contact if they could communicate in Thai as the conversation would have to be monitored and no translation was available.

We couldn't wear our normal clothes but had to put on a uniform. Only two kinds of people wear those kind of clothes; criminals and people in hospital. I wasn't sick and I wasn't a criminal.

Privacy of communications: Generally before the trial is over women and girls, whether witnesses or victims, are prohibited from having any communications with others. Even after this time all correspondence is opened and read before being passed on.

Employment and Study:

Shelter staff told us they assess the women's intelligence by asking them questions and if they are deemed smart they can study. Otherwise they must take gender biased training in sewing and handicrafts. They are not paid for their labour but may earn pocket money from sales after the costs of materials and tuition is deducted.

Religion, language and culture: The only religion recognized in state shelters appears to be Buddhism. Christians and Muslims are not provided for. This is especially abusive for Muslim women as no proper dietary considerations mean women often simply don't eat or eat only plain rice. This was particularly distressing for one woman during Ramadan. The culture of the shelters is such that she didn't dare ask for fear of standing out to staff. There are no trained translators for any of the Thai ethnic or Mekong languages despite the numbers of women and girls detained from these countries. Only Thai cultural events are recognized and there is no understanding or consideration for the differences between women and girls in the culture of daily life, for example women all complained the food was of poor quality and not what they are used to eating.

Punishments: The shelter psychologist told us that if women or girls misbehaved the most useful punishment for the staff was to cancel family visits, often without letting family know before they arrived. This was seen as especially useful for staff as the women knew their family would travel long distances and waste a lot of money for nothing.

Isolation: the same psychologist often orders periods of isolation for up to 6 weeks where women and girls are isolated from all outside contact when they are first sent to the centre. She says she uses this time to convince the women and girls that their parents are bad people who trafficked them. Sometimes this can take months she complained.

Health care: Women detained as witnesses reported being denied appropriate health care. One woman was distressed as she had not been taken for her regular pre-natal check-ups. She was also not given any of the vital vitamins and mineral supplements that are routinely dispensed to pregnant women in Thailand. A second woman asked to be taken to a dentist for treatment of a severe toothache. She was consistently refused and given paracetamol instead. A third woman with headaches and fever requested to see a doctor. The staff who are not medically trained told her she was just stressed. This is despite the fact the woman had a high fever and comes from a malaria prone area.

Maybe they think that anything is better than a brothel but in the brothel my employer took much better care of me than they do here. If I was sick he took me to the clinic, he provided good food for our meals and talked to us politely.

Discrimination: Compared to Thai women, migrant women and girls are less likely to receive formal educational opportunities and more likely to receive occupational training that is not formally recognized.

Suppression of Human Trafficking Act Section 37: Trafficked persons have the right to temporary work in Thailand, while waiting for court outcomes and repatriation.

There are obvious inequalities in the application of the Act between men and women affected by trafficking. Women are offered only very limited opportunities for work all within the shelter. Men however are able to seek work outside the shelters, going out and returning every day. Staff give the reason that women are weaker and more vulnerable to being exploited if allowed outside the shelters to work. Women are offered piece work for factories contracted by the shelter or make handicrafts to be sold at local shelter stores. They are not paid for their labour but rather earn money when their products are sold. If they sew badly or no one visits, they make nothing. Men on the other hand are able to work outside shelters, earning the daily minimum wage or more in labouring jobs.

This double standard discriminates against women, and is especially harmful for women who are often supporting families and children in their home communities prior to being detained in the shelter.

Suppression of Human Trafficking Act Section 33-35: Compensation: Prosecutor must inform the trafficked person of their right to compensation and make a claim during criminal proceedings in the Court.

No Money No Honey

Compensation has only been applied for and awarded to people affected by trafficking in occupations other than in prostitution. Women are not properly informed of their right to compensation or given access to the process to claim it. There seems to be an assumption that because the work, prostitution, is not legal than compensation is not warranted. Migrant sex workers regularly earn well above the minimum wage. Three young women who were detained for 8 months were recently deported home. No compensation claim was made on their behalf. Each was given 4,000 Baht by a leading anti -trafficking organization. That amount is equal to just a single month of salary.

Repatriation or disposing of the evidence?

Suppression of Human Trafficking Act Section 38: Repatriation: Officials shall undertake to return trafficking victims to their countries of origin without delay

During the research migrant sex workers currently living and working in situations which satisfy the definition of human trafficking explored the Suppression of Human Trafficking Act, especially sections outlining assistance for those affected by trafficking. They were unanimous in their findings that the current Act did not meet their needs. They wish to be able to leave their current employer, find new work often within the Entertainment Industry and have access to legal immigration status. The Act does not provide for any right or opportunity to stay. (They were pleased to note the inclusion of access to education but disappointed to find it came with compulsory detention.)

Even given that deportation is not what many migrant women want, repatriation without delay currently means a waiting period anywhere between 3 months up to 2 years. Women and girls affected by trafficking and deported are not guaranteed effective follow up or any ongoing support due to problems in cross border collaboration between States and NGOs. This is of major concern for women being deported back to Burma. Women are deported to areas of military conflict; persecution and systematic rape of ethnic women by the State military; and face punitive attitudes of officials towards women who have been working in the sex industry. Women's families and villagers have all been alerted about her situation. Women report that there is a lot of gossip leading to a great sense of shame for the woman and her family, upon their return home.

What next?..... Recommendations

Despite the fact sex workers and others in the entertainment industry are supposed to be the most vulnerable group to be affected by trafficking, to date we have not received any information and/or awareness raising about the crime of human trafficking. In fact sex workers are much more likely to be targeted by state and non state anti-trafficking actors, using punitive suppression strategies rather than capacity building and educational programs. No sincere consultations have ever been undertaken with sex workers to seek their input, assistance, knowledge and experience in designing and implementing trafficking intervention and prevention strategies within our own industry. Instead sex workers are humiliated, blamed, raided, detained and punished, all in the guise of trafficking prevention.

The Thai Suppression of Human Trafficking Act 2008, associated policies and practices has become a tool for corrupt police to extort more money from migrants, employers and sex workers. The Act has become a barrier to migrant sex workers asserting their human rights.

1. RECOMMENDATIONS FOR THE THAI GOVERNMENT:

- 1.1 The Royal Thai Government urgently consult with representatives of sex worker organizations, human rights organizations and legal experts to create a clear, accurate and objective definition of human trafficking.
- 1.2 We urge the Royal Thai Government to repeal those Articles under the Suppression and Prevention of Prostitution Act BE 2439 that criminalize sex work: and apply and enforce existing Labour, Social Security and Occupational Health and Safety Laws to Entertainment Place workers. Such legal reform must also include consulting with migrant sex workers to create mechanisms whereby migrant women can access permission to work in the Entertainment Industry.
- 1.3 The use of entrapment and raids on Entertainment Places must undergo urgent and thorough review by independent experts, including representatives from sex worker organizations and Entertainment Place Associations with the aim to either end the practice or at a minimum create strict guidelines to protect human rights.
- 1.4 The practice of illegally detaining migrant sex workers as witnesses in trafficking cases must be immediately ceased and any persons compelled to be witnesses must be given access to remuneration and all entitlements under the Witness Protection Act 2003. In addition witnesses must be given the option to be represented by legal advocates separate and independent from the prosecution and the defense, who are charged with protecting their rights throughout the trial and as long as necessary. The cost must be borne by the State.
- 1.5. The Royal Thai Government must take comprehensive and immediate steps to ensure that all women who are apprehended during trafficking investigations be awarded their full rights under the law. This includes but is not limited to: the right to contact a relative, friend, or other party; the right to translation and to understand; informed consent and the right to refuse medical procedures; protection from identification in the media.

1. 6 Where any trial delays are possible, prosecutors must be strongly urged to pre-record witness testimony promptly so that persons affected by trafficking can be released from the obligation to appear physically in court and therefore not be in situations of prolonged detention.
- 1.7 The Royal Thai Government in cooperation with sex worker organizations, migrant worker organizations, legal and language experts, should develop a training curriculum for translators in the Mekong languages. Government funded training courses using this curriculum should be provided, along with access to work permits for potential translators from Mekong countries. These trained translators must be available to all persons affected by trafficking at all times.
1. 8 The practice of mandatory detention in shelters must be immediately ceased.
1. 9 Accessible safe complaints mechanisms must be created and implemented in all shelters, both State and non State.
- 10.0 There must be an urgent review of the questionable practice of dental and bone x-ray techniques to determine age, and alternative models of age determination developed that are more likely to be accurate and do not abuse human rights. In addition every effort must be made to locate documents or other proof to verify age or other information.

2. SUGGESTED ACTIONS FOR THE ENTERTAINMENT INDUSTRY: i.e. sex worker organizations, other stake holders

- 2.1 Sex workers must be supported to achieve improvements in working conditions in order to reduce exploitation.
- 2.2 Information and awareness campaigns for employers and workers in the Entertainment Industry be developed on safe migration, human rights, labour rights, and migration, including trafficking, for wide distribution.
- 2.3 Guidelines be developed and implemented with the media in Thailand to provide minimum standards for media coverage of instances of human trafficking within the entertainment industry.
- 2.4 An independent legal advocacy team for sex workers be available to represent and support sex workers in Thailand affected by trafficking.
- 2.5 A broad based approach to improving conditions within the sex industry be implemented highlighting improved working conditions for sex workers as a strategy to prevent trafficking and reduce exploitation within the industry.

CHAPTER 1: CURRENT CONTEXT OF OUR WORK AND LIVES

Migration Today

“For thousands of years we have moved freely between countries. We grow the same crops, weave the same cloth and hold similar festivals. Your river becomes my river; when it rains on my house soon it will rain on your house. It was natural to visit our neighbors’ in times of need or celebration; sometimes to make war and sometimes to make love. It has only been in the last one hundred years that the natural movement of people has had to struggle with the artificial barriers of borders, passports, immigration laws and law enforcement. These man-made barriers are often more difficult than the jungles, mountains and rivers we cross on our way to a better life.”⁴

In modern times, Thailand’s comparatively strong economy, level of development and easily negotiated borders make it a popular destination for migrants from neighboring countries. In addition over the decades and in some cases centuries, migrant communities and networks have developed and strengthened, providing a loose safety net for new arrivals or migrants in trouble. There are also shared cultural practices and traditions in the region that make Thailand feel a little less alien than destinations further afield.

In 2010, official data shows that there were 1,157,000 immigrants to Thailand predominantly from China, Burma, Laos and Cambodia.⁵ Estimates based from local organizations however tell us that approximately 3 million migrant workers currently work and live in Thailand with the majority coming from Burma.⁶

Though Laos and Cambodia are also less developed than Thailand we don’t see the same numbers of people moving across the border as those from Burma. For sixty years the economy and development of Burma has been wallowing in an environment of mismanagement, corruption and neglect by the ruling military junta. There are few ways of making a decent livelihood and even fewer ways of improving one’s quality of life. Migrating to Thailand has become one response by the peoples of Burma to the dire economic situation inflicted on them. In addition, people from Burma also migrate to escape the ongoing civil war, armed conflict and persecution from the State.

Most official migration systems in the Asia region are inefficient, face problems with corruption and provide little protection against labour exploitation and human rights abuses for those who migrate.⁷ In addition in many countries in the region it is more difficult for people to access identity documents than to cross the border without them.

⁴ Excerpt from Submission to Mr Jorge A Bustamante Special Rapporteur on the Human Rights of Migrants from Empower Foundation , July 2010

⁵ World Bank (2011) Migration and Remittances Fact Book Thailand Country Profile

⁶ Interview 2011 Jackie Pollock Migrant Assistance Program (MAP) Foundation Thailand

⁷ Hugo (2009) ILO Asian Regional Programme on Governance of Labour Migration, Working Paper No.17

“I live about 15 kms from the Thai border. If I want to get passport I must go to Rangoon 1,300 km trip by bus on terrible roads. In Rangoon I will have to pay 3,000 Baht for passport fees (the average wage in Burma is 750 Baht a month). The process is also very slow. I will have to spend a month in the city waiting which means more expense and no work. Then another long trip home. It doesn’t make sense to even try. We all come the regular way - we catch a 10 minute ride to the river (the border), pay maybe 50 Baht to a boat man and just go across.” Ami, Akkha, Shan State, Burma

In Burma, formal migration channels have essentially been inaccessible to most people, especially women from ethnic groups, due to restrictive emigration policies enforced by the military regime over the last fifty years.⁸ This includes their anti-trafficking policy which forbids women under 25 years from travelling unaccompanied in border regions.

The long natural tradition of people moving between neighboring countries in the region is older and more relevant to people than the much newer and strange tradition of needing documents to do so.

Beginning in 1996 Thailand, with cooperation from the neighboring countries, attempted to regulate migration and formalize documentation. There have been a range of methods created, some more successful than others. Basically the Thai government would like to know the identity, nationality and occupational details of all migrants within the country; collect revenue from migrants to compensate for supposed increased use of government services; and restrict the movement and freedoms of migrants so they are available for immediate deportation if needs be. Not all migrants see any benefits in registering and even more are not eligible to register in any case.

Migrants are restricted to working in occupations the government has recognized as having a labour shortage. The labour shortage has often arisen because the particular work is not respected, not safe, poorly paid and provides no path for improvement in life circumstances. Except for cleaners, migrants working in an Entertainment Place are not able to join the registration system.

In 2002 the first of a series of MOU (Memorandum of Understanding) governing migration was signed by Thailand, with Burma, Laos, and Cambodia. These have culminated in a system whereby migrants already registered in Thailand must go to border areas and apply to have their nationality verified by their government. This has been problematic to say the least.

In 2010 of the 145,457 requests for Nationality Verification, less than 20% (only 28,191) have been processed via the formal MOU registration system with Laos, Burma and Cambodia.⁹

The majority of migrants remain outside the government system either by choice or circumstance. Despite the overwhelming need Thailand has for migrant workers, the government has never developed assisted migration or employment recruitment agencies. This void in access to services

⁸ Asian Migrant Center, 2005, Asian Migration Yearbook 2005

⁹ Mekong Migration Network (2011) Update on Nationality Verification & MOU Thailand

created by government oversight has been filled by informal employment systems, i.e.: brokers. Brokers are used by both employers and migrants to assist with travel and finding employment. Brokers operate outside the system with no monitoring body and often work with impunity. Migrants must take a chance as to whether the broker they are dealing with is fair or exploitative. This will influence not just the migrant's travel costs and safety, but also to a large extent the working conditions at the end of their journey.

The Labour Act BE 2547 (2003) includes protection for all workers in Thailand, both Thai and non-Thai but the Act is not effectively enforced for either. The work that migrants are permitted to do in Thailand is the least protected work, with exploitative conditions common in factories, agricultural and the fisheries sectors. Overall it is estimated that 90% of migrant workers in Thailand currently work in exploitative conditions.¹⁰ For undocumented migrant workers it is considered normal to receive wages that are below the legal minimum wage, and it is common for employers to withhold or refuse to pay wages.

Ratification of human rights treaties in the Asia region in general is low and Thailand has faced ongoing criticism for its failure to protect the human rights of migrant workers. Migrants in Thailand, particularly undocumented migrants, commonly face violence, harassment and exploitation by corrupt police, immigration, government officials, and abusive employers.¹¹ It is common practice for corrupt police or immigration officials to extort money from migrants, and deportation of undocumented migrants is a regular event in border towns. Undocumented migrants who are arrested are held in immigration detention centres or police cells for processing, after which they are transported to border towns and dropped off at official border crossings to be repatriated. Many people however return almost immediately to Thailand, via informal border crossings or bribe corrupt immigration officials, and either return to their previous workplace, or seek other work.¹² Sometimes employers are able to make payments to immigration police to pay a fine for undocumented workers, who are then released and able to return to work without being deported.

Women on the Move

“As a young woman growing up in Shan State Burma, coming to Thailand to find work is a normal stage in life. We don’t think about whether will we come or won’t we... it is just a matter of deciding when to come, not if.”

Nuan, empower research partner, migrant sex worker, Burma

Since the mid 1950's it has been recorded that globally, women have increasingly been migrating independently of men to find work.¹³ Women now constitute nearly 50% of the overseas migrant work force in Asia, and in some countries women's overseas labour migration has overtaken men's.¹⁴ Currently 48% of recognized migrants to Thailand are women.¹⁵

¹⁰ Interview with Jackie Pollock, Migrant Assistance Program, Thailand

¹¹ Human Rights Watch 2010, From the Tiger to the Crocodile

¹² Migrant Movements (1996-2010) Migrant Assistance Program MAP Foundation Thailand

¹³ UNESCO 2006, Feminization Of Migration, Remittances, Migrants' Rights, Brain Drain

¹⁴ UNIFEM (2009) Gender, Migration and Development - Emerging Trends and Issues in East and

Our research found that in reality women have been moving to, from, within and through Thailand for centuries; seeking work, adventure and opportunity. Of course not every young woman has a good experience.

“It was mostly my mother’s idea to come. I didn’t know what I would be doing here. I’ll be glad to go home really” **Lisa, American student volunteering in Thailand**

Thai women have also been migrating within the country and overseas for work, education and travel for decades. The most popular destinations regionally are Malaysia, Singapore and Japan, and internationally women travel to the US, Australia, Europe and the Middle East. Women from neighboring countries travel through Thailand to reach countries such as Malaysia, Singapore or Hong Kong, the Middle East and other international destinations.

Migrant women working in Thailand now have more work choices than their sisters had even just ten years ago, but they are still paid less than men. This is true for both the Thai and migrant workforce. In this context migrant women generally have the lowest potential earnings, and often work in unhealthy and unjust conditions. It is a reflection on their home country situations, that even given the exploitative conditions in Thailand; they continue to migrate for work.

“Whatever we find in Thailand it’s still better than what we had back home. There is nothing there for us, nothing” **Muay, research team, sex worker, Mae Sai**

The most common working sectors for migrant women are: domestic work, fisheries processing, agriculture, construction, restaurants and retail. Women are more likely to be employed in the informal sector, which can mean less pay, more vulnerable conditions, less freedom of movement and employers who are less willing to declare and register them.¹⁶

Women without friends or family links in Thailand must use brokers to assist with travel, negotiate border crossings, organize documentation and to find work in Thailand.

We have found that paying to be moved, especially across borders, and taken to work in unsafe and unfair conditions is the current form of regular migration for men and women coming to Thailand. Though it neatly slides into the definition of trafficking under the law, it does not in any way resemble the spirit of the trafficking crime and does not require the same responses. This regular way of migrating to Thailand is how migrants are managing to overcome the bureaucratic barriers blocking their right to movement and right to work. It is for the most part, not trafficking, but simply the movement of people seeking work and opportunity in Thailand, using the most affordable and accessible means that is available. Unfortunately the governments of the region do not yet provide viable alternatives.

“We would prefer not to break any laws. We aren’t criminals, we are just honest

South-East Asia

¹⁵ World Bank (2011) Migration and Remittances Fact Book Thailand Country Profile

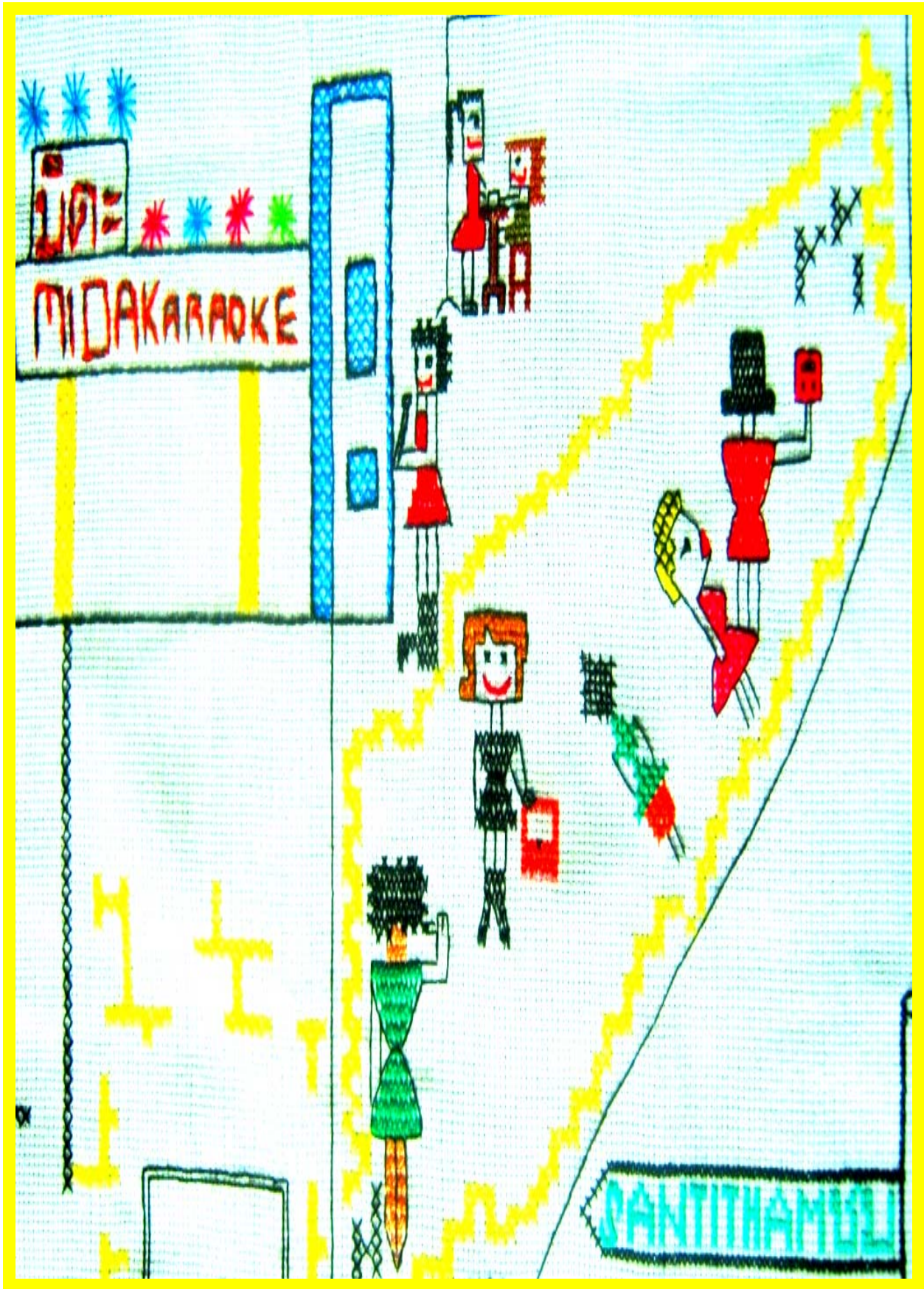
¹⁶ Sciortino 2009, International Migration in Thailand 2009, International Organization for Migration (IOM)

people trying to find work and build a better life."

Kiaw, migrant sex worker, Laos

Of the estimated 1,440,000 migrant women in Thailand, a small minority work in the Entertainment Industry predominately employed in massage and karaoke bars.

Sex Work in Thailand: the Modern Context



No one knows when the first man in the world paid someone for cooking his rice; washing his

shirts; cutting his hair; cleaning his house; sewing his pants or giving him sexual pleasure. We don't know who the sellers were; what they thought or how it all came about. We do know that people have been buying and selling services for hundreds of years, and the services have developed into professions like cook, seamstress, laundress, hairdresser; sex worker and domestic worker.

“Our industry hasn't changed, rather it has developed. All occupations develop. As better choices become available, then its natural as workers, we choose those. Development and improvement doesn't come from closing doors to keep us out or to keep us in, but it comes from opening more doors for us to step through.”

Wi, research leader, sex worker, Empower Foundation, speaking at UN Regional Taskforce Working Group, Bangkok November 2011

Our research has shown the working conditions in the Thai sex industry have improved strikingly over the last ten years. As recently as two decades ago the sex industry in Thailand was plagued with exploitation and severe human rights abuses, including locked brothels, abusive employers, lack of access to health care for women, forced sex with no protection against STI and HIV-AIDS, debt bondage and the sexual abuse of minors.¹⁷ The word “trafficking” was rarely heard but would have described the situation of many women. Those interested in our history can find accurate descriptions of those days in “Bad Girls of Lanna” by Empower Foundation 2011, “Migrating with Hope” by Images Asia 1997 or for even earlier descriptions in Human Rights Watch 1993, “Modern Form of Slavery.”

As for the present, in 2011, we are delighted to report that although we still have a way to go, the working conditions in our industry have improved manifestly. We have reached a stage where severe exploitation such as we experienced in the 1990's is now the rare exception rather than the rule.

“Women being tricked and locked up in brothels is very old fashioned thinking. All we have now days are a few teenagers where they shouldn't be.”

Police, Anti Human Trafficking Unit: Division 4

In Thailand most sex workers now work in an Entertainment Place. Places advertise for staff and we go and apply just like other jobs. If our application is successful, the employer outlines the conditions and if it suits us then, we start work. For most of our working shift we are serving drinks, dancing, singing, chatting with customers, playing snooker or giving massage - depending on the kind of entertainment place we work in. We also spend a lot of boring time waiting for customers. We may have sex once or twice a week, or three or four times a shift depending on our style of working. Women in the entertainment industry work fewer hours and have comparatively more freedom of movement than women who are working in factories, fisheries, agriculture and domestic work.¹⁸

However, as in other industries in Thailand, the entertainment industry also has its share of poor

¹⁷ IMAGES ASIA, 1997, Migrating with Hope: and Human Rights Watch 1993, Modern Form of Slavery

¹⁸ CARAM ASIA 2010, Remittances: Impact on Migrant Workers Quality of Life

working conditions including salary cuts for punishment of workplace rule infringements, quotas for selling alcohol, quotas of customers, no paid holiday or sick leave, too few days off etc. The punitive legal environment also ensures sex workers are targets for abuse from authorities, and migrant sex workers face added rights violations similar to other undocumented migrant workers.

“All jobs have their good and bad points. I know because I worked in many jobs before sex work. Sex work is the job where I can earn more than any other job open to me. I don’t have to have start-up capital or educational qualifications, and it’s much more interesting too.”

Lek, research leader, sex worker, Empower Chiang Mai

We found the library shelves and the internet groaning with the weight of the research done on the sex industry in Thailand. There is a dazzling array of conflicting numbers, percentages, statistics, graphs and anecdotes that can support every side of every argument imaginable, with little concrete evidence.

Rather than add more numbers to these lists our research looked at the official Thai government estimates of the numbers of sex workers in Thailand. The Thai government largely bases its estimates on the number of Entertainment Place registrations and the number of sex workers visiting government STI clinics (Sexually Transmitted Infection) via records and mapping. We found that only about one third of our workplaces have ever been registered. We also found many of us are not part of the government health service register, as we choose to use private health clinics. So the official figures are likely to be lower than reality. Still government estimates of 200,000 - 300,000¹⁹ feel a lot closer to our reality than the wild numbers put forward by some groups e.g. 800,000 - 2.6 million!

“We know that many people want to count us but we don’t understand why? Do they count other working women? How many women in Thailand sell noodles? Will counting us help us to be closer or further way from reaching our dreams? After counting, are our lives better or worse?”

Wi, research leader, sex worker, Empower Coordinator, Ubon Thani

Another measure of the size of our industry is the amount of revenue we generate. In 2003, the Thai sex industry was said to yield an annual income of US\$4.3 billion which is likely to have increased significantly over the last 8 years, as the Thai economy and tourism sector has developed.²⁰

Much of the tourism industry is dependent on the sex industry which has been estimated to make up around 7 percent of national GDP - more than rice exports.²¹

As far back as 1998 it was estimated that sex workers in urban areas of Thailand sent close to USD300 million annually to our rural families, a sum that exceeded the budgets of government-

¹⁹ UNDP 2004 Thailand’s Response to HIV AIDS; Responses and Challenges ; WHO 2001, Sex Work In Asia

²⁰ The Age 2003

²¹ CNN International 2010

funded development programs.²² This amount will have also increased significantly over the last decade. Migrant sex workers are also sending huge amounts of money to their home communities. Migrant sex workers working on this research project all send between 15 - 26% of their monthly income home to their families.

Sex workers in Thailand are usually the main family provider, supporting families, including children, either in Thailand or in our home country. We work hard to give our family a better life, paying for education, housing, land, farming machinery, health treatment and basic daily living for an average of five other people.²³

Our workforce is made up of men, transgender and women from Thailand, Burma, Cambodia, Laos, China, Europe, and Africa. Our services are sought out by men respected in society of all nationalities, all levels of society and all occupations e.g. businessmen, civil servants, university lecturers, doctors, politicians, labourers, migrant workers and many others.

Despite the significant size of our workforce, the enjoyment of our services from respected men and our role in supporting the national economy, sex work however remains illegal under the Suppression and Prevention Act BE 2539 (1996).

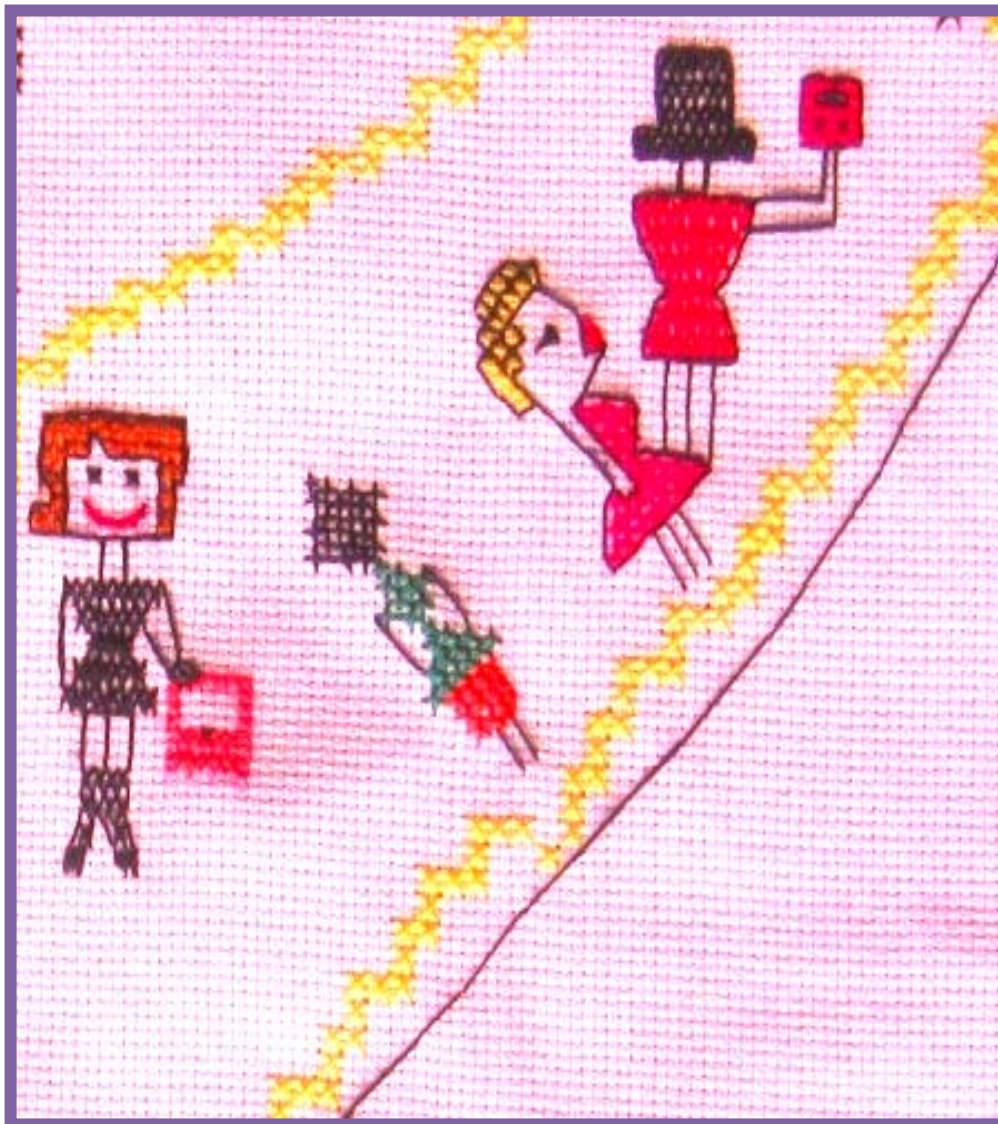
²² ILO 1998 The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia

²³ Empower Foundation, Thailand

2011 Still Migrating with Hope

Across Thailand in 2011, migrant sex workers came together for the research and re-created their journey to Thailand, to work and beyond. Together they told a story of how migration and sex work happen in the modern context. Over two hundred women took part representing their own story and the stories of their sisters and friends. Conclusions were reached by consensus, so when a majority (85-90%) shared an experience it was said to be "general". The stories were then brought together and using the same measure of consensus, a single tale was created that reflects how we move, find work and build our lives in Thailand today.

Generalizing means taking the most common features and talking about them as if they belong to all. It can be a dangerous practice. However in the following section, we will be generalizing to give a snapshot of the most common experiences and lived reality of migrant women coming to work in the Thai sex industry in present day. We aren't claiming it is everyone's story but we do claim that if you know of some women who have not had this experience, then we know thousands more who have.



Travelling to Thailand – Migrant Sex Workers from the Mekong Region

There are many similarities in women's experiences of migration from the neighboring countries of Laos, Burma, Cambodia and China.

A decade ago most young women coming to Thailand from neighboring countries lived on farms or in small villages in remote rural areas. Nowadays those young women migrate to the larger towns and cities, and it is the women from these towns and cities who are migrating to Thailand. Development in their home countries has meant they are likely to have been to school, some until the age of 15 years, though others for much shorter periods.

Some things have not changed. For example in their home countries, even though they attend school, from the age of 10 years old girls are expected to work, either helping to raise vegetables or animals, small jobs for neighbors or working in the family businesses to help with family income.

The decision to migrate is generally made independently by women, though it is common to discuss their plans with family members. Though most are older, some girls as young as 14 years still migrate alone from Burma, whereas it is more common for women to migrate at the age of 18-20 years from Laos and China. In addition women from Burma said that apart from economics and adventure, women migrate to escape the harassment from armed forces in Burma who commonly abuse, demand bribes, and confiscate belongings and livestock from families and communities in the ethnic areas of the country.

Except for the women from Laos, many women have no specific plan of what work they will do. Rather the vision is very general of coming to Thailand to work...whatever job. Though some hope to have a chance to work in the karaoke bars they have heard about, many more have given it little thought.

On the Road

When leaving for Thailand, women and girls prefer to travel with friends or family members, for safety reasons, cost sharing and company.

However under the anti-trafficking law of Burma, it is illegal for women under 25 years to travel unaccompanied by a guardian. In addition women from Burma and China often must travel without formal documents as it is difficult and expensive to get a passport in these countries. (Women have to travel to capital cities to apply). Under these circumstances women will generally use a broker – a person who can assist with travel and finding employment in Thailand. They contact the broker by mobile phone and he/she arranges to pick them up. The broker will travel with the women, and negotiate all the arrangements and fees.

Fees are fairly standard throughout the region. A fee for service and travel costs to reach Thailand ranges from 3,500-10,000 baht (USD 120 -330) depending on how far the women need to travel. Women pay for travel costs in different ways – sometimes they pay up front using savings, sometimes they borrow from family members or the family will take out a loan. Some take a loan from the broker.

In some circumstances where the family is in immediate need, a woman may add an advance on her earnings to the loan to leave some cash with her family to survive on until she can begin earning and sending money home.

It's not compulsory to take a loan from the broker if you have other ways of paying. If you do take out a loan there is usually no interest added and the cost of travel is not increased as a condition of the loan.

Women from Laos however do not commonly use brokers to travel to Thailand as they can use formal migration systems, e.g. it is affordable and convenient to get a passport in their local towns, without difficulty.

Most women from Laos have had formal education, access to general knowledge about the world, and generally migrate with more planning and detailed decision making, as they are moving from situations of poverty but not civil war as in Burma. For example they are the most likely to have a specific workplace in mind and already know a lot about what different jobs entail and the working conditions. Most women are able to read and write in Laotian and many are also literate in Thai (which is a similar language).

Some women from Laos will take out a loan with a broker of up to 5,000 baht (USD160) in Laos, to support their families at home which they agree to pay off from their earnings in Thailand. In some situations, women from Laos and China will travel to Thailand without documentation, cross the border at informal crossing points using local transport where they work to earn money for their passport. When they have enough they return home and purchase the correct documents to come back to Thailand legally.

Crossing the Border

Women cross the border into Thailand either via marked immigration points or unmarked river or land crossings - depending on the route used by the broker and the women's documentation status. It is common practice in Thailand's border areas for undocumented migrants to pay a small fee to cross into Thailand, sometimes having to bribe officials or soldiers on either or both sides of the border. Women with documents will cross through immigration checkpoints and pay the usual visa and entry fees. Those without documents also sometimes cross through formal checkpoints – but they are required to pay a higher fee as a bribe to corrupt immigration officials in order to cross. Bribes are negotiated by the brokers. In Burma it is also common to make payments at military checkpoints along the way; generally the amount is equal to more than a day's pay, i.e. around 1,000 kyat (40 Baht or 1.50 USD per person). The total amount of bribes paid on a journey is unpredictable so is not covered in the price quoted for travel costs but rather must be paid as necessary by the women themselves, either up-front or added to the amount owed to the broker.

Travelling in Thailand

The ease of travel within Thailand differs depending on a woman's immigration and citizenship status. Thai women working also travel from their hometowns to other provinces to work. Most Thai women, apart from women from hill tribe areas, have Thai ID cards so are free to move

legally around the country using local transportation. Interestingly though some will also use local brokers, to negotiate loans for travel and recruitment costs to different areas in Thailand. These services are not expensive and they do not need to make bribe payments to police at checkpoints along the way.

Migrant women often travel from border areas to the bigger cities in central Thailand such as Bangkok, Pattaya and Samut Sakorn; or to the border of Malaysia to look for better work opportunities. Those with tourist visas and passports can travel to all provinces in Thailand legally using local transport. Women with migrant worker cards can only travel to the areas named on their cards, and in the company of their employer.

Migrant and Thai women without identity documents have the most expensive and difficult travel options in Thailand, they often must use brokers, and commonly must bribe police and immigration officials to move between districts or provinces.

Generally women do not have up-front cash to pay brokers for travel within Thailand so they negotiate a loan with the broker. The average up-front price that the brokers charge women to get from the north of Thailand (Mae Sai) directly to another workplace on the Thai-Malaysia border is about 45,000 baht (USD1, 500). However this does not include payments to officials at checkpoints. Women pay about 5,000 baht (USD160) for bribes at each police or military checkpoint they are stopped at along their journey. The more checkpoints there are the more expensive the trip. If they could take it, a trip by public transport, including meals and refreshments would cost them just 1,500 Baht (USD 50) and by air the trip is about 6,000 Baht (USD 200).

Sometimes women are not aware of the added costs of bribes paid and end up with a larger than expected debt to pay off. A trip from the north of Thailand into Malaysia itself with work pre-arranged could cost about 150,000 baht.(USD5,000) It is a huge sum of money, equal to the amount Thai men pay official agencies to send them to Taiwan to work. However women don't see this as exploitation.

“No it's not exploitation...it's expensive. If you don't want to go you don't pay it. No one is making us. It's like buying a Mercedes ...it's expensive but that's what it costs. Anyway in under a year, about 8 months, we have it paid off and another 150,000 Baht earned on top.”

Muay, research partner, sex worker, Mae Sai

Finding a Job

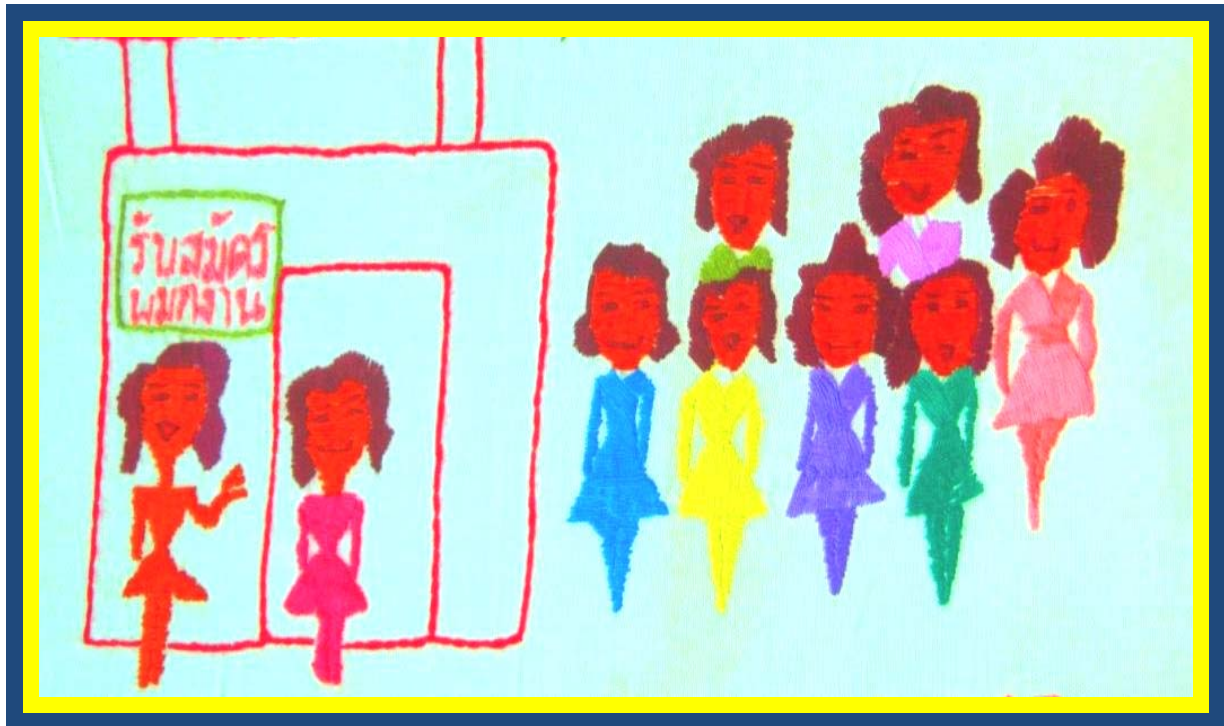
The choice of workplace in Thailand is generally dependent on the contacts that women have (brokers, friends or family members). Some women just use brokers to get to Thailand i.e. to negotiate immigration checkpoints but then find their own work independently. Others use the broker to find work – sometimes the same broker that assisted with travel, sometimes another broker in the area they are seeking work.

Some, especially those under 18 years, will firstly work in other jobs such as domestic work or restaurants in order to learn some language and build confidence. However the earnings in these jobs are far less than in sex work, (e.g. domestic work is 2,000 baht per month (USD65);

restaurant 2-3,000 baht per month (USD100). In an Entertainment Place they can earn a minimum of 3 - 4,000 baht per month (USD100 -130) plus tips by having drinks bought for them and chatting /singing with the customers. If they are adults and provide sexual services there income increases markedly. Most women can earn more than the Thai daily minimum wage in Thailand, by providing services for just one customer.

Unless it is a pre-arranged contract with a broker, if women want a job in an Entertainment Place they need to apply and pass an interview by employers or managers before getting the job. Most women will approach a karaoke bar or restaurant as a first option, while others find work in brothels, and those with massage certificates can work in massage parlours.

For girls of 14-17 years, it is more common to start working in domestic work, noodle shops, as cleaners or waitresses, and then some may consider moving into sex work when they are older. The hiring and exploiting of young girls in the sex industry is not common practice. In the past when young women came to Thailand, they were often ignorant about sex work but these days young women generally understand that working in karaoke, bars, massage and some restaurants can include having sex with men for money. Young women these days often talk to each-other about the pros and cons when deciding whether to take up sex work. Some younger women (16-17 years) will work in bars and karaoke venues as cleaners or waitresses, and may socialize with customers, but do not do sex work or go with customers. In most workplaces, women say that they are able to decide themselves whether they will take up sex work and do not feel they are pressured or forced into accepting customers, either by other sex workers or the venue owners. Their decision is mostly based on personal circumstances, financial needs, their confidence and maturity levels. Age is not an issue talked about during the job interview or even discussed very much in the workplace as it is deemed fairly unimportant. Many women do not have formal documentation verifying their age.



Working Conditions

Most women in the Thai sex industry work in an Entertainment Place e.g. karaoke bars, restaurants, massage parlours, beer bars and brothels. Wages and conditions differ depending on the place and the owner's conditions. Women in all workplaces get paid in cash. Economically it is the most profitable work choice for migrant women who can earn approximately 15 times as much as migrant workers in other available work. Women are not commonly in situations of forced labour – they have freedom of movement and some choice over their working conditions, however the lack of labour protection and adherence to minimum standards means that all workplaces are exploiting their worker's labour on some level.

It is normal practice for employers to take a share of the money that sex workers generate. The money may be made from sales of alcoholic drinks, massage or bath services, customers paying for a workers time and company in the workplace as a "sitting fee" or away from the work place paid as a "bar fine" or as a portion of the money paid for sexual services. The system is generally felt to be unfair; however women do not define this as exploitation as long as the employer does not take more than 50% of their earnings.

In most workplaces there is a set of rules imposed by owners or managers, who will cut women's wages or earnings should they breach the rules. Wages can be cut for various things such as lateness, weight gain, dress code infringements, and arguments with customers, etc. This is illegal under the Labour Law. Although cuts are standard in all work places and normal practice, sex workers consider such wage cuts as exploitation. In addition most sex workers do not have health care entitlements or paid holiday or sick leave.

"Its hard work, it's not fair but that's the way it is"

Nok, research partner, migrant sex worker, Burma, Mae Sot

In all areas there are corrupt police who extort money from women and owners. Mostly it is the owners who have to pay police bribes but often they will deduct some or all of the costs out of women's earnings. In some places women are paying 10-17% of their earnings in police bribes.

Most women these days do not live at their workplace but either organize their own accommodation or live in shared accommodation with other women from the workplace. Some live with other workers in a house provided at an affordable rent by their employer.

In the rare places where women do live on the premises the women must work whenever the brothel is open (generally from 10am - till 2am). In practice this means that the women are on-call 24 hours. They also have limited freedom of movement, having to get permission to go out and often having to be accompanied by another employee e.g. doorman. These are echoes of the old style of brothels. Women who joined the research, and were living and working in these circumstances, were informed about the assistance available under the anti-trafficking act, but they unanimously decided they would prefer to manage the situation themselves by paying back advances on salary or other debts and then looking for better working conditions in the future.

In most workplaces women choose their customers and can refuse customers if needed. However some employers impose customer quotas that sex workers must meet. It is rare for owners to demand sex workers accept all customers. Any pressure, force or quota for customers, women define as exploitation.

Condom use for customers is enforced by workers, who generally have an understanding of the need for protection, however they are not usually offered support by employers. For most customers condom use is now the norm, still a few need to be convinced and the small number who remain uncooperative are generally refused service.

Most women access their own health care independent of their workplace, either through the public health system or more often by paying for private health care. Despite the lack of support for worker's safety, most employers insist on mandatory health checks for workers demanding they have regular HIV/AIDS and STI checks which are recorded in health documents that must be shown to employers, as a precondition for getting your salary.

Women do not have any information about Thai law, including the anti-prostitution law, the anti-trafficking law or labour law. Often migrant women are not aware that sex work is illegal in Thailand. Given the general visibility and tolerance of the industry, women will often assume it is legal and that the police raids and bribes are purely due to their immigration status rather than their work.

Working Off Loans and Debt

Different scenarios are negotiated by women needing to borrow money including:

- Borrowing from the broker to cover travel and recruitment costs, and agreeing to pay back the debt from wages in Thailand, generally without interest being charged
- The broker may transfer the debt to the employer once in Thailand and the women then pay back the debt from their wages to the employer, with or without interest
- The women may take an advance on their earnings from the employer to cover start-

up costs. Generally women will consider borrowing 10-30,000 baht (USD 30-1,000) to cover costs such as makeup, clothes, phone, and transport plus send money home to the family to cover the initial work period. Most women who have migrated from Burma generally need to send money home to their families at least every 2-3 months.

- Some women will pay off their initial debt and then take another loan from the employer for investments in housing, family education costs, buying a motorbike, medical costs or to make a return visit home etc.

There is no written agreement on the loan and women generally monitor their expenses and debt repayments themselves. Women in all workplaces are paid in cash, minus police bribes and debt repayments.

Generally the earnings are split three ways. 50% goes to the employer, 25% goes to the loan, and 25% goes to the worker. This means at least she continues to earn while paying her debt off. It is considered normal practice for women to pay their loan repayments back at interest rates that can be 10 times higher than local banks. Most women however have no other access to loans, especially migrant women who do not have bank accounts. Women say that they do not consider their loan repayment as exploitative, as long as the interest is equal or less than 5 baht per 100 baht (5%)

For larger loans (i.e. 100,000 THB or 3,300 USD) sex workers consider it is normal practice for their employer to require them to stay on the premises and that they will have limited freedom during the months they are indebted. However they do not consider this exploitation or debt bondage because they are adults; taking a loan is not compulsory; and they knowingly agree to the debt and the conditions. They also feel the employer needs to apply this rule as insurance for debt repayment as he cannot go to the courts if the debtor doesn't pay up, or disappears. There is a general understanding in all workplaces that women need to repay their debt before they can leave the workplace and work elsewhere. Sometimes the limits on their freedom are considered too harsh and women may run away. At least one woman in the project told of being able to change workplaces and negotiate with her original employer to repay the debt at a new rate. Most of our research partners in the project did not have a debt. Those that did have current debts, the amounts ranged from 3,500 baht to 30,000 baht (USD 115-1000), though some had previously had debts of over 100,000 Baht. Generally women say they can pay small debts off over 2- 3 months, moderate debts of 50,000 - 80,000 Baht (USD 1,600 - 2,300) take 4-5 months and even the highest debt incurred by women of 150,000 baht (USD 5,000) could be paid off over 8 months.

Just passing through

Some women will travel through Thailand on their way to work elsewhere – either in countries in the Asian region or further afield. Aside from women from China and Burma going to Malaysia women are also travelling to do sex work in Singapore where they are guaranteed good earnings as well as having an opportunity to travel.

Thai sex workers also travel overseas to work in other countries. Some travel a circuit to Singapore, Taiwan, Hong Kong, and Macau to work. A small number go to other regional destinations such as Australia or Dubai. They usually have a passport however often use a broker

to help find workplaces overseas and assist with travel arrangements such as airfares and visas.

Usually women will take on a debt for these costs, which they pay off once they start work overseas. Costs for Thai women travelling to Australia can be as high as 200,000 baht (USD 10,000). It's not just very expensive but it is considered exploitative because brokers are grossly overcharging as women have passports and can access visas. However, no regulated brokers for our industry exist. While the cost was known to be high, the capacity for earning money was also high.

An example of the value of overseas remittances from Thai sex workers was noted in the research, in one town in the northeast of Thailand where there is a modern, upper class, housing development known as 'Singapore Village'. This was built using remittances from sex workers who worked overseas in Singapore to support their families. The sex workers in the area consider this to be a symbol of their success and hard work in supporting their families and are proud of their contribution to their community in Thailand from their work overseas.

International Sex Workers in Thailand

Women coming from overseas to work in the tourist areas known for their thriving entertainment industry have a different style of migration. In addition to thousands of Thai women, some women from Russia, Uzbekistan, Nigeria, Japan, Korea and South America also work in entertainment places in Bangkok, Pattaya, Patpong and Phuket. While the research team had limited access to European and African sex workers in Thailand, some information on their migration and conditions, was available from our research partners and venue owners working in the same areas.

The women from Europe working in Pattaya appear to be mostly in their twenties, with many coming from Uzbekistan. They sign employment contracts as dancers, usually stay between 3-6 months to earn money, pay off their debt for airfare and travel costs, and then return home. Every few months groups of new women arrive to work in the bars in Pattaya. The employers cultivate good relationships with the local police, and ensure that there are no minors (under 18 years) working and the sex workers appear to be free to move around independently outside of their working hours.

In Phuket entertainment places (A Go Go Bars) have been specifically set up for sex workers from Russia. The work conditions are published online and include employment contracts for women seeking employment as 'artists' in Thailand - written in Russian. The employment contract includes more than 30 'bar rules' with quite punitive and unjust working conditions with costly fines for making noise, being out of the room, talking with people other than customers, etc. The salary starting point is 9,000 baht (USD 300) per month, over twice the Thai minimum wage, and the women will also have the opportunity to earn more from customers and tips. The experience of women from overseas, working in these areas in Thailand is not possible to gauge from this research. Inviting them to join future projects may be useful for them to learn about the labour and human right protections available to them.

Modern way of moving

Our research shows women from neighboring countries are migrating largely independently to find work in Thailand. Brokers are generally seen as helpful and most don't charge exorbitant rates for their services. Most women are over 18 years when they apply for work in the entertainment industry and then make further independent decisions about whether sexual services will be part of their work or not. Migration is a part of the culture of sex work, with women moving to other towns, provinces, countries or continents.

We found a wide range of working conditions in the Thai sex industry – most of which, at best, are unfair and some elements of exploitation remain. Generally sex work provides sustainable, economically lucrative opportunities for both local and migrant women. Our research shows that migrant and Thai women have individual and collective agency and opportunity to decide, manage and to some extent control their working conditions within the Thai sex industry. However our research also makes clear that there is an urgent need to create an enabling legal environment that protects and promotes the rights of sex workers and puts an end to discriminatory and criminal practices of corrupt police and authorities.

Human Trafficking is to Sex Work as Shovel is to Birthday

“At least they are calling us human”

Wi research leader, sex worker, Ubon Thani

Sadly our research went on to show that often when people discuss human trafficking into the Entertainment Industry they call it “sex trafficking” and the word ‘human’ disappears. They don't use similar terms like sewing trafficking or fishing trafficking. The focus isn't on our human rights after all, but rather the problem seems to be that we are having sex.

One of our research team put the following question to a senior policeman from the anti-trafficking division who had told us he had attended many training sessions on trafficking.

“If a woman agreed to go and work as a sex worker in a karaoke bar but instead was taken and made to work for no pay in a garment factory, do you count that as trafficking?”

“No that's not trafficking, that's a good opportunity” he responded.

“So you wouldn't help her? “

“No if she really wanted to work in karaoke she'd have to get out herself, come back to the border and start again”

The International Perspective

In fact the modern concept of human trafficking covers a wide range of illegal practices including slavery, forced labour, exploitation, forced begging and organ trading. However it also singles out "exploitation i.e. seeking benefits from prostitution" though what that would actually constitute is not defined. This oversight is partly responsible for sex work and human trafficking being frequently conflated to mean the same thing, both in Thailand and worldwide.

Our research found that hysteria over the human trafficking of women for prostitution is not a new phenomenon. It has its roots in the historical movement to protect white American women from being sold into prostitution in Europe in the early 1900s. The first agreement to combat this traffic in women emerged with the *1904 League of Nations International Agreement for the Suppression of the White Slave Traffic*. This law explicitly focused on protecting women who were transported for "immoral purposes" and prompted a worldwide effort to combat prostitution. The 1904 Agreement has since been modified five times over the last century, into its current format as the UN Trafficking Protocol (2000)²⁴ which now includes protections for men, women and children, and a broader definition of trafficking.

The historical focus on abolishing prostitution however haunts the definitions of the current Protocol and is alive and well within the modern day anti-trafficking movement.

Over the last two decades the push to abolish the sex industry globally has been heavily promoted under the guise of anti-trafficking by abolitionist groups and their champion - the US government. One such group, the Coalition against Trafficking of Women and Girls (CATW) was formed to 'challenge the demand for prostitution and to curb the legal acceptance and tolerance of the global sex industry' under the name of anti-trafficking.²⁵ CATW consists of people, largely from the academic world, who view all sex work as exploitation, and see it as inherently violent, abusive, and degrading to all women, and based on the sale of women as commodities in the marketplace.²⁶ The opinions of sex workers about our own work and lives are at best deemed irrelevant or outright unacceptable.

During the Bush administration in the USA (2001-2009), the anti-prostitution lobby expanded further by joining with Christian fundamentalists, which also strongly promoted an abolitionist approach as a response to human trafficking. Both groups, endorsed by the US government, became a powerful lobby group in the international anti-trafficking movement.

Sex workers and civil rights proponents have consistently argued for clear separation of the trafficking issue from sex work. Sex workers promote the end to any criminalization of the sex industry and recognition of sex worker's labour rights as the primary method to stop the exploitation of sex workers, including but not limited to trafficking.

The UN Trafficking Protocol was signed into force in 2000 as part of the United Nations Convention against Transnational Organized Crime (UNTOC). In the development of the

²⁴ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Trafficking (2000)

²⁵ CATW website 2011

²⁶ Raymond, J: Legitimizing Prostitution as Sex Work ILO calls for Recognition of the Sex Industry

Trafficking Protocol there was much contention on how the law should address the issue of sex work and the sex industry.

Sex workers and other activists demanded a clear distinction be made between: sex work (the exchange of sexual services for payment, in cash or kind)²⁷ and trafficking (the forced coercion of women and children into sexual exploitation), and decried the use of the word 'prostitution' within the Protocol definitions.

The abolitionist lobby argued from their fundamentalist perspective that 'prostitution' is inherently exploitative and degrading to women; and all sex workers are victims of sexual exploitation regardless of their consent.²⁸

In the end, the final draft of the UN Trafficking Protocol used the word 'prostitution' in its definition. However it deliberately avoided *defining* the terms: 'prostitution', 'exploitation of the prostitution of others' or 'sexual exploitation' – in order to allow State Parties to define these terms according to their own national law.

However our research shows that like most governments, the Thai government simply copied the UN description of trafficking that sets "prostitution" apart as if it were in itself a distinct form of trafficking. This lack of clear definition allows for highly subjective judgments to be made and acted upon by a variety of agencies depending on their agenda.

This includes giving space for abolitionists to continue to blur the lines between abolitionism and anti-trafficking. In addition the identification of prostitution as some kind of separate form of trafficking automatically links the sex industry to organised crime, drug trafficking, weapons trading and terrorism under the UNTOC Convention. This encourages and condones government excesses against sex workers.

For the last 10 years, the anti-prostitution agenda has been heavily promoted internationally by the US government via its anti-trafficking policies. In 2002, just months after the 9/11 terrorist attack on the USA, President Bush began forcing trade partners worldwide, by threat of sanctions, to tighten their border controls and restrict smuggling in the name of "preventing sex-trafficking" and global terrorism.²⁹ The Bush Administration proclaimed all sex work was trafficking and in 2004 implemented a policy (which remains in place today) whereby any organization worldwide who receives US funding for HIV/AIDS prevention, must sign "the Pledge" and follow a mandate to actively oppose any legalization or acceptance of sex work.³⁰

The US anti-trafficking agenda is monitored and enforced via the annual Trafficking in Persons (TIP) report, which ranks more than 184 countries according to whether or not they have achieved US and international standards in anti-trafficking activities.³¹ The TIP report ranks each country

²⁷ NSWP, Declaration on the Rights of Sex Workers, Draft 2011

²⁸ Burge, N 2011

²⁹ President George W. Bush Address to the United Nations, 23 September 2003;

³⁰ Amendment on Prohibition of Funding to Organizations that Promote Prostitution Adopted in US, 2004

³¹ TIP Ranking is based on standards set forth under the US Trafficking Victims Protection Act (TVPA) 2000 and the 3P principles of prevention, protection and prosecution, in the UN Anti-trafficking Protocol.

against a tier level from 1-3, whereby countries that are deemed to have under-achieved are ranked downwards onto a 'Watch List' with a Tier 3 level indicating failure. Each country's ranking is linked to its eligibility for US financial aid with a Tier 3 ranking precluding them from receiving funding from US sources. The TIP report in reality provides a blunt tool for alleged reform to combat human trafficking, which is directly linked to US economic, political and strategic interests worldwide. The TIP report process has been criticized worldwide for its overt political agenda as well as its failure to meet standards of evidence-based policy making; its insufficient discussion of the root causes of trafficking; and its tendency to lay the blame for global trafficking on governments in developing countries.³²

The TIP report directly promotes the US abolitionist agenda via its rating system, based on minimum standards within the US Anti-trafficking law (the TVPA). These standards mandate governments worldwide to make *"serious and sustained efforts to reduce the demand for (A) commercial sex acts; and (B) participation in international sex tourism by nationals of the country."*³³

Furthermore the TVPA explicitly targets "sex trafficking" as a distinct form of trafficking separate from all other human trafficking, with an emphasis in the TIP Guidelines on the need for state officials to identify and assist victims of sex trafficking – including women who do not identify as trafficked women and who do not wish to receive legal support or intervention.³⁴ Because of the significant economic and political power of the US in today's global economy, these conditions mean that the international anti-trafficking movement is inextricably linked with the movement to abolish the sex industry in countries worldwide.

For more on the global situation of conflating sex work and human trafficking see NSWP, Global Network of Sex Work Projects: Briefing paper #3 "Sex Work is Not Trafficking" December 2011 at www.nswp.org

Our research found that far from being defeated by this seemingly overwhelming opposition, sex workers and the sex industry have continued to work, develop and expand.

Human Trafficking in Thailand

Over the last 80 years, Thailand has in fact, enacted three anti-trafficking laws in the country. The first Act passed in 1928 was in response to concerns for women from China working in the brothels of Sampang Lane in Bangkok. More recently over the last 20 - 30 years there has been significant advocacy at the domestic level from some Thai women's organizations and welfare groups, many of whom support abolition. This combined with pressure to meet the US led anti-trafficking agenda has led to a range of anti-trafficking policies and practices being implemented in Thailand.

Thailand has signed but not yet ratified the UN Trafficking Protocol. Even so it has co-opted the protocol's broad definitions. According to the Thai Suppression of Human Trafficking Act BE 2551

³² Jordon A 2011 State Department TIP Report: A need for more evidence and U.S. accountability,

³³ Trafficking Victims Protection Act of 2000, Minimum Standards for the Elimination of Trafficking in Persons

³⁴ TIP 2011 Definitions: Techniques of Control Used by Sex Traffickers and Pimps

(2008) trafficking includes “exploitation of prostitution”. The only indication of what “exploitation” in this sense may involve is the broad definition of “seeking benefits from the prostitution of others” with no further explanation of what exactly this entails.³⁵ As stated previously the lack of clear definition allows for highly subjective judgments to be made and acted upon by a variety of agencies depending on their agenda.

Thailand is a major strategic ally of the USA in Southeast Asia, and relies on US investment in health, trade, business and development. The conflation between sex work and human trafficking however is a thorn in the side of this strategic relationship and has led to harsh criticism from the US State Department of Thailand’s anti-trafficking efforts.

While on the surface the TIP report is meant to measure a country’s responses to human trafficking, the not so well hidden agenda is the abolition of sex work. The TIP report criticizes Thailand for its neglect of persons trafficked into other industries apart from sex work, even though it’s clear that Thailand has simply been following the US abolitionist agenda.

Although Thailand has in fact made some progress in addressing the situation of trafficked persons, it keeps being reprimanded for failing to curb the sex industry, even though this is a completely separate issue.

The 2011 TIP report noted that “*sex tourism continues to be a problem in Thailand, and this demand likely fuels trafficking for commercial sexual exploitation*”.³⁶ The trafficking of men and boys into the fishing industry is of real concern in Thailand. The US government continues to highlight this in the TIP reports but has to date not called on Thailand to curb its consumption of fish as “*this demand likely fuels trafficking for labour exploitation.*”

To add to the confusion, while Thailand is struggling on the Tier 2 watch list, and in trouble for not doing enough to abolish sex work; New Zealand, who decriminalized sex work many years ago, is on Tier 1 and the US reports that the Government of New Zealand fully complies with the minimum standards for the elimination of trafficking.

We found some anti-trafficking organizations and agencies understandably bewildered by these inconsistencies.

Apart from a handful of prevention campaigns with youth and poor rural communities, the primary strategies for reducing trafficking in Thailand have been focused solely on the Entertainment Industry. Over the last decade this has included police raids, arrests, detention, and deportation of migrant sex workers; detention and rehabilitation of Thai and migrant sex workers in shelters. Even the National Action Plan’s stated aim “to assist victims of sexual exploitation”³⁷ is still not enough for Thailand to pass the US TIP standards.

The confused and frantic efforts to comply with US requirements has led to a punitive, criminal

³⁵ Thailand Anti-Trafficking in Persons Act B.E. 2551 (2008), Sections 4&6

³⁶ US TIP Report 2011 Thailand Country Report

³⁷ Thai Ministry of Social Development and Human Security, National Action Plan to Prevent Trafficking 2011-2016

justice response to women, men and communities who live and work within the sex industry in Thailand. While this approach has allegedly led to the rescue of women and girls, who were judged to be trafficked into the sex industry, it has also led to unacceptable human rights violations against an even larger number of women sex workers, their families and communities.

We have major concerns regarding current anti-trafficking interventions given the lack of objective evidence, accountability and independent monitoring of anti-trafficking practices. Almost 10 years after the US anti-trafficking push began, according to US government data, 11 out of 12 human trafficking incidents *do not* involve sex work³⁸ However in Thailand and worldwide the propaganda, hysteria, and poorly thought out anti-trafficking law and policies continue to target women working in the sex industry.

It will always be impossible to accurately measure the number of people affected by trafficking. This gap is often exploited as an excuse for people to give wild estimations to create a false perception that millions of children and women are trafficked into the Thai sex industry each year. Anti-trafficking groups, media, and researchers commonly cite information that is based on spurious estimations, or referenced to sources that are 15-20 years old but presented as if still relevant today.

The propaganda, emotive stories, and vastly contradictory statistics promoted to the public, have combined to form a perception that the Thai sex industry is one of abuse, violence, forced exploitation and gross human rights violations. This image however is completely at odds with the research findings in this report which provides an overview of the modern sex industry from the lived experience of migrant sex workers working in Thailand in 2011.

In the last fifteen to twenty years Thailand has seen wide reaching social changes such as higher levels of education, greater wealth distribution, and more access to knowledge and communication technology. In addition there has been a stronger focus on human rights and gender rights. However the legal system that attempts to control prostitution was set up decades before this when abuses such as trafficking, debt bondage, forced labour and locked brothels were common in the Thai sex industry. Current day sex workers in Thailand live and work in a totally different context. Nowadays sex work in Thailand closely resembles many other occupations whether applying for a job, working conditions, work tools or earning power. Old style brothels have been replaced by modern entertainment venues and old style pimps replaced by managers. The laws are outdated and irrelevant to the way sex workers work today.

Our research, reinforced by decades of experience, finds that trafficking and child sexual abuse is uncommon in the Thai sex industry; most women have freedom of movement; and we work in visible and public workplaces. One of the most problematic outcomes of the moral panic and hysteria of anti-trafficking propaganda, is that unsubstantiated 'data' has been regurgitated over and over for more than a decade by anti-trafficking groups, politicians, researchers, media and policy makers with no regard for the experiences and opinions of women who actually live and work in the sex industry. This has effectively sidelined any informed, systematic debate and

³⁸ US TIP report 2009

evaluation of strategies to assist either trafficked persons facing forced exploitation, or sex workers wanting to improve exploitative working conditions.

A related impact of the anti-trafficking movement in Thailand has been the changes to and the disintegration of effective partnerships within Thai civil society. For thirty years in Thailand HIV-AIDS activists, women's organizations, sex workers, migrant organizations, government, and community organizations have managed to work together on HIV education, advocacy and care despite holding very different positions on sex work. However, the US discrimination policy, "the pledge" effectively polarized individuals and organizations in Thailand and forced them to choose between being 'for' or 'against' sex workers. There is no longer any midway option and many effective networks across the country have been split and weakened.

At the same time numerous new organizations have sprang up, or changed their name and focus to take advantage of the millions of dollars available within the anti-trafficking industry. This includes both Thai and international NGO, faith based organizations, private ex-military rescue organizations, and local organizations supporting community development, women, children and migrants.

A UN body, UNIAP (United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-Region) was established in 2000 just to co-ordinate the 13 UN agencies and 8 International NGO who ran programs or policies on trafficking in the Mekong Region. In 2010, in Thailand alone 61 organizations were given government support to run some 103 projects focused on anti-trafficking.

Practices in the anti-trafficking or 'rescue industry'³⁹ vary widely, however many organizations work without monitoring or accountability. The anti-trafficking movement in Thailand includes a glut of organizations in the rescue industry some of whose main aim is to raise money for the supposed rescue and rehabilitation and often Christian conversion of women and children. Older well established organizations such as Daughters' Education Project and New Life Centre, who have worked for decades to empower girls, provide assistance and reduce exploitation, are forced to compete for funds with the swell of new organizations under the anti-trafficking banner.

These older organizations must find gaining donor support and public interest in the empowerment of girls more difficult, when their competition is so willing to misrepresent and sensationalize the reality as seen in the following examples.

One anti-trafficking organization based in the north of Thailand claims: *"The sex industry sets its sights on the Northern Hill-Tribe villages to buy, trick or kidnap their daughters who are usually very young (no more than 7 years old). They traffic them all over the world. To 'season' the children, they put them alone in a locked room with no windows for two years, serving 10 to 12 customers a day. The men do not wear condoms because the competition is too great between the brothels."* Abba House Foundation website, Chiang Mai, Thailand 2011

There is another group who promotes Thailand as a key trafficking destination and offers 'reality tours' of trafficking hotspots, charging USD1000 and more for the experience to meet victims of

³⁹ Agustin, L (2007) Sex at the Margins: Migration, Labour Markets and the Rescue Industry

trafficking and visit vulnerable communities to *"learn effective strategies for undermining slave rings, and experience first-hand how emancipated slaves rebuild their lives."*⁴⁰

Yet another group – consisting of former special-forces soldiers and ex-policemen, originally from Australia, have worked in Thailand for years as undercover operatives whose mission is to save children who are trafficked into brothels and hunt down perpetrators. They use military espionage techniques to 'work under the radar' and 'win by stealth'⁴¹. Even this group however admits it is getting more difficult to actually find children in brothels in Thailand. In 2011, they have come under investigation by the Thai Police Department of Special Investigations, for allegedly falsifying and sensationalizing claims of trafficked village children in the north of Thailand in order to raise funds for their organization.

In its evangelistic aim to save women and girls, the rescue industry promotes rehabilitation. Sex workers spend years detained in State or non-government shelters, until they are deemed to be 'reformed' and if their families are judged to be adequate and they are no longer at risk of being a 'prostitute' they are released.

These violations against women who work in the sex industry have occurred regularly, often in an arbitrary manner, perpetrated by both government and non government agencies and have left women with no recourse for complaint, remedy or access to justice.

Since 2003, the rescue industry in Thailand has taken steps to shun some of the most ridiculous groups and ensure a more formalized approach to their operations. This has resulted in the development of a series of a MOU, governing anti-trafficking approaches at the provincial level, documentation and training in standardized operational guidelines. There is now a core group of organizations who work closely together, but they still have not moved on from the raid and rescue response.

The groups include international and local NGO, Thai Police and state social welfare authorities, who coordinate raids. The raids are now more likely to be carried out by police from the Anti Human Trafficking Division (AHTD) who are separate from local police or ex-military groups, and people are supposedly identified, rescued and processed according to standardized procedures and legal obligations. The court and deportation process has also seen recent reform and various agreements and protocols for support and deportation of trafficked persons have been developed across the region.

In recent years, on paper at least, there has been an increased concern for the human rights of trafficked persons, greater protection and support and a focus on different forms of trafficking such as forced labour.⁴²

However as our research shows, there remain strong incentives within the anti-trafficking movement to target the Thai sex industry using the old raid and rescue approach, which results in human rights abuses, legal violations and incompetent practice, all of which are still prominent in

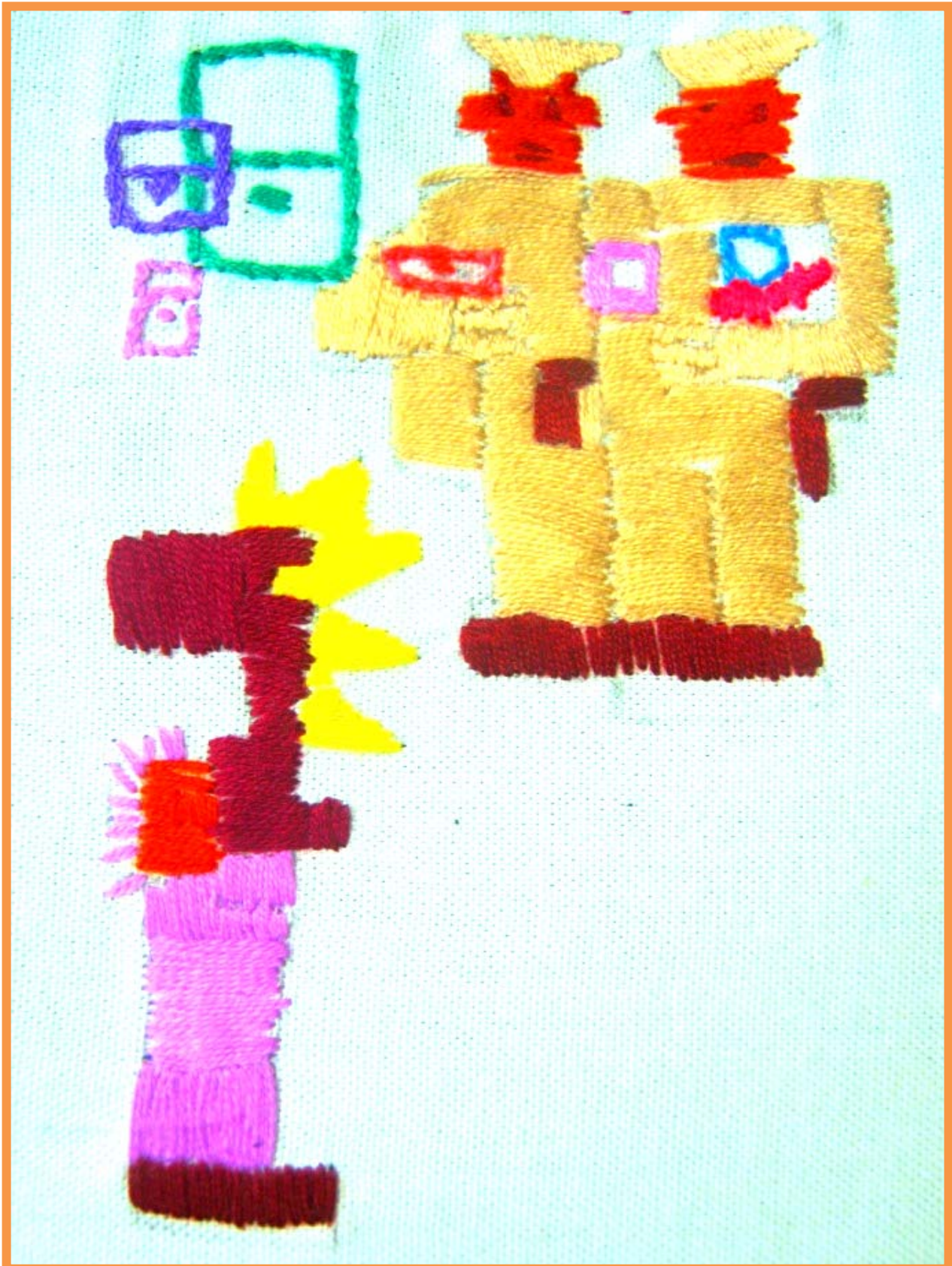
⁴⁰ Not For Sale Campaign and Global Exchange 2011

⁴¹ Drummond A, 2012 article: The Grey Man Will Blow Critics Out Of The Water

⁴² World Vision, 2010, Ten Things you need to know about labor trafficking in the GMS; UNIAP Estimating Labor Trafficking: A Study of Burmese Migrant Workers in Samut Sakhon, Thailand

the anti-trafficking movement in Thailand in 2011.

CHAPTER 2: ON TOP OF A MOUNTAIN OF LAWS



LAW AND POLICY IN THAILAND

Sex workers in Thailand live and work on top of a complex stack of laws, many of which aim to restrict and control our work.

Sex work is illegal in Thailand. The specific details of Thai laws that affect us follow. However first, it is important to understand the implications of criminalization of our work as we found it has a flow on effect with important consequences for the policy and practice of human trafficking law.

The process of criminalization begins when society makes a moral judgment that according to an ideal of sex only within marriage, we have sex with too many people, the wrong kind of people, for the wrong reasons. Society then makes a law to protect their moral standards, whether real or imagined.

The Suppression and Prevention of Prostitution Act is one such law. Looking at it closely we see that most sections in the law are not trying to stop us working, but are aimed at keeping what we do hidden. We cannot solicit, we cannot advertise, we cannot be in groups, we must be confined to certain areas etc.

Under this legislation, our work is not work, it's a crime and we are considered criminals. Our boss is automatically a crime boss rather than a businessman and employer.

The place we work is not a workplace but is considered a place of criminal acts. The Labour Act, Social Security Act and Occupational Health and Safety standards are not enforced in criminal businesses so our employers are outside these laws. They make up their own laws that we work under.

Society has to make more special laws to manage these crime areas: the Entertainment Place Act; the Social Order Policy; Zoning Laws; and Special Administration Areas, none of which offer us any benefits or protections. Problems at work can end up in the criminal court instead of the Labour Court.

The people who enforce the laws in places of crime are the police not Labour Inspectors or Health and Safety Officers. To show they do their job well, police must arrest us regularly. To arrest just one or two of us they use entrapment which is most common, to arrest more they raid our workplace which happens regularly like other festivals, and every year or so they will have a crackdown where they raid many places, sometimes across the country. During or after these raids and crackdowns they can put photos of us on the TV, in the newspaper and online so society can feel reassured. They can also show their good works by investigating where we work for other crimes like drug use, money laundering, immigration, copyright infringements and so on. We don't get automatic protection from the normal police but instead must pay corrupt police for protection.

Currently breaches of the Suppression and Prevention of Prostitution Act carry a maximum fine of 1,000 baht (USD33) for sex worker's. Police generally fine Thai sex workers 200-500 baht (USD 6-16), after which we are released from custody and return to work. Police data shows that each year in Thailand there are between 30-40,000 sex workers arrested for prostitution of which only

around 65 prosecutions involve minors⁴³

In raids on entertainment places, migrant sex workers can be charged with prostitution; being outside their designated workplace, working illegally and illegal entry into Thailand. Hence we become a more impressive indicator for arrest records and/or a more lucrative target for police extortion.

If the raid is by corrupt authorities for extortion, the owner or the workers themselves will usually pay bribes in the police station after which the workers are released.

If the raid is genuine then migrant sex workers will be fined for prostitution, sent to immigration and fined for immigration offences. We will be held in detention until transport is available for our deportation, usually not longer than two weeks. Fortunately due to longstanding fears for women's safety, usually women from Burma are left on the Thai side of the border crossing and told to go home, rather than handed over officially to the military junta.

The third type of raid is called a "rescue". When most people think about trafficking they think about crime gangs, women and prostitution. So it is no surprise that once again our workplaces are targeted for anti-trafficking raids. These raids are equally as terrifying and violent as the other kind of raids. Women are apprehended and taken to police stations the same as other raids. Reporters are given free range to photograph us the same as other raids. Our research shows that women have no idea what the raid is for, why they have been apprehended or what their rights are. We are eventually deported but unlike other deportations, we sometimes wait a year or more and rescues result in official deportations where we are handed over to our home governments.

Fortunately as human beings we also have our human rights which are defined and recognized at the national, regional and international level. Our rights must be protected and promoted by the Thai government the same as other people, according to law.

Punitive Laws

The following section provides an overview of the laws that currently impact on the everyday lives of sex workers in Thailand.

1. Employer's Bar Rules

These rules have the biggest direct impact on our everyday lives. The rules are used instead of labour laws and occupational health and safety standards. They are created by our employer following a fairly standard pattern. Rules include how much we are paid in salary or commission; what time and for how long we work every day; what we must do and must not do at work; and how much we are fined for breaches of the rules.

⁴³ Royal Thai Police 2008, Central Information Technology Centre Statistics

2. State Laws

Prevention and Suppression of Prostitution Act BE 2539 (1996)

Thailand's first law criminalizing sex work was enacted in 1960 during a moral cleansing campaign. It was amended in 1996 resulting in the current Prevention and Suppression of Prostitution Act BE 2539. Under the law prostitution is defined as '*sexual intercourse, or any other act... in order to gratify the sexual desire of another person in a promiscuous manner in return for earning or any other benefit*' (Section 4). "*In a promiscuous manner*" means with more than one man, added so that men could retain their mistresses and minor wives without concern.

Prostitution is deemed an offence whenever there is evidence of soliciting, advertising, recruiting others or arranging the prostitution of others for self-profit (Articles 5, 6, 7, 9). The maximum penalty for a sex worker is a 1,000 Baht fine (USD 30) or one month in jail. There are provisions for mandatory rehabilitation for adults but this is very rarely invoked in current times. The law in itself is reasonably lenient but the consequences of being judged a criminal are horrific, as discussed earlier.

The Entertainment Place Act BE 2503/2547 1966 (amended 2003)

This Act was originally enacted during the Vietnam War when US armed forces used Thailand as an R&R destination. The Entertainment Act allows for the registration of entertainment places where there is any kind of dancing, or any massage service provided (e.g. massage parlors, bars, night-clubs, Go-go bars etc) to hire "service employees" (e.g. waitresses, masseurs, dancers etc). The Act provides entertainment place owners with an opportunity to legitimize their business through registration or licensing. Under the Act owners must register their venues and employees with the police. This involves workers providing the police with a detailed family history, fingerprints and photos. In 2006 the National Human Rights Commission found the police were recording worker's history on a criminal suspect forms which was a breach of the human rights of workers. There are no provisions for working conditions labour rights or OH&S standards under the Act. Only a third of Entertainment Places have ever registered under the Act.

The Anti-Money Laundering Act B.E. 2542 (1999)

The money laundering act lists sex work as a 'predicate offence' (Section 3.2). This law gives the State the power to investigate financial transactions related to illegal activity. It makes it illegal to conduct any financial transactions using assets, property or money gained from the business of prostitution or the trafficking of women. The law has penalties of 1-10 years prison and fines of up to 200,000 baht (USD 6500) and allows the state to freeze, seize and confiscate assets and money gained from sex work or used in money laundering. The law is targeted to prosecute criminal offences at the higher end of money laundering and organized crime, and has been mainly used to target the illegal drug trade in Thailand rather than prosecuting individual sex workers.

Extra Punishment for Migrant Sex Workers

Immigration Act, B.E.2522 (1979)

Migrant sex workers are restricted by an extra set of laws governing their immigration status. The Immigration Act, B.E.2522 (1979) prohibits all undocumented and unskilled migrants from entering Thailand for work and in Section 12.8 explicitly prohibits immigration when there is “reason to believe that entrance into the Kingdom was for the purpose of being involved in prostitution or the trading of women of children”.

Technically there is a provision where non Thai women can apply to work legally in entertainment venues as performers or entertainers. Under the Immigration Act, entertainment venue owners can apply for work permits for migrant women to work as temporary entertainers or performers for period of up to 3 months.⁴⁴ However the employer needs to demonstrate a minimum business capital of not less than 20 million baht (USD 650,000); provide a minimum monthly income of 25,000-50,000 per month for each woman (USD 800- 1,600: the minimum wage in Thailand is around 4,000 Baht per month USD130); and the workplace must adhere to licensing and labour law requirements. In reality it is an exclusive system that isn't possible for the majority of entertainment venues in Thailand to access. The system also excludes women who do not have access to passports.

Under the Immigration Act, undocumented migrants found to be working illegally are arrested, detained, fined and deported. Under the law, the costs for detainment can be charged to employers, while deportation costs must be paid by migrants themselves. The maximum punishment is 2 years prison and 20,000 baht fine (USD65). In addition anyone who "brings or takes an alien into the Kingdom" is liable to imprisonment for up to 10 years and a fine up to 100,000 baht (USD 3,000).

The Alien Worker Act BE 2551 (2008)

This Act further restricts migrant sex workers through prohibiting undocumented migrants from working in Thailand without registration. Supporting Cabinet Resolutions limit occupations that are eligible for registration to domestic work, factory work, construction work, agricultural labour, fishing industries and general labourers. Working in a karaoke bar or giving massages are not criminal activities in themselves, and migrant women make up a large part of the workforce in these sectors of the industry. However they cannot join the registration process so must work unregistered or falsely register in other occupations. The Alien Worker Act allows police to arrest and fine undocumented migrant workers or those that are working in jobs that are contrary to their registration cards. Penalties range from 2000-100,000 baht (USD 65 -3,000) and 5 years prison. They may also be sent to Immigration for deportation to their country of origin. With no access to documentation, most migrant sex workers from neighboring countries in Thailand are in breach of both the Immigration and Alien Worker Act, and therefore vulnerable to arrests and deportation or extortion and harassment, the latter being considered by women to be the lesser

⁴⁴ Section 35 of the Immigration Act B.E. 2522 and Section 11(4) of the Royal Thai Police Act B.E. 2547

evil.

Other Acts that specifically mention prostitution or are used to punish or suppress sex workers include:

- Penal Code Amendment Act (No. 14) BE 2540 (1997 AD)
- Penal Code BE 2429 (1956 AD)
- Drug Suppression ACT BE 2547 (2003 AD)

Regulations

In addition to State Law, national provincial and local regulations also impact directly on sex workers. These regulations include: Public Health Regulations such as the 100% Condom Use Policy; clauses in tourist areas that have been declared “Special Administrative Zones” and have regulations and penalties for “bothering tourists”; regulations under the “Social Order Policy” that influence working hours, zoning etc. Lastly local council regulations can control sex workers conditions e.g. dress codes, only two workers can sit or stand outside the entrance at a time.

We are persons before the law - Protection and Recognition

Despite the fact that sex workers at times may be in breach of the Suppression and Prevention of Prostitution Act or the Immigration Act, we are entitled to recognition under all other laws and to protection of our full human rights. Like other workers, sex workers have legal protection provided within the Penal Code, criminal justice law and basic human rights entitlements framed within the Thai Constitution and according to international conventions ratified by the State.

If we are affected by a crime we are eligible for the same legal protection and redress as any other person under Thai law. For example the Thai Penal Code provides protections for all women against rape and sexual abuse (Thai Penal Code Section 277). However, because of the legal status of our work, sex workers are less likely to seek legal protection or redress for crimes or human rights violations, especially when many of these violations are perpetrated by corrupt police officials. For undocumented migrant sex workers, access to justice is even more difficult as there is a climate of impunity for perpetrators of violations against migrants who are rarely prosecuted or punished under Thai law.⁴⁵

Thai law also includes protection for sex workers who may be witnesses in criminal cases, via the Witness Protection Act, B.E.2546 (2003). This law provides guarantees for protection in cases of sexual offences and other crimes under the Criminal Code, with rights to protective custody being granted with the consent of witnesses in cases of need. Protective custody includes financial support for daily living costs, education, training, housing, security and in some cases the right to financial compensation.⁴⁶ In practice however, while sex workers are commonly being held as witnesses in trafficking cases they are not being recognized or granted any of their legal rights under the Witness Protection Act.

⁴⁵ Briefing Paper :Putting Women Migrant Workers into ASEAN, MAP Foundation Legal Support Unit

⁴⁶ Sections 7, 8, 9, 10,15 and 16 Witness Protection Act, B.E.2546 (2003)

National human rights protection mechanisms also guarantee legal protection for sex workers. The 2007 Constitution of Thailand guarantees fundamental human rights and freedoms. For Thai sex workers this includes the right to work, travel, access state health care and education services, live and work in circumstances free of discrimination, and entitlement to protection of these rights by law.⁴⁷ In addition the Constitution has legal provisions against unjust discrimination and declares that all persons are equal before the law and shall enjoy equal protection under the law, regardless of origin, race, language, personal status, economic or social standing.⁴⁸

While protection against discrimination is guaranteed within the Thai Constitution however it is not protected by any specific anti-discrimination law at the national level. The National Human Rights Commission guarantees both Thai and migrant women recourse for investigation and remedy of human rights violations via the Office of the National Human Rights Commission (NHRC) in circumstances where judicial and other state remedies have failed. This applies to all human rights that are guaranteed under the Constitution, under Thai law or under treaty obligations of the Thai government. In reality however the national human rights institution is not accessible to individual women. After the 2006 coup, under the 2007 Constitution the NHRC became a semi-independent body which is to a degree State controlled, and has not yet taken a stand against State human rights abuses.

The Labour Protection Act 1998 does not specifically exclude entertainment work or sex work. Although not enforced in the Entertainment Industry, in theory sex workers could make claim for labour protection or redress for breaches of the Labour Act.

Regional Protections

At the regional level Thailand has signed agreements as a member state of the Association of South East Asian Nations (ASEAN), which includes human rights protections for women and migrants in Thailand. This includes the:

- Declaration on the Advancement of Women in ASEAN 1988
- Declaration on the Elimination of Violence against Women in the ASEAN Region 2004
- ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers 2007

These ASEAN mechanisms have clear protection obligations for the Thai government to uphold the rights of sex workers in Thailand. This includes specific recognition of the fundamental human rights of migrant women including their right to access justice, education and training⁴⁹ and state obligation to eliminate discrimination and violence against all women in the ASEAN region; to strengthen women's economic independence; and to protect their human dignity and fundamental freedoms. In addition Thailand is an active member of two ASEAN regional institutions focused on human rights protection for women. The ASEAN Inter Governmental Commission on Human Rights (AICHR) requires Thailand as a member state to uphold the fundamental human rights of

⁴⁷ Section 34,40,49,51, Constitution of the Kingdom of Thailand B.E. 2550 (2007)

⁴⁸ Section 4, 30 Constitution of the Kingdom of Thailand B.E. 2550 (2007)

⁴⁹ ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, Sections: 5,7 &9; ASEAN Declaration on the Elimination of Violence against Women, Section 5

all peoples in the ASEAN region.⁵⁰ The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children requires Thailand to promote the well-being, development, empowerment and participation of women in the ASEAN community.⁵¹ While these mechanisms clearly outline core human rights protections for sex workers in Thailand, they have to date been relatively ineffective due to the limited protection mandates within ASEAN institutions, and the precedence given to national laws and policies over human rights in the region. In addition there remains a challenge in advocating for the human rights of sex workers via regional and ASEAN mechanisms, due to differing views of sex work between governments, institutions and indeed women's rights advocates in the region.

International Law

At the International level the Thai government has signed a number of treaties which enshrine state obligation to protect sex workers in Thailand. Thailand adopted the Universal Declaration of Human Rights (UDHR) in 1948 and since that time has ratified four major international human rights instruments including:

- International Covenant on Economic, Social and Cultural Rights (ICESCR) (acceding on 5 Dec 1999)
- International Covenant on Civil and Political Rights (ICCPR) (acceding on 29 Jan 1997)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (acceding on 27 Feb 2003)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (acceding on 8 Sep 1985)

These Conventions provide important binding legal protections for the human rights of sex workers in Thailand including: the right to work; right to access justice and for equality under the law,⁵² the right to liberty,⁵³ freedom from arbitrary detention,⁵⁴ the right for human dignity, privacy, family life, reputation and honour.⁵⁵

Within CEDAW however Article 6 is used to excuse human rights abuses against sex workers by the State. Article 6 mandates States to "take any appropriate measures to suppress all forms of traffic and exploitation of prostitution of women." This effectively provides governments with a free hand to use of aggressive suppression approaches targeted at women in the sex industry. This clause needs urgent amendment.

More recently in 2008, the CEDAW Committee issued General Recommendation No. 26 specifically detailing the obligations of countries with a significant migrant population, such as Thailand, to protect and uphold the fundamental human rights of migrant women with a focus on protections

⁵⁰ ASEAN Inter Governmental Commission on Human Rights Terms of Reference: Section 1.4, 2.2, 2.3;

⁵¹ ASEAN Commission on the Promotion and Protection of the Rights of Women and Children Terms of Reference: Section 2.1, 2.1, 3.2, 3.3, 3.5

⁵² UDHR 2, 6, 7 & 8; ICCPR 2(1), 14, 16 & 26; ICESCR 2(2) & 3; CEDAW 1 & 2; CERD 1 & 5

⁵³ UDHR 3 & 9; ICCPR 6 & 9; ICERD 5; CRC 6; CRC 37

⁵⁴ UDHR 3 & 9; ICCPR 9.1

⁵⁵ UDHR 12 & 16; ICCPR 17 & 23; ICESCR 10; CRC 9, 10 & 20

for those who are undocumented.⁵⁶ This would include migrant sex workers in Thailand.

The Thai government however has fallen short of their obligations within many of these Conventions and has also not yet ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The International Labour Organization provides a definition of work to include 'any economic activity that people can do or can be forced to do' which would include sex work. This means that under international labour law, sex work can be considered as a recognized form of labour and therefore be eligible to fundamental labour rights protections under ILO conventions related to work. In 1998 the ILO in fact recommended that economic recognition and the extension of labour rights be granted to sex workers.⁵⁷ The ILO Committee of Experts has always treated forced prostitution as a form of forced labour.⁵⁸ The 2010 ILO Recommendation 200 on Work and HIV does not exclude sex workers as workers. The ILO framework which the Thai government has endorsed via many ratified conventions – does provide an opportunity for greater protection of sex worker rights should there be the political will to endorse this option in the future.

The current legal environment leaves sex workers in a position of vulnerability to exploitative working conditions with no practical legal recourse, and hinders efforts to improve the safety and work standards for the entertainment industry as a whole. It also clearly discriminates against hundreds of thousands of Thai and migrant women whose work supports the national economy, their families and communities.

It is clear that the Thai Government has enshrined comprehensive legal obligations for human rights protections at the international, regional and national level. However our research shows that the Thai Government is failing in its current obligations within regional agreements and international law to protect the fundamental human rights of sex workers in Thailand. It is also violating the legal rights enshrined within its own domestic law and state officials are themselves perpetrating rights violations in the name of anti-trafficking policy and practice.

But what about the children? Legal Framework for Protection of Children and Minors

Thai society places high value on children and protective law has been in place for centuries. A large majority of sex workers in Thailand are mothers who have a strong commitment to the well being of children and young people. Children in Thailand are protected as specified within the UN Convention on the Rights of the Child 1990 which has been ratified by the Thai Government. This Convention supports comprehensive rights for children, and protections from economic exploitation, harmful work, sexual exploitation and abuse, abduction, sale and trafficking.

⁵⁶ CEDAW General Recommendation No. 26 on Women Migrant Workers, 5th December 2008

⁵⁷ Lin Leam Lim, The Sex Sector: The Economic And Social Bases Of Prostitution in Southeast Asia (ILO 1998).

⁵⁸ AIM for Human Rights; Fact Sheet 13; Right to Free Choice of Employment and to Just Conditions of Work

Other laws which provide penalties for the sexual abuse of minors include the Child Labour Act, and the Thai Penal Code Section 277 and Amendment 278 (Statutory Rape law). The Penal Code Amendment Act (1999) extends jurisdiction of the law irrespective of nationality and national location of crime as well as bringing in heavier penalties for commercial sexual abuse of a child. Amendment 278 provides protection for boys and girls who are the victims of sexual abuse or sexual assault with penalties for sexual abuse of minors under 13 years from 7-20 years prison and 14-40,000 baht (USD 466-1300) or Life imprisonment; and for 13-15 year olds: 4-20 years prison and 8-40,000 baht (USD 266-1300) fine.

In line with the moral ideal that only married people have sex there is no legal age of consent in Thailand. The Thai Marriage Act sets 18 years as the legal age of marriage for women and men (Section 1435). However in some circumstances minors under 18 years can be legally married providing they have the consent of their parents, guardians or a court in Thailand.

Both the Suppression of Prostitution Act and the Entertainment Act have specific provisions and penalties related to age. The 1996 Suppression of Prostitution Act originated from the older 1960 law that criminalized sex work however did not specify ages or refer specifically to commercial sexual abuse of children.

The 1996 Suppression of Prostitution Act made commercial sexual acts involving minors under the age of 18 years an offence, with the strongest punishments reserved for offences involving children under the age of 15 years. The law has appropriate penalties for venue owners and procurers ranging from 10-20 year prison terms and fines of 100,000-400,000 baht (USD3300-13,000). It also has penalties for parents including 4-20 years prison and 80,000-400,000 baht (USD 2600-13,000) fines; and customers: 1-6 years prison and 40,000-100,000 baht (USD 1300-30000) who engage in or support the prostitution of minors.

Overall the penalties for the prostitution of minors range from 4 years to life imprisonment and include the death penalty for cases of extreme exploitation and violence. The Suppression of Prostitution Act also provides for children and minors to be sent to PODC or welfare shelters, where they are entitled to welfare assistance, support, education and care under state guardianship as outlined under the Child Protection Law BE 2546 (2003). The Child Protection law covers all children in Thailand including migrant children, with a requirement for the child to be returned into family or guardianship care as soon as possible and institutional residence seen as a last resort.

The Entertainment Act law also includes age restrictions, setting 20 years as the minimum age for patrons and 18 years as the minimum age for women to work in entertainment establishments. The penalty for employing under-age girls is up to 2,000 baht. In practice, if girls under 18 years are found to be working in entertainment venues in Thailand they are either returned to an appropriate family environment, or sent to shelters under state guardianship until they reach the age of 18 years (until 20 years old in special circumstances).

This combination of laws provides a strong framework to protect children and punish individuals and organizations that sexually exploit or abuse minors. They also clearly define the entertainment industry in Thailand as an industry of adult workers.

In practice however there is a serious gap in resources and real employment options for mature teenagers who have family responsibilities and need to earn a significant amount of money. Apprehending and detaining such minors is not effective strategy, they need safe choices, respect and ongoing support.

Aside from the possibility of compensation, the Suppression and Prevention of Trafficking Act has added little of benefit to the existing legal framework especially for women and girls. It is interesting to note that the Suppression and Prevention of Prostitution Act BE 2539 (1996 AD) carries far higher penalties for the offences against minors and children. Prison terms for acts against minors for example incur up to 5 years longer and the fines are double that of the maximum penalties in the Suppression and Prevention of Human Trafficking Act.

Even so it seems authorities and anti-trafficking agencies prefer to use the anti-trafficking Act even when the Suppression of Prostitution Act would seem more fitting.

During our research we talked with a man on trial for human trafficking. He had been a gardener at a city park. He noticed a group of 4-5 homeless teenage girls living in the park and selling sex. They had all ran away from home, all were Thai and from the local area. They told us they knew of social services available to them but didn't want to contact them. The gardener got to know the girls, aged 16 -17 years. Soon he had quit his gardening job, rented a house where the girls moved into and he began arranging customers for them and collecting most of the money i.e. taking advantage of them and their situation. The girls say they were happy enough with the arrangement and were free to come and go. He was reported to police and arrested, but instead of being charged with the recruiting and sexual exploitation of minors or other offences under the Prostitution Act, he was charged with human trafficking. His case was concluded during our research period and he was given a 3 year custodial sentence. All the girls have returned to life and work in the park. We suppose that he and the three girls rescued will be recorded in the anti-trafficking statistics and the upcoming TIP report to add to the misleading picture of human trafficking in Thailand!

**CHAPTER 3: SUPPRESSION AND PREVENTION OF HUMAN
TRAFFICKING ACT BE 2551**



The current Suppression and Prevention of Human Trafficking Act, hereafter referred to as the Act, is an amendment to the 1997 anti-trafficking law which did not include recognition of trafficking of men or boys. The 2008 changes rectified this and increased protection measures for all trafficked persons.

While the Act contains a number of important protections there remain significant problems both within the definitions and in the enforcement.

Problems of Definitions

Under the Act the offence of 'trafficking in persons' is defined as consisting of three elements:

TRAFFICKING:

1. Movement or 'trading' of human beings:

"Procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving any person"

2. Use of force or deceit:

"By means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person"

3. For the purpose of Exploitation

"Exploitation" means seeking benefits from prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent."

If the victim of trafficking is a minor or child (i.e.: under 18 years) there is no need to consider the issue of consent or deceit: *"anyone procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving a child for the purpose of exploitation is guilty of trafficking in persons."*

(Sections 4 and 6)

As previously discussed; the singling out of prostitution as if it were in itself a form of sexual exploitation and a distinct type of trafficking causes confusion and conflation of sex work and human trafficking. This conflation of the two leads to many of the abuses and human rights violations we uncovered in our research.

The broad definition of 'exploitation' in the Act which includes anyone 'seeking benefits from prostitution ... with or without consent of the person' is also problematic. 'Seeking benefits' could implicate a wide range of persons in and outside of the sex industry in addition to the traffickers, exploitative employers and corrupt authorities it is aimed at.

For example: Entertainment place owners and support staff e.g. those who clean, cook, or provide transport. It could also include customers and sex worker's families who receive 'benefits', in cash or kind. Many NGO, UN agencies and the government also clearly benefit from prostitution via job opportunities, funding and other economic gains.

This generic definition of trafficking within the Act does not take into account how we sex workers would define exploitation of our labour, but rather this has been left to the subjective judgment of others.

The Act also does not allow for the reality of how people are routinely moving and finding employment in Thailand. There is also wide misunderstanding about the role of smuggling, including within the anti-trafficking movement. In smuggling, movement is often paid for, it may be expensive and opportunistic, but does not result in ongoing exploitation. Millions of migrants from neighboring countries commonly pay fees for brokers who can assist them in their travel and in finding work in Thailand. This may indeed involve smuggling, yet is often referred to as interchangeable with human trafficking by authorities and media simply because there has been movement and an exchange of money. This second conflation, between smuggled and trafficked, creates a situation where nearly all migrant sex workers could be labelled as trafficked persons despite their statements to the contrary.

Further confusion occurs concerning the salary advances or loans taken out by migrants coming to Thailand. These loans are commonly viewed by migrant sex workers as reasonable, useful and they are generally able to be paid back within a few months of work. However under the Act this exchange of money can be construed as a payment to family for the woman's consent.

The issue of force is key to the crime of human trafficking. While the Act does not define forced labour, unlike the broad subjective "seeking benefits from prostitution" - several useful international definitions of forced labour do exist:

*"Physical or sexual violence; restriction of movement; debt bondage; withholding or refusing to pay wages; retaining passports or ID documents and threat of denunciation to authorities"*⁵⁹

Debt bondage is also defined as referring to a system by which workers are kept in bondage by making it impossible for them to pay off their real, imposed or imagined debt.⁶⁰

If these definitions were adopted or similarly specific and measurable definitions were in put in place for sex work then much of the confusion and ensuing human rights abuses against migrant sex workers would be reduced.

However currently prosecution of trafficking for exploitation of prostitution under the Act requires that there is evidence of breaches in the three key areas i.e. proof of movement by deception or force; proof of coercion or force (non consent) and proof of others seeking benefits from prostitution, except for minors or children where proof of deceit, force or coercion is unnecessary.

⁵⁹ From ILO Guidelines on Human Trafficking and Forced Labor Exploitation: Forced labor is further defined in UDHR, Art 4 / ICCPR Art 8 / ICESCR Art 10/ CEDAW Art 6/ ICRMW Art 11 / ECHR Art 4/ ILO Convention 29 and 105

⁶⁰ RIGHT FACT SHEET and defined in Article 1 (a) of the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery.

However, as the large majority of women and minors apprehended in Entertainment Places deny they are trafficked and do not wish to pursue any legal action, anti-trafficking agencies, both state and non-state have a significant problem. In response, agencies have developed a range of practices for their evidence collection. Not all of these practices are ethical or even legal, such as entrapment mentioned previously. However the Act itself gives wide powers to State officials to collect evidence. Police have the extended powers to enter and investigate any place they believe is involved in trafficking without the need for a warrant (Section 27.4). The Act also enables police to detain people against their will (for periods of 24 hours – to 7 days in shelters or other secure venues) in order that authorities can assess whether they are trafficked persons or not (Section 29).

When women suspected of being minors give their age as over 18 years, as is common, the agency involved must then provide the court with some proof of age to refute their testimony. This has led to mandatory age testing conducted by state authorities without informed consent. (These tests themselves have no scientific credibility as discussed in following chapters).

Anti-trafficking agencies place themselves in the bizarre situation of having to commit acts of violence and human rights abuses on the women and girls they rescue in order to try and prove a crime has occurred, despite the denial and lack of cooperation from the alleged victims.

Protections under the Prevention and Suppression of Human Trafficking Act

The Act provides a range of protections and rights for trafficked persons including:

- Accommodation in government approved shelters, food, medical care, rehabilitation (physical and mental), education, vocational training. In the provision of these entitlements human rights principles including the opinion of the person, must be taken into account seriously (Section 29, 33).
- Legal aid, timely legal process and free legal representation in a court of law to prosecute traffickers; (Section 31, 34)
- Compensation from the trafficker for damages as a result of trafficking (Section 33, 34, 35, 37)
- Right to temporary stay and work in Thailand while awaiting outcomes of the prosecution (Section 37)
- Privacy: identifying photos or information are not to be circulated via media or other channels (Section 52)
- Safe and timely return home to families and communities , both in Thailand and to other source countries (Section 33,36,38, 39, 44)

Penalties under the Act: Section 6, Section 52-56

The penalties are aimed at anyone who assists in the trafficking process and benefits from the exploitation of trafficked persons.

- Trafficking children up to 15 years old: 8-15 years prison / 160-300,000 baht (USD 5000-10,000) fine
- Trafficking minors 15-17 years: 6-12 years prison and 120-140,000 baht (USD 4000-4500) fine
- Trafficking adults 18 years and over: 4-19 years prison and 80-200,000 baht (USD 2500-6500).

The severity of the penalty is also dependent on the status of the trafficker – with state officials or those involved in organized criminal groups receiving the highest penalties. Any three people who, as a group, benefit from prostitution is defined as an “organized criminal group” e.g. a manager; cashier and motorcycle transport boy can be labelled as an organized crime gang. While it looks impressive on paper for law enforcement to have busted up organized crime rings, on the ground it is obvious they are neither a gang, well-connected or even very well organized.

The Suppression and Prevention of Prostitution Act imposes far heavier penalties for forced prostitution which is defined to include confinement, bodily harm, threats, violence, or deprivation of liberty. Extreme incidences of such crimes against women or children can result in life imprisonment and even the death penalty (Section 12).

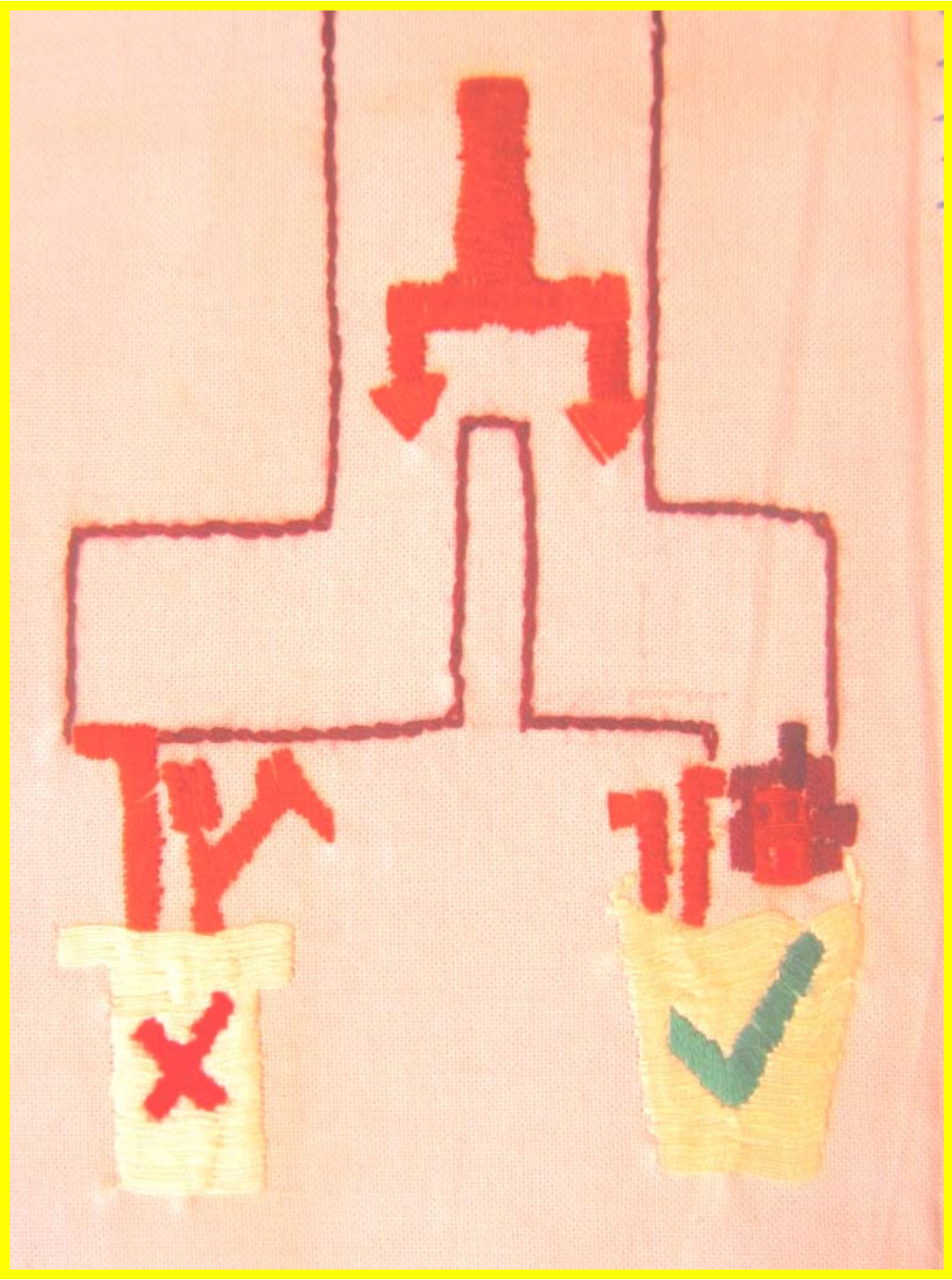
Protections under International Anti-trafficking Commitments

In addition to protections in the national law, the Thai government also has obligations as a signatory to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Despite the fact that the Thai government has not yet ratified this UN Trafficking Protocol, the State is obligated as a signatory, to refrain from acts that would defeat the objectives or undermine this treaty,⁶¹ and should act with its signified intention to adhere to all the protections within the treaty. The protection and assistance outlined in the UN Protocol Section 2 Articles 6-8 are for the most part mirrored in the Thai Suppression and Prevention of Human Trafficking Act.

In addition the Thai government has ratified most of the international human rights treaties that are incorporated into the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking. These international Guidelines provide important standards on which to base national anti-trafficking practice and include core principles that prioritize the obligation of the State to place the human rights of trafficked persons at the centre of all anti-trafficking measures and to ensure that anti-trafficking measures do no harm – i.e. do not violate the human rights of others (migrants, refugees, etc).

⁶¹ AIM for Human Rights, Fact Sheet 7: Human Rights Standards for Preventing and Combating Trafficking and the protection of the rights of trafficked persons.

CHAPTER 4: GOVERNMENT ANTI-TRAFFICKING POLICY



National Policy and Structure

In order to implement the provisions in the Act, the Thai government has developed a comprehensive structure which includes a National Action Plan implemented via approximately 14 different government departments. There are also a number of cross-border agreements for cooperation on trafficking issues with neighboring countries.

The first National Action Plan was developed in 1996. The current plan will cover 2011-2016. Contrary to all evidence to the contrary the current plan still identifies “cross border trafficking for sexual purposes” as the primary trafficking trend in Thailand,⁶² and targets women who are trafficked into Thailand as well as Thai women who are trafficked overseas.

The policy includes 7 key operational plans based on: prevention; assistance and protection; prosecution and suppression; return and reintegration; monitoring and evaluation; administration and management; and international cooperation.

A number of committees have been established to oversee anti-trafficking activities in Thailand with representatives from government and NGO, at international, national and regional levels.

Anti-trafficking policy is overseen by the Anti-Trafficking in Persons (ATP) Committee, chaired by the Prime Minister (Section 15). There are also committees tasked with response and prevention activities for Thai trafficked persons overseas. These are based in Thai foreign missions abroad, and include members from the level of attaché, consul, ambassador, plus representatives from government, NGO and Thai communities overseas.

At the national level the committee of the National Operation Centre on Human Trafficking (NOCHT) plays a national coordination role and includes government departmental heads, representatives from NGO, and international organizations. At the provincial level the Provincial Operation Centres on Prevention and Suppression of Human Trafficking (POCHT), are chaired by provincial governors, with representatives from provincial level police, social welfare and other state agencies, plus NGO, civil society and local businesses who work on anti-trafficking activities in their local area.

The Act also requires the establishment of an Anti-trafficking Fund managed by the Ministry of Social Development and Human Security (MSDHS) (Section 42). The fund is made up of money from government and international NGO sources and can be used to provide support, protection and assistance to trafficked persons in Thailand or Thai people overseas. The Fund can also be accessed for prevention or suppression campaigns (Section 42-51).

The Act has mandatory annual reporting requirements for government departments on anti-trafficking activities, including the number and outcomes of trafficking interventions (Section 40), and monitoring and evaluation of the Fund (Section 49). The main government agencies involved in administration and implementation of anti-trafficking activities are outlined below.

⁶² Ministry of Social Development and Human Security, National Policy Strategies and Measures to Prevent and Suppress Trafficking in persons (2011-2016)

- Ministry of Social Development and Human Security (MSDHS)

The MSDS is the lead government agency for counter-trafficking activities in Thailand, responsible for coordinating the work of other agencies and providing support for trafficked persons. It is responsible for the production of the annual reports and evaluations.

The MSDHS manages nine state run Protection and Occupational Development Centres providing support services and vocational training for men, women, minors and children who are either affected by trafficking, sex workers under sentence, or people with social or family problems. The MSDHS also oversees another 76 shelters across Thailand, some of which are administered by state authorities while others are run by non government organizations.

- Department of Special Investigation (DSI) under the Ministry of Justice (MOJ)

The DSI is responsible for investigation of human trafficking cases and pursuing those deemed as 'special cases'. The DSI has a special division of police targeted to pursue this area (below)

- Royal Thai Police Anti-Human Trafficking Division (AHTD)

THE AHTD was established in 2009 as a specialist division within the DSI, with the mandate to investigate trafficking offences. Provincial level police still follow up the less complex trafficking cases while the AHTD takes charge of the bigger cases. The AHTD also coordinates information and responses in all trafficking cases and works with NGO, the MSDHS, local and provincial police. The AHTD consists of seven divisions – the Directors Division and six specialist units that are based in the following designated provinces in Thailand.

- AHTD 1 Bangkok,
- AHTD 2 Ayutthaya
- AHTD 3 Khon Kaen
- AHTD 4 Chiang Mai
- AHTD 5 Nakhon Pathom
- AHTD 6 Songkhla

- The Office of the Attorney General (OAG)

The OAG is an independent government agency responsible for prosecuting human trafficking cases. The Center Against International Human Trafficking (CAHT) located within the Attorney General's office has eight full-time attorneys devoted to coordinating the prosecution of all trafficking cases in Thailand. They also have an informal network of more than 180 prosecutors who aim to share information on trafficking cases. The OAG also trains prosecutors nationwide in the use of the Act.

Provincial Memorandums of Understanding (MOU)

The national response to trafficking has also included a series of provincial agreements or memorandum of understanding (MOU) developed since 2003, to oversee the anti-trafficking response between the 76 provinces of Thailand. These include:

1. National Memorandum of Understanding (MOU) on Operational Procedures for Concerned Agencies in Trafficking in Women and Children (1999)
2. MOU on Common Operational Guidelines for Government Agencies, B.E. 2546 (2003)
3. MOU on Operational Guidelines for NGO Engaged in Addressing Trafficking in Children and Women, B.E. 2546 (2003)

4. MOU on Operations between State Agencies and NGO, B.E. 2546 (2003)
5. MOU on Common Guidelines of Practices for Agencies in the Nine Northern Province, B.E. 2546 (2003)
6. MOU on Common Guidelines of Practices for Agencies in the 19 North East Province, B.E.2549 (2006)
7. MOU on Common Guidelines of Practices for Agencies in the Eastern Province, B.E. 2549 (2006)
8. MOU on Operational Procedures for Concerned Agencies in Prevention, Suppression, and Solution for Human Trafficking Problem in 17 Northern Provinces, Thailand B.E. 2550 (2007)
9. MOU on Common Guidelines of Practices for Agencies in the 8 South Eastern Provinces, B.E. 2550 (2007)
10. MOU On Operational Procedures for Concerned Agencies in Human Trafficking in 6 Southwestern Provinces, Thailand B.E. 2550 (2007)
11. MOU on Common Guidelines of Practices for Agencies in the 9 Nine Lower Central Provinces, B.E. 2554 (2008)

The MOU developed in the year 2003 provide operational guidelines for anti- trafficking activities, based on the previous Suppression and Prevention of Human Trafficking Act of 1997. They cover a wide range of activities including identifying target groups or trafficked individuals – with explicit focus on women, minors or children found to be in the ‘sex trade’ or ‘exported as prostitutes’. The guidelines outline the roles and responsibilities of government social welfare staff, police, NGO, shelter staff and embassies. They cover procedures such as fact-finding, assessment and support and the deportation process for migrants, and offer important protections such as the requirement for a translator when interviewing trafficked persons.⁶³ These MOU endorse the practice of medical tests by state medical authorities, including physical and dental examinations, to determine the age of people who have no ID documents, or in cases when officials suspect the ID documents to be false, or are incomplete.⁶⁴

The four MOU developed in 2006 -2007 formalize the operations of provincial anti-trafficking activities under the Provincial Operation Centers on Prevention and Suppression of Human Trafficking (POCHT). The POCHE is mandated to form multidisciplinary teams whose aim is to rescue trafficked persons.

All of the MOU have similar provisions for these teams which include: an explicit target on rescuing women and children in the sex industry; operational guidelines for the teams to plan and execute raids; restrictions on photos and sharing identifying information about trafficked persons; procedures to identify trafficked persons with the help of official investigators, social workers and psychiatrists; and a mandate to follow up support and legal cases.

The MOU are all based on the 1997 law except for the latest MOU for the lower central provinces which is based on the 2008 Act. The 2007 and 2008 MOU include mention of men, reflecting recent expanding of the anti-trafficking focus. The latest MOU also has additions that are relevant

⁶³ Operational Guidelines for NGO Engaged in Addressing Trafficking in Children & Women, B.E. 2546 (2003) Section 5

⁶⁴ MOU on Common Operational Guidelines for Government Agencies, B.E. 2546 (2003) Sections: 4.4, 4.5.5.5,6.4,6.5

to the current Act including: protection of internationally recognized rights of the child, right to confidential interview techniques, and additional duties assigned to the POCHT to provide support for trafficked persons to stay and work temporarily in Thailand. This includes assistance to find a job and secure a work permit. The MOU however fails to document the process for people to apply for and obtain compensation as is their right under the Act. All of the MOU include reference to fundamental human rights principles for the protection of trafficked persons.

Regional and Bilateral MOU

The Thai government has signed a number of bilateral and regional agreements to combat trafficking since 2002. In 2004 the Thai government joined the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) alongside the five other Greater Mekong States: Cambodia, China, Lao PDR, Burma and Vietnam. This resulted in an MOU between the countries known as the 2004 COMMIT MOU against Trafficking in Persons.

The COMMIT MOU is based on international standards, uses the UN Trafficking Protocol definition, and emphasizes a person centred approach to trafficking prevention. COMMIT however also highlights the need for effective migration processes, labour laws and monitoring of labour recruitment processes for all countries in the region.

The COMMIT structure includes a national COMMIT Taskforce made up of Thai government officials from police, justice, social welfare, and women's affairs. This taskforce has the mandate to develop the national anti-trafficking work plan for Thailand, as well as help develop sub-regional plans of action (SPA). Currently the SPA III: 2011-2013 are underway.

The COMMIT taskforce works in collaboration with other taskforces from the Mekong countries and the process is supported by a wide range of partners including UN agencies, NGO, inter-governmental organizations, donor organizations, and academia. The UN Interagency Project on Human Trafficking (UNIAP) is the Secretariat to the COMMIT Process which covers regional anti-trafficking activities in the area of: policy and cooperation, prevention, support and repatriation, legal frameworks, data collection, monitoring and evaluation.

Bilateral MOU targeting trafficking have also been signed by Thailand, Laos, Burma, Vietnam and Cambodia over the last seven years. The definition of trafficking in the MOU is based on the UN Trafficking Protocol and all MOU specifically discuss exploitation in prostitution as if it were a form of trafficking. These MOU provide standard protections for trafficked persons including: access to legal representation, shelter, protection, vocational training, health treatment, safe repatriation, right to compensation and freedom from prosecution for immigration offences. They also outline official deportation, cooperation and data sharing processes between states.

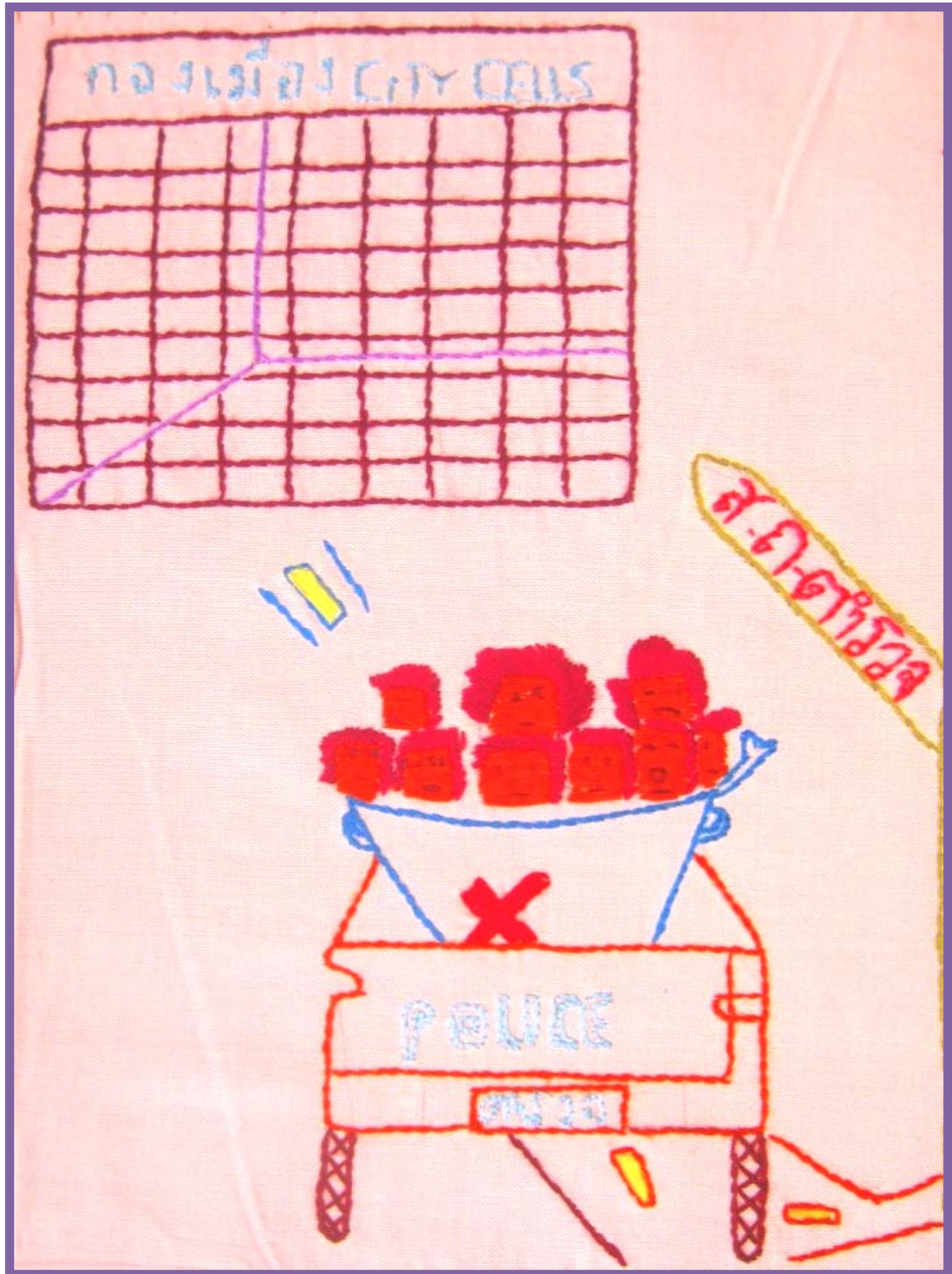
In addition to the COMMIT process the Thai government has signed the ASEAN Declaration against Trafficking emphasizing a commitment to develop formalized migration processes within ASEAN; to uphold human rights protections for trafficked persons; and to prosecute traffickers.

Bilateral and regional anti-trafficking agreements signed by the Thai government:

1. MOU between Thailand and Cambodia on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking 2003

2. ASEAN Declaration Against Trafficking in Persons Particularly Women and Children DARE
3. The MOU on Cooperation Against Trafficking in Persons in the Greater Mekong Sub-Region, 2004
4. MOU between Thailand and Lao PDR on Cooperation to Combat Trafficking in Persons, Especially Women and Children, 2005
5. MOU between Thailand and Vietnam on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking 2008
6. MOU between Thailand and Myanmar on Cooperation to Combat Trafficking in Persons, Especially Women and Children 2009

CHAPTER 5: POLICY AND PRACTICE - MIND THE GAP



When good policy becomes bad practice

We found that the Thai Government's comprehensive national and regional policy and guidelines concerning approaches to address human trafficking are in line with the Suppression and Prevention of Human Trafficking Act. However in reality there is a huge gap between policy and practice.

What's what? Accountability

There is no central common monitoring or reporting system used by anti-trafficking NGO or government departments in Thailand. A number of government departments collect and keep information about human trafficking but each uses a different system and collects different types of information.

Despite being required under the Act to produce yearly reports and comprehensive monitoring of the state activities and the anti-trafficking fund, the Ministry of Social Development and Human Security (MSDHS) has to date produced only one national annual report on anti-trafficking activities in year 2009.

Anti-trafficking NGO appear to use their own individual data reporting systems to monitor and evaluate their own activities and these are not routinely available for public scrutiny.

Many NGO and government representatives interviewed for our research were able to discuss one or two individual examples of trafficking and interventions, however were reluctant or unable to give any specific data on the numbers of persons assisted nor measure the extent of the trafficking problem in general.

"Everyone says 'we had one case' or 'we had two cases'. Often it turns out to be the same story told by different organizations so four organizations are all talking about 'we had one case' "
Lek, research team leader, sex worker, Chiang Mai

Even given the lack of credible evidence, generally the anti-trafficking NGO we talked with were confident that human trafficking is a major issue of concern in Thailand. Most expressed frustration that addressing the issue was often hindered by an ineffective police response, a slow prosecution process and a lack of understanding by state officials of the Act, including the victim identification process. The Act itself was felt to be comprehensive but the enforcement inadequate.

There are several areas and border towns often labelled by agencies as 'Hot Spots' of human trafficking. However, police and government officials in a number of these alleged 'hot spots' reported that there was either no trafficking occurring or only one or two instances of trafficking ever found in their area. Our research team received a number of provincial and regional level reports from the MSDHS and attended a number of state sponsored anti-trafficking meetings held in 2011.⁶⁵ From these sources it appeared that there was much confusion regarding the Act and it's definitions amongst state welfare, immigration and police officials. A common

⁶⁵ See Appendix for list of reports and meetings attended

misunderstanding appeared to be the confusion between undocumented migrant workers and trafficked persons, or smuggling and trafficking.

“Nobody understands trafficking - so we can’t tell what is trafficking and what is not. For example: if a Laos person comes into Ubon looking for work and then goes to other provinces and they agree to the wage they get, there is not any force used, including both women and men over 18, or under 18 years is this trafficking or not?”

Comments from Provincial level MSDHS Report

“There is no trafficking in Mukdaharn - no trafficking cases have been found here – it is a transit point – people come here from Laos and pass through here on their way elsewhere to other places. They come the normal illegal way without documents – they are difficult to identify because they pretend to be Thai.”

Comments from Provincial level MSDHS Report

Over the last five years, there have been a range of training programs, resource guides and information developed to assist police, immigration officials and NGO to find and identify persons trafficked for exploitation in prostitution.

There have been no targeted publications or trainings given to sex workers, sex worker organizations, Entertainment Place owners, sex worker employers or support staff.

Police respondents noted that despite the fact that they had received training on the Act, there are still some areas that are difficult to understand. In general though the police were positive about the Act and its protections for trafficked persons, however they found that the implementation process and paperwork is complicated and creates an increased work load.

The core group of 36 sex worker leaders who studied the Act had little trouble understanding its scope, content and provisions. It is not a particularly lengthy or complicated law in itself.

We propose that the difficulty that police and others have in understanding and enforcing the Act, is when it is incorrectly applied to people who staunchly deny they have been trafficked and insist they are over 18 years old.

None of the entertainment industry employers we spoke with had ever seen the Act, even those who had been convicted of trafficking had little knowledge of it.

When analysing the Act sex workers working on the project were very critical that the provisions made for education and training of trafficked persons required compulsory stay in shelters and that the final outcome for all trafficked persons was deportation.

“Why do women have to be trafficked and locked up to access education and training. Why not provide it anyway?”

Nong, research partner, sex worker leader, Mae Sot

Who? Identification of persons being trafficked and assisted

The types of trafficking and the number of persons who have been assisted under the Act is impossible to determine because as mentioned earlier the national data is inconsistent, published rarely and difficult to access. The data that is available does not include sufficient information to determine clearly the numbers or demographics of trafficked persons who have been officially assisted in Thailand each year.

Data on arrest and prosecution outcomes is easier to come by, however these figures do not reflect the actual numbers of trafficked persons involved.

When collating these findings with the opinions of other stakeholders and the little reliable data we were able to access the following snapshot of human trafficking interventions since the enactment of the Act in 2008 emerges:⁶⁶

2008 -2011 Trafficked persons assisted:

- .. There have been between 363 and 530 persons recorded as trafficked and receiving assistance in state supported shelters each year. However each person is re-counted every year as long as they are still receiving assistance, meaning real totals are lower again still. The numbers include men, women, minors and children trafficked into Thailand to work in various industries. People mostly came from Burma, Laos and Cambodia, with smaller numbers from Vietnam and China.

There have been between 309 and 443 Thai people each year who have been returned to Thailand after being trafficked overseas. Once again they are counted again every year that they receive assistance. They also includes men, women and children trafficked into in various industries. No data is provided on gender, yet figures are said to include mainly adult women trafficked into the sex industry in Singapore, Bahrain, UAE, Malaysia, Taiwan, and Japan.

Incidence and Arrests

THAILAND DATA 2008 - 2009:⁶⁷

A total of 221 traffickers were arrested for their involvement in the 42 cases of trafficking identified in the first year of the Act.

Of those arrested, 120 (54%) were charged with involvement in 20 (47%) incidents of trafficking for exploitation of prostitution identified in the year. The remainder were arrested for trafficking for other types of forced labour (30%) or forced begging. (12%)

In the following year 2009 authorities almost doubled the number of trafficking incidences

⁶⁶ US Trafficking in Persons reports 2008 to 2011

⁶⁷ MSDHS 2009 Report on the Situation, Prevention, Suppression of Trafficking in Persons, NOCHT

identified. In all 97 cases of trafficking were now identified, with 58 (59%) being trafficking for exploitation of prostitution.

Since the Act was implemented in June 2008 till June 2011⁶⁸ there have been 253 actual convictions with 159 (67%) of successful convictions being for trafficking for exploitation of prostitution. There is no data provided on the length of sentences that traffickers received. Two of the people convicted of trafficking for exploitation of prostitution interviewed in our research however told us they received between 2-3 years in prison for their offences.

TYPE OF TRAFFICKING PROSECUTIONS	2008	2009	2010	2011	TOTAL
Exploitation of Prostitution	19	56	58	26	159 (67%)
Labour	13	27	10	6	56
Begging	8	6	2	0	16
Sexual Exploitation	0	1	0	0	1
Organ	0	0	0	0	0
Pornography	0	0	0	0	0
Slavery	0	4	0	0	4
Extortion	0	1	0	0	1
TOTAL	48	101	72	32	253

(DATA from AHTD Police, Bangkok: From 5th June 2008 to June 2011)

During 2010 the Attorney General's Office estimated that they had 79 reports of human trafficking. From January 2010 until March 2011 the Court had ruled on 18 of these cases, dismissed 5 cases, and were continuing to investigate and interview witnesses in the remaining 56 cases as of August 2011.⁶⁹

Given the anti-trafficking movement's primary focus is on the sex industry and the size of our migrant workforce we found that the above data fully supports our anecdotal evidence from sex workers and employers, that trafficking into the sex industry in Thailand is the exception rather than the rule. We find the picture also shows that trafficking for exploitation of prostitution is more likely to be investigated, identified, arrests made and convictions upheld.

⁶⁸ Correspondence Report from Bangkok AHTD police data2011

⁶⁹ Correspondence from Attorney General Office, Thailand, 2011

It was pointed out to us by NGO and police that it was difficult to identify and prosecute cases of forced labour. Reasons they gave for this include: the absence of a definition of forced labour within the Act, the lack of access to factories and other workplaces, the political sensitivity of the migrant labour issue in Thailand and the difficulty of proving force, coercion and exploitation in a labour context.

“Our workplaces are wide open every night with fairy lights to show the way! Of course it’s easier to visit us” Oa, research partner, Empower Chiang Mai

Many NGO note that the trend of concentrating on trafficking for exploitation in prostitution to the exclusion of other perhaps more common forms of trafficking is beginning to change. There has been a move to include concerns for men trafficked, particularly those being exploited within the Thai fishing industry. There is also a slow shift towards addressing trafficking and exploitation of migrants working in factories, construction and other migrant labour intensive industries in Thailand.

“We don’t want the police involved in workplaces. We don’t want the police carrying out raids as we see happen for the sex industry. Exploitation and forced labour in any industry, including the sex industry is primarily a labour issue that needs to be solved using labour mechanisms. We only wish that even a fraction of the money and resources spent on anti-trafficking could have been channelled into existing mechanisms like, Labour Inspection teams.”

Jackie Pollock, Director, MAP Foundation

How? The Process

Generally police investigations begin with a report of suspected trafficking to a designated hotline or other contacts. Reports come from various sources e.g. NGO, the general public, customers in the sex industry, and from people who seek help themselves or their friends and family. Billboards and posters, albeit strangely often only in English language, are displayed encouraging reporting. Some NGO do their own searching by sending their volunteers to karaoke bars and massage parlours to find trafficked women and girls.

Of course this all results in the police getting a large share of malicious, false or mistaken reports. Police say that most of their anti-trafficking work, and most of the reports they receive are related to minors, girls 15 - 18 years old, who are said to be working in karaoke bars in forced prostitution. However reporting is frequently inaccurate, for example police in the north of Thailand estimate that only 1 in 10 reports of trafficking for exploitation of prostitution they receive turn out to be true.⁷⁰

Police also pointed out another reason why data available is so contradictory. Those who report trafficking cases often confuse undocumented migration or smuggling with trafficking. The public or NGO may initially report an incidence of suspected human trafficking involving large numbers of people however after proper investigation there is often a much smaller number or no actual

⁷⁰ Interview with police from Anti Human Trafficking Division 4 Chiang Mai, July 2011

trafficked persons, arrests or prosecutions.⁷¹

Anti-trafficking organizations claim that the mismatch between the numbers of first reports of trafficking and the actual arrests is more a problem of the lack of training, information and follow up from police and prosecutors in Thailand.

This disconnect between agencies is fuelled by the lack of clear definition of exploitation of prostitution in the Act and the resistance from migrant sex workers and minors to being defined as trafficked persons.

In order for an arrest for trafficking to proceed there needs to be both adequate evidence and reliable testimony from those affected. Both police and NGO reported that it is difficult to obtain testimony from women or girls who do not identify themselves as trafficked; were not looking for help; do not want to, or simply cannot afford to be involved in lengthy legal cases, but would rather move on to new work or just return home.

In the face of all evidence to the contrary many anti-trafficking NGO continue to assert that there is still a large number of minors and children being trafficked into the Thai sex industry.

They claim to consistently see girls, particularly Laos girls between the ages of 14-16 years being trafficked into forced into prostitution in Thailand. However what they see is not reflected at all in the combined knowledge of the sex worker community, anti-trafficking police, government shelters or the courts.

We found that many anti-trafficking NGO have few connections and little experience with the sex worker community. They struggle to understand our work and do not manage to differentiate between minors and adults, preferring to see us all as “girls” and “victims”. Their confusion leaves no space for us to be independent working women and can lead them to apply a very broad interpretation of trafficking under the Act.

“Firstly some girls are just automatically victims of trafficking because their age is below 18; Secondly, some girls come to the process by deceit and luring – but not that much; Thirdly - some have no choice in their life, they have debts and most have come here to work – it is the lack of information that they are given that is the problem – most of them are unwilling to do sex work at first but we think they become victims because they don’t have any other choices”

Coordinator TRAFCORD, Chiang Mai

“I did so many jobs before sex work. I was exploited in every one of them. Sex work gives me the most independence, freedom and the best conditions. It’s the same for all my friends. We are grateful and thank you for your concern, but please don’t rescue

⁷¹ Feedback from senior AHT police at Anti-trafficking Rapid Report and Response Meeting, Pattaya, July 2011

me”

Pim, research partner, sex worker from Burma, Chiang Mai

Why? Prosecution and Suppression – the criminal justice approach

The use of raids, rescue, arrests and prosecution of traffickers has been the major strategy used to target trafficking for exploitation of prostitution in Thailand.

As previously noted in Chapter 2 raids on entertainment places are carried out for a variety of purposes and are fairly common. Most migrant sex workers joining our research had experienced raids and arrests by police, while working in Thailand.

There is no data publicly available on the actual number of raids specifically targeting trafficking. In our research two out of nine towns/cities visited had experienced anti-trafficking raids in 2011. A search of online media reports of anti-trafficking raids on the sex industry in Thailand showed that over the last three years (June 2008-June 2010) there have been a total of 32 raids reported in the English language online media – at least 10 a year. All except one of the reported raids were in provinces in the Central South of Thailand, with the majority of raids occurring in areas with a well known tourism industry or a high population of migrant workers. The raids are mostly made on entertainment places such as karaoke, bars and restaurants; and some raids on massage parlors, hotel rooms, and houses.

In total 389 women were reported in the English language media to have been apprehended by police in these raids with 48 trafficked persons identified, either with or without their cooperation– a ratio of about 1 trafficked person identified for every 8 women arrested.

NGO are also involved in the raids and see them as a useful way to be involved from the initial point of rescue, to support trafficked persons and to ensure that there is enough evidence to prosecute traffickers to stop them from trafficking others.⁷²

As sex workers, we know raids to be violent, terrifying events that violate our safety, security and liberty leading to detention and often deportation.

Generally specialist anti-trafficking (AHTD) police lead the raid and rescue operations, local police may or may not have a role depending on how well they are trusted by AHTD police. The AHTD police often work with anti-trafficking groups to investigate venues where they suspect trafficking is occurring. The police go undercover and look for three main things:

“First we check the faces of the women to see who looks young, then we check to see if there is an agent around and lastly we check to see if there is sex being sold”

Police, Chiang Mai Division 4 AHTD

⁷² Interview with Coordinator TRAFCORD , Chiang Mai

In fact we believe in all entertainment places in Thailand, depending on ones agenda, it would be relatively easy to find young looking women, support staff who could be called an agent and the offer of sexual services, yet there may be absolutely no trafficking for the exploitation of prostitution.

However, if all three factors are present the multi-disciplinary team (police, NGO, state welfare department) will meet together for a planning session they call the “War Room” to organize a raid. If there is a need to gather more evidence the police may use the process of entrapment. This entails police and/or volunteers, posing as customers and attempting to pay for sexual services with minors or adult women who are suspected of being trafficked. They aim to collect evidence such as: payment chips, money transfers, condoms, and receipts, to be used in the prosecution of trafficking cases.

We believe that most business premises, not only entertainment businesses will have things like pay slips, condoms, receipts and money transfers without any trafficking being involved.

The element of surprise and storming the venue to apprehend the people there is customary. In this process police and NGO will also collect evidence, confiscating mobile phones, bags. They also take photos of those apprehended, both suspected traffickers, women and minors women and also of the venue. These photos and details of the raid often appear in the media, in direct contradiction of the Act Section 56 Article 3.

Women are then generally taken to the police station for questioning to determine if they are trafficked.

A leading anti-trafficking NGO⁷³ estimates that on most raids, an average of 3-5 victims are rescued for every 10-20 women who are working there voluntarily in sex work - a ratio of 1 to 4, which is a higher estimate than the ratio of 1:8 as evident in the media reports. In quite a few of the raids mentioned in media and by NGO, it was found that the women who were initially identified as being trafficked, had by the time of the raid, escaped or left the venue or their own volition, leaving no one being willing to submit to being rescued.⁷⁴

In fact we found that most women who are in exploitative working environments within the sex industry, generally find ways to escape or change their conditions – enlisting the help of other workers, customers, or in some cases by re-negotiation of their debts and working conditions with employers or venue owners. Given the employer’s close relationship with corrupt authorities, our lack of documents, the criminalization of our work, and our inevitable detention and deportation required by law, sex workers do not consider approaching any official channels for help.

Age Assessment

For everyone, minors and children trafficked into any situation are the persons of most concern. This is also true for people trafficked for exploitation of prostitution. Most anti-trafficking NGO’s, police and officials said they focused on removing minors and children from the sex industry. Actually the Act also ensures that prosecuting for offences where minors or children are trafficked

⁷³ Interview with Coordinator TRAFCORD , Chiang Mai

⁷⁴ Reports in Online Media 2008-2011

for exploitation of prostitution is much simpler than for adults or other occupations. Where the person is a minor or a child, police and prosecutors no longer have to prove force or even need the person to admit to being trafficked. They are only required to show proof of the person being under 18 years age and the charge of trafficking can follow automatically.

However there remains a problem when people suspected of being trafficked minors identify themselves as willing adult workers.

This has created the situation where women and girls apprehended in raid and rescue operations are forced to undergo medical testing in an effort to determine their biological age. The methods currently used involve dental exam and bone x-rays.



Identifying the ages of trafficked persons is very important at the prosecution level as the penalties for traffickers of children between 15-18 years are higher than for adults and so in these cases police and prosecutors want to be able to push for higher penalties for the traffickers.

Program Director, IOM, Bangkok

Once the raid and identification process is completed, the police remain involved only to the extent where more evidence is required. Otherwise the case gets passed over to the Office of the Attorney General and the public prosecutor to follow up. Our research found that delays in the completion of court cases have ranged from 1 month to 12 months and counting. During this time

both those classified as trafficked persons and migrant sex workers are held in mandatory detention in state or NGO shelters. (See section below)

Assistance and Protection

All minors found in entertainment place raids and all trafficked adults are automatically sent to women's shelters or government run Protection and Occupational Development Centers (PODC). Here they are entitled to support services under the Act including: education, training, health care, psycho-social rehabilitation and the right to stay in Thailand temporarily. Adults also have the right to work in Thailand temporarily. In the research it was also found that adult sex workers who were not trafficked, but were required to be witnesses in anti-trafficking prosecutions, were also sent to shelters (see section below). It is not possible to determine the actual number of women or minors currently being held in shelters in Thailand. Data from shelters is either incomplete or unavailable for public access despite several formal requests from our research team. NGO estimate that victims of trafficking generally stay in shelters for a period of 6-9 months awaiting court cases and receiving support services. That may be true as an average range but our research found that periods of detention of 18 months to 2 years were also not uncommon.

Shelter Conditions

Sex workers working on our research project that had either visited or been detained in government or women's shelters identified a number of issues of concern. The major issue is the involuntary nature of detainment – both trafficked persons and non trafficked sex workers are detained, against their will, and forced to undergo occupational training and rehabilitation therapy.

“I was held in the shelter for two years before they let me go”

Mai, research partner, Tai Yai sex worker, Mae Sai

The Act gives the responsibility and power to detain women is to the state Ministry of Social Development and Human Security. Even though the Act expressly asserts that the “opinion of the trafficked person should be sought” we could find no evidence of any process for this or any incidence of this being carried out. Indeed, policy provides the power for police to forcibly return women if they manage to escape from the shelter. Shelter staff at the main government shelter near Bangkok, explained their policy in this way:

“The women here who are over 18 are all here voluntarily – but they cannot just leave of their own accord as we are responsible for their safety and protection so we have to check out where they are going, when and who with’

Baan Kredtrakarn staff

“I was there for nearly two years and I never heard of any one going out...only some escaped but I don't know how”

Bim, Laos sex worker, Ubon Thani

Minors who are in the shelter have no right to leave until they reach 18 years of age, but even

then they are detained until their family members or guardians are found and approved of. Still their release is contingent upon the opinion or assessment by shelter staff and state welfare officials. This practice is intended to fulfill State responsibility to protect people from further exploitation and to ensure that they are released into supported, safe and secure environments with their families and communities. However it becomes problematic when the rights and opinions of the women and minors are ignored.

The main government shelter Baan Kredtrakarn is located on an island in the middle of the Chao Payoe river outside of Bangkok in Nontaburi. Originally a leper colony, it has been used for more than 50 years to 'rehabilitate prostitutes' and more recently also supports trafficked women and girls.

In our community its simply called Ban Kred. It's infamous and has been for decades. Sex workers joke about it but we are really scared of being sent to Ban Kred mainly because of its reputation as a "prison for prostitutes".

Nowadays it is widely promoted by the government and others as a model for assisting trafficked women and girls in Thailand.

Whilst staying in the shelters, women are often prohibited entirely from contacting family, friends or outside agencies particularly if they are waiting to testify in a court case. This is justified again as a protective measure, especially for those whose family members or friends may be suspected of being part of the trafficking.

"Sometimes it takes months of being isolated from the outside to convince these girls how bad their parents are." **Psychologist Baan Kredtrakarn**

In practice however this means that women's phones are confiscated and their letters and phone calls are monitored by shelter staff.

Migrants whose family communicate in a language other than Thai are not allowed any contact as there is no one able to monitor or censor communications other than in Thai language.

This leaves them totally isolated from their families and communities and allows no recourse or access to justice if they are mistreated in the shelter. In this regard they are treated more like criminals rather than victims.

"I was in detention in the police cells once and we could use the phone whenever we wanted as long as we had 10 baht" **Mai, research partner, Tai Yai sex worker, Mae Sai**

Baan Kredtrakarn has a system of punishments if women and children misbehave including things like: scrubbing the bathroom floors, not being allowed to have treats, and not being allowed to see visitors.

"Seeing family is a reward we can take away if they break the rules – this makes them feel very bad because their families pay a lot of money to come and see them – so this is the most effective punishment for us"... **Baan Kredtrakarn psychologist**

Also in Baan Kredtrakarn it appeared that migrant women and children were discriminated against in a number of ways. All women and children in the shelter, have access to study Thai Non formal education (equivalent to Thai Primary and High school), unless their IQ is deemed too low – in which case they are offered only gender biased vocational training. This includes weaving, hairdressing, making plastic baskets and handicrafts, fruit carving, cooking, and foot massage. Women do not receive any formal certificates for their vocational training however as it is seen as a rehabilitation program not a true occupational training.

In this context migrant women who spoke Thai with an accent or had limited Thai language skills; or those who had been denied their right to education in their home countries and were not literate in any language have been frequently judged as of low intelligence. After over a year in the shelter they leave still without any education, marketable skills or formal qualifications. This did little to support them to reintegrate back into society or find new work opportunities as is the aim of the support program.

“I was dropped off here in Mae Sai (on the Thai Burma border) with a bag of cloth dolls to make and sell. No one wanted to buy them. I went back to my old boss and luckily he gave me my job back in the karaoke bar. I learned Thai with Empower in the daytime for about three months I can read the Thai newspaper now and will enroll in the school next term. What a waste of two years of my life”

Mai, research partner, Tai Yai sex worker, Mae Sai

In theory all women are eligible for a daily living allowance which is managed by shelter administration staff. However in Baan Kredtrakarn the staff told us that only Thai women were able to open a bank account which meant, in their minds, that migrant women were not able to receive this money. They also felt that the women’s home countries should be the ones to pay though there was no talk of any process to make this a reality. They also restricted family support payments to Thai citizens for similar reasons.

However shelters and department staff in other provinces had found ways to ensure migrants received at least a portion of the financial support available to Thai citizens.

Translation and Communication

In Baan Kredtrakarn and other shelters, there were concerns raised in the research, about the lack of translators available to women. Translation is rarely available in shelters, and on the occasions it was available it was frequently of poor quality. This issue however seems to occur not only in shelters, but also in various stages of the legal process, including in court cases, in police interviews, and in mandatory health testing at hospitals. It appears that the use of translators for communication with migrant women, who are plaintiffs or witnesses in trafficking cases, is sporadic and relies on volunteer translators or sometimes the women or minors who are involved in the process are themselves used as translators for other women.

One of the reasons for this shortage and lack of standard training is that under current migrant worker policy “translator” is not recognized as an occupation available for migrants to do. This means that departments and NGO cannot hire translators or even have them volunteer without

breaching regulations. The Action Network for Migrants, Raks Thai, MAP Foundation and Empower and other organizations have been advocating for the government to recognize ‘translator’ as a category for migrant registration, especially for translation in health and legal settings.

Witnesses

Our research found that in some shelters sex workers are not being held for the purposes of rehabilitation or recovery from trafficking, but rather they are detained as witnesses in trafficking cases. Again it is not possible to determine how many women are currently being held as witnesses in Thailand however this process is fraught with abuses. The women held as witnesses face the same conditions as trafficked persons including forced detention in the shelter, isolation from family and community, and discrimination either as migrant women and/or sex workers. In at least one instance (outlined in section below) this situation has led to difficulties within the shelter. Women being held as witnesses do not want to stay in the shelter and so quite rightly protest by withdrawing their cooperation with shelter staff and refusing to take part in vocational training. This has caused difficulties for shelter staff, who see their role as supporting women who want to be helped, not to detain women against their will.



“I am a social worker not a prison warden. I want to help people not be involved in locking them up.” Staff at a shelter in Thailand who asked not to be identified

It appears shelters are commonly used for detention purposes despite the fact that it is illegal, violates the human rights of the women being held and causes great distress for the women and for shelter staff.

Right to Work

Under the Act, adult trafficked persons staying in shelters have the right to temporary work opportunities if they are required to stay in Thailand awaiting legal or repatriation procedures.

In our research however it was found that this right is not being extended to women. In 2011, for the first time in Thailand, nine men who had been trafficked into the fisheries industry who were staying in a shelter in the south of Thailand were permitted the opportunity to work. The men were allowed out of the shelter to do daily labouring work, were paid 200 baht a day (above minimum wage), and returned to the shelter at night.⁷⁵ One man was allowed to live outside the shelter with his wife whilst he awaited the chance to testify in court. Another managed to save 70,000 Baht (130USD) during his time. This situation however is vastly different for women in shelters.

None of the women are allowed to leave the shelter to work or take part in any activity.

“In Thailand men who are victims of trafficking and staying in shelters can go out and get work while they wait for their cases but we cannot let these women out. These women are weaker and more vulnerable than men to being tricked again so instead they are able to stay inside and we bring the work to them or they can make handicrafts. ”

Psychologist, Baan Kredtrakarn

Women at Baan Kredtrakarn as in many other shelters are obliged to work making dolls and handicraft items to be sold in the shelter store that is also behind the shelter walls on the island. They are not paid for their labour when making these products, they do not have the option of setting prices, or choosing where to sell their products, and receive only 70% of sale price if the product sells - with the shelter keeping the rest “for the cost of the tutor and materials”. If your products don't sell you are never compensated for your time or labour, even though the work is not an optional activity. Products in the shop ranged from 25 baht to 300 baht (less than USD1 to USD10)

This does not satisfy women's right to work under the Act. It is clear discrimination based on gender. It is especially cruel for us as we are largely the main family providers. We know our families are suffering terribly because of our detention and inability to earn.

These problems in shelters in Thailand have been highlighted consistently by NGO, researchers and even those in the anti-trafficking movement, as issues that need priority resolution. The latest US TIP report summarizes the issues still occurring in 2011:

“There were regular reports during the year of foreign trafficking victims who fled

⁷⁵ International Organization for Migration, (IOM), Interview, Bangkok, March 2011

shelters, likely due to slow legal and repatriation processes, the inability to earn income during trial proceedings, language barriers, and distrust of government officials. There were reported instances in which victims opted not to seek designation as trafficking victims due to systemic disincentives, such as long stays in shelters during lengthy repatriation and court processes."

US TIP Thailand Country Report 2011

"For those who do not accept our work or misunderstand the modern context of sex work in Thailand they may believe that anything is better than where we were when they found us. Some on the outside they may think sitting around in a shelter sewing , getting free food and board is much better than working every night in a brothel. Maybe they think we have nothing better to do with our time. So somehow we need to show them that in a brothel we had our freedom, we were earning good money for our families, we were not a burden on Thailand, we even had fun. We need to show them that our time, families, freedom and independence is just as precious as theirs. How can we show them?"

From discussion by research team

Compensation

Trafficked persons in Thailand are eligible for compensation either via criminal proceedings for the crime of trafficking and/or via Labour Court for exploitation. It seems however that woman trafficked for exploitation of prostitution rarely receive any compensation or have access to either process. Like everyone else if we are trafficked we have the right under the Act for the public prosecutor to make a claim for criminal damages to be awarded and to be paid out of the assets of the trafficker.

The Act also allows the government to confiscate assets of convicted traffickers and add them to the National anti-trafficking fund to be used to assist people affected by trafficking or other anti-trafficking activities. In the financial year of 2010, seven million Baht (230,000 USD) worth of assets were seized.

National data on trafficking compensation claims is difficult to access. There have been compensation claims awarded in the past for forced labour such as migrant workers trafficked into the Thai fisheries sector, and there is anecdotal evidence that increased compensation claims for people affected by trafficking are being made to the Thai Courts over the last year.⁷⁶

During the research we were only able to find one anecdotal report where compensation was awarded to two minors who were trafficked for exploitation of prostitution. NGO and government officials generally had not heard of any compensation claims being awarded for people trafficked into the sex industry. Certainly there were no successful trafficking compensation claims reported in 2010 for people trafficked for exploitation of prostitution, which is of real concern considering our over-representation in trafficking arrests and prosecutions in Thailand.

Making a compensation claim is a difficult and lengthy process. However the Act gives the MSDHS

⁷⁶ SIREN 2010, The Criminal Justice Response to Human Trafficking, Strategic Information Response Network, Asia Regional Trafficking in Persons (ARTIP) Project, AUSAID and UNIAP

the obligation to support people affected by trafficking to make compensation claims via the legal process. The law mandates the public prosecutor or inquiry official must inform the person of their right to compensation and the prosecutor is to represent them in court.

Each claim must be approved by the sitting judge. The amount of compensation awarded is dependent on the seriousness of the crime and the assets of the trafficker.

This entire process may take more than a year to complete notwithstanding delays in court proceedings. Indeed feedback from the Office of Attorney Generals in Thailand shows that over 15 months, only 23 compensation for trafficking cases were completed (less than 2 per month), by a team of eight full time attorneys.⁷⁷ As there is no accessible data available on compensation outcomes, it is difficult to know who did or did not receive compensation.

The relative absence of claims leads us to believe it is unlikely that the process is happening in a routine manner for all trafficked persons in Thailand. The compensation process requires further investigation and follow-up within the Ministry of Justice.

Recently in November 2011, three minors deported after 8 months detention in a shelter were given a single payment of 4,000 Baht each (130 USD) by a leading anti-trafficking group. Prior to being apprehended they were employed as waitresses and singers in a Karaoke bar earning 4,000 Baht a month salary plus tips, generally taking home 5-6,000 Baht a month. Their earnings would have been at a minimum 40,000 Baht for the time they were detained...ten times more than they were given by way of compensation or perhaps as an incentive not to return to Thailand.

“They gave us 4,000 Baht each and told me I could contact them if I want to start sewing at home.” **Amee, research partner, Akkha, from Shan State, Burma**

In contrast, Thai people returning from being trafficked overseas usually receive compensation from destination country governments of approximately 1000 USD which is separate from any legal compensation awarded by overseas courts and is not dependent on their testimony. Even so the feeling that people who have been trafficked are somehow deficient lingers. This grant is managed by an international NGO and the Thai MSDHS and can be used for activities such as education, health costs or business development in Thailand. It cannot be used freely and is conditional e.g. cannot be used to pay off migration debts and only a small amount can be used for basic necessities.

Deportation is Inevitable

The lengthy detention of people in shelters in Thailand is also due to the delays in the deportation process. Under the Act and in most anti-trafficking discussions they refer to this as repatriation (going home) but migrant sex workers experience it and refer to it as deportation (being sent home) as there is no voluntary element involved. Out of respect for the truth of lived experience we call it deportation in our research.

On paper deportation of persons affected by trafficking appears relatively straightforward and

⁷⁷ Data from Office of Attorney Generals, Centre for Anti –Human Trafficking, July 2011

comprehensive.

Yet, despite the plethora of bilateral agreements, MOU, and training sessions provided for state officials and NGO; the deportation process between Thailand and its neighboring countries seems fraught with difficulty.

Deportation of trafficked persons is a government to government process facilitated by NGO based in Thailand and neighboring countries. Our research was limited to exploring and describing the deportation process for minors classified as being trafficked for exploitation of prostitution. We did not discover whether the same process happens for adults or for all industries. Certainly the men rescued from trafficking for exploitation in fisheries did not undergo the same process and delays.⁷⁸

First people are interviewed about their home circumstances by immigration and welfare officials from Thailand and authorities from the home country, generally Embassy staff. Officials from their home country, sometimes assisted by NGO begin tracing the family based on the details they have been given. When the family is located they are assessed supposedly for their preparedness to accept the trafficked minor back and their ability to protect them from future exploitation.

After a successful contact and assessment the person is transported to the Thai border crossing. They are handed over to officials on the other side. Sometimes they are then detained again by their own government before being sent home or reunited with their families.

For Thai people returning from overseas, or those that have been trafficked within Thailand, NGO and state welfare officials provide conditional support and follow up for people and their families sometimes for periods of up to 3 years. The support they are offered includes counselling, conditional social, educational and occupational support. Although application process is very bureaucratic people are also eligible for financial assistance often given as equipment rather than cash by NGO to generate an income. e.g.: women are given sewing machines to set up sewing shops.

Anti-trafficking NGO and Thai authorities both attest to the problems of long delays in the formal government to government deportation process for people from countries bordering Thailand.

In Burma there are multiple causes of these chronic delays. Many people from Burma have migrated to escape persecution by the military regime and come from ethnic states where there is ongoing civil war, where rape is used as a weapon of war, making women and girls particularly vulnerable.

We have not been able to find any systematic protections within the deportation system to protect people who may be at risk of further persecution from Burmese authorities or other armed groups upon their return home.

Indeed in 2011, it was alleged that DKBA, one of the armed groups attached to the junta in Burma was involved in extorting large sums of money and/or re-trafficking people being deported to their area back across the border into Thailand.⁷⁹ In addition, sex workers from Burma can all attest to

⁷⁸ Discussion with Jackie Pollock Director MAP December 2011

⁷⁹ USTIP 2011 Thailand Country report

the insulting, judgmental and often vindictive attitude of Burmese state officials towards women who are deported after being classified as having been trafficked into the Thai sex industry.

There are also delays because the basic infrastructure in Burma, especially in the ethnic areas has been neglected for decades. Street names, house numbers and even entire townships can be known by many names and no official records exist. In addition those who have had experience with Burmese authorities are very wary of informing them of where they really live.

“Even when checking addresses for nationality verification process the officials would come to the house just to see how much money we had, to get an idea what our lifestyle was like so they knew how much money they could demand from us in taxes. Maybe they will do the same thing or something worse if we have been trafficked”

Nuan, research partner, Tai Yai sex worker, Chiang Mai

When migrant sex workers who are a part of Empower return home even temporarily, to China, Laos or Burma they frequently keep in contact with us via phone calls, face book, or via our extensive grapevine.

In stark contrast when people are deported following the official anti -trafficking process, once they are returned there is little or no real follow up and the anti-trafficking NGO admit they are not re-contacted by anybody. We learned that NGO and government in Thailand face huge obstacles in follow up or even arranging joint meetings to coordinate the follow up process.

In Burma, all communications and plans must be approved by the military regime central administration. Permission is often refused or so conditional it makes meeting pointless. One International NGO told us their Thai centre has never been able to meet, even unofficially for dinner on either side of the border, with its staff based on the Burma side. In addition travel is restricted within Burma. This means that in reality it is impossible for NGO or state officials in Thailand to know whether people they have deported are supported effectively or even safe in Burma.

In Laos and China there is a scarcity of NGO generally and no coordinated follow up to date. Women and girls returned to Laos must be deported to the capital city where they are detained for a further 12 months before arrangements to go home are put in place. These issues were also highlighted in the recent 2011 US TIP report.

It's ironic that by the time they reach home, trafficked persons and sex workers affected by trafficking have often spent longer in detention than those prosecuted with trafficking spend in jail.

Funding is available from anti-trafficking NGO to support those deported to Burma, Laos and Cambodia however in reality it is often not accessible. NGO told us that this is because women do not have access to bank accounts in Thailand or their home countries, and are not able to carry cash on their return journey home, as it is routinely confiscated by corrupt state officials in Thailand or in the home countries.

However migrant workers, including migrant women from Burma routinely send large remittances

home. If trusted to manage the money themselves we are sure migrant women and girls can find a way to transfer it safely to where they choose. Concerns about the security of money should not be reason to deny women access to compensation.

Both NGO and state officials acknowledge that many of those deported across the border to Laos, Burma and Cambodia, simply turn around and come back to Thailand. We found this is the natural consequence of applying anti- trafficking strategies that do not distinguish clearly between migrant sex worker, waitress, migrant worker, smuggling, loan, debt bondage, sex work and trafficking. In addition the current strategies at no point address the causes of trafficking or the needs of people who are trafficked.

“We came to build a new life for the family not to be sent home empty handed and ashamed. If something bad happens to us we want to find a new place to work with a better boss. ” Dang Moo, research partner, Burmese migrant sex worker, Mae Sot

“After being kept so long I needed to go home and show my family I was alright then I came straight back to Thailand.” Bim, research partner, Laos sex worker, Udon Thani

Some NGO noted that the training and skills offered to trafficked persons in Thailand are of limited use where there is no opportunity for work in their home countries due to lack of economic development.⁸⁰ While there is no way to monitor the number of people who return to Thailand, anecdotal evidence suggest that most people return to work in Thailand within a year of being rescued and deported.

Anti-trafficking NGO and state officials are quick to point to poverty and unemployment within neighboring countries as a major cause of trafficking.⁸¹

However our research shows that while poverty and unemployment are major reasons for migration, it is the lack of access to travel documents and immigration restrictions combined with poor enforcement of labour standards and the outdated criminalization of sex work, that create the space for human trafficking.

Prevention – stopping trafficking through education and awareness-raising

Trafficking prevention activities in Thailand are reported to have included awareness raising campaigns, training, public forums, publication of resources in migrant languages and programs targeting people or groups identified as having a high risk of being trafficked.

The government reported that throughout 2010 and early 2011, it reached more than 3,000 people who they call high-risk groups and approximately 2,000 employers to raise awareness on trafficking.

In the same period Empower, with far fewer resources reached approx 30,000 sex workers, including migrant sex workers, in various sectors of the sex industry.

⁸⁰ World Vision interview, Chiang Mai, June 2011

⁸¹ Laos and Thai Government Anti-Trafficking meeting, Mukdahan, June 2011

Recently in 2011 sex workers in Chiang Mai were invited, via Empower to attend an NGO run training on trafficking. It was one day of lectures to an audience of 100 participants; the large majority of the audience were young men. This was the first and only education we have heard of purported to be for the sex industry.

At the beginning of our research none of the migrant sex workers in our initial workshops had heard of the word or the concept of 'human trafficking' and no one knew that the Act existed. Most women did however understand the concept of 'tuk lork' (i.e. being tricked), but as noted in Chapter 1: even this was an old story not a common issue that women saw or experienced within their work in the sex industry today.

The lack of awareness of the trafficking law amongst sex workers points to the failure of national trafficking prevention programs in Thailand, in actually reaching those who have are promoted as being at high risk of trafficking.

Entertainment place owners and employers within the sex industry also have little understanding or information about trafficking. Most owners had heard of the concept of human trafficking - either through the TV, the police or via friends but did not necessarily identify it as having anything to do with them or their businesses. Some saw it primarily something connected with migrant women not having ID cards.

Overwhelmingly those that knew there was an anti-trafficking law saw it as just another opportunity for corrupt police to extort bribes from them. Those employing migrant women had all experienced demands for increased payments to corrupt police since the law was implemented.

Given that our employers and managers are the primary decision makers concerning hiring and working conditions it would be useful to implement education campaigns, including highlighting the penalties for trafficking, with the positive aim of reducing exploitation and improving working conditions within the industry.

Our industry is quite open so it is relatively easy to reach both sex workers and employers with appropriately designed prevention and education campaigns. However, trafficking prevention activities to address trafficking for exploitation in prostitution appear to be focused on programs run by NGO in poorer provinces and communities to provide anti-prostitution warning messages, educational opportunities and occupational training programs for women and girls. It's commendable that many women and girls can access their right to education via these programs, and build up their skill base and confidence. However it is disappointing that these activities cannot be provided for their own sake, rather than simply to prevent trafficking.

Furthermore it is astounding to note that despite years of funding and resources spent on national prevention and awareness raising campaigns run by more than 60 NGO and numerous government departments – women who work in the sex industry in Thailand still have limited knowledge of the issue of trafficking prevention and protection.

Funding – Show me the money

There is a lack of transparency in government spending on anti-trafficking activities in Thailand. Requests from the research team for information on state expenditure on trafficking activities met with no success. There is no publicly released reporting on the management or expenditure of the Trafficking Fund despite the mandate provided for this within the Act. The information below is summarized from the minimal amount of data available to the general public.

News reports show that in 2005 when the anti-trafficking fund was first set up, an initial budget of 500 million baht (estimated as 12.5 million USD) was allocated by the Thaksin government.⁸²

Three years later in 2007 however, the US TIP report claimed that in practice only 75 million (USD2.5 million) of this was ever allocated for expenditure to assist people affected by trafficking and to support anti-trafficking projects. Since then spending appears to have decreased, with Thai government budget briefs⁸³ listing the Fund for Preventing and Suppressing Human Trafficking as a revolving fund since 2009.

Allocations in the budget briefs show that in 2009 the fund was allocated 10 million baht (USD312,000), in 2010 it received no allocation, and in 2011 it received 20 million baht (USD625,000). These figures however provide no evidence of actual government expenditure on anti-trafficking activities.

In 2010, the Abhisit government stated that during the past two years, the Thai Government had allocated a budget to the Anti-Trafficking Fund comprising of 8.5 million baht (USD265,625) to help 498 affected persons, while another 56 million baht (USD 1.7 million) was used to support 103 projects carried out by 61 organizations. The budget allocation presumably included the 7 million confiscated from convicted traffickers.⁸⁴ This means that on average 17,000 baht (USD530) was spent on each person affected by trafficking during 2009-2010.

The US TIP reported that in 2010 the Thai Ministry of Foreign Affairs spent 5.9 million baht (USD 185,000) on trafficking protection and prevention activities including youth, government and NGO awareness and information campaigns. The 2011 TIP report noted that the Thai government spent 6 million baht (USD200,000) from its fund to assist persons affected by trafficking and finance anti-trafficking activities which was reportedly only a small portion of the government's overall fund to assist trafficked persons.

It is impossible to ascertain from these figures the Thai governments funding commitment to anti-trafficking, its priorities or effectiveness in fund management overall. It appears that on an annual basis expenditure in 2009 and 2010 has been approximately 30 million baht a year, most of which is allocated to organizations and agencies to run training and information campaigns for the perplexed police etc, leaving comparatively minimal amounts allocated to assisting persons affected by trafficking.

Thailand has a low score on the global Corruption Perceptions Index as 3.5 out of 10.⁸⁵ While

⁸² Article: "Anti-trafficking Center established: 500 Million Baht injected." *Khao Sod Newspaper*, 29 October 2005.

⁸³ Bureau of the Budget, Thailand – Budget in Brief for years 2008, 2009, 2010, 2011;

⁸⁴ Article: Thailand's Commitment to Anti-Human Trafficking (24/09/2010)

⁸⁵ Transparency International Corruption Perception Index (CPI) scores countries on a scale of zero

Thailand recently signed the UN Convention against Corruption in 2011, corruption amongst state authorities within the anti-trafficking sector has been an issue.

There is a long history of human trafficking by state officials dating back to the end of WWII. This has pervaded many levels, from local immigration officers who extort bribes from migrant workers and agents, to provincial government councils who have stakes in businesses which rely on migrant labour, and in particular within the Royal Thai Police departments, from local level police to central division police working in trafficking hot spot areas.⁸⁶ As recently as January 2011, three senior high -level police officers, working in the Anti Human Trafficking Division 3, were transferred to inactive posts, pending investigation for corruption and bribe taking. To date however while the Act provides heavy penalties for state officials who are complicit in trafficking there have been no prosecutions of state officials. Ensuring public access to transparent comprehensive financial reporting on the Anti-trafficking Fund would go a long way to restoring confidence in the committee.

The issue of human trafficking is the focus for global action. Many organizations both registered and unregistered also have access to large amounts of funding from international donor agencies, UN and foreign government aid agencies.

The modern style of aide and development must include some representation by and accountability to the people targeted or affected by the programs. Donors of Empower routinely require us to show sex worker involvement in the design, implementation and evaluation of our work. The same requirements are made for groups working on environment, migration, indigenous peoples, HIV, drug use, gender and many other issues.

However groups working on human trafficking seem totally divorced from and unaccountable to the communities they affect particularly the sex worker community and migrant work groups. Complaints procedures are non existent. There is a serious lack of external monitoring of their practices or outcomes for those they purport to assist.

We cannot imagine how abolitionist organizations can ever effectively identify and respond to people trafficked for exploitation in prostitution when they see all prostitution as exploitation? We are also concerned about how organizations can possibly balance positive relationships with sex worker groups in order to better understand and respond, when they have to fulfil the USAID requirement to actively oppose the very reforms we need to make to reduce exploitation in our industry.

The US State Department (USAID) funded five Thai-based anti-trafficking NGO in the financial year of 2009 -2010. Amounts ranged from 2.5 million baht (USD85, 000) to 22.5 million baht (USD750, 000) each, for 1-2 year programs.

For these organizations it will clearly be a dilemma to find ways to work with us that don't endanger their funding.

In this climate of mismanagement, conflicting agendas and the lack of effective monitoring of

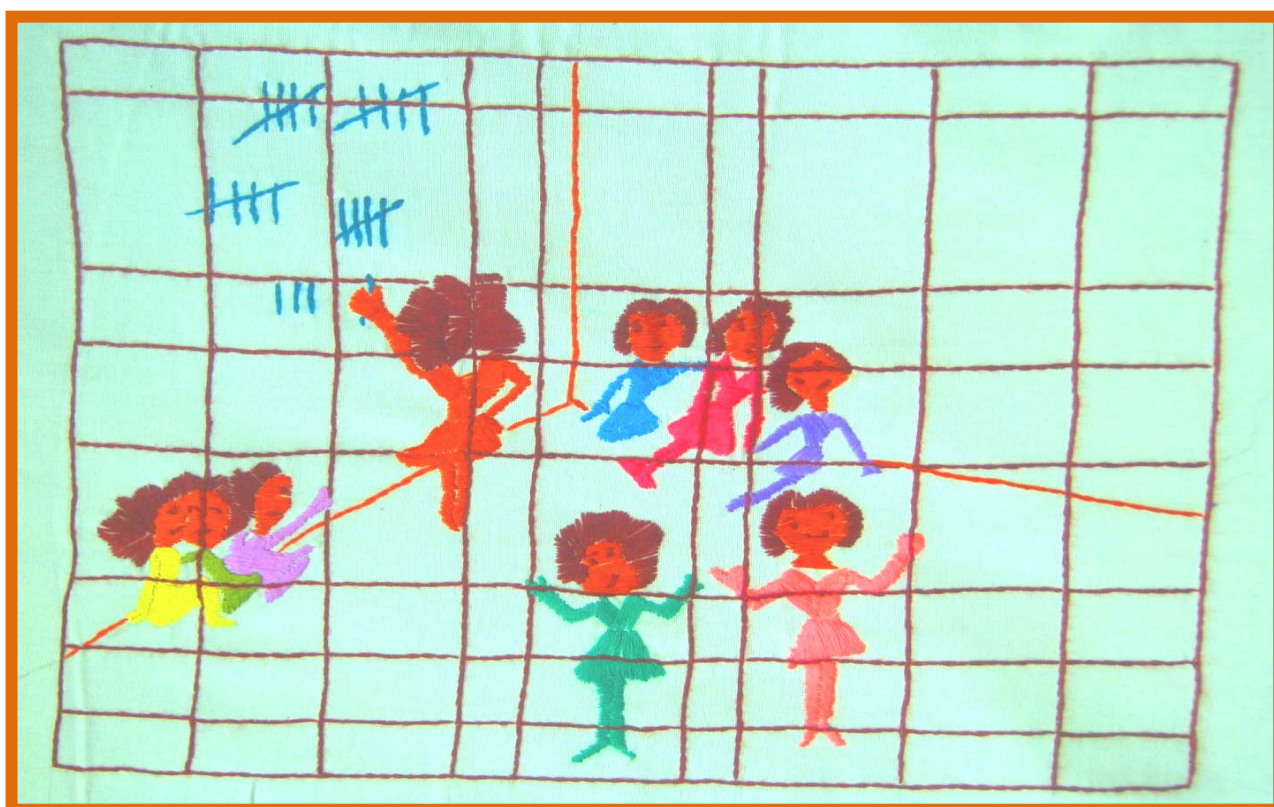
to 10, with zero indicating high levels of corruption and 10, low levels.

⁸⁶ USTIP 2011 Thailand Country Report

state and non-state financial expenditure it is little wonder that anti-trafficking activities continue to be misdirected. The complete absence of any impact evaluation of the anti-trafficking sector's performance and the lack of accountability to affected groups is unacceptable especially given the large amount of funding and resources focused on this area and the sub-standard practices that have been identified within our research.

HIT AND RUN: True stories of Raids and Rescues

The enforcement of the Suppression and Prevention of Human Trafficking Act BE 2551 (2008) has led to arbitrary protracted detention of migrant sex workers and multiple violations of their fundamental human rights. Even those people classified as being trafficked for exploitation of prostitution are also routinely denied their basic human rights as well as specific rights under the Act itself. In the following section, we describe two situations that occurred during our research. This is followed in the next chapter by our analysis of the human rights impact contrasted with the State's obligation for remedy.



RAID AND RESCUE 1 - M Karaoke Chiang Mai

On February 14th Valentine's Day night we visited karaoke bars saying Happy Valentines, giving out small gifts and catching up. There were a good number of customers; the women we met were busy and happy.

On the 16th of February 14 staff were working in M Karaoke bar in Chiang Mai. They were all ethnically Akkha, all but one of them from Burma. Three teenage Akkha boys were also working there that night at their usual job, taking women on their motorbike to meet with customers.

For the previous 2-3 nights a group of Thai customers had come into the bar asking specifically for the youngest women and offering almost twice the normal price to spend time together. In fact three of the workers were between 17 and 18 years old. At least one of them was only working as a waitress as she hadn't decided whether to do sex work or if she was ready. She felt no pressure to do otherwise until these men started showing up.

So on the 16th February around 11 pm when one of them showed up yet again and requested six of the youngest women be sent to a nearby short time hotel she and the other two decided to go along. Instead of paying the women which was the custom the men insisted on handing the money directly to one of the Akkha boys - 500 Baht each totalling 3,000 Baht (100 USD.)

They all left for the hotel in a minivan. At the hotel, one of the women got a phone call from a regular customer, a policeman. He warned her that the situation was a set-up and that the customers were in fact undercover police. She ran through the hotel corridor banging on the doors to try and warn her friends, and then escaped by jumping from the first floor balcony. The other women were not able to escape and were temporarily detained in locked bathrooms by the police. They had their bags and phones taken off them and were then taken to the police station.

Meanwhile at the karaoke bar at 12.30am, 50 uniformed armed police coordinated by the Bangkok Counter Human Trafficking Unit (CTU), raided the bar, running in the doors to cut off the escape and physically apprehend the eight women working there. There were also NGO' staff, government welfare officers, immigration officials and people taking photos. The police searched the bar confiscating the women's bags, telephones, clothes and makeup.

Police also searched the women's accommodation nearby, upturning the whole room looking for drugs or detained women which they did not find. The three young Akkha men were arrested and eight women apprehended. They were loaded onto the police trucks and taken to the police station in Chiang Mai.

No one at any stage told the women why they were apprehended, or they had the right to contact family or support persons, or that they could request independent legal assistance.

Interviews began around 1am. Women apprehended in the bar and at the hotel were all interviewed in the police station by police, NGO and welfare officials until 3am. Despite the fact the women were from non-Thai speaking backgrounds from Burma, no translator was made available at any point.

“We thought we were arrested for not having ID cards and we tried to understand what their questions meant and what we should say.”

One of the women had proof of Thai citizenship. She was fined 200 baht for associating for the purpose of prostitution and released. She notified the women's families the next day. It would be weeks before the families were notified by officials.

Finally the rest were given statements written in Thai to put their thumbprint on. None of them could read Thai and did not have the statement translated verbally to them.

Photos of the bar, the young men handcuffed and the women at the police station were published by different online media and newspaper agencies the following day. These reports claimed '14 children had been rescued from prostitution.' They published the name and address of the bar and the names of the three young men as an alleged traffickers and an organized crime gang.

Around 8am on the 17th February the women were taken to a hospital, where they underwent internal vaginal examinations and blood tests, including HIV tests – with no translation provided and without informed consent. None were given any results from these tests.

Over the next few days, the 13 women were detained in a social welfare home outside of Chiang Mai city. All 13 had staunchly denied they had been trafficked and all claimed to be over 18 years old. Accordingly they were forced to have dental examinations, with four women also having bone x-rays in an attempt to prove they were minors. The women had no phones, no contact with family or friends, were not allowed to leave and were interviewed by NGO staff, again all with no translation provided.

“We didn't know where we were. It was a big concrete building and we were kept two to a room with bars on the windows. We guessed we would be sent to immigration soon. We still thought it was all about having no ID card”

Meanwhile, within three days the karaoke bar had re-opened, the young men who were arrested had been bailed out of jail by the bar owner, and the other women who worked at the Karaoke started to return to the area to work. They were however extremely worried – they were traumatized from the raid, did not understand what was happening and had spent two days in hiding as they were too scared to stay at their homes. They were also frantically worried about their friends as they had no contact with any of them.

Five days after the raid, the 13 women in custody were split into two groups. It is not known whether those involved realised they were separating a pair of sisters in this process. In any case, it would be five weeks before they saw each other again.

Officials said tests had shown three of the women to be under 18 years old. They were identified as trafficked persons in accordance with the Act. These three were sent to a government shelter 330kms south east of Chiang Mai in Phitsanalouk. They had no contact with anyone except for shelter staff, anti-trafficking NGO workers and state officials. Their families and friends were frantic with worry over their welfare but had no way to contact the young women.

The remaining nine women were found to be over 18 years old, and although they were not trafficked, it was decided by officials that they would be held as witnesses for the prosecution's trafficking case. These women were sent to the Chiang Mai city police cells.

“We asked police if they could have a lawyer but the police said they didn't need one as they weren't victims of a crime or defendants ...they were witnesses. We then asked if they were witnesses could they be released. The police reply was “no they're illegal migrants'. We asked if they were illegal migrants why weren't they being

deported. No they can't be deported they're witnesses. We asked the anti-trafficking NGO about them but they said they only looked after the 'victims'. Later we asked police if the women would be compensated according to the Witness Protection Act 2003. They reassured us that they would but in the end the women were awarded 200 Baht a day as stated in the Witness Protection Act but then charged 200 Baht a day to cover their food and other costs" Oa, research partner, Chiang Mai

Police cells are only set up for temporary custody, usually not exceeding 10 days. Their cell was separate from male prisoners and had its own toilet, but the women had to get their friends to bring in extra clothes (after a week already in their work clothes), and all of their other belongings were confiscated. They had limited contact with their friends or family for which they had to pay police to use the phone. They also had to pay for extra food to be bought in. Explanations were not given to the women about the proceedings, their rights, or the process they were involved in. They assumed their three friends had been released.

Two weeks after the raid the nine women were sent to the immigration detention centre for processing and then put into a van to go to the border town of Mae Sai where their family were waiting for them to be released. However when the women reached Mae Sai the police received a phone call and the van was turned around and the women driven for 5 hours, all the way back to the Chiang Mai cells without even so much as seeing their families.

The court case finally began March 22nd in Chiang Mai, a month after the initial raid. The nine women witnesses were taken to testify in court on the first two days. They had not been briefed by police or lawyers. In all five men were on trial, the three young motorcycle drivers caught during the raid, and two other men allegedly the Karaoke manager and the owner. In court the witnesses were called one at a time to the stand to testify. The questioning focused on whether the witnesses knew the alleged traffickers, what their conditions of work were and the ages of women at the workplace. All of the women said that they were not exploited or forced into sex work and the alleged traffickers had different roles in supporting them in their work such as with transport, food, clients etc. They said they did not know how old anyone was at their workplace as this was not talked about and most of them just used nicknames and did not know many personal details about each other.

The court was a difficult and threatening environment with students walking in and out of the room, and the prosecution used an aggressive approach to interrogate the women witnesses on the stand. The language used was academic and legalistic Thai and two of the women struggled to understand anything, replying "I don't know" to nearly every question. In this situation "I don't know" would have meant 'I don't understand what you are asking'. None of the women were able to read Thai, but all were asked to verify written statements in court. None of the women had any translation provided or offered at any stage from the time of the raid up to and during the court despite the fact they were all from Burma. We were told it was because they didn't ask for any.

The testimony of the three younger women was taken in the days following the witness testimony. They were supported by NGO legal staff and were able to give evidence via video link from a separate room in the public court. The questioning focused on their ages and their work in the karaoke bar. The court was told that the age of the young women – taken from bone x-ray – was

estimated to be between 14-16 years old. The 3 young women refuted this and said they were at least 17 years – they testified that although they did not have papers to confirm their ages, their mothers had told them they were 17 years old.

All three young women said they made the decision themselves to come to Thailand and work in karaoke. One got a job in this particular bar because her sister was working there, so she went and had a look for herself and then applied for a job; no-one asked about her age when she was applying so she didn't think about it. Another said she came on a bus with others from Burma who were looking for work. She borrowed money from her mother to travel because she didn't want to be in debt. When she started work at the Karaoke no-one asked about her age and she did not know that she had to be 18 years old to legally work there. The third woman said her friend was working at the karaoke bar, so she also applied for a job there and was able to borrow some money from her friend and share her room while she got started. Of the three 17 year olds – one is the sole provider for her family and supports them with her income including paying for the medical costs of her father who is sick. The other two are not the family provider and their families are not relying on them – one of them came on an "adventure" for herself and the other young woman came looking for work.

Under the Entertainment Place Act BE 2509 the employer could be prosecuted for employing minors. He could also have been charged under the Suppression and Prevention of Prostitution ACT BE 2539 and received heavier punishment than under the anti-trafficking Act for exploiting minors if any of the three were providing sexual services as a part of their employment. The three minors would not be charged with any offences under the Acts and still be offered rehabilitation and support before deportation. We were not able to establish why the prosecution decided to lay charges of human trafficking instead.

In terms of labour compensation - the bar owner said in court that he had paid them all correctly except for the day of the raid and he said that he would be happy to pay them their money owed from that day as well. The money that was found on the premises on the night of the raid – as reported in the media – was about 3000 baht (USD100); this was the marked bills used by the police themselves.

After testifying at the court case the women witnesses spent yet another night in the immigration detention centre and then were taken to the Thai Burma border where they were deported back across the Mae Sai bridge. Most of their belongings were returned to them by police however two mobile phones and some cash money that the women had at the time of the raid were not returned. In total the women had been detained for 38 days (31 in police cells, 6 in shelters and 1 in Immigration Detention). This prolonged detention resulted in most of the women incurring a debt. With the main family provider locked up and unable to work, families were forced to borrow money to survive. Most women were released to find they each owed up to 10,000 baht (USD300). In addition some women went on to borrow money so that they could return to Thailand in order to get back to work. Most women returned to Chiang Mai to work within 3 months following the raid.

"Before being arrested I was not in debt, working happily and free to move around the city. Now I have a debt. I'm scared most of the time and it's not safe to move around.

How can they call this help?"

Nok, Akkha sex worker, Burma

In all, nine women had lost 6 weeks of earnings, were not given any compensation or witness support payments by the state, were made to pay for phone calls and food whilst in jail and were fined 200 Baht for associating for the purpose of prostitution and further fines for immigration offences.

The younger women were sent back to the shelter after their court case testimony in March 2011, to await the family tracing process so that they could be deported back to Burma. They had their mobile phones confiscated so could not speak with their families or friends over this time. Empower received a number of confused, distressed phone calls from friends and family members of the young women including parents, sisters and grandmothers all seeking information on their whereabouts and situation.

Despite the fact their families had been in contact with Empower since the date of the raid and had made repeated requests to the anti-trafficking NGO and shelter staff to contact their daughters, it took another 8 months for families to be officially traced, approved and the young women deported. During this time all the young women turned 18 years but were still detained against their will and treated as minors.

In late October they were sent to the Thai border town of Mae Sai and handed over to Burmese authorities. In Burma they were held in detention for an extra week until finally being reunited with their families after being detained for 9 months. The women received 4,000 baht (USD133) each from the anti-trafficking NGO involved a token amount in comparison to the 40,000 baht minimum they would have earned in the same period.

The outcomes of the court case and sentencing of the traffickers was held in July 2011 Empower was unable to access official court records to find out about the sentences and findings of the court.

All three women plan to return to Thailand to work in karaoke bars.

RAID AND RESCUE 2- MAE SOT

On March 16th 2011, on a Wednesday night, a group of 17 migrant women from Burma were working at a brothel in the Thai - Burma border town, Mae Sot. Once again at around 11pm at night a large group of armed uniform police, immigration and staff from an anti-trafficking NGO burst in and arrested all the women.



The raid resulted from an anonymous tip from a woman over the phone that young girls were trafficked into the brothel.

In all 17 migrant women were apprehended in the police raid. All were taken to the police station in the middle of the night where they were questioned by police, NGO volunteers and social welfare officials. The women were from Burma, with limited Thai language skills, and had trouble understanding the questions, which were poorly translated by an untrained NGO staff.

“The translator was saying all the wrong things and the police wrote them down. I said the translator was wrong but no one seemed to be interested. Pi Nong from Empower told them (NGO staff) as well but nothing changed”

Dork Mai, migrant sex worker Burma Mae Sot

The volunteer used to translate for police at Mae Sot police station that night has since contacted Empower research team to apologize.

“I’m really sorry about what happened to those women. I said I couldn’t translate but they (the NGO) talked me into it. I thought it wasn’t serious, that they would be let go. I’m sorry”

Once again none of the women were properly informed as to why they were apprehended or of their rights in the police station. Far from being allowed to have a support person sit in on interviews Empower Mae Sot Coordinator who was at the police station was asked to leave the premises by NGO staff.

Women are not given the freedom to choose a legal advocate but one is provided without choice automatically by the anti-trafficking NGO in cooperation with the Public Prosecutor.

Ten of the women who were documented were not trafficked and clearly over 18 years were

charged with associating for prostitution and immigration offences. They spent 48 hours in police custody, went to court and were fined 850 baht and deported across the bridge to Burma being charged for various services adding a further 1,500 to their costs -about a week's earnings.

The remaining seven women gave their age as over 18 years old or over, stated they migrated independently and were voluntarily doing sex work. It is not clear to the women whether these details were translated correctly but in any case they did not have any ID documents and their statements were disbelieved by both the anti-trafficking NGO plus /minus police.

In the early hours of the morning all of the seven women were driven 5 hours to be detained in the shelter in Phitsanalouk. Where they were going or why was not explained for women to understand. They underwent mandatory internal vaginal examinations, and blood tests with no information or consent. They did not understand why these tests were done. Their confidentiality was also breached when Empower was spontaneously told of some of their results.

In order to dispute their stated ages dental examinations and bone x-rays were carried out. As a result two of the women were judged as being minors -15 and 16 years old, and therefore classified as trafficked for exploitation in prostitution. Both women refuted the age estimate and label of trafficked. They restated their ages as 18 and 20 years old.

When the family was told by Empower about the age test results, they were outraged.

"I gave birth to her - I know how hold she is" said the mother of one of those alleged to be underage.

She said that her daughter was over 18 years old but did not have any birth papers or ID papers, as these were lost in floods some years ago. However she did have evidence of her daughter's age on her house registration back in Burma. She made a plan to return to Burma to get these papers for Empower to give to her daughter.

The remaining five women were judged to be over 18 years old, and although they were not trafficked, it was decided by officials that they would be held as witnesses for the trafficking prosecution. They were not supplied with independent legal assistance and no one involved takes the responsibility of ensuring their rights are protected.

While at the shelter the women were not allowed any contact with their families or friends in Thailand or Burma who were extremely worried about them. One of the women had gone to work that night leaving her two young children with her mentally unstable mother. She was extremely worried about her kids and her mother. Others were concerned for elderly grandparents usually in their care. When we tried to deliver a letter from their families we were told any communication

had to be in Thai only as it was monitored and no translation was available. Despite two requests from the Empower Foundation to meet with the women, the women were barred from all outside contact until after the court case. The women therefore had no contact with anyone except the anti-trafficking NGO staff and government officials.

No official statements were taken from the women for the first 3 weeks of their detention in the shelter.

In April, Police and officials from Burma and Thailand, interviewed the women via speaker phone, using translators. Once again the translators had trouble making things clear and understandable for the women.

During this interview the women requested to leave the shelter after already being detained for two months waiting for the court case. They were told by shelter staff that they were not allowed to do so. Frustrated and angry they quite rightly 'went on strike' in the shelter – refusing to participate in any of the vocational activities and staying in their rooms.

The court case was held in Bangkok and delayed at least four times. Initially no alleged trafficker could be found.

At the first court session it was observed that there were no official translators – instead it appeared that one of the women judged as being just 16 years old and allegedly a trafficked person was translating for the prosecutor and other women on the stand. She stated her age as twenty in the other young woman supposed to be 15 years gave her age as 18 years.

At the second session there was a court appointed translator but the woman on the stand complained repeatedly about the translation until the judge had no choice but to adjourn until a replacement could be found. The third session was a disaster for the prosecution as the women strongly contradicted the statements police had written out for them in Mae Sot the night of the raid. The court was again adjourned and the prosecutor angrily scolded the women telling them they must agree with the original statements.

In August 2011, after six months of detention in the shelter, Empower was requested to assist in locating the family of one of the women witnesses. She was nearly 8 months pregnant. The shelter and anti-trafficking NGO staff wanted to locate a responsible family member for the woman to be released into their custody immediately after giving her testimony in the court case. They were anxious that she should give birth outside of the shelter and outside of Thailand. However even though she was clearly an adult, a mother of two and expecting her third child they would not release her without a guardian. Empower was again refused permission to talk with the woman to determine her wishes. Given the lack of health care available in Burma many migrant women prefer to give birth in Thailand, in some instances opting to give birth in jail or other institution to guarantee the baby is delivered safely with vaccinations etc available.

We had assumed that the NGO or shelter staff had already made contact with family. Now we realised this was not the case and had Empower not been in contact, even after six months they would have had no idea where their daughters were taken, why and what circumstances they were living in.

Empower made a written formal request for permission to visit with the women in August 2011.

In September 2011, Empower was again contacted by family members of two of the women detained in the shelter.

The mother was greatly distressed and said she had been contacted by phone by Burmese authorities who threatened her that her daughter would never be released. The mother was also

concerned that her daughter and others in the shelter had vowed to kill themselves if not released. Empower also spoke with the mother of the pregnant woman who was detained in the shelter. The mother was grandma to two young children of her daughter and although she had been caring for them whilst her daughter was detained, she was unable to support all their basic costs e.g. education. She was also extremely worried about her daughter's health and well being in the shelter.

In the closing days of October, Empower was finally given permission to talk to the women. Huge amounts of home cooking was prepared by their families to be taken to them. During a visit to the shelter we met with all 7 of the women. A Burmese sex worker joined the team to translate as there was still no translator available in the shelter. The women had many concerns to share with Empower but were also scared and cautious as they had been told by staff that they were not to complain or say anything bad about the shelter. However the women managed to let us know of the following issues;

- court was postponed again until February 2012 due to Bangkok floods
- The pregnant woman had been denied regular antenatal checkups and not given vital mineral and vitamin supplements
- She is Muslim but no dietary arrangements were made so she often ate just plain rice or nothing at all
- She had not been able to practice any other Islamic religious practices during her time in the shelter
- The other women complained of poor health treatment, being refused visits to see the doctor and dentist.

"Our brothel owner takes better care of our health than they do here. In the brothel I could go to the doctor or my employer would fetch medicines for us if we asked"

- the poor quality of the food in the shelter

"The breakfast - rice porridge - is the grade of rice that you would usually feed to the pigs in Burma".

All of the women were desperate to leave, however two of them were still waiting to testify in the court case, another two who were alleged minors and trafficked persons were awaiting family tracing and deportation and 3 refused to leave their friends there until they could all get out together.

The women had serious concerns regarding the court proceedings. One of the alleged minors again asserted that she was actually 20 years old not 16 and instructed Empower to help her family find proof of age from Burma so that she could prove her real age.

They said that the signed statements read out in court did not match what they told the police in the original interview.

In August a man was arrested and charged with:

- Running a place of prostitution
- Harboring illegal aliens

- *Bribing police*
- *Trafficking fro exploitation of prostitution*
- *Smuggling*

The women said the prosecutor was pressuring them to identify this man as one who brought them to Thailand and forced them to work in his brothel. The women refused to do this as they stated they came independently, were not forced to work and in any case did not recognize this man as their employer or the owner of the brothel. The owner/employer had walked away from the brothel during the raid after being mistaken for a customer.

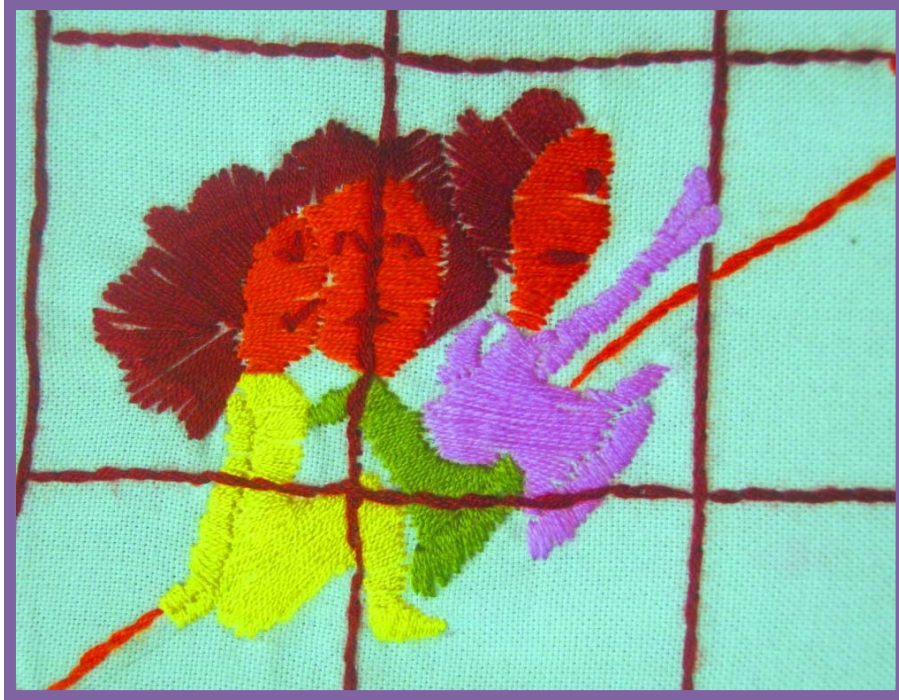
In November 2011 one of the women's father made an expensive and difficult trip to Rangoon returning with a copy of his daughter's birth certificate and other documents were located by the second family. Documents show one of the women is indeed 20 years old as she told everyone, not 16 years as claimed. The second, though 17 and 9 months on the night of the raid was indeed 18 years old the first time she was asked in court and well over the 15 years she was judged to be.

In early 2012, at the time of writing and release of this report – all of the seven women remained in detention in the women's shelter – meaning more than 10 months with continued restriction on contact with family, friends and organizations outside of the shelter. Their family members remained frustrated, worried and unable to contact them and the court case had yet to be finalized.

The raid and rescue approach may have jailed five or six men for 2-3 years for employing or exploiting minors and may have removed 4 minors from the sex industry while they waited for their 18th birthday, however the actions have also resulted in multiple human rights violations of the 4 minors involved, plus for an additional 17 women and their families.

Empowers attempts to promote the human rights of those affected by the anti-trafficking actions were severely hampered due to the alleged need for protection and confidentiality of the evidence (testimonies). Empower maintained communication and gained information from informal discussions with Anti-trafficking NGO staff, shelter staff, police and lawyers involved. We also received direct testimony from the sex workers and their families who were caught up in this process and also by talking with those being prosecuted.

The narratives provide an account of how anti-trafficking activities play out on the ground. We find the many similarities between the two incidences point to what must be standard practice rather than coincidence.



We conclude that it is very likely that many other women have suffered similar human rights abuses in the name of the Suppression and Prevention of Human Trafficking Act. If the Anti-trafficking Police and Tracord are correct in their estimates, then at least 1,500 non-trafficked migrant sex workers have had their rights abused in a similar fashion over the past 3 years.

CHAPTER 6: SPECIFIC VIOLATIONS INCURRED



This Chapter provides an examination of the human rights that we found to be violated in the implementation of the Suppression and Prevention of Human Trafficking Act BE 2551 (2008). Rights violations have been perpetrated by both state and non-state actors against minors and women who are found to be trafficked for exploitation of prostitution, as well as adult sex workers, from Thailand and neighboring countries.

We measured the impact by analysing our lived experience in comparison with the fundamental rights that individuals have within national criminal, human rights and constitutional law in Thailand, and the rights enshrined in regional and international treaties that have been signed and ratified by the Thai Government. Specific treaties and clauses that the Thai government has ratified are outlined in Chapter 2 and are referred to in the Chapter below.

There is also specific reference to the clauses within each law that have found to have been violated by anti-trafficking practice.

The research has found that at least twelve fundamental human rights have been regularly violated in the process of implementing the Act over the past three years. While our work as sex workers at times may be in breach of the Suppression and Prevention of Prostitution Act 2539 and some of us also in breach of the Immigration Act we are nevertheless entitled to recognition of our basic human rights and protection of these under Thai and international law.

Furthermore, it is recognized internationally that anti-trafficking law, policy and practice should adhere to core human rights principles and *at the very least*, do no harm to those affected by trafficking or anti-trafficking interventions.⁸⁷ Despite this requirement our research has found that

⁸⁷ Aim for Human Rights 2010 The Right Guide,
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the implementation of a total of ten sections of the Act, have had a negative human rights impact on sex workers. In addition, some of the human rights protections and entitlements that are provided within the Act itself are not being met by either state or NGO representatives who are failing to adhere to the Act. Other elements of anti-trafficking practice in Thailand are also in breach of national laws, such as the Thai Witness Protection Act 2003 and other protections under the Thai Penal Code.

Violations of Human Rights Treaties

Definitions in the Law

CRIMINALIZING SEX WORKERS, THEIR FAMILIES AND COMMUNITIES

AT LAW Section 4- 6 DEFINITIONS:

Section 4 EXPLOITATION - seeking benefits from prostitution,

Section 6 TRAFFICKING - use of threat or force, abuse of power, giving money, - to get persons consent for purpose of exploiting the person

Section 4/6/7 TRAFFICKER - anyone who 'helps' in the trafficking process for the purpose of exploitation

The definitions within the Act provide a very broad mandate which effectively targets those who work in, or are associated with the Thai sex industry to be either potential trafficked persons or traffickers. The fact that the term 'prostitution' is used to denote a distinct form of trafficking – separate from forced labour and sexual slavery - means that in practice the legislation unfairly targets those in the Thai sex industry. Using the word prostitution puts the focus on the activity of 'prostitution' as being the problem rather than the focus on whether women are forced or coerced and exploited.

This discriminates against adult sex workers who are satisfied with their working conditions and do not consider themselves exploited. It also hinders any further action on tackling real issues of exploitation and sub standard working conditions within the sex industry as a whole.

The Act's definition of exploitation includes 'seeking benefits from prostitution'. This vague definition implicates most of those connected to the sex industry including entertainment venue owners, waitresses, cooks, cleaners, dancers, NGO's, landlords, as well as families, friends, customers and colleagues of sex workers. The definition of movement in the Act also implicates anyone who assists in the transport of sex workers, including taxi or motorcycle drivers, travel agents, informal brokers, family or friends.

The impact of these broad definitions mean that sex workers, their friends, families and communities have been disproportionately targeted for anti-trafficking 'interventions' - far more than workers and communities in other industries. Moreover the sex worker community is primarily targeted using punitive criminal justice strategies rather than education and awareness

strategies. This has the effect of further stigmatizing sex workers and their families, and pushing sex work underground as those in the industry seek to avoid police or NGO contact, tend to withhold information and find more covert ways to move, manage finances and work. The definition also unfairly discriminates against and potentially criminalizes families of sex workers who receive 'benefits' from the remittances of sex workers, to pay for basic necessities such as housing, health care and education.

The Act and the Suppression and Prevention of Prostitution law effectively act together to create a negative impact on the sex industry as a whole, which increases the potential for human rights violations. In failing to recognize and define sex work as legitimate work that is clearly different and distinct from trafficking, a punitive criminal justice approach results. This approach means that sex workers, employers and others are less able to report or offer assistance to trafficked persons for fear of being implicated in prostitution and/or trafficking offences themselves.

HUMAN RIGHTS VIOLATED: Right to Non Discrimination, Equality and Equal Protection under the Law / Right to Work: Free Choice of Employment

Prosecution and Suppression

POLICE ENTRAPMENT

AT LAW Section 27.4: Police can enter dwellings to seize evidence of trafficking in persons

Entrapment is used by police and NGO investigators in Thailand to gain evidence for the prosecution of traffickers. Entrapment is the act of inducing a person to commit a crime that they otherwise wouldn't have considered. In Thailand this practice entails police posing as customers seeking to buy sexual services from minors, i.e.: specifically requesting young girls under 18 years. In the research, the use of entrapment has resulted in at least two incidents of minors being falsely accused of working in the sex industry. In one incident it resulted in a 17 year old girl being coerced by undercover police to enter into a sex work agreement for the first time in her life, prompted by their request for sex with under-age girls. In another incident a 17 year old girl was apprehended as a trafficked person on her first night of work in a karaoke bar as a waitress, not a sex worker. Both of these girls were entrapped by police and falsely identified as being trafficked on the basis of their age and the fact that they were working in a venue where sex workers are also employed. Neither of them were engaged with sex work; and they did not want to be assisted by the government welfare department nor rescued from their working or living situation. The practice of entrapment to collect evidence of trafficking not only leads to spurious and inaccurate evidence, it also promotes the sexual exploitation of minors, and is an assault on the human dignity of young women working in the entertainment industry in Thailand. The Thai National Human Rights Commission in 2003 recognized that police entrapment in Thailand often leads to serious human rights violations against women in the sex industry and recommended it should only be used under a clear and precise system that prevents human rights abuses. Instead however, the use of entrapment by police and NGO conducting anti-trafficking investigations appears to be a routine practice that continues unmonitored and with negative consequences for

sex workers and young women in the entertainment industry.

HUMAN RIGHTS VIOLATED: Right to Life, Liberty & Security of the Person: right to be treated with humanity respect

POLICE RAIDS AND RESCUES:

AT LAW Section 27 Anti-Trafficking Raids Police can enter dwellings without a warrant to discover and rescue a trafficked person and to seize evidence of trafficking in persons

In anti-trafficking raids in Thailand women are experiencing a range of human rights violations. Both trafficked persons and sex workers are subject to operations where large numbers of armed police raid an entertainment place, chase and apprehend women who attempt to run away in fear and confusion. Some women have been physically hurt in police raids while trying to escape. The police are not obligated to use a warrant under the Act. They routinely search all women who are apprehended at the venue and confiscate their handbags and mobile phones to be used as evidence for possible trafficking prosecution.

AT LAW Section 29 Custody: Suspected victims can be held in custody for 24, hours, and then the Court can grant permission to extend to 7 days

All women who are apprehended in a raid are taken by police to the local police station where they are questioned by NGO workers and police officers, to ascertain whether they are trafficked persons. This can take several hours of questioning. Women who have been caught up in raids say they were not told the reasons for the questioning and at no stage were informed of their rights under the Thai Constitution and within the Thai criminal justice system, as plaintiffs, suspects or witnesses in alleged crimes. These rights include: their right to know what they have been charged with; right to call a trusted person or family member; right to legal representation; to speak to a lawyer in private; and the right for a trusted person or lawyer to sit in on all interviews with police. In fact some of the women were given a printed statement of these rights by police to sign at the time of questioning, however because the statement was in Thai language and there was no effective translator, the women did not understand their entitlements. It appears that translators are not routinely provided for migrant women in this questioning process. Migrant women and illiterate women have been forced to put their thumb print as a signature to legal documents which they do not understand provided by police at the police station. They have also been forced to put their thumb print to documents which apparently provide a list of their belongings that have been confiscated by police – which they cannot read or understand due to language and literacy issues. This violates their entitlements under the Thai Constitution, Thai criminal justice system and under international human rights law.

HUMAN RIGHTS VIOLATED: Right to Life, Liberty and Security of the Person: right to be informed of reasons for arrest and charges against a person in language they understand; right to be treated with humanity and respect

MEDIA VIOLATION OF PRIVACY:

AT Law Section 56 Privacy and Media: Cannot take, circulate or publish a picture of a trafficked person that might lead their identification at any time. Cannot disseminate or publish information disclosing the history, place of work, home, or education of the trafficked person

During raids on the venue, and at the police station, photographers often take photos of the venue, the alleged traffickers and the women working there. These photos along with information on the raid venue and charges against traffickers are then often shared with media outlets who publish media reports on the raids in TV, print and online. The media reports often include photos of the women in the raid with black strips across their eyes (supposedly as an attempt to maintain the confidentiality), or pictures of the women trying to hide their faces behind papers, clothes, etc. News agencies commonly publish photos, names and addresses of the workplace, which compromises the privacy of women who are apprehended or rescued in these raids. This is in violation of protections under the Act itself which make it illegal to publish any identifying information on victims of trafficking.

HUMAN RIGHTS VIOLATED: Right to Privacy and Family Life, Reputation and Honor

Raids also have a negative impact on the wider community, including women and men who work at the entertainment venue, but are not apprehended in the raid because they were not at work at the time of the raid. This includes sex workers, and other staff such as cleaners, cooks, singers, waitresses etc. Most of these people also experience fear, trauma and confusion, and are refused access to contact any of their friends or family members who may have been apprehended in the raid. They have no knowledge as to the reason for the raid and invariably lose wage payments and in some cases lose their entire job, due to the closure of venues following the raid.

HUMAN RIGHTS VIOLATED: Right to Family Life; (regular contact with family), Right to Just and Favorable Conditions of Work

MANDATORY MEDICAL TESTING:

AT Law Section 33 Assistance: The MSDHS must provide assistance to trafficked persons, including medical treatment undertaken with the opinion of the trafficked person sought and providing that human dignity and the differences in sex, age, nationality race and culture of the trafficked person be taken into account.

Women who are apprehended in raids have been forced to undergo mandatory medical tests with no information provided to them as to why the tests are required, and no opportunity to refuse these testing procedures. Migrant women in particular have limited understanding as to the reasons for the testing as no translator is being provided to explain this procedure. The tests are being conducted on women who are suspected to have been trafficked and/or under 18 years of age, and also on adult women who assert that they are not trafficked persons. The tests include blood tests, and internal vaginal examinations. Mandatory blood tests and vaginal examinations

without informed consent are only enforceable under Thai national security laws or if ordered by the court for specific purpose. However in the anti-trafficking scenario, it is questionable as to why the tests are even occurring. The women are not routinely given the results of the tests at any time following the test procedure, and it is unclear who else has access to their test results and what purpose they are being used for.

HUMAN RIGHTS VIOLATED: Right to Life, Liberty and Security of the Person: right to be treated with humanity and respect / Right to Health: including right for control over ones health and body; right to confidentiality and informed consent to health treatment, right of complaint and redress

VICTIM IDENTIFICATION AND AGE TESTING

AT Law Section 4 Definitions: “Child” means any person under eighteen years of age.

Section 33 Assistance: The MSDHS must provide assistance to trafficked persons, including medical treatment undertaken with the opinion of the trafficked person sought and providing that human dignity and the differences in sex, age, nationality race and culture of the trafficked person be taken into account.

The large majority of women and minors apprehended in raids fiercely deny that they are trafficked and give their age as over 18 years. In order to justify the raid NGO and police are anxious to prove otherwise. So all undocumented women who are suspected of being trafficked persons and minors (i.e. under 18 years) are forced to undergo forensic tests including bone x-rays and dental examinations in an effort to determine their age.

While the use of bone and dental examinations is *not* included under the Act, it is covered extensively in provincial level MOU on anti-trafficking activities in Thailand. All of the MOU also emphasise the need to respect the fundamental human rights of trafficked persons – which includes the right to informed consent in medical treatment. The Act also notes that medical treatment for trafficked persons must be undertaken considering the opinion and human dignity of the trafficked person, which in these circumstances is not occurring.

The use of dental and bone examinations to determine the age of victims of trafficking is questionable in terms of both human rights and credible medical practice. This process of age assessment is recommended under international Anti-Trafficking Guidelines⁸⁸ which requires that assessment of alleged victims should be undertaken by trained and qualified individuals who should consider the following:

- the verification of the victim's age should be taken into account;
- the physical appearance of the victim and his/her psychological maturity,
- documentation,
- checking with embassies and other relevant authorities,

⁸⁸ OHCCR Recommended Principles and Guidelines on Human Rights and Human Trafficking; and UNICEF Guidelines for the Protection of the Rights of Child Victims of Trafficking

- consensual medical examination and opinion
- the victim's statements

In Thailand however it appears that the victims consent and statements are not routinely considered in this process and there is a strong reliance on forensic bone and dental examinations as the primary means to determine the age of young women who are apprehended in raids. This approach is clearly outlined in the 2003 Anti-trafficking MOU for Government Agencies in Thailand:

"In the case where the foreign children or women assert that they are over 18 years of age without any proof of ID documents; or there is reasonable doubt that their ID documents are false, modified, or not the ones issued to them; and there is reasonable doubt that the children or women are not over 18 years old, either the investigating officers or the officials of the Department of Social Development and Welfare shall arrange medical examinations of the children or women in question by way of dental or other physical check-ups, to rule if in the transnational cases the girls or women are 18 years old or younger."

This process is problematic as the use of bone and dental testing is an unreliable measure to determine the specific age of persons between 16-20 years old. In the US and Europe, forensic bone and dental tests are never used as stand-alone age assessment tools as it is recognized that they can be incorrect by a period of up to 5 years.⁸⁹ In addition, standard bone x-ray procedures are inappropriate to assess the age of young migrant women from Asia, as the age baseline used within these tests is based on American children in the 1940s. It has been proven that significant variations in bone age will occur due to factors such as race, ethnicity, socio-economic and nutritional status.⁹⁰ Given the unreliability and inconclusiveness of forensic testing procedures, it is now recognized that accurate age assessment must include additional processes such as longer periods of in-depth observations and input from experts from the same culture and background as those being assessed.⁹¹ This however is not the process that is followed in Thailand anti-trafficking procedures, where forensic tests are used as the primary evidence for proof of age, in legal proceedings which contest the statements of women who expressly state that they are consensual adult sex workers.

The age assessment procedure relies heavily upon the principle within both international and national anti-trafficking guidelines, of 'presumption of age and victim status'.⁹² This principle espouses that in cases where the age of the victim is uncertain but there are reasons to believe that they may be under 18 years – they should be presumed to be a child victim and therefore eligible to protection and support according to legal protections for the minors. While this principle is intended to be a protection measure for young trafficked persons – in the circumstance facing undocumented sex workers in Thailand, it is in fact being used to violate their human rights. In this instance the Act is being used as a tool to contradict the stated evidence and opinion of young women who are working in the entertainment industry, and essentially force them to accept a

⁸⁹ 'The Health of Refugee Children – Guidelines for Pediatricians', Royal College of Pediatricians, 1999

⁹⁰ Bassed R, (2011) Bone of Contention, Monash University

⁹¹ US Immigration and Customs Enforcement MOU 2004

⁹² OHCCR Recommended Principles and Guidelines on Human Rights and Human Trafficking; Principle 10.2: THAILAND: MOU on Common Operational Guidelines for Government Agencies, B.E. 2546 (2003) Sections: 4.4, 4.5.5.5,6.4,6.5

false identity as a victim of trafficking. This practice violates the core principle of rights-based support for victims, which is central to the entire anti-trafficking approach. It also violates the rights of women who do not wish to be assisted and at the very least it is a misdirected waste of resources and intervention efforts in trying to help women who do not need help.

HUMAN RIGHTS VIOLATED: Right to Life, Liberty and Security of the Person: right to be treated with humanity and respect / Right to Health: including right for control over ones health and body; right to confidentiality and informed consent to health treatment, right of complaint and redress

ARBITRARY DETENTION OF SEX WORKERS AS WITNESSES

AT Law Section 27: Police can summon any person to give statements or evidence of trafficking;

Section 31: The court shall hear the statement of witnesses promptly

Section 237 bis paragraph 3 and 4, Criminal Procedure Code shall apply: Witness testimony can be taken promptly and used instead of witness physical presence at the trial.

Police are using the law to compel migrant sex workers who are apprehended in anti-trafficking raids, to testify as witnesses in anti-trafficking prosecutions. Although the Act does give the police the power to compel witnesses, it also requires the prosecutor to take the witness testimony *promptly*. In reality however state officials are not adhering to the law and instead are holding migrant sex workers, against their will, in arbitrary detention in jail cells or shelters for weeks, months even a year. Arbitrarily detaining these women is failing to offer them their legal and basic human rights entitlements. There are two legal options that could be extended to migrant sex workers in these circumstances. The first is outlined in the Act, which has reference to a clause in the Penal Code, enabling the Court to record witness testimony promptly - prior to the full prosecution hearing - and use this testimony in lieu of the witness attending the court case in person. The second option is for the migrant sex workers to be held as voluntary witnesses under the Witness Protection Act 2003. The Witness Protection Act mandates that in a criminal case, a witness has the right to protection, proper treatment and necessary and appropriate remuneration from the State as provided by law.⁹³ Under this law witnesses are entitled to safe accommodation (outside of a jail cell), daily living allowance, legal advocacy and support, training, education and protection.

Currently none of the women have had the Witness Protection Act applied and have no channels to seek redress for this injustice. While trafficked persons have an appointed lawyer via the public prosecutor, and in some cases also have a legal advocate provided by an NGO, the women that are held as witnesses have no access to any independent legal advice or representation.

⁹³ Prathan Watanavanich 2006, Thammasat University, Bangkok, Thailand

HUMAN RIGHTS VIOLATED: Right to Life, Liberty and Security of the Person: right to be informed of reasons for arrest and charges in a language they understand; protection against arbitrary detention, right to file a complaint for arbitrary detention

Right to Non Discrimination and Equal Protection by the Law: discriminatory treatment of migrant sex workers / Right to Freedom of Movement: right to leave any country / Right to Family Life: regular contact with family / Right to Fair Trial: within a reasonable time frame / Right for redress of legal violations

PROSECUTIONS

Both the young women classified as trafficked and the women witnesses are not given adequate information on the proceedings, expectations and timing of the court case, no effective translators and are either not allowed to choose their own legal advocate if classified as trafficked or not given any legal representation at all if a witness.

Women who are illiterate are routinely required to put their thumb print on legal documents related to the court case that they do not understand.

Women are often instructed or coerced to identify strangers or others as being involved in moving them or exploiting them even when they are clear that they do not know the defendant or that the person was never involved in such activities.

HUMAN RIGHTS VIOLATED: Right to Non Discrimination and Equal Protection by the Law / Right to Fair Trial

Assistance and Support

WOMEN ARE FORCIBLY DETAINED IN SHELTERS

AT Law Section 33 Assistance: The MSDHS must provide assistance to trafficked persons, including food, shelter, training, legal support, etc - undertaken with the opinion of the trafficked person sought and providing that human dignity and the differences in sex, age, nationality race and culture of the trafficked person be taken into account.

Women who are classified as trafficked persons and also witnesses are held against their will in government and non-government shelters for periods of up to two years. The opinion of either group has never been sought or respected. Women are not consulted about their detention and have no choice about which shelter they go to and cannot leave once they are there. There is no independent complaints mechanism accessible to women in the shelters.

They have their phones confiscated and are unable to contact family, friends or outside agencies until such time as the court case is completed – which can take over a year.

Women all report instances of discrimination and racism by shelter staff either because of being a migrant and /or a sex worker. The only religion adhered to in the shelters is Buddhism. Christian and Muslim women who have been detained as witnesses in shelters have not been able to practice their religions. Muslim women do not have access to *hala* food or opportunity to observe Islamic religious practices. Women have been denied appropriate health care at shelters including dental and maternity health care services.

Migrant women who stayed in shelters have had extremely limited access to translators, and those that did have access had difficulties understanding the translation. This issue however seems to occur not only in shelters, but also in various stages of the legal process, including in court cases, in interviews for identification, and in mandatory health testing at hospitals.

Compared to Thai women in shelters migrant sex workers are less likely to receive formal educational opportunities and more likely to receive occupational training that is gender biased and not formally recognized.

HUMAN RIGHTS VIOLATED: Right to Life, Liberty and Security of the Person: protection against arbitrary detention, right to file a complaint for arbitrary detention

Right to Non Discrimination and Equal Protection by the Law: discriminatory treatment of migrant sex workers / Right to Freedom of Movement: right to leave any country

Right to Family Life: regular contact with family / Right to Freedom of Religion /Rights for Redress of legal violations

GENDER DISCRIMINATION IN THE RIGHT TO TEMPORARY WORK

AT Law Section 37 Work: Trafficked persons have the right to temporary work in Thailand, while waiting for court outcomes and repatriation.

Trafficked women are discriminated against on the basis of gender. They are offered limited opportunities for earning an income compared with trafficked men.

Women are restricted to working within shelter grounds allegedly because they are more vulnerable to being exploited if allowed outside the shelters to work. Women are offered temporary piecework making handicrafts to be sold at local shelter stores. They are not paid for their labour and only earn money when their products are sold. Men on the other hand are able to seek work outside shelters, earning at least the daily minimum wage. This double standard discriminates against women, and is especially cruel for women who are responsible for supporting families and children in their home communities prior to being detained in the shelter.

HUMAN RIGHTS VIOLATED: Right to Free Choice of Employment and to Just and Favourable Conditions of Work/ Right to Non Discrimination

COMPENSATION FOR VICTIMS

AT Law Section 33-35 Compensation: Prosecutor must inform the trafficked person of their right to compensation and make a claim during criminal proceedings in the Court.

Compensation claims for women classified as having been trafficked for exploitation of prostitution are not routinely lodged. Compensation is more likely to be awarded to people trafficked for labour exploitation. Women are not given to understand their right to compensation or the process with which to claim it. Claims for compensation can take up to a year to execute, at which time migrant women may already have been deported to their home countries.

HUMAN RIGHTS VIOLATED: Access to Justice and Effective Remedy /Right for redress of legal violations

Deportation

AT Law Section 38 Reparation: Officials shall undertake to return trafficked persons to their countries of origin without delay.

It takes between 8 months and 2 years for women to be deported to their home country, even those which are neighboring countries to Thailand.

Migrant women cannot routinely be guaranteed effective follow up or support, due to problems in cross border collaboration between states and NGO. This is of major concern for women from Burma where there are inadequate protection guarantees for migrant women who are deported to areas where there is known to be military conflict, persecution of ethnic women by the state military, and punitive attitudes of Burmese government officials towards women who have been involved in the sex industry.

Migrant women who are trafficked persons do not routinely receive financial compensation to set up businesses or investments in their home communities because NGO and welfare staff's concerns over bank accounts and safety of the money. Thai women are more likely to receive follow up support and compensation than migrant women affected by trafficking.

HUMAN RIGHTS VIOLATED:Right to Justice and Access to Effective Remedy: compensation / Right for Redress of legal violations / Right to Non Discrimination / Right to Non Refoulement

Prevention

Sex workers and others in the entertainment industry have limited knowledge of their rights and responsibilities under the Act as there have been no effective awareness raising campaigns for this allegedly 'high risk' group. In fact sex workers are more likely to be targeted by state and non state punitive suppression strategies rather than capacity building and educational programs. No consultations have ever been undertaken with sex workers to seek their input, assistance, knowledge and experience in designing and implementing trafficking intervention and prevention strategies within their own industry. Instead sex workers are humiliated, raided, detained and punished, all in the guise of trafficking prevention.

HUMAN RIGHTS VIOLATED: The Right to Participation: access to information

TABLE OF HUMAN RIGHTS VIOLATIONS: Our research has found consistent violation of the following fundamental human rights of Thai and Migrant women in Thailand, under the guise of anti-trafficking practice. The Thai Government is obligated to protect these rights under various international treaties that it is a signatory to as highlighted below.

RIGHTS AND PRINCIPLES VIOLATED	TREATY OBLIGATION S OF THE THAI GOVERNMENT
Right to Non Discrimination, Equality before the Law and Equal Protection by the Law	UDHR 2, 6, 7 & 8; ICCPR 2(1), 14, 16 & 26; ICESCR 2(2) & 3; CEDAW 1 & 2; CERD 1 & 5; ICRMW 1 & 24; ECHR 14
Right to Justice/ Access to Effective Remedy	UDHR 6, 7, 10, 11, CEDAW General Recommendation 26
Right to Participation/ Access to Information	ICCCPR 25, CEDAW General Recommendation 26
Right to Gender Equality	UDHR 2, 6, 7 & 8; ICCPR 2(1), 14, 16 & 26; ICESCR 2(2) & 3; CEDAW 1 & 2; CERD 1 & 5
Right to Life, Liberty and Security of the Person	UDHR 3 & 9; ICCPR 6 & 9; ICERD 5; CRC 6; CRC 37
Right to Freedom of Movement	UDHR 13; ICCPR 12; CEDAW 15(4)
Right to Privacy and Family Life, Reputation and Honor	UDHR 12 & 16; ICCPR 17 & 23; ICESCR 10; CRC 9, 10 & 20
Right to Property	UDHR 17
Right to Non-Refoulement	UDHR 14; CAT 3
Right to a Fair Trial	UDHR 6, 7, 10 & 11
Right to Free Choice of Employment/ Just and Favorable Conditions of Work	UDHR 23, 24 & 25; ICESCR 6 & 7;
Right to Health	UDHR 25; ICESCR 12; ICERD 5; CEDAW 14; CRC 24, 25 & 39
Right to Freedom of Religion	UDHR ICCPR; ECHR 9

As well as the above noted human rights violations, the research has found that Thai government officials and non-state actors involved in anti-trafficking responses in Thailand are in some instances also violating national law including some of the protections and provisions within the Anti-Trafficking law itself. There is also evidence that anti-trafficking practice in Thailand is in contradiction to a number of regional treaties that have been signed by the Thai government, and also violate international anti-trafficking law and guidelines. These are outlined below.

Violation of Thai National Law and Policy:

Suppression and Prevention of Human Trafficking Act BE 2551

- Must take testimony of witness promptly; Section 31
- Prompt victim testimony and court hearings, Section 31
- Victim right to compensation, Section 34-35
- Right for safe repatriation without delay; Sections 33,34,35,36, 37, 39
- Victim right to privacy; Section 53
- Victim assistance must adhere to human dignity and opinion of trafficked persons; Section 31, 53

Constitution of the Kingdom of Thailand B.E. 2550 (2007)

- All Persons are Equal before the law; Section 4, 30
- Right to Live and Work Free of Discrimination; Section 34,40,49,51
- Right to Access to Justice; proper treatment in administration of justice; Section 39
- Right to Remedy through the Court for Violations of Constitution; Section 27
- Right and Liberty to Observe Religious Principles and Practices; Section 37
- Right to Family Life, Dignity, Reputation and Privacy; Section 35
- Right to be Informed of Evidence, Legal Assistance; Section 40

Thai Human Rights Commission Recommendation on Human Rights and Entrapment, 2003

Thai Penal Code -

- Right to access to justice: lawyer,
- Redress or complaint against illegal detention
- Arbitrary Detention
- Informed consent for medical procedures

Thai Witness Protection Act, B.E.2546 (2003)

- Support and protection for witnesses Sections 7, 8, 9, 10, 15 and 16

National Operational Guidelines for NGO Engaged in Addressing Trafficking in Children and Women, B.E. 2546

- Foreign victims of trafficking right to translators, Section 5

Regional Agreements Violated

COMMIT MOU on Cooperation of Trafficking in Persons in the Greater Mekong Sub region

- Victim right to translators; Section 2.10
- Victim right to receive legal information; Section 10
- Promoting gender sensitivity in trafficking interventions; Section 15
- Victim right to safe return and cross border follow up; Section 20, 21

ASEAN Declaration against Trafficking in Persons Particularly Women and Children

- Safeguard victim human rights and dignity; Article 6

ASEAN Declaration on the Elimination of Violence Against Women in the ASEAN Region

- Remove discrimination against women/support economic empowerment; Section 5

International Ant-trafficking Standards Violated

UN Trafficking Protocol 2002

- Anti-trafficking measure should not adversely affect the human rights of persons; Article 14.1
- Principle of Non-Discrimination; Article 14.2
- Assistance provided to victims in a language they understand; Article 6.2
- The privacy of trafficked persons is protected; Article 6.1
- Victims have right to legal assistance in a language they understand; Article 6.2
- Right to compensation for victims: Article 6.6,

UNOHCR 2010 Recommended Principles and Guidelines of Human Rights and Human Trafficking:

- Anti-trafficking measure should not adversely affect the human rights of persons; Principle 3.1
- Vulnerable groups have the right to receive information to enable them to seek assistance; Principle 4
- The privacy of trafficked persons is protected; Guideline 6.6,
- Non Coercion of care and support; victims should not be subjected to mandatory medical testing; Guideline 6.2
- Victims have right to legal assistance in a language they understand; Guidelines 3.1, 3.8 & 6.5
- Routine detention of victims or suspected victims in public or private shelters violates international law; restrictive measures must conform to the principle of proportionality; Guidelines 3.3 & 7.4

- Right to compensation for victims; Guidelines 17.4 & 17.5
- Safe repatriation of trafficked persons and family UN Trafficking Protocol 8.1 & 8.2, UN HCHR Guidelines 6.7
- Principle of Non Refoulement: States prohibited from returning person to country where they will be subject to persecution or abuse; Guidelines 6.7

Our findings call for a sincere and urgent response from the Thai Government and others involved. It is unconscionable to allow these abuses to continue in the name of responding to human trafficking or to satisfy a foreign government's agenda. The Thai Government has a clear and compelling duty to end all harmful interventions and provide legal remedy to those affected by such violations according to domestic and international law e.g. as mandated within the ICCPR article 2.3, the CERD Article 6 and the and UDHR Article 8.

Appendix: CONSULTATION LIST

Summary of Stakeholders and Contacts interviewed for the Research:

Research Partners/sex workers: 170

Sex Workers from Thailand, Burma, Laos, and China. Working in different sectors of the industry in 9 provinces in Thailand (Samut Sakhon, Nonthaburi, Ubon Ratchathani, Udon Thani, Mukdahan, Chiang Mai, Mae Sot, Mae Sai, Chongmek)

Research Leaders/sex worker leaders: 36

Sex Workers from Thailand, Burma and Laos. Working in different sectors and with Empower 11 provinces in Thailand (Krabi, Phuket, Samut Sakhon, Bangkok, Nonthaburi, Ubon Ratchathani, Udon Thani, Mukdahan, Chiang Mai, Mae Sot and Mae Sai)

Entertainment Place Owners: 9

3 in the North East / 5 Mae Sot / 1 Chiang Mai

People on trial for or previously convicted of trafficking: 5

3 employees at a karaoke bar, 1 bar owner, 1 gardener

Department of Social Development and Human Security: 10 meetings

Women's shelters: 4 shelter staff (Baan Kredtrakarn, Baan Song Khawe)

Provincial Offices : 6 meetings / reports from provincial level officials (Ubon, Udon, Mukdahan, Pattaya, Chonburi, Samut Sakhon)

Police: 23

15 provincial Anti Human Trafficking Department Police: Chiang Rai, Chiang Mai, Payao, Bangkok

8 local police: Chiang Mai, Mae Sot, Pattaya

NGO: 15

2 international / regional anti-trafficking NGO (UNIAP, GAATW)

8 Thai NGO with anti-trafficking programs (Trafcord, World Vision, IOM, Foundation For Women, ADRA, Daughters Education project, Thai Development Foundation, LPN)

5 local NGO (MAP Foundation, SHARE, Grass Roots Human Rights Foundation, Foundation for AIDS Rights, Rak Thai)

Meeting: NGO and Police-Anti-Trafficking R3 Rapid Report and Response Meeting, Pattaya, July 2011

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