

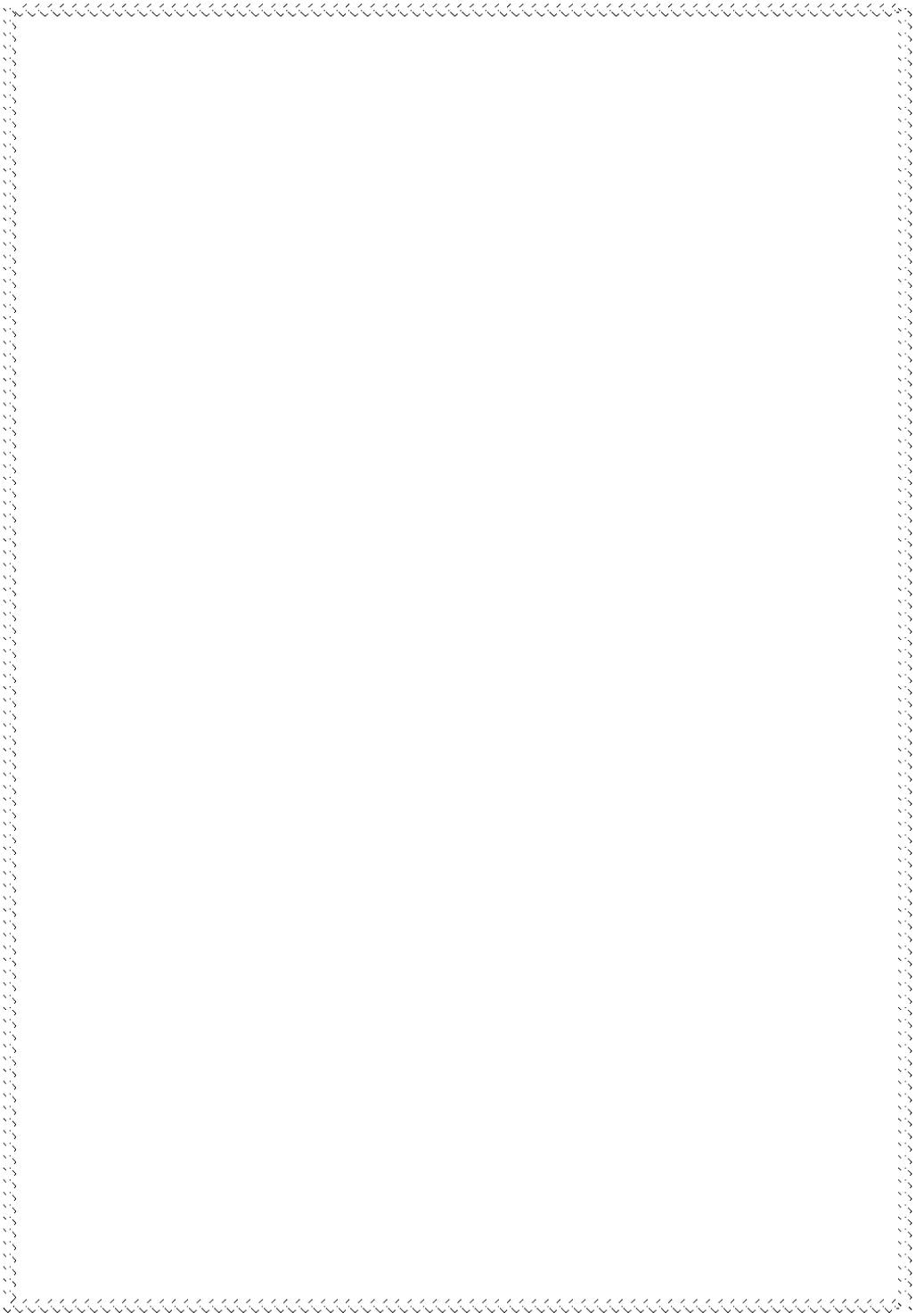
EMPOWER FOUNDATION PRESENTS



MOVING TOWARD DECENT SEX WORK

**SEX WORKER COMMUNITY RESEARCH
DECENT WORK AND EXPLOITATION
IN THAILAND**

2016





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Moving toward Decent Sex Work
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Cover: Honey Bee Cartoon by Empower founder, Chantawipa Apisuk from part of ILO supported Empower project in 1998.

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MOVING TOWARD DECENT SEX WORK

SEX WORKER COMMUNITY RESEARCH DECENT WORK AND EXPLOITATION IN THAILAND

by empower, 2016



พิมพ์ครั้งที่ ๑
โดยเอ็มพาวเวอร์, 2559

Empower Foundation

Empower is a Thai sex worker organization which began as a collaboration between Chantawipa Apisuk (Noi), a group of sex workers and activists in Patpong, Bangkok, in 1985. 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 30 years. Our members include sex workers from Thailand and migrant sex workers mainly from Mekong countries such as Laos, Burma, China and Cambodia.

Empower currently reaches over 20,000 current sex workers via key contacts in 11 provinces in Thailand and centers in Nontaburi and Chiang Mai. In each area, Empower is part of the sex worker community.



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***"When the only tool is a hammer,
everything is dealt with like a nail."***



***Empower in support of
Amnesty International's decision August 2015***

Sex work is currently managed under the hammer of criminal law. Criminalizing sex work has not only failed to protect women from exploitation, it has also spectacularly failed to 'end prostitution' in Thailand or anywhere ever.

Introduction

Sex work is work. This short, clear statement is repeated globally by sex workers from a wide range of working conditions, cultures, ethnicities, religions, cultures, genders, age groups, economic situations and legal environments. Sex workers have a global network, NSWP, comprising of 237 sex worker led organisations and groups from over 71 countries who all endorse acceptance of sex work as work.¹

A growing list of major international agencies is openly validating sex workers' calls for recognition and decriminalization of sex work. The World Health Organization (WHO), the United Nations Population Fund (UNFPA), the United Nations Development Programme (UNDP) and the Joint U.N Programme on AIDS/HIV (UNAIDS), which includes UN Women, all recognize sex work as work and have endorsed the call for decriminalization of sex work. Most recently on the 11th of August 2015, Amnesty International confirmed a policy to support decriminalization joining similar calls by Human Rights Watch, The Lancet and the Global Alliance Against Traffic in Women.²

International donors for human rights have also supported recognition of sex workers' rights and labour/law reform for decades, including such organizations as Open Society Foundation, American Jewish World Services and Mama Cash. The International Labour Organization (hereafter ILO) currently recognizes sex work as an economic activity.³

¹ www.nswp.org/members

² <http://www.nswp.org/news/amnesty-international-votes-decriminalisation-sex-work>

³ Prostitution, Politics & Policy Roger Matthews 2008

Even when done in unacceptable conditions, sex work is work. Like all work, sex work does not become something else when performed under unacceptable conditions. It is vital “to recognize prostitution⁴ as work, even in situations where that work is deeply exploitative, as many other forms of labour are, in order to create better working conditions and reduce the stigma and violence associated with sexual labour.”⁵ As with any other industry, the existence of exploitation, forced labour or substandard working conditions experienced by workers does not negate the State’s responsibility to protect workers’ rights, nor should it negate the individual’s right to seek recognition or redress as a worker.

The overriding conditions of exploitation in the sex industry cannot be addressed if these situations of abuse are automatically considered to be outside the context of work. Such divisions create a hierarchy of merit in which sex workers must be criminally exploited, e.g. trafficked, in order to be seen as deserving of support, opportunities or protection under the law and in society.

To date, the core response to concerns about sex work has been to use a stand-alone criminal justice model of punishment as protection. This has been the one-size-fits-all solution to both perceived and real exploitation in the sex industry. The criminalization of sex work has been enforced for many decades in more than 116 countries around the world. Thailand has criminalized the selling and buying of sex for 60 years.

The criminalization of sex work has not only failed to protect people from exploitation, it has also spectacularly failed to ‘end prostitution’ in Thailand or any single one of these 116 countries. Criminalization of sex work has had disastrous consequences for all sex workers,

⁴ We acknowledge that “prostitution” is an offensive term for many sex workers. However in some sections of this paper we have use it as it is the current legal terminology in Thailand or when directly quoting other authors

⁵ Hardy (2013: 52) *Body/Sex/Work: Intimate, Embodied and Sexualised Labour* edited by Carol Wolkowitz, Rachel Lara Cohen, Teela Sanders, Kate Hardy

including those it purports to protect. It has also failed to address societies' other more pressing concerns such as human rights violations, child abuse, exploitation of workers and corruption.

We propose that law reform is a key component of achieving a just society and human rights for sex workers. Decriminalization, the removing of criminal law, does not mean that there are no regulations. Most occupations are not legal; they simply are not criminal. Sex worker organization, SWOP offers:

A carpenter is not 'legalized' but simply is not a criminal; they do not require special criminal regulations. There are plenty of other regulations in place that protect the carpenter as a worker, the community in which the carpenter is working (such as materials, zoning, noise, etc.) and a carpenter can be trained or join a union etc. Under decriminalization, sex workers will have similar rights, but also have civil, labour and social guidelines to follow.⁶

We do not intend to list or describe all the harms caused by criminalization of sex work or to restate the ways in which recognition of sex work improves the human rights situation of sex workers. However, we do strongly encourage people to access the extensive documentation and links to resources on the NSWHP website www.nswp.org and research undertaken by Amnesty International www.amnesty.org

⁶ <https://swoplv.wordpress.com/category/legalize-decriminalize-prohibit/page/12/>

Executive Summary

Criminal law is a very blunt instrument and has proven to be ineffective in addressing the complex concerns around sex work. As an old maxim says, "When the only tool is a hammer, everything is dealt with like a nail." We suggest that it is high time to increase the range of tools available to sex workers and society.

In 2016, Thai society is more concerned with addressing exploitation, reducing corruption and honouring the rights of the child than punishing the buying and selling sex. Most of Thai society may well consider exchanging sex for money to be immoral. However, we propose that the breach of some of society's moral beliefs no longer carries an imperative strong enough to criminally punish those involved. The outdated legal framework around sex work needs to be reformed to reflect the modern concerns of society. The Suppression and Prevention of Prostitution Act 1996 is in danger of becoming an orphan law divorced from society's support.

To date, sex work has not been included in labour rights discussions. The ILO reports, "*Gender Equality and Decent Work in Thailand: a country report for ILO/ADB*" and "*Extending Labour Law to All Workers: Promoting Decent Work in the Informal Economy in Cambodia, Thailand and Mongolia*" did not mention sex workers at all.

In order to develop new frameworks and refine interventions, we need to explore the protections available under civil law and the application of other labour mechanisms to sex work.

The clarification of sex work as work moves the focus away from punishing the subjective immorality of sexual behaviour and toward improving the working conditions and quality of life of sex workers and the well-being of society by extension.

Can Do Bar

Sex workers in Thailand have already taken steps toward making this vision a reality. In 2006, sex workers under the banner of Empower Foundation created a working model of a just, fair workplace for sex workers - the Can Do Bar in Chiang Mai, Thailand. Unlike other entertainment places in Thailand, Can Do Bar's physical environment complies with Thai Occupational Health & Safety Standards; staff are employed in accordance with the Thai Labour Protection Act and are enrolled in the National Social Security Scheme according to the law. Can Do Bar also provides opportunities for skill advancement and promotion. Although as yet there is no formal Union or Association, the workers regularly meet and are pivotal in guiding changes in the workplace.

Although Can Do Bar provides an excellent starting point, there remains an urgent need to reform the existing criminal laws that negatively impact sex workers.

Terms such as "exploitation of prostitution" and "sexual exploitation" are used in law and practice, yet commonly left undefined as if they were interchangeable and self-explanatory, which is not the case. Furthermore, with no clear definition there has never been a tool available which will allow for the objective measuring of 'exploitation of prostitution.' Instead, it is left up to the subjective judgment of individual law enforcement officers who naturally have their own preconceptions about sex work according to their own moral code, religious belief, gender, class, culture and experiences. It becomes a situation of "up to me" law enforcement.

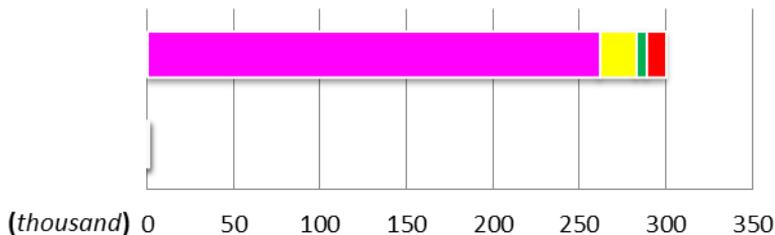
Moving Toward Decent Sex Work

In order to develop a reform process, we must start by hearing how exploitation is defined and experienced by sex workers; understand what conditions sex workers are working in; and use sex workers' descriptions and definitions to determine how exploitation in the sex industry can best be measured and responded to. Our response will include the construction of a range of interventions and mechanisms which are appropriate to prevent and address exploitation in sex work.

The ILO has clearly defined a range of labour conditions such as Decent Work, Decent Work Deficits, Unacceptable Forms Work, Forced Labour, Child Labour and Debt Bondage. The Thai Labour Protection Act 1998, Thai Social Security Act (No.3) 1999, and the Occupational Safety, Health and Environment Act 2011, have well defined and measurable standards of safe, fair work in Thailand.

We have applied these existing definitions and recognized standards to the current real working conditions in the Thai sex industry. We mapped the current status of sex work along a continuum spanning Decent Work, Decent Work Deficits, including conditions that violate national laws, and Unacceptable Forms of Work (UFW) as defined by the ILO. We have taken our lived understanding and experience of sex work to extrapolate the number of sex workers working across the continuum.

Decent Sex Work Continuum



Working Conditions	Percentage	Number of Sex Workers
Decent work	0	0
Substandard	87.2	261,600
Indications of Forced Labour	7	21,000
Indications of Debt Bondage	2	6,000
Human Trafficking /Under 18	3.8	11,400

The Thai government estimates there are 300,000 sex workers in Thailand. We find that neglect and isolation from labour protection and the criminalization of sex work are incompatible with Decent Work principles of freedom, equity, security and dignity. The application of criminal law, i.e. the Suppression and Prevention of Prostitution Act 1996, prevents all sex workers, and the industry itself, from achieving the ideal standard of Decent Work and full compliance with Thai Labour, Social Security and OH&S laws. Hence, 100% of sex workers in Thailand can currently be described as working in situations of 'decent sex work deficits.' We are confident that taking action to replace criminal law with labour protections will move all sex workers along the continuum closer to decent work.

Our continuum finds 87.2% of sex workers in Thailand (261,600) are working in conditions that breach the definition of Decent Sex Work and/or are substandard to Thai national labour and OH&S policy.

A further 9% (27,000 people) are working under conditions which threaten a wider scope of human rights – Unacceptable Forms of Sex Work. These workers are in working environments where there are indicators correlated to the presence of forced labour or debt bondage, e.g. withholding salary, limited freedom of movement, and withholding travel documents. These conditions do not in themselves meet the definitions of either forced labour or debt bondage; rather the conditions exist that could allow forced labour or debt bondage to occur. None of the sex workers in our community research project described or felt they were in situations of forced labour or debt bondage.

There has been so much information generated, estimated and debated about trafficking in sex work, including previously published Empower community research,⁷ that we have not repeated it here. Rather, we have simply included the figure proposed by the United Nations Inter Agency Programme (UNIAP/UNACT - the key UN coordination agency for trafficking in Thailand) who estimate some 3.8% (11,400 people) working in the Thai sex industry are in a situation of trafficking and/or child labour (under 18 years old).⁸ Though it is an 'official estimate,' we do not know if it is accurate and suspect no one else does either.

This continuum is created from the reality of sex workers' experience and can be used as a guideline to begin to develop appropriate policy and practices that address the concerns of society, including concerns of sex workers. Measurable indicators

⁷ Hit & Run www.empowerfoundation.org

⁸ http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_097142.pdf

can be created that can be used to decide which working conditions require intervention using labour or civil law; which require criminal law response and which require some combination of the two. These interventions can then be used by sex workers and others to positively respond to problematic situations regardless of the sex worker's position on the continuum.

The Thai fishing industry is currently undergoing reform in order to move toward Decent Work and end Unacceptable Forms of Work. Many of the reforms being made in that industry are of particular relevance to sex workers. It is notable that the Thai government is developing a "demonstration boat" as a model of decent work, similar to what sex workers did in 2006 with the creation of the Can Do Bar.

We recommend drawing on the lessons learned from the fishing industry to undertake a pilot project reforming working conditions in the Thai entertainment industry. We suggest it be developed and trialled in one area, i.e. Chiang Mai city, over a 5 year period. Ongoing monitoring and a final review of the project will inform the development of a national strategy to end Unacceptable Forms of Sex Work in Thailand.

Thai Entertainment Industry: Key Measures for Reform

1. Reform of existing regulations and policy

In particular, there must be legal reform to end the criminalization of sex work. Decriminalization does not imply the absence of regulations; civil business, trading and penal codes will still apply. Under decriminalization, sex workers will have labour rights as well as existing civil, labour and social guidelines to follow. Law reform will need to involve the Ministry of Justice, the Department of Labour Protection and Welfare in addition to industry associations and sex worker organizations, with the ILO in the role of technical support, drawing on Thai employment

practices and working conditions, relevant ILO Conventions, international labour standards and good practices.

2. Enhancement of Labour Inspection

Police entrapment operations and violent raids will be replaced by a multi-sector Labour Inspection team with the resources and expertise needed to undertake targeted labour inspections of sex workers' work conditions. The Labour Inspection team must include sex worker organizations or associations.

3. Development of Good Labour Practice Guidelines

Specifics of categories along the decent sex work continuum need further refinement in order to extract indicators to develop assessments and plan interventions at all levels. These indicators will then be developed into Guidelines on Good Labour Practices (GLP) and form the basis for the development of a Code of Conduct for employers.

4. Improvement of Occupational Safety and Health

At present, there is a lack of analysis and understanding of Occupational Health and Safety issues for sex work in Thailand. Further inquiry is needed to clarify the application of the Occupational Safety, Health and Environment Act to sex work. This process can draw on experience from Empower's Can Do Bar as well as international experience of OH&S in the sex industries of New Zealand and NSW Australia.

Chiang Mai Model

Given the complexities and concerns of society and the long-standing nature of the issues involved, we recommend undertaking a 5 year pilot program in the Chiang Mai sex worker community. We have chosen Chiang Mai because sex workers there are well organized under the umbrella of Empower Foundation and reflect the various sectors and styles of working. The model will involve both those impacted and those charged with managing policy.

Together, new standards of decent working conditions for existing Entertainment Places will be developed, implemented and enforced.

Implementation Steps:

1. Passing of a Cabinet Resolution suspending the enforcement of the Suppression and Prevention of Prostitution Act 1996 in existing Entertainment Places in Chiang Mai. Other regulations such as the Entertainment Place Act, Human Trafficking Act, Alcohol Act and all Penal/Civil Laws will remain in place.
2. Empower and employers will join with the Department of Employment to form a working group. This group will be charged with mapping of key 'decent work indicators' and proposed interventions in the pilot area.
3. During the implementation phase, resources will be developed and support allocated to allow Labour Inspection teams to assess workplaces with the aim of supporting employers to implement decent sex work standards. An excellent example of one such resource that could be adapted for use is the "Decent Work Checklist" which can be found on the WageIndicator.org website www.tusalarario.org/costarica
4. The budget could be allocated from the Tourism budget, Human Anti-Trafficking budget or funds allocated for use against corruption.
5. The working group in cooperation with the Labour Inspection teams will develop and implement monitoring and evaluation, paying particular attention to feedback from sex workers. The final evaluation will include recommendations for further law reform. The findings will be used by policy makers to design and implement the new structure nationally.

Sex Work is Decent Work

Decent Sex Work is achievable. The first step is the recognition that sex work is no more inherently abusive or automatically criminally exploitative than other work or human relationship. Sex workers are workers in diverse situations, sectors and labour conditions, similar to other workers.

Unacceptable forms of sex work that sex workers consider exploitation and want urgently addressed are:

- 1. Salary cuts**
- 2. Mandatory alcohol consumption**
- 3. Interference with freedom to choose or refuse customers, e.g. quotas, threat of dismissal**
- 4. Receiving any less than a 50 % share of the earnings**

By stepping away from individual beliefs about sex and sexuality and looking at the inherent rights we all have as human beings, and in particular as workers, we can begin to reform the situation of sex work in Thailand. By dismantling the old framework of criminal punishment of sex work we can create a new framework that enshrines all human rights and dignity. By laying aside the hammer we can take up newer more effective tools to build a stronger society where all work is decent work.



***Empower community research has a unique collectivism where questions and answers come from each other's experiences.
Empower research is inside-out research.***



Bangkok Art & Culture Centre
Empower exhibition Kumjing's Story, March 2010

This is a community research and discussion paper where sex workers asked each other the questions, "What are our common working conditions?" "What is decent sex work?" and "What is exploitation of our work?"

Methodology

This is a community discussion paper that has drawn together the knowledge, research findings and experiences of Empower Foundation. More than 228 sex workers joined the project as researchers including taking part in workshops in six provinces of Thailand. We undertook research to find answers together to questions like, "What are our common working conditions?" "What is decent sex work?" and "What is exploitation of our work?"

The answers we found were then collated and compared with the situation of sex workers in the Empower sex worker community of Chiang Mai, comprising some 3,000 workers, whom we assert are representative of the Thai sex industry generally.

The process included a desk review identifying international law and policy that uses definitions and descriptions of "exploitation of prostitution."⁹

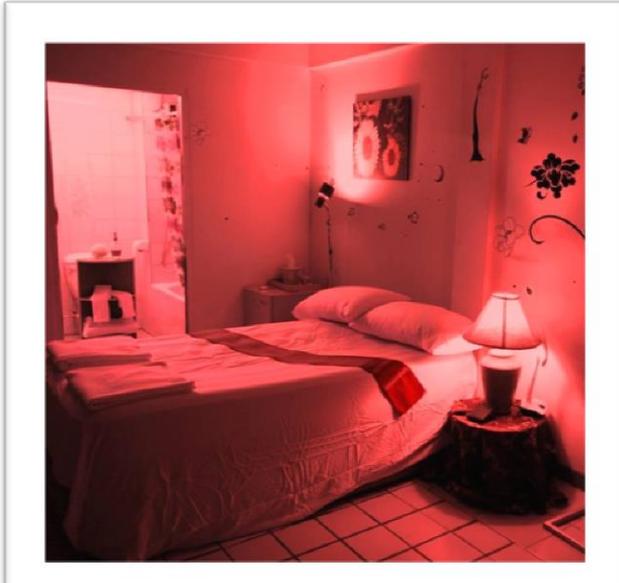
Our paper has drawn heavily on writings focusing on exploitation of labour and decent work in other sectors. Of particular note is the paper "Between decent work and forced labour: examining the continuum of exploitation" by Klara Skrivankova published by Joseph Rowntree Foundation in 2010.¹⁰

During the creating of our paper, we also had the opportunity to collaborate on a related paper with the Silke Heumann and Karin Astrid Siegmann from the International Institute of Social Studies (ISS) in the Netherlands. The paper "Towards new perspectives on labour precarity and decent work of sex workers" will be published

⁹ EXPLOITATION OF PROSTITUTION Review of Law and Policy by Rachael McGuin for Empower Foundation April 2013

¹⁰ www.gla.gov.uk/PageFiles/1602/JRF%20%20Between%20decent%20work%20and%20forced%20labour.pdf

by Civic Innovation Research Initiative (CIRI) as a chapter in their book, *The Meaning of Civic Innovation*. This not only provided a space for our discussions and findings, but the process of collaboration helped us refine and clarify our understanding.



Empower Reality Theatre Stage

“My work is good work. I have been working about 10 years already. Because of sex work I have bought land. I have savings to live on when I retire.”

Dao – Sex Worker, Empower, December 2015

Definitions from our Understanding

Decent Work

The notion of decent work was first introduced by the Director General of the ILO in his 1999 report to the International Labour Conference as 'productive work under conditions of freedom, equity, security and dignity, in which rights are protected and adequate remuneration and social coverage are provided.'¹¹

Dignity in work recognizes that Labour is a human activity, not an inert object or commodity. The world values the Market Place and therefore work is a source of human dignity and family well-being; all human beings who work have rights that must be respected.¹²

By 2006 the ILO had attributed the following characteristics to decent work:

- it is productive and secure work;
- it ensures respect of labour rights;
- it provides an adequate income;
- it offers social protection;
- it includes social dialogue, union freedom, collective bargaining and participation.

¹¹ ILO 2006, p. 15

¹² FACTS ON Decent Work ILO 2015 http://www.ilo.org/wcmsp5/groups/public/--dgreports/-dcomm/documents/publication/wcms_082654.pdf

“Is it better for society to try and catch 300,000 criminals or treat us as 300,000 workers, mothers and family providers? As workers, mothers and family providers we can help to solve social problems– as criminals we cannot.”

Malee – Sex Worker, Empower, August 2015



Celebrating in Can Do Bar with family from ASEAN & Pacific Sex Worker Organizations Feb 2015

The clarification of sex work as work moves the focus away from punishing the subjective immorality of sexual behaviour and shifts towards improving the working conditions and quality of life of sex workers plus the well-being of society by extension.

Unacceptable Forms of Work¹³

In most occupations and labour sectors, there is a variety of working conditions which can range from decent work to substandard, and in some cases, forced labour, including subsets of forced labour such as debt bondage or human trafficking.

The ILO has introduced a broad category of conditions referred to as, 'Unacceptable Forms of Work' (UFW) which identify working conditions that are the opposite of decent work and must be eliminated. UFW does not refer to the nature of the work, but rather the conditions under which it is done.

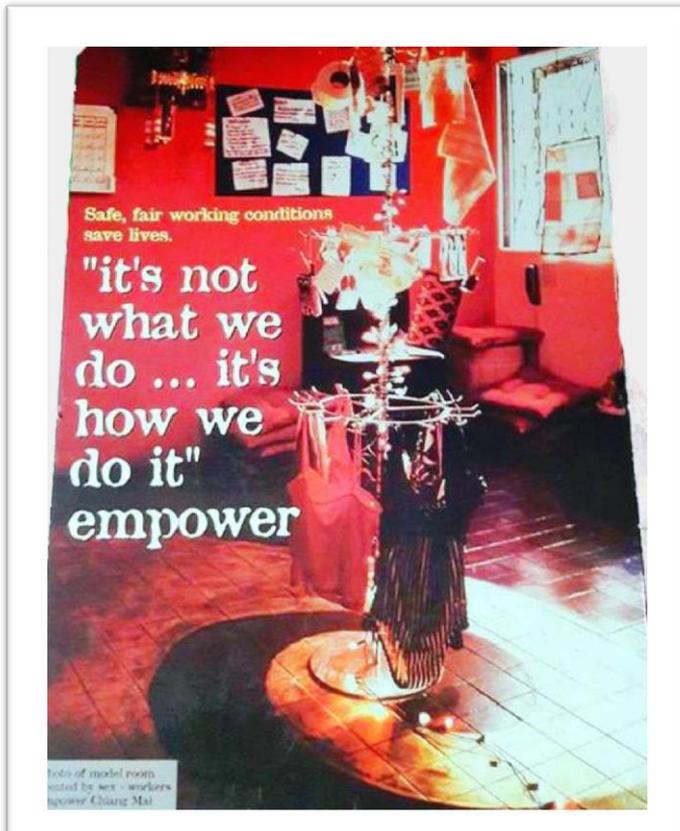
Unacceptable Forms of Work refers to conditions where there are violations against:

- (i) physical integrity
- (ii) human dignity
- (iii) empowerment

According to the ILO Unacceptable Forms of Work comprise conditions that:

- Deny fundamental principles and rights at work,
 - 1.1 Discrimination in employment and occupation;
 - 1.2 Forced labour,
 - 1.3 Child labour
 - 1.4 Freedom of association and right to collective bargaining.
- Put at risk the lives, health, freedom, human dignity and security of workers
- Keep households in conditions of extreme poverty¹⁴

¹³ This section draws from the Terms of Reference and Background Note for the Expert Workshop on the Possible use of the Delphi Methodology to Identify Dimensions and Descriptors of Unacceptable Forms of Work, held in Geneva in December 2013.



Empower Safe, Fair Working Conditions Poster, 2004

"It is the type of relationship that links the person to the 'employer,' not the type of activity he or she is actually performing – a woman trafficked and forced into prostitution is in forced labor because of the menace under which she is working not because of the sexual duties

¹⁴ Taken from Programme and Budget for 2014-2015

which her job demands or the legality or illegality of that particular occupation.”¹⁵

Working conditions are measured by:

- 2.1 recruitment and contractual agreements
- 2.2 working hours
- 2.3 employment-related income
- 2.4 occupational safety and health
- 2.5 social protection
- 2.6 access to redress

Forced Labour

Prohibition of forced labour by the International Labour Organization's (ILO) Conventions (in particular No.29 and No.105) dates back to the first half of the twentieth century. The Forced Labour Convention No. 29 (1930)¹⁶ defines forced labour as:

- a) all work or service;
 - which is not voluntary;
 - and is exacted under the menace of a penalty.

Generally, there are two common features that situations of forced labour share: the exercise of coercion and the denial of freedom.

Menace

According to the ILO, menace of penalty does not always mean that some form of punishment is applied; subtle forms of menace exist, sometimes of a psychological nature or taking the form of a loss of rights or privileges, e.g. non-payment of wages (ILO, 2005b).

¹⁵ ILO Minimum Estimate of Forced Labour in the World 2005, p 8

¹⁶ *ILO Forced Labour Convention, 1930: Article 2(1)*

While the ILO accepts that the menace of penalty can be of a psychological nature, it has not accepted that it can be applied to broad economic need. That is, the need to keep a job to earn one's living does not constitute a menace of penalty; only when combined with other elements. The ILO clarifies, 'Employer or state is not accountable for all external constraints or indirect coercion existing in practice.'¹⁷

Through the lens of decent work, 'freedom of choice' means that the worker possesses bargaining power and is able to negotiate with the employer about terms and conditions of employment without facing any punishment.

In a situation of forced labour, the power of the employer to impose conditions and rules is absolute and the worker is unable to refuse without facing some kind of punishment.

The ILO argues that if two or more of the following indicators are present, there is a strong indication of forced labour:

- Threats of or actual physical or sexual violence.
- Restriction of movement and confinement, to the workplace or to a limited area.
- Debt bondage: where a worker works to pay off an unreasonable debt or loan, and is not paid for his or her services.
- Withholding of wages, refusing to pay the worker at all or excessive wage reductions.
- Retention of passports and identity documents.
- Threat of denunciation to the authorities.

Indicators such as these are the most commonly used method of identification of forced labour in practice. In addition to the initial set of indicators, the ILO further developed a Delphi model (ILO, 2009c)

¹⁷ ILO, 2002, p. 98

to be applied to identify a situation of forced labour as an outcome of trafficking.

“If you borrow from the bank, they charge interest. If you are late with a payment they will send rude letters and phone to you at work and at home all the time. Sometimes you they can take your land if you do not pay the loan back. Nobody calls this the crime of debt bondage. It is called credit or a loan.”

Lily – sex worker, Empower, April 2015



Dolls representing over 1 million sex workers of ASEAN –
Empower SW ASEAN education kit

The issue of debt bondage is NOT the same as having a debt to the employer. Criminalization of sex work effectively prevents sex workers from access to regulated financial institutions so getting a loan or salary advance is the only viable option. Any migrants pay for their travel expenses this way.

Forced Labour under Thai Law

Many countries enshrined the prohibition of forced labour in the constitution or in national human rights legislation. Under the most recent Thai Constitution 2007:

Section 38: Forced labour shall not be imposed except by virtue of the law specifically enacted for the purpose of averting imminent public calamity or by virtue of the law which provides for its imposition during the time when the country is in a state of war or armed conflict, or when a state of emergency or martial law is declared.

It is hoped a similar clause will be included in future constitutions. Prohibition of forced labour through general or international legal norms is very difficult to enforce and prosecute unless there is a corresponding criminal offence created in the national law. That remains true even where states ratified relevant ILO Conventions to ensure that 'the illegal exaction of forced or compulsory labour shall be punishable as a penal offence'.

In addition, sections of the Thai Labour Protection Act 1998 prohibit the withholding of wages, refusing to pay the worker at all or excessive wage reductions.

Debt Bondage

The UN Supplementary Convention of the Abolition of Slavery 1926 defines debt bondage:

"Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined."

In other words, debt bondage *refers 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.*³⁹

The issue of debt bondage however is NOT the same as having a debt to the employer:

"Not all people who must repay a debt to their employer/enforcers are in debt bondage. If the employer/enforcer deducts the reasonable value of the labour from the debt, does not artificially increase the amount of the debt and does not extend the contract length of time, then it is not a debt bondage situation. Many migrants pay for their travel expenses this way.

*Even though it is not debt bondage, it may still be illegal since it requires a person to work for a specific employer to pay off a debt."*⁴⁰

It is often assumed that incurring a debt is inherently coercive and harmful. It is presumed that these relationships are "forced" and that debt is a form of indenture or bondage. This definition "ignores the many exchange relationships in which individuals voluntarily agree to pay facilitators for the costs of their labour migration and willingly assume a debt in order to migrate or work—but are not slaves controlled by violence and denied all of their personal freedom."¹⁸

In fact, incurring a debt is a natural part of labour migration for most resource-poor migrants. The taking out a loan or advance in salary in order to migrate is not nearly as important as the relationship and details of the agreements and whether those agreements are honoured in practice. This includes considering whether working conditions are also in line with the original

¹⁸ Human Rights and Social Justice in a Global Perspective Susan C. Mapp Assistant Professor of Social Work Elizabethtown College

agreement. Are migrants getting what they paid for or not? —This is a more useful “criteria that determines whether a debt is truly coercive, fraudulent, unpayable, or exploitative or instead simply a mutually agreed loan to be repaid.”¹⁹

Indebtedness should not be labelled automatically as debt bondage but measured against National standards applied to other loans, and whether they involve deception, coercion, and contract violations or not.

Debts in Thai Law

Loans and repayments are managed under Civil and Commercial Code. The current maximum interest rate must not exceed 15% of the principal amount. Interestingly loans made by financial institutions have no current limit on interest, except in special cases such as credit cards. Protections and redress can be found under the Consumer Protection Act and Unfair Contract Terms Act.²⁰

Pragmatic Work

We understand that sub-standard working conditions, though they fall under ‘unacceptable forms of work’ are not automatically criminal or forced labour. Similarly a lack of viable economic alternatives which keeps people working in such conditions cannot be considered forced labour.

Comparatively, very few people in the world are able to assert their right to work in a career that they have chosen above all other choices and that they enjoy.

¹⁹ *Prostitution, Power and Freedom* Julia O'Connell Davidson 2013

²⁰ *Loan transactions and security interests in Thailand* Stephen Frost, Bangkok International Associates
www.bia.co.th/.../Loans%20and%20Security%20Interests%20Art%2007

"It is very difficult to do sex work if you really don't enjoy the job. If you must force yourself to work you don't earn very much at all, so there is even less incentive to keep going. If you don't like it, you can't do it."

Pueng – sex worker Empower, August 2015



Empower visiting each other at work

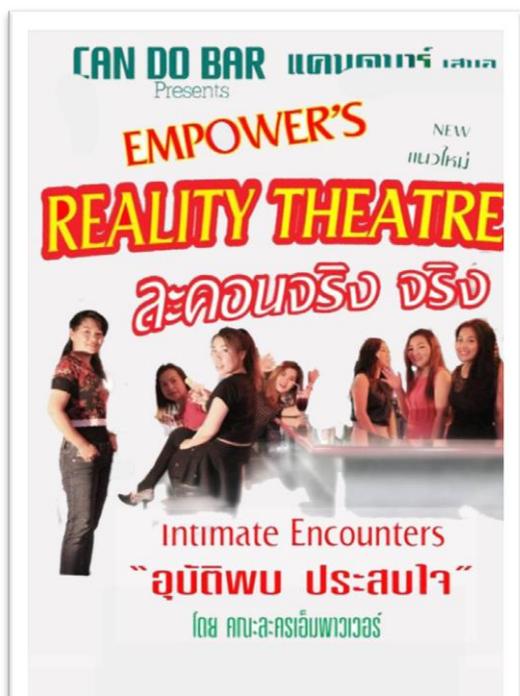
Most of us do work "which, like all work in capitalist society, is forced work, which we do not do for love but because, like every other worker, we and our children would starve if we stopped.

Many people find meaning and rewards in the work they do, even if it is not their primary choice or preference. Others find themselves deciding to continue in work they do not enjoy because it satisfies other pragmatic conditions such as amount of income needed, hours, location, status or abilities which the alternatives available do not.

In acknowledgement that workers in all occupations and professions dislike their job but do not quit, we have added a term for consideration we refer to as "Pragmatic Work." Pragmatic workers would prefer to be doing something else but good alternatives aren't available, don't offer enough income or freedoms. A Wall Street Journal article quotes the Harris Poll as finding that 41% of workers are unsatisfied with their jobs. We would call these pragmatic workers.²¹

²¹ Harris Poll: Many Employees Dislike Their Job and Employers The Wall Street Journal Online <http://www.wsj.com/articles/SB111523804494924885>

“We see other workers e.g. delivery men and waitresses who are underpaid and exploited but society accepts that. They look at us from the outside... they need to understand us from the inside.”
Omsinh – Sex Worker, Empower, September 2015



Theatre poster created by sex workers
September 2015

We must start with hearing how exploitation is defined and experienced by sex workers; understand what conditions sex workers are working in; use sex workers' descriptions and definitions to determine how exploitation in the sex industry can best be measured and responded to.

Exploitation?

The most basic definition of 'exploitation' is the taking of an unfair advantage. The Oxford Dictionary defines exploitation as "*a situation in which somebody treats somebody else in an unfair way, especially in order to make money from their work.*"

Many daily transactions rely on one party having an advantage over the other, usually not a fair one, e.g. transactions between employers and employees; vendors and buyers; lending institutions and borrowers, to name a few.

The large majority of these transactions, although they may be clearly exploitative, are within the law. Society and the State admit that there can be, and indeed always is, a 'legitimized exploitation' that favours the market over the worker.

The ILO seems to acknowledge and be resigned to accepting that some degree of constraints and coercion is inherent in labour markets. However they do not yet hold the State responsible for creating any of the external conditions that result in such exploitation.

*'Employer or state is not accountable for all external constraints or indirect coercion existing in practice.'*²²

A lack of State and corporate culpability for the general environment of exploitation seems to hold true even when States fail to provide adequate welfare, living wages, freedom from violence, access to education or capital, recognition of unpaid women's work, opportunities for the disabled, etc.

²² International Labour Organization, 2002,
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/--/declaration/documents/publication/wcms_106143.pdf (p.98).

Undefined

Sexual Exploitation

Sexual exploitation has no accepted standard definition. We define it as taking unfair advantage of someone for your own sexual gratification. A teacher who promises to give good grades to a student if she will have sex with him. An employer who forces an employee to submit to having sex under the threat of dismissal or deportation. An adult man who tricks a child into being filmed or photographed sexually. A religious leader who uses his position of power to coerce people into submitting to sexual acts. A policeman who threatens a sex worker with exposure or arrest if she refuses to provide free sexual services to him. These are examples of sexual exploitation.

Sexual exploitation is a crime that can happen in a variety of settings in and outside of the workplace, and is not specific to any one occupation.

Despite the use of these phrases in International and National laws for many decades, neither "Exploitation of Prostitution" nor "Sexual Exploitation" has universally recognized definitions. The term 'exploitation of prostitution' is frequently left undefined without analysis or description, as if its meaning and harms were self-evident. They are not.



Empower actors during making of film "Last Condom In Siam" 2014

Exploitation of Prostitution

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was written in 1949 and became the first convention to use the word 'prostitution' and to introduce the phrase "exploitation of prostitution."²³

Prostitution, while not defined in the Convention, was described in the Preamble as being "*incompatible with the dignity and worth of the human being and endangering the welfare of the family and community.*"

We note that the Preamble was developed over 60 years ago with little input from women in general and none from sex workers, whether trafficked or not.

Despite the use of the phrases in International and National laws for many decades, neither "Exploitation of prostitution" nor "sexual exploitation" has universally recognized definitions. The term 'exploitation of prostitution' is frequently left undefined, without

²³ "The Parties to the Convention agree to punish any person who, to gratify the passions of another:

1. Procures, entices or leads away for the purposes of prostitution, another person, even with the consent of that person
2. Exploits the prostitution of another person even with the consent of that person" (Article 1)

Additional clauses are added to criminalize any person who "keeps, manages, knowingly finances, rents, or lets a building or brothel for the purpose of the prostitution of another person" (Article 2) and to take "the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, being exposed to the danger of prostitution (Article 20)

In addition states are mandated to undertake activities to prevent prostitution (Article 16).

analysis or description, as if its meaning and harms were self-evident. They are not.²⁴

The Convention also introduced the concept of removing the person's right to choose. Sex workers were robbed of the right to make decisions as all sex work was deemed exploitative. Being exploited is the antithesis of consent so it is impossible to consent to exploitation - "exploitation of prostitution" was deemed to have occurred "even with the consent of that person."



Sex work is work, even when done in unacceptable conditions - it is still work. Solutions require a labour response too, not just a criminal response.

Drawn by Empower founder Noi Apisuk as part of ILO project 1998

²⁴ www.annualreviews.org • Human Trafficking and Contemporary Slavery

Exploitation of Prostitution in Thai Law

Sex work is criminalized in Thailand under the PREVENTION AND SUPPRESSION OF PROSTITUTION ACT B.E. 2539 (1996).²⁵

Under the Act, "prostitution" refers to *'sexual intercourse, or any other act, or the commission of any other act in order to gratify the sexual desire of another person in a promiscuous manner in return for money or any other benefit, irrespective of whether the person who accepts the act and the person who commits the act are of the same sex or not.'*

'Promiscuous' is undefined in the Act but Oxford Dictionary provides the following definition: "having sex with many partners." The exact number of sexual partners that would constitute "many" remains entirely subjective. "Many partners" could be 3, 7, 21 or 340 depending on one's viewpoint, experience and gender, as women are generally expected to have far fewer partners than men.

In Thai law, a broad definition of Exploitation appears in the Suppression and Prevention of Human Trafficking in Persons Act B.E 2551 (2008) Section 4:

"Exploitation" means seeking benefits from the 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.

²⁵ Translation of Suppression and Prevention of Prostitution Act BE 2539
<http://www.lawreform.go.th/lawreform/images/th/legis/en/act/1960/15308.doc>

Exploitation of the Criminalization of Prostitution - Corruption

*Sex workers are over-policed, but under-protected.*²⁶

The criminalization of sex work has not reduced or ended prostitution or exploitation. However, the criminalization of sex work has provided corrupt authorities and unscrupulous third parties with a multiple avenues for exploitation and extortion. When being treated unfairly or exploited, other workers can appeal to the Office of Labour Protection and Welfare, the Department of Employment, the Department of Social Security and the Ombudsman. Sex workers are effectively unable to report crimes or exploitation or fully access protection or justice from law enforcement without facing penalties of arrest, public shaming and, for migrants, the added risk of deportation.

Criminalization of sex work fortifies the imbalance of power between sex workers and those in authority, putting sex workers at heightened risk of severe exploitation by corrupt forces.

Unlike most other workers, sex workers are forced to pay corrupt authorities for basic rights to be free of abuse and have access to justice. Ending corruption is a major concern for all sex workers and society as a whole. However, if sex workers can no longer pay for justice, access to rights must be upheld and protected. This means reforming laws to end the 'exploitation of the criminalization of sex work.'

²⁶ Responding to Hate Crime: The Case for Connecting Policy and Research edited by Neil Chakraborti, Jon Garland 2015

"Every single word uttered can profoundly affect other human beings."

Pornpit, Empower 2006



Publication of words and concepts defined by sex workers

Not one of the attempts to formally define or even describe 'exploitation of prostitution' has included guidance from sex workers and therefore remain inaccurate, disconnected from reality and impossible to apply in practice.

Current Terminology and Absence of Standard Definitions: Key Problems

- Not one of the attempts to formally define or even describe 'exploitation of prostitution' has included guidance from sex workers so remain inaccurate, disconnected from reality and impractical.
- There are no objective and measurable indicators of 'exploitation of prostitution.' Instead the law proposes that benefiting from a sex worker's labour is always exploitation and therefore should be prohibited. Decisions are left to the subjective judgement of individual law enforcement authorities based on their personal morals, perceptions and bias.
- Unlike other workers, sex workers are denied the right to determine our own contractual arrangements and to make our own financial decisions.
- Sex work and sex workers are not included in Labour terminology so our concerns as workers are also absent in the discussions of Decent Work, etc.



For the past 60 years, the response to sex work has been punishing women under criminal law. 'When the only tool is a hammer, everything is dealt with like a nail.' New tools are needed.



Empower Reality Theatre Troupe led by Thanta
(Ping Pong) September 2015

Sex Work is Work

In 1979 Carol Leigh, sex worker activist, first coined the term sex work saying, "It acknowledges the work we do rather than defin[ing] us by our status." Over the last 36 years, sex worker activists and organizations have embraced the term globally including sex workers in Thailand.

Still to date, the situation of sex workers is not included in any of the terminology or discussions on labour. Instead of having labour concerns of sex workers addressed they have been relegated to consideration under criminal codes e.g. 'exploitation of prostitution' and more recently 'human trafficking' or occasionally Public Health policy e.g. ILO Recommendation 200 on HIV and Work.

By including sex work for equal consideration along a continuum of working conditions we can create the opportunity to understand and develop practical responses and remedies to address the crucial issues for sex workers and society. Developing an understanding of the components of decent sex work will provide policy makers with concrete measurable goals. Highlighting the distinctions between situations of exploitation can help in the development of indicators to measure and respond to unacceptable forms of sex work.

In formulating any definitions and developing policy, precedence must be given to the inclusion of sex workers. Respect for human dignity and agency of the individual is not diminished simply because one does not agree with their choices or decisions. Globally, sex workers urge policy makers to remember, "Nothing about us without us."²⁷

²⁷ nswp.org

About Us

Who we are

Our knowledge of the sex industry has come from 30 years of experience as part of the sex worker community in Thailand. Over 50,000 sex workers have been part of Empower since 1985. Chiang Mai was the main area for our research. Here Empower has regular contact with 3,091 sex workers in the 249 Entertainment Places we visit.



Our members include:

1. Women just starting sex work, experienced workers and those planning to change jobs, retire or have retired already;
2. Women who are working conditions of substandard work or are in conditions that have indications of debt bondage and/or forced labour as according to ILO definitions;
3. Sex workers who love their work and sex workers who hate their work – ranging from pragmatic to enthusiastic;
4. Mothers & family providers; Thai, ethnic minority and migrant sex workers from the Mekong countries;

5. Those working in A Go Go, Karaoke and Beer Bars, Massage Parlours, public spaces, internet and brothels.

Empower has been a part of the many changes in the sex work environment of Thailand over the past 30 years. Up until the late 1990's, now more than 15 years ago, it was still common for agents to secure workers for the brothels of Thailand using a criminal, yet traditional pattern of opportunism, coercion, debt bondage and forced labour. These practices have been well documented in historical reports such as *Migrating with Hope*²⁸ and *Modern Form of Slavery*.²⁹

However, several events over a period of 4 -5 years culminated in an improved landscape of sex work in Thailand. At the time of writing 2016, there remain very few brothels and agents operating in the old style. A full analysis of the specific changes that took place, while of historical interest, is beyond the scope of this paper. It is worthwhile to note that these improvements took place with little or no guidance by sex workers, political will or support to better the lives of sex workers. We can only imagine how the industry could improve further if there were a coordinated and sincere effort guided by sex workers and supported by those in power.

This report draws on the real experience and working conditions of sex workers currently working in the industry at the time of writing 2016.

²⁸ <http://www.ibiblio.org/obl/docs3/Migrating-with-hope-ocr.pdf>

²⁹ <https://www.hrw.org/report/1993/12/01/modern-form-slavery/trafficking-burmese-women-and-girls-brothels-thailand>

"There are only two reasons to go to an Entertainment place. Either you are going to pay for entertainment or going to get paid for providing entertainment. That's it. We are the ones being paid...we are the workers, the bar is our workplace."

Nueng – Sex Worker, Empower, January 2015



Workers and the manager at weekly staff meeting
at Karaoke Bar Chiang Mai

Sex workers and their workplaces fully satisfy the relationship of Employer and Employee under Thai law. Indeed they are not specifically excluded from the Thai legal labour framework.

Sex Worker Employment in Thailand: Current Context

Employers and Employees

Under Thai law “Employer” means a person who agrees to accept an employee for work by paying wages. “Employee” means a person who agrees to work for an Employer in return for wages.

Labour Protection Act B.E. 2553 specifies that under Section 14, ‘*An Employer shall treat an Employee properly in accordance with the rights and duties prescribed under the Civil and Commercial Code unless otherwise prescribed in the Labour Protection Act B.E. 2553.*’

Under the Thai Social Security Act (No.3), 1999 all employers of one or more workers must register all their workers and make contributions under the social security scheme. In reality, most employers in entertainment places avoid this ruling by refusing to acknowledge their staff’s employment status. It is not difficult to avoid in any case as enforcement of the Act is rare, only initiated if there is a direct complaint.

In addition, Employers are required to comply with the Occupational Safety, Health and Environment ACT B.E. 2554. “Occupational safety, health and environment” means actions or working conditions which are safe from any cause resulting in danger to life, physique, mentality or health arising out of or related to working.³⁰

Under the OH&S Act the definition of Employer and Employee is widened. “Employer” means an Employer as defined under the labour protection law and, in addition, refers to ‘an entrepreneur who allows any person to work for or to provide benefit for/or in an establishment, whether the working or providing some benefit in part or as a whole or a part of production process or business under responsibility of the entrepreneur’. “Employee” means an Employee

³⁰ Occupational Safety, Health and Environment ACT B.E. 2554 OH&S 2011

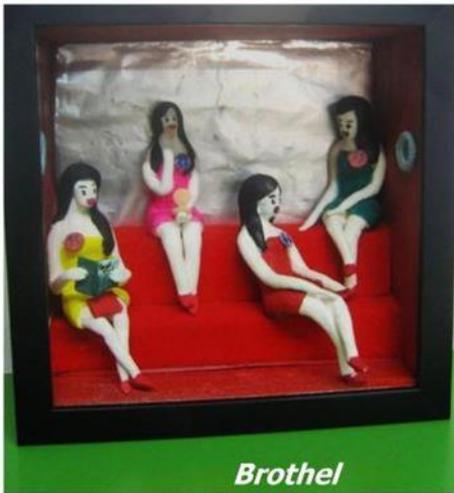
Brief Description of Our Workplaces

Brothels:

Brothels are usually one story buildings often situated in rows next to each other. They usually do not have a sign and are often known by the name of the owner or some other common geographic landmark. Workers often live and work on the premises. There is a common area for workers to wait for customers, sometimes with tiered seating or simply chairs placed along the wall. Most brothels employ 10–20 women. Since 1960 there has been no registration or regulation of brothels outside the criminal prostitution law. Records of brothels in Thailand reach back over 700 hundred years being depicted on murals in temples and also as a part of the State accounting records.

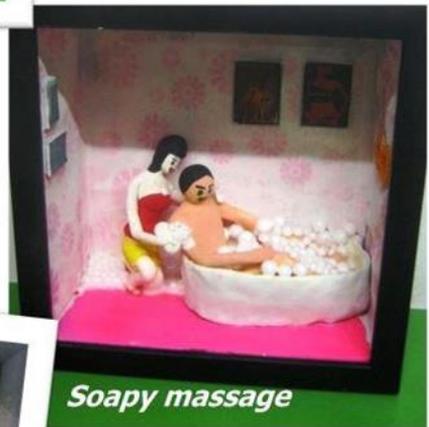
Massage Parlours:

- Traditional Thai Massage shops can be large multi-story buildings with up to 200 workers or small shops with 4 -5 workers. They will have signs in both Thai and English. Though many do, not every massage parlour will include sexual services as part of their business. In some places full sex or limited sexual services may be available in the shop. Often, workers will go offsite with their customers. Workers in all massage parlours must have a certificate in Thai massage issued by the government and the massage parlour can register with the Department of Public Health. The registration does not include any provisions for workers' well-being or rights. Traditional Thai massage has been practiced for 2,000 years. Thai massage does not include sexual pleasure in the recorded practices.



Brothel

Empower Mini Bars
In 2009 Rachanikon U-para (Lek) a sex worker and artist of Empower created over 30 dioramas (10 cm x 12 cm) depicting our work places and snippets of our work. The full collection is on permanent exhibit in Empower Museum "This is Us" Nontaburi Thailand.



Soapy massage

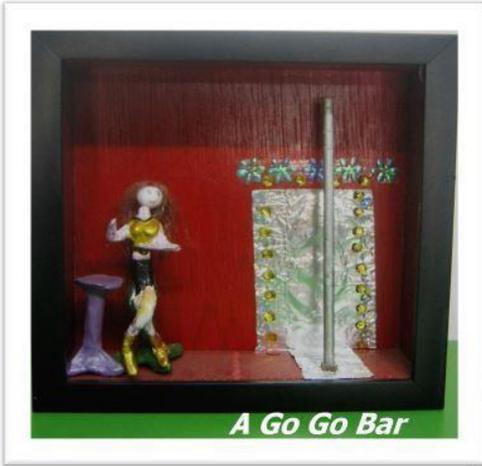


Thai Massage

- Soapy Massage/Bath Houses are large modern buildings similar to hotels, usually several stories high with over 50 rooms. Hundreds of workers are employed often on a shift work rota. There is a common area where women wait, sometimes customers are kept behind a glass partition. Customers hire one of the rooms and workers provide bathing, a massage and other services they that they agree on. Parlours have a sign in Thai rarely translated into English. They can be distinguished from hotels by their lack of windows. Soapy Massage parlours are regulated under the Entertainment Place Act which makes no provisions for workers' well-being or rights. Generally they are only found in larger towns and cities. They first became part of the Thai entertainment industry in the 1920's copying the popular Turkish Baths. They increased in number during the Japanese occupation of WWII.

A Go Go Bars

A Go Go bars employ anywhere from 10–100 workers, depending on the size of the bar. The bar has one or more raised dancefloors with poles where workers dance in sets - usually 20 minutes per set. There are tables and stools for customers and workers to sit together. Workers will go offsite with their customers. The bars may be registered under the Entertainment Place Act which does not carry provisions for workers' well-being or rights. Some A Go Go Bars may also have choreographed entertainment or shows, e.g. ping pong shows. Workers able to perform shows are highly respected by other workers for their skills and talent. Most A Go Go Bars are in cities in the tourist areas. The first A Go Go opened in Patpong in 1969, Grand Prix Bar, and one of the first dancers was Joy who danced barefoot. The poles were added to A Go Go Bars in Thailand in the 1980's - copied from Montreal, Canada.



A Go Go Bar



Bar Beer



VIP Karaoke Air



Open Air Karaoke

Bar Beer

These are small-medium sized shops with a counter for alcohol sales, music, anywhere from 6 – 30 tables for customers and workers to sit and often a snooker table. Beer bars provide work for 5–40 workers depending on the size of the shop. They are decorated with party lights and have English names e.g. Can Do Bar, Lucky Bar, Butterfly Bar. They are often situated in rows next to each other or concentrated in a single area. They are often in popular tourist areas, especially in larger towns and cities. They can be registered under the Entertainment Place Act or the Alcohol Sales Act though neither have provisions for worker well-being or rights. Workers go offsite with their customers. The first Beer Bars were opened on and around the US Army bases in U-tapo and the North East of Thailand e.g. Korat and Ubon Thani during the American Indo-China wars of the 1960's, expanding during their war in Vietnam and Laos.

Karaoke Bars

- Open-Air Karaoke or Bamboo Karaoke Bars are small locally constructed venues with 5-6 tables, a small counter and a karaoke music machine. They employ 5–15 workers to chat, sing and encourage drink buying. Workers will go offsite with their customers. The karaoke bar can register with the Entertainment place Act though no provisions for worker well-being or rights exist under the act. Open air karaoke is found everywhere throughout Thailand, largely replacing the old style brothel system.
- Karaoke Air (air conditioned) or Karaoke VIP are more substantial buildings than the open-air karaoke. They can be single structures or large complexes with many floors. They have signs and often very dark tinted windows for discretion.

Workers are often obliged to sit outside the front door in order to attract passing customers. They employ 50–200 women depending on the size of the business. Aside from a common area, there are also individual karaoke rooms for hire. The parlour provides karaoke machines and sofas for the customers and workers. Workers will often go offsite with their customers, though not in all parlours.

Body Massage, On the Web and Golf Caddies

There are other styles of working in which many of the working conditions are similar to those described above.

Applying for sex work

Whether they are A Go Go, Karaoke Bars, Beer Bars, Massage Parlours, or brothels, entertainment places all advertise for staff. Advertising usually consists of placing a sign in front of the business, similar to most other small businesses in Thailand. People looking for work reply to the advertisement by phone or, more often, in person. They speak to the manager or owner who tells them the basic conditions, i.e. hours of work, work duties, rates of pay, any quotas or extra conditions; dress code and any benefits or bonuses that may apply. If the manager/owner expects the worker to “go off with customers” or, alternatively, if it is not allowed, they will usually make this clear in the interview. The manager/owner will ask about skills and previous experience and sometimes ask about migration documentation status. The applicant may be asked to demonstrate particular skills of massage, singing, English language, dance or mixology - depending on the sector they are applying to work in. Sex work requires specific aptitudes and skills - not all those who apply for work are hired. Like many other labour transactions in Thailand there is no written contract and in any case verbal contracts in Thailand are equally binding.

Sex work in Thailand is a job you must apply for. Sex work requires specific aptitudes and skills - not all those who apply for work are hired.



Job descriptions

Sex workers may be hired as part-time or full-time employees. Our work duties can include:

- Sitting, chatting with customers
- Singing
- Dancing
- Performing shows
- Playing snooker/bar games with customers
- Massage and bathing
- Mixing/serving drinks
- Cleaning/washing glasses
- Cashier
- Doorman or spruiker to attract customers into the venue
- Encouraging customers to buy drinks especially "lady drinks."³² There may be a minimum quota enforced by the employer, e.g. 100-150 "lady drinks" per month
- Having customers pay a "bar fine"³³ to take us away from the premises. There may be a quota enforced by the employer on the minimum number of "bar fines" per month e.g. 10 - 15 customers

Once a worker has left the workplace the employer is not involved in specifics of the worker's transaction with the customer – the employer takes no money and no responsibility. The worker decides independently on the type of services they offer and the price.

³² Lady Drinks Refer to a drink bought by the customer for the worker. They are usually alcoholic drinks which are priced above the normal rate with the understanding that the worker will spend time chatting and entertaining the customer who has bought her the drink.

³³ Bar Fine Often also called "pay bar" this is an amount of money the customer pays to the bar when taking a worker away from the workplace (or "off"). Traditionally employers claimed it was to compensate for the work time they missed although in reality the amount does not match the worker's hourly rate and applies even when no wages are paid.

Others are employed in places where our main duties are providing sexual services. This usually applies to those of us employed in Traditional Brothels, Bath/Massage Parlours, Body Massage and some Karaoke Lounges. The price of the service provided is usually set by the employer and we receive 50- 60% of the price paid by the customer as monthly wages. The employer provides some security measures against law enforcement but takes little or no responsibility for worker health and safety or social security.

Salaried workers

Most entertainment places pay workers less than the minimum wage gazetted under the Thai Labour Law. There is also an embedded culture in the Thai Entertainment Industry of imposing salary cuts as a way to punish and control workers.³⁴ Though common throughout all sectors of the sex industry nationwide, such fines are prohibited under the Labour Protection Law 1998. Sex workers identify these salary cuts as unacceptable and exploitative. Over the last 10-15 years sex workers have responded by working independent from a salary – called working sideline.

Sideline

Sideline means the worker has an agreement with the owner of the Entertainment Place, whether it is registered as such or not. Establishments with Sideline workers include A Go Go bars, Beer Bars, Karaoke Lounges and Massage Parlours. The owner provides the sex workers with access to their customers. In return, the owners get an increase in the number of happy customers, increased income from “lady drinks” and “bar fines” and unpaid labour, e.g. serving drinks, singing, dancing, cleaning.

³⁴ Bar Rules http://empowerfoundation.org/sexy_en.php#

*Salaried and Sideline workers work alongside each other.
Both usually must comply with "bar rules."*



Empower visiting each other at work- Karaoke

Bar Rules are a set of rules strictly applied to sex workers by most employers. Unlike State laws, bar rules can be changed quickly without notice and are not open to challenges.

Sex workers are not paid a wage by the owner but receive a commission on "lady drinks" (usually 50 baht from 150 Baht) or sometimes also from the bar fines up to 50% of 400-700 baht.

As the employer still pays the worker, in Thai law the relationship will still be defined as one of employee-employer and all responsibilities will remain.

Often the line between employee and self-employed becomes blurred as owners insist that in order to receive any commission and to be in the venue sex workers must comply with "bar rules"³⁵ including the amount of hours worked, meeting a set quota of "lady drinks" or "bar fines."

Although sex workers may benefit from reduced stress by escaping the bar rules and increased autonomy and income; the arrangement also allows the owners to take all profit but no responsibility for worker's safety, health or security.

These employment contracts or contractual obligations are not acknowledged in the justice system as being valid. The Suppression and Prevention of Prostitution Act 1996 and the Suppression and Prevention of Human Trafficking Act 2008 both prohibit any such financial transactions. This leaves workers further isolated from labour protection and redress while employers are free from all such responsibilities to their workers.

³⁵ Bar Rules: A set of rules strictly applied to sex workers by most employers. Unlike State laws bar rules can be changed quickly without notice and are not open to challenges. Bar rules are more important to workers than state law which is a long way away from life.

Brothel workers

The majority of brothel workers are women who have migrated for work from neighbouring countries. Those women who have used brokers usually are made aware of their basic work conditions before leaving home, similar to other overseas employment agencies. The broker will tell them the range of geographical locations available; the cost of travel; the percentage of earnings shared with the employer; and the availability and cost of accommodation/board.³⁶

Unlike workers in other sectors of the industry, sex workers in brothels do not provide other services that increase the profits of the employer e.g. dancing, singing, massage, or encouraging the buying of drinks. The brothel business makes its profits by providing sexual services only.

Generally, the customer pays a set fee for services to the employer. This amount is split with the worker usually 50 – 50 though some places offer 40% for employer – 60% for the worker. Many customers will also give a tip directly to the worker. She is not obliged to share this tip with the employer.

Independent

Self-employed sex workers manage their work independent of others. Some have a fixed group of regular customers who may be in contact monthly for short periods or annually - often for consecutive weeks or months. Regular customers may pay per visit and/or provide regular payments, similar to a retainer paid to lawyers.

³⁶ For more detailed descriptions of the current migration, employment process and working conditions see Empower's report Hit & Run 2012 www.empowerofoundation.org

Other self-employed sex workers find customers via the Internet, in nightclubs or other public places such as parks, streets, shopping malls, and golf courses. They create their own terms of work including pricing, hours of business and services offered. They take responsibility for their own overheads and health & safety, including providing for their own social security needs via private insurance and savings.

Can Do Bar – Experitainment

In 2006, sex workers of Empower created a working model of a just and fair workplace for sex workers – the Can Do Bar in Chiang Mai, Thailand. Unlike other Entertainment Places in Thailand, Can Do Bar’s physical environment complies with Thai Occupational Health & Safety Standards. Staff are employed in accordance with the Thai Labour Protection Act and are enrolled in the National Social Security Scheme according to the law. Can Do Bar also provides opportunities for skill advancement and promotion. Although as yet there is no formal Union or Association the workers regularly meet and are pivotal in guiding changes in the workplace.



Working Context of Key Community – Chiang Mai

	Workplace Type	Number Places	Salaried Workers	Sideline Workers	Total Sex Workers
1.	Beer Bars	88	25	875	900
2.	Karaoke VIP	17	540	0	540
3.	Traditional Thai Massage	52	215	305	520
4.	Soapy Massage	7	420	0	420
5.	Open-Air Karaoke	65	350	0	350
6.	A Go Go Bar	3	150	90	240
7.	Body Massage	10	10	50	60
8.	Brothel	4	41	0	41
9.	Total	249	1,726	1,365	3,091

Salaried Staff (*A Go Go, Beer, Karaoke, Massage*).....28
 Sideline (*A Go Go, Bar Beer, Massage*).....113
 Brothel Worker.....86
 Independent.....1

"As labourers we are always taken advantage of in one way or another. The only way around it is to hire ourselves as sub- contracted work or find a way to be self-employed."

Mee – water delivery man, Chiang Mai



Empower joining May Day Rally Chiang Mai 2014
"Labor Rights for Sex Work"

Very few workers in Thailand, especially those working beyond the protection of labour laws and social security work under conditions which would meet the ILO standard of decent work.

Decent Sex Work in Thailand

Decent work is described by the ILO as productive work under conditions of freedom, equity, security and dignity.

There are an estimated 39.9 million employed persons in Thailand.³⁷ Around 27 million persons — 68 percent of all employed persons — work in the informal economy and outside the protection of the social security law.³⁸ The large majority (18 million) are women.

We understand very few workers in Thailand, especially those working beyond the protection of labour laws and social security, will meet the gold standard of decent work. For example, in 2012 the Social Security had registered just 9.4 million private sector workers under its coverage.³⁹

We found this to be true for sex workers as well. In our research team only 5 of the 228 sex workers (2%) were in a situation that even came close to approximating decent sex work. Most of the 2% were employed in Can Do Bar or self-employed. Even for these workers, the criminalization of sex work is a significant barrier to the achievement of key principles of freedom, equity, security and dignity inherent in the definition of decent work.

³⁷ World Bank <http://data.worldbank.org/indicator/SL.TLF.TOTL.IN>

³⁸ Extending Labour Law to All Workers: Promoting Decent Work in the Informal Economy in Cambodia, Thailand and Mongolia Informal Economy, Poverty and Employment Cambodia • Mongolia • Thailand International Labour Office David Tajgman file:///C:/Users/user/Downloads/wcms_bk_pb_129_en.pdf

³⁹ Social Security Fund Number of Insured Persons (Article 33) : 2003-2012 http://www.sso.go.th/sites/default/files/R_D122012/statisticsmid3_en.html

ILO Decent Work

Sex work as decent work

Decent Work is productive and secure work;

Sex work has been gazetted as a productive economic activity in the UN System of National Accounts since 2008

Sex work is productive work that requires skills which can be built on and lead to advancement within the industry and could lead to other job pathways e.g. communication, management, languages, hospitality, massage, performance, tourism, etc.

Deficit: Sex workers are denied optimum recruitment and contractual agreements as both are criminalized under Prostitution and also Trafficking law. Sex workers are employed under verbal contracts that generally make no provisions for dismissal procedures or job security. S:

Can Do Model: Security of work at Can Do Bar is ensured via employment contracts including fair dismissal processes like other workers in accordance with Labour Law. Can Do also provides access to skill development and training.

Decent Work ensures respect of labour rights

Deficit: Employers do not follow labour laws even though entertainment place work is not specifically excluded under the existing labour law framework.

Can Do Bar Model: Sex workers have instituted full compliance with all labour rights under Thai law.

Decent work provides an adequate income

Sex workers overall earnings are at least twice the daily minimum wage in Thailand. They are able to fully support themselves and many are able to support up to 5 other adults from their income.

Deficit: They are not compensated correctly in accordance with Thai wage law for the work they undertake in Entertainment Places e.g. serving drinks, dancing, cleaning.

Can Do Bar Model: Workers are paid for their work in the bar according to minimum wage and are not required to share any other earnings with the bar.

Decent Work offers social protection;

Deficit: Though sex workers can access the National Social Security Scheme and employers are legally obliged to comply, few employers comply with the Act.

Can Do Model: Provides access to social security for all staff.

Decent work includes social dialogue, union freedom, collective bargaining and participation.

Deficit: Criminalization of sex work includes prohibition against "associating with prostitutes" or "within a place of prostitution". This is a legal barrier to union freedom and social dialogue.

We understand that Decent Sex Work, in accordance with the ILO definition of Decent Work, in its broadest sense will:

- guarantee productive and secure work;
- ensure respect of labour rights;
- provide an adequate income;
- offer social protection;
- include social dialogue, union freedom, collective bargaining and participation.

We found that although decent sex work is possible, there are common and significant decent work deficits. These deficits even applied to sex workers of Can Do Bar as core criminal legislation prevents the development of optimum conditions.

Unacceptable Forms of Sex Work

Unacceptable Forms of Work refers to working conditions where there is a lack of:

- (i) human dignity
- (ii) physical integrity
- (iii) empowerment

(i) Human Dignity

People often worry over the relationship between sex work and human dignity. Every human being possesses an intrinsic worth, merely by being human. Our intrinsic worth should be recognized and respected by others. Our intrinsic worth and the recognition of our intrinsic worth is human dignity.

In 1949 the League of Nations described sex work as being “incompatible with the dignity and worth of the human being and endangering the welfare of the family and community.”

We find that this premise this is no longer true, if indeed it ever was. Looking at the latter part of the quote first, we can see that far

from “endangering the welfare of family and community,” sex work has proven to be a sustainable path out of poverty for many families, communities, and in some cases, entire nation states.

We find it is the neglect, isolation and criminalization of sex workers that is “incompatible with the dignity and worth of the human being.”

‘Our dignity is not harmed by sex work – it is harmed by being treated as criminals and the denial of our rights as workers.’

Ping Pong – Sex Worker, Empower, September 2015



**“Stop scapegoating migrant sex workers.”
- Empower Bangkok Post 2nd March 2015**

Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and respect them.

To ensure human dignity there must be:

1. The prohibition of all types of inhuman treatment, humiliation, or degradation by one person over another
2. The assurance of the possibility for individual choice and the conditions for 'each individual's self-fulfilment', autonomy, or self-realization;
3. The recognition that the protection of group identity and culture may be essential for the protection of personal dignity
4. The creation of the necessary conditions for each individual to have their essential needs satisfied.⁴⁰

Dignity in the context of work recognizes that labour is a human activity. Work, including sex work, is often a source of self-esteem and self-worth, human dignity and family well-being.

Sex workers are an active party in the labour market even when working in exploitative situations. No matter how difficult the situation, international experience and research show that like other workers, most sex workers strive to regain control over their lives, want to do away with the exploitation and restore their dignity.⁴¹

Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and respected.

⁴⁰ Human Dignity and Judicial Interpretation of Human Rights Christopher McCrudden <http://ejil.oxfordjournals.org/content/19/4/655.full#fn-214>

⁴¹ Between decent work and forced labour: examining the continuum of exploitation
Klara Skrivankova November 2010

"I can say yes. I can say no. I can say maybe, later, now, never, for love, for money, for fun, for charity. I own my body and I decide what I do with it."

Mai – Sex Worker, Empower, January 2015



Global network NSWP badges on a handmade hat at Empower April 2015

Sex workers, like all human beings, have the right to decide which other adults they will refuse or agree to have sex with, when, why and how. This right is not diminished by our occupation any more than it is diminished by marriage. Agreeing to do sex work is not agreeing to have sex with everyone - just as agreeing to be a boxer is not agreeing to fight anyone, anytime, anywhere.

(ii) Physical Integrity

Physical integrity means our physical body is sacrosanct and emphasizes the importance of autonomy and the self-determination of all human beings over their own bodies. In the workplace the employer is responsible to ensure the worker's physical integrity is protected. Workers must have a safe, healthy work environment and the working conditions must promote physical wellbeing, e.g. adequate rest, limited hours of work, safety equipment, etc.

The second aspect of physical integrity is the right to autonomy over our own body, and respect of self-determination. Physical integrity and sexual autonomy mean sex workers, like all human beings, have the right to decide which other adults they will agree to have sex with, when, why and how. This right is not diminished by our occupation. Agreeing to do sex work is not agreeing to have sex with everyone just as agreeing to be a boxer is not agreeing to fight anyone, anytime, anywhere. Article 13 of the ILO Occupational Health and Safety Convention, 1981 (No. 155) recognizes workers have the right to refuse to undertake work they believe may be harmful. New Zealand has enshrined the right of refusal in its Prostitution Reform Bill 2003 by acknowledging the right of sex workers "to refuse to have sex with a client for any reason or for no reason."⁴² During their fight to have the Bill introduced the New Zealand Prostitution Collective war cry was "Hey Ho – Let's Go – Right to Say Yes – Right to Say No!" Honouring physical integrity must ensure 'freedom from' and, at the same time, must support 'freedom to.'

The State is also obligated to have structures which honour and protect physical integrity. Criminalizing sex work and neglecting

⁴² <http://www.nzpc.org.nz/index.php?page=Law>

labour rights is against the principle of protecting physical integrity and contravenes sex workers' rights as workers and our sexual rights.

(iii) Empowerment

Generally, empowerment can be seen as people taking control over their lives. It is about people pursuing their own goals, living according to their own values, developing self-reliance, and being able to make choices and influence the decisions that affect their lives and society as a whole. For people to be empowered, conditions have to exist in the society which enable us to acquire necessary resources, knowledge, and political voice as well as enhance our opportunities and organizational capacity.⁴³

Naturally, on an individual level, sex workers may be as empowered or as disempowered as any other people in society, regardless of their occupation.

Structural empowerment in work, however, is concerned less with the individual, but focuses on whether the environment nurtures or obstructs the self-empowerment of workers as individuals or groups. An empowering work environment is one that ensures that employees have access to information, resources, support, opportunities to learn and grow, and can participate in collective organizing. These are the key elements of structural empowerment in the workplace.⁴⁴

⁴³ Source: IFAD <http://www.ifad.org/gender/glossary.htm>

⁴⁴ Workplace Empowerment, Work Engagement and Organizational Commitment of New Graduate Nurses by Julia Cho, MScN, RN; Heather K. Spence Laschinger, PhD, RN
https://www.researchgate.net/profile/Heather_Laschinger/publication/6755559_Workplace_empowerment_work_engagement_and_organizational_commitment_of_new_graduate_nurses/links/0912f50aae6a2d23c7000000.pdf

**"By law we can't organize as workers, only commit the crime of 'associating with prostitutes'
Mori – Sex Worker, Empower, December 2015**



P'Noi & Mali Empower awarding trophy
to the Best Ago Go Dancer Patpong, 2013

An empowering work environment is one that ensures that employees have access to information, resources, support, opportunities to learn and grow, and can participate in collective organizing.

Within structural empowerment, a further five elements can be analysed to assess empowerment in work situations.

1. Workload: demands placed on an employee in a specified amount of time;
2. Resources: tools needed to do the job effectively, safely and efficiently;
3. Control: level of decision-making and autonomy in the job;
4. Rewards: recognition of contributions (can be monetary, social, personal or some combination of these);
5. Community: quality of social interactions in the workplace;
6. Fairness: respect, accountability and consideration of workers' rights and quality of life;
7. Value: congruence of values and priorities between employees and management

There is no research or documentation about structural empowerment in workplaces in Thailand. Globally, the issue of empowerment in work has received very little attention. To date the discussion has been limited to issues of economic empowerment and empowerment of women unsegregated by occupation or work environment. It is unreasonable to expect sex workers to attest to the empowerment of sex work when the subject remains absent from labour rights discussions in most other sectors.

Labour Law Framework Violations: Summary

We collected our experiences of sex work and together identified the most common working conditions we all face. We compared these with Provisions under the Thai Labour Protection Act B.E. 2541 (1998) (*as amended by the Labour Protection Act (No. 2) (No. 3) B.E. 2541 and (No. 4) B.E. 2553*). (A detailed table of our comparisons follows).

Nineteen Thai Labour Law violations commonly occur, concerning:

1. Working Hours

2. Payment of minimum wage
3. Overtime (OT)
4. Salary deductions
5. Public holidays
6. Rest breaks
7. Regular days off per month
8. Annual holiday leave
9. Personal business days
10. Sick leave
11. Maternity Leave
12. Unfair dismissal
13. Training/skill development
14. Pregnancy
15. Business suspension and compensation
16. Prohibited to employ under 18 years of age
17. Compulsory Staff Welfare committee and Employee Welfare Fund
18. Submission of employment and working conditions to Dept. Employment
19. Labor inspection processes

In addition, we found that working conditions do not satisfy requirements under the Social Security Act, B.E. 2533 (1990) and the Occupational Safety, Health and Environment ACT B.E. 2554 (A.D. 2011). Specifically, *Section 6 'An Employer is obligated to provide and keep an Establishment and an Employee in safe and hygienic working conditions and environment including to support and promote an operation of the Employee preventing the Employee from any harm on life, physique, mentality and health.'*

The table on the following pages compares existing Thai labour protections and benefits available to workers and the current real working conditions of sex workers in Thailand.

**Provisions under the Thai Labour Protection Act B.E. 2541 (1998)
(as amended by the Labour Protection Act (No. 2) (No. 3) B.E. 2541
and (No. 4) B.E. 2553**

Issue	Relevant Regulations	Reality for Sex Workers 2016
Working Hours	Section 23. An Employer shall notify a normal working time to an employee and not exceed 8 hours per day.	Up to 12 hours.
Overtime (OT)	Sections 23, 24. Employer shall pay at a rate of no less than 1.5 times of the hourly wage for a number of exceeding working hours.	OT compulsory and unpaid for both full and part time workers.
Working on Public Gazetted Holidays	Section 25. An Employer may require an Employee to work on Holiday in an entertainment establishment, a beverage shop, a club, provided that the Employee's <u>prior consent is obtained on each occasion.</u>	Banned from taking holiday days off and/or large deductions from salary for doing so.
Rest Period	Section 27. Employer shall arrange a rest period during work for an Employee of not less than 1 hour per day after the Employee has been working for not more than 5 consecutive hours.	No rest periods.
Paid Leave Entitlements & Public Holidays	Sections 28. An Employer shall provide a weekly holiday of not less than 1 day per week for an Employee, (4 days per month). Section 29. An Employer shall announce not less than 13 traditional holidays per year in advance for Employees. Whereas an Employer does not provide a traditional holiday to	1-2 days/ month. No paid public holiday leave Large salary cuts for taking public holiday off.

Annual Holiday Leave	<p>an Employee because the Employee performs work of such description or nature as prescribed in the Ministerial Regulations, the Employer shall make an agreement with the Employee to take another day off to substitute for the traditional holidays or the Employer shall pay Holiday Pay to the Employee.</p> <p>Section 56. An Employer shall pay Wages to an Employee equivalent to Wages of a Working Day for the following Holidays: (1) a weekly holiday, except for an Employee who receives Wages calculated on a daily, hourly or piece rate basis; (2) a traditional holiday; and (3) annual Holidays.</p> <p>Section 30. An Employee who has worked for an uninterrupted period of one year, is entitled to annual Holidays of not less than 6 Working Days in one year.</p>	No paid annual holidays.
Personal Business	<p>Section 34. An Employee shall be entitled to leave for necessary business in accordance with the work rule of his or her workplace.</p>	Salary withheld or cut at same rate as "bar fine" (500 – 700 Baht).
Training/Skills	<p>Section 36. An Employee shall be entitled to take leave for training or the development of his or her knowledge and skills in accordance with the rules and procedures prescribed in the Ministerial Regulations.</p>	Salary withheld or cut at same rate as "bar fine" (500 – 700 Baht).

Maternity Leave	<p>Section 41. A female Employee who is pregnant shall be entitled to maternity leave of not more than ninety days for each pregnancy.</p> <p>Section 59. An Employer shall pay Wages to a female Employee for maternity leave equivalent to Wages of a Working Day throughout the Leave period, but not exceeding 45 days per year.</p>	Pregnancy results in instant dismissal.
No Dismissal for Pregnancy	<p>Section 43. An Employer shall not terminate the employment of a female Employee on the grounds of her pregnancy.</p>	Instant dismissal.
Paid Sick Leave	<p>Section 57. An Employer shall pay Wages to an Employee for sick leave under Section 32 equivalent to Wages of a Working Day throughout the leave period up to 30 days.</p>	No paid sick leave. Employee may also have salary cut or withheld.
Business Suspension/Temporary Unemployment	<p>Section 75. When it is necessary for an Employer for whatever cause other than a force majeure which affects his/her business and causes the Employer incapable to operate his or her business as normal so as to temporarily suspend the business in whole or in part, the Employer shall pay wages to an employee in amount of not less than 75% of wages of working days received by the employee before the suspension of business for the entire period which the Employer does not require the employee to work.</p>	No payments. Police raids and police orders most frequent reason for forced closures.

<p>Age</p>	<p>Section 47. An Employer shall not require a young worker under 18 years of age to work between 22.00 hours and 6.00 hours unless written permission is granted by the Director General or a person entrusted by the Director-General.</p> <p>Section 50. An Employer shall be prohibited to require an Employee who is a youth under 18 years of age to work in any of the following places: (3) an entertainment place in accordance with the law governing entertainment places; (4) any other place as prescribed in the Ministerial Regulations.</p>	<p>Employers do not always comply with checking the age of people applying for work in Entertainment Places</p>
<p>Prohibition of Salary Deductions</p>	<p>Section 76. An Employer shall not make any deductions from Wages, Overtime Pay, Holiday Pay and Holiday Overtime Pay except the deductions made for:</p> <p>(1) payment of income tax; (2) payment of labour union dues according to the regulations of a labour union; (3) payment of debts owed to the saving cooperatives or other cooperatives of the same description.</p>	<p>Salary Deduction Entrenched Examples: Late: 3 baht/minute; Under drink quota: cut per number under the quota; Weight increase: 200 baht per kilo; Slow to get on dance floor: 250 Baht; No health check: salary withheld or 1,000 Baht fine; Night Off: bar fine (500-700 Baht); Holiday/ Weekend Night Off: 1,000+ Baht</p>

		Salary cut by arbitrary amounts for infringements such as failing dress code; trouble with customer; arguing; late for or missing staff meeting.
Compulsory Staff Welfare Committee	Section 96. In a place of business with 50 Employees or more, an Employer shall arrange for the establishment of a welfare committee at the place of business, comprising of at least five Employee representatives.	None.
Submitting of Employment and Working Conditions if More Than 10 workers Employee Welfare Fund	Section 115/1. For the purpose of performing duties of the Labour Inspector under Section 139, an Employer who employs 10 employees or more shall submit a report form on conditions of employment and working conditions to the Director-General or a person entrusted by the Director-General within every January. The Labour Inspector shall provide the form as prescribed by the Director-General to the employer annually. Section 130. Employees shall be members of the Employee Welfare Fund	Not submitted. Never.
Labour Inspection Teams, Experts	Section 142. During an inspection of the place of business or office of an Employer or the working place	Never. Police and immigration inspection only.

	<p>of an Employee, the Director-General or a person entrusted by the Director General may arrange physicians, social welfare workers or experts appointed by the Minister to enter such places in order to give advice or to help the Labour Inspector in execution of this Act.</p>	
<p>Occupational Safety, Health and Environment Occupational Safety, Health and Environment ACT B.E. 2554 (A.D. 2011)⁴⁵</p>		
<p>OH&S</p>	<p>Section 6. An Employer is obligated to provide and keep an Establishment and an Employee in safe and hygienic working conditions and environment including to support and promote an operation of the Employee preventing the Employee from any harm on life, physique, mentality and health. The Employee is obligated to cooperate with the Employer in operating and promoting of occupational safety, health and environment in order to ensure safety to the Employee and the Establishment.</p>	<p>Locked, blocked or absent fire exits; poor ventilation; no staff toilets; music above safe limit of 91 Decibels; substandard lighting; mandatory alcohol consumption.</p>

⁴⁵ http://www.aseanoshnet.org/images/News_images/pdf/OSH%20ACT.pdf

SOCIAL SECURITY ACT, B.E. 2533 (1990)⁴⁶

Social security	An employer with one or more employees must register and contribute to the Social Security Fund.	Usually limited to cashier or doorman.
	Section 46.18. The Government, an Employer and an insured person under Section 33 each shall pay contributions equally to the Fund at the rate prescribed in the Ministerial Regulations for payment of benefits relating to injury, sickness, invalidity, death and maternity, but the contributions thereof shall not exceed the rate of contributions appended to this Act.	No access.
	Section 54. An insured person or a person under section 73 shall be entitled to receive the following benefits from the Fund: (1) injury or sickness benefits; (2) maternity benefits; (3) invalidity benefits; (4) death benefits; (5) child benefits; (6) old-age benefits; (7) unemployment benefits.	No access.

⁴⁶ <http://www.sso.go.th/sites/default/files/Social%20%20security%20act.pdf>

Bar Rules

Arriving late: 3 baht per minute

Under drink quota: 80 Baht/drink under the quota

Weight increase: 200 baht/kilo or suspension

Slow to get on dance floor: 250 Baht

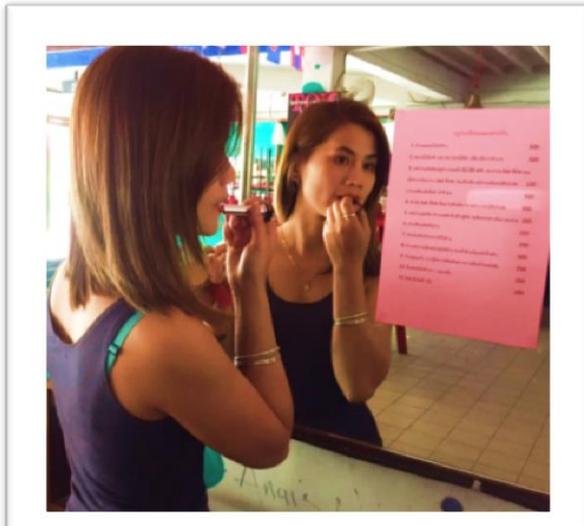
No health check: salary withheld until card presented

Night off: bar fine (500 -700 Baht)

Holiday/weekend night off: 1,000-7,500 Baht

Salary cut by arbitrary amounts for infringements such as:

- **Failing dress code**
- **Trouble with customer**
- **Arguing**
- **Late for or missing staff meeting**



Bar rules, salary cuts and quotas are displayed.

Income – Benefiting from prostitution of others?

A key concern for policy makers and human rights advocates is often rooted in the misguided vision of a stereotypical pimp-victim relationship where the sex worker is forced to hand over all, or part of her earnings to a man who controls her. In fact, sharing earnings 50-50 with employers or management is common throughout the world in other occupations as diverse as professional boxing, music publishing, pet grooming, modelling and fruit picking. These relationships, like all labour relationships, function in a situation of unequal power. They may be morally unjust or ethically wrong but they are not criminal exploitation or forbidden.

Sex workers in Thailand feel that a 50:50 split is the upper-limit for fair division of earnings. The employer provides the workplace, equipment, utilities, contact with customers, and protection from police/immigration that are all necessary in order for us to work. We also reason, however, that if we were less reliant on protection from arrest for the crimes of sex work and migration, a more appropriate percentage may be determined. Our findings are that if the sex workers receive anything less than 50%, that this is a clear indicator of exploitation of labour.

Unacceptable Forms of Sex Work

Unacceptable forms of sex work comprise such conditions as discrimination, indications of forced labour, debt bondage and human trafficking. They include any conditions which deny fundamental principles and rights at work.

1.1 Discrimination in employment and occupation

There is little enforcement of non-discrimination in employment in Thailand generally. In the sex industry, it is given no attention whatsoever. Discrimination happens on individual basis according to age, appearance and gender. The three examples below were found to be common throughout large sectors of the industry.

- Pregnant sex workers or those with living with HIV face instant dismissal and discrimination, i.e. they will not be hired.
- Sex workers who weigh over 50 kgs are penalised.
- Non-Thai sex workers may be paid less than Thai Nationals.

1.2 Forced labour in sex work

Salary Cuts

ILO asserts that the “Withholding of wages, refusing to pay the worker at all or excessive wage reductions” – although not qualifying as forced labour on its own – is one of the indicators of a working environment where forced labour could occur. The widespread and institutionalized deductions of sex workers’ salaries are not forced labour per se but constitute an unacceptable form of sex work. It is an illegal practice under Thai Labour law.

All 19 violations we identified are objective and practical indicators to measure labour standards for sex workers in Thailand. Decriminalization alongside the extension of labour protection and benefits would allow workers the opportunity to organize and improve conditions.

Unacceptable forms of sex work that sex workers consider exploitation and want urgently addressed:

- 1. Salary cuts*
- 2. Mandatory alcohol consumption*
- 3. Interference with freedom to choose or refuse customers e.g. quotas, threat of dismissal*
- 4. Any less than a 50% share in the earnings*

Health & Safety

It is unacceptable for employers to fail to provide a safe, healthy workplace. Mandatory consumption of alcohol via drink quotas is an assault on workers' physical integrity and certainly jeopardizes workers' health. It is unacceptable for employers to control, set customer quotas or otherwise determine a worker's provision of sexual services.



Pragmatic Work is Not Forced Work

Sex Work worker job satisfaction in Thailand is above average for other occupations with less than 30 % of sex workers in Thailand dissatisfied with their jobs i.e. working in Pragmatic Work.

Migrant Sex Workers

In addition to standard salary cuts, migrant sex workers may be in situations that involve “Restriction of movement to the workplace or to a limited area” and “retention of passports and identity documents.” The combination of two or more indicators is not a guarantee of forced labour but is “strong indication that forced labour exists.”

Restrictions on the movement and freedoms of migrant sex workers and retention of identity documents are a consequence of a wider environment of racism, restrictive regulations, corruption and immigration and trafficking policies which foster situations of forced labour.

Despite the significant presence of and the need for migrant workers in the Entertainment Industry, particularly in Karaoke sectors, workers are denied access to immigration/migrant worker documentation that other migrant workers can obtain. They are kept in precarious situations where they must work around corrupt authorities and exploitative employers without protection or recognition. Documented migrant workers fair little better as their work visas are tied to a particular employer creating an imbalance of power where workers lose their immigration status if they lose their job.

Assisted Migration

In our community, some had previously paid large amounts of money for transport and arranging employment. The loan was not advanced by the agent or the prospective employer. Rather the worker or her family members used savings or took out loans locally to finance their migration. Payment rates for travel and employment arrangements are well known and standardized depending on the destination and type of transport.

"Between us, we have borrowed about 500,000 Baht. The boss is taking a risk lending that as we could run off on our debt or even be arrested and deported. If that happens he just loses the lot. We understand why he has the condition that we have to stay onsite when we borrow this much."

Ying – Sex Worker, Empower, May 2015



Empower Kumjing Story performance Bangkok Art and Culture Center 2010

"They don't exploit us – they take unfair advantage of the situation that exists around us. Many people and even aid organizations exploit situations of poverty and hardship to make a living or a profit."

Nuan – Sex Worker, Empower, 2012

Transport from the Thai-Burma border in the North and employment in a brothel across the Malaysian border for an undocumented migrant sex worker could cost up to 150,000 Baht. The journey for someone with documents to travel independently will cost as little as 6,000 Baht. Migrant sex workers felt that the service was very expensive, but they were not being exploited. Brokers and corrupt authorities are exploiting a situation where people wanted and needed to migrate for work but had no access to independent legal channels. Migrant sex workers' perception is clear and precise.

Debt Bondage and Sex Work

In our research, we found no incidences of debt bondage as defined by the ILO. A small number of sex workers employed in brothels had current loans or "salary advances" they had voluntarily taken out with their employers. They were all migrant sex workers and had borrowed 80,000 – 100,000 Baht each. This is enough to buy a piece of land and build a family home in rural areas of Burma. The loans generally took 4-6 months to pay off and carried no interest.

The usual employment terms include a 50 -50 split with the employer from each customer's payment.

The loan conditions were:

- From customer pays 25% to the worker: 25% as loan repayment and 50% employers share
- For loans of over 80,000 Baht workers were required to live on premises until loan repaid and notify if going off premises for any reason.

We found this to be standard practice for loans in most places. Sex workers found the loan conditions reasonable and fair in light of the fact that:

- They have no access to borrowing from any regulated financial institutions;

- They freely choose to take the loan – it was not compulsory;
- Private loan sharks charge 3% interest per day;
- They recognize that their precarious situation affords no loan protection or collateral for the employer.

Loans up to 80,000 Baht had no interest, restrictions on movement or living arrangements.

Mapping the Continuum

Although sex workers are often portrayed as a colourful and confusing array of graphs and statistics, at Empower we are not statisticians. However, we are confident in using our research findings, our decades of experience as part of the sex worker community and thousands of stories of Empower members working in all sectors across the country to make general estimates about the situation of decent sex work in Thailand. We found out this can be called 'representational generalization.'

"Representational generalisation involves two key issues. First, whether the phenomena found in the research sample (for example, views, experiences, behaviours or outcomes) will similarly be found in the parent population. Second, whether other additional phenomena (or different perspectives on them) will be found in the parent population which are not present in the study sample."⁴⁷

We assert that the phenomena found in our key community are present in the parent population (i.e. sex workers of Thailand) and furthermore, perspectives found in the Chiang Mai community also reflect the perspectives of said parent population.

⁴⁷ https://mthoyibi.files.wordpress.com/2011/10/qualitative-research-practice_a-guide-for-social-science-students-and-researchers_jane-ritchie-and-jane-lewis-eds_20031.pdf

Decriminalization: Making Sex Work Decent

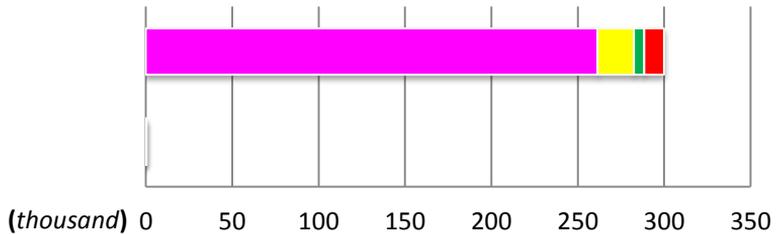
Decent sex work is possible and in existence in places that have decriminalized sex work such as New Zealand. We find that neglect and isolation from labour protection combined with the criminalization of sex work are incompatible with decent work, i.e. working in “freedom, equity, security and dignity, in which rights are protected and adequate remuneration and social coverage” are guaranteed.

The Thai government estimates there are 300,000 sex workers in Thailand. We find that neglect and isolation from labour protection, combined with the criminalization of sex work are incompatible with Decent Work principles of freedom, equity, security and dignity.

The application of criminal law beginning with the Suppression and Prevention of Prostitution Act 1996 prevents all sex workers, and the industry itself, from achieving the ideal standard of Decent Work and full compliance with Thai Labour, Social Security and OH&S laws.

What We Found

Decent Sex Work Continuum



Working Conditions	Percentage	Number of Sex Workers
Decent work	0	0
Substandard	87.2	261,600
Indications of Forced Labour	7	21,000
Indications of Debt Bondage	2	6,000
Human Trafficking /Under 18	3.8	11,400

The continuum is created from the reality of sex workers' experience and can be used as a guideline to begin to develop appropriate policy and practices that address the concerns of society, including concerns of sex workers.

Decent Work

We found that criminalization of prostitution means there are no sex workers in Thailand who can currently be described as working in situations of 'decent sex work' as defined by the ILO.

Substandard

87.2 % - 261,600 sex workers nationally face Decent Work deficits, working in conditions below labour law standards.

This large majority of sex workers are left unprotected by labour frameworks including Occupational Health & Safety Codes and Social Security. Human dignity and physical integrity is not honoured by employers who impose alcohol and customer quotas; or by the State that fails to protect their health and safety in their legal workplaces and penalizes their sex work as a crime.

Criminalization and State neglect ensures the large majority of sex workers in Thailand routinely experience:

1. Discrimination in employment and occupation;
2. Unprotected recruitment and prohibition from making contractual agreements;
3. Excessive working hours;
4. Underpaid employment and related income issues especially salary cuts;
5. No provision or protection of occupational safety and health;
6. No access to social protection;
7. No access to redress.

We estimate the remaining 12.8% of sex workers are working in Unacceptable Forms of Work (38,400 nationally).

Indications of Forced Labour

Up to 7 % of sex workers (21,000 nationally) are working in conditions that show one - three indicators associated with Forced Labour

- Restriction of movement to the workplace or to a limited area

- Retention of passports and identity documents
- Excessive wage reductions

Indications of Debt Bondage

Conditional loans undertaken by 2% of workers are suggestive of debt bondage in that the worker agrees to pledge her "*services as security for a debt*" - 6,000 sex workers nationally.

Human Trafficking

Child labour and human trafficking in the sex industry are less common and were not identified in our research. The United National Inter-agency Program (UNIAP)⁴⁸ estimates 11,400 (3.8%) of sex workers are in situations of human trafficking. This number includes any workers in the Entertainment Industry under 18 years of age, who by legal definition are classified as trafficked persons.

Increasing criminal penalties for sex work and migration has not led to any change in human trafficking. Thailand has been downgraded twice by the US TIP process since implementing the 2008 Human Trafficking Law and is now on the lowest level, Tier 3. Significantly, the anti-trafficking framework leaves recruitment practices with no oversight and automatically voids any contractual agreements leaving workers without bargaining power or redress. Focusing exclusively on the extreme end of the continuum of sex work does not have any positive impact on reforming those systems and structures within the industry and within the law that contribute to forced labour.

⁴⁸ Originally created to coordinate work between the 13 UN agencies and 37 NGO's working on human trafficking in the region. Downsized in recent years and renamed UN ACT

If a domestic worker is unpaid and forced to work - the work she does is still called domestic work. If a sex worker is unpaid and forced to work - the work she does is still called sex work, yes?"

Fah – Sex Worker, Empower, December 2015



While sex work remains criminal in itself, there is little or no true access to protection even under the Penal Code or Civil laws.

Responses to Unacceptable sex work need to be decided objectively. Generally legal interventions must follow three principles:

1. Where labour standards are violated, remedies are best provided for by the labour law framework and Civil Conduct Code.
2. Where crimes occur, remedies are provided for by the criminal law framework, i.e. Penal Code.
3. Where a crime happens in relation to work, e.g. forced labour (whether as an outcome of trafficking or not), remedies available will include both labour law and criminal law.

Moving toward Decent Sex Work

Our continuum is created from the reality of sex workers' experience. It illustrates how replacing criminal law with labour law has the potential to move over 260,000 sex workers out of substandard working conditions and toward decent work. We propose that the shift would also generate increased protection and benefits for the 40,000 of us working in unacceptable conditions.

Access to Justice

Sex work is regulated under three core laws. These laws overlap in terms of prosecution but do not provide protection. Serious gaps leave sex workers without the opportunity for redress or justice. While sex work remains criminal in itself, there is little or no true access to protection under the Penal Code or Civil laws. The following table (#1) identifies which crimes and labour violations of sex workers' rights are addressed under the current framework. Table #2 shows that when the criminalization of sex work is removed, sex workers are protected under the law and able to access Penal & Civil Codes to seek redress and justice like other workers.

Table #1 Shows access to justice under current legal framework:

#1	Crime or violation	Prostitution Law	Entertain. Places Act	Human Trafficking Act*
1.	Wage dispute	X	X	X
2.	Employment conditions	X	X	X
3.	Working conditions	X	X	X
4.	Interest rates/loans	X	X	X
5.	Rape/assault	X	X	X
6.	Worker health & safety	X	X	X
7.	Unfair dismissal	X	X	X
8.	Labour Compensation	X	X	X
9.	Skill development	X	X	(limited)
10.	Social Security	X	X	X
11.	Organizing/Union	X	X	X
12.	Fraud	X	X	(limited)
13.	Sexual autonomy	X	X	✓
14.	Violence	X	X	(limited)
15.	Kidnapping	X	X	✓
16.	Arbitrary Detention	X	X	✓
17.	Extortion/corruption	X	X	(limited)
18.	Child Abuse/Child Labour	✓	✓	✓

Table #2 Access after replacing Prostitution Act with Labour Laws:

#2	Crime or Violation	Penal / Civil Codes	Labour framework	Human Trafficking Act*
1.	Wage dispute	X	✓	X
2.	Employment conditions	X	✓	X
3.	Working conditions	X	✓	X
4.	Interest rates/loans	✓	X	X
5.	Rape/assault	✓	X	X
6.	Worker health & safety	X	✓	X
7.	Unfair dismissal	X	✓	X
8.	Labour Compensation	X	✓	✓
9.	Skill development	X	✓	(limited)
10.	Social Security	X	✓	X
11.	Organizing/Unionizing	X	✓	X
12.	Fraud	✓	X	(limited)
13.	Sexual autonomy	✓	(limited)	✓
14.	Violence	✓	X	(limited)
15.	Kidnapping	✓	X	✓
16.	Arbitrary Detention	✓	X	✓
17.	Extortion/corruption,	✓	X	(limited)
18.	Child Abuse/Child Labour	✓	✓	✓

“If they can improve the fishing business for workers then we know they can improve the entertainment business as well.”

Nok – Sex Worker, Empower, January 2016



Empower on boat near Pattaya

In the fishing industry, rather than respond by imposing criminal law or attempting to eliminate fishing altogether there has been a united response to solve the problems of exploitation and correct existing decent work deficits.

Sex Work and the Fishing Industry

Although we see that a simple shift of legal framework will move hundreds of thousands of sex workers in Thailand closer to decent sex work, the reality is likely to be a slower process. There is a need for policy makers, employers and sex workers to have the opportunity to understand and discuss the various viewpoints.

A National dialogue is necessary with representation from the government, business and sex worker organizations working on labour rights, with ILO providing technical support. The critical issues that prevent sex workers from claiming their rights urgently need to be changed. The other sector in Thailand that has received national and international attention for exploitation of workers and Unacceptable Forms of Work is the Thai fishing industry.

Notably, in the fishing industry, rather than responding by imposing criminal law or attempting to eliminate fishing altogether, there has been a united response to solve the problems of exploitation and correct existing decent work deficits; in the fishing industry, the focus of reform has been employment and working conditions, not individual employers and workers. In the entertainment industry a similar focus is needed.

We have referred to the Asian Research Centre for Migration, Institute of Asian Studies, Chulalongkorn University's examination of reforms for the Thai Fishing Industry to identify common issues and strategies.⁴⁹

⁴⁹ Employment practices and working conditions in Thailand's fishing sector ILO ILO Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE project)
Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University Copyright © International Labour Organization 2013
www.ilo.org/dyn/migpractice/docs/184/Fishing.pdf

Commonalities between the Fishing and Entertainment Industries:

1. Lack of establishing and enforcing standards around the maintenance of social security and minimum rest hours.
2. Need to developing guidelines for conducting effective and regular labour inspection that includes experts from civil society.
3. Engaging industry associations in the development of policy and legislation, in the regulation of recruitment and employment practices, and in the delivery of training and provision of information.
4. Exploring options for migrant registration that take into account the high mobility within the sector, as well as allowing migrant workers to change employers without losing their legal status.
5. Addressing concerns related to occupational safety and health (OSH).
6. Promoting Occupational Health and Safety training.
7. Making complaint mechanisms more available to all workers, including migrants.
8. Allowing space for workers to form associations that represent their interests and can negotiate with employers.
9. Cooperating with countries of origin to improve access to safe migration information and legal migration channels.
10. Advocating for and monitoring of stricter regulatory standards to prevent and eliminate forced labour and other unacceptable forms of work.

Key measures being implemented in the Reform of Thai Fishing Industry

1. Reform of existing regulations and policy
2. Enhancement of Labour Inspection
3. Development of Good Labour Practice Guidelines
4. Development of a Code of Conduct
5. Improvement of Occupational Safety and Health (OSH)

We believe reform of the fishing industry can serve as a model for similar measures to reform the Thai entertainment industry. Indeed a press release from the Thai Ministry of Foreign Affairs shows similar approaches for reform which are embedded in the concept and development of Can Do Bar as a working model of decent sex work

On 18 March 2016, Thai Government agencies and Thai leading private sectors in fishery industry agreed to join forces to launch a project called 'Demonstration Boat.' The project, made possible by the Department of Fisheries, the Ministry of Foreign Affairs, Nestlé and Thai Union Group, aims to raise awareness among fishing boat owners, captains and crews of best practices concerning the rights of fishery workers. A fishing boat for the project will be provided by the Thai government while Nestlé and Thai Union Group, together with partner NGOs, will then support and oversee the renovation of the fishing boat into a model boat with improved working conditions and labour standards on board the vessel. This 'demonstration boat' will serve as a capacity building model for fishing boat owners, captains and workers. The training course will be jointly designed by all project partners, including the Department of Fisheries and the Ministry of Labour.⁵⁰

⁵⁰ Thai Government, Nestlé and Thai Union to launch 'Demonstration Boat' to protect fishery workers' right <http://www.mfa.go.th/main/en/media-center/14/65812-Thai-Government,-Nestl%C3%A9-and-Thai-Union-to-launch-%E2%80%98.html#.VvpTXrHBxJA.facebook>

Entertainment Industry Reform: Key Measures Proposed

1. Reform of existing regulations and policy

In particular, there must be reform of the criminalization of sex work. Decriminalization does not mean that there are no regulations. Civil business, trading and penal codes will still apply. Under decriminalization, sex workers will have labour rights, but also will still have civil, labour and social guidelines to follow.

Law reform could involve the Ministry of Justice, Department of Labour Protection and Welfare, in addition to industry associations and sex worker organizations as well as the ILO in the role as technical support drawing on Thai employment practices and working conditions, relevant ILO Conventions, international labour standards and good practices.

2. Enhancement of Labour Inspection

Police entrapment operations and raids will be replaced with the creation of a multi sector Labour Inspection team with the resources and expertise needed to undertake targeted labour inspections of sex worker's conditions. The Labour Inspection team needs to include sex worker organizations or associations.

3. Development of Good Labour Practice Guidelines

Situations on the decent sex work continuum need further refinement to extract specific circumstances which can become indicators when making assessments and planning interventions at all levels. These will then be developed into Guidelines on Good Labour Practices (GLP).

4. Development of a Code of Conduct.

Guidelines on Good Labour Practices (GLP) can be used to develop a Code of Conduct.

5. Improving Occupational Safety and Health

At present, there is a lack of analysis and understanding of Occupational Health and Safety issues for sex work. This needs clarification and awareness of how the Occupational Safety, Health and Environment Act should be applied to sex work. The process can draw on experience of Empower Can Do Bar as well as international experience of OH&S in the sex industry of New Zealand and NSW Australia.

Implementation

Given the complexities involved, the concerns of society and long-standing nature of the issues involved, we recommend undertaking a 5 year pilot program in the Chiang Mai community. We have chosen Chiang Mai as sex workers here are well organized under the umbrella of Empower Foundation. The model will involve both those impacted and those charged with managing policy. Together, new standards of decent working conditions for existing Entertainment Places will be developed, implemented and enforced.

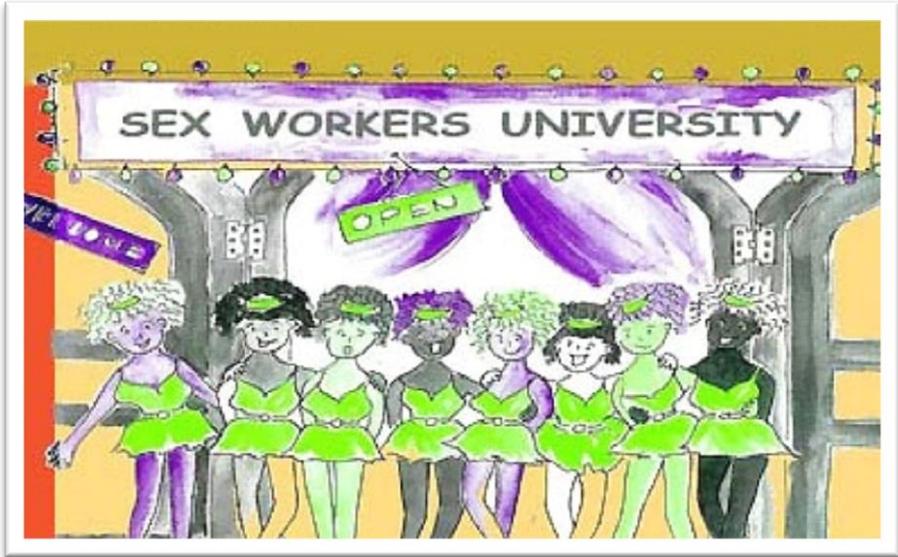
Implementation Steps:

1. A Cabinet Resolution suspending the enforcement of the Suppression and Prevention of Prostitution Act 1996 in designated Entertainment Place zones in Chiang Mai. Regulations such as the Entertainment Place Act, Human Trafficking Act, Alcohol Act and all Penal/Civil Laws will remain in place.
2. Empower and employers will join with the Department of Employment as a working group. This group will be charged with mapping of key 'decent work indicators' and proposed interventions in the pilot area.
3. During the implementation Phase, resources will be developed and support allocated to allow Labour Inspection teams to

assess workplaces with the aim of supporting employers to implement decent sex work standards. An excellent example of a resource that could be adapted for use is the “Decent Work Checklist” which can be found on the WageIndicator.org website www.tusalario.org/costarica.

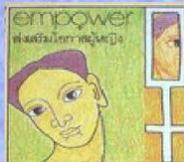
Sex Work is Decent Work

Decent Sex Work is achievable. The first step is the recognition that sex work is no more inherently abusive or automatically criminally exploitative than other work or human relationship. Sex workers are workers in diverse situations, sectors and labour conditions, similar to other workers. By stepping away from individual beliefs about sex and sexuality and looking at the inherent rights we all have as human beings, and in particular as workers, we can begin to reform the situation of sex work in Thailand. By dismantling the old framework of criminal punishment of sex work we can create a new framework that enshrines all human rights and dignity.



By laying aside the hammer of the prostitution law, we can take up newer, more effective tools to build a stronger society where all work, including sex work, is decent work.

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