

EMPOWER FOUNDATION PRESENTS



MOVING TOWARD DECENT SEX WORK

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

2016

**Excerpt from
MOVING TOWARD DECENT SEX WORK**

SEX WORKER COMMUNITY RESEARCH
DECENT WORK AND EXPLOITATION IN THAILAND



by empower foundation Thailand , 2016

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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

¹ www.nswp.org/members

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

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.

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

³ Prostitution, Politics & Policy Roger Matthews 2008

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

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, 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 NSWP website www.nswp.org and research undertaken by Amnesty International www.amnesty.org

⁶ <https://swopl.v.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.

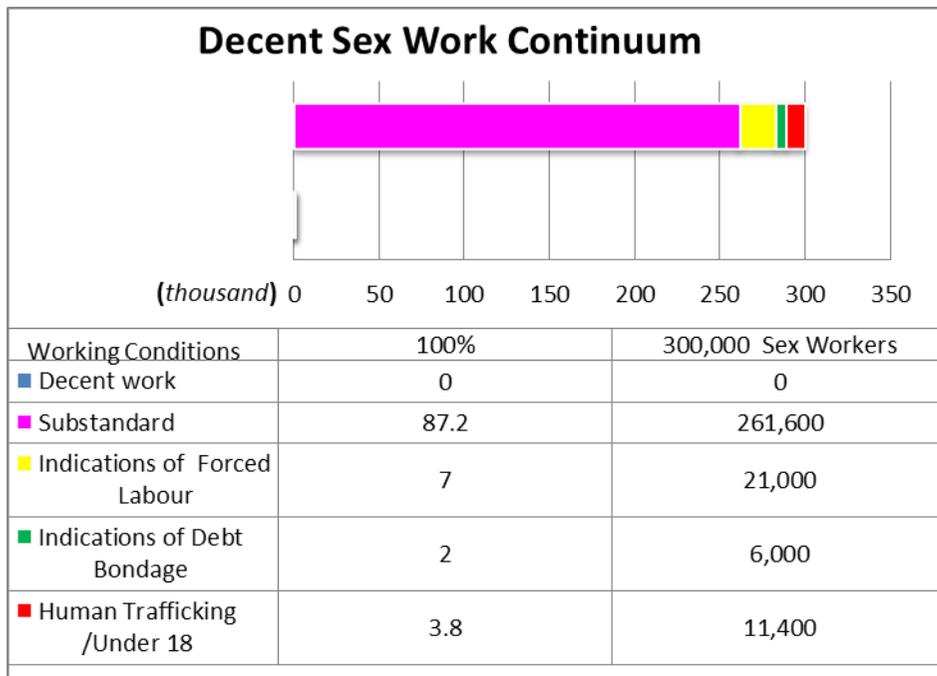
Terms such as "exploitation of prostitution" and "sexual exploitation" are used in law and practice, yet commonly left undefined as if they were interchangeable and self-explanatory, which is not the case. Furthermore, with no clear definition there has never been a tool available which will allow for 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.



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 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.

⁷ Hit & Run www.empowerfoundation.org

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

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.tusalario.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.