

Sex Workers and the Thai Entertainment Industry

Submitted by Empower Foundation

to the

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Executive Summary

Women sex workers face multiple levels of discrimination. The long standing history of State negligence in enforcing labour protections; criminalization of sex work and harmful law enforcement practices restrict women who do sex work from asserting and enjoying their human rights and fundamental freedoms.

This report was written by Empower Foundation. Established 32 years ago, Empower is the lead representative organization for women sex workers in Thailand. Over 50,000 sex workers, both Thai and migrant have joined Empower. The core reference community for this paper is comprised of 3,061 sex workers who are employed in all sectors of the industry.

Key concerns of women sex workers in Thailand:

- Unequal treatment before the law: presumption of guilt
- Entrapment operations violating sexual consent and the Thai Criminal Code
- Corruption
- Conflation of sex work with the crime of human trafficking
- Violent raids resulting in discrimination against victims and witnesses
- Neglect of labour protection
- Migrant sex workers excluded from complying with Migrant Worker policies
- Lack of protection for the rights of girls
- No access to relevant skill development and training
- Discrimination in access to sexual and reproductive health

Recommendations in Brief

1. Pass a Cabinet Resolution suspending the enforcement of the Suppression and Prevention of Prostitution Act 1996 in establishments that comply with licensing e.g. the Entertainment Place Act 1966(2003)
2. Ensure that all law enforcement authorities strictly comply with the Thai Criminal Code.
3. Bring together representatives from relevant agencies including Empower Foundation to develop a road map for the implementation of a Decent Work framework and the enforcement of Thai Labour Standards System and Occupational health and Safety in all entertainment places.
4. Convene an Ad hoc Committee charged with developing a clear measurable definitions of exploitation, a full review of the Suppression and Prevention of Prostitution Act and the Entertainment Place Act. The committee to be comprised of at least one third of affected people i.e. sex worker's representatives from Empower Foundation
5. Provide access for women to accredited training for the entertainment sector designed in collaboration with sex workers
6. Develop migrant worker policies that promote the rights of migrant women in the entertainment Industry.

¹ The Entertainment Industry is a term used to encompass venues such as massage parlours, karaoke lounges, bars, A Go Go Bars that are all aimed at providing entertainment.

Harmful Legal Environment

Over 85% of sex workers are employed in entertainment places e.g. Karaoke bars, Ago Go Bars, Massage Parlours, and Beer bars. These workplaces are legally registered under the Entertainment Place Act 1966(2003) or as a business under the Civil and Commercial Code (CCC) B.E. 2551. Sex workers are employed in a range of roles such as dancing, singing, serving drinks, flirting, providing bathing or massage. A smaller number work in traditional brothels or from public spaces such as beaches, parks or the street. .

Working in entertainment places is not illegal. Employment in a place of Entertainment is not prohibited and theoretically not excluded from protection under any Thai National laws or Ministerial Regulations, with the exception of the employment of child workers. (*See section on Girls*)

Section 74 of the Constitution of the Kingdom of Thailand B.E. 2559 (2016) cites that “The State should protect labour to ensure safety and vocational hygiene, and receive income, welfare, social security and other benefits which are suitable for their living, and should provide for or promote savings for living after their working age.”

However the Thai Government doesn’t apply or enforce any of the standard labour protections or benefits for sex worker that are afforded to workers in other sectors. Working conditions are set by employers and commonly violate the national labour laws and rights mandated for all in the Constitution.

An assumption that women are violating the prostitution law is often cited as justification for withholding labour protection and redress.

Prostitution is criminalized under the Prevention and Suppression of Prostitution Act B.E. 2539 (1996)²

Articles 5,6,7,8 & 9 of the Prostitution Act specifically criminalize

- Women and customers for solicitation - if it is done in “an open and shameless manner or causes nuisance to the public”; (Article 5)
- Anyone who associates in a place of prostitution; (Article 6)
- Anyone who openly advertises prostitution; (Article 7)
- Anyone involving a minor (under 18 years of age) in prostitution;(Article 8)
- Anyone who recruits someone for prostitution. (Article 9)

² Under the Act “prostitution’ means sexual intercourse, 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”. “Promiscuous” is left undefined. The Act can be used to penalize sex workers, customers and employers/managers though most commonly used against sex workers and employers/managers. The intent of the Act was to prevent the abuse of minors and exploitation, not the punishment of sex workers. Sex workers in Thailand strongly oppose ‘end demand’ models that criminalizing customers and employers.

Impacts of the Prostitution Act

Presumption of Guilt

The Thai Constitution Section 27 stresses that persons are equal before laws and shall enjoy equal protection under the law. Furthermore Section 29 states that “A suspect or defendant in a criminal case shall be presumed innocent, and before the passing of a final judgment convicting a person of having committed an offence, such person shall not be treated as a convict”

However women working in the entertainment industry are commonly presumed to be guilty under the Suppression and Prevention of Prostitution Act 1996. Women’s workplaces, even though registered legitimate businesses, are treated as crime scenes. Women are arrested simply for being on the premises during police raids and charged under Article 6 of the Prostitution Act “Associating for the purpose of, or in a place of prostitution”. Further gratuitous prosecutions follow according to their nationality or immigration status. This blanket presumption of guilt leads to collective punishment of an entire workforce of women.

The failure to protect and promote sex worker’s rights before the law in conjunction with the criminalization of sex work fuels corruption, stigma and other violations against women. In 2011 a Joint Submission by the Planned Parenthood Association of Thailand and the Sexual Rights Initiative (Ottawa, Canada) to the OHCHR reported that: “The 1996 Prevention and Suppression of Prostitution Act had created an environment where police and local authorities felt emboldened to take abusive actions against sex workers”.

Entrapment operations which breach the Thai Criminal Code³

Undercover police and in some cases Non- Government Organizations visit entertainment places as customers and manipulate the sexual consent of women and girls. The methods used to lure women and girls to commit the crime of prostitution are often in breach of the Thai Criminal Code regulating police practice. Entrapment operations against trafficking have been allowed to continue for months after it has been established that underage workers are employed on the premises, leaving girls in precarious situations.

It has been reported that police also have sex with women to create evidence to arrest them on charges of prostitution.

Sexual consent must not be coerced by deception or manipulated, especially by men in authority and where it concerns the sexual consent of teenage girls. It violates the rights of the child, the right to dignity and physical integrity.

As far back as 2003 the Thai National Human Rights Commission recognized that police entrapment often leads to serious human rights violations, especially against women in the sex industry and recommended it should only be used under a clear and precise system that prevents such human rights abuses.

³ Appx One Examples of Entrapment Operations

Corruption

The Prostitution Act is a tool of extortion for corrupt authorities. The International Labor Organization reports that in Thailand “sex workers and the owners of entertainment and sex establishments regularly pay the police.” The National Economic and Social Advisory Council found in a 2003 study that A go-go bar and massage parlor owners in Thailand pay a 3.2 billion baht (US\$80 million) a year in police bribes regardless of whether they are breaking any law. Empower has not heard of any decline in the amount of bribes being paid since then. The bribe money paid by employers ultimately comes from women’s earnings. In 2010 Empower Foundation research found that in border areas 26% of migrant sex worker’s monthly earnings go to corrupt authorities. In other areas women also report that corrupt police regularly extort free sex as well as cash.

Conflation with Trafficking and Harmful Responses⁴

The Royal Thai Government Trafficking in Persons Report 2015 highlighted “*that one crucial step to fully enforcing human trafficking law in this country is to ensure clearer definitions of key terms being precisely addressed.*” In 2016 a special ad hoc working committee clarified the definition of “Forced Labour”. The term “exploitation of prostitution” is also used in the Act yet remains undefined and poorly understood. The decision about what constitutes “exploitation of prostitution” is left up to the subjective judgment of individual law enforcement officers, who naturally have their own preconceptions about sex work according to their moral code, religious belief, gender, class, culture and experiences.

For 20 years the international focus on eliminating trafficking in the sex industry has been centred on prosecution. Thailand has been under continuous pressure to produce evidence of women being rescued and criminals being punished. This has led to a pattern of law enforcement practices that prioritize the pursuit of convictions and enumerating victims rather than upholding human rights.

Prevention of trafficking has also heavily relied on punishment as deterrence rather than addressing structural causes of exploitation of women and girls in the industry such as lack of labour law enforcement, poverty, unemployment, citizenship status and traditional gender roles⁵.

The responses undertaken in the entertainment industry are in direct contrast with the methods implemented in the Masterplan for Labour Problem Resolution in the Fisheries Industry that focused on upholding Labour Rights to reduce problems of child labour and trafficking in the male dominated industry.

Violent Raids

Its common practice for 50 - 100 armed men to conduct late night raids where women and sometimes also girls are chased, trapped, interrogated and paraded before the media while terrified, only partially dressed or naked wrapped in just a towel or sheet.

⁴ Appx Two CASE STUDY NATAREE MASSAGE Incident June 2016

⁵ Appx Three Notes on Traditional Gender Roles

Raids on Entertainment Places suspected of employing underage workers consistently punish all women workers, despite the fact they are adults employed in legitimate workplaces and have no involvement in the crime of trafficking.

Impacts of Raids:

1. Stigma

Sensationalist reporting by State and media violates the dignity of women and girls apprehended, increases misconceptions and fuels stigma against women who do sex work.

2. Unemployment without compensation or redress

All women working in an establishment that is closed following a raid are immediately left unemployed. They are not compensated as workers in other industries can be in accordance with the Labour Protection Act 1998.

3. Discrimination in detention of Victims of Trafficking

Once labelled as a victim of human trafficking girls are placed in the care of the Ministry Of Social Development and Human Security (MSDHS) and detained in government shelters. The problems of detention in shelters have been well documented⁶. While the Thai government has made some improvements to conditions major concerns persist.

- Girls detained have no contact with family in contradiction to best practices of children in care and in violation of the Convention Child Rights.
- Vocational activities do not develop marketable skills and are based on gender stereotypes e.g. sewing and craftwork.
- Those who enroll in the Thai Education program are not supported to continue study after they are released or deported.
- In 2013 two girls drowned trying to escape Kredtrakarn Protection and Occupational Development Center in Nonthaburi.⁷ Empower has received messages from other girls and women contemplating suicide during prolonged detention. The length of time taken for court procedures has been shortened considerably. However after the court proceedings are completed, girls are detained in shelters for a further 6 months to one year. Neither the girls nor their families understand why

4. Discrimination in treatment as Witnesses

The Thai government reported that since March 2016 migrant trafficking victims and witnesses can apply to temporarily stay in Thailand; foreign victims can renew work permits after the completion of a case; all witnesses of human trafficking cases are automatically entitled to be protected under the Witness Protection Act 2011. However in June 2016 twenty one women detained without legal process had to engage a lawyer to

⁶ Global Alliance Against Traffic In Women "Collateral Damage"

http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf

Hit & Run Empower Foundation

http://www.empowerfoundation.org/sexy_file/Hit%20and%20Run%20%20RATSW%20Eng%20online.pdf

⁷ April 2nd 2013 <https://coconuts.co/bangkok/news/news-two-girls-drown-while-trying-to-escape-protection-center-in-pak-kret/>

lobby the Court and the National Human Rights Commission to be moved into the Witness Protection.

5. *Discrimination in Compensation*

On February 2016, a new regulation on financial rewards and compensation came into force, which allows the government to disburse financial rewards and/or compensation of \$846 – \$2,828 for persons assisting in arrest and prosecution of human traffickers. Children exploited in other industries are also supported to make claims on employers for wages and compensation. However girls and women who have been exploited in the Entertainment Industry are told they are not eligible to claim compensation or monies owed from employers as “prostitution is illegal” as if that negates all claims to justice. Girls released in April 2017 from detention in shelters received only \$100 each.

Recommendations to reduce impacts of criminalization

- ***Convene an Ad hoc Committee that is comprised of at least one third of affected people i.e. sex workers and their representative organization Empower Foundation, as mandated in the Thai Constitution Section 128. The Committee would be charged with developing a clear measurable definition of “exploitation of prostitution” and a full review of the Suppression and Prevention of Prostitution Act and the Entertainment Place Act.***
- ***In the interim pass a Cabinet Resolution suspending the enforcement of the Suppression and Prevention of Prostitution Act 1996 (at a minimum suspending Article 6) in existing establishment that comply with the Entertainment Place Act 1966(2003) or with licencing under the Civil and Commercial Code (CCC) B.E. 2551***
- ***To ensure women’s safety reject “end demand” legal models criminalizing customers and employers.***
- ***Ensure that all law enforcement authorities strictly comply with the Thai Criminal Code relating to entrapment and undercover operations.***

Neglect of Labour/Employment Protection

Thailand has a robust labour protection framework. The rights mandated in Article 11 CEDAW and the right to Decent Work are enshrined in the Royal Thai Constitution Section 74, the Social Security Act 2003 and the Thai Labour Standard System (TLS 8001-2003) which is comprised of Labour Protection Act B.E.2541 (1998), Labour Relations Act B.E. 2518 (1975) and National Standard on Social Responsibilities (SA 8000). Thailand has also ratified the ILO Declaration on Fundamental Principles and Rights at Work; Convention 29 concerning Forced or Compulsory Labour; Convention 138 concerning Minimum Age for Admission to Employment and the Worst Forms of Child Labour Convention, 1999 (No.182).

In 2016 inspections of 142,000 entertainment places employing women found just 0.5 % places did not fully comply with regulations.⁸ Women are employed in roles such as bartender, bathing, waitress, masseuse, cashier, dancer, or conversation/flirting. None of these roles are illegal and none are specifically excluded from the Labour Law framework.⁹

Absence of enforcement of Thai Labour Standards and discrimination against women in the Entertainment Sector ensures working conditions remain exploitative. It makes it impossible to develop protection and complaint mechanisms for underage workers or women who are forced or trafficked.

Unacceptable Conditions of Work are universal in the entertainment sector. Empower research found that 87% of women working in the Entertainment Industry in Thailand are working in conditions that do not meet the national legal standards of Labour Protection or the ILO criteria of Decent Work. The labour protection enforcement for women in the Entertainment Sector has allowed a culture of employer or ‘bar rules’ to develop in the industry.

Examples of “Bar Rules”

1. Wage deductions/salary cuts

- *weight gain (calculated per kilo),*
- *taking sick leave or leave for any other reason*
- *having trouble with customers*
- *not reaching a pre-set drink quota*

2. Two days off a month (legal standard of four)

3. Pregnancy or HIV positive results = instant dismissal¹⁰

Migrant Women

Migrant women working in the Entertainment Industry are only partially able to access migrant worker documentation. They are left outside the law, working in precarious situations and vulnerable to exploitation.

⁸ . The Royal Thai Government Trafficking in Persons Report 2015 states that its taskforces inspected 142, 745 places of entertainment, liquor stores and other at-risk businesses nationwide. Almost all (141,987) were found to be correctly registered. There were 750 infringements e.g. non-compliance with closing times, alcohol sales, underage drinking, located too close to a place of worship or educational institution Results of at-risk businesses inspection in 2015 by Ministry of Interior Table 28: Results of at-risk businesses inspection in 2015 by Ministry of Interior. Entertainment. Business. Liquor Store. Other at-risk businesses http://ccpl.mol.go.th/ewt_dl_link.php?nid=86&filename=index

⁹ Command Centers for Combating Illegal Fishing (CCCIF), established in May 2015 created an inter-agency task force for addressing trafficking in the male dominated fishing industry, including inspecting the labor concerns of 474,334 fishery workers. There was no inspection of the labour conditions for women working in the Entertainment Industry in conjunction with the inspections of at-risk businesses above.

¹⁰ Women living with HIV who are refused employment in entertainment places work from public spaces by contacting customers in parks, the beach and streets etc. Women doing sex work in public spaces, especially transgender women report high levels of police harassment and extortion and significant lack of access to protection from violent men.

Under the Alien Work Act 2008 migrant worker's permission to stay and work in Thailand is linked to an employer. This dependence on the employer means migrant workers have little bargaining power and may stay with exploitative employers simply to keep their migration status. While the regulations apply to all migrant workers there are added risks in linking immigration/employment status of migrant women in the entertainment industry to their employer.

In contrast to the immigration charges levied against migrant sex workers in order to reduce trafficking in the fishing industry the government offered work permits to 149,623 migrant workers in the fishing and seafood sector in an attempt to regularize their legal status in Thailand.

Other reforms in the Fishing Industry provide a good example where the Thai Government developed regulations that de-link worker's right to stay and work from the employer and reduce migrant worker's dependence on the employer.¹¹ For example in November 2015 the Ministry of Labour revised rules to provide migrant workers in fisheries with greater flexibility to change employers.

Recommendation to move toward Decent Work:

Bring together representatives from Empower Foundation, the Department of Labour, Ministry of Human Security and Social Development with technical support from the International Labour Organization and other relevant bodies to develop a road map for the implementation of a Decent Work framework, enforcement of Thai Labour Standards System and Occupational health and Safety in all entertainment places. This will include designing the scope and composition of labour inspection teams for the entertainment industry.

Develop procedures where migrant women can access full documentation and ensure their immigration and work status in the entertainment sector is not dependent on the employer, a particular geographical location or be linked to remaining working in the entertainment sector.

Girls

The safety and well-being of children (under 18 years) is a key concern for Thai society, the government and also for sex workers, the majority of whom are mothers. The national legal framework reflects this concern. There are seven National Laws¹² which strictly prohibit minors under the age of 18 from working in the Entertainment Industry in any capacity as well as International obligations under various Conventions especially the Convention of the Rights of the Child and the ILO Convention on Child Labour.

¹¹ Highlights of Progress on Labour Related Issues in Thailand's Fisheries Sector
<http://thaiembassy.se/minmapp/PDF/1704282.pdf>

¹² National Laws prohibiting employment of underage workers in Entertainment Places
1. Labour Protection Act 1998 (2011) (2017), 2. Entertainment Place Act 1966 (2003)
3. Suppression and Prevention of Prostitution Act 1996 4. Suppression and Prevention of Human Trafficking Act 2008 (2011) 5. Sections 282 and 285–287 of the Penal Code 6. Article 26 of the Child Protection Act 2003 7. Amendment to the Penal Code Act No.24 (42-46)

School leavers aged 15 – 18 years, especially poor and working class children are employed both legally and illegally in various occupations. Unemployment for this age group is growing. Approximately 20% of girls will be mothers by the time they are 18 years old. There is little or no financial support for families and no alternative housing or income for teenagers who are unable to live with their families.

Exploiting a child is a serious crime. All evidence indicates that the number of underage workers in the entertainment sector is much lower than the general perception. The Royal Thai Government Trafficking in Persons Report 2015 states that its taskforces inspected 142, 745 places of entertainment, liquor stores and other at-risk businesses nationwide. Just 0.01% of entertainment places were found to employ underage workers and a total of 32 teenage workers were found.¹³

Protection of all minors is essential but sensational reporting, non-evidenced based estimates and pressure to meet targets has led to responses that fail to meet the needs of children or fully respect their rights.

Recommendation to reduce violations of girls rights

- ***Invest in prevention programs that aim to reduce poverty, provide services for youth and increase access to work and study opportunities***
- ***Policy and practices must be in accord with all obligations under the Convention on the Rights of the Child and enforced without discrimination.***

Skill development and training for the entertainment sector

The Skill Development Promotion Act B.E. 2545 has been in force since 2002. The provision of such training is also linked to the Section 54 in the Thai 2017 Constitution: right to “lifelong learning”

To date there has been no avenue for women entertainment workers to access skill development, especially training aimed at increasing the many skills they already have e.g. tourism, bar service hospitality and languages. Accredited and appropriate skill development training for women working in the Entertainment Sector also provides options for those wishing to leave sex work.

Recommendation to ensure equal access to opportunities:

Provide access for women to accredited training for the entertainment sector designed in close collaboration with sex worker’s associations, in order to reduce exploitation and improve standards for the entertainment industry. Training would include legal literacy and human rights awareness.

¹³ TRAFFICKING IN PERSONS REPORT 2015 The Royal Thai Government’s Response (page 105) http://ccpl.mol.go.th/ewt_dl_link.php?nid=86&filename=index

Health

The Ministry of Health introduced the National Condom Strategy (2015-2019). It has five objectives including Objective (4) “building an environment that persuades individuals to use condoms”

As a part of the program the Ministry for Health and NGO’s distribute condoms to sex workers and their workplaces. However police continually confiscate these condoms and use them as supporting evidence in the crime of prostitution and/or human trafficking.

Employers and women working in entertainment places are afraid to stock or carry condoms in case of police searches or raids. The use of condoms as evidence of prostitution places yet another barrier to sex workers asserting their right to protected sex and demand safety in their workplaces.

Media reports of raids commonly feature photos of Public Health or Global Fund condoms on display as part of the ‘evidence’ collected. These public displays of condoms as “evidence of prostitution” increase the stigma against sex workers and against condom use.

Recommendation

Confirm that the Thai Criminal Code clearly prohibits the use of condoms as evidence of prostitution. Make this known to the general public and all authorities. The National Reproductive Health Development Committee and the Ministry of Public Health would be well placed to monitor any violations.

Appendices to Empower Foundation Report to CEDAW July 2017 (Thailand)

Appx One: Examples of Entrapment

1. *May 13th 2017 "A short while after the undercover agent entered the premises the other authorities who had been hiding nearby conducted a raid. They arrested 9 workers. In Room 2 they found Ms A 23 years of age lying on the bed with the undercover agent. both were undressed. Police found a condom on the bed, a basket containing lubricant and massage oil plus 2,500 Baht of the marked bills in the pocket of Ms A's jeans."¹⁴ Empower Foundation has submitted an open letter to the Prime Minister urging and end to entrapment which was supported by 22 other organizations.*
2. *Nid is from a Karen hill tribe village and is considered a "star" hostess at a bar in Chiang Mai. Like Sa, she was "lured" to her arrest by a police officer who was a client. "He was very nice to me," she told Spectrum. "He asked me to call him Here [Chinese for older rich man]. Whenever Here visited me, he gave me a big tip just to have drinks with him. Sometimes he took me out to dinner. I trusted and thought he was one of the nicest customers I had. We had sex and he paid me a lot of money. "I was arrested for prostitution by police officers in Chiang Mai. What surprised me is that when I was it was Here who handled the case. I then realized I was lured by the police." Pol Col Phoomwit Wetkama, the superintendent of Udon Thani city police, said the law specifically mentioned that to make an arrest for prostitution, evidence has to be produced that a crime was committed, meaning the sex worker has to be caught in the act. 2017 Bangkok Post Spectrum¹⁵*
3. *"I came to Chiang Mai about 4 months before this all happened. I was staying with my aunty and working in the karaoke bar. When I applied for the job no one asked my age and I never thought to mention it. I didn't know it was important. I wasn't ready to go with customers. I felt too shy. There was no pressure from anyone, it was up to me. It just meant I didn't earn as much as the others. Then this guy came in three nights in a row. He said I looked very young and he wanted me to go with him. Even though he offered to pay a lot I refused for the first two nights. Then I don't know why but on the third night I thought well, he seems nice and it would be good to have some more money. So I agreed to go with him. Big mistake. He turned out to be a policeman and I was arrested and locked up for 8 months". Tip, rescued as a victim of trafficking, Chiang Mai¹⁶*
4. **PATTAYA VOLUNTEER POLICE INDULGE IN UZBEK STING OPERATION**
On the 22nd May 2007, at 02:30 am, Pol. Lt. Col. Withichart Luensukan, Tourist Police Inspector of Pattaya, and his team, planned an operation to nab Uzbek Prostitutes around the night time entertainment areas. The undercover Pattaya Tourist Police officers managed to arrest four ladies who were offering their services. The foreign undercover officers made arrangements with the four Uzbek women for sexual services at the Pattaya Inn Hotel. When the love making sessions were concluded, the prostitutes

¹⁴ https://www.khaosod.co.th/around-thailand/news_347125#

¹⁵ Bangkok Post Spectrum 2017 <http://www.bangkokpost.com/news/special-reports/1043129/the-sex-workers-embraced-by-the-wrong-arms-of-the-law>.

¹⁶ Empower Foundation, Hit & Run The impact of anti-trafficking policy and practice on Sex Worker's human rights in Thailand 2012

*asked for 2,000 baht each. The undercover representatives gave a total of 8,000 baht to the women, and the police placed them under arrest.*¹⁷

Appx Two: CASE STUDY “Nataree Massage” Bangkok

Nataree Massage parlour was an established business in Bangkok. It had been in operation for 40 years. There are at least 10 other large massage parlours of similar vintage in the area of Ratchadaphisek Road. It is a 3- 5 story building and although smaller than some of the other parlours it resembles a 3-4 star hotel.

Nataree Massage was registered under the Entertainment Place Act 1966. It employed approx. 400 women working in separate shifts, none of whom lived on the premises. Nataree provided bathing, massage and was commonly believed to also include sexual services. The business was reported to be generating \$USD 539,000 per month.¹⁸ Workers were averaging earnings of \$US 2,000 per month (wages and tips)

In March 2016 NVADER a New Zealand anti-trafficking organization reported to the Interior Ministry’s Department of Provincial Administration (DOPA) that they believed there were three 15 year olds working in Nataree Massage. An undercover operation by NVADER apparently sanctioned by authorities began. Despite having established that minors were working on the premises the girls were not immediately removed but left at risk for a further 3 months in an attempt to investigate other unnamed crimes. After the 3 month long entrapment operation, the Nataree massage parlour was raided on June 7th 2017. Over 100 police and officials accompanied by media outlets and NVADER took part in the late night raid.

Of special concern are the issues of:

- 1. Unlawful Entrapment**
- 2. Violent Raids**
- 3. Lack of adherence to the rule of law in providing protection of those impacted**
- 4. Gratuitous Prosecutions**

Summary of key events

- All 400 women were made unemployed by the raid without redress
- 121 women were apprehended in the raid along with 5 ancillary staff
- The owner and manager were not apprehended and have never been located
- Fifteen girls aged 15 – 18 years were charged with being victims of trafficking and committed to a government social welfare centre. Six of these were also forced to undergo medical procedures without giving full and free consent.
- The remaining 116 women were found not to have had any part in the crime of human trafficking.
- They were not immediately released but were instead charged under the Prostitution Act, the Alien Working Act and/or Immigration Act
- The 23 women with full Thai citizenship were charged, fined and released. After attending court 47 of the migrant women were released on 20,000 – 50,000 Baht bail bonds. Ten migrant women without documents were sent to jail on remand awaiting trial.

¹⁷ <https://www.thaivisa.com/forum/topic/121877-pattaya-police-volunteers-swoop-on-uzbeki-girls/>

¹⁸ <http://www.channelnewsasia.com/news/asiapacific/bangkok-brothel-raid/2854990.html>

- Twenty one women, both Thai and migrant were fined but then transferred to be detained in Immigration without charge. When their detention was questioned by their family, friends and Empower, the authorities said that they were being held as witnesses
- The 21 witnesses were held for up to 34 days described by the Nation Human Rights Commission as being detained without legal authority i.e. unlawful
- The women hired a lawyer to lobby the court and the NHRC for their release into the Witness Protection Programme where they remained for a further 11 days.
- Women's identities were exposed in the media during the raid and photos names and addresses of some of the girls were leaked on social media. This is dangerous and in breach of the Human Trafficking Act.
- Documents were found that indicated that corrupt officials may have been regularly taking money from the owners and the workers. However after a few days an internal investigation found no evidence of corruption.

Raid

Over 100 armed police and soldiers participated in the raid on Nataree. Raids are violent. The image shown by media of police raids is an image of violence against women. It is the image of small women who are afraid, shamed and cowering before powerful men.



Lack of preparation: After 3 months the investigators must have had intimate knowledge of the workforce yet no one involved in the Nataree raid had thought to prepare for the apprehension and processing of over 100 women. There were no methods in place to notify and if necessary provide protection to family of victims. There were no advocates or lawyers specifically arranged prior to the raid to fully inform, support and defend the rights of the other workers impacted by the anti-trafficking actions. There was no processes to access back wages, severance pay and unemployment benefits for those who lost their jobs. Nothing had been prepared to ensure appropriate and safe accommodation for witnesses, compensation or arrangements for the prompt taking of testimonies by the Public Prosecutor. All these provisions are in accordance with standard Thai laws e.g. they appear in the Human Trafficking Act, Labour Protection Act, Criminal Code 237 and the Witness Protection Act. Only the punitive sections of the laws were applied to those who were not trafficked, none of the protections.

Fifteen minors (aged 15-17 years) were held in detention at Social Welfare. There was nothing in place to begin the process of informing parents. Parents are the people who hold a lifetime responsibility and bond with their child. Those identified as victims were not allowed to contact

family. We believe this is not in accordance with the Declaration of the Rights of the Child (Article 37) Worried parents began contacting Empower and others a week after the raid. They were becoming more desperate for news about their children.

Women Unlawfully Detained

- Four days after the raid, on the 11th June twenty one of the women appeared in court charged with minor breaches of the Suppression of Prostitution Act and Alien Worker Act. They paid their fines in full and were told by the court they were “free to go home”. However the police had them transferred to Immigration Detention Centre and instructed that they be held there.

None of the 21 women had committed Immigration offences. Police confirmed the women were being held as witnesses in the Nataree human trafficking case.

National Human Rights Commissioner Ms. Ankana Neelapaijit found that the women were being “detained with no legal authority”. She directed that this must be urgently rectified and that the women be treated in accordance with the law and basic human rights standards.¹⁹

After attending final court day instead of being released all the women were taken into the Witness Protection programme without full explanation and or any opportunity to refuse or to consent.

Eventually only three women out of the 83 detained were ever interviewed by the court.

They were asked:

“How did you come to Thailand?”

“Were you forced to work?”

“Was there any force or bad conditions?”

“Did you get paid enough?”

Then they were asked to point to the defendants, explain their role at Nataree and answer whether they ever had to give money to the defendants.

The three women gave similar answers. The three women all said they had travelled and were working willingly with no force involved and all were paid well, collecting their earnings each day. They only recognized 2 or 3 of the defendants and explained they were the floor manager, cashier, doorman etc. and that they had not paid them anything.

This was the only testimony ever taken.

Women were then transferred to the care of Immigration for deportation. By the time they arrived home they had been detained for periods of 18 – 66 days. Some of them had their documents stamped to say they were blacklisted from Thailand for committing the crime of prostitution. This is in contradiction to the Human Trafficking Law and regulations which state that witnesses must have right to stay and also be assisted.

¹⁹ รายการต่างคนต่างคิด ตอน กักตัวสาว อาบ อบ นวด นาดารี 5/07/59 (Thai)
<https://m.youtube.com/watch?sns=em&v=G2NjVnAEoYY>

From June 8th 2016 the 15 girls identified as victims remained in detention without access to their families for periods of 8 – 10 months. The last girl was released to make her own way home 12 hours' drive from Bangkok on March 15th 2017 after 281 days in detention. The girls were given just \$100 as compensation, most of which had to be spent on travel costs to get home.

Processes and detention of 121 women

Place of detention	Fined and released	Social Welfare Pak Kret	Bangkok Women's Remand Prison	Immigration Detention	Bail	Safe House
Reason for detention	N/A	Identified as victims	Immigration offences	Unlawfully Detained as witnesses	Violating Migrant Worker Act	Moved to Witness Protection
Number of women	23	15	10	21	47	72
Days detained/ bail	N/A	240 – 281	48	34	34	11 - 18

Note: A further 279 women who were employed at Nataree but were not at work at the time of the raid lost their jobs as a consequence

Alternatives: In its 40 years of being in business Nataree Massage never had a single Labour Inspection or an inspection by Social Security to check compliance. Either of these inspection processes could have uncovered any labour abuses, failure to comply with Social Security, including employing people under the age of 18 years which is in breach of the Labour Protection Act 1998 and the Entertainment Place Act 1966 (Amended 2003) which Nataree was registered under. It is a much less exciting operation but the minors could have been identified and assisted; the employer/owner could have been prosecuted and the labour rights of remaining workers restored. This happens in other industries, most recently the reforms lauded in the Thai fishing industry.

The three months of entrapment could have been 3 months training for workers, employer and management on the law and rights e.g. labour rights, rights of the child

Appx Three : Notes on Stereotyped Roles and Traditional Practices

We note and concur with the RTG report which recognizes “that traditional attitudes are an obstacle to women’s advancement”

Traditionally the eldest unattached daughter is responsible for caring for the family. Society and by extension the RTG, continues to embrace the expectation that women in the family, especially daughters, can be relied on as a defacto welfare system to support younger sibling still studying,

disabled family, elderly parents and/or grandparents. The ability to fulfil this role is a source of great pride and great stress for many women in Thailand.

Women providers, especially women who do sex work find there is little or no recognition of their value or status as head of the family. Officially households are only enumerated as “female headed” if there are no adult man living in the premises. Currently just 34.7% of households are recognized as having a woman as head of household²⁰, even though women are the main provider for a much greater number.

Women’s family responsibilities:

Unwaged caring work: 76% of caring work in the home is done by women. 5 million women work fulltime in unwaged care work in the home and on the land

Elderly parents/grandparents: In 2014 almost 80% of older persons received at least some income in the past year from their daughters and 37% of elderly people reported their daughter as their main source of income.

Extended Family: Our research has shown that over 90% of women doing sex work are supporting on average 3 – 5 adult family members. At least 85% of women sex workers are sending money to family monthly.

Crisis Support: All sex workers send money home in times of emergency or special economic need e.g. a brother entering the monkhood, medical costs, natural disaster, a niece’s graduation, funeral costs etc.

Children: Before starting sex work 80% of women will have been married and separated, becoming the sole provider for their child/children. Most marriages in Thailand are customary marriage or defacto relationships. Under the Family Registration Act of 1935 fathers in customary/defacto marriages bear no legal rights over or responsibility for their children. (*see more in section on Marriage Article 16*)

In the case of divorce after a registered marriage, courts may rule that men are financially responsible for their children however the rulings are rarely enforced.

Studies have found that 40% of separated or divorced fathers do not adequately contribute to the cost of raising their children. 30 per cent of fathers who leave the relationship have no further contact at all with their children.²¹The children are generally cared for by the grandmother or another older woman in the family and the mother works to send remittances. This is a common situation for working parents in Thailand where 21% of all children do not live with their parents²².

The traditional role of women in the family does not compel men to fulfil their common responsibility in the upbringing of their children as required under CEDAW Article 5. Many women find themselves suddenly alone, without qualifications or capital yet charged with the

²⁰ According to the National Statistical Office, in 2010, the ratio of female-headed households increased to 34.7 % from 26.8% in 2003. CEDAW Thai Footnotes

²¹ The IPSR study reflects these financial worries “The Impact of Internal Migration on Early Childhood Well-being and Development: a Longitudinal and Mixed-Method Study”, 2013, Mahidol University’s Institute for Population and Social Research (IPSR)

²² National Statistical Office: Ministry of Information and Communication Technology and National Statistical Office, Core Economic Indicators of Thailand, HRI/CORE/THA/2012

responsibility of supporting herself, her children, and often her extended family. Sex work is one of the very few viable occupations available to women in this situation.

Image:

Women who do sex work are routinely misrepresented as source of social problems, criminals or as passive victims of low intelligence and social status. In addition transgender women sex workers are frequently portrayed as prone to committing crimes especially theft and violence.

Such portrayals of women are committed by State and non-State agencies, for example reports related to tourism, HIV, raids and human trafficking operations. The acceptance of misrepresentation, degrading language and images encourages stigma, discrimination and is a violation of women's inherent dignity.

Public campaigns and policies that aim to decrease the acceptance of sex work itself in reality simply serve to increase stigma and impede social acceptance of women who do sex work. This encourages further discrimination and degrading treatment and fuels an environment of exploitation of sex workers with impunity.²³

Recommendations

- Undertake the necessary legislative changes to mandate that all biological fathers have a legal and binding duty to share financial responsibility for children's their care, regardless of marital status or whether or not they have contact with the child
- Develop systems that effectively enforce court rulings on child support
- Develop a robust and accessible welfare system with the eventual goal of providing universal financial support equal to a living wage for
 - Mothers and all carers
 - Elderly
 - Disabled persons
 - Students
- Policy reforms, State reporting and public campaigns on sex work and sex worker issues must not increase discrimination and stigma against sex workers; must be evidence based and informed by sex workers.
- Ensure that the language and images of sex workers used by the State respects the rights and honours the dignity of women who do sex work

²³ Joint Submission 6 - by the Planned Parenthood Association of Thailand and the Sexual Rights Initiative (Ottawa, Canada); OHCHR 2014