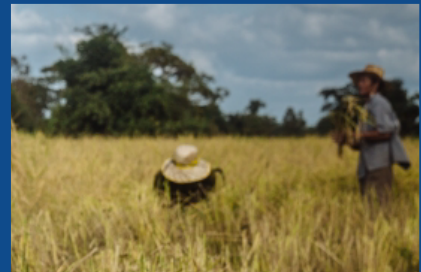




THAILAND MIGRATION REPORT 2019



Thailand Migration Report 2019

United Nations Thematic Working Group on Migration in Thailand

Edited by Benjamin Harkins



International Organization
for Migration



International
Labour
Organization

International Labour
Organization



United Nations Entity for
Gender Equality and the
Empowerment of Women



World Health Organization



United Nations Capital
Development Fund



Empowered lives.
Resilient nations.

United Nations
Development Programme



United Nations Action
for Cooperation Against
Trafficking in Persons



United Nations
Children's Fund



Bangkok Office

United Nations
Educational, Scientific and
Cultural Organization

United Nations
Educational, Scientific
and Cultural
Organization



Food and Agriculture
Organization of the
United Nations

Food and Agriculture
Organization of the
United Nations



United Nations
Population Fund



UNHCR
The UN Refugee Agency

Office of the United
Nations High
Commissioner for
Refugees



UNODC
United Nations Office on Drugs and Crime

United Nations Office on
Drugs and Crime



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Office of the High
Commissioner for
Human Rights



UNAIDS

Joint United Nations
Programme on HIV/AIDS



**THAILAND
MIGRATION
R E P O R T
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**Edited by
Benjamin Harkins**

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FOREWORD

The Thailand Migration Report 2019 is the fifth publication that members of the United Nations Thematic Working Group on Migration have produced since 2005. Like its predecessors, the report aims to provide up-to-date information on migration trends and patterns in Thailand, as well as analysis of migration-related issues and policy developments. Drawing on the expertise of the relevant UN agencies in Thailand, the report features thematic chapters which provide evidence-based recommendations for stakeholders on the formulation and implementation of migration policy and practice.

As a key country of origin, transit and destination for migrants, displaced persons and asylum seekers, Thailand is a regional migration hub within South-East Asia. Since the report was last published in 2014, official data shows that migration to Thailand has intensified. The non-Thai population in the country now stands at an estimated 4.9 million, a substantial increase from 3.7 million in 2014.

With an ageing population, low unemployment rate and continuing economic growth, the high demand for migrant workers in Thailand is likely to continue for the foreseeable future. Migrants will play a key role in Thailand's development as it integrates into the ASEAN Economic Community and restructures its economy under the Thailand 4.0 initiative. It is important that the development of policies to ensure well-managed migration is factored into Thailand's priorities as Chair of ASEAN in 2019.

The publication of this report takes place against the backdrop of significant efforts by the Royal Thai Government to combat human trafficking and exploitative working conditions for migrants. A range of measures have recently been introduced to address these issues, including the enactment of the Royal Ordinance on the Management of Foreign Workers Employment, the establishment of Migrant Worker Assistance Centres and the ratification of the Protocol to the Forced Labour Convention, 1930 (No. 29). However, increased government regulation alone is unlikely to put an end to cases of abuse against migrants. Partnerships with other key stakeholders, such as the private sector, civil society, trade unions, international organizations and the media, will be necessary to promote safe migration and decent work for migrants.

In-line with the 2030 Agenda on Sustainable Development and the Global Compact for Safe, Orderly and Regular Migration, the United Nations is committed to supporting Thailand in its efforts to develop policies and programmes that maximize the benefits of migration for migrants and society. Through the establishment of a long-term, coherent and rights-based governance framework, migration can contribute to equitable and inclusive growth and development for all.



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This research would not have been possible without the contributions of many individuals who assisted with its design, data collection, analysis and publication. The editor especially wishes to thank Dana Graber Ladek, Chair of the United Nations Thematic Working Group, Petra Neumann and Reuben Lim for their unwavering support during the production of this report on behalf of IOM Thailand.

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Benjamin Harkins

Editor

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LIST OF ACRONYMS

ACE	ASEAN Confederation of Employers
ADB	Asian Development Bank
AEC	ASEAN Economic Community
ARCM	Asian Research Center for Migration
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
CCCIF	Command Centre to Combat Illegal Fishing
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CLMV	Cambodia, the Lao People’s Democratic Republic, Myanmar and Viet Nam
CPMS	Colombo Process Member States
CRC	Committee on the Rights of the Child
CSMBS	Civil Servant Medical Benefit Scheme
CSO	civil society organization
DLPW	Department of Labour Protection and Welfare
DOE	Department of Employment
DOF	Department of Fisheries
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
Fintech	financial technology
FSP	financial service provider
GAATW	Global Alliance Against Traffic in Women
GCM	Global Compact for Safe, Orderly and Regular Migration
GDP	gross domestic product
GFATM	Global Fund to fight AIDS, TB and Malaria
GMS	Greater Mekong Sub-region
HIV	human immunodeficiency virus
ILO	International Labour Organization
IOM	International Organization for Migration
IRIS	International Recruitment Integrity System
IUU	illegal, unreported and unregulated fishing

KYC/AML	know your customer/anti-money laundering
Lao PDR	Lao People’s Democratic Republic
MDT	multi–disciplinary team
MSDHS	Ministry of Social Development and Human Security
MHIS	Migrant Health Insurance Scheme
MLC	migrant learning centre
MOL	Ministry of Labour
MOPH	Ministry of Public Health
MOU	memorandum of understanding
MTO	mobile transfer operator
MWAC	Migrant Worker Assistance Centre
MWG	Migrant Working Group
NCPO	National Council for Peace and Order
NESDB	National Economic and Social Development Board
NFPE	Non-Formal Primary Education
NGO	non-governmental organization
NSO	National Statistical Office
NSWP	Global Network of Sex Worker Projects
NV	nationality verification
OBEC	Office of the Basic Education
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OESPAAA	Alliance of Asian Associations of Overseas Employment Service Providers
OHCHR	Office of the United Nations High Commissioner for Human Rights
ONIE	Office of Non-Formal and Informal Education
OSH	occupational safety and health
PIPO	Port-in/Port-Out
PIS	ASEAN Framework Agreement on Priority Integration Sectors
PPE	personal protective equipment
ROK	Republic of Korea
SDG	Sustainable Development Goal
SLAPP	strategic lawsuits against public participation
SMEs	small and medium-sized enterprises
SSF	Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries
SSS	Social Security Scheme
STI	sexually transmitted infection

SWIFT	Society for Worldwide Interbank Financial Telecommunication
TB	Tuberculosis
TDRI	Thailand Development Research Institute
THB	Thai baht [currency]
UAE	United Arab Emirates
UCS	Universal Coverage Scheme
UHC	Universal Health Coverage
UK	United Kingdom
UN	United Nations
UN-ACT	United Nations Action for Cooperation against Trafficking in Persons
UNCDF	United Nations Capital Development Fund
UNDP	United Nations Development Programme
UNDESA	United Nations Department of Economic and Social Affairs
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
UNPAF	United Nations Partnership Framework
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
USD	United States dollar [currency]
WHO	World Health Organization



Abstract:

Research into the Thai sex industry has often focused on trafficking for the purpose of sexual exploitation, rather than on the working conditions and livelihoods of sex workers. In part, this is because sex work remains illegal in Thailand. The conflation of sex work and trafficking for the purpose of sexual exploitation fails to recognize that working in the sex industry is a practical decision for many individuals, including migrants. The Thai sex industry provides migrant workers with an opportunity to earn higher wages than are available in countries of origin or in other sectors available to migrant workers in Thailand. However, migrant sex workers are currently unable to draw on the protections available to other migrant workers because of the illegality of their work and lack of regular migration channels into the sector. Criminalization of sex work increases migrant sex workers' vulnerability to exploitation. Systemic legal, policy, and social changes – including decriminalization of sex work and dedicated efforts to ensure labour protection – are necessary to protect the rights of migrant (and Thai) sex workers and enable them to increase their contribution to, and participation in, Thai society and their communities of origin.

Introduction

The term “sex work” is often misconstrued.¹ For the purpose of this chapter, sex work is defined as the provision of sexual services in exchange for economic benefit between consenting women, men and transgender adults (ILO, 1998; UNAIDS, 2015; NSW, 2017). Sexual services constitute a wide range of activities, which include “flirtation, stripping, escort service”, as well as sexual intercourse and other sexual acts (Parreñas, 2011).

Migrants in sex work exist at the nexus of migration regimes, labour and businesses laws, criminal justice frameworks, and the counter-trafficking efforts often used to justify increased migration controls. The population of migrant sex workers are rarely recognized as agents of their own migrations or capable of choosing to enter the sector. Further, their contributions as workers in related industries – bars, restaurants and tourism venues – remain undervalued. The prevalence of anti-trafficking rhetoric, the confluence of administrative and criminal law, and discriminatory norms that ascribe little value to women's work that is considered to be low-skilled all converge in the state response to migrant sex workers.

¹ Language note: Throughout this chapter, the terms “migrant worker” and “sex worker” are used as the preferred terminology. “Migrant worker” avoids the use of othering terms such as “foreign”, “alien” or “guest”. “Sex worker” is the preferred term chosen by many of those working in the sex sector and confers agency on the individual, unlike “prostitute”. Throughout the chapter, both “migrant worker” and “sex worker” are used as inclusive terms, referring to diverse workers of all gender identities, gender expressions and sexual identities, including men, women and transgender workers.

Thailand, along with many other nations, fails to adequately protect the human and labour rights of these men, women and transgender individuals. Sex work remains criminalized, perhaps as a result of – and indeed perpetuating – stigma and discrimination about sex work and those who engage in it. Criminalization of sex work has often created further vulnerabilities for an already marginalized population of workers.

Sex work provides income to millions of workers around the world, including many in Thailand and the ASEAN region. Data on the numbers of sex workers in Thailand is not complete, as the illegality of their work and the irregularity of the migration channels used means that sex workers are unable to report it as their means of employment. An ILO study in 1998 estimated that between 0.25 and 1.5 per cent of women in Indonesia, Malaysia, the Philippines and Thailand were engaged in sex work (ILO, 1998). More recently, sex worker advocacy groups have estimated that there may be 300,000 sex workers in Thailand (Empower, 2016).

Importantly, sex work often provides a much higher wage than other low-skilled job options available in Thailand, with a recent study suggesting earnings of 2 to 10 times the minimum wage (GAATW, 2018). This allows many sex workers to support their families in rural areas, with ILO research in 1998 estimating close to USD 300 million is transferred annually by women working in the sector (ILO, 1998). Sex work also usually offers flexible hours, making it more attractive to individuals who may be required to perform other roles, including domestic work and caring for children or the elderly.

Employment in sex work is often conflated with trafficking for the purpose of sexual exploitation, especially when movement within and across borders is involved. There are numerous reasons for this conflation, and the issues involved are difficult to unravel. Many individuals, including policymakers, consider that a “choice” to enter sex work is not possible. Others argue that the choice of anyone to enter into sex work should be regarded as a practical decision (Aoyama, 2009).

Despite evidence to the contrary, it is often believed that all sex work is the result of coercion; thus sex workers are more likely to be identified as victims of trafficking. The “choice” is considered an incomplete expression of agency where economic circumstance is the main driver for entering into sex work. When individual agency is removed from sex workers, trafficking can easily be inferred, often to the detriment of those identified as victims (ILO, 1998; IWRAP-AP and NSWP, 2017; GAATW, 2018).

Given the social and economic inequalities that pervade Thailand and the region, sex work is a rational livelihood strategy for many workers. Studies by the ILO and Empower Foundation have found that the vast majority of people working in the Thai sex industry are there by choice and are not coerced or forced (ILO, unpublished; Empower, 2012).

Sex workers who are migrants often go abroad irregularly, or lose their legal status. Brokers who facilitate the movement of migrants across borders may be interpreted as “traffickers” despite the willingness of many migrants and the voluntariness of the movement. Given international pressure to report on action to counter trafficking in persons, it can be expedient to assume all sex workers are victims. While this conflation may be due to misunderstanding, it may also be a conscious – or subconscious – effort to stigmatize sex work and prevent people, especially women, from migrating for the purpose of sex work (NSWP, 2011). It is necessary to understand

that while trafficking for the purpose of sexual exploitation is a serious issue that needs to be addressed, it is distinct from sex work.

International and civil society organizations in Thailand have been actively advocating to bring sex worker voices and issues into mainstream human rights discussions. In 2016, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) expressed concerns about the exploitation of sex workers and the enforcement of Thailand's Suppression and Prevention of Prostitution Act of 1996. Their recommendations included decriminalizing women in sex work, which would allow sex workers and entertainment businesses to operate within the regulatory framework of Thailand's labour laws (CEDAW Committee, 2017).

The Government of Thailand has yet to publically respond to this recommendation (GAATW, 2018), but public platforms for sex workers to contribute to this discourse are increasing. In July 2017, during the Sixty-Seventh Session of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Empower Foundation submitted a shadow report highlighting the negative consequences of raids on entertainment establishments in Thailand, which are fuelled by and perpetuating the conflation of sex work and trafficking (Empower, 2017). In February 2018, the Global Alliance Against Traffic in Women (GAATW) released a seminal report on sex worker representation, mobilization and working conditions, which includes a chapter highlighting the impact of anti-trafficking policies and practices from the perspective of women sex workers in Thailand (GAATW, 2018).

Though sex workers, civil society groups and United Nations agencies in Thailand have produced substantial research advocating for sex workers' rights, development attention and funding around the nexus between migration and sex work has, for the most part, continued to conflate sex work and trafficking. In order to add nuance to this debate, this chapter explores the working conditions of migrant sex workers in Thailand from a labour migration and labour rights perspective.

International human rights standards

Despite little specific guidance within international law, the rights of sex workers, including migrant sex workers, are already included in existing human rights instruments by the principle of universality. The fundamental human and labour rights of sex workers are protected in numerous key human rights instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

Sex worker rights are also reflected in several ILO Conventions and Recommendations. The Occupational Safety and Health Convention, 1981 (No. 155) covers the sex and entertainment industries under Article 3(a): "*the term branches of economic activity covers all branches in which workers are employed*". The ILO Recommendations concerning HIV/AIDS in the world of work (No. 200) and the transition from informal to formal economy (No. 204) are particularly relevant for sex workers in terms of accessing sexual and reproductive health services and participating in the formal economy.

While the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons

(Trafficking Protocol) address exploitation in the context of prostitution, “exploitation of prostitution” is not clearly defined in either instrument. “Exploitation” has no agreed definition within international law and is often considered to be an ambiguous concept (IWRAW-AP and NSWP, 2017). It may therefore be interpreted to serve diverse agendas, including to impose restrictions on the right to choose sex work as a livelihood option.

Sex work and migration in Thailand

In the past few decades, tourism-focused economic development in Thailand has interacted with existing social norms in such a way as to set the conditions for an expansive sex industry (ILO, 1998). The Thai sex industry became well known internationally from the 1950s to 1970s, particularly during the Viet Nam War when Pattaya was used as a rest and recreation centre for American soldiers. However, after the withdrawal of military troops, the sex industry expanded to cater to tourists. As this occurred, many women and transgender women from the rural areas of the north and northeast of Thailand migrated to urban centres in search of opportunities to earn a higher income.

During the 1980s and 1990s, foreign investment increased and tourism became a key driver for Thailand’s economic development. With the promise of more jobs and increased income due to tourism, internal migrant sex workers were joined by workers from Cambodia, the Lao People’s Democratic Republic, Myanmar, Viet Nam and China (ILO, 1998). Migrant sex workers often hold irregular and precarious legal status in Thailand, in part due to the lack of regular migration channels available for sex workers. At present, anecdotal evidence suggests that migrant sex workers from Thailand’s neighbouring countries often initially work in towns and cities close to the border before moving on to urban centres like Bangkok and Pattaya (ILO, unpublished).

Although use of sexual services by non-Thai customers is commonly seen as the key driver for sex work in Thailand, there is also a large local demand. Nonetheless, tourism arguably benefits from the international reputation of the Thai sex industry (ILO, 1998). The high visibility of sex work in tourist areas illustrates the vital role of tourists in patronizing the sex industry (ILO, 1998; Phongpaichit, 1982; Truong 1983, 1990; Lee, 1991; Leheny, 1995). Despite criminalization of sex work and denial of the scale and economic importance of the sector, the strategy of Thai tourism authorities to promote the “exotic” appeal of the Thai people – including Thai women and transgender women – has likely contributed to the expansion of the sex sector and concurrent economic benefits (ILO, 1998; Villar, 2017).

The Thai sex industry mostly employs workers from within Thailand and the region, but also from Central Asia, Europe and Africa. Pattaya is typically the destination for women from European countries engaged in sex work but others travel from Uzbekistan, Uganda and Madagascar. In Phuket, some a-go-go bars have specifically been set up for sex workers from Russia, with working conditions and employment contracts published online in Russian (Empower, 2016).

Migrant sex workers are often highly mobile, moving across borders within South-East and East Asia. For some, this is due to the limitations posed by short-term visas and visa exemptions. Other migrant sex workers choose to travel around the region between Singapore, Malaysia and Hong Kong (Chin, 2013). While the patterns of mobility by sex workers vary considerably, the cross-border movement of some is based on the seasonal influx of tourists into Thailand (Villar, 2017).

Sex workers generally rely on brokers and intermediaries to migrate due to the legal and financial barriers involved, including the criminalization of sex work in most countries and the high costs associated with regular migration (Chin, 2013; Villar, 2017). In some cases, reliance on unfamiliar brokers may increase the risk of exploitation for migrants (Parreñas, 2011; ILO, 2017; Harkins, 2014; Natali, McDougall and Stubbington, 2014).

In February 2018, the Global Network of Sex Worker Projects (NSWP) released a briefing paper exploring the intersection between migration and sex work. The report highlights several interrelated reasons for migration into sex work that are evident in Thailand. Some sex workers migrate to find more lenient conditions in which to sell sexual services, attempting to avoid harassment and violence at the hands of authorities. Other sex workers migrate to escape stigma and discrimination where misogyny, transphobia and homophobia are prominent. Access to gender-appropriate health care – including HIV treatment, gender-affirming surgery and hormone therapy – may also be a reason for migration (NSWP, 2018). Thailand is well-recognized as being more accepting of transgender individuals than many of its neighbours. It also provides relatively easy access to HIV treatment and is a hub for inexpensive gender-affirming surgery, providing several “pull” factors for migration of sex workers to Thailand (Aizura, 2011).

However, media treatment of transgender sex workers in Thailand continues to propagate negative stereotypes (Burapha University, 2017). A large number of news stories written about transgender sex workers depict them as violent attackers and thieves. Some transgender women have reported being stopped, assaulted and jailed by the police under false charges, as well as being regularly harassed by volunteer tourist “police” in Pattaya (Yongcharoenchai, 2017). Transgender women, regardless of whether they are sex workers, are often presumed to be doing sex work, which puts them at great risk of violence and abuse from police and further entrenches social stigma (Villar, 2017).

Despite these challenges, the higher incomes earned by sex workers remain the key motivation for migrating to Thailand to engage in sex work (Panyasuppakun, 2018). An unpublished ILO study found that while respondents were acutely aware of the risks involved with the industry, the potential gains were seen as outweighing the negatives. Fewer than half of respondents interviewed in the study had plans to leave sex work at a specific point in time. Sex work in Thailand was also viewed as more relaxed than other jobs and afforded sex workers with ancillary benefits such as learning a foreign language (ILO, unpublished).

For women migrant workers, the sector is especially attractive as they have fewer opportunities than men to migrate regularly into formal sector jobs. Gender-based restrictions on labour migration limit the options available to seek employment through legal channels (ILO, 2017). Moreover, women migrant workers frequently experience gender-based discrimination in the workplace, resulting in systematically lower wages in comparison to men migrant workers (Harkins, Lindgren and Suravoranon, 2017). Consequently, sex work remains one of the few sectors in Thailand where women migrants have the opportunity to earn substantially more than the minimum wage.

Criminalization and anti-trafficking responses

There are policy options available beyond the criminalization of sex work and the restriction of migration into the sector. In 2003, New Zealand passed the Prostitution Reform Act and became the first country in the world to fully decriminalize sex work. Since the passing of the Act, sex

workers have been in a better position to challenge those who seek to exploit them – as illustrated in a 2014 case in which a sex worker brought a brothel operator to court for sexual harassment and won NZD 25,000 in compensation (Armstrong, 2018; Crichton, 2015). However, the New Zealand model has also been criticized for prohibiting migrants from being granted temporary permits for sex work. This prohibition puts migrant workers at an increased risk of exploitation, such as being blackmailed by clients and being forced to work long and inflexible hours by brothel operators (Roguski, 2013; GAATW, 2018). Despite these flaws, the New Zealand model illustrates that decriminalization can be effective in protecting sex workers from exploitation.

In Thailand, however, criminalization and anti-trafficking efforts have often resulted in harassment and detention of sex workers (Empower, 2012). The Thai Government should be recognized for its efforts to reduce trafficking, but the outcomes for sex workers have often been challenged by advocates. Anti-trafficking responses have largely been shaped by the “3Ps” (prevention, protection and prosecution) framework articulated in the United Nations Trafficking Protocol. Although the framework recommends the holistic implementation of prosecution, protection and prevention activities to curb human trafficking, prosecution figures are often emphasized. This has led to a pattern of authorities prioritizing “raids and rescues” leading to prosecution and conviction over protecting the human rights of sex workers, who may be either mistakenly identified as, or working alongside, victims of trafficking.

Thailand has received substantial pressure from the international community to address trafficking in persons, particularly through the US Department of State’s Trafficking in Persons Report. US anti-trafficking policies have historically been focused on trafficking in the sex sector (Chuang, 2014), which has had a considerable influence on the Thai Government’s approach. In 2014 and 2015, Thailand dropped to the lowest rating of Tier 3 within the report’s ranking system. The Thai Government began increasing their response to human trafficking, which led to an improved ranking of Tier 2 in June 2018. However, much of the action taken has been related to improving the legal framework and law enforcement in the fishing and seafood sectors.

In the sex industry, raids on entertainment establishments have been one of the Government’s common anti-trafficking responses, often leading to the arrest and detention of sex workers. In their aftermath, sex workers are frequently labelled either as criminals under the Penal Code and the Prevention and Suppression of Prostitution Act, or as victims of trafficking under the Prevention and Suppression of Human Trafficking Act (Empower, 2012, 2016, 2017). The result is that the majority of those affected by raids lose their livelihoods and their support systems; ending in deportation back to a situation of poverty for many migrants.

The Penal Code punishes those engaged in prostitution as well as in trafficking of persons for the purpose of sexual exploitation. It also penalizes persons who are habitually associated with a sex worker or receive money or other benefits arranged for by a sex worker. Especially concerning in relation to increasing access to justice is the prohibition against assisting a sex worker in a dispute with a customer.

The Prostitution Act also criminalizes acts of solicitation for the purpose of prostitution and prohibits persons associating with one another in a “prostitution establishment”. The prohibition on associating with a sex worker has the effect of disrupting peer networks, which are often the only support system available to sex workers (NSWP, 2018; Villar, 2017). Penalizing association with a sex worker also threatens migrant sex workers’ housing rights, as landlords may refuse to

provide lodging for fear of incrimination (NSWP, 2018).

In some cases, the Prostitution Act is used by authorities to justify activities that may be considered extortionate. It has long been reported that sex establishments pay police to operate (ILO, 1998). More recently, a study by Empower Foundation found that women migrant workers in border areas spent over a quarter of their salary on “informal payments”. Sex workers report that authorities also sometimes extort free sexual services (Empower, 2012). In another study, transgender sex workers in Pattaya were found to pay bribes directly to police, as well as local mafia, “in order to remain safe” (Villar, 2017).

The mandate of the State and law enforcement officials under the Anti-Trafficking Act opens up the risk of harassment and human rights violations. Although designed with the intention to provide trafficking victims with assistance and protection, the Act has been used to trigger raids on venues where sex work is suspected to take place. Sex workers are routinely arrested in these raids and labelled as victims of trafficking, even when they are not trafficked or in need of being rescued (Empower, 2012; 2017). Moreover, migrant workers are often unaware of their rights and do not understand the purpose of interviews conducted by police (Empower, 2016). In these “rescue operations”, migrant sex workers who appear over 18 and can produce documentation are often charged with violating the Prostitution Act, the Immigration Act or the Alien Employment Act. Those not able to provide proof of age are regularly disbelieved and few attempts are made to secure evidence through family members (Empower, 2012).

During police raids, wages due, savings and belongings of sex workers may be lost or confiscated. Compensation for damages and loss of livelihood is difficult to obtain due to the illegality of sex work and the irregular legal status of many migrant sex workers (Empower, 2017).

Exemplifying the “raid and rescue” approach to counter-trafficking, a raid was conducted at Nataree massage parlour in Bangkok on 7 June 2016 by police, local administration officials and soldiers, with an international NGO. Following a three-month long investigation, the raid resulted in the detention of 121 women. Of those detained, 15 sex workers under the age of 18 were identified as victims of trafficking, resulting in their compulsory placement under the care of the Department of Social Welfare. The last to be released from the Government’s shelter left after 281 days. The women identified as victims of trafficking who were found to also be migrants were deported. The women not considered victims of trafficking were fined for violating the Prostitution Act and/or Immigration Act, detained, and for 73 migrant women, deported. Twenty-one women were also classified as “witnesses” but were nonetheless held in detention for 34 days. Empower made a formal request for an investigation by the National Human Rights Commission of Thailand (Empower, 2017). After visiting the women in the detention centre, the Commission issued a public statement that the women had been detained without legal authority (GAATW, 2018).

Irregular migrant workers are most vulnerable in these raids as they face being deported and fined for providing sexual services. As in the Nataree raid, migrant sex workers not considered to be victims or witnesses are usually sent to detention centres to await deportation. Those identified as victims of trafficking are taken to shelters to await court hearings that may also result in deportation (GAATW, 2007). While victims of trafficking are offered vocational training in rehabilitation centres, the training often perpetuates gender stereotypes and provides them with skills that they are not interested in and which do not provide for a livelihood. There is also

differential treatment between men and women victims of trafficking. While men are allowed to seek work outside the shelter, women are not as regularly given permission as it is considered impractical or dangerous for them to leave the shelter (Arora, 2017; Empower, 2017; GAATW, 2018).

The lengthy process prior to deportation can take its toll on those detained. Time wasted in these residential centres without an income or freedom of movement is frustrating for many (Surtees, 2013) and critical for others whose families, including children, depend on their income for survival. Women detained prior to their return home are likely to leave without any income or savings and may potentially still be in debt to the brokers they used to facilitate their initial migration. As a result, the survival of these women and their families often relies on their return to Thailand or another country, often to return to sex work (GAATW, 2007).

Beyond the impact on individuals, raids also perpetuate stigmatization of sex workers and gender minorities through sensationalized reports in the media (Empower, 2016). This stigma, which disproportionately affects women, can become particularly problematic when migrant workers return to an unwelcoming or discriminatory community. The media's focus on human trafficking as primarily an issue of sexual exploitation has also contributed to the conflation of sex work and trafficking by creating and disseminating the image of an "ideal victim", used to elicit emotive reactions rather than engage with the deeper complexities of their situations. (Uy, 2011; Lopez, 2018).

In spite of the pervasive social stigma that remains in relation to employment in the sex industry, sex workers have reported that public attitudes in Thailand have become more open and tolerant in recent years. Public discourse on sex work has increased, with sex workers' dreams highlighted at the 2018 Bangkok Art Biennale, and new academic research focusing on the sector (Chandran, 2018; Panyasuppakun, 2018). Likewise, the working environment in the sex industry can be positive: sex workers have pointed out that there is a strong sense of friendship and family among peers, who are often sources of information and mutual support (ILO, unpublished).

Labour protection and occupational safety and health

Sex work takes place in a range of venues. Massage parlours provide traditional massage, with some sex workers providing sexual services within or outside some of these establishments. There are also bathhouses or saunas equipped with bathtubs, with some sexual services taking place at the venue. Various other types of venues are also common, including a-go-go bars, pubs, coyote bars, beer bars, and karaoke bars (ILO, unpublished). However, it should be noted that sex work often takes place outside of entertainment venues, and it can be difficult to clearly differentiate between sex work and affective relations (Empower, 2017). The lack of a traditional "workplace" is another challenge to the recognition of sex work as work.

Entertainment places such as massage parlours, nightclubs, a-go-go bars, karaoke bars and similar establishments where sex workers are often employed are registered under the Entertainment Place Act. While the Act imposes licensing requirements on entertainment venues, it does not offer protection for the labour rights or occupational safety and health of entertainment workers. Owners and managers may implement harsh wage deduction practices for lateness, weight gain, dress code infringements, minimum drinks orders and arguments with customers

(Empower, 2017; ILO, unpublished). Workers are commonly fined for absences and are required to either work seven days a week or lose out on pay to take days off (ILO, unpublished). Unfair wage deductions and workplace rules can pressure sex workers into actions they are not comfortable with, increasing their vulnerability to exploitation by employers, clients and other parties.

The Labour Protection Act is the key legislative instrument outlining workers' rights in Thailand. In the concluding observations on Thailand, the CEDAW Committee heard a statement from the Inspector-General from the Ministry of Labour affirming its application to protecting the rights of workers in the entertainment sector.

"[We] regard women working in entertainment ... the rights and general conditions ... [to be] protected by the Labour Protection Act, the Social Security Act, the Workers Compensation Act and other related labour laws the same as workers in other businesses. ...Regarding the employment of migrant workers in the entertainment sector ...employers in the entertainment sector can legally employ unskilled migrant workers, both male and female for legal activities in the establishment" (Empower, 2017; CEDAW/C/THA/CO/6-7).

Sex workers are not explicitly excluded from mechanisms providing access to justice, however, in practice they are unable to report exploitation and abuse without facing the possibility of arrest, deportation and public shaming (Empower, 2016). These deterrents prevent sex workers from lodging grievances when they do not receive their basic labour rights in their legal employment, including holiday pay, overtime pay, severance pay, regular days off, and occupational safety and health protections.

Aside from restrictions in their ability to use labour protection mechanisms, access to sexual and reproductive health care is also difficult for migrant sex workers. Migrant sex workers are often not free to leave their work establishments to seek health services. Physical accessibility can be limited as many state-funded health clinics are not open during hours that are convenient for migrant sex workers or are located in areas far away from where they are working. In addition, health-care providers may hold biases against sex workers, affecting the way they are treated as patients (ILO, unpublished). Police have been reported to use the possession of condoms as evidence against sex workers, thus discouraging condom use and increasing sex workers' vulnerability to HIV infections (NSWP, 2017).

HIV remains the overarching health concern for employers in the sex industry. Some impose weekly mandatory HIV and sexually transmitted infection (STI) testing, while others will only take migrant sex workers to access treatment when they are ill (ILO, unpublished). Although HIV prevention and treatment has been used as an entry point to address sex workers' rights, migrant sex workers themselves have emphasized that their health needs go beyond HIV and include mental health, drug and alcohol abuse, and nutrition. The importance of maintaining their psychosocial well-being and the need for safe spaces to rest and relax with peers has also been expressed by migrant sex workers (NSWP, 2018).

There have been efforts to increase access to health services for migrant workers, though not targeted specifically for migrant sex workers. In 2001, the Ministry of Public Health announced the Migrant Health Insurance Scheme, which provides health coverage, including antiretroviral treatment, for registered and unregistered migrants from Cambodia, the Lao People's Democratic Republic and Myanmar (Tangcharoensathin, Thwin, and Patcharanarumol, 2017). One Stop

Service Centres and reduced health insurance fees have enabled more migrants to register and enrol in the programme. However, many migrant workers have not enrolled in the MHIS due to the upfront costs (IOM and WHO, 2009; Tangcharoensathin, Thwin, and Patcharanarumol, 2017). Many migrant workers are young and healthy, which contributes to them not seeing the value in investing in health insurance (Harkins, 2014). Additionally, migrant workers are not always aware of what can be claimed under the scheme, as some information is only available in Thai (Fisher, 2017; IOM and WHO, 2009).

Migrant workers who are enrolled in the MHIS and do not have services provided by their employers have no other option than to visit private doctors, clinics or pharmacies (Barmania, 2013). Many undocumented migrant sex workers, particularly in border areas, have reported having to pay for HIV testing and treatment out-of-pocket (ILO, unpublished). The lack of accessible and affordable health-care services can discourage migrant sex workers from seeking necessary care.

Sex workers in Thailand often have to work in conditions that put their safety at risk. These risks include being required to drink while working, a lack of safe transportation options to and from the workplace due to the hours of work, no private changing rooms, no separation between employees' accommodation and the workplace, inadequate emergency exits, poor bathroom facilities and unclean venues (ILO, unpublished).

To counteract these conditions, some sex workers in Thailand have turned to organizing to increase occupational health and safety standards. In 2006, sex workers, under the banner of Empower Foundation, created a working model for a fair and just workplace for sex workers – the Can Do Bar. Unlike some entertainment venues, the Can Do Bar's physical environment complies with the Thai Labour Protection Act. The bar also provides opportunities for skill advancement and training on first aid, safe sex, safe lifting, emergency procedures, managing difficult or violent situations, and English language training (Empower 2016, 2018).

Conclusion

Recognizing sex work as work is crucial in protecting the rights of migrant sex workers and differentiating sex work from trafficking for the purpose of sexual exploitation. Criminalization of sex work institutes a structural barrier that prevents sex workers, especially migrants, from seeking legal protection and accessing justice. Other factors that prevent sex workers from lodging complaints about rights violations include the lack and/or high cost of legal aid; and the lack of safe, confidential and non-judgmental avenues for reporting abuse.

Due to various intersecting social and legal barriers and constraints, migrant sex workers are currently unable to maximize their labour market outcomes. While some migrant workers are able to earn high wages, gain skills, and live with a level of autonomy not available in other sectors, a majority still face exploitative working conditions.

The current focus on prosecution within the anti-trafficking response in Thailand enables raids on entertainment venues that place migrant sex workers at heightened risk of being unlawfully detained and deported, severely damaging their livelihoods. Moreover, raids propagate stigma against those working in the sex industry, which can increase discriminatory treatment against them within Thai society.

In order to better protect the rights of migrant sex workers, efforts must be made to provide them with legal status, ensure safe and secure workplaces and expand access to remedy for abusive employment practices. Little progress will be made on reducing their exploitation until they are viewed not as victims or criminals but as workers who are entitled to labour rights.

Recommendations

1. **Decriminalize sex work and protect sex workers' rights through labour protection and migration laws:** Decriminalizing sex work is an essential first step to recognizing sex workers as right bearers entitled to legal and social protection by the State. By amending or repealing laws that directly and indirectly criminalize sex workers, labour protection mechanisms can be developed to eliminate recruitment and employment malpractice. For example, allowing sex workers to register as migrant workers at One Stop Service Centres for the service sector. It is essential to ensure migrant sex workers' voices are appropriately represented throughout the process of legislative reform and the development of protection mechanisms, through social dialogue that also engages with national sex worker organizations.
2. **Review anti-trafficking responses that increase the risk of exploitation and violence for migrant sex workers of all genders:** It is vital to review the implementation of and amend where necessary anti-trafficking laws, policies and mechanisms that institutionalize harassment, racial and gender profiling, and violence by State actors (including the police and immigration officials) against women, men, and transgender sex workers. The Thai Government should explore the potential of coordinating with sex worker organizations to adequately screen for victims of trafficking. Migration governance regimes should recognize that sex workers can assist in anti-trafficking efforts by accurately identifying persons affected by trafficking. The review and amendment of such anti-trafficking responses must include consultations with sex worker organizations and relevant human rights organizations.
3. **Improve working conditions of sex workers to meet decent work standards:** Sex workers, including migrants, should be protected by labour laws that enshrine decent work principles. Minimum standards should protect all workers in this sector. Standards should include minimum wage, regular days off, access to social protection, and improved occupational health and safety, including prohibiting violence in the world of work. Unfair wage deductions and other employment malpractices should be prohibited. Employer compliance to minimum standards should be ensured through proper implementation of labour inspections. Additionally, the labour inspectorate mandate should be expanded to include entertainment venues and reviewed with the rights of all migrant and non-migrant entertainment workers in mind. In this light, the Department of Labour Protection and Welfare may hold discussions with relevant sex worker organizations, with technical support from relevant international organizations, to design a decent work framework that can update Thai labour and migration systems with respect to sex workers' rights.
4. **Improve access to health services:** Ensure all sex workers have access to quality condoms free of charge. Maintain public campaigns for safe sex and for HIV and STI prevention. Ensure that migrant sex workers can access health-care services that provide reproductive health-care advice; voluntary testing services, treatment including for HIV; access to psychosocial counselling; and specialized services. It is equally important to sensitize health service providers on sex work issues and ensure the delivery of non-judgmental and

confidential health-care service.

5. **Improve access to legal services:** Sex workers, especially migrants, have stressed the need for legal information, including what their rights are and what protections they are entitled to, and how to protect themselves from harassment. Sex workers should also have access to safe, non-judgmental and confidential avenues for reporting labour complaints and human rights violations, and lawyers with familiarity with sex work and migration issues should be made available. Legal aid services should be available free or at a low cost to remain accessible. Migrants pursuing a legal case should be provided dispensation to stay in Thailand during the proceedings.
6. **Reduce stigma and discrimination against sex workers:** Stigma and discrimination against sex work compound the social and economic disadvantages that sex workers face. Reducing stigma against sex workers would also begin to undo the conflation of sex work and trafficking by respecting and emphasizing the ability of individuals to choose sex work. It is crucial to work with policymakers, media and law enforcement to tackle misconceptions about migrant sex workers and increase understanding of migrant and sex worker issues. Finally, ongoing efforts to displace stereotypical and harmful traditional gender norms and roles – particularly regarding women and the negative stereotypes of transgender women – must continue.

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