

Joint UPR Submission on the Human Rights of Sex Workers in Thailand

1. This report is submitted jointly by the **Planned Parenthood Association of Thailand**¹ and the **Sexual Rights Initiative**². It focuses on issues of human rights and sexual rights of sex workers in Thailand. This report summarizes the current situation and challenges that sex workers in Thailand are facing with respect to their human rights and sexual rights. It also presents recommendations for the Government of Thailand to improve the quality of life of sex workers and further the realization of their human rights, including their sexual rights.

Background and Context

2. Sex workers in Thailand consist of people of all genders, with a majority of them being Thais who come from a poor family background or from rural areas; some sex workers are undocumented or irregular migrants from the neighbouring countries of Laos, Cambodia, Vietnam and Myanmar. The majority of sex workers can be found in major tourist cities such as Bangkok, Pattaya, Chiangmai and Phuket.

3. It is difficult to estimate the numbers of sex workers in here since prostitution, though openly practiced, is illegal. The majority of sex workers conceal their work status for fear of being arrested by police and being stigmatized and discriminated against in society since the perception towards sex workers is generally negative. Apart from those who work in venue-based entertainment establishments such as karaoke bars or body massage parlor and thus registered as “service providers”, there are many who keep their illegal working status as a secret and act as “freelancers”³. The latter groups are more vulnerable to violations of their human rights, including violence or harassment, and greater struggles in redressing violence they have experienced. In addition, they also lack of access to proper information and knowledge on the prevention of HIV and sexually-transmitted infections and to health care and services.

Legal Framework

4. The Prevention and Suppression of Prostitution Act, B.E. 2539 (1996) (the “Prostitution Law”), is the central legal framework prohibiting prostitution which is defined as any act done to gratify the sexual desire of another in exchange for money or any other benefit, but only if it is done “in a promiscuous manner”⁴. The Prostitution Act, in a way, has fueled an environment where police and local authorities feel emboldened to take abusive actions against sex workers based on outdated or unrelated laws and policies, such as laws directed at social order policy and public nuisance policy. Frequently police run entrapment or sting operations in direct contradiction to police policy which only authorizes such actions for the investigation of serious drug or weapons crimes. In some case, even the possession of condoms has been used as evidence to prosecute sex workers for committing a crime.

5. These laws and actions of the police have become the main barrier for sex workers, who want to seek help from local authorities when targeted with violence and harassment but who

¹ Planned Parenthood Association of Thailand is a non-profit organization, working to improve the quality of life of the population in Thailand and neighbouring countries, with a main focus on sexual and reproductive health and rights.

² **The Sexual Rights Initiative:** a coalition including: Action Canada for Population and Development (ACPD); Creating Resources for Empowerment and Action (India), Mulabi - Latin American Space for Sexualities and Rights, Federation for Women and Family Planning (Poland), and others.

³ “Freelancer” refers to sex workers who do not work in brothels or massage parlors which are under high supervision of owners. They could be waiters or waitresses at restaurants and negotiate directly with clients.

⁴ Fox, J. *Sex Laws in Thailand Part 2: Laws Regulating Commercial Sex and Entertainment Places*. 2009 30 November 26 May 2010]; Available from: <http://www.thailawforum.com/sex-crimes-in-thailand-part2.html>.

keep these abuses, along with their work, hidden for fear of being arrested;⁵ it is also a major barrier to the promotion of HIV/STI prevention campaigns. The hidden nature of this work due to its illegal status also leads to violations of many other rights of sex workers, particularly the rights to equal protection under the law, to work, to have access to social service, and to the highest attainable standard of health.

The Right to Equal Protection and Human Dignity

6. Physical and sexual violence against female sex workers by clients or brothel supervisors in Thailand is still a major problem; a 2007 study of 815 Female Sex Workers (FSWs) highlighted that 15% of FSWs had experienced violence in the week before the survey.⁶ Sex workers who experienced violence find that if they report any crime, even very violent crimes like rape, they are threatened with arrest on prostitution charges and frequently turned away from the police station. They also find that they struggle to have complaints taken seriously as well. Unable to seek help from police and local authorities for fear of being prosecuted or unfairly judged due to stigmatization, sex workers have to tolerate these abuses which also make them vulnerable to STI/HIV.⁷

7. It is much worse when it comes to cases of trafficked or migrant sex workers. Though undergoing physical and sexual abuse, they are unable to report these to the police as, if found out that they are undocumented workers, they would be arrested on immigration or trafficking charges. Aside from the fear of deportation, some sex workers, who have reported instances of violence and abuse to the police in the hope that they would be freed from violence in brothels, have experienced fake ‘raid and rescue’ missions by local authorities who would set up a raid on a brothel to move all sex workers out, and later send them to another brothel as part of bribery negotiations or for money extortion.⁸ Such violations of their human rights by authorities results in abused migrant workers’ decision to stay silent on their experiences of violence.

8. Migrant sex workers if arrested under prostitution, immigration or trafficking offences are rarely provided with translators and usually do not know their right to ask for translation or even a lawyer. Similarly, Thai sex workers are expected to automatically know their rights in the law, yet similar services are not offered to them.

9. Sex workers continue to be misrepresented in State and non-State media as “vectors of disease”, “victims of trafficking”, “illegal aliens”, and in other negative ways. These attacks on sex workers’ dignity and reputation undermine their self worth, incite hatred and contempt towards them and increase their stigma and isolation. Government-produced media that belittles or misrepresents sex workers is particularly dangerous as it encourages sectors of society to feel they can act against sex workers with impunity. Therefore, more positive perceptions on this matter, through more accurate representation, will help eliminate the stigma and discrimination sex workers face by the general public, law enforcement and service providers.

The Right to Work and to Social Services

⁵ UNAIDS. *Sex Work & HIV in Thailand*. 2010; Available from: http://www.plri.org/sites/plri.org/files/sex_work_hiv_thailand%5B1%5D.pdf

⁶ Decker MR, McCauley HL et al, *Sex trafficking, sexual risk, sexually transmitted infection and reproductive health among female sex workers in Thailand*. J Epidemiol Community Health, June 1 2010.

⁷ See above. The study has highlighted the relationship between violence as it relates to sexual risk and HIV among female sex workers.

⁸ Association for the Promotion of The Status of Women (APSW). *Diaries: 6 life experiences on new life paths*. 30th Anniversary of Emergency House, December 2010.

10. Although the Thai Labour Act and Social Security Act do not specifically exclude people working in Entertainment Places, there is no implementation or enforcement of either Act in the industry. Since sex work is against the law, the owners of such entertainment places would most likely not register their business for fear of being prosecuted by authorities. This State neglect and discrimination allows employers to exploit their workers with impunity, places workers in risky situations and prevents sex workers from accessing social benefits, such as the Social Security Scheme and unemployment benefits, like other workers. Consequently, this has brought about the campaign to legalize prostitution for sex workers' eligibility to legal protection and social benefits.⁹

11. In a similar vein, there are no Occupational Health and Safety Standards implemented or enforced in entertainment places, leaving women working in physically unhealthy and sometimes dangerous environments with no recourse if they become ill, get injured or even die from work related problems.

The Right of Sex Workers to the Highest Attainable Standard of Health

12. Sex workers are commonly marginalized, stigmatized and criminalized by the society in which they live. The idea of promiscuous acts in the sex trade is against the beliefs and morals of the general public in Thailand. This has resulted in labeling sex workers as 'dirty women' and 'vectors of disease' as mentioned above. Such attitudes have affected some health service providers who show their negative attitudes towards sex worker clients through stigma and offensive behaviours, which consequently deny adequate health services to sex workers. These factors are contributing to sex workers' vulnerability to HIV and other sexual and reproductive health problems. The 2010 UNGASS Report highlights the fact that some government healthcare providers do not fully understand the principles of HIV-related rights, leading services to not be user-friendly.¹⁰ Sex workers are understandably reluctant to be confronted with stigma from health providers. For this reason, it is important for government to organise sensitization workshops and trainings for service providers and relevant staff, in order for them to truly provide friendly and respectful services for sex workers.

13. In prior to receive free Voluntary and Confidential Counseling and Testing (VCCT) at government hospitals, sex workers are asked to fill out a form with personal information and to answer questions, such as the numbers of clients they have had and whether they use condoms or not. Moreover, some government hospitals do not have confidentiality and privacy systems for files related to clients. Consequently, information on clients can be accessed by just anyone in hospital, even those who have nothing to do with the VCCT process. Such processes invade the privacy of sex workers, especially if the case of HIV-positive results. Thus, sex workers are not comfortable receiving VCCT or sexual and reproductive health services for fear of disclosures of their work status or health status which could lead to being prosecuted by police and/or stigmatization from service providers and people in communities.

14. The Thai government provides healthcare services to Thai citizens under the scheme called 'Universal Health Scheme'.¹¹ However, patients can only receive health care services in the district in which they are registered as inhabitants. This practice has hindered sex workers' access to health services since the majority of them work in big cities outside their hometown and frequently relocate their working areas. When facing the same problem, other

⁹ Jon Fox, *Sex Laws in Thailand Part 2: Laws Regulating Commercial Sex and Entertainment Places*. Thailand Law Forum, November 2009; Available from: <http://www.thailawforum.com/sex-crimes-in-thailand-part2.html>

¹⁰ National AIDS Prevention and Alleviation Committee, *UNGASS Country Progress Report 2010: Thailand reporting period January 2008 – December 2009*. 2010, National AIDS Control Programme, Ministry of Health.

¹¹ 'Universal Health Scheme' is a healthcare scheme which gives the opportunity for all Thais to access basic health care with a medical consultation and treatment for a cost of 30 baht for each visit.

workers who move within Thailand use the Social Security Scheme as a solution to this problem. However, this option is denied to sex workers as they are not registered on labour lists. Consequently, sex workers are unable to exercise their rights to equal health care services and have to bear health care costs themselves.

15. On the other hand, migrant sex workers face the double barriers of the inability to access health services and the fear of their immigrant status or illegal career being exposed. Despite the permission from the Thai government to allow migrants from neighbouring countries registering to work in six occupations and be part of Social Security scheme in Thailand, migrant sex workers have never been able to access the registration process and by extension have access to health services. In order to obtain a health service they must avoid arrest, struggle with language, face discrimination, risk being reported to immigration and pay for all exams and treatment since they are not part of any government health scheme. For this reason, comprehensive friendly health services for migrant workers are needed.

16. Male and transgender (TG) sex workers are one of the most marginalized populations due to the stigmatized nature of both their sexual behaviour and illegal career. Although many programmes and health services were provided for sex workers by government and civil societies, only a few of them were designed specifically for male sex workers. In spite of having large communities of men having sex with men (MSM) and TG persons, in Thailand, preventive services and information on safe sex for MSM are still limited. In 2009, there were only 6 MSM-specific clinics throughout the country. Additionally, MSM and TG are not part of the regular government data collection system.¹² Lack of specific friendly services and comprehensive knowledge dissemination for STI/HIV prevention, combined with fear of being arrested and stigmatization have put male sex workers at greater risk of infection.¹³ Hence, it is important to provide knowledge dissemination and health services designed specifically for MSM and TG with the intention to increase access of this target group to HIV/STIs prevention and other health services.

Role of Non-Profit Organisations on Sex Workers and Their Rights

17. In response to the problems of sex workers, many non-profit organizations have stepped in to provide assistance for sex workers. One of the most significant organizations which play important role in assisting sex workers in Thailand is 'Empower Foundation'. Established since 1985, Empower Foundation provides support for sex workers by offering free languages classes, pre-college education and health knowledge dissemination as well as counselling on legal matters. Additionally, they also play a vital role in protecting the rights of sex workers. Empower takes a stance on prostitution as 'another' career in society. Therefore, they are advocating for the extension of regular labour protections to sex workers and for legalization of prostitution.¹⁴

18. In implementation of the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM): Round 8 'Comprehensive HIV Prevention among Most At Risk Populations (MARPs) by Promoting Integrated Outreach and Networking (CHAMPION)', non-profit organizations working for sex workers, such as Empower Foundation and SWING

¹² AIDS Data Hub, *Thailand MSM Country Snapshots - AIDS Data Hub, August 2010, Version 2*; Available from: http://www.aidsdatahub.org/reference-materials/key-populations/doc_download/3161-unaid-apcom-and-hadh-2010-thailand-msm-country-snapshots--country-specific-information-on-hiv

¹³ UNAIDS. *Sex Work & HIV in Thailand*. 2010; Available from: http://www.plri.org/sites/plri.org/files/sex_work_hiv_thailand%5B1%5D.pdf. The study conducted has found that male sex workers have a higher prevalence of HIV, have less comprehensive knowledge about HIV and receive less testing than female sex workers due to the lack of knowledge and fear of stigmatization for their work and for being MSM.

¹⁴ Tunya Sukpanich, *Empowering 'bad girls'*, *The Bangkok Post*, March 11, 2007

Foundation¹⁵, have taken part in the operation as sub-sub-recipients (SSRs). With their familiarity and wide acceptance by sex workers, their outreach works are much more effective than the government's outreach work which is still restricted by the regulations and stigma of implementers. In this aspect, it is important for the Government of Thailand to support sex workers organizations in implementing programmes for their people as it would help the Government's efforts to reach out to this vulnerable group

Recommendations

19. The Government of Thailand should:

- a. Implement sensitization and value-clarification training/workshop for government health service providers and concerned staff who work with sex workers in order to change their negative attitudes towards sex workers and eliminate the stigma and discrimination against sex workers.
- b. Revise legislation to actively protect the rights of the individuals that enter into the sex industry without being criminalized, stigmatized and marginalized.
- c. Provide legal services and other related services, such as translators, for sex workers, particularly migrant workers, according to the rights they are entitled to when facing judicial proceedings.
- d. Apply the Thai Labor Act and Social Security Act to all Entertainment Places and allow self-employed sex workers to join the Social Security Scheme.
- e. Provide resources to develop and implement Occupational Health and Safety Standards in the entertainment industry
- f. Provide access to comprehensive friendly health services for migrant sex workers despite their immigration status according to their human rights.
- g. Provide comprehensive knowledge dissemination and friendly health services tailored for male and transgender sex workers.
- h. Ensure that any service provision process, particularly for sex workers, is confidential and respects sex workers' right to privacy
- i. Organise medical mobile unit services to visit areas where sex workers work frequently in order to increase their access to health services.
- j. Reinforce anti-trafficking campaigns to be in line with the standards set by the UN High Commissioner on Human Rights.
- k. Support non-profit organizations, particularly sex worker organizations, in further development and capacity building in order for them to be part of knowledge dissemination and service provision programmes. The government should also support these organizations in project management and give preference to sex workers for all positions in sex work related projects.

¹⁵ SWING or 'Sex Worker in Group' Foundation is a non-profit organization for sex workers of any gender which aims to provide educational opportunities and to promote good physical, emotional and mental health for sex workers in order to protect themselves from diseases, particularly HIV and other sexually transmitted infections.