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Can prostitution as sex work ever be compatible
with human rights? A feminist human and labour
rights analysis of Thailand's sex industry.

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Summary

This thesis begins by briefly exploring the human and labour rights issues associated with prostitution. It continues by outlining two strands of feminism which have been influential in the international debate on prostitution: neo-abolitionism and the sex work approach. Neo-abolitionism incorporates human rights and the latter approach incorporates both human and labour rights into its theory and activism.

Following an analysis of neo-abolitionism and the sex work approach, this thesis then goes on to outline the current state of the sex industry in Thailand and explores some of the proposed root causes behind its' existence and continued growth. Thailand was chosen as a suitable case study because it is one of a number of countries where prostitution is illegal yet is host to a flourishing and highly visible sex industry¹.

Thailand's sex industry is analysed through the lenses of neo-abolitionism and the sex-worker approach and the credibility of each perspective in relation to the Thai sex industry is accordingly assessed. Subsequently, whilst both approaches bring valuable insights it is ultimately decided that whilst a neo-abolitionist approach accurately describes the root causes of the Thai sex industry, its one-fits-all solution of criminalisation is not feasible in the current climate.

The thesis concludes by attempting to answer the question: can prostitution as sex work ever be compatible with human rights? Though this question may appear to be a reformulation of the age old conundrum of whether prostitution should be legalised or not, it must be noted that this thesis does not at any point advocate for either legalisation or criminalisation of any sex industry, it simply attempts to decipher whether treating prostitution as work is compatible with human rights.

¹ Other countries in a similar predicament include Costa Rica, Laos, Cambodia and the Dominican Republic, to name a few.

Preface

This thesis is the result of more than one years' planning, scheming researching and writing. There have been many ups and downs during that time; most significantly was the realisation that there is no one simple answer to the many disturbing human rights issues which prostitution brings with it. There are no winners in prostitution but there are ways of making misery less painful. On the up side is the realisation that the future is not yet set in stone, and what has been for thousands of years, need not be for thousands more. The most surprising realisation for me, however, is that the route to elimination may begin with embracing the problem head on.

Abbreviations

ILO	International Labour Organisation
CATW	Coalition Against Trafficking in Women
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
OECD	Organisation for Economic Cooperation and Development
HIV	Human Immunodeficiency Virus
AIDS	Acquired Immune Deficiency Syndrome

Methodology

This thesis is the result of pure desk based research. I used academic journals, including theory and small scale studies, official publications and statistics from the United Nations (UN) and UN agencies such as the International Labour Organisation.

Ethics

Prostitution in any context, let alone the context of labour rights, is understandably a very controversial topic and protecting the identities and integrity of those involved is of utmost importance. However, due to the fact that all of my research was desk based, no major ethical considerations can be said to have arisen.

Introduction

“Prostitution -- a topic that implicates philosophical and moral questions of autonomy, power, gender and oppression—is far too complicated to elicit a uniform response from feminist legal advocates” Katie Beran, 2012 legal commentator.²

Prostitution is a subject that evokes strong reactions in fields as diverse as psychology, sociology, politics, gender and of course, law. Of the many perspectives on prostitution, feminism is one of the most pertinent. Within feminism, however, there is no current consensus on the status of prostitution; whether prostitution empowers or oppresses women is still very much a moot point within feminist thought and activism. This would not in itself be a problem if it were not for the fact that prostitution occupies ambiguous territory both in terms of human rights and labour rights. Prostitution is invariably associated with the degradation and commodification of women; violence and early death; HIV and AIDS and general dehumanisation. The idea that prostitution can and should be viewed as work has become normalised in certain country's (Australia, the Netherlands and new Zealand, for example); supported by some feminists yet vehemently rejected by others who . Prostitution exists in a no-man's land in term of human and labour rights. Whereas some countries, such as Sweden, insist prostitution is a form of violence against women and accordingly is a human rights violation, whilst others, such as the Netherland, are adamant that it is a occupation as legitimate and as worthy of full labour rights as any other.

This thesis addresses the human and labour rights issues associated with prostitution from the perspective of two very different strands of feminism, both of which have been enormously influential in the international prostitution debate: radical feminism and liberal feminism. The

² Katie Beran: "Revisiting the prostitution debate: uniting liberal and radical feminist theory in pursuit of policy reform", 30 Law and Ineq. 19: Winter 2012.

radical feminist approach when applied to the subject of prostitution takes what will be termed in this essay as an abolitionist/neo-abolitionist stance whereas liberal feminist thought is the basis of the ‘sex work’ approach.

Why feminism?

Feminism is a sociological and legal perspective and area of activism aimed at defining the status of women in the world and further defending equal social, political, legal and cultural rights for both men and women. One of the major concerns of feminism as a movement is to ensure the equal availability of educational, employment and quality of life opportunities to women as to men. In this respect, feminism and human and labour rights are natural allies: they strive to achieve the same goals of non-discrimination, gender equality and social justice. However, feminism and human rights do not merely share common goals, but are integral to one and other. It has long been accepted, for example, that issues that what were previously referred to as ‘women’s rights’, such as reproductive health care and gender equal pay are unconditional human rights.

Prostitution is generally viewed as something which is harmful to prostitutes, and due to the fact that the overwhelming majority of prostitutes are female, feminism is of particular relevance when considering the human rights implications of prostitution.

Why labour rights?

The question of why labour rights are relevant to prostitution and general human rights is one of the main focuses of this thesis and thus shall be explored at great length. As a prelude to this exploration, however, I argue that in order to appreciate the importance of a combination of feminist theory, labour and human rights it is necessary to establish the origins of the debate.

The historical and contemporary status of prostitution in national and international arenas

Prostitution is a huge business. A 2010 report from Foundation Scelles (*la Fondation Scelles*) estimates that there are between 40 and 42 million prostitutes worldwide³. Prostitution is not limited to any particular country, region, culture or generation; sometimes referred to as the ‘oldest profession’⁴, though it is not possible to say precisely when prostitution began, there is considerable evidence that commercial sex predates ancient Rome and Greece and can be traced all the way to the times of Ancient Egypt and Mesopotamia⁵. Though the trade in sexual services is global, the socio-economic and gender profile of the typical prostitute tends to transcend international boundaries: the average prostitute is female and between the ages of 13 – 25⁶. She tends to live on the margins of society; their status as a prostitute is all defining and renders them a social outcast to be treated with pity or disgust, or both. In addition to being marginalised by society, prostitutes often suffer disproportionately high rates of HIV and AIDS, rape, murder, violence and sexual assault and death.

Despite the longevity and globalised nature of prostitution, it has almost universally been treated as a social and legal problem throughout. Even in Ancient Rome, an era widely associated with sexual liberation and normalised prostitution, prostitutes were systematically

³ The report (World Report on Sexual Exploitation) is not currently available online but its findings are reported in Le Figaro 31/01/2012 at <http://www.lefigaro.fr/actualite-france/2012/01/13/01016-20120113ARTFIG00766-40-a-42-millions-de-personnes-se-prostituent-dans-le-monde.php>

⁴ The BBC news website, for example, referred to prostitution as the oldest profession in a 2008 article discussing the UK governments approach to regulating or criminalising prostitution. See: “Can you outlaw the oldest profession?” by Dan Bell, BBC News, 24/02/08 available at http://news.bbc.co.uk/2/hi/uk_news/7258639.stm. It is important to note that the contention that prostitution is the oldest profession is not universally accepted and will be discussed later in this chapter.

⁵ It is thought that the first brothel was in ancient Egypt. In ancient Greece brothels were common and were regulated by the state. For more on this see for example: “A brief history of brothels”, Paul Vallely, The Independent, 21/01/2006 available at <http://www.independent.co.uk/news/uk/this-britain/a-brief-history-of-brothels-523962.html>

⁶ Three –quarters of prostitutes are thought to be aged between 13 – 25, and 80 percent are female. It should be noted that there are also transgender prostitutes who may be biologically male but who identify and present themselves as female. For the purposes of this thesis, the term female encompasses biological females and transgender people who identify as females.

treated with disgust and contempt⁷. Prostitution and respectability were mutually exclusive. Fast forward thousands of years and the situation is still recognisable: Whilst the legal status of prostitution is ever changing; prostitutes are still treated with the contempt cultivated under the Roman Empire some millennia ago.

Prostitution has long been considered problematic; though historically these problems were presented in terms of morality and culture, prostitution in time presented itself as a troubling legal problem. This was spurred on in no small part by the abolitionist movement: though prostitution was outlawed in many countries long before the era of slave emancipation, the anti-slavery movement enabled the debate on prostitution to acquire a new dimension which no longer focused on the perceived reprehensibility of the actions of the prostitute but on the legality of the now legally unclear relationship between socially powerful male clients and largely powerless female prostitutes. This relationship was said to resemble one of bondage or slavery and was thus inconsistent with the dominant anti-slavery movement. Though prostitution appears to be based on a wage labour contract – a crucial tool for distinguishing work entered into freely from slavery – neo-abolitionists compared prostitution with slavery as it shared the attributes considered to be associated with slavery: exploitation, dispossession, alienation and total financial dependency⁸.

Abolitionists deny that separation between sale of labor and sale of the self is possible in the context of prostitution. It is argued that when the complete right to command one's body and time is transferred to another, so too is the person⁹. As such, prostitution- wherein the prostitute is

⁷ For more on this see Fenton, E. (2007). Prostitution as labour in imperial rome. *Studies in Mediterranean Antiquity and Classics*, 1(1), 1-15. Retrieved from <http://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1007&context=classicsjournal>.

⁸ Though abolitionists accepted that whilst prostitutes may not be physically forced into prostitution as slaves were it was argued that society forced some into a position of prostitution by limited the employment opportunities of women and girls and making them dependent on men for sustenance – either through marriage or through prostitution. Another way in way societies forced women into prostitution was by providing less than subsistence wages to women in the knowledge that she can supplement her earnings by relying on her husband or through selling sex.

⁹ Larson, J. (2004). Prostitution, labour and human rights. *University of California Davis Law Review*, 47, 673-700.

thought to subject her body to the control of another if only for a limited time, is thought to be equivalent to slavery. Further, whilst slavery itself is a gross violation of human rights, so too are the daily humiliations, acts of violence and sexual assaults which prostitutes routinely risk.

Radical feminists/neo-abolitionists view consent as void within the context of commercial sex and thus all sex acts are acts of rape and/or sexual assault¹⁰.

In the context of prostitution, the anti-slavery movement provokes the question as to whether or not a free human being can contract themselves into forms of “labour” that apparently cannot be reconciled with their human dignity. The contemporary argument, shaped by a powerful human rights movement, is whether one can contract oneself into a condition that contradicts one's basic human rights.

Though prostitution is often referred to as the “oldest profession” or the “oldest trade”, abolitionists take issue with the suggestion that prostitution can be classified as a profession or trade. Neo-abolitionists argue, rather, that this is a cliché used to falsely legitimize the profoundly unequal power relations which *result* in the poorest and most vulnerable people in the world turning to prostitution as simply servicing a permanent and natural segment of the labour market¹¹. There is no natural demand for prostitution rather it is a construct of oppressive patriarchal structures.

Liberal feminists, on the other hand, focus on the significance of the legitimating power of the wage labour contract and argue that prostitution *can* be a form of labour entered into freely and as such should be accepted as work rather than abolished. This is the basic premise of what shall be termed in this thesis as the ‘sex work approach’¹². The sex work approach is underpinned by the core argument that labour rights are an

¹⁰ This viewpoint will be discussed in more detail below.

¹¹ Beran (2012), *OpCit*, for example, argues that “...the cliché that prostitution is the oldest profession legitimises prostitution as an original – that is not to say unchangeable – part of the labour market reserved for the poorest women and the women with the least resources all over the world”. No page number available.

¹² The sex work approach is a prostitution-specific offshoot of diverse liberal political thought and activism.

undeniable and indivisible aspect of the broad spectrum of human rights and that through recognising prostitution as work can prostitutes realise their labour rights as well as other related more general human rights. The human rights abuses sex workers endure, such as violence and exposure to STIs is not necessarily a result of prostitution itself but a consequence of the legal and social treatment of prostitution and those who work within it.

As will become apparent throughout the thesis, the neo-abolitionist and sex worker approaches relate directly to the thesis question: “can prostitution as sex work ever be compatible with human rights?”. Neo-abolitionism argues that it cannot, whereas the sex work approach argues that it most definitely can.

Disclaimer: Not all prostitutes are female

Applying feminist approaches to prostitution does not necessarily imply the automatic exclusion of the male prostitute. Twenty per cent of those who engage in prostitution are thought to be men and boys who sell sex to both men and women and feminist approaches recognise this. This fact does not however invalidate feminist theory on prostitution as much is based on an analysis of power relations based on the status one has in society which in the context of prostitution is often based on gender, but not always: not all women are prostitutes because some are socially powerful in spite of their gender¹³.

¹³ This depends on a multitude of factors such as educational, labour and health opportunities.

Chapter 1: Human rights, feminism and the international prostitution debate: radical feminism/neo-abolitionism and liberal feminism/the sex work approach.

Radical and liberal feminist approaches are extremely influential in the ongoing debates in this area, with both having had a marked impact on legal reform around the globe¹⁴.

1.1 Liberal feminists and the “sex work approach”

Liberal feminists argue that commercial sex between two consenting adults is capable of being an expression of one’s sexual freedom, agency and choice. This is not to say that liberal feminism necessarily promotes prostitution as a desirable form of work, but rather that prostitution can, in certain circumstances, be a form of work and it should in those instances be treated as such.

The cornerstone of liberal feminism is that women are equal to men, and should accordingly be treated equally. The vision of equality which liberal feminism strives for is that of *formal equality* – a type of equality that emanates from an understanding of gender neutrality. The same rules and privileges afforded to men should also be afforded to women, with no deviation to accommodate for apparent gender differences. Formal equality is thought to be achieved when men and women have the same relationship with the state: they have access to the same opportunities and are treated in the same way. So for example, a formally equal job labour

¹⁴ The extent of which shall be discussed in detail later in this thesis with regards to the impact of feminist perspectives on HIV/AIDs and human trafficking in the context of prostitution.

market provides exactly the same job opportunities one exactly the same terms to both men and women. Another important aspect of liberal feminism, particularly from a legal perspective, is the dismantling of legal barriers for women to the public sphere and of laws which advocate different treatment based on gender. Formal equality is gained through the equal availability of choice. Given this, the liberal feminist approach to selling sex is to advocate for legalization or decriminalization.

The sex work approach, as it is termed in this thesis and in many bodies of research, is a derivative of liberal feminism. The sex work approach differentiates itself from neo-abolitionism, to be discussed below, in that it distinguishes between forced and voluntary prostitution, whereas neo-abolitionism regards all prostitution as forced. This is because the sex work approach accepts consent within commercial sex as being legitimate, given the right circumstances. However, despite the centrality of consent to the sex work approach, there are differences of opinion with regards to the legitimacy of consent in the context of commercial sex. Some argue that consent should be treated as a matter-of-fact, regardless of the context, whilst others interpret consent as being compromised by the social and economic opportunities – or rather lack thereof – available to the men and women who often end up as sex workers, but that such consent is capable of being valid nonetheless. Under the latter view of consent, it is generally recognized that the conditions which often lead to the decision to sell sex, such as poverty and lack of opportunity elsewhere, whilst not ideal, are a common condition of many workers¹⁵.

1.2 The sex work approach: human right violations as arising from the criminalization of the sex-industry

While sex worker feminists acknowledge the many risks associated with engaging in commercial sex, they contend that the risks stem from the

¹⁵Carson, L., & Edwards, K. (2011). Prostitution and sex trafficking: What are the problems represented to be? A discursive analysis of law and policy in sweden and victoria, australia. *The Australian Feminist Law Journal*, 34, 63-87.

criminalization of commercial sex rather than the acts themselves. It is accordingly argued that legalization, regulation and granting the protection standard labour laws afford is the best way to mitigate these risks and protect sex workers from the human rights violations rife within the worlds sex industries. Legalization protects sex workers human rights by uprooting the link which currently exists in so many countries between commercial sex and organized crime and thereby reducing the likelihood of violence. Furthermore in regulating and more importantly controlling the environment and the legal context in which commercial sexual exchanges take place, the state is able to protect sex workers from violence and the spread of Sexually transmitted infections (STI's) thereby ensuring the safeguard of a number of human rights, such as the rights to work, life and health.

1.3 The Sex-Work approach and human and labour rights

The substance of the sex work approach has, in recent years, been increasingly framed and presented in terms of the human rights it purports to protect and promote; most notably the right to health, the right to freedom from discrimination and the right to freedom from violence under CEDAW, as well as general international human rights law. One of the most notable achievements of the sex work approach is that it has shifted the focus of the debate away from abolition -as was the case in many countries previously- to the human rights of sex workers.

The human rights based rationalisation of the sex work approach has garnered a great deal of support with sex worker organizations and governments who favour the legalization of commercial sex work and are able to use the language of rights to bolster their arguments.

The sex work approach is noticeably, and increasingly, influencing national and international debate, laws and policy on prostitution. A recent example of the pervasiveness of the sex work approach can be seen in a judgement by the Ontario court of Appeal, which held that a ban on brothels and pimping violated a sex worker's constitutional right to life, liberty and security. The court reached this

because on the basis that the ban was endangering sex workers by forcing them onto the streets, and thus preventing them from being able to take safety precautions, such as enlisting the services of a security guard or a driver lest they fall foul of the laws banning pimps¹⁶. It should be noted, however, that sex work was already legal at the time of judgement, but the manner in which it was permitted was very restrictive.

A strict liberal approach advocates for no or minimal state interference as this interferes with a sex workers right to express her sexuality as well as exercise her right to work in a manner of her own choosing. The sex work approach, which it will be remembered is a derivative of liberal feminism, generally advocates for some form of regulation to better allow for health interventions and the protection of sex workers labour and human rights. Sex worker feminist view the social and legal constraints present in the majority of the world which prevents prostitution being treated as a form of work as disabling prostitutes from realizing basic labour rights such as the right to work, the right to a safe working environment and freedom from slavery.

1.4 Radical feminism/neo-abolitionism

The sex work approach stands in stark contrast to the opposing and until relatively recently (around the 1980's) dominant view promoted by radical feminists that prostitution in itself is a form of violence against women and as such a violation of women's human right. This approach rejects the idea that the sale of sex can or should be treated as work and as such rejects the term sex work altogether, rather this approach has harnessed the language of the anti-slavery movement, viewing prostitution as a form of slavery which must be abolished. Indeed, this approach is often termed the neo-abolitionist approach¹⁷.

1.5 Prostitution as supporting the oppression of women

¹⁶ Canada (Attorney General) v Bedford 2012, ONCA 186 (2012032) See also: BBC News online, Ontario brothel ban quashed by appeal court, 27th March 2012.

¹⁷ Carson, OpCit.

Neo-abolitionists view the existence of prostitution as symbolizing deeply rooted gender oppression in society; oppression that would be further legitimized should prostitution be legalized and treated as work. Prominent radical feminist Sheila Jeffreys argues that “*prostitution arises from and symbolizes the subordination of women*”¹⁸. It is an example of how social and cultural arrangements force women to submit to male demands simply because they are women, thereby reinforcing gender inequality. Gender inequality, argue neo-abolitionists, is the most fundamental form of oppression for women living under conditions of patriarchy around the world.

Whereas for liberal feminists, gender equality is achieved through formal equality; radical feminists argue that: as the root causes of gender inequality are often deeply entrenched in social and cultural institutions, such as organized religion, school and the family, gender equality must exist at these levels as well as at the level of law.

A central concern of radical feminism is how female sexuality is constructed and controlled: women are denied power over their own bodies and sexuality through the politicization of child-bearing and rearing, female sexual behaviour, and reproductive choices. Radical feminist Catherine MacKinnon sums up the radical approach to gender where she writes that radical feminist theory “*treats sexuality as a social construct of male power: defined by men, forced on women, and constitutive of the meaning of gender*”¹⁹. Dominant patriarchal norms dictate that the essence of female sexuality is selflessness and submissiveness, while that of male sexuality is dominance. Prostitution, therefore, embodies and reinforces patriarchal domination by commodifying the male defined female body and concept of female sexuality. Thus, when a prostitute “*sells her body*”²⁰, she

¹⁸ Sheila Jeffreys, Prostitution, Trafficking and Feminism: an update on the debate, Women’s Studies International forum 32 (2009) 316 – 320. Page 1.

¹⁹ MacKinnon, C. (1989). *Towards a feminist theory of the state*. (p. 113). Cambridge: Harvard University Press.

²⁰ Neo-abolitionism treats selling sex as selling one’s body as it does not accept that one can separate the sex from the body. In this way prostitution is seen as equivalent to slavery.

(perhaps unwittingly) acknowledges and legitimizes the client's patriarchal right over her body.

A prerequisite to achieving gender equality is thus deconstructing the commodification of women's bodies and their sexuality. Contrary to this goal, prostitution is a powerful symbol of the commodification of women and in this sense is at odds with the very core of radical feminism. In essence, gender equality cannot be achieved while prostitution is tolerated.

1.6 Neo-abolitionism and consent

Neo-abolitionists question whether consent can ever be valid given the harsh realities of the worlds' sex industries, wherein there is much evidence to indicate that the "choice" to engage in sex work is one born out of economic, social and in some circumstances literal physical coercion or duress. Neo-abolitionist activist organization the Coalition Against Trafficking in Women (CATW) argue that:

*"The issue of choice and consent as an analytical tool is worthless to understand prostitution as an institution. Prostitution pre-exists as a system that requires a supply of female bodies and therefore, women and girls will be kidnapped, deceived, enticed or persuaded to ensure that supply. How women get into prostitution is irrelevant to the functioning of the prostitution system, rather, prostitution maintains itself as a system by what is and can be done to women in prostitution, and what sexual privileges prostitution allows the male clientele."*²¹

Accordingly, neo-abolitionists view consent as being invalidated due to a presumed internalization of sexism and of male privilege over the female body on behalf of the prostitute: he or she is disabled from making informed consent due to an indoctrination of

²¹ Coalition Against Trafficking in Women (CATW). (n.d.). *Sex: From intimacy to "sexual labor" or is it a human right to prostitute?*. Retrieved from <http://action.web.ca/home/catw/readingroom.shtml?x=16287>

patriarchal ideals which are inherently oppressive. Neo-abolitionists furthermore accuse the sex work approach of failing to recognize the harms of prostitution, which they argue are inherent and thus cannot be mitigated away by regulation. The CATW point out that in addition to the high risk of violence and rape that the average sex worker runs, engaging in commercial sex damages prostitutes in that often they face a mental battle in transcending the cold commodification of what is often culturally considered to be the pinnacle of human intimacy. CATW, along with many neo-abolitionists, refer to former prostitutes as “survivors of prostitution”, and point to accounts of said survivors experiencing “unwanted but tolerated sexual acts” as being intrusive and traumatic regardless of whether or not force or violence was employed²². Sex workers do not want the sex of sex work but rather they need the money and will use disassociating mental tactics to help them survive the ordeal of submitting to “paid rape”²³ such as creating a separate personality or imagining they are not present, a tactic that is commonly reported by rape victims. One former prostitute and rape victim reported the similarities between rape and prostituting herself:

“...I mean that’s what happened to me when that man raped me. I went to the ceiling and numbed myself because I did not want to feel what I was feeling...and while I was in prostitution I used to do that all the time. I would numb my feelings. I wouldn’t even feel my body...it was rape to me”²⁴

1.7 The importance of vocabulary: sex work vs. prostitution

Neo-abolitionism rejects the vocabulary employed by the sex work approach, which talks of professional sex workers engaging in consensual

²² CATW, Ibid.

²³ CATW, Ibid.

²⁴ Anonymous former sex worker/prostitute as quoted in O’ Connor and Healy, “The Links Between Prostitution and Trafficking: A Briefing Handbook”, 2006, Prepared for the Joint Project Coordinated by the Coalition Against Trafficking in Women (CATW) and the European Women’s Lobby (EWL) on Promoting Preventative Measures to Combat Trafficking in Human Beings for Sexual Exploitation: A Swedish and United States Governmental and Non-Governmental Organisation Partnership

sexual labour as opposed to prostitutes, victims or rape survivors. Raymond argues that the use of this vocabulary from human rights advocates is particularly damaging:

“(T)he term, "sex work," doesn't dignify the worker; all it dignifies is the sex industry -- the pimps, procurers and traffickers. And coming from human rights activists and feminists, it gives the sex industry more dignity than it has ever had, or could get anyplace else.”²⁵

Like the sex work approach, neo-abolitionists have harnessed human rights law to argue for the case that prostitution is a human rights violation and for that reason should not be viewed as work but as something which countries have an obligation to eliminate²⁶.

1.8 Prostitution as violence against women

Neo-abolitionists argue that prostitution is a form of violence against women and as such is a violation of women's human rights under international human rights law. Recommendation 19 from the Committee on the Elimination of Violence Against Women names gender based violence against women as seriously inhibiting women from being able to enjoy rights and freedoms on a basis of equality with men.²⁷ Recommendation 19 defines gender based violence against women as including:

“violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”²⁸

²⁵Janice Raymond, "Prostitution as Violence Against Women: NGO Stonewalling in Beijing and Elsewhere", WSIF, Vol. 21 (1), 1 – 9, 1998.

²⁶ Mahoney

²⁷ The Committee on the Elimination of Discrimination Against Women, General Recommendation 19, 11th Session, 29/01/1992.

²⁸ Recommendation 19, Ibid, para 6.

Neo-abolitionism view prostitution as a form of physical, mental and sexual harm that disproportionately affects women by virtue of the fact that they are women. The recommendation states that the human rights prejudiced by gender based violence against women include:

“(a) The right to life;

(b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;

(c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;

(d) The right to liberty and security of person;

(e) The right to equal protection under the law;

(f) The right to equality in the family;

(g) The right to the highest standard attainable of physical and mental health;

(h) The right to just and favourable conditions of work”²⁹

Whilst consensus exists at the international level that forced prostitution is a form of violence against women³⁰; as mentioned above, radical feminism does not distinguish between “forced” and “voluntary”, and consequently views all prostitution as forced and as such a form of violence against women.

1.9 Common ground: searching for a legal response to prostitution

²⁹ Recommendation 19, Para 7.

³⁰ Article 2(1) on the UN Declaration of the Elimination of All Forms of Violence Against Women for example states that violence against women encompasses forced prostitution. Forced prostitution is considered to be a form of violence against women in that the female prostitute is physically and sexually assaulted. Radical feminists view commercial sex as being akin with rape as consent is invalid.

Despite being polar opposites, both sex work feminists and neo-abolitionist/radical feminists are against criminalizing the sex worker albeit for different reasons: whereas the latter view the criminalization of sex workers as proof that female sexuality is controlled by men who want to keep women who sell sex in a position of powerlessness, liberals view the criminalization of the sex worker as primarily denying the agency of the sex workers as well as disabling sex workers from seeking legal recourse for abuse and violence at the hands of their pimps, clients and even the police. As will be seen in the course of this thesis, this is the only common ground shared by neo-abolitionist and sex work feminists with regard to acceptable legal responses. For neo-abolitionists, the only response to prostitution is to criminalize the buyers and reform the social system which allows for prostitution. There is more variation within the sex work approach, though calls for partial and full legalization are defining characteristics.

Chapter 2: The Sex Industry in Thailand:

Hidden in plain view

2.1 Legal status of prostitution in Thailand

Prostitution in Thailand is illegal. However as the laws governing prostitution are ambiguous and shrouded in poorly defined concepts, prosecution of those involved in prostitution is quite difficult. A key legal instrument in the prostitution legal framework is the Prevention and Suppression of Prostitution Act, B.E. 2539 (1996) (herein: PSPA) which defines prostitution in the following terms:

“...sexual intercourse, or 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...”³¹

Thus the sale and purchase of sex or sex acts is only regarded as prostitution when it is committed in a promiscuous manner though the Act does not provide a definition of the term “promiscuous”. Furthermore the act of prostitution as defined above is not in itself illegal but solicitation of the act is proscribed in the following terms:

*“Any person who, for the purposes of prostitution, solicits, induces, introduces herself or himself to, follows or importunes a person in a street, public place or any other place in an **open and shameless manner or causes nuisance to the public** (my emphasis), shall be liable to a fine not exceeding one thousand Baht (around 25 Euro)”³²*

The law therefore hinges on two highly vague and subjective concepts on which the Act provides no clarification: promiscuity and

³¹ PSPA Section 4

³² PSPA Section 5

shamelessness. “Promiscuous” is defined by the Oxford dictionary as either having many transient relationships or as behaving in an unselective or indiscriminate manner. This elaboration, assuming it is one adhered to by the Thai authorities, is open to multiple interpretations. As for the required element of shamelessness, whether or not something is shameless depends on the morals and values of those subject to alleged solicitation and possibly even the solicitor themselves.

2.2 Commercial sexual exploitation of children, human trafficking for the purposes of sexual exploitation and slavery/sexual servitude.

The sexual exploitation of children, human trafficking and slavery³³ are all strictly forbidden under national and international law³⁴.

³³ Section 12 PSPA provides that: ” Section 12. Any person who detains or confines another person, or by any other means, deprives such person of the liberty of such person or causes bodily harm to or threatens in any manner whatsoever to commit violence against another person in order to compel such other person to engage in prostitution shall be liable to imprisonment for a term of ten to twenty years and to a fine of two hundred thousand to four hundred thousand Baht. If the commission of the offence under paragraph one results in:(1) grievous bodily harm to the victim, the offender shall be liable to the imprisonment for life;(2) death of the victim, the offender shall be liable to the death penalty or to imprisonment for life.Any person who supports the commission of the offence under paragraph one or two shall be liable to the penalty provided in paragraph one or two, as the case may be.If the offender or supporter of the offence under paragraph one is an administrative or police official or a competent official or an official of a Primary Admittance Centre or an official of a Protection and Occupational Development Centre under this Act, such person shall be liable to imprisonment for a term of fifteen to twenty years and to a fine of three hundred thousand to four hundred thousand Baht.”

³⁴ Section 8 of the PSPA provides: “Any person who, in order to gratify his or her sexual desire or that of another person, has sexual intercourse or acts otherwise against a person over fifteen but not over eighteen years of age in a prostitution establishment, with or without his or her consent, shall be liable to imprisonment for a term of one to three years and to a fine of twenty thousand to sixty thousand Baht.” Section 9 provides that “Any person who procures, seduces or takes away any person for the prostitution of such person, even with her or his consent and irrespective of whether the various acts which constitute an offence are committed within or outside the Kingdom, shall be liable to imprisonment for a term of one to ten years and to a fine of twenty thousand to two hundred thousand Baht.” Harsher sentences are levied against those who sexually exploit children under the age of 18 and the age of 15.

2.3 Complicity of parents and guardians with regard to commercial sexual exploitation of children

Section 10 of the PSPA criminalises parental complicity in the commercial sexual exploitation of children under their guardianship in the following terms:

“Any person who, being a father, mother or parent of a person not over eighteen years of age, knows of the commission against the person under his or her parental control of the offence under paragraph two, three or four of section 9 and connives in such commission shall be liable to imprisonment for a term of four years to twenty years and to a fine of eighty thousand to four hundred thousand Baht”

2.4 Criminal responsibility of brothel owners

Section 11 provides long prison sentences and heavy fines for those involved in the running of brothels:

“Any person who is the owner, supervisor or manager of a prostitution business or a prostitution establishment, or the controller of prostitutes in a prostitution establishment shall be liable to imprisonment for a term of three to fifteen years and to a fine of sixty thousand to three hundred thousand Baht.”

Where children under the age of 15 have been sexually exploited, the prison sentence jumps to a minimum of 10 years to a maximum of 20.

2.5 Sex tourism and the domestic sex industry

The explosion of sex tourism, not only in Thailand but in other popular tourist destinations such as Brazil, Costa Rica, the Dominican Republic, Philippines and the Netherlands, has attracted a great deal of international interest, academically and otherwise. So intriguing is this phenomenon of

travelling abroad for the purposes of purchasing sex (so-called transnational prostitution) that it is fast developing its own vocabulary and associated research specific to sex tourism.

Representations of sex tourism in Thailand can be readily found in films, books, songs³⁵ and academic research. Consequently, Thailand has become notorious as being a destination of choice for international sex tourists looking to obtain sexual services cheaply and readily. A quick “google” search including the words “Thailand” and “Sex Tourism” reveals an abundance of websites claiming to provide new visitors to Thailand with all the information they need to skilfully navigate the commercial sex industry. “A guide for the uninitiated sex tourist”³⁶ for example advises would be clients on the pit-falls of falling in love with Thai sex-workers who in that particular article were portrayed as being ruthless money-grabbers. Some websites offer euphemistically termed all-inclusive “pleasure tours”³⁷ which promise to take customers directly from the airport to the “hottest” bars and most “liberal-minded” hotels. Similarly there are countless web-forums which invite sex tourists to share their experiences of buying sex in Thailand. All too often these accounts turn into a form of rating various sex-workers/establishments in terms of pleasure experienced and perceived value for money. There is no need to divulge the contents of such accounts on these pages, suffice to say that the sale of sex in the commercial sex industry in Thailand is in many ways treated as the sale of any other commodity or service.

It is however important to recognise that the sex industry is not a product of tourism alone that what simply disappear if tourism suddenly stopped. To characterise the Thai sex industry as being a Western import would be to greatly underestimate the scale of the industry and the reasons behind its existence, rapid growth and the evident disconnect between the legal status and the de facto status of commercial sex in Thailand.

³⁵

³⁶ <http://www.mypattaya.com/137sextourists.asp> (Accessed 08/02/2012 at 16:41) see also <http://www.mypattaya.com/122pattayasexguide.asp>

³⁷ One such example is www.pleasuretours.com.

2.6 What are the reasons behind the sex industry in Thailand?

“The Sex Sector”, authored by Lim Lean Lin, is an ILO study on the sex industries of four countries, including Thailand, identified the following three factors as being intricately linked to the current state of the sex industry in Thailand. These are:

- 1) Gender roles;**
- 2) Economic development, and;**
- 3) Tourism.**

Whereas *The Sex Sector* was published in 1998, its findings and description of the dynamics of the sex industry in Thailand appear to be just as relevant in 2012 as in 1998. This is supported by numerous more recent smaller scale studies, which will be discussed in the course of this thesis. The three root causes of the sex industry, as identified by *the Sex Sector*, shall now be discussed in turn.

1) Gender roles and the sex industry

In terms of education and labour force participation, Thai men and women generally enjoy formal equality. The 1997 Constitution provides for equality between men and women. This is reinforced by Thai labour laws, which provides for equal pay and equal treatment of workers. Family laws providing for equal inheritance and ownership rights further protect formal equality. Additionally, large parts of Thailand are matrilineal with the youngest daughter expected to inherit familial agricultural holdings. The impressive economic development that Thailand has experienced in recent decades has enhanced women’s economic power and status in society. Whilst a glance at common socio-economic indicators such as access to education and labour-force participation show that Thai women enjoy

formal equality³⁸ with their male counterparts, a closer analysis indicates gender discrimination at a cultural level.

The Organisation for Economic Co-operation and Development (OECD) reports that whereas women make up over 40 per cent of the Thai work force, they are disproportionately found in low-paying jobs, low-status jobs³⁹ as compared with Thai men. Traditional and stereotypical attitudes concerning women's abilities and appropriate place in society preclude women from entering certain professions such as the police and military, whose academies do not accept female students. Lim in *The Sex Sector* argues that the reasons behind why women find themselves confined to certain jobs is that an ideology has been created whereby a woman's beauty and femininity is considered one of her most valuable assets. This according to Lim is a result of the spread of values considered to be associated with the Thai upper class whereby women are expected to invest a great deal of time and effort into pleasing their husband, including maintaining their appearance and pursuing other such "feminine interests"⁴⁰. The overriding expectation is that women be submissive and servile. This is in contrast to the role of Thai women from supposedly lower socio-economic classes, particularly those from rural largely agricultural areas of Thailand who have long held prominent economic roles. The mounting research on the motivations behind why sex tourists travel to Thailand indicates that the perceived submissive nature of Thai sex workers, particularly in comparison with Western women, is as major draw factor. In the words of one American sex tourist: "*American women are fucking bitches. You don't want to deal with American women – these women [Thai women] are the best, their minds have the right attitude.*"⁴¹ This sex tourist went on to explain in no

³⁸ For an explanation of formal equality see liberal feminism and the sex work approach in chapter 1.

³⁹ Social Institutions and Gender Index, OECD Development Centre: "Gender Equality and Social Institutions in Thailand" available online at <http://genderindex.org/country/thailand> accessed 15/02/2012

⁴⁰ *The Sex Sector: The economic and social bases of prostitution in Southeast Asia* edited by Lin Lean Lim, International Labour Office, Geneva, 1998. p132.

⁴¹ Garrick, D. (2005). Excuses, excuses: Rationalisations of western sex tourists in Thailand. *Current Issues in Tourism*, 8(6), 497-509. p500

delicate terms that the reason he preferred Thai sex workers to American women was that they are submissive and never refuse sex, seemingly oblivious to the transactional nature of his relationships with sex workers.

In line with this argument, Julia O'Connell Davidson concluded a series of interviews with British sex tourists in Thailand by remarking that: *“Almost all the sex tourists interviewed spoke with great bitterness about white women’s power to deny them sexual access”*⁴². This reinforces the neo-abolitionist arguments as it demonstrates the deep power imbalance between the person buying sex and the person selling sex and that the sex worker’s lack of power, due to her financial predicament and need to conform to gender roles, is what attracts sex tourists.

In addition to the above, there exists a deeply entrenched cultural expectation that adult daughters will financially support their parents when they are no longer able or willing to support themselves. Research indicates that this expectation of daughter parental support is felt most strongly in the northern rural poor region of Thailand, a region from which many sex workers hail. Lim writes:

*“This expectation, when it occurs in conjunction with an economic structure which provides relatively high rewards for work in the sex industry, can represent a strong motivation for women to enter the sex industry”*⁴³

2) **Economic growth and the sex industry**

“The Sex Sector” outlines how economic development is in part responsible for the growth of the sex industry. In recent decades, Thailand has undergone dramatic and a fundamentally international economic growth. In addition to being an attractive host country for foreign investment, tourism is big business with international tourism accounting for an estimated 7 per

⁴² Davidson, J. O’C. (1994) British sex tourists in Thailand, (*Hetero*) *Sexual Politics* (edited by M. Maynard and J. Purvis) Taylor and Francis, London.

⁴³ The Sex Sector, OpCit. P.133

cent of the Thai GDP⁴⁴. At around the same time as foreign money started flooding in, the previously largely agricultural Thai economy began to transform into an economy based on industrial exports and goods. Urban development took centre stage whilst rural development went largely neglected resulting in a mass flight to urban centres from persons trying to escape rural poverty, the incidence of which is measurably greater than urban poverty. The Northeast is the poorest region in Thailand. Whilst accounting for only one third of the overall population, it accounts for two thirds of those living in poverty. One in six people on the North East live on less than one dollar a day. The second poorest region after the north east is the North.⁴⁵ Both of these regions have become poorer in relative terms. Whilst the major cities and the many beautiful islands of Thailand have flourished economically, the fragile economic structure of the largely agricultural North East has been doubly overwhelmed by draught and by the plummeting prices of the regions' largest export: rice, helped along in no small part by the liberalisation of trade with China⁴⁶.

Whilst the urban centres have experienced growth and economic success, this success has yet to be matched in rural areas. Transportation between rural and urban areas on the other hand is widely and cheaply available with plenty of job opportunities. This has resulted in the widespread practice of migrating workers sending remittances home to support their families in their native northern regions. These urban jobs are often poorly paid and whilst they may provide for the cost of living of one, they do not pay enough to provide for an entire whole family. A consequence of this is that women, who as it will be recalled, are expected to support their parents as well as their own children, may supplement their income through the sex industry.

⁴⁴ It is worth noting that this frequently cited estimate does not take into account the potential economic contribution of the commercial sex industry catering to sex tourists.

⁴⁵ World Bank, Thailand's Poverty Map, retrieved from http://siteresources.worldbank.org/INTPGI/Resources/342674-1092157888460/493860-1192739384563/10412-13_p241-260.pdf

⁴⁶ Newley, P. (2010, 03 07). Thai-farmers fear asean-china trade deal will leave rice in a rut. *Jakarta Globe*. Retrieved from <http://www.thejakartaglobe.com/business/thai-farmers-fear-asean-china-trade-deal-will-leave-rice-in-rut/362462>

3. Tourism and the sex industry

By no means the only clients of the Thai sex industry, international tourists are thought to dominate in the highly visible go-go bar and beer bar market as referred to above. This is an aspect of the sex industry which has visibly and dramatically expanded in recent years. The sex industry is perceived by researchers and policy makers alike to attract tourists and since tourism is such a crucial component of the Thai economy, the approach taken by government with regards to the illegal sex industry has been one of confused ambivalence. Whilst prostitution an illegal activity with heavy penalties attached, the industry continues to flourish as if the opposite were true. Speaking at a conference of Provincial Governors in 1980, the Deputy Prime Minister of Thailand famously encouraged governors to consider how to harness sexual entertainment as a means of boosting tourism in their respective provinces. He argued:

“I ask all governors to consider the natural scenery in your provinces, together with some forms of entertainment that some of you might consider disgusting and shameful because they are forms of sexual entertainment that attract tourists...we must do this because we have to consider the jobs that will be created for people”⁴⁷

2.7 The approach of the Thai authorities and the sex industry

The former deputy Prime Ministers attitude is at odds with the law regarding prostitution, as well as attempts made by the Thai government in recent decades to rebut assertions sometimes made in international media that Thailand is a country where prostitution is widespread. Take for example the *New Longman Dictionary of English language and Culture* incident in 1993 whereby Thai authorities successfully persuaded the publishers to withdraw and amend a description of Bangkok as “often

⁴⁷ Former Deputy Prime Minister of Thailand as cited in Montgomery, H. (2008). Buying Innocence: Child-sex tourists in Thailand. *Third World Quarterly*, 29(5), 903 – 917.

mentioned as a place where there are a lot of prostitutes”. Commenting on the incident, which saw the dictionary banned and an eruption of government and public protests, government spokesman Abhisit Vejjajiva said “We do not deny the existence of the problem. But we do not believe it should be used as the definition of this city”⁴⁸.

2.8 A brief summary of the organisation structure of the sex industry: From sex tourist to local and from go-go bars to “freelancers”

It may be argued that it is wiser to talk about multiple sex industries in Thailand, such is the complexity and diversity amongst the establishments from which sex is solicited or sold; this may vary from the luxuriously expensive and neon sign posted to a dark corner behind a convenience store. This naturally impacts on the extent of the density of the chain of persons and/or businesses implicated in commercial sex transactions, the potential risks faced by the sex workers as well as their rights and a whole host of other variables which contribute to our understanding of sex work in Thailand. Research indicates that the sheer diversity of arrangements by which sexual services are purchased has increased exponentially during recent decades in order to serve demand from specific niches within the “market”. Below is a non-exhaustive list of places where sex is commonly bought and sold:

- brothels;
- hotels and motels;
- tea houses;
- massage parlours, particularly those licensed as a place of “entertainment” under the EPA, above;
- beer bars, nightclubs, pubs, discos and go-go bars;
- restaurants;
- private members clubs;

⁴⁸The Independent (Tuesday 06th July, 1993): “Thais Ban Dictionary over “City of prostitutes” slur”. Available at <http://www.independent.co.uk/news/world/thais-ban-dictionary-over-city-of-prostitutes-slur-1483226.html>. Accessed 19/02/2012.

- Karaoke bars;
- Escort services advertised in tourist magazines, newspapers and phone booths, and;
- freelancers who solicit custom on the streets.

2.9 The legal response to the highly organised sex industry

The response of the authorities is a varied as the industry itself. Given that prostitution is illegal yet at the same time so visibly widespread, there is a palpable pressure on governmental authorities to take action. This pressure to act against prostitution, evidenced in the almost ritualistic espousals of government figures to do just that, is however tempered by corruption, an ambiguous legal framework and pressure from the thriving industry itself which generates an enormous amount of money. Some estimates place the income generated by foreign sex tourists alone at 1 per cent of the Thai GDP⁴⁹.

Corruption is broadly acknowledged to be a widespread and deeply rooted problem in Thailand, a country which ranks 78 out of 178 on the Corruption Index, neck and neck with China, Peru, Colombia and Serbia⁵⁰. However much of the evidence on the role of corruption in the rise of the sex industry is based on anecdotal evidence, rumour and accusations⁵¹

⁴⁹ Renton, A. (2005, 05 21). Learning the thai sex trade. *Prospect Magazine*, Retrieved from <http://www.prospectmagazine.co.uk/magazine/learningthethaisextrade/>

⁵⁰ Corruption Perception Index 2010, retrieved from http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

⁵¹ One powerful such anecdote is the case of the sex mogul turned successful politician, Chuwit Kamolvisit, whose escapades as one of Thailand's biggest sex establishments owners are briefly detailed above and well documented in Thai media. Now reinvented as a fervent anti-corruption crusader, he founded the Rak Prathet Thai (Love Thailand) political party after selling a large share of his massage parlours - claiming that police interference had made it difficult to continue operating. Chuwit's revelations were spurred on by an incident where Chuwit was arrested and temporarily thrown in jail not for his involvement in the sex industry per se but for illegally ordering the demolition of unlicensed massage parlours on a piece of expensive real estate controlled by Chuwit. Apparently incensed by the unwillingness of the Thai police to protect him, despite monthly bribes averaging 160, 000 US dollars, Chuwit went public with his claims, armed with a list of names of authorities who had received bribes over the past 10 years and which police officers had been gifted with free sexual services at one of his many establishments. Whilst his establishments were subsequently raided and attempts were made to hold Chuwit responsible for minors employed at his

it is difficult to accurately measure the effect of corruption on the Thai sex industry suffice to say that governmental corruption tends to hinder rather than encourage fair application of the law.

2.10 An appraisal of the sex industry in Thailand from neo-abolitionist and sex-worker feminist perspectives.

There are numerous elements of the sex industry in Thailand which support neo-abolitionist arguments, chiefly: The social system is constructed in such a way that prostitution is a possibility for certain segments of society – young women with limited earning potential looking to support their families. The fact that some prostitutes are male does not negate this argument; men too are capable of falling foul of a system which denies equality of opportunity to all. Equality of opportunity is rarely as simple as one half of the population being openly and automatically denied access because of their gender; if this were the case then all women would be vulnerable to the sex industry. As the above shows this is not true as it is most often the rural poor who turn to prostitution as a last resort to support their family. The fact that it is largely women can be explained by the fact that the sex industry as it stands today caters largely to men who wish to engage in commercial sex with women. A smaller segment of that market is men who wish to engage in commercial sex with men. Had there been a greater “market” for male prostitutes it is entirely possible that more poor and rural men would turn to prostitution than today. The vulnerability to prostitution depends on a number of factors, these are: poverty and equality of opportunity to dig oneself out of poverty. This is a considerably difficult task for Thai women – in particular those from rural parts of the country -who unlike their male counterparts are expected to support whole

establishments, he was eventually acquitted of all charges. This begs the question, if the most prominent pimp (Chuwit is quoted as preferring the term pimp to politician: "In fact, a pimp is better than a politician. The whole system is corrupt and the government is so corrupt", *The Guardian*, 21/02/04: *The Brothel King's Revenge*. The sad fact that a notorious brothel king cannot be held legally accountable for his well-publicised actions casts doubt on how well the approach of the legal authorities mirrors the legislative framework set out above.

families but have less employment opportunities in the public sphere males. The booming and comparably more profitable sex industry offers a way out for these young women, and men. Demand is key. Tackling the demand for commercial sex is a large part of the neo-abolitionist approach as it argues that the supply of prostitutes is a result of demand. Should the demand be wiped out so too will the supply of prostitutes. However, the major paradox of the Thai sex industry is that whilst it is illegal, this has not prevented it from flourishing. Nor has it extinguished the demand. Herein lies the greatest weakness of the neo-abolitionist approach as it assumes that the force of the law is an instrument capable of wiping out an industry enormous in size and profit. It does not account sufficiently for corrupt politicians, policemen and judicial systems. It also fails to account for the lack of equality in other aspects of society – such as with regard to employment and earning potential between genders and between urban and rural areas. Wiping out supply and demand requires much more than merely criminalising the sex industry but would require an entire societal overhaul. This is not in itself theoretically impossible but is likely to be an extremely lengthy process – during which time more adults and children are increasingly vulnerable to trafficking, rape, sexual exploitation, HIV/AIDS and other acts of violence.

For these reasons, I argue that it is worthwhile to view the Thai sex industry in more detail from the sex-worker feminist perspective: to view prostitutes as “workers” and to include labour rights in the spectrum of human rights issues being considered. This is something which a neo-abolitionist perspective does not permit as it does not accept that prostitutes are sex workers and thus no such consideration of labour rights, or rather lack thereof arises. I suggest that labour rights can be seen as a tool of emancipation by which prostitutes or sex workers can realise the broader spectrum of human rights. What I do not at any point suggest however is that neo-abolitionist arguments be wholly abandoned. The sex industry has shown itself to be dangerous, exploitative and the manifestation of a rotten social structure which does not provide equal opportunities for all. It is also the result of a disproportionate geographical distribution of prosperity and

poverty. This should be tackled as a long term project of the utmost importance. Viewing prostitution as “labour” should in no way be seen as a green light for the legitimization of expansion of a sex industry – this has already happened despite its illegal status - but rather a way of trying to empower those adult prostitutes who are a part of the sex industry of their own volition. As will be seen in the chapters that follow, the sex industry in Thailand as well as in other countries is plagued by a number of serious human rights issues, of which the following two are the focus of this thesis:

- 1) Prostitutes/sex workers are dramatically more vulnerable to contracting HIV and AIDS than the general population;
- 2) The illegal and taboo nature of the sex industry creates the conditions necessary for hosting victims of trafficking and slavery;

I argue that a common ground must be found which achieves the shared⁵² goals of neo-abolitionism and sex-worker feminism: the realisation of human rights for prostitutes. A hybrid approach recognises the harmfulness of the sex industry but allows for a more nuanced approach than simple criminalisation. I argue further that endowing prostitutes with labour rights and treating them as sex workers will facilitate targeting the two focus human rights issues mentioned above – HIV and Aids and trafficking for sexual exploitation.

⁵² It is well understood that neo-abolitionist and sex-worker feminism are irreconcilable on a number of matters, chiefly whether or not buyers of commercial sex should be criminalised and whether prostitution is labour or exploitation which is incapable of being labour. Both perspectives however emphasise the need for the decriminalisation of the prostitute and her/his human rights deficit.

Chapter 3: Prostitution as sex work: Applying a labour rights perspective to the sex industry

This chapter approaches the Thai sex industry from the perspective of the sex work approach, which as shall be recalled, advocates for commercial sex to be regulated and promotes the term sex worker instead of prostitute or survivor of prostitution.

3.1 General Working Conditions in Thailand⁵³

Working conditions in Thailand are formed in statutory law, as opposed to collective agreements between employers and trade unions. Collective bargaining is neither widely practiced nor is it well protected: less than 2 percent of the workforce is unionized. At the time of writing Thailand is not a party to ILO Convention 87 or 98, the two ILO conventions which together enunciate the fundamental right to freedom of association and collective bargaining. The fact that unionization rates are so low however likely has at least as much to do with the large number of workers in the informal economy as lack of effective legal protection⁵⁴.

Forming the basis of the legislative framework is the *Labour Protection Act (1998)* which establishes minimum standards concerning working hours, overtime, public holidays, annual and sick leave, maternity leave, severance pay and other fundamental workers rights. The Act has wide applicability and is binding on *all* employers and employees in both the formal and informal economies, with the sole exception of household staff.

⁵³ Due to the fact that Thailand is not party to any of the three major conventions which focus exclusively on Occupational Safety and Health (C155, C161 and C187) – an area which is relevant to the subject matter at hand – this chapter provides a general overview of working conditions in the Thai sex industry and will not focus on OSH specifically.

⁵⁴ Concept Note: The Role of the International Organisation in improving the Working Conditions and Sexual and Reproductive Health of Sex Workers in Thailand. Draft. Prepared by Davide Lowe. September 2011: For the International Labour Organisation's east and South East Asia and the Pacific Regional Office.

The *Labour Relations Act 1975* regulates employment contracts and makes contracts mandatory for firms with 20 or more workers. These contracts cover employment conditions, benefits, and salary and complaint procedures⁵⁵. The *Social Security Act* requires all employers to register their employees with the Social Security Fund which is financed through monthly payments by employees, by employers and the government each equalling 3 percent of the employees monthly salary. The Social Security Fund is not limited to the formal economy but is extended to workers in the informal sector – including sex workers – who may partake on a voluntary basis. Sex workers and informal economy workers may choose to pay 70 baht a month with the government contributing 30 baht into the fund. This protects the worker in case of sickness, disability and death. A contribution of 100 Baht met with 50 Baht from the government provides the above benefits plus a pension⁵⁶.

3.2 Enforcement of Thai labour laws

Government mandated labour inspections are limited by generally low levels of effectiveness and capacity. Thailand is not a party to either C81 or c129, the two major ILO labour inspection conventions. There are in total 75 provincial and 10 district Labour Protection and Welfare Offices⁵⁷, though labour inspection visits to sex establishments are rare. Whilst enforcement in the formal sector is considered poor, it is practically non-existent⁵⁸ in the huge informal sector of which the sex industry is a big part. A conclusion of a recent ILO Concept Note was that:

⁵⁵ Details of the regulatory framework of Thailand's labour laws can be found at http://www.ilo.org/labadmin/info/WCMS_153137/lang--en/index.htm

⁵⁶ ILO Concept Note, OpCit : Page 5

⁵⁷ Info-page on Thailand at http://www.ilo.org/labadmin/info/WCMS_153137/lang--en/index.htm

⁵⁸ As there are no official records of state mandated labour inspections of the informal economy it is not possible to say how frequently, if at all, labour inspections take place.

*“Thai labour laws, with some isolated exceptions, are ignored by employers in the sex industry”.*⁵⁹

Conditions in the sex industry vary according to establishment, clientele and individual management. In general however, brothels are thought to be amongst the worst. Sex workers are expected to service multiple customers per day with little or no choice in whom they engage as a client. The closed conditions and relative invisibility of brothels makes them a fertile breeding ground for human and labour rights violations of particularly vulnerable groups such as children, victims of trafficking and undocumented migrants.

Though brothels are thought to provide the worst working conditions establishments in other parts of the sex industry generally fall way below national and international standards for workplaces. So-called freelancers, who might be said to exercise comparative autonomy when compared with brothel workers, are invariably extremely vulnerable to rape, physical violence, financial exploitation (i.e. clients refusing to pay) and other serious labour and human rights abuses. Research indicates that rape, physical violence and financial exploitation are occupational risks which exist to some degree or another in all the market niches of the sex industry.

Sex workers at karaoke bars are more likely than their Go-go and beer bar counterparts to encounter violent and drunk clients, to have overall lower salaries and to lose a greater percentage of their payment for the sale of sexual activities to the establishment. Whilst the total income of sex workers in general (not including those working under conditions of slavery) is higher than most occupations in Thailand, hence its enduring appeal to the rural poor who must support their families. Salary is furthermore commonly used as a tool by employers to keep sex workers in check. Most establishments require workers to adhere to certain “bar rules”, negative incentives which penalise disobedient workers by deducting money from salaries. Examples of bar rules include:

⁵⁹ ILO Concept Note, OpCit. Section 2.5

- Disproportionate deduction for arriving at work late, for example 3 Baht for each minute where pay for the whole day or evenings work may only amount to 200 – 500 Baht.
- Deductions for workers who fail to fulfill their monthly quota of clients. This can be as much as 300 – 500 for each client.
- Salary deductions for failing to meet the minimum sale of drinks.

Whilst negative incentives may not in themselves be a labour or human rights violation⁶⁰, it should be noted that these are used by employers to exercise control over a workforce which is by all intents and purposes treated as *freelance*, making it a questionable practice indeed. As freelance workers they have no right to sick pay, maternity pay or any kind of social protection whatsoever. They are completely without rights and while treated by their employers as free agents, they do not enjoy any of the associated autonomy.

Worse still is the risk that such negative incentives directly encourage sex workers to engage in risky behaviour detrimental to their health, well-being and safety such as filling the drinks quota by encouraging the client to buy drinks for her or by encouraging clients to become very drunk – both of which lead to increased likelihood of violence and potential long-term health problems. Negative incentives prevent sex workers from making autonomous choices about who they chose to engage as clients and may make actual choice an impossibility as sex workers are encouraged to sleep with whoever may present themselves in order to avoid losing a large part of their livelihood.

3.3 Labour rights are human rights.

Applying a labour approach to the sex industry highlights the labour rights deficit that sex workers in Thailand endure. Applying a purely neo-abolitionist approach does not allow for the consideration of labour rights as part of sex workers' human rights. This is in direct contradiction

⁶⁰ It is however possible that in certain cases use of negative incentives is so severe that the labour must be describe as forced labour, and thus a human rights violation.

with the contemporary understanding of labour rights as part of the indivisible spectrum of human rights⁶¹. Labour rights are for example protected in the Universal Declaration of Human Rights⁶² on par with all other human rights.

Whilst the reasoning of neo-abolitionism is rational – if prostitution is a human rights violation it cannot simultaneously be considered work – the outcome is somewhat too myopic to reflect the extreme complexity and variation of sex industries around the world.

One may consider, for example, the parallel argument of protecting child labourers human rights. Child labour is beyond any doubt exploitative, repugnant and a clear violation of human rights⁶³. For example, whilst child labour is not a problem in a wealthy welfare state such as Norway; it is a serious problem in Bangladesh, where poverty forces 7.4 million children between the ages of 5 and 17 into work⁶⁴. It is also illegal in both Norway and Bangladesh. However, due to radically different economic and social, cultural and developmental climates (i.e the root causes) it is widespread in Bangladesh but not in Norway. It is clear then to any one working in that field that considered the radical gap between Norway and Bangladesh on the spectrum of fully abolishing child labour, radically different approaches must be employed, which tackle the root causes such as poverty rather than avoiding discussion of the problem with a band-aid of illegality. This does not mean, however, that child labour should be legalised merely because it is widespread; but that steps should be taken which explicitly protect the human rights of children presently trapped in child labour. Whilst the most effective way of protecting child labourers would be to eliminate child

⁶¹ Whilst neo-abolitionism is certainly not the only movement to consider labour rights as separate from human rights, the growing trend is to accept labour rights as human rights. This is also the position of the International Labour Organisation. For more on this see for example Kevin Kolben, Labor Rights as Human Rights?, *Virginia Journal of International Law* (Vol. 50:2) 2009.

⁶² See in particular Article 24 of the *Universal Declaration of Human Rights*, G.A Res. 217A, U.N. GAOR 3rd session., December 12, 1948.

⁶³ Convention on the Rights of the Child (1990), ILO Minimum Wage Convention No. 138 (1973) and Worst Forms of child Labour Convention No. 182 (1999)

⁶⁴ There are 7.4 million working children under between the ages of 5 and 1 in Bangladesh. 3.2 million of these are in form of banned child labour according to international standards and 1.3 million are engaged in hazardous forms of child labour. For more on this see UNICEF: Key Statistics on Child Labour in Bangladesh retrieved from http://www.unicef.org/bangladesh/Child_labour.pdf

labour altogether, most strategies recognise that poverty, as the root cause of child labour, must be tackled first. The ILO's International Programme on the Elimination of Child Labour (IPEC), for example, was created in 1992 with the goal of progressively eliminating child labour. Crucially, IPEC recognises that merely making child labour illegal is not enough to eliminate it but that further action is needed to make child labour obsolete; this includes providing education, skills training and enabling parents to earn enough money to support their family's needs without having to send their children to work.

Chapter 4: Human Rights Issues in focus

part one: Trafficking and sexual slavery/forced labour

The terms trafficking and slavery/forced labour refer to two distinct but related issues. It will be useful to begin with a clarification of what each term means, their relationship to one another and their prevalence in the Thai sex industry.

The *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)* is signed but not at the time of writing ratified by Thailand. It is the lynchpin of the human trafficking framework. It sets out the definition of the “trafficking in persons” in *Article 3 (1)* which appears below, presented for purposes of clarity in the three distinct elements which are necessary for the act of trafficking:

“Trafficking in persons shall mean the:

- 1) *“...recruitment, transportation, transfer, harbouring or receipt of persons...”*

- 2) *“... by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments to achieve the consent of a person...”*

- 3) *“... for the purpose of exploitation”*

The third element of exploitation is expounded upon further in article 3 as including, as a bare minimum *“the exploitation of the prostitution of others*

or other forms of sexual exploitation, forced labour or services or practices similar to slavery, servitude or the removal of organs”.

4.1 Prostitution as exploitation

Prostitution is named as a potential source of exploitation. The protocol does not provide an unambiguous definition of what “exploitation of prostitution” or “sexual exploitation” entails. The radical feminist/neo-abolitionist approach for example dictates that all prostitution is exploitation thus under this analysis no further intended malice would be necessary if it can be demonstrated that a person was forcibly transported into a country for the purposes of prostitution. The sex work approach on the other hand views exploitation in this context as hinging on the concepts slavery, servitude and control as per the protocol.

A leading case in this area, which provides much needed clarification, is that of *Rantsev v Cyprus and Russia* heard by the European Court of Human Rights in 2010 wherein trafficking was equated directly with slavery. The Court held that:

“...trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership⁶⁵”.

Whilst this does not provide an adequate definition of exploitation it does indicate that control and ownership – both distinguishing elements of slavery and forced labour – are integral elements of exploitation. The shared element of control is clear in the 1926 Slavery Convention definition of slavery as *“the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”⁶⁶* whereas the shared element of coercion is evident in the definition of forced labour as *“all work or service which is exacted from any*

⁶⁵ *Rantsev v. Cyprus and Russia*, Application no. 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010, Para 281.

⁶⁶ The Slavery Convention (1926) Article 1(1)

*person under the menace of any penalty and for which the said person has not offered himself voluntarily*⁶⁷.

The significance of the above is that it characterizes trafficking as a human rights violation on par with that of slavery. This is despite the fact that the Protocol is not a human rights instrument in itself but rather it is a creation of the UN Crime Commission aimed at reducing transnational organized crime. Equally important is the identification of trafficking victims and sex industry slaves as victims of *core labour* standards violations⁶⁸ which member states of the ILO are bound to at the very least promote and protect for all workers, regardless of whether they are in the formal or the informal economy⁶⁹.

It is important to note that it is not only persons who cross national borders that are vulnerable to human rights abuses but all persons forced to work in the sex industry. For the purposes of this discussion victims of trafficking are also victims of forced labour whilst not all victims of forced labour are victims of trafficking. The two issues are to be understood as equally pressing human rights concern whilst simultaneously acknowledging the elements of deception and transportation unique to trafficking.

4.2 Trafficking, forced labour and sexual exploitation in Thailand

Trafficking for the purposes of forced labour is a huge global business worth an estimated 31.6 billion USD. The ILO estimates that globally 12.3 million people are victims of forced labour, 2.4 million of whom have been trafficked and over half of which are in Asia and the Pacific. Out of these 2.4 million trafficking victims, a whole 43 % (just over 1 million) are in *forced commercial sexual exploitation*⁷⁰ – 98 % of which are women and

⁶⁷ ILO Convention No. 29 (1930)

⁶⁸ Thailand, like the majority of ILO member states, has ratified both ILO C29 on Forced Labour (1929) and C105 Convention on the Abolition of Forced Labour (1957)

⁶⁹ This obligation arises from the ILO Declaration on fundamental principles and rights at work (1998)

⁷⁰ The remaining 32 % are used for economic exploitation and 25 % are used for a mixture of both sexual and economic exploitation or for unknown reasons. Source: ILO Key Statistics on Forced Labour: Fact Sheet (2005). Factsheets available at

girls making trafficking for sexual exploitation extraordinarily gendered phenomena. Forced commercial sexual exploitation includes women, men and children who have forcibly entered into prostitution or other forms of commercial sexual activities or those who entered voluntarily but are subsequently unable to leave⁷¹.

Thailand is a trafficking hub, it is both a country of origin and destination. It has introduced legislative measures aimed to counter human trafficking in the form of the Anti Trafficking in Persons act (2008) which identifies trafficking as per the Protocol as a serious criminal offence. In addition to this multidisciplinary teams consisting of government and civil society organizations exist in every province with the specific mandate to collectively address trafficking. However, whilst it is clear that Thailand is concerned about trafficking and is willing to pour resources into finding a solution, this concern has not yet manifested itself into the reality of the trafficking scene in Thailand - widely considered to be booming rather than shrinking. In August 2011 UN Special Rapporteur on Trafficking Joy Ngozi Ezeilo expressed concern regarding the ever higher rates of human trafficking and migrant workers vulnerable to exploitative or forced labour in Thailand whilst warning that “deep rooted corruption” was impeding current anti-trafficking/slavery measures.⁷²

Trafficking for sexual exploitation was identified as a major form of trafficking in Thailand during Ms. Ezeilos’s 12 day mission to Thailand and whilst there has been a notable reduction in the number of Thai citizens trafficked abroad for sexual and economic exploitation, the opposite was true for foreign citizens being trafficked into Thailand⁷³. Additionally,

http://www.ilo.org/declaration/info/factsheets/WCMS_DECL_FS_20_EN/lang--en/index.htm

⁷¹ For more see: “A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work”, International Labour Conference 93rd Session 2005 (Report 1b), ILO, Geneva.

⁷² UN NEWS, *Thailand must mount anti-trafficking measures more effectively, warns UN expert*. Available at

<http://www.un.org/apps/news/story.asp?NewsID=39349&Cr=human+trafficking&Cr1=>

⁷³ UN Special Rapporteur on Trafficking end of mission statement: Thailand 2011. Available at

internal trafficking of children, particularly children of migrant workers, refugees and hill tribe children for sexual exploitation was “rampant”⁷⁴

Victims of commercial sexual exploitation – be they trafficked or otherwise, can expect to endure a range of human and labour rights violations that go beyond forced labour as defined above.

4.3 Life as a trafficking victim/victim of forced labour

Insight into the life of a trafficking/forced labour victim in the Thai sex industry is hard to come by. There is no standard model of abuse as each case varies. As an example however we can consider the experiences of a number of trafficking victims from Burma who ended up in a Thai brothel as detailed in a Human Rights Watch report. They “worked” between ten and fourteen hours every day, serving anywhere between ten and twenty clients daily. The girls had no say over who their clients were or what activities they undertook. One seventeen year old victim of trafficking working at brothel in Hat Yai spoke of how dirty, sweaty and smelly her clients were. Though she did not want to sleep with them, the brothel owners would beat her if she tried to resist⁷⁵. The girls received a few days off each month to allow for menstruation. If the girls were very sore or sick they could ask for time off, though this was by no means guaranteed and was furthermore not widely practiced due to fear of more and more debt being added onto ludicrously high figures⁷⁶. In addition to servicing clients on the premises, the girls interviewed could be “hired” for entire days and nights. Clients would leave a deposit and were allowed to take the girls wherever they chose, subject only to restrictions that the pimp may place if he or she fears that the girl will not be returned. The girls expressed anxiety over these arrangements and told stories of friends who had been kidnapped and never heard of again. In some cases, pimps and brothel owners were

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11319&LangID=E>

⁷⁴ End of mission statement, Ibid.

⁷⁵ HRW: Asia Watch , & And the Women's rights project , Human Rights Watch, (1993). *A modern form of slavery: Trafficking of burmese women and girls into brothels in thailand.*

⁷⁶ In this case the girls families had paid large sums to secure passage and work in Thailand, which the girls when then obligated to pay off before they could leave the brothel. This is referred to as debt-bondage.

found to have beaten the girls into submission, whereas some girls submit because they hope to work themselves free of their debt. Those interviewed resided at the brothel, though it should be noted that this is not always the case. They lived, slept and performed sexual services in tiny two by two-and-a-half meter cubicles. In one instance the tiny and squalid living quarters were found to be shielding hidden doors and secret passageways for hiding in the event of a raid. Conditions were extremely cramped and unhygienic⁷⁷.

4.4 The scale of the problem

Reliable and meaningful statistics on the extent of human trafficking for sexual purposes are notoriously hard to come-by. Whereas no governmental statistics on the matter currently exist, multiple figures put forward by NGO's and specialized agencies tend to periodically go through phases of being embraced and subsequently abandoned for being too unrealistic or insufficiently grounded in evidence. The received wisdom in the sizeable anti-trafficking movement⁷⁸ active in Thailand is that quantifying the problem may simply not be possible. Trafficking is more often described in more abstract terms, such as the conclusion of the ILO's anti-trafficking programme that "significant numbers of migrant workers in Thailand are indeed victims of trafficking"⁷⁹. Communications Officer for the programme Allan Dow remarks that "We've stopped using numbers now. We know the problem is serious: there's no point coming up with unreliable statistics. Not having numbers doesn't mean we don't know what we're doing... but we have to admit that the current methodology for getting statistics doesn't work."⁸⁰ Thus the trafficking problem is difficult to put a number on, suffice to say that it is a serious human rights issue.

Trafficking in human beings is widespread, not only in Thailand, but also in neighbouring countries China, Myanmar, Laos,

⁷⁷ HRW, *Modern Day Slavery*, OpCit.

⁷⁸ There are 21 NGO's and agencies active in the field of anti-trafficking in Bangkok alone.

⁷⁹ The ILO, where we work: Thailand:

<http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/wherewework-thailanddetail.htm#link01>

⁸⁰ Prospect Magazine, *Learning the Thai sex trade*, OpCit..

Cambodia and Vietnam. UNIAP, the UN agency set up to help facilitate a more coordinated response to the trafficking of persons in the Greater Mekong Sub-region (GMS) reports that Thailand is a source, transit and destination country for trafficking. It is furthermore thought to host the greatest number of child trafficking victims of all the aforementioned GMS countries. The victims of trafficking in Thailand are both male and female and are trafficked for a variety of reasons, including sexual and labour exploitation, from other GMS countries as well as from poor rural areas of Thailand to more affluent urban centers.

What is more is that trafficking is not expected to subside anytime soon. As Thailand's popularity as a tourist destination soars in tandem with its reputation as a country where sexual services can be easily bought the demand for sexual service providers is set to increase correspondingly. The temptations for traffickers to ply their trade in Thailand is heightened by the substantial economic gains they stand to make combined with notoriously corrupt authorities.

A recent report by the United Nations Office on Drugs and Crime named Thailand as one of the most common destinations for victims of human trafficking⁸¹. At present there is no reliable way of telling just how many of those trafficking victims in Thailand will end up in the sex industry. Whilst, the same UNODC report shows that trafficking in humans for the purposes of sexual exploitation was by far the most commonly identified form of trafficking in the Mekong region, it was also acknowledged that this may be the result of a statistical bias as sexual exploitation tends to be more visible and furthermore, until recently legislative provisions in the region only criminalised trafficking in conjunction with sexual exploitation.⁸² Whilst this is unhelpful in quantifying the problem at hand, it is also a powerful indicator of the close

⁸¹ See UNODC: the UNODC on Human Trafficking and Migrant Smuggling, at <http://www.unodc.org/unodc/en/human-trafficking/>. Other common destinations for victims of human trafficking are: Japan, Israel, Belgium, the Netherlands, Germany, Italy, Turkey and the USA. See also: UNODC Global Report on Human Trafficking http://www.unodc.org/documents/Global_Report_on_TIP.pdf

⁸² UNODC Global report on Human Trafficking in Persons (2009) <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>

relationship between human trafficking and sexual exploitation in the region.

4.5 Trafficking and the commercial sexual exploitation of children

Worldwide, children are thought to account for 20 per cent of all trafficking victims. However, this figure is thought to be higher in the Mekong region⁸³, particularly in Thailand where trafficking in children was labeled as a “significant issue” in Thailand by the UNODC⁸⁴. Of the 544 victims of trafficking identified by the government above – the majority of whom were forced to work in the sex industry – an overwhelming 416 were children⁸⁵. If these statistics, which are as is often the case with governmental statistics on illegal matters likely to be an underestimation, are to be generalized, this would mean that three-quarters of all trafficking victims in Thailand are children, and that those children will more likely than suffer sexual exploitation in the sex industry. Research commissioned by the ILO’s International Programme on the Elimination of Child Labour indicates that there are between 27,400 and 44, 900 children being commercially sexually exploited in Thailand⁸⁶. This accounts for approximately 15-20 percent of the entire sex industry if one follows the albeit conservative number of 150,000 – 200,000 total prostitutes⁸⁷.

4.6 Trafficking, forced labour and the sex work approach

As outlined above, the liberal/sex work approach tends to distinguish between forced and non- forced prostitution. With regard to trafficking, the sex-work approach postulates that some who would be identified as trafficking victims by international or national standards self-

⁸³ UNODC (2009) Ibid.

⁸⁴ UNODC (2009) Ibid.

⁸⁵ UNODC (2009)Ibid, page 185: Fig. 156.

⁸⁶ ILO-IPEC: Trafficking in Children in Asia: A regional overview, By Karen. C. Tumlin, Researcher, Institute for Asian Studies, Chulalongkorn University. February 2000.

⁸⁷ ILO-IPEC, *ibid*.

identify as migrant sex workers⁸⁸. W. Chapkis argues that anti-trafficking movements and legislation often capitalize on an unwarranted “moral panic” regarding an imagined epidemic of sexual slavery⁸⁹. That being said this approach does recognize that trafficked persons are sometimes forced into conditions of sexual slavery, but argue that that is not always the case. Scarlett Alliance, an Australian based sex workers organisation, illustrates the sex worker approach to trafficking where it argues that:

“A distinction is required between human rights abuses arising from bad work conditions in sex work...and the perspective that all migrating sex workers are forced, coerced and or trafficked”⁹⁰.

It is contended that the criminalization of the sex industry only serves to further jeopardize the health and human rights of those involved in the sex industry, including willing participants as well as victims of trafficking forced to work in the sex industry. This sentiment is shared by Sex Workers rights organization EMPOWER Thailand which views current anti-trafficking laws and policy as marginalizing and criminalizing migrant sex worker who travel to Thailand and work in the sex industry voluntarily. EMPOWER demonstrates a typical sex worker approach to trafficking where it questions the motives of anti-trafficking measures:

“It’s not us that fill the violent offender’s cells of prisons around the world. Exactly what risk does our freedom of movement pose? Why is keeping us in certain geographical areas so important that governments are willing to spend so much money and political energy? Why do we feel like sheep or cattle, only allowed by the farmer to graze where and when he chooses”⁹¹

⁸⁸ W. Chapkis, Trafficking, Migration and the Law (2003): Protecting Innocents, Punishing Immigrants,. *Gender & Society*, December vol. 17 no. 6 923-937

⁸⁹ Ibid.

⁹⁰Scarlet Alliance Information page: International Migration. Available at <http://www.scarletalliance.org.au/issues/migration>. last accessed 13/04/2012

⁹¹ Empower Thailand, Hit and Run: Sex Worker’s Research on Anti-Trafficking in Thailand (2012)

However, the argument that trafficking victims are in fact willing participants who travel with the aid of traffickers in order to engage in ‘sexual labour’ is very difficult to reconcile with general human rights law, and of course international anti-trafficking laws. There is no human right to unconditionally and freely move to a country of one’s choosing, even where one is fleeing terrible poverty; if this was the case all forms of visas, travel restrictions and international borders would be in violation of human rights law and asylum law would be a lot less complicated than it is today. This argument tends to veer to the extreme libertarian, rejecting human rights and measures intended to protect exploited persons, whilst at the same time relying on freedom of movement to deny those rights to others.

It is understood that human rights are often balanced with and other. However, in the context of trafficking and sexual slavery an argument for sacrificing the right of protection for the extremely vulnerable majority for the right of freedom for the minority does not seem compatible with the general purpose of human rights law.

4.7 Anti-trafficking measures as harmful

EMPOWER allege further that anti-trafficking measures may in fact be more harmful to sex workers than the sex industry itself:

“We have now reached a point in our history where there are more women in the Thai sex industry who are being abused by anti-trafficking practices than there are traffickers”⁹².

This, they argue, is because rescue missions in the sex industry are primarily instigated by using punitive criminal measures. These are supposedly ineffective at punishing traffickers and largely punish victims of trafficking by sending them back to their borders of their own countries to

⁹² Hit and Run, Ibid. Executive summary.

start their journey all over again. It is argued that entrapment operations are common and more often than not result in extortion rather than “rescuing”⁹³. However, it should be noted that this is due more to corruption and a failure to follow international trafficking and human rights law than it is to the nature of anti-trafficking measure. It is a problem of implementation and corruption.

4.8 Neo-abolitionism: the sex industry as fuelling the demand for trafficking for sexual exploitation

Neo-abolitionism treats trafficking for sexual exploitation as being a direct consequence of the demand for commercial sex. The supply of women, girls and boys for sexual exploitation is a response to a demand for cheap sex from who do not distinguish between exploited, trafficked or otherwise. If trafficking for sexual exploitation and sexual slavery is to be eliminated, neo-abolitionism argues that the demand must be extinguished through criminalisation of the sex industry. This line of reasoning was adopted by Sweden when current anti-prostitution laws criminalising the purchase but not the sale of sex were enacted. It furthermore underpinned Sweden’s involvement in the 2002 Nordic Baltic Campaign Against Trafficking in Women. Swedish Campaigners took as their point of departure article 9 (5) of the Trafficking Protocol which provides that every country that has signed and ratified the protocol shall “*adopt or strengthen legislative or other measures such as educational, social or cultural measures....to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking*”. It will be recalled that abolitionists treat *all forms of prostitution* as exploitation without any need for further qualification. Thus the existence of a thriving commercial sex scene –exploitative by definition- is an open invitation for traffickers for purposes of sexual exploitation and under article 9 (5) state

⁹³ It should be noted that these comments are made in the context of a notoriously corrupt police and immigration authorities and cannot be said to be accurate of anti-trafficking measures in all countries.

parties to the protocol should act to eliminate the demand for the sexual exploitation of women, girls and boys: the sex industry itself⁹⁴.

The fact that Thailand has signed but not at the time of writing ratified the Protocol does not in this instance preclude a discussion of a demand centred approach to trafficking as the argument itself predates the Protocol⁹⁵. Furthermore, similar obligations are incumbent upon Thailand under CEDAW⁹⁶.

4.9 Trafficking and slavery: summary

On the one hand, if Thailand's enormous sex industry continues under a thin veil of illegality as it has done for decades now, then this precludes the legitimate cooperation of the various labour actors who are well equipped to detect victims of trafficking and to identify traffickers. Whilst the ILO does not openly endorse either neo-abolitionism or the sex work approach, it does recognise the importance of labour inspection in helping to prevent trafficking. A recent report on trafficking and forced labour reads that:

*“whether the trafficking is for sexual exploitation or for other forms of economic exploitation, labour actors must be harnessed to global efforts to prevent and combat it. Ministries of labour together with labour inspectorates, employers, recruitment agencies and trade unions must all be an integral part of global efforts to eradicate human trafficking”*⁹⁷

⁹⁴ “Abolishing prostitution: the Swedish Solution. An interview with Gunilla Ekberg by the Rain and Thunder Collective”, Rain and Thunder: A Radical Feminist Journal of Discussion and Activism, issue 41 Winter Solstice 2008.

⁹⁵ Melissa Farley, “Bad for the body, bad for the heart: Prostitution harms women even if it is legalized or decriminalized”, Violence Against Women, Vol 10, Number 10, October 2004, 1087-1125.

⁹⁶ Article 6 of CEDAW provides that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

⁹⁷ ILO Background paper: Fighting Human Trafficking: the Forced Labour Dimensions, Conference Paper, 28th January 2008. Available at http://www.ilo.org/sapfl/Events/ILOevents/WCMS_090236/lang--en/index.htm

Whilst it must be repeated here that the ILO does not endorse either neo-abolitionist or a sex work approach⁹⁸, it has identified a number of elements as being instrumental in shaping the demand for trafficking for commercial sexual exploitation⁹⁹, these are:

1. **Corruption** of custom officials in origin, transit and destination countries;
2. **Lack of general awareness** in society, workplaces and in government.
3. The **low-risk high-profit** nature of the trafficking business; rates of conviction for traffickers are extremely low¹⁰⁰ and victims are hard to identify, particularly where the victims are part of an invisible and legally non-existent industry such as the sex trade.
4. **Lack of respect for and/or violations of human rights.**
5. **Absence of an effective regulatory framework** and/or lack of enforcement.
6. **Growth of sex and entertainment industries which results in a higher demand for commercial sex.**
7. **High consumer demand for cheap services and products;** though this point is perhaps better suited to explaining economic exploitation, it stands to reason that the growth of a sex industry brings with it an element of competition whereby pimps and brothel owners strive to offer commercial sex for the lowest possible price.
8. **Unwillingness of locals to work in sex industry due to higher standards of education, and opportunity, particularly for local women.** This leaves a gap to be filled by traffickers.

⁹⁸ The ILO does not clearly enunciate a abolition or sex work stance but leaves the question open for debate. However, perhaps due to the nature of the organisation

⁹⁹ ILO Action Against Trafficking in Human Beings (2008), ILO: Geneva. Available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf

¹⁰⁰ There are a few thousand convictions for traffickers every year compared to the 2.4 million trafficking victims at any one time.

There are also a number of factors crucial to the “supply” of trafficking victims which in many ways mirror the structural inadequacies which enable an illegal sex industry to thrive, namely: poor or corrupt governance, public administration and judicial systems which fosters an environment whereby traffickers can prosper; gender biased employment and educational discrimination which excludes women from formal employment opportunities thereby ensuring a surplus of females with little earning potential in their home countries; inefficient migrations channels unable to legally cater for migratory flows combined with a lack of information on legitimate working opportunities abroad – an disproportionate amount of work at home and abroad aimed solely at men may force women to rely on “recruiters”; poverty and low levels of education and just as with the demand market, *the low-risk high-profit nature of the trafficking business.*

Special Rapporteur Ezeilo found a number the aforementioned conditions to be present in Thailand, raising the following as issues of urgent concern behind the growth of trafficking:

- *“The implementation of policy and legal framework on human trafficking and the law enforcement are weak and fragmented, resulting in a huge gap between de jure and de facto (approaches to human trafficking).*
- *Victims of trafficking are not properly identified, leading to wanton arrest, detention and deportation around the country. They are too often misidentified as irregular migrants, arrested and deported without any risk assessment as to whether the return would be safe.*
- *There is a lack of statistical information and conflicting data on the number of victims rescued, assisted and repatriated.*
- *Corruption especially among low-cadre law enforcement officers at provincial and local levels is deeply rooted. Corruption, coupled with the infamous brokerage system, has diluted the efficacy of Government policies and programmes to combat human trafficking.*

- *Root causes of trafficking, particularly demands for cheap and exploitative labor provided by migrant workers, are not being effectively addressed. This has perpetuated the abuse of human rights of migrant workers who are exposed to exploitation and extortion by brokers, employers and the law enforcement agents. In particular, the Government is doing not enough to protect irregular migrants who are frequently exploited and face serious violations of their human rights.*
- *The rate of prosecution of trafficking cases remains low, which contributes to impunity of traffickers engaging in illicit and clandestine operations.”*

Source; Early media release of end of mission statement from the Special Rapporteur on trafficking, especially in women and Children: Thailand, 19th August 2011. UN

Throughout the statement, the existence of a flourishing sex industry is noted as being widespread and visible. The Rapporteur does not however recommend the abolition of the sex industry as a solution to trafficking, on the contrary she recommends that it be regulated. Ezeilo strongly advocates that *“the role of labor inspectors in identifying trafficked persons in workplaces and preventing exploitative working conditions should be strengthened”*

Clearly, the trafficking and forced labour phenomena is not black and white. It does not have one root cause alone but is a result of a number of government failings and social prejudices which combine to produce conditions in which the trade in human beings for sexual and other forms of exploitation can thrive. The existence of a commercial sex industry is one of many causes and is in itself the end result of any number of social failings. If trafficking for commercial sexual exploitation is to be tackled effectively, a multi-pronged approach must be taken.

Chapter 5: Human Rights Issues in Focus

Part Two: HIV and AIDS¹⁰¹

5.1 Why is HIV and AIDS a human rights issue in the global sex industry?

HIV/AIDS is a very serious human rights issue for a number of reasons. Whereas there is no specific human right to be free from HIV/AIDS, the illness seriously comprises one's ability to fully enjoy fundamental human rights. This is due in no small part to the severe stigma attached to being afflicted with HIV/AIDS. Despite huge advances in the treatment of HIV and AIDS, they are both still very much feared and misunderstood, particularly in countries where an understanding of the causes of and treatments available for HIV and AIDS is lacking. One of the reasons behind why the illnesses are so strongly stigmatised is due to an association with homosexuality and promiscuity – both themselves very strong taboos¹⁰² in many parts of the world. Another reason is a lack of understanding regarding how HIV and AIDS are transmitted.

The stigma associated with HIV and AIDS is rife, to a certain extent, the world over. Indeed, forty-nine countries in all impose some sort of restriction on the entry, stay and/or residence of people living with HIV; this list includes Australia, New Zealand, Cyprus, Lithuania, Russia and the United Arab Emirates¹⁰³. The consequences of HIV and AIDS related stigma varies from country-to-country. They can include being excommunicated by ones family and/or community, and being fired, which in some cases is tantamount to losing access to sorely needed healthcare

¹⁰¹ AIDS stands for Acquired Immundeficiency Syndrome and HIV stands for Human Immundodeficiency Virus.

¹⁰² As well as being taboo in large parts of the world, homosexuality is criminalised in many countries where HIV and AIDS is prevalent, including 41 countries in Africa and 21 countries in Asia. For more on this see www.globalequality.org

¹⁰³ For more on this see UNAIDS: "Eliminating travel restrictions", available at <http://www.unaids.org/en/targetsandcommitments/eliminatingtravelrestrictions/>

coverage. Furthermore, HIV is a human rights issue because it disproportionately affects the most marginalised and vulnerable groups in society, such as sex workers. The *UN International guidelines on HIV and AIDS* explains this in the following terms:

“Vulnerability to HIV infection and to its impacts feeds on violations of human rights, including discrimination against women and violations which create and sustain poverty”¹⁰⁴.

5.2 HIV and Aids and the international debate on prostitution/sex work

Sex workers have repeatedly been identified as belonging to one of the most vulnerable and marginalised groups most susceptible to contracting HIV and AIDs¹⁰⁵; this was certainly the case in Thailand during an HIV/AIDs epidemic in the late 1980’s/90’s wherein the prevalence of HIV/AIDs in brothel-based sex workers sky rocketed from 3.1 percent in June 1989 to 15.2 percent in June 1991. Furthermore, studies demonstrate that the majority of new HIV/AIDs infections were occurring primarily through commercial sex¹⁰⁶.

The reasons behind why sex workers are at a greater risk of contracting HIV/AIDs are multiple: sex workers run a high risk of occupational exposure to HIV/AIDs, and this risk pivots around the crucial issues of condom usage. Those at greatest risk are those who systematically or sporadically do not use condoms; these include workers who are not educated about the risks associated with unprotected sex as well as those who are disempowered from decisions regarding condom usage. The importance of condom usage in the sex industry and the spread of HIV/AIDs was quickly recognised and acted upon when Thailand put into

¹⁰⁴ UN international Guidelines on HIV/AIDS and Human Rights, Consolidated Version, 2006

¹⁰⁵ Other groups commonly identified include men who have sex with men, injecting drug users, the impoverished internally displaced persons, refugees and prisoners, to name a few. For more see: UN international Guidelines on HIV/AIDS and Human Rights, Consolidated Version, 2006.

¹⁰⁶ As stated in UNAIDS Evaluation of the 100 percent Condom Programme in Thailand, UNAIDS Case Study, 2000.

effect the "100 percent Condom Programme"; a programme mandating obligatory condom usage in all commercial sex transactions. This will be discussed below in relation to the domestic approach to commercial sex and HIV/AIDS.

5.3 How has the International Arena responded to HIV and AIDS within sex industries?

Contrary to trafficking and forced labour/sexual slavery, a strong preference for the sex work approach to the prevention of HIV and AIDs in the commercial sex industry is clearly evident in the international arena. Take for example Guideline 4 "Criminal Laws and Correctional Systems" of the influential *UN International Guidelines on HIV/AIDS and Human Rights* where it strongly endorses the sex work approach in terms of both vocabulary (the term sex worker is used rather than prostitute or survivor) and in terms of favouring decriminalisation and regulation of the sex industry:

*"With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients. Criminal law should ensure that children and adult sex workers who have been trafficked or otherwise coerced into sex work are protected from participation in the sex industry and are not prosecuted for such participation but rather are removed from sex work and provided with medical and psycho-social support services, including those related to HIV"*¹⁰⁷

¹⁰⁷ UN International Guidelines on HIV/AIDS and Human Rights, 2006, page 33.

5.4 The International Labour Organisation and HIV and Aids : The ILO Recommendation 200 concerning HIV and AIDS and the World of Work

Recommendation 200 is a broad instrument which covers “all workers working under all forms of arrangements, and at all workplaces” and “all sectors of economic activity, including informal economies”. Though no specific mention is made of sex work or any other occupation for that matter it is understood that it is intended to apply to *all workers*¹⁰⁸, be they formal or informal and regardless of their migration status. The recommendation is grounded on 11 general principles that “should apply in all action involved in the national response to HIV and AIDS in the world of work”¹⁰⁹. Of particular relevance in the context of commercial sex is the general principle providing for the “protection of workers in occupations that are particularly exposed to the risk of HIV transmission”¹¹⁰.

5.5 Does Recommendation 200 cover sex workers?

Whereas prostitution is not officially recognised as an occupation in Thailand, or the vast majority of the world for the matter, it nonetheless can be argued to adhere to the ILO definition of occupation:
”A set of jobs whose main tasks and duties are characterised by a high degree of similarity constitutes an occupation. Persons are classified by occupation through their relationship to a past, present or future job.”¹¹¹

¹⁰⁸ ILO Concept Note 2011, see also ILO Information Sheet on Recommendation 200 : First International Labour Standard on HIV and AIDS, no date given. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/publication/wcms_157866.pdf

¹⁰⁹ ILO Recommendation 200 concerning HIV and AIDS and the World of Work, 2010, paragraph 3

¹¹⁰ ILO Recommendation 200 concerning HIV and AIDS and the World of Work, 2010, paragraph 3(k)

¹¹¹ International Standard Classification of Occupations (ISCO-88), ILO, Geneva, 1990: Conceptual framework. Available at: <http://www.ilo.org/public/english/bureau/stat/isco/isco88/publ2.htm>

Job is defined as "a set of tasks and duties executed, or meant to be executed, by one person"¹¹². Whilst there is no universally accepted definition of "worker", nor is one provided by the ILO - this is generally left to the discretion of individual national law and policy makers- it is important to note that the ILO in a thematic regarding implementation of Recommendation 200 and sex workers "promotes the inclusion of female and male sex workers and their clients in HIV responses at the international, national, sectoral and workplace levels"¹¹³. The same thematic brief states unequivocally that "The ILO Recommendation on HIV and AIDS (No. 200) covers both sex workers and their clients"¹¹⁴.

Another guiding principle as set out in Recommendation 200 is that HIV and AIDs be treated as a *workplace issue* central to national, regional and international responses that aim to tackle the pandemic¹¹⁵. The recommendation outlines the effect HIV and AIDS has on the world of work as well as the personal lives of those affected where it is noted that:

"HIV and AIDS have a serious impact on society and economies, on the world of work in both the formal and informal sectors, on workers, their families and dependants, on the employers' and workers' organizations and on public and private enterprises, and undermine the attainment of decent work and sustainable development".

HIV and AIDS have devastating consequences for afflicted individual workers and their families; for local and national economies, for the foundations upon which the working world is based and for long term developmental goals.

5.6 Prostitution as sex work and the labour approach to HIV and AIDS

¹¹² Ibid.

¹¹³ Thematic Brief on Sex Workers: "HIV and Work: getting to zero through the world of work. Reaching out to sex workers and their clients", ILO, Geneva, 19th July 2012.

Available at

http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/genericdocument/wcms_185717.pdf

¹¹⁴ Thematic Brief, ILO. Ibid.

¹¹⁵ ILO Recommendation 200, Para 3 (b)

Viewing commercial sex as work enables us to view it as a job which carries with it an increased risk of HIV/AIDS infection and other STDs¹¹⁶. In the case of Thailand, the occupational risk sex workers run of contracting HIV/AIDS is compounded by factors such as: the type of sex establishment he or she is working in, and their financial predicament¹¹⁷. HIV and AIDS have further relevance as a workplace issue for sex workers for a number of other reasons related which go beyond their high level of occupational risks of exposure. These include:

- HIV positive sex workers are more likely than HIV positive workers in other sectors to be dismissed from their jobs because of their HIV status;
- General social gender inequality forces more women than men into the sex industry, meaning that females are in general more likely contract HIV/AIDS than males, studies have shown that male sex workers (MSW) tend to have higher rates of HIV/AIDS than do female sex workers. As of 2009 the prevalence rate amongst MSW was at 14.2 percent, compared with 2.8 percent for FSW¹¹⁸.
- Mandatory testing for HIV/AIDS is commonplace in sex establishments whereas this is not the case in other sectors. This intrusion of privacy is a violation of human and labour rights.
- Sex workers lack trade union representation capable of representing their concerns regarding this extremely serious workplace issue, in large part because their “trade” is illegal.

Whilst the recommendation in its entirety is broadly applicable to sex work, one aspect which is of particular relevance and thus deserves extra

¹¹⁶ The risk of HIV and AIDS infection is higher for sex workers than for non-sex workers.

¹¹⁷ These may well go hand in hand as sex workers in desperate need of money may be more likely to agree to sex without a condom if a higher sum is paid, and as a result his or her risk of contracting HIV or AIDS is greatly increased.

¹¹⁸ As quoted in UNAIDS, Sex Work and HIV in Thailand.

consideration in this context is *discrimination on the grounds of real or perceived HIV status*.

A general principle of the Recommendation is that there should be “*no discrimination against or stigmatization of workers, in particular job seekers and job applicants, on the grounds of real or perceived HIV status*”¹¹⁹. However, research shows that discrimination against sex workers who are HIV positive or have AIDS is rampant, with afflicted workers often being dismissed¹²⁰. A consequence of this is that afflicted sex workers may then turn to the freelance labour market where they lack the most basic human and labour rights.¹²¹

5.7 The link between violence and HIV and AIDS

Unchecked violence against any worker in any sector constitutes a clear violation of a multitude of international human rights laws, not least of all the rights to life, liberty, safety of person, health and non-discrimination to name a mere handful. In the context of sex workers however, violence has been shown to be positively linked to the transmission of STIs, HIV and a plethora of other serious health problems.

The recommendation provides that measures should be taken in the workplace to reduce the transmission of HIV and further to alleviate its impact by, amongst other things, taking action to prevent and to prohibit violence and harassment at work¹²². Violence seriously compromises a sex worker’s ability to protect themselves from HIV transmission, either because he or she is forced to engage in sexual activity without a condom, or because they fear the consequences if they refuse a client’s wishes. It is worth remembering that one violent client is enough to frighten a sex worker for a long time for many future clients: in one study of 815 FSW in Thailand, approximately one in seven (14.6 %) had experienced violence in

¹¹⁹ ILO Recommendation 200, para 3 (c)

¹²⁰ ILO Ibid.

¹²¹ ILO Recommendation 200

¹²² ILo Recommendation 200, Para 14.

the week before the survey alone; the study found that those who had experienced violence were less likely to demand condom usage against a clients wishes and furthermore were more likely to have contracted a sexually transmitted infection (STI)¹²³.

So prevalent is violence against sex workers that is regarded by sex workers as being an unpleasant but expected part of the job¹²⁴. Violence can take various forms and come from various actors. In a 2009 study of female street sex workers in three of Bangkok's red light districts¹²⁵, it was found that violence at work tended to originate from 4 main perpetrators:

- Pimps
- Partners (though sometimes pimps and partners are one and the same)
- Clients
- Police

Violence from clients includes: refusing to wear a condom; this was viewed by the sex workers interviewed as a form of violence as it directly threatened their health and well-being. It may also include direct physical assaults; triggers for physical assaults include refusing to comply with the clients demands, demanding payment and, client intoxication. Physical assaults in this particularly were also carried out in order to fulfil a desire by the client for violence-based sex. The study notes that numerous reports of murdered sex workers appeared during the few months in which the study was ongoing and that interviews with sex works suggested that many more murders had gone unreported to the police and to the media. Rape, gang rape, kidnapping and robbery were not uncommon amongst the sex workers questioned, though it was rarely if ever reported to the police or media. Victims were largely too frightened to defend themselves for fear of a violent backlash. Those who did attempt escape often injured themselves seriously in the process.

¹²³ Decker et al, Violence victimisation, sexual risk and sexually transmitted infection symptoms among female sex workers in Thailand. *Sex Transm Infect.* 2010 Jun;86(3):236-40. Epub 2010 May 5

¹²⁴ Ratitorn et al (2009) OpCit.

¹²⁵ Souan Lum, Samn-Loung and Yaowaraj

Violence from pimps/partners

Pimps and/or partners use violence as a means of exercising control over sex workers. Those interviewed stated that their violent pimps/partners would hit them if they spent too long with a particular client, if they did not make enough money, or if they expressed a desire to leave them. Verbal and psychological abuse from partners, pimps and clients is thought to be common and in the context of HIV/AIDS the cumulative effect of violence, both physical and otherwise, from pimps is to bully the sex workers into adhering to the demands of the clients, which may include sex without a condom.

Violence from other sex workers and their pimps/partners

Sex workers and/or their pimps may attack other sex workers who they perceive as competition as a means of forcing them away from their territory.

Police violence/intimidation

Fear of arrest and incurring fines or even a prison sentence may encourage sex workers to place themselves in risky situations wherein there is a greater likelihood of violence. This may include soliciting clients in poorly lit areas and sparsely populated areas and making rushed decisions about whether or not to sleep with a client in order to evade police attention. This leads to a perpetual cycle of violence whereby sex workers wishing to avoid police attention practice extremely risky behaviour and are therefore at a heightened risk of violence. These same sex workers are extremely unlikely to report any resulting violence for fear of arrest. This fear is compounded by the intense stigma and discrimination attached to sex work and which may compromise a sex workers claim. This in conjunction with the risk of arrest may render reporting violence counterintuitive for the ex

worker attempting to scrape a living on their earnings. As one sex worker put it:

*“When women stole money and customer reported to the police, the police would arrest women. But when customer stole money, women couldn’t report to the police, if we reported, we would be arrested. Who would want to pay a fine? (sic)”*¹²⁶

Vulnerability to violence is compounded for migrant sex workers in particular who fear deportation and thus avoid contact with the authorities. Additionally, fear of police for the sex worker does not stop with arrest and fines; claims of police intimidation, abuse of power, harassment and rape are echoed through numerous studies. For example, a Human Rights Watch report from 1994 alleges that sexual abuse of victims of trafficking of sexual purposes in detention centres was common. Sometime this abuse would be in exchange for a promise to permit return to Thailand or simply because the abusers are aware that there will not be any legal repercussions for their actions¹²⁷. A further example, and one which highlights not only the prevalence of police violence towards sex workers but also the protectorate relationship between police and sex establishment owner, is the well publicized murder of a young sex worker in Songkhla province in 1992: on November 1st 1992 Passawara Samrit fled the brothel where she was being held captive and went to a local hospital to seek help. The hospital transferred her to a local welfare office where it was decided that she be handed over to the police. However, before she could leave the welfare office she visited the bathroom never to return. Her mutilated body was found the following day. An investigation charged 4 senior police officers as well as a pimp and son-in-law of the brothel owner with the murder. The implicated police officers had repeatedly threatened to arrest

¹²⁶ Ratinthorn, A., Meleis, A., & Sindhu, S. (2009). Trapped in a circle of threats: Violence against sex workers in thailand. . *Health Care Women International*,30(3), 249-269.P. 265

¹²⁷ HRW: Asia Watch, & And the Women's rights project, Human Rights Watch, (1993). *A modern form of slavery: Trafficking of burmese women and girls into brothels in thailand*. Retrieved from website: <http://www.hrw.org/legacy/reports/1993/thailand/>

Passawara if she refused to return to the brothel and had received payoffs from the brothel owners.

There is a clear link between violence against sex workers and increased risk of HIV/AIDS infection. However, contrary to Thailand's international obligations under general human rights law and more specifically in the context of Recommendation No. 200, there is no indication that significant action has been taken at a national level to prevent or prohibit violence against sex workers. Indeed there are some measures institutionalized in large parts of the sex industry which seem to have the opposite effect in that they are prone to indirectly encouraging violence through promoting heavy drinking for both client and sex worker, as discussed above.

5.8 Neo abolitionism: violence against sex workers as a result of misogyny

That violence has become a normalized part of sex work is not limited to Thailand, but it is common the world over. Neo-abolitionists argue that the high incidence of violence against sex workers is related to the severe social stigma attached to prostitution combined with a view of sex workers as being immoral and criminal. The potential for violence against sex workers can be understood as related to the structural position of sex workers in society. Women who are sex workers already violate the norm of 'being good women' and this contributes to the normalization of implicit social condoning of physical violence.¹²⁸ Neo-abolitionists furthermore argue that violence against sex workers is just one aspect of a broader violence against women, also common the world over.

5.9 Mandatory HIV tests

¹²⁸ Ratinthorn et al, Trapped in a Circle of Threats: Violence Against Sex Workers in Thailand, *Health Care for Women International* (30) (3) 2009

The recommendation, in line with the Thai National Aids Plan and general human rights law, strictly prohibits mandatory HIV testing and provides that the results of voluntary HIV tests are 100 percent confidential. Failing this, grievance procedures ought to be available at a workplace level. There is significant evidence, however, which indicates that mandatory HIV and STI testing as a prerequisite for initial and continued employment is widespread amongst the various sex establishments of Thailand. Some establishments have contracts with sexual health clinics whereby the information is provided directly to the owner of the sex establishment. Indeed a sex worker may not even be aware what they are being tested for or the results of tests until they either receive treatment for STIs or are dismissed from their work for being HIV positive. This is contrary to sex workers' labour and human rights.

The currently employed approach indicates furthermore that sex workers are not being screened for HIV and other STI's for the good of their health or protection of their physical well-being, but rather they are being treated as vectors of disease and as a danger to the rest of society. This is supported by the intense emphasis placed on? preventative measures and a near total absence of assistance for HIV positive sex workers in accessing the appropriate treatment. Whilst post exposure prophylaxis is available under the Thai Universal Health Coverage scheme, it is not certain that it is freely available to sex workers and does not appear to be routinely directed towards HIV positive sex workers. Additionally, contact with HIV positive sex workers is often hindered by the fact that once dismissed, they tend to filter into the freelance market and thus beyond the radar of sex worker and health organisations.

5.10 The sex work approach and HIV – the 100 per cent Condom Usage Programme

A HIV epidemic during the late 80's and early 90's was soon identified as being compounded and intensified by unprotected commercial sexual transactions. In 1990, 70 percent of all new HIV infections were sex-worker

– male client transmissions and 10 percent were female sex workers (workplace transmission). In response to this, Thailand initiated the “100 percent Condom Use Programme”. The 100 percent CUP aimed to slow the spread of HIV by requiring all sex workers to use condoms in all commercial sexual transactions. The logic behind this, besides the obvious ability of condoms to prevent the transfer of HIV and STI’s, was that if all sex establishments and sex workers strictly applied this rule, a standard would be set which clients could not evade by seeking services elsewhere. It furthermore addresses the economic incentives which may exist for not using condoms; previously sex workers could be pressured into engaging in unsafe sex by competition from other sex workers or sex establishments which freely permit sex without condoms.

The programme is regionally managed by provincial public health offices which provide free condoms and regular STI/HIV tests. The public health offices work closely with police and sex establishment owners to ensure compliance. Additionally condom use has been and is promoted through mass media, peer education and outreach groups and health worker visitations targeted at different groups in society, with particular emphasis on sex workers.

Despite initial scepticism regarding the feasibility of mandating universal standards in an illegal and underground industry, the results of the programme since its national implementation in 1991 have been overwhelmingly positive, with all provinces showing rising rates of condom usage and declining HIV and STI rates in sex workers. A UNAIDS survey of 2,000 direct sex workers (i.e those who work in sex establishments as opposed to those who work elsewhere but may sell sex as an extra form of income, for example) carried out in 2000 found uniformly high rates of condom usage throughout the major forms of sex establishments¹²⁹. 97 percent always used condoms with one-off clients whilst 93 percent always used condoms with regular clients. The lower rate with regular clients is generally attributed to the growth of trust between sex

¹²⁹ The survey questioned sex workers working at brothels, massage parlours, bars (including karaoke bars), restaurants and “other”. The rates of condom usage were similar across the board.

worker and a regular client. A separate study carried out between 2004 and 2008 found similarly high rates of condom use in commercial sexual transactions with an average of 94 percent always using condoms in all types of commercial transactions (both regular clients and one-offs).¹³⁰

There is, however, some variation when it comes to condom use for indirect sex workers: the 2000 study further found reasonably high, but comparatively lower rates of condom usage for indirect workers. The study found that 81 and 91 percent of male clients purchasing sexual services from indirect sex workers consistently used condoms with one-off and regular sex workers respectively. Furthermore, both the 2000 and the 2008 studies found lower rates of condom usage with non-commercial sex partners such as with husbands, boyfriends and male friends with as little as 35 percent regularly using condoms.

High rates of condom usage are thought to be positively correlated with the steep decline in rates of HIV in sex workers and commercial sex clients during the same period of time. Whereas in 1990, 70 percent of all new HIV infections were sex worker to male client transmissions, this figure decreased dramatically following the introduction of 100 percent CUP in 1991 to around 57 percent in 1992, 15 percent in 2000 and less than 10 percent in 2010. Whilst the decrease of new HIV infections in female sex workers did not decrease quite as rapidly as in male clients of sex workers, the rate has halved for every decade following CUP, from 10 percent in 1990, 5 percent in 2000 and between 2-3 percent in 2010.

5.11 What lessons can be learned from 100 % CPU programme in the context of enabling sex workers rights?

A 2000 UNAIDS evaluation of the 100% CUP found that the “success” of the programme pivoted on the presence of a number of factors:

- How tightly controlled and structured a sex establishment was: those which were patently more organized and employed direct rather than

¹³⁰ As quoted in Sex Work and HIV in Thailand, UNAIDS, August 2010.

indirect sex workers, such as brothels, had the most success. Targeting indirect sex workers, such as sex workers in bars or restaurants, under the programme was seen as a far greater challenge, with one study finding that 44% of managers denied sex workers health check-ups, 30% did not facilitate STI/HIV checks and 50% had not introduced any means of condom promotion let alone condom enforcement¹³¹. Enforcement of the programme with regard to freelance sex workers is difficult to measure and relies largely on individual sex workers having contact with sex worker or health organizations.

- Political commitment at both the local and national level was crucial. This commitment ensured the cooperation of the multiple governmental departments with each other and with sex establishment owners without breaking the law. Commitment was also manifest in the significant amounts of resources poured into the programme, such as a generous supply of free and good quality condoms for distribution at sex establishments.
- Cooperation based on good relationships between sex establishments, sex workers and authorities was thought to be more effective in the long term than police enforcement. Whilst enforcement was seen to be a good way to launch the programme, aggressive measures towards sex establishment owners was thought to impede progress and closures due to non-compliance would merely restrict care. Close collaboration of the various different actors involved was instrumental, from the authorities supporting the programme, the owners who provide access to the sex workers and clients who through education now recognise the importance of condom usage.
- A holistic approach yields best results: efforts must be made to reach and educate clients through multiple mediums. In this context, mass media and workplace outreach programmes proved to be effective.

¹³¹ As quoted in UNAIDS, Sex Work and HIV in Thailand. OpCit.

The lessons learned from 100 % CUP have wider implications not only for the field of HIV/AIDS prevention but for strengthening the case for the sex worker approach and its relevance in the field of human and labour rights.

It may be said to counter a familiar and indeed highly credible argument, sometimes put forward by neo-abolitionist and abolitionist leaning approaches, that if the authorities are unable or unwilling to enforce laws prohibiting prostitution it is equally as unlikely that those same authorities would be able or willing to enforce measures protecting sex workers' human rights.

5.12 Economic empowerment of sex workers as an HIV prevention strategy: ILO Community-based Enterprise Development (C-BED) training for sex workers in Thailand

As an example of how a labour rights approach to sex work does not necessarily always lead to the promotion and legitimization of the sex industry, it is worth while considering ILO C-BED training for sex workers in Thailand: an ILO initiative which aims to teach sex workers new skills which they can then use as a means of supplementing and potentially replacing their income gained from sex work.

The C-BED initiative recognises that economic vulnerability severely compromises a persons' ability to protect themselves' from HIV; from forcing one into sex work to disabling sex workers from being able to make safe choices. C-BED thus aims to economically empower sex workers through teaching sex workers business skills, such as how to set up and run small businesses. For example, one recent C-BED graduate, San, used information she learned on the course to open a successful bakery where two other graduates

Training is facilitated by members of the local community and so far are held at sex worker advocacy group EMPOWERs office in Bangkok. This keeps costs low and enables sex workers to acquire new

business acumen whilst also having an opportunity to educate themselves’ on how to make sex work safer for themselves. It also enables access to a very vulnerable group which would otherwise be very difficult.

Richard Howard, ILO Senior Specialist for HIV and AIDS in Asia and the Pacific explains the rationale behind C-BED:

“Economic empowerment can support sex worker efforts to negotiate for better, safer working conditions free of violence and harassment with improved access to health services, including HIV prevention, treatment and care.”¹³²

5.13 The “Can Do” bar: empowering sex workers through decent working conditions

The above is an example of how labour rights can help sex workers leave or at least not be so reliant on the sex industry. The Can Do bar is an example of sex workers finding strength in numbers and in labour rights. The Can Do bar is a sex establishment in Chiang Mai owned and run by sex workers from the aforementioned EMPOWER group. Though there are plenty of sex establishments run by pimps and *mamasans*, the Can Do bar has attracted a certain amount of attention due to the fact it is the only sex establishment (that is known of) which provides for full labour rights as provided by Thai law, including paid holiday and sick leave¹³³. Empower furthermore provides non-formal high school level education with the hope of finding other employment; English lessons so that sex workers are able to communicate with the almost exclusive western clientele in Chiang Mai and safe sex education.

The rationale behind the Can Do bar is that the sex workers who work at the bar would otherwise be working in the sex industry, but

¹³² UNAIDS, feature story, 20th May 2012: “Sex workers learn business skills in new community based ILO project”. Available online at www.unaids.org

¹³³ EMPOWER foundation website: Can Do Bar – About. Available at http://www.empowerfoundation.org/barcando_en.html

under worse conditions and without the knowledge needed to protect them self. It is a similar rationale to the 100 CPU programme outlined above and whilst there is no way at present to gauge the success of the Can Do bar, it certainly cannot be said to be any worse than the many pimp run sex establishments which litter the country.

5.14 Does empowerment make commercial sex any more compatible with human rights?

From a sex work approach the Can Do bar is a positive development and an example of sex workers uniting and using labour rights to attempt to improve their quality of life. From a neo-abolitionist perspective the Can Do bar is no better than any other establishment; given the understanding that all commercial sex is equivalent to rape the neo-abolitionist response would surely be that improving the conditions where ones rape takes place does not make it any less of a rape.

Determining which perspective is most compatible with human is not black and white.

Conclusion

Throughout the course of this thesis, it has become apparent that there is support for both neo-abolitionism and the sex work approach in the Thai sex industry. There are large elements of the Thai sex industry which strongly support neo-abolitionist arguments, including two of the three root causes of the sex industry, according to the study the Sex Sector, these are: oppressive gender roles preventing women from seeking education/employment in as many fields as men, and; disproportional economical development resulting in girls from rural areas travelling to urban areas in order to engage in sex work as a means of supporting their family (see pages 25 – 29 for more on this).

This indicates that commercial sex is not a choice for sex workers but it is an inevitably engineered by a corrupt social and legal system. It furthermore severely undermines the role of consent is able to play in legitimizing commercial sex as work.

Human rights issue in focus 1: Trafficking and sexual slavery

With regard to trafficking and human rights, the major contribution of the sex work approach is to advocate for labour inspections and more transparent working conditions in order to help detect trafficking victims. Other aspects of the sex work approach to trafficking, such as the contention that anti-trafficking measures prevent women from travelling to other countries to sell “sexual labour” are somewhat more difficult to align with general human rights, not because it is untrue- no one knows this but the sex workers themselves- but because it would sacrifice protection for the extremely vulnerable majority in favour of the more powerful majority.

On the other hand, whilst the solution proposed by neo-abolitionists to extinguish demand to discourage to supply appears to work well on paper the solution of criminalization does not reflect the complexity and deeply entrenched root causes of trafficking, which include corrupt police and migration authorities; a lack of respect for human rights violations; a lack of general awareness in society and much higher standards of living for natives than in neighbouring countries.

Human Rights issues in focus part two: HIV and AIDS

Whereas with trafficking no clear neo-abolitionist or sex-worker approach can be either detected as currently favoured or advocated as the best approach, the international approach to HIV and AIDS in commercial sex work demonstrates a strong preference for the sex-work approach. This is evident not only from the vocabulary choice of the UN, UNAIDS and the ILO – all of which favour the term sex work in the context of HIV prevention – but from the types of programmes being supported, such as the seemingly successful 100 percent Condom Use Programme.

Whilst the sex work approach as a HIV and AIDS strategy is not without its criticisms – it may be argued, for example, that it treats sex workers as vectors of disease and protects male clients rather than prioritizing the safety of the sex worker – it has been effective at reducing HIV infections. This would not have been possible under a neo-abolitionist approach.

Earlier in this thesis, a comparison was drawn between protecting child labourers and protecting sex workers; a key difference between child labour and commercial sex, however, is that whilst child labour has long been rightly recognised a violation of human rights, the same cannot be said for commercial sex. Though prostitution and child labour share the same root causes, such as poverty and social inequality, there is at present no international consensus on if and/or how it should be eliminated. Until such a consensus exists, progress will be slow and more will become a victim of the human and labour rights no man's land the sex industry occupies.

Returning to the thesis question “Can prostitution as sex work ever be compatible with human rights?”, the answer that emerges from the findings of this thesis is a highly tentative yes. This is not to say that it is the only choice, but that in certain circumstances it may be the best harm reduction strategy available. However, this tentative yes is also burdened by a number of “buts”: yes, it may be compatible, *but* only in instances where real efforts are being made to help empower sex workers, economically and intellectually, so that they are able to make choices about their life not based on economic desperations. It is a yes, *but* only when the root causes of the sex industry, such as poverty, gender and social inequality and an uneven distribution of resources are being actively tackled. It is a yes, *but* the ultimate goal should be elimination of the sex industry, at least in its current and at present only imaginable form. At present, the sex industry degrades, violates and oppresses sex workers. This is not compatible with human rights. However, neither is police brutality, a complete absence of labour rights or being forced to live in the margins of society.

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