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**Submission by Empower Foundation, Thailand
to the United Nations Special Rapporteur on Trafficking in Persons
Implementation of the non-punishment principle.
21 January 2021**

Empower Foundation¹ was established three decades ago in 1985. Empower is the lead representative organization for women sex workers in Thailand. Over 50,000 sex workers, both Thai and migrant have been a part of Empower since its founding. The core reference community for this paper is comprised of 3,542 sex workers, migrant and Thai, who are employed in all sectors of the industry in eight provinces of Thailand.

Key Concerns re: punishment of victims of trafficking in Thailand:

1. Discrimination and Punishment during Investigation
2. Detention of trafficked persons
3. Non-payment of compensation
4. Absence of effective victim advocacy and support.
5. Forced deportation
6. Punishment of witnesses

The Recommended Principles and guidelines for anti- trafficking investigations² are clear that the actions of law enforcement must never take place at the expense of victim's rights. However, for the past 20 years the focus of eliminating trafficking in the sex industry has been centred on prosecution. Thailand has been under continuous pressure to produce evidence of women and girls being rescued, and criminals being punished. This has led to a pattern of law enforcement practices that prioritize the pursuit of convictions and enumerating victims rather than upholding human rights.

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

¹ Empower Online Library <https://www.empowerlibrary.online/>

² Recommended Guideline 5.5 provides: "Guaranteeing that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation."

Prevention of trafficking has also heavily relied on punishment as deterrence at the expense of addressing structural causes of exploitation of women and girls in the industry such as armed conflict, land grabbing, lack of labour law enforcement, poverty, unemployment, corruption, citizenship status and lack of financial recognition of women's role as family carer and provider.

The lived experience of being punished is experienced by victims throughout the process, regardless of whether it comes with a legal penalty or not.

- Investigation

Discrimination and rights violations caused by anti-trafficking practice begin at the starting point of the detection of the victim by the authorities. Undercover police and Non-Government Anti-Trafficking Organizations visit entertainment places as customers. Men and transgender sex workers are not targeted by these operations. The police manipulate the sexual consent of teenage girls to create or prove the crime of 'trafficking for the purpose of exploitation of prostitution'. Coercing sexual consent by deception and manipulation, especially by men in authority is a violation of rights. Where this concerns the sexual consent of teenage girls it further violates the rights of the child, the right to dignity and physical integrity.

Undercover entrapment operations continue for months after it has been established that underage workers are employed on the premises, leaving girls in precarious situations.

As far back as 2003 the Thai National Human Rights Commission of Thailand recognized that police entrapment often leads to serious human rights violations, especially against women in the sex industry and recommended it should only be used under a clear and precise system that prevents such human rights abuses. No such system yet exists. [The CEDAW Committee in 2017](#) recommended that Thailand immediately ends the practice of entrapment and violent raids³.

In 2018 police were advised by the Police Policy Department to stop all extended entrapment operations. However, some vigilante [anti-trafficking organizations](#), continue to run entrapment operations instead of the police. ⁴ The methods used also contradict the Code of Conduct for Foreign NGOs in Thailand 2018 and Convention on the Rights of the Child,

Often undercover police wait until the suspected victim is fully undressed before signalling to other law enforcement to begin the raid. The girl or woman is forced to cover herself in a sheet, towel or the 'rescuers' jacket for the duration of the operation which can take hours. Its common practice for 50 - 100 armed men to conduct late night raids where women and sometimes also girls are chased, trapped, interrogated, and paraded before the media while terrified, and only partially dressed.

In this process it would be impossible for any reasonable human being to believe that one was not being punished. Media routinely accompany police and customarily during filming girls with towels put over their heads by way of hiding their identity. Interviews by National Human

³ Concluding observations on the combined sixth and seventh periodic reports of Thailand Trafficking and Exploitation of Prostitution 27(d) Immediately end the practice of violent raids of entertainment venues, entrapment operations and extortion, and hold individual police officers accountable for their involvement in such activities https://www.fidh.org/IMG/pdf/cedaw_c_tha_co_6-7_25136_e.pdf

⁴ <https://prachatai.com/english/node/7786>

Rights Commissioner Angkhana Neelaphajit with victims found this practice “makes them feel as if they are criminals and causes emotional trauma”

Victims reporting on their experience of what authorities call ‘rescue’ describe and name the experience as being “arrested”.

- Medical punishment

Although the anti-trafficking act requires that victims consent to bodily examinations ⁵ this is not practiced. Victims are obliged to undergo teeth examinations and bone x-rays in effort to quickly prove they are under 18 years old, and therefore automatically a victim of trafficking regardless of other circumstances. This is a breach of the law, is undignified, and denies victims any control over their bodies which is often a continuation of the experience of trafficking. It is certainly perceived as punishment by victims.

- Detention of Victims of Trafficking

Once labelled as a victim of human trafficking, girls are placed in the care of the Ministry of Social Development and Human Security (MSDHS). Thai teenagers and women are generally allowed to go home or choose other private accommodation. However, all migrant women and teenage girls identified as victims, are detained in government shelters regardless of immigration status.

Recommended Principle 7, concerning protection and assistance to victims of trafficking, generally provides that “trafficked persons shall not be detained, charged or prosecuted.” The places are called “shelters” in the law but are called detention centres by people in the community, especially by those who have been detained in them, Renaming and refurbishing detention centres as shelters is not systemic change of punishment.

The [problems of detention in shelters](#) have been well documented⁶ One of the key concerns which has led to girls becoming suicidal and in some cases successfully killing themselves in detention is that they are denied contact with family. This is in contradiction to best practices of children in care and in violation of the Convention Child Rights.

There is no effective practice of victim advocacy. Social Workers and Psychologists who on paper have this role are civil servants who are in an employee relationship with the State. They seem compelled to assist authorities who they identify with rather than defend the victims who are usually of a different age, class, and nationality. Victims have no independent legal representation to protect their rights at any time through the process which can include detention for up to two years. This failure to protect results in victims not being made aware of their rights e.g. right to refuse medical exams, right to contact family, right to compensation.

⁵ CHAPTER 3 Powers and Duties of the Competent Official Section 27. (2) to conduct bodily examination on any person, **with his or her consent**, where there is a reasonable ground to believe that such person is a victim of human trafficking offence

⁶ Hit & Run Empower On Line Library https://68738d33-e198-469a-aa34-b8ce7e1b841b.filesusr.com/ugd/ebc7c4_7b2014bb10024ab68b18d0f4e9c9db2b.pdf

Global Alliance Against Traffic In Women “Collateral Damage”

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

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

- Withholding Compensation

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

- Deportation

Since March 2016 by law migrant trafficking victims and can apply to temporarily stay in Thailand and foreign victims can renew work permits after the completion of a case. In reality, completion of the criminal proceedings results in automatic deportation of the victims, usually with little or no money. In addition, the deportation of girls is further delayed as attempts are made to check the “goodness” of the family. No such procedure is required for men returning home. There is no support on return to the home country. As a result of the extended detention, victims and their families are deeper in debt. The need to migrate for work is heightened and people will try harder to avoid authorities thereby exposing themselves to greater danger of exploitation.

- Punishment of Witnesses

Migrant sex workers from Burma who were detained as witnesses and provided testimony were formally charged with associating in a place of prostitution, working contrary to their work permit and deported. Their passports were stamped “Committed the crime of Prostitution” and banned from re-entering Thailand for one hundred years (100) despite them having young children and established family living in Thailand.

Non-punishment under the Anti-trafficking Act

The criteria for non-punishment in Thailand’s Anti-trafficking Act is clear though limited to specific acts and circumstances. It only applies to those formally identified as victims of trafficking.

Section 41. Unless a written permission is granted by the Minister of Justice, the inquiry official shall be barred from taking legal proceedings against any victim on the offence of entering, leaving, or residing in the Kingdom without permission under the law on immigration, the offence of giving false information to the official, the offence of forging or using a forged travel document under the Penal Code, the offences under the law on prevention and suppression of prostitution, particularly on contacting, persuading, introducing, soliciting or pestering a person for the purpose of prostitution and assembling together in the place of prostitution for the purpose of prostitution, or the offence of being an alien working without permission under the law on alien working.

Non-Punishment is further supported by Article 14(7) of the Association of Southeast Asian Nations Convention against Trafficking in Persons, Especially Women and Children²⁶ (“ASEAN Convention”) of 2015 requires States Parties to “consider not holding victims of trafficking criminally or administratively liable”

Good Practice of Non-punishment

There has been a recent positive change where victims are no longer taken to police stations for interview following raids. They are taken to other government offices not associated with criminal activity. This follows the regulation that "The temporary custody of the person who may be a victim shall be made in an appropriate place which shall not be a locked-up room or a detention place, which shall be in accordance with the regulations prescribed by the Minister."

The practice of allowing Thai victims to go back to their home accommodation or choose where they stay is also an important improvement that needs to be extended to all victims.