

## **Women's consent in the United Nation's anti-trafficking legislation and its impact on Thailand's domestic prostitution laws**

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### **Abstract**

Thai anti-trafficking legislation does not recognise the consent of women, and this has a debilitating effect on the equality and autonomy of female migrants and Thai sex workers in Thailand. Due to the influence from the UN's anti trafficking of women and children legislation of 1949 and 2000, Thailand has transposed the same structure and intention, significantly adopting the broad and ambiguous definitions of 'trafficking' and 'exploitation.' This has had three significant consequences: First, it infantilises women by incorporating them with children and undermines their autonomy as human beings and their equality under the Bill of Rights. Second, by international legislation conflating sex trafficking with prostitution in an attempt to eradicate both, it has led to further Thai legislation that criminalises prostitution and in so doing ensnares consenting Thai sex workers in a system of exploitation. Thirdly, it renders female migrants and consenting Thai sex workers as victims, subject to legislative policies that have been drafted by a majority of men in Western countries with Western ideals and so ignoring Thai customs and traditions.

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## I. Introduction

This paper will explore the importance of consent to women's human rights and equality that the Bill of Rights bestows. Through the lens of how Thai anti prostitution and trafficking legislation has been influenced by the UN Convention of 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol 2000), both of which ignores consent, it will consider the deleterious impact this has had on migrant and Thai sex workers in Thailand. Firstly, the paper will consider the concept of consent within the confines of human rights and the importance this has for women's and consequently sex workers' rights. It will then review the UN's Anti-trafficking Legislation of 1949 and 2000 and how deeming consent irrelevant challenges migrant women's and sex workers' human rights. Thailand's prostitution and migration legislation will then be explored from 1908 to the present and how these have been influenced by the UN's legislation and Western ideals and the consequences. The paper will then conclude as to the present issues still facing migrant women and Thai sex workers in Thailand.

## II. The concept of consent in human rights

When the Bill of Rights<sup>1</sup> was established, it bestowed upon all humans "inherent dignity..."<sup>2</sup>; to be "endowed with reason and conscience..."<sup>3</sup>; and "the right of self-determination, amongst other rights. By virtue of this right everyone can freely determine their political status and freely pursue their economic, social and cultural development..."<sup>4</sup> These inalienable rights should also be "protected by the rule of law..."<sup>5</sup> These rights were deemed fundamental for everyone so that they could all become part of, contribute to and benefit from, a society intent on "freedom, justice and peace in the world." In accordance with the bill of human rights, it is each person's fundamental right to have the autonomy to consent to something and in doing so provides self-respect, and these qualities are to be protected and respected by society and law. "It would probably be generally agreed that without autonomy, without self-government, the life process could not be understood. Selection, choice, self-regulation, adaptation, regeneration are phenomena which logically imply the autonomy of the organism."<sup>6</sup> So to be able to consider the choices in your current

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environmental circumstances and to make a reasoned decision is what it means to be human.

However, the issue of consent is far from straight forward. Whether humans can truly have freewill and therefore be able to be wholly autonomous in their decision-making whilst living within a framework of rules and laws is still debated. An autonomous person may be restricted by external factors (socio-economic, cultural) that may govern how that person decides, yet it remains the general consensus of opinion that all humans should have the capacity of self-determination, i.e., that of being autonomous in their decision-making and to consent to making decisions in circumstances that they are confronted with (Kant; Nirje; Braun). But more than that, these rights to consent and to be autonomous should be represented within the framework and structure of society and law. It is necessary to ‘create conditions through which a...person experiences the normal respect to which any human being is entitled. Thus the choices, wishes, desires, and aspirations of a...person have to be taken into consideration as much as possible in actions affecting him.’<sup>7</sup> It is therefore the duty of governments to produce legislation to support and protect these rights and for everyone to enjoy the same rights. If governments ‘deny any person their fair share of risk experiences is to further cripple them for healthy living.’<sup>8</sup> To ensure everyone is assured of their dignity and autonomous rights is to empower them as humans. Conversely, to remove or limit these fundamental rights is to disempower them and to render them less than human. So for example, if a woman chooses to consent to a commercial sex act, then it is her human right to do so. It is also society’s obligation to respect her autonomous decision and for this right to be protected by law. If the law or society were to remove or limit a woman’s right to consent to a commercial sex act, then this would usurp her inalienable right to making an autonomous decision that affects her life and would disrespect her dignity as a human. It would in essence render her less human than everyone else.

However, should there be restrictions placed by society upon autonomous people in exercising their right to self-determination? Braun et al. argue that this may be necessary in certain circumstances, such as a threat to public safety. This would determine whether there is a disproportionate balance between the respect for the autonomous person and the consequences of preventing them from exercising their self-determination.<sup>9</sup> Sexual consent has for the most part been referenced particularly within the antagonistic framework of a gender hierarchy pitting the female against the

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male, re-enforcing the tired stereotypes of dominant man versus subservient woman, where no woman can consent as all sex, particularly prostitution, is a form of violence against women (Barry, 1979 and 1995; MacKinnon, 1991 and 1997). In a situation consisting of moral principles and human rights, which one takes precedence? W.D. Ross "'Prima facie duty" refers to a duty always to be acted upon unless it conflicts on a particular occasion with an equal or stronger duty."<sup>10</sup> Arguably, there is a fundamental right to self-determination to survive and enjoy life, via whatever means available, including prostitution, being weighed against the morality of the act being considered a form of violence against women and therefore a threat to public safety.<sup>11</sup> There are however, no hard and fast rules governing either the hierarchy of the various moral principles or which take precedence.<sup>12</sup> However, as will be shown, in accordance with current UN and Thai anti-trafficking and prostitution legislation which disregards sex workers' consent and thereby their human right to self-determination, the 'principles versus rights' is arguably being established in favour of the moral principles to the detriment of human rights, causing a considerable impact on female migrants and sex workers' rights and freedom.

### **III. The UN's anti-trafficking legislation**

The idea of sexual consent and, inevitably, prostitution, has historically become embroiled within an engendered framework entrenched in issues of morality and this tends to obscure the more pertinent factors involved. The UN Convention of 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, was the first international convention that entered into international law and came on the heels of a first world panic over 'white slavery'. It was visceral in its intention and states in its preamble, "Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family, and the community." It considers prostitution an indignity to human rights and a significant cause of the trafficking in women, and both are to be abolished.<sup>13</sup> It was perhaps satisfying to many anti-prostitution advocates including radical feminists (Barry, 1979 and 1995; MacKinnon, 1991 and 1997), but more liberal opponents (Doezema, 1998, 2000 and 2002; Agustin, 2007) responded that this homogenous view fails to consider the rights of women involved in prostitution to self-determination, not only by its monolithic terminology, but

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Article 1 states that prostitution is a crime “even with the consent of that person.”

By using the morality paradigm, this legislation ignored the human rights of the women, conflated prostitution with the crime of sex trafficking and criminalised prostitution and the prostitutes, with the result that the women were deemed either criminals if they admitted consenting to the act, or in the alternative, as victims helplessly submitting to the actions of others. It was an untenable position for the women who were consenting, for to avoid one fate, you had to be subjected to the other, and that usually involved either being arrested as a ‘whore’ and imprisoned or classed as an illegal migrant and returned to their country of origin, often without consideration to the factors contributing to their migration (Doezema, 1998 and 2002). As the legislation was also gendered, it encouraged the stereotype that all women were perceived to be vulnerable and in need of protection and rescue by men and were not therefore regarded as having the capacity of their own agency. Instead, the legislation gave that responsibility to policy makers and politicians who were considered better placed to make these decisions for them, without further recourse to the women’s circumstances or needs.<sup>14</sup> Arguably, it wasn’t women who were by themselves vulnerable, it was the legislation that had rendered them so. Interestingly, this restrictive convention has never been repealed and is still relevant and influential in international law with currently 82 state parties, the most recent signatory being Micronesia in 2011. It was also considered in the recent European Parliament considerations on prostitution and sex trafficking and is still valid and oft cited international law.<sup>15</sup>

### IV. Palermo Protocol 2000

This protocol is the most significant and influential of the UN’s anti-trafficking legislation yet remains relatively controversial due to its ambiguous terminology and intentions. Article 2 of the Palermo Protocol reads: “To prevent and combat trafficking in persons, paying particular attention to women and children.” The very fact that it emphasised “women and children” strongly suggested that women and children were to be regarded as more vulnerable to being trafficked and were in increased danger of being exploited and in need of more assistance and protection than men. Indeed, the *Travaux Préparatoire* notes that it was still generally believed “that women and children are particularly vulnerable to and targeted by

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transnational criminal organisations engaged in trafficking in persons.”<sup>16</sup> But why group women and children together at all? The Convention of the Rights of the Child (which Thailand ratified) was already comprehensive in matters relating to the sexual and economic trafficking of a child where the issue of consent is deemed irrelevant, as being a minor they are not bestowed with the capacity to consent. Ergo, by grouping autonomous adult women (who have the capacity to consent and are bestowed with the human right to self determination), with children (who would never have the ability to consent), had an infantilizing effect on women as a majority group, rendering them all incapable of consenting under this piece of legislation and robbing them of their dignity (Mahdavi and Sargent, 2011).

Article 3 of the Palermo Protocol, contains an ambiguous definition of “trafficking” that broadened it to include “exploitation” and suggested a partial separation between the previously determined and proclaimed abhorrent symbiotic relationship between prostitution and sex trafficking. However, ‘Exploitation’ was now defined as to “include at a minimum, the exploitation of the prostitution of others...” This is also ambiguous as confirmed in the *Travaux Preparatoire* “the term was subject to a wide range of divergent interpretations, according to whether all activities in the sex industry constituted “sexual exploitation” per se or whether only sex work under exploitative or slavery-like conditions could qualify as ‘sexual exploitation.’”<sup>17</sup> From the perception of a female sex worker, the much broader far-reaching implication of the definition of trafficking, now suggested that this incorporated all aspects of the sex industry to include “managers, supervisors and controllers...such as a brothel” (Gallagher, 2010, p. 30). Interestingly, there was no qualification that the exploitation was due to the result of forced actions. By failing to qualify the terms “exploitation” and “prostitution” in anti-trafficking legislation, by default, still tends to conflate the two issues and by its specific mention in the legislation, highlights that this is a significant factor that requires acute attention by member states and organisations in order to alleviate trafficking. This is noted in Gallagher (2010), “... many of the earlier controversies documented ... are alive and well.”<sup>18</sup>

But why was prostitution mentioned at all? Although there were other forms of trafficking mentioned, such as “forced labour”, no other form of actual work was classified, for example, “forced labour such as in domestic service, fishing,

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construction, or agricultural work.” These areas had been raised as significant hotspots for exploitation for both men and women, resulting from construction, mining, agriculture, forestry and fishing,<sup>19</sup> so why not specifically mention them as well as prostitution? The implied interpretation of this convention was that governments and organisations were to concentrate their efforts in oppressing prostitution, as had been done historically. This would impact adversely on female sex workers’ rights.

Furthermore, the methods of procurement also remained ambiguous as to what this referred to specifically, suggesting a non-exhaustive list to ensnare the would-be traffickers, making it easier to secure a conviction. For the genuine female victims, there were now more ways of being trafficked, with the intention that they should all contain an element of force, which by their very nature would negate any possibility of a woman being able to consent, by stating that the “consent of a victim ... [was] irrelevant where any of the means set forth ... have been used.” In effect, if any of the many unspecified means of being trafficked were proved and that these contained some aspect of force, then consent of the woman is irrelevant and there is no possible defense for the accused trafficker. Gallagher argues that, “the reference to the non-applicability of consent merely confirms that the means element of trafficking (coercion, deception, abuse of authority, etc.) operates to annul meaningful, informed consent”<sup>20</sup> and cannot therefore be used as a defense. The question was again one of consent and whether trafficking could occur regardless of consent of the women. Interestingly, at no time was it suggested or argued that to consider consent irrelevant would be to challenge and potentially undermine that woman’s human right to self-determination. Instead it simply renders them a victim without rights and vulnerable to the decisions of the authorities as to their fate. Added to which, one of the forms of procurement is “the giving or receiving of payments or benefits to achieve the consent of a person”, is curious in that there appears to be no explanation of this in the *Travaux Preparatoire* and Gallagher suggests that it could be in reference to the obtaining of the legal control of “a parent over a child.”<sup>21</sup> However, although she admits that this element is irrelevant when considering a minor, for they cannot consent, what she does not consider is that it could be interpreted as the transaction of commercial sex work and so highlighting the negative connotation between sex work and sex trafficking.

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There were indeed a number of concerns from some states that only some of the forms of procurement involved an element that precluded consent, which also meant therefore that there was a general understanding that there were other forms included—such as deceit—that allowed the opportunity to consent. “Several expressed concern that an express reference to consent might actually imply that in some circumstances it would be possible to consent to such things as the use or threat of force, or fraud.”<sup>22</sup> Overall though, there appeared to be a consensus of opinion that to avoid a legal evidential minefield, the issue of consent should be clarified and included in the draft. “Several delegations pointed out that proving lack of consent was difficult because the victim’s consent or ability to consent often changed while the offence was ongoing. In trafficking cases, the initial consent of the victim was often withdrawn or vitiated by subsequent changes in circumstance and, in some cases, a victim abducted without consent might subsequently consent to other elements of the trafficking.”<sup>23</sup> The intention behind the inclusion of the “irrelevance of consent” therefore was to create an unconditional rejection of consent in any form, to ensure the traffickers would have no defense to their actions. Consensual trafficking of either adults or children is a legal impossibility (Gallagher, 2010, p. 47).

The outcome was a balance between protecting the human rights of the women, against the potential threat to the public that these traffickers allegedly posed. Despite the state parties’ acknowledgement of women’s awareness in recognizing their changing circumstances and to make autonomous decisions, they decided that the danger of trafficking was too great a risk to allow women the capacity to consent. Arguably, it was again not a question of women being vulnerable *per se*, but the realisation that it is international law that is forcing them to be vulnerable by dismissing their right to be respected as being bestowed with self-determination.

It is accepted that any international agreement between numerous parties is difficult as it means making significant allowances on many parts to elicit terms that everyone can sign. However, from a human rights perspective, this umbrella of ambiguous terminology assigned with specific references to women and children, prostitution, consent and force, without any further qualification, had an oppressive effect on the opportunities of sex workers to be able to migrate and work and women

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in general. How have these conventions influenced trafficking and prostitution legislation in developing countries, such as Thailand?

### V. Thai anti-trafficking and prostitution legislation

It has always been the intention of international legislation to influence as many states as possible to adopt its definitions and policy recommendations, which is often what occurs, despite traditional customs and traditions. “The Protocol’s understanding of trafficking has been adopted, explicitly or implicitly, by all relevant UN organs and agencies, as well as by other intergovernmental organisations working on this issue” (Gallagher, 2010, p. 42). Thailand has been an important developing country with close ties to the US for over 80 years and has experienced considerable pressure from the West to adapt its customs to be more in line with Western values, and has struggled to maintain its traditions (Jeffrey, 2002; Boonchalaksi and Guest, 1994). Accordingly, it has had a mixed reaction to international human rights law. It is not a signatory to the 1949 Convention; it ratified CEDAW in 1985 (albeit with reservations); the ICCPR was ratified in 1996 and the ICESCR in 1999 (although it is not a party to the optional protocols for either), but ratified the Rights of the Child in 1992 and the Optional protocol in 2006. Interestingly, although Thailand signed the Palermo Protocol in 2001, it only ratified it in 2013 (with a reservation to Article 15). Why has Thailand been reluctant to sign and ratify these important international conventions? Ostensibly, the sex industry has been a significant part of Thai culture for centuries and today is arguably worth an estimated USD22.5 to 27 billion<sup>24</sup>, some 4-5 per cent of Thailand’s GDP. Thailand has had to establish a fine balance between culture and income against international pressure to conform with human rights laws. It has resulted in a very antithetical mix of domestic anti-trafficking and prostitution laws that have marginalised migrant women and Thai sex workers.

Historically, slavery and prostitution were part of Thai culture (Sorajjakool, 2013; Boonchalaksi and Guest, 1994) and there was no established ‘trafficking’ issue as such. However, there was no existing protection for the female sex workers and health issues became prevalent. The industry was made formally legal through the Contagious Diseases Prevention Act 1908, but failed to protect the female sex workers from exploitation and led to “numerous complaints about international sex trafficking organisations.”<sup>25</sup> This then led to the Trafficking in Women and Girls Act (Anti-Trafficking Act)<sup>26</sup> of 1928, which continued to exempt the women from

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prosecution and placed the emphasis of blame on the procurers.<sup>27</sup> Without actual reference to the wording of the 1928 Act, it is presumed that as the women were exempt from prosecution and the act itself was legal, the consent of the women involved was respected and any cases of force were directed at the traffickers.

### VI. International influence and Thai legislation

Things changed irrevocably following the 1949 UN Convention that conflated sex trafficking with prostitution and strongly encouraged its abolition, and this subsequently put “pressure from the UN”<sup>28</sup> on the Thai government to follow suit. Despite not signing the convention, the 1908 and 1928 acts were repealed and were replaced with the Suppression of Prostitution Act 1960. This act (later amended in the 1996 Prevention and Suppression of Prostitution Act) attempted to abolish prostitution and “played a significant role in changing the situation of sex trafficking in Thailand.”<sup>29</sup> Section 4 defined prostitution as “sexual intercourse, or any other act, or the commission of any other act in order to gratify the sexual desire of another person in a promiscuous manner in return for earning or any other benefit.”<sup>30</sup> However, there is no actual definition of a “prostitute”. Furthermore, in a “promiscuous manner” suggests that if a female sex worker operated in a non-promiscuous manner, then this is not prostitution. This was very ambiguous; but much clearer was Section 9 of the Act that states “Any person who procures, seduces or takes away any person for the prostitution of such person, even with her or his consent ...” This has been transcribed straight from the UN convention and ignores the women’s human right to self-determination as a consequence. This act placed the emphasis of blame back on the female prostitutes because it criminalised the act and rendered their consent invalid. Although the effect was that visibly the “numbers of brothels decreased dramatically, other forms of sex work emerged...[and the]... prevalence of prostitutes...continued...”<sup>31</sup> The effect of this act forced prostitution underground and into the hands of organised crime and into other forms of prostitution - including massage parlours, making the women involved much more vulnerable to exploitation (Sorajjakool, 2013). Furthermore, according to Impact, the act “was drafted vaguely and with certain qualifying language, which suggests enforcement of the law could be challenging” and so ensuring that the sex industry could continue as before, in reality, whilst being perceived as illegal.<sup>32</sup>

Worryingly, Sections 14 and 15 of this act also places in the hands of the

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Protection and Occupational Development Committee (P.O.C), (which includes the Royal Thai Police Department), the power to “determine policies with regard to the protection and occupational development, including the development of the quality of life of prostitutes.” This was very much in line with the UN’s referral of matters related to the ‘victims’ welfare being placed into the more responsible hands of the authorities. Section 17 states that the P.O.C should be “a centre for the co-ordination between the government and the private sector in respect of information, resources and the operation in connection with the prevention and suppression of prostitutes in the province.” So as much as the influence of the UN’s legislation was strong, the Thai government was reluctant to draft a more convincing law against abolishing prostitution. However, what it did do through its ambiguous legislation was to create a confusing smorgasbord of definitions and terminology that effectively permitted prostitution but under very oppressive conditions for the women, whilst simultaneously removing the women’s human right to self-determination and dignity rendering them vulnerable to the authorities. This influence has ignored Thailand’s historical attitude and culture towards prostitution (including it as a very profitable business) and consequently has resulted in Thailand producing ambivalent prostitution laws that marginalise both the native and migrant women and subjected them to further exploitation.

The Service Establishment Act (Entertainment Places Act) 1966 (amended 2003) further complicated matters, as it regulated the venues where the women worked, including the massage parlours, go-go bars, karaoke bars and other similar places of entertainment, which allowed “service partners” or “bath service providers”, but made the owners liable if the act of prostitution occurs on the premises. It fails to address the issues of prostitution or trafficking in any comprehensive manner, but restricts the working conditions of the women and suppresses their human rights.<sup>33</sup>

A direct attack on female migrants followed with the Immigration Act of 1979 section 12.8 that specifically prohibits immigration if there is “reason to believe that entrance...[is for]...the purpose of being involved in prostitution.”<sup>34</sup> This law not only draws the focus onto all female migrants as a homogenous group to potentially restrict them from entering the kingdom, but it also means to avoid being repatriated forcibly the women are vulnerable to exploitation by the authorities in their attempts to remain in Thailand. The act is also an instrument abused by the police to undertake

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arbitrary raids and arrests of all female sex workers to threaten them with deportation and consequently elicit bribes or sexual favours in return for releasing them.<sup>35</sup>

The Measures in Prevention and Suppression in Trafficking in Women and Children 1998 amended in the Thai “Suppression of Human Trafficking Act” 2008, places an emphasis on traffickers and the protection of victims and gave increased authority to officials to search. Added to which, Section 4 of this Act states that, “[E]xploitation” means seeking benefits from prostitution or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or service ... or any other similar practices resulting in forced extortion, regardless of such persons consent,” and Article 6 of the Act also reflects the same meaning of trafficking in persons (action, means and purpose), including the element of consent (Mahdavi and Sergeant, 2014). Apart from adopting the definitions of the international conventions, this act blatantly failed to properly define prostitution, but continued to remove women’s ability to consent to sex work and persisted in infringing upon their human rights.<sup>36</sup>

### VII. Consequences

ASEAN has also encouraged all member states, including Thailand, to implement the Palermo Protocol to combat human trafficking as part of their domestic laws. “It is critical to note that many countries that have adhered to the Protocol have modified their laws to comply with it.”<sup>37</sup> Although Thailand is only a signatory to the Palermo Protocol, it has evidently enacted domestic human trafficking laws in line with the definitions. The UNODC 2009 Global Report on Trafficking in Persons confirmed that Thailand had construed “trafficking in Persons” as only sexual exploitation of women and children<sup>38</sup> and deems consent irrelevant. This interpretation not only continues to draw a conflation between prostitution and sex trafficking of women (and children), but it continues to disregard the issue of consent that persists in the authorities perceiving women as only victims. Consequently, it significantly places a greater and disproportionate emphasis on more oppressive policies and legislation directed at them. Thailand’s domestic legislation in relation to trafficking and women are very reflective of this restrictive approach that has been actively encouraged by the UN’s legislation that deems the consent of women irrelevant and can thus have far-reaching and highly influentially damaging effects. Despite a number of policies introduced by the Thai government, in accordance with

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data collected in the TIP reports, these had limited success.<sup>39</sup> With the focus predominantly on migrant women with the notion of prevention in mind, anti-trafficking becomes synonymous with anti-migration, “This connotation is made to discourage women’s migration and thus seemingly hopefully diminish the occurrence of sex trafficking.”<sup>40</sup> This means that migrant women who work as prostitutes in Thailand are not regarded as autonomous subjects with human and legal rights. Instead, they are deemed as forced victims of sex trafficking and treated as objects processed at the mercy of the Thai authorities without further consideration to their circumstances or needs. This results in the majority of cases in repatriating them to their originating countries, to face potential further abuse that they were originally escaping and so exacerbates a perpetual problem.

All of these laws are gendered, restrictive and oppressive and specifically targetting women and particularly female migrant sex workers, by adopting often ad verbatim, the controversial definitions drafted by the UN. Doezema (2000b) comments that this allegedly need for women to be protected by or from men is used as a tool to restrict and contain women and, in so doing, ostracise them from society. The consequences are that these policies are then used to persecute and exploit the women rather than aiding and rescuing them, as was the alleged intention of the international legislation.<sup>41</sup>

### VIII. Conclusion

Current UN legislation reflects a distorted view of the definition of trafficking that encourage and incorrectly substantiate that women and children are the only victims. The definition misguides states into creating policies that are wholly engendered and into failures to tackle the underlying socio-economic issues. By ignoring women’s ability to consent, they reconfirm the previously established low status of a female and encourage a universal failure to acknowledge women’s and sex workers’ rights. Particularly concerning is the fact that these predominantly Western definitions are so influential, even with states such as Thailand who are often not parties to the conventions and whose policies are not aligned with their overall intention, are pressured to copy these definitions and intentions into their domestic trafficking and prostitution policies with detrimental effects on the women involved.

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Due to the influence of the UN's policy of abolishing prostitution as a cause of sex trafficking of women, Thailand has introduced anti prostitution and anti trafficking legislation that ignores the consent of migrant women and Thai sex workers, rendering them all victims; criminalised the act of prostitution, allowing sex workers to be exploited, and conflating sex trafficking with prostitution that confuses the correct identification of victims from consenting workers. As a result, prostitution is still a huge industry albeit criminalised; sex trafficking is still a significant and growing problem; there is increased corruption within the Thai authorities; rescued trafficked victims are not correctly assisted and Thai prostitutes and female migrants are criminalised and victimised. Added to which, vast economic resources and efforts are diverted away from the possibility of more constructive socio-economic policies being considered. The UN needs to redress their ideology to ensure that definitions within international conventions, re-enforce and reiterate women's autonomy and for their right to consent to be respected and upheld. Current legislation continues to challenge women's human rights to choose their occupation; their right to self-determination and their right of movement and undermines women's rights not just on a domestic level but on an international scale.

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## Notes

1. Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR).
2. Preamble to UDHR Available from: <http://www.un.org/en/documents/udhr/index.shtml/>.
3. Article 1 UDHR.
4. Article 1 ICCPR and ICESCR Available from:  
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> &  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.
5. UDHR Preamble.
6. Angyal, 1941, cited in Weyheymer, 2003, p.14.
7. Weyheymer, 2003, p.17.
8. Perske, 1972, cited in Weyheymer, 2003, p.18.
9. Weyheymer, p. 9.
10. Ross, 1930, cited in Weyheymer, 2003, p. 9.
11. European Parliament declared prostitution a form of violence against women in their report in 2014. Available from: [http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0071+0+DOC+XML+V0//EN&language=en#\\_part2\\_def4](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0071+0+DOC+XML+V0//EN&language=en#_part2_def4).
12. Fraun p. 17; Weyheymer 17.
13. Article 6.
14. Articles 14-19.
15. [http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0071+0+DOC+XML+V0//EN&language=en#\\_part2\\_def4](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0071+0+DOC+XML+V0//EN&language=en#_part2_def4).
16. Travaux Preparatoire (TP) p. 323 Available from:  
<http://lastradainternational.org/lsidocs/1039%20Travaux%20Preparatoire%20Palermo%20Protocol.pdf>.
17. TP, p. 334;
18. Gallagher, p. 39.
19. ILO website. Available from: [http://www.ilo.org/asia/info/public/pr/WCMS\\_243810/lang--en/index.htm](http://www.ilo.org/asia/info/public/pr/WCMS_243810/lang--en/index.htm).
20. Gallagher, p. 28.
21. Gallagher, p. 33
22. TP, p. 344
23. Travaux Preparatoire p. 344
24. ILO [http://www.ilo.org/global/about-the-ilo/media-centre/press-releases/WCMS\\_007994/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/media-centre/press-releases/WCMS_007994/lang--en/index.htm).
25. Boonchalaksi and Guest, p. 120.
26. This act cannot be accessed online as of 15 June 2015.
27. This is actually more in line now with the Nordic model in the European Union.
28. Boonchalaksi and Guest, p. 121.
29. Boonchalaksi and Guest, 123.
30. <http://www.refworld.org/docid/482aff982.html>.
31. Boonchalaksi and Guest, 12.
32. <http://www.impowr.org/content/current-legal-framework-prostitution-thailand#sthash.jJTUBKV.dpuf>
33. <http://www.thailawforum.com/sex-crimes-in-thailand-part2-2.html>
34. ([http://www.immigration.go.th/nov2004/en/doc/Immigration\\_Act.pdf](http://www.immigration.go.th/nov2004/en/doc/Immigration_Act.pdf)).
35. EMPOWER Hit and Run.
36. <http://www.thailaws.com/>.
37. Kranrattanasuit, p.111.
38. 15-17 unodc.org/documents/human trafficking/global report on TIP.
39. Kranrattanasuit pp.98 – 151.
40. Kranrattanasuit pp. 82.
41. Empower Hit and Run.

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