



International Labour Organization  
Organisation internationale du Travail  
Organización Internacional del Trabajo

6 July 2018

## **ILO remarks for Ministry of Labour Online Comment regarding Draft Prevention and Elimination of Forced Labour Act**

We have the honour to refer to the draft Act on the Prevention and Elimination of Forced Labour in its version of 7 June 2018.

The draft Act—and the comments offered here—have been prepared in the context of consultations with the ILO on the recently ratified Protocol of 2014 to the Forced Labour Convention, 1930, including recommendations in the Gap Analysis on the Protocol submitted to the Government on 7 February 2017.\*

The Office wishes to draw the attention of the Royal Thai Government to the need to reconsider the definition of forced labour and the provisions on penalties in the draft Act, if it is to fulfil its purpose of strengthening the legal framework giving effect to the Forced Labour Convention, 1930 (No. 29), and its Protocol of 2014.

### **Definition of forced labour**

Section 6 of the June 2018 draft lays down a definition of forced labour as comprising six discrete acts or instances. Five of the instances refer directly to existing offences in the Penal Code or the Labour Protection Act.

This definition gives rise to a number of concerns, particularly as regards conformity with the Convention and its Protocol. It must be recalled that forced or compulsory labour is defined broadly in Article 2 (1) of Convention No. 29 as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”, that definition being reaffirmed in Article 1 (3) of the Protocol. By limiting the scope of the term to six specific acts, the proposed definition would unduly exclude all other acts, or situations, potentially constituting forced labour within the meaning of the Convention and its Protocol. In addition, the proposed new definition differs from that set forth in the Anti-Human Trafficking Act, which defines in its Section 4 forced labour as “compelling the other person to work...”. As noted in earlier comments, conflicting definitions could undermine the scope of both laws and create confusion amongst law enforcement and the judiciary.

It is recommended therefore that a single and sufficiently broad definition of forced labour (either that set out in the Anti-Human Trafficking Act or that contained in the January 2018 draft) be adopted, so as to ensure its conformity with that laid down in international labour standards, while ensuring that relevant laws are harmonised. For overall consistency, the definition should be moved from Section 6 to the section concerning definitions.

The Office acknowledges the potential benefit of enumerating, within the law, specific instances constituting forced labour. However, the six instances in the proposed definition might more usefully be deployed in Chapter 6 (“Penalties”) as a non-exhaustive list of specific violations of forced labour, with a corresponding range of possible sanctions for each of the said violations.

### **Penalties**

It must be recalled that Article 25 of Convention No. 29 requires exaction of forced labour to be punishable as a *penal* offence, with penalties imposed by law that are really adequate and are strictly enforced, while Article 1 (1) of the Protocol makes it an obligation to take effective measures to sanction the perpetrators of forced labour.



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In order to give full effect to this specific requirement of the Convention, efforts to amend the legal framework would ideally include a concurrent review of both the legislation relevant to forced labour and the penal code—with a view to the amendment of both as appropriate.

Section 36 of the draft Act provides that the acts enumerated in its proposed definition of forced labour may be punishable *under the specific offences in the Penal Code to which they refer*. Although the logic of this proposition is understandable, it is not effective in providing the penalties required by the Convention. The Penal Code offences cited, while containing elements that may also serve as indicators in determining forced labour situations (such as the confiscation of documents, or physical confinement), simply do not constitute offences of forced labour *per se*, as they do not, among other things, explicitly refer to the exaction of work or service.

In the alternative, the Office recommends that:

- (1) references to the existing offences in the Penal Code as forced labour offences be removed;
- (2) Section 36 state that **all** violations of forced labour may be punishable as penal offences under Section 309 of the Penal Code, the non-exhaustive list of forced labour situations being considered as a subset of, or a partial elaboration of, that same section;
- (3) a non-exhaustive list of situations constituting forced labour be laid down, borrowing from the list of situations set out in the proposed definition. Each of these situations would furthermore need to be re-worked, so as to ensure that they contain all elements of forced labour as defined in the Convention; and,
- (4) a range of penalties be prescribed for each of the situations, while noting that the present penalties are lower than those proposed in previous versions of the draft Act, as well as lower than those provided in the Anti-Human Trafficking Act, and at risk of being found insufficient to give effect to the Convention’s requirement of “really adequate” penalties.

We hope these comments and recommendations prove helpful and the ILO shall be glad to provide any further information the Roayl Thai Government may wish in this connection.

\* As with comments provided previously by the ILO, these comments are subject to the customary reservation that the Constitution of the International Labour Organization confers no special competence upon the International Labour Office to provide interpretations of instruments adopted by the International Labour Conference or to assess compliance with these instruments, this being the preserve of the competent ILO supervisory bodies.