



Situation and gap analysis on the ILO Protocol of 2014 to the Forced Labour Convention, 1930, and the fishing and seafood processing industries in Thailand¹

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¹ This document was prepared by an inter-disciplinary team of the ILO, including staff of the EU-funded Ship to Shore Rights Project, following extensive consultations conducted by the ILO in partnership with the Ministry of Labour and the Thai social partners.



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Executive summary

Background and scope of the study

The two ILO Conventions on forced labour, namely the Forced Labour Convention, 1930 (No.29), and the Abolition of Forced Labour Convention, 1957 (No. 105), have played a vital role in combating the practice and remain among the most widely ratified ILO instruments. Yet, gaps in their implementation called for additional measures in order to achieve the effective and sustained suppression of forced labour, including in its contemporary manifestations.

Therefore, at the International Labour Conference in June 2014, ILO constituents adopted the Protocol of 2014 to the Forced Labour Convention, 1930. Constituents also adopted the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), which supplements and provides guidance on the implementation of both Convention No. 29 and its Protocol.

Thailand ratified Conventions Nos. 29 and 105 in 1969, and the Government has adopted and implemented several measures with a view to addressing forced labour and trafficking over the last few decades. However, despite the significant efforts made by the Government, comments made by the ILO supervisory bodies, as well as recent research studies and reports continue to draw attention to the poor working conditions and abuses faced by low-skilled workers - especially migrant workers - in some of the country's labour-intensive industries, such as fishing and seafood processing.

Against this background, and as a contribution to the overarching objective of strengthening Thailand's legal and regulatory framework relevant to forced labour and trafficking - in particular as regards the fishing and seafood industries - the present research aimed to assess the country's existing laws and regulations, as well as their practical implementation, against the requirements of Convention No. 29 and the 2014 Forced Labour Protocol.

In particular, the research aimed to determine the extent to which the Thai legal and regulatory framework gives effect to the provisions of the new Protocol, and the extent to which it would need to be adjusted or complemented in order to meet its requirements. By identifying such gaps, the present research and a series of tripartite consultations will also help determine Thailand's readiness for ratification of the Protocol.

In addition to desk-based research, a comparative legal analysis was conducted between the most relevant laws and policies and main obligations set forth in the Forced Labour Protocol, namely: the adoption of a national policy and plan of action for the prevention and suppression of forced labour and trafficking in persons; adoption of prevention measures; adoption of measures for the identification and protection of victims; measures to ensure victims' access to remedies, such as compensation; and international cooperation.

Due to their relevance for the development of effective policies and implementation of targeted measures, researchers have also analysed the existing legal definitions of forced labour and trafficking, and their application and interpretation in practice. Finally, focus groups meetings were conducted with a range of key stakeholders with a view to verify the results obtained through the comparative legal analysis and to provide insights regarding the practical implementation of the legislation under review.

This document was prepared by an inter-disciplinary team of the ILO, including staff of the EU-funded Ship to Shore Rights Project, following extensive consultations conducted by the ILO in partnership



with the Ministry of Labour. This analysis has been presented to the Government and social partners for validation and the results are a reflection of this process of close tripartite consultation and engagement.

The findings of the analysis are presented under the usual understanding that the International Labour Office has no authority under the Constitution of the International Labour Organization to provide interpretations of the instruments adopted by the International Labour Conference or to assess the conformity of national law and practice with these instruments, and without prejudice to comments that may be made by the competent ILO supervisory bodies.

Key findings - main gaps and challenges

The analysis shows that Thailand has adopted positive measures with a view to improving its legislative and regulatory framework to prevent and address trafficking and forced labour, and to strengthen the protection of workers' rights, including in the fishing sector. However, challenges remain to be addressed, especially with regard to the enforcement and application of certain provisions, and the implementation of certain measures and policies. These challenges relate to three main areas, as follows:

- **Legal definitions and victim screening:** Research findings indicate that stakeholders involved in trafficking prevention and mitigation face challenges assessing whether an exploitative situation constitutes trafficking for forced labour or labour exploitation, or a violation of labour law provisions. This, in turn, impacts the practical application of legal provisions and measures relating, among other issues, to victim protection, assistance and access to compensation, which are only applicable to individuals identified as victims of trafficking.

In addition, **forced labour is not defined as a stand-alone offence under Thai law**, which might hinder the identification, investigation and prosecution of cases of extreme labour exploitation that are not a consequence of trafficking, or cases in which the trafficking element is not clearly evident. Taking into consideration that forced labour - as defined in Convention No. 29 - is a broader concept than trafficking in persons, and that perpetrators engaging in these practices often operate in different ways, the lack of precise provisions sanctioning all forms of forced labour might also hinder the effective identification and protection of all victims, and their access to appropriate and effective remedies - as required by Convention No. 29 and the Protocol.

Findings have also shown that, in practice, the element of "debt bondage" is often crucial for the identification of cases and screening of victims of trafficking, although the issue is not currently addressed under existing laws and regulations. However, a proposed amendment to the Anti-Trafficking Act under discussion in the National Legislative Assembly aims to address this gap by including "confiscation of documents" and "subjecting a person to debt bondage" as a means of coercing individuals into trafficking for forced labour.

- **Monitoring and regulating recruitment:** The findings indicate that the monitoring of recruitment practices and labour recruiters with a view to preventing trafficking and forced labour requires further strengthening. While the adoption of the Royal Ordinance Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment, in 2016, represented an advance in relation to the previous regulatory framework, the prevention of fraudulent recruitment practices, and the effective protection of workers from abuses that could lead to a debt bondage situation will depend on the effective enforcement and implementation of the 2016 Ordinance.

In addition, the Royal Ordinance does not provide for the establishment of a complaints mechanism or other channels for the reporting of abuses and violations faced by migrant workers during employment, which could prevent the identification and investigation of cases of exploitation. The Ordinance is also only applicable to workers recruited and registered in accordance with bilateral agreements signed with migrant-sending countries, and to recruiters licensed by the Government.

In this context, the monitoring of compliance by employers and labour recruiters, as well as the appropriate application of sanctions for non-compliance will require robust and coordinated efforts among all relevant national agencies, as well as between national agencies and their counterparts in migrant-sending countries.

- **Coordination and collaboration among relevant stakeholders:** The analysis has shown that coordination and collaboration has improved among some stakeholders at the operational level, including among law enforcement agencies, and between government agencies and civil society organisations. However, increased collaboration and coordination is needed, particularly at the policy level, and especially as regards policies addressing trafficking for labour exploitation and forced labour. Anti-trafficking policies and strategies adopted by the Ministry of Social Development and Human Security (MSDHS) and the Ministry of Labour (MOL) seem to approach criminal and labour protection issues independently, instead of adopting a holistic approach to address both the criminal and labour market aspects of trafficking, forced labour and labour exploitation.

In this context, measures to enhance the monitoring and evaluation of policies and their implementation might contribute to the revision and improvement of existing strategies with a view to developing more targeted responses to trafficking and forced labour.

Conclusions and recommendations

Overall, Thai laws and regulations appear to meet the standards set by Convention No. 29 and the Protocol of 2014. However, the Government could consider strengthening its legal and institutional framework in order to ensure a better judicial response to **all forms of forced labour existing in the country** and a better protection of **all victims**.

The Government is encouraged to pursue its efforts to amend the Anti-Trafficking Act with a view to including the elements of “debt bondage” and “confiscation of documents”, and to give due consideration to legislating other potential indicators of forced labour - such as withholding of wages or irregular wage deductions - as specific offences, or as elements of the crime of trafficking in persons.

The Government could also step up its efforts to address the more systemic labour market issues that increase risks of labour exploitation and forced labour with a view to reducing the gap between the criminal and labour justice responses to trafficking and forced labour, especially to ensure that victims of labour exploitation and forced labour are adequately protected, assisted and compensated for the wrongs suffered. To this end, the Government should pursue its efforts to strengthen coordination and collaboration between all actors involved in preventing and addressing trafficking, forced labour and labour law violations, both at the operational and policy levels, with a view to ensuring that offenders are brought to justice and that all victims are effectively protected and assisted.

The Government could also consider strengthening its efforts to collect, analyse and disseminate reliable and detailed information and data on trafficking in persons, forced labour and labour exploitation with a view to adopting targeted strategies and policies in order to address the root causes that increase risks of exploitation, and to assess the progress made.



In addition, the Government should strengthen its coordination, monitoring and enforcement efforts, in order to ensure the effective implementation of regulations on the recruitment of migrant workers, the monitoring of compliance by employers, labour recruiters and recruitment agencies, and the adequate application of sanctions in case of non-compliance.

Therefore, in order to address these areas, and with a view to reaffirm and strengthen the Royal Thai Government's commitment to preventing and suppressing trafficking and forced labour, protecting and assisting victims, and bringing perpetrators to justice, the Government should be encouraged to consider ratifying the ILO Forced Labour Protocol.

Ratification would give international visibility to the significant efforts made by the Government and would facilitate the dialogue with the ILO supervisory bodies on measures taken. Ratification of the Forced Labour Protocol would also help to guide policy development and technical assistance, both in Thailand and globally, and would reinforce the promotion, protection and respect for the rights and principles enshrined in the Protocol and Convention No. 29.



Chapter 1. Research approach

1.1 Background

Over the last few decades, Thailand has experienced sustained high levels of economic growth, with fishing and seafood, manufacturing and agriculture exports making large contributions to the country's remarkable economic progress.

However, despite the positive socio-economic development outlook, a number of recent research studies and reports have drawn attention to the substandard working conditions and abuses faced by low-skilled workers, especially migrant workers, in some of the country's labour-intensive industries.

As regards the commercial fishing sector in particular, reports have highlighted issues such as shortages of Thai workers willing to work on board fishing vessels; a large surplus of low-skilled migrant labour from neighbouring countries; and challenges in monitoring and regulating employment and working conditions in the sector as some of the factors contributing to the heightened vulnerability of workers to abuse and exploitation.²

Allegations of forced labour and trafficking affecting workers in fishing and seafood processing and reported in the media and through other channels have also given rise to increased international pressure and scrutiny, including from buyers, retailers and consumer groups, who called on the government to take measures to strengthen regulation and improve the sector's recruitment and employment conditions.

To respond to this critical situation, the International Labour Organization (ILO), in partnership with the Royal Thai Government and social partners, is implementing the EU-funded project *Combating Unacceptable Forms of Work in the Thai Fishing and Seafood Industry*. The project aims to progressively eliminate the exploitation of workers, particularly migrant workers, in the Thai fishing and seafood processing sectors, thereby improving respect for fundamental rights at work.

The project directs special attention to tackling forced labour on board fishing vessels through a range of mutually reinforcing methods, which include, among other measures, enhancing Thailand's legal and regulatory framework in line with international labour standards.

1.2 Research objectives

As a contribution to the overarching objective of strengthening Thailand's legal and regulatory framework relevant to forced labour and trafficking in persons, in particular in the fishing and seafood industries, the present research aims to assess the country's existing laws and regulations, as well as their practical implementation, against two of the main international standards on forced labour, namely the Forced Labour Convention, 1930 (No. 29), and the Protocol of 2014 to the Forced Labour Convention, 1930 (hereinafter: "the Forced Labour Protocol").

The situation and gap analysis aims to determine the extent to which the Thai legal and regulatory framework gives effect to the provisions of the Forced Labour Protocol, and the extent to which current law and practice would need to be adjusted or complemented in order to meet its minimum requirements. By identifying the main areas where adjustments may be required, the present research

² See, for example: Robertson, P.: *Trafficking of fisherman in Thailand* (Bangkok, International Organization for Migration, 2011).



and a series of tri-partite consultations will also help determine the country's readiness for ratification of the Protocol.

Given the serious abuses - particularly of migrant workers - and the cases of forced labour and trafficking in persons reported in the Thai commercial fishing and seafood processing industries, special attention will be given to laws, regulations and other measures that have a bearing on the working and employment conditions of workers on board fishing vessels and in the seafood processing industry.

Specific research objectives include:

- Mapping of relevant laws, regulations and other measures relevant to the prevention and mitigation of forced labour and trafficking in persons, particularly in the fishing and seafood processing industries;
- Identifying whether and how the provisions of Convention No. 29 and the Forced Labour Protocol are reflected in existing laws, regulations and practice in Thailand;
- Identifying gaps in Thai law and practice regarding specific requirements of the Forced Labour Protocol that would need to be addressed to ensure compliance;
- Providing recommendations on the changes to be made to ensure compliance with the Forced Labour Protocol and to move towards ratification.

1.3 The Protocol of 2014 to the Forced Labour Convention, 1930

At its 103rd session in June 2014, the International Labour Conference adopted the Protocol to the Forced Labour Convention, 1930, as well as the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), which supplements both the Convention and the Protocol and provides guidance on their implementation.

While Convention No. 29 and the Abolition of Forced Labour Convention, 1957 (No. 105), have played a vital role in combating all forms of forced and compulsory labour and remain among the most widely ratified ILO instruments, gaps in their implementation called for additional measures in order to achieve the effective and sustained suppression of forced labour in all its forms and contemporary manifestations.

As recognised in the Preamble of the Protocol, an increased number of workers are exploited in the private economy, with certain sectors and groups of workers - especially migrant workers - being particularly vulnerable to forced labour. In addition, trafficking in persons for forced labour, which may involve sexual exploitation, is the subject of growing international concern, requiring specific and targeted action.

In order to address these gaps, the Protocol establishes specific obligations to prevent forced labour, to protect victims and provide them with access to remedies, such as compensation, and emphasizes the link between forced labour and trafficking. These key obligations are set out in Article 1 of the Protocol, which further requires member States to develop a national policy and plan of action, in consultation with employers' and workers' organisations, and involving systematic action with a view to strengthening the impact of measures taken against forced labour and trafficking in persons.

The provisions in the Protocol and the guidance provided in the Recommendation elaborate further on specific requirements regarding prevention, protection, access to remedies, enforcement, and

international cooperation, and provide clarification on what measures are considered effective. The text of both instruments, as well as of Convention No. 29, is provided in **Annexes III-V** of the present report.

1.4 Methodology and limitations of the analysis

The study is composed of two main parts: a brief situation analysis and a more comprehensive gap analysis between the Forced Labour Protocol and existing law and practice.

The situation analysis provides an overview of the incidence of forced labour in the country, discussing the extent and nature of the problem, as well as the main groups and sectors at risk. It also discusses the institutional framework relevant to the prevention and suppression of forced labour and trafficking in persons in Thailand, particularly as regards the fishing and seafood processing industries. The situation analysis draws mainly from desk-based research, focusing on existing reports and studies prepared by the ILO and other relevant stakeholders, statistical data disseminated by the government, as well as comments made by the ILO supervisory bodies based on information provided by the Thai government and social partners.

The gap analysis was conducted based on a set of guidelines and template matrix developed by the ILO for an assessment of national laws and regulations vis-à-vis the Forced Labour Protocol. Research began with an initial review of existing Thai laws, policies and regulations relevant to the prevention and suppression of forced labour - and to labour practices in the fishing and seafood sector in particular - in order to map the most relevant instruments to be considered in the analysis.

A comparative legal analysis was then conducted between the most relevant laws and policies and the requirements under the Forced Labour Protocol. The aim was to examine the presence of compliance gaps with regard to the main obligations set forth in the 2014 Protocol, namely: the adoption of a national policy and plan of action for the prevention and suppression of forced labour and trafficking in persons; adoption of prevention measures; adoption of measures for the identification and protection of victims; measures to ensure victims' access to remedies, such as compensation; and international cooperation.³

³ The obligations set forth in the Protocol are as follows:

- Development of a **national policy and plan of action** for the effective and sustained suppression of forced labour, which shall involve systematic action by the competent authorities. National policies and plans of action shall be **developed in consultation with employers' and workers' organisations**;
- Adoption of **specific measures to address trafficking** for forced labour;
- Adoption of measures to **prevent** the use of forced labour, including:
 - Educating and informing people, especially those considered to be particularly vulnerable, in order to prevent their becoming victims of forced labour and trafficking;
 - Educating and informing employers, in order to prevent their becoming involved in forced labour practices;
 - Undertaking efforts to ensure that:
 - The coverage and enforcement of legislation relevant to the prevention of forced labour, including labour law as appropriate, apply to all workers and all sectors of the economy; and
 - Labour inspection services and other services responsible for the implementation of this legislation are strengthened;
 - Protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process;
 - Supporting due diligence by both the public and private sectors to prevent and respond to risks of forced labour and trafficking; and
 - Addressing the root causes and factors that heighten the risks of forced labour and trafficking.
- Adoption of effective measures for the **identification, release, protection, recovery and rehabilitation of all victims** of forced labour and trafficking, as well as the provision of other forms of assistance and support;
- Ensuring that all victims of forced labour and trafficking, irrespective of their presence or legal status in the national territory, have **access to appropriate and effective remedies**, such as compensation;
- Adoption of measures, in accordance with the basic principles of each country's legal system, to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced labour and trafficking in persons;



The researchers also used the information from the comparative legal analysis to develop a preliminary set of questions to be applied to a qualitative assessment through focus group discussions. The completed matrix containing the mapping of relevant laws, the results of the comparative legal analysis and the questions for focus group discussions is provided in **Annex I** of the present report.

The focus group meetings were conducted over the course of 3 days with a range of key stakeholders, including social partners, civil society representatives, law enforcement agencies and representatives from the Ministry of Social Development and Human Security (MSDHS), Ministry of Labour (MOL) and Ministry of Public Health (MOPH). The main objective of the qualitative focus group consultation was to verify the results obtained through the comparative legal analysis and to provide researchers with insights regarding the practical implementation of the legislation under review.

The findings of the analysis are presented under the usual understanding that the International Labour Office has no authority under the Constitution of the International Labour Organization to provide interpretations of the instruments adopted by the International Labour Conference or to assess the conformity of national law and practice with these instruments, and without prejudice to comments that may be made by the competent ILO supervisory bodies.

Chapter 2. Situation analysis: Prevalence of forced labour and the Thai fishing and seafood processing industries

2.1 Nature and extent of forced labour and trafficking in persons in Thailand

According to the ILO's most recent estimates, more than 11 million people in the Asia-Pacific region are victims of forced labour, accounting for more than half (56%) of the global total.⁴ The ILO also estimates that the illegal profits from forced labour in Asia-Pacific amount to approximately US\$ 51.8 billion annually. Out of these profits, US\$13.4 billion are made in sectors such as agriculture, manufacturing, construction and fishing,⁵ and are generated from unpaid wages, undeclared taxes and social security contributions, among other violations.

At country level, however, an accurate picture of the extent of the forced labour problem remains largely unclear, mostly due to challenges regarding the identification of victims, coordination in data collection, and gathering of evidence against perpetrators, especially in cases involving labour exploitation.

According to the data provided by the Thai government in its 2014 Trafficking in Persons Country Report,⁶ 280 cases of trafficking were investigated in the country in 2014, leading to 115 cases prosecuted and 104 defendants convicted.

Of the 280 cases investigated, 222 related to sexual exploitation, 47 to labour exploitation (of which 11 were in the fishing industry), and 11 cases concerned forced begging. Of the trafficking cases prosecuted, 102 involved sexual exploitation, 7 involved labour exploitation, and 6 involved forced begging. No information is provided in the report regarding the number of cases of trafficking in the fishing industry that led to prosecution.

International cooperation to ensure the prevention of all forms of forced labour, including trafficking in persons.

⁴ ILO: ILO Global Estimate of Forced Labour - Results and Methodology (Geneva, 2012).

⁵ ILO: Profits and Poverty - The Economics of Forced Labour (Geneva, 2014).

⁶ Ministry of Foreign Affairs of the Kingdom of Thailand: *2014 Trafficking in Persons Country Report* (Bangkok, 2014).

As regards victim identification, the report indicates that a total of 595 victims of trafficking (215 men and 380 women) were identified in Thailand in 2014. These included 274 Thais, 108 Laotians, 83 Myanmar nationals, 29 Cambodians, and 101 of other nationalities. The majority of victims identified (380 individuals) were under 18 years of age.

As these figures indicate, the number of identified cases and victims of trafficking for labour exploitation remains relatively low, especially considering the various measures taken by the government in recent years, including through the adoption of new laws and targeted policies. In addition, the fact that numerous cases of exploitation of workers in sectors such as fishing and seafood processing - which employ an estimated 200,000 migrant workers - continue to emerge in news reports and through other non-governmental channels, is a strong indicator that further measures are needed for the effective identification, prevention and elimination of forced labour and trafficking for labour exploitation.

2.2 Groups and sectors particularly at risk

In keeping with global and regional patterns, the exploitation of workers in Thailand is more prevalent in sectors and industries employing low- or unskilled workers, in seasonal industries (where labour demand fluctuates), and in sectors where working conditions are generally poor and law enforcement is inadequate. Some of these sectors include:

- Agriculture
- Commercial fishing
- Construction
- Food, including seafood processing and packaging
- Manufacturing
- Sex and entertainment industry

Within these and other sectors where forced labour is most likely to occur, certain categories of workers face an increased risk of falling victim to exploitation and abuse. The most vulnerable groups in Thailand include unskilled workers from remote rural areas, members of ethnic minorities, highland persons and foreign migrant workers, particularly from Laos, Cambodia and Myanmar.

The factors that increase the vulnerability of these groups to exploitation are multiple, complex and interrelated, including discrimination and social exclusion; limited protection under national laws; limited access to education, employment, or alternative livelihood opportunities; ineffective labour migration governance, among others.

As regards foreign migrants in particular, vulnerability to exploitation is often exacerbated in case of recruitment through unregulated labour brokers, irregular employment agencies or informal recruitment networks. This increases the risk of workers being forced to pay abusive recruitment and placement fees, which in turn increases vulnerability to debt bondage. Additionally, in the case of workers with an irregular migration status, the limited ability to seek other livelihood opportunities and the possibility of extreme dependence on the employer increases even further the risk of exploitation.

The vulnerability of migrant workers to conditions of forced labour, particularly in the fishing sector, has also been highlighted by the ILO Committee of Experts on the Application of Conventions and

Recommendations (CEACR), the body responsible for monitoring the implementation in practice of international labour standards - including the Forced Labour Conventions.

In its 2013 observation on the application by Thailand of Convention No. 29 (available in **Annex VI** of the present report), the CEACR took note of a report from the United Nations Special Rapporteur on the human rights of migrants that expressed concern about the pattern of exploitation faced by a large number of migrant workers in Thailand, especially irregular migrants.⁷ The CEACR also referred to a study conducted by the International Organization for Migration (IOM), which indicated that labour recruitment processes for migrant workers in the fishing sector remained largely informal, often leading to abuse.

In this regard, the CEACR recalled the importance of taking effective measures “to ensure that the system of employment of migrant workers does not place them in a situation of increased vulnerability, particularly where they are subjected to abusive practices, such as non-payment of wages, deprivation of liberty and physical and sexual violence”. The Committee observed that such practices, if not addressed, might lead to a situation of abuse that could amount to forced labour.

2.3 Labour exploitation, forced labour and trafficking in the Thai fishing sector

In recent years, the ILO and other international governmental and non-governmental organisations have conducted extensive research on the conditions of work and situations of exploitation affecting workers in the Thai fishing sector. In 2013, a report published by the ILO highlighted the use of inadequately trained and informed migrant workers; the isolation of workers for months while at sea; the precarious and unsanitary working conditions; and regulatory gaps and ineffective law enforcement as some of the leading factors of forced labour and trafficking in persons in the fishing sector in general.⁸

The report also observed that vessel owners often force fishers to work extremely long hours, with no weekly rest, and at a very low pay. In spite of the hazardous and intense nature of the work, health and safety standards are also often disregarded, with fishers being forced to work in adverse weather conditions, handling dangerous machinery and without adequate clothing to protect them from injuries caused by sun and seawater exposure.

Similarly, a large-scale survey conducted by the ILO on employment practices and working conditions in Thailand’s fishing sector provided extensive insight into the way in which migrant fishers are recruited, their conditions of work, and the existence of patterns of exploitation, including forced labour and trafficking in persons.⁹

The ILO study observed that the Thai fishing industry has faced significant changes in the structure of its employment and working conditions since a major natural disaster in the late 1980’s resulted in a drastic decline in the number of Thai nationals willing to work on board commercial fishing vessels. This, in turn, has resulted in a heavy reliance of the sector on migrant workers from neighbouring countries, mainly Myanmar and Cambodia. However, even among foreign migrants, the desirability to work on board fishing vessels is low (particularly due to the low prevailing wage rates and subpar

⁷ ILO: Observation (CEACR) - adopted 2013, published 103rd ILC session (2014), Forced Labour Convention, 1930 (No. 29) - Thailand (Ratification: 1969).

⁸ ILO: Caught at Sea: forced labour and trafficking in fisheries (Geneva, 2013).

⁹ ILO Tripartite Action to Protect Migrants within and from the GMS from Labour Exploitation (TRIANGLE); Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University: *Employment practices and working conditions in Thailand’s fishing sector* (Bangkok, 2013).

working conditions), leading to an increased risk of deceptive and coercive recruitment practices, especially of undocumented migrants.

In this regard, the study indicated that approximately one-third of the migrant fishers surveyed by the ILO in 2013 had been recruited by brokers who had charged for their transfer and placement with employers, increasing the risk of exploitation and debt bondage.¹⁰ It observed that, although workers might enter these arrangements with brokers voluntarily, they often end up in situations where they are unable to leave the job as a result of a debt incurred. The ILO study also indicated that nearly a quarter of surveyed workers who had used a broker were facing wage deductions in order to repay recruitment fees, and many of those who claimed to have paid recruitment fees up front had done so using loans from their families, the employer or labour brokers, and were therefore also in a situation of debt.¹¹

The abuses faced by migrant workers during recruitment and employment on board fishing vessels in Thailand were also highlighted by the CEACR in its 2013 observation on the implementation of Convention No. 29 in the country.¹² The Committee observed that “the itinerant nature of work in fishing and the long periods of time spent away from shore hamper the identification of migrant fishermen working under forced labour conditions” and urged the government to take measures “to ensure that migrant workers, particularly those in the fishing industry, are fully protected from abusive practices and conditions that amount to the exaction of forced labour”. The Committee also requested the Thai government to strengthen measures “to enforce anti-trafficking laws against those who target migrant fishermen, as well as to ensure that sufficiently effective penalties are applied to persons who subject these workers to conditions of forced labour”.

Chapter 3. Gap analysis: the Forced Labour Protocol and the fishing and seafood processing industries in Thailand

3.1 Summary of relevant legislation

Some of the main laws relevant to the prevention and elimination of forced labour and trafficking in persons, particularly in the fishing and seafood processing industries, include:

- Labour Protection Act, B.E. 2541 (1998)
- Ministerial Regulation on the Protection of Labour in Fisheries, B.E. 2557 (2014)
- Anti-Trafficking in Persons Act, B.E. 2551 (2008, as amended in 2015)
- Human Trafficking Criminal Procedure Act, B.E. 2559 (2016)
- Royal Decree Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment, B.E. 2559 (2016)

The main features of these instruments can be briefly summarised as follows:

- **Labour Protection Act B.E. 2541 (1998):** Provides for labour protection regarding minimum age for employment, wages, working hours, overtime and occupational health and safety. It also empowers

¹⁰ ILO Tripartite Action to Protect Migrants within and from the GMS from Labour Exploitation (TRIANGLE); Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University: *Employment practices and working conditions in Thailand's fishing sector* (Bangkok, 2013), p. 46-50.

¹¹ *Idem.*

¹² ILO: Observation (CEACR) - adopted 2013, published 103rd ILC session (2014), Forced Labour Convention, 1930 (No. 29) - Thailand (Ratification: 1969).

officials of the Department of Labour Protection and Welfare to conduct labour inspections and to enforce the Act.

While the Labour Protection Act applies equally to all workers in Thailand, regardless of migration status or occupation, Section 22 establishes that workers in certain activities (e.g. agriculture, loading of marine cargos, transport work, and fisheries) may enjoy different labour protection as prescribed by Ministerial Regulations.

- **Ministerial Regulation on Protection of Labour in Fisheries B.E. 2557 (2014)**: Provides minimum standards for the labour protection of workers in the fishing industry. It prohibits the employment of children under 18 years of age on board fishing boats (Clause 4), and contains provisions on mandatory rest periods and the use of written employment contracts (Clauses 5 and 6, respectively). Pursuant to the Ministerial Regulation, all workers in fishing, regardless of the number of fishers and crew members on board vessels, are entitled to minimum wage payment, rest periods, and monthly and annual paid leave.

The 2014 Ministerial Regulation replaced Ministerial Regulation No. 10 (1998), which limited the protection of fishers regarding certain provisions of the Labour Protection Act, and was not applicable to fishing boats with fewer than 20 employees or boats fishing outside of Thailand's territorial waters for a period exceeding one year.

- **Anti-Trafficking in Persons Act B.E. 2551 (2008, as amended in 2015)**: Following the language of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (2000), it defines trafficking as the act of "procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving any person by means of threat or use of force, abduction, fraud, deception, abuse of power, or by giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control "for the purpose of "exploitation". The Act broadened the previous legal definition of trafficking in persons to include labour exploitation, forced labour and trafficking offences committed against male victims.

The Act also recognizes the principle of non-prosecution of victims of trafficking for certain related offences they might have been compelled to commit, such as violations of immigration regulations and possessing fake identification documents. The Act establishes the Anti-Trafficking in Persons Committee, a multi-stakeholder body in charge of developing and adopting strategies and measures for the prevention and suppression of trafficking in persons.

An amendment to the Act in 2015 has included provisions allowing the competent authority to close, or interrupt the operations of business associated with trafficking in persons. The amendment has also provided protection to whistleblowers from both civil and criminal liability.

- **Human Trafficking Criminal Procedure Act B.E. 2559 (2016)**: Outlines the special procedure for the prosecution of cases of trafficking in persons. It establishes a special Anti-Trafficking branch in the Appeal Court responsible for handling cases of trafficking and provides increased flexibility during hearings and trials (e.g. by allowing hearings to be conducted via video-conference). The Act also establishes different channels for potential victims of trafficking to access remedies, both through civil and criminal proceedings. In addition, it sets out a protection system for witnesses and victims, and recognizes their right to anonymity.

- **Royal Ordinance Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment**

B.E. 2559 (2016): Sets out rules for the recruitment of migrant workers with the objective to prevent trafficking in persons, people smuggling and illegal employment, as well as to strengthen protection of migrant workers. The Ordinance regulates the operation of recruitment agencies (limited companies or public limited companies) and sets out a number of responsibilities to recruiters (licensees) and employers who bring migrant workers into the country for employment in accordance with Memoranda of Understanding (MoUs) signed with migrant-sending countries.

3.1.1 Institutional framework regarding prevention and suppression of forced labour and trafficking in Thailand

The following table provides a summary of responsibilities of key government agencies involved in the prevention and suppression of forced labour and trafficking in persons in Thailand, particularly in the fishing sector. It is worth noting, however, that while agencies' mandates are clearly established under national laws and regulations, the division of responsibilities and coordination of tasks in practice is not always well defined.

AGENCY	RELEVANT DUTIES	ADDITIONAL COMMENTS
Department of Employment (Ministry of Labour)	<ul style="list-style-type: none"> • Registering, regulating, and monitoring the employment of all migrant workers in Thailand, including those in the fishing sector; • Issuance of work permits, renewal of work permits, permission to change employment, and inspecting worksites for undocumented workers; • Accepting and investigating recruitment related complaints. 	<ul style="list-style-type: none"> • On board fishing vessels, responsibility to inspect work permits lies with the Royal Thai Marine Police and Navy.
Department of Labour Protection and Welfare (Ministry of Labour)	<ul style="list-style-type: none"> • Enforcement of Labour Protection Act, Ministerial Regulation on sea fishery work and other applicable laws on labour protection and conditions of work; • Charged with fully investigating labour protection violations occurring on board fishing vessels within 30 days of receiving a complaint. 	<ul style="list-style-type: none"> • Does not participate in inspection of fishing vessels at sea, as this falls under the responsibility of the Marine Police and the Navy; • The Department may provide support to the Marine Police and Navy to assess whether working conditions and employment practices on board fishing vessels are in accordance with the law.
Ministry of Social Development and Human Security	<ul style="list-style-type: none"> • Coordination of anti-trafficking efforts, including coordination of inter-agency Committees and Sub-Committees established under the Anti-Trafficking in Persons Act; • Enforcement of the Anti-Trafficking in Persons Act, including power to search premises, • Responsible for trafficking prevention and providing assistance and protection to victims (both Thai and foreign); • Coordination with Royal Thai Police during trials and with other organisations engaged in victim protection (e.g. NGOs). 	
Anti-Human Trafficking Division of Royal Thai Police	<ul style="list-style-type: none"> • Conducting raids, identifying and investigating cases of trafficking in persons, particularly in "hot spot" locations. 	<ul style="list-style-type: none"> • Responsibility for investigation of criminal activities taking place on board fishing vessels and in Thai territorial waters lies with Marine Police and Navy.

<p>Royal Thai Marine Police</p>	<ul style="list-style-type: none"> • Leading law enforcement agency at sea; • Jurisdiction over criminal violations occurring in Thai coastal waters (within 12 nautical miles from shore); • Conducting boat inspections to monitor and interdict a broad range of criminal activities, including trafficking in persons; • Enforcement of Anti-Trafficking in Persons Act. 	<ul style="list-style-type: none"> • Does not have the mandate to formally investigate and refer cases for prosecution; • When potential cases of trafficking are identified, these must be referred to other authorities for investigation and prosecution, which may have a limiting effect on follow-through.
<p>Royal Thai Navy</p>	<ul style="list-style-type: none"> • Jurisdiction over criminal violations occurring beyond the 12 nautical miles delineation of coastal waters; • Conducting boat inspections to monitor and interdict a broad range of illegal activities, including trafficking in persons; • The Navy and Marine Police are responsible for enforcing the same laws in their respective jurisdictions; • Enforcement of Anti-Trafficking in Persons Act 	<ul style="list-style-type: none"> • Like the Marine Police, the Royal Thai Navy does not have the mandate to formally investigate and refer cases of trafficking for prosecution. If cases of trafficking are identified, these must be referred to other authorities for investigation.
<p>Marine Department</p>	<ul style="list-style-type: none"> • Main agency responsible for overseeing registration and monitoring of fishing vessels and for providing “seafarer” documents for Thai fishermen on board Thai vessels; • Issuance of work permits for employment on board fishing vessels. 	<ul style="list-style-type: none"> • While the Department is responsible for ensuring the safety of fishermen, the investigation of trafficking in persons is delegated to the Royal Thai Navy; • “Seafarer” documents serve to register the length of time a fishermen is on board a fishing vessel, but are not to be used as workers’ registration or permits; • The Department does not conduct inspections while vessels are at sea. Such inspections fall under the responsibility of the Marine Police and the Navy.
<p>Port Authority (Port in-Port Out Control Centres – PIPO)</p>	<ul style="list-style-type: none"> • Inspection of vessels to ensure boats, crew and fishermen are properly registered; • If documentation is not fully in compliance, authorities can facilitate the completion of documentation to rectify the situation. 	<ul style="list-style-type: none"> • Port Authority officials do not have the mandate to inspect employment and working conditions; • If labour law compliance issues are reported by fishermen, the Port Authority will coordinate with the Department of Labour Protection and Welfare; • For cases concerning irregular migrants, the Port Authority will refer the case to the Immigration Department.
<p>Immigration Department</p>	<ul style="list-style-type: none"> • Enforcement of the Anti-Trafficking in Persons Act, as well as all applicable immigration laws and regulations; • Monitoring of all foreign workers entering and leaving the country, including fishermen; • Mandate to arrest and deport unregistered migrant workers, including fishermen. 	<ul style="list-style-type: none"> • Immigration officers have the mandate to conduct inspections in all types of worksites on immigration matters;
<p>Ministry of Public Health</p>	<ul style="list-style-type: none"> • Involved in the issuing and renewal of work permits for foreign migrant workers by conducting compulsory medical examinations. • Responsible for providing trainings on nutrition, sanitation and hygiene targeted at vessel owners and boat captains. 	<ul style="list-style-type: none"> • Although medical checks are required for regular migrants, the proportion of undocumented migrants in the fishing sector remains high.

3.2 Summary of findings

Research findings are based on two main assessments, namely a comparative legal analysis of relevant laws, regulations and policies vis-à-vis the requirements of the Forced Labour Protocol, and consultations held with key stakeholders through focus group discussions. Further details on the methods applied are provided in **Section 1.4** of the present report.

Both the comparative legal analysis and qualitative focus group discussions took into consideration the key requirements in the 2014 Protocol, namely: the adoption of a national policy and plan of action for the prevention and suppression of forced labour and trafficking in persons; adoption of prevention measures; adoption of measures for the identification and protection of victims; measures to ensure victims' access to remedies, such as compensation; and international cooperation. The sections below reflect the main findings of the assessments regarding each of these topics. In addition, due to the relevance of legal definitions and concepts for the development of effective policies and implementation of targeted action against forced labour and trafficking, researchers have also analysed existing legal definitions and their application and interpretation in practice.

3.2.1 Definitions

Comparative legal analysis

a) Forced labour definition in ILO Convention No. 29:

Convention No. 29, ratified by Thailand in 1969, defines forced or compulsory labour as “all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. This definition is reaffirmed by the Forced Labour Protocol.¹³

Forced labour is therefore the antithesis of decent work and refers to situations in which persons are coerced to work against their will through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of personal documents or threats of denunciation to immigration authorities. The practice often emerges on the edges of the labour market, where regulation is insufficient, law enforcement is weak and workers have little or no opportunity to organise or to find effective protection against violations of their rights.

According to Convention No. 29, ratifying States are bound to **suppress forced labour in all its forms** (Art. 1(1)). The Convention also stipulates that the use of forced labour “shall be **punishable as a penal offence**”, and the penalties imposed by law shall be “**adequate and strictly enforced**” (Art. 25).

In this regard, the ILO supervisory bodies have considered that States should take the necessary measures to ensure that their legislations are comprehensive and appropriate **for punishing those who engage in forced labour exploitation**, and to ensure that such practices are brought to an end.¹⁴ In doing so, countries should take into consideration their national contexts and legal systems with a view to covering all forced labour practices existing in the country and ensuring that such practices are punishable under adequate legislation. The CEACR has also observed that:

“Although desirable, specific provisions making the use of forced labour a punishable offence with appropriate penalties are not always necessary to give effect to the provisions of Article 25 of the

¹³ Article 1, paragraph 3, Protocol of 2014 to the Forced Labour Convention, 1930.

¹⁴ ILO: *Eradication of forced labour - General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)* (Geneva, 2007), para. 136.

*Convention. In order to assess compliance with Convention No. 29, the Committee seeks assurance from governments (...) that there are provisions allowing the punishment of persons guilty of forced labour practices.*¹⁵

A wide range of provisions can thus be used in practice, especially where these are interpreted together with other provisions concerning, for example, trafficking in persons, coercion, the use of threats or violence and substandard working conditions. The **objective is therefore to ensure that the nature and extent of the problems faced in practice in each country are taken into account, and to ensure that legislation explicitly targets these problems** through the imposition of adequate penal sanctions, among other measures.¹⁶

With regards to the link between trafficking in persons and forced labour in particular, the CEACR has observed that **forced labour, as established by Convention No. 29, “is a broader concept than trafficking in persons”**, and it is therefore important “for national jurisdictions to have precise provisions, taking into account the principle of the strict interpretation of penal law”.¹⁷

b) Definitions under Thai law:

Under Thai law, forced labour is not specifically defined as a stand-alone, punishable offence. However, the Anti-Trafficking in Persons Act B.E. 2551 (2008) criminalises trafficking in persons for the purpose of exploitation.

Pursuant to Section 4 of the Act, “exploitation” shall include “sexual exploitation; benefitting from the production or distribution of pornography; slavery; forced labour or services; forced begging; forced removal of organs for the purpose of trade; or any other similar practices resulting in forced extortion, regardless of the person’s consent”. The same provision defines forced labour as “compelling a person to work or provide services through threats of injury to life, body, liberty, reputation or property, of such person or another, by means of intimidation, use of force, or any other means preventing the said person to resist to such threats.”

In addition to trafficking in persons, which is punishable as a criminal offence, the Thai Penal Code criminalises slavery (Section 312), while the Labour Protection Act contains provisions regarding working conditions, including hours of work, occupational health and safety, wages and overtime, as well as provisions prohibiting the use of child labour.

In terms of the adequate punishment of forced labour practices required under Convention No. 29, the recognition of forced labour as a form of exploitation under the Thai Anti-Trafficking in Persons Act of 2008 represented an advance in relation to previous laws, which only recognised as a criminal offence trafficking of female victims for the purpose of sexual exploitation.¹⁸

Nonetheless, the absence of a stand-alone offence of forced labour might pose significant challenges to the identification, investigation and prosecution of cases of extreme labour exploitation that are not a consequence of trafficking, or cases in which the trafficking element is not clearly evident. Taking into consideration that forced labour - as defined in Convention No. 29 - is a broader concept than trafficking in persons, and that perpetrators engaging in these practices often operate in

¹⁵ Idem, para. 137, footnote 319.

¹⁶ Ibid, para. 138.

¹⁷ See, for example, ILO: Observation (CEACR)- adopted 2010, published 100th ILC session (2011), Forced Labour Convention, 1930 (No. 29) - Peru (Ratification: 1960).

¹⁸ Law on Measures for Prevention and Suppression of Trafficking in Women and Children B.E. 2540 (1997)

different ways, the lack of precise provisions sanctioning all forms of forced labour might also hinder the effective identification and protection of all victims, and their access to appropriate and effective remedies - as required by Convention No. 29 and the Protocol.

In addition, current legislation and policies address trafficking and labour exploitation through isolated approaches focusing either on criminal justice OR labour protection, without a comprehensive approach targeting both labour and criminal aspects of forced labour practices.

In this context, the enforcement of the Anti-Trafficking in Persons Act - approached through the criminal justice lens - falls under the mandate of the Ministry of Social Development and Human Security and the Royal Thai Police, while the enforcement of labour law provisions and the punishment of exploitative labour practices falls under the responsibility of the Department of Labour Protection and Welfare of the Ministry of Labour. In the case of workers at sea and in fishing vessels, however, the enforcement of criminal, anti-trafficking and labour legislation falls under the mandate of the Royal Thai Marine Police and Royal Thai Navy. Therefore, the lack of a comprehensive and coordinated approach may present additional challenges for the screening of forced labour victims that are not victims of trafficking and the punishment of all forms of forced labour existing in the country.

Focus group discussions

Law enforcement officials observed during focus group discussions that officials and agencies responsible for the identification, investigation and prosecution of trafficking and forced labour cases perform their duties based on the definitions prescribed under relevant laws.

In this regard, representatives from the Royal Thai Police and from civil society highlighted that current laws and existing definitions of trafficking and forced labour pose challenges regarding the screening of victims and identification of cases, particularly of labour exploitation. Participants observed that it is often challenging to assess whether an exploitative situation constitutes trafficking for forced labour or a mere violation of labour law provisions. This, in turn, impacts the practical application of prevention and victim protection measures, as well as victims' access to remedies and compensation.

Participants also stressed that the issue of "debt bondage" is often crucial in the identification of cases and screening of victims. On this matter, participants observed that a draft amendment to the Anti-Trafficking in Persons Act has been proposed to the National Legislative Assembly and is currently under discussion. The proposed amendment aims, among other issues, to broaden the current definition of forced labour under Section 4 of the Act in order to include "confiscation of documents" and "subjecting a person to debt bondage" as a means of coercing individuals into forced labour.

In terms of a stand-alone offence of forced labour, participants observed that, if a specific offence were to be considered, it would be necessary to take into account whether such provision would be part of civil, labour or criminal legislation, and what sanctions would apply.

3.2.2 National policy and plan of action

Comparative legal analysis

According to Article 1 of the Forced Labour Protocol, member States shall **develop a national policy and plan of action for the effective and sustained suppression of forced labour in consultation with employers' and workers' organizations, which shall involve systematic action by the competent authorities and, as appropriate, in coordination with employers' and workers' organizations, as well as**

*with other groups concerned. In addition, measures (...) shall also include **specific measures to address trafficking** for forced labour.*

Thailand has adopted several policies to address trafficking for both sexual and labour exploitation, including labour exploitation in the fishing sector, as well as specific policies to address illegal, unreported and unregulated fishing (IUU). These include, among others, the National Policy, Strategy and Measure to Prevent and Suppress Trafficking in Persons, B.E. 2554-2559 (2011-2016), issued by the Ministry of Social Development and Human Security (MSDHS), and the Plan of Action on Prevention and Suppression of Trafficking in Persons B.E. 2559 (2016), as well as the Plan on Prevention and Suppression of Trafficking in Persons in Fisheries Sector B.E. 2559 (2016), both issued by Royal Thai Police.

The Plans of Action and policies adopted by the Government cover a number of issues regarding trafficking prevention and suppression, including strengthening knowledge and tools for labour inspection focusing on anti-trafficking in persons, and the establishment of multi-agency inspection units to combat IUU fishing and unacceptable forms of work in fisheries. However, no specific reference is made in the existing policies as to whether these have been developed in consultation with employers' and workers' organisations.

As regards specific measures to combat trafficking in persons for the purpose of forced labour, the government has adopted the Anti-Trafficking in Persons Act B.E. 2551 (2008), which specifically recognizes trafficking for the purpose of forced labour and labour exploitation as an offence. This represents an advance in relation to previous anti-trafficking laws, which only recognised trafficking of female victims for the purpose of sexual exploitation as a criminal offence.

Focus group discussions

Policies developed in consultation with social partners: Representatives from Ministry of Social Development and Human Security (MSDHS) clarified during focus group discussions that both civil society organisations and social partners participate in the development of policies and drafting of Ordinances on trafficking prevention and suppression.

Collaboration and coordination during policy planning and implementation: Participants in the "law enforcement" focus group, as well as representatives from civil society observed that collaboration and coordination during policy planning and implementation has significantly improved in the context of recent policies against trafficking and unacceptable forms of work adopted by the National Council for Peace and Order. Participants representing law enforcement agreed that there had been a change in attitude in their respective agencies towards the identification of trafficking cases and protection of victims, and that this contributed to improved inter-agency collaboration.

However, it transpired from the focus group discussions that the degree of collaboration and coordination between stakeholders appears to be higher among law enforcement agencies working on the ground, while at the Ministerial level mandates seem to be distinct and not to overlap. In this regard, the majority of policies and strategies described focused on a criminal justice/anti-trafficking approach or on a labour protection perspective, rather than on a comprehensive approach targeting trafficking and labour rights violations with a view to addressing trafficking for labour exploitation and forced labour.

Monitoring and evaluation of national policies and plans of action addressing trafficking and forced labour: Representatives from MSDHS referred to the annual reports prepared in collaboration with all

agencies involved in the prevention and suppression of trafficking. However, no further information was provided with regards to the evaluation of policies and measures with a focus on strategic planning.

3.2.3 Prevention

Comparative legal analysis

Article 2 of the Forced Labour Protocol requires member States to adopt measures to **prevent** the use of forced labour, including:

- *Educating and informing people, especially those considered to be particularly vulnerable, in order to prevent their becoming victims of forced labour and trafficking;*
- *Educating and informing employers, in order to prevent their becoming involved in forced labour practices;*
- *Undertaking efforts to ensure that:*
 - *The coverage and enforcement of legislation relevant to the prevention of forced labour, including labour law as appropriate, apply to all workers and all sectors of the economy; and*
 - *Labour inspection services and other services responsible for the implementation of this legislation are strengthened;*
- *Protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process;*
- *Supporting due diligence by both the public and private sectors to prevent and respond to risks of forced labour and trafficking; and*
- *Addressing the root causes and factors that heighten the risks of forced labour and trafficking.*

The policies and laws adopted by the Thai government contain a number of provisions on the prevention of trafficking in persons and protection from labour rights violations. These include, for example, measures to improve the capacity of law enforcement officials, as well as initiatives to strengthen cooperation with migrant sending countries to ensure safer labour recruitment and migration.

The Labour Protection Act B.E. 2541 provides for the protection of workers' rights with regards to wages, minimum age for employment, statutory working hours, annual leave and overtime regulations, among other issues. While the Act is applicable to all workers, both national and foreign, special Ministerial Regulations may be issued on the protection of workers in agriculture, sea fishing, loading or unloading of marine cargos, home work, transport work and other types of work as provided by Royal Decrees (Section 22).

In this regard, the Ministerial Regulation on work in fishing B.E. 2557 (2014) establishes that all workers in fishing, regardless of the number of fishers and crew members on board vessels, are entitled to minimum wage payment, rest periods, and monthly and annual paid leave. Employers are also obliged to provide written employment contracts to all workers and the employment of persons under 18 years of age on board fishing boats is prohibited. In the seafood processing sector, employment of persons under 18 is also prohibited under the Ministerial Regulation on Minimum Age for Employment in Seafood Processing, B.E. 2559, adopted in January 2016.

However, despite the protection afforded to workers under existing legislation, and the efforts made by the Government to improve the capacity of relevant agencies, law enforcement remains weak -

particularly with regard to labour inspections in sectors such as fishing and seafood processing, and the identification of trafficking, forced labour and labour exploitation affecting migrant workers in these industries. Law enforcement efforts are hindered especially by the limited number of interpreters and translators available to support inspections and initial interviews with workers, as well as by the lack of alternative channels for migrant workers to report abuses and labour rights violations.

With regard to the prevention of fraudulent recruitment practices, the government has adopted the Royal Ordinance Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment, B.E. 2559, in 2016. The Ordinance sets out rules for the recruitment of migrant workers and regulates the operations of recruitment agencies by establishing a number of responsibilities to recruiters and employers, including the mandatory use of written employment contracts. It also prohibits recruiters from charging or receiving monetary and non-monetary fees from migrant workers (Section 25(2)). Violations of this provision shall be punishable with imprisonment not exceeding 1 year, and a fine of 5 times the fee or property received from the worker (section 52).

However, the Royal Ordinance does not provide for the establishment of a complaints mechanism or other channels for the reporting of abuses and violations faced by migrant workers during employment. In addition, the Royal Ordinance does not address the possibility for workers to change jobs in case of abuse or exploitation committed by the employer. Specific provisions in this regard could help reduce the risk of exploitation stemming from workers' increased dependence on the employer, which may also hinder the identification of cases of trafficking and forced labour, as well as the reporting of abuses by workers.

Finally, the Royal Ordinance is only applicable to workers recruited and registered in accordance with MoUs signed with migrant-sending countries, and to recruiters licensed by the Government. Therefore, additional measures might be necessary in order to ensure that protection from fraudulent recruitment is afforded to all migrants, and that violations committed by informal brokers and unregulated recruitment agencies are effectively identified, investigated and sanctioned.

Focus group discussions

Measures to inform and educate workers and employers: Both the representative from civil society and the participant from the workers' organization described initiatives undertaken by their respective organisations (or with their collaboration) for the prevention of trafficking and forced labour. In particular, participants referred to information-sharing sessions on law enforcement and the rights of workers targeted specifically at employers and workers in the fishing industry. According to participants, these activities have yielded positive results in terms of improved conditions of work, sanitation and hygiene, especially around pier areas. Participants also highlighted that information-sharing sessions proved to be an excellent platform for improving dialogue between employers and workers, and a channel for both groups to raise concerns.

Representatives from MSDHS and the Ministry of Labour (MOL) shared information on post-arrival training provided to migrant workers upon arrival in Thailand, as well as on leaflets and brochures with basic rules and rights distributed to workers at worksites. However, participants also highlighted that language barriers continue to pose challenges to informing and educating migrant workers, and observed that the number of translators and interpreters is still insufficient in this regard.

Strengthening of labour inspection services and law enforcement: Participants in the "law enforcement" focus group shared information on the training provided to officials in relevant agencies,

including labour inspection services, the anti-trafficking division of the Royal Thai Police and the Navy, on the prevention of trafficking and forced labour.

Participants stressed, however, that although capacity building activities are implemented in coordination with all agencies concerned, the level of understanding of issues and definitions among officials and agencies might vary, which may impact the effective screening of victims and, consequently, their access to protection measures and remedies.

Measures to regulate and monitor recruitment services: Participants noted that the Royal Ordinance Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment B.E. 2559 had been adopted in 2016, and therefore its application in practice was yet to be assessed.

A representative from the Ministry of Labour observed, however that one of the main challenges regarding the implementation of the new Ordinance would be to monitor recruitment agencies and labour brokers in order to ensure compliance and cooperation.

Some of the participants also indicated that further measures were necessary in order to inform and educate migrants on fair recruitment, as well as on the risk of exploitation, and their rights and obligations when migrating for employment.

3.2.4 Victim protection

Comparative legal analysis

According to Article 3 of the Forced Labour Protocol, member States shall:

*Take effective measures for the **identification, release, protection, recovery and rehabilitation of all victims of forced labour**, as well as the provision of other forms of assistance and support.*

In this regard, the Anti-Trafficking in Persons Act, B.E. 2551 (2008) contains several provisions on assistance, protection, recovery and rehabilitation measures for victims of trafficking. These include provisions on access to medical treatment and physical and psychological rehabilitation; legal protection; and material assistance through the provision of shelter, food and training.

However, these provisions are only applicable to individuals who have been identified as victims of trafficking. Therefore, the effective implementation and enforcement of protection measures under the Anti-trafficking Act depends on the effective identification of cases and screening of victims. This may pose challenges, particularly in cases of forced labour in which the elements of (or the link with) trafficking in persons are not clearly evident, or are not present.

With regard to specific protection measures for migrant victims of trafficking, the Anti-Trafficking in Persons Act establishes that a victim of trafficking (identified as such) might be granted temporary permission to stay in Thailand during legal proceedings, while receiving medical assistance or to claim compensation. During this period, victims may also be allowed to work. Upon termination of proceedings, migrant victims without the right to stay in the country under Immigration laws or registration schemes shall be repatriated to their countries of origin or domicile.

It is worth noting in this connection that, according to the guidance provided in ILO Recommendation No. 203, migrant victims should be allowed a reflection and recovery period in order to make an informed decision regarding protective measures and their participation in legal proceedings. In any case, protection and assistance should be provided to all victims, regardless of their willingness to cooperate in proceedings, and repatriation should be preferably voluntary (Paragraphs 5 and 11).

Focus group discussions

Victim identification: Participants representing law enforcement and civil society observed that, although victim protection measures are in place, these are only applicable to individuals identified as victims of trafficking. In this regard, participants noted that the evolving nature of trafficking, forced labour and labour exploitation, and the different levels of understanding (and different interpretations) of current legal definitions often pose challenges to victim screening.

As regards measure to strengthen victim identification, participants from law enforcement shared information on trainings provided to labour inspectors, the Royal Thai Police, immigration officials and the Royal Thai Navy on the identification of victims. Participants also shared information on existing guidelines and checklists used by different law enforcement agencies during capacity building activities, as well as for the identification of cases.

The representative from the Department of Labour Protection and Welfare noted that, in collaboration with the ILO, the Department has developed a checklist to assist labour inspectors in identifying and screening potential cases of forced labour, as well as in referring potential cases of trafficking to competent authorities.

Victim protection and cooperation in judicial proceedings: With regards to the protection of victims, all participants agreed that victim-witnesses, or victims of trafficking cooperating in judicial proceedings have access to protection, assistance, lodging in shelters run by the government or by non-governmental organisations and legal counselling. In such cases, migrant victims may be allowed to stay in Thailand for a period of up to two years (depending on the duration of the legal proceedings), and may be allowed to work in certain activities. Individuals identified as victims of trafficking would also be protected from prosecution for certain violations they might have committed as a consequence of being a victim of trafficking, such as immigration law violations and possessing false identity documents.

The representative from civil society indicated, however, that migrant victims who are unwilling to cooperate in judicial proceedings are normally repatriated, and the judicial case is brought to an end. In this regard, participants noted that a large number of migrant victims are reluctant to provide preliminary information and to cooperate in judicial proceedings, often for fear of reprisal from authorities and employers, or for fear of stigmatisation in Thailand and their countries of origin. Participants also indicated that language barriers due to the limited number of translators and interpreters in Thailand pose challenges for identifying victims, informing them about their rights and applicable procedures, and for ensuring their cooperation. In this regard, participants indicated that, as of November 2016, the Government would be implementing a new policy with a view to enabling the recruitment of assistant translators and interpreters under the Alien Employment Act in order to strengthen victim screening and migrant worker protection.

3.2.5 Access to remedies, such as compensation

Comparative legal analysis

Article 4 of the Forced Labour Protocol establishes that member States shall:

*Ensure that all victims of forced labour and trafficking, irrespective of their presence or legal status in the national territory, have **access to appropriate and effective remedies**, such as compensation. Members shall, in accordance with the basic principles of its legal system, take the necessary measures*

*to ensure that competent authorities **are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.***

In Thailand, the Anti-Trafficking in Persons Act and the Trafficking in Persons Case Procedure Act provide different channels for victims to access judicial remedies. These include the possibility to file joint complaints with the public prosecutor; to independently file complaints in a civil or criminal court; and to seek compensation through criminal and civil proceedings.

As regards the penalties imposed on perpetrators, in addition to penal sanctions, the Anti-Trafficking Act provides for the criminal liability of legal persons and a 2015 amendment to the Act has given authorities the power to temporarily halt operations and immediately suspend licenses of businesses involved in trafficking in persons.

With regard to migrant victims, the Anti-Trafficking in Persons Act establishes that a victim of trafficking might be granted temporary permission to stay in Thailand during legal proceedings or to claim compensation. In addition, the Act contains a non-punishment clause for victims compelled to commit offences related to illegal immigration, false information, and forging or using a forged travel document.

However, access to remedies, the right to compensation, as well as the non-punishment clause are measures applicable only to individuals who have been identified as victims of trafficking. In this regard, the effective implementation and enforcement of the Anti-trafficking Act and other relevant legislation depends on the effective identification of cases and screening of victims. This may pose challenges, particularly in cases of forced labour in which the elements of (or the link with) trafficking in persons are not clearly evident, or are not present.

Focus group discussions

Access to justice: The representative from the Office of the Attorney General noted that, as of October 2016, the trial system for the prosecution of trafficking cases had changed from accusatorial to inquisitorial,¹⁹ allowing judges to play a more active role in the trial of these cases. Judges now rely heavily on the investigation file submitted by public prosecutors and may pose questions directly to witnesses during court trials. While this may translate into public prosecutors having a less active role in the trial stage, their responsibility during the investigation phase is heightened, as the quality of investigations is now a key factor for the successful prosecution of trafficking cases.

Access to compensation: The participant from civil society drew attention to the distinct approaches and attitudes with regard to compensation of victims of trafficking for sexual exploitation and for labour exploitation. He observed that, while compensation for victims of sexual exploitation is often associated with “damages for the harm suffered”, in the case of labour exploitation compensation is usually perceived exclusively as the settlement of unpaid wages. He noted that, in a situation where employers and exploited workers come before a court in order to *negotiate* the settlement of unpaid

¹⁹ In an *accusatorial*, or adversarial legal system, representatives from each party debate and argue their case, while the role of the Judge is to uphold principles of fairness, and to remain impartial until making a decision on the case. In an *inquisitorial* system the court is actively involved in fact-finding by questioning the parties and witnesses, and, where applicable, requesting the production or analysis of additional evidence.

wages, workers will often be in a disadvantaged position in which they are compelled to settle for less than the full amount owed, and will not be compensated for any losses or injuries suffered.

3.2.6 International cooperation

Comparative legal analysis

According to Article 5 of the Forced Labour Protocol,

Members shall cooperate with each other to ensure the prevention and elimination of all forms of forced labour.

Thailand has signed MoUs on labour migration governance and measures to combat trafficking in persons with major migrant sending countries, such as Lao PDR, Cambodia and Myanmar. Thailand is also one of the six governments parties to the MoU on sub-regional cooperation against human trafficking in the Greater Mekong Sub-Region, an initiative known as the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT).

In addition, while the Anti-Trafficking in Persons Act does not contain specific provisions on international cooperation, it provides for the establishment of the Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee (CMP Committee). Among other tasks, the Committee is responsible for cooperation and coordination with international bodies and organisations on the prevention and suppression of trafficking.

Focus group discussions

Participants in all three focus groups provided examples of international cooperation between their respective agencies and organisations and major migrant-sending countries. For example, the representative from the Department of Special Investigations referred to ongoing collaboration with Myanmar, which would also be replicated in Cambodia and Laos.

The representative from civil society referred to collaboration with a network of lawyers in Southeast Asia on the protection of migrant workers and promotion of their rights. Representatives from MSDHS and MOL referred to MoUs signed with neighbouring countries (Myanmar, Laos and Cambodia), as well as to bilateral agreements between the Thai Ministry of Labour and its counterparts in Cambodia, Laos, Myanmar and Vietnam.

With regards to the main areas in which international cooperation required further strengthening, the majority of participants highlighted the challenges posed by language barriers due to the limited number of translators and interpreters available in Thailand. Participants observed that additional measures were necessary in terms of international cooperation to address these barriers in the context of trafficking and forced labour prevention and mitigation, victim protection, and access to justice.

Chapter 4. Conclusions, recommendations and ratification prospects

The findings of the analysis of laws, regulations and policies, supported by information collected through desk-based research and focus groups discussions, indicate that Thailand has adopted a number of positive measures with a view to improving its legislative and regulatory framework to prevent and address trafficking and forced labour, including in the fishing sector.

Positive steps include: the recognition of the offence of trafficking for forced labour (with the adoption of the Anti-Trafficking in Persons Act in 2008); the adoption of national policies to prevent and suppress trafficking, including specific policies targeting the fishing sector; the revision of Ministerial Regulations

concerning work in fisheries; and the strengthening of legislation covering the recruitment of migrant workers, including by prohibiting the charging of recruitment fees.

The analysis also suggests that, overall, Thai laws and regulations meet the standards set by Convention No. 29 and its Protocol of 2014. In particular, the legal and regulatory framework addresses the main requirements under the Protocol, namely: the adoption of national policies and plans of action for the prevention and suppression of forced labour and trafficking; adoption of prevention measures; adoption of measures for the identification and protection of victims; measures to ensure victims' access to remedies, such as compensation; and international cooperation.

However, while the robust legal framework appears to be in line with international standards, challenges remain to be addressed with regard to the enforcement and application of certain provisions, as well as with the implementation of certain measures and policies. These challenges are explained in detail in the section below.

4.1 Main gaps and challenges

Legal definitions and victim screening: The current legislative framework contains provisions allowing for the punishment of persons guilty of trafficking, including trafficking for forced labour. It also addresses victim protection, access to remedies and the right to compensation regarding victims of trafficking. However, the effective enforcement and implementation of such provisions depends, among other measures, on the adequate interpretation of existing legal definitions and effective victim screening.

In this regard, the findings of the analysis indicate that law enforcement agents and other relevant stakeholders involved in trafficking prevention and mitigation face challenges in assessing whether an exploitative situation constitutes trafficking for forced labour or a mere violation of labour law provisions. This, in turn, impacts the practical application of prevention and victim protection measures, as well as victims' access to remedies and compensation, particularly since such provisions under Thai law are only applicable to individuals identified as victims of trafficking in persons.

The findings also indicate that law enforcement and victim screening efforts are often hindered by the limited number of interpreters and translators available to support inspections and initial interviews with workers, as well as by the lack of alternative channels for migrant workers to report abuses and labour rights violations. This is particularly problematic in sectors employing a large number of migrant workers, including fishing and seafood processing.

Additionally, the absence of a stand-alone offence of forced labour under Thai law might hinder the identification, investigation and prosecution of cases of extreme labour exploitation that are not a consequence of trafficking, or cases in which the trafficking element is not clearly evident. This legislative gap might also hinder the effective identification and protection of all victims, and their access to appropriate and effective remedies - as required by Convention No. 29 and the Protocol.

Findings have also shown that the issue of "debt bondage" is often crucial in the identification of cases and screening of victims, although the practice is not currently addressed under existing provisions. In this regard, a proposed amendment to the Anti-Trafficking Act under discussion in the National Legislative Assembly aims to broaden the current definition of forced labour to include "confiscation of documents" and "subjecting a person to debt bondage" as a means of coercing individuals into forced labour.

Against this background, the Government could consider strengthening its legal and institutional framework in order to ensure a better judicial response and better protection of victims, particularly in cases of trafficking for labour exploitation and forced labour.

The Government is encouraged to pursue its efforts to amend the Anti-Trafficking Act with a view to including the elements of “debt bondage” and “confiscation of documents”, and to give due consideration to legislating other potential indicators of forced labour - such as withholding of wages or irregular wage deductions - as specific offences, or as elements of the crime of trafficking in persons.

The Government is also encouraged to step up its efforts to address the more systemic labour market issues that increase risks of labour exploitation and forced labour with a view to reducing the gap between the criminal and labour justice responses to trafficking and forced labour, but especially to ensure that victims of labour exploitation and forced labour are adequately protected, assisted and compensated for the wrongs suffered.

Finally, the Government could consider strengthening its efforts to collect, analyse and disseminate reliable and detailed information and data on trafficking in persons, forced labour and labour exploitation with a view to adopting targeted strategies and policies in order to address the root causes that increase risks of exploitation, and to assess the progress made.

Monitoring and regulating recruitment: The Forced Labour Protocol explicitly recognises the link between forced labour, trafficking in persons and abusive recruitment practices, requiring the adoption of prevention measures that include the protection of individuals, especially migrant workers, from abusive and fraudulent recruitment practices (Article 2 (d)).

In this context, it transpired from the analysis that the monitoring of recruitment practices and processes by the relevant agencies in Thailand requires further strengthening.

The adoption of the Royal Ordinance Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment, in 2016, represented an advance in relation to the previous regulatory framework, establishing responsibilities to recruiters and employers, including the mandatory use of written contracts, and prohibiting the charging of monetary and non-monetary fees from migrant workers.

However, the prevention of fraudulent practices by labour recruiters, and the protection of migrant workers from possible abusive practices during recruitment - which can lead to a situation of trafficking and/or forced labour - will depend on the effective enforcement and implementation of the Royal Ordinance.

Moreover, the Royal Ordinance does not provide for the establishment of a complaints mechanism or other channels for the reporting of abuses and violations faced by migrant workers during employment, which could prevent the identification and investigation of cases of exploitation. The Royal Ordinance is also only applicable to workers recruited and registered in accordance with MoUs signed with migrant-sending countries, and to recruiters licensed by the Government. Therefore, additional measures might be necessary in order to ensure that protection from fraudulent recruitment is afforded to all migrants, and that violations committed by informal brokers and unregulated recruitment agencies are effectively identified, investigated and sanctioned.

The Government should consider strengthening its coordination, monitoring and enforcement efforts, both among national agencies, as well as between national agencies and their counterparts in migrant-sending countries, in order to ensure the effective implementation of recruitment laws and

regulations, monitoring of compliance by employers, labour recruiters and recruitment agencies, and the adequate application of sanctions in case of non-compliance.

Coordination and collaboration among relevant stakeholders: The findings of the analysis show that the level of collaboration and coordination has improved among certain stakeholders at the operational level, such as law enforcement agencies (including the Royal Thai Police, labour inspectors, immigration officers and the Royal Thai Navy) and with civil society organisations.

However, increased collaboration is needed at the policy level, particularly with regard to trafficking for labour exploitation and forced labour. Current anti-trafficking policies and strategies adopted by the Ministry of Social Development and Human Security and the Ministry of Labour seem to focus on a criminal justice *or* a labour protection perspective, rather than on a comprehensive approach targeting trafficking and labour rights violations with a view to addressing the criminal and labour aspects of both trafficking and forced labour.

Therefore, as stated above and given the complexity of the problem of trafficking, labour exploitation and forced labour, the Government should pursue its efforts to strengthen coordination and collaboration between all actors involved in preventing and addressing trafficking, forced labour and labour law violations, both at the operational and policy levels, with a view to ensuring that offenders are brought to justice and that all victims are effectively protected and assisted.

In addition, measures to enhance the monitoring and evaluation of policies and their implementation might contribute to the revision and improvement of existing approaches with a view to strategic planning and the development of targeted responses to trafficking and forced labour (including through prevention and victim protection and assistance).

4.2 Added value of ratifying the ILO Forced Labour Protocol

As described in the sections above, Thai laws, regulations and policies against trafficking and forced labour appear to substantially incorporate the standards set in the Forced Labour Protocol, although challenges remain to be addressed with regard to enforcement and implementation. Thus the Royal Thai Government should be encouraged to consider ratifying the Forced Labour Protocol in order to address these areas in greater depth and with focused emphasis.

Ratification would reaffirm and strengthen the Government's commitment to preventing and suppressing trafficking and forced labour, protecting and assisting victims, and bringing perpetrators to justice. It would also give international visibility to the efforts made by the Government to improve its laws, policies and practice in this regard.

In addition, ratification of the Forced Labour Protocol would facilitate the dialogue with the ILO supervisory bodies on the measures taken for the application in national law and practice of international standards. The ILO system of supervision focuses on a continuous dialogue with governments and social partners with a view to contributing to a better understanding of the implications of international labour standards in country-specific contexts in order to overcome challenges and resolve problems encountered.

To this end, the ILO supervisory mechanisms also provide for the possibility of ILO technical assistance to help promote and apply ratified instruments. Assistance may be provided, for example, in the areas of capacity development, training, technical advice and legislative drafting and revision.



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Widespread ratification of the Forced Labour Protocol will further help guide policy development and action globally, and will contribute to existing efforts to address forced labour, modern-day slavery and trafficking in persons.

Annex I - Gap analysis matrix: Thai legal and regulatory framework and the ILO Forced Labour Protocol

International instrument	Issues addressed	Existing or envisaged national laws, regulations or other measures concerning this issue.	Ministry/authority/institution responsible for implementation.	Detailed description of measures taken or envisaged for the implementation and enforcement of such measures.	Main gaps identified through comparative legal analysis	Questions for Focus Group Discussions
<p>Convention No. 29</p>	<p>Definition of forced labour (Art. 2(1) “All work or service exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily”)</p>	<ul style="list-style-type: none"> - Under Thai law, forced labour is not specifically defined as a criminal offence. However, the Anti-Trafficking in Persons Act B.E. 2551 (2008) provides for a broad definition of “exploitation”, which includes sexual exploitation, slavery, forced labour and other forms of abuse. - In this connection, the Act defines forced labour as “compelling a person to work or provide a service by putting such person in fear of injury to life, liberty or reputation, by means of intimidation, use of force, or any other means resulting in such person being unable to resist. 	<ul style="list-style-type: none"> - MSDHS - MOL 	<ul style="list-style-type: none"> - The definition of “forced labour or services” in Section 4 of the Anti-Trafficking in Persons Act is applicable to cases of trafficking for the purpose of forced labour. 	<ul style="list-style-type: none"> - Although the Anti-Trafficking in Persons Act provides for a definition of “forced labour”, the practice is not criminalised or sanctioned as a penal offence under Thai Law. This could hinder the identification and prosecution of cases of forced labour that are not a consequence of trafficking in persons. 	<p>1. Based on the current definition of “forced labour” under the Anti-Trafficking in Persons Act (and its interpretation), is it possible to effectively investigate and prosecute cases of trafficking for labour exploitation? What about cases of forced labour that are not a consequence of trafficking? Why or why not?</p>

<p>Protocol P29 Art. 1 (Recommendation No. 203, paras. 1 and 2)</p>	<p>National policy and plan of action for the effective and sustained suppression of all forms of forced labour through prevention, victim protection and access to remedies. Plans and policies should be developed in consultation with employers' and workers' organisations.</p>	<ul style="list-style-type: none"> - National Policy, Strategy and Measure to Prevent and Suppress Trafficking in Persons B.E. 2554-2559 (2011-2016) issued by MSDHS - Plan on Prevention and Suppression of Trafficking in Persons B.E. 2559 (2016) issued by Royal Thai Police - Announcement of Department of Fisheries Concerning Thailand National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2015-2019 - Plan on Prevention and Suppression of Trafficking in Persons in the Fisheries Sector B.E. 2559 (2016), issued by Royal Thai Police - Sub-Committee on Child Labour, Forced Labour, and Migrant Workers, under National Policy Committee on Anti-Trafficking in Persons and Illegal, Unreported, and Unregulated Fishing (IUU), chaired by Prime Minister of Thailand - Order No. 10/2558 of National Council for Peace and Order (NCPO, 2015) concerning IUU Fishing Solutions - Policy Committee on Migrant Workers and 	<ul style="list-style-type: none"> - National Council for Peace and Order (NCPO) - Ministry of Social Development and Human Security (MSDHS) - Ministry of Labour (MOL) - Ministry of Interior (MOI) - Ministry of Foreign Affairs (MFA) - Supreme Court - Attorney-General - Ministry of Justice (MOJ) - Royal Thai Navy (Multi-agency inspection unit to combat IUU fishing and unacceptable forms of labour in fisheries) - Royal Thai Police - Department of Fisheries 	<ul style="list-style-type: none"> - The plans of action and policies adopted by the Government cover a number of issues regarding trafficking prevention and suppression, including in the fishing sector. Some of the issues covered include: - Strengthening knowledge and tools for labour inspection focusing on anti-trafficking in persons; - Establishment of multi-agency inspection units to combat IUU fishing and unacceptable forms of work in fisheries. 	<ul style="list-style-type: none"> - Thailand has adopted national policies and plans of action for the prevention and suppression of trafficking in persons. However, from the analysis of the existing plans, the level of participation of and consultation with social partners during the development of national policies against trafficking remains unclear. 	<p>2. Are employers' and workers' organisations consulted during the development of national policies and plans of action addressing trafficking and forced labour? Are they consulted or involved during the implementation of these plans?</p> <p>3. How are national policies and plans of action monitored and evaluated?</p> <p>4. How is the cooperation between different agencies in the implementation of national policies and plans of action addressing trafficking in persons?</p> <p>5. What are the main existing or potential challenges regarding the work of the multi-agency inspection unit to combat IUU fishing and unacceptable forms of work in</p>
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		Human Trafficking, established pursuant to Order No. 73/2557 of the NCPO (2014)				fisheries (led by the Navy)?
	Specific measures to combat trafficking in persons for the purpose of forced labour.	- Anti-Trafficking in Persons Act B.E. 2551 (2008), as amended in 2015.	- MSDHS	<p>- Contains numerous provisions on trafficking prevention and suppression, as well as on victims' access to remedies and victim protection.</p> <p>- Establishes an Anti-Trafficking in Persons Committee, responsible, among other measures, for making recommendations; developing policies and strategies; prescribing guidelines and monitoring the implementation of international standards on trafficking in persons. (Sections 15 and 16)</p> <p>- Establishes a Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee, responsible, among other measures, to prepare and monitor the implementation plans under the Act "with a view to achieve the highest efficiency of law</p>	<p>- The Anti-Trafficking Act recognises trafficking for the purpose of forced labour and labour exploitation as an offence. This represents an advance in relation to previous laws, which only recognised trafficking of female victims for the purpose of sexual exploitation as a criminal offence.</p> <p>However, law enforcement mechanisms still require further strengthening, especially as regards inter-agency coordination. For example, while the MSDHS remains the main implementing agency for anti-trafficking measures, cases of trafficking for labour exploitation require close coordination with MOL.</p>	<p>6. How is the cooperation between the Ministry of Labour, the MSDHS and the ATP Committee in the implementation of the Anti-Trafficking in Persons Act and anti-trafficking policies and strategies?</p> <p>7. How is the cooperation among different agencies that are members of the Anti-Trafficking in Persons Committee when dealing with cases of trafficking for labour exploitation or forced labour?</p> <p>8. How does the CMP Committee monitor the implementation of the Anti-Trafficking in Persons Act?</p>

				enforcement". (Sections 22 and 23).		
PREVENTION						
Protocol P29 Art. 2(a)-(f) (Recommendation No. 203, paras. 3, 8 and 13(a))	Prevention measures that include: information, education and awareness raising;	<ul style="list-style-type: none"> - Section 23(3) of Anti-Trafficking in Persons Act B.E. 2551, as amended in 2015 - Ministry of Education Regulation on Proof of Admission of Students into Educational Institutes (2004) and Cabinet Resolution on Education for Unregistered Persons (2005) - Ministerial regulation to provide education to children without requirement of evidence for legal status or Thai citizenship (2005) - Section 19 - 20 of Civil Registration Act B.E. 2534. 	<ul style="list-style-type: none"> - MSDHS - MFA - MOI - Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee (CMP Committee) 	<ul style="list-style-type: none"> - Under the Anti-Trafficking in Persons Act, the CMP Committee has the power and duty to formulate and monitor campaigns to inform and educate the public in relation to the prevention and suppression of trafficking in persons. - Ministry of Education Regulations and Cabinet Resolutions contain provisions ensuring education for all, without requirement for legal status or Thai citizenship. - Civil Registration Act provides for universal birth registration (for Thai nationals and foreigners with domicile in Thailand). 	<ul style="list-style-type: none"> - The Anti-Trafficking Act contains specific provisions on trafficking prevention, including through improved information-sharing, education and awareness raising. The Act and other relevant laws appear to be in compliance with the requirements under the Protocol. - However, no specific reference is made to awareness-raising and information-sharing measures targeting employers or groups that are particularly vulnerable to exploitation. 	9. Are you aware of any awareness-raising and information-sharing measures targeting employers or groups vulnerable to exploitation (e.g migrant workers)?

	<p>Strengthening and broadening coverage of relevant legislation, particularly labour law;</p>	<ul style="list-style-type: none"> - Labour Protection Act B.E. 2541, particularly with regard to wages, minimum age for employment, statutory working hours, annual leave and overtime regulations. - Ministerial Regulation on Protection of Labour in Fisheries B.E. 2557 (2014) and other ministerial regulations, e.g. Ministerial regulation on protection of domestic workers B.E. 2555 (2012) and Ministerial Regulation on Minimum Age for Employment in Seafood Processing, B.E. 2559 (2016). 	<p>- MOL</p>	<ul style="list-style-type: none"> - Section 22 of the Labour Protection Act B.E. 2541 gives power to the Ministry of Labour to issue Ministerial Regulations to prescribe special protection to workers in agriculture, sea fishing, loading or unloading of marine cargos, home work, transport work and other types of work as provided by Royal Decree. - Section 139 of the Labour Protection Act B.E. 2541 gives power to labour inspectors to enter workplaces during normal working hours to undertake inspections and assess working conditions. Chapter 12 of the Act also establishes workers' right to lodge a complaint with labour inspectors in case of labour rights violations or potential violations. - The Ministerial Regulation on work in fishing B.E. 2557 (2014) replaced Ministerial Regulation No. 10 (1998), which limited the protection of fishers regarding 	<ul style="list-style-type: none"> - Section 22 of the Labour Protection Act, B.E. 2541, may raise questions regarding its scope if the protection provided to certain categories of workers under Ministerial Regulations is lower than the minimum standards afforded under the Labour Protection Act. - As regards labour inspections, places with atypical working hours, such as nightclubs, massage parlours and informal establishments are less likely to be inspected, which might hinder the identification of victims and cases of trafficking for both sexual and labour exploitation. 	<p>10. Does the Labour Protection Act provide the same level of protection to all workers, including migrant workers? Why or why not?</p>
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				<p>certain provisions of the Labour Protection Act, and was not applicable to fishing boats with fewer than 20 employees or boats fishing outside of Thailand territorial waters for a period exceeding one year.</p> <ul style="list-style-type: none"> - Pursuant to the 2014 Ministerial Regulation, all workers in fishing, regardless of the number of fishers and crew members on board vessels, are entitled to minimum wage payment, rest periods, and monthly and annual paid leave. Employers are also obliged to provide written employment contracts to all workers. - The Ministerial Regulation prohibits the employment of children under 18 years of age on board fishing boats. 		
	<p>Capacity building for competent authorities, including labour inspection services;</p>	<p>- Section 23(2) of Anti-Trafficking in Persons Act B.E. 2551</p>	<p>- Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee (CMP Committee)</p>	<ul style="list-style-type: none"> - The CMP Committee has the power and duty to prepare and monitor the implementation of plans and guidelines regarding the capacity building for personnel responsible for 	<p>- The Anti-Trafficking in Persons Act contains provisions on measures to strengthen the capacity of the competent authorities and the law appears to</p>	<p>11. Have labour inspectors of MOL received training on trafficking prevention and suppression according to the Anti-</p>

				<p>prevention and suppression of trafficking in persons.</p> <ul style="list-style-type: none"> - The ILO supported the delivery of training modules on Increasing Capacities for Labour Inspection Focusing on Vulnerable Workers; and training for multi-agency labour inspection units to combat IUU fishing and unacceptable forms of work in fisheries. 	<p>be in compliance with the requirements under the Protocol in this regard.</p>	<p>Trafficking in Persons Act?</p> <p>12. Have police officers, immigration authorities, competent authorities in the Marine Police, Navy and other law enforcement agencies received training on trafficking prevention and suppression according to the Anti-Trafficking in Persons Act?</p>
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	<p>Regulation and supervision of labour recruitment and placement process;</p>	<ul style="list-style-type: none"> - Royal Ordinance Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment B.E. 2559 (2016). 	<ul style="list-style-type: none"> - MOL 	<ul style="list-style-type: none"> - The Royal Ordinance sets out rules for the recruitment of migrant workers and regulates the operations of recruitment agencies (limited companies or a public limited companies). - It sets out a number of responsibilities to recruiters and employers, including the mandatory use of written employment contracts. - The Ordinance prohibits recruiters from charging or receiving monetary or non-monetary fees or other property from migrant workers (Section 25(2)). In accordance to Section 52, violations of Section 25(2) shall be punishable with imprisonment not exceeding 1 year and a fine of 5 times the fee or property received from migrant workers. 	<ul style="list-style-type: none"> - The Royal Ordinance Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment represents an advance in relation to previous laws on recruitment. - However, the Ordinance is only applicable to workers recruited and registered in accordance with MoUs signed with migrant-sending countries, and to recruiters licensed by the Government. Therefore, additional measures might be necessary in order to ensure that protection from fraudulent recruitment is afforded to all migrants, and that violations committed by informal brokers and unregulated recruitment agencies are effectively identified, investigated and sanctioned. 	<p>13. In practice, does the Royal Ordinance Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment provide effective protection against illegal recruitment of migrant workers? Why or why not?</p> <p>14. In your experience, what are the main challenges facing the regulation and supervision of labour recruitment, especially of migrant workers?</p>
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	<p>Promoting safe and regular migration;</p>	<ul style="list-style-type: none"> - Immigration Act B.E. 2522 (1979) - Employment of Alien Act B.E. 2551 (2008) and relevant Ministerial Regulations - Sections 28, 29 and 31 of Royal Ordinance Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment B.E. 2559 (2016) - Announcement of the National Council for Peace and Order No. 70/2557 on Measures for Solving the Problem of Migrant Workers and Human Trafficking - Memorandum of Understanding (MoU) between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on cooperation regarding the employment of workers - MoU between the Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic on cooperation regarding the employment of workers - MoU between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on 	<ul style="list-style-type: none"> - MOL - MSDHS - MFA - MOI 	<ul style="list-style-type: none"> - Requirements for passport, proper travel documents and work permits - Offences for smugglers and irregular migrants - Broadens occupations for foreigners to perform work in Thailand - Sections 28, 29 and 31 of Royal Ordinance Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment stipulate that recruiters or employers, as applicable, are responsible for financing the repatriation of migrant workers upon termination of employment. - Announcement of the National Council for Peace and Order No. 70/2557 contains provisions on the registration of migrant workers from Myanmar, Laos, and Cambodia, as well as the documentation of irregular workers. 	<ul style="list-style-type: none"> - The Royal Ordinance Concerning Rules on Bringing Migrant Workers into the Kingdom for Employment contains no provisions regarding the possibility for workers to change jobs in case of abuses and exploitation committed by the employer. - Paragraph 7 of Announcement of the NCPO Order No. 70/2557 stipulates that temporary entry permits and temporary work permits issued pursuant to the Announcement shall be terminated if the individual concerned has a mental problem, or contracts disease, as prohibited by the Ministry of Health; or is in unhealthy condition, obstructing the carrying out of his/her occupation. This provision might impact workers' ability to seek medical care and assistance in cases where health 	<p>15. What would be the standard practice if an individual with an irregular visa situation or work permit is suspected to be a victim of trafficking for labour exploitation, forced labour, or any other abusive practice committed by the employer? Would he or she be able to change employers/job in case of abuses, including forced labour?</p>
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		cooperation regarding the employment of workers.			issues were caused by abusive or exploitative working conditions.	
	Supporting due diligence by public and private sectors;	<ul style="list-style-type: none"> - MoU between Department of Labour Protection and textile industries in Tak Province on anti-human trafficking and labour relations - MoU between Department of Labour Protection and the Thai Sugarcane Farmers Association and the Thai Sugarcane Farmers Institute on mutual cooperation to acknowledge and recognize the importance of the prevention of child labour in sugarcane fields for the off-season harvest. - MoU between Industry Associations in fishing and seafood processing sectors to combat IUU and trafficking in persons. 	- MOL	n/a	n/a	n/a

	<p>Addressing root causes and risk factors that perpetuate forced labour;</p>	<ul style="list-style-type: none"> - MoU between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on cooperation regarding the employment of workers - MoU between the Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic on cooperation regarding the employment of workers - MoU between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on cooperation regarding the employment of workers 	<ul style="list-style-type: none"> - MOL - MFA 	<ul style="list-style-type: none"> - Cooperation with migrant sending countries to ensure safer labour recruitment, labour migration and return of migrant workers. - Requirements for visas, work permits, health insurance, contributions to saving funds, taxes, and employment contracts. 	<p>- Although the Government has adopted measures to address some of the root causes that perpetuate forced labour, such as policies and laws to improve labour migration governance, additional measures might be needed. For example, the Government could consider stepping up its efforts to collect, analyse and disseminate reliable and detailed information and data on trafficking in persons, forced labour and labour exploitation with a view to adopting targeted strategies and policies to address the root causes that increase risks of exploitation, and to assess the progress made.</p>	<p>n/a</p>
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	Other prevention measures.	<ul style="list-style-type: none"> - Sections 16(5) and 23(4) of Anti-Trafficking in Persons Act B.E. 2551, as amended in 2015 - NCPO Order No. 10/2558 Concerning IUU Fishing Solutions - Announcement of Department of Fisheries Concerning National Plan to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (IUU) B.E. 2558 -2562 (2015-2019), and Marine Fisheries Management and National Policy on the Management of Marine Fisheries B.E. 2558-2562 (2015-2019) 	<ul style="list-style-type: none"> - Anti-Trafficking in Persons Committee (ATP Committee) and Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee (CMP Committee) - Royal Thai Navy in charge of multi-agency inspection unit to combat IUU fishing and unacceptable forms of labour in fisheries (inc. Marine Dept., Marine Police, Royal Thai Police, Customs Dept., MOL, MSDHS) 	<ul style="list-style-type: none"> - The ATP Committee has the power and duty to direct and supervise the arrangements of study or research projects and the development of an integrated data base system for the benefit of prevention and suppression of trafficking in persons - The CMP Committee has the power and duty to compile, study and analyze data for the benefit of prevention and suppression of trafficking in persons and to conduct a research for the benefit of the execution of the Anti-Trafficking Act. - NCPO Order No. 10/2558 and the Announcement of Department of Fisheries aims to improve registration of fishing vessels and database to monitor IUU fishing. 	n/a	n/a
VICTIM PROTECTION						
Protocol P29 Art. 3 (Recommendation No. 203, paras. 5- 11 and 13(a))	Measures for the identification, release, protection, recovery and rehabilitation of all	<ul style="list-style-type: none"> - Chapter 4 of Anti-Trafficking in Persons Act B.E. 2551, as amended in 2015 	<ul style="list-style-type: none"> - MSDHS - MOL - MOI 	<ul style="list-style-type: none"> - The Anti-Trafficking Act contains provisions on assistance, protection and rehabilitation for victims of trafficking. 	<ul style="list-style-type: none"> - The provisions on victim protection and assistance under the Anti-Trafficking Act seem to be in compliance with the requirements of the 	16. Does the Anti-Trafficking in Persons Act provide effective protection for both victims of trafficking for sexual and labour

	<p>victims of forced labour.</p>			<ul style="list-style-type: none"> - Section 37 provides that a victim of trafficking might be granted temporary permission to stay in Thailand during legal proceedings, while receiving medical assistance or to claim compensation. During this period, victims may also be allowed to work. - Subject to Section 37, Section 38 provides that migrant victims without the right to permanent residence in the country, or the right to stay in the country under Immigration laws or registration schemes shall be immediately repatriated to their countries of origin or domicile upon termination of all necessary proceedings. 	<p>Protocol as regards victims of trafficking.</p> <ul style="list-style-type: none"> - However, these provisions are only applicable to individuals who have been identified as victims of trafficking. Therefore, the effective implementation and enforcement of victim protection measures depends on the effective identification of cases and screening of victims. This may pose challenges, particularly in cases of forced labour in which the elements of (or the link with) trafficking in persons are not clearly evident, or are not present. - In addition, Article 3 of the ILO Forced Labour Protocol establishes that protection measures should be provided to all victims. <p>In this regard, according to the guidance provided in Paragraph 5(2) of Recommendation No. 203, protective measures “should not be made conditional on the victim’s willingness to</p>	<p>exploitation? And for victims of forced labour that is not related to trafficking in persons? Why or why not?</p> <p>17. Are the suspected or potential victims of trafficking and forced labour effectively “screened” under the Anti-Trafficking in Persons Act? Why or why not?</p> <p>18. In your experience, what are the main challenges facing the identification and protection of victims of trafficking and forced labour?</p>
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					cooperate in criminal or other proceedings” (although this is not a legal obligation under the Protocol).	
	Protection measures might include: training of relevant actors on the identification of forced labour practices;	<ul style="list-style-type: none"> - Policy, Strategy and Measure to Prevent and Suppress Trafficking in Persons B.E. 2554 – 2559 (2011-2016) issued by MSDHS - Plan on Prevention and Suppression of Trafficking in Persons B.E. 2559 (2016) issued by Royal Thai Police 	<ul style="list-style-type: none"> - MSDHS - Royal Thai Police 	<ul style="list-style-type: none"> - National Plans of Action and policies adopted by the government contain provisions regarding measures to strengthen the capacity of competent authorities focusing on anti-trafficking in persons. 	<ul style="list-style-type: none"> - Providing training of relevant actors is not a specific requirement under the Protocol. It is one of the protection measures suggested in Recommendation No. 203. However, it is worth noting that the effective screening of victims, and therefore the effective training of competent authorities on the identification of victims, is a key element for the prevention and suppression of forced labour and trafficking, as well as for the effective implementation of victim protection measures. 	19. Are the competent authorities, such as MOL, MSDHS, labour inspectors, Police, Navy and Immigration officials provided training on how to identify victims of trafficking and forced labour, as well as on how to identify a forced labour situation?
	Development of forced labour indicators to help in the identification of cases and victims;	n/a	n/a	n/a	n/a	20. Has Thailand developed indicators to identify cases and victims of trafficking for both sexual and labour exploitation, as well as forced labour?

	<p>Ensuring legal protection for victims;</p>	<ul style="list-style-type: none"> - Anti-Trafficking in Persons Act B.E. 2551, particularly Chapter 4, and Anti-Trafficking in Persons Act (Amendment No.2, B.E. 2558) - Sections 10, 11 and 27 of Trafficking in Persons Case Procedure Act B.E. 2559 (2016) 	<ul style="list-style-type: none"> - MOL - MSDHS - Royal Thai Police - Supreme Court - Attorney-General 	<ul style="list-style-type: none"> - The Anti-Trafficking in Persons Act provides for the protection and safety of trafficking victims and victim-witnesses who cooperate in criminal proceedings. - The Trafficking in Persons Case Procedure Act provides that the timeframe of legal procedures can be shortened, at the discretion of the court and, where appropriate, hearings could be conducted via videoconference. - Section 27(2) of the Trafficking in Persons Case Procedure Act ensures the right to anonymity of the witness, including the victim-witness. 	<ul style="list-style-type: none"> - Providing legal protection is not a specific requirement under the Protocol. It is one of the protection measures suggested in Recommendation No. 203. <p>However, it is worth noting that according to the guidance provided in the Recommendation, protection should be provided to all victims and should not be made conditional on the victim’s willingness to cooperate in criminal or other proceedings” (Paragraphs 5(2) and 9).</p>	<p>21. Are victims of trafficking or forced labour (including migrant victims) provided legal protection even if they do not wish to cooperate with authorities in the prosecution of traffickers or forced labour perpetrators?</p> <p>22. In your experience, what are the main challenges or obstacles regarding victims’ access to legal protection?</p>
	<p>Material assistance for victims;</p>	<ul style="list-style-type: none"> - Chapter 4 of Anti-Trafficking in Persons Act B.E. 2551 	<ul style="list-style-type: none"> - MSDHS 	<ul style="list-style-type: none"> - The Anti-Trafficking Act contains provisions on assistance, including food, shelter, education and training for victims of trafficking. 	<ul style="list-style-type: none"> - Providing material assistance is not a specific obligation under the Protocol. It is one of the protection measures suggested in Recommendation No. 203. However, it is worth noting that according to the guidance provided in the Recommendation, 	<p>n/a</p>

					assistance should be provided to all victims and should not be made conditional on the victim's willingness to cooperate in criminal or other proceedings" (Paragraphs 5(2) and 9).	
	Medical and psychological assistance for victims;	- Chapter 4 of Anti-Trafficking in Persons Act B.E. 2551	- MSDHS	<ul style="list-style-type: none"> - The Anti-Trafficking Act contains provisions on access to medical treatment and physical and psychological rehabilitation for potential victims of trafficking who participate in criminal proceedings. - Victims receiving medical treatment might be granted the right to temporarily stay in the country (Section 37). 	- Providing medical and psychological assistance is not a specific obligation under the Protocol. It is one of the protection measures suggested in Recommendation No. 203. However, it is worth noting that according to the guidance provided in the Recommendation, assistance should be provided to all victims and should not be made conditional on the victim's willingness to cooperate in criminal or other proceedings" (Paragraphs 5(2) and 9).	n/a

	<p>Specific protection measures for children victims of forced labour;</p>	<ul style="list-style-type: none"> - Child Protection Act B.E. 2541 - Section 44 to Section 52 of Labour Protection Act (protection of child workers) - National Policy to Combat Worst Form of Child Labour 2014-2020 - Amendment of Labour Protection Act B.E. 2541 to increase offences related to child labour 	<ul style="list-style-type: none"> - MSDHS 	<ul style="list-style-type: none"> - The Child Protection Act and the Labour Protection Act contain provisions on the rights of children to be protected from child labour and exploitation and right to rehabilitation, access to social services in their best interests - Also contain provisions on minimum age, prevention of child labour, registration of young workers and special protection for young workers including right to development 	<p>n/a</p>	<p>n/a</p>
	<p>Specific protection measures for migrant victims of forced labour;</p>	<ul style="list-style-type: none"> - Chapter 4 of Anti-Trafficking in Persons Act, B.E. 2551 (2008), in particular Sections 36, 37, 38 and 41 	<ul style="list-style-type: none"> - MSDHS 	<ul style="list-style-type: none"> - The Anti-Trafficking in Persons Act contains provisions on protection and safety of trafficking victims (and victim-witnesses). - Section 37 provides that a migrant victim of trafficking might be granted temporary permission to stay in Thailand during legal proceedings, while receiving medical assistance, or to claim compensation. During this period, victims may also be allowed to work. 	<ul style="list-style-type: none"> - Article 3 of the Protocol establishes that protection, measures should be provided to all victims. However, providing specific protection measures for migrant victims is not a specific obligation under the Protocol. This is one of the protection measures suggested in Recommendation No. 203. According to the guidance provided in the Recommendation, protection should not 	<p>23. What would be the standard practice if migrant workers who are potential victims of forced labour or trafficking do not wish to cooperate in the prosecution of traffickers or perpetrators? Could they have access to legal protection, material assistance or other assistance? In case of irregular migrants, would they be charged or prosecuted for illegal</p>

				- Subject to Section 37, Section 38 provides that migrant victims without the right to permanent residence in the country, or the right to stay in the country under Immigration laws or registration schemes shall be immediately repatriated to their countries of origin or domicile.	be made conditional on the victim's willingness to cooperate in criminal or other proceedings. Additionally, migrant victims should be allowed a reflection and recovery period in order to make an informed decision regarding protective measures and their participation in legal proceedings. Finally, repatriation should be preferably voluntary." (Paragraphs 5 and 11).	entry, illegal stay, working without work permit? Would they be repatriated immediately?
	Other protection measures.	n/a	n/a	n/a	n/a	n/a
ACCESS TO REMEDIES						
Protocol P29 Art. 4 (Recommendation No. 203, paras. 12 and 13(b) and (c))	Measures to ensure that all victims have access to remedies, such as compensation.	- Chapter 4 of Anti-Trafficking in Persons Act B.E. 2551 (2008) - Section 13 - 15 of Trafficking in Persons Case Procedure Act B.E. 2559 - Section 44/1 of Criminal Procedure Code of Thailand	- MSDHS - Supreme Court - Attorney-General	- The Anti-Trafficking in Persons Act provides different channels for victims of trafficking to access remedies: possibility to file joint complaints with public prosecutor; to independently file complaints in a civil or criminal court and/or to access remedies according to the public fund;	- The provisions seem to be in compliance with the requirements of the Protocol as regards victims of trafficking. In practice, however, it remains unclear whether and how this provision would be applied to irregular migrants victim of exploitation, particularly in light of provisions under	24. What are the main challenges facing victims' access to legal assistance, counselling and remedies, such as compensation? How could these challenges be overcome?

				<ul style="list-style-type: none"> - Section 37 of the Anti-Trafficking Act provides that a victim of trafficking might be granted temporary permission to stay in Thailand during legal proceedings, while receiving medical assistance or to claim compensation. During this period, victims may also be allowed to work. - Under the Trafficking in Persons Case Procedure Act B.E. 2559 and Criminal Procedure Code, compensation claims may be filed by the Public Prosecutor or by the victim. The victim may claim compensation through criminal or civil procedures. 	<p>immigration laws providing for the compulsory and immediate deportation of migrants with irregular immigration status.</p> <p>- In addition, the provisions on victim protection, assistance and access to remedies under the Anti-Trafficking Act are only applicable to individuals who have been identified as victims of trafficking. Therefore, the effective implementation and enforcement of measures depends on the effective identification of cases and screening of victims. This may pose challenges, particularly in cases of forced labour in which the elements of (or the link with) trafficking in persons are not clearly evident, or are not present.</p>	
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	Measures might include: information and counselling for victims on their rights and services available;	- Chapter 4 of Anti-Trafficking in Persons Act B.E. 2551,	- MSDHS	- The Anti-Trafficking Act contains provisions on Information and counselling for victims on their rights and services by social workers, as well as on Information and counselling for victims on their rights and remedies by police or public prosecutor (Sections 33 and 34 respectively).	- Providing information and counselling is not a specific requirement under the Protocol. It is one of the measures suggested in Recommendation No. 203. The Act seems to be aligned with the guidance provided in the Recommendation in this regard.	n/a
	Legal assistance for victims (preferably free of charge);	- Section 33 of Anti-Trafficking in Persons Act B.E. 2551	- MOL - MSDHS	- Section 33 of the Anti-Trafficking in Persons Act covers the right of victims of trafficking to have access to legal assistance and remedies.	- Providing legal assistance is not a specific requirement under the Protocol. It is one of the measures suggested in Recommendation No. 203. The Act seems to be aligned with the guidance provided in the Recommendation in this regard.	n/a
	Provision of a reflection and recovery period;	n/a	n/a	n/a	n/a	n/a

	<p>Access to civil, administrative and criminal remedies in the country where the violations occurred;</p>	<ul style="list-style-type: none"> - Chapter 4 of Anti-Trafficking in Persons Act B.E. 2551, as amended in 2015 - Section 13 of Trafficking in Persons Case Procedure Act B.E. 2559 (2016) - Section 44/1 of Criminal Procedure Code of Thailand 	<ul style="list-style-type: none"> - MOL - MSDHS - MOJ - Supreme Court - Attorney-General 	<ul style="list-style-type: none"> - The Anti-Trafficking in Persons Act contains provisions on legal access to remedies and compensation. Section 37 provides that a victim of trafficking might be granted temporary permission to stay in Thailand for legal proceedings, medical treatment, rehabilitation, or to claim compensation. During this period, victims may also be allowed to work. - Under the Trafficking in Persons Case Procedure Act B.E. 2559 and Section 44/1 of Criminal Procedure Code, compensation claims may be filed by the Public Prosecutor or by the victim. The victim may claim compensation through criminal or civil procedures. 	<ul style="list-style-type: none"> - Providing access to civil, administrative and criminal remedies in the country where the violation occurred is not a specific requirement under the Protocol. It is one of the measures suggested in Recommendation No. 203. The Act seems to be aligned with the guidance provided in the Recommendation in this regard. 	n/a
	<p>Access to compensation schemes;</p>	<ul style="list-style-type: none"> - Compensation and Expense for the Accused in Criminal Case Act B.E. 2544 	<ul style="list-style-type: none"> - MSDHS - MOJ 	<ul style="list-style-type: none"> - Victims of trafficking may be able to receive compensation from public fund under Compensation and Expense for the Accused in Criminal Case Act. 	n/a	n/a

	<p>Stricter penalties (in addition to penal sanctions) imposed on perpetrators, such as confiscation of assets and criminal liability of legal persons;</p>	<ul style="list-style-type: none"> - Section 53 of Anti-Trafficking in Persons Act B.E. 2551 - Section 14 of Trafficking in Persons Case Procedure Act B.E. 2559 - Anti-Money of Laundering Act B.E. 2541 	<ul style="list-style-type: none"> - MSDHS - Supreme Court - Anti-Money Laundering Bureau 	<ul style="list-style-type: none"> - Section 53 of the Anti-Trafficking in Persons Act B.E. 2551 provides for criminal liability of legal persons (punishable with imprisonment and fine) - Under Section 14 of Trafficking in Persons Case Procedure Act B.E. 2559, the court has discretionary power to award “punitive damages” to the victim in cases of aggravated offences of trafficking. 	<ul style="list-style-type: none"> - Providing for stricter penalties imposed on perpetrators and the criminal liability of legal persons is not a specific obligation under the Protocol. It is one of the protection measures suggested in Recommendation No. 203. The Act seems to be aligned with the guidance provided in the Recommendation. 	<p>n/a</p>
	<p>Possibility for authorities not to prosecute victims for acts they have been compelled to commit as a result of being a victim of forced labour.</p>	<ul style="list-style-type: none"> - Section 41 of Anti-Trafficking in Persons Act B.E. 2551 	<ul style="list-style-type: none"> - MSDHS - Royal Police - Public Attorney-General 	<ul style="list-style-type: none"> - The Anti-Trafficking in Persons Act contains a non-punishment clause applicable to victims compelled to commit offences related to illegal immigration, false information, forging or using a forged travel document. 	<ul style="list-style-type: none"> - Providing for a non-punishment clause is not a specific obligation under the Protocol. It is one of the protection measures suggested in Recommendation No. 203. The Act seems to be aligned with the guidance provided in the Recommendation. 	<p>25. In practice, are victims (including migrant victims) effectively protected from prosecution for acts they have been compelled to commit as a result of being a victim of trafficking and forced labour (e.g offences related to illegal migration, forging or using false documents, etc.)? Why or why not?</p>
<p>INTERNATIONAL COOPERATION</p>						

<p>Protocol P29 Art. 5 (Recommendation No. 203, para. 14)</p>	<p>Cooperation between and among member States to achieve the effective prevention and suppression of forced labour.</p>	<ul style="list-style-type: none"> - Sections 16(4) and 23(5) of Anti-Trafficking in Persons Act B.E. 2551 - MoU between Thailand and Lao PDR on Cooperation to Combat Trafficking in Persons, Especially Women and Children 13 July 2005 - MoU between Thailand and Cambodia on Bilateral Cooperation in Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking 31 May 2003 - MoU between Myanmar and Thailand on Cooperation to combat trafficking in persons, especially women and children - COMMIT Memorandum of Understanding on Cooperation Against Trafficking in Persons in the Greater Mekong Sub-region 29 October 2004 	<ul style="list-style-type: none"> - Royal Thai Government - MSDHS - MOL - MFA 	<p>n/a</p>	<ul style="list-style-type: none"> - Although the Anti-Trafficking Act does not make specific reference to cooperation between member States, it refers to cooperation and coordination with international organizations. - In addition, Thailand has signed MOUs on labour migration governance and measures to combat trafficking in persons with major sending countries, such as Lao PDR, Cambodia and Myanmar. - Thailand is also one of the six governments part of the MoU on sub-regional cooperation against human trafficking in the Greater Mekong Sub-Region. The initiative is known as the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT). 	<p>26. In your experience, what are the main challenges facing cooperation between and among countries to prevent and suppress trafficking and forced labour? How could these challenges be overcome?</p>
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	<p>Cooperation between member States and international and regional organisations to achieve the effective prevention and suppression of forced labour.</p>	<p>- Sections 16(4) and 23(5) of Anti-Trafficking in Persons Act B.E. 2551, as amended in 2015</p>	<p>- Anti-Trafficking in Persons Committee (ATP Committee) and Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee (CMP Committee)</p>	<ul style="list-style-type: none"> - Among other duties, the ATP Committee shall cooperate and coordinate with international institutions and organisations to prevent and suppress trafficking in persons; - The CMP Committee shall follow up and report on implementation of international obligations, as well as cooperation and coordination with international institutions and organisations on the issue of prevention and suppression of trafficking in persons. 	<p>- Cooperation between countries and international and regional organisations is not a specific obligation under the Protocol. It is one of the protection measures suggested in Recommendation No. 203. The Act seems to be aligned with the guidance provided in the Recommendation.</p>	<p>n/a</p>
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Annex II - Focus group discussions: list of participants

Day 1 - Civil society organisations and social partners

1. Mrs. Patana Bhandhufalck Director of International Cooperation Bureau, Ministry of Labour
2. Mrs. Piengpahp Wityachumnarnkul Advisor to Permanent Secretary, Ministry of Labour
3. Mrs. Wilaiwan Kownkeawpring Senior Expert, International Cooperation Bureau, Ministry of Labour
4. Ms. Julia Batho Consultant, International Labour Organization
5. Representative International Labour Organization
6. Representative Human Right and Development Foundation
7. Representative State Enterprise Worker's Relations Confederation

Day 2 - Law enforcement

1. Mrs. Patana Bhandhufalck Director of International Cooperation Bureau, Ministry of Labour
2. Mrs. Piengpahp Wityachumnarnkul Advisor to Permanent Secretary, Ministry of Labour
3. Ms. Julia Batho Consultant, International Labour Organization
4. Representative International Labour Organization
5. Representative Office of the Attorney General
6. Representative Department of Provincial Administration
7. Representative Department of Labour Protection and Welfare (MOL)
8. Representative Department of Employment (MOL)
9. Representative Royal Thai Police
10. Representative Anti-Trafficking in Persons Division, Royal Thai Police
11. Representative Department of Special Investigations
12. Representative Immigration Bureau
13. Representative Royal Thai Navy
14. Representative Department of Fisheries

Day 3 - Ministries/Government officials

1. Mrs. Patana Bhandhufalck Director of International Cooperation Bureau, Ministry of Labour
2. Mrs. Piengpahp Wityachumnarnkul Advisor to Permanent Secretary, Ministry of Labour
3. Ms. Julia Batho Consultant, International Labour Organization
4. Representative International Labour Organization
5. Representatives Social Security Office
6. Representatives Department of Skills Development (MOL)
7. Representatives Department of Labour Protection and Welfare (MOL)
8. Representatives Ministry of Public Health
9. Representatives Ministry of Social Development and Human Security
10. Representatives Legal Affair Division, Ministry of Labour
11. Representatives Division of Strategy and Planning, Ministry of Labour

Annex III - Forced Labour Convention, 1930 (No. 29)

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fourteenth Session on 10 June 1930, and

Having decided upon the adoption of certain proposals with regard to forced or compulsory labour, which is included in the first item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention, adopts this twenty-eighth day of June of the year one thousand nine hundred and thirty the following Convention, which may be cited as the Forced Labour Convention, 1930, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation:

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

(Article 1(2) and (3) were transitional provisions and are no longer applicable)

Article 2

1. For the purposes of this Convention the term forced or compulsory labour shall mean 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.

2. Nevertheless, for the purposes of this Convention, the term forced or compulsory labour shall not include:

a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

(Articles 3-24 were transitional provisions and are no longer applicable)

Article 25

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

(Final provisions)

Annex IV - Protocol of 2014 to the Forced Labour Convention, 1930 (P29)

Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 103rd Session on 28 May 2014, and

Recognizing that the prohibition of forced or compulsory labour forms part of the body of fundamental rights, and that forced or compulsory labour violates the human rights and dignity of millions of women and men, girls and boys, contributes to the perpetuation of poverty and stands in the way of the achievement of decent work for all, and

Recognizing the vital role played by the Forced Labour Convention, 1930 (No. 29), hereinafter referred to as “the Convention”, and the Abolition of Forced Labour Convention, 1957 (No. 105), in combating all forms of forced or compulsory labour, but that gaps in their implementation call for additional measures, and

Recalling that the definition of forced or compulsory labour under Article 2 of the Convention covers forced or compulsory labour in all its forms and manifestations and is applicable to all human beings without distinction, and

Emphasizing the urgency of eliminating forced and compulsory labour in all its forms and manifestations, and

Recalling the obligation of Members that have ratified the Convention to make forced or compulsory labour punishable as a penal offence, and to ensure that the penalties imposed by law are really adequate and are strictly enforced, and

Noting that the transitional period provided for in the Convention has expired, and the provisions of Article 1, paragraphs 2 and 3, and Articles 3 to 24 are no longer applicable, and

Recognizing that the context and forms of forced or compulsory labour have changed and trafficking in persons for the purposes of forced or compulsory labour, which may involve sexual exploitation, is the subject of growing international concern and requires urgent action for its effective elimination, and

Noting that there is an increased number of workers who are in forced or compulsory labour in the private economy, that certain sectors of the economy are particularly vulnerable, and that certain groups of workers have a higher risk of becoming victims of forced or compulsory labour, especially migrants, and

Noting that the effective and sustained suppression of forced or compulsory labour contributes to ensuring fair competition among employers as well as protection for workers, and

Recalling the relevant international labour standards, including, in particular, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Domestic Workers Convention, 2011 (No. 189), the Private Employment Agencies Convention, 1997 (No. 181), the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), as well as the ILO Declaration on

Fundamental Principles and Rights at Work (1998), and the ILO Declaration on Social Justice for a Fair Globalization (2008), and

Noting other relevant international instruments, in particular the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Slavery Convention (1926), the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), the United Nations Convention against Transnational Organized Crime (2000), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Elimination of All Forms of Discrimination against Women (1979), and the Convention on the Rights of Persons with Disabilities (2006), and

Having decided upon the adoption of certain proposals to address gaps in implementation of the Convention, and reaffirmed that measures of prevention, protection, and remedies, such as compensation and rehabilitation, are necessary to achieve the effective and sustained suppression of forced or compulsory labour, pursuant to the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Protocol to the Convention;
adopts this eleventh day of June two thousand and fourteen the following Protocol, which may be cited as the Protocol of 2014 to the Forced Labour Convention, 1930.

Article 1

1. In giving effect to its obligations under the Convention to suppress forced or compulsory labour, each Member shall take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour.

2. Each Member shall develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour in consultation with employers' and workers' organizations, which shall involve systematic action by the competent authorities and, as appropriate, in coordination with employers' and workers' organizations, as well as with other groups concerned.

3. The definition of forced or compulsory labour contained in the Convention is reaffirmed, and therefore the measures referred to in this Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour.

Article 2

The measures to be taken for the prevention of forced or compulsory labour shall include:

(a) educating and informing people, especially those considered to be particularly vulnerable, in order to prevent their becoming victims of forced or compulsory labour;

(b) educating and informing employers, in order to prevent their becoming involved in forced or compulsory labour practices;

(c) undertaking efforts to ensure that:

(i) the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour, including labour law as appropriate, apply to all workers and all sectors of the economy; and

(ii) labour inspection services and other services responsible for the implementation of this legislation are strengthened;

(d) protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process;

(e) supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour; and

(f) addressing the root causes and factors that heighten the risks of forced or compulsory labour.

Article 3

Each Member shall take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support.

Article 4

1. Each Member shall ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation.

2. Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.

Article 5

Members shall cooperate with each other to ensure the prevention and elimination of all forms of forced or compulsory labour.

Article 6

The measures taken to apply the provisions of this Protocol and of the Convention shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned.

Article 7

The transitional provisions of Article 1, paragraphs 2 and 3, and Articles 3 to 24 of the Convention shall be deleted.

Article 8

1. A Member may ratify this Protocol at the same time as or at any time after its ratification of the Convention, by communicating its formal ratification to the Director-General of the International Labour Office for registration.

2. The Protocol shall come into force twelve months after the date on which ratifications of two Members have been registered by the Director-General. Thereafter, this Protocol shall come into force for a Member twelve months after the date on which its ratification is registered and the Convention shall be binding on the Member concerned with the addition of Articles 1 to 7 of this Protocol.

Article 9

1. A Member which has ratified this Protocol may denounce it whenever the Convention is open to denunciation in accordance with its Article 30, by an act communicated to the Director-General of the International Labour Office for registration.

2. Denunciation of the Convention in accordance with its Articles 30 or 32 shall ipso jure involve the denunciation of this Protocol.

3. Any denunciation in accordance with paragraphs 1 or 2 of this Article shall not take effect until one year after the date on which it is registered.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, declarations and denunciations communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Protocol shall come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications, declarations and denunciations registered by the Director-General.

Article 12

The English and French versions of the text of this Protocol are equally authoritative.

Annex V - Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)

Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 103rd Session on 28 May 2014, and

Having adopted the Protocol of 2014 to the Forced Labour Convention, 1930, hereinafter referred to as “the Protocol”, and

Having decided upon the adoption of certain proposals to address gaps in implementation of the Forced Labour Convention, 1930 (No. 29), hereinafter referred to as “the Convention”, and reaffirmed that measures of prevention, protection, and remedies, such as compensation and rehabilitation, are necessary to achieve the effective and sustained suppression of forced or compulsory labour, pursuant to the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Convention and the Protocol;

adopts this eleventh day of June of the year two thousand and fourteen the following Recommendation, which may be cited as the Forced Labour (Supplementary Measures) Recommendation, 2014.

1. Members should establish or strengthen, as necessary, in consultation with employers’ and workers’ organizations as well as other groups concerned:

(a) national policies and plans of action with time-bound measures using a gender- and child-sensitive approach to achieve the effective and sustained suppression of forced or compulsory labour in all its forms through prevention, protection and access to remedies, such as compensation of victims, and the sanctioning of perpetrators; and

(b) competent authorities such as the labour inspectorates, the judiciary and national bodies or other institutional mechanisms that are concerned with forced or compulsory labour, to ensure the development, coordination, implementation, monitoring and evaluation of the national policies and plans of action.

2. (1) Members should regularly collect, analyse and make available reliable, unbiased and detailed information and statistical data, disaggregated by relevant characteristics such as sex, age and nationality, on the nature and extent of forced or compulsory labour which would allow an assessment of progress made.

(2) The right to privacy with regard to personal data should be respected.

Prevention

3. Members should take preventive measures that include:

(a) respecting, promoting and realizing fundamental principles and rights at work;

(b) the promotion of freedom of association and collective bargaining to enable at-risk workers to join workers’ organizations;

(c) programmes to combat the discrimination that heightens vulnerability to forced or compulsory labour;

(d) initiatives to address child labour and promote educational opportunities for children, both boys and girls, as a safeguard against children becoming victims of forced or compulsory labour; and

(e) taking steps to realize the objectives of the Protocol and the Convention.

4. Taking into account their national circumstances, Members should take the most effective preventive measures, such as:

(a) addressing the root causes of workers' vulnerability to forced or compulsory labour;

(b) targeted awareness-raising campaigns, especially for those who are most at risk of becoming victims of forced or compulsory labour, to inform them, inter alia, about how to protect themselves against fraudulent or abusive recruitment and employment practices, their rights and responsibilities at work, and how to gain access to assistance in case of need;

(c) targeted awareness-raising campaigns regarding sanctions for violating the prohibition on forced or compulsory labour;

(d) skills training programmes for at-risk population groups to increase their employability and income-earning opportunities and capacity;

(e) steps to ensure that national laws and regulations concerning the employment relationship cover all sectors of the economy and that they are effectively enforced. The relevant information on the terms and conditions of employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations or collective agreements;

(f) basic social security guarantees forming part of the national social protection floor, as provided for in the Social Protection Floors Recommendation, 2012 (No. 202), in order to reduce vulnerability to forced or compulsory labour;

(g) orientation and information for migrants, before departure and upon arrival, in order for them to be better prepared to work and live abroad and to create awareness and better understanding about trafficking for forced labour situations;

(h) coherent policies, such as employment and labour migration policies, which take into account the risks faced by specific groups of migrants, including those in an irregular situation, and address circumstances that could result in forced labour situations;

(i) promotion of coordinated efforts by relevant government agencies with those of other States to facilitate regular and safe migration and to prevent trafficking in persons, including coordinated efforts to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion; and

(j) in giving effect to their obligations under the Convention to suppress forced or compulsory labour, providing guidance and support to employers and businesses to take effective measures to identify, prevent, mitigate and account for how they address the risks of forced or compulsory labour in their operations or in products, services or operations to which they may be directly linked.

Protection

5. (1) Targeted efforts should be made to identify and release victims of forced or compulsory labour.

(2) Protective measures should be provided to victims of forced or compulsory labour. These measures should not be made conditional on the victim's willingness to cooperate in criminal or other proceedings.

(3) Steps may be taken to encourage the cooperation of victims for the identification and punishment of perpetrators.

6. Members should recognize the role and capacities of workers' organizations and other organizations concerned to support and assist victims of forced or compulsory labour.

7. Members should, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.

8. Members should take measures to eliminate abuses and fraudulent practices by labour recruiters and employment agencies, such as:

- (a) eliminating the charging of recruitment fees to workers;
- (b) requiring transparent contracts that clearly explain terms of employment and conditions of work;
- (c) establishing adequate and accessible complaint mechanisms;
- (d) imposing adequate penalties; and
- (e) regulating or licensing these services.

9. Taking into account their national circumstances, Members should take the most effective protective measures to meet the needs of all victims for both immediate assistance and long-term recovery and rehabilitation, such as:

- (a) reasonable efforts to protect the safety of victims of forced or compulsory labour as well as of family members and witnesses, as appropriate, including protection from intimidation and retaliation for exercising their rights under relevant national laws or for cooperation with legal proceedings;
- (b) adequate and appropriate accommodation;
- (c) health care, including both medical and psychological assistance, as well as provision of special rehabilitative measures for victims of forced or compulsory labour, including those who have also been subjected to sexual violence;
- (d) material assistance;
- (e) protection of privacy and identity; and
- (f) social and economic assistance, including access to educational and training opportunities and access to decent work.

10. Protective measures for children subjected to forced or compulsory labour should take into account the special needs and best interests of the child, and, in addition to the protections provided for in the Worst Forms of Child Labour Convention, 1999 (No. 182), should include:

- (a) access to education for girls and boys;
- (b) the appointment of a guardian or other representative, where appropriate;
- (c) when the person's age is uncertain but there are reasons to believe him or her to be less than 18 years of age, a presumption of minor status, pending age verification; and
- (d) efforts to reunite children with their families, or, when it is in the best interests of the child, provide family-based care.

11. Taking into account their national circumstances, Members should take the most effective protective measures for migrants subjected to forced or compulsory labour, irrespective of their legal status in the national territory, including:

- (a) provision of a reflection and recovery period in order to allow the person concerned to take an informed decision relating to protective measures and participation in legal proceedings, during which

the person shall be authorized to remain in the territory of the member State concerned when there are reasonable grounds to believe that the person is a victim of forced or compulsory labour;

- (b) provision of temporary or permanent residence permits and access to the labour market; and
- (c) facilitation of safe and preferably voluntary repatriation.

Remedies, such as compensation and access to justice

12. Members should take measures to ensure that all victims of forced or compulsory labour have access to justice and other appropriate and effective remedies, such as compensation for personal and material damages, including by:

- (a) ensuring, in accordance with national laws, regulations and practice, that all victims, either by themselves or through representatives, have effective access to courts, tribunals and other resolution mechanisms, to pursue remedies, such as compensation and damages;
- (b) providing that victims can pursue compensation and damages from perpetrators, including unpaid wages and statutory contributions for social security benefits;
- (c) ensuring access to appropriate existing compensation schemes;
- (d) providing information and advice regarding victims' legal rights and the services available, in a language that they can understand, as well as access to legal assistance, preferably free of charge; and
- (e) providing that all victims of forced or compulsory labour that occurred in the member State, both nationals and non-nationals, can pursue appropriate administrative, civil and criminal remedies in that State, irrespective of their presence or legal status in the State, under simplified procedural requirements, when appropriate.

Enforcement

13. Members should take action to strengthen the enforcement of national laws and regulations and other measures, including by:

- (a) giving to the relevant authorities, such as labour inspection services, the necessary mandate, resources and training to allow them to effectively enforce the law and cooperate with other organizations concerned for the prevention and protection of victims of forced or compulsory labour;
- (b) providing for the imposition of penalties, in addition to penal sanctions, such as the confiscation of profits of forced or compulsory labour and of other assets in accordance with national laws and regulations;
- (c) ensuring that legal persons can be held liable for the violation of the prohibition to use forced or compulsory labour in applying Article 25 of the Convention and clause (b) above; and
- (d) strengthening efforts to identify victims, including by developing indicators of forced or compulsory labour for use by labour inspectors, law enforcement services, social workers, immigration officers, public prosecutors, employers, employers' and workers' organizations, non-governmental organizations and other relevant actors.

International Cooperation

14. International cooperation should be strengthened between and among Members and with relevant international and regional organizations, which should assist each other in achieving the effective and sustained suppression of forced or compulsory labour, including by:

(a) strengthening international cooperation between labour law enforcement institutions in addition to criminal law enforcement;

(b) mobilizing resources for national action programmes and international technical cooperation and assistance;

(c) mutual legal assistance;

(d) cooperation to address and prevent the use of forced or compulsory labour by diplomatic personnel; and

(e) mutual technical assistance, including the exchange of information and the sharing of good practice and lessons learned in combating forced or compulsory labour.

Annex VI - CEACR Observation on the application by Thailand of the Forced Labour Convention, 1930 (No. 29), 2013²⁰

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. Law enforcement. In its previous comments, the Committee noted the comments made by the International Confederation of Free Trade Unions (ICFTU) (now the International Trade Union Confederation (ITUC)) expressing concern about the persistence of trafficking in persons from and into Thailand. The Committee subsequently noted the adoption of the Anti-Trafficking in Persons Act B.E. 2551 (2008), as well as the detailed information provided by the Government which demonstrated the significant efforts it had made in the fight against trafficking. It also noted the observations submitted by the National Congress of Thai Labour (NCTL) stating that statistics had shown that the number of arrests and prosecutions related to trafficking was still low compared to the number of offenders.

The Committee notes the Government's response that this is due to the fact that in each case of arrest and prosecution there is usually more than one suspect, as human trafficking cases are usually committed by organized crime or groups of perpetrators. The Committee also notes the Government's statement that the implementation of the Anti-Trafficking in Persons Act involves the participation of government agencies, specialist groups and NGOs. The difficulties encountered by the competent authorities in implementing the Act include demands from victims to be immediately repatriated and a lack of experienced interpreters to overcome language barriers in the prosecution process. In order to strengthen law enforcement mechanisms, the Royal Thai Police has established strategies to prevent and combat human trafficking and has taken measures to ensure a more effective investigation system. These measures include collaboration between law enforcement officials and the Office of the Attorney-General and the targeting of particular locations for investigation, such as medium and small sized factories, karaoke pubs and brothels. The Committee notes that between 2010 and 2012 there were 162 arrests for human trafficking for the purpose of prostitution, 25 arrests for trafficking for the purpose of forced labour or service and two arrests for human trafficking for the purpose of slavery. While taking due note of the detailed information relating to arrests, the Committee notes an absence of information on how many of those arrested were convicted and penalized. However, it notes the copies of nine court decisions submitted with the Government's report, relating to the application of the Anti-Trafficking in Persons Act. These cases involved the prosecution of 18 defendants, resulting in 17 convictions and one acquittal, and the application of penalties of imprisonment for 15 defendants (ranging from two to ten years) as well as the application of fines in two cases. ***The Committee strongly encourages the Government to pursue its efforts to prevent, suppress and combat trafficking in persons, and to continue to provide information on the measures taken in this regard, including measures to provide appropriate training to law enforcement officials, border officials and the judiciary. The Committee also requests the Government to continue to provide information on the application of the Anti-Trafficking in Persons Act in practice, including the number of arrests, as well as the number of prosecutions, convictions, and the specific penalties applied. It further requests the Government to continue to provide copies of court cases related to the application of the Act.***

2. Protection and reintegration of victims of trafficking in persons. The Committee previously noted that the Anti-Trafficking in Persons Act contained provisions relating to victim protection. The

²⁰ The Government was expected to provide its reply to these comments of the Committee of Experts in a report that was due not later than 1 September 2016 but had not been received at the time of closing this paper.

Government indicated that its labour inspection and labour protection practices included coordination with relevant government agencies, NGOs, international organizations and Thai embassies overseas to ensure trafficking victims' protection, recovery and reintegration. Repatriation programmes had been arranged with Cambodia, the Lao People's Democratic Republic, Myanmar and the Yunnan Province of China in order to develop effective and safe repatriation procedures.

The Committee notes the statement in the Government's report that it has provided translation services at hotline centres in provinces with a large number of migrant workers. Additional training was also provided to education field officers, including with the agencies responsible for rehabilitation, support and repatriation so as to ensure integrated cooperation among the concerned agencies. The Government states that difficulties encountered in the application of the Convention included the limited budget to provide support to migrants during the investigation and prosecution process. The Government also states that arrested illegal migrant workers investigated by the Centre on Suppression, Arrest and Prosecution against Illegal Migrant Workers will be screened to assess whether they are victims of trafficking, and that any detected victims of trafficking will not be prosecuted. However, since the establishment of the Centre, no victims of trafficking for the purpose of labour exploitation have been detected. ***The Committee requests the Government to take measures to strengthen mechanisms for the identification of victims of human trafficking, and to continue to provide information on any difficulties encountered in this regard. It also requests the Government to intensify its efforts to provide protection and assistance, including legal assistance, to victims of trafficking, and to provide information on the number of persons benefiting from these services.***

Articles 1(1), 2(1) and 25. Vulnerability of migrant workers to conditions of forced labour. In its previous comments, the Committee noted the addendum to the report of the United Nations Special Rapporteur on the human rights of migrants of 7 May 2011 (A/HRC/17/33/Add.1), which expressed concern regarding violations of the human rights of migrants in Thailand, in particular the negative impact of the National Verification (NV) registration process for migrant workers. According to the report, an estimated 1 million unregistered migrant workers were ineligible for the NV process and had been deemed as migrants with irregular status. These unregistered migrant workers could be asked to pay bribes ranging from 200 to 8,000 baht (THB) or more to the police in exchange for their freedom, either when stopped by the police or when in police custody. The Special Rapporteur expressed particular concern about the pattern of arbitrary arrest, violence and exploitation of migrants. This was exacerbated by the Prime Minister's Order of 2 June 2010, which established a special centre to suppress, arrest and prosecute alien workers who are working underground, and an increasing number of cases of systematic abuse of official powers had been reported, "including the 'sale' of irregular migrants to various brokers who then transfer the migrants back to their worksites for fees or who 'resell' or traffic the individuals to various employers in the fishing and domestic industries". The Committee also noted the 2011 report of the International Organization for Migration (IOM) on trafficking of fishermen in Thailand (14 January 2011), indicating that labour recruitment processes for migrant workers in the fishing sector remained largely informal, often leading to abuse. Many fishermen were "sold" to fishing boat owners by brokers, having to work for long periods without receiving any wages in order to repay their debts and could not leave or escape since fishing boats tended to be offshore for long periods of time. According to the report, migrant fishermen, who are usually undocumented and unregistered, are often held on boats indefinitely, working and being forcibly transferred between fishing boats, under threats of being reported to immigration authorities.

The Committee also noted the comments of the NCTL expressing concern about the lack of participation of employers' and workers' organizations in the implementation of the Convention in the country.

The Committee notes the Government's statement that employers' and workers' organizations have participated in activities concerning the application of the Convention, including through the working group on the resolution of child labour and forced labour in shrimp and agriculture. It also notes the Government's indication that measures have been taken to protect the labour rights of migrant workers, especially those working in the fishery industry including the preparation to revise Ministerial Regulation No. 10 B.E. 2541 issued under the Labour Protection Act. The Government indicates that it has undertaken continuous efforts to systematically solve the problem of migrant workers from Myanmar, Lao People's Democratic Republic and Cambodia working illegally in Thailand, as well as taking measures to prevent these migrant workers from becoming victims of labour trafficking, including through developing MOUs with these countries. The Government indicates that it is carrying out labour inspections focusing on particular areas, such as small and medium-sized enterprises, as well as enterprises which fail to submit a report on employment and working conditions to the competent authority and enterprises which regularly employ migrant workers, especially in the fishing and related industries. These inspections were conducted with the cooperation of many agencies, such as the Royal Thai Navy, the Marine Police, the Marine Department as well as NGOs. The Government indicates that 5,400 labour inspections focusing on the protection of migrant workers, covering 408,000 workers, resulted in the identification of 117 cases of violations of the Labour Protection Act. The Government indicates that the Prime Minister issued Order No. 68/2555 of 13 March 2012 on the Centre on Suppression, Arrest and Prosecution against Illegal Migrant Workers in order to manage the Government's response to migrant workers and labour trafficking. The Centre involves the participation from the Ministries of the Interior, Justice and Defence, as well as the Royal Thai Police, in investigating the employment of illegal migrant workers. The Committee also notes the Government's indication that it has taken measures to legalize the status of existing migrant workers, by allowing these workers to register with concerned authorities, obtain an identification number, and temporarily stay and work in Thailand while awaiting repatriation. Moreover, the Government indicates that in 2012, it implemented programmes on human trafficking for labour exploitation, including dissemination of information in languages understood by migrant workers, carrying out labour inspections in the fishing industry, conducting meetings with employers and workers and cooperation with the ILO within the framework of the Tripartite Action to Protect Migrant Workers from Labour Exploitation.

The Committee notes that the United Nations Committee on the Elimination of Racial Discrimination, in its concluding observations of 15 November 2012, expressed concern at reports of abuse and exploitation of migrant workers, in particular those with irregular status (CERD/C/THA/CO/1, paragraph 22). The Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly where they are subjected to abusive employer practices, such as non-payment of wages, deprivation of liberty and physical and sexual abuse. Such practices might cause their employment to be transformed into situations that could amount to forced labour. Particularly, the itinerant nature of work in fishing and the long periods of time spent away from shore hamper the identification of migrant fishermen working under forced labour conditions. ***The Committee therefore once again urges the Government to take the necessary measures to ensure***

that migrant workers, particularly those in the fishing industry, are fully protected from abusive practices and conditions that amount to the exaction of forced labour. It also requests the Government to further strengthen its law enforcement mechanisms, including measures to enforce anti-trafficking laws against those who target migrant fishermen, as well as to ensure that sufficiently effective penalties are applied to persons who subject these workers to conditions of forced labour. Moreover, the Committee requests the Government to continue to provide information in its next report on measures adopted specifically tailored to the difficult circumstances faced by migrant workers, including measures to prevent and respond to cases of abuse of migrant workers.