



International
Labour
Organization

THEMATIC BROCHURE SERIES

FORCED LABOUR

**COMBATING THE WORST FORMS OF
CHILD LABOUR IN SHRIMP AND SEAFOOD
PROCESSING AREAS OF THAILAND**

THA/10/50/USA

➤ **The ILO estimates** that 20.9 million or about three in every 1,000 of people worldwide are victims of forced labour. Of these, 90 per cent are exploited by private individuals and enterprises, while 10 per cent are forced to work by the state, by rebel military groups or in prisons under conditions which violate fundamental ILO standards. Forced sexual exploitation accounts for 22 per cent of all victims whereas forced labour exploitation makes up 68 per cent of the total¹.

The victims of forced labour are the most vulnerable – women and girls forced into prostitution, migrants trapped in debt bondage, and sweatshop or farm workers kept there by clearly illegal tactics and paid little or nothing. The new ILO estimate shows how forced labour affects different groups of people: 55 per cent of all victims are women and girls, 45 per cent are men and boys. Children make up around one quarter of all victims.²



Victims of forced labour by region

¹ Questions and Answers on Forced Labour, http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_181922/lang--en/index.htm

² ILO 2012 Global estimate of forced labour

Forced labour violates the principles of international labour standards and basic values of human rights and human dignity. The use of forced labour is against ethical business practices and fair competition.

Forced labour issues that have recently surfaced in the Thai's fishing and seafood processing sector has attracted international attention. According to the most recent study supported by the ILO³ on Employment Practices and Working Conditions in Thailand's Fishing Sector, nearly one in six fishermen working in commercial fishing vessels have identified themselves as working against their will under a menace of financial penalty or under violence or a threat of violence. Fishermen who identified themselves as being in forced labour situation were exclusively migrant workers. Forced labour situation have also been reported in the shrimp and seafood processing sector in Thailand.

OVERVIEW OF INTERNATIONAL STANDARDS

The *Convention concerning Forced or Compulsory Labour, 1930 (No.29)* and the *Convention concerning the abolition of Forced Labour, 1957 (No.105)* are the two of the eight fundamental Conventions of the ILO which deal with the prohibition and abolition of forced labour. Thailand ratified Conventions No. 29 and No. 105 in 1969. In 2001, Thailand also signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

According to the ILO's Forced Labour Convention No. 29, forced or compulsory labour is all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily. Consent to work and receipt of wages does not exclude the possibility of forced labour. Employee consent that is elicited through deceit, false promises, or threat of penalty is not considered a voluntary. In addition to freely accepting a position, a worker's voluntary consent must be present at all

³ ILO 2013, Employment Practices and Working Conditions in Thailand's Fishing Sector. http://www.ilo.org/asia/whatwedo/publications/WCMS_220596/lang--en/index.htm

times implying that an employee may withdraw this consent at any time without fear of excessive penalty. The Convention No. 29 requires making illegal exaction of forced or compulsory labour punishable as a penal offense.

FORCED LABOUR CONVENTION, 1930 (No. 29)	ABOLITION OF FORCED LABOUR CONVENTION, 1957 (No. 105)
Defines forced labour;	Member of the ILO shall suppress and not to make use of any form of forced or compulsory labour-
Provides for certain exceptions, including compulsory military service, civic duties, work required to cope with an emergency situation, and prison labour under certain stipulated conditions;	(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
Requires making illegal exaction of forced or compulsory labour punishable as a penal offense.	(b) as a method of mobilising and using labour for purposes of economic development;
Member States of the ILO should suppress the use of forced or compulsory labour in all its forms within the shortest possible period.	(c) as a means of labour discipline;
	(d) as a punishment for having participated in strikes;
	(e) as a means of racial, social, national or religious discrimination.

While there is wide international support for the abolition of forced labour, it can be difficult to determine if a specific situation constitutes forced labour. The ILO has defined eleven indicators which represent the most common signs of forced labour. These are⁴:

⁴ Special Action Programme to Combat Forced Labour, *ILO Indicators on Forced Labour*,

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

The set of eleven indicators covers the main possible elements of a forced labour situation, and hence provides the basis to assess whether or not an individual worker is a victim of this crime. The presence of a single indicator in a given situation may in some cases imply the existence of forced labour. However, in other cases several indicators may need to be looked for which, taken together, point to a forced labour case.⁵

OVERVIEW OF NATIONAL LEGISLATION

Article 38 of the Constitution of Thailand prohibits the use of forced labour. Thailand's ratification of the ILO Conventions on forced labour demonstrates the government's support for these international standards and its commitment to uphold them.

The Penal Code of Thailand establishes enslaving a person or causing a person to be in a position similar to a slave as a penal offense (Section 312), and the Anti-Trafficking in Persons Act B.E. 2551 (2008) imposes penal sanctions on those found guilty of trafficking in persons (Sections 6 and 52). In addition, the Labour Protection Act (LPA) which is applicable to all workers in the country regardless of his/her status, has established certain protection for workers to be prevented from exploitation and abusive conditions that may be considered as indicators of forced labour.

⁵ Special Action Programme to Combat Forced Labour, *ILO Indicators on Forced Labour*,

Freedom to terminate employment contract. A contract of employment shall expire upon the completion of the period specified in the contract for employment with no requirement for advance notice. If the period is not specified in the contract of employment, an employer and employee may terminate the contract by giving advance notice in writing to the other party at or before any due date of wage payment in order to take effect on the following due date of wage payment (Section 17).

Limiting working hours and overtime. The LPA limits the number of working hours per day and per week, and it stipulates conditions for overtime and the way in which this should be remunerated. However, these limits of weekly working hours as provided in the current legislation are considered to be long compared to those established in most countries.

LABOUR PROTECTION ACT B.E. 2541 and 2551

- **An employer shall notify a normal working time to an employee by specifying the commencing and ending time of work in each day of the employee, which should not exceed 8 hours per day and 48 hours per week (Sec. 23)**
- **If working conditions are hazardous normal working hours should not exceed 7 hours per day and 42 hours per week (Sec. 23)**
- **If an employer may not notify the commencing and ending time of daily work due to the nature or conditions of work, the employer and the employee shall agree to specify the working hours in each day of not exceeding the limits prescribed above;**
- **Employer is not allowed to order employee to work overtime or work during holidays unless the consent of the employee has been obtained on a case-by-case basis. Overtime and holiday work may be ordered only if the characteristics or nature of the work requires the work to be performed continuously, if the stoppage will cause damage to the work, or where the work is emergency work or such other work prescribed by ministerial regulations (Sec. 24-25).**
- **Employers are not allowed to order overtime work or holiday work which might be hazardous to the health and safety of the employee (Sec.31)**

- **An employer shall arrange for the employee to have a rest period of not less than one hour per day during the work after the employee has been working for not more than five consecutive hours (Sec. 27);**
- **Overtime work must be compensated at a rate of not less than 1.5 times of the normal hourly rate or of the normal piece rate (Sec. 61). Holiday work must be compensated at a rate of not less than one time of the normal hourly rate or of the normal piece rate (Sec.62).**

Prohibition of demanding and receiving security deposit. It is prohibited for the employer to demand or receive from an employee a security deposit for work or for damage to work, unless the nature or conditions of the work require the employee be responsible for money or property belonging to the employer. Where the employer receives security deposit or makes a guarantee contract with the employee to compensate for the damage done by the employee, an employer shall pay back the security deposit with applicable interests when the employment is terminated by the employer or the resignation is made by the employee (Section 10).

Protection of wage and regularity of wage payment. It is prohibited to make deductions from employee's wages and payments unless it is deducted for the purpose of paying income tax, trade union dues, paying the debts of a savings cooperative or some other cooperatives, providing guarantee money or compensation as provided in the law and depositing money for the employee in savings fund under an agreement with the employee regarding such fund. In each case, deductions of more than ten per cent are prohibited and the total deductions shall not be more than one fifth of the money which the employee is entitled to receive on the date of payment (Section 76).

The payment of wages, overtime pay, holiday pay, and holiday overtime pay and other monetary payments arising from employment shall be made at the employee's place of work (Section 55). Payment of wage, overtime pay, holiday pay and holiday overtime pay shall be made not less than once a month. Also, the LPA provides the deadlines for payment of wages and other payments arising from the employment to the employee. When an employer terminates the employment of an employee, the employee shall be paid the wages, holiday pay, and holiday overtime pay within three days from the date of termination of employment (Section 70).

The payment of the young worker's wage to another person is prohibited. Also, where the employer pays money or any other benefit to the young employee, the parent or guardian of the young employee or other persons before employment, the commencement of employment, or before the due time of wage payment in each period, that payment shall not be deemed as the payment or receipt of wages for the young employee. The employer is prohibited to deduct such money or such benefit from the wages to be paid to the young employee (Section 51).

Prohibition of harassment and abuse at workplace. An employer, chief, supervisor, or a work inspector shall be prohibited from committing sexual abuse, harassment or nuisance against an employee (Section 16).

In addition to aforementioned provisions, the relevant sections in national legislation need to ensure that sanctions of imprisonment involving compulsory labour cannot be imposed as a means of labour discipline, or on persons peacefully expressing certain political views or participating in peaceful strikes.

Strengthening law enforcement mechanisms, including measures to enforce anti-trafficking laws, as well as taking effective measures to protect migrant workers have been suggested as areas for improvement.