

REPUBLIC OF KOREA (2016-2018)

THE ELIMINATION OF ALL FORMS OF FORCED OR COMPULSORY LABOUR

Protocol of 2014 (P029) to the Forced Labour Convention

REPORTING	Fulfillment of Government's reporting obligations	Yes.	
	Involvement of Employers' and Workers' organizations in the reporting process	<p>2016-2018 ARs: Yes, the Korea Employers' Federation (KEF), the Federation of Korean Trade Unions (FKTU), and the Korean Confederation of Trade Unions (KCTU) have been consulted in the preparation of the Government's report.</p>	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	No.	
	Workers' organizations	<p>2018 AR: Yes, by FKTU and KCTU. FKTU comment: there are no direct recent measures taken by the government in order to address forced labour. No improvements have been made in the Skilled Industry Personnel System and the Public Interest Service Personnel System which are the substitute to mandatory military services. The Ministry of National Defence is opposed to abolish the two systems on the ground that parties to the draft prefer the substitute systems. Migrant workers are subject to forced labour since they are only allowed to change their workplace a total of three times in a three-year period and employers often prevent them from leaving the workplace. Government's observations on FKTU's comment: the government, through consultations on the ratification of Convention Nos. 29 and 105 among relevant ministries and with experts, is carrying out close review on domestic laws that might not be in line with the Conventions. Changing workplaces are allowed for migrant workers in case of the expiration or the termination based on agreement of the worker and the employer of a labour contract. Also, there is no limit for migrant workers to change employers in cases where it is deemed to difficult to continue working at the workplace for reasons not attributable to the worker. These cases may include the employer's violation of labour law or unreasonable treatment of the worker. Furthermore, the government has been continuously working to improve relevant institution to allow migrant workers to change workplace more freely.</p> <p>2016-2017 ARs: No.</p>	
EFFORTS AND PROGRESS MADE IN REALIZING MEASURES TARGETED BY THE PROTOCOL	Ratification	Ratification status	The Republic of Korea has not yet ratified the Protocol of 2014 (P029) to the Forced Labour Convention.
		Ratification intention	
	Existence of a policy and / or plan of action for the suppression of forced or compulsory labour	<p>2016-2018 ARs: There is a national policy and plan of action aimed at realizing the principle of effective and sustained suppression of all forms of forced or compulsory labour through prevention, victim protection and access to remedies. The Korean Government prohibits forced or compulsory labour through Article 10 (the right to pursue happiness), Article 12 (personal liberty), and Article 15 (freedom of occupation) of the Constitution of the Republic of Korea as well as Article 7 (prohibition of forced labour) of the Labor Standards Act. The Ministry of Employment and Labor (MOEL) investigates whether workplaces violate any of the provisions concerning forced labour when it conducts regular, occasional or specially-planned inspections of workplaces which take place. An investigation can also be triggered if a worker whose rights and interests are infringed upon</p>	

		<p>by forced labour or a third party who is aware of such infringement reports it to the labor authorities. If any forced labour practice in violation of the Labor Standards Act is found as a result of such an inspection and investigation, it is punished by imprisonment for not more than five years or a fine of up to 30 million Korean won. The Government further reported that Korea has no separate special law aimed at prohibiting trafficking in persons. However, in April 2013, Korea incorporated the concept of human trafficking into its law by comprehensively defining the crime of human trafficking in the Criminal Act, the framework act that provides for the State's right to punish crimes. The crime of human trafficking was newly inserted into Article 289 of the Criminal Act. Article 292 of the same Act made it a punishable offence to kidnap/abduct or traffic in persons for the purpose of committing a new type of crime, such as labour exploitation, sex trafficking, sexual exploitation, or organ acquisition, and separate constituent requirements were established to ensure that the act of recruiting, transporting or transferring a person with the intent to commit a kidnapping/abduction or human trafficking, etc., is considered an independent crime and, thus, can be harshly punished. In addition, Article 288 (2) of the same Act stipulates that kidnapping and abducting a person for the purpose of labour exploitation, sex trafficking, sexual exploitation, or organ acquisition shall be punished by imprisonment for not less than two years nor more than 15 years.</p>
	<p>Measures taken or envisaged for systematic and coordinated action</p>	<p>2017-2018 ARs: The Korean government prohibits forced or compulsory labour through Article 10(the right to pursue happiness), Article 12 (personal liberty), and Article 15 (freedom of occupation) of the Constitution of the Republic of Korea as well as Article 7 (prohibition of forced labor) of the Labor Standards Act. The Ministry of Employment and Labor (MOEL) investigates whether workplaces violate any of the provisions concerning forced labour when it conducts regular, occasional or specially-planned inspections of workplaces which take place. An investigation can also be triggered if a worker whose rights and interests are infringed upon by forced labour or a third party who is aware of such infringement reports it to the labor authorities. If any forced labour practice in violation of the Labor Standards Act is found as a result of such an inspection and investigation, it is punished by imprisonment for not more than five years or a fine of up to 30 million Korean won.</p>
	<p>Measures taken or envisaged to prevent forms of forced labour</p>	<p>2016–2018 ARs: Article 7 of the Labor Standards Act prohibits all forms of forced or compulsory labour that might occur in labor relations. Any person who violates this provision is strictly punished. The provision applies to all workers under the Labor Standards Act regardless of whether they are Koreans or foreigners. The Government requires employment contracts to be in writing so that the workers themselves can clearly understand their working conditions, and consistently conducts labor inspections and awareness-raising campaigns to ensure essential working conditions, such as minimum wage compliance, the ban on overdue wages and the prohibition of forced labour.</p>
	<p>Measures taken or envisaged to protect victims of forced labour</p>	<p>2016–2018 ARs: Article 7 of the Labor Standards Act does not distinguish between types of labour, and punishes every person who causes harm by violating the provision. Article 30 of the constitution of the Republic of Korea stipulates that “citizens who have suffered bodily injury or death due to criminal acts committed by others may receive aid from the State under the conditions as prescribed by various Acts.” The Crime Victim Protection Act was established according to this provision. As the Criminal Act was revised in 2013, the crime of trafficking in persons was incorporated into Korea’s criminal code. Therefore, victims of human trafficking for the purpose of forced labour can receive the same support as those of other crimes.</p>
	<p>Measures taken or envisaged to facilitate access to remedies</p>	<p>2016–2018 ARs: A victim of forced labour or a third party who becomes aware of the incident can report it to the nearest regional employment and labor office. And the victim can receive counselling, legal assistance and other related support free of charge through the regional employment and labor office to seek a remedy, including receiving overdue wages owed to him/her during the period of forced labour. It is stipulated that a perpetrator of forced labour shall be punished by imprisonment for not more than five</p>

		<p>years or a fine of up to 30 million Korean Won, the heaviest of the penal provisions, which are applicable to violations of the prohibition of forced labor under Article 7 of the Labor Standards Act. The Government further reported that it allows foreigners for whom remedial proceedings are under way in relation to forced labour to enter and stay in Korea, regardless of their legal status of stay, until the remedial proceedings are concluded, in the context of protecting the human rights of foreigners. Such foreigners are granted G-1 (others) status of sojourn under Article 10 of the Immigration Control Act. Although a public official is required to notify the competent regional immigration office without delay if he/she detects a foreigner without legitimate sojourn permit, if the Ministry of Justice deems it more urgent to provide the foreigner with a remedy, it is possible to invoke an exemption from the notification obligation to provide a remedy first. The Government allows foreigners for whom remedial proceedings are under way in relation to forced labour to enter and stay in Korea, regardless of their legal status of stay, until the remedial proceedings are concluded, in the context of protecting the human rights of foreigners. Such foreigners are granted G-1 (others) status of sojourn under Article 10 of the Immigration Control Act. Although a public official is required to notify the competent regional immigration office without delay if he/she detects a foreigner without legitimate sojourn permit, if it is deemed to be more urgent to provide the foreigner with a remedy, it is possible to invoke an exemption from the notification obligation to provide a remedy first. Article 84 (1) of the Immigration Control Act) states that “If a public official finds any person subject to deportation, including foreigners without legitimate sojourn permit, in the course of performing his/her duties, he/she shall immediately inform the head of the competent regional immigration office thereof”. The crime of obstructing the exercise of rights under the Criminal Act and crimes under certain special laws, including the Act on Special Cases Concerning the Punishment, etc., of Sexual Crimes, the Employment Security Act, are subject to exemption from the notification obligation. Also, the Article 92-2(3) of the Enforcement Decree of the Immigration Control Act stipulates that a public official may be exempt from the notification obligation even when he/she finds a foreigner without legitimate sojourn, if the Minister of Justice deems it a higher priority to provide the foreigner with a remedy when the public official is carrying out affairs prescribed by the Minister of Justice, such as aiding victims of crimes and remedying human rights violations.</p>	
	Non-prosecution of victims for unlawful acts that they would have been forced to carry out		
	Cooperation with other Member States, international / regional organizations or NGOs		
	Promotional activities		
	Special initiatives/Progress		
CHALLENGES IN REALIZING MEASURES TARGETED BY THE PROTOCOL	According to the social partners	Employers’ organizations	
		Workers’ organizations	
	According to the Government	<p>2016–2018 ARs: Forced or compulsory labour occurs mainly among the socially disadvantaged, such as people with intellectual disabilities, the old and the infirm, and the homeless, so there can often be some difficulties in remedying forced labour based on reports by the victims. The Government is making efforts to prevent victims of forced labour by identifying and inspecting workplaces likely to use forced labour. Such preventive efforts need to be expanded.</p>	

<p>TECHNICAL COOPERATION NEEDS</p>	<p>Request</p>	<p>2016–2018 ARs: The Government does not require ILO technical assistance.</p>
	<p>Offer</p>	