

**NORTH KOREAN FORCED LABOUR IN THE EU, THE POLISH CASE:  
HOW THE SUPPLY OF A CAPTIVE DPRK WORKFORCE FITS OUR DEMAND FOR CHEAP  
LABOUR**



Researching contemporary North Korea and North Koreans is fraught with danger. Not necessarily for the researchers themselves (although the DPRK regime has shown not to be above threats and intimidation aimed at academics), but also and primarily for North Koreans themselves. It does not take a great feat of imagination to picture what could happen to anyone perceived in Pyongyang to have fallen foul of the regime. Or to just be expendable. These considerations informed our protection protocols, but have not dissuaded us from doing the research in the first place. Our prime reason for undertaking this research was the realization that the sudden increase in DPRK

overseas forced labour would continue, given the low risks and high profits involved for the DPRK. This victimizes a growing number of people and secures abundant sources of hard currency for a state that in terms of human rights violations was considered in 2014 to be 'without parallel' by the United Nations Commission of Inquiry on Human Rights in the DPRK.

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## **FOREWORD**

**Tried** and tested as I thought I was after more than a quarter century of struggle in the labour movement and in politics, I have been shaken by the revelations brought forward in this report. An autocracy of the worst kind using its own citizens as a kind of slaves in an effort to raise money for weaponry and luxury items for the elite. Despite the difficulty of verifying the numbers, this excellent report shows that it is a problem of unprecedented magnitude. It concerns tens of thousands, perhaps over hundred thousand, North Korean workers who are exploited in other countries to ensure the survival of a thoroughly rotten regime.

**This** in-depth report, prepared in astonishingly little time by a multidisciplinary team led by Leiden University's LeidenAsiaCentre, shed a cold light on what has long been hidden. Moreover, it shows that it does not just involve the usual suspects. Of course, most North Korean slaves are being deployed in "friendly" countries such as China and Russia; in itself shocking enough. However, it goes much further than that. Even in democratic countries, themselves signatories of all kinds of noble conventions and treaties, these practices occur. Even now North Koreans work in appalling conditions in the European Union itself while their meager remuneration flows directly into the coffers of Pyongyang.

**The** report tells about a North Korean man who, after having worked 12 hours a day, six days a week for years in a Polish shipyard, succumbed to his wounds in a Polish hospital. Burns covered over 95% of his body because his highly inflammable synthetic overalls – cheaper for the bosses – caught in a blaze when he was welding pipes without any supervision. This and the other stories and testimonies show clearly that not only European legislation, ILO conventions and universal human rights are structurally violated, but that these practices are above all essentially an attack on humanity itself.

**The** full story must be revealed. The report shows that many more – also other European countries – are involved in this structural exploitation. Even Dutch companies have, through maintenance contracts, been involved. Some of these companies have even received European funds, which means that the EU is indirectly funding the tyranny of Kim Jong-un. We must put an end to this.

I am working hard in the European Parliament to achieve this. The European Commission and national governments must be forced into action. Nevertheless, that will not be enough; the problem is much bigger than Europa alone. It is spread all over the world. We cannot solve it as long as no information is above the table. Therefore, I would encourage policymakers to continue to support research such as to the “Slaves to the System” project, enabling them to continue uncovering this open wound in our world.



**Agnes Jongerius**

*Member of the European Parliament for the Netherlands*

*Vice-chair of the Committee on Employment and Social Affairs*

## INTRODUCTORY REMARKS

**The** 2016 Global Slavery Index, released in early June, focused a bright light on North Korea. I am a co-author of the Global Slavery Index and after several years of stating that we simply



could not get enough information to report on North Korea, we finally pulled out all the stops and worked hard to develop a clear idea of the state of modern,

state-sponsored slavery in that country. The results surprised even our hardened research team. Applying our very conservative statistical extrapolation techniques it soon became clear that North Korea, if our estimates were correct, had the highest prevalence of slavery of any country in the world.

**For** our very respected colleagues at the LeidenAsiaCentre, this confirmed what they already knew and had helped us to understand – that hundreds of thousands of North Koreans are exploited, trafficked, enslaved, and abused systematically and routinely by the government. Some are sold abroad; some are forced, both in prisons and in “freedom” to work extensively and often brutally in the service of the state. It is a level of exploitation and enslavement that exceeds all other modern examples, and is reminiscent of the Congo under King Leopold in 1900, when millions there were enslaved and died in forced labour.

**It** is hard to penetrate the dark and closed state of North Korea, and for many in the developed world, it is a country that is easy to ignore. But as a seat of unalloyed and extensive violations of human rights, we cannot allow its mask to conceal its crimes. *Slaves to the System* is a crucial tool in ripping away that mask, and for that all who value human life and rights are grateful.

**Kevin Bales**

Professor of Contemporary Slavery, University of Nottingham

Co-Author, Global Slavery Index



## **PREFACE**

**Writing** a report on a – politically – sensitive topic related to North Korea, one faces challenges that in some ways are very different from other fields of research (and very similar in yet other ways). Although every research project on forced labour or human rights has its own characteristics and pitfalls, North Korea is yet another category.

**First**, there is the difficulty of obtaining information. Although often wildly exaggerated in the press, it is more difficult than in most other countries to secure data from North Korea, to hold interviews, or to access the media. There are no public debates or discourses in North Korea researchers may refer to and it is a state that lacks the sustained critical gaze of opposition parties. These are the very ingredients needed to approach sensitive topics such as overseas forced labour, but they are not (or hardly) available to a researcher working on North Korea. This often leads to North Korea not being included in more globally oriented large-scale research efforts, either because researchers have no sufficient hard evidence in terms of data, or because North Korea is seen as such an exotic rarity that it is seen as a fundamental category on its own.

**We** started our project on North Korean overseas forced labour trying to put - the very urgent need for - research on North Korea in a different perspective. There are two advantages that enabled us to do so and gave us the confidence that we would be able to contribute to the debate. First, since we focus on the EU, for most data and information we would not be dependent on anecdotal bits and pieces of information seeping out of the DPRK. We were able

to obtain the information we needed in the countries where the DPRK workers were placed; from the local authorities, the local media, locally conducted interviews et cetera. Second, the discourses on labour rights violations (even if they may be uncomfortably close to human rights violations) tend to be less politicised than those on human rights violations.

**Because** of the specific characteristics of our research, we found added value in tackling this issue by combining forces with specialists on the DPRK, on (EU and international) labour law and on human rights. The composition of a multidisciplinary research team has made it possible to highlight and to understand issues from different angles. Specific knowledge on different fields of (academic and other) specialization has proven to be particularly instructive in the in-depth analyses, while it also allowed us to get a broader perspective on the issues involved. The multidisciplinary character of the professional backgrounds of the team members – a motley crew of academics, lawyers, journalists, policymakers, and (retired) civil servants – inevitably led to research methods and findings that are not easily captured in a uniform format. Although we agree on the fundamental issues, we all have different voices and these voices are heard in this report. Even when they do not fully agree with one another. This plurality of opinions is something we find important, both academically and personally. Concretely, this means for example that some of the quoted excerpts from the testimonies are reproduced two or more times in the report. But each time in a different context and with different significance.

**We** hope this report will be of use both to specialists of a diverse range of professional backgrounds and to those who take a non-professional interest in the DPRK and forced labour issues. We also hope that this report will contribute to including the DPRK in research initiatives, legal actions, advocacy activities, and the like. The gap between area specialists and disciplinary specialists is particularly large with regard to DPRK-related research and if this report could contribute to building a bridge between the different fields, the practical challenges of working with a multi-disciplinary (and not to mention multi-national) team will have been more than worth it.

**In** this – what we consider to be – first stage of our project, the research team has mainly worked on gathering data (working permits, chamber of commerce files, financial reports, labour inspections reports, etc.), on conducting interviews, doing fieldwork, analysing data and putting it in the right framework. In gathering of data, Poland – unlike most other EU Member States - turned out to be the country that most helpfully offered data on visa and working permits, information on companies involved, and labour inspection reports. As far as we have been able to determine, it is also the EU Member State hosting the most DPRK workers,

but our research continues and we are certainly aware of the fact that we do not – yet? – possess all the facts. It is certainly not our intention to stop at Poland. The exploitative conditions under which DPRK workers have to work are not a Polish problem – this is an EU-wide problem. Indeed, it is a global issue.

**Because** of the likely risks that would involve interviewing DPRK workers in order to obtain information, the project team chose to not focus on these kinds of interviews, but to mostly rely on testimony from workers who had already fled the DPRK and on the data contained in Polish labour inspection reports and the like. Furthermore, the – often publically available – data on visa, working permits, financial constructions and employment mechanisms made such an approach not only possible, but also viable.

**It** should be noted that DPRK overseas forced labour is a global issue. Allegedly, forty mostly ILO countries host DPRK workers in situations that are not likely to be very different, if not explicitly worse, than the conditions that we found during the research for this project. Again, this report is but a first step towards creating a situation in which we understand the workings of and urgent need for DPRK overseas labour and in which DPRK workers can work in humane conditions.

**This** report is anything but exhaustive. We have chosen to focus on one country, and within that country on a select number of cases. This was dictated by resources more than anything. Even so, we have not been able to delve into those cases to the extent that we wished we could. The crucial relationship between DPRK forced labour in the EU and the sanctions imposed on North Korea by the UN and the EU, for example, is something we will look into in the future. The place of DPRK export labour in the global market, to mention another avenue waiting to be explored, is a topic deserving of in-depth scrutiny. And there is more we did not cover. But the essence of what we found is nonetheless clear. It is disconcerting and demands our immediate attention.

Remco Breuker (P.I.)

Imke van Gardingen (coordinator)



#### ACKNOWLEDGEMENTS

**The** authors would like to acknowledge the support of our colleagues at the LeidenAsiaCentre in making this report possible. The funding for the research project also came from LeidenAsiaCentre.

**Mr** Jang Jin-sung 장진성, who heads New Focus ([www.newfocus.co.kr](http://www.newfocus.co.kr)), has been invaluable in tracking down sources, introducing people and providing critical information and analysis of the kind that only a former member of the North Korean elite has the ability to. Mr Kim Hyeongsoo 김형수, a fellow exile from the DPRK, has also been very helpful by explaining the ins and outs of the North Korean system, in particular the workings of the Central Party organs that oversee foreign trade and foreign money flows.

**We** would also like to extend our gratitude to Mr Kim T'aesan 김태산 and Mr Lim Il 립일, both of whom gave us the benefit of their practical experiences within the North Korean overseas labour system. The same goes for the confidential witnesses, who for reasons of personal security need to remain unnamed. Our gratitude is not less, on the contrary.

**The** entire text of the report was read and corrected by Mr Ad van Heeswijk, who was only given the shortest possible time for doing so. That he nonetheless did proofread this report is something for which we feel very grateful.

**We** gladly acknowledge these debts of gratitude.



## INTRODUCTION

In 2014, a welder at a Polish shipyard died in a horrible accident. According to the Polish Labour Inspectorate, the safety measures in place were not sufficient to provide even a modicum of safety to the welder. He was wearing flammable clothing provided to him by Armex, the company that employed him. Armex is a Polish company that is tied into a complex structure of companies that are co-owned by Polish and North Koreans representing the Democratic People's Republic of Korea (DPRK) and provide Polish companies with North Korean labourers. The welder who died, Chŏn Kyŏngsu 전경수 was a DPRK national, working 12-hour workdays (excluding overtime), 6 days per week. Not allowed to go anywhere in Poland except for work and home, not receiving proper compensation for his work (just his living expenses), forced to participate in ideological sessions worshipping an absolute god-like leader in his spare time, not having received a labour contract, and not in possession of his own passport, Chŏn was a victim of forced labour. A special kind of forced labour at that, one that is ideologically enforced and shaped, exported across borders and instigated and executed by the state.

**Forced** labour outside the DPRK is a reflection of what goes on inside the country. Forced adherence to its monolithic leadership system is the all-encompassing characteristic of the DPRK system. Both have long been thought to take place mainly if not exclusively inside North Korea. Recently, it has become clear that the DPRK has been exporting its labourers to over 40 different countries. The inevitable concomitant realization, that if the country's labourers are exported, its monolithic supreme leadership system (the Suryŏng system 수령체제

in Korean) must necessarily also be exported, has strangely enough never been articulated.<sup>1</sup> This concept is not only important in understanding how forced DPRK labourers live their lives in significant repression, but also as an avenue towards understanding the DPRK system and why it is so successful. Understanding DPRK forced overseas labour is all the more important because the UN Commission of Inquiry (COI) on Human Rights in the DPRK, due to constraints on time and resources, was not in a position to treat it in its landmark report of 2014.<sup>2</sup>

A more recent UN report notes that over 50,000 citizens from the Democratic People's Republic of Korea are working abroad.<sup>3</sup> HRNK just published a report in which it concluded that, 'North Korea's mineral supply chain is tainted by the use of forced and slave labor'.<sup>4</sup> In a blog posted on June 22, 2016, Greg Scarlatoiu from HRNK wrote about a disconcerting discovery he had made: that North Korean sailors have been dispatched to work Uruguayan fishing ships, presumably under less than ideal working conditions.<sup>5</sup> The DPRK regime systematically uses overseas labour to earn much needed hard foreign currency, and according to the UN Special Rapporteur on the situation of human rights in the DPRK, it earns reportedly between \$1.2 billion USD and \$2.3 billion USD a year from the workers' salaries. The problem with such an estimate is that it is not based on hard data and empirical evidence, but primarily on witness testimonies and information reinforced and exaggerated in the echo chamber of the international media.<sup>6</sup> Scholars and journalists in particular have sought out North Korean defectors as key informants to gather information regarding the practice of the DPRK's overseas labour. These testimonies need to be complemented by independently verifiable facts, filtering out personal bias, the time lag between testimony and the actual violations experienced. Questioning these numbers and investigating charges of exaggerations do, incidentally, not mean that real estimates will be lower. In fact, when factoring in statistics from the Chinese

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<sup>1</sup> To our knowledge, North Korean overseas labour has not been looked at in this light before until the working paper this project published early 2016: <https://slavestothsystem.files.wordpress.com/2016/02/a-new-lease-on-life-def.pdf>.

<sup>2</sup> See the report here: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N15/273/17/PDF/N1527317.pdf?OpenElement>.

<sup>3</sup> Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, UN Doc. A/70/362 (2015).

<sup>4</sup> The full report, by Kim Kwang-Jin, may be downloaded here: [http://www.hrnk.org/uploads/pdfs/KKJ\\_Gulag\\_INC\\_FinalFinal\\_WEB.pdf](http://www.hrnk.org/uploads/pdfs/KKJ_Gulag_INC_FinalFinal_WEB.pdf).

<sup>5</sup> 'The North Korean regime is dispatching sailors and fishermen overseas through Montevideo, Uruguay, one of South America's major ports. This is the first time that the presence of dispatched North Korean workers is confirmed in South America. This is also the first time propaganda and indoctrination material carried by North Korean sailors officially dispatched overseas is examined by a human rights organization. HRNK has also received information on a similar operation being conducted in Peru, but has so far been unable to verify such reports.'  
<http://www.hrnkinsider.org/2016/06/the-rime-of-juche-mariner-north-korean.html>.

<sup>6</sup> In which, for example, the yearly income from DPRK overseas labour was multiplied with the factor 10 when translating from Korean into English (this, incidentally, is an often-made mistake when translating numbers from Korean into English or vice versa).



Bureau of Tourism, it seems that for example in China much larger numbers of North Korean workers than is habitually discussed have been receiving temporary working permits.<sup>7</sup>

**This** project has gathered information through witness testimonies, field research in Poland (the test case for this preliminary report), and archival research into company structures, issued visas, bilateral treaties and the like. In addition, it is important to note that this report is also the product of information gathered from official government data and official agencies, including the Polish National Labour Inspectorate. With these official data, this study has identified a number of crucial facts, inter alia, that the DPRK is working closely with local recruiting agencies to allocate the workers.

**This** research project uses testimonies of DPRK labourers in and outside of the EU. Two of those workers can be identified. For their own security and due to consent considerations, the other workers remain anonymous. This includes (but is not limited to) name, gender, age, circumstances in North Korea, place of work, and period of work. Defector testimonies are crucial in understanding DPRK forced labour abroad.

**The** project also uses the research of civil society organizations on this issue, both on forced labour in Europe and in China, Russia, the Middle East and Africa.<sup>8</sup> The recent paper published by the Database Center for North Korean Human Rights (NKDB) has been particularly valuable in helping our research getting started.

**One** of the defining and distinguishing characteristics of DPRK overseas forced labour is its hybrid nature, the overlap it presents between normal, legitimate practices and those usually associated with undocumented, unobserved illegal labour. In terms of sources this means that the labour situation of the DPRK workers in the EU is unusually well-documented. There are among other things work permits, government statistics, visas, labour inspection reports, and contracts between companies. Even if these documents portray a faked reality rather than the lived reality of the workers, they are invaluable for a structural understanding of this phenomenon.

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<sup>7</sup> Kim Sökchin arrived at a much higher estimate using Chinese statistics. See Kim Sökchin 김석진, *Pukhan oehwaböri ch'use-wa ch'önmang* 북한 외화벌이 추세와 전망 (Seoul: KINU T'ongil nach'imban 통일나침반 15-04, 2015).

<sup>8</sup> See among others the following studies: Yoon Yeo-sang and Lee Seung-ju, *Human Rights and North Korea's Overseas Laborers: Dilemmas and Policy Challenges*, the [Database Center for North Korean Human Rights](#) (Seoul: NKDB, 2015); International Network for the Human Rights of North Korean Overseas Labour, 'The conditions of North Korean overseas labour' (2012); Statement of Greg Scarlatoiu, Executive Director, Committee for Human Rights in North Korea at the hearing of the Tom Lantos Human Rights Commission entitled 'North Korea's Forced Labor Enterprise: A State-Sponsored Marketplace in Human Trafficking', April 29, 2015; NKDB, *Pukhan haeoe nodongja kukkabyöl koyong kiöp risüt'ü* (Seoul: NKDB, 2015).

**With** these documents it becomes possible, first, to gather accurate hard data and evidence on the situation of DPRK workers in the EU; second, to identify and analyse accountability regarding the employers involved, the hosting countries, and the sending state; and third, to gain a systemic understanding of the importance of DPRK overseas forced labour for the DPRK system.

#### EXPORTING LABOUR

**The** high number of DPRK workers abroad suggests that the state has created a new and rather sophisticated instrument in the ongoing struggle to keep its economy from collapsing: leasing its workers to the highest bidder, whether this be China, Qatar, Poland or the Netherlands.<sup>9</sup> Paradoxically, perhaps, it is precisely the fact that these human rights violations and other abuses perpetrated under the flag of the DPRK are being committed overseas, that create an opportunity for effective redressing, with the chain liability reaching all the way to Pyongyang. There is an overlap between the characteristics of the DPRK system and labour exploitation in the EU, creating an unexpected synergy.

**A** brief word on terminology is due. The DPRK uses a hybrid system that transcends existing categories, in that it combines the practices of the state with those of private agents. Still, it is useful to briefly refer to the standard definitions used when discussing forced labour. The International Labour Organization (ILO) has defined forced labourers as ‘persons meeting the definition under Convention No. 29: men and women, boys and girls were considered as being in forced labour whenever the work was involuntary as a result of force, fraud or deception, and a penalty or threat of a penalty was used to coerce them or their parents in the case of children below the age of 18.’ And according to the definition under Convention No. 29 forced labour amounts to: ‘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.’<sup>10</sup>

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<sup>9</sup> This is the list of the countries that are usually mentioned as hosting North Korean workers (as recent as 2013): Algeria, Angola, China, Equatorial Guinea, Ethiopia, Kuwait, Libya, Malaysia, Mongolia, Myanmar, Nigeria, Oman, Poland, Qatar, Russia, and the UAE. See Shin Chang-hoon & Go Myong-Hyun, *Beyond The UN COI Report on Human Rights in DPRK* (The Asan Institute for Policy Studies: Seoul, 2014), p. 21. To this list should be added the Czech Republic, Malta, and provisionally the Netherlands.

<sup>10</sup> See International Labour Office, *Profits and poverty*, p. 4. Also see the typology offered in International Labour Office, *Profits and poverty*, p. 14. The ILO distinguished between forced labour imposed by the state; imposed by private agents for sexual exploitation; imposed by private agents for labour exploitation.

**There** is a large discrepancy between the numbers of workers sent to China, Russia and Africa on the one hand and the much lower number of workers sent to the EU.<sup>11</sup> In terms of individual earnings the situation is inverted, which is why the EU, despite the relatively lower number of workers sent there, is nonetheless financially important.<sup>12</sup>

**Our** investigation has established the hybrid nature of the DPRK system, in which the state is the prime mover, instigating projects and gathering the workers.<sup>13</sup> Prospective workers are mobilized and vetted by the state, while they wait, sometimes for over a year, at one of the training institutes for workers to be sent abroad.<sup>14</sup> The most prominent name that emerged as a co-owner of the Polish-DPRK joint ventures implicated in employing and hiring out DPRK

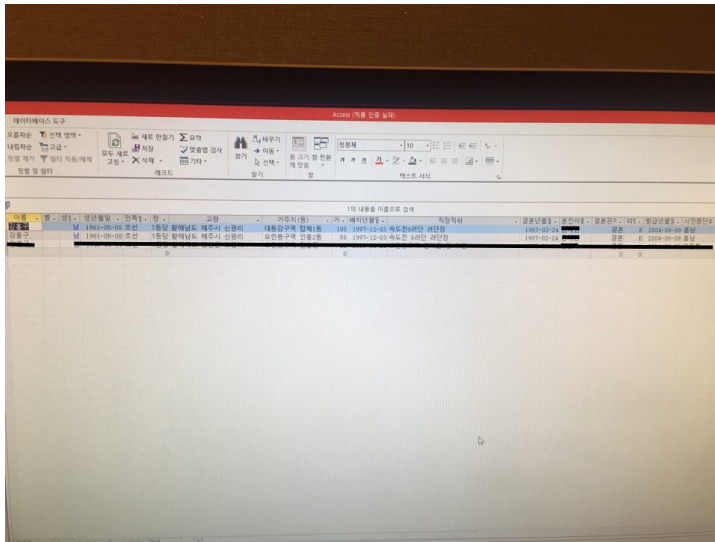
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<sup>11</sup> The number of DPRK labourers in China runs into the tens of thousands if not more. Two Chinese government reports ([http://paper.people.com.cn/zgjzk/html/2012-07/23/content\\_1088147.htm?div=-1](http://paper.people.com.cn/zgjzk/html/2012-07/23/content_1088147.htm?div=-1); <http://finance.sina.com.cn/china/20120706/230812501781.shtml>) state that according to the *Chosun Ilbo* (a newspaper from South Korea), Chinese government and NK government reached an agreement that 120,000 NK workers would be sent to China in 2013, but this news was not confirmed by Chinese authorities. The average salary of NK workers in China is about 1500RMB (around 250USD) per month, 60% of which shall be paid directly to the State. Although unconfirmed by the Chinese government, 2010-2015 statistics from the Chinese National Bureau of Tourism seem to confirm this trend. ([http://www.cnta.com/zwgk/lysj/201510/t20151026\\_750101.shtml](http://www.cnta.com/zwgk/lysj/201510/t20151026_750101.shtml); <http://www.cnta.com/zwgk/lysj/201507/t20150717742201.shtml>; [http://www.cnta.com/zwgk/lysj/201506/t20150627\\_717880.shtml](http://www.cnta.com/zwgk/lysj/201506/t20150627_717880.shtml); [http://www.cnta.com/zwgk/lysj/201506/t20150610\\_18859.shtml](http://www.cnta.com/zwgk/lysj/201506/t20150610_18859.shtml); [http://www.cnta.com/zwgk/lysj/201506/t20150610\\_18821.shtml](http://www.cnta.com/zwgk/lysj/201506/t20150610_18821.shtml); [http://www.cnta.com/zwgk/lysj/201506/t20150610\\_18785.shtml](http://www.cnta.com/zwgk/lysj/201506/t20150610_18785.shtml); [http://www.cnta.com/zwgk/lysj/201506/t20150610\\_18704.shtml](http://www.cnta.com/zwgk/lysj/201506/t20150610_18704.shtml); [http://www.cnta.com/zwgk/lysj/201506/t20150610\\_18628.shtml](http://www.cnta.com/zwgk/lysj/201506/t20150610_18628.shtml)). Finally, according to the Chinese *Phoenix Weekly* (<http://www.chuguo78.com/laowu/88917.html>) a government officer stated that the government of Jilin Province had agreed to receive 20,000 workers from NK and that the dormitory for the DPRK workers had been built in the Tumen North Korean industrial zone.

<sup>12</sup> One might wonder whether the consistent DPRK efforts to post workers in the EU also have a strategic component to them. Perhaps it is seen as important in Pyongyang to keep the ties with the EU as close as possible, especially when diplomatically (directly with Brussels) this is not easy. The very recent death of Kang Sökchu will only strengthen this. His personal ties to EU diplomats seem to have been crucial in DPRK-EU relations.

<sup>13</sup> And even if DPRK citizens volunteer for overseas labour assignments, domestic circumstances (which include widespread hunger and institutionalized repression by the state) imply that a free choice cannot be said to have been made. 'According to the ILO's survey guidelines, an individual is considered to be working in forced labour if he or she was not freely recruited and faced some form of penalty at the time of recruitment, had to work and lives under duress and the menace of any penalty or cannot leave the employer because of the menace of a penalty.' International Labour Office, *Profits and poverty*, p. 30.

<sup>14</sup> The Pyongyang database, in the possession of North Korean defectors, shows that almost all workers were married (the most recent update was from 2004, so it is to be assumed all workers were in fact married by the late 2010s); most of them came from Pyongyang and over half were Party members. The Pyongyang database is written about here: [http://english.chosun.com/site/data/html\\_dir/2011/10/24/2011102401152.html](http://english.chosun.com/site/data/html_dir/2011/10/24/2011102401152.html). About 15% of the NK population is a party member, so this testifies to the fact that workers sent to Poland are well-established, well-connected DPRK citizens. According to witness testimonies, workers must be married, have two children and have a good relation with their spouse. This is actually investigated by the Party before they are sent abroad to minimize the risk of defection.



Picture: Screenshot of the Pyongyang Database's entry on Kang Honggu.

labourers is Kang Honggu.<sup>15</sup> In 2004, he was the Brigade Commander of the 8<sup>th</sup> Soktojön Brigade 속도전 려단, someone very high ranking in the regime and the Korean Workers' Party.<sup>16</sup>

**The** North Korean company instrumental in sending the workers abroad is state-run Rungrado 룡라도 무역회사,<sup>17</sup> which is the DPRK's version of a multinational, present all over the globe and also responsible for the training institutes where prospective labourers are vetted and prepared for their work abroad.<sup>18</sup> As is also apparent from witness testimonies,<sup>19</sup> it is the North Korean state that provides the rigid surveillance structure (including punishment for infringement of rules) and the ideological straightjacket that accompany the workers wherever they go. Party-life (생활총화), including self-criticism and mutual criticism sessions, ideological study sessions, and forced financial contributions in honour of the Supreme Leader, continues even outside the DPRK.<sup>20</sup> Ideology is not only used as a stick to beat workers with, but also as a carrot: the more one earns for the Party in foreign currency, the higher the honorary rank one

<sup>15</sup> Business Registry Documents Wonye Sp. z.o.o., document no. RP/563187/4/20160502111317, *National Court Registry*, 30/06/2015.

<sup>16</sup> At least, someone with the same birth year and the same name (which is not a very often seen name). This information also comes from the Pyongyang database.

<sup>17</sup> The website of the company can be found here: <http://www.dprktoday.com/index.php?type=42&no=590>.

<sup>18</sup> Lim Il, Skype, Leiden-Seoul, 22/03/2016.

<sup>19</sup> Kim T'aesan, Skype, Leiden-Seoul, 22/03/2016; Lim Il, Skype, Leiden-Seoul, 22/03/2016.

<sup>20</sup> See the testimonies in International Network for the Human Rights of North Korean Overseas Labor (INHL), *The conditions of North Korean overseas labor* (Seoul: INHL, 2012) and Saeme Kim and James Burt (EAHRNK), *The will of the state: 'We were not allowed to do other jobs beyond our own work... At 20:00 we had our mandatory education classes for an hour. Twice a week, we had our life-meetings. We were constantly given ideological education'*. Another one stated the following: 'I thought that I needed to obey their [DPRK officials] commands in order to come out alive. I did imagine what it would be like to escape and run, but if I got caught I would have been punished by death. So I tried to find an opportune moment to escape, but it never came.' (Kim & Burt, *The will of the state*, p. 36).

receives.<sup>21</sup> This hybrid nature makes DPRK forced overseas labour qualitatively different from other kinds of forced labour: many of the human rights transgressions noted in the UN COI report continue abroad, including on EU territory.

**In** a previous paper, we contended that:

[I]n the increasing use of this instrument [forced overseas labour] the DPRK state has successfully replicated its state ideology and practices and blended these to the demands of the international market, in effect temporarily exporting self-contained micro-versions of the DPRK surveillance and labour system to foreign environments. State control through repression and coercion within the group remain intact, as does the hierarchical structure ultimately leading to the monolithic supreme leader system. And, like in the DPRK, economic benefits derived from the labour go directly to the state, which then redistributes a small part of these to the workers, usually just enough to sustain a level of bare sustenance [...]

**It** should, incidentally, be noted here that the practice of not earning a salary directly but being compensated by the state or its representative (with no necessary relationship between the amount of work and the amount of earnings), or the absence of a formal contract between employer and employee, are not merely signs of labour exploitation when seen in a EU-context. By the same token, these are structural characteristics of the DPRK system. The Communist adagio ‘from each according to his ability, to each according to his needs’ has been transformed into a system in which there is no correspondence between work done and compensation received. Strictly speaking, in the same system there are no employers or employees, merely the state and its citizens, obviating the need for a specific employment contract. Thus, the export of the DPRK system overlaps with labour exploitation in the EU.

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<sup>21</sup> See <http://newfocusintl.com/exclusive-dprk-issues-guideline-for-foreign-currency-offerings/>.



#### **AN EMPIRICAL ANALYSIS OF THE SITUATION OF DPRK WORKERS ABROAD: THE POLISH CASE**

In 2014, a tragic accident at Crist Shipyards in Gdynia took the life of one North Korean worker. On August 29, Chŏn Kyŏngsu was assigned to a dry dock at the shipyard.<sup>22</sup> Eyewitnesses testified that he was welding pipelines inside a tank when a sudden flame ignited his clothes. The flames soon went all over his clothes and over his body. When he was transferred to a hospital later, he already had burns on over 95 percent of his body. Due to these severe burns he died on the following day. The local Polish Labour Inspectorate looked into the case and found a number of illegal practices by the employers. These included the lack of supervision of the worker; at the time of the accident he was working without the presence of a supervisor. Chŏn also was not wearing the necessary protective gear – the uniform provided by his employer Armex was made of flammable fabric, according to the local inspectorate.<sup>23</sup>

It is important to note that since 2010, the Polish National Labour Inspectorate has carried out over 20 inspections of companies that have employed or delegated workers from the DRPK. Notably, in the course of checks in 2013 at Crist Shipyard, the labour inspectorate found that 29 North Koreans were working at the shipyard illegally, because they were in fact employed by a local recruiting agency called Armex. Accordingly the workers did not have valid permits that allowed them to work for Crist. They had been lent on.<sup>24</sup> The Polish National

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<sup>22</sup> Chŏn, 42, had had been working for over 1 year and 7 months at the shipyard before the accident occurred.

<sup>23</sup> The Polish National Labour Inspectorate's inspection into Armex, 28 November 2014, case No. 03273-5303-K047-Pt/14.

<sup>24</sup> Armex SP. ZO.O. provides a number of Polish employers with North Korean workers. We have found evidence that Armex has strong business ties with the DPRK's Rungrado Trading Co. The Polish National Labour Inspectorate stated that

Labour Inspectorate admits that they have limited authority to regulate or monitor working and living conditions of DPRK workers.<sup>25</sup> Following the paper trail laid out by companies such as Armex, and without relying on further field investigations, the Polish National Labour Inspectorate concluded that the DPRK workers are self-employed and hence outside of the jurisdiction of the Polish National Labour Inspectorate. In a situation with evidently insufficient control mechanisms, local employers continue to hire North Korean workers who work under extremely exploitative conditions.

**Acquiring** a work permit for non-EU citizens is possible depending on the regulations of the country of origin of said citizens. Naturally, the process and the types of work permits vary per EU country, but in general, all non-EU citizens from countries that allow it should be able to gain a work permit.<sup>26</sup> The Schengen agreement allows all people with a traveling visa from a Schengen country to freely travel to another country in the Schengen area.<sup>27</sup> It does not permit them, however, to work in another Schengen area. A work permit is only valid in the country that issued it, and for the specific type of work and period it was issued for.<sup>28</sup>

**We** contacted all countries within the European Union for information regarding work permits, but gaining access to this information proved to be difficult. At the time of writing, we are still in contact with the Official Statistical Bureaus or the Ministries responsible for Labour in the respective countries of Germany, Ireland, Estonia, Croatia, Latvia, Lithuania and Spain. So far, we have yet to receive a reply from Cyprus, Greece, France and Bulgaria. Of all other countries within the EU, we have data on the work permits distributed to North Koreans. One problem with this data is that every country stores its information in a different way, meaning that, for instance, some countries have data over the past ten years, while others have data for the past two or three years. Another problem is that some countries either do not distinguish between North and South Koreans, or sometimes mix them up, as could be seen in the *VICE Cash for Kim* documentary. However, the data does call for more in-depth research into countries with a relatively high number of North Korean workers. For instance, in Austria in

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this act constitutes a violation of Article 120 of the Act of 20th April 2004 regulating employment promotion and labour market institutions.

<sup>25</sup> Interview with the Chief Labour Inspectorate in Poland on 18/04/2016.

<sup>26</sup> European Commission, 'Employment, Social Affairs and Inclusion: Non-EU Nationals,' *European Commission Official Website*. <http://ec.europa.eu/social/main.jsp?catId=470>.

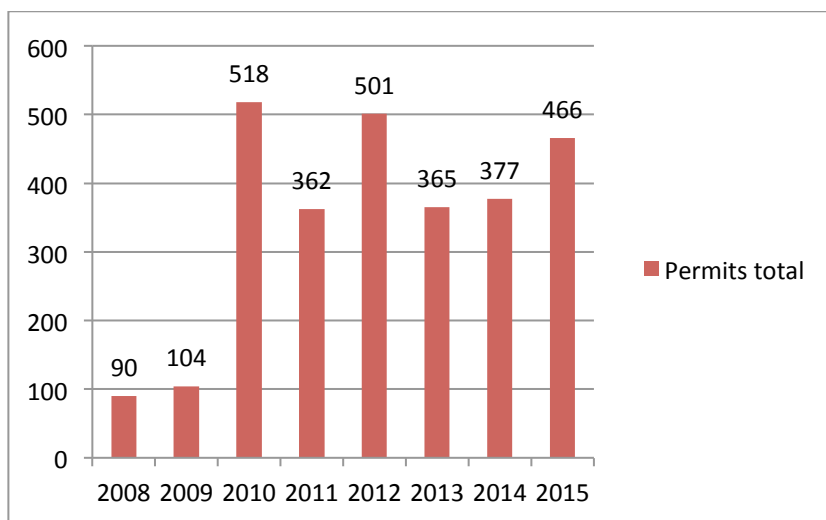
<sup>27</sup> 'Travel Documents for Non-EU Nationals.' *Europa.eu: Your Europe*, per 27/10/2014 at [http://europa.eu/youreurope/citizens/travel/entry-exit/non-eu-nationals/index\\_en.htm](http://europa.eu/youreurope/citizens/travel/entry-exit/non-eu-nationals/index_en.htm).

<sup>28</sup> 'Work in Poland: Work Permit' *Official Migrant Information Website Polish Government*, [http://www.migrant.info.pl/Work\\_permit.html](http://www.migrant.info.pl/Work_permit.html).



2014 there were 104 North Korean workers, and in 2015 there were 111 North Korean workers.<sup>29</sup>

**Poland** issues five different types of working permits for non-EU citizens, categorized from A to E. Employees are not able to apply for a work permit themselves; this has to be done by their employer. A work permit in Poland is issued for a fixed term, but never for longer than three years at a time. It can then be extended up to two years by the employer, provided that this is filed no less than 30 days before the expiry of the previous work permit.<sup>30</sup> There are some exceptions, which can be found on the official website of the Polish Ministry of Foreign Affairs. Additionally, after 2009 Poland discontinued providing information concerning the travel route of incoming persons. In 2008 and 2009, North Koreans were coming into Poland from various third countries. According to the information provided by the Polish government, in 2008 these were mostly North and South Korea. In 2009 however, the range of countries broadened significantly to include Austria, Germany, and Hungary.<sup>31</sup> Over the last couple of years, the amount of work permits issued to North Korean workers has increased to around 500 per year (see graph 1) with the amount accumulating to a total of 2783 work permits granted between 2008 and 2015.



Graph 1<sup>32</sup>

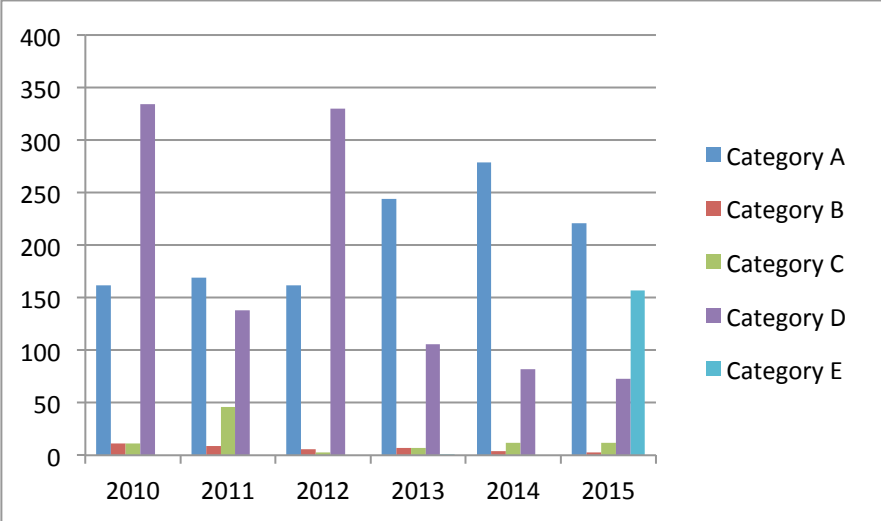
<sup>29</sup> Information distributed by the Statistics Department of the Hauptverband der Österreichischen Sozialversicherungsträger.

<sup>30</sup> Ibid.

<sup>31</sup> The Employment of Foreigners in Poland Statistical Data 2008-2014, *The Ministry of Labour, Family, and Social Policy*, accessed 11 April 2016. (available at <http://psz.praca.gov.pl/rynek-pracy/statystyki-i-analizy/zatrudnianie-cudzoziemcow-w-polsce>).

<sup>32</sup> Ibid.

The country issues five different types of work permits for non-EU citizens, categorized from A to E. The top three categories issued to North Korean workers are Type A, Type D and Type E (See graph 2). The five types of work permits are as follows:



Graph 2<sup>33</sup>

**Work permit type A:** [a foreign employee] performs work in the Republic of Poland pursuant to a contract with an employer whose registered office, place of residence, branch, facility or other form of business is located in the Republic of Poland.

**Work permit type D:** [a foreign employee] performs work for a foreign employer without a branch, facility or other form of business in the Republic of Poland and is delegated to the Republic of Poland for the purpose of execution of a service of temporary and casual nature (export service).

**Work permit type E:** [a foreign employee] performs work for a foreign employer and is delegated to the Republic of Poland for a period exceeding 3 months within the next 6 months for the purpose other than that indicated in [type A to D].<sup>34</sup>

Since the publication of our preliminary report: ‘North Korea Forced Labour in the EU, the Polish Case: How the Supply of a Captive DPRK Workforce fits our Demand for Cheap Labour’ several media outlets have noted that since 2016, the Polish government has stopped issuing new work permits to North Korean nationals, nor does it extend any of the work permits currently valid. No coherent reason has been given as to why the Polish government has suspended work permits for North Korean nationals. Some media state that this decision was

<sup>33</sup> Ibid.

<sup>34</sup> PolandVisa, ‘Poland Immigration: Work Permit, Residence Permit’ *PolandVisa: Expertise through experience*. [http://www.polandvisa.pl/poland\\_immigration.html](http://www.polandvisa.pl/poland_immigration.html).

made after the North Korean nuclear test in January, or because of the financial scheme of North Korean labourers sending their salaries to Pyongyang, but there is no conclusive evidence on this.<sup>35</sup>

**We** would like to emphasize that hiring North Korean nationals in possession of a valid work permit is perfectly legal. In an e-mail to VOA, Voice of America, the Polish Ministry of Foreign Affairs stated that:

As the member state of the EU, we are convinced that the primary duty of the international community is to promote this legitimate concern. DPRK's citizens working in Poland, in shipyard or any other workplace, are subject to the Polish law and are not discriminated in any way.<sup>36</sup>

**There** are two issues regarding this statement. The first one is that if North Korean nationals are subject to Polish law and are not discriminated, there should be no common cases of unpaid overwork, wages below minimum standard, etc. Simultaneously, this would render the suspension of North Korean work permits unnecessary, seeing that all Polish laws are adhered to and that the presence of DPRK workers in an EU Member State is not a problem in itself.

**On** its official website, MOFA stated that 'The M[o]FA takes the issue of respecting the rights of North Koreans working in Poland very seriously [...] At the request of M[o]FA, the actual working conditions of North Korean workers in Poland are inspected and monitored by the relevant government institutions including the State Labour Inspectorate and the Border Guard.'<sup>37</sup> These statements by the Polish MOFA contradict their actions. While it is a sound strategy to include the State Labour Inspectorate and the Border Guard in tougher inspections into the working conditions for North Korean labourers, this strategy is in need of rethinking while the underlying scheme of suspending work permits is in place. Seeing that a work permit can only be issued for a maximum of three years at a time, it will take a maximum of three years at this point for all North Korean workers to have been deported from Poland.

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<sup>35</sup>For instance KBS and Korea JoongAng Daily, accessible at:

[http://world.kbs.co.kr/english/news/news\\_in\\_detail.htm?No=119531](http://world.kbs.co.kr/english/news/news_in_detail.htm?No=119531) and

<http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3019732>.

<sup>36</sup> Sungwon, Baik. 'Exclusive: Poland suspends issuing Visas for North Korean Workers' *Voice of America*, 7/6/2016.

<http://www.voanews.com/content/poland-suspends-visas-north-korean-workers/3366399.html>.

<sup>37</sup>Sobczak, Rafał. 'Correction of untrue information found in the article 'Poland under construction – thanks to slaves from North Korea. Maybe they are working day and night building your new apartment?'' *Poland MOFA Press Office*. 12/4/2016.

[http://www.ms.gov.pl/en/news/they\\_wrote\\_about\\_us/correction\\_of\\_untrue\\_information\\_found\\_in\\_the\\_article\\_poland\\_under\\_construction\\_thanks\\_to\\_slaves\\_from\\_north\\_korea\\_maybe\\_they\\_are\\_working\\_day\\_and\\_night\\_building\\_your\\_new\\_apartment\\_\\_](http://www.ms.gov.pl/en/news/they_wrote_about_us/correction_of_untrue_information_found_in_the_article_poland_under_construction_thanks_to_slaves_from_north_korea_maybe_they_are_working_day_and_night_building_your_new_apartment__).

**This** immediate response is, in our opinion, not a solution to the issues. North Korean individuals have the right to be employed by foreign companies, given that the correct documents are provided. The Polish government, as does any other EU Member State and the EU as a whole, has an obligation to ensure that all their workers, migrants or not, are able to work and live in an environment that protects them legally and physically from exploitation. Suspending work permits does not solve the issue, which is one of inefficient inspections, response or neglect; it just eliminates one symptom. The DPRK workers deserve assistance, not deportation.

#### CHARACTERISTICS OF DPRK TRADING COMPANIES

**A** major factor in understanding the motives and possible effects of the DPRK's overseas labour, lies in the function of its trading companies. Perhaps one distinguishing feature is its strong control over foreign trade and the domestic market. It is true to a certain extent that the control has weakened somewhat following the failure of the 2009 currency reforms that damaged the already struggling economy. Nonetheless, the flow of money is still severely constrained and foreign exchanges in particular are strictly regulated inside the country.

**The** North Korean academic journal *Economic Research* (경제연구) has emphasised the importance of the state's control over foreign exchanges.<sup>38</sup> In the second issue of 2015, an article titled 'The Essence of the State's control of foreign exchanges (Korean)' asserts that 'the competency of the State to control and manage foreign exchanges is a key principle of a socialist economy.' The article further stated that 'control means that the distribution, conservation and functions of foreign hard currency are all channelled through the central government.'

**It** is worth noting that the DPRK has a number of trading companies that are operated directly by departments within the main political party, the Workers' Party of Korea (WPK).<sup>39</sup> A prime example is Korea Rungrado Trading Company that is run by the Pyongyang City WPK Committee (see diagram 1). Other companies managed by the WPK also include Korea Daesong Trading Company, the biggest trading company in the country. Notably, Daesong

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<sup>38</sup> *The essence of State control on foreign exchange (Korean), Economic Research, 2015 Issue 2.* Accessed from the KMP Database on North Korea, available at : <http://www.dprkmedia.com/>

<sup>39</sup> *Route to the Democratic People's Republic of Korea For European Companies: A Guidebook for European Investors in DPRK*, Asia-Invest EuropeAid Co-operation Office, Brussels, (2006), CD-ROM, available at UNCITRAL Law Library in Vienna. This Guidebook is part of a series of guides that are funded by the European Union under the Asia-Invest initiative. The Asia-Invest Program was launched in 1997, funded by the European Commission with an aim to promote business co-operation between the EU member States and Asia.

Group and its affiliated companies, including Daesong bank, are on the black lists issued by the U.S. and the European Union.<sup>40</sup> Rungrado produces a wide range of products such as food, construction materials, mining materials and light industry products. Reportedly, Rungrado has over 10,000 employees in branches/partners in various countries, including Russia, China, Japan and also Poland. It is worth noting that the company is currently on the list of 30 entities that are sanctioned by the South Korean government.

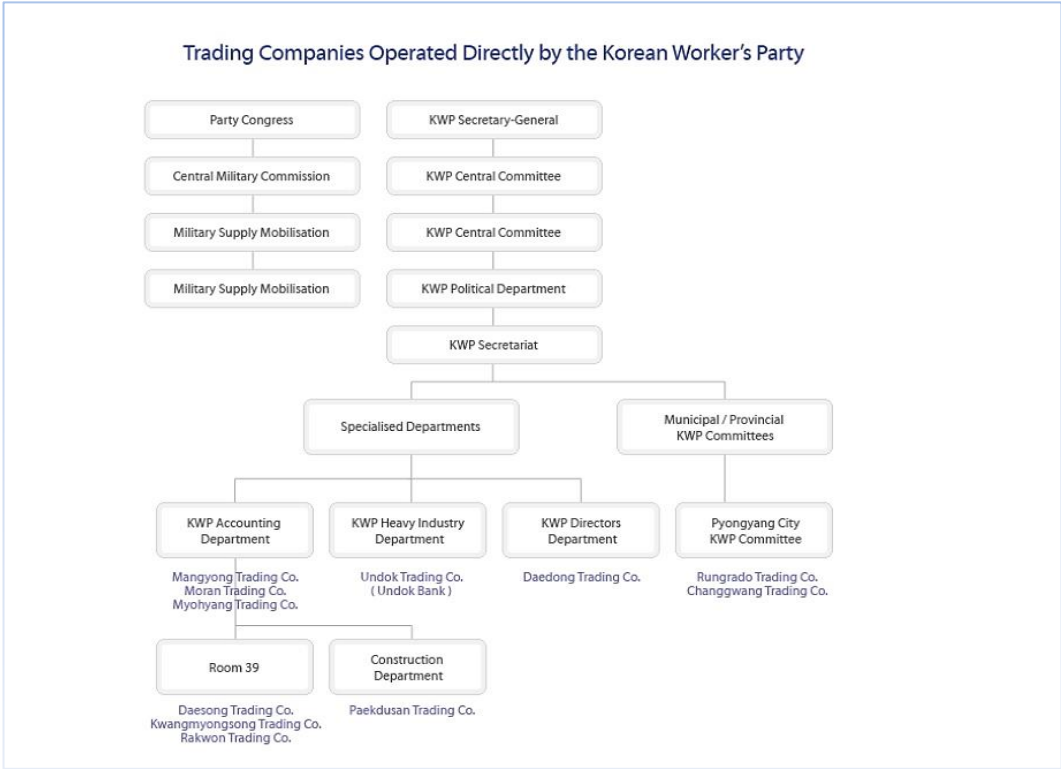


Diagram 1 (source: Route to DPRK)

RUNGRADO’S TIES WITH POLISH COMPANIES

**Rungrado’s** role came to light after a series of inspections on construction sites and shipyards in Poland. In 2013, the Polish National Labour Inspectorate found that Rungrado, without a branch office, provided workers to carry out exports services, i.e. temporary and occasional work, for various local entities. Documents show that Rungrado delegated 59 workers to a local entity called JP Construct, that then allocated them to one of the construction sites in Warsaw.

<sup>40</sup> In 2010, the U.S. Treasury Department designated Daesong Bank and Daesong General Trading Corporation pursuant to Executive Order 13551 for being owned or controlled by Office 39 of the Korean Workers' Party. See Executive Order 13551 available at <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/Executive%20Order%2013551.pdf>. See also the EU Council Decision 2013/183/CFSP of 22 April 2013 concerning restrictive measures against the DPRK available <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D0183&from=EN>

**Our** research has found that North Korean workers are building a block of luxury apartments for Atal Construction based in Warsaw. The Polish National Labour Inspectorate documentation confirmed that Rungrado also delegated 18 North Korean workers for Monolit SP, an importing company of women's clothes based in Cracow. Another noticeable intermediary linked to Rungrado is Armex Elektro.<sup>41</sup> The company based in Gdansk provides electrical, mechanical and welding services for shipbuilding and offshore industries. Armex has also built strong business ties with Rungrado. The brokerage agreement between Rungrado and Armex stipulates that the former will provide 29 workers to the latter for projects at Crist Shipyard in Gdynia.<sup>42</sup> According to the agreement, the workers are paid at the fixed hourly rate of 28 PLN (around 6.30 EURO). In addition, Cecylia Kowalska, the chairperson of Armex, also heads another company called Alson, that hires North Koreans and then allocates them to Nauta Shipyard in Gdansk. Our research team has observed that there are currently some 20 North Korean workers working at Nauta's.

It appears that Armex has a long business history with the DPRK regime. It is worth noting that a collection of halls, that house gifts presented to former leaders Kim Il Sung and Kim Jong Il has a gift presented by Kowalska (see picture 2 below). Furthermore, the 66-year-old chairperson has a company called Wonye, in which she is jointly registered with two North Koreans.



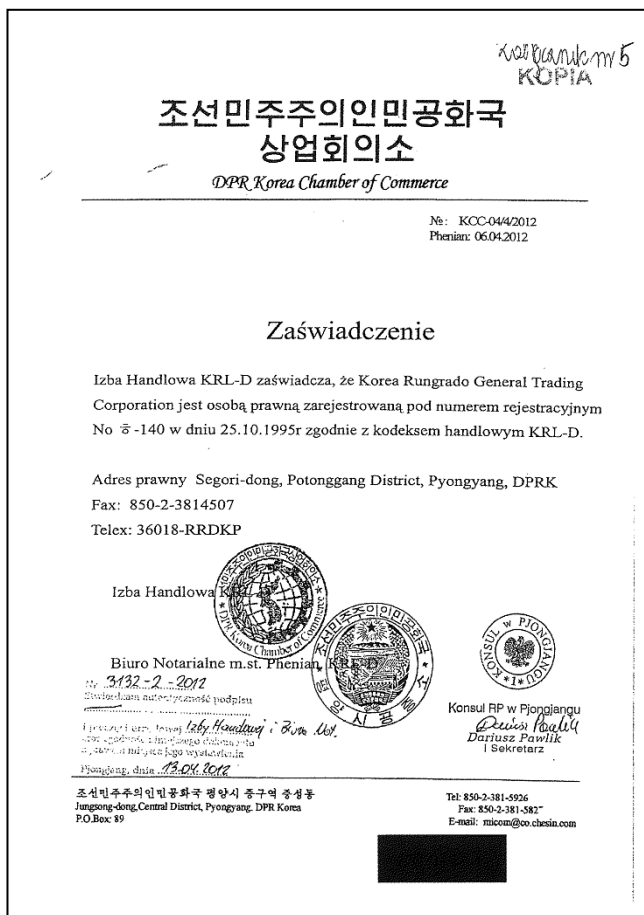
Picture 1. Image obtained from a video clip *the International Friendship Exhibition in Mt Myohyang*<sup>43</sup>

<sup>41</sup> For more information about Armex, visit <http://aramex.pl>.

<sup>42</sup> The agreement between Rungrado and Armex took effect on July 1, 2012, see Appendix 1.

<sup>43</sup> Image obtained from the documentary about the International Friendship Exhibition in Mt Myohyang, available at <https://www.youtube.com/watch?v=S2heBK6r9qE>.

We located the agreement between Armex and Rungrado, which provides for the North Korean entity to assign a minimum of one employee who oversees and supervising work carried out by its workers. Polish National Labour Inspectorate documentation shows that Rungrado indeed has delegated one employee with authority to act as an attorney on behalf of the company in Poland. His role includes signing and amending agreements with local companies, as well as assuming liabilities and opening and running bank accounts.<sup>44</sup> Moreover, we found evidence that prove the involvement of the North Korean government in the case. For instance, the DPRK Chamber of Commerce certified that Rungrado is a legal entity authorised to provide brokerage services (see picture 2). This certification was later confirmed by the DPRK Embassy in Poland.



Picture 2. Certification issued by the Chamber of Commerce of DPRK to Rungrado

#### DIRECT/INDIRECT RESPONSIBILITY OF THE WORKERS

The brokerage agreement indicates that the responsibility to protect the workers from risks to

<sup>44</sup> Ibid.

their health and safety falls on Rungrado. It stipulates that the employer will have no legal liability for events, including accidents occurring at work, and that the contractor will pay all personal injury and damage to property caused by its employees to third parties and the employer. It should be noted that all receivables, such as taxes and insurance claims, will be charged in North Korea in accordance with North Korean law. Moreover, in the event of failure of quality and timely work by North Korean workers, the Employer has the right to request for another employee to be sent at the expense of the Contractor, and to withdraw from the contract without notice according to the agreement between Armex and Rungrado.

#### FACILITATING NORTH KOREAN LABOUR

**There** are at least 32 entities and intermediaries that have been linked to the facilitation and deployment of North Korean labour. Several of these companies have been verified to have employed North Korean workers either legally or illegally. According to the Polish Labour Inspectorate there have been 23 inspections since 2010, in which it was found that 377 workers were employed by various companies, of which 77 cases were found to be illegal employment.<sup>45</sup> This means that over 20 percent of the cases involved the illegal employment of North Korean workers. These cases include the following violations:

- Foreigners ending up working illegally by being led on or by misunderstanding.
- Performing work by foreigners in workplaces different from ones specified in the work permit.
- Assigning foreigners to positions different from ones specified in the work permit.
- Assigning foreigners to performing work tasks without obligatory written contracts.
- Not paying foreigners their wages on time, not paying extras for working overtime.
- Foreigners not given the obligatory leave (for resting purposes).

Not securing proper employment conditions, i.e. contrary to regulations regarding conditions of employment, hours of work, periods of rest and the customary rule of a 5-day working week.<sup>46</sup>

**Three** DPRK-based companies and three Polish-based companies have been confirmed to have provided North Korean workers to companies. These are the following companies:

- Korea Cholsan General Corporation
- Korea Rungrado General Trading Corporation
- Korea South – South Cooperation Corporation

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<sup>45</sup> Written correspondence from the Polish National Labour Inspectorate on 31/03/2016.

<sup>46</sup> Ibid.



- Alson Sp. Z.o.o.
- Aramex Sp. Z.o.o.
- JP Construct Sp. Z.o.o.

Korea Cholsan, Korea Rungrado and Korea South–South Corporation have provided Alson and Aramex with workers. The three Polish companies in turn dispatch these workers to various locations, although Rungrado has occasionally dispatched workers directly as well. One conspicuous entry in the list of companies is Chopol, or officially the Korean-Polish Shipping Company. The result of a bilateral agreement between Poland and the DPRK,<sup>47</sup> this company is state-owned on both sides and employs one official representative from the DPRK and one from Poland.<sup>48</sup> Its main activities include shipping, renting vessels, and marine transportation.<sup>49</sup> The company is subject to DPRK law, and according to the bilateral agreement through which the company was established, it is allowed to transfer money from Poland in foreign currency to the DPRK directly without supervision or permission from foreign-currency authorities.<sup>50</sup> Additionally, vessels registered under this company can sail under both the North Korean and the Polish flags.<sup>51</sup>

**Through** correspondence with the Polish National Labour Inspectorate and according to labour inspection reports the following companies have been inspected concerning the employment of North Korean workers:

- Monolit Sp. Z.o.o.
- Przedsiębiorstwo Usługowo – Handlowe Modern – Bud Sp. Z.o.o. Gospodarstwo Rolne Tomasz Kociszewski
- Puckie Centrum Medyczne Sp. Z.o.o. Sp. Komandytowa Zs. W Pucku,
- Stalbud – Budownictwo Sp. Z.o.o.
- Stalbud – Konstrukcje Sp. Z.o.o.
- HSBC Service Delivery (Polska) Sp. Z.o.o.
- Uniwersytet Gdański (Gdańsk),
- Medif Prywatna Kasa Chorych Sa
- Borgwarner Poland Sp. Z.o.o.

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<sup>47</sup> Agreement between the Government of the Polish People's Republic and the Government of the Democratic People's Republic of Korea regarding conversion of the Korean-Polish Maritime Broker Company into the Korean-Polish Shipping Company - a Joint Stock Limited Liability, *Legal and Treaty Department of the Ministry of Foreign Affairs Poland*, 11/02/1987.

<sup>48</sup> *Ibid.*, Article 5.

<sup>49</sup> *Ibid.*, Article 2.

<sup>50</sup> *Ibid.*, Article 11-14.

<sup>51</sup> *Ibid.*, Article 9.

- Redshield Sp. Z.o.o.
- Fabryka Mebli „Ryś’ Sp. Z.o.o.
- Przedsiębiorstwo Produkcyjno – Handlowe „Postęp’ S.A.
- Fms Kielce Sp. Z o.o. Mielec
- Fms Kielce Sp. Z.o.o. Ceramika Harasiuki – Harasiuki

In addition to this list, the following companies have also been linked to the employment of North Korean labourers:

- Wonye Sp. Z.o.o.
- K&K Select Sp. Z.o.o.
- K&K Select Aviation Sp. Z.o.o.
- FLAIR POLAND Sp. Z o.o.
- K&K Selekt Ltd. - Foreigners Recruitment
- Kobylnica
- Aramex Elektro Sp. Z.o.o.<sup>52</sup>

**In** the case of Wonye, the same persons who are active in Armex (and Aramex, including a plurality of subsidiaries) and Alson are also board members in this company, notably the chairwoman Cecylia Kowalska. However, as explored below, this is not a comprehensive list of companies involved in the practice of employing North Korean labourers.

**Companies** that hire these workers can also do so through subcontractors. These include Armex and companies such as JP Construct in Warsaw.<sup>53</sup> These companies are supplied with workers by North Korean trading companies, and in turn dispatch these workers to various locations. In the case of JP Construct, in June and July of 2013, 59 workers were delegated to the company by Korea Rungrado for work at ‘Nowe Polesie IV’ in Łódź, Poland. Similar circumstances can be found across the spectrum of employment of North Koreans in the country. In a case concerning Monolit, a Polish company based in Cracow, the workers were delegated by Rungrado.<sup>54</sup> In another inspection, carried out on Gospodarstwo Rolne, Tomasz Kociszewski showed that five female North Korean workers were taking care of tomato plants

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<sup>52</sup> Written correspondence from the Polish National Labour Inspectorate on 25/04/2016.

<sup>53</sup> Correspondence, Chief Labour Inspectorate: Department of Legal Employment, 31/03/2016.

<sup>54</sup> Written correspondence from the Polish National Labour Inspectorate on 25/04/2016.

for, according to their written contracts, 40 hours a week for no less than around 375 euro per month.<sup>55</sup>

**The** network of involved companies expands in this way often beyond oversight of the National Labour Inspectorate, to include shipbuilding companies such as Nauta S.A. and Crist S.A., that employ North Korean welders through Armex. Also in construction Korea Rungrado dispatches workers to subcontractors such as JP Construct, who in turn provides North Korean workers to companies such as Atal S.A., a company that is currently building luxury apartments in the Polish capital. It is clear that companies linked to North Korean workers are spread among a diverse range of sectors, most notably construction and shipbuilding.

**Notable** shipbuilding companies linked to North Korean workers are Crist S.A. and Nauta S.A. Violations that occurred at Crist have been described in detail above. Nauta is a subsidiary of Mars Offshore, a company that is located in Poland and functions as the mother company of the following companies: EPG, Nauta, MSR Gryfia, and Energop.<sup>56</sup> The Mars Closed-End Investment Fund also holds minority stakes in Bilfinger Crist Offshore and Crist Shipyards.<sup>57</sup> Crist and Nauta are strategic partners and are located close by in adjacent shipyards. Both companies are also strategic partners with Alson, one of the companies that dispatches North Korean workers and whose president is also the president of Armex and a board member at Wonye, another company with two North Korean board members.<sup>58</sup> Following the 2014 incident in which Chŏn Kyŏngsu, a North Korean welder, lost his life, an inspection of the company showed that Armex had illegally deployed these workers to Crist. During an inspection performed in February 2016, 19 North Korean workers were found to be active in Gdynia in a shipyard owned by Nauta. They had been deployed for several years, during which Crist has worked on vessels from companies located in, among other countries, France, Norway, Germany, Denmark, the Netherlands, the United Kingdom, Spain, Poland, and Cameroon.<sup>59</sup> According to the inspection report, Chŏn Kyŏngsu had worked on ten projects in the two-year period he was active at Crist. These included mostly vessels from Norway and Denmark.<sup>60</sup>

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<sup>55</sup> Ibid.

<sup>56</sup> Mars Shipyards & Offshore Folder 2014.

<sup>57</sup> Ibid.

<sup>58</sup> Business Registry Documents Wonye Sp.z.o.o., document no. RP/563187/4/20160502111317, *National Court Registry*, 30/06/2015.

<sup>59</sup> Crist Project References, Crist S.A., accessed 25/4/2016, <http://www.crist.com.pl/referencelist,3,en.html>.

<sup>60</sup> Aramex PIP Report 2014.

**The** North Korean workers employed by Nauta and Crist through Armex are employed as welders, as is shown in the inspection report following the death Chŏn Kyŏngsu.<sup>61</sup> The welders are certified by the Norwegian company called Det Norske Veritas (DNV). Officially stated as employed by Armex, the welders undergo an exam which takes place on location in Gdynia. They are issued a personal certificate by DNV, which is valid for an approximate period of two years. The DNV works according to a European Standard as approved by the CEN (European Committee for Standardization). Following this standard means the welder should be aware of safety precautions, which have to be undertaken before entering the workplace. These include, among others, personal protection, fire hazards, welding in confined spaces, and awareness of the welding environment.<sup>62</sup> However, certifying companies such as DNV have leeway in the testing of the job knowledge of workers such as Chŏn Kyŏngsu, as it remains a recommended and not a mandatory practice according to the CEN. Consequently, every North Korean welder has been able to receive a certificate from the DNV.

**Nauta** and Crist not only are geographically close, both companies are shipbuilding companies that perform ship maintenance and related activities. Incidentally, Nauta also works on NATO military vessels and is NATO certified.<sup>63</sup> In the last few years, the company has worked on more than 50 Polish Navy vessels and has conducted repairs on Norwegian and French patrol boats and military vessels.<sup>64</sup> Additionally, both Crist and Nauta have received financial support from the European Regional Development fund, a European Union regulated and controlled fund. As part of this, the Polish Industrial Development Fund in November 2009 granted a loan of around €37.5 million to Crist<sup>65</sup> and acquired 2-year bonds worth around €40 million from Nauta.<sup>66</sup> Seeing that Crist and Nauta collaborate with EU funds, it is of importance to look at how these funds contribute to their endeavours.

**Since** two companies in Poland have benefited from EU funds for their projects, it is important to look at the structure of these funds, and how they may be used. As part of the Regional and Urban policy, the European Commission has set up the European Structural and Investment Funds (ESIF) in order to aid the lesser developed parts of the EU. The ESIF consists of

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<sup>61</sup> Det Norske Veritas, Welder's Approval Test Certificate EN 287/ISO 9606, Certificate No. GDA W13-082.

<sup>62</sup> Norsk Standard, NS-EN 287-1:2011, Godkjenning av sveisere, Smeltesveising Del 1: Stål, page 37.

<sup>63</sup> Bureau for Military Standardization Service, 43 National Codification Bureau, NATO Commercial and Government Entity Code NCAGE 0256H, 18/02/2002.

<sup>64</sup> Mars Folder NAVAL 08/10/2015.

<sup>65</sup> Press Release - State aid: Commission finds the loan by Poland for Crist Shipyard is not aid, document no. IP/12/841, *European Commission*, Brussels, 25/07/2012.

<sup>66</sup> Press Release - State aid: Commission clears financing of Polish Nauta Shipyard, document no. IP/13/258, *European Commission*, Brussels, 20/03/2013.

five separate funds, each with their own purposes and goals, namely the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural and Rural Development Fund (EAFRD) and the European Maritime and Fisheries Fund (EMFF). Every 15 years, the ESIF re-evaluates its rules and regulations for the five funds described above.

**The** ESIF's strategy for the coming years has changed from the previous one. For instance, all five funds now fall under common ESIF rules, with specific rules added for several of the individual funds.<sup>67</sup> By definition, all projects funded by the ESIF must adhere to the rules and regulations of the EU, and of the national laws of the participating EU member states.<sup>68</sup> EU Member states that want to make use of the ESIF have to submit projects that adhere to and try to achieve the goals of ESIF's 2014-2020 strategy.<sup>69</sup> This strategy has three main goals, which contain eleven thematic objectives in total. The three main goals are: smart growth (e.g. enhancing the competitiveness of small to medium enterprises), sustainable growth (e.g. promoting climate change adaptation), and inclusive growth (e.g. promoting social inclusion and combatting discrimination).<sup>70</sup> This means that projects that do not adhere to EU regulations, or are in conflict with ESIF's strategy, are not eligible for funds or loans. Should such projects receive support from ESIF, they have to be called to account for it and monetary aid should be cut off. This means that, when Polish companies working with EU loans treat their North Korean staff differently, this directly contradicts the ESIF's strategy.

**The** ERDF is a fund that aims to aid social, economic and territorial cohesion by addressing regional imbalances.<sup>71</sup> Under the 2020-strategy, member states that submit projects for the ERDF can receive either grants or repayable assistance.<sup>72</sup> As stated above, these projects must be related to the eleven objectives of the ESIF.

**The** ESIF has published a list of regions inside the Union that fall in the category of either 'less developed (GDP per capita is less than 75% of the average in the EU)' or 'transition (GDP per capita is between 75%-90% of the average in the EU)' regions. Member States on this list can apply for aid from the ESIF.

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<sup>67</sup> European Union, 'European Structural and Investment Funds 2014-2020: Official Text and Commentaries.' *European Commission: Regional and Urban Policy*, 2015, p. 8.

<sup>68</sup> *Ibid.*, 8, 15.

<sup>69</sup> *Ibid.*, 18.

<sup>70</sup> *Ibid.*, 17.

<sup>71</sup> *Ibid.*, 202.

<sup>72</sup> *Ibid.*, 25.

**At** the start of 2014, all member states applying for funds had to develop a Partnership Agreement in dialogue with its partners and the European Commission. It should ‘translate the elements set out in the CSF [Common Strategic Framework] into national context’<sup>73</sup> and ‘sets out that Member state’s strategy, priorities and arrangements for using ESI Funds [...] so as to pursue the Union strategy for smart, sustainable and inclusive growth’.<sup>74</sup>

**It** is the Member States’ – in this case Poland’s - responsibility to set up a commission that annually reviews the ESIF funded projects. Moreover, annual implementation reports for each operational program (OP), and progress reports for the Partnership Agreements in 2017 and 2019, have to be submitted by the Member States. Finally, Member States should set up measures for guaranteeing ‘the prevention, detection and correction of irregularities and infringements of Union law.’<sup>75</sup>

**Inspection** by the Commission is performed largely in order to ensure that the ‘budget of the Union is not used in a wasteful or inefficient way.’<sup>76</sup> In the case of neglect by or malfunction of the Member State, the Commission has the right to suspend payments or apply financial corrections. If complaints are submitted to the Commission, the Commission will request the Member State to examine this, and the result of the examinations should be relayed to the Commission. Whenever financial corrections are applied, they will be applied to the Member State, meaning the government of said state is responsible for paying the corrections.

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<sup>73</sup> Ibid., 49.

<sup>74</sup> Ibid., 66.

<sup>75</sup> Ibid., 56.

<sup>76</sup> Ibid., 50.

### **HUMAN RIGHTS LEGAL FRAMEWORK**

**North** Koreans in the European Union are subject to a wide range of human rights violations. Both the Democratic People's Republic of Korea (DPRK) and all EU countries, including Poland, are States Parties to the two core international human rights covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). This means that the governments of these countries have gone through the formal process of signing then ratifying these international treaties. These two covenants are international legal instruments, meaning the countries that have ratified them have actively accepted the legal obligations to uphold the rights and provisions of those treaties.

**While** the Universal Declaration for Human Rights expresses fundamental values shared by the international community, and speaks to many of the human rights violations taking place in the EU and other countries where North Korean labourers are sent, the project group bases its analysis on international human rights law. In addition to the core covenants, the DPRK has also ratified the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Poland is State Party to those treaties as well, and in addition to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination. In addition, Poland is both a European Union Member State and a member of the Council of Europe and has ratified the European Convention on Human Rights.

**Both** ICCPR and ICESCR contain specific rights that are directly applicable to North Korean labourers in the EU. Article 8 of ICCPR explicitly states, 'No one shall be required to perform forced or compulsory labour.' Other ICCPR articles detail rights that North Korean

labourers are entitled to: the right to liberty of movement and freedom to choose their residence; the right not to be subjected to arbitrary and unlawful interference with their privacy, family, home or correspondence; the right to freedom of thought, conscience and religion; the right to hold opinions without interference and the freedom of expression; the right of peaceful assembly; and the right of freedom of association.

**Similarly**, article 6 of ICESCR explicitly outlines the right to work, which obliges State Parties to refrain from instigating or allowing forced labour, while article 7 covers the right to just and favourable conditions of work, which not only means fair wages but equal remuneration for work of equal value without distinction of any kind. Article 7 also states that States should ensure a decent living with safe and healthy working conditions including rest, leisure and reasonable limitation of working hours with periodic paid holidays. ICESCR also requires countries that have ratified the treaty to ensure the right to an adequate standard of living, which covers food, clothing and housing, with the elaboration that this means the right to live somewhere in security, peace and dignity. The Committee on Economic, Social and Cultural Rights' General Comment No. 23 (2016) on the Right to just and favourable conditions of work (article 7 of the ICESCR), and General Comment No. 18 (2005) on the right to work, provide particularly useful guidance in this context.

#### METHODOLOGY

**The** project group gathered evidence of these human rights violations through interviews with three North Koreans with direct experience of forced labour in the Middle East and the EU from a period ranging between 1996 and 2015, and with one Polish worker at the Nauta Shipyard in Gdansk during a field visit in April 2016. Where necessary for reasons of protection and consent, testimony has been deemed to be confidential and identifying information about the witness is withheld.

**Although** it would have been preferable to have a larger number of witness testimonies from North Koreans with direct experience of forced labour in the EU or more generally overseas, the project group chose to allocate limited resources to gathering directly available information about the Polish situation as it pertained to violations of labour law, as well as information about company structures. Significant information about human rights violations is embedded in the reports of the Polish Labour Inspectorate and is detailed in earlier sections of this report.

**The** project group also refers to research by civil society organizations who have investigated overseas forced labour, and between 2012 and 2015 have reported their findings,



despite having some questions about the methodology. Although media reporting is generally not used as evidence by human rights investigations, it must be noted that there has been significant coverage of North Korean overseas forced labour, presenting photographic and video images and reporting on violations that are difficult to ignore.

**The** project group has used evidence in order to assess human rights violations under standards similar to those employed by the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea (DPRK), namely as regards standard of proof. The project group also started this endeavour with discussion, consideration and agreement on a protection framework to adhere to the 'do no harm' principle.

#### FINDINGS OF HUMAN RIGHTS VIOLATIONS

**North** Koreans living and working in the European Union are subject to human rights violations that follow patterns observed by civil society organizations and media in China, Russia, and other countries in the Middle East, Africa and Asia. These are broadly violations pertaining to: 1) the right to work including through forced labour, 2) liberty of movement and freedom to choose one's residence, 3) interference with privacy, family, home or correspondence, 4) freedom of thought, conscience and religion, 5) freedom of expression and the right to hold opinions without interference, and 6) adequate standard of living, food, clothing and housing.

**Other** human rights violations may also be taking place but are more difficult to ascertain. For example, the rights to freedom of assembly and association do not appear likely to be respected given the conditions under which the North Korean workers live and work, but there is no evidence of the obstruction of such activity. At any rate, they are certainly not facilitated. As trade union activity is discouraged in North Korea by a social system constructed on absolute fealty to the Supreme Leader and a Party mechanism that exerts control over so many facets of people's lives, there is little time or space available to North Koreans for that type of independent activity. Since the collapse of the Public Distribution System and the increasing role of markets, both official and unofficial, many North Koreans appear to focus their efforts on individual commerce. A similar situation appears to be the reality for workers dispatched abroad: long hours at work, obligatory Party activities including self-criticism and indoctrination sessions, and surveillance by authorities against anything that might lead to subversion of state power. Therefore, the findings of human rights violations here should not be construed as an exhaustive analysis but rather a starting point for appreciating the magnitude of the problem.

## RIGHT TO WORK

**The** right to work, as the Committee on Economic, Social and Cultural Rights notes, 'is essential for realizing other human rights and forms an inseparable and inherent part of human dignity.'<sup>77</sup> As an enabling right, the right to work is of fundamental importance. Explicitly prohibited under the right to work is forced labour. Indicators of forced labour include retention of identity documents, isolation, intimidation and threats, withholding of wages and excessive overtime.<sup>78</sup> The withholding of wages and excessive overtime are covered in detail in the context of labour law violations, with substantial evidence from the Polish Labour Inspectorate reports as well as testimony from the North Korean workers and the civil society research reports.

**As** for retention of identity documents, all three North Korean witnesses attest to supervisors seizing passports upon arrival at their respective work sites. It is also a practice cited in a civil society research report by the Asan Institute for Policy Studies covering North Korean overseas labour in China, Kuwait, Russia and Malaysia.<sup>79</sup>

**Lim** Il, dispatched to Kuwait from 1996 to 1997, said,

The manager keeps the passports. When I was there, I heard it was originally the security officer's job to keep the official documents but the security officer was delayed in getting to his assignment, so there was no security officer at the location. Normally they'd just hand out our passports when we'd go through the gates at the airport and then take them back again.<sup>80</sup>

**According** to Kim T'aesan, who managed up to 150 female North Korean workers in shoe and garment manufacturing operations in the Czech Republic from 2000 to 2002,

It is the general practice of North Korea's overseas labour that all passports of workers are collected and that the embassy of the DPRK in the hosting country takes care of them. In our case, we kept all the passports of the workers in a locked safe in the office of the manager. Only when the workers were to prove their ID, for instance, when they needed to go to the hospital, they were allowed to hold their passport.<sup>81</sup>

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<sup>77</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 18, 6/2/2006, E/C.12/GC/18.

<sup>78</sup> ILO Indicators of Forced Labour, Special Action Programme to Combat Forced Labour. Available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf).

<sup>79</sup> Asan Institute for Policy Studies, *Beyond the UN COI Report on Human Rights in the DPRK*, 2014.

<sup>80</sup> Interview 22/3/2016, Skype Leiden-Seoul.

<sup>81</sup> Interview 22/3/2016, Skype Leiden-Seoul.

**Isolation** is an indicator of forced labour. Globally, North Korean workers' living and working arrangements are designed in such a way as to minimize contact with outsiders. In addition, language barriers limit interaction with co-workers. Moreover, explicit rules prohibit conversations with non-North Koreans.

**Grzegorz**, a Polish labourer in his late 40s, who has been working at the Nauta Shipyard, Gdansk, said he first saw North Koreans arrive at the premises five years earlier, although that original group of North Korean workers are now gone and a new batch of workers replaced them in the same year. He commented that there is a canteen at the shipyard where workers can buy food and drinks, but he never saw any of the North Korean workers eat there. Rather, they always ate together away from the Polish workers. He claimed he had never been able to speak with any of the North Koreans.<sup>82</sup>

**Lim Il** shared,

On the days off, I did the laundry, played Chinese chess, card games, that's it. There was not much to do. You cannot go outside. There was barbed wire stretched around North Koreans' working area. I asked why and the North Korean translator told me it is like that for all foreign labourers. So we just lived like that. In fact, the North Korean authorities put the wire there for the reason of managing the labourers.<sup>83</sup>

**Kim T'aesan** further commented,

The workers live in slave and slave-like conditions. They don't have access to outside world, no access to TV, radio and such, and they are not allowed to talk to foreigners.<sup>84</sup>

**In** a confidential testimony, a North Korean witness who recently worked in the EU said that North Koreans worked separated from the other workers, 'Since we all worked at the same location, our working area was shared with North Koreans and separate from Europeans.'<sup>85</sup>

**Another** indicator of forced labour is intimidation and/or threats. By virtue of the recruitment system wherein only party members of good standing with families are allowed to work overseas, there is an implicit threat to North Korean workers that their families are being

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<sup>82</sup> Interview 20/4/2016, Gdansk.

<sup>83</sup> Interview 22/3/2016, Skype Leiden-Seoul.

<sup>84</sup> Ibid.

<sup>85</sup> Interview, 13-15/5/2016, undisclosed location.

held hostage to ensure against flight risk and to guarantee adherence to rules. The entire foundation of North Korean society is built on a system of control that layers indoctrination, rewards for assertions of loyalty to the Supreme Leader and ultimately the threat of punishment. Punishment in North Korea is not limited to an individual but to three generations of his or her family. There is a substantial amount of literature and witness testimony on this principle, whereby an individual was perceived to have committed a crime of loyalty, and he or she and immediate members of their family from grandparents down to their children are then banished to labour camps without explanation, without trial and without mercy.<sup>86</sup>

**Kim T'aesan** recounted,

The workers wouldn't dare to raise an issue against the system, for instance, regarding their wages. If they do, they know they will be sent back home (DPRK), where they will face punishment.<sup>87</sup>

**According** to a confidential testimony,

To be eligible as a foreign labourer, you have to be formally married and your children have to remain in back home in North Korea—they are hostages to prevent you from escaping. Your formally recognized marriage has to be amicable and when you officially get dispatched overseas, the president of a neighbourhood association and three colleagues have to guarantee [your good behaviour].<sup>88</sup>

**Civil** society reports by the European Alliance for Human Rights in North Korea (EAHRNK) and the International Network for the Human Rights of North Korean Overseas Labor (INHL) provide additional testimony about intimidation and threats of overseas workers.<sup>89</sup>

**The** right to work is comprised of more than simply not being subjected to forced labour. It encompasses just and favourable conditions of work, fair wages, equal remuneration, decent living, safe and healthy working conditions including rest, leisure and reasonable limitation of working hours, paid holidays. Evidence that North Korean workers are not in fact receiving fair

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<sup>86</sup> For example, see United Nations Human Rights Council, 'Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea,' 7 February 2014, A/HRC/25/CRP.1, or Kang Chol-hwan, *The Aquariums of Pyongyang: Ten Years in the North Korean Gulag*, Basic Books, 2005.

<sup>87</sup> Interview Kim T'aesan, 22/3/2016, Skype Leiden-Seoul.

<sup>88</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>89</sup> EAHRNK, *The Will of the State: North Korean Forced Labour*, September 2015, and The International Network for the Human Rights of North Korean Overseas Labor, *The Conditions of the North Korean Overseas Labor*, December 2012. Available from <http://en.nksc.co.kr/wp-content/uploads/2014/08/INHL.pdf>.

wages, equal remuneration and are subject to a reasonable limitation of working hours and paid holidays, are covered extensively in the sections on violations of labour laws. Safe and healthy working conditions particularly are addressed in the harrowing description of the 2014 accident of Chŏn Kyŏngsu by the Polish Labour Inspectorate.

#### LIBERTY OF MOVEMENT, FREEDOM TO CHOOSE RESIDENCE

**Article 12** of ICCPR provides for the liberty of free movement and the freedom to choose his [or her] residence. The Human Rights Committee notes in General Comment No. 27, ‘Liberty of movement is an indispensable condition for the free development of a person.’ Much like their counterparts in China, Russia and elsewhere, North Korean workers in the EU are denied liberty of movement or the freedom to choose their residence.

**According** to the Polish Labour Inspectorate, North Korean workers upon arrival were residing together in group homes, in a semi-detached house in Gdynia that appears to be about 240 m<sup>2</sup> with 20 people officially registered as living there. Similarly, in Gdansk, there were 19 North Koreans registered to be living in one premise of an estimated 255 m<sup>2</sup>. The Database Center for North Korean Human Rights (NK Database) reports that living conditions of labourers in Poland and Mongolia were generally poor.<sup>90</sup>

**One** confidential witness who worked in the EU noted, ‘For housing, they rented a two-story house for the personnel and located 10 labourers for each room.’ He noted,

A manager told us that they [the foreign enterprises] are hiring us because of our low personnel costs, and that they deduct the charges for board and lodging, gas, and electricity from our monthly wages. They never let us know how much we earn and how much they charge for the expenses. That’s why none of us knows how much we are being exploited.<sup>91</sup>

**Kim T’aesan** commented about living conditions,

I think it was pretty decent compared to other places because the Czech Republic was then about to join the European Union, and it had strict labour regulations regarding foreign workers. For instance, all (foreign) workers were required to have health insurance. As for the living conditions, there was a rule that does not allow living in a group of more than five people. So the workers

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<sup>90</sup> Database Center for North Korean Human Rights: press release in English, March 2015.

<sup>91</sup> Interview, 13-15/5/2016, undisclosed location.

stayed in a budget hotel, no more than three in the same room. The cost of accommodation was deducted from their wages.<sup>92</sup>

**Lim** II described his accommodations in Kuwait,

The closed school [where we lived] had been bombed during the war, so there was much damage from explosives and from fires, it was definitely not a clean place. We slept in the classroom. We put steel single beds in the classroom and slept there, made a kitchen in the corner of school gym and ate there, and used a flush in the toilet as shower. We prepared meals by ourselves with money from the company.<sup>93</sup>

**If** North Korean workers are not paid their wages or only a small fraction and on an irregular basis, it would not be feasible for them to rent accommodation. Moreover, there are rules that control their movement and would not permit workers to live outside their designated premises.

#### INTERFERENCE WITH PRIVACY, FAMILY, HOME OR CORRESPONDENCE

**Being** compelled to live together in cramped quarters without choice is not just a matter of sharing accommodation with co-workers, managers and security agents. The North Korean system operates through constant surveillance, something akin to the East German Stasi, where neighbours and co-workers are expected to inform on each other, in addition to the direct oversight by police or intelligence agents who are sent with workers going abroad. The Commission of Inquiry on Human Rights in the DPRK noted,

State surveillance permeates the private life of all citizens to ensure that no expression critical of the political system or of its leadership goes undetected. DPRK nationals are punished for any 'anti-state' activity or expression of dissent. They are rewarded for reporting on fellow citizens suspected of committing such 'crimes'.<sup>94</sup>

**This** practice of constant surveillance appears to be a key part of the management system that is exported with the workers. Explicit rules require workers to move in groups of three or larger in order to watch each other. According to INHL, workers needed to always travel in groups of three to four and to practice surveillance against each other.<sup>95</sup> These systems of control violate the right of every person to be protected against arbitrary or unlawful

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<sup>92</sup> Interview, 22/3/2016, Skype Leiden-Seoul.

<sup>93</sup> Interview, 22/3/2016, Skype Leiden-Seoul.

<sup>94</sup> A/HRC/25/CRP.1.

<sup>95</sup> INHL, *The Conditions of the North Korean Overseas Labor*, December 2012.

interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation, as stipulated under article 17 of ICCPR.

**The** project group observed CCTV cameras outside the registered homes of the North Korean labourers in Gdynia and Gdansk. The group living situation, enforced isolation and surveillance by fellow labourers indicate interference with privacy. Correspondence with family and friends at home similarly appears to be restricted.

**When** Kim T'aesan was asked about whether the workers he was managing in the Czech Republic were able to go out after work, he replied, 'No, such outside activity is considered as a violation of the general principles of DPRK's overseas labour. Though there are exceptional cases, such as when the food stock and daily necessities were running out and somebody had to shop. In that case, a group of workers goes to a grocery or shop together with permission from their supervisor. Individually it was not possible to go out.'<sup>96</sup>

**Lim** Il, who fled Kuwait in 1997, was asked about the difficulty of getting to the South Korean embassy for his escape. He replied, 'It was hard. I was not supposed to go anywhere alone.' He explained,

There is an internal policy that North Korean labourers cannot get around alone. It's Party policy so we were not supposed to break this rule. The rule applied not only outside of work. At work, also, we moved around in groups of at least two people.<sup>97</sup>

**According** to a confidential testimony from the EU,

At first when I was located to the place of work, most of the labourers carried cell phones. However, the security officer ordered us to get rid of our cell phones in May 2015. Everyone was getting access to foreign cultures through the online service on their cell phones. But then, they only allowed translators to keep a cell phone, although probably labourers might have one hidden somewhere in their pockets.

When asked about correspondence with family, he replied, 'I received letters from my two daughters via someone else. Foreign overseas workers normally receive letters via other deploying workers.'<sup>98</sup>

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<sup>96</sup> Interview, 22/3/2016, Skype Leiden-Seoul.

<sup>97</sup> Interview, 22/3/2016, Skype Leiden-Seoul.

<sup>98</sup> Interview, 13-15/5/2016, undisclosed location.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

**The** Human Rights Committee in General Comment No. 22 emphasizes the critical importance of the freedom of thought, conscience and religion, 'The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.'<sup>99</sup>

**The** Commission of Inquiry on Human Rights in the DPRK concluded that 'there is almost complete denial of the right to freedom of thought, conscience, and religion as well as of the rights to freedom of opinion, expression, information, and association.'<sup>100</sup>

**Key** to restricting this fundamental freedom is indoctrination and ideological sessions. The Commission of Inquiry notes, 'The DPRK operates an all-encompassing indoctrination machine which takes root from childhood to propagate an official personality cult and to manufacture absolute obedience to the Supreme Leader (*Suryŏng*), effectively to the exclusion of any independent thought from the official ideology and state propaganda.'<sup>101</sup>

**The** three North Korean witnesses who provided testimony to the project group described the export of these indoctrination and ideological sessions abroad. The International Network for the Human Rights of North Korean Overseas Labor describes indoctrination in the Middle East, Russia and China. EAHNRK does not specify where the witnesses they interviewed had been stationed, but the NGO recounts that they testified to having to attend ideology training and indoctrination sessions.

**Lim** Il notes,

Studying is done twice a week. Studying lasts one hour and the meeting goes on for about another hour. Usually after our normal schedules. Yes, you have to participate in all of them. If you don't, they count it as a violation. It is a political obligation for North Koreans. Meeting and studying are a must.<sup>102</sup>

**Similarly**, in the Czech Republic, Kim T'aesan explains,

It was compulsory for all workers to take part in the evaluation meeting once every week outside of their working hours, plus once a week there was a

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<sup>99</sup> Human Rights Council, CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993. Available at: <http://www.refworld.org/docid/453883fb22.html>.

<sup>100</sup> A/HRC/25/CRP.1.

<sup>101</sup> Ibid.

<sup>102</sup> Interview, 22/3/2016, Skype Leiden-Seoul.



compulsory lecture. The lecture materials were provided through the channels of the DPRK embassy.<sup>103</sup>

A witness providing confidential testimony from the EU noted,

Once a week we write notes about self-critique, pros, and cons, and then get checked by the cell leader. The reason we keep track of the records is for the party secretary from the embassy or the secretary from the company patrolling down randomly. Indeed, there once was the time we did not hold the meeting for a month and procrastinated writing notes until the end of the month.<sup>104</sup>

#### FREEDOM OF EXPRESSION, RIGHT TO HOLD OPINIONS WITHOUT INTERFERENCE

**The** freedom of expression and opinion are among the most fundamental of human rights. The Human Rights Committee notes,

Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society.<sup>105</sup>

The Freedom of expression and opinion are outlined in article 19 of ICCPR and covered in articles 18, 17, 25 and 27. Again, the Human Rights Committee notes that this is an enabling right: 'The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights.'<sup>106</sup>

Kim T'aesan explains,

The workers wouldn't dare to raise an issue against the system, for instance, regarding their wages. If they do, they know they will be sent back home (DPRK), where they will face punishment.<sup>107</sup>

According to confidential testimony from an EU-based witness,

If you complain or go against their opinion, you become an outcast. No one can act that way. Workers think it as a natural thing and they just go along with it. Of course we complain among ourselves. There is a possibility that the

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<sup>103</sup> Interview, 22/3/2016, Skype Leiden-Seoul.

<sup>104</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>105</sup> Human Rights Committee, General comment No. 34, September 2011, CCPR/C/GC/34.

<sup>106</sup> Ibid.

<sup>107</sup> Interview, 22/3/2016, Skype Leiden-Seoul.

manager's informant can hear us but I believe he is on the same side. It is all right unless you make a statement against the system.<sup>108</sup>

#### RIGHT TO ADEQUATE STANDARD OF LIVING, FOOD, CLOTHING AND HOUSING

**The** right to an adequate standard of living is part of the right to just and favourable conditions of work. The Committee on Economic, Social and Cultural Rights makes this explicit in its General Comment No. 23 when it says, 'remuneration must be sufficient to enable the worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing, and additional expenses such as commuting costs.' However, it is not just part of the right to work but also a stand-alone right in article 11 of ICESCR: 'The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'.

**As** noted above, North Koreans working in Gdynia and Gdansk were living in group housing of such proportions that were shared with fellow workers, that housing in Poland could be characterized as overcrowded. Also noted earlier, the North Korean witness from the EU said that he had lived in a two-story house with co-workers with 10 people sharing a bedroom. As to the adequacy of food and clothing, there is little information available. The same witness said he spent his money in the EU country on cigarettes, beer and clothing.<sup>109</sup>

**The** civil society reports claim that living conditions of workers were bleak, but they do not provide enough detail or supporting documentation to assess these claims. EAHRNK quotes one witness as saying that the lifestyle of overseas workers was worse than animals, while NKDB noted without elaboration that labourers in Poland and Mongolia live in very poor conditions.<sup>110</sup>

**Economic**, social and cultural rights require progressive realization. In the case of North Korea, it is difficult to understand to what degree families benefit from the wages earned by North Koreans working abroad, although it must be said that there would have to be some advantage for families and individuals to regularly pay bribes to obtain such assignments. There appear to be some shifts in the system of dispatching overseas labour, as one witness describes a significant expansion of the number of training centres involved. Whereas it used to be

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<sup>108</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>109</sup> Ibid.

<sup>110</sup> See the aforementioned reports by EAHRNK and NKDB.

necessary to pay bribes to get into such a centre, according to the testimony, this is no longer the case and bribery is limited to other stages of the recruitment process, including passing the medical examination, shortening the waiting period and assignment to a better country.<sup>111</sup>

**According** to Lim Il,

You could bring stuff like a TV, a refrigerator, a recorder and bicycles. I left Pyongyang in 1996 so what I am saying applies to the situation before 1996. I usually went to the Soviet Union to work and brought those appliances back every three years. If you work in North Korea, it is almost impossible to get a TV or refrigerator after working for three years.

At the same time, he explained that he worked unofficial side jobs in Kuwait in order to make money to take home:

Since I couldn't get enough money from the assigned location, side jobs didn't amount to much, but they were better than nothing. That way I could bring some money when I went back home. Because I went there to make money.<sup>112</sup>

**From** direct accounts as well as other civil society reports, it appears that most of the wages earned by the North Korean labourers are diverted to the state. This is covered in depth in the section on labour law violations. If families are receiving a residual amount at any point during the overseas employment of their family members, it could be that they do experience some benefit from the wages that are earned. Whether the amount is substantial enough to facilitate continuous improvement of living conditions cannot be ascertained with the information available to the project group. For the workers themselves, it does not appear that they are experiencing such a continuous improvement of living conditions.

#### TRAFFICKING

**The** issue of trafficking has also been raised in the context of North Korean overseas forced labour. Determining whether dispatching North Koreans labourers to overseas assignments under conditions of forced labour constitute human trafficking is beyond the remit of the project. Nevertheless, the project group takes note of the US State Department's annual report on trafficking in 2015. The report states,

The Government of North Korea sends citizens to work abroad through bilateral agreements with foreign governments. Some workers are subjected to

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<sup>111</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>112</sup> EAHRNK and NKDB reports.

forced labour, prohibited from changing jobs, and denied a large portion of their earnings.<sup>113</sup>

North Korea is a Tier 3 country, the lowest category, 'Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.' Recommendations to the DPRK include, 'establish transparent bilateral work contracts used to deploy North Korean labourers to neighbouring countries; work with the international community to allow North Koreans to receive fair wages, choose their form of work, and leave their employment at will; eliminate coercion tactics used to monitor the movements and communications of workers in forced labour; and become a party to the 2000 UN TIP Protocol'.

**Poland**, in contrast, is categorized as a Tier 1 country by the US State Department. In 2010, the Special Rapporteur on trafficking in persons, especially women and children, observed a clear political will on the part of the Government and civil society to combat trafficking in persons, illustrated by the numerous institutional mechanisms established across various Governmental agencies, as well as by the policies and programmes adopted.<sup>114</sup> Regarding trafficking for labour exploitation, she noted the agreement signed between the Border Guard and the National Labour Inspectorate in April 2008, providing for cooperation between the agencies on including joint controls of employment environments by both Border Guard officials and labour inspectors. Cases of human trafficking identified by labour inspectors were supposed to be referred to the National Prosecutor's Office for investigation, although authorities noted a capacity gap of labour inspectors to identify victims of trafficking in the face of an increasing number of cases of human trafficking for forced labour.<sup>115</sup>

#### MODERN DAY SLAVERY

**The** Walk Free Foundation recently listed North Korea as among the countries with the highest estimated prevalence of modern slavery. It noted, 'In North Korea, there is pervasive evidence that government-sanctioned forced labour occurs in an extensive system of prison labour camps while North Korean women are subjected to forced marriage and commercial sexual exploitation in China and other neighbouring states.'<sup>116</sup> The index itself states that 1.1 million

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<sup>113</sup> United States Department of State, 2015 Trafficking in Persons Report, July 2015. Available from <http://www.state.gov/documents/organization/245365.pdf>.

<sup>114</sup> Human Rights Council, 'PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo\* Addendum Mission to Poland\*\*', 2 June 2010, A/HRC/14/32/Add.3. Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/138/76/PDF/G1013876.pdf?OpenElement>.

<sup>115</sup> Ibid.

<sup>116</sup> Walk Free Foundation, *The Global Slavery Index*, Available from <http://www.globallslaveryindex.org/findings/>.

North Koreans or 4.4 percent of the population of 25 million are in slavery. It is not clear if the 50,000 estimated overseas workers are included in that figure, although the index details their situation in the regional analysis.<sup>117</sup>

**The** ILO notes, 'Forced labour, contemporary forms of slavery, debt bondage and human trafficking are closely related terms though not identical in a legal sense.'<sup>118</sup> From a legal perspective, the project group argues that there is a strong case for categorizing North Korean labourers working abroad, particularly in the EU, as forced labour and that North Koreans labourers are subject to human rights violations in this regard. Determining whether their experience constitutes modern day slavery is beyond the scope of this project.

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<sup>117</sup> See <http://www.globallslaveryindex.org/region/asia-pacific/>.

<sup>118</sup> See [http://www.ilo.org/global/topics/forced-labour/news/WCMS\\_237569/lang-en/index.htm](http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang-en/index.htm).



#### **DPRK CITIZENS WORKING IN THE EU: THE LABOUR LAW PERSPECTIVE**

**The** cycle of DPRK citizens working abroad starts and ends with the regime in Pyongyang. This is where the prospective workers are selected on professional, but mostly personal criteria such as party membership, loyalty to the regime, marital status and good health. And it is where the money they will earn eventually ends up. To what extent this practice of earning money for the regime is formally standardized at the state level can be deduced from several facts. The process of selecting labourers is monopolized by the regime and the intermediate DPRK companies are owned by DPRK officials. Moreover, as previously mentioned, a DPRK decree issued in 2013 by the National Defence Committee honours individuals earning a certain amount of foreign currency for the regime with official ranks. Elsewhere in this report substantial evidence is given of the state involvement in the company structures.

**Based** on the gathered data, this section aims to go into detail regarding, 1. how workers are recruited, 2. the circumstances in which they are working, 3. and (alleged) infringement on employment laws. This data will then be checked against European directives, Union law and International Labour Law treaties. It is beyond the scope of this report to go into detail with regard to Polish legislation.

**Evidence** regarding the working permits is obtained from immigration offices that show that the vast majority of the legally residing DPRK workers in the EU is currently working in

Poland.<sup>119</sup> The data is provided in the section on working permits, furthermore information is retrieved from witness testimonies and previous research. They provide a picture of how workers are recruited, trained and dispatched to the host country. The testimonies, along with the observations during the field trip, also give an insight into daily practices and working routines, as well as into the working conditions. Infringement and violations of regulations are based on observations of and testimonies in the Polish National Labour Inspectorate reports.

#### SENDING WORKERS ABROAD: THE ROUTE FROM PYONGYANG TO POLAND

**The** DPRK's increasing need for foreign currency has resulted in the promotion of sending DPRK workers abroad. Since Kim Jong-un came to power, the export of labour to China, Cambodia, Middle East, African countries and the EU has increased significantly. One of the interviewed workers, who has recently –in the period of 2012 till 2015- worked in the EU, states that the demand for workers to be dispatched overseas is much higher than the number of applicants that offer themselves,

As for institutes carrying the name of foreign construction training centre, there are Nūngna [Rungra], Pyongyang, Moranbong, Songhwa, Yangyak and 15 other training centres (20 in total). There are many training centres, but they are having trouble by having not that many applicants. It is the job of the executives from the training centre to recruit as many applicants as possible to dispatch them overseas. They can easily become the target of criticism if they don't meet certain performance targets by the evaluative work meeting at the end of the year.<sup>120</sup>

**In** the same testimony it is explained that some ten years ago it was necessary to bribe someone to be selected for being sent abroad, but the demand for labourers has increased to such an extent, that there is no need to do so anymore. Bribery is now only needed to get through the medical check-up, a hurdle that many DPRK citizens fail to pass because of their structurally bad health. The bribe may also be meant to shorten the waiting period before being sent abroad, or to be sent to certain countries with a better working environment. As the EU-witness states,

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<sup>119</sup> Information was further obtained from historical treaties between Poland and North-Korea, dating back to communist times; contracts between North-Korean HR companies and Polish contractors; contracts for individual workers; payslips; Polish labour inspection reports; interviews with the Polish labour inspection and former workers, and from observations near working sites.

<sup>120</sup> Interview, 13-15/5/2016, undisclosed location ('EU'-witness).



I applied through the Labour Department in Rungra Foreign Construction Training Centre [...]. Rungra Foreign Construction Training Centre originally belonged to the Central Party until September or October 2014, but switched its affiliation to the cabinet.

30% fails to meet the physical threshold demands because of tuberculosis. Among North Koreans there are many TB patients. [...] Most of the workers prepare 50 dollars before the exam in order to pass the physical check-up. [...]

In the training centre there are the party secretary, the party officer and the main advisor.<sup>121</sup>

**On** the surface one could claim that the notion of ‘application’ and the need for bribes to be selected would suggest a voluntary choice. However, it should be noted that ‘individuals in North Korea do not have the freedom to choose or alter their occupation’<sup>122</sup> and that ‘North-Korea’s Ministry of Labour forcibly allocates individuals to specific sectors, [...]’.<sup>123</sup> The ILO-report, ‘Profit and Poverty, the Economics of Forced Labour’, furthermore adds to the notion of ‘unfree recruitment’ - which is one of the indicators of forced labour- the idea of ‘deceptive recruitment.’<sup>124</sup> Given the fact that the workers have no clue whatsoever about the work they will be engaged in, about remuneration and working-conditions, it is safe to label the recruitment if not involuntarily, then at least as ‘deceptive’. As Lim Il explains, he was lured into going to Kuwait by being told he would earn more in Kuwait than in Russia or Libya. When asked if that really was the case, he answered,

No, I don’t think so. I haven’t received payment for the five months that I worked. I guess the reason the officer told me about the higher payment was because they concluded bigger contracts with Kuwait than with Russia and Libya. I guess that was why.

**After** the application has been made, the conditions for being selected are not – if at all- solely based on professional skills,

[...]You have to be formally married and your children have to remain in back home in North Korea—they are hostages to prevent you from escaping. Your formally recognized marriage has to be amicable and when you officially get

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<sup>121</sup> Ibid.

<sup>122</sup> The Gulag Inc, p. 41 [http://www.hrnk.org/uploads/pdfs/KKJ\\_Gulag\\_INC\\_FinalFinal\\_WEB.pdf](http://www.hrnk.org/uploads/pdfs/KKJ_Gulag_INC_FinalFinal_WEB.pdf).

<sup>123</sup> Ibid.

<sup>124</sup> See *Profits and Poverty, the Economics of Forced Labour*, p 31:

dispatched overseas, the president of a neighbourhood association and three colleagues have to guarantee [your good behaviour]].<sup>125</sup>

Also, North Korea evaluates the applicants on their health and technical skills and the most important factor is *sŏngbun* (social status). The applicant cannot have a history of reactionary activities in his family.<sup>126</sup>

**In** general before they are sent abroad, the workers do not know anything of the work they will do, under what conditions and in what circumstances. The preparation for overseas labour mainly focuses on ideological training.<sup>127</sup>

There is a party secretary. It's a unique feature of North Korea's administration system, in which a party executive is in charge of ideas. He takes charge of the labourers' study and ideological education and applicants have to receive a positive evaluation from him.

There is no contract. Instead of a contract or documents, they do the ideological education after they announce a list of labourers to be dispatched overseas. There are three kinds of education. The first one is central party education, which teaches about Kim Il Sung and politics, highlighting how we should propagate Kim Il Sung and the systems of our party. Then there is the working abroad training. This teaches manners, customs and etiquette we should follow abroad. The last one is higher-class course, and this is interesting, they teach us how to stay secure. It deals with the many South Korean national security agents abroad and how we have to be careful since they will otherwise kidnap us. [...] In this course they show us videos about people who were blinded by the lure of money and went to South Korea, people who got kidnapped and all kinds of miserable lives of people who went to South Korea and were tortured to death, while and their deaths were camouflaged as traffic accidents.<sup>128</sup>

**State** involvement is seen throughout the whole selection procedure, the obligatory medical check-ups and the travels to the receiving country. Also the travel is arranged on state level,

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<sup>125</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>126</sup> Interview, Lim Il, 22/3/2016, Skype Leiden-Seoul.

<sup>127</sup> Ibid.

<sup>128</sup> Interview, Lim Il, 22/3/2016, Skype Leiden-Seoul.

Due to flight schedule, we stayed one night in the Embassy of North Korea in Beijing. The driver from the embassy picked us up at the Beijing airport and guided us to the embassy.<sup>129</sup>

#### WORKING IN POLAND: CONDITIONS AND CIRCUMSTANCES

**Based** on the obtained documents, it can be concluded that the workers receive formal working permits to enter the country. On what level the issuing of working permits is agreed upon on state level, is not within the scope of this research. However, that it is common practice between Russia and DPRK is described in the *International Journal of Korean Unification Studies*,

In August 2001 during the official visit of the North Korean leader Kim Jong Il to Moscow, the DPRK authorities proposed the sending every year to Russia of more than 5,500 North Korean workers. A year later, in August 2002, during his second unofficial visit to Primorye and Khabarovskiy Krai, Kim Jong Il asked to send another extra 2,500 North Korean workers per year to the Russian Far East.<sup>130</sup>

The statement of Lim Il too refers to contracts agreed upon on state level between DPRK and Kuwait, Russia and Libya.

**The** Polish National Labour Inspectorate has exposed infringements on the working permits in several cases of DPRK workers performing work in other facilities than the ones specified in the work permits, and DPRK workers working in other positions than the ones specified in the work permit. The labour inspector, during inspections carried out in July and August 2013, found 29 citizens of the DPRK working on the basis of type 'D' work permits. The workers were led to believe they were delegated from Korean Rungrado General Trading Corporation to Armex, but were in fact delegated by the latter to Christ S.A. Their work permits however, did not authorise them to do so, which is a violation of art. 120, paragraph 3, of the Act on the Promotion of Employment and Labour Market Institutions,

Whoever forces a foreigner to perform illegal work by way of deception, exploiting error, exploiting professional dependency or exploiting the inability to properly comprehend the undertaken action, shall be subject to financial penalty not exceeding PLN 10.000,-

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<sup>129</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>130</sup> Larisa V. Zabrovskaya, 'Economic Contacts between the DPRK and the Russian Far East: 1992-2005,' *International Journal of Korean Unification Studies* 15.2 (2006), pp. 95-111.

The labour inspector determined the following,

In the face of the facts and pursuant to the collected evidence it was determined that a person representing ARMEX Sp. Z.o.o. by means of misleading, taking advantage of a mistake or incapacity to properly understand conducted activities made a person representing the entity in question to entrust 29 foreigners (DPRK) with conducting illegal work and made 29 employees, citizens of Korea, perform illegal works, as rendering the work in such a way they held no permits that would authorize them to perform work for Crist S.A., i.e. they were seconded to ARMEX Sp. Z.o.o. which directed them to this entity to perform temporary work for the benefit of this entity.<sup>131</sup>

He submitted this case to court, with the request of punishment and the court imposed a fine of PLN 3000,- on the guilty person.<sup>132</sup>

**The** inspection report regarding Korea Rungrado General Trading Corp, 2013 mentions the following violation,

In the course of the inspection it was established that four foreigners did not commence employment in Poland, whereas the indicated legal representative of the company failed to inform the authority issuing the permit of non-commencement of work by a foreigner within three months since the beginning of the validity period of the work permit without delay.<sup>133</sup>

Moreover, it cannot be ruled out that the workers stay after the work permit is expired. As the EU-witness observed,

When I first got there, I was surprised to see someone who has been working there for 7 years said, 'Here goes another day in hell'.<sup>134</sup>

It should be noted that the validity of working permits does not exceed three to five years.

**Upon** arrival, travel documents, including passports, are either kept at the embassy or with the manager. Kim T'aesan, a former manager in the Czech Republic who testified in the EU Parliament in 2007, states:

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<sup>131</sup> Regional Labour Inspectorate, 28/8/2013, case no. 03186-53100-K034-PU\_13-Control Protocol.

<sup>132</sup> Written correspondence from the Polish National Labour Inspectorate on 25/04/2016.

<sup>133</sup> Written correspondence from the Polish National Labour Inspectorate on 25/04/2016 (GNL-439-0512-1-1/16).

<sup>134</sup> Interview, 13-15/5/2016, undisclosed location.

It is the general practice of North Korea's overseas labour that all passports of workers are collected and that the embassy of the DPRK in the hosting country takes care of them. In our case, we kept all the passports of the workers in a locked safe in the office of the manager. Only when the workers were to prove their ID, for instance, when they needed to go to the hospital, they were allowed to hold their passport.<sup>135</sup>

This is confirmed by the practice in Poland, 'As I arrived at the construction location in Poland, a manager collected the passports and visa and specially secured them in his office.'<sup>136</sup> The same practice was prevalent in Kuwait where, as Lim Il claims, the manager kept the passports.

**In** the Human Rights section, state involvement in the private life is explained. But state control extends to the host country also in the working environment. When asked whether or not there was a supervisor managing and watching the workers, Kim T'aesan stated: 'I was the supervisor, and there was another supervisor from the Powibu [the State Security Department in North Korea].'

**The** workers' salaries are received by intermediate companies. The Polish Labour Inspectorate exposed violations referring to cases in which the DPRK workers were not paid their due compensation, nor any overtime allowance. Supporting evidence for the observations are given by the statements in which labourers confirm that they are not informed about the size of their salary, are not allowed (by their own managers and minders) to have individual bank accounts, and merely receive nominal payments in cash, if they receive it at all.<sup>137</sup> The time and height of the payments are unclear and arbitrary. After being asked when, how and how much payment is received, the witnesses replied,

There is no set date, but whenever the boss comes in, the workers receive payments. [...] When the manager gave me money, he said I would get a lower wage, since I was a newcomer. The reason why our second wage was 100 zloty less than the first wage was because the manager provided 100 zloty as a donation to the Kumsusan Palace Fund.<sup>138</sup>

The practice of North Korea's overseas labour is that the manager or interpreter collects all the wages in lieu of the workers. [...] I collected the entire amount

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<sup>135</sup> Interview Kim T'aesan, 22/3/2016, Skype Leiden-Seoul.

<sup>136</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>137</sup> Interview Kim T'aesan, 22/3/2016, Skype Leiden-Seoul; Lim Il, 22/3/2016, Skype Leiden-Seoul.

<sup>138</sup> Interview, 13-15/5/2016, undisclosed location.

of the wages and distributed it to each worker according to the payroll. [...] For instance, if one worker received a monthly wage of about 150 USD, 80 USD would be deducted, so the worker received 70 dollars, and the rest went to the DPRK.

[...]he workers take it for granted that their entire wage goes to the North Korean regime during their overseas work. [...]he cost of accommodation was deducted from their wages. That was about 40 US dollars a month. That means if a worker received 70 USD per month, the actual amount they would receive get was 30 USD.<sup>139</sup>

There is no clarity on the height of the share that is withheld, but for the workers there is no doubt that it is for the benefit of the party.

I don't know how much the manager sends to the country and what he takes. All workers know that working abroad itself is for central party's fundraising.

We have to send foreign currency to the central party but sanctions against North Korea from UN has blocked us leaving the country with a bulky roll of notes. So they make us write a letter and send money to the central party under the name of 'money transfer to family' when departing. I don't know the details.<sup>140</sup>

When asked whether he got paid while working in Kuwait, Lim Il replied,

No, when they pay wages, they would have to pay all of us, but none of us got anything. So I think the money went directly to North Korea's central account. [...]Because we didn't get any money in return for our labour, I just thought the money directly went to our home country.<sup>141</sup>

**The** withholding of payment is furthermore used as an arbitrary way of punishment. The EU witness recalled,

There was an incident in October 2014 in X, where two young welders (35 years old) stole electronics from stores and one was arrested. He was taken to the police station, but the manager negotiated with the storeowner and covered up the case. After that case, all North Koreans in Y were grounded for

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<sup>139</sup> Interview Kim T'aesan, 22/3/2016, Skype Leiden-Seoul.

<sup>140</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>141</sup> Interview Kim T'aesan, 22/3/2016, Skype Leiden-Seoul.; Rim Il, 22/3/2016, Skype Leiden-Seoul.

a while. The person directly involved was transferred from Z to A and didn't receive even one penny for an entire year.

[...] He wasn't given his wages for an entire year even though he had to keep working.<sup>142</sup>

**For** the DPRK workers, there is no general practice of criticising the way the wages are paid or withheld. As Kim T'aesan states,

The workers wouldn't dare to raise an issue against the system, for instance, regarding their wages. If they do, they know they will be sent back home (DPRK), where they will face punishment.

Recently an unusual uproar in a DPRK labour facility in Qatar occurred. The Chosun Ilbo reported on 25<sup>th</sup> of April this year that,

[...A]round 100 North Korean labourers in Kuwait rose up against the state security agents who keep constant watch on them. The protest was triggered by a foreman telling workers that they would be rewarded if they met their required payment dues for the regime ahead of former leader Kim Jong Il's birthday on April 15. The workers reportedly shouted out at the foreman and demanded their back pay instead, and some tried to assault him. [...] The protest took place after state security agents visited Kuwait, Qatar and the UAE in February and March to weed out potential defectors among workers there. They investigated the movements and mobile phone records of workers. The protest occurred a week after the investigations ended,' a source said.<sup>143</sup>

Radio Free Asia reported on June 7 that on May 17 a plane from Koryo Air arrived in Kuwait and took tens of DPRK workers back home.<sup>144</sup>

**The** Polish Labour Inspectorate has also found failures to ensure basic regulations in terms of working hours.<sup>145</sup> The workers tend to work up to 12 hours a day, six days a week.

[..]n practice, when it was necessary they worked on average 10-12 hours a day, and even more than 12 hours a day depending on the volume of orders.<sup>146</sup>

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<sup>142</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>143</sup> See [http://english.chosun.com/site/data/html\\_dir/2016/04/25/2016042501023.html](http://english.chosun.com/site/data/html_dir/2016/04/25/2016042501023.html).

<sup>144</sup> See [http://www.rfa.org/korean/in\\_focus/food\\_international\\_org/kuwaitnworker-06072016144106.html](http://www.rfa.org/korean/in_focus/food_international_org/kuwaitnworker-06072016144106.html).

<sup>145</sup> Correspondence with PIP 31 March 2016.

I woke up at 6am, made up my bed and washed until 7, had breakfast and went to work by 8 o'clock. I worked until 12 o'clock and had lunch for an hour, worked again until 6 o'clock and dinnertime was from 6 to 7 o'clock. Excluding lunchtime, I usually worked 11-12 hours per day. There were extended work hours every two or three days. There wasn't any policy about it, but low-level executives encouraged us to bring glory to the Party by working more. They encouraged us to finish the task earlier and report good news to the Party. [...] Extended working hours every 2-3 days made daily average work hours increase to 14, since three hours were added every time.<sup>147</sup>

Usually (I worked) from 7am to 7pm. On Saturdays it was until 5 pm. But later on they made us work until 7 pm on Saturdays as well. [...] Sometimes I worked until 11 pm. Usually when the work was not finished, they made us work nights as well, but once neighbours complained about the noise, so we had to stop working at night.<sup>148</sup>

The Polish Labour Inspection has found failures to provide foreigners (from the DPRK) with their due holiday leave.<sup>149</sup> The EU witness explains that it is possible to take holidays, but if you take one day off, the manager takes payment off for two days.

**The** Polish Labour Inspection report investigating the fatal accident of a worker on the 29<sup>th</sup> of August, 2014 describes into detail under what circumstances the workers are doing their jobs. Although it is not clear if the circumstances that led to the fatal accident are representative of the condition in which all DPRK workers are working, it offers a description of the circumstances on an average working day. The inspection was performed without notification of the intent to start the inspection, for the purposes of establishment of the circumstances and reasons of the fatal accident at work suffered on 29.08.2014 by Chŏn Kyŏngsu on the watercraft being built within the premises of Crist S.A. in Gdynia.<sup>150</sup> The reports describes the details of the accident, as well as the facts and circumstances that preceded the accident. The victim, Chŏn Kyŏngsu, had been transferred from the department of prefabrication to the piping department. There has been no confirmation of training pertaining to the job following the transfer to a new position and new working conditions. On the day of the accident, the 29<sup>th</sup> of August, the Armex supervisor (W.P.) was not present, also the translator (in charge not only of communications,

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<sup>146</sup> Interview Kim T'aesan, 22/3/2016, Skype Leiden-Seoul.

<sup>147</sup> Interview Lim Il, 22/3/2016, Skype Leiden-Seoul.

<sup>148</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>149</sup> Written correspondence from Polish Labour Inspectorate, 31/3/2016.

<sup>150</sup> Regional Labour Inspectorate, Control Protocol PIP Aramex 2014, document no. 03273-5303-K047-Pt/14, 28/11/2014.



but also logistics, organisation of documents, such as medical examinations, training certificates etc.) who was supposed to represent him was not present. The details of the work were mainly explained in hand gestures and simple words like, 'welding'. Shortly after 6:00 AM, Chŏn Kyŏngsu was brought to the place where he was supposed to work. Chŏn was supposed to be welding a pipe in a tank, 5-10 metres from the entrance. There was only a welding line leading to the entrance, there was no connected pipe to provide a flow of fresh air into the tank. Until noon no one had checked upon or seen Chŏn Kyŏngsu, until flames were coming out of the tank where Chŏn was working. When Chŏn came out of the tank, he was burning. His clothing burned to ashes. There were no tools around to put out the fire and bystanders had to start searching for them.

**The** inspector arrived at 14.30u on the 29<sup>th</sup> of August. The violations observed by the inspector were manifold. There was no written authorisation for work in the tanks; there was no supervision over the progress of the particularly hazardous work; there was no security, like a second individual remaining outside the tank; the worker entering the tank was not secured with a harness and security line; the location of work was not connected to utilities providing for air circulation; no precise and clear entry of particularly dangerous work (work in tanks) in the log of dangerous work, and no permit from the vessel's builder for performance of such work with preservation of appropriate safety measure; access to welding work without protective clothing; there were no fire blankets at the vessel under construction or in the office; and there were no extinguishers near the site of the accident.<sup>151</sup>

**Although** there is no clear supporting evidence that these violations represent the working conditions in general of DPRK workers within Crist, given the variety of the violations and the fundamental character of the violations –no incidental mistakes- it would be safe to say that the violations at least cannot be called exceptional. The court case regarding the fatal accident is pending. Considering the fact that it is the second time that Crist faces a court case concerning the illegal or law-breaking employment of DPRK workers, one could have doubts about the EU funding that was granted to Crist. Since the court has imposed a fine for illegal employment, art. 7, paragraph 1c of the directive on the illegal stay of third country nationals would apply to Christ, having received EU Funding.<sup>152</sup>

**The** inspection covered the legality of the DPRK workers and concluded that the working permits were present, as well as the receipts for remuneration for July, August and

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<sup>151</sup> Ibid.

<sup>152</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>.

September, the signatures of the employees with the dates.<sup>153</sup> However, the report fails to mention that the signatures of July and August are all written in the same handwriting, and only after the inspection, on the receipts of September, individual signatures can be distinguished as will be described below in detail. A problem that the labour inspectors are facing under the current Polish law is that they have a very limited role in controlling and supervising foreign workers, partly because at this moment foreign employers, such as Rungrado, still have no obligation to inform the authorities about delegating workers and their information. Such lack of oversight of foreign workers by Polish authorities makes it easier for the DPRK regime to maintain a strong network with local intermediaries, and use them to channel workers in Poland.

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<sup>153</sup> Control Protocol Inspection PIP Aramex (2013), Case No. 03186-53100-K033-PU\_13.

### **WORKING RELATION BETWEEN THE HIRER AND THE WORKER**

As the ILO-report, 'Hard to see, Harder to Count', has noticed, 'it appears that recruiters and employers increasingly oblige workers to adopt the legal status of 'self-employed', thus disguising the underlying employment relationship. This occurs particularly in countries where labour law enforcement is strong or migration law is restrictive. By so doing, the 'employer' or 'contractor' can avoid responsibility for paying social benefits and minimum wages or for observing regulations on hours of work or leave entitlement.<sup>154</sup> It should be added that, 'The ILO Forced Labour Convention, 1930 (No. 29) states that 'all work or service' can be forced labour, as an own-account worker and without necessarily being in either a formal or informal employment relationship', making no reference to the employment status of the worker.<sup>155</sup>

**Determining** whether or not the workers are employees might not be crucial for determining whether or not the work can be labelled 'forced labour', but it is important for understanding the workers legal position in the EU. In that sense, the first consideration is the fact that the workers are third-country nationals (TCN) in the EU and therefore another set of rules and regulations, partially at least, applies to them when compared to citizens from EU Member States. An additional defining factor is the position of the employer, or in some cases the (sub-)contractor or hirer, and the character of the working relationship. In many cases the identity of the hirer is not obvious. (Sub-)contractors are often part of a complex chain leading to and from the company hiring or employing the workers. The issue, then, cannot be simply

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<sup>154</sup> See [http://www.ilo.org/wcmsp5/groups/public/--ed\\_norm/--declaration/documents/publication/wcms\\_182096.pdf](http://www.ilo.org/wcmsp5/groups/public/--ed_norm/--declaration/documents/publication/wcms_182096.pdf), p. 19.

<sup>155</sup> Ibid, p. 13.

resolved by looking at the contract (supposing that there is a valid contract to begin with). Individuals may be hired as self-employed workers on paper, but in practice function as regular workers or employees. A (sub)contractor is able to hire workers as employees, lending them on to another contractor, obfuscating their legal status. The scope of protection, and whether labour law or commercial law is applicable, is partially determined by these considerations.

**In** the case of Poland, the logistical organization of sending workers abroad is realized by a number of intermediaries: DPRK companies such as Korea Cholsan General Corporation, Korea Rungrado General Trading Corporation and South-South Cooperation; Polish companies such as Alson and Armex; and North Korean-Polish joint ventures like Chopol and Wonye.

**These** intermediaries either present themselves as: 1. temporary employment agencies providing workers for temporary jobs, 2. payroll companies which provide the administration of monthly payments, or 3. purely intermediaries, facilitating a constant supply of workers to (sub-)contractors. In the receiving state, a total of 32 Polish companies are linked to the employment of DPRK workers, either as human resource companies, sub-contractors or hirers. Based on the inspection reports, contracts and interviews, it can be concluded that there are three different constructions in which the workers are hired:

Construction Type I: Functioning as a temporary agency, DPRK company A allocates workers directly to Polish hirer B;

Construction Type II: DPRK-Polish joint venture A posts DPRK workers to carry out work in Poland for a limited period. They remain employed by the sender, joint venture A;

Construction Type III: DPRK company A provides workers to Polish or DPRK-Polish joint-venture subcontractor B. Subcontractor B provides workers to hirer C. In some cases this chain is extended to include additional subcontractors.

**Under** Construction Type III, a common construction, workers are presented as self-employed workers, and hired by the contractor. Payslips provide 'proof' that the workers were paid per project. The actual situation however shows that in practice they have to be considered as employees of the contractor. The workers are paid the exact same amount every month for their activities (at least on paper, in reality the workers just receive small amounts of cash for personal items, often spent on cigarettes and beer). There is no proof that the remaining payment of the project is paid afterwards. They work in daily shifts with strict time

schedules. Each morning starts with clear instructions and they are subordinate to the foreman.<sup>156</sup> The testimony dated on 30/7/2013 (Rungrado) states,

I have been working for Crist as production master. [...] My master group includes five nationals of North Korea and seven nationals of Ukraine. All the Koreans are employed by Armex. [...] They have welding permits and they render only such works. Each day in the morning I assign tasks to the members of my master group. [...] The foreigners from Armex, i.e. [name removed], are accompanied to their work positions by myself personally. I show them precisely what they should do in the course of the day. Then, I oversee their work throughout the day. I verify whether they understood everything and whether they perform works correctly.<sup>157</sup>

Crist not only is the actual employer giving instructions, but also the one to provide work wear, protective wear, tools and personal protective equipment.

**As** for the contractor, the company undertakes a project with the full responsibility for the contracting. Based on the above and the following observations, it can be concluded that the workers have to be considered to be involved in bogus self-employment:

- Contracting company X is responsible for the work process (the day starts with work and safety instructions), for the labour (division of labour decided by company X), clothing (all workers wear clothing of company X), equipment (provided by company X);
- Contracting company X is specialized in the relevant branch, either shipbuilding, construction work or agricultural work;
- Contracting company X has signed a contract for finishing the project (not for providing a number of workers);
- Contracting company X has a regular team of workers. The team is autonomous and has a manager who is also employed by the contracting company;
- Contracting company X is responsible for planning, administration, management, safety certificates.

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<sup>156</sup> It is mentioned in a report for the Polish National Labour Inspectorate that these briefings had been taking place every day (except for the day of the accident). See the Polish National Labour Inspectorate's inspection into Armex, 28 November 2014, case No. 03273-5303-K047-Pt/14.

<sup>157</sup> Regional Labour Inspectorate, 28-Aug-13, Labour Inspectorate\03186-53100-K034-PU\_13-Control Protocol Inspection PIP Rungrado 2013 .

INFRINGEMENTS: REPORTS OF THE POLISH NATIONAL LABOUR INSPECTORATE

**The** Polish Labour Inspection has conducted 23 inspections, during which they verified the legality of the employment of citizens of the DPRK. In the inspected entities there were in total 377 foreigners (DPRK) performing work. In the course of these inspections, it was established that there were 77 foreigners from the DPRK whose employment and carrying out of work was illegal.<sup>158</sup> The subject of the inspections is the legality of employment and work of foreigners, that is, in particular, verifying if they have valid visas or any other documents authorising their stay on the territory of the Republic of Poland and the necessary work permits, as well as verifying if they are performing work in positions and under conditions specified in the permits.<sup>159</sup>

**In** accordance with the guidelines and procedures adopted by the National Labour Inspectorate, inspection of the legality of employment or other paid work carried out by foreigners is carried out in case of a *reasonable suspicion of illegal employment* on the basis of information obtained in cooperation with other authorities, complaints submitted to the National Labour Inspectorate, requests and notifications submitted by other offices, or information published in the media, or information arising from the inspectorate's own investigations. The issue of establishing the relationships and cooperation between Polish and Korean companies cannot in itself be the subject of the inspection conducted by a labour inspector. Reasonable suspicion has led to 23 inspections, as listed in the above section.<sup>160</sup>

The following irregularities, among others, were revealed as a result of the inspections:<sup>161</sup>

- Causing the foreigners to illegally carry out work by misleading them:
- The foreigners working in different facilities than the ones specified in the work permits
- Entrusting foreigners with work in different positions than the ones specified in the work permits
- Employing foreigners without concluding the required contracts in writing
- A failure to pay foreigners their due compensation and overtime allowance
- A failure to provide foreigners with their due holiday leave
- A failure to ensure that the terms and conditions of the foreigners' employment are not worse than the ones arising from the Polish Labour Code in the scope of

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<sup>158</sup> Written correspondence from Polish Labour inspection, 3/3/2016.

<sup>159</sup> Written correspondence from National Labour Inspectorate, 25/4/2016.

<sup>160</sup> Written correspondence from National Labour Inspectorate, 25/4/2016.

<sup>161</sup> Written correspondence from National Labour Inspectorate, 31/3/2016.

its standards, working hours, weekly rest periods and the principle of an average five-day work week.

**The** inspection report concluded that workers were ending up working illegally ‘by being lead on or by misunderstanding’; workers were to carry out work tasks without the obligatory written contracts; workers were not paid their wages on time, they were not paid extra for working overtime; workers were not given obligatory leave (for resting purposes); there was a lack of securing proper employment conditions, i.e. contrary to regulations regarding conditions of employment, hours of work, periods of rest and the customary rule of a 5-day working week.<sup>162</sup>

**The** inspection has not officially discovered that the employees were being accompanied during their employment by a representative of the government of their home country, but inspectors received officially unconfirmed information about the possible presence of a person acting as a ‘guardian’ of the DPRK citizens.<sup>163</sup>

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<sup>162</sup> Ibid.

<sup>163</sup> Written correspondence from National Labour Inspectorate, 25/4/2016.





### **CONSEQUENCES OF THE DEFINITION OF THE LEGAL POSITION OF DPRK WORKERS IN THE EU**

**The** legal status of the worker and his employer/user-company determines his right to work lawfully in the EU, and also to move within the EU in order to carry out labour or services in another EU member state other than the one that initially issued the work and/or residence permit. The EU immigration portal provides the extensive requirements for a self-employed worker as well as those for employees.<sup>164</sup> These are not universal within the EU, in particular the regulation of self-employed workers and companies differs largely from one member state to the next.

**For** self-employed workers, many requirements pertain to the legal form of the business activities. The requirements for Poland are not as extensive as those in many other EU Member States. Still, according to the rules presented on the portal, an individual would have to present and prove that his business activities are feasible and his funds are substantive. Once a TCN is allowed to work as self-employed in Poland, this does not automatically allow him to provide his business services in other Member States.

**To** work as an employed worker, or an employee, in Poland, one must obtain a work permit and a visa (Schengen or national) for the purpose of carrying out work or temporary residence. Depending on whether one is already present in Poland or not, merely a work permit (single permit, see below) may suffice, however. There are several categories of

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<sup>164</sup> The portal can be accessed here: [http://ec.europa.eu/immigration/eu-immigration-portal-home\\_en](http://ec.europa.eu/immigration/eu-immigration-portal-home_en).

foreigners (holders of certain residence statuses, carrying out certain types of work, and nationals of selected countries) who are entitled to work without having to obtain a work permit. DPRK nationals are not among them. A work permit is granted for a specific job and is tied to a particular employer. The employee would need a new work permit to change employer.

**Employers** and user companies of agency workers can only employ workers with the appropriate papers. Once workers are legally residing and working in one member state, their employer can execute his right to provide services in another EU member state under the Posting of Workers Directive.<sup>165</sup> Note that this is not a right of the workers themselves but is connected to the service provider. In order to provide a service in another member state, the company that provides the cross-border service is allowed to bring its own employees, including third-country nationals who are legally working and residing in the 'sender state'. Once these employees are carrying out their work in the 'receiving state', a core of labour law that is provided in the Posting of Workers Directive has to be applied to them. According to the Enforcement Directive<sup>166</sup>, these workers have several protective rights, among them the right to receive their own wages in their own bank account. If a service provider brings a worker who does not have the right papers, the service provider or the user company would be subject to prosecution or fine under administrative law. In the case of agency work, there are restrictions as to which workers the service provider can bring along.

**The** EU and its Member States are increasingly aware that the bona fide legal constructions that enact and regulate freedom of movement for workers and services, are increasingly misapplied as vehicles for abusive situations of forced labour and labour exploitation. This is possible due to the fact that once TCN workers or (bogus) self-employed workers move (legally or under covert conditions) across EU-borders, their papers are not scrutinized when they pass into another member state. Enforcement measures and enforcement fall short in the prevention of such abhorrent practices. A number of initiatives are in process at the highest EU levels in order to better fight these illegal situations.

**It** is obvious that all these EU rights and obligations concerning freedom of movement should not be abused in order to facilitate forced labour which is a punishable crime in all EU Member States. As ratification of all the core ILO labour conventions is part of the *aquis communautaire* that is mandatory for Member States to join the EU, they are all obliged to

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<sup>165</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:EN:HTML>.

<sup>166</sup> See [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3A0J.L\\_.2014.159.01.0011.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3A0J.L_.2014.159.01.0011.01.ENG).

regularly report to the ILO on both law and practice. The EU had called upon all its Member States to ratify the Convention 29 protocol.<sup>167</sup>

#### EMPLOYEES ACCORDING TO EU LAW AND DIRECTIVES

**Based** on the evidence and analyses derived from contracts, interviews, payslips and inspection reports, it is clear that the North Korean workers should be considered employees, even though the Polish Labour Inspectorate chose not to do so, basing its opinion mainly on paperwork, and refraining from further investigation of the actual situation. The workers all have regular 12-hour working days, mostly six days a week. They get daily instructions regarding the work that has to be done, supervised by a manager to whom they are subordinate. If work has not been done properly or in time, the workers face disciplinary sanctions from their superior or are instructed to work overtime. Furthermore, they receive –on paper- regular monthly salaries.

**As** employees with TCN status, EU Directive 2011/98 applies.<sup>168</sup> This is a directive for a single application procedure for a single permit for third-country nationals for residing and working in the territory of a Member State, and regarding a common set of rights for third-country workers legally residing in a Member State. The directive offers the TCNs equal treatment with nationals of the Member State where they reside with regard to (art. 12, 1a): working conditions, pay and dismissal, as well as health and safety at the workplace. The implementation date of the directive has long passed, but it can be concluded that regarding all the rights proclaimed in this Directive, the DKPR workers do not enjoy equal treatment with Polish workers.

**The** Polish labour inspections also found cases of illegal employment. In these cases, workers either worked without the right work permit or without a work permit at all. For TCNs illegally residing in Member States, Directive 2009/52<sup>169</sup> provides minimum standards for sanctions against employers of illegally staying TCNs. Article 3 of this Directive prohibits the employment of illegally staying TCNs. In order to avoid infringements, it obliges employers to require TCNs to hold a valid residence permit or authorization for their stay, to hold a copy of that document for inspection by the authorities, and to notify the authorities of the employment of TCNs. Article 5 requires sanctions for infringement of Article 3 to be 'effective, proportionate

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<sup>167</sup> See [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029).

<sup>168</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0001:0009:EN:PDF>. Art. 1 states: Third-country workers as referred to in points (b) and (c) of Article 3(1) shall enjoy equal treatment with nationals of the Member State where they reside with regard to: (a) working conditions, including pay and dismissal as well as health and safety at the workplace.

<sup>169</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>.

and dissuasive.<sup>170</sup> In several cases, it has been noted that employers have violated these requirements, but the sanctions have been far from 'effective, proportionate and dissuasive'. In the case of a serious violation, no more than 500 EUR (2000 PLN) was imposed,<sup>171</sup> which can hardly be seen as 'dissuasive'. Art. 6 offers the illegally employed worker some protection, since the employer is liable to pay any outstanding remuneration to the illegally employed TCN.<sup>172</sup>

#### VIOLATIONS ACCORDING TO EU-LAW AND INTERNATIONAL TREATIES

**Defining** DPRK workers in the EU as employees provides a starting point in determining which EU and national labour rights apply in terms of payment and dismissal, working conditions, health and safety regulations.

**Overall**, the workers are kept in the dark regarding every aspect of their legal position, which in itself is in breach of Directive 91/533,<sup>173</sup> requiring an employer in an EU Member State to inform employees of their working conditions (identity of the parties and place of work, nature of the job, date the contract begins and its duration, amount of payment and working hours). Art. 2.1 states, 'An employer shall be obliged to notify an employee to whom this Directive applies, hereinafter referred to as 'the employee', of the essential aspects of the contract or employment relationship.' It is important to note that this Directive applies to every paid employee having a contract or employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State (art. 1.1).

**North** Korean workers do not personally receive a contract and their payslips are signed on their behalf with forged signatures.<sup>174</sup> The Polish Inspection Report published in 2014 regarding Armex Spolka shows a payslip dated 31 July 2014 and 31 August with 45 Korean names, written in the same handwriting.<sup>175</sup> The deadly accident on the 29<sup>th</sup> of August has led to

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<sup>170</sup> Ibid, Article 5.1. Member States shall take the necessary measures to ensure that infringements of the prohibition referred to in Article 3 are subject to effective, proportionate and dissuasive sanctions against the employer.

<sup>171</sup> Correspondence, Chief Labour Inspectorate: Department of Legal Employment, 31/03/2016.

<sup>172</sup> Ibid, Article 6. 1. In respect of each infringement of the prohibition referred to in Article 3, Member States shall ensure that the employer shall be liable to pay: (a) any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration shall be presumed to have been at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages.

<sup>173</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0533:EN:HTML>.

<sup>174</sup> Regional Labour Inspectorate, Control Protocol PIP Aramex 2014, document no. 03273-5303-K047-Pt/14, 28/11/2014.

<sup>175</sup> Regional Labour Inspectorate Report, Nr. rej. 03273-5303-K047-Pt/14.

an investigation by the Polish Inspection and it is important to note that the payslips signed in September –after the initial inspection- have signatures all in different handwritings.

The payslips of the workers at Crist show that the Koreans receive 2,800 PLN a month. According to Kowalska, the workers are paid directly by her at her office in Gdansk, and every worker signs his own payslip.<sup>176</sup> The payslips in the inspection report contain signatures of the Koreans. However, they show certain patterns of handwriting that indicate the strong possibility of one person signing the payslips on behalf of the rest of the group. (See picture 3)

2014  
Gdańsk, 2014-08-31

**RACHUNEK DO UMOWY O DZIEŁO Z DNIA 2014-07-01**

**Nazwa wykonanej usługi:** Wykonanie prac zgodnie z umową o dzieło z dnia 2014-07-01 Budowa sekcji składowych oraz prefabry kacy wyposażenia na jednostkach NB309, NB302, NB303, NB306, NB371, NB352, NB374, NB428, NB373, NB378 w zakresie prac sprzątkowych w dostawczym składzie - ul. Chłopska 2a 80-514 Gdańsk 484-4997725

**Odbywca:** Armes Sp. z o.o. Marynarki Polskiej 96 80-515 Gdańsk 484-4997725

No	Nazwisko	Grupa Recrutacji	Kwota Brutto	Kwota netto	Podstawa	Podatek	Naliczenie	Data
1	AN		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08.2014
2	CHIA		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08.14
3	CHIH		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08.14
4	CHOF		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
5	HAM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
6	HAN		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
7	HO		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
8	HO		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
9	HONG		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
10	JANG		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08.14
11	JANG		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
12	JO		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
13	JO		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
14	JO		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
15	JONG		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08.14
16	JONG		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08.14
17	JONG		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08.14
18	KANG		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08.14
19	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08.14
20	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08.14
21	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
22	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
23	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
24	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
25	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
26	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
27	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
28	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
29	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
30	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
31	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
32	KIM		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
33	MUN		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
34	MUN		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
35	O		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
36	PAK		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
37	PAK		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
38	PAK		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
39	RI		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
40	RI		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
41	RI		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
42	RI		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
43	REH		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
44	SO		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
45	WON		2 800,00 zł	560,00 zł	2 240,00 zł	403,00 zł	2 397,00 zł	31.08
			126 000,00 zł	25 200,00 zł	100 800,00 zł	18 135,00 zł	107 665,00 zł	

Wartość rachunku ogółem: 126 000,00 zł - wg powyższego zestawienia

<sup>176</sup> Kowalska interviewed by Vice recently in the documentary *Cash for Kim: North Korean Forced Labourers Are Working to Their Death in Poland*, available at <https://www.vice.com/video/cash-for-kim-north-korean-forced-labourers-are-working-to-their-death-in-poland>.

Picture 3 The payslip of August 2014 of North Korean workers <sup>177</sup>

**This** practice should be considered a criminal offence, but has not been treated as such by the Polish Labour Inspectorate, according to the report. This is in breach of Directive 2009/52 that requires Member States to take the necessary measures to ensure that national citizens who commit this criminal offence are punishable by criminal penalties. The Directive states:

(23) In all cases deemed to be serious according to this Directive the infringement should be considered a criminal offence throughout the Community when committed intentionally. The provisions of this Directive regarding criminal offences should be without prejudice to the application of Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (1).

(24) The criminal offence should be punishable by effective, proportionate and dissuasive criminal penalties. The obligation to ensure effective, proportionate and dissuasive criminal penalties under this Directive is without prejudice to the internal organisation of criminal law and criminal justice in the Member States.<sup>178</sup>

Article 10 Criminal penalties 1. Member States shall take the necessary measures to ensure that natural persons who commit the criminal offence referred to in Article 9 are punishable by effective, proportionate and dissuasive criminal penalties. 2. Unless prohibited by general principles of law, the criminal penalties provided for in this Article may be applied under national law without prejudice to other sanctions or measures of a non-criminal nature, and they may be accompanied by the publication of the judicial decision relevant to the case.

It should be noted that a separate directive is applicable to the illegally staying third-country nationals in the EU; directive 2009/52/EC, providing minimum standards for sanctions and measures against employers of illegally staying third-country nationals.<sup>179</sup> The directive aims to fight against illegal employment of third-country nationals and at the same time provides

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<sup>177</sup> Obtained from the 2014 Polish National Labour Inspectorate Inspection into Armex, Case no. 03273-5303-K047-Pt/14. Names and signatures and personal information are not disclosed due to safety concerns of the workers.

<sup>178</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>.

<sup>179</sup> Ibid.

minimum standards for the illegally employed worker. The directive does not limit its scope to the traditional employer-employee relation.

#### Article 8 Subcontracting

1. Where the employer is a subcontractor and without prejudice to the provisions of national law concerning the rights of contribution or recourse or to the provisions of national law in the field of social security, Member States shall ensure that the contractor of which the employer is a direct subcontractor may, in addition to or in place of the employer, be liable to pay:

- (a) any financial sanction imposed under Article 5; and
- (b) any back payments due under Article 6(1)(a) and (c) and Article 6(2) and(3).

2. Where the employer is a subcontractor, Member States shall ensure that the main contractor and any intermediate subcontractor, where they knew that the employing subcontractor employed illegally staying third-country nationals, may be liable to make the payments referred to in paragraph 1 in addition to or in place of the employing subcontractor or the contractor of which the employer is a direct subcontractor.

The directive urges Member States as follows,

#### Article 13 Facilitation of complaints

1. Member States shall ensure that there are effective mechanisms through which third-country nationals in illegal employment may lodge complaints against their employers, directly or through third parties designated by Member States such as trade unions or other associations or a competent authority of the Member State when provided for by national legislation.

2. Member States shall ensure that third parties which have, in accordance with the criteria laid down in their national law, a legitimate interest in ensuring compliance with this Directive, may engage either on behalf of or in support of an illegally employed third-country national, with his or her approval, in any administrative or civil proceedings provided for with the objective of implementing this Directive.

**Apart** from the daily working hours and instructions, wherever DPRK workers are posted, North Korean workers are not informed about the conditions of the work, about their

payment, or about the duration of the activities.<sup>180</sup> In Poland, the official payslips are signed by the manager or the interpreter and the individual workers receive small and irregular portions of that money in cash. The workers do not know how much they will receive once they return to the DPRK or even if they will receive anything. The question remains if the practice can be labelled as 'forced labour', since the workers mostly state that they themselves applied for foreign dispatch. However, in the circumstances there is hardly a freedom of choice. 'The term 'forced or compulsory labour' is defined by the ILO Forced Labour Convention, 1930 (No 29), article 2.1, as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.' The definition thus contains three main elements: first, some form of work or service must be provided by the individual concerned to a third party; second, the work is performed under the threat of a penalty, which can take various forms, whether physical, psychological, financial or other; and third, the work is undertaken involuntarily, meaning that the person either became engaged in the activity against their free will or, once engaged, finds that he or she cannot leave the job with a reasonable period of notice, and without forgoing payment or other entitlements. While sometimes the means of coercion used by the exploiter(s) can be overt and observable (e.g. armed guards who prevent workers from leaving, or workers who are confined to locked premises), more often the coercion applied is more subtle and not immediately observable (e.g. confiscation of identity papers, or threats of denunciation to the authorities).<sup>181</sup> Both Mr Lim Il and the confidential witness have stated that their identity papers were kept from them, and that they had to flee and therefore could not receive remuneration.

**According** to the ILO's survey guidelines, an individual is considered to be working in forced labour if he or she is not freely recruited and faces some form of penalty at the time of recruitment, has to work and live under duress and the menace of any penalty, or cannot leave the employer because of the menace of a penalty. The indicators are summed up as follows,

- Not freely recruited
- Impossible to leave
- Limited freedom
- Live and work under duress
- Dependent individual
- Dependent household

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<sup>180</sup> This is a point that keeps coming back in the testimonies (Kim T'aesan, Lim Il, confidential) and in the interviews done for previously published studies.

<sup>181</sup> ILO, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf).



- Labour rights violations
- Coerced/violence
- Guardian in forced labour.<sup>182</sup>

In the report, 'not being freely recruited' also refers to being recruited through either deception or coercion.<sup>183</sup> According to the statements made by the witnesses, it is clear the none of them were aware of the work they would do, the hardship they would suffer and the (lack of) payment. Also the Polish Inspectorate has revealed irregularities causing DPRK workers to illegally carry outwork by misleading them.

Protocol of 2014 to the Forced Labour Convention, 1930, art 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

**Modern** forms of forced labour are facilitated by the DPRK and intermediary companies in ingenious ways. Nevertheless, forced labour is prohibited on many levels by international treaties and declarations, customary law, and EU law - ratified by all EU Member States, ranging from the Universal Declaration on Human Rights, to the UN Guiding Principles on Business and Human Rights, the EU Charter, art. 5, the ECHR and the European Social Charter.<sup>184</sup> At the same time, there are no signs that sufficient measures are being taken to

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<sup>182</sup> Profits and Poverty, the economics of Forced Labour, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_243391.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf).

<sup>183</sup> Ibid, p. 32.

<sup>184</sup> The relevant texts can be found at: <http://www.un.org/en/universal-declaration-human-rights/>; [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf);

prevent forced labour by educating and informing workers and employers, as art. 2 of the 2014 Protocol to Convention 29, ILO requires. According to one witness interviewed by the project, a DPRK worker was punished by having to work for one year without pay for a perceived infraction of rules. No pretence of a trial or formal procedure for applying DPRK laws was made.<sup>185</sup>

#### DEALING WITH DPRK WORKERS IN THE EU

**With** regard to the legal position of DPRK workers in the EU, their situation falls within the ongoing debate on bogus self-employment practices. It fits within the broader political discussion regarding the situation of the shadowy constructions of sub-employment in construction work, in order to avoid paying taxes, social benefits, holiday allowances and pensions. There are many cases of litigation regarding this subject, in which the questions of whether or not a particular case is bogus self-employment, and the working individual is actually an employee, must be answered. The special characteristics in the case of the DPRK workers are the constant surveillance by the regime and the fact that the income is going straight to the state.

**With** regard to the North Koreans, it can be argued with sufficient evidence that the workers actually are hired as employees. The DPRK is very well aware of the possibilities of the EU legal constructions, and profits from them by using the most advantageous and up-to-date employment constructions. This offers the EU a chance to immediately ameliorate the human rights situation of at least some DPRK citizens. The human rights discourse has been politicized, and, due to the DPRK's flat-out refusal to cooperate with human rights mechanisms, it is not heard within the DPRK. EU labour law offers the international community a different way to address this issue, and to move beyond merely observing that human rights are being breached, particularly since labour law infringements and human rights violations seem to overlap significantly in these cases. To combat these labour and human rights violations in the working conditions on EU soil, there are clear recommendations that should be considered. It supports the argument the confidential witness makes,

If a company from Country X provides wages to North Korean labourers personally, and makes sure to have them sign the payslip, working conditions would get better [...]. If exploitation keeps occurring even after those improvements, labourers would realize that this type of treatment is unfair and wrong. [...] North Koreans do not have any concept for personal human rights.

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[http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf); <http://www.echr.coe.int/Pages/home.aspx?p=home>;  
<http://www.coe.int/en/web/turin-european-social-charter/home>.

<sup>185</sup> Confidential testimony, 13-15/05/2016.

They don't have any methods or system input to compare the North Korean system with. This is because they don't have any information or news about what the truth is and what really is going on. They don't realize there might be a different way of living one's life out there. I think it is important for South Korea and other nations societies to make them realize to see what is really going on.

Also Lim Il states in agreement with the above statement,

I feel relieved that this issue is emerging internationally, even though it is a little late. There are lives and hardships involved; the practice should be banned. Also, the profit from the labour does not go to the labourers but huge amounts of money go to the DPRK authority's foreign currency earnings.

The project team accordingly makes a number of recommendations at the end of this report.



### EXPORTING THE SYSTEM

An underrepresented characteristic of North Korean overseas labour, whether deemed to be forcible or not, is the inevitable concomitant export of the DPRK system. This is such an obvious thing to expect from a state that emphasizes its ideology as *sui generis* that it often goes unnoticed. Interviews conducted with former North Korean workers abroad confirm the crucial and compulsory nature of the wide variety of ideological sessions that workers must actively attend on their day off. The reason for the inevitable export of the ideology of the monolithic leadership system is in itself simple, even if its ramifications and execution are not: the DPRK is not a socialist state, nor is it communist. To call it proto-capitalist (as some recent analyses do) would be more correct, but is limited to a *modus operandi* and does not relate to the essential guiding ideology of the DPRK: *suryŏngjuŭi* or the cult of the monolithic leadership system. Even in a foreign setting, the tenets of the DPRK ideology need to be adhered to, the central place of the Supreme Leader needs to be reaffirmed daily, by worship, the teaching of ideological mythology, the public confession of committed sins, the remonstrance of sins committed by others, or by collecting money to be used for the benefit of the Supreme Leader. As one recent refugee with experience working in Europe stated,

I take a rest on Sundays. First, we clean after breakfast on Sunday morning. And then from 9:30 am until 10:30 am we hold a meeting. It's usually about

watching seminar video clips, propaganda films, or discussing the weekly settlement.<sup>186</sup>

A former manager of North Korean labourers in the Czech Republic, Kim T'aesan, answered the question whether workers abroad had to undergo regular ideological evaluations as follows,

It was compulsory for all workers to take part in the evaluation meeting once every week outside of their working hours, plus once a week there was a compulsory lecture. The lecture materials were provided through the channels of the DPRK Embassy.<sup>187</sup>

A witness providing confidential testimony from the EU stated,

Once a week we write notes about self-critique, pros, and cons, and then get checked by the cell leader. The reason we keep track of the records is for the party secretary from the embassy or the secretary from the company patrolling down randomly. Indeed, there once was the time we did not hold the meeting for a month and procrastinated writing notes until the end of the month.<sup>188</sup>

**Financial** drives for the leader are also held abroad as if one has never left North Korea,

The reason why our second wage was 100 zloty less than the first wage was because the manager provided 100 zloty as a donation to the Kūmsusan Palace Fund. All North Koreans are virtually obligated to pay to the government 30 dollar every quarter as a contribution to the Kūmsusan Palace Fund. This also applies when you work abroad.<sup>189</sup>

**The** enforced ideological training sessions are accompanied by their necessary component of absence of freedoms, 'There are not that many of options for cultural experience in Poland. They don't install TV.'

**Being** abroad does offer opportunities for circumventing the rules regulating watching TV or accessing the internet, however,

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<sup>186</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>187</sup> Ibid.

<sup>188</sup> Ibid.

<sup>189</sup> Ibid.

Most labourers have a small TV or personal laptop for private use. They watch it under their blanket at night. Although there might be someone next to them while watching something, that person can't report anything to manager since he doesn't know what they are watching. We don't try to take a peek at what others watch. Everyone just turns a blind-eye to each other. [...] I once watched a European movie in secret. Our cell leader also watched TV on his laptop privately. One time he fell asleep with his laptop on after a drink or two. Labourers in the same room decided to turn the laptop off for him after they heard Korean coming out of the laptop.<sup>190</sup>

**The** ideological training sessions take up much of the free time of the workers. Again, according to Kim T'aesan, answering the question whether workers were able to go out after they had finished their work,

No, such outside activity is considered as a violation of the general principles of DPRK's overseas labour. Though there are exceptional cases, such as when the food stock and daily necessities were running out and somebody had to shop. In that case, a group of workers goes to a grocery or shop together with permission from their supervisor. Individually it was not possible to go out.<sup>191</sup>

**Enforcing** such a system is not an easy task. As has also been noted by the Polish labour inspection, some of the DPRK workers function as minders. According to the North Korean workers themselves, the minders have been delegated to particular groups by the State Security Department 국가안전보위부. They are primarily responsible, it seems, for maintaining order and enforcing obedience,

At first when I was assigned to the place of work, most of the labourers carried cell phones. However, the security officer ordered us to get rid of our cell phones in May 2015. Everyone was getting access to foreign cultures through the online service on their cell phones. But then, they only allowed translators to keep a cell phone, although probably labourers might have one hidden somewhere in their pockets.<sup>192</sup>

Another witness also testified to the presence and importance of the State Security Department,

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<sup>190</sup> Ibid.

<sup>191</sup> Interview Kim T'aesan, 22/03/2016, Skype Leiden-Seoul.

<sup>192</sup> Interview, 13-15/5/2016, undisclosed location.

In our system, the director of the company is no.1, the party secretary is no.2, and the no.3 is the security officer from the State Security Department. In practice, no.3 wields all real authority. The manager (Mr. K.) is party secretary for the company and our team leader functions as cell party secretary.<sup>193</sup>

**It** is clear then that the presence of the state in overseas DPRK labour is not limited to the mobilization and selection of workers. Nor does it stop at benefiting economically from this practice by jointly owning some of the companies involved, or by being paid for sending their citizens to work. Work and life of DPRK citizens employed as workers abroad are both determined by the state. The minders, detailed by the State Security Department, have the duty to make sure that the ideology of the monolithic leadership system is not left behind in the DPRK, but travels with the workers wherever they go. The compulsory nature of the ideological sessions and of the nominally voluntary financial drives, the restrictions imposed on the workers (enforced by the representatives of the State Security Department), the sanctions to which they are vulnerable: these all emit from the state. The export of the DPRK system is not only ideologically inevitable, it is also crucial for the maintenance of group discipline and hence for continued financial profits enjoyed by the state.

**Interestingly**, the ideological sessions are both a vignette of the ultimately 'enslaved' nature of each and every North Korean, including those abroad through the export of the ideological and physical (agents from the State Security Department) aspects of the system, and a space for unobserved acts of rebellion. Revisiting the quotations from interviews reproduced in this section, it is clear that the ideological straightjacket that workers are forced in is tied slightly less tightly outside of the DPRK. Workers evade strict control mechanisms by turning a blind eye to violations by others, by treating ideological requirements as merely bureaucratic necessities, and by breaking the rules by possessing private laptops or other devices capable of accessing unauthorized information.

**In** considering the implications of a miniature replication of the DPRK system wherever DPRK workers are sent to work abroad, the observation that structures and practices are replicated that have been deemed infringements on human rights by the UN COI report,<sup>194</sup> has to our knowledge not been made before. It is, however crucial to the practice of overseas DPRK labour in two ways: first, it maintains the necessary – repressive - discipline for the group to function most efficiently from the point of view of the employers. Second, only by rigidly

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<sup>193</sup> Interview, 13-15/5/2016, undisclosed location.

<sup>194</sup> See the report here: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N15/273/17/PDF/N1527317.pdf?OpenElement>.



adhering to the DPRK system both ideological and socially (i.e. isolation from everyone outside of the system), in which there is no direct correlation between work and remuneration can the ignorance of the workers with regard to their work, their legal status and their remuneration be maintained.

#### WHO ARE THE DPRK WORKERS SENT TO POLAND?

**Our** research has been greatly aided by having enjoyed indirect access to a database of about two million citizens of Pyongyang (see note 12). Having been able to crosscheck the background of the workers named in the reports of the Polish National Labour Inspection (who shall remain anonymous in this report), has allowed us to form a concrete idea about what kind of workers are sent to the EU. To some extent, they share characteristics with other workers being sent abroad: the conditions of being married and preferably leaving a spouse and two children in North Korea during one's stay abroad presumably are valid for all workers, although it seems logical to suppose that these conditions are more strictly enforced when a destination is thought to be more attractive for a worker to try and escape to. EU countries belong to the most attractive category: wages are high, North Korean refugees easily receive asylum, and the DPRK regime does not consider escaping to an EU country a political crime (as escaping to South Korea would be), but rather an economic misdemeanour, comparable to an illegal sojourn in China in order to earn money.<sup>195</sup>

**The** Pyongyang database yielded records for 25 of the 48 names mentioned in the Polish Labour Inspection's investigation of the death of Chŏn Kyŏngsu. This means that the 23 names not in the database either are from outside Pyongyang, were not living in Pyongyang in 2004 (when the database was last updated before it was taken out of the DPRK), or were too young in 2004 to merit an entry. In itself, the fact that 25 out of 48 workers in Poland are from Pyongyang is significant. Less than 10% of the population of the DPRK lives in Pyongyang and special permission is needed to live there. It is widely seen (both in North Korea and abroad) as the most privileged area in the DPRK, to the extent of having earned the nickname 'Republic Pyongyang' among North Koreans.<sup>196</sup>

**Of** the 25 workers, 19 are Party members, which is an overwhelmingly large ratio: less than 15% of the North Korean population is a member of the Party. The information further shows that 19 out of 25 were married in 2004, while those not married were also the youngest

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<sup>195</sup> This means that there maybe sanctions against a refugee or remaining family, but of a different order than against someone who defects to South Korea.

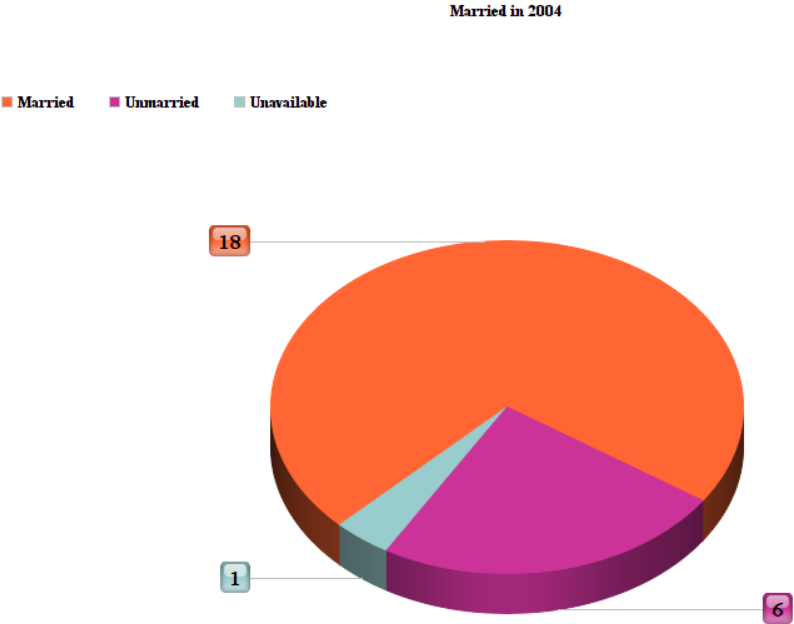
<sup>196</sup> Personal communication Jang Jin-Sung.

of the group. This suggests that the workers showing up in the database as unmarried in 2004 will in all probability have married before being sent abroad some seven or eight years later.

**The** last category of useful information concerns the place of work. Most if not all of the workers turn out to have been active in professions that will have made work at construction sites or shipyards an excellent fit. They worked in factories and at construction companies.

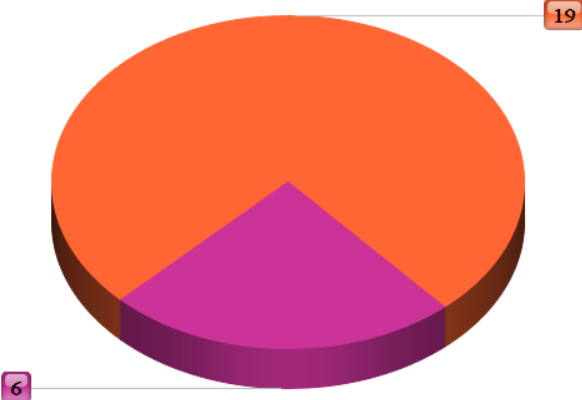
**Summarizing,** it is difficult to avoid the conclusion that the workers sent to work in Poland or at least at Polish shipyards are highly skilled professionals trusted by the regime. This is shown by the fact that half of the workers lived in Pyongyang, while a staggering 76% (five times the average) of the workers are members of the Korean Workers Party.

Tables:



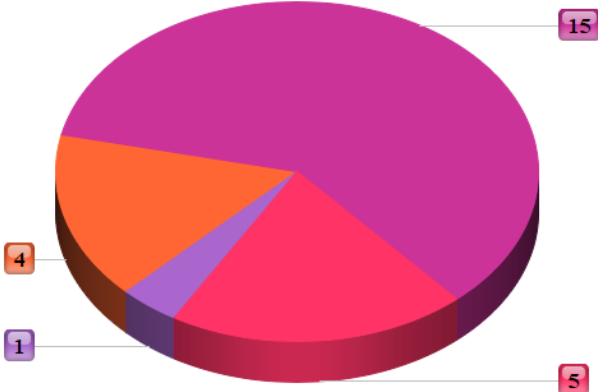
Workers - Party Members

Party Members Non-Party Members



Worker Age

30 - 39 40 - 49 50 - 59 60 +





## SUMMING UP

**North Korea's** state and society possess a unique structure that ensures that the boundaries between the state and private entities are blurred. Seen from the EU, the DPRK state and DPRK private companies are clearly separated. The line of separation between state institutions and private entities is an illusion, however. Even if one does not subscribe to the notion that the DPRK now is much more akin to a neo-liberal conglomerate than to a state in the classic sense of the word,<sup>197</sup> it is hard to deny that privately registered DPRK entities are under full state control, if only, as this report has shown, because their owners as registered overseas are actually high-ranking state officials.<sup>198</sup> Through companies such as Rungrado (in all its different domestic and overseas incarnations), the DPRK regime has created a sophisticated instrument of labour leasing on a large scale. It combines the prerogatives of the state (in mobilizing, vetting and sending the workers; in supporting visa applications; in arranging financial matters; in supplying surveillance mechanisms) with the practical know-how of local agents (who have access to the local companies and government). The DPRK, despite its reputation as an unpredictable, irrational state with hardly any knowledge of how things are done outside of its borders, has nonetheless, with patience and through trial-and-error,<sup>199</sup> managed to develop an innovative hybrid form of overseas forced labour that fits local EU conditions all too well.

**The** sanctions imposed on the DPRK in the last six months have made this source of hard currency even more important. As we noted in our first working paper, 'during the last few years, income from the sale of minerals (or from the right to mine minerals in the DPRK) has been declining. In 2013, the DPRK earned about 1.8 billion USD through selling mineral

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<sup>197</sup> Remco Breuker, '[Noord-Korea is geen staat, maar een bedrijf](#),' *NRC Next*, 11/02/2016; and Jim Walsh & John Park, 'To Stop the Missiles, Stop North Korea, Inc.,' *New York Times*, 10/03/2016, [http://www.nytimes.com/2016/03/10/opinion/to-stop-the-missiles-stop-north-korea-inc.html?\\_r=0](http://www.nytimes.com/2016/03/10/opinion/to-stop-the-missiles-stop-north-korea-inc.html?_r=0).

<sup>198</sup> Kang Honggu seems the perfect example of this.

<sup>199</sup> Press attention for DPRK labour in the Czech Republic appears to have closed down that earlier experiment with deployment of North Koreans to the EU.

reserves to the PRC, while in the first half of 2015 only 600 million USD was earned.<sup>200</sup>

Statements made at the Seventh Party Congress held in early May 2016 have again emphasized the desperate need felt by the regime to jump-start the North Korean economy and to increase overseas earnings.<sup>201</sup> There seems to be a direct correlation between the observed increase in overseas forced labour under Kim Jong Un and the DPRK's increasingly difficult economic situation.<sup>202</sup>

**This** project has unearthed a number of important facts and figures associated with DPRK overseas forced labour. As of yet, we have not been able to track the finances involved. But if we follow the argument outlined in our first working paper, using the solidly argued estimates of the ILO of the per victim earnings in a developed economy such as the EU, one DPRK labourer nets his/her employer roughly US\$34,800 per year.<sup>203</sup> When compared to the total trade balance between the DPRK and EU in 2015 (€ 30,000,000), the verified minimum of DPRK workers in Poland already annually earns more than half of this sum *in net profits* for their employers.<sup>204</sup> A state with an estimated GDP of USD \$14,000,000,000 and very limited opportunities to obtain funds cannot afford to ignore this method of earning hard currency.<sup>205</sup>

**It** should also not pass unnoticed that the way in which DPRK overseas labour is organized and executed, even if it is undeniably forced labour, may very well mean that it is a lucrative affair for all participants involved, including the labourers themselves. Despite the infringements on the workers' human rights, their situation in Poland may be better than doing comparable work in the DPRK. It is a well-established fact that bribes are paid in North Korea to be considered for posting abroad.<sup>206</sup> Even so, DPRK overseas forced labour experience transcends the individual level. The profits generated flow directly to the DPRK, which

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<sup>200</sup> Kim Sökchin, *Pukhan oehwaböri ch'use-wa ch'önmang*, pp. 5-17.

<sup>201</sup> To the extent of factually selling honorary titles for earned income from overseas.

<sup>202</sup> Kim Sökchin, *Pukhan oehwaböri ch'use-wa ch'önmang*, pp. 33-45.

<sup>203</sup> General statistics from the ILO show that on average US\$3,900 is earned in Africa per victim of forced labour; US\$5,000 per victim in the Asia-Pacific region; US\$15,000 per victim in countries in the Middle East; and US\$34,800 per victim in so-called developed economies. While the actual amount will vary according to the particular situation, the overall relative distribution of profits is correct. The ILO further notes that '[total] profits are highest in Asia (US\$ 51.8 billion) and Developed Economies (US\$ 46.9 billion), mainly for two reasons: the high number of victims in Asia and the high profit per victim in Developed Economies.'

<sup>204</sup> See [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_113428.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113428.pdf).

<sup>205</sup> One would think that the predicament that the DPRK is in in economic terms, and the (partial) answer that it has found in labour leasing in the EU, would give the EU a good handle for persuading the DPRK to seriously negotiate, but so far the EU has not shown any inclination to capitalize on this.

<sup>206</sup> Interview, 13-15/5/2016, undisclosed location. Various civil society reports feature witness testimonies about this practice, including International Network for the Human Rights of North Korean Overseas Labor: The Conditions of the North Korean Overseas Labor, December 2012.

contravenes the sanctions that the UN and the EU have put in place for preventing foreign funds from strengthening the DPRK's nuclear weapons and missile development programs. The fact that EU regional funds are, however indirectly, involved in funding companies that generate Pyongyang's profits is obviously extremely problematic.

In our first working paper, a number of push-and-pull factors were identified that make the DPRK engage in the export of forced labour and that make its increasing growth a high likelihood. They are reproduced below:

1. The general lack of opportunities for the DPRK to earn foreign hard currency; the decline of those industries that specialize in earning hard currency (such as the mining industry); and the ever-present need for the DPRK to earn as much hard currency as it can.
2. The presence of the historical example of working abroad, both for the state in organizational terms and for the average citizen who remembers the riches associated with labour abroad from before.<sup>207</sup>
3. The almost perfect fit of the current DPRK state and social system with the needs of a system based on forced labour abroad (the capacity to gather workers and to force them to work abroad, while adhering to domestic DPRK rules; the ability to arrange visa procedures legally and effectively through its diplomatic representatives abroad; the normality of the state receiving the wages and redistributing these according to its own insights; the peculiar structure in which the DPRK elite has invested its economic well-being in private companies, often also registered abroad, that act as agents).
4. The possibility to replicate the DPRK state surveillance system and to attach it to the groups of workers sent abroad, effectively recreating a mini-DPRK wherever the workers find themselves and in that way minimizing defection or outside contamination (*but which constitutes a structural infringement on human rights as noted in the UN COI report, only now transferred to foreign – EU – soil*).
5. The high profits to be earned a. by sending a high number of workers to Asian countries such as China to earn the accumulation of the relatively limited profits per victim, or b. by sending far fewer workers

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<sup>207</sup> Particularly in the sixties, but also in the eighties: see Larisa V. Zabrovskaya, 'Economic Contacts between the DPRK and the Russian Far East: 1992-2005,' pp. 95-111.

to the developed economies of the EU countries,<sup>208</sup> but against an incomparably higher return per victim (Pyongyang's so-called 'flying doctors would also be an example of this).<sup>209</sup> In both cases the net profit is considerable.

**These** push-and-pull factors indicate a high likelihood of DPRK overseas forced labour continuing to grow. Exploiting North Korean workers in the EU is a local expression of a global phenomenon, wherein the demand for cheap labour in the international market meets workers presented by a system that is, coincidentally, perfectly suited to supply them. Abuses past and present merit further investigation and redress. Vigilance with regard to future abuses is necessary. DPRK overseas forced labour offers not only avenues to end abuses and locate accountability (both of which are necessary). If managed strategically, it may just present an opportunity to persuade the DPRK to engage more seriously with the EU, instead of continuing the merely rhetorical engagement that it has shown ever since the EU and the DPRK established diplomatic ties. Beyond the EU, these findings should alert employers and leaders of other states hosting North Korean workers, as they too are accessories to the human rights violations being committed against these overseas labourers.

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<sup>208</sup> For obvious reasons, the US is not a target country for the DPRK overseas labour force.

<sup>209</sup> See <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3011968>.



## **RECOMMENDATIONS**

The project team has arrived at a number of recommendations that came out of the research. The recommendations consist of preventive measures, short-term measures and long-term measures. The first notable finding of this project is the fact that DPRK workers are completely in the dark about their position and their rights. This leads to the first recommendation. The Member State and the companies involved should take the responsibility to inform the workers on their legal position and their rights. It could make a substantial difference in the awareness of the workers. Being used to their complete dependence on the DPRK state mechanisms, their situation abroad is not very different from their position within the DPRK. Raising awareness of their rights and legal position is important from a labour law perspective, but maybe even more so from the perspective of human rights. Workers may arrive at the realization that outside of the DPRK they enjoy individual legal rights that can be enforced. Other recommendations consist of ways to enforce regulations, on the use of relevant legal instruments, and on further research.

- RECOMMENDATION NO. 1:

Workers should be informed by EU Member States and by their respective employers about their rights and their legal position. Member States are responsible for the information. National migration offices that issue the working permits, trade unions and hirers play a crucial role in informing the workers.

- RECOMMENDATION NO. 2:

Intermediate companies, (sub)contractors and hirers should be informed about

their place in the chain of responsibility, and, if needed, should be sanctioned according to the notion of chain liability.

- RECOMMENDATION NO. 3:

Infringements of labour law and violations of human rights related to working conditions of DPRK workers in the EU should be part of the public debate and should be subjected to judicial remedy by the relevant authorities as well as by (representatives of) the workers themselves.

- RECOMMENDATION NO. 4:

Available instruments of reporting by the ILO and national labour inspection bodies should be deployed. Representatives who are able to act independently and without risk for the victims/aggrieved parties should organise themselves.

- RECOMMENDATION NO. 5:

Define where civil or administrative litigation procedures can initiated and/or criminal proceedings are in order. Seek redress and compensation for the workers.

- RECOMMENDATION NO. 6:

Secure protection for workers who intent to lodge complaints, secure a safe haven for possible defectors.

- RECOMMENDATION NO. 7:

Undertake further research regarding how the secondment of DPRK workers to the EU may be in violation of EU and/or UN sanctions.

- RECOMMENDATION NO. 8:

Undertake in-depth research regarding the state liability of the DPRK for severe human rights violations and labour right violations abroad.

- RECOMMENDATION NO. 9.

Undertake further research regarding the practice of allocating DPRK workers to the all ILO member states where DPRK are now known or thought to be employed.

**The** ILO considers itself to be best placed to lead global action for decent work in the global supply chain. It aims to 'strengthen its capacity as the global centre of excellence to facilitate, having regard to all relevant available evidence, the development and implementation of well-informed coherent policies and strategies and build the capacity of

constituents.<sup>210</sup> The DPRK labour export-case provides a case to match this ambition. At least 19 ILO Member States are said to employ DPRK workers. The UN special rapporteur on human rights in North Korea stated that they include China and Russia, and reportedly include Algeria, Angola Cambodia, Equatorial Guinea, Ethiopia, Kuwait, Libya, Malaysia, Mongolia, Myanmar, Nigeria, Oman, Poland, Qatar and the United Arab Emirates.<sup>211</sup> Considering the fact that there is much supporting evidence of violations of labour rights, and considering the fact that DPRK workers are in no position to protect themselves and have no access to legal remedies, and combined with the fact that this practice moreover supports a state that violates human rights without parallel, the ILO should not remain silent on this issue.

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<sup>210</sup> Reports of the Committee on Decent Work in Global Supply Chain: Resolution and conclusions submitted for adoption by the Conference. 9 June, 2016

<sup>211</sup> The Guardian, 29<sup>th</sup> October, 2015, <https://www.theguardian.com/world/2015/oct/29/north-korea-workers-forced-labour-abroad-un-report>.



## EXECUTIVE SUMMARY

In 2014, a North Korean welder died in an accident in a Polish shipyard, working at least 12-hours workdays, 6 days per week. He was not allowed to go anywhere in Poland except for work and home and did not receive most of the money his work earned. Like his colleagues, he was forced to participate in ideological sessions worshipping an absolute god-like leader in his free time. He never received an employment contract and was not in possession of his own passport. Chŏn and his North Korean colleagues in Poland are victims of forced labour. And a special kind of forced labour at that, one that is ideologically enforced and shaped, exported across borders and instigated and executed by the North Korean state.

**The *Slaves to the System*** project has investigated this phenomenon, collecting information through witness testimonies, field research in Poland (the test case for this preliminary report), and archival research into company structures, visas, bilateral treaties, and Polish and North Korean government sources.

**North** Korea's state and society possess a unique structure that ensures that the boundaries between the state and private entities are blurred. Through companies such as Rungrado, North Korea has created a sophisticated instrument of labour leasing on a large scale. It combines the prerogatives of the state to mobilize and dispatch workers with the practical know-how of local agents who know the local market.

**The** sanctions recently imposed on the DPRK have made this source of hard currency even more important. There seems to be a direct correlation between the observed increase in forced overseas labour under Kim Jong Un and the DPRK's increasingly difficult economic situation.

**DPRK** forced overseas labour transcends the individual level. The profits generated flow directly to the DPRK, which contravenes UN and EU sanctions to prevent foreign funds strengthening the DPRK's nuclear weapons and missile development programs. The fact that EU regional funds are, however indirectly, involved in funding companies that generate Pyongyang's profits, is problematic.

**The** DPRK workers in the EU are an example of bona fide legal constructions that legislate and regulate freedom of movement for workers and services, misapplied as vehicles for abusive situations of forced labour and labour exploitation. DPRK workers in the EU fall within the on-going debate on bogus self-employment practices. It is the constant surveillance by the regime and the fact that the income is going straight to the DPRK that make this case stand out. The DPRK, despite its reputation as an unpredictable, irrational state, has nonetheless managed to develop an innovative hybrid form of overseas forced labour that fits local EU conditions all too well.

**DPRK** overseas forced labour is growing. Exploiting North Korean workers in the EU is a local expression of a global phenomenon, wherein the demand for cheap labour in the international market meets workers presented by a system that is, coincidentally, perfectly suited to supply them.

**EU** labour law offers the international community a different way to address this issue and to move beyond merely observing that human rights are being breached, particularly since labour law infringements and human rights violations seem to overlap significantly in these cases.

**Beyond** the EU, these findings should alert employers and leaders of other states hosting North Korean workers, as they too are accessories to the human rights violations being committed against these overseas labourers.

**EXECUTIVE SUMMARY (KOREAN)**

2014년 폴란드 한 조선소에서 북한 노동자 한 명이 (이름: 전경수) 화재로 인해 사망했다. 당시 이 노동자는 용접공으로 약 1년 7개월 동안, 하루 평균 12시간, 주 6일 동안 근무했다. 이렇게 일한 대가로 그가 받은 월급 대부분은 북한 관리자에 의해 북으로 송금됐다. 본 연구진은 이 노동자가 월급 명세서도 받지 못했고, 근로계약서도 직접 서명하지 않았다는 것을 확인했다. 이 모든 정황이 현재 북한 해외근로자들의 실태를 보여주는 증거다.

이번 연구 (SLAVES TO THE SYSTEM)의 목적은 이러한 북한 해외 근로자들의 현실을 정확히 알리는 데 있다. 이를 위해 연구팀은 폴란드 현장조사, 관계자 및 노동자들의 인터뷰뿐만 아니라 폴란드 노동 감독기관과의 협조를 통해 북한인을 채용한 기업 자료도 확보했다.

연구를 통해서 드러난 사실 중 하나는

1) 첫째, 북한 기업과 현지 회사들과의 긴밀하고 복잡한 비즈니스 구조다. 본 연구진은 북한의 대표적인 회사인 능라도 무역총회사가 폴란드 현지 기업들과

계약을 맺고 있다는 것을 확인했다. 이 기업들은 능라도의 중개 역할을 맡아 폴란드 내 토마토 농장, 조선소 등 다양한 곳에 북한 노동자들을 파견했다는 점을 확인했다. 이렇게 현지 인력중개회사를 활용한 이유는 문건상으로는 쉽게 파악하기 힘들고, 노동감독청의 감시도 벗어나기 위한 것으로 본다.

2) 둘째, 본 연구진은 현장 조사 및 증언을 통해 폴란드 내 북한 노동자 중 상당수는 노동법상의 고용 근로계약이 아닌 임시직, 또는 용역계약으로 고용된 점을 확인했다. 이는 노동법보다는 상대적으로 제약이 덜한 민법상 고용계약을 적용하기 위한 것으로 파악된다. 하지만 실제 이들은 근무조건은 일반 고용계약에 해당하는 일을 하고 있다.

3) 이를 종합해 보면 북한 해외노동자들의 근로 조건 및 환경이 국제 인권법뿐만 아니라 EU 노동법에 위반된다는 사실이다. 특히 이번 연구를 통해 드러난 북한 해외노동자 파견 시스템은 비단 유럽 내 뿐만 아니라 이미 다른 곳에서도 사용하고 있거나 앞으로도 지속적으로 사용될 가능성이 있는 만큼 이에대한 각 국가들의 시급한 조치와, 지속적인 관심이 필요하다.



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## APPENDIX 1

### OBSERVATIONS FROM FIELD RESEARCH CONDUCTED IN POLAND, APRIL 17-22, 2016

#### OVERALL REMARKS

**During** field research from April 17-22 in Poland, our research team observed the situations of North Korean workers working across the country. We conducted interviews with key informants. These included officials from the Polish Labour Inspectorate, employers and local workers. The information below is organised according to locations and names of organisations, and in a way to help readers to locate where our research team observed North Korean workers. Due to time and resource constraints, it was not possible to visit all the locations and working sites that we have identified in the research.

#### WARSAW AND ADJACENT AREAS

JTM Tomato, Janów 14, 05-480 Karczew



A view of JTM tomato farms in Karczew. ©LeidenAsiaCentre

**Located** some 40 kilometres South-East of Warsaw, endless glass houses sit in a vast field where, inside, various sizes of tomato plants are potted and grown. Surrounded by concrete walls and barbed wire, the glasshouses are not clearly visible from the outside. On the day of our visit, we were not able to find any workers. We did manage to speak with a local resident who saw a group of female workers who looked like North Koreans at the farm. We also visited a corner shop on the main road towards the farm, but the shopkeeper refused to speak to us. We also went to the address nearby, which is registered under the name of Kang Honggu. It turned out that the address given in the PIP documentation is a gas station.

**Atal's** construction site, Aleja Rzeczypospolitej 24, 02-972, Warsaw  
([www.oazawilanow.pl](http://www.oazawilanow.pl))



Atal's construction site in Warsaw. ©LeidenAsiaCentre

**We** visited a construction site, a block of luxury apartments being built by Atal on the outskirts of Warsaw. There we found a number of North Korean workers. Inside the main gate of the construction site, three North Koreans were working together, removing heavy steel frames with bare hands. The work looked very dangerous, though the Koreans did not seem to care much. One of the workers was listening to music, which sounded like some kind of North Korean propaganda song, from a small device he was wearing round his neck. In our observation we also found visible signs that there was a hierarchy among the workers. We observed that all the Koreans were wearing the kind of high-visibility safety clothes that construction workers wear. The difference among them is that we saw two North Koreans who acted like supervisors giving orders to the rest of the group who were wearing orange vests. The other workers wore yellow vests. Also, two men were carrying mobile phones, unlike the other ordinary workers.



North Korean workers are seen at the construction site © Vice Media

#### THE OFFICE OF THE POLISH NATIONAL LABOUR INSPECTORATE, WARSAW

**Our** research team had a chance to speak with Jaroslaw Cichon, the Chief Specialist of the Polish National Labour Inspectorate (PIP), about their ongoing investigation of companies that have employed North Korean workers. Since 2010, the PIP has conducted 23 inspections, during which they verified the legality of the employment of North Korean workers, and they have established that there were in total 377 North Korean workers in the period of 2014-2015. During the interview, the Chief Inspector admitted that the role of labour inspectors is, however, very limited in terms of regulating and monitoring North Korean workers. This is due to the fact that the foreign employees have a temporary contract, or a contract to perform a specified task, and that these are civil-law contracts that do not guarantee workers the right to enjoy the protection and privileges resulting from the Labour Code.

#### GDANSK

Our research team checked Gdansk shipyards. Apparently, Poland's biggest port is now filled with many foreign migrant workers, who are brought in to fill the void left by Poles who left the country to find better-paid jobs.



Nauta Shipyard in Gdansk. ©LeidenAsiaCentre

#### NAUTA SHIPYARD

**The** company advertises on its website that it provides services in the area of repairs, modifications and building of naval vessels for the Polish and foreign navies, including those of NATO countries. On the day of our visit, we noticed that a French navy vessel was currently being repaired. One thing the company remains silent about is the fact that there are number of North Korean welders currently working at the shipyard, repairing naval vessels from many different European countries.



A North Korean worker stands on scaffolding at Nauta shipyard. ©Vice Media



A house of North Korean workers in Gdansk. ©LeidenAsiaCentre

**The** labour inspectors confirmed that 19 citizens of North Korea are currently working at Nauta shipyard. And we have located a house where these workers are living together. Their accommodation is located on a hill, overlooking the shipyard. The distance from the shipyard to their house is some 3.5 kilometres. Between 6 p.m. and 7 p.m., we were able to observe a



number of North Koreans walking towards the house. They were usually in pairs or groups of three. The house is a three-story building, with a kitchen and a common room situated on the ground floor. It was difficult to determine how many rooms the house has. One thing that could be noticed is that there are several CCTV cameras at each corner of the building. At the shipyard, we spoke with a Polish welder who has been working there for nearly 10 years. He said that the first group of North Korean workers that he first saw five years ago were no longer working at the shipyard. Their replacements, a new group of North Koreans, came in last year, he said. The Polish worker said that he never spoke with the Koreans because they work, eat and rest together only with fellow North Korean workers.

WONYE OFFICE, MARYNARKI POLSKIEJ 96, GDAŃSK



Wonye's office in Gdansk ©LeidenAsiaCentre

**Wonye** is a subsidiary of Armex that is jointly registered by Cecylia Kowalska and two North Korean owners. Kowalska has used the office before, and now two North Koreans use it. They usually come in the evening, two or three times a week. The office has a fax-machine and a computer, according to the receptionist.

ARMEX ELECTRO, UL. REDUTA ŻBIK, GDAŃSK



C. Kowalska's office in Gdansk. ©LeidenAsiaCentre

**We** have also visited Amex's current office in Gdansk, where we were able to speak with the 66-year-old chairperson through an interpreter. Kowalska, who has built strong ties with the DPRK, denies any wrongdoing concerning the employment of North Korean workers. For instance, when asked about the wages of the workers, she claimed that each month the North Koreans come to the office to receive their wages in cash. Testimonies and documentation, however, show that their pay slips are signed on their behalf by someone with forged signatures.

THE DISTRICT LABOUR INSPECTORATE, UL. WŁADYSŁAWA IV 43 , GDYNIA

**Local** inspectors have carried out a series of inspections of Crist, following the fatal accident in 2014. In the course of the inspection, illegalities by the employer were found regarding the supervision on the workplace and regarding working methods. However, the labour inspectorate admits that they have limited authority to monitor and regulate foreign employees. Documents show that there are currently 35 North Koreans working at Crist under similar working conditions.

## CRIST SHIPYARD



The main gate of Crist Shipyard in Gdynia. ©LeidenAsiaCentre

**At** around 5:30 p.m., the main road in front of Crist Shipyard becomes lively, filled with workers both commuting in and out. The shipyard workers usually start work at 6 a.m. and finish at 5p.m., but some workers have night shifts, that normally start from 6p.m. One distinguishing feature that can be observed from North Korean workers is that they always commute in pairs or groups of three or more. We observed that some of the Koreans were riding bicycles to and from the shipyard.