

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

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*This is a preliminary report. The full findings will be published in the complete report that will
be published on July 6.*

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 mainly 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 to undertake 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 securing 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.

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 North Korean labourers to Polish companies. 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.¹ This concept is not only important in understanding how forced DPRK labourers live their lives in significant repression, but also as an avenue to understand 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 2014.²

A more recent UN report notes that over 50,000 citizens from the Democratic People's Republic of Korea are working abroad.³ The DPRK regime systematically uses overseas labour

¹ To our knowledge, North Korean overseas labour had 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>.

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

³ 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).

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.⁴ 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 recounting of 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 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.⁵

This project has collected 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 collected 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 delegate 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.⁶ The recent paper

⁴ In which for example the yearly income from DPRK overseas labour was multiplied with the factor 10 when translating from Korean to English (this incidentally is an often-made mistake when translating numbers from Korean to English or vice versa).

⁵ 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).

⁶ 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

published by the Database Center for North Korean Human Rights (NKDB) has been particularly valuable in helping our research in 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.

With these documents it becomes possible, first, to collect accurate hard data and evidence on the situation of DPRK workers in the EU; second, to identify and analyze 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 on-going struggle to keep its economy from collapsing: leasing its workers to the highest bidder, whether this be China, Qatar, Poland or the Netherlands.⁷ Paradoxically, perhaps, it is precisely 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 overlap between the characteristics of the DPRK system and labour exploitation in the EU, creating unexpected synergy.

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 kukkabyŏl koyong kiŏp risŭt'ŭ* (Seoul: NKDB, 2015).

⁷ 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.

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.”⁸

There is a large discrepancy between numbers of workers sent to China, Russia and Africa on the one hand and the much lower number of workers sent to the EU.⁹ 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.¹⁰

⁸ 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.

⁹ 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://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/lys/201510/t20151026_750101.shtml; <http://www.cnta.com/zwgk/lys/201507/t20150717742201.shtml>; http://www.cnta.com/zwgk/lys/201506/t20150627_717880.shtml; http://www.cnta.com/zwgk/lys/201506/t20150610_18859.shtml; http://www.cnta.com/zwgk/lys/201506/t20150610_18821.shtml; http://www.cnta.com/zwgk/lys/201506/t20150610_18785.shtml; http://www.cnta.com/zwgk/lys/201506/t20150610_18704.shtml; http://www.cnta.com/zwgk/lys/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.

¹⁰ 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.

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.¹¹ 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.¹² The most prominent name that emerged as a co-owner of the Polish-DPRK joint ventures implicated in employing and hiring out DPRK labourers is Kang HG.¹³ In 2004, he was the Brigade Commander of the 8th Soktojŏn Brigade 속도전 려단, someone very high ranking in the regime and the Korean Workers' Party.¹⁴ The North Korean company instrumental in sending the workers abroad is state-run Rungrado 룡라도 무역회사,¹⁵ 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.¹⁶ As is also apparent from witness testimony,¹⁷ it is the North Korean state that provides the rigid surveillance structure (including punishment for infringement of rules) and 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.¹⁸ Ideology is not only used as a stick to beat workers with, but also as a carrot: the more

¹¹ And even if DPRK citizens volunteer for overseas labour assignments, domestic circumstances (which include widespread hunger and institutionalized repression by the state) 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.

¹² 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. 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.

¹³ Business Registry Documents Wonye Sp. z.o.o., document no. RP/563187/4/20160502111317, *National Court Registry*, 30/06/2015.

¹⁴ 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.

¹⁵ The website of the company can be found here: <http://www.dprktoday.com/index.php?type=42&no=590>.

¹⁶ Im Il, Leiden and Seoul, 22/03/2016.

¹⁷ Kim T'aesan, Leiden and Seoul, 22/03/2016; Im Il, Leiden and Seoul, 22/03/2016.

¹⁸ 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

one earns for the Party in foreign currency the higher the honorary rank one receives.¹⁹ 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. The export of the DPRK system overlaps with labour exploitation in the EU then.

AN EMPIRICAL ANALYSIS OF THE SITUATION OF NORTH KOREA’S 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.²⁰ Eyewitnesses testified that he was welding pipelines inside a tank when a sudden flame ignited onto 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

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).

¹⁹ See <http://newfocusintl.com/exclusive-dprk-issues-guideline-for-foreign-currency-offerings/>.

²⁰ Chŏn, 42, had had been working for over 1 year and 7 months at the shipyard before the accident occurred.

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.²¹

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 and accordingly the workers did not have valid permits that allowed them to work for Crist. They had been loaned on.²² The Polish National Labour Inspectorate admits that they have limited competencies to regulate or monitor working and living conditions of DPRK workers.²³ 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 thus outside of the jurisdiction of the Polish National Labour Inspectorate. In a situation with obvious insufficient control mechanisms, local employers continue to hire North Korean workers who work under extremely exploitative conditions.

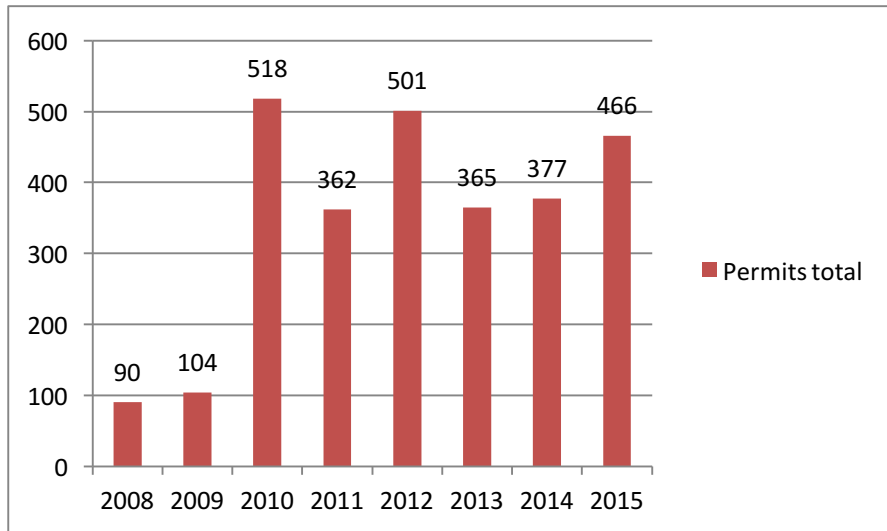
Poland has one of the highest numbers of work permits issued to North Koreans. Compared to other EU countries such as Germany, Switzerland, Italy and the Netherlands, Poland has a relatively high number of work permits issued to North Korean labourers.²⁴ Over the last couple of years, the amount of work permits issued to North Korean workers has increased to around 500 per year (see graph 1) with the total amount between 2008 and 2015 totaling 2783 work permits.

²¹ The Polish National Labour Inspectorate's inspection into Armex, 28 November 2014, case No. 03273-5303-K047-Pt/14.

²² Armex SP. ZO.O. provides North Korean workers to a number of Polish employers. We have found evidence that Armex has strong business ties with the DPRK's Rungrado Trading Co. The Polish National Labour Inspectorate described this act constitutes a violation of Article 120 of the Act of 20th April 2004 on employment promotion and labour market institutions.

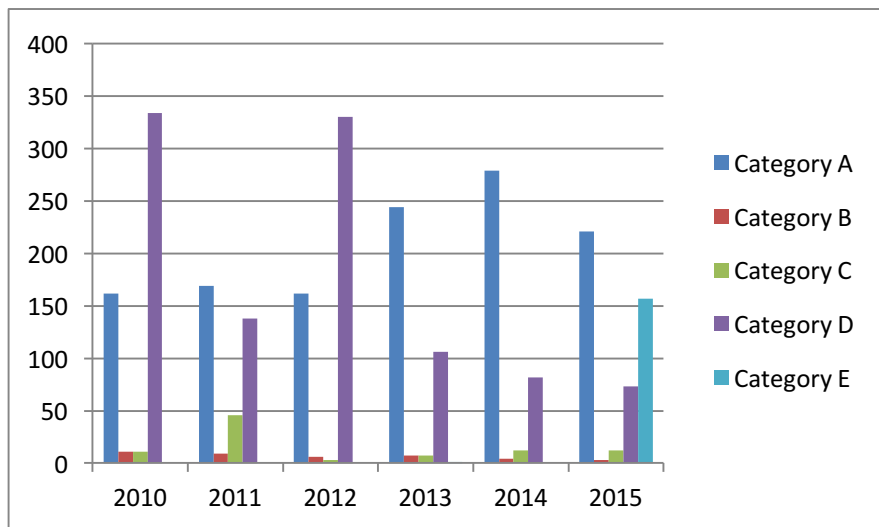
²³ Interview with the Chief Labour Inspectorate in Poland on 18/04/2016.

²⁴ Official Bureau of Statistics from Switzerland, Italy, Germany and the Netherlands.



(Graph 1)²⁵

The country issues five different types of working 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).



(Graph 2)²⁶

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

²⁵ The Employment of Foreigners in Poland Statistical Data 2008-2014, *The Ministry of Labour, Family, and Social Policy*, accessed 11/04/2016. (available at

<http://psz.praca.gov.pl/rynek-pracy/statystyki-i-analizy/zatrudnianie-cudzoziemcow-w-polsce>).

²⁶ Ibid.

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].²⁷

There are 32 Polish companies that are linked to the employment of North Korean workers. Within this group 28 companies have been verified to have employed North Korean workers either legally or illegally. According to the Polish National 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. These include the following violations:²⁸

- Foreigners ending up working illegally by being lead on or by misunderstanding;
- Performing work by foreigners in workplaces different than ones specified in the work permit;
- Assigning foreigners to positions different than 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);
- Lack of securing proper employment conditions, i.e. contrary to regulations on conditions of employment, hours of work, periods of rest and the customary rule of a 5-day working week.²⁹

Three DPRK-based companies and two 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
- Alson Sp. Z.o.o.

²⁷ For a description of the other types of work permits, see http://www.polandvisa.pl/poland_immigration.html.

²⁸ Written correspondence from the Polish National Labour Inspectorate on 31/03/2016.

²⁹ Ibid.

- Armex Sp. Z.o.o.

Cholsan, Rungrado and South – South Corporation have provided Alson and Armex with workers. These two Polish companies in turn dispatch these workers to various locations, although Rungrado has dispatched workers directly on occasions as well. One conspicuous entry on the list of companies is Chopol, or officially the Korean-Polish Shipping Company. The result of a bilateral agreement between Poland and the DPRK,³⁰ this company is state-owned on both sides and employs one official representative from the DPRK and one from Poland.³¹ Its main activities include shipping, renting vessels, and marine transportation.³² 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.³³ Additionally, vessels registered under this company can fly under both the North Korean and the Polish flags.³⁴

The other companies linked to North Korean workers are spread among a diverse range of sectors of which most notably construction and shipbuilding. Working on luxury apartments in the capital of Poland is Atal S.A., a company that employs subcontractors like JP Construct. JP Construct in turn has employed North Korean workers who have been dispatched to them by Rungrado.³⁵

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 also holds a minority share in Crist. 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 dispatched 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.³⁶ Following the 2014 incident in which one North Korean welder lost his life, an inspection of the company showed that Armex had

³⁰ Agreement between the Government of the Polish People's Republic and the Government of the Democratic People's Republic of Korea on 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.

³¹ *Ibid.*, Article 5.

³² *Ibid.*, Article 2.

³³ *Ibid.*, Article 11-14.

³⁴ *Ibid.*, Article 9.

³⁵ Correspondence, Chief Labour Inspectorate: Department of Legal Employment, 31/03/2016.

³⁶ Business Registry Documents Wonye Sp. z.o.o., document no. RP/563187/4/20160502111317, *National Court Registry*, 30/06/2015.

illegally deployed workers to Crist. These workers 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, Scotland and Cameroon.³⁷

Also verified to employ North Korean workers in their shipyard is Nauta. Nauta and Crist not only share proximity, both companies are shipbuilding companies that perform ship maintenance and related activities. Incidentally, Nauta also works on NATO military vessels and is NATO certified.³⁸ The company has in the last few years worked on more than 50 Polish Navy vessels and has conducted repairs on a Norwegian and French patrol and military vessels.³⁹

Both Crist and Nauta have received financial support from the European Regional Development (ERD) 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 Crist⁴⁰ and acquired 2-year bonds worth around €40 million from Nauta.⁴¹ Seeing that Crist and Nauta collaborate with EU funds, it is of importance to look at how these funds contribute to their endeavours. 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 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 reevaluates its rules and regulations for the five funds described above.

The ESIF's strategy for the coming years has changes quite a bit 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.⁴² Per 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

³⁷ Crist Project References, Crist S.A., accessed 25/4/2016, <http://www.crist.com.pl/referencelist>, 3, en.html

³⁸ Bureau for Military Standardization Service, 43 National Codification Bureau, NATO Commercial and Government Entity Code NCAGE 0256H, 18/02/2002.

³⁹ Mars Folder NAVAL 08/10/2015.

⁴⁰ 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.

⁴¹ Press Release - State aid: Commission clears financing of Polish Nauta Shipyard, document no. IP/13/258, *European Commission*, Brussels, 20/03/2013.

⁴² European Union, "European Structural and Investment Funds 2014-2020: Official Text and Commentaries." European Commission: Regional and Urban Policy, 2015, p. 8.

states.⁴³ EU Member states that want to make use of the ESIF have to hand in projects that adhere to and try to achieve the goals of ESIF's 2014-2020 strategy.⁴⁴ This strategy has three main goals, which total contain eleven thematic objectives. 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).⁴⁵ 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 are in breach of the regulations 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.⁴⁶ Member states that submit projects for the ERDF can under the 2020-strategy either receive grants or repayable assistance.⁴⁷ As stated above, these projects must be related to the 11 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 percent of the average in the EU)" or "transition (GDP per capita is between 75-90 percent of the average in the EU)" regions. Member States on this list can apply for aid from the ESIF.

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"⁴⁸ 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."⁴⁹

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

⁴³ Ibid., 8, 15.

⁴⁴ Ibid., 18.

⁴⁵ Ibid., 17.

⁴⁶ Ibid., 202.

⁴⁷ Ibid., 25.

⁴⁸ Ibid., 49.

⁴⁹ Ibid., 66.

measures as to guarantee “the prevention, detection and correction of irregularities and infringements of Union law.”⁵⁰

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.”⁵¹ 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.

LEGAL POSITION OF THE NORTH KOREANS WORKING IN THE EU

SENDING WORKERS ABROAD: THE ROUTE FROM PYONGYANG TO POLAND

During the project research, details on where and how DPRK workers in the EU are employed and/or hired have gradually become clearer. Data obtained from EU immigration offices show that the vast majority of legally residing North Korean workers is currently working in Poland.⁵² Quantitatively, Poland is therefore the obvious member state to focus on.

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, and marital status (having a good marriage and offspring is obligatory). And it is where the money they will earn eventually ends up. Payments are received by intermediate companies. Individual workers are not informed about the size of their salary, are not allowed to have individual bank accounts, and merely receive nominal payments in cash.⁵³ To what extent this practise 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.

⁵⁰ *Ibid.*, 56.

⁵¹ *Ibid.*, 50.

⁵² 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 from individual workers; payslips; Polish labour inspection reports; interviews with the Polish labour inspection and former workers and from observations near working sites.

⁵³ Kim T'aesan, Leiden and Seoul, 22/03/2016; Im Il, Leiden and Seoul, 22/03/2016.

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 also 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, the most 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), and they work on daily shifts with strict time schedules. Each morning starts with instructions and they are subordinate to the foreman.⁵⁴

⁵⁴ It is mentioned in a report for the Polish National Labour Inspectorate that these briefings had been taking place everyday (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.

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:

1. 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);
2. Contracting company X is specialized in the relevant branch, either shipbuilding, construction work or agricultural work;
3. Contracting company X has signed a contract for finishing the project (not for providing a number of workers)
4. 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;
5. Contracting company X is responsible for planning, administration, management, safety certificates.

Determining whether or not the workers are employees is important for understanding their legal position. Another 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 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.

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 perform 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.⁵⁵ 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 performing work or temporary residence and work permit (single permit, see below), depending on whether one is already present in Poland or not. There are several categories of foreigners (holders of given residence statuses, performing 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.⁵⁶ 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 his own employees, including third country nationals who are legally working and residing in the 'sender state'. Once these employees are performing 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 directive⁵⁷, 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

⁵⁵ The portal can be accessed here: http://ec.europa.eu/immigration/eu-immigration-portal-home_en.

⁵⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:EN:HTML>.

⁵⁷ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.159.01.0011.01.ENG.

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 legislate 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 to better fight these illegal situations.

It is obvious that all these EU rights and obligations concerning freedom of movement should not be abused 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 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.⁵⁸

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 of 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 meet 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.⁵⁹ This is a directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers

⁵⁸ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.

⁵⁹ <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.

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 on 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 2009/52⁶⁰ provides for minimum standards on 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 and dissuasive.’⁶¹ In several cases, it has been noted that employers have violated these requirements, but the sanction has been far from ‘effective, proportionate and dissuasive. In the case of a serious violation, no more than 500 EUR (2000 PLN) was fined,⁶² 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.⁶³

RIGHTS AS EMPLOYEES IN THE EU: NATIONAL LAW, 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.

The violations of these rights are manifold. The Polish National Labour Inspectorate concluded that workers were ending up working illegally ‘by being lead on or by misunderstanding’; workers were to perform work tasks without the obligatory written contracts;

⁶⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>.

⁶¹ 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.

⁶² Correspondence, Chief Labour Inspectorate: Department of Legal Employment, 31/03/2016.

⁶³ 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.

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 on conditions of employment, hours of work, periods of rest and the customary rule of a 5-day working week.⁶⁴

Overall, the workers are kept in the dark on every aspect of their legal position, which in itself is in breach of Directive 91/533,⁶⁵ requiring an employer in an EU Member State to inform employees of their working condition (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 that are signed on their behalf, mostly with forged signatures.⁶⁶ This practice should be considered a criminal offence, but has not been treated as such by the Polish Labour Inspectorate. This is in breach with Directive 2009/52 which requires Member States to take the necessary measures to ensure that national persons who commit the 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.⁶⁷

⁶⁴ Ibid.

⁶⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0533:EN:HTML>.

⁶⁶ Regional Labour Inspectorate, Control Protocol PIP Aramex 2014, document no. 03273-5303-K047-Pt/14, 28/11/2014.

⁶⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>.

Apart from the daily working hours and instructions, wherever North Korean 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.⁶⁸ 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 rights violations do not end with labour law issues. North Koreans in the EU are subject to a wide range of human rights violations. Both the 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)⁶⁹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁷⁰ 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. 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 articles detail rights that North Korean labourers are entitled to: the right to liberty of movement and freedom to choose his residence; the right not to be subjected to arbitrary and unlawful interference with his 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

⁶⁸ This is a point that keeps coming back in the testimonies (Kim T’aesan, Im Il, confidential) and in the interviews done for previously published studies.

⁶⁹ The entire text can be found here: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁷⁰ The entire text can be found here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>.

requires countries that have ratified 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.

Preliminary research indicates that North Koreans living and working in the EU are subject to violations of these rights, keeping to the patterns observed by civil society organizations and media in China, Russia, and other countries in the Middle East, Africa and Asia. The project's findings on these human rights violations will be presented in the final report.

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.⁷¹ At the same time, there are no signs that sufficient measures are being taken to 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.⁷²

DEALING WITH DPRK WORKERS IN THE EU

With regard to the legal position of DPRK workers in the EU, their situation falls within on-going debate on bogus self-employment practices. It fits within the broader political discussion on 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 on 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.

⁷¹ 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.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>.

⁷² Confidential testimony, 13-15/05/2016.

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, the following recommendations should be considered:

1. Take preventive measures: DPRK workers should be informed by the EU Member States and their respective employers about their rights and their position.
2. Intermediate companies, (sub)contractors and hirers should be informed about their chain of responsibility, and, if needed, to be sanctioned according to the chain liability.
3. Infringements of employment and human rights violations related to working conditions in the EU should be part of the public debate and could be subject to judicial remedy by representatives.
4. Possible instruments of reporting by the ILO and national labour inspection bodies should be deployed. Organise representatives that are able to act independently and without risk for the victims/aggrieved parties.
5. Define where civil or administrative litigation procedures can be applied and/or criminal proceedings are in order. Seek redress and compensation for the workers

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 ascribe 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,⁷³ 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.⁷⁴ 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-error⁷⁵ 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 of the right to mine minerals in the DPRK) have been declining. In 2013, the DPRK earned about 1.8 billion USD through selling mineral reserves to the PRC, while in the first half of 2015 only 600 million USD was earned.”⁷⁶ 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.⁷⁷ 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.⁷⁸

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

⁷³ 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.

⁷⁴ Kang HG seems the perfect example of this.

⁷⁵ Press attention of DPRK labour in the Czech Republic appears to have closed down that earlier experiment with deployment of North Koreans to the EU.

⁷⁶ Kim Sökchin, *Pukhan oehwaböri ch’use-wa ch’önmang*, pp. 5-17.

⁷⁷ To the extent of factually selling honorary titles for earned income from overseas.

⁷⁸ Kim Sökchin, *Pukhan oehwaböri ch’use-wa ch’önmang*, pp. 33-45.

DPRK labourer nets his/her employer roughly US\$34,800 per year.⁷⁹ 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 earn more than half of this sum *in net profits* for their employers.⁸⁰ 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.⁸¹

It should also not pass unnoticed that the way 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.⁸² Even so, DPRK overseas forced labour experience transcends the individual level. The profits generated flow directly to the DPRK, which contravenes the sanctions the UN and the EU have put in place 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 obviously extremely problematic.

In our first working paper, a number of push-and-pull factors were identified which make the DPRK engage in the export of forced labour and which 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.

⁷⁹ 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."

⁸⁰ See http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113428.pdf.

⁸¹ One would think that the predicament the DPRK is in in economic terms and the (partial) answer it found in labour leasing in the EU would give the EU a good handle at persuading the DPRK to seriously negotiate, but so far the EU has not shown any inclination to capitalize on this.

⁸² Confidential testimony, 05/2016. Various civil society reports feature witness testimony 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.

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.⁸³
3. The almost perfect fit of the current DPRK state and social system with the needs of a system based on forced expatriate labour (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 which act as agents).
4. The possibility to replicate the DPRK state surveillance system and attach it to the groups of workers sent abroad, effectively recreating a mini-DPRK wherever the workers find themselves and minimize defection or outside contamination (*but which constitutes a structural infringement of 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 to the developed economies of the EU countries,⁸⁴ but against an incomparably higher return per victim (Pyongyang's so-called flying doctors would also be an example of this).⁸⁵ 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 the 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 handled 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 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

⁸³ 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," *International Journal of Korean Unification Studies* 15.2 (2006), pp. 95-111.

⁸⁴ For obvious reasons, the US is not a target country for the DPRK overseas labour force.

⁸⁵ See <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3011968>.

states hosting North Korean workers as they too are complicit in the human rights violations being committed against these overseas labourers.

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 makes 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 the 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 complicit in the human rights violations being committed against these overseas labourers.

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ACKNOWLEDGEMENTS

The authors would like to acknowledge the support of our colleagues at the LeidenAsiaCentre in making this report possible. Mr Jang Jin-sung, who heads New Focus (www.newfocus.co.kr) has been invaluable in tracking down sources, introducing people and providing critical information and analysis of the kind only a former member of the North Korean elite has the ability to.