



LABOR STANDARDS AND SOUTH KOREAN EMPLOYMENT PRACTICES IN NORTH KOREA

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By 2012, South Korean firms employed more than 50,000 workers in North Korea. This paper examines whether their employment practices are likely to encourage North Korea's transition. Survey data indicate that the North Korean government has successfully circumscribed exposure of North Korean citizens both to South Koreans and to more market-oriented economic practices. South Korean investment in North Korea may well be beneficial both for the firms and the workers involved, but evidence of the sort of broader spillovers that proponents of engagement sometimes assert is not evident. The possibility of using voluntary labor codes to promote transformation is then examined.

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North Korea has a dysfunctional economy, an abysmal human rights record, and a belligerent foreign policy. A standard theme of North-South relations is that increased cross-border exchange will contribute to an improvement in the North Korean economy, ultimately promoting a lessening of internal repression and a moderation of the country's foreign policy.

This argument often rests on unexamined assumptions about the nature of economic engagement, specifically the extent to which engagement fosters market-orientation and reduces direct state control over the economy. It is possible that by giving rise to a middle class, by providing influential factions an enhanced stake in external economic relations, and/or by strengthening interest groups within the polity that have such stakes, an expansion of cross-

border economic integration could generate the desired alteration in state preferences and behavior. But it is also the case that the incumbent power structure may also understand the implications of such processes and act to forestall or blunt their impact.

One issue missing from this discussion is the actual conditions under which workers are employed by foreign investors in North Korea. The picture is not very appealing. According to survey data presented below, only one in five South Korean firms investing in North Korea even knows how much its workers are paid. Entirely missing from the discussion of engagement is whether these employment practices are consistent with various international agreements and covenants to which the governments of North and South Korea have committed, and whether these or other voluntary labor standards initiatives such as the Global Sullivan Principles, which have been applied in other situations of controversy, could be used to achieve the desired transformational effects.

Using survey data on South Korean firms operating in North Korea, this paper examines whether the employment practices of South Korean firms conform to this transformational vision and are likely to play a role in encouraging North Korea's evolution in the desired directions. Over the past two decades there has been a considerable expansion in North-South economic interaction, and by 2012, South Korean firms were employing more than 50,000 workers in North Korea.

North Korea presents a challenging business environment, and foreign firms respond by hedging risks in a variety of ways, including favoring trade over investment (which is subject to expropriation). As a consequence, only a minority of foreign firms doing business with North Korea establishes local facilities (Haggard, Lee, and Noland 2012; Haggard and Noland 2012a). In the case of South Korea, the particular history of North-South relations has resulted in a situation in which exchange occurs through three quite distinct modalities.

When cross-border integration began in the 1990s, while some trade (mainly the importation of North Korean natural resource products) took the form of arm's-length transactions—that is to say exchange between independent, unrelated buyers and sellers—the majority of trade took the form of a processing-on-commission (POC) arrangement. Under this arrangement, South Korean firms shipped inputs to North Korea for assembly by North Korean partners, with the finished products re-exported for sale in South Korea or other third country markets. A typical example would involve South Korean garment manufacturers transshipping cut cloth, buttons, and thread through China to North Korea, where the components would be sewn into shirts and then re-exported back through China for sale outside North Korea.

A third modality of exchange subsequently developed at the Kaesong Industrial Complex (KIC). The zone, which opened in December 2004, sits just north of the North-South border and is easily accessible from Seoul. It was closed in a diplomatic dispute in April 2013, but reopened in September 2013. Firms in the KIC are engaged in processing and assembly activities. Inputs are sourced from South Korea, transported to the KIC, fabricated into finished products by North Korean workers, and then transported back to South Korea for sale there or in third-country markets. Financial terms on which these exchanges occur indicate that the activity at the KIC, undertaken with considerable South Korean government support, is the least risky, followed by, in terms of increasing risk, POC exchange and arm's-length transactions (Haggard and Noland 2012b). Given the differences in degree of exposure to the North Korean policy environment, it would be reasonable to expect that employment practices may vary across the three modalities as well.

Survey data on South Korean employers indicate that the North Korean government has in large part successfully circumscribed exposure of North Korean citizens both to South Koreans and to new, more market-oriented economic practices. Hiring is largely conducted via the North Korean government, which pre-screens workers (possibly on political criteria), sets wage rates administratively, demands payment in foreign currency, and takes a large cut. South Korean managers typically do not interact directly with North Korean employees, but rather manage them through North Korean intermediaries who effectively represent state interests in monitoring and exercising control over workers. And even in firms that report direct supervision of workers, there is little statistical correlation with knowledge of working conditions or worker attitudes. In a narrow economic sense, South Korean investment in North Korea may well be beneficial both for the firms and the workers involved, but there is no evidence of broader spillovers of the sort that proponents of engagement sometimes assert.

This paper then considers whether these practices are consistent with various international agreements and covenants to which the governments of North and South Korea have committed, and whether these or other voluntary initiatives could be used to encourage employment practices more likely to generate the desired transformation of the North.

Who Are the Respondents?

The results reported here are derived from a survey of 250 firms conducted between November 2009 and March 2010. Of those firms, 200 had been engaged in trade or investment in North Korea, and 50 were selected as a control group. As there are no public business registries listing firms engaged in business with North Korea, these firms necessarily constitute a sample

of convenience, culled from a variety of sources. However, extensive interviews suggest that the sample is broadly representative of the cross-border business. At its peak in the late 2000s, roughly 400 South Korean firms were engaged in economic activities in the North outside of KIC; activity at Kaesong peaked in 2013 with 123 firms and has since declined. At the time it was undertaken, the survey sampled more than half the universe of South Korean firms doing business in North Korea.¹ As noted in the introduction, North Korea is a very risky business environment and only a minority of foreign participants establishes local facilities. Of the 200 firms doing business in North Korea, 46 reported employing North Korean workers.

The sub-sample which reports employing North Korean labor is engaged in importing, exporting, and investment, either through arm's-length transactions, POC trade, and/or the KIC. The permutations and combinations of these three activities are diagrammed in figure 1. Most of the firms, 33 of 46, or 72 percent, operate in the KIC, though not necessarily exclusively there. Most firms engage in some kind of processing trade; eight firms or 17 percent, engage in POC trade outside the KIC. A handful of firms are engaged exclusively in arm's-length importing or exporting, and one firm engages in both arm's-length importing and exporting activities; nonetheless, they have at least some North Korean employees.

Among those firms operating outside the KIC, the most frequent counterparties are North Korean state-owned enterprises (38 percent), other sorts of North Korean organizations, including government entities and agricultural cooperatives (25 percent), followed by foreign enterprises (i.e. non-DPRK enterprises) (17 percent), and others (21 percent).

Nearly half of the firms (43 percent) are involved in textiles and apparel. Of the remainder, watches, parts, and accessories (13 percent); natural resource products (9 percent); machinery, motors, and parts (9 percent); and electronic parts (9 percent) are the most frequent lines of business. Apart from in the KIC, the respondent firms have operations in the capital city, Pyongyang, and in North Hamgyong, North Pyongan, and Gangwon provinces. Almost by definition, the natural resource based businesses mostly involve arm's-length transactions occurring outside the KIC.

Employment Practices

It is important at the outset to draw an important distinction between South Korean firms that employ North Korean workers and those that actually hire North Koreans; this itself is highly revealing. Only one of the 46 firms reported hiring workers directly; the vast majority reported

¹ See Appendix A for methodological details.

hiring via a North Korean government labor agency, and this was the almost exclusive means of hiring for operations in the KIC (table 1). The only other avenue of hiring that received a noticeable response was that North Korean partners supplied the workers (11 percent overall). This channel of hiring labor was correlated at the 1 percent level with firms engaged in arm's-length transactions and those involved in the natural resources sector.

When the South Korean employers were asked if they believed that their workers had to pay their North Korean counterparties bribes or kickbacks for the privilege of working for the South Korean employer, a plurality of firms responded negatively, though 60 percent of those obtaining their labor via North Korean counterparties (significant at the 1 percent level) said they believed this to be the case. When asked if they were required to employ members of the Korean Workers' Party (KWP), most firms said no, though 27 percent of the firms operating in the KIC indicated that they were forced to employ KWP members. But these responses obscure the fact that the firms do not hire labor directly; if North Korean entities are responsible for actual hiring decisions, then it is the policies of those hiring agencies, not the firms, that are relevant.

When asked about wage rates, perhaps not surprisingly, the overwhelming response (83 percent overall, 94 percent within the KIC, and 54 percent outside the KIC) was that wage rates were set by the North Korean government. Other responses included wages being set by North Korean partners (9 percent overall, and 60 percent for the firms engaged in arm's-length transactions) or by the South Korean government or supply-and-demand (4 percent each). Similarly, the vast majority of firms reported paying wages to the North Korean government and not the workers directly (93 percent overall, 97 percent in the KIC, and 85 percent outside the KIC); 4 percent reported paying workers directly, and one firm operating in the KIC said it both paid the government and paid the workers directly. These findings are significant because they underscore a point examined further below: that the wage payment going to workers is actually unknown.

This fact is buttressed when we consider that wages were overwhelmingly paid in US dollars or other foreign currency (93 percent overall, 100 percent in the KIC, 81 percent outside it, and 100 percent for the arm's-length group), although it is technically illegal for domestic residents to hold foreign exchange. One POC firm indicated that it paid wages in North Korean won, and extraordinarily, another POC operation claimed that it paid wages in South Korean won.

At the time of its closure in April 2013, the minimum wage at the KIC was \$67.05 per month, and once all payments and bonuses were accounted for, the average wage was \$130.² Workers, however, were not receiving the full \$130 per month; the North Korean government was thought

² Seong Guk Park, "Kaesong Wages Rise by 5%," *DailyNK*, August 6, 2012, <http://www.dailynk.com/english/>

to retain roughly 30 to 40 percent of this payment, ostensibly to cover social security payments, transportation, and other in-kind benefits. More importantly, while South Korean firms pay in US dollars, North Korea pays the workers in North Korean won converted at the wildly overvalued official exchange rate. Evaluated at the more realistic black-market rate, North Korean workers may have been netting less than \$2 per month (if the entire dollar amount were converted into won at the black market exchange rate). Alternatively, market prices for rice have been on the order of 4,000 to 5,000 (North Korean) won per kilo, suggesting that monthly after tax wages might purchase roughly 2 to 3 kilos of rice.³ These figures imply that the real wages of KIC workers are low. Nevertheless, while conditions in Kaesong may be exploitative, they probably are considerably better than those existing elsewhere in North Korea, and there appears to be no shortage of North Koreans willing to work on these terms.

In short, hiring is largely via the North Korean government, which prescreens the workers, sets wage rates administratively, demands payment in foreign currency, and absorbs the lion's share of wage payments.

However, there is some evidence of incentive pay (table 2). While most respondents indicated that they paid salaries on the basis of a set daily or hourly wage rate, 22 percent reported paying overtime, 15 percent reported paying a piecework rate, and 7 percent reported paying bonuses for exceeding production targets. Consistent with relatively greater regulatory oversight and more direct North Korean government pecuniary interest, overtime is paid more frequently in the KIC (27 percent versus 8 percent outside), but piecework is more common outside the KIC (23 percent versus 12 percent inside). Half the POC firms, and nearly half of the KIC operations, use some kind of incentive pay. Yet, as shown below, it appears that the incentive payments go to the North Korean counterparty. It is unclear how much incentive pay, if any, actually reaches the workers. And if incentives are operating, they may be operating indirectly via North Korean management.

No firms reported paying tips. This is slightly amusing insofar as Choco-Pies, a South Korean snack similar to American Moon Pies, emerged as a kind of parallel currency in the city of Kaesong. Originally providing Choco-Pies to workers as a snack, South Korean firms, unable to vary wage rates or reward particularly productive workers, began using extra allocations of the snacks as a way to lure workers away from their competitors. (The cakes circulated as a kind of parallel currency in the environs of Kaesong, so that providing workers with extra cakes that

[read.php?catald=nk00100&num=9633](#) (accessed November 7, 2013).

³ Based on figures for December 2013. See *DailyNK*, "North Korea Market Trends," <http://www.dailynk.com/english/market.php> (accessed January 29, 2014).

could be sold outside the KIC effectively amounted to granting them a bonus.⁴) The North Korean government became sufficiently concerned over these developments that in November 2011, North Korean officials, the South Korean KIC management committee, and the employers agreed to rules to limit the distribution of the snacks. Choco-Pie rules were on the agenda when North and South Korea negotiated the reopening of KIC after its closure in 2013.

Given that wages are usually paid to the North Korean government, the firms hiring via the government were asked if they knew exactly how much money their workers were in turn receiving from the government. *A majority of the employers refused to answer the question.* Of those that did, their responses were split nearly evenly between those that said they knew (21 percent) and those that said they did not (18 percent). In other words, only one in five firms indicated that they knew how much their workers were actually paid. Remarkably, none of the firms that reported paying piecework rates indicated that they knew how much the workers were paid—they simply paid their North Korean counterparty and left it at that. However, when asked the follow-up question whether they believed that the government took a large amount of money that was supposed to go to their employees, a majority responded affirmatively (76 percent overall, 77 percent in the KIC, 71 percent outside the KIC). The implication is that those firms claiming to be paying piecework wages cannot know for sure if they actually are.

In sum, it appears that operations in the KIC are more bureaucratized or controlled than activities outside the zone. Hiring is done through a state agency, wages are set administratively, and the state takes a substantial cut of wage payments. Given that the state gets a cut of the wages, it has a direct incentive to negotiate and enforce generous overtime bonuses. But it is unclear how these overtime bonuses are shared between the workers and the state (if at all). Yet while operations outside KIC may not be subject to the same degree of state scrutiny, the state appears to continue to dominate basic hiring and payment practices in these other modalities as well.

Industrial Relations

South Korean managers generally do not directly supervise North Korean workers. Supervision is normally done through a North Korean intermediary manager. This holds true for KIC, POC, and arm's-length relationships, inside or outside of the KIC. Some firms, however, did report that either their managers directly supervised North Korean workers or used both indirect and direct supervision. Direct supervision occurred more frequently outside of the KIC (15 percent). However, if one combines the firms that indicated that they used direct supervision with those

⁴ Marcus Noland, "A superior currency comes to the Kaesong Industrial Complex," *North Korea: Witness to Transformation*, November 30, <http://blogs.piie.com/nk/?p=3882> (accessed March 3, 2014).

that responded that they used both direct and indirect supervision, then the percentage in the KIC (42 percent) is nearly double that outside of it (23 percent). That is, firms outside the KIC tend to either supervise their workers directly or not at all; those inside the KIC also mostly do not directly supervise their workers, but if they do, it is in combination with North Korean management, perhaps reflecting greater regimentation within the KIC.

The lack of direct supervision appears to come at a cost: most South Korean firms agreed that it was difficult to supervise North Korean workers, but this seemed to be a bigger issue in the KIC (statistically significant at the 5 percent level), where firms tend to rely on the intermediation of North Korean managers. Apparently supervision via North Korean intermediaries is a highly imperfect substitute for direct supervision. This may come from the fact that the North Korean intermediaries are not individuals who are assigned to Kaesong because of any managerial expertise, but who essentially play a political function; indeed, it is plausible that such intermediaries reduce the efficiency of Kaesong businesses, as has been reported anecdotally with respect to other foreign-invested businesses.

Most South Korean employers surveyed had generally positive appraisals of their North Korean workers (figure 2). When asked if the North Korean workers had adequate skills, a majority responded affirmatively (54 percent), but firms operating outside the KIC had more positive assessments (62 percent) than those operating within the KIC, which were split between those indicating that the North Koreans had an adequate skill level (54 percent) and those saying they did not (43 percent). Disturbingly, firms in which managers directly supervised North Korean workers were more likely to say that they did not have adequate skills (59 percent).

When asked to compare the skill level of North Korean labor relative to Chinese, Vietnamese, or other foreign workers, the consensus among most of the South Korean employers was that North Korean workers had a comparable level of skill (89 percent overall, 91 percent in the KIC, and 85 percent outside the KIC). When asked the bottom line question of whether, given the skill level, the employment of the North Koreans was advantageous at the prevailing wage rates, again, large majorities answered affirmatively (91 percent overall).

As figure 3 shows, relatively few firms acknowledged that workers complained about conditions in their South Korean-operated factories (15 percent overall, 18 percent in the KIC, and 8 percent outside the KIC). There was no correlation between direct supervision or the use of both direct and indirect supervision and responding that workers complained (i.e., the pattern of responses indicating a lack of complaints did not appear to reflect lack of familiarity or contact). In fact, large majorities (80 percent overall) indicated that they thought that their employees considered

themselves lucky to be employed by South Korean firms. This general acceptance of working conditions seems to be borne out by low turnover rates: 76 percent of the respondents indicated that a benefit of hiring North Korean workers was that the percentage that quit was low (79 percent of respondents in the KIC and 69 percent of the firms outside the KIC).

When asked how they handled situations involving unsatisfactory or unnecessary workers, 28 percent responded that they had never confronted this problem, including half of the POC firms (table 3). For the POC firms that make piecework payments to their North Korean counterparties, this result may reflect the internalization of the pecuniary incentive of the North Korean counterparty management to weed out unproductive workers. The counterparty takes care of this function.

Among the firms that did acknowledge needing to dismiss workers, none said that they were able to do so without obtaining some kind of approval or permission. The majority of firms that reported making dismissals (77 percent) said that they had to get the permission of the North Korean labor agency to dismiss a worker, 10 percent said that they had to get permission from the KWP, and another 10 percent said that they had to get permission from their North Korean partner. One firm reported paying severance. Out of the firms that had dismissed workers, all but one reported that their method of replacement was to go back to either the state labor agency or their North Korean partner and ask for another worker.

Work stoppages appear to occur infrequently: most firms reported that they had not experienced strikes or work stoppages (83 percent overall, 88 percent in the KIC, and 69 percent outside the KIC; 75 percent for POC firms and 60 percent for arm's-length firms). Among those firms that had experienced labor unrest, there appeared to be no standard method of dispute resolution. Some in the KIC (though none outside of it) appealed to the South Korean government or the North Korean government. The POC firms that experienced strikes or work stoppages most often appealed to their Chinese office or a Korean Chinese intermediary for help. Other employers indicated no method of settling disputes at all.⁵ When the South Korean employers were asked if a benefit of hiring North Korean workers was that they were not unionized, 61 percent responded affirmatively (58 percent in the KIC and 69 percent outside the KIC); 80 percent of the firms engaged in arm's-length transactions said they agreed with this sentiment.

⁵ Haggard, Lee, and Noland (2012) and Haggard and Noland (2012a) obtain similar results regarding weak or non-existent mechanisms for resolving non labor-related commercial disputes on the basis of a survey of Chinese enterprises operating in North Korea.

What stands out is the dog that did not bark. There is little statistical correlation between direct supervision of workers and knowledge of either workers' attitudes or their working conditions. Direct supervision of workers was uncorrelated with beliefs that workers had to bribe to obtain jobs, knowledge of the share of wage payments retained by the government, knowledge of worker complaints, or beliefs about their happiness. In fact, firms that directly supervised their workers were more likely to complain about inadequate skills.

Labor Standards

The results of the previous section document labor practices that appear both exploitative and, by limiting the extent North Korean workers are exposed to new ways of organizing work (or even exposure to South Korean managers), are consequently unlikely to generate the transformational effects desired by many observers. The questions then become: Are these conventions consistent with the international obligations of the North and South Korean governments? Are there mechanisms that could be used to encourage the adoption of more humane and potentially transformative practices?

North Korea is not a member of the International Labor Organization (ILO), and internationally recognized core labor standards such as the rights to associate, organize, and bargain collectively are notable in their absence. South Korea is a member of the ILO, however, as well as of the Organization of Economic Cooperation and Development (OECD), which has promulgated its *Guidelines for Multinational Enterprises* (OECD 2011), which obligate investors to ensure that North Korean workers are aware of their rights and how to exercise them. Both countries are members of the United Nations, which has released a set of *Guiding Principles for Business and Human Rights* (United Nations 2011). Finally, the South Korean government could extend regulation over its investors extraterritorially. Indeed, the constitution of the Republic of Korea makes claims over the entire peninsula, raising the question of to what extent South Korean firms investing in North Korea ought to be subject to "domestic" standards and regulations. To what extent, if any, is the behavior of South Korean investors in North Korea constrained in principle, if not in reality, by these covenants?

A basic issue with both the UN and OECD guidelines is that they are largely oriented toward prescribing behavior for multinational firms in an environment in which the host government is committed to upholding international norms. The guidelines tend to be concerned with situations in which firms could exploit the mobility of capital to undercut host government attempts to

maintain standards. The problem with their application in the North Korean case is that it is not so much that private firms subvert the government's attempt to do the right thing, but rather that the state opposes the international norms, and the investor stands to benefit.

So, for example, the OECD *Guidelines* state that investors should respect human rights “within the framework of internationally recognized human rights, international human rights obligations of the countries in which they operate” (OECD 2011, 31), and then go on to reference “the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights” and the ILO principles (OECD 2011, 32). North Korea is a state party to the International Covenant on Economic, Social, and Cultural Rights. So, for example, the covenant obligates states to ensure “equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence” (Article 7)—an obligation eviscerated by North Korea's *songbun* system of political classifications (Collins 2012), as are the rights of citizens to form and join trade unions of their choice and strike (Article 8). The OECD *Guidelines* would seem to establish both the government of North Korea's obligation under its international commitments to ensure certain rights, as well as the employer's obligation to respect those rights. But the *Guidelines* go on to say that “obeying domestic laws is the first obligation of enterprises ... in countries where domestic laws and regulations conflict with the principles and standards of the *Guidelines*, enterprises should seek ways to honor such principles and standards to the fullest extent which does not place them in violation of domestic law” (OECD 2011, 17). In North Korea, the state's unwillingness to meet its international legal obligations would seem to emasculate any salutary impact of the OECD *Guidelines*.⁶

However, the *Guidelines* also specify that adhering countries establish National Contact Points (NCPs). The NCPs are primarily oriented toward ensuring the implementation of the OECD *Guidelines* within the host adhering country. They are also tasked, however, with supporting the implementation of the guidelines by home country entities in non-adhering countries.

In the case of South Korea, the NCP is Korea Commercial Arbitration Board. Officials there indicated that the government, together with the Korean Chamber of Commerce and Industry (KCCI), was working to raise the awareness of the OECD *Guidelines* among South Korean companies operating in non-adhering countries. According to Wolman (2010), the NCP has

⁶ Some have also suggested that ILO Convention No. 94 and Recommendation No. 84 concerning labor clauses in public contracts could be applicable. But neither North nor South Korea are signatories to this convention.

received several complaints alleging extraterritorial violations of labor rights by South Korean firms in countries such as Guatemala and Myanmar, and appears to have instinctively sided with the South Korean firms against the complainants. During this period, the NCP was located in the Overseas Investment Division, tasked with promoting South Korean business abroad, first in the Ministry of Knowledge Economy and then after a governmental reorganization in the Ministry of Trade, Industry, and Energy. With the recent relocation of the NCP to the Korea Commercial Arbitration Board, perhaps complainants will get a fairer hearing. In any event, the issue of the OECD *Guidelines* had not come up in the context of either the Kaesong Industrial Complex or investment in North Korea more generally, and the government had not formulated a policy position.

The UN's *Principles* face similar difficulties. The first foundational principle is that "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises" (UN 2011, 6). The text goes on to elaborate principles for constraining the operation of firms and ensuring that neither host nor sending state contributes to the denial of human rights. But in North Korea, the state itself is the problem, and the UN *Principles* do not address the obligations of firms in such environments. They do suggest, however, that at times, states may need to consider extraterritorial application of the law.

South Korea has generally applied its labor laws extraterritorially only when the complainant is a South Korean national working for a South Korean company overseas (Wolman 2012). However, Article 3 of the South Korean constitution declares that the territory of the Republic of Korea consists of "the Korean Peninsula and its adjacent islands," establishing a *de jure* presumption of territoriality (Article 103 of the North Korean constitution makes a mirror claim to the entire peninsula) and a *de facto* status of extraterritoriality. The South Korean constitution then goes on to elaborate a number of economic rights, including Article 33: "To enhance working conditions, workers shall have the right to independent association, collective bargaining and collective action." Article 6a reads: "Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea." To be clear, the labor rights provision has been violated for much of South Korea's history. But one could interpret these articles and other similar provisions together with South Korea's international legal obligations as forming the constitutional basis, nationally and internationally, for encouraging, if not requiring, South Korean firms to facilitate labor rights in North Korea. For example, a proactive South Korean government could attempt to negotiate an amendment of the KIC labor law that would incorporate the core ILO labor standards, including the right to freedom of association and collective bargaining, the right to

strike, prohibition against sexual discrimination and harassment, and a ban on child labor. The government of North Korea would almost certainly reject such a request, but the actual outcome would be a function of bargaining.

The obstacle to the extraterritorial application of South Korean law is not the lack of a legal foundation, it is that South Korea's diplomatic commitment to engagement with North Korea trumps labor rights concerns, together with the perception of South Korean firms that the North Korean status quo confers benefits. That is to say, the South Korean government does not make requests to address labor conditions to start with. To date, there is no evidence that the South Korean government has undertaken any steps that would encourage or require its firms to abide by any standards whatsoever.⁷

The same calculus does not hold for all of South Korea's trade partners, however. For example, the South Korean request for goods produced in the KIC to be classified as "made in South Korea" and receive duty-free treatment was rejected by US negotiators in the Korea-US Free Trade Agreement talks. The two sides ultimately adopted a face-saving gesture of creating a bilateral commission to study the issue with the tacit understanding that the United States would never agree to duty-free treatment under the current economic and political conditions prevailing in North Korea. Other free trade agreement partners—Singapore, for example—have acceded to the South Korean request. Since the 2013 KIC closure, there have been signs that South Korea would like to "internationalize" KIC, the thought being that the presence of firms from third countries would deter North Korea from interfering with the operation of the zone (Stangarone 2013). But another implication of bringing in non-South Korean firms is that those firms may be subject to a different set of legal constraints and political pressures than the South Korean firms are, as the foregoing examples demonstrate.

That leaves private activism as a possible remedy. One possibility noted above would be to encourage foreign companies investing in North Korea the development of codes of conduct similar to that of the Sullivan Principles that were used in South Africa during that country's apartheid period.⁸ The Principles are named after the Reverend Leon Sullivan, who was appointed to the General Motors (GM) board in 1971, becoming the first African-American board member of a major US corporation. At the time, GM was the largest employer of non-white South

⁷ As Wolman (2010) observes one avenue would be to expand the jurisdictional authority of the (South) Korean National Human Rights Commission to address labor rights abuses committed by corporations. At present, the Commission does not have the authority to investigate actions by corporations either within or outside South Korea, but expanding its remit would be consistent with practices elsewhere.

⁸ The Sullivan Principles inspired other initiatives such as the MacBride Principles (in Northern Ireland), the Slepak Principles (Soviet Union), the Miller Principles (China and Tibet), the Malquiladora Standards of Conduct (Mexico), and the Ceres nee Valdez Principles (environment). See McCrudden (1999).

Africans, and Sullivan used his position on the GM board to advocate for reform of the apartheid system. In 1977, he formulated what came to be known as the Sullivan Principles, aimed at remediating racial discrimination in employment practices. Sullivan established an independent administrative unit to implement the principles, and recruited the accounting firm Arthur D. Little, Inc. to monitor implementation at the company level.

The introduction and development of the Sullivan Principles occurred symbiotically with a growing anti-apartheid movement, which included shareholder resolutions, divestment campaigns, and, at the level of state and local governments in the United States, selective purchasing policies with respect to government procurement.⁹ In short, US investors in South Africa came under considerable pressure either to adopt the Sullivan Principles or divest. In turn, a burgeoning anti-apartheid movement and growing frustration over the apparent lack of progress in South Africa led Sullivan in 1984 to expand the Principles, adding a provision committing signatory firms to “working to eliminate laws and customs that impede social, economic, and political justice.”¹⁰ The following year, President Ronald Reagan issued an Executive Order requiring firms to abide by fair employment standards similar to the Sullivan Principles, but this could not stem the tide, and in 1986, the US Congress passed sanctions legislation.

In a judicious assessment of the impact of the Sullivan Principles, McCrudden (1999) writes,

There is some indication that the Principles had several positive effects: first, that corporations found them useful by providing a focus for their social and political activities in South Africa; second, that the Principles brought about some changes in conditions for black workers which may not have otherwise have occurred; third, that the Principles led to increased funding by companies of social causes in the South African community, and fourth, that they may have increased pressure on government for the recognition of black trade unions, an important factor in the development of organized black politics. It is difficult,

⁹ So, for example, the State of Maryland adopted a policy that firms bidding for contracts in excess of \$100,000 had to certify that either they did no business in South Africa or adhered to the Sullivan Principles.

¹⁰ The principles were: 1) Non-segregation of the races in all eating, comfort, and work facilities; 2) Equal and fair employment practices for all employees; 3) Equal pay for all employees doing equal or comparable work for the same period of time. 4) Initiation of and development of training programs that will prepare, in substantial numbers, blacks and other non-whites for supervisory, administrative, clerical, and technical jobs. 5) Increasing the number of blacks and other non-whites in management and supervisory positions. 6) Improving the quality of life for blacks and other non-whites outside the work environment in such areas as housing, transportation, school, recreation, and health facilities. 7) Working to eliminate laws and customs that impede social, economic, and political justice (added in 1984). <http://www.marshall.edu/revleonsullivan/principles.htm> (accessed November 11, 2013). When this tactic did not bear fruit, eventually Sullivan called upon companies to exit South Africa.

however, for the effect of the Principles to be distinguished from the effect of other similar activity, outside the context of the Principles, such as undertaken by other countries, or from larger political and economic forces operating at that time in South Africa (77).

One weakness of the monitoring and assessment process was that much of the benchmarking was on the input side (e.g., dollars spent on corporate social responsibility projects) rather than on the output side (i.e. employment expansion, job training, upward mobility, small-business development), where the companies might have had the most capability for making a difference (Sethi and Williams 2000).

Nevertheless, the apartheid regime ultimately fell, and in 1999, Sullivan and UN Secretary General Kofi Annan formulated the Global Sullivan Principles of Corporate Social Responsibility, an antecedent to the UN *Principles* examined above (see Appendix B).¹¹ In contrast to the UN *Principles*, and consistent with their origins as guidelines for corporate activity, the Global Sullivan Principles focus on the behavior of firms, not states. They call for multinational companies to proactively advocate for universal human rights and the rights of their employees. And in the words of Stephan Haggard, “Nor do the Global Sullivan Principles have the waffling language of the OECD guidelines, which open the giant loophole of operating within the constraints of national law.”¹²

Conclusion

Most North Koreans are so isolated from the rest of the world that nearly any exposure to foreigners and new ways of doing things has to be regarded as positive. Yet the results of this survey of South Korean employers suggests that the North Korean government has effectively circumscribed exposure of North Korean citizens both to South Koreans and to new, more market-oriented economic practices. This appears to be particularly true in the KIC, where activities are subject to much greater political scrutiny than activities outside its bounds. South Korean managers work through North Korean counterparts whose main function appears to be control and monitoring of the workforce. Labor mobility and the operation of labor-market incentives are blunted by the administrative control of appointments and the capture of bonuses

¹¹ Reproduced in Appendix B. Accessed November 11, 2013, <http://www1.umn.edu/humanrts/links/sullivan-principles.html>.

¹² Stephan Haggard and Marcus Noland, “Foreign Investment in North Korea: What Obligations Do Firms Have?” *North Korea: Witness to Transformation*, May 23, 2011, <http://www.piie.com/blogs/nk/?p=1405> (accessed November 7, 2013).

and incentive pay. Perhaps not surprisingly, the labor market practices of South Korean firms operating in North Korea appear similar to those obtaining elsewhere in the North Korean economy.

The apparent detachment of South Korean employers is consistent with an “Ugly Korean” narrative that arose as South Korean multinational firms made their initial forays into Southeast Asia as they were accused of various abusive labor practices (Wolman 2010).¹³ A majority of the South Korean employers report that their North Korean operations are profitable and frankly appear to value the docility of their non-unionized North Korean workers. Given the constellation of interests between the North Korean state and the South Korean employers, it is doubtful that much impetus to improve the working conditions of North Korean workers will come from these sources.

Instead, if internationally recognized labor standards are to be achieved in these North Korean institutions, it is likely to require action by the South Korean government. This begs the question of whether the South Korean government’s passivity on this score reflects the interests of South Korean firms, or as some might argue, the firms simply conform to the framework established by the North and South Korean governments.

Some observers would favor using a multilateral interstate obligation such as the OECD *Guidelines* as the foundation for such a policy. The problem is that the existing interstate agreements are weak or poorly suited for the case at hand. And in the Korean case, existing constitutional claims probably establish an equally compelling basis for policy as the multilateral obligations.

Even if one accepts the need to root policy in an existing state obligation however, as a tactical matter, public pressure directed at companies based on existing voluntary codes is likely to be a necessary precursor to state action. Admittedly, in the case at hand, firms’ scope for implementing voluntary codes, perhaps modeled on the Global Sullivan Principles, would be significantly constrained by the North Korean government. But as the example of apartheid-era South Africa demonstrates, it is possible for businesses to make marginal improvements in working conditions, even in the context of a highly repressive legal environment, if sufficient pressure is brought to bear. However, as the history of the Sullivan Principles makes clear, much of its impact was derived from public and political pressure to adopt more drastic divestiture and sanctions

¹³ See, for example, Asia Monitor Resource Centre. Describing the operations of Korean employers in Indonesia, two NGOs write, “Workers’ opinions on Korean employers are that they were the worst employers who mostly refuse to negotiate and infringe labor rights” (271).

solutions, which encouraged both the companies and political defenders of engagement to take implementation of the Principles seriously. This is to say that the impact of voluntary codes cannot be viewed statically in isolation, but as part of a broader political process that may ultimately involve state-mandated action.

Such a shift in stance toward active policy is only likely to come if the South Korean public agitates for it. The absence of any kind of coherent human rights campaigning among South Korean progressives is notable,¹⁴ but a campaign organized around workers' rights, anchored in both the South Korean constitution and existing international norms and covenants, would not be a bad place to start. While there is a broad political consensus within South Korea as to the desirability of economic engagement with North Korea,¹⁵ an appropriately calibrated set of principles could be more than a poison pill designed to end engagement. Such principles could center on providing for basic labor rights, recognition of labor organizations, and non-discrimination on the basis of *songbun*. But to be clear, the history of the Sullivan Principles demonstrates that whatever positive impact the initiative had occurred symbiotically against a backdrop of divestiture, selective purchasing, and sanctions campaigns and policies. Application of voluntary labor standards in North Korea would presumably require a similar political context and in all likelihood would eventually require negotiations between the governments of North and South Korea to reform the labor practices of South Korean firms operating in North Korea.

¹⁴ See Wolman (2013).

¹⁵ Marcus Noland, "South Korean Attitudes Toward North-South Cooperation," *North Korea: Witness to Transformation*, September 20, 2013, <http://www.piie.com/blogs/nk/?p=11728> (accessed December 9, 2013).

Appendix A. Survey Methodology

A pilot survey was conducted in November 2009 using a survey instrument designed by the authors, with the actual interviews conducted by Millward Brown Media Research. Millward Brown was responsible for securing any local permits and ensuring that the survey was conducted according to ESOMAR rules (<http://actrav.itcilo.org/actrav-english/telearn/global/ilo/guide/iccmar.htm>). The final survey was conducted during November 2009 and March 2010. The predominant means of conducting the survey was through telephone interviews, though some interviews were conducted face-to-face. Among the reasons that interviews could not be conducted were refusal by the enterprise to participate prior to or during the interview, inability to establish contact with the enterprise, and the unavailability of the person within the enterprise eligible to respond according to the survey instrument (chairman, manager, etc.). The data—and particularly firm addresses—were subject to post-survey verification by random spot-checking.

Given that there are no known or available registries of all firms doing business with North Korea, the sample of firms doing business with North Korea was of necessity a sample of convenience. The sample was developed using North Korean, South Korean, and Western press accounts, as well as information gathered by Millward Brown in the process of the pilot and during interviews with other firms. The sample was drawn from enterprises operating throughout South Korea, including the control group of firms not doing business in North Korea.

The design involved a survey of 250 firms, with 200 doing business in North Korea and 50 not doing business in North Korea; in the end, we had responses from 50 firms not doing business in North Korea and 199 firms doing business in North Korea. We defined firms doing business with North Korea to include those that were involved in trading (import, export, or both), investment, or processing on commission activities, or that maintained representative offices in North Korea. Also included were 18 firms that had done business and had quit. The control group consisted of 50 firms that had never done business with North Korea.

The survey began with a pilot of 50 firms from throughout South Korea. Although it was understood this was a sample of convenience, enterprises reflecting a broad distribution of size, sector, and provincial location were targeted. Following the successful completion of the pilot, which did not require fundamental modification of the survey, we were able to transit directly to the full survey, and all of the pilot firms were included in the final 249 firms. Once the sample of 199 enterprises operating in North Korea was completed, our aim was to select 50 firms without business relationships with North Korea but with similar qualities with the firms in our treatment group of firms engaged in business with North Korea (198 firms, excluding one

foreign-owned firm). Not all quality variables were available for comparison. We first teased out the firms engaged in the manufacturing sector, since the majority of our treatment group was in the manufacturing sector. The variables of the two groups were then adjusted so that their categorizations would be comparable with each other. The variables (regions, firm ownership, and firm size) were dummified, and we applied the CEM (Coarsened Exact Matching) method in STATA to identify 199 matching firms. We provided a list of 199 firms, as lower response rates were expected, and of those, 50 firms were ultimately selected for our control group.

Appendix B. The Global Sullivan Principles

THE PREAMBLE

The objectives of the Global Sullivan Principles are to support economic, social and political justice by companies where they do business; to support human rights and to encourage equal opportunity at all levels of employment, including racial and gender diversity on decision making committees and boards; to train and advance disadvantaged workers for technical, supervisory and management opportunities; and to assist with greater tolerance and understanding among peoples; thereby, helping to improve the quality of life for communities, workers and children with dignity and equality.

I urge companies large and small in every part of the world to support and follow the Global Sullivan Principles of corporate social responsibility wherever they have operations.

~ The Reverend Leon H. Sullivan

THE PRINCIPLES

As a company which endorses the Global Sullivan Principles we will respect the law, and as a responsible member of society we will apply these Principles with integrity consistent with the legitimate role of business. We will develop and implement company policies, procedures, training and internal reporting structures to ensure commitment to these principles throughout our organization. We believe the application of these Principles will achieve greater tolerance and better understanding among peoples, and advance the culture of peace.

Accordingly, we will:

Express our support for universal human rights and, particularly, those of our employees, the communities within which we operate, and parties with whom we do business.

Promote equal opportunity for our employees at all levels of the company with respect to issues such as color, race, gender, age, ethnicity or religious beliefs, and operate without unacceptable worker treatment such as the exploitation of children, physical punishment, female abuse, involuntary servitude, or other forms of abuse.

Respect our employees' voluntary freedom of association.

Compensate our employees to enable them to meet at least their basic needs and provide the opportunity to improve their skill and capability in order to raise their social and economic opportunities.

Provide a safe and healthy workplace; protect human health and the environment; and promote sustainable development.

Promote fair competition including respect for intellectual and other property rights, and not offer, pay or accept bribes.

Work with government and communities in which we do business to improve the quality of life in those communities—their educational, cultural, economic and social well-being—and seek to provide training and opportunities for workers from disadvantaged backgrounds.

Promote the application of these principles by those with whom we do business.

We will be transparent in our implementation of these principles and provide information which demonstrates publicly our commitment to them.

Appendix C. Figures and Tables

Figure 1. Modalities of firms that employ North Korean labor

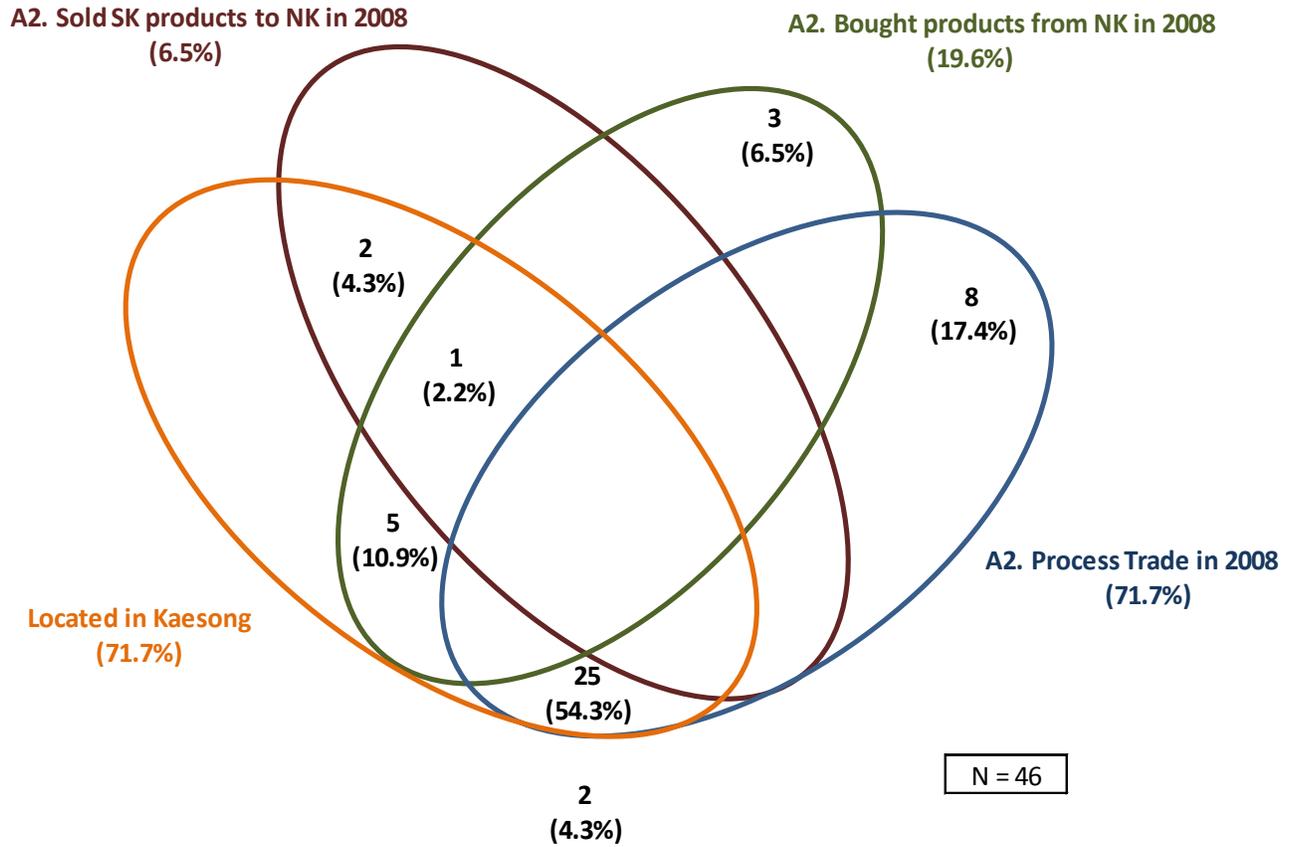
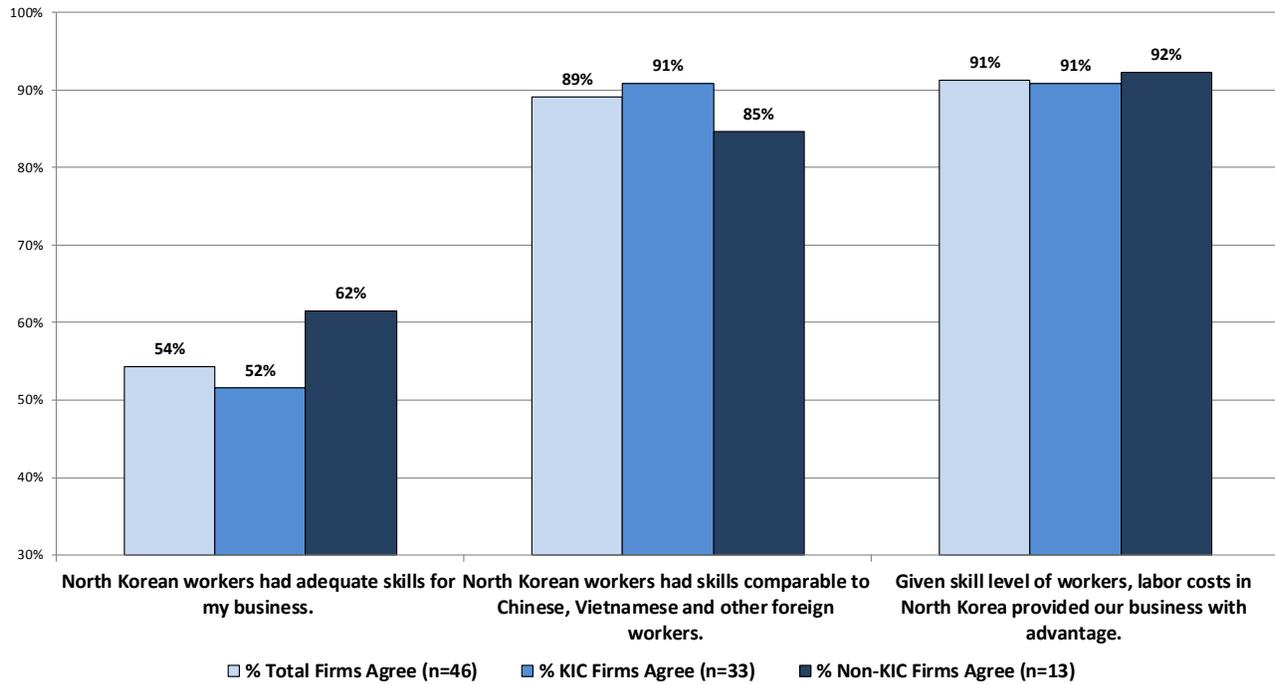
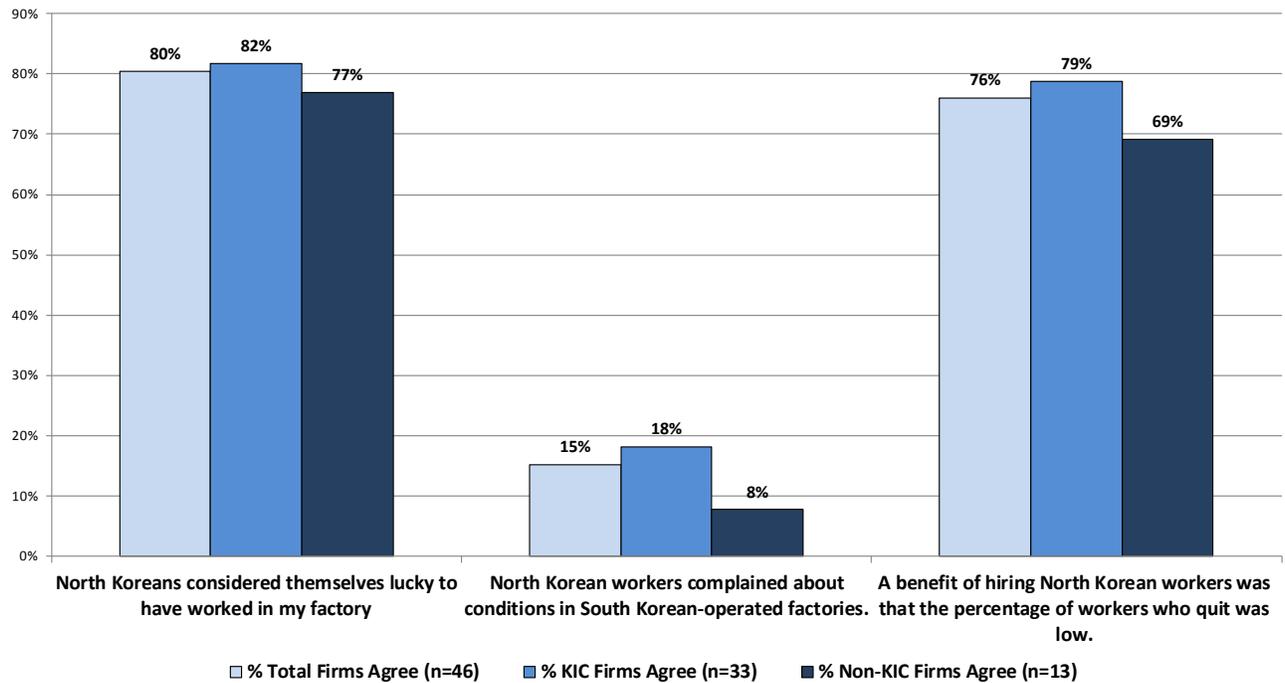


Figure 2. Firm opinions on quality of North Korean labor



Note: Bars represent percent of firms out of sub-sample that responded positively to the corresponding survey question. Positive responses aggregate 'Agree' and 'Totally agree.'

Figure 3. Firm opinions on North Korean worker satisfaction



Note: Bars represent percent of firms out of sub-sample that responded positively to the corresponding survey question. Positive responses aggregate 'Agree' and 'Totally agree.'

Table 1. Methods of hiring North Korean labor

NK Employee Hiring Method	Total		KIC (n=33)		Non-KIC (n=13)		POC (n=8)		Arms-Length (n=5)	
	Frequency	%	Frequency	%	Frequency	%	Frequency	%	Frequency	%
Directly	1	2%	0	0%	1	8%	0	0%	1	20%
From a North Korean government labor agency	38	83%	31	94%	7	54%	7	88%	0	0%
Our North Korean partners supply the workers	5	11%	1	3%	4	31%	1	13%	3	60%
Other	2	4%	1	3%	1	8%	0	0%	1	20%
<i>Total</i>	46	100%	33	100%	13	100%	8	100%	5	100%

Table 2. Types of Payments to North Korean Workers

Compensation Methods Practiced	Total (n=46)		KIC (n=33)		Non-KIC (n=13)		POC (n=8)		Arms Length (n=5)	
	Frequency	% Total	Frequency	% KIC	Frequency	% Non-KIC	Frequency	% POC	Frequency	% Arms Length
Pay hourly wages	41	89%	31	94%	10	77%	6	75%	4	80%
Make piece-work payments to North Korean labor	7	15%	4	12%	3	23%	2	25%	1	20%
Make overtime payments to North Korean labor	10	22%	9	27%	1	8%	1	13%	0	0%
Make bonus payments to North Korean labor	3	7%	2	6%	1	8%	1	13%	0	0%

Note: Firms able to choose all compensation methods that apply.

Table 3. Dismissal and replacement methods for unsatisfactory North Korean workers

Methods of Dealing with Unsatisfactory Workers	Total (n=46)		KIC (n=33)		Non-KIC (n=13)		POC (n=8)		Arms-Length (n=5)	
	Frequency	% Total	Frequency	% KIC	Frequency	% Non-KIC	Frequency	% POC	Frequency	% Arms Length
Dismissal Methods										
<i>Made severance payment</i>	1	2%	1	3%	0	0%	0	0%	0	0%
<i>Get permission from North Korean labor agency</i>	24	52%	20	61%	4	31%	3	38%	1	20%
<i>Get permission from North Korean partner</i>	3	7%	1	3%	2	15%	1	13%	1	20%
<i>Get permission from KWP</i>	3	7%	3	9%	0	0%	0	0%	0	0%
<i>Get permission from South Korean government</i>	0	0%	0	0%	0	0%	0	0%	0	0%
<i>Required no permissions or approvals</i>	0	0%	0	0%	0	0%	0	0%	0	0%
Replacement Methods										
<i>Dismissed worker and hired a new one</i>	1	2%	1	3%	0	0%	0	0%	0	0%
<i>Dismissed worker and asked North Korean government labor agency to supply new one</i>	22	48%	18	55%	4	31%	4	50%	0	0%
<i>Dismissed worker and asked North Korean partner to hire new one</i>	2	4%	1	3%	1	8%	0	0%	1	20%
Never hired an unsatisfactory worker	13	28%	7	21%	6	46%	4	50%	4	80%

Note: Firms could choose all responses that apply.

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