



North Korea: Workers’ Rights at the Kaesong Industrial Complex

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I. Introduction

The Democratic People's Republic of Korea (DPRK, North Korea) opened the Kaesong Industrial Complex (KIC) in June 2004 under a contract with Hyundai Asan Corporation and state-owned Korea Land Corporation of the Republic of Korea (ROK, South Korea). The complex is located between the city of Kaesong and the western end of the border between the two Koreas, an hour's car ride from Seoul. As of August 2006, 13 South Korean companies had opened facilities at the KIC, employing about 8,200 northern workers to produce watches, shoes, clothes, kitchenware, plastic containers, electrical cords and car parts, among other items. Ten other companies are preparing to start operations in the near future. North and South Korea have an ambitious plan to expand the complex to employ 730,000 North Korean workers by 2012.¹ A specific KIC Labor Law was drafted and adopted to govern the rights of workers employed by enterprises in the KIC.

It is generally accepted that North Korea prohibits organized political opposition or independent civil society. The country has an abysmal human rights record, including arbitrary arrests, pervasive use of torture, lack of due process and fair trials, and executions. There is no freedom of information or freedom of religion. There are no independent trade unions or labor activism. Most North Koreans do not enjoy the freedom to choose their own occupation, because job assignments follow the state's central economic plan, rather than individual talents or wishes.²

Working conditions at the KIC have been a subject of debate. Jay Lefkowitz, the United States special envoy on human rights in North Korea, has raised concerns about possible worker exploitation at the KIC, particularly the low salaries and their indirect payment.³ South Korea's Ministry of Unification (in charge of North Korea relations, including joint projects such as the KIC) responded by saying that the North Korean workers at the KIC are paid better than elsewhere in the country and that their labor conditions meet international standards. The Ministry also noted that

¹ Kaesong Industrial Complex homepage, <http://gaeseong.iklc.co.kr/index.htm> (accessed July 25, 2006).

² Korea Institute for National Unification, "White Paper on Human Rights in North Korea," March 2006, pp. 177-184.

³ Jay Lefkowitz, "Freedom for all Koreans," *The Wall Street Journal*, April 28, 2006.

South Korea is “making technical preparations for direct payment for northern workers,” as required under the inter-Korean agreement on the KIC.⁴

This briefing paper provides an overview of the work conditions at the KIC and notes ways in which workers’ rights are being compromised. In July 2006, Human Rights Watch sent a list of questions to the Ministry of Unification about the KIC (see Appendix). The ministry sent a written response, which Human Rights Watch followed up with phone and in-person interviews with ministry officials. Separately, Human Rights Watch interviewed a representative of South Korean employers at the KIC. This paper is based on their responses and Human Rights Watch’s analysis, interviews with Seoul-based experts on North Korea’s labor laws and with people who have visited the KIC in an official or private capacity, reviews of the KIC Labor Law, and books and reports written by independent scholars with expertise on North Korea.

Human Rights Watch believes that the KIC is a small step forward, in that it opens a window onto and from an otherwise hermetically sealed nation, one that consistently denies access to international human rights organizations. But for the KIC to represent real progress in North Korea’s human rights conditions, basic workers’ rights must be protected and promoted. Although the KIC Labor Law addresses certain workers’ rights, many of the most fundamental rights are missing, including the right to freedom of association and collective bargaining, the right to strike, the prohibition on sex discrimination and sexual harassment, and the ban on harmful child labor. Absent legal protections requiring that these rights be respected, Human Rights Watch is concerned that they may be violated with impunity.

As a first step towards addressing inadequate workers’ rights protections at the KIC, Human Rights Watch urges North Korea to:

- Join the International Labour Organisation (ILO);
- Accede to the ILO’s core treaties;
- Invite ILO officials to discuss the protection and promotion of workers’ rights;
- and

⁴ Ihn Kyo-joon, “South Korean Official Tells U.S. Human Rights Envoy Not to Interfere with Domestic Affairs,” Yonhap News Agency, April 30, 2006.

- Amend the KIC Labor Law to meet international labor standards, and ensure the law is effectively enforced.

Human Rights Watch also urges South Korea to:

- Ensure South Korean companies operating at the KIC are respecting workers' rights; and
- Promote the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.

II. Background

North Korea's laws, including its labor laws, are based on the country's state ideology of "juche," or self-reliance, socialism, communism and the policies of the Workers' Party. Guiding principles or instructions by former President Kim Il Sung have legal force that supersedes the constitution or laws. North Korea's labor laws are composed of the Socialist Labor Law and relevant provisions in the constitution and the penal code, in addition to laws concerning foreign investors and businesses.⁵ The state has full control over the labor market, and the law permits only labor organizations sanctioned and controlled by the state. Under North Korean law there is no concept of an employment contract, as workers are assigned to their jobs by state labor administrative agencies under the control of the Workers' Party.⁶ The state is responsible for providing basic services such as food,⁷ healthcare, education and housing, and in return for their labor workers are paid a small amount of remuneration in cash or coupons to cover items such as supplementary food, clothes, or furniture.

⁵ Moon Moo-gi, *Assessing Outlook of North Korea's Labor Law Changes through Analysis of Chinese Legal Changes* (Seoul: Korea Labor Institute, 2002) pp. 165-170.

⁶ Article 33 of the North Korean Labor Law reads, "The state shall strictly enforce the principle of eight hours of labor, eight hours of rest and eight hours of study in workers' daily labor structure. The authorities, management and social collectives should regularize workers' labor, normalize their study and guarantee their rest by properly combining labor, rest and study." Chongko Choi, *North Korean Laws*, (Seoul: Pakyoungsa Publishing Co., 2001) p. 364.

⁷ In reality, most North Koreans are forced to find food on their own, as the state food distribution system broke down during the food crisis in the 1990s. Despite improvements in overall food production and foreign aid in recent years, many North Koreans still suffer from hunger. See Human Rights Watch, *A Matter of Survival: The North Korean Government's Control of Food and Risk of Hunger*, vol. 18, no. 3(C), May 2006, <http://hrw.org/reports/2006/northkorea0506/>.

The KIC Labor Law was drafted by the North Korean government after consulting with Hyundai Asan Corporation and was then adopted by the Standing Committee of the (North Korean) Supreme People's Assembly.⁸ It has not been publicly disclosed whether the North Korean government consulted with workers in drafting the law. The KIC Management Committee, a North Korean organization with technical staff from South Korea, is in charge of operational support at the KIC, including enforcing the KIC law, monitoring compliance, and punishing violators, under the supervision of North Korea's Central Special District General Bureau for Kaesong Industrial Complex (the General Bureau).⁹ According to the South Korean Ministry of Unification, North Korea's labor laws apply to employment conditions in the KIC in the event that the KIC Labor Law is silent on a particular matter.¹⁰

North Korea is a party to four main international human rights treaties: the International Covenant on Civil and Political Rights (ICCPR),¹¹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹² the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹³ and the Convention on the Rights of the Child (CRC).¹⁴ All provide important workers' rights protections. As a party to these international human rights treaties, North Korea has a legal obligation to protect these rights. Both the ICCPR and ICESCR establish workers' right to freedom of association (which includes the

⁸ The Supreme People's Assembly is the legislative branch of the North Korean government. The Standing Committee has the legal authority to review and adopt laws, abolish laws, and offer official interpretation of laws, among other duties. Chung Suk-hong, *Comparative Study of North and South Korea*, (Seoul: People&People Publishing Co., 1999) pp. 92-97.

⁹ The KIC Management Committee is made up of about 50 South Korean civilian experts on law, health, industrial safety, accounting, and similar issues. A few North Korean officials also work for the Management Committee, but Human Rights Watch has not been able to ascertain how they are selected. Some 80 other North Koreans, including cleaners, bus drivers and photographers also work for the committee. Human Rights Watch telephone interview with a Ministry of Unification official, Seoul, August 23, 2006.

¹⁰ Human Rights Watch interview with a Ministry of Unification official, Seoul, August 2006.

¹¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March, 23, 1976, acceded to by the DPRK on April 10, 1990.

¹² International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, acceded to by the DPRK on April 10, 1990.

¹³ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by the DPRK on December 27, 1984.

¹⁴ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by the DPRK on November 20, 1991.

right of collective bargaining),¹⁵ and ban discrimination against people based on their race, color, sex, language, religion or social origin.¹⁶ Furthermore, the CEDAW directly bans employment and workplace sex discrimination and violence against women, including sexual harassment.¹⁷ The ICESCR and the CRC prohibit dangerous or hazardous work for children under the age of 18.¹⁸

The ILO conventions form the core of international standards on workers' rights, but North Korea is not a member of the ILO.

Although Kaesong is North Korean territory, South Korea also has a responsibility as a member of the OECD to ensure that South Korean corporations respect international labor standards as laid out in the OECD Guidelines for Multinational Enterprises.¹⁹ South Korea is among the 39 countries that have pledged to adhere to the guidelines, which state that enterprises should “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments,” “respect the right of their employees to be represented by trade unions and other bona fide representatives of employees,” “contribute to the effective abolition of child labor,” and “not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin.” The guidelines also state that enterprises should provide facilities and information to employees that may be needed for the negotiation of meaningful and effective collective agreements and enable authorized representatives of their employees to bargain collectively.²⁰ The guidelines establish state responsibilities, asserting that “governments wish to encourage the widest

¹⁵ ICCPR art. 22 and ICESCR art. 8.

¹⁶ Art. 2 of both the ICCPR and ICESCR.

¹⁷ See in particular CEDAW arts. 2, 5 and 11, and General Recommendation No. 19, adopted at the CEDAW Committee’s 11th Session, 1992, www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19.

¹⁸ ICESCR art. 10 and CRC art. 32.

¹⁹ The OECD Guidelines for Multinational Enterprises are recommendations to international business for conduct in such areas as labor, environment, consumer protection and the fight against corruption. The recommendations are made by the adhering governments and, although they are not binding, governments are committed to promoting their observance. Revised OECD Guidelines for Multinational Enterprises were adopted on the occasion of the OECD’s annual Council meeting at ministerial level in Paris on June 27, 2000. The full text can be found at <http://www.oecd.org/dataoecd/56/36/1922428.pdf>. The OECD Annual Report on the Guidelines for Multinational Enterprises: 2005 Edition (Paris: OECD, 2005), can be found at http://www.oecd.org/document/45/0,2340,en_33873108_33873555_35845165_1_1_1_1,00.html.

²⁰ OECD Guidelines for Multinational Enterprises, pp. 21-22.

possible observance of the Guidelines,” and that “adhering to the Guidelines will promote them and encourage their use.”²¹

III. The Labor Conditions Framework at the KIC

The questions Human Rights Watch sent to the Ministry of Unification sought specific information on labor conditions at the KIC and included questions on freedom of association and collective bargaining, sex discrimination, sexual harassment, child labor, hours of work, wages, healthcare, monitoring of labor conditions, safety inspections, enforcement of the KIC Labor Law and measures to address violations, labor-management disputes, and workers’ awareness of their rights. The Ministry of Unification answered most of the questions, though in many cases did not include as much detailed information as requested. Human Rights Watch could not independently confirm the Ministry’s answers—with the exception of those addressing published legal provisions—as it has not yet been given access to KIC workers to corroborate the responses provided.

1. Wages

The KIC Labor Law stipulates that North Korean workers must be paid a minimum of U.S.\$50 per month. Their hourly rate is \$0.25. North Korean workers at the KIC reportedly worked an average of 54.9 hours per week and received an average of \$67.40 per month in 2005.²² North Korea takes 30 percent of the workers’ wages as a contribution to a fund designed to provide free housing, healthcare and education. The Ministry of Unification told Human Rights Watch that South Korean companies ensure that their KIC workers are aware of how much they are supposed to be paid by having the workers sign payroll forms that show their work hours and wages.

Article 32 of the KIC Labor Law stipulates that South Korean companies shall pay wages to North Korean workers directly in cash. However, on North Korea’s demand, South Korean companies remit worker salaries to the North Korean government,

²¹ *Ibid.*, p. 18.

²² KIC Council of Industry Representatives, “Worker Wage and Labor Conditions at Kaesong Industrial Complex,” May 2006, pp. 19-20.

which in 2005 reportedly paid the workers an average of 6,300 North Korean won per month,²³ or \$42 using the official exchange rate of 150 North Korean won for one U.S. dollar.²⁴

2. Hours of Work

The Ministry of Unification told Human Rights Watch that North Korean workers at the KIC work eight hours per day and 48 hours per week, not including overtime. The average overtime for KIC workers in 2005 was reportedly 6.9 hours per week. The KIC Labor Law does not establish the maximum work hours per week, but it stipulates that South Korean companies shall consult with workers' representatives prior to requesting workers to work overtime, and workers can refuse. North Korea's Labor Law, meanwhile, states that workers shall maintain a routine of eight hours of work, eight hours of study and eight hours of rest.²⁵

Article 22 of the KIC Labor Law stipulates that employers shall guarantee workers North Korea's national holidays, off days and rest time.²⁶ KIC workers are thus guaranteed one day off per week. In addition, the KIC Labor Law provides that all workers shall be given 14 days of paid leave per year, while those in dangerous or hazardous occupations shall be given an additional two to seven days of paid leave. Including national holidays, North Korean workers in non-hazardous jobs, therefore, take 71 days in national holidays and off days per year for which they are paid plus 14 days of paid leave.²⁷

3. Healthcare and Industrial Accidents

Under the KIC Labor Law, North Korea is in charge of healthcare for its workers. According to the Ministry of Unification, because North Korea does not have

²³ Ibid.

²⁴ In a black market rate, one U.S. dollar is worth about 3,000 North Korean won, or 20 times the official rate. Kwak Dae-jung, "Exchange Rate Stands at Average 3,000 Won in March," *The Daily NK*, March 22, 2006.

²⁵ North Korean Labor Law, art. 33.

²⁶ KIC Labor Law, art. 22.

²⁷ The Korea Institute for National Unification says in a report that, in reality, North Korean workers generally do not get eight hours of daily rest as they are forced to take part in various political studies, meetings, etc. after work hours. Korea Institute for National Unification, "White Paper on Human Rights in North Korea," pp. 177-184.

adequate healthcare services, the KIC Management Committee makes significant efforts to prevent industrial accidents. The KIC Labor Law stipulates that in case of death, injury or poisoning of North Korean workers while at work, South Korean companies shall immediately notify the KIC Management Committee, which shall handle the incident in consultation with the General Bureau. Once an injury occurs, the North Korean government reportedly covers the treatment of the injured from a social welfare fund it raises from South Korean companies (equivalent to 15 percent of worker salaries) and North Korean workers (30 percent of their salaries—see above). The KIC Labor Law does not provide for workers' compensation, however, and it is not clear whether North Korean workers receive monetary compensation for injuries or salaries during a sick leave.

The number and rate of industrial accidents at the KIC are not publicly disclosed, though South Korean companies investing in the KIC are reportedly discussing with the North Korean government the possibility of publicizing such information.

4. Labor-Management Disputes

The KIC Labor Law stipulates that labor-management disputes shall be resolved through consultation between the workers and employers, though it fails to clarify whether the requirement bars workers from exercising their right to strike. Under the KIC Labor Law, if a matter cannot be resolved through consultations, workers and employers can ask the KIC Management Committee to mediate. According to the Ministry of Unification, if the KIC Management Committee is unable to resolve a dispute to the satisfaction of both parties, either party can lodge a complaint with the General Bureau, although there is no such provision in the KIC Labor Law. The KIC Labor Law provides, however, that in cases in which an employer or employee has an “opinion” regarding a penalty imposed against the employer or employee, either can raise the issue with the Management Committee or the General Bureau, which must resolve the issue of concern within 30 days after the complaint is filed.

Although there is no law that bans retribution against workers for requesting mediation, the Ministry of Unification told Human Rights Watch that such retribution is impossible because the KIC Management Committee and the General Bureau monitor working conditions constantly.

5. Monitoring of Labor Conditions

According to the Ministry of Unification, the KIC Management Committee makes daily trips to work sites without advance notice to monitor the labor environment and compliance with the KIC Labor Law. When North Korean workers have concerns about labor conditions, they can raise them with either the KIC Management Committee or the General Bureau. Similarly, South Korean companies operating at the KIC can raise issues regarding North Korean workers with the KIC Management Committee as well. In such cases, the General Bureau and Management Committee visit the work site, with advance notice to employers and workers, and later share the results of their monitoring visit with the South Korean company of concern. Their findings are not made public. The Ministry of Unification did not say whether they share the findings with the workers.

6. Safety Inspections

According to the Ministry of Unification, the KIC Management Committee submits requests for safety inspections at KIC facilities to the Ministry of Unification, which then forwards the requests to South Korea's Labor Ministry and the (South) Korea Occupational Safety and Health Agency (KOSHA). The agency conducts safety inspections and submits the results to South Korean companies, the Management Committee, and the Unification and Labor Ministries. The committee accordingly makes recommendations to the southern employer to remedy any violations of the KIC Labor Law that are found. Additional KOSHA staff are based at the KIC and work with the Management Committee. KOSHA inspectors conducted two inspections in 2005 and another this year (as of August 2006), with a plan to conduct one more before the end of the year.

7. Violations of the KIC Labor Law

According to the Ministry of Unification, if violations of the KIC Labor Law are found after monitoring, the KIC Management Committee will make recommendations to South Korean companies to remedy the violations. If the conditions do not improve, the committee can impose a fine (from \$100 to \$2,000) or order the company to stop operations. So far, none of the South Korean companies has been fined, as the KIC Management Committee has found no violations of the law.

It should be noted that despite the law's stipulation that North Korean workers be paid directly in cash, South Korean companies are clearly violating this by instead paying workers' wages to the North Korean government, although they claim that the latter has forced them to do so. At a minimum, this reflects the limitations of the KIC Management Committee in being able to ensure that the KIC Labor law is effectively enforced.

8. Workers' Awareness of Rights

According to the Ministry of Unification, South Korean companies operating at the KIC do not provide workers with written information on their rights. The ministry told Human Rights Watch, however, that North Korean workers are well aware of the important parts of the KIC Labor Law, including work hours, wages and bonuses.

IV. Inadequate Protection of Rights Guaranteed in International Human Rights Treaties

Based on the information from the Ministry of Unification, it appears that conditions at the KIC likely represent the best of North Korea. For example, the KIC Labor Law contains important protections, such as those providing paid leave and holidays (including a guarantee of 150 days of maternity leave), those limiting conditions under which employers can fire workers, and those clarifying employers' responsibilities for protecting workers from dangerous or hazardous work conditions. However, Human Rights Watch is concerned that not all those provisions are effectively enforced (the issue of payment of workers' wages to the North Korean government rather than to the workers directly, mentioned above, being a prime example).

Human Rights Watch has also identified important workers' rights guaranteed in international human rights treaties to which North Korea is a party that are not covered or adequately protected by the KIC Labor Law. In addition, Human Rights Watch has identified practices that also appear to violate labor rights provisions in these treaties. Without adequate legal protections on paper and in practice, KIC workers are vulnerable to rights violations.

1. Freedom of Association and Collective Bargaining

Human Rights Watch is concerned by the failure of the KIC Labor Law to protect workers' right to freedom of association and to bargain collectively at the KIC.

The KIC Labor Law does not cover these fundamental workers' rights. The Ministry of Unification notes, however, that article 13 of the KIC Labor Law states that "employers may determine and apply labor rules applicable to all workers through consultation with workers' representatives. The labor rules include work hours, rest hours, labor protection standards, labor structure, reward and punishment standards, etc." The Ministry of Unification claims that this provision indirectly recognizes the right to bargain collectively and that workers' representatives could, therefore, collectively bargain on behalf of KIC workers under the KIC Labor Law. Permitting South Korean employers to voluntarily "consult" with North Korean workers' representatives does not ensure that workers can exercise their right to bargain collectively under international law, however. Rather, this requires that workers, through representatives of their choosing, must be able to freely engage their employer in the exchange of information, proposals and dialogue to establish terms and conditions of employment, without fear of negative repercussions.

Although the KIC Labor Law is silent on workers' right to freedom of association and collective bargaining, North Korea's Foreign Enterprise Law purports to enshrine the right of those employed by foreign enterprises to form trade unions and "conclude a contract concerning working conditions."²⁸ But that law does not protect workers from employer conduct that violates these rights, such as taking punitive measures against workers who attempt to exercise them and interfering in workers' efforts to organize, nor does the law require employers to negotiate in good faith with workers' representatives upon their request. The law also fails to provide remedies for those

²⁸ North Korea's second periodic report under the ICCPR submitted to the Human Rights Committee in May 2000 stated: "[T]he employees of private enterprise i.e. foreign enterprise form their own trade union under Article 21 of the Foreign Enterprise Law to protect their rights and interests in accordance with the labor law and regulations, conclude a contract concerning working conditions with the foreign enterprise and make activities to implement it." In the same report, North Korea explained limitations to the right: "If a public organization or a trade union seriously endangers the State security or healthy public order, the organization and activity is forbidden." Second Periodic Report of the Democratic People's Republic of Korea on its implementation of the International Covenant on Civil and Political Rights, CCPR/C/PRK/2000/2, May 4, 2000. Article 21 of North Korea's Foreign Enterprise Law states: "Employees working for foreign enterprise can form trade unions. Trade unions protect the rights and interests of the employees under the republic's labor law and conclude a contract concerning working conditions with [a] foreign enterprise and supervise their implementation. Foreign enterprises must guarantee conditions for trade union activities." Chongko Choi, North Korean Law, p. 468.

workers whose rights are violated, such as reinstatement for those fired for engaging in organizing activity.

An American of Korean descent who has invested in six businesses in North Korea over a decade told Human Rights Watch that trade unions, collective bargaining and strikes were nonexistent at all of the factories he had visited as late as 2004.

It was obvious to me that it didn't even occur to the workers that they could elect their own representatives or form a trade union. If you asked them what a strike is, they probably won't be able to answer the question. Even if they knew what it was, they were not able to act on it. The Workers' Party decided everything for them.²⁹

The Ministry of Unification nonetheless told Human Rights Watch that KIC workers could form trade unions if they wanted but that to date there have been no such moves.³⁰ There are no unions at the KIC and no collective agreements.

Instead, according to the Ministry of Unification, the North Korean government—not the workers themselves—selects workers' representatives, subject to the approval of the South Korean companies operating at the KIC. Each representative, therefore, is a state appointee approved by the employers. One is assigned to each facility at the KIC, and each also generally has managerial responsibilities. There is no time limit on their term of office and they are replaced only when they resign or cause production delays due to lack of managerial ability. Typically, they deal with issues regarding work environment and worker welfare, such as determination of overtime hours and the supply of safety equipment.³¹

The ICCPR and the ICESCR protect a worker's right to freedom of association and collective bargaining. The ICCPR states "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."³² The ICESCR states that parties to the covenant shall

²⁹ Human Rights Watch interview, identity withheld, Seoul, August 29, 2006.

³⁰ Ministry of Unification written response to questions from Human Rights Watch, August 2006.

³¹ Ibid.

³² ICCPR, art. 22.

ensure “the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests.”³³

The ILO, to which North Korea is not a party, explains more fully states’ obligation to respect workers’ right to freedom of association and collective bargaining. ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise specifically bans states from interfering with this right and guarantees workers’ right to freely elect their representatives.³⁴ ILO Convention No. 98 Concerning the Right to Organise and Collective Bargaining further requires states to take measures “to encourage and promote” collective negotiation.³⁵ The ILO Committee on Freedom of Association has added, “The right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent.”³⁶

The KIC Labor Law falls far short of guaranteeing the fundamental right to freedom of association and the corollary exercise of that right, collective bargaining, as recognized in international law. In addition, the process by which workers’ representatives at KIC are selected not only violates workers’ right to elect representatives of their choosing but the ban on state interference in the organization, operation, and functioning of workers’ organizations.

Human Rights Watch recommends that the KIC Labor Law be amended to explicitly protect workers’ right to freedom of association, protect against all conduct that

³³ ICESCR, art. 8.

³⁴ ILO Convention No. 87 provides, “Workers’ and employers’ organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.” The convention further states, “The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.” ILO Convention No. 87, art. 3.

³⁵ ILO Convention No. 98 states, “Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.” ILO Convention No. 98, art. 4.

³⁶ ILO Committee on Freedom of Association, “Digest of Decisions: The right to bargain collectively (Collective bargaining),” 1996, para. 728.

violates that right, and introduce a process whereby workers' representatives are freely elected by workers through a secret ballot election or similar democratic process. Human Rights Watch further recommends that the KIC Labor Law be amended to explicitly provide for workers' right to bargain collectively, including by requiring employers to bargain in good faith upon the request of workers' representatives and prohibiting employer retaliation against workers for exercising that right. The revised law should provide meaningful sanctions on employers for violating these rights, and should be effectively enforced. Employees should be fully informed of the changes and their rights, and provided with training and support to ensure that they are aware of how to exercise those rights. Their rights should be publicly posted in the workplace.

2. Sex Discrimination and Sexual Harassment

According to testimonies of North Korean refugees living in South Korea, sex discrimination and sexual violence against women is widespread in North Korea. Women become victims of sexual harassment and sexual violence at workplaces, in the military and even when they fail to pay fines for traveling without state permission. Many victims of sexual harassment and sexual violence reportedly choose not to report the violations to the authorities due to shame and fear of retribution. In North Korea, women make up about 50 percent of the work force, but in white-collar jobs, including government positions, 65 percent of workers are men. Women are represented in far higher proportions than men in manual labor and farming.³⁷

North Korean laws state that all people in North Korea enjoy equal rights in all spheres of state and public activity.³⁸ Nonetheless, the laws do not explicitly ban employment and workplace sex discrimination, including sexual harassment. The KIC Labor Law also does not address sex discrimination or sexual harassment. The Ministry of Unification did not respond to questions on sex discrimination and sexual

³⁷ Korea Institute for National Unification, "White Paper on Human Rights in North Korea," pp 138-149.

³⁸ In its second periodic report under the ICCPR submitted to the Human Rights Committee in May 2000, North Korea stated: "All the citizens of the DPRK are equal before the law and enjoy, without any discrimination, the right to equal protection of the law. The Constitution and the laws that elaborate it guarantee this right. Article 65 of the Constitution provides: 'Citizens enjoy equal rights in all spheres of state and public activity.' The citizens of the DPRK exercise equal rights in all spheres of state and public activity without discrimination on any ground such as race, color, sex, language, religion, national or social origin, property, birth or other status. Foreigners in the territory of the DPRK are also guaranteed the legal rights and interests without any discrimination, as is stipulated in the article 16 of the Constitution." Second Periodic Report of the Democratic People's Republic of Korea on its implementation of the International Covenant on Civil and Political Rights, CCPR/C/PRK/2000/2, May 4, 2000.

harassment from Human Rights Watch, except to report that there is no pregnancy-based discrimination, that KIC workers are not required to submit to pregnancy tests before hiring, and that companies take measures so that pregnant employees are not assigned to dangerous or hazardous jobs and offer 150 days of maternity leave, including 60 days of paid leave.³⁹

Human Rights Watch has generally found, however, that without legislation explicitly clarifying that sexual harassment and pregnancy-based discrimination are prohibited forms of discrimination, employers often engage in such conduct with impunity. In such cases, women workers who suffer these violations and want to seek justice cannot cite explicit labor law provisions banning these practices. Instead, they must make the argument that the conduct runs afoul of the law's general ban on discrimination, often an insurmountable obstacle.⁴⁰

Article 11 of the CEDAW, to which North Korea is a party, provides, "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights."⁴¹ In addition, the CEDAW Committee, charged with interpreting the protections of the convention, has found that "[e]quality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace" and that, therefore, states are obliged under the CEDAW to take steps to provide "[e]ffective legal measures, including penal

³⁹ As of May 2006, 21 North Korean workers have taken maternity leave. See KIC Council of Industry Representatives, "Worker Wage and Labor Conditions at Kaesong Industrial Complex," May 2006, p. 24.

⁴⁰ See, for example, Human Rights Watch, *A Job or Your Rights: Continued Sex Discrimination in Mexico's Maquiladora Sector*, vol. 10, no. 1(B), December 1998, <http://www.hrw.org/reports98/women2/>; *A Test of Inequality: Discrimination Against Women Living with HIV in the Dominican Republic*, vol. 16, no. 4(B), July 2004, <http://hrw.org/reports/2004/dro704/dro704.pdf#search=%22%22A%20Test%20of%20Inequality%22%22>; *From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force* (New York: Human Rights Watch, 2002), <http://hrw.org/reports/2002/guat/>; *Tainted Harvest: Child Labor and Obstacles to Organizing on Ecuador's Banana Plantations* (New York: Human Rights Watch, 2002), <http://www.hrw.org/reports/2002/ecuador/index.htm#TopOfPage>; and *Help Wanted: Abuses Against Female Migrant Domestic Workers in Indonesia and Malaysia*, vol. 16, no. 9(B), July 2004, <http://hrw.org/reports/2004/indonesia0704/>.

⁴¹ Article 11 of CEDAW further states that, in particular, states should protect "[t]he right to the same employment opportunities, including the application of the same criteria for selection in matters of employment" and "[t]he right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work." CEDAW, art. 11.

sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including . . . sexual harassment in the workplace.”⁴²

Human Rights Watch recommends that the KIC Labor Law be amended to explicitly prohibit workplace and employment sex discrimination, including pregnancy-based discrimination and sexual harassment. The revised law should provide meaningful sanctions on employers if these provisions are violated, and should be effectively enforced. Employees should be fully informed of the changes and what the prohibition on discrimination means, and female employees in particular should be provided with training and support to ensure that they are aware of how to seek redress if they are victims of sex discrimination or sexual harassment.

3. Child Labor

The KIC Labor Law does not explicitly ban dangerous or hazardous work for those under 18. North Korea’s Labor Law establishes 16 as the minimum age for employment,⁴³ but it does not ban harmful labor for children under 18. The Ministry of Unification told Human Rights Watch that North Korea is in charge of providing labor at the KIC and that the selection process follows the North Korean Labor Law and is governed by the law’s minimum age provisions. The ministry also said that at present there is no dangerous or hazardous work at the KIC. As discussed above, however, the KIC Labor Law provides for additional paid vacation days for “those in dangerous or hazardous occupations,” suggesting that even if no such occupations currently exist at KIC, they may in the future.

The CRC, to which North Korea is a party, requires states to “recognize the right of the child to be protected from economic exploitation and from performing any work that is

⁴² General Recommendation No. 19 of the CEDAW Committee, adopted at its 11th session in 1992. The committee stated, “Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”

⁴³ North Korea clarified the minimum working age in the country in its second periodic report under the ICCPR submitted to the Human Rights Committee in May 2000. The report stated, “Article 15 of the Labor Law stipulates: ‘In the DPRK, the minimum working age is 16. Labor by children under the working age is prohibited by the state.’” Second Periodic Report of the Democratic People’s Republic of Korea on its implementation of the International Covenant on Civil and Political Rights, CCPR/C/PRK/2000/2, May 4, 2000.

likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” To these ends, the convention obligates states to establish a minimum age of employment and “appropriate regulation of the hours and conditions of employment.”⁴⁴

Human Rights Watch recommends that the KIC Labor Law be amended to incorporate the North Korean Labor Law’s minimum age provision and to ban the assignment of children under the age of 18 to dangerous or hazardous jobs. The revised law should provide meaningful sanctions on employers if these provisions are violated, and should be effectively enforced.

V. Summary of Recommendations

1. Human Rights Watch encourages North Korea to join the International Labour Organization, accede to its core treaties, and invite ILO officials to investigate and discuss protection and promotion of workers’ rights in North Korea.
2. Human Rights Watch encourages South Korea, as a member of the OECD that has pledged to adhere to the OECD Guidelines for Multinational Enterprises, to ensure that South Korean corporations operating at the KIC respect the guidelines and in turn ensure that workers in their enterprises are fully informed of their rights and how to exercise them.
3. Human Rights Watch recommends that the existing provisions of the KIC Labor Law be effectively enforced and, in particular, that the North Korean government allow workers to receive payment directly from their South Korean employers.
4. Human Rights Watch recommends that the KIC Labor Law be amended to explicitly protect workers’ right to freedom of association and the right to collective bargaining and protect the workers against all conduct that violates that right.

⁴⁴ CRC, art. 32.

5. Human Rights Watch recommends that the KIC Labor Law be amended to explicitly prohibit sex discrimination and sexual harassment.
6. Human Rights Watch recommends that the KIC Labor Law be amended to incorporate the North Korean Labor Law's minimum age provision and to prohibit the assignment of children under the age of 18 to dangerous or hazardous jobs.
7. Human Rights Watch recommends that the KIC Management Committee ensures that all workers are fully informed and trained about their rights and how to exercise them, and that information about their rights is easily accessible, for example by requiring them to be publicly posted at the workplace.

VI. Appendix

Human Rights Watch's Questions to the Ministry of Unification on Labor Conditions at the Kaesong Industrial Complex

Laws/Regulations Governing Kaesong

Procedural Concerns

1. Who drafted/established the laws/regulations governing labor standards at Kaesong?
2. If the laws/regulations were not publicly developed, i.e., by the South Korean or North Korean governments, then please explain the process by which they were developed. Were workers and employers consulted in their development, i.e., was it a tripartite process?
3. We have been told that a Management Committee, made up of 47 South Korean and a few North Korean officials, enforces the laws/regulations governing Kaesong and that the committee has regular meetings with employers to monitor compliance.
 - a) Are workers also interviewed about working conditions to monitor compliance? If so, are workers interviewed off-site in a safe setting that ensures their anonymity and protects against possible employer retaliation?
 - b) Are monitoring/inspection visits unannounced, i.e., do employers know when committee members will be visiting their facilities?
 - c) How frequently do monitoring/inspection visits occur at each facility?
 - d) Are the findings/reports of these monitoring/inspection visits made public?
 - e) If violations are found after inspection/monitoring, what is the process for remediation and the imposition of fines?
 - f) Have any fines been imposed for noncompliance with the laws/regulations? If so, how much? Were they paid?
 - g) If a fine is imposed and paid to the Management Committee, to whom does the fine ultimately go, i.e., South Korea, North Korea, a private entity?

4. We have been told that there were a few industrial accidents at Kaesong last year, but details have not been made public. Do the laws/regulations governing Kaesong provide for public recording and disclosure of industrial accidents or health and safety violations?

Substantive Concerns

Freedom of Association, Collective Bargaining, and the Right to Strike

1. What protections do the laws/regulations provide for workers' right to freedom of association, collective bargaining, and strike? For example:
 - a) Do the laws/regulations require employers to bargain collectively with elected worker representatives?
 - b) Do the laws/regulations ban employer retaliation, including demotion or dismissal, against workers for engaging in organizing or union activity?
 - c) Are there special protections for "workers' representatives" to ensure that they are not retaliated against by employers for their work on behalf of workers?
 - d) Are workers allowed to strike, as long as they follow certain procedures set forth in the laws/regulations? [NOTE: We understand that this is currently an impossibility in the context of North Korea, but we raise it because the right to strike is encompassed in the rights to freedom of association and collective bargaining—core workers' rights.]

Sex Discrimination

1. What protections do the laws/regulations provide against sex discrimination, including sexual harassment?
 - a) Do the laws/regulations ban pregnancy-based discrimination, including mandatory pregnancy testing as a condition of employment?

Workers' Compensation

1. Please explain the provisions of the laws/regulations governing workers' compensation for workers injured on the job at Kaesong.

Hours of Work

1. Please explain the provisions of the laws/regulations governing hours of work.
 - a) How many hours may a worker work per week, not including overtime?
 - b) Are workers guaranteed days off each week? How many?
 - c) Are workers guaranteed paid vacation days? If so, how many vacation days are they guaranteed per year?
 - d) How many hours may a worker work per week, including overtime?
 - e) Can workers refuse to work overtime if they so desire or can a factory require overtime work?

Wages

1. Please explain the provisions of the laws/regulations governing minimum wage.
 - a) What is the minimum wage for Kaesong workers?
 - b) Do workers receive a higher hourly wage for overtime work?
 - c) Please explain the provisions governing payment of workers' salaries.
 - d) To whom do Kaesong factory managers directly pay workers' wages?
 - e) Who directly pays the workers their wages?
 - f) Does current practice comply with the terms of the laws/regulations?

Healthcare

1. Do the laws/regulations require employers to pay for health insurance for their workers or otherwise provide them with healthcare? If not:
 - a) What, if any, arrangements exist for workers' healthcare?

Child Labor

1. What is the minimum age of employment in Kaesong?
2. Are there certain tasks that workers under 18 are banned from performing in Kaesong? If so, what are they?

Know Your Rights

1. Do the laws/regulations require factories to post workers' rights, as protected under the laws/regulations?

2. Do the laws/regulations require factories to post the fundamental rights set forth in the ILO Declaration on Fundamental Principles and Rights at Work?

Labor Law/Regulation Enforcement

1. We have been told that the Management Committee acts as a peacemaker for disputes, such as wage issues.
 - a) Do the laws/regulations provide for a complaint mechanism/process by which workers can submit complaints or concerns to the committee?
 - b) Do the laws/regulations ban retribution against workers for using the complaint mechanism/process?
 - c) In the event that the Management Committee is unable to resolve a dispute to the satisfaction of the parties, what other mediation, arbitration, or similar processes are available?
 - d) What issues have come before the Management Committee, to date?
2. We have been told that South Korean industrial safety inspectors visited Kaesong twice in 2005. Please explain how these officials coordinate inspection/monitoring with the Management Committee on issues related to workplace health and safety.
 - a) What monitoring/inspection procedures did the South Korean industrial safety inspectors follow?
 - b) Are the inspection reports of the South Korean industrial safety inspectors publicly available?

Terms and Conditions of Employment

Freedom of Association and Collective Bargaining

1. We have heard reports that workers' representatives at Kaesong are in constant dialogue with employers. How are these workers' representatives selected?
 - a) If workers vote for them, how is the election conducted? Are votes cast through secret ballot or openly?
 - b) If management selects them, how is the selection made? Who is consulted during the selection process?
2. How many workers' representatives are there at each factory?

3. For how long does each workers' representative serve in that position?
4. Are the workers' representatives also employees of the factories whose workers they represent? If not, for whom do they work?
5. What issues have workers' representatives typically raised with management?
6. Have workers' representatives sought to negotiate collective agreements with terms above and beyond those provided in the laws/regulations governing Kaesong?
7. Are there worker committees at Kaesong factories to represent the interests of workers? If so:
 - a) How are these committees selected? (Same questions as 1(a) and 1(b))
 - b) Do factory managers also serve on these committees?
 - c) Same questions as 3, 5, and 6, adapted to the context of worker committees.

Hours of Work

1. How long is the typical shift for Kaesong workers?
2. How often do Kaesong workers work overtime?
3. How many days per week do most Kaesong workers work?

Wages

1. What is the average hourly wage of Kaesong workers?
2. What percentage of workers' wages is retained by the North Korean government?

Healthcare

1. Do Kaesong factories provide for workers' healthcare? If so:
 - a) What is the cost to workers?

Sex Discrimination

1. Have you heard any reports of sexual harassment?
2. Do Kaesong factories have procedures in place to minimize the number of pregnant women hired, for example, through mandatory pregnancy testing prior to hiring?

Child Labor

1. Have there been any reports of children under the minimum age of employment working at Kaesong?
2. Have there been any reports of children under 18 performing dangerous tasks at Kaesong?

Know Your Rights

1. Are workers' rights, as protected by governing laws/regulations, posted in Kaesong factories?
2. Are the fundamental rights set forth in the ILO Declaration on Fundamental Principles and Rights at Work posted at Kaesong factories?