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CHINA'S FORCED REPATRIATION OF NORTH KOREAN REFUGEES INCURS UNITED NATIONS CENSURE

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Summary: The UN Commission of Inquiry (COI), set up in 2013 to investigate widespread, systematic, and grave human rights violations in North Korea, has strongly implicated China in North Korea's commission of crimes against humanity because of its forced repatriation of North Korean refugees and asylum seekers who are severely punished once returned. China, however, insists that North Koreans exiting without permission are 'economic migrants,' not refugees, and that deportations are essential to maintaining its national security, social order, and border controls, as well as the stability of the Korean Peninsula. Although a preponderance of states at the United Nations have rejected China's position, China has continued to subordinate UN human rights and refugee standards to its immediate political objectives and deny North Koreans their right to leave their country and seek asylum abroad. As greater international pressure focuses on China's policies and practices, a vigorous international effort is needed to protect North Korean refugees and encourage China to see that its interests may be better served over the longer term by modifying its policies.

Introduction

For the first time, China is under broad international censure for its forced repatriation of North Koreans crossing into its territory illegally. The United Nations Commission of Inquiry (COI), set up in 2013 to investigate the “systematic, widespread, and grave” human rights violations in North Korea, has implicated China as possibly facilitating North Korea's commission of crimes against humanity.¹ The COI's 400-page report points out that over a period of two decades, China has forcibly returned tens of thousands of North Koreans almost all of whom have been subjected to inhuman treatment and punishment in the form of “imprisonment, execution, torture, arbitrary detention, deliberate starvation, illegal cavity searches, forced abortions, and other sexual violence.”² It calls on China to halt its collaboration with North Korean security agencies in identifying and forcing back North Koreans and to extend asylum to persons fleeing the DPRK (Democratic People's Republic of North Korea). COI Chair Michael Kirby, a former justice of the High Court of Australia, in a special letter appended to the report, cautions China that its officials could be “aiding and abetting crimes against humanity”³ by sharing information with North Korea's security bodies and forcibly turning back those who try to escape.

The evidence amassed in the COI report challenges China's claims that 1) North Koreans entering China illegally are economic migrants who must be deported, and 2) that those forcibly returned are not punished, even though it is a criminal offense to leave North Korea without permission. In an effort to obstruct the commission's work, China denied it entry to its border areas, and then declared the COI findings to be “divorced from reality,”⁴ because it was unable to visit. Nonetheless, the three COI commissioners⁵ concluded that China was enabling North

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Korea to commit crimes against humanity by forcibly returning them to conditions of danger, thereby standing in violation of its obligations under international human rights and refugee law.

Although China's initial response has been defensive, the more fundamental question is whether over the longer term, China will see it in its interests to modify its policies. The COI report appears to take the longer view. For one, the report warns that by continuing to cooperate with North Korea in forcibly repatriating its citizens, Chinese officials might end up being held accountable in future trials of North Koreans. Second, it points out that this can be avoided if China helps modify North Korea's practices and policies by raising with the DPRK's "Supreme Leader" and other high-level authorities the crimes to which repatriated North Koreans have been subjected.⁶ It suggests that there is good reason for China to take offense at North Korea's policies. The forced abortions carried out by North Korea on repatriated women have been racially based because the women have become impregnated by Chinese men; and the infanticide perpetrated against children born to such women has been carried out because they are part Chinese. Furthermore, allowing North Korean security agents free rein to carry out abductions on Chinese soil and implement 'shoot to kill' orders on the Chinese side of the border is an infringement of China's sovereignty. Violating the international refugee convention so blatantly through forcible repatriations also tarnishes China's reputation with other governments and international organizations. North Koreans who cross the border, the COI report points out, must have "free access to diplomatic and consular representations of any State that may be willing to extend nationality or other forms of protection to them."⁷

This paper examines the significance of the COI's findings on China's forced repatriation of North Koreans, especially in light of the UN's history on this question, discusses the reasons for China's response, and closes with options for addressing the problem. It argues for the development of an international strategy involving the United Nations, governments, NGOs, and other concerned actors to encourage a change in China's policies and practices.

China's Forced Repatriations in UN Reports and Resolutions

From 2004 to 2014, UN Special Rapporteurs on human rights in the DPRK, tasked with investigating the situation in North Korea, focused exclusively on how North Korea treated its citizens, including the harsh punishment meted out to those who left illegally and were forcibly repatriated by other states. The UN reports, however, studiously avoided direct reference to China, generally using the euphemism "neighboring" countries⁸ when mentioning the many North Koreans forced back by the People's Republic of China (PRC) and then punished. In their recommendations, the reports appealed to "all" states to assume their responsibilities to not forcibly return refugees.⁹

There were two main reasons for the reluctance to mention China by name. First it was not considered the rapporteur's mandate to go beyond the practices of North Korea. Second, it was feared that China, which was opposed to the special UN human rights mandate on North Korea, might try to terminate it. Thus, the UN Secretary-General in his annual report to the General Assembly on North Korean human rights, regularly said:

I wish to remind neighbouring countries and the international community in general [emphasis added] of their obligations, under the 1951 Convention relating to the Status

*of Refugees, to provide protection to those fleeing the Democratic People's Republic of Korea in order to seek asylum.*¹⁰

UN resolutions also avoided direct reference to China when calling for an end to forced repatriations. In fact, the General Assembly since 2006 has expressed “serious concern” about North Korea’s punishment of those “who have been repatriated from abroad” and has urged “all states” to respect the principle of *non-refoulement* and provide unhindered access to the UN High Commissioner for Refugees (UNHCR).¹¹

Occasionally, there were exceptions. In 2012, Special Rapporteur Marzuki Darusman, in a report to the General Assembly mentioned China by name because he was reporting on a particular incident. Thirty-one men, women and children who had fled the DPRK “and sought international protection in China were arrested for being in the country illegally.”¹² The case had engendered considerable international attention and publicity; even the UN Secretary-General and the UN High Commissioner for Refugees had appealed to China not to repatriate the group.¹³ But in its recommendations, the Special Rapporteur’s report called on “neighbouring countries” to abstain from forcibly returning North Koreans, and the General Assembly’s resolution did the same.

Only the UN treaty bodies which monitor states’ compliance with the human rights treaties they ratified have felt in a position to call on China directly to cease its practice of forcibly repatriating North Koreans. The Committee for the Rights of the Child, for example, reviewing China’s compliance with the Convention on the Rights of the Child, called on the Chinese government in 2005 to ensure that no unaccompanied child from North Korea be returned to a country “where there is substantial grounds for believing that there is a real risk of irreparable harm to the child.”¹⁴ And it repeated this in 2013.¹⁵ Similarly, the Committee against Torture (CAT), the body that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, called upon China in 2008 to comply with Article 3 of the convention that affirms: “No state party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.” The CAT called on China to establish a screening process for North Koreans and examine whether they will face the risk of torture on return. It further called on China to provide access to UNHCR and to adopt legislation incorporating China’s obligations under the torture convention concerning deportations.¹⁶

The treaty bodies have also expressed concern about the treatment of North Koreans who remain hidden inside China. The Committee on the Elimination of Discrimination against Women (CEDAW) called on China in 2006 “to review the situation of North Korean women refugees and asylum seekers” and “ensure that they do not become victims of trafficking and marriage enslavement because of their status as illegal aliens.”¹⁷ And the Committee on the Rights of the Child called upon China to ensure that North Korean children in China have access to health, education and other basic services.¹⁸ It repeated this in 2013 and called on China to

*...cease the arrest and repatriation of North Koreans, especially children, and women who have children with Chinese men, and ensure that children of North Korean mothers have access to fundamental rights, including the right to identity and education.*¹⁹

It pointed out that children of North Korean mothers in China are not registered under the *hukou* system “out of fear that their mothers would be identified and forcibly returned to DPRK.”

The treaty bodies have helped lay the groundwork for building the UN’s case about forced repatriations. When the Human Rights Council in 2013 adopted a resolution establishing the Commission of Inquiry, it identified freedom of movement as one of the areas that should be investigated for possible crimes against humanity. Special Rapporteur Darusman studied the treaty bodies’ findings and impressed upon the Council that North Koreans who leave without authorization have a valid fear of persecution upon return, and need protection, given the punishment they face when they “have been repatriated from abroad.”²⁰

International publicity also helped to heighten interest in China’s forced repatriations. The widely publicized report, *The Hidden Gulag*, by David Hawk, issued by the Committee for Human Rights in North Korea (HRNK) in 2012 amply documented the punishments of those forcibly repatriated from China.²¹ Its testimonies from survivors and former guards, for example, noted more than 60 instances of racially motivated forced abortion or infanticide occurring between 1998 and 2004 at five different kinds of detention and labor training facilities operated by two different police forces.²² In addition, a NKDB (Data Base Center for North Korean Human Rights) *White Paper* of 2012 documented 273 forced abortions, mostly in police and detention facilities in North Hamgyong Province and North Pyongan Province, on women repatriated from China up through 2010.²³

Meanwhile, South Korean parliamentarians and NGO groups in Seoul made headlines in 2012 when they undertook demonstrations and hunger strikes to try to prevent the forced repatriation of the abovementioned 31 North Koreans from China.²⁴ South Korean President Lee Myung-bak spoke out as did US Secretary of State Hillary Clinton and the European Parliament.²⁵ But in the end, China forced them back, and it was reported, although not confirmed, that four had been executed and that the families of the group were arrested even before the actual returns, based on information communicated by China to North Korean security agents.²⁶

The story of Shin Dong-hyuk, who was born in the camps, tortured, and escaped through China to South Korea was also published in 2012 and sold hundreds of thousands of copies.²⁷ According to *Escape from Camp 14*, Shin had to sneak through China to avoid arrest and could hardly be said to typify the term economic migrant, used by China to describe North Koreans who enter its country illegally.

UN High Commissioner for Human Rights Navi Pillay, in expressing support for the establishment of a COI on North Korea, gave special attention to forced repatriations. In 2012, she met for the first time with North Korean survivors of prison camps who had made the harrowing journey through China to reach South Korea. One of them, Kim Hye-sook had been forcibly repatriated from China several times resulting in harsh punishments before her successful escape.²⁸ Pillay was reported to have been visibly moved by her testimony, and said publicly, “People who try to escape and are either caught or sent back, face terrible reprisals including execution, torture and incarceration often with their entire extended family.”²⁹ She went on to endorse an in-depth inquiry into “one of the worst – but least understood and reported – human rights situations in the world.”³⁰

UN Commission of Inquiry and China

When the 47-member Human Rights Council established the COI in 2013, it requested the new body to investigate “systematic, widespread, and grave violations of human rights” in North Korea, and in particular to see whether these violations amount to “crimes against humanity” for which there should be “accountability.”³¹ No mention of China was made.

In carrying out its work on North Korea, however, the role of China became evident. The COI came across many witnesses who suffered crimes against humanity after having been forcibly repatriated from China. Of the more than 300 witnesses the commissioners interviewed over the period of a year, more than 100 had directly experienced forced repatriation from China and been subjected to a range of inhumane punishments; others who saw these practices or knew about them testified before the commission, sometimes referencing the “complicity” of China.³²

The commission went on to include China’s forced repatriations in the scope of its mandate, explaining that,

*...violations committed outside the DPRK that causally enable or facilitate subsequent human rights violations in the DPRK, or are the immediate consequence of human rights violations that take place in the DPRK, are also within its mandate [emphasis added].*³³

This marked a notable shift from the UN’s earlier reports on human rights in North Korea. The COI report would cover not only the brutal treatment experienced by North Koreans forcibly repatriated from China, but would also address, for the first time, China’s own role in the forced repatriations. The report found:

- 1) Clear collusion between China and North Korea in forcibly repatriating North Koreans
Chinese officials, according to the report, were known “in some cases” to provide information to DPRK authorities on the circumstances, place of arrest and contacts of North Koreans apprehended in China. Beijing also allowed North Korean security agents to monitor, hunt down and even abduct North Koreans on Chinese soil.³⁴ And China encouraged its own citizens to turn in DPRK nationals, sometimes providing them with monetary rewards; or its security agency hired DPRK citizens to inform on DPRK nationals in China planning to flee to South Korea.³⁵
- 2) Harsh punishment meted out to North Koreans as a result of this collusion

With rare exceptions, every single one of more than 100 persons repatriated from China who were interviewed by the Commission were beaten or subjected to worse forms of torture during interrogations.³⁶

The harshest punishments—long-term prison camp incarceration and executions—were generally meted out to those North Koreans reported to be in contact with Christian churches, South Korean nationals, or South Korean intelligence.³⁷ On some occasions, the COI report points out, Chinese security officials have taken “the positive step of warning targeted individuals and thus prevented such abductions.”³⁸

- 3) Subjection of forcibly repatriated women to sexual violence and forced abortions
North Korea has often subjected repatriated women to sexual violence and to forced abortions if they were impregnated by Chinese men. Their practices on abortions are “driven by racist attitudes towards persons from China” and “to inflict punishment on women who have committed a serious offence by leaving the country.” When a baby is born and believed to have been fathered by Chinese nationals, “it is killed by the authorities.”³⁹ “Numerous cases” of forced abortions and infanticide have been reported.⁴⁰
- 4) Increased fences and barriers on both sides of the border since 2009⁴¹
Such restrictions have helped reduce the number of North Koreans able to seek asylum abroad. In 2012 and 2013, some 1,500 managed to reach South Korea each year as compared to close to 3,000 in earlier years.⁴²
- 5) The repeated violation by China of the principle of *non-refoulement* in international refugee law (Convention Relating to the Status of Refugees, Art. 33), human rights law (Convention against Torture, Art. 3), and customary international law
China’s “rigorous policy” of forcibly repatriating North Koreans to conditions of danger,⁴³ and its active measures to ensure that they cannot gain access to foreign embassies and consulates places China in contravention of international law.⁴⁴ China also has disregarded its agreement with UNHCR that provides for unimpeded access by UNHCR to asylum seekers.⁴⁵ And it has failed to implement its own laws regarding refugees, when it comes to North Koreans, in particular its 2012 Administration Law on Entry and Exit (which came into effect in July 2013), and was intended to result in the adoption of a comprehensive national refugee framework.⁴⁶
- 6) The vulnerability of North Korean women to trafficking and forced marriages in China
North Korean women who reach China (some 70 percent of North Koreans who cross the border are women and girls)⁴⁷ may be trafficked into forced marriages and commercial sexual exploitation, but are afraid to report such crimes because of fear of repatriation. Most of these women cannot access basic health services for themselves or their children.⁴⁸
- 7) The denial of rights to half Korean children born in China
Of the estimated 20,000 to 30,000 children born to North Korean women living in China, most are “effectively deprived of their rights to birth registration, nationality, health care, and enrollment in school because their birth cannot be registered without exposing the mother to the risk of *refoulement*.”⁴⁹ Although some women and children are able to obtain resident permits—sometimes as a result of bribes, this is not the case for the majority of women and their children.⁵⁰ Because China does not recognize the marriage of North Korean illegal migrants to Chinese men, the children are separated from their mothers if the mother is arrested and deported, and become “effectively stateless.”⁵¹ China’s policies in this regard, finds the COI, violate the UN Convention on the Rights of the Child, and the UN Convention on the Elimination of Discrimination against Women.

The COI report further found that “many” of the North Koreans fleeing into China are “refugees” entitled to “international protection.”⁵² Either they are 1) directly fleeing persecution; 2) are members of a low *songbun* social class suffering from severe socioeconomic deprivation because of political persecution; or 3) are refugees *sur place*—they may not have been refugees when they left North Korea, but become so because of a well-founded fear of persecution upon return, given the criminal nature of leaving without permission and their membership in a religion, social group, or political opinion that would result in their punishment. In a letter to China’s Deputy Permanent Representative to the UN, Ambassador Wu Haitao, COI Chair Kirby posed 14 detailed questions about China’s repatriation policies, to which China largely declined to respond. The COI’s principal recommendations to China called upon it to:⁵³

- Stop forcible repatriations of North Koreans “unless the treatment there, as verified by international human rights monitors markedly improves;”
- Cease providing information about North Koreans in China to North Korean security agents, and take steps to prevent their carrying out abductions from Chinese territory;
- “Caution” its officials that their conduct concerning forced repatriations “could amount to the aiding and abetting crimes against humanity.”⁵⁴
- Extend asylum and other means of protection to North Koreans, recognize that they are refugees or refugees *sur place* and give them “free access to diplomatic and consular representations of any state that may be willing to extend nationality or other forms of protection to them.”⁵⁵
- Provide North Korean victims of trafficking in China with the right to stay in the country and access legal protection and basic services, such as medical treatment, education and employment opportunities;
- Regularize the status of North Korean women and men who marry or have a child with a Chinese citizen and ensure that such children are registered at birth, and given Chinese nationality and access to education and health care (some 20,000 North Koreans reported to be working in China have received residency permits; Kirby asked the Chinese Ambassador whether any of these permits were given to undocumented North Koreans to regularize their status⁵⁶).
- Raise with the Supreme Leader of the DPRK and other high-level North Korean authorities abductions from Chinese soil, infanticide of children entitled to Chinese nationality, and forced abortions imposed on repatriated women impregnated by Chinese men.

In March 2014, after reviewing these findings, the UN Human Rights Council adopted a resolution by a vote of 30 to 6 (including China) with 11 abstentions, commending the report of the COI and in particular expressing “deep concern” about North Korean refugees and asylum seekers “repatriated from abroad.”⁵⁷ The resolution recommended that the General Assembly submit the report to the Security Council for appropriate action concerning crimes against humanity, including referral of the situation to an “international criminal justice mechanism.”⁵⁸

China’s Position

As a matter of policy and practice, China has been forcibly repatriating North Koreans for decades and to date, has shown no readiness to alter its approach. Now, however, international opposition to its policy has culminated in a UN expert report warning that China’s actions could

constitute complicity in crimes against humanity and lead to Chinese officials being held accountable in trials. Kirby's letter to the Chinese Ambassador, appended to the report declared:

*The Commission would urge your Excellency's Government to caution relevant officials that such conduct on their part could amount to the aiding and abetting crimes against humanity where repatriation and information exchanges are specifically directed toward (or have the purpose of) facilitating the commission of crimes against humanity in the DPRK.*⁵⁹

China claims that its forced repatriations have been essential to maintaining national security, social order and border controls. Although it signed the international Refugee Convention and its Protocol in 1982, and sits on UNHCR's Executive Committee, its policies and practices have been based on special agreements it negotiated with North Korea going back to the 1960s. At that time, China was concerned about its own citizens fleeing into North Korea for reasons of famine and persecution.⁶⁰ Later on, the restrictions began to focus on North Koreans fleeing into China. In 1986, both states signed a Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order and the Border Areas (revised in 1998).⁶¹ The agreement basically viewed persons crossing into the other's territory without permission as "criminals" (although in practice, large numbers of North Koreans crossed the border for food during the great famine in the 1990s). The agreement provided for cooperation between China and North Korea in the criminal handling of border crossing, including through extradition and deportation and the sharing of information about those who might disrupt national security by escaping into the other's country.⁶² In 2012, China adopted an Administration Law on Entry and Exit that came into force in 2013, and that gives heavy emphasis to criminalizing border crossing, and requires Chinese citizens, companies or other entities to report to local security officials foreigners who illegally enter. But for the first time, its law contains a provision (Art. 46) on refugees:

*...foreigners applying for refugee status, during the screening period of refugee status, may stay temporarily in Chinese territory by provisional identity cards signed and issued by public security bodies. Foreigners identified as refugees may remain and reside in China by refugee status certificates signed and issued by public security bodies.*⁶³

However, China to date has not applied this provision to North Koreans. The Chinese Ambassador in responding to Kirby treated the problem of North Koreans crossing into China as a *criminal* matter. He stated that "illegal entry" violates Chinese laws and "undermines China's border controls" and that some of the North Koreans who enter China "were engaged in illegal and criminal acts such as theft, robbery, illegal harvesting,"⁶⁴ while "some NGOs and religious groups" from South Korea were engaged in "smuggling" and "trafficking" of North Koreans "for profit."⁶⁵

The Ambassador readily acknowledged that "Chinese public security and border guard authorities have seized some DPRK citizens who have repeatedly entered China illegally" but underscored that China needs to safeguard its "national sovereignty and fundamental interests, bearing in mind *the stability* of the Korean Peninsula [emphasis added]."⁶⁶

China's declared interest in "stability" on the Korean Peninsula has essentially subordinated China's obligations under refugee and human rights law. Basically, Beijing fears that if it were to allow North Koreans refuge in China, more and more North Koreans would follow, and in time, the outflow would destabilize the DPRK. It is a kind of 'domino' theory: refugee flows will lead to unrest inside the DPRK, followed by collapse and reunification under South Korea's leadership, and the expansion of US political and military influence on the Peninsula.

In addition, China has concerns about how refugee outflows from North Korea would impact on historic boundary disputes in some of the border areas.⁶⁷ Too many North Koreans entering could disrupt the demography of the area and put into question whether that part of China is Korean or Chinese. The prefecture of Yanbian for example in Jilin province near the border has an estimated population of 40 percent ethnic Koreans. Adding to those numbers could also pose an economic strain on these undeveloped regions.

Of course the most effective way to reduce the number of North Koreans going into China is not for the Chinese and North Koreans to push back North Koreans but for the DPRK to begin to provide for the well-being and security of its population. China's lack of confidence in North Korea's ability to do so is evident. It has invested considerably in deportations and border fences, while at the same time offering substantial humanitarian and development aid (China accounts for an estimated 80 to 90 percent of the North's food and fuel imports).⁶⁸

Toward most other refugee populations, China's policy is markedly different. The Chinese government for example has cooperated with UNHCR in the resettlement in China of ethnic Han Chinese or ethnic minorities from Vietnam and Laos, residing there since the Vietnam War, and it is currently considering granting citizenship to them and their children. China also has allowed UNHCR access to asylum seekers from Pakistan, Iraq, Somalia and Eritrea. With North Koreans, however, China has insisted that the UN not make the issue of forced repatriations "a refugee one" and "internationalize it"⁶⁹ and has regularly repeated what is now its well-worn mantra: North Koreans who cross illegally "do it for economic reasons...they are not refugees."⁷⁰

But even in the case of clear 'political' refugees, China has collaborated with North Korean officials "in hunting down high-value defectors."⁷¹ Albeit, on certain occasions, China has treated high level defectors as political refugees. One such case was Hwang Jang-yop, a principal crafter of the *juche* state ideology and a former President of Kim Il-sung University who defected in 1997 to the South Korean Embassy in Beijing. Ignoring North Korea's protests, China sealed off the Embassy and permitted Hwang to depart for South Korea. Hwang, it should be noted, had fallen into disfavor with Kim Jong-il and had been criticized for taking an interest in China's economic reforms.⁷²

Unconfirmed reports last year similarly indicated that another high level North Korean official with reported ties to China was being protected.⁷³ The official was reported to be associated with the once powerful Jang Song-taek, Kim Jong-un's uncle who was executed. There had been criticism of Jang and others for awarding China too lucrative economic contracts.

China has further allowed North Koreans to depart for South Korea who have made their way to foreign embassies or consulates or to the UNHCR compound in Beijing. Indeed, in 2012, China

allowed a group of 11 North Koreans hiding in South Korean diplomatic missions in the PRC to travel to South Korea. Some had been in hiding for more than two years. In this instance, China's and South Korea's Presidents discussed the case and agreed to their departure. Clearly China has felt impelled at different times to cooperate with governments or the UNHCR in facilitating the departure of North Koreans to South Korea or other countries. Perhaps China allowed the 11 to depart in an effort to mollify South Korea for its forcible repatriation that same year of 31 North Koreans despite protests from South Korea's President and a well-publicized hunger strike of a South Korean parliamentarian in front of the Chinese Embassy in Seoul. China also allowed a group of North Koreans of Japanese origin who had entered the Japanese diplomatic compound in Beijing to depart for Japan, although China reportedly extracted a commitment from the Japanese government to not allow North Koreans into its embassy again.

Such cases are of course exceptions to China's overall policy. The many North Koreans who have suffered persecution over the years in prisons and detention centers and then fled to China have not been considered political refugees by China. Either they were not senior enough, or involved in some way with China, or protected by a foreign embassy, or simply were not of interest. Whether China has any criteria for allowing some North Koreans to depart for South Korea or stay in its country is not known.⁷⁴ China failed to answer Kirby's question on this point.

China has denied that "repatriated DPRK citizens from China face torture in the DPRK" presumably because this would create the foundation for their being considered refugees or refugees *sur place*.⁷⁵ China's Ambassador argued that the repeated returns of some of the North Koreans proved that they could not have been tortured. But the accumulated testimonies in the COI and other reports clearly show that those returned have been subject to torture and other punishment each time they were repatriated and nonetheless kept trying to escape. According to one former North Korean woman:

*After escaping to China and living in fear for almost ten years, during that period we were forcibly repatriated four times....I was beaten so severely that my skull still has pieces of bone embedded in my head...and one of my ear drums ruptured and to this day, I am hard of hearing in one ear...North Korean refugees, if they are miraculously able to survive...will attempt to escape from North Korea even if it means death if caught again.*⁷⁶

At the 47-member Human Rights Council in 2014, a preponderance of states from Europe, Asia, Africa and the Americas rejected China's version of events. The Council's resolution underscored that refugees and asylum seekers forced back to North Korea have been subject to "internment, torture, cruel, inhumane and degrading treatment, sexual violence, enforced disappearances, or the death penalty."⁷⁷

China also has not accepted UNHCR's 2004 categorization of North Koreans in China without permission as "persons of concern," meriting humanitarian protection. UNHCR proposed to China a special humanitarian status for North Koreans that would enable them to obtain temporary documentation, access to services, and protection from forced return. UN High Commissioner for Refugees Antonio Guterres, while visiting China in 2006, told Chinese officials that forcibly repatriating North Koreans without any determination process and where

they could be persecuted stands in violation of the Refugee Convention. UNHCR officials also have pointed out that South Korea, by virtue of its Constitution, is ready to provide citizenship to most if not all North Koreans who wish to avail themselves of its protection. China, however, has refused to view North Koreans as dual nationals.

Instead, the PRC has placed itself in a defensive position and often is caught telling untruths about its practices and its violation of international law. In 2013, for example, China told the UN Committee on the Rights of the Child that its government “has not extradited or expelled any unaccompanied children” to North Korea or any other country.⁷⁸ Yet news reports showed China colluding with Laos and North Korea in forcing back to the DPRK nine North Korean youth, aged 15 to 23, most of whom were orphans who had hidden in China for about two years, and then went on to Laos in an effort to reach South Korea.⁷⁹ Furthermore, when Kirby asked the Chinese Ambassador how undocumented North Korean women and children in China fare, the Chinese Ambassador denied that there were any cases “related to DPRK women and their children in China.”⁸⁰ Yet the COI report provided information about the thousands or tens of thousands of North Koreans hiding in China, including women and children who have no rights and are vulnerable to exploitation and trafficking, as well as to forced returns.⁸¹

Increasingly, Chinese academics and policy specialists as well as ordinary Chinese on the Internet have begun to question their government’s position that all North Koreans fleeing into China are economic migrants. Some have openly expressed discomfort at China’s forcing back North Koreans to face persecution.⁸² As one Chinese asked on the Internet: “If [North Koreans fleeing] aren’t refugees then what is a refugee?”⁸³ Others have more broadly questioned China’s political and economic policies toward North Korea in light of its nuclear program and provocations and some have begun to see North Korea as more of a liability than a strategic asset and partner.⁸⁴

At times, China has felt impelled to rein in some of North Korea’s excesses, in part no doubt out of embarrassment at being identified with the Kim regime. It reportedly objected to North Korea’s shoot to kill orders being carried out on the Chinese side of the border or even on the border.⁸⁵ According to researchers at the Korea Institute for National Unification (KINU), North Korean border guards themselves may now “think twice about using deadly force against their own countrymen” if they might be tried in future for acts of murder.⁸⁶ And there are reports that some police officials have refrained from forcing abortions upon North Korean women returned from China in the detention facilities they oversee (not only due to bribes).⁸⁷ The COI report lists the names of state institutions in North Korea responsible for crimes against humanity and have put individual names in a UN security archive while private groups like NKDB have also been collecting the names of those who could be held accountable.

The Way Forward

To close the gap between China’s policy and practices and the findings and recommendations of the COI report, there are many ways to proceed, both multilateral and bilateral.

International Support for UNHCR

As a first step, governments should lend full support to UNHCR’s proposals for a special humanitarian status for North Koreans. Although refugee status should remain the goal, this

formulation might be more palatable to China in the interim. And it is one UNHCR actually prefers since North Koreans can avail themselves of the protection of South Korea, and under the Refugee Convention, persons who can avail themselves of the protection of a country of which they are also nationals are excluded from refugee status.

Since 2001, China has been allowing North Koreans to stay in China up to one year with temporary visas⁸⁸ in order to conduct business or visit relatives. Tens of thousands have done so, but such exit and entry visas first must be approved and issued by North Korea and of course do not extend to political cases or persons seeking to leave the DPRK secretly. Whether China could be persuaded to allow North Koreans arriving without documentation to stay for temporary periods pending resolution of their cases should be broached.

Some UNHCR staff fear that if the agency were to become more outspoken about China's policies toward North Koreans, it could jeopardize its access to other refugee populations in China. But if backed up by a strong group of governments, UNHCR might feel more assured about urging China to call a moratorium on deportations, extend humanitarian protection to North Koreans, apply its new laws to North Korean refugees, and develop a framework for identifying and determining the status of refugees and their temporary resettlement.⁸⁹

UN Secretary-General Ban Ki-moon should play more of a role. His new "Rights up Front" strategy calls on UN specialized agencies to take into account and address human rights concerns in their engagement in different countries.⁹⁰ Were the Secretary-General to apply this strategy to North Korea, UNHCR might feel encouraged to raise its profile on the rights of North Koreans. It is noteworthy that UNHCR publicly announced this year that it would be more proactive in helping North Koreans to gain safe passage to South Korea and help them resettle in the South. It called sending back people against their will to conditions where their life or physical integrity may be in danger "unacceptable." And it singled out countries in the region:

*Our main advocacy with countries in the region is to allow for safe passage of North Korean defectors to come to South Korea if they wish to.*⁹¹

UNHCR will have more influence with countries in the region if it is seen to be vigorously trying to persuade China to adhere to refugee principles. This would signal to other Asian nations that *refoulement* of North Koreans is unacceptable practice. Laos' return to China of nine North Korean youth had to have been influenced in part by China's forced repatriations. UNHCR's main objective should be to make sure that the *non-refoulement* provisions of the 1951 refugee convention are upheld by all the countries in the area, especially members of UNHCR's Executive Committee like China.

UNHCR should also seek to expand the training seminars it holds in China in refugee law and practice with the aim of creating a corps of experts inside the country with an understanding of refugee law, temporary protection, and statelessness, who can work to influence their own government's policies.

A Multilateral Dialogue with China

Since Chinese officials have repeatedly said that “constructive dialogue” should be the way to address “differences in human rights,”⁹² why not take them at their word?

The UN Secretary-General, UN High Commissioner for Refugees, or a mutually agreed government should offer to chair a dialogue focused on the findings of the COI report, in particular the treatment of North Korean refugees. Participants would be governments heavily affected by the refugee problem or prepared to admit North Koreans, most notably South Korea, which already houses more than 27,000 North Koreans to whom its Constitution offers citizenship. Also involved would be states that have taken in North Koreans like the European Union (EU), US, Canada, Japan and Russia as well as states that North Koreans transit in order to reach South Korea, such as Thailand, Laos, Cambodia, Myanmar, and Mongolia.

International burden sharing should be discussed, and together with UNHCR, a multilateral approach worked out that seeks to balance China’s concerns about stability with international principles of *non-refoulement* and human rights and refugee protection. Different refugee sharing arrangements could be explored.

Some refugee specialists, for example, have recommended “formalizing” informal networks through which North Koreans have made their way through China and into Southeast Asia and creating “UN-mandated safe havens in countries that already provide sanctuary for North Korean refugees.”⁹³ Others have suggested encouraging an Orderly Departure Program, similar to the one begun in Vietnam in 1979 to permit safe and orderly exodus of populations. According to one expert, “It would be in North Korea’s interests to permit households with motives of family reunification, labour and economic betterment, or simply survival, to leave without risk of penalty to themselves or their family members left behind”:

*A practical, and perhaps even productive approach to North Korean migration must begin by framing an understanding of population mobility within and outside the country as something more than a simple threat to stability. The migration of North Koreans in the last two decades has always encompassed a mix of motives: food, health, shelter, asylum, family formation, family reunification, labour/livelihood and more.*⁹⁴

The criminal aspects of border crossing would also need to be addressed. There is for example an increasing drug trade emanating from North Korea that has crossed over into China’s northeast region.⁹⁵ Such programs of course require law enforcement mechanisms that should be distinguished from the procedures and screening programs to protect refugees or potential refugees crossing the border into China.

Bilateral Dialogues

In close coordination with South Korea and Japan, the United States should conduct private talks with China to try to ease Chinese concerns about stability on the Korean Peninsula and provide a framework for the handling of refugees. Former US Ambassador to China Winston Lord advises that such talks focus “on future contingencies on the Korean Peninsula. These would include regime change but that would not be in the heading because of Chinese sensibilities.” Among the goals would be to ease Chinese fears of an expansion of US influence in a reunited Korean Peninsula:

In addition to treating such issues as control of nuclear weapons and the implications of a Seoul-led unified nation, the U.S. (and its allies) could offer assurances on refugee flows, including their relocation to the South and financial help to Beijing. Such talks might help ease general Chinese concerns about ‘stability’ on the Peninsula and provide a framework for more humane, enlightened policies toward North Korean refugees.⁹⁶

Efforts should also be made by South Korea to reassure China that its domino theory is hardly an inevitability. A shift in China’s attitude toward a South Korea-led reunification of the Korean Peninsula is after all not to be ruled out.⁹⁷ Although some argue that China is trying to position itself to take over North Korea and its mineral resources when the regime collapses, China has also been deepening its ties with South Korea so that a unified Korean Peninsula led by South Korea need not necessarily be viewed as against China’s interests. It is noteworthy that Kim Jong-un has yet to meet China’s President Xi Jinping whereas South Korea’s President Park Geun-hye has met him several times, paid a state visit to China in 2013, and received China’s President in Seoul in July of 2014.

After meetings between South Korea’s and China’s Presidents in 2013, Beijing issued a statement underscoring that “China and the ROK need to enhance coordination and cooperation on regional and international issues...”⁹⁸ The plight of North Korean refugees is one such issue; it concerns the ROK as much as China, given the ROK’s Constitution and the efforts made by North Koreans to cross into China to reach the South. Arrangements should also be discussed to respond to a possible collapse in the North in future. South Korea does not want to jeopardize its economic progress and stability by being overwhelmed with refugees any more than China does; at the same time, both states will need to agree to deal with North Korean refugee flows in line with international refugee and human rights standards. In the meantime, it is important for South Korea to press China toward progress on particular cases of North Korean refugees, which China at times has been ready to address.

EU governments as well as South Korea and Japan should add to their own diplomatic dialogues with China the PRC’s policies toward North Korean refugees in light of the findings of the COI report. They should urge China to press North Korea to undertake economic and political reforms that would lead to better conditions in the country and point out that stability on the Korean Peninsula cannot be achieved without reforms taking place in the DPRK. At present, the stability China speaks of is founded on pervasive DPRK security force controls and the commission of crimes against humanity. Sooner or later, as more of a critical mass of North Koreans become aware of the contrast between conditions in their country and others, they will begin to press for change internally or seek to overthrow the Kim regime.

All dialogues by concerned governments with China should press for a moratorium on forced repatriations of North Koreans until such time as the DPRK ceases its punishment and persecution of those trying to exit the country. However, it is not enough for governments to raise the forced repatriation issue with China on occasion.⁹⁹ It should become a regular feature of diplomatic dialogue with an international plan developed for dealing with refugees.

At the United Nations

If China remains unresponsive to the above approaches, UNHCR's Executive Committee, of which China is a member, as well as the UN Human Rights Council and General Assembly should find ways in its resolutions and reports to begin to call on China by name to carry out its obligations under refugee and human rights law. The new office to be set up in Seoul by the UN Office for the High Commissioner of Human Rights to document North Korea's human rights violations with a view to accountability¹⁰⁰ should continue to monitor China's forced repatriations, in line with the COI report, and begin to identify the institutions and individuals involved.

Efforts also should be made to place the COI report on the agenda of the Security Council. This would enable the UN's most powerful body to regularly discuss the North Korean human rights situation, including the refugee issue, and possibly issue a Presidential statement linking the nature of the regime to regional and international peace and security. To place the item on the Security Council agenda, it would be useful for the General Assembly to recommend it in a resolution; to achieve this, nine out of fifteen states in the Security Council would have to support it. A first step has already been taken, the holding of an *informal* gathering of Security Council members in April to discuss the COI report (an Arria formula meeting) outside the Council chamber.¹⁰¹

Once on the Council agenda, states could begin to press the Security Council to refer the North Korea case to the International Criminal Court (ICC) or another international mechanism of justice, as called for in the COI report. (A Security Council referral is essential because North Korea has not ratified the ICC Statute.) China has spoken against such a referral and is likely to use its veto, but the sheer fact of going to the Security Council would call world attention to China's reported collusion with North Korea's practices. There has also been talk of a General Assembly decision to set up a tribunal that could bypass Security Council vetoes. It is conceivable that these and other options would encourage China to reflect on a new approach that would press North Korea to take steps toward reform. South Korea's President has urged China's President not to exercise its veto against the COI report.¹⁰²

The United States and other countries supporting Security Council action on North Korea's human rights situation should enlist the support of the Secretary-General. He could propose that the Security Council discuss the North Korean human rights situation; and he could use his good offices on behalf of North Korean refugees in China.

Action by Parliaments

It is sometimes claimed that "humiliation or lecturing the Chinese in the public domain" should be avoided because it "will make the Chinese very suspicious and angry."¹⁰³ Silence, however, should not be acceptable in the face of crimes against humanity. Members of parliaments in different countries have spoken out and should consider undertaking joint efforts on behalf of North Koreans at risk of forcible repatriation. For example, they could hold hearings as did the Congressional Executive Commission on China in the US,¹⁰⁴ conduct programs as did the All Party Parliamentary Group on North Korea in the UK, issue resolutions like the European Parliament,¹⁰⁵ adopt legislation such as the North Korean Human Rights Act in the US, and join in solidarity with South Korean parliamentarians seeking to pass a human rights act in their country. They also can press their respective governments to raise the priority of China's forced

repatriations of North Korean refugees in their policies. And they can adopt sanctions, in particular financial sanctions that can make China more aware of the need for North Korea to change its policies.¹⁰⁶

Multilateral Arrangements in Northeast Asia

For many years, a Helsinki-type process for Northeast Asia has been proposed to promote a peace and security framework in which discussions of human rights, refugee problems as well as political, security and economic issues would take place. Most recently, a hearing was held in the US Congress on whether the Helsinki process in Europe could serve as a model for an arrangement in Asia. Carl Gershman of the National Endowment for Democracy suggested that Mongolia become the center point for such an arrangement.¹⁰⁷ Although this certainly will be a politically uphill undertaking, the idea of being able to discuss refugee repatriation within a broader framework of political, economic and human rights issues could contribute to progress in this area.

Engaging China's Civil Society

Within China, the COI report should be widely disseminated, particularly among China's think tanks and government offices. As earlier noted, some academics and policy specialists within China have questioned their government's policies concerning North Koreans fleeing into China. Providing information to and organizing seminars with analysts and policymakers could help strengthen alternate views in China. Approaching the supporters of China's dismantlement of its reeducation through labor system¹⁰⁸ might also prove worthwhile since there may be a number of Chinese ready to endorse North Korea's taking such steps. Meetings also could be planned in Hong Kong where activists have raised questions about China's policies toward the human rights situation in North Korea.¹⁰⁹ In 2014, Michael Kirby will be lecturing about the COI report at the University of Hong Kong.

Concluding Comment

Given today's realities, some of these suggestions may seem impractical at the present time. Influencing a long-standing policy can be daunting, and perhaps seem hopeless to some, but avenues do need to be identified to reflect on and pursue over time. And building on steps, however small, can be important. Consider too that the Republic of Korea has become one of the world's largest economies while North Korea remains shrouded in darkness. China's largely unqualified support of the Kim regime can hardly contribute to greater stability or development on the Korean Peninsula or Asia more broadly. It behooves governments and international organizations to encourage China to consider a new approach. Doing so will end the international criticism China is now facing over its forcible repatriations of North Koreans, and encourage other states in the Asian region to uphold international refugee and human rights principles. By joining the effort to turn the lights on in North Korea and influence its leadership to enter the 21st century, China itself will enhance its standing in the international community and be better able to exercise a positive role in Asia and beyond.

Notes

- ¹ See UN General Assembly, Report of the commission of inquiry on human rights in the Democratic People's Republic of Korea, A/HRC/25/63, 7 February 2014 [henceforth COI report].
- ² COI report, paras. 42 and 89 (m); and UN General Assembly, Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea, A/HRC/25/CRP.1, 7 February 2014, para. 1114 [henceforth COI report 2].
- ³ COI report.
- ⁴ Madison Park, "China, North Korea slam U.N. human rights report as 'divorced from reality,'" *CNN*, March 18, 2014.
- ⁵ The COI members were Michael Kirby, Chair (former High Court Justice, Australia), Marzuki Darusman, UN Special Rapporteur on human rights in the DPRK and former Attorney General of Indonesia and Sonja Biserko, human rights advocate (Serbia).
- ⁶ COI report, para. 90 (f).
- ⁷ COI report, para. 90 (a).
- ⁸ See for example, UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the DPRK, A/HRC/19/65, 31 February 2012, para. 59.
- ⁹ See UN General Assembly, Report of the Special rapporteur on the situation of human rights in the DPRK, A/67/370, 13 September 2012, para. 70.
- ¹⁰ See UN General Assembly, Report of the Secretary-General, Situation of Human Rights in the DPRK, A/65/391, 24 September 2010, para. 88; A/66/343, 7 September 2011, para. 79; A/67/362, 13 September 2012, para. 64; and A/68/392, 19 September 2013, para. 73.
- ¹¹ See UN General Assembly, Resolutions on the Situation of human rights in the DPRK -- A/RES/66/174, 19 December 2011 (para 1 (iii); A/RES/67/181, 20 December 2012, para. 1 (iv); and A/RES/68/183, 18 December 2013, para. 1 (iv).
- ¹² UN General Assembly, Report of the Special rapporteur on the situation of human rights in the DPRK, A/67/370, 13 September 2012, para. 57.
- ¹³ "U.N. chief voices concern over N. Korean defectors in China," *Yonhap News Agency*, March 8, 2012.
- ¹⁴ UN Committee on the Rights of the Child, Concluding Observations: China, CRC/C/CHN/CO/2, 24 November 2005, paras. 80-82.
- ¹⁵ UN Committee on the Rights of the Child, Concluding Observations: China, CRC/C/CHN/CO/3-4, 4 October 2013.
- ¹⁶ UN Committee against Torture, Concluding Observations: China, CAT/C/CHN/CO/4, 12 December 2008.
- ¹⁷ UN Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Comments: China, C/CHN/CO/6, 25 August 2006.
- ¹⁸ UN Committee on the Rights of the Child, Concluding Observations: China, CRC/C/CHN/CO/2, 24 November 2005, paras. 80-82.
- ¹⁹ UN Committee on the Rights of the Child, Concluding Observations: China, CRC/C/CHN/CO/3-4, 29 October 2013, pp. 18-19.
- ²⁰ UN General Assembly, Report of the Special Rapporteur on the Situation of human rights in the DPRK, A/HRC/22/57, 1 February 2013, paras. 101 and 109.
- ²¹ David Hawk, *The Hidden Gulag: The Lives and Voices of 'Those Who are Sent to the Mountains,'* Committee for Human Rights in North Korea, 2012, pp. 111-154.
- ²² *Ibid.*, p. 167.
- ²³ NKDB, *White Paper on North Korean Human Rights 2012*, Seoul, p. 306, and *White Paper on North Korean Human Rights 2011*, Seoul, pp. 432-437. Some 138 were perpetrated from 2000 to 2005 and some 60 from 2006-2010.
- ²⁴ See, for example, "Seoul, Parliament urges China to stop the forced repatriation of North Koreans," *AsiaNews.it*, February 28, 2012.
- ²⁵ See Park Chan-Kyong, "Activists say China returned 31 N. Korean refugees," *Agence France-Presse*, March 9, 2012; "European Parliament resolution on the situation of North Korean refugees," 2012/2655(RSP), 24 May 2012;

and John M. Glionna and Jung-yoon Choi, "Hundreds protest China's return of defectors to North Korea," *Los Angeles Times* (blog), February 23, 2012.

²⁶ Henry Wang, "Update on the Current Situation: Topic B (North Korean Refugees)," UNHCR, <http://www.harvardmun.org/wp-content/uploads/2011/10/UNHCR-Update-Guide.pdf>; and "N. Korea executed 4 defectors sent back from China: activist," *Yonhap News Agency*, 25 June 2012.

²⁷ Blaine Harden, *Escape from Camp 14*, New York, Viking Penguin, 2012.

²⁸ See "Freedom from Morbid Concentration Camp, then Gloomy Fate," *Daily NK*, April 25, 2011.

²⁹ OHCHR news release, "Pillay urges more attention to human rights abuses in North Korea, calls for international inquiry," 14 January 2013 [henceforth Pillay Statement 2013].

³⁰ Pillay Statement 2013.

³¹ UN Human Rights Council, Resolution on Situation of human rights in the DPRK, A/HRC/22/L.19, 21 March 2013.

³² See for example Statement by Roberta Cohen, Co-Chair, Committee for Human Rights in North Korea, before the UN Commission of Inquiry on North Korea's Political Prisoners: The Gender Dimension, October 30, 2013, Washington DC, at <http://www.hrnk.org/events/events-view.php?id=15>.

³³ COI report 2, para. 20.

³⁴ See COI report 2, paras. 51, 90 (f); and Letter of Mr. Michael Kirby, Chair of the COI on Human Rights in the DPRK, to Ambassador Wu Haitao, Permanent Mission of China to the United Nations Office at Geneva, 16 December 2013, in COI report, Annex II, pp. 30-35 [henceforth Kirby letter].

³⁵ COI report 2, para. 436

³⁶ COI report 2, para. 411.

³⁷ See COI report 2, paras. 256, 409-411, 436, 448-453.

³⁸ See Kirby letter.

³⁹ See COI report 2, para. 489; and Kirby letter.

⁴⁰ Kirby letter.

⁴¹ COI report 2, para. 397.

⁴² See Choe Sang-hun, "Fleeing North Korea is Becoming Harder," *New York Times*, January 5, 2013; and "2013 DPRK Defection Numbers," *North Korean Economy Watch*, January 13, 2014, at <http://www.nkeconwatch.com/2014/01/02/2013-dprk-defection-numbers/>.

⁴³ COI report, para 43.

⁴⁴ COI report 2, para. 437.

⁴⁵ COI report 2, paras. 443-444.

⁴⁶ COI report 2, para 445.

⁴⁷ COI report 2, para. 394; see also Committee for Human Rights in North Korea, *The North Korean Refugee Crisis*, ed. Stephan Haggard and Marcus Noland, at http://hrnk.org/uploads/pdfs/The_North_Korean_Refugee_Crisis.pdf, p. 56.

⁴⁸ COI report 2, paras. 458-470.

⁴⁹ COI report, para. 44, and COI report 2, para 491.

⁵⁰ COI report 2, para. 475.

⁵¹ COI report 2, paras 471-477.

⁵² COI report 2, para. 447.

⁵³ See COI report, para 90.

⁵⁴ COI report, para. 43.

⁵⁵ COI report, para. 90 (a).

⁵⁶ Kirby letter, p. 33.

⁵⁷ UN Human Rights Council, Resolution on The situation of human rights in the DPRK, A/HRC/25/L (draft), 18 March 2014, operative paragraph 4.

⁵⁸ *Ibid.*, operative paragraph 7.

⁵⁹ Kirby letter, COI report, p. 31.

⁶⁰ In 1964, China and North Korea signed a Protocol on Mutual Cooperation in Safeguarding National Security and Social Order in Border Areas, see Stephan Haggard, "Sources: Hazel Smith Dossier on Migration," at <http://blogs.piie.com/nk/?p=7953>, November 1, 2012. Earlier still, the two countries are reported to have signed a

secret agreement called Escaped Criminals Reciprocal Extradition Treaty, see Human Rights Watch, “The Invisible Exodus: North Koreans in the People’s Republic of China,” November 2002.

⁶¹ See Ministry of Foreign Affairs of the PRC, Compilation of Treaties on Border Affairs of the PRC: Sino-North Korea Volume, pp. 388-389, cited in COI report 2, para. 451.

⁶² COI report 2, para. 451.

⁶³ UN Committee on the Rights of the Child, Response of the Chinese Government to Questions Concerning the Combined 3rd and 4th Periodic Reports on the Implementation of the *Convention on the Rights of the Child*, 10 September 2013, at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fQ%2f3-4%2fAdd.1&Lang=en, p. 25.

⁶⁴ Letter of Wu Haitao, Ambassador, Permanent Mission of China to the United Nations Office at Geneva, to Mr. Michael Kirby, Chair of the COI on Human Rights in the DPRK, 30 December 2013, in COI Report, Annex II, pp. 36-7 [henceforth Wu Haitao letter].

⁶⁵ Wu Haitao letter, pp. 36-7.

⁶⁶ Wu Haitao letter, p. 37.

⁶⁷ See, for example, Daniel Goma Pinilla, “Border Disputes between China and North Korea,” *China Perspectives*, 2004, at <http://chinaperspectives.revues.org/806>; and *Perilous Journeys: The Plight of North Koreans in China and Beyond*, International Crisis Group, October 26, 2006.

⁶⁸ Mike Green, “China’s evolution on North Korea,” *JoonAng Daily*, August 6, 2013. And *Perilous Journeys: The Plight of North Koreans in China and Beyond*, International Crisis Group, October 26, 2006.

⁶⁹ Wu Haitao letter, p. 37.

⁷⁰ Wu Haitao letter, p. 36.

⁷¹ Blaine Harden, “For dictatorship’s elite, a life of sycophancy and fear,” *Washington Post* (review of Jang Jin-sung, *Dear Leader*,) June 8, 2014.

⁷² A. Pollack, “North Korea’s Leader says ‘Cowards’ are Welcome to Leave,” *New York Times*, February 19, 1997.

⁷³ See “North Korea: Aide to Kim’s Uncle ‘Defects,’” *Sky News*, December 6, 2013; and Jun Ji-hye, “Jang Song-thaek’s aide in South Korean custody in China,” *Korea Times*, December 18, 2013.

⁷⁴ See Kirby Letter.

⁷⁵ Wu Haitao letter, p. 37.

⁷⁶ Prepared Statement of Songhwa Han, at Hearing before the Congressional–Executive Commission on China, on *China’s Repatriation of North Korean Refugees*, one hundred twelfth Congress, second session, March 5, 2012.

⁷⁷ UN Human Rights Council, Resolution on The situation of human rights in the DPRK, A/HRC/25/L.17, 26 March 2014, operative paragraph 4.

⁷⁸ Response of the Chinese Government to Questions Concerning the Combined 3rd and 4th Periodic Reports on the Implementation of the *Convention on the Rights of the Child*, 10 September 2013, at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fQ%2f3-4%2fAdd.1&Lang=en

⁷⁹ Paula Hancocks and KJ Kwon, “Defectors agonizingly close to freedom sent back to North Korean nightmare,” *CNN*, October 3, 2013; and COI report 2, para. 445.

⁸⁰ Wu Haitao letter, p.37.

⁸¹ See also Committee for Human Rights in North Korea, *Lives for Sale: Personal Accounts of Women Fleeing North Korea to China*, 2009; and Stephan Haggard and Marcus Noland, *Witness To Transformation: Refugee Insights Into North Korea*, Peterson Institute for International Economics, January 2011.

⁸² See, for example, “China May Recognize Some NK Refugees,” *NorthKoreanRefugees.com*, 15 March 2009, cited in R. Cohen, “Legal Grounds for Protection of North Korean Refugees,” *Life & Human Rights in North Korea*, Vol. 57, Fall 2010, p. 10; and David Wertime, *TeaLeafNation*, February 27, 2012, at

<http://www.tealeafnation.com/2012/02/chinas-netizens-plead-with-government-not-to-repatriate-north-koreans>

⁸³ Wertime, *Ibid*.

⁸⁴ See Paul Yi, “China should consider abandoning North Korea: Beijing Think Tank,” *Arirang News*, February 5, 2014, at http://www.arirang.co.kr/News/News_View.asp?nseq=156878; Deng Yuwen, “China Should Abandon

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⁸⁵ See COI report 2, para. 1111.

⁸⁶ O. Yi and D.S. Hong, “Start Thinking Now About Transitional Justice in a Post-Transition North Korea,” PacNet #51, Center for Strategic and International Studies, July 11, 2013.

⁸⁷ Interview with David Hawk, October 2013.

⁸⁸ Cara D. Cutler, “China’s Provision of Temporary Visas to North Koreans: Reconsidering the Protection of Migrants in the 21st Century,” *Stanford Journal of East Asian Affairs*, Winter 2006, p. 67.

⁸⁹ See Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights; Compilation Report - Universal Periodic Review: People’s Republic of China, at <http://www.refworld.org/pdfid/5135b0cb2.pdf>

⁹⁰ COI report, para. 94 (g).

⁹¹ See “UNHCR ups efforts to protect N.K. defectors,” *Korea Herald*, March 2, 2014.

⁹² See UN press release, “Council holds interactive dialogue with the Commission of Inquiry on human rights in the DPRK, 17 March 2014. See also UN, Web TV, Response to Interim Report of COI by China, Mr. Chen Chuandong, Chapter 20, at <http://webtv.un.org/meetings-events/watch/id-commission-of-inquiry-on-dprk-14th-meeting-24th-regular-session-of-human-rights-council/2677214608001>; and Foreign Ministry Spokesperson Hua Chunying’s Regular Press Conference on February 17, 2014, at <http://www.china-un.org/eng/fyrth/t1129283.htm>

⁹³ See Markus Bell & Geoffrey Fattig, “International cooperation on the North Korean refugee crisis,” *Forced Migration Review*, February 2014, p. 60.

⁹⁴ Courtland Robinson, “The curious case of North Korea,” *Forced Migration Review*, May 2013, pp. 53-55.

⁹⁵ See, for example, COI report 2, para. 397; and Sheena Chestnut Greitens, *Illicit: North Korea’s Evolving Operations to Earn Hard Currency*, The Committee for Human Rights in North Korea, April 2014.

⁹⁶ Interview with Winston Lord, former US Ambassador to China, April 13, 2014.

⁹⁷ See “China May No Longer Need North Korea as Buffer Zone – Japanese expert,” *NKNews.org*, March 27, 2014; Mike Green, “China’s evolution on North Korea,” *JoonAng Daily*, August 6, 2013; and Andrew Park, “China helps North Korea despite human rights violations,” *The Daily Cardinal*, March 4, 2014.

⁹⁸ Foreign Ministry Spokesperson Hong Lei’s Regular Press Conference on March 24, 2014, at <http://www.china-un.org/eng/fyrth/t1140281.htm>

⁹⁹ Glyn Davies, US Special Representative for North Korea Policy, raised the issue of the repatriated North Koreans with Chinese officials, according to Hillary Clinton, see Park Chan-Kyong, “Activists say China returned 31 N. Korean refugees,” *Agence France-Presse*, March 9, 2012.

¹⁰⁰ This was provided for by the UN Human Rights Council, see Resolution on The situation of human rights in the DPRK, A/HRC/25/L.17, 26 March 2014, operative paragraph 10.

¹⁰¹ See Rick Gladstone, “U.N. Council Takes Up Question of Rights in North Korea,” *New York Times*, April 18, 2014.

¹⁰² Jin Dong Hyeok, “Park Urges China Not to Veto COI Report,” *DailyNK*, March 24, 2014.

¹⁰³ Cheng Li, Director of the John L. Thornton China Center at the Brookings Institution, as quoted in Krissah Thompson, “Soft-diplomacy approach to thorny issue,” *Washington Post*, March 22, 2014.

¹⁰⁴ See Congressional-Executive Commission on China, Hearing on China’s Repatriation of North Korean Refugees, March 5, 2012.

¹⁰⁵ “European Parliament resolution on the situation of North Korean refugees,” 2012/2655(RSP), 24 May 2012.

¹⁰⁶ See for example H.R. 1771, North Korea Sanctions Enforcement Act of 2013, before the U.S. Congress.

¹⁰⁷ See Hearing before the US Commission on Security and Cooperation in Europe, “Resolving Crises in East Asia through a New System of Collective Security: The Helsinki Process as Model,” Washington DC, December 11, 2013.

¹⁰⁸ Congressional-Executive Commission on China, “Prospects for Reforming China’s Re-education Through Labor System,” at <http://www.cecc.gov/publications/issue-papers/prospects-for-reforming-chinas-reeducation-through-labor-system>

¹⁰⁹ See, for example, Kang Tai-Jun, “Why North Korean defectors matter in Hong Kong,” *NK News*, November 26, 2013.