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BEYOND THE UN COI REPORT ON HUMAN RIGHTS IN DPRK

SHIN Chang-Hoon & GO Myong-Hyun


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ASAN REPORT

Beyond the UN COI Report on Human Rights in DPRK

by SHIN Chang-Hoon & GO Myong-Hyun

The Asan Institute for Policy Studies

ABOUT

The Asan Institute for Policy Studies

The Asan Institute for Policy Studies is an independent, non-partisan think tank with the mandate to undertake policy-relevant research to foster domestic, regional, and international environments conducive to peace and stability on the Korean Peninsula, as well as Korean reunification.

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EXECUTIVE SUMMARY

On February 17, 2014, the United Nations Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea released a landmark report. The report findings outline in horrendous detail the crimes against humanity being perpetrated in North Korea. In its investigations, the Commission found that widespread and systematic human rights violations are being committed pursuant to state policy. Further characterizing the DPRK as a totalitarian state that "does not have any parallel in the contemporary world," the report finds that North Korea's Supreme Leader, Kim Jong-un, bears direct personal responsibility for the crimes.

Invoking the concept of the Responsibility to Protect (R2P), the report called on the North Korean regime to immediately implement systematic changes to ensure protection of its citizens and their rights. It also recommended that the international community engage with civil society groups working in North Korea to provide information and raise awareness about human rights. The commission suggested referring the case to the International Criminal Court (ICC), as well as enacting targeted sanctions against individuals and entities responsible for committing abuses.

The UN COI Report places special emphasis on the plight of concentration camp inmates, religious believers, forcefully repatriated defectors, and international abductees. The Hon. Michael Kirby, the report's chair, even asserted that the atrocious treatment of these groups by the regime is tantamount to "political genocide." Yet, as the Commission's report also makes clear, these are not the only groups suffering from grave human rights violations in North Korea.

To augment the Commission's findings, this report by the Asan Institute for Policy Studies, titled *Beyond the UN COI Report on Human Rights in DPRK,* seeks to further examine the human rights situation of ordinary North Koreans. In particular, it details abuses suffered by North Koreans sent overseas as forced laborers and those working in the country's nuclear facilities. It concludes that these groups are subjected to slavery and forced labor conditions that violate international law. Institutionalized by the state, these conditions are further symptomatic of how gross human rights violations are routinized at all levels of North Korean society.

Those working in the country's nuclear program and as forced laborers overseas play an important role in the North Korean regime's efforts to bypass existing international sanctions. Addressing the treatment of these two groups thus offers an opportunity to incorporate human rights issues into the existing sanctions regime. Based on interviews with North Korean defectors with direct experience in the two fields, this report identifies numerous state practices that constitute modern slavery in clear violation of human rights law.

With regard to North Korea's use of forced laborers overseas, our report finds:

- North Korea's labor export is organized, managed, and overseen as a matter of state policy.
- Individuals are subject to constant surveillance by North Korean security agents, who are embedded with the workers, limiting any freedom of movement.
- The average wage is between 120-150 dollars a month, as stipulated by North Korean state regulations. Workers are not paid directly by their foreign employers, who pay much higher amounts to the North Korean state.
- Workers are not allowed to return to North Korea until their contract expires, which usually lasts three years.
- Work hours range between 12 and 16 hours a day, sometimes as much as 20 hours, and laborers are only provided one or two rest days a month.
- Earnings are not sent back as remittances, but appropriated by the state and transferred back to the country in the form of bulk cash, in clear violation of UN sanctions.

With regard to working conditions in North Korea's nuclear facilities, it finds:

- Widespread use of conscript labor in the construction of facilities
- Inadequate health and safety measures for workers
- No provision of information on occupational safety standards

It is clear that, unless the international community applies more pressure, North Korea will continue these inhumane policies. Our report thus offers several policy recommendations that can contribute to improving the human rights situation in North Korea.

1.

The United States should adopt more comprehensive sanctions against North Korea modeled on the 2012 Iran Threat Reduction and Syria Human Rights Act. Targeted sanctions against North Korea should include the aspects of human rights violations. Speedy adoption of the 2014 North Korea Sanctions Enforcement Act (HR 1771) will be an important step towards that end.

2.

The international community should pressure countries that make use of North Korean labor to enforce basic labor protection standards. As of 2013, 16 countries made use of North Korean forced laborers. These countries should ensure North Korean workers are treated fairly on par with their domestic workers, stop the practice of giving worker's salaries to the North Korean government, and conduct regular inspections at work sites and housing facilities to ensure basic standards are being met. International sanctions should be applied against individuals and entities that abet the human right abuses of North Korean laborers.

3.

The international community should ban the trade of goods, items, or technology with North Korea that can be used to commit human rights abuses. The international community should pay particular attention to restrictions on the flow of surveillance technology and police equipment, which could be misused by the repressive North Korean regime.

4.

North Korea should abide by its international treaty obligations and immediately abolish any slavery or forced labor practice as prohibited by the International Covenant on Civil and Political Rights (ICCPR) that it acceded to on September 14, 1981, and join the International Labor Organization and accede to other international anti-slavery treaties.

5.

South Korea should fully support the UN human rights field office to be set up in Seoul and closely work with the UN Special Rapporteur on the human rights situation in North Korea. It should also strictly enforce the relevant law that regulates the direct payment of wages to North Korean workers at the Kaesong Industrial Complex.

I.

Implications of the UN Commission of Inquiry Report

1.

KEY FINDINGS AND RECOMMENDATIONS

On March 21, 2013, the United Nations Human Rights Council established the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea. The commission was tasked with investigating the systematic, widespread and grave violations of human rights in North Korea, with a view to assigning full institutional and individual accountability, in particular for violations that may amount to crimes against humanity. On February 17, 2014, the UN COI released its findings, concluding that crimes against humanity and other human rights abuses were indeed being perpetrated in North Korea. The report's authors noted that the unique and dangerous conditions prevailing in the DPRK "do not have any parallel in the contemporary world."[1] As the Hon. Michael Kirby, the report's chair, has even publicly stated that the report's findings demand a response from the international community.

Amongst the various findings of the Commission, the comprehensive and detailed report outlines the following three key points that embody the seriousness and extreme gravity of the human rights situation in North Korea.

1.
North Korea is a totalitarian state, "a state that does not content itself with ensuring the authoritarian rule of a small group of people, but seeks to dominate every aspect of its citizens' lives and terrorizes them from within."[2]

2.
North Korea has committed "crimes against humanity" and other grave, widespread and systematic human rights violations as a matter of "State Policy". In accordance with international criminal law and the Rome Statute of the International Criminal Court, two elements must be present in order to constitute "crimes against humanity": (a) Individuals must commit inhumane acts with the requisite criminal intent; and (b) These inhumane acts must form part of a widespread or systematic attack directed against a civilian population. The Rome Statute also requires that the attack be pursuant to, or in furtherance of, a state or organizational policy.

3.
Kim Jong-un, Supreme Leader of North Korea, sits at the top of the system and has effective command and control of all organs and branches of the government. He receives direct and daily reports on the specific actions, policies, and decisions of all governmental bodies. This means that he has requisite knowledge of the ongoing human rights abuses. The Commission designated six governmental organs (the State Security Department, Ministry of People's Security, Office of the Public Prosecutor and the Court system,

1.
Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea (United Nations document A/HRC/25/63), pp. 365, para. 1211 [hereinafter "UN COI Report"].

2.
Ibid.

> Korean People's Army, Workers' Party of Korea, and the National Defense Commission) as having committed and presently committing crimes against humanity. The Commission further found that these officials are acting under the effective control of, ultimately, the Supreme Leader.

Various crimes against humanity committed by North Korea were well-documented in the report. However, North Korea has been unwilling to implement its domestic and international obligations to bring the perpetrators to justice, because those perpetrators have acted in accordance with the state policy.

The UN COI makes detailed recommendations to the North Korean Government, the People's Republic of China, the Korean People, other States, civil society organizations, the international community, and the United Nations. The UN COI's recommendations are based on the three principles, or "pillars," of the Responsibility to Protect (R2P).[3]

The first recommendation refers directly to the North Korean state, which has the primary responsibility to protect its own people. The report recommends that North Korea implement many changes, including profound political and institutional reforms to introduce genuine checks and balances upon the powers of the Supreme Leader and the Workers' Party of Korea.[4]

Based on the second principle, which stipulates that the international community has a responsibility to encourage and assist States concerned in fulfilling this responsibility, the report recommends that States and civil society groups work together to foster greater opportunities for people-to-people exchanges in order to expose North Koreans to experiences outside their home country.[5] In addition, it recommends that States, foundations, and engaged business enterprises provide more support to civil society organizations that are working to improve the human rights situation in North Korea, including efforts to document human rights violations and to broadcast accessible information into the country.[6]

Since the North Korean state has patently failed to observe the two previous principles, the report makes the strongest recommendation yet, that the United Nations Security Council refer the human rights situation in North Korea to the International Criminal Court (ICC) as well as enact and implement targeted sanctions against those who appear to be most responsible for committing crimes against humanity.[7] While the report does not go into the details of a possible sanctions regime, the 2009 report of the UN Secretary-General on "Implementing the Responsibility to Protect" defines targeted sanctions as those restrictions imposed on travel, financial transfers, luxury goods and arms transactions.[8]

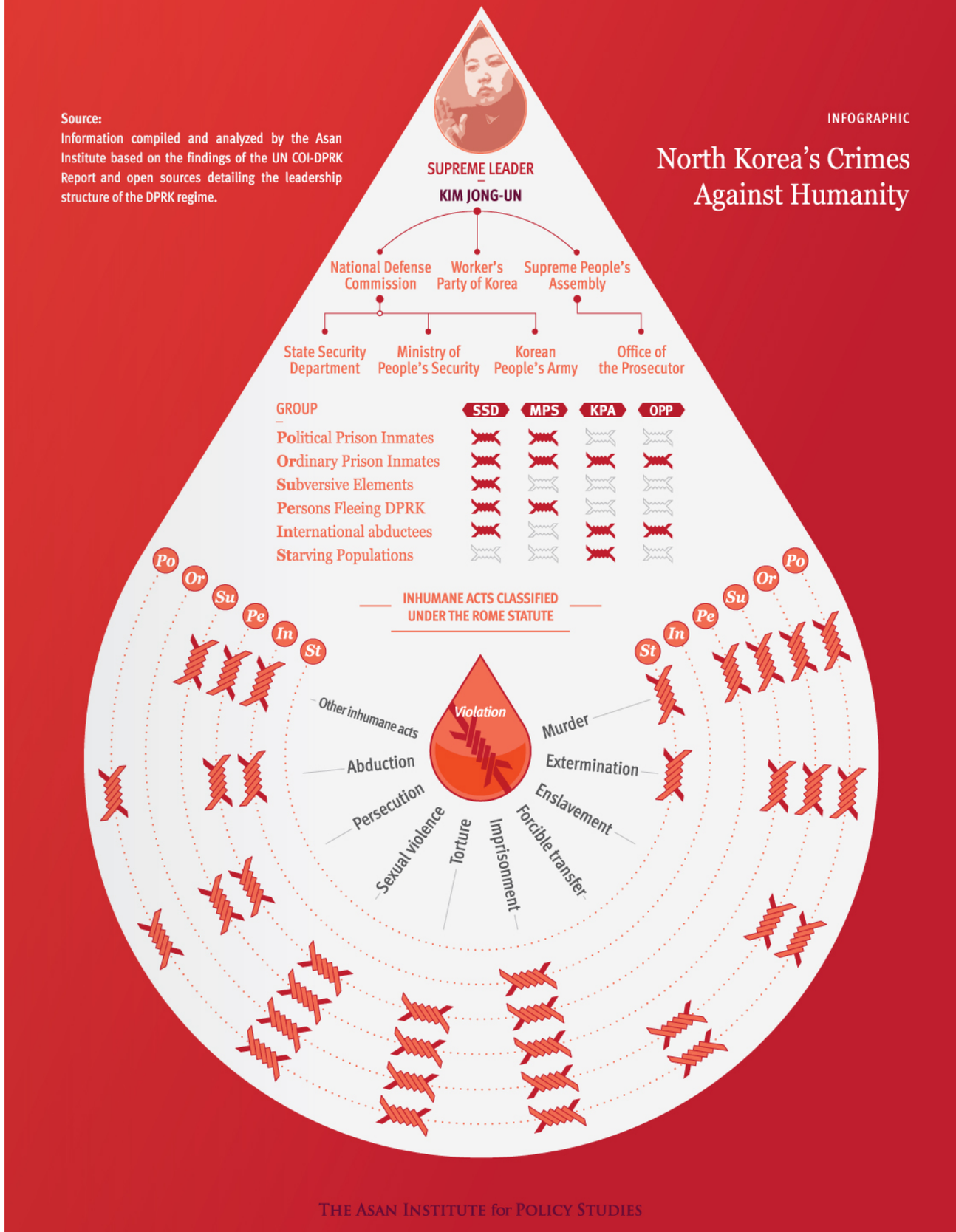
3. According to the Outcome Document of the 2005 United Nations World Summit (A/RES/60/1, paras. 138-140) and the UN Secretary-General's 2009 Report on Implementing the Responsibility to Protect (A/63/677, para. 1), the three pillars are:
   1) The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement;
   2) The international community has a responsibility to encourage and assist States in fulfilling this responsibility;
   3) The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations.
4. UN COI Report, p. 365, para. 1211.
5. UN COI Report, p. 370, para. 1223.
6. UN COI Report, p. 370, para. 1224.
7. UN COI Report, p. 370, para. 1225 (a).
8. UN Secretary-General's 2009 Report (A/63/677) on Implementing the Responsibility to Protect, p. 25, para. 57.

2.

IMPLICATIONS OF THE REPORT: RECOGNIZED AS FACTS

The UN COI-DPRK Report holds important implications for addressing the North Korean human rights situation. It is the first study of its kind by the United Nations and the first commission of inquiry to investigate human right violations taking place during peacetime instead of in war or armed conflict situation. While there have been many attempts by human rights organizations to shed light onto North Korea's human right records, the works of the UN COI carries with it a level of credibility and legal importance that others could not attain. In fact, the primary purpose of a Commission of Inquiry is to "establish accountability for violations that have taken place, ensuring that those responsible for violations are brought to justice."[9] To that end, while the standard of proof applied is not as high as that which is used in criminal proceedings, the findings from the UN COI carry a level of impartiality and legal weight that investigations conducted by non-governmental organizations or even governmental entities cannot easily reach. The reality of the human rights situation in North Korea cannot, and should not, be in dispute any more.

9. Geneva Academy of International Humanitarian Law and Human Rights, *The UN Human Rights Council: Commissions of Inquiry Conference brief* (December 2011), p.2.



3.
LIMITATIONS OF THE REPORT

The mandate of the UN COI was confined to nine substantive areas:

- Violations of the right to food,
- Violations associated with prison camps,
- Torture and inhuman treatment,
- Arbitrary detention,
- Discrimination,
- Violations of freedom of expression,
- Violations of the right to life,
- Violations of freedom of movement, and
- Enforced disappearances, including in the form of abductions of nationals of other States.

The mandate seems sufficiently broad, but in essence the Commission's findings focused primarily on specific persecuted populations, mainly concentration camp inmates, religious believers (i.e., Christians), defectors forcefully repatriated to North Korea, and international abductees. The routine human rights violations occurring in the rest of North Korean society are only partially covered (e.g. right to food). For instance, the report describes the slavery and forced labor conditions that prison camp inmates are subject to, but these findings do not extend to the conditions experienced by ordinary North Koreans. As for the international aspects of North Korea's human right violations, only the issue of abductions is covered in the report. However, the circumstances of North Korean workers overseas, laboring under inhumane conditions, are not addressed. While the UN COI Report has described the cruelty that the regime has shown in the treatment of some of its people, another term, "slavery", aptly describes the status of ordinary North Koreans who are subject to the regime's barbarities. Therefore, this report seeks to cover these groups.

4.
COMPREHENSIVE APPROACH TO NORTH KOREAN HUMAN RIGHTS ABUSES

The proscription of slavery constitutes jus cogens (a peremptory norm) under international law and is a principle accepted by the members of the international community. However, slavery has largely been substituted with systems of forced labor, which is often described as modern forms of slavery. It has been well documented that ordinary North Koreans are deprived of the right to food and other basic freedoms, such as the freedom of movement. But in addition, it could be argued that ordinary North Koreans exist solely to provide a free source of labor for the regime. For instance, most North Koreans must work on state projects without pay, in addition to their regular jobs that are only paid in nominal wages. Similarly, students, including pre-school children, are forced to spend countless weeks and months rehearsing for state-sanctioned propaganda spectacles, such as the annual "Arirang Mass Games" which feature as many as 100,000 participants. Slavery and forced labor is an important manifestation of the exploitative nature of the North Korean totalitarian regime. In order to illustrate the routinization of North Korea's human right violations and its internationalization, the following sections examine the human rights situation of two particular groups of North Koreans, workers in nuclear facilities and North Korean workers overseas.

An examination of North Korean nuclear facility workers and overseas forced laborers is important because their suffering is tied to the issue of nuclear proliferation and how the regime funds its activities. These two groups are central to stopping North Korea's nuclear weapons program and making sure

international sanctions are effective. Nuclear facilities in North Korea have little safeguards against accidents, and workers are often exposed to dangerous levels of radiation. This is an issue that should be addressed in the denuclearization negotiations. As for laborers overseas, they provide the regime with precious hard currency earnings that allow it to mitigate the effect of sanctions. Since the international community has made progress in shutting down North Korea's illicit arms and narcotics trade, North Korea has become increasingly dependent on labor earnings as a source of external funding.

II.
Slavery and Forced Labor

1.
NORTH KOREAN WORKERS OVERSEAS

Overview

There are close to 50,000 North Korean laborers working in 16 countries who collectively earn the regime between US$ 1.2-2.3 billion per year.[10] North Korea's inhuman labor export practices are a longstanding issue. North Korea first began sending laborers overseas in 1967 after signing a bilateral trade agreement with Russia.[11] Since then, it steadfastly expanded the scope of its labor exports by sending workers to Africa in the 1970s, followed by the Middle East in 1991. As of January 2013, 16 countries are known to be hosting North Korean laborers: Algeria, Angola, China, Equatorial Guinea, Ethiopia, Kuwait, Libya, Malaysia, Mongolia, Myanmar, Nigeria, Oman, Poland, Qatar, Russia, and the UAE. According to research by the Asan Institute, a total of 45 countries in Asia, Africa, the Middle East, and Europe have at one time employed North Korean workers. For instance, the US Department

10. International Network for the Human Rights of North Korean Overseas Labor (INHL), *The Conditions of the North Korean Overseas Labor* (Seoul: INHL, 2012).

11. Alain Devalpo, "North Korean slaves," *Le Monde Diplomatique*, 8 April 2006, available at http://goo.gl/GbSg8o (last retrieved 2014-10-14); *See also*, Andrew Higgins, "In Siberia's last gulag," *The Independent*, 26 June 1994.

of State's annual "Trafficking in Persons Report" has cited North Korea as a source country for persons trafficked for the purposes of sexual exploitation and forced labor successively since 2003. Most notably, the 2006 Report asserted that Burma and North Korea remain the only countries in the world today where slavery is still state sponsored.

North Korean laborers work abroad for an average of three years, during which they are not allowed to return home, even for family emergencies. They work between 14 and 16 hours a day, regardless of the country posted, and are allowed only one day off per month without any other vacation time. Laborers also endure inhumane and unsafe work conditions that often contravene even the most meager labor standards of the host countries without receiving payment until returning to North Korea. The wages they do receive are pre-determined by the North Korean state and range between 120 to 150 dollars per month. This amount has virtually stayed the same since the 1990s and is only a portion of the total amount that foreign employers pay to the North Korean regime; the remaining bulk is pocketed by the state or by corrupt officials.

According to the testimony of laborers gathered by the Asan Institute, returning workers also act as mules to carry hard currency earnings back to North Korea, violating the bulk cash ban imposed by the international community to sanction North Korea for its proliferation activities. This implies that North Korea's labor exports lie at the intersection between grave human rights violations and North Korea's WMD program. Accordingly, such human rights violations help perpetuate and support the country's illicit activities and its development of nuclear weapons.

Findings

The Asan Institute for Policy Studies conducted interviews with North Korean defectors who worked in China, Kuwait, Malaysia and Russia. The objective was to investigate the depth and scope of North Korea's labor export policies. Their testimonies show that the horrific labor conditions North Koreans suffer overseas are tantamount to slavery, in violation of international law. The report finds that:

1. No standardized labor contracts exist

- During recruitment, no applicant is shown the details of their labor contract.
- No information on work hours or work conditions is provided.
- No contact is allowed with former workers who have returned to North Korea.

2. Work is not voluntary in character

- Workers volunteered to work abroad, but were deceived into thinking that they might earn a lot of money.

3. Workers are not paid directly

- Salaries are deposited into accounts controlled by local North Korean companies. North Korean supervisors receive and hold worker salaries from their partner companies in the hosting countries.
- Workers are not paid regular salaries, instead receiving small stipends for personal use. North Korean authorities instead promise to pay workers their accumulated wages upon return to North Korea.
- The average monthly wage was 120 to 150 dollars per month, which is only 10 to 20 percent of their actual labor value in the contracts. Under regulations, no workers were allowed to receive more than 150 dollars per month.
- Voluntary contributions to the North Korean government were also delivered in the form of bulk cash without any declarations or reporting.

4. Workers are denied freedom of travel

- Upon arrival in the host country, North Korean supervisors confiscate all workers' passports and visas.
- Any North Koreans that left their worksites were thus treated as illegal immigrants in the host countries, making them vulnerable to ill treatment or illegal trafficking.
- In case of the Russian logging camps, North Korean workers were reportedly allowed to keep their own passports. However, none of the workers recalled being able to hold onto their passports. No other identification documents were issued for any of the workers.

5. Some workers are forced into debt bondage

- Some workers who volunteered to work in foreign countries were forced to pledge that they would pay in return for being selected for the job after returning to North Korea.
- Some workers in the Russian logging camps testified that if they did not fulfill their quota for a month, no salary was paid or accounted for, and the shortage instead became a debt.

6. Workers work excessive hours without compensation

- North Korean workers in the Russian logging camps worked on average 16 hours per day without any shift changes or additional compensation. Workers sometimes slept for only 4 hours a day, and were given one or two days off per month.

7. There is no monitoring of work conditions by host authorities

- Workers never saw any supervisors from the local government or authorities who took charge of monitoring the work conditions in their workplaces.
- In case of the Russian logging camps, local Russian authorities were reportedly allowed to conduct inspections at the camp. But, the workers testified that no local police or officials carried out inspections or investigations, except in cases where it was necessary to apprehend of escaped defectors.

8. North Korean administrators are responsible for apprehension of workers

- Defectors from the workplaces were apprehended by the North Korean administrators, not by the local police or authorities.
- In Russia, they were sometimes apprehended through cooperative joint operations conducted by North Korean administrators and local police.
- No safety accidents were ever reported to the local police, but instead were handled and controlled by North Korean supervisors.

9. The threat of repatriation is used to control workers

- All interviewees agreed that their workplace environment resembled the conditions inside North Korea with similar rules and regulations.
- However, since they came abroad to earn money, the most severe punishment was to threaten them with repatriation to North Korea.

10. Political class ("Songbun") determines work assignments

- North Korean authorities select workers for different countries and industries based on their political background and class designations.
- Those deemed to be from lower classes were only allowed to apply for dangerous and difficult assignments such as Siberian logging camps.
- Such individuals were also at high risk of having all their earnings withheld by the authorities upon their return.

US State Department's "Trafficking in Persons Report"

The working conditions of North Korean overseas workers have been severely criticized by the American government as amounting to slavery and forced labor. Since 2001, the United States Department of States' Trafficking in Persons report has identified the Czech Republic, Mongolia, and Russia as transit or destination countries for men and women trafficked from North Korea under conditions of forced or compulsory labor.[12] In January 2007, the Czech Ministry of the Interior announced it would eliminate its employment program for North Korean workers. That year's report stated that all North Koreans would leave the Czech Republic by the end of 2007, when their work visas were set to expire.[13]

In Mongolia, the 2012 Report estimated that approximately 2,000 North Koreans were employed as contract laborers, more than quadruple the number reported in previous years.[14] The most frequently contracting industries, as reported in 2014, included construction, production, agriculture, forestry, fishing, hunting, factory, wholesale and retail trade, automobile maintenance, and mining.[15]

12. US Department of State, Trafficking in Persons Report 2006 (Washington, D.C.: US Department of State, 2006), p. 103-4, 182, and 210 [hereinafter "Trafficking in Persons Report"]
13. Trafficking in Persons Report 2007, p. 88.
14. Trafficking in Persons Report 2012, p. 253.
15. Trafficking in Persons Report 2014, p. 277.

Regarding North Korean laborers in Russia, the 2009 Report raised awareness about the so-called "Siberian gulag" by asserting that "approximately 10,000 to 20,000 North Koreans have worked in the logging industry each year in the Russian Far East since 1967."[16] In accordance with the 2010 Report, it is estimated that tens of thousands of North Korean workers are employed in Russian logging camps,[17] where they reportedly have only two days of rest per year and face punishments when they fail to meet production targets. Their wages have also reportedly been withheld until they return home, in a coercive tactic used by the North Korean authorities to compel their labor.[18] The 2010 Report found that since the North Korean government and companies take up to 85 percent of the wages paid to the workers in the logging camps, this constitutes highly exploitative working conditions for the contract laborers.[19]

The 2008 Report found that there were eleven countries in which North Koreans had established contracted labor arrangements. These included Russia, Romania, Libya, Bulgaria, Saudi Arabia, Angola, Mongolia, Kuwait, Yemen, Iraq and China.[20] The Report also made the case that work arrangements made with certain countries could allegedly amount to exploitation, since the earned salaries of the workers are deposited into accounts controlled entirely by the North Korean government. These include Poland, Bulgaria, Romania, Russia, Qatar, Saudi Arabia, Iraq, Kuwait, Yemen, the United Arab Emirates, Libya, Angola, China, Mongolia, Malaysia, Cambodia, Thailand, and Laos.[21]

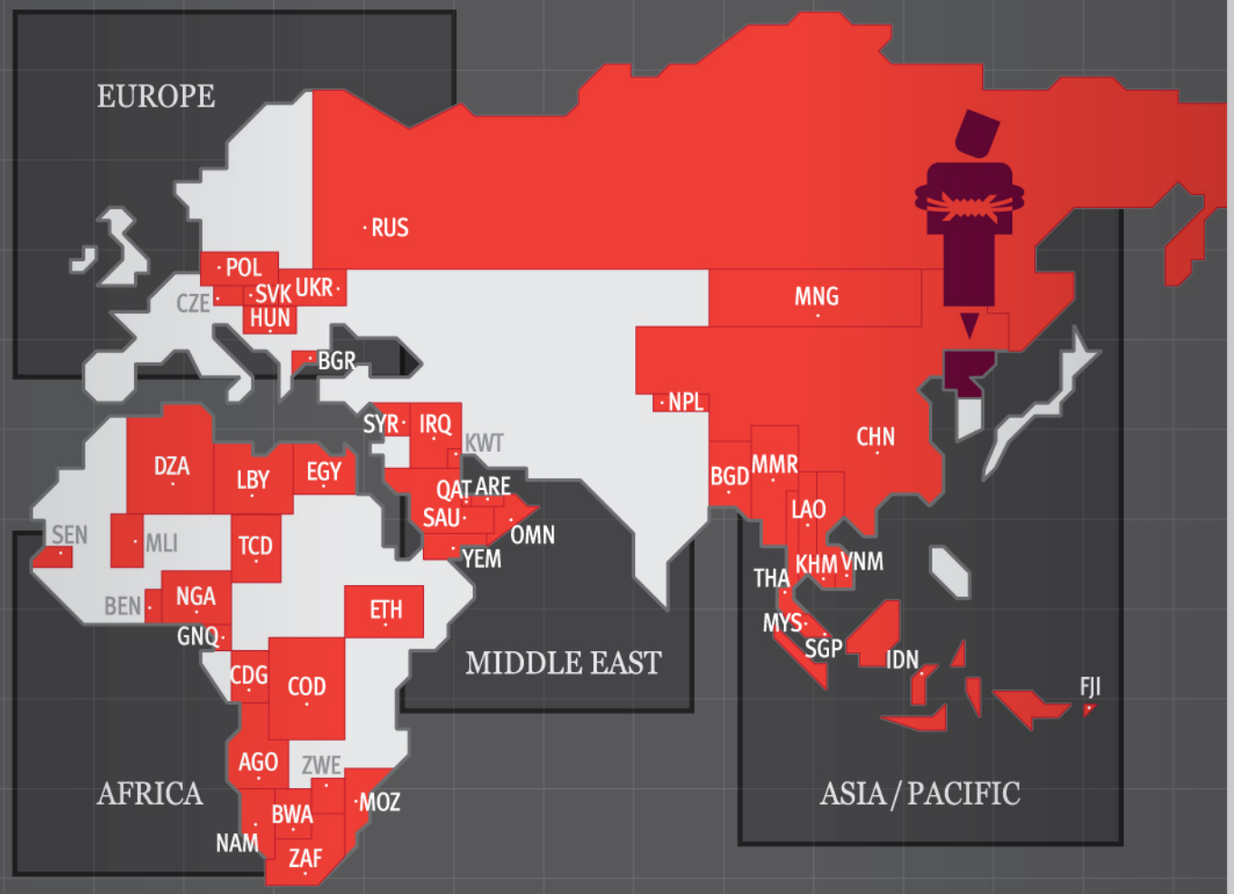
Since 2010, with the exception of China, Mongolia and Russia, the Trafficking in Persons Report has not specifically published the names of the countries where the North Korean workers were employed, but merely indicated those regions where "the North Korean government sends laborers to work abroad under bilateral contracts with foreign governments, including a significant number of laborers sent to Russia and China. DPRK contract workers also labor in Africa, Central Europe, the Middle East, Central Asia, and Mongolia."[22]

In addition, the 2014 Report exposed a new area of concern regarding forced labor as it relates to North Korean overseas workers. Some North Korean workers are deceptively recruited by the North Korean government and transit through or board fishing vessels from Fiji ports and waters.[23] They subsist under poor living conditions, accrue debt much greater than their promised wages, and work for little to no compensation on foreign fishing vessels, mainly Chinese and Taiwanese, in Pacific waters.[24]

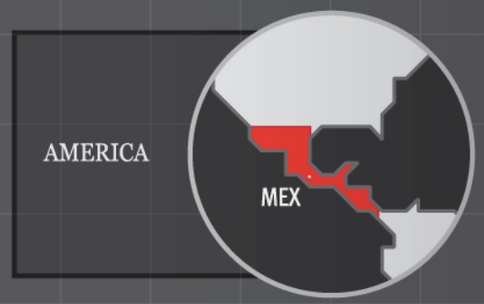
Country Profiles

The Asan Institute for Policy Studies conducted research to determine which countries have employed or are currently employing North Korean workers. This data was collected from news agencies and media sources such as Radio Free Asia and Voice of America. The following infographic lists all 45 countries that have employed North Korean workers, at one time or another, as well as their legal obligations as parties to key anti-slavery and labor treaties. Of these countries, these 16 still host North Korean workers.

16. Trafficking in Persons Report 2009, p. 228.
17. Trafficking in Persons Report 2010, p. 279.
18. Trafficking in Persons Report 2010, p. 199.
19. Trafficking in Persons Report 2010, p. 280.
20. Trafficking in Persons Report 2008, p. 199.
21. Trafficking in Persons Report 2009, p. 228.
22. Trafficking in Persons Report 2014, p. 231.
23. Trafficking in Persons Report 2014, p. 174.
24. Trafficking in Persons Report 2014, p. 174.







North Korea's Labor Export Around the World

INFOGRAPHIC

THE ASAN INSTITUTE for POLICY STUDIES

A1 Slavery Convention 1926

A2 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)

A3 ICCPR (International Covenant on Civil and Political Rights)

B1 ILO member

B2 ILO Convention concerning the Forced or Compulsory Labor 1930

B3 ILO Convention concerning the Abolition of Forced Labor 1957

R Rome Statute (International Criminal Court)

E European Convention on Human Rights

ASIA / PACIFIC

	A1	A2	A3	B1	B2	B3	R
Bangladesh (BGD)	■	■	■	■	■	■	■
Cambodia (KHM)		■	■	■	■	■	■
China (CHN)	■			■			
Fiji (FJI)		■					
Indonesia (IDN)			■	■	■		
Laos (LAO)		■	■	■	■	■	
Malaysia (MYS)		■		■	■	■	
Mongolia (MNG)		■	■	■	■	■	■
Myanmar (MMR)	■			■	■		
Nepal (NPL)		■	■	■	■	■	
Singapore (SGP)		■		■	■	■	
Thailand (THA)			■	■	■	■	
	3	8	7	11	10	8	3

MIDDLE EAST

	A1	A2	A3	B1	B2	B3	R
Iraq (IRQ)	■	■	■	■	■	■	
Kuwait (KWT)		■	■	■	■	■	
Libya (LBY)		■	■	■	■	■	
Qatar (QAT)	■			■	■	■	
Saudi Arabia (SAU)		■		■	■	■	
Syria (SYR)	■	■		■	■	■	
UAE (ARE)				■	■	■	
Yemen (YEM)			■	■	■	■	
	3	5	4	8	8	8	0

AMERICA

	A1	A2	A3	B1	B2	B3	R
Mexico (MEX)	■	■	■	■	■	■	■
	1	1	1	1	1	1	1

AFRICA

	A1	A2	A3	B1	B2	B3	R
Algeria (DZA)		■					
Angola (AGO)			■	■	■	■	
Benin (BEN)	■		■	■	■	■	■
Botswana (BWA)			■	■	■	■	■
Chad (TCD)			■	■	■	■	■
Congo (CDG)	■	■	■	■	■	■	■
DR Congo (COD)		■	■	■	■	■	■
Egypt (EGY)	■	■	■	■	■	■	
Equatorial Guinea (GNQ)							
Ethiopia (ETH)		■	■	■	■	■	
Mali (MLI)	■	■	■	■	■	■	■
Mozambique (MOZ)			■	■	■	■	
Namibia (NAM)			■	■	■	■	■
Nigeria (NGA)		■	■	■	■	■	■
Senegal (SEN)	■	■	■	■	■	■	■
South Africa (ZAF)	■		■	■	■	■	■
Zimbabwe (ZWE)		■	■	■	■	■	
	6	9	15	15	15	15	10

EUROPE

	A1	A2	A3	B1	B2	B3	R	E
Bulgaria (BGR)	■	■	■	■	■	■	■	■
Czech Republic (CZE)	■	■		■	■	■	■	■
Hungary (HUN)	■	■	■	■	■	■	■	■
Poland (POL)		■	■	■	■	■		■
Russia (RUS)		■	■	■	■	■	■	■
Slovakia (SVK)		■	■	■	■	■	■	■
Ukraine (UKR)		■	■	■	■	■		■
	3	7	6	7	7	7	5	7

Source:

Based on information compiled by the Asan Institute from the UN Treaty Database, International Labor Organization website, and various media sources. Current as of October 2014.

Table 1.
Countries Hosting North Korean Laborers

Country	Number of Workers
Russia	20,000
China	19,000
Mongolia	1,300-2,000
Kuwait	5,000
UAE	2,000
Qatar	1,800
Angola	1,000
Poland	400-500
Malaysia	300
Oman	300
Libya	300
Myanmar	200
Nigeria	200
Algeria	200
Equatorial Guinea	200
Ethiopia	100
Total	**52,300-53,100**

Source:
Asan Institute's own research based on news reports. Current as of January 2013

It is unclear whether all the countries listed above have employed North Korean workers strictly under bilateral government-to-government arrangements. For example, as member states of the European Union, Bulgaria, Czech Republic and Romania all stopped their employment programs for North Korean workers as a matter of legal obligation. But in 2013, the Newsweek Polska reported that Poland still employed 509 North Korean workers.

These bilateral arrangements serve to benefit the DPRK regime and are held in contempt of international legal norms. As such, the issue of slavery and forced labor of North Koreans is an international matter. Raising public awareness to eliminate or reduce the overseas labor programs is dependent on the status of North Korean workers in each host country. The countries that currently employ North Korean workers should take the following steps: 1) investigate labor conditions at the workplaces; 2) cease the employment of North Korean contract laborers if their treatment at the hands of North Korean authorities is determined to constitute forced labor and slavery; and 3) strengthen the procedures for declarations of bulk cash.

2.
WORKERS IN NORTH KOREA'S NUCLEAR PROGRAM

Overview

The North Korean state uses conscripted/forced labor for its nuclear weapons program. Just as the influx of foreign exchange earnings is used to sustain the regime, North Korea's nuclear program would not be possible without massive use of conscripted labor. Information gathered from North Korean defectors and refugees indicates the treatment of workers at nuclear facilities is above average by North Korea's standard, the investment in safety and health of the workers is woefully inadequate. For illustrative purposes we have included two of the interviews that the Asan Institute has conducted with North Korean defectors who had worked inside North Korean nuclear facilities, such as the reprocessing facility at Yongbyon and the uranium mine in Pyongsan.

Conditions in the Pyongsan Uranium Mine based on Defector Testimony

The interviewed defector entered the Korean People's Army in August 1995 under the age of 18 and was assigned to a mining unit from August 1995 to June 1996. His tasks were to build entrance rails to the mine, to dig an underground mine, and to repair rails and mining structures. The interviewee recalled that he never saw any ventilation systems for the dilution of concentrated radon. Moreover, he stated that the poor quality of the distributed anti-dust masks rendered them useless to the underground mine workers, who did not even bother wearing them.

A single work day was divided into three different time shifts. Since the interviewee was a novice laborer, he worked only from 8:00am to 4:00pm. The workers were permitted to have lunch from 12:00 to 1:00 pm, constituting a total of seven work hours in one day. Considering the fact that prisoners in ordinary prison camps were forced to work for 9-12 hours every day of the week, the working conditions at the mine are comparatively better. Additionally, the interviewee stated that the mineworkers were well fed with special foods that were not distributed to ordinary citizens in North Korea. However, the workers were forced to labor almost every day of the week. The interviewee recalled that he only had one rest day per month.

The defector stated that occupational safety training was conducted for one month as part of the work orientation. However, the workers were never notified of the hazards of uranium ore. The work suits, boots and anti-dust masks were distributed to the workers, but no dosimeter (film badge) to check for radiation exposure was ever given out. Doctors would perform regular health examinations on all laborers, but they never informed the individual workers of their health examination results. The mining of uranium ores generates ore dust and poses a serious inhalation hazard. Recent studies show that radiological hazards in uranium mines result from airborne radionuclides, which consist of radon and its related products. Present in other types of mines as well, they can cause severe occupational illnesses such as lung cancer.

Conditions in the Yongbyon Reprocessing Facility based on Defector Testimony

Another interviewed defector worked at the Radiochemical Laboratory in the Yongbyon nuclear facility as an analyst of radioactive chemicals from April 1988 to December 1994. He belonged to the so-called "December Enterprise," where about 1,000 scientists and laborers worked. The workplace was located about four kilometers from a village where the families of the Yongbyon nuclear facility workers resided. The population of the village was around 50,000 people.

The interviewee's work was to analyze the high concentration levels of radioactive chemicals in an ample by using colorimeters. The ample that contained the chemicals was delivered through pipelines connected to his workplace. After their delivery, he placed the ample into a transparent box that was 60 centimeters thick and manipulated the ample with the robot arms. He was trained for about a year, but had never heard or had any knowledge of what kind of chemicals he was required to analyze. No one in the factory gave him this information. He was only told to let the scientists know what colors showed up on the colorimeter.

For the sake of preventing information leaks, he was not informed of any security or safety matters in his workplace. While workers received good quality personal protective equipment, such as a work suit, gloves and boots, they were responsible for washing the contaminated equipment themselves at home. All workers also carried film badges, but the badges were monitored only once every three months. The workers were never informed of the results of these monitoring tests, unless severe symptoms of radiation sickness were present and visibly apparent.

According to the defector's testimony, most of his colleagues suffered from severe fatigue during work hours. He stated that one of the work responsibilities among colleagues was helping each other shake off their fatigue and sleepiness during working hours. The interviewee also witnessed many workers who suffered from nausea, vomiting, and fevers at the workplace.

The interviewee also stated that since food was well distributed to the workers in this nuclear facility, those from poorer families and with less social status wanted to get married with the workers. However, the fertility of the women laborers was very low. In his department, 60 percent out of a total of fifty workers were women, but most of the women who got married could not conceive children while working at the factory.

Findings

The situation of North Korean workers in domestic nuclear facilities is deserving of attention. While forced to labor, they are regularly denied information on occupational safety standards. This lack of information prevents the workers from adopting appropriate workplace practices that can protect them from occupational hazards. While the North Korean government distributes food of good quality to the workers at the nuclear facilities, it ignores its responsibility to better the work conditions, safety and health of the workers. This fact supports the observation that North Korea is more interested in enhancing workers' productivity than respecting their human rights. As such, given North Korea's antiquated safety culture, its nuclear programs under the "Dual Policy of Economic Construction and Nuclear Arsenal Expansion" announced in 2013 can result in a radiological catastrophe, primarily due to human failure. The improvement of the safety culture and compliance with international safety standards in order to prevent human failures are in urgent need.

III.
Human Rights and Sanctions

The human rights abuses occurring in North Korea demand further international attention and action. While the UN COI Report highlighted the totalitarian nature of the North Korean regime's crimes, its findings do not cover the full extent of the horrendous violations being perpetrated. This report sheds light on two victim groups that were not covered by the report: 1) North Korean workers overseas and 2) workers in North Korean nuclear facilities. The additional abuses highlighted in this report constitute persuasive additional evidence that North Korea is committing crimes against humanity.

The international community can no longer focus on North Korea's nuclear program while ignoring its human rights abuses. The United States, European Union, and United Nations have long sought to separate human rights from North Korea's illicit activities and its nuclear weapons program. However, the defector testimonies included in this report demonstrate that North Korea itself does not make such a distinction. In conjunction with the UN COI Report, this report clearly demonstrates that human rights abuses go hand in hand with North Korea's nuclear activities.

The North Korean problem poses a greater threat to international peace and security than ever before. As more evidence comes to light about North Korean human rights abuses, its growing nuclear program, and its pervasive illicit activities, what actions

can be taken by the international community? Realistically, there are only four options on the table for dealing with North Korea vis-à-vis the human rights issue: engagement, regime change by force, maintaining current policy, or pressuring the regime with additional measures such as sanctions. Options one and two do not appear to be feasible at this time. While dialogue with North Korea on nuclear issues may be feasible in the future, discussions on human rights are not likely to yield any productive results. Given North Korea's latest pronouncement and its recently released report on DPRK human rights conditions, it is evident that engaging North Korea over human rights will lead virtually nowhere due to the fundamental differences on this issue between the international community and North Korea.

Similarly, regime change by force is not an option given the inherent damage and costs that would be associated with such action, as well as the danger that it would bring to Northeast Asia. The only remaining option is enhancing those sanctions currently in place. Sanctions regimes have already been imposed on North Korea by the United States, European Union, and United Nations, as well as Japan and South Korea. However, current sanctions only target North Korea's nuclear proliferation activities and do not address human rights violations.

The status quo is unlikely to change in the near future unless a more creative approach to sanctions is devised. Implementing an effective, targeted sanctions regime based on human rights faces steep challenges, especially in Northeast Asia. This is because China is wary of any US involvement on humanitarian grounds while South Korea is concerned about refugees and instability.[25] South Korea also worries about the impact on inter-Korean relations as well as the potential for resuming inter-Korean dialogues and multilateral negotiations like the Six-Party Talks.

How can the international community formulate and implement an effective sanctions regime against North Korea? An examination of the current sanctions regimes is illustrative in this regard. It must be noted that each case contains its own set of unique circumstances[26] and may require a different and complex set of analyses.

Fortunately, the international community is vigorously pursuing human right abuses and using sanctions in the process to tackle major problems, especially in conflict settings. A comparative analysis of targeted sanctions imposed through the United States, European Union, and United Nations shows that the US has a tendency to impose more human rights sanctions than the EU and the UN.[27] The European Union tends to favor the use of individual travel bans and asset freezes, as achieving consensus on a country-wide sanction is politically difficult. A survey of UN sanctions shows that targeted sanctions to address human rights abuses is becoming an increasingly important component in the sanction regimes. In fact, of the fifteen UN sanctions regimes currently in place, six include some reference to human rights.[28]

Enhancing the North Korean sanctions regime by adding a human rights component is eminently implementable. Regardless of the feasibility of some measures, a focus on human rights will send a strong message to the North Korean regime and demonstrate to the North Korean people that the world is concerned for their well-being.

25.
Emma Chanlett-Avery, *Congress and U.S. Policy on North Korean Human Rights and Refugee: Recent Legislation and Implementation*, CRS Report RS22973 (Washington, D.C.: Congressional Research Service, 2009), p. 1.

26.
"[E]ach UN sanctions case is unique with incomparably complex dynamics. No two sanctions regimes are the same, and by definition, each episode is inimitable. The distinctive complexity of each, combined with the relatively small sample size for some categories, makes generalizations difficult...Moreover, UN sanctions are always combined with other measures and never applied in isolation." Targeted Sanctions Consortium, The Effectiveness of United Nations Targeted Sanctions (Geneva, Switzerland: The Graduate Institute Geneva, 2013), p. 11.

27.
The US has been implementing targeted sanctions for human rights violations primarily through executive orders and country-specific congressional legislation. These primarily consist of asset freezes, travel bans, and some targeted financial measures. *See* US Treasury Department website, http://goo.gl/BrnVXC.

28.
UN Sanctions, Special Research Report (New York: United Nations Security Council Report, November 2013); UNSC Sanctions Committees website, http://www.un.org/sc/committees; *See e.g.*, the UN Sanctions Committees on 1) Somalia, 2) the DRC, 3) Côte d'Ivoire, 4) Sudan, 5) Libya, and 6) the Central African Republic.

IV.
Policy Recommendations

1.

The United States should adopt more comprehensive sanctions against North Korea modeled on the 2012 Iran Threat Reduction and Syria Human Rights Act.

The 2012 Iran Threat Reduction and Syria Human Rights Act (ITRSHRA) offers a useful model for implementing a comprehensive sanctions regime against North Korea that encompasses both human rights and nuclear-related sanctions. Among its provisions, ITRSHRA requires the US President to publish a list of senior Iranian officials—which may include the Supreme Leader, president, cabinet, intelligence services, and paramilitary forces—involved in committing serious human rights abuses, or proliferation or terrorist activities.[29] Such measures should be applied to North Korean officials.

In the case of UN-sponsored sanctions retimes, United Nations Security Council Sanctions Committees supported by the expert groups such as Panels of Experts would substitute for the role of the US President and be responsible for listing and de-listing individuals or entities that are subject to sanctions. Targeted sanctions could include travel bans and asset freezes of individuals committing human rights abuses and also impose stiff penalties, including financial sanctions, against those entities that provide support to these individuals.

Additional sanctions against North Korea should target at least seven of the institutions found to be accountable for the atrocities in the COI-DPRK report, including the 1) State Security Department, 2) Ministry of People's Security, 3) Office of the Prosecutor and Court system, 4) Korean People's Army, 5) Workers' Party of Korea, 6) National Defense Commission, and 7) Supreme Leader. In the Iranian case, heads or ministers of institutions have been listed as the targets of sanctions. The heads or ministers of North Korean institutions must similarly not be exempt from possible sanctions.

In adopting sanctions measures, the US, EU and UN should take an incremental approach. Targeted human rights sanctions could be developed similar to those contained in US Executive Order 13553 ("Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions"). As in the Iranian case, sanctions against North Korea would designate and target specific perpetrators for human rights violations. Bill H.R. 1771 ("North Korea Sanctions Enforcement Act of 2014"), currently before the US Congress, contains such elements. Initiatives such as this should be seriously considered and it is up to the EU and UN to draft and adopt similar legislation and resolutions.

29. H. R. 1905, "Iran Threat Reduction and Syria Human Rights Act of 2012," 112th Congress (Sec. 221), p.25.

2.

The international community should pressure countries that make use of North Korean labor to enforce basic labor protection standards.

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Greater effort needs to be made to pressure countries that make use of North Korean labor to apply the same basic labor rights and standards as given to domestic workers as well as investigate and correct human rights violations. North Korean workers overseas are an important source of income for the North Korean regime and such measures will force it to either stop the practice of overseas forced labor or at least provide workers with greater protection. Given that this is illicit income from forced labor, and that the money is transferred to North Korea in the form of bulk cash in violation of UN sanctions, the international community should do its utmost to stop the flow of workers from North Korea and the illicit gains back to the country.

Interviews with defectors have revealed the names of North Korean enterprises that operate abroad, as well as the foreign employers that contract out the work to these companies. Before targeting the individuals and entities that are involved in North Korea's labor export scheme, the international community should strongly urge the countries that make use of North Korean workers to: 1) Ensure basic living and working standards are met, at least to the level stipulated in their labor laws; 2) Ensure that workers are paid directly rather than through the North Korean government/state enterprises; 3) Conduct regular inspections of the workplaces that make use of North Korean labor; 4) Prevent the transfer of bulk cash back to North Korea.

If the concerned countries fail to observe these conditions, the proposed international sanctions regime should draft a list of individuals and entities that make use of North Korean workers and penalize them accordingly. The purpose of this proposal is not to hinder North Korea's economic development, but rather to ensure that the gains of labor are given to the rightful owners, and that workers are given basic international standards of safety and dignity. If effectively implemented, North Korean workers would eventually return home and bring with them ideas of respect for human rights.

Depending upon the legal status in the international organizations of the States that have employed North Korean workers, the issue of human rights abuses against the workers should be raised and discussed at the 1) Special procedures in the UN Human Rights Council, 2) International Labor Organization, 3) European Court of Human Rights and/or 4) International Criminal Court.

3.

The international community should ban the trade of goods, items, or technology with North Korea that can be used to commit human rights abuses.

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Sections 402 and 703 of ITRSHRA include sanctions on the transfer of goods, technologies, or services to Iran and Syria, respectively, that are likely to be used to commit human rights abuses.[30] In this regard, it is important to point out what goods or technologies are likely to be used to commit human rights abuses. ITRSHRA stipulates that they include: 1) firearms or ammunition, rubber bullets, police batons, pepper or chemical sprays, stun grenades, electroshock weapons, tear gas, water cannons, or surveillance technology; or 2) sensitive technology. The 2009 Report of the UN Secretary-General on "Implementing the Responsibility to Protect" also categorizes targeted sanctions as those restrictions imposed on travel, financial transfers, luxury goods and arms transactions.[31] This report urges States to pay particular attention to restrictions on the flow of small arms and police equipment, which could be misused by repressive regimes.

30. H. R. 1905, "Iran Threat Reduction and Syria Human Rights Act of 2012," 112th Congress (Sec. 221), p.25.

31. "Implementing the responsibility to protect," Report of the Secretary-General, United Nations General Assembly (January 12, 2009), p.25.

4.

North Korea should abide by its international treaty obligations and immediately abolish any slavery or forced labor practice as prohibited by the International Covenant on Civil and Political Rights (ICCPR) that it acceded to on September 14, 1981, and join the International Labor Organization and accede to other international anti-slavery treaties.

—

The International Criminal Court Statute defines "enslavement" to mean "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children." This definition is directly related to Article 7 of the 1956 Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which defines slavery. Thus, the ICC Statute explicitly recognizes trafficking in persons as a "crime against humanity" which may be prosecuted according to the following language in the statue "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of that act."

While North Korea has not acceded to the 1926 Slavery Convention, the 1956 Supplementary Convention that bans practices similar to slavery, the ICC Statute, or the two ILO conventions that ban forced or compulsory labor, it acceded to the International Covenant on Civil and Political Rights (ICCPR), which bans slavery and forced labor, on 14 September 1981. The international community should strongly urge North Korea to abide by the anti-slavery treaty that it has already signed. International pressure and adherence to the standards contained in the treaties on slavery and forced labor could push the North Korean regime to change its abusive practices towards laborers sent abroad and those working in its nuclear facilities.

5.

South Korea should fully support the UN human rights field office to be set up in Seoul and closely work with the UN Special Rapporteur on the human rights situation in North Korea.

The resolution of the UN Human Rights Council adopted on March 28, 2014, renewed the mandate of the Special Rapporteur on the situation of human rights in North Korea and called on the UN to establish a field office to continue monitoring and documenting human rights abuses occurring in North Korea. The South Korean government should closely work together with the Special Rapporteur and fully support the field office to be set up in South Korea to effectively continue the work of the UN COI. In addition, the South Korean government should raise the issue of slavery and forced labor to the North Korean regime.

In 2006, Human Rights Watch reported that while Article 32 of the Kaesong Industry Complex Labor Law stipulated that South Korean companies should pay wages to North Korean workers directly in cash, South Korean companies remitted worker salaries to the North Korean government instead, on the latter's demand.[32] This practice may provide concerns over the possibility of slavery and forced labor, and should be rectified in accordance with the Law.

32.
Human Rights Watch, *North Korea: Workers' Rights at the Kaesong Industrial Complex*, Background Briefing Paper no. 1 (October 2006), pp. 6-7.

ASAN
REPORT

Beyond the UN COI Report on Human Rights in DPRK

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