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유엔 조선민주주의인민공화국 인권조사위원회  
COMMISSION OF INQUIRY ON HUMAN RIGHTS  
IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

REFERENCE: COIDPRK/CC/st/59

16 December 2013

Excellency,

This letter follows up my letter dated 7 November 2013 whereby the Commission had sought the agreement of your Government to visit China. The Commission of Inquiry regrets the decision of the Government of China not to extend such an invitation as conveyed to the Secretariat by telephone on 20 November 2013.

The Commission regrets that it will not be provided the opportunity to meet and consult with officials directly concerned with China's relations with the Democratic People's Republic of Korea (DPRK) as well as experts who would have been able to inform us of the context with respect to China's official positions. The Commission also regrets not having been able to visit the Yanbian Korean Autonomous Prefecture in order to conduct interviews with DPRK citizens in holding centres and other places of detention as well as with representatives of Christian churches and other organizations that work on issues related to the position of DPRK citizens in China.

As you may be aware, the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea is presently preparing its final report for the Human Rights Council. Access to China would have been instrumental to clarifying and verifying certain facts that pertain to China and that fall under the mandate of the Commission. The Commission would have wished to clarify issues of serious concern which we have outlined below and the specific questions listed in an annex to this letter.

The Commission has been informed by representatives of Your Excellency's Government that China maintains a position that DPRK citizens who enter China without permission are considered economic migrants and thus are not given the opportunity for refugee status determination. We understand that it is the position of your Government that such persons should be repatriated to the DPRK, with some exceptions based on humanitarian grounds.

Without wishing to express any final conclusions at this stage of the inquiry, the body of testimony and other information gathered so far indicates that many of the DPRK citizens who cross the border into China do so owing to a well-founded fear of being persecuted for reasons of religion, and/or membership of a particular social group or political opinion. In addition, persons forcibly repatriated to the DPRK are regularly subjected to torture and arbitrary detention and, in



some instances, also to rape, enforced disappearance, summary execution and other gross human rights violations. The Commission also received information on numerous cases of forced abortions and infanticide regarding children believed to have been fathered by Chinese nationals. The Commission is not aware of any effective steps taken by China to ensure that repatriated persons will not be subjected to such violations upon their return to the DPRK.

It would therefore appear that the foregoing repatriation practice breaches China's obligations not to expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. This obligation emerges from Article 3 of the Convention against Torture, ratified by China on 4 October 1988. Contrary to Article 33 of the Convention Relating to the Status of Refugees, repatriation typically also places DPRK citizens in a position where their life or freedom would be threatened on account of their religion and/or membership of a particular social group or holding a political opinion. The obligation not to expel persons to other States where there are substantial grounds for believing that the person would be in danger of being subject to gross human rights violations also emerges from the requirements of customary international law.

While the inquiry is not yet concluded, the information received so far points towards crimes against humanity being committed by officials of the DPRK against their citizens repatriated from China. There are also reasonable grounds for believing that Chinese officials have in some cases shared with DPRK authorities information about the contacts and conduct of DPRK nationals subject to repatriation. It appears that exchanges are to some degree based on border control-related agreements concluded between the Ministry of Public Security on behalf of the People's Republic of China and the Ministry of State Security on behalf of the Democratic People's Republic of Korea.

The Commission is concerned that conveying such information further aggravates the risk that repatriated DPRK nationals will be subject to torture, enforced disappearance and summary execution, in particular where information conveyed relates to alleged contacts that DPRK citizens may have had with Christian churches or nationals of the Republic of Korea or any attempts they may have made to travel onwards to the Republic of Korea. 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 towards (or have the purpose of) facilitating the commission of crimes against humanity in the DPRK.

The information gathered so far also indicates that many women from the DPRK who enter China are being trafficked into forced marriages and, in some instances, commercial sexual exploitation. The Commission is aware that China has criminalized human trafficking and is taking steps to identify and prosecute the perpetrators. However, it appears that the policy of repatriating DPRK citizens and the gross violations repatriated persons face in the DPRK makes many women afraid to report crimes of human trafficking to the authorities.





The Commission has received reports that DPRK women, some of whom have been victims of trafficking, who have had children with Chinese men, have been among those who have been captured and returned to North Korea. The Commission has received estimates of children of Chinese fathers and North Korean mothers ranging from 10,000 to 25,000. The status of most of these children appears to be effectively stateless as the Chinese families have been discouraged from registering such children because of the illegal status of their mothers. The Commission has noted that China in its Compulsory Education Law makes provision for nine years of compulsory education to all children living in China irrespective of nationality or race. However, information received by the Commission indicates that a large number of children living in China born to women from the DPRK are deprived of the opportunity to attend school resulting from the parents' fear of being arrested and repatriated by registering their children's names as required by law in order for them to attend school.

The Commission also received indications that agents of the DPRK appear to be operating on Chinese territory and attempting to gather information about DPRK citizens and persons supporting them. On some occasions, they appear even to have abducted DPRK citizens and at least one national of the ROK. The Commission has been informed that on other occasions, Chinese security officials have taken the positive step of warning targeted individuals and thus prevented such abductions.

The Commission would be grateful to receive a reply from your Government with respect to the above concerns, and the questions listed in the annex to this letter, by 30 December 2013 so that it may endeavor to reflect your responses in the Commission's report to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read "Michael Kirby".

Michael Kirby  
Chair

His Excellency  
Mr. Wu Haitao  
Ambassador Extraordinary and Plenipotentiary (Disarmament)  
Deputy Permanent Representative of the People's Republic  
of China to the United Nations Office at Geneva  
Email: [chinamission\\_gva@mfa.gov.cn](mailto:chinamission_gva@mfa.gov.cn)



Annex

1. Could you confirm your position of treating all DPRK citizens who enter China without permission as illegal economic migrants and therefore not providing them the opportunity to seek asylum or have their refugee status determined ? If this is not an accurate position taken by your Government, could you explain or elaborate further China's policy on such DPRK citizens ?
2. The Commission understands that China has concluded an agreement with the DPRK in 1986 on "the Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas", which was first revised in 1998. Could you confirm this understanding to be correct ? If so, could you provide us with a copy of the agreement currently in force and other related documentation revising such an agreement ? Could you provide the Commission with any other documentation that would explain the position of the authorities of China on the policies applies to DPRK citizens in China?
3. The Commission has received reports that Chinese authorities have forcibly returned DPRK citizens to the DPRK. Could you let us know in which cases China has chosen to return DPRK citizens to the DPRK, and in which cases China has chosen not to return them ? Could you provide us with figures, disaggregated by sex and age, on the numbers of DPRK citizens who were returned to the DPRK ? Could you provide us with figures of how many DPRK citizens were permitted to remain in China under humanitarian considerations and with what status?
4. The Commission has received information that approximately 20,000 work or residency permits have been in recent times provided by China to DPRK citizens. Could you provide details about these permits including what is the remit of these permits, which categories of DPRK citizens have received them, how many have received them, and the procedures for obtaining these permits ? In particular, the Commission requests information on whether such permits were given to undocumented DPRK citizens in China so as to regularize their status.
5. Could you inform us of how many DPRK citizens are estimated to currently reside in China, disaggregated by documented and undocumented status?
6. Could you please indicate to what extent Chinese authorities are providing information to DPRK authorities about the activities and contacts of returned DPRK citizens while they are in China ?
7. To what extent have Chinese authorities cooperated with DPRK authorities in identifying persons for capture and repatriation ? If so, how frequently has this occurred and under what legal framework ?





8. What protection is extended to DPRK women who have children with Chinese men and under what legal framework ? Could you provide us with a figure of how many women with Chinese children have been subject to repatriation ? What approach is taken towards the children born from mixed marriages of DPRK and Chinese citizens ? The Commission would also be grateful for any other information about this population of vulnerable children, and what measures are being taken to address their problems?
9. According to information available to the Commission, pregnant DPRK women who are captured in China and are believed to have been impregnated by Chinese men, have been subject to forced abortion or their babies subject to infanticide upon return to the DPRK. Have the Chinese authorities addressed this human rights violation with the DPRK ? Has China considered special measures to protect pregnant DPRK women at risk of refoulement ?
10. The Commission understands that the agreement concluded between China and UNHCR in 1995 on the establishment of the latter's presence in Beijing allows, inter alia, for UNHCR to conduct refugee status determination for asylum-seekers as a temporary measure until the Government implements its own refugee protection framework in accordance with the Refugee Convention. We also understand, that in order for UNHCR to conduct refugee status determination, the Chinese Government has agreed to allow UNHCR personnel unimpeded access to asylum seekers. However, we believe that UNHCR has in fact not been permitted to visit or operate in the northeastern area of China where a large number of DPRK citizens who have fled the DPRK are believed to be residing. Could you provide an explanation for this refusal of permission in light of the agreement between UNHCR and China as well as China's legal obligations under the Refugee Convention ?
11. We understand that the new *Administration Law on Entry and Exit*, adopted by the Standing Committee of China's National People's Congress in July 2012, and came into effect in July 2013, includes provisions on refugee status. The new legislation allows an "alien" applying for refugee status to stay in China with an official temporary identity certificate until the time his or her application is decided. Could you confirm that such an opportunity would be afforded to DPRK citizens who fled the DPRK including through them being informed of such an opportunity if and when they are arrested by the Chinese authorities (for entering and/or remaining in China without permission) ?
12. The Commission would also be grateful for any available information on DPRK operatives who are reportedly present in China in order to monitor and capture DPRK citizens. What is the status of such operatives; are any present with the knowledge of your Excellency's Government ? Have any cases of abductions been investigated by the authorities ? Could you verify this ? If so, how many DPRK agents are permitted to operate in China, for what period of time, and under what guidelines are they entitled to carry out their functions ?
13. The Commission has received reports about the abduction of Chinese, Republic of Korea and other nationals from the Chinese mainland by the DPRK. The COI has received information that in at least one instance, a perpetrator of such abductions has been arrested and prosecuted



in a Chinese Court: Liu Yong Hua, involved in the abduction of Republic of Korea pastor Kim Dong Shik (Court reference attached). Could you please advise of other arrests and prosecutions of perpetrators of abductions in China ? Could a certified version of judgments in these cases please be provided to the Commission ?

14. The Commission has received reports of abductions from Macau and Hong Kong in 1978. The Commission would appreciate any information that about the abductions of Ms Hong Lein-jeng and Ms So Moi Chun (both from China) and Ms Anocha Panjoy (from Thailand) abducted from Macau, and Ms Choi Un-hee and Mr Shin Sang Ok (both from the Republic of Korea) who were abducted from Hong Kong.

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