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**State Enslavement in North Korea**

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**State Slavery**

Much of the literature about contemporary slavery focuses on enslavement by private actors, such as human traffickers or those who use bonded labor. Bales, for example, discusses the new slavery of the late 20<sup>th</sup> and early 21<sup>st</sup> centuries, a slavery rooted in profit-making, in which governments are often complicit but which they formally recognize as illegal (Bales 1999). However, the crime of enslavement is not only committed by private criminals; it is also a state practice that benefits elites, and sometimes the entire economy of a country. This chapter discusses state slavery, defined as enslavement of citizens by the state. State slavers are those individuals in charge of the state who instigate, direct, and often profit from state slavery. North Korea (officially known as the Democratic People's Republic of Korea) is an example of a wider problem of state slavery in contemporary dictatorial states.

Two kinds of state slavery exist in the 21<sup>st</sup> century: North Korea is an amalgam of both. The first is the remnant of the communist system that in the 20<sup>th</sup> century enslaved large numbers of people in prison camps now collectively known as the gulag, originally an acronym for slave-labor camps in the Soviet Union (Applebaum 2003) (Hochschild 2003). Such enslavement was

also widely used in China after the Revolution of 1949 (Margolin 1999, 497-513), and is still practiced despite China's transformation over the last thirty years from a totalitarian Communist to an authoritarian state-capitalist state. Conditions in China's slave-labor prison camps, collectively known as the Laogai, remained abysmal in the 21<sup>st</sup> century. There were about 1,000 Laogai camps in 2005, which practiced "reform through labor," such as prisoners' mining asbestos with their bare hands (Wu 2005, 25, 30); products from slave labor were integral to China's growing export economy (Wu 2005, 33-34) (Xu 2005, 42-43). Slave labor was also practiced on an enormous scale during the genocidal regime of the Khmer Rouge in Cambodia (1975-79), where almost the entire population, including children, was enslaved in gigantic prison camps. An estimated 885,000 overworked and underfed people died from starvation or disease in these camps (Fein 2007, 26).

The second kind of state slavery is enslavement of citizens for the benefit of the government and the individual slavers who control it. In Uzbekistan, the ruling elite forces school children to harvest cotton, a staple of that country's economy. Adults are also forced to participate in the harvest, even when they are teachers or physicians. The farms on which cotton is produced are privately owned, but farmers are forced to sell the harvest to the government at prices below their actual costs; thus, they agree to use forced child labor so as to minimize the costs of production (European Center for Constitutional and Human Rights 2011). The children work excessively long hours in very hot weather, are not provided with food, and often drink water from polluted canals (International Labor Rights Forum and Human Rights Defenders in Uzbekistan 2008, 6).

Eritrea, a small state on the east coast of Africa that obtained its independence from Ethiopia in 1993 after a long civil war, is another example of state slavery for the benefit of the

government and those who control it. What was originally designed to be an 18-month period of obligatory military service has been extended since 1998 to be indefinite forced labor of anyone, male or female, unfortunate enough to be drafted into the army, officially until the age of fifty but sometimes even longer (Human Rights Watch 2009a). Members of government and the ruling party, and senior military officers, use those conscripted into indefinite military servitude to build their houses, act as their personal servants, and work on farms, building sites, and enterprises owned by the state or army (Kibreab 2009, 59-63).

The countries mentioned above are not all of those engaged in state slavery. They are, however, sufficient to show that state slavery should be considered as a separate category from enslavement by private individuals. This chapter discusses the case of North Korea to show how necessary it is for international law to acknowledge state slavery separately from both the traditional definitions of slavery and the legal definition of forced labor. The chapter presents a brief historical background of North Korea, followed by a discussion of conditions in the North Korean gulag and an explanation of who is imprisoned in its slave labor camps. It then turns to a conceptual discussion of whether North Korea's camp system should be considered forced labor or slavery. It ends with a discussion of what can be done to end state slavery in North Korea.

The chapter relies on secondary sources, news reports, and reports from two international human rights non-governmental organizations, Amnesty International (AI) and Human Rights Watch (HRW), as well as the US Department of State (USDS) annual human rights reports. These sources, in turn, rely heavily on interviews with North Korean refugees in northern China and South Korea; in the former location, many of these interviews are clandestine. There is also satellite imagery of North Korean prison camps, which helps to verify the testimony of refugees (Hawk 2003). It is almost impossible for foreigners to enter North Korea and those who do enter

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are very carefully watched, risking incarceration or worse if they are caught investigating prison conditions. Nevertheless, the testimony which the various researchers have accrued over the years, especially since large numbers of people started to illegally enter China during the famine of the mid-1990s, is remarkably consistent and can be considered reliable. These are not sensationalist accounts: researchers are very careful to cross-check accounts when they can and, if possible, to conduct methodologically sound surveys of refugees (Haggard and Noland 2009).

### **Historical Background**

North Korea is severely isolated and cut off from the international community. It is officially a communist state, but it is better thought of as a state under one-man dynastic rule: first of Kim Il-Sung from 1948 to 1994; since then by his son, Kim Jong-Il; and possibly in the future by Kim Jong-Il's son, Kim Jong-un. The government is characterized by deep paranoia, massive corruption, and fascistic racism, as well as by almost complete control over a devastated and severely inefficient economy. Citizens enjoy absolutely no human rights; no civil or political rights, no rule of law or right to due process, no right to property, and no economic human rights.

North Korea is a creation of the Cold War. From 1910 to 1945, the Korean Peninsula was colonized by the Japanese. At the end of WWII, the Americans and Soviets came to an agreement that Korea would be split at the 38<sup>th</sup> parallel, a line arbitrarily chosen as it roughly divided this ancient kingdom into two equal parts. Kim Il-Sung, reputed to have been a guerilla leader against the Japanese, was chosen by the Soviets to rule North Korea. In 1950, anticipating an easy victory, he attacked the South. The United Nations and the United States came to the defense of the South, leading newly-Communist China to enter the war on the side of the North. An extremely brutal three-year war ensued, at the end of which the two parties signed a truce and retreated to their respective sides of the 38<sup>th</sup> parallel. There is no peace treaty and the two Koreas

are still technically at war, though they maintain a heavily-armed “demilitarized zone” between the two countries.

North Korea’s official ideology, introduced in 1970, is called *Juche*, comprising “self-control, independence, and self-sufficiency” (Rigoulot 1999, 548). It is a form of self-reliance that is, in effect, extreme autarky (Cumings 2005, 429): no one (except the extremely corrupt elite) is legally permitted access to foreign goods, thought, or media. In practice, *Juche* means that North Koreans rely completely on the whims of the state for fulfillment of their basic needs. Propaganda presents Kim Jong-il, as both the father and the mother of his people (Myers 2010).

### **Forced Labor**

The North Korean government maintains a large system of slave labor camps, in effect a gulag. Rigoulot, publishing originally in 1997, estimated that 1.5 million people had died in these camps since the creation of North Korea (Rigoulot 1999, 564). Becker’s lower estimate suggested that as of 2005 a million people had died in the camps, assuming an annual death rate of ten per cent of the 200-300,000 people imprisoned at any time (Becker 2005, 87). HRW estimated that in 2010 there were still 200,000 prisoners in labor camps (Human Rights Watch 2011, 345).

A major reason for the high death rates is that prisoners are supplied with “deliberate starvation-level rations” (Hawk 2003, 15), and were so even before the food shortages and famine of the 1990s, as discussed below. Food is allocated on the basis of productivity; the less a prisoner produces, the less he eats, resulting in a spiral downward as those deprived of even more food produce less and less. There are no health facilities to speak of, and prisoners often die of malnutrition-related diseases. A former prison guard described his shock on first entering a

prison: he saw walking skeletons, many without ears or with only one eye as a result of beatings, and many covered with scars (Becker 2005, 85). There are also reports of medical experiments performed in North Korean prison camps (Haggard and Noland 2009, 20), as well as reports that prisoners have been used as live guinea pigs in tests of chemical and biological weapons (Becker 2005, 95-97). In 2004 by a North Korean refugee who had been a senior scientist said he had witnessed a test of chemical weapons on two prisoners in 1979; they died in excruciating pain (Demick 2004).

The gulag is a major contributor to the North Korean economy. Some of the prisons' products are for export: for example, prisoners have produced hardwoods for export to Japan (Hawk 2003, 31). Other prisoners perform corvée labor, repairing roads or “substitut[ing] for the lack of other forms of energy and transport...for example, by pushing train cars” (Haggard and Noland 2009, 11). Yet others produce goods for the use of the party élite and the military, such as meat, textiles, and rabbit fur to line soldiers' winter jackets (Becker 2005, 87). Prisoners also work excavating mines and quarries, and in nuclear facilities (Rigoulot 1999, 555). Working days for adults can reach as long as 16.5 hours, followed by grueling “ideology struggle sessions” where weak and starving prisoners are criticized and beaten for not fulfilling their production quotas (Amnesty International 2011).

Moreover, to earn money, during the Soviet era the regime sent prisoners to work in Siberian slave labor camps, although conditions in the Siberian camps improved after the end of Soviet rule (Rigoulot 1999, 557). HRW reported that in 2009 there were still 1500 North Koreans working in Russian logging camps; they had only two rest days per year, they were punished if they did not meet their production quotas, and the North Korean government took part of their salaries (Human Rights Watch 2010, 328-9). It appears that these workers, however, were not

prisoners: rather, they were “volunteers” lured to Siberia in the false hopes of earning money and on contracts of several years that they were expected to honor, regardless of the working conditions (Devalpo 2006). HRW also reported that North Koreans worked in Bulgaria, China, Iraq, Kuwait, and Mongolia. Large portions of their salaries were alleged to be paid directly to the government (Human Rights Watch 2009b, 282).

In 2004 North Korea created the Kaesong industrial park, an hour’s drive from Seoul, to attract South Korean investment. South Korean corporations employ North Korean workers, who appear to be subjected to “indirect payment”; that is, their salaries are paid to the government, raising concerns that the workers may in fact be enslaved (Human Rights Watch 2006, 1). By 2010, it was reported, about 44,000 people worked in this complex, under conditions that in all respects fell far short of international labor standards (Human Rights Watch 2011, 346). Finally, the government often mobilizes the general population for farm labor and other projects without pay, sometimes kidnapping people from the streets, suggesting that in effect the entire population is subjected to forced labor (U.S. Department of State 2010) (see also Hassig and Oh 2009, 79). In mid-2011 it was reported that the government was drafting students from universities to perform manual construction and agricultural jobs until April 2012; these young people were drafted in order to complete ambitious construction projects in time to celebrate the 100<sup>th</sup> anniversary of the birth of Kim Il-Sung (Sharma 2011; Ryall 2011).

### **Who Is in the Gulag?**

Two types of people are most likely to be imprisoned: those famine criminals, and those who fall into one of several disgraced classifications of North Koreans.

#### *Famine Criminals*

Famine criminals are those people whose actions in search of food ensure that they are branded as criminals, resulting in their imprisonment. The discussion below of food shortages and famine provides necessary background to understand why so many North Korean prisoners are famine criminals. Their crimes consist of the following activities: fleeing to China, engaging in petty trade, cultivating private plots of land, foraging for food, and cannibalism.

From 1994 to 2000, North Korea experienced a major famine. A conservative scholarly estimate based on known demographic and statistical data suggests that between 630,000 and 1.1 million people lost their lives, or between three and five per cent of the entire population of about 22 million people (Lee 2005, 47). The causes of the famine included poor harvests and flooding, exacerbated by both Russia's and China's decisions to cut off cheap food exports and food aid to North Korea (Demick 2009, 67) (Myers 2010, 50). The famine was also a consequence extreme mismanagement of the economy, especially the agricultural sector, by the central government in the 1980s and early 1990s (Noland 2007, 201). During the worst of the 1990s famine, the government also cut off rations to four provinces, where citizens were suspected of being disloyal to the regime (Noland 2007, 204).

While food shortages are chronic in North Korea, famine appeared to have returned in 2011. In September, estimates were that six million people, about a quarter of the population, were at severe risk of starvation (Ten Kate 2011 16 September). Diplomats reported that food rations had been halved in 2010-2011 (Bourke 2011 28 June) Foreigners observed women and children in the fields eating roots and weeds, while "feral children" ate dead dogs and rotted food in the markets (Economist 2011 17 September). Even members of the military, normally favored by the regime, were suffering malnutrition (Ryall 2011 13 September).

These famines have created conditions that result in citizens' committing "crimes" that are punished by incarceration in slave labor camps. One such crime is to go to China; one estimate is that 200-300,000 people fled to China during the 1990s famine (Hawk 2003, 56). China does not protect these refugees: it returns them to North Korea, where some are executed while others are tortured and then incarcerated.

Another famine crime is to engage in private production of food or in petty trade in order to find money to buy food. Since the mid-1990s, the state has inconsistently introduced reforms that permit private cultivation and then reneged on them. It has also inconsistently turned a blind eye to private food markets that sprang up in urban areas, even legalizing them in 2002 only to declare them illegal again in 2005 (Caryl 2008). Having allowed more private cultivation and trade, however, the state also cut off the meager food rations that North Koreans had been used to receiving under the Public Distribution System. Thus, many North Koreans were again at risk of entering the gulag because they cultivated their own food and sometimes sold it in the market. Yet they could also be imprisoned merely because they foraged for food (Noland 2007, 205). On one occasion a starving prisoner was executed for eating ripe chestnuts that had fallen at the entrance of a slave-labor mine (Hawk 2003, 37).

Finally, famine in North Korea has resulted in some known cases of cannibalism. Homeless children in North Korea are reputed to run the risk of being cannibalized (Demick 2009, 168); one refugee reported witnessing the public execution of a 28-year-old man accused of eating a four-year-old child (Kim 2008, 50) An official North Korean document leaked in mid-2011 reported five cases of cannibalism, including one in which a guard killed one of his colleagues, ate some of his flesh and sold the rest on the market, disguised as mutton (Lodish 2011).

During the 1990s, famine criminals constituted a large, although unknown and unverifiable, percentage of the slave laborers in the North Korean gulag. It is not yet known whether people who foraged, traded, or privately produced food during the 2010-11 food shortage were treated as severely as those who did so in the 1990s.

### *Classification of Citizens and Likelihood of being Imprisoned*

Aside from the famine, there are many other factors that might cause a North Korean to be imprisoned and enslaved. Some prisoners are “common” criminals, although it is difficult to determine what might be considered a common crime in North Korea. In addition, there are frequent political purges. Party purges began in 1953 to rid North Korea of any former guerillas not content with Kim Il-Sung’s rule, and continued until at least 1997 (Rigoulot 1999, 551-2). About 15,000 “anti-revolutionaries,” along with 70,000 family members, were sent to camps in purges from 1966 to 1970 (Hassig and Oh 2009, 208).

Even an individual never considered to have committed a political crime could face imprisonment because of his so-called class category. The North Korean state classifies its population on the basis of perceived loyalty, or lack thereof, to the regime: the three major classes are the core, or loyal, class; the wavering class; and the hostile class (Hassig and Oh 2009, 195-215). There also appear to be various sub-classes, perhaps as many as 51, though no one seems to know exactly how many categories the regime currently uses. Membership in the three core classes is hereditary; an individual might be deemed a member of the hostile class because his great-grandfather was considered a reactionary. Members of the hostile class are most likely to be sent to the gulag.

Not content with sending individuals perceived to be hostile to the regime to the gulag, the state also sentences family members, up to three generations, to go to the gulag with them (Hawk 2003, 24). This is accordance with Kim Il-Sung's 1958 directive that "[Prison] inmates are class enemies and must be actively exterminated to three generations" (Becker 2005, 90). Thus, for example, Kang Chol-Hwan, the author of a rare memoir of the camps, was incarcerated at the age of nine because his grandfather was suspected of a crime; Kang survived partly by eating rats (Kang Chol-Hwan 2006, 688). Members of the hostile class were also the first to have their rations cut during the famine of the 1990s (Hassig and Oh 2009, 203).

North Korea is also explicitly racist. Basing his analysis on the regime's propaganda, Myers argues that far from being a Communist state, North Korea is actually a fascist, racist state along the lines of Hitler's Germany, and that it derives what little legitimacy it has in part from convincing the populace that they are a superior race (Myers 2010). Thus people who are of mixed "racial" background are likely to be incarcerated.

Some women refugees repatriated from China are imprisoned, many after severe torture, because in addition to fleeing they committed the crime of racial pollution by having had sexual relations with Chinese men. Some of these women voluntarily marry Korean-Chinese or ethnic Chinese men. Others are trafficked to Chinese husbands, as China's one-child policy has caused a surplus of men over women, and many men therefore resort to purchasing wives. If these women are pregnant when they are returned to North Korea, they are forcibly aborted. If they are in the late stages of pregnancy, delivery is induced and the infants are then murdered or tossed alive into garbage cans before their mothers' eyes (Hawk 2003, 61-62) (Haggard and Noland 2011, 97).

The regime's racist ideology stresses the perfection, as well as the purity, of the Korean people. It appears that until the late 1980s individuals with disabilities were banned from major urban areas, special concentration camps were set up for them, and they were routinely sterilized. Kim Jong-Il had a particular aversion to "dwarfs", who did not fit his vision of a perfect North Korean race. After the 1980s, the regime apparently became more lenient toward the disabled, and in 2003 passed a law for their protection, although discrimination against the disabled was still very common (Park Young-ho et al. 2010, 249-260). Thus it may be safe to assume that there are now fewer disabled individuals among the prison population.

Finally, minority groups suspected of disloyalty are imprisoned. One such group is North Korean Christians, some of whom are executed while others are sent to the gulag (Goedde 2010, 554) (Hawk 2003, 67). Another group at risk is returnees from Japan. During the period of Japanese colonialism many ethnic Koreans lived in Japan, where they were badly treated, and some returned to North Korea during the early post-war period. It is estimated that 93,000 Koreans, some with Japanese wives, who emigrated to North Korea in the 1950s and 60s were imprisoned (Hassig and Oh 2009, 208).

Thus the gulag population consists of many different social categories. In effect, there is exactly one individual in North Korea who does not fear imprisonment and enslavement; namely, Kim Jong-il himself. In that sense, it is perhaps correct to think of the entire country as a prison. In the more restricted sense, though, at any given time it appears that 200-300,000 slave laborers are in the gulag.

## Slavery or Forced Labor?

Slavery is prohibited under international law. The 1926 Slavery Convention defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” and further defines the slave trade *inter alia* as “all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery” and “all acts involved in the acquisition of a slave with a view to selling or exchanging him” (League of Nations 1926 September 25, Article 1, (1) and (2)). North Korea is not guilty of engaging in the slave trade: it does not sell its prisoners, who are nominally its citizens. As noted above, however, some have been “rented” in the past—and a few apparently still are—to work in Russia and other countries in return for payment to the North Korean government. Moreover, other aspects of how prisoners are treated fit the definitions of both forced labor and slavery.

The 1956 Supplementary Convention on Slavery refers in its Preamble to the Forced Labor Convention of 1930 (Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956, Preamble, Par. 5). This Convention, in its turn, defines forced labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” But the Convention then lists among several exceptions “any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations” (International Labour Organization 1930, Article 2, 1).

The 1930 Forced Labor Convention appears to apply to North Korea, although that country is not a party to it. Many prisoners enter North Korea's gulag without conviction in a court of law, merely being arbitrarily apprehended by the authorities. Some, however, do appear in court, though hardly in a manner that would conform to international norms of due process, as elaborated *inter alia* in the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1976). North Korea did institute constitutional reforms in 2004 that regularized sentence for economic crimes, but in 2007 it lengthened its list of crimes and the sentences for them (Haggard and Noland 2011, 82). Even if conviction of those North Korean prisoners who went through the court system were considered legitimate, however, incarceration of family members not tried for or convicted of any crime yet obliged to accompany their convicted family members to the gulag would be illegal. These imprisoned elderly people and children are also obliged to labor as slaves. Moreover, although forced labor in North Korea is indeed carried out "under the supervision and control of a public authority," as the 1930 Convention requires, some North Koreans appear to be hired out to private companies either inside or outside their own country, as in the Keogang industrial zone and the work camps in Russia. Although they appear to originally volunteer as free labor, their conditions of work resemble servitude, especially as their wages are often paid, in whole or in part, to the state.

A later 1957 Convention Concerning the Abolition of Forced Labor directly addresses the type of forced labor found in North Korea. Its Article 1 is worth quoting in full.

Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour--

(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

- (b) as a method of mobilising and using labour for purposes of economic development;
- (c) as a means of labour discipline;
- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national or religious discrimination (International Labour Organization 1957)

Aside from the question of strikes, which may never have occurred in North Korea (although prison rebellions have occurred (Becker 2005, 91) ) there is plenty of evidence that the state uses forced labor as punishment for political views, as a means of economic development, as a means of labor discipline, and as a means of discrimination, as the section above on who is likely to be imprisoned showed. However, North Korea is not party to this Convention, which is binding only upon its members (International Labour Organization 1957, Article 4).

Yet generally speaking, in the literature on North Korea prison laborers are not considered to be slaves, although there are some exceptions, such as Becker, who includes an entire chapter on North Korea as a “slave state” (Becker 2005, 85-100). Reports by HRW, AI, and the USDS refer to forced or compulsory labor, not slavery. Human rights reports by the USDS from 1996 on usually refer to “reform through labor” and “reeducation through labor,” in the prison camps. In its annual reports on North Korea from 2005 to 2011, HRW makes no mention of slavery, confining itself to sections on the treatment of workers, except in its 2011 report, which contains a separate section on forced labor camps. In this section HRW mentions collective punishment and generally abysmal living conditions, but does not mention slavery or slave-like conditions (Human Rights Watch 2011, 345). Following suit, AI reports on child labor and forced labor, but does not refer to slavery (Amnesty International 2011).

The question remains, therefore, whether under international law it is advisable to redefine as slavery what seems undoubtedly to be forced labor in North Korea. Quirk notes the tendency to inflate the definition of slavery, especially by the United Nations Working Group on Contemporary Forms of Slavery, even including such practices as *apartheid* as a form of slavery. This gradual redefinition of slavery, according to Quirk, includes “forced labor for the state”, including in North Korea (Quirk 2009, 29, 98). Nevertheless, recent attempts by scholars, including Quirk himself as well as several others who are included in this volume, to define what exactly constitutes slavery, suggests that the case can be made for state slavery in North Korea.

The 2011 Draft Bellagio-Harvard Guidelines on the Legal Parameters of Slavery suggest that several aspects of the treatment of those imprisoned in North Korea’s gulag constitute slavery (Research Network on the Legal Parameters of Slavery 2011). These guidelines are based in the first instance on the 1926 definition of slavery, cited above. Guideline 2 refers to the exercise of the powers attached to the right of ownership, usually through force or coercion, and including “control over a person in such a way as to significantly deprive that person of his or her individual liberty, with the intent of exploitation through the use, management, profit, transfer, or disposal of that person.” North Korea prisoners are forcefully and often violently deprived of their liberty, and then exploited as prison labor for the profit of the North Korean elite and the “development” of the devastated economy. Those people, such as students, who are rounded up for forced labor are similarly exploited for “development” purposes or to gratify the elite, as in the case of the construction projects meant to help commemorate Kim Il-Sung’s 100<sup>th</sup> anniversary. Most prisoners and forced laborers are not transferred, although the situation of North Koreans “voluntarily” working abroad or in the Keosang industrial park is problematic, as

they appear to be lent for profit to their employers, an aspect of possession described in Guideline 4, d.

The Bellagio-Harvard Draft Guideline 3 states that “possession is foundational to an understanding of the legal definition of slavery,” and characterizes possession as “control over a person by another such as a person might control a thing.” North Korean prisoners, worked to the bone without any pay and deprived of even a minimal diet are certainly treated like things by their guards. Guideline 4, f refers to the “disposal, mistreatment, or neglect of a person,” in such a way as to result in “the physical or psychological exhaustion of a person, and ultimately to his or her destruction.” This certainly occurs in North Korea’s gulag. Overwork in particular constitutes the “imposition of physical demands that severely curtail the capacity of the human body to sustain itself,” noted as a characteristic of slavery in Guideline 4, f. All these prisoners are also disposed of, in the sense that their deaths from starvation, disease, violence and cruelty are foreseeable and preventable, yet encouraged by the state. Aborted or murdered half-Chinese infants, and imprisoned Christians, returnees from Japan, disabled people, and others are similarly disposed of.

Importantly, these draft Guidelines do not mandate that all aspects of enslavement be present for a system to be considered slavery: Guideline 5 states that “the exercise of *any* or all of the powers attaching to the right of ownership...shall provide evidence of slavery” (italics mine). Thus, the evolving opinion of scholars and jurists is that prison and forced labor of the kind exercised in North Korea does constitute slavery. The Guidelines are not law: they are the effort of a group of scholars and jurists to refine and clarify the legal definition of slavery. However, such guidelines are often incorporated into judicial opinions and later into international law itself.

Whether or not what I call state slavery is indeed currently slavery under international law, the question remains what can be done to stop it in North Korea. The answer, sadly, is very little. State slavers operate with an impunity not granted to private slavers.

### **Possible Interventions to Punish and Prevent Slavery in North Korea**

One would think that the conditions in North Korea, including state slavery, would make it a country of immediate human rights concern to the international community; however, the human rights of its population take second place to various geo-strategic concerns. Both humanitarian intervention and indictment of Kim Jong-il and other state slavers before the International Criminal Court (ICC) are extremely unlikely.

#### *Humanitarian Intervention*

The principal concern of the international community with regard to North Korea is not the way it treats its citizens, but the threat it poses to the world because it appears to be manufacturing nuclear weapons. It is also thought to possess illegal chemical and biological weapons. A further international concern is North Korean participation in international drug trafficking, one of the key ways it earns foreign currencies (Bernstein 2007). Slave laborers in the gulag have cultivated opium poppies to supply this drug trade (Hawk 2003, 99).

Several key state actors also focus on North Korea's threats to international security, rather than on the right of its citizens not to be enslaved. The US fears both North Korea's nuclear and its conventional weapons; indeed, it appears that North Korea has already developed ballistic missiles that could hit the US West Coast (Bernstein 2007, 38) The North Korean regime also counterfeits US currency (Bernstein 2007, 39). Despite this, many Americans are concerned about North Korea's human rights record. In 2004, the US Congress passed a North

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Korea Human Rights Act (Goedde 2010, 560), and the US has had sanctions on North Korea for some years. One purpose of these sanctions is to choke off the flow of luxury goods to North Korea, which allows the elite to live in luxury—and especially to eat very well—at the same time as the population starves.

China, on the other hand, protects North Korea, which in the past it has viewed as a buffer state between itself and South Korea, Japan, and Taiwan (Economist 2010, 4 December). It appears, however, that China has had less need of such a buffer since it renounced communist-style production and became a major capitalist power. But China also fears the development of nuclear weapons, especially since North Korea tested nuclear weapons in 2006 and 2009 (Economist 2010, 29 May, 23-25). China's other concern is fear of a refugee overflow from North Korea into its northern region, should the regime fall. China has been investing in North Korean mines and is also interested in building a dock in the city of Rajin-Sonbong that would give it access to the Sea of Japan, off North Korea's east coast (Economist 2010, 29 May, 25).

South Korea is interested in North Korean political stability. According to South Korea's Constitution, all North Koreans are its citizens, yet South Korea, like China, fears a refugee overflow (Bernstein 2007, 39), although only about 20,000 North Koreans had actually managed to reach South Korea by the early 21<sup>st</sup> century. South Korea also is interested in the return of an estimated 500 of its citizens whom North Korea appears to have abducted, along with some elderly South Korean prisoners of war still held in North Korea (Human Rights Watch 2010, 329), and it has a short-term interest in the reunification of families that were split after the 1953 truce that ended the Korean War. Finally, South Korea has a very real fear of attack by North Korea, which already possesses conventional weapons that could wipe out its capital, Seoul, even if nuclear weapons were not used (Bernstein 2007, 38).

Thus, despite their diverse interests, it appears that the international community, the US, China and South Korea all agree that their first strategic priority is a stable North Korea that does not develop or use its nuclear capacity. This interest overshadows concern for victims of state slavery. Yet we must be careful not to confer impunity on states that are so closed and so dangerous that it is easy to neglect their citizens' suffering. One means that has been used elsewhere to undermine impunity is referral of state criminals to the ICC.

### *The International Criminal Court*

Grace Kang, a legal scholar, has suggested that Kim Jong-il should be referred to the ICC on suspicion of crimes against humanity, including slavery. The ICC defines enslavement as “the exercise of any or all of the powers attaching to the right of ownership over a person ...” (International Criminal Court 1998, Article 7(2)(c)). According to Kang, in the case of *Prosecutor vs. Kunarac* at the International Criminal Tribunal for Yugoslavia, factors further clarifying the meaning of the crime of enslavement were elucidated, and included “the control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labor” (Kang 2006, 86). These criteria of enslavement are reflected in the Draft Bellagio-Harvard Guidelines, shown above to apply to North Korea.

Kang argues that forced labor in North Korean prison camps meets all of these conditions. She also notes that as of 2006 North Korea owned factories in several countries, including the Czech Republic, Russia, Libya, Bulgaria, Saudi Arabia and Angola, where North Korean workers were exploited. For example, in the Czech Republic, North Korean women workers

worked under “extremely harsh conditions” and their wages were deposited to a North Korean government account. Kang argues that the treatment of these workers could be considered enslavement, even though it appeared that they were working voluntarily (Kang 2006, 87).

Against Kang’s claims, the North Korean government could argue that it does not engage in enslavement, as it exercises no rights of ownership over prison laborers, who are merely convicts engaged in labor as part of their sentence; but as Kang suggests, this so-called prison labor meets many of the conditions now defined legally as enslavement. The North Korean government could also argue that it does not sell these laborers or traffic in them. Indeed, those who traffic in North Koreans are those who enslave women refugees in China and sell them to brothels or prospective husbands; since North Korea prohibits migration to China, the government could argue that it is not implicated in such enslavement. Kang, however, is skeptical about this claim and argues that there should be an investigation to ascertain whether, in fact, the North Korean government and Kim Jong-Il himself are connected to such trafficking (Kang 2006, 88). Such a connection is not inconceivable, given the number of other international crimes in which the regime engages, such as illegal arms exports and sale of illegal narcotics. In any case, engagement in the slave trade or human trafficking is not a necessary aspect of enslavement itself.

Kim Jong-Il could also be indicted for crimes against humanity. A strong case can be made that he is guilty of all crimes against humanity except *apartheid*, including murder, extermination, torture, rape, deportations, enslavement, forced disappearances and persecution (Goedde 2010, 554). Kim Jong-Il is personally responsible for the gulag prisons; they are run by the National Security Service which reports directly to him (Hawk 2003, 26). Since North Korea is not party to the ICC, however, any indictment of Kim Jong-il would have to be referred by the

UNSC: furthermore, any such indictments could refer only to crimes committed since the ICC came into existence on July 1, 2002. In December 2010, after UNSC referral, the ICC opened a preliminary investigation into possible war crimes by North Korea with regard to the sinking of the South Korean ship, the *Cheosan* in March 2010 with the loss of 46 lives; an international commission determined that a North Korean torpedo had struck the *Cheosan* (International Justice Tribune 2010 December). But no one from North Korea has been referred to the ICC by the UNSC for crimes against humanity, nor is such referral likely, as long as the geo-strategic concern to contain North Korea's nuclear ambitions tops the international community's agenda.

### **Conclusion**

The case of North Korea exemplifies both the “old” Communist use of forced labor/enslavement, and the “new” use of forced labor for a country's “development” or the personal profit of a country's rulers. The draft Bellagio-Harvard Guideline 6 incorrectly maintains that “as the State generally does not support a property right in persons, a negative obligation against the state [to desist from enslavement] no longer exists” (Research Network on the Legal Parameters of Slavery 2011). Yet several states are known to enslave laborers in the early 21<sup>st</sup> century. In the absence of a term for this type of slavery in the Bellagio Guidelines, I coined the term state slavery to describe North Korea and analogous cases, referring to Kim-Jong-il and other such dictatorial leaders as state slavers. Scholars and others concerned with human rights and with countering slavery need to pay more attention to the role of the state in instigating and perpetuating it.

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