

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

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Secretary of State John F. Kerry
US Department of State
Washington, DC

Re: Resettlement of North Korean Refugees

Dear Secretary Kerry:

I write on behalf of the Association of the Bar of the City of New York to urge you to do everything reasonably possible to enable more refugees from the Democratic People's Republic of Korea to resettle in the United States. In the interest of protecting these especially vulnerable refugees from persecution and the horrors of repatriation, the U.S. Government should implement pertinent provisions of the North Korean Human Rights Act and actively promote the resettlement of North Korean refugees in the United States.

The Association of the Bar of the City of New York is a 145-year-old organization of more than 24,000 members from New York City, throughout the United States, and around the world. It has a long history of engaging in a wide spectrum of legal issues to promote the rule of law and ensure better governance. The Association is comprised of over 160 committees that focus on various issues, including immigration, international law and human rights. In recent years, this focus has extended to the human rights crisis in North Korea.

As you know, since the Great Famine of the 1990s, hundreds of thousands of North Koreans have fled their country in search of food, jobs, and a better way of life.¹ These refugees have primarily settled in the Republic of Korea² and the People's

¹ Mikyoung Kim, "Securitization of Human Rights: North Korean Refugees in East Asia", ABC-CLIO, 2012, at 45.

² Ministry of Unification, "Overview", available at <http://eng.unikorea.go.kr/content.do?cmsid=3026> (last accessed 9 May 2015) (As of 2013, the Ministry of Unification estimated that 26,717 North Korean refugees were living in South Korea).i. As of March of 2014, this number had decreased just slightly to 26,483. See Sung Jiyong and Go Myong-Hyun, *Resettling in South Korea: Challenges for Young North Korean Refugees*, The Asian Institute for Policy Studies, 8 August 2014, available at <http://en.asaninst.org/contents/resettling-in-south-korea-challenges-for-young-north-korean-refugees/> (last

Republic of China. South Korea had accepted over 26,000 refugees by 2013, and China has as many as 300,000 residing within its borders.³ Refugees have also settled in a host of other countries.⁴

While the Great Famine and the convergence of other factors may have initially led to these massive migrations, North Koreans heroically continue to escape the grip of their country's despotic regime. Their immeasurable bravery is all the more impressive when one considers that, if caught and repatriated, they face imprisonment, torture and even execution.⁵ Repatriating them clearly violates the Convention Relating to the Status of Refugees (1951)⁶, its 1967 Optional Protocol⁷, the Convention Against Torture⁸, and customary international law.⁹

Given the severe persecution these refugees face if they are repatriated back to North Korea, the United States Government should take the lead in resettling them. The U.S. must make every effort to afford these refugees the opportunities that they need and deserve. Perhaps because of our egalitarian reputation, North Korean refugees themselves have expressed an interest in resettling in the United States,¹⁰ despite the aggressive anti-American propaganda campaign that the DPRK has waged over the past 65 years.

accessed 9 May 2015); cf. Andrei Lankov, "The real reason North Korea refugees – not defectors – struggle". NKnews.org, 17 February 2015, available at <http://www.nknews.org/2015/02/the-real-reason-north-korea-refugees-not-defectors-struggle/> (last accessed 7 June 2015).

³ Kim, Mikyoung, *Securitization of Human Rights: North Korean Refugees in East Asia* 13, PSI Reports, Praeger, Santa Barbara, California, 2012 ("China, on the receiving end of a massive influx of famine refugees, with estimates ranging from 30,000 to 300,000, has to tread cautiously between North Korea and the world's concerns").

⁴ Mikyoung Kim, "Securitization of Human Rights: North Korean Refugees in East Asia", ABC-CLIO, 2012, at 45.

⁵ Report of the Commission of Inquiry on human rights in the Democratic People's Republic of Korea, United Nations General Assembly, A/HRC/25/63, 7 February 2014, available at <http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx> (last accessed 2 May 2015) (¶66 – "Where appropriate, the Commission has also considered relevant obligations of other states, including the prohibition of *refoulement* under international refugee law and international human rights law as well as the rights and duties of states in extending diplomatic protection to their nationals and permanent residents.").

⁶ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at <http://www.refworld.org/docid/3be01b964.html> (accessed 23 May 2015)

⁷ United Nations, *Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality*, 19 March 1967, available at <http://www.refworld.org/docid/3ae6b3860.html> (accessed 23 May 2015).

⁸ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at <http://www.refworld.org/docid/3ae6b3a94.html> (last accessed 23 May 2015).

⁹ UN High Commissioner for Refugees (UNHCR), *The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994, available at <http://www.refworld.org/docid/437b6db64.html> (last accessed 23 May 2015).

¹⁰ "N.Korean Refugees Want Wider Doorway to America", The Chosun Ilbo (English Edition), 4 August 2009, available at http://english.chosun.com/site/data/html_dir/2009/08/04/2009080400338.html (last accessed 15 February 2015).

Congress has already laid the legal groundwork for action, through the passage of the North Korean Human Rights Act (“NKHRA”). Signed into law on October 18, 2004,¹¹ and in 2012 reauthorized until 2017¹², the NKHRA was enacted at a time of changing attitudes towards a country whose unspeakable tyranny was slowly becoming exposed.¹³ The NKHRA is not merely an aspirational document symbolizing one country’s concern for the people of another. Rather, it provides concrete steps for action. Title III, titled “Protecting North Korean Refugees,” provides, under section 302 (“Eligibility for refugee or asylum consideration”), that “North Koreans are not barred from eligibility for refugee status or asylum in the United States on account of any legal right to citizenship they may enjoy under the Constitution of the Republic of Korea.”¹⁴ The Act further provides, under section 303 titled “Facilitating submission of applications for admission as a refugee,” that “[t]he Secretary of State shall undertake to facilitate the submission of applications under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157)¹⁵ by citizens of North Korea seeking protection as refugees,” as defined in the Immigration and Nationality Act.¹⁶ Additionally, in its reauthorized form in 2012, a section titled “Sense of Congress” was added calling on the U.S. to cooperate with foreign governments in allowing the U.S. to process North Korean refugees.¹⁷

While the NKHRA clearly intends to promote the resettlement of North Korean refugees in the United States, the reality is quite different. For although the U.S. does resettle North Korean refugees into the country, the numbers are small, especially when compared to the number accepted by smaller Western countries. From 2004 to 2011, the U.S. resettled just one hundred and twenty North Korean refugees¹⁸ and between 2009 and 2013, just ninety-five.¹⁹ By contrast, by 2010 some 581 North Korean refugees were

¹¹ H.R. 4011 (108th): North Korean Human Rights Act of 2004, Pub.L. 108-333, *available at* <https://www.govtrack.us/congress/bills/108/hr4011> (last accessed 10 May 2015).

¹² “North Korean Human Rights Act – 2012 Reauthorization. The National Committee on North Korea. The Act may be cited as the ‘Ambassador James R. Lilley and Congressman Stephen J. Solarz North Korea Human Rights Reauthorization Act of 2012’.

¹³ Prepared Statement by Rep. Jim Leach, sponsor of the NKHRA, *available at* http://commdocs.house.gov/committees/intlrel/hfa93390.000/hfa93390_of.htm (last accessed 6 June 2015)

¹⁴ H.R. 4011 (108th): North Korean Human Rights Act of 2004, Pub.L. 108-333, *available at* <https://www.govtrack.us/congress/bills/108/hr4011> (last accessed 10 May 2015).

¹⁵ Under the Immigration and Nationality Act, a refugee is defined as “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

¹⁶ *Id.*

¹⁷ “North Korean Human Rights Act – 2012 Reauthorization. The National Committee on North Korea.

¹⁸ U.S. Department of State, testimony by Robert R. King, Special Envoy for North Korean Human Rights Issues, “Implementation of the North Korean Human Rights Act,” Statement Before the House Committee on Foreign Affairs, Washington, DC, June 2, 2011, *available at* <http://iipdigital.usembassy.gov/iipdigital-en/index.html> (last accessed 23 May 2015).

¹⁹ Fiscal Year 2009 Refugee Admission Statistics, Department of State, Bureau of Population, Refugees and Migration: Summary of Refugee Admissions for the 2010 Fiscal Year, *available at* <http://www.state.gov/documents/organization/181373.pdf> (last accessed 9 May 2015); “FY10 Refugee Admissions Statistics”, Department of State, Bureau of Population, Refugees and Migration: Summary of Refugee Admissions for the 2010 Fiscal Year, *available at*

living in the United Kingdom²⁰ and in 2009 alone Germany accepted 156.²¹ Other countries have been denying North Korean refugees access, and have sent them to South Korea or even back to North Korea. These include Laos,²² Russia,²³ Canada,²⁴ and China.²⁵ If the U.S. wishes to maintain its leading role in opposing the North Korean government's violation of international and human rights law, it is clearly imperative that it lead the way in resettling North Korean refugees.

Numerous obstacles – some substantial, others based on misconceptions – have hindered the resettlement of North Koreans in the United States. For instance, there is the widely held misconception that North Koreans are better suited for resettlement in South

<http://www.state.gov/j/prm/releases/statistics/181160.htm> (last accessed 9 May 2015) (8 North Koreans admitted in U.S.); “FY11 Refugee Admissions Statistics”, Department of State, Bureau of Population, Refugees and Migration: Summary of Refugee Admissions for the 2011 Fiscal Year, *available at* <http://www.state.gov/j/prm/releases/statistics/184843.htm> (last accessed 9 May 2015) (23 North Koreans admitted in U.S.); “FY12 Refugee Admissions Statistics”, Department of State, Bureau of Population, Refugees and Migration: Summary of Refugee Admissions for the 2012 Fiscal Year, *available at* <http://www.state.gov/j/prm/releases/statistics/206319.htm> (last accessed 9 May 2015) (22 North Koreans admitted in U.S.); “FY13 Refugee Admissions Statistics”, Department of State, Bureau of Population, Refugees and Migration: Summary of Refugee Admissions for the 2013 Fiscal Year, *available at* <http://www.state.gov/j/prm/releases/statistics/228666.htm> (last accessed 9 May 2015) (17 North Koreans admitted in U.S. from October 2012 to September 2013).

²⁰ Mark Leftly, “UK may ship all North Korean asylum-seekers to South Korea”, *The Independent*, 28 November 2014, *available at* <http://www.independent.co.uk/news/uk/politics/uk-may-ship-all-north-korean-asylumseekers-to-south-korea-9891612.html> (last accessed 6 June 2015).

²¹ Choi Lyong, “The British dilemma of North Korean refugees”, *The London School of Economics and Political Science*, 26 October 2011, *available at* <http://blogs.lse.ac.uk/ideas/2011/10/the-british-dilemma-of-north-korean-refugees/> (last accessed 9 May 2015).

²² Paula Hancocks and KJ Kwon, “Defectors agonizingly close to freedom sent back to North Korean nightmare”, *CNN*, 3 October 2013, *available at* <http://www.cnn.com/2013/09/30/world/asia/north-korea-laos-defectors-hancocks/> (last accessed 2 May 2015).

²³ Hamish Macdonald, “Russia and North Korea draft agreement to deport illegal immigrants”, *The Guardian*, 11 November 2014, *available at* <http://www.theguardian.com/world/2014/nov/11/north-korea-russia-extradition-agreement-defectors> (last accessed 2 May 2015); Alexander Podrabinek, “Russia Will Deport Refugees Back to North Korea”, *Institute of Modern Russia*, 5 November 2014, *available at* <http://imrussia.org/en/opinions/2077-russia-will-deport-refugees-back-to-north-korea> (last accessed 2 May 2015) (“According to writer Alexander Podrabinek, the document does not mention either human rights or judicial protection for refugees. Refugees forced to return to North Korea will face execution”).

²⁴ Nicholas Keung, “Canada closing door on North Korean refugees”, *Toronto Star*, 15 December 2013, *available at* http://www.thestar.com/news/immigration/2013/12/15/canada_closing_door_on_north_korean_refugees.html (last accessed 2 May 2015) (“In cases where North Korean asylum claimants in Canada hold South Korean citizenship, the onus is on the claimant to demonstrate that he/she is facing persecution or harm in both North Korea and South Korea. Otherwise they would be expected to return to South Korea.”); Jeremy J. Nuttall, “Canada Slammed Door Shut to North Korean Escapees”, *The Tyee*, 11 September 2014, *available at* <http://thetyee.ca/News/2014/09/11/North-Korean-Refugees/> (last accessed 2 May 2015) (“Not having granted any North Korean refugee protection is in stark contrast to 2012, when Canada allowed 230 of 708 claimants remain in the country.”).

²⁵ Unknown, “North Korean refugees and UNHCR's role” chlee365, 19 November 2013, *available at* <http://sites.duke.edu/chlee365/2013/11/19/north-korean-refugees-and-unhcrs-role/> (last accessed 2 May 2015); Unknown, *The Issue: North Korea's Refugee Crisis*, *available at* <http://hanvoice.ca/theissue/northkoreasrefugeecrisis/> (last accessed 2 May 2015).

Korea.²⁶ In reality they face discrimination and often homelessness in South Korea. At the same time, onerous application procedures for refugees and technical disqualifications have dissuaded at least some North Korean refugees from resettling in the United States.²⁷ Nonetheless, the proper mechanisms and means are available under the NKHRA to resettle more North Korean refugees. Therefore, we urge that the U.S. Government do the following:

- (i) Allocate adequate funding for the NKHRA in the 2017 fiscal budget;
- (ii) Ensure sufficient funding from Migration and Refugee Assistance to enforce the NKHRA's provisions;
- (iii) Employ the powers granted under section 303 of the NKHRA of 2004 and section 3 of the Reauthorization of 2012 by facilitating the submission of North Korean refugee applications;
- (iv) Work with countries in which North Koreans reside to establish a "first asylum" fast track that prioritizes North Korean refugees and streamlines the resettlement process for them;
- (v) Accept North Korean refugees who once resided in China for economic purposes. Although many of these refugees are considered "economic migrants," these refugees were forced to search for work and food in China because they were persecuted and/or placed in a lower caste in North Korea.²⁸ Therefore, they should still be considered refugees under U.S. and international law;
- (vi) Institute a special transition program to help North Korean refugees acclimate to the U.S.;²⁹ and
- (vii) Promote the United States as a viable place of resettlement for North Koreans.

Recently we have seen an unprecedented interest in righting the wrongs that the North Korean people have suffered since the country's founding in 1948.³⁰ On February 17, 2014, the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea issued a landmark report detailing the systematic human rights abuses perpetrated by the North Korean dictatorship on its people.³¹ This exhaustive report has

²⁶ Although South Korea may in many respects be a logical fit for North Korean refugees, given their shared cultural history, familial ties, and South Korea's support system, many North Koreans face discrimination in South Korea, as well as myriad of obstacles in their efforts to assimilate.

²⁷ Roberta Cohen, "Admitting North Korean Refugees to the United States: Obstacles and Opportunities", Brookings Institute, 20 September 2011, *available at* <http://www.brookings.edu/research/opinions/2011/09/20-north-korea-cohen> (last accessed 8 June 2015).

²⁸ Roberta Cohen, "Admitting North Korean Refugees to the United States: Obstacles and Opportunities", Brookings Institute, 20 September 2011, *available at* <http://www.brookings.edu/research/opinions/2011/09/20-north-korea-cohen> (last accessed 8 June 2015).

²⁹ "Support System: North Korean Refugees & Resettlement", Ministry of Unification, available at <http://eng.unikorea.go.kr/content.do?cmsid=3027> (last accessed 8 June 2015).

³⁰ North Korea profile – Timeline, BBC news, 30 April 2015, *available at* <http://www.bbc.com/news/world-asia-pacific-15278612> [last accessed 23 May 2015] 1948 Joseon Minjujuui Inmin Gonghwaguk Sahoejuui Heonbep [Constitution] (1948) (N. Kor.); Hawk, David. "After the COI: Four Next Steps", 38north.org, 11 April 2014, *available at* <http://38north.org/2014/04/dhawk041114/> [last accessed 23 May 2015].

³¹ Report of the Commission of Inquiry on human rights in the Democratic People's Republic of Korea, United Nations General Assembly, A/HRC/25/63, 7 February 2014, *available at*

since sparked a much-needed dialogue – much of it led by you or Ambassador Samantha Power personally – on the egregious human rights violations in North Korea, violations that are among the worst seen in the post World War II world. It has also compelled the international community to take action where it once sought conciliation and compromise, as the referral of Kim Jong-Un to the International Criminal Court has become a more realistic possibility.

In view of the spirit and provisions of the NKHRA as well as the widespread discrimination and fear of repatriation which North Korean refugees face in other countries, we respectfully request that the United States Government take the necessary steps to resettle more North Korean refugees in the United States. The government should consider paramount the desire of North Korean refugees who wish to resettle here in the United States, and must endeavor to remove the technical barriers that have hindered their ability to do so. Thank you for your consideration of this issue.

Respectfully,



Debra L. Raskin

- cc. Secretary Jeh Johnson, U.S. Department of Homeland Security
Ambassador Samantha Powers, U.S. Mission to the United Nations
Director of Refugee Affairs for Department of Homeland Security
Joseph E. Langlois, Associate Director of Refugee, Asylum, and International Operations, United States Department of Homeland Security
The Bush Center
Former U.S. Representative James Leach
The National Committee on North Korea
The Committee for Human Rights in North Korea