

NORTH KOREAN REFUGEES IN CHINA

Introduction

Throughout the Commission's 2015 reporting year, the Chinese government continued to detain and repatriate North Korean refugees to the Democratic People's Republic of Korea (DPRK), despite substantial evidence that repatriated persons face torture, imprisonment, and other inhuman treatment.¹ The Chinese government maintains that North Koreans who enter China without proper documentation are illegal economic migrants and continues to forcibly repatriate them based on a 1961 treaty and 1986 border protocol with the DPRK.² China's repatriation of North Korean refugees contravenes its international obligations under the 1951 UN Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol.³ China is also obligated under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to refrain from repatriating persons if there are "grounds for believing that [they] would be in danger of being subject to torture."⁴

The UN Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea has called "the current handling of the movement of people across [the China-North Korea border] far from ideal," stating that the present situation "can easily lead to abuses."⁵ Despite being a State Party to both the 1951 Convention and 1967 Protocol, China has not enacted formal legislation or administrative provisions for determining the status of refugees and granting asylum.⁶

China continues to be a main transit point for North Korean refugees.⁷ Information on the number of North Korean refugees residing in China remains difficult to ascertain due in part to the Chinese government's refusal to allow the UN High Commissioner for Refugees access to these North Korean refugees.⁸ A resolution adopted by the UN General Assembly in December 2014 called on all States "to ensure unhindered access to the UN High Commissioner for Refugees and his Office [to North Korean refugees]."⁹

Increased Border Security

Throughout the reporting year, heightened security and instability along the China-North Korea and China-Southeast Asia borders increased the dangers North Korean refugees face. Chinese authorities reportedly strengthened security along the China-North Korea border following three incidents between September 2014 and April 2015 in which rogue North Korean soldiers killed at least 10 Chinese citizens.¹⁰ In June 2015, Chinese border guards shot and killed an unidentified North Korean border crosser.¹¹ A South Korean media outlet identified the border crosser as a North Korean civilian and indicated Chinese border security was operating under new orders to shoot all illegal border crossers refusing arrest.¹² Concerns over cross-border drug smuggling and human trafficking have also reportedly led Chinese authorities to install new barbed-wire fencing.¹³

Along the border with Southeast Asia, Chinese authorities reportedly stepped up efforts to combat illegal border crossings. In a

case reported by South Korean media in October 2014, Chinese authorities detained 11 North Koreans as they attempted to cross into Burma from Yunnan province.¹⁴ International experts indicate that Southeast Asia remains a main transit point for North Korean refugees, with a large number of refugees reportedly passing through the region en route to South Korea.¹⁵ In January 2015, Chinese authorities reported that a campaign initiated in May 2014 had uncovered several hundred human trafficking cases along the border with Southeast Asia and resulted in the detention of over a thousand unidentified persons.¹⁶

Heightened border security could be limiting the outflow of refugees from the DPRK, as demonstrated by the smaller number of refugees reaching South Korea. According to the South Korean Ministry of Unification, the number of refugees who reached South Korea decreased from 1,514 in 2013 to 1,397 in 2014,¹⁷ continuing the trend of a significant decline in the number of refugees entering South Korea since 2011.¹⁸

Crackdown on Foreign Aid Workers

A reported crackdown by Chinese and North Korean authorities this past year on organizations and individuals assisting North Korean refugees has made it increasingly difficult for refugees to flee the DPRK. Individuals and groups including foreign aid workers, Christian missionaries, South Korean churches, and non-governmental organizations have had a crucial role in assisting and facilitating the movement of North Korean refugees outside the DPRK.¹⁹ Greater scrutiny and monitoring by Chinese authorities has reportedly led to the closure of many aid groups operating within China²⁰ and resulted in the detention of several foreign nationals, highlighted below.

- **Peter Hahn.** Chinese authorities formally arrested Peter Hahn, a U.S. citizen, in December 2014 reportedly on charges of “embezzlement and counterfeiting receipts.”²¹ Hahn reportedly ran a Christian aid agency in Tumen city, Yanbian Korean Autonomous Prefecture, Jilin province, and had previously managed several projects that provided assistance to North Koreans, including refugees.²² Authorities released Hahn on August 17, 2015, on the basis of time served, after he received a nine-month sentence for “counterfeiting receipts.”²³

- **Kevin and Julia Garratt.** Chinese authorities placed Kevin and Julia Garratt, Canadian citizens, under “residential surveillance” beginning in August 2014 on “suspicion of engaging in activities endangering national security.”²⁴ In February 2015, authorities criminally detained Kevin on “suspicion of stealing national secrets,” while Julia was released on bail.²⁵ They operated a coffee shop near the North Korean border in Liaoning province, and were reportedly involved with organizations assisting North Koreans and sheltering refugees from the DPRK.²⁶

Trafficking of North Korean Women

North Korean women who enter China illegally remain particularly vulnerable to human trafficking. Experts indicate that the

majority of North Korean refugees entering China are women,²⁷ with some estimates suggesting that between 70 and 90 percent become victims of human trafficking.²⁸ The Chinese government's refusal to recognize these women as refugees denies them legal protections and encourages the trafficking of North Korean women and girls within China.²⁹ The demand for trafficked women has been linked to a sex ratio imbalance in China driven by the Chinese government's population planning policies.³⁰ Many women are trafficked by force or deception from the DPRK into or within China for the purposes of forced marriage.³¹ In other cases, women become victims of sex trafficking and are forced into commercial sexual exploitation.³² China is obligated under the Convention on the Elimination of All Forms of Discrimination against Women and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to take measures to safeguard trafficking victims and suppress all forms of trafficking in women.³³

Children

Many children born to Chinese fathers and North Korean mothers remain deprived of basic rights to education and other public services, owing to a lack of legal resident status in China. The PRC Nationality Law provides that all children born in China are entitled to Chinese nationality if either parent is a Chinese citizen.³⁴ Despite this stipulation, Chinese authorities in practice continue to largely deprive these children of their rights to birth registration and nationality.³⁵ Without proof of resident status, these children are unable to access education and other public services.³⁶ In some cases, bribery of local officials has allowed some children to obtain identification documents, but the bribes are reportedly high and attempting to negotiate with local officials risks exposing the North Korean mother to arrest and repatriation.³⁷ The denial of nationality rights and access to education for these children contravenes China's obligations under international law, including the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.³⁸

Notes to Section II—North Korean Refugees in China

¹UN Human Rights Council, Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, A/HRC/25/CRP.1, 7 February 14, paras. 116–122, 405–442; Lu Shan et al., “North Korean Woman Illegally Enters Country, Luannan Police Deport Her” [Chaoxian nuzi feifa rujing luannan minjing qiansong chujing], Tangshan Labor Daily, reprinted in Huan Bohai News, 28 May 15.

²Democratic People's Republic of Korea Ministry of State Security, People's Republic of China Ministry of Public Security, Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas, signed 12 August 86, art. 4, reprinted in North Korea Freedom Coalition. The protocol commits each side to treat as illegal those border crossers who do not have proper visa certificates, except in cases of “calamity or unavoidable factors.” James D. Seymour, “China: Background Paper on the Situation of North Koreans in China,” commissioned by UNHCR, Protection Information Section, January 2005, 13. According to a report commissioned by the UN High Commissioner for Refugees (UNHCR), the validity of “[the Protocol] cannot be authenticated, but it does not seem implausible.” UN Human Rights Council, Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, Annex II—Correspondence with China, A/HRC/25/63, 7 February 14, 33. In a January 2014 letter addressed to the United Nations Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea Chairman Michael Kirby, China's Deputy Permanent Representative to the United Nations Office in Geneva Wu Haitao indicated that “China has repeatedly made clear, on various occasions, its position that DPRK citizens who have entered China illegally do it for economic reasons.”

³UN Convention Relating to the Status of Refugees (1951 Convention), adopted on 28 July 51 by the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429(V) of 14 December 50, entry into force 22 April 54, arts. 1, 33. Article 1 of the 1951 Convention defines a refugee as someone who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country . . .” Article 33 of the 1951 Convention mandates that, “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” UN Protocol Relating to the Status of Refugees (1967 Protocol), adopted by UN General Assembly resolution A/RES/2198 of 16 December 66, entry into force 4 October 67. The Chinese government acceded to the 1951 Convention and the 1967 Protocol in September 1982, but has not adopted legislation to implement the treaties.

⁴Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly 10 December 84, entry into force 26 June 87, art. 3. Article 3 states that, “No State Party shall 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.” The Chinese government ratified the Convention on October 4, 1988.

⁵Marzuki Darusman, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, UN General Assembly, A/69/548, 24 October 14, para. 36.

⁶UN Office of the High Commissioner for Refugees, “The People's Republic of China: Fact Sheet,” September 2014, 2; “Uncovering the Two Routes North Korean Refugees Use To Pass Through China on Their Way to South Korea” [Jiemi zai hua “tuobeizhe” zhanzhan fu han 2 luxian], Phoenix Television, 21 October 14; UN Office of the High Commissioner for Refugees, “UNHCR 2014–2015 Global Appeal: East Asia and the Pacific,” last visited 24 July 15, 2–3.

⁷United Nations Office on Drugs and Crime, “Migrant Smuggling in Asia: Current Trends and Related Challenges,” April 2015, 76; Marzuki Darusman, Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, UN General Assembly, A/69/548, 24 October 14, para. 24.

⁸UN Human Rights Council, Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, A/HRC/25/CRP.1, 7 February 14, paras. 395, 444.

⁹Situation of Human Rights in the Democratic People's Republic of Korea, adopted by UN General Assembly resolution 69/188 of 18 December 14, item 2(iv).

¹⁰Qiao Jianjun and Liu Senlin, “Yanbian, Jilin Tightens Control on Chinese-Russian and Chinese-North Korean Borders, 24-Hour Video Monitoring” [Jilin yanbian yanguan zhong'e zhongchao bianjing 24 xiaoshi shipin jiankong], China Defense News, reprinted in China News Service, 14 January 15; Sui-Lee Wee and Megha Rajagopalan, “China Enlists Citizens To Patrol Border With North Korea—State Media,” Reuters, 15 January 15; Yang Feng, “Official Confirms 3 Killed in Village on China-Korea Border, Third Incident in 8 Months” [Guanfang zhengshi zhongchao bianjing cunzhuang 3 ren yuhai xi 8 ge yue lai disan qi], Beijing News, 29 April 15.

¹¹Austin Ramzy, “China Says It Killed North Korean Suspected of Illegally Crossing Border,” New York Times, 11 June 15; “Troops Garrisoned in Yanbian, Jilin Shoot Dead Suspected Illegal Border Crosser” [Jilin yanbian zhujun guanbing jibi 1 ming yi si feifa yuejingzhe], People's Daily, 11 June 15.

¹²Lee Sang Yong, “Civilian Not Soldier Shot in Helong,” Daily NK, 15 June 15; Stephan Haggard, Peterson Institute for International Economics, “Shoot To Kill on the China-DPRK Border?” North Korea: Witness to Transformation (blog), 19 June 15.

¹³“North Korean Authorities Offer Rewards for Informing on Defectors, Smugglers,” Radio Free Asia, 3 March 15.

¹⁴“11 N. Korean Defectors Arrested in China,” Yonhap News Agency, 31 October 14.

¹⁵UN Human Rights Council, Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, A/HRC/25/CRP.1, 7 February

14, paras. 159, 393–394; United Nations Office on Drugs and Crime, “Migrant Smuggling in Asia: Current Trends and Related Challenges,” April 2015, 79; Rohan Radheya, “Refugee in Laos Awaits Chance To Reach S. Korea,” NK News, 5 November 14; Robert Lauler, “North Korean Defectors SK-Bound After Laos Release,” NK News, 20 October 14. According to published estimates, 90 percent of North Korean refugees pass from China through Laos on their way to the Republic of Korea.

¹⁶“Massive Exodus of Uyghurs Suspected of ‘Jihad Migration’” [Weizu daju waitao yi “qianxi shengzhan”], *Oriental Daily News*, 20 January 15; Kor Kian Beng, “China Cracks Down on Uighur Exodus,” *Straits Times*, reprinted in *AsiaOne*, 22 January 15.

¹⁷Ministry of Unification of the Republic of Korea, “Korean Peninsula Information: North Korean Refugees Current Situation” [Hanbandao xinxi: tuobei jumin xiankuang], last visited 10 June 15.

¹⁸*Ibid.*

¹⁹United Nations Office on Drugs and Crime, “Migrant Smuggling in Asia: Current Trends and Related Challenges,” April 2015, 83–84; Matthew Bell, “China Is Cracking Down on the Missionary Lifeline That Helps North Korean Refugees,” *Public Radio International*, 5 December 14.

²⁰Matthew Bell, “China Is Cracking Down on the Missionary Lifeline That Helps North Korean Refugees,” *Public Radio International*, 5 December 14; Megha Rajagopalan, “Canadian Couple Accused of Spying in China Held in Near Isolation, Son Says,” *Reuters*, 24 October 14.

²¹Megha Rajagopalan, “China Arrests American Christian Aid Worker Near North Korean Border,” *Reuters*, 19 December 14; Philip Wen, “Peter Hahn, Korean-American Aid Worker, Held in China,” *The Age*, 20 November 14.

²²Jane Perlez, “China Detains U.S. Aid Worker Who Assisted North Koreans,” *New York Times*, 20 November 14; Philip Wen, “Peter Hahn, Korean-American Aid Worker, Held in China,” *The Age*, 20 November 14; Megha Rajagopalan, “China Arrests American Christian Aid Worker Near North Korean Border,” *Reuters*, 19 December 14.

²³Michael Martina, “China Releases Korean-American Missionary: Lawyer,” *Reuters*, 7 September 15; “Fraud Convict Peter Hahn Let Go,” *Standard*, 7 September 15.

²⁴Ministry of Foreign Affairs, “February 5, 2015, Ministry of Foreign Affairs Spokesman Hong Lei Holds Routine Press Conference” [2015 nian 2 yue 5 ri waijiaobu fayanren hong lei zhuchi lixing jizhehui], 5 February 15.

²⁵*Ibid.*

²⁶Dan Levin, “China Holds Canadian on Suspicion of Stealing State Secrets,” *New York Times*, 5 February 15; Stephan Haggard, Peterson Institute for International Economics, “Detainee Update: Peter Hahn and the Garratt Case,” *North Korea: Witness to Transformation* (blog), 11 February 15.

²⁷Lisa Curtis and Olivia Enos, Heritage Foundation, “Combating Human Trafficking in Asia Requires U.S. Leadership,” 26 February 15; Kyla Ryan, “The Women Who Escape From North Korea,” *The Diplomat*, 24 November 14; Olivia Enos, “Human Trafficking Thrives Where Rule of Law Ends,” *The Diplomat*, 16 March 15.

²⁸*Ibid.*

²⁹Gary Chodorow, “China Police Search for 100 Missing Vietnamese Brides,” *U.S. and China Visa Law* (blog), 15 December 14; Olivia Enos, “Human Trafficking Thrives Where Rule of Law Ends,” *The Diplomat*, 16 March 15.

³⁰Madeline Fetterly, “Sex Trafficking and China’s One Child Policy,” *The Diplomat*, 6 November 14; Kyla Ryan, “The Women Who Escape From North Korea,” *The Diplomat*, 24 November 14; Olivia Enos, “Human Trafficking Thrives Where Rule of Law Ends,” *The Diplomat*, 16 March 15.

³¹Liberty Asia, “From Every Angle: Using the Law To Combat Human Trafficking in Southeast Asia,” November 2014, 44; Amnesty International, “The Other Interview: Escape From North Korea,” 6 February 15; Sylvia Wassermann, “A Fugitive’s Harrowing Flight From North Korea,” *Deutsche Welle*, 3 May 15; Lisa Curtis and Olivia Enos, Heritage Foundation, “Combating Human Trafficking in Asia Requires U.S. Leadership,” 26 February 15.

³²Madeline Fetterly, “Sex Trafficking and China’s One Child Policy,” *The Diplomat*, 6 November 14; Subin Kim, “Operators of Webcam Site Exploiting Defector Women Indicted,” *NK News*, 24 February 15.

³³Convention on the Elimination of All Forms of Discrimination against Women, adopted by UN General Assembly resolution 34/180 of 18 December 79, entry into force 3 September 81, art. 6; UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 00, entry into force 25 December 03, arts. 6, 9.

³⁴PRC Nationality Law [Zhonghua renmin gongheguo guoji fa], passed, issued, and effective 10 September 80, art. 4.

³⁵UN Human Rights Council, Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea, A/HRC/25/CRP.1, 7 February 14, items 139–141, 472–477; Stephanie Gordon, “Children of North Koreans, Living Between Borders,” *NK News*, 4 March 15.

³⁶UN Human Rights Council, Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea, A/HRC/25/CRP.1, 7 February 14, items 139–141, 472–477.

³⁷Stephanie Gordon, “Children of North Koreans, Living Between Borders,” *NK News*, 4 March 15.

³⁸Convention on the Rights of the Child, adopted by UN General Assembly resolution 44/25 of 20 November 89, entry into force 2 September 90, arts. 2(1), 7, 28(1a). Under the Convention on the Rights of the Child, China is obligated to register children born within the country immediately after birth and also provide all children with access to education without discrimination

on the basis of nationality. International Covenant on Economic, Social and Cultural Rights, adopted by UN General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 3 January 76, art. 13. Under Article 13, China recognizes that everyone has a right to education, including a free and compulsory primary education.