NORTH KOREAN REFUGEES IN CHINA

Introduction

During the Commission’s 2016 reporting year, the Chinese government’s policy of detaining North Korean refugees and repatriating them to the Democratic People’s Republic of Korea (DPRK) remained in place, despite substantial evidence that repatriated persons face torture, imprisonment, execution, and other inhuman treatment.1 The Chinese government regards North Koreans who enter China without proper documentation as illegal economic migrants2 and maintains a policy of forcible repatriation based on a 1986 border protocol with the DPRK.3 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, to which China has acceded.4

China is obligated under the 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.”5 In November 2015, the UN Committee against Torture (Committee) conducted its fifth periodic review of China’s compliance with the Convention.6 In its concluding observations, the Committee stated its concerns about China’s lack of “national asylum legislation and administrative procedures” for determining refugee status, as well as China’s “rigorous policy of forcibly repatriating all nationals of the [DPRK] on the ground that they have illegally crossed the border solely for economic reasons.”7 The Committee urged China to address these concerns by incorporating the “principle of non-refoulement” into domestic legislation, “immediately ceas[ing] forcible repatriation of undocumented migrants and victims of trafficking” to the DPRK, and allowing “UNHCR personnel unimpeded access to nationals of the [DPRK] . . . in order to determine if they qualify for refugee status.”8

Repatriation of Refugees and Border Conditions

This past year, heightened security measures along the China-North Korea and China-Southeast Asia borders increased the risks North Korean refugees face. In November 2015, Human Rights Watch reported an October 2015 case in which Vietnamese authorities detained nine North Korean refugees—including an 11-month-old infant—near the China-Vietnam border and later transferred them to Chinese authorities in the Guangxi Zhuang Autonomous Region.9 Chinese authorities subsequently transferred the group to a military base in Tumen city, Yanbian Korean Autonomous Prefecture, Jilin province, near the China-North Korea border, causing concerns that authorities planned to repatriate them.10 China’s Ministry of Foreign Affairs refused to answer a media inquiry from Radio Free Asia regarding the condition of these nine North Korean refugees.11 As of August 2016, the Commission had not observed any updates about the group.

Heightened border security may be limiting the outflow of refugees from the DPRK, as demonstrated by the smaller number of refugees reaching South Korea.12 South Korean Ministry of Unifi-
cation data reportedly showed that the number of refugees who reached South Korea decreased from 1,397 in 2014 to 1,277 in 2015, continuing the trend of a significant decline in the number of refugees entering South Korea since 2011.

**Crackdown on Foreign Aid Workers**

During this reporting year, Chinese and North Korean authorities continued to crack down on organizations and individuals—including foreign aid workers, Christian missionaries and churches, and non-governmental organizations—that have played a crucial role in assisting and facilitating the movement of North Korean refugees outside the DPRK. In January 2016, Chinese authorities indicted Canadian citizen Kevin Garratt, accusing him of “spying and stealing China’s state secrets.” Garratt and his wife operated a coffee shop near the North Korean border in Dandong municipality, Liaoning province, and were reportedly involved in assisting North Korean refugees.

**North Korean Workers in China**

During this reporting year, the Commission observed reports of North Korean laborers in China working under exploitative conditions. According to Greg Scarlatoiu, Executive Director of the Committee for Human Rights in North Korea, the DPRK government sent about 50,000 North Korean nationals to work overseas and subjected them to “very harsh conditions of work” that “amount to forced labor.” These “harsh” work conditions reportedly include long working hours with little or no time off, strict supervision by North Korean agents, confiscation of pay, violence, health and safety hazards, and sexual harassment and exploitation. [For more information on North Korean workers in China, see Section II—Human Trafficking.]

This past year, some North Korean restaurant workers escaped to South Korea from their work sites in China. According to media reports, the DPRK government operated more than 130 restaurants overseas, about 100 of which were located in China, earning approximately US$10 million per year for the DPRK government. One South Korean media outlet reported that about 350 to 400 North Koreans, including 50 minors, worked at these restaurants in China.

- **April 2016.** According to South Korean media reports, a group of 13 North Korean restaurant workers in Ningbo municipality, Zhejiang province, escaped to South Korea via a Southeast Asian country. On April 11, China’s Ministry of Foreign Affairs spokesperson Lu Kang confirmed the incident at a press conference, and emphasized that the restaurant workers left China with valid passports.

- **May 2016.** Three North Korean restaurant workers in Weinan municipality, Shaanxi province, reportedly escaped to South Korea via Thailand without passports.

**Trafficking of North Korean Women**

North Korean women who enter China illegally remain particularly vulnerable to human trafficking. The demand for trafficked
North Korean women has been linked to a sex ratio imbalance in China exacerbated by the Chinese government’s population planning policies. Sources indicate that the majority of North Korean refugees leaving the DPRK are women, many of whom are trafficked by force or deception from the DPRK into or within China for the purposes of forced marriage and commercial sexual exploitation. The Chinese government’s refusal to recognize these women as refugees denies them legal protection and encourages the trafficking of North Korean women and girls within China. 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.

Children of North Korean and Chinese Parents

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. According to some estimates, the population in China of children born to North Korean women ranges between 20,000 and 30,000. The PRC Nationality Law provides that all children born in China are entitled to Chinese nationality if either parent is a Chinese citizen. Despite this stipulation and a December 2015 policy change to register 13 million “illegal residents” (heihu) who lack household registration (hukou) in China, Chinese authorities reportedly continue to largely deprive these children of their rights to birth registration and nationality, and their North Korean mothers remain deterred from registering these children due to fear of repatriation. Without proof of resident status, these children are unable to access education and other public services. In some cases, bribery of local officials has reportedly allowed a very small number of children to obtain identification documents. 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.
Notes to Section II—North Korean Refugees in China


3 Democratic 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(1), 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.” See also “China’s Policy Change Toward North Korea Disastrous for Defectors” [Zhongguo dui chao zhengce chuxian bianhua yangji tuobeizhe de chujing], Radio Free Asia, 26 November 15.

4 Convention Relating to the Status of Refugees, adopted on 28 July 51 by the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 15/181 of 14 December 50, entry into force 22 April 54, arts. 1(A2), 33(1). Article 1 of the 1951 Convention, as amended by the 1967 Protocol, 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.” Protocol Relating to the Status of Refugees (1967 Protocol), adopted by UN General Assembly resolution 2136 (XX) of 16 December 66, entry into force 4 October 67. See also UN Office of the High Commissioner for Refugees, “UNHCR, Refugee Protection and International Migration,” 17 January 07. According to the UN High Commissioner for Refugees, “People who leave their own country for non-refugee related reasons may nevertheless acquire a well-founded fear of persecution in their own country following their departure. An economic migrant may . . . become a ‘refugee sur place’, when there is an armed conflict or violent change of regime in that person’s country of origin, or when the government or other actors in that country begin to inflict human rights violations on the community of which that migrant is a member.”

5 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by UN General Assembly resolution 39/46 of 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.

6 UN Committee against Torture, Concluding Observations on the Fifth Periodic Report of China, adopted by the Committee at its 1391st and 1392nd Meetings (2–3 December 2015), CAT/C/CHN/CO/5, 3 February 16, para. 1.

7 Ibid., para. 46.

8 Ibid., para. 47.


[16] “North Korean Defectors Arriving in South Korea in 2015 About Half the Number Compared to Before Kim Jong-un’s Rule” [2015 nian di han tuoeizhi jiao jin zheng’en zhizheng qian jian ban], Yonhap News Agency, 4 January 16; Lin Senhai, “Korean Media: Under Kim Jong-un’s Rule in North Korea, Defectors’ Entering South Korea Reduced by Half” [Hanne: jin zheng’en zhizheng chaoxian hou jinru hanguo de “tuoeizhi” jian ban], Global Times, 5 January 16; “South Korea: The Number of North Korean Defectors Who Arrived in South Korea This Past Year Reduced to Half Compared to Before Kim Jong-un’s Rule” [Han: qian di han tuoeizhi renshu jiao jin zheng’teng shangtai qian shao yiban], South China Morning Post, 5 January 16.

[17] “North Korean Defectors Arriving in South Korea in 2015 About Half the Number Compared to Before Kim Jong-un’s Rule” [2015 nian di han tuoeizhi jiao jin zheng’en zhizheng qian jian ban], Yonhap News Agency, 4 January 16; The number of North Koreans who defected to the South was 2,706 in 2011. Lin Senhai, “Korean Media: Under Kim Jong-un’s Rule in North Korea, Defectors’ Entering South Korea Reduced by Half” [Hanne: jin zheng’en zhizheng chaoxian hou jinru hanguo de “tuoeizhi” jian ban], Global Times, 5 January 16; “South Korea: The Number of North Korean Defectors Who Arrived in South Korea This Past Year Reduced to Half Compared to Before Kim Jong-un’s Rule” [Han: qian di han tuoeizhi renshu jiao jin zheng’teng shangtai qian shao yiban], South China Morning Post, 5 January 16.


including a free and compulsory primary education.

31 January 76, art. 13. Under Article 13, China recognizes that everyone has a right to education, adopted by UN General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 1977-01-01.

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 their birth, and to ensure that every child shall have the right to a name.


36 PRC Nationality Law [Zhonghua renmin gongheguo guji fa], passed, issued, and effective 10 September 80, art. 4. Article 4 of the PRC Nationality Law provides that, “Any person born in China having both a father and mother who are Chinese nationals or having one parent who is a Chinese national shall have Chinese nationality.”

37 Jiao Ying, “Family Planning Policies To Be Delinked From Hukou Registration, To Comprehensively Resolve the Issue of Illegal Residents” [Jihua shengyu deng zhengce jiang yu heihu wenti, yaoqiu bujiao shehui fuyangfei cai neng luohu], Chinese Business Network, 10 March 16.