

Statement of Greg Scarlatoiu, Executive Director, Committee for Human Rights in North Korea, on China's Repatriation of North Korean Refugees, at the Hearing of the Congressional-Executive Commission on China, March 5, 2012

Good afternoon, Chairman Smith, Cochairman Brown, and members of the Commission. On behalf of the Committee for Human Rights in North Korea, thank you for inviting me to speak with you at this hearing today. Our Committee considers it essential to draw attention to the case of 30 to 40 North Koreans who have been arrested by China and who now risk being forcibly returned to North Korea where they most assuredly will be subjected to severe punishment in violation of international refugee and human rights law. The fundamental right to leave a country, to seek asylum abroad and not to be forcibly returned to conditions of danger are internationally recognized rights which China and North Korea must be obliged to respect.

Mr. Chair, the Committee for Human Rights in North Korea is a Washington DC-based non-governmental organization, established in 2001. Our Committee's main statement has been prepared by Chair Roberta Cohen, who was unable to be here today. I will draw upon that statement in my opening remarks.

Over the past two decades, considerable numbers of North Koreans have risked their lives to cross the border into China. They have done so because of starvation, economic deprivation or political persecution. It is estimated that there are thousands or tens of thousands in China today. Most are vulnerable to forced returns where they will face persecution and punishment because leaving North Korea without permission is a criminal offense. Yet to China, all North Koreans are economic migrants, and over the years, it has forcibly returned tens of thousands to conditions of danger. According to the testimonies and reports received by the Committee for Human Rights, the North Koreans returned to their country endure cruel and inhuman punishment including beatings, torture, detention, forced labor, sexual violence, and in the case of women suspected of become pregnant in China, forced abortions or infanticide. Some have even been executed.

We therefore submit that North Koreans in China merit international refugee protection for the following reasons: First, a definite number of those who cross the border may do so out of a well founded fear of persecution on political, social or religious grounds that would accord with the 1951 Refugee Convention. Second, the reasons why these North Koreans flee to China go beyond the economic realm. Those who cross the border into China for reasons of economic deprivation are often from poorer classes, without access to the food and material benefits enjoyed by the privileged political elite. Subject to North Korea's *songbun* classification system, their quest for economic survival may be based on political persecution. Examining such cases in a refugee determination process might establish that certain numbers crossing into China for economic survival merit refugee status. Third, and by far the most compelling argument why North Koreans should not be forcibly returned is that most if not all fit the category of *refugees sur place*. As defined by the UN High Commissioner for Refugees (UNHCR), *refugees sur place* are persons who might not have been refugees when they left their country but who

become refugees at a later date because they have a valid fear of persecution upon return. North Koreans who leave their country for reasons including economic motives have valid reasons for fearing persecution and punishment upon return. Accordingly, UNHCR has urged China not to forcibly return North Koreans and has proposed a special humanitarian status for them so that they can obtain temporary documentation and access to services and not be repatriated.

China, however, has refused to allow UNHCR access to North Koreans in border areas where it could set up a screening process. It considers itself bound by an agreement it made with North Korea in 1986 obliging both countries to prevent “illegal border crossings,” which replaced an earlier 1960 agreement. It also stands by its local law in Jilin province (1993) which requires the return of North Koreans who enter illegally. Both documents stand in violation of China’s obligations under the 1951 Refugee Convention (which it signed in 1982), its membership in UNHCR’s Executive Committee (EXCOM), and the human rights agreements it has ratified. These include the Convention against Torture, which prohibits the return of persons to states where they could be subjected to torture, and the Convention on the Rights of the Child, which prohibits the return of unaccompanied children to countries where they could be irreparably harmed.

It is reported that some local Chinese officials have at times provided documents to North Korean women married to Han Chinese, which allows them and their children some form of protection and access to medical and educational services. Such practices should be encouraged but they are not Chinese policy or law. Most North Koreans in China have no rights and are vulnerable to exploitation, forced marriages and trafficking as well as to forced returns where they will face persecution and punishment. Our Committee’s report *Lives for Sale: Personal Accounts of Women Fleeing North Korea to China*, 2010, documents the experiences of North Korean women in China and the extreme lack of protection for them.

To encourage China to fulfill its international obligations to North Koreans on its territory, our Committee puts forward the following recommendations:

First, the United States Congress should consider additional hearings on the plight of North Koreans who cross into China to keep a spotlight on the issue and try to avert forced repatriations to conditions of danger.

Second, members of Congress should consider supporting the efforts of the Parliamentary Forum for Democracy, established in 2010, so that joint inter-parliamentary efforts can be mobilized in a number of countries on behalf of the North Koreans in danger in China.

Third, the United States should encourage UNHCR to raise its profile on this issue. It further should lend its full support to UNHCR’s appeals and proposals to China and mobilize other governments to do likewise in order to make sure that the provisions of the 1951 Refugee Convention are upheld and the work of this important UN agency enhanced.

Fourth, together with other concerned governments, the United States should give priority to raising the forced repatriation of North Koreans with Chinese officials but in the absence of a response, should bring the issue before international refugee and human rights fora. UNHCR's Executive Committee as well as the UN Human Rights Council and General Assembly of the United Nations should all be expected to call on China *by name* to carry out its obligations under refugee and human rights law and enact legislation to codify these obligations so that North Koreans will not be expelled if their lives or freedom are in danger.

Fifth, the United States should consider promoting a multilateral approach to the problem of North Koreans leaving their country. Their exodus affects more than China. It concerns South Korea most notably, whose Constitution offers citizenship to North Koreans. Countries in East and Southeast Asia, East and West Europe as well as Mongolia and the United States are also affected. Together with UNHCR, a multilateral approach should be designed that finds solutions for North Koreans based on principles of *non-refoulement* and human rights and humanitarian protection. International burden sharing has been introduced for other refugee populations and could be developed here.

Sixth, the United States should consider ways to enhance its readiness to increase the number of North Korean refugees and asylum seekers admitted to this country. Other countries should be encouraged as well to take in more North Korean refugees and asylum seekers until such time as they no longer face persecution and punishment in their country.

Thank you, Mr. Chairman, and members of the Commission. I look forward to answering any questions you might have.