



China's Repatriation of North Korean Refugees

**Before the
Congressional-Executive Commission on China**

Testimony by

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Thank you Mr. Chairman and member of the Congressional – Executive Commission on China, Amnesty International is pleased to testify at this important hearing on China’s repatriation of North Korean refugees.

Amnesty International have been closely monitoring the plight of North Korean refugees in China for over a decade and have published reports on the treatment of North Korean refugees by the Chinese authorities, reasons why North Koreans flee their country and the abuses faced by North Korean refugees forcibly returned to North Korea.

Despite China being a Permanent Member of the UN Security Council and a state party to the UN Refugee Convention; with respect to North Korean border-crossers residing without legal documentation, China completely disregards its commitments to and obligations under the international system. China denies these North Koreans the enjoyment of full protection of their human rights and refugee rights in China.

Chinese authorities forcibly returns North Korean border-crossers back to North Korea where they face risk to their lives. By its actions, it intimidates North Korean border-crossers and those who are helping them in China.

China refuses to give access to the UN refugee agency, the UN High Commissioner for Refugees (UNHCR).

Those individuals apprehended by Chinese border police and North Korean authorities in China are reportedly detained in China for several days and then forcibly returned to their country where they are at risk of punishment including arbitrary detention, forced labor, and in some cases, the death penalty for leaving the country without authorization.

Background:

The acute food shortages in North Korea since the early 1990s have forced tens of thousands of people to cross the border “illegally” into China’s north-eastern provinces. According to NGOs, journalists and aid workers who have visited the region, thousands of North Koreans are currently residing in border areas.

Amnesty International believes that all North Korean in China are entitled to refugee status because of threat of human rights violations if they were to be returned to North Korea against their will.

The North Korean authorities criminalize the act of leaving the country without State approval and consider it a political offence, even though the motive for leaving the country may simply be one of survival. This along with harsh punishments faced by those who are returned would indicate that almost all North Korean who flee are at risk of facing severe abuses once returned.

Their plight is made even more precarious by reports suggesting a January 2012 announcement by the North Korean authorities condemning border-crossers and threatening them with severe punishments. The announcement comes at a time when North Korea’s leadership is in transition.

Amnesty International is concerned that this reported denouncement of border-crossers could signal a crackdown against any potential dissent at this key time in North Korea. Additionally, those who are forcibly returned now may face even harsher punishment than usual.

North Korean authorities refuse to recognize or grant access to international human rights monitors, including Amnesty International and the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (North Korea).

Repatriation and the Principle of Non-refoulement:

Article 33 (1) of the 1951 Convention relating to the Status of Refugees, states 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."

International law prohibits the forcible return, either directly or indirectly, of any individuals to a country where they are at risk of persecution, torture or other ill-treatment, or death.

China – North Korea Bilateral Agreement:

According to a White Paper published by the South Korean think-tank KINU in 2011, "North Korea's State Safety Protection Agency and China's Public Safety Agency have been enforcing strict controls over the movement of their citizens across the border based on the "Bilateral Agreement on Mutual Cooperation for the Maintenance of State Safety and Social Order" (July 1998).

Plight of North Korean Refugees in China:

Despite significant risks, thousands of North Koreans illegally cross the border into China every year. China considers all undocumented North Koreans to be economic migrants, rather than as asylum seekers, and forcibly returns them to North Korea if they are caught.

North Koreans residing “illegally” in China live in appalling conditions and are vulnerable to physical, emotional and sexual exploitation. North Koreans living in China live in constant fear of being caught detained by Chinese authorities and forcibly returned to China.

North Korean border-crossers in China are in a very precarious situation. Some find shelter in villages and farms where they are supported by China’s ethnic Korean community and ethnic Chinese people, several work in the service industry but are vulnerable to exploitation and discrimination given their lack of legal status to reside in China. Others are forced into begging.

Surveillance and checking for “illegal” North Koreans in China have intensified and there have been even reports of North Korean authorities crossing the border to “detain” some North Korean border-crossers and “abduct” them back to North Korea.

North Koreans in China are denied their right to seek and enjoy asylum from persecution. Although China is a party to the Refugee Convention, NGOs and other advocates for North Korean asylum-seekers in China say that it is virtually impossible for North Koreans to access refugee determination procedures with UNHCR, or be afforded protection as a group.

According to several reports Amnesty International has received from NGOs and contacts in Japan, South Korea, Europe and the USA, China regularly returns North Koreans back to their country of origin without giving them the opportunity to make a claim for asylum and without making an objective and

informed decision that the North Koreans would be protected against serious human rights abuses in North Korea.

The Government of China have on occasion also arrested and imprisoned NGO activists – most of whom are South Korean or Japanese nationals – and others who have been attempting to help North Koreans to leave China and reach South Korea.

What Happens to the North Korean border-crossers Repatriated from China?

Detention

According to testimonies from North Korean border-crossers, all those forcibly repatriated from China are detained and interrogated in detention centers or police stations operated by the National Security Agency or the People's Safety Agency. The detainees are often subjected to torture. There appear to be several factors that influence the severity of the punishment meted out to North Koreans who have been forcibly returned from China. After the interrogation, “depending on the number of times the person had been in China, depending on their background (if the person had been serving in the military or was a government official, then the interrogation and sentencing appear to be more severe) and if the authorities have been convinced that the detainees are not ‘politically dangerous’, they are sent to a village unit labor camp, where they spend between three months and three years in forced labor.

If the North Korean border-crossers are considered to be politically sensitive such as serving or retired government officials or military personnel, they are at risk of being sent to a political prison camp.

North Korean border-crossers who have been in touch with South Korean nationals or with religious groups while in China are at great risk of being sent to political prison camps.

Execution

In 2011, Amnesty International reported testimonies of former detainees at political prison camp 15 at Yodok, that prisoners are forced to work in conditions approaching slavery and are frequently subjected to torture and other cruel, inhuman, or degrading treatment. All those interviewed had witnessed public executions.

Women:

Women suffer particularly because of the social roles ascribed to them. Women are generally responsible for finding food for their families, and in times of scarcity often have the last call on food within a household. Many have been forced to roam the countryside in search of food, medicine and other daily necessities. A large proportion of those crossing the border into China for these purposes are women.

In its 2003 concluding observations on North Korea, the Committee on Economic, Social and Cultural Rights expressed its concern about the: *“persistence of traditional attitudes and practices prevailing...with regard to women that negatively affect their enjoyment of economic, social and cultural rights. The Committee is concerned about the lack of domestic legislation on non-discrimination against women and about the persistence of de facto inequality...”*

Information received by Amnesty International indicates that a growing number of women have been forced to turn to prostitution to feed themselves and their hungry families.

Amnesty International has also documented an increase in the number of North Korean women being trafficked to China by Chinese bride traffickers where they are sold on to ethnic Korean farmers of Chinese nationality who have difficulty finding wives.

Children:

The Committee on Rights of the Child expressed concern in June 2004 at reports of North Korean street children in Chinese border towns. It was also deeply concerned at reports that children (and their families) returning or forcibly returned back to North Korea were considered by the North Korea government not as victims but as perpetrators of a crime.

North Korean Law:

North Koreans who flee their country are usually considered by their government to be traitors and/or criminals if they leave North Korea without official permission. Article 47 of the 1987 North Korean Criminal Code states that:

"A citizen of the Republic who defects to a foreign country or to the enemy in betrayal of the country and the people...shall be committed to a reform institution for not less than seven years. In cases where the person commits an extremely grave concern, he or she shall be given the death penalty..."

Article 117 states:

"A person who crosses a frontier of the Republic without permission shall be committed to a reform institution for up to three years."

The North Korean law which prohibits unauthorized departure is in clear breach of the fundamental right to leave one's own country. Article 12 (2) of the International Covenant on Civil and Political Rights (ICCPR), to which North Korea is a state party, states that "(e)veryone shall be free to leave any country, including his own."

North Koreans who "illegally" cross or help others in crossing the North Korean border face heavy penalties. Under Article 117 of the Criminal Code,

a person who illegally crosses “a frontier of the Republic” faces a sentence of up to three years in a *kwalliso* (a political prison camp).

In a 2006 media briefing, “North Korea: Human rights concerns”, Amnesty International stated that the large numbers of North Korean border-crossers being forcibly repatriated back from China have caused the North Korean government to ease sentences and change the penal code. The 1999 version of the penal code distinguished between “unlawful border crossing” and crossing “with the intent to overturn the Republic”.

The 2004 revision of the North Korean penal code further distinguishes between “crossing” and “frequent crossings”. According to the latter version, “frequent crossing” of the border without permission is a criminal act punishable by up to two years in labor camps (three years in the 1999 version).

Acts of treason, such as “surrendering, changing allegiance, [and] handing over confidential information”, are punishable by five to ten years of hard labor, or ten years to life in more serious cases.

Recommendations:

The Government of China should:

- Stop immediately all operations by Chinese and the North Korean officials aimed at apprehending and intimidating North Korean border-crossers and those who are helping them in China.
- Respect its obligations under international human rights and refugee law. This includes protecting the fundamental human rights of all North Koreans on its territory. In particular, asylum-seekers should have access to a fair, satisfactory and individual refugee status determination procedure.

- North Korean asylum-seekers should be given access to the UNHCR so that their claims for protection can be independently and impartially assessed. Persons found to be refugees under a fair and satisfactory procedure should have access to effective respect for their fundamental human rights, including their economic, social and cultural rights;
- In accordance with the customary norm of *non-refoulement* and its obligations under the Convention against Torture and the Refugee Convention, the Government of China should not forcibly return any North Korean to North Korea who may be subject to serious human rights abuses, including imprisonment, torture, execution or other punishment inflicted for leaving the country without authorization;
- Immediately end all bilateral re-admission agreements [with North Korea] which deny asylum-seekers and refugees access to a fair and satisfactory asylum-procedure and effective and durable protection from *refoulement*.
- lift restrictions on access to the border areas with North Korea for the UNHCR, independent human rights monitors and other independent observers, agencies and organizations;

The Government of North Korea should:

- Respect the right to freedom of movement for all North Koreans, especially to ensure that they have adequate access to food. The North Korean government should not punish individuals whose only crime is to try and feed their family.
- The North Korean government should, especially, refrain from punishing its citizens who have moved to other countries, in particular for humanitarian reasons, and refrain from treating their departure as criminal or even as treason leading to punishments of imprisonment, inhuman or degrading treatment or the death penalty.
- Stop all executions.

- Respect the right of access to information – including by allowing independent news media to publish and broadcast and by granting free and unimpeded access to media outlets – so that ordinary people are aware of the gravity of the food situation and of their human rights.
- Allow independent international human rights monitors.

The Government of the United States should:

- 1) Raise North Korean refugee protection issues in all its meetings with the Chinese Government, including during the annual Security and Economic Dialogue and Human Rights Dialogue.
- 2) Ensure that the Government of China respects its obligations under international law, including respecting the fundamental principle of *non-refoulement*, by not forcibly repatriating North Korean Refugees.
- 3) Urge the Chinese Government to stop arresting and intimidating North Korean refugees.
- 4) Urge the Chinese Government to fulfill its obligations under the 1951 Convention relating to the Status of Refugees, including respect for the right of North Koreans to seek and enjoy asylum.
- 5) Urge the North Korean Government not to punish North Korean refugees brought back to North Korea.
- 6) Help resettle North Korean refugees.

Thank you for inviting Amnesty International to testify in this hearing.

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