

## CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

### North Korean Refugees and the Imminent Danger of Forced Repatriation from China

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When the 2012 UNGA resolution (A/RES/66/290) stressed the “right of people to live in freedom and dignity, free from poverty and despair,”<sup>1</sup> it appeared the UN was determined to reach out to the most vulnerable in all corners of the world. When it comes to North Koreans, this commitment has proven to be more rhetorical than substantive. In North Korea, the people’s fundamental rights, including “freedom from fear and want,” are systematically trampled. Those who manage to escape to China in search of a better life do not fare much better. China’s discriminatory policy leaves North Korean refugees with two choices; forcible repatriation or inhumane treatment in hiding. The plight of the North Korean refugees in China stands out as one of the most troubling challenges to the UNHCR.

#### **North Korean Refugees in China: An Overview**

In the 1990s, facing severe political persecution and starvation, North Koreans fled the country *en masse* to take refuge in China. Up to 200,000 North Koreans crossed the border in search of a better livelihood. The fortunate few made it out of China to countries like Laos, Thailand, and Myanmar before finding safety in South Korea or other countries willing to take them in as asylum-seekers. This pattern of exodus has continued for nearly three decades. Today, there are 34,000 defectors living in South Korea. Having peaked in 2009 at 2,914, the number has significantly dwindled since 2020 due to COVID-19 border shutdown, stringent crackdown by both Chinese and North Korean authorities, and Moon Jae In government’s aversion to addressing the defector issue in favor of placating Beijing and Pyongyang.

When caught, the asylum-seekers are forcibly repatriated since Beijing considers them “illegal economic migrants,” not refugees. Those who are returned to North Korea often join 120,000 others in gulags (political prison camps). Their lives filled with fear, hunger, and persecution

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<sup>1</sup> United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1, Resolution adopted by the United Nations General Assembly (September 25, 2015).

are well-chronicled by some of the escapees from these camps.

Although the North Korean defectors are recognized as refugees by the UN, the Chinese government prevents them from receiving international protection and assistance. Without institutional support, North Korean refugees struggle not only to find food and livelihood but also to avoid capture and repatriation. In the event of repatriation, the punishment ranges from torture, incarceration, starvation, and even death. The North Korean refugee situation is particularly urgent because while the problem continues unabated, international concern over the longstanding crisis has weakened due to attention being channeled towards North Korea's nuclear and missile threats. Although denuclearization goal remains a compelling responsibility for the global community, such goal should not hamper efforts to address North Korea's other problem – 'crimes against humanity.'

### **The COI Finding and Recommendation**

In February 2014 the UN Commission of Inquiry (COI) on Human Rights in the Democratic People's Republic of Korea (DPRK) identified the state's systematic and widespread "crimes against humanity," including forced labor, forced abortions, infanticide, public executions, a massive gulag system, and overseas abductions.<sup>2</sup> The predicament of the North Korean escapees in China was also highlighted, accusing China of "aiding and abetting" crimes against humanity. By forcibly repatriating North Koreans, China was found to be in violation of the *non refoulement* principle. China continues to violate this international human rights law which supposedly guarantees that "no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm."<sup>3</sup>

Of course the fundamental problem with the North Korean refugees begins in their country of origin—North Korea. But China's position on interpreting their status as 'illegal economic migrants' certainly compounds the problem.<sup>4</sup> The Office of the UN High Commissioner for Refugees (UNHCR) in China has not helped the situation simply by remaining silent despite not having access to these "migrants."

The legal tools are there for the UNHCR to do more for the North Korean defectors. The UNHCR concluded a bilateral agreement with China in 1995 that granted the UNHCR's staff in China unimpeded access to refugees within China. Determining who is a refugee requires interviewing the prospective asylum-seekers. With China strictly preventing UNHCR access

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<sup>2</sup> 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* (A/HRC/25/CRP.1) (February 2014).

<sup>3</sup> OHCHR, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

<sup>4</sup> Human Rights Watch, "China: Redoubling Crackdowns on Fleeing North Koreans." (September 3, 2017). <https://www.hrw.org/news/2017/09/03/china-redoubling-crackdowns-fleeing-north-koreans>

to North Koreans near the border, the process towards refugee recognition has been completely thwarted. The forcible repatriation of North Koreans seeking refuge in China is a blatant breach of Beijing's obligations under the 1951 UN Convention Related to the Status of Refugees and its 1967 Protocol.

The 1951 Convention defines a refugee as “a person who, owing to a 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 their nationality, and is unable to or, owing to such fear, is unwilling to rely on the protection of that country, or to return there, for fear of persecution.”<sup>5</sup> That's North Koreans in China. The fact that North Korean refugees face detention, prison terms, torture, or in extreme cases, execution when repatriated back to North Korea is sufficient to classify them as “asylum-seekers” or refugees.

### **The Causal Link between Sŏngbun System and Refugee Status**

It is true that famine-related economic migrants cannot be classified as refugees in the traditional international legal sense. But the case of North Koreans is different; the main reason for their defection to a foreign country—economic plight—is the political outcome of a failed socialist system under totalitarian rule.

The connection between political power and economic deprivation of a large percentage of the North Korean population can be traced to the state-sponsored discrimination policy known as sŏngbun. North Korea is a society steeped in social stratification based on each individual's political-ideological background as determined by the Workers' Party of Korea (WPK). All North Korean citizens are classified into either the basic class (Kibon-gyech'ŭng), wavering class (Pokjab-gyech'ŭng), or hostile class (Chŏkdae-gyech'ŭng). Sŏngbun is the source of systemic discrimination based on the evaluation of a person's religious, political, and family background spanning three generations, as well as his or her current behavior and perceived loyalty to the state. This system underpins the state's socio-economic exclusion policies responsible for an inter-generational discriminatory scheme that determines who receives what kind of food, healthcare, education, job, and even residence.<sup>6</sup> The sŏngbun class system is strictly enforced by North Korea's secret police, the Ministry for Protection of the State (Kukga Bowisŏng), which target the perceived “enemies of the state” in the lowest sŏngbun class. Those targeted are not only deprived of socio-economic opportunities, but often persecuted in the vast network of North Korea's detention centers, including political prison camps.

It is not surprising that most of the victims of the widespread famine in the 1990s were those of the low sŏngbun class, as they were the first to be cut from the government's public

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<sup>5</sup> Atle Grahl-Madsen, “Refugees, UN High Commissioner.” In Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, Vol. 5 (Amsterdam, 1985), 257.

<sup>6</sup> For a discussion on sŏngbun as a tool of the state, see Greg Scarlatoiu, “Human Security in North Korea,” *International Journal of Korean Studies*, Vol. 14, No. 2 (Fall 2015), pp. 128–31.

distribution system (baegŭpjedo). The famine led to the exodus of tens of thousands of North Koreans, primarily residents of the northernmost areas bordering China—North Hamkyŏng Province in particular. These areas were, and still are, largely mining areas, where many people had been sent as a form of punishment for their poor sŏngbun background. With international humanitarian agencies prevented from reaching out to these people, many of them escaped to China as the only means to ensure their survival.

The right to food is one of the most fundamental human rights ensured under the existing international laws. Denial of food, especially as a weapon of persecution, can therefore substantiate a claim to refugee status by those denied. The sŏngbun system thus causes repeated attempts to defect, further aggravating the cycle of deprivation and persecution. Cognizant of this systemic problem, the COI found that there was enough evidence to recognize many North Koreans as refugees fleeing persecution or refugees sur place, entitled to international protection.<sup>7</sup> Women, who constitute 70-80% of repatriated refugees, are particularly hard-hit as they are subjected to trafficking while in China, and to forced abortion, infanticide, and sexual abuse upon return.<sup>8</sup>

The principle of non-refoulement guarantees that no one should be returned to a country where they would face “torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm irrespective of their migration status.” This measure is explicitly stipulated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and other international human rights, refugee, humanitarian and customary law.<sup>9</sup>

## Where’s UNHCR?

The UNHCR’s lack of access to North Korean refugees is generally viewed as the main reason for its ineffectiveness. But in actuality, the 1995 agreement between the UNHCR and China gives the UNHCR unimpeded access to all refugees within China. Why, then, has the UNHCR

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<sup>7</sup> 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* (A/HRC/25/CRP.1) (February 2014), p130.

<sup>8</sup> Daye Gang and Joanna Hosaniak, *They Only Claim that Things have Changed: Discrimination against Women in the Democratic People’s Republic of Korea*, NKHR Briefing Report No. 8 (Life & Human Rights Books Citizens Alliance for North Korean Human Rights, 2018), pp.38~46.

<sup>9</sup> UN Office of the High Commissioner for Refugees, “The principle of non-refoulement under international human rights law.”  
<https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

not done more to help the North Korean refugees? The UNHCR Beijing Office is, after all, responsible for determining refugee status in China, as well as for providing life-sustaining assistance such as accommodation, living allowances and access to basic health care. The fact that China permits the presence of the UNHCR office in Beijing suggests at least a minimum level of professional partnership. In fact, China and the UNHCR have enjoyed a cooperative relationship, for example, in working together in the 1980s to support the Vietnamese refugees in China. The UNHCR has also provided training for Chinese government officials and held joint symposiums to address refugee protection issues. Thus, the lack of cooperation on North Korean refugees appears to be more an exception than the rule.

This begs the question why the UNHCR has not been more aggressive in obtaining access to interview the escapees. It is also puzzling that the UNHCR has never opted to invoke binding arbitration regarding China's refusal to allow access to North Korean defectors. Binding arbitration in the event of a bilateral dispute is permissible as stipulated in the 1995 UNHCR–China agreement. In such a case, China is obligated to accept an arbitrator acceptable to both parties within a 45-day period.

Clearly, the UNHCR has failed to do its job on the North Korean refugee issue. At the very least, the UNHCR should have been more vocal in condemning Beijing's refusal to provide legal protection for female refugees from being trafficked within China. China, after all, is obligated under the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly in December 1979, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, adopted by the General Assembly in November 2000, to take measures to safeguard against the trafficking of women and children inside its own borders.

### **Short-term Suggestions**

- Despite its shortcomings, the UNHCR remains the best instrument available to deal with the North Korean refugee issue. But its presence in China will be ineffective until it begins to assert its right to “binding arbitration” with China. UNHCR should be pressed to do this, especially regarding the current detainees in danger of imminent repatriation against their will.
- UNHCR could also convince Beijing to open an official corridor – “underground railroad” – through which North Korean refugees could pass, escorted by UNHCR officials on their way to Mongolia, Vietnam, Myanmar, or Laos.
- Beijing can be persuaded to periodically allow amnesty for “illegal aliens,” a conduct more becoming of a P5 and an aspiring global leader.
- A semblance of a refugee camp or a temporary settlement for the escapees to provide a much-needed shield from human rights violations would mean a major breakthrough. Considering many refugee camps are erected impromptu, establishing one specifically for North Korean

refugees should not be complicated in practical terms. It's just a matter of political will.

### **Accountability Requires Strong Political Will**

- Reinforce the existing international sanctions by addressing loopholes.
- Benchmark international campaign against South Africa's apartheid system.
- UNGA Credentials Committee should be prodded to re-examine the credentials of the DPRK pursuant to its Rule 29. Question is: If South Africa was bad enough to be suspended from all UN activities for twenty years, shouldn't the UNGA consider doing at least the same to North Korea until the nonproliferation and human rights goals are met?
- What has UN done instead? It recently elected North Korea to the executive board of the World Health Organization and in June 2022 permitted North Korea to assume presidency of the Conference on Disarmament.
- Such display of weakness in not dealing with countries like North Korea will only lead to the perpetuation of the human suffering in that country.