

# Human Rights Without Frontiers

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## China's Treatment of North Korean Refugees

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Economic deprivation and political repression have forced thousands of North Koreans to flee their homeland into China as their primary escape option. Their route goes through the Tumen River into Yanbian Korean Autonomous Prefecture, which is also predominantly populated by ethnic Koreans with Chinese citizenship. The exact numbers of refugees and asylum seekers in the whole of China is not known but estimates vary between 100,000 and 300,000, believed to be scattered across the country in search of possibilities to leave China and reach a safe haven in a third country.

The lack of accurate data on the numbers of North Korean defectors in China is symptomatic of their overall vulnerability. The looming humanitarian crisis remains unaccounted for either because the Chinese authorities have no idea of the scope of the problem or because they refuse to make public data available. There is however one point on which Chinese authorities are unequivocal – China does not permit North Koreans to apply for asylum in China, nor does it even recognize them as refugees. Moreover, in the past few years Chinese authorities have been conducting a systematic campaign to apprehend North Korean defectors and send them back to their country, where they are known to face imprisonment, torture and even public execution. These policies are in flagrant violation of international commitments and obligations undertaken by China under international human rights and humanitarian law.

## **China and international human rights and humanitarian law**

The international human rights and humanitarian law contain far-reaching provisions to protect those seeking refuge and asylum. Leaving one's country is a right enshrined in Article 12 of the Covenant on Civil and Political Rights, which China has signed but not ratified yet. Receiving countries have various obligations spelled out in the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. China became party to the Convention and the Protocol in 1982.

The Convention defines a refugee as a person 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 .... owing to such fear, is unwilling to return to it". Article 33 of the Convention is explicit that refugees may not be returned to their country if they face danger there. Part 1 of Article 33 reads as follows: no 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".

The quoted Article 33 is now generally accepted to be customary international law, binding even on countries that have not acceded to the Convention. China has signed the Convention but has nevertheless violated the non-expulsion (*refoulement*) when they expel or return the North Korean defectors to their country where their lives and freedom would be threatened. In breach of international commitments and obligations, China abides by the provisions of a Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas it had signed with North Korea on a bilateral basis in 1986. Both sides had agreed to cooperate against illegal border crossing and to hand over criminals, including "anti-revolutionary elements", escaping across each other's borders. Abiding by this bilateral arrangement, China clearly abrogates its international agreements in defiance of international human rights and humanitarian law.

## **China's policies of deportation**

China considers North Koreans to be illegal immigrants and justifies its policies on the basis of this reasoning despite the fact that by all legal definitions and international standards, North Korean defectors can qualify as refugees due to the fact that they are expected to face imprisonment and execution upon their repatriation. Article 47 of the Criminal Code of North Korea is quite explicit: "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 offence, he or she will be given the death penalty".

North Koreans defect to China in pursuit of freedom and in defiance of the political authorities of North Korea. It is true that they defect to China for food, as well. Food in North Korea, however, is not only a means of survival. Food is a strong weapon of

political repression. Qualifying North Korean defectors as "economic migrants" means to discard the whole political reality in North Korea.

The 2004 resolution of the UN Commission on Human Rights expressed deep concern about **"sanctions on citizens of the DPRK who have been repatriated from abroad, such as treating their departure as treason leading to punishments of internment, torture, inhuman or degrading treatment or the death penalty, and infanticide in prison and labour camps"** (E/CN.4/2004/L.21). This formulation provides good grounds for considering the eligibility of North Korean asylum-seekers to refugee status as prescribed for in international human rights and humanitarian law. China's refusal to acknowledge and protect North Koreans as refugees is a blatant violation of its obligations under international treaties and laws. China goes even further in its policies of disregard for international provisions – it prevents the UNHCR from getting access to vulnerable North Koreans and from fulfilling its protection mandate, which is to assist host governments to safeguard the basic rights of refugees and take necessary measures to guarantee protection throughout the displacement cycle, from preventing *refoulement* and securing asylum to the realization of durable solutions.

According to an agreement signed between UNHCR and China in 1995, "UNHCR personnel may at all times have unimpeded access to refugees". Under this agreement, the UNHCR Mission to China was upgraded to UNHCR Branch Office. Since then, notwithstanding, China systematically denies the UNHCR staff an access to North Korean refugees; therefore, the UNHCR has no way of studying their situation or establishing status determination procedures. This stalemate has dragged on for several years already.

In December 1999, the UNHCR recognized seven North Koreans (aged between 13 and 30) as refugees under the 1951 Convention. Although the UNHCR informed the Chinese and Russian governments about its decision, Russia returned them to China on 31 December 1999, and China forcibly returned them to North Korea on 12 January 2000. In June 2001, a family of seven North Koreans entered the Beijing office of the UNHCR asking for a political refugee status. After negotiations with the UNHCR, the Chinese government agreed to let them leave the country on "humanitarian" grounds.

Since 2002, we have witnessed the desperate escape of North Korean refugees into foreign diplomatic missions in Beijing and elsewhere in China, which left an indelible picture in the mind of the international audience. Cases that came under the spotlight were positively resolved through China's agreement to let refugees leave for a third country on humanitarian grounds. These images brought the plight of North Koreans to the attention of the international community. On the other side, however, the Chinese authorities intensified their efforts to crack down on fleeing North Koreans. A campaign of forced repatriation has been going on for the past several years. This campaign has been conducted in silence and there is no information on the real scope of Chinese policies and their consequences for North Korean refugees.

Time will not suffice to go through the whole list of cases of arrest, detention and deportation, of which we have learned in the last few years. It will be enough to mention the name of Kim Chun-hee, who has been missing since December 2005

when she was arrested in China and deported back to North Korea. Her fate is not known. As the fate of thousands others, deported back to North Korea and presumed dead.