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North Korea: Refugee Issues



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May 10, 2012**

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Since the end of the 1950-1953 Korean War, North Koreans have fled to South Korea via China and other countries, first at a very slow pace but now in increasing numbers. North Koreans have left their country because of economic hardship and political repression they faced at home.

South Korea

Prior to 1990, reliable statistics about the flow of North Korean defectors are not available and therefore it is only possible to have a detailed look at the flow of North Korean defectors post 1990.

In 2001, only 1200 North Koreans resided in South Korea. It is also important to point out that 583 of the 1200 North Koreans residing in South Korea had only arrived in 2001. The following year, nearly double the number of North Koreans (1138) sought refuge in the South.

At the end of 2010, the South Korean Unification Ministry issued a report which stated that 10,000 North Koreans had defected to the South over the sole period 2007-2010. This is a substantial figure when you consider only 10,000 North Koreans sought refuge in the period between the end of the Korean War to 2007.

In the recent few years, the average annual number of North Korean refugees arriving to South Korea has fluctuated around the 2,700-2,900 mark.¹ The total number of North Koreans in South Korea at the end of 2011 was 22,892 according to figures from the Unification Ministry.¹ Every year since 2002, more women have sought refuge in South Korea than men. For example in 2010 women accounted for nearly 76 per cent of the 2,376 defectors who sought refuge in South Korea. In 1998, only 12 per cent of the 947 defectors in the South were female. About 70 per cent of the defectors arriving recently have graduated from middle school or high school, about 9 per cent have graduated from junior colleges, and about 8 per cent are college graduates.

This year, Seoul has noted a sharp fall in the number of North Koreans arriving in South Korea: 366 North Koreans in the first three months of 2012, a substantial decrease from the 566 in last year's corresponding period.

The decline can be due to increasing difficulty North Koreans face due to crackdown on them and increased costs in illegally crossing the border into China, a comparatively safer escape route to South Korea.

Many defectors reach the South with the help of people known as brokers. The journey can cost anywhere from \$2,500 to \$15,000. Many brokers will defer payment until the government in Seoul has paid resettlement money. To prevent this from occurring, the South Korean government in 2005 cut resettlement money from a W10 million (about \$9,400) lump sum to W6 million (about \$5,600) which is paid out over several years. This has left many defectors with considerable debts. In addition, many North Koreans experience forced labor, starvation, human trafficking, sexual assault, and other abuses in their journeys to get to South Korea.

¹ <http://www.atimes.com/atimes/Korea/NC16Dg01.html>

China

In the mid 1990s, many North Koreans fled famine at home and moved to China in large numbers with some estimates of nearly a quarter of a million refugees. A substantial number have settled there but no reliable statistics are available to determine how many North Koreans from that wave still live in China. The official Chinese estimates are as low as 10,000. Press reports commonly cite a figure of 100,000 - 300,000. In 2006, the State Department estimated the number to be between 30,000 and 50,000, down from the 75,000 to 125,000 range it projected in 2000. UNHCR also uses estimates ranging from 30,000 to 50,000 as a working figure."² The majority of these are based in the Yanbian Korean Autonomous Prefecture in eastern Jilin Province, near China's border with North Korea, where there is a large - and often sympathetic - ethnic-Korean minority.

Due to the geographical situation of North Korea, China is almost the only country through which the North Koreans can defect. Crossing China southwards to other relatively safer countries remains a dangerous adventure as on the basis of an agreement with Pyongyang in 1986, Beijing sends back home all North Koreans who "have illegally crossed the border". Some live in hiding in China for some time to earn some money and hereby be able to finance the next leg of their journey while others prefer not to take the risk to be caught by the police and forcibly repatriated.

Over the past 10 years a number of North Koreans have been attracted by the money on offer in China. They may be involved in illegal cross-border trading , paying bribes to the border guards and the local mafias, or they may be tempted to find some "attractive" work/ An unskilled worker in the borderland provinces can be expected to earn US\$50-75 a month, plus free accommodation and as much rice as he or she can eat. For North Koreans, whose formal monthly salary seldom exceeds \$2, this is an exorbitant sum. Therefore a lot of North Korean refugees in China take unskilled, dangerous and poorly paid (by Chinese standards that is) jobs in construction, the timber industry and the service sector. Some North Koreans are also involved in smuggling activities across the border.

The role of the UNHCR

As a state party to the 1951 Refugee Convention, China has an obligation to offer protection to refugees, but Beijing categorically labels North Koreans in China "illegal" economic migrants and routinely repatriates them without first giving them access to the UNHCR.

The position of the UNHCR on the issue of the North Korean defectors has always been uncomfortable and ambiguous.

At the 54th session of the Executive Committee of the High Commissioner's program in 2003, the UN High Commissioner for Refugees Mr Ruud Lubbers recognized for the first time that "**North Korean defectors may well be considered refugees**". At the 55th session, a year later, Mr Ruud Lubbers stated: "**The plight of North Korean asylum seekers is an abiding preoccupation of my Office. In China, we continue to request access to those North Koreans who are of concern to us and I would welcome the chance to discuss with Chinese authorities this issue and opportunities I see for China to assist in the region.**"

² <http://www.fas.org/sgp/crs/row/RL34189.pdf>

In 2005, however, the newly appointed UN High Commissioner for Refugees, Mr Antonio Guterres, seemed to be careful in his statement. Firstly, he avoided to refer to North Korean defectors as refugees or asylum-seekers by invoking the vague term of "**population displacements**" resulting from the human rights violations in DPRK.

Secondly, the naming of China as an important actor in solving the North Korean refugee issue was then omitted. Without pointing to concrete countries, the UN High Commissioner committed the UNHCR to "**being very attentive to situations of direct and indirect *refoulement*, governed by bilateral agreements which disregard international law or by the treatment of bona fide asylum seekers as illegal immigrants**". With its policies of forceful repatriation of North Korean refugees, China qualifies easily for UNHCR scrutiny. The failure to name concrete countries, first and foremost being China, will confine this commitment undertaken by the UN High Commissioner to the realm of lofty statements with no result-oriented follow-up, thus leaving no hope for refugees and asylum-seekers trapped in such situations.

On the other side, UN High Commissioner for Refugees Antonio Guterres did not spare words to elaborate on the protection mandate of the UNHCR and to define a modern concept of protection which "**emphasizes the need to create a space where rights can be enjoyed to the full and where the Rule of Law prevails**". "In that sense", Mr Guterres continued, "**all our actions must be protection-minded and be judged by their protection implications, and all staff members must see themselves as protection agents**".

Protection, however, is the least thing North Korean refugees can unfortunately expect from the UNHCR. For a number of years already, the UNHCR and the international community have been unable to exert enough pressure on Chinese authorities to abide by their commitments. For years, we have been continuously asking the following questions:

- Who is to guarantee the physical safety and security of the thousands of North Koreans living in constant fear of being arrested by the Chinese authorities and forcibly repatriate?
- Who is to intervene when North Koreans are denied access to international monitoring procedures of their needs and the way they are treated by the Chinese authorities?
- Who is to ensure access of North Korean asylum-seekers to refugee status determination procedures?

Recommendations of Human Rights Without Frontiers

I. The international community, and the EU in particular, should take a strong and principled stand on the issue of North Korean asylum-seekers

By taking such a stand on the issue of the asylum-seekers, the international community will demonstrate that it cannot and will not succumb to the position of the Chinese authorities. The definition of a "refugee" is universal and has been agreed upon by the UN member states.

The 1951 Convention Relating to the Status of Refugees defines a refugee to be someone with "well-founded fear of being prosecuted for reasons of race, religion, nationality, membership of a particular social group or political opinions". China denies North Koreans international refugee status on the grounds that they are "economic migrants" and are therefore not threatened with persecution in their country.

A refugee is further defined as someone who is "unable to avail himself of the protection of that country" or "outside of the country of his former habitual residence and unable or unwilling to return to it". On this point, it is legitimate to argue that North Koreans have no protection on their return back to their country.

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".

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.

II. China should be held responsible for violating its international commitments

It is incumbent on the international community to state clearly that China's treatment of North Koreans in China is in defiance of international agreements and represents a flagrant violation of its obligations as a UN member state.

China acceded to both the 1951 Convention on the Status of Refugees and the 1967 Protocol on September 24, 1982. Thirty years later, Chinese authorities violate the non-expulsion (*refoulement*) principle under Article 33 of the Convention and Article 1, Paragraph 1 of the 1967 Protocol when they expel or return the North Korean defectors to their country where their lives and freedom would be threatened.

The Chinese government denies violating the Convention. However, it neither gives the asylum-seekers a refugee status nor allows the UNHCR to examine their status. Instead, China abides by the provisions of a secret agreement the North Korean Ministry of State Security and the Chinese Ministry of Public Security had signed 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. This bilateral arrangement, therefore, abrogates international agreements in defiance of international human rights and humanitarian law.

III. UNHCR should discontinue its "wait and see" policy and fulfil its protection mandate

On this point, many NGOs and individuals share great deal of frustration as the UNHCR has failed so far to fulfill its 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 realisation of durable solutions. The word "protection" is the underlying motto of the UNHCR mandate, and yet North Korean asylum-seekers have no protection whatsoever. Even worse, the UNHCR has no access to North Koreans in China and, therefore, has no way of studying their situation or establishing status determination procedures. This stalemate has dragged on for several years already.

UNHCR should be in a position to invoke all mechanisms at its disposal that will allow it to obtain direct and unhindered assistance to North Koreans. **According to an agreement signed between UNHCR and China in 1995, “UNHCR personnel may at all times have unimpeded access to refugees”. Moreover, the agreement provides for the possibility of an arbitration procedure, should there be a dispute arising out of or relating to it.**

For a number of years, *Human Rights Without Frontiers Int.* alongside numerous other NGOs has called on the UNHCR to invoke the arbitration procedure as prescribed for in this bilateral agreement. Despite all legal provisions in place, the UNHCR has failed to fulfill its protection mandate and to ensure the safety and security of North Korean refugees.

What is the threshold that has to be reached before policy-makers are imbued with enough moral indignation to enable them to look beyond the immediate geo-political constraints and to seek creative answers despite the prevailing challenges and complexities of the context?

***Human Rights Without Frontiers Int* believes that there are outstanding issues that have to be dealt with urgently:**

- **The forced repatriation of North Korean asylum-seekers constitutes a violation of international law and has to be recognised as such. Therefore, the Chinese authorities should immediately stop the forced repatriation of North Koreans.**
- **The Chinese government should allow the international community to provide direct and unhindered assistance to North Koreans and to ensure their physical safety and security.**
- **The Chinese authorities should provide the UNHCR with unimpeded access to North Korean refugees.**
- **The UNHCR should immediately conduct an investigation of the conditions of North Korean refugees in China.**
- **The UNHCR should establish status determination procedure and North Korean asylum-seekers should be given legal refugee status in accordance with international law.**

ⁱ Number of North Koreans entering the South (Unification Ministry):

Year	Past - 89	1990 - 1993	1994 - 1998	1999 - 2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Male	564	32	235	564	513	468	625	422	509	570	612	666	578	765
Female	43	2	71	479	625	813	1269	961	1509	1974	2197	2261	1798	1767

Total as of 2011: 22,892
