

*North Koreans in China: A Human Rights Analysis**

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This paper analyzes the situation for North Koreans in China from a human rights perspective. It describes China's policy of considering all North Koreans to be illegal economic migrants and details the impact of this policy on the lives of individuals who have crossed the border to assure their survival. Based on interviews conducted in Yanbian and documentation by human rights organizations, the paper describes the treatment by the DPRK of North Koreans deported from China. The author makes the case that the majority of the North Koreans in China qualify for refugee status on the grounds of the differentiated access to public goods in North Korea, which is determined by political criteria, and of the harsh punishments meted out to all North Koreans who are deported from China. The paper concludes with

* Editor's Note: The North Korean penal code was amended in April 2004. Although this analysis was prepared after these changes were implemented, an English language copy of the amended code has not yet become available to the author.

policy options for China to contribute to resolving this situation, ranging from quietly halting all arrests and deportations of North Koreans who pose no threat to public safety to granting the Office of the UN High Commissioner for Refugees access to North Koreans in China for the purpose of conducting individual refugee status determinations.

North Koreans fleeing deprivation and political oppression in their homeland have no choice but to cross the border into the People's Republic of China. The exodus, which increased substantially with the advent of famine in North Korea in the mid-90s, presents China with humanitarian and human rights dilemmas that it would prefer to avoid as it seeks a resolution of security issues in Northeast Asia. Activists have organized embassy invasions by North Korean asylum seekers in Beijing, while the US Congress passed the North Korea Human Rights Act, which authorizes substantial US engagement to protect North Korean refugees. The issue of North Korean asylum seekers is now on the international political agenda. China's strategy of avoidance is therefore increasingly untenable, and solutions are needed to protect North Korean asylum seekers while recognizing China's legitimate security concerns.

The Scope of The Problem

The exact number of North Korean migrants and asylum seekers in China is unknown. Common estimates range from 100-300,000. This estimate is problematic, due to the wide range and the lack of credible, publicly available data to support the calculation. Although it is plausible that hundreds of thousands of North Koreans have crossed the border since the advent of the famine in 1994, a significant proportion of the border traffic has been, and remains, bi-directional. Many North Koreans seek temporary

employment or emergency relief from support networks in China, before returning to their homes with cash and goods to ensure the survival of their families.

Most North Koreans who enter China do so by crossing the Tumen River into Yanbian Korean Autonomous Prefecture, where 854,000 ethnic Koreans with Chinese citizenship reside.¹ The capital of Yanbian, Yanji, has a population of 350,000 of whom 210,000 are ethnic Koreans. These population figures suggest that the upper estimates for the numbers of North Koreans in China are implausible, since a large portion of the 300,000 North Koreans living illegally would find it difficult to live underground in a city of 350,000 and would be even more conspicuous in rural areas where strangers are easily identified.²

According to an unpublished estimate, there were 20,000 North Koreans living in Yanbian in September 2002.³ In testimony before the Senate Committee on Foreign Relations of the US Congress in November 2003, Refugees International (RI) endorsed an estimate of 60-100,000 based on the findings of a one-week visit to Yanbian in June 2003.⁴

The lack of data is symptomatic of the overall vulnerability of the North Korean population in China. The Chinese authorities themselves either have no firm grasp of the scale of the inward-migration, or refuse to make public data that may be available. Church networks and humanitarian organizations in

¹ The population figures in this paragraph are from Hazel Smith, University of Warwick, "North Koreans in China: Defining the Problems and Offering Some Solutions," unpublished manuscript (December 2002), p. 2.

² *Ibid.*, pp. 5-6.

³ *Ibid.*, p. 6.

⁴ Joel R. Charny, "North Korean Refugees in China: The Current Situation and Strategies for Protection," Senate Committee on Foreign Relations, November 4, 2003.

Yanbian make some effort to monitor the scale of border crossings, but do not publish these data for fear of jeopardizing their operations.

The Motivation for Leaving

The North Korean Criminal Code prohibits unauthorized departure to another country. Article 117 of the Code mandates a punishment of up to three years labor re-education for crossing the border without permission. Article 47 of the Code states that “one who escapes to another country or to the enemy in betrayal of his motherland and people” will receive a punishment of at least seven years labor re-education. Serious violations mandate execution and forfeiture of all property.⁵ These provisions violate the fundamental right to leave ones own country, a right enshrined in both the Universal Declaration of Human Rights, Article 13(2) and the International Covenant on Civil and Political Rights, Article 12(2), to which the Democratic People’s Republic of Korea (North Korea) is a state party.⁶

In addition to the forceful Criminal Code, the suffocating “cradle-to-grave” propaganda of the North Korean government ceaselessly portrays North Korea as paradise on Earth. China, South Korea, and the United States, however, are portrayed as horrible places of poverty and injustice. To shatter the bounds of this all-encompassing construct and even consider the possibility of crossing the border into China is indeed tantamount to treason in the mind of a North Korean citizen. South Korean anthropologist Chung Byung-Ho described the decision to leave the homeland thus:

⁵ *Human Rights Watch*, “The Invisible Exodus: North Koreans in the People’s Republic of China,” Vol. 14, No. 8 (C), November 2002, pp. 20-21.

⁶ *Ibid.*, p. 20.

For the people in North Korea, crossing the national border is not a simple act for better living. It is considered as an ultimate resistance to the regime, [of] the same order as suicide. The state has indoctrinated the population rather successfully up to the level of a quasi-religious community. Thus, crossing the border means an act of secession, an act of betrayal, and the ultimate crime.⁷

RI interviews with North Korean refugees in Yanbian confirm this sense of crossing the border as treason. According to one young man from Onsung, interviewed in June 2004, “Escaping is a shameful experience.” A 49-year old woman from Chongjin said that she felt like a traitor for coming to China. When she was arrested in China and deported, a 33-year-old woman from Haeryong was initially placed in a National Security Jail, where the guards repeatedly told the captured defectors that “a man without a country is worse than a dog at a funeral.”⁸

The primary motivation for North Koreans to leave their country is survival. China considers all North Korean entering the country to be economic migrants, but this does not do justice to the level of suffering and deprivation that North Koreans experience. The North Koreans interviewed by RI in 2003 and 2004 were almost all facing extreme circumstances, such as:

- food deprivation as the result of the collapse of the Public Distribution System, which supplied the basic food basket to North Korean families until the mid-90s famine;
- loss of employment as state enterprises ceased to function;

⁷ Chung Byung-Ho, “Living Dangerously in Two Worlds: The Risks and Tactics of North Korean Refugee Children in China,” *Korea Journal* (Autumn 2003), pp. 206-7.

⁸ Refugees International (RI) interviews, May 30, 2004; June 1, 2004; May 30, 2004. RI interviewed a total of 65 North Korean refugees in China over the course of two one-week visits to Yanbian in June 2003 and May-June 2004. These interviews were conducted through interpreters with individuals selected by local organizations providing assistance and protection to North Koreans in the region. The transcripts of these interviews have not been published, but can be made available on request by sending an email to the author at the following address: ri@refintl.org.

- death of family members in the famine, which shattered the support networks for the individual; and
- health problems, either personal or of a family member, which led the individual to seek money for medicines in China.

The vast majority of the North Koreans that RI interviewed were from North Hamgyong province, one of the poorest provinces in the country and one deliberately cut off from national and international food assistance during the famine as part of a “triage” strategy to husband scarce food resources.⁹

Among the 65 people that RI interviewed in Yanbian, only two cited political reasons for leaving. One 28-year-old woman said that one reason she left, in addition to accompanying her brother, was that her family was in the “hostile class” - the lowest and least privileged of the three strata in the North Korean class system.¹⁰ A 44-year-old woman from Onsung said that her parents were considered suspect by the regime because her father was a businessman (who later defected to South Korea) and her mother had studied in Germany and Russia. Her parents were treated like political prisoners. As a result, her own background was suspect and she did not want to pass this down to her children, so she decided to leave for China.¹¹

The Situation in China

As noted above, most North Koreans seeking sanctuary in China cross the Tumen River into Yanbian Korean Autonomous Prefecture.

⁹ Andrew Natsios, “The Politics of Famine in North Korea,” United States Institute of Peace Special Report (August 2, 1999), p. 5. See also, Hazel Smith, *op. cit.*, p. 12.

¹⁰ RI interview, June 18, 2003.

¹¹ RI interview, June 2, 2004.

With its large population of Korean-Chinese, North Koreans have a chance of finding people in Yanbian with whom they can communicate and who are willing to provide them shelter and economic support.

Chinese policy towards North Korean asylum seekers is predicated on the assumption that all North Koreans crossing the border do so for economic reasons. They are treated as illegal migrants and subject to arrest and deportation. China is a signatory of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as being a member of the Executive Committee of the Office of the UN High Commissioner for Refugees (UNHCR). Despite this, China does not permit UNHCR staff of the Beijing office to visit Yanbian to assess the situation for North Koreans in the region. In addition to insisting that all North Koreans are economic migrants, China also justifies its treatment of North Koreans by citing sovereign treaties with the DPRK, including agreements from the early 1960s and 1986, which oblige China to deport illegal migrants and criminals seeking to cross the border from North Korea.¹²

Despite the national Chinese policy of arrest and deportation, local implementation in Yanbian is tempered by intra-ethnic solidarity that Korean-Chinese officials feel for their deprived brothers and sisters from North Korea. Furthermore, many people in Yanbian either have direct experience, or have learned of their parents' experiences, of being sheltered in North Korea during the political chaos and economic dislocation during the Chinese Cultural Revolution. These experiences generate sympathy for the plight of North Koreans.

If individuals cross the border to survive and present no threat to public safety, the local authorities and police tend to look the

¹² *Human Rights Watch, op. cit.*, p. 11.

other way, often for months. Indeed, several North Koreans told RI that they received assistance from border guards when they first crossed into China.¹³

Since activists began to raise the public profile of the plight of North Korean asylum seekers in China by organizing groups of North Koreans to enter foreign embassy compounds in Beijing in the spring of 2002, local officials in Yanbian have had less leeway to tolerate the presence of North Koreans in the prefecture. The national authorities have responded to these events by ordering local government security forces to round up and deport illegal North Korean migrants. During these periods, rewards are offered for each individual arrested.¹⁴ In June 2004, public notices were posted throughout Yanji, imploring residents to be on the lookout for illegal North Korean migrants and to report any sightings to local police.

Crime is also a factor in China's response to North Korean asylum seekers. Some North Koreans, including armed soldiers and border guards, are so desperate when they cross the border that they break into houses in villages close to the Tumen River, steal what they can find, and then cross back into North Korea. Since gaining legal employment is impossible, a small minority of North Koreans remaining in Yanbian resort to crime to support themselves. The same 60-year-old woman who cited the initial kindness of Chinese guards when she first crossed the border in 1998, told RI that "North Koreans have committed many crimes and the Chinese don't feel sympathetic anymore."¹⁵

¹³ RI interview, May 30, 2004.

¹⁴ In June 2003, RI was told by local sources in Yanbian that the reward per North Korean was 100 RMB, or about US\$12. It was not clear, however, if that was a consistent policy or a one-time amount valid for the one most recent crackdown.

¹⁵ RI interview, May 30, 2004.

Regardless of the initial solidarity and support that North Koreans may receive, they live in China under constant fear of arrest and deportation. They have no realistic options to live freely and meet their basic needs, and the few courageous individuals and organizations seeking to provide protection and assistance, whether Korean-Chinese, South Korean, or the rare few from outside the region, are themselves under constant pressure from the Chinese authorities to curtail their activities or risk expulsion.

Men have a difficult time finding sanctuary in China because they need to support themselves outside the home. Moving around Yanji or rural areas to find day labor exposes them to police searches. The few long-staying male refugees who RI interviewed were established in a safehouse deep in the countryside with access to agricultural plots in the surrounding forest. Some men may survive in the informal economy, but they are not reached by the refugee support organizations. The numbers of such men are impossible to determine in the absence of a census of North Koreans in Yanbian. Otherwise, men tend to cross the border, quickly contact refugee support organizations, access food and other supplies, and then return to their homes in North Korea.

The overwhelming majority of North Korean women seeking to stay in China establish relationships with Chinese men, either through brokers or directly, as a survival strategy. In rural Yanbian, the male-female ratio among the unmarried age group after schooling is a staggering 14-1, so there is high demand for women willing to live in rural areas.¹⁶ While North Korean women sometimes find compatible companions and end up in loving relationships, most are - in effect - trafficked; sold to Chinese men or to the owners of brothels and karaoke bars, whether in Yanbian or other parts of China. The fact that women seek a relationship to survive, and in this sense could be said to

¹⁶ Byung-Ho, *op. cit.*, p. 198 at footnote 14.

cooperate in the transaction, does not change the calculus of their vulnerability.

The following accounts, based on RI interviews of North Korean women in Yanbian in 2003 and 2004, are typical:

In 2001, a 30-year-old woman crossed the border with an unknown North Korean man whom she met at the border. “There are North Korean men who look for women along the border to sell them. The Chinese client pays. In the back of my mind I knew I was going to be sold.” She was taken to the house of a Korean-Chinese man. Fearing she would be sold, she escaped by going to the washroom and fleeing at night. After wandering hopelessly in search of shelter, she was forced to look for the man’s house, as it was the only one she knew. She was unable to find it, but eventually found refuge in a neighboring village. The family with whom she stayed had two sons and wanted her to live with one of them. She married the 30-year-old. After four months of living with him, however, the police came to the house one night. She was arrested and deported.¹⁷

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In 1999, a 28-year-old woman crossed the border with three other women; a cousin and two friends. They were caught by a gang of 3-4 Chinese businessmen at the border and sold to clients in southern China. She was sold to a Chinese man, with whom she stayed for just two hours. He left for work and locked the door, but she nevertheless managed to escape and climbed the fence. She fled from his village, through the countryside to the closest town. She was unable to speak the language, but could write the name Kim Il Sung in Chinese. She showed this name to passers-by until one man understood what had happened. He gave her food and a train ticket back to Yanji.¹⁸

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¹⁷ RI interview, June 17, 2003.

¹⁸ RI interview, June 17, 2003.

In 1999, a 25-year-old woman from Onsong arrived in China, where she was introduced to a Korean-Chinese man. She was unaware of any monetary incentive or reward for this introduction. The man had been married before for seven years. Her husband is 37 and they have two daughters. When he gets drunk, he beats her. He has emotional problems due to side effects from medication. When asked her biggest concern, she said, "Emotional pain." She is concerned about her safety.¹⁹

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In 1999, a 26-year-old woman from Chongjin crossed the border with her cousin, who had made the trip before and returned. "There is a rumor that Chinese treat North Korean women like slaves or abuse them. I was afraid of the businessmen that take women from North Korea." To avoid capture by traffickers at the border, she dressed as a man and went directly to a house that her cousin knew. She hid in a room for two days and asked the owner to marry her to a peasant rather than be sold. The owner found her a man as requested and arranged an introduction. They remain in a stable relationship with a young daughter.²⁰

North Korean children are also vulnerable. Few speak Chinese and are therefore at risk of detection if they venture outside of the home. Only a small percentage has access to education. A few attend church-run schools and even fewer attend Chinese schools. Some families can afford the fee to enroll their children in Chinese schools, but as of June 2004 increasing crackdowns by Chinese police were forcing North Korean children to stay out of schools to avoid detection. In rural areas, some young people are able to work on farms, but job opportunities in cities are almost non-existent because of tighter surveillance.

The reality for young North Koreans in China is bleak. They stay at home all day to avoid detection. There are few opportunities

¹⁹ RI interview, June 1, 2004.

²⁰ RI interview, June 18, 2003.

for them to learn Chinese, which might afford some freedom to move undetected outside their homes or shelters. They cannot work. They are constantly worried about their families, in either North Korea or China. In the poignant words of one teenage boy, “The situation here does not allow me to dream about my future.”²¹

The economic deprivation and political oppression in North Korea, coupled with the lack of legal status in China, place tremendous strains on families. Precious few of the children that RI interviewed in China were part of stable families. Separation and vulnerability were the norm. The following account of a 16-year-old girl from Orang who first arrived in China in 2001 captures the consequences of the stress on North Korean families:

Her parents were both farmers. When she was nine years old [in 1997], her mother went to China, where she married a Chinese man. At the time she was too young to comprehend where her mother had gone, but was able to guess from the clothes her mother sent back. Unfortunately, the Chinese husband mistreated her mother, then murdered his own mother. When the police came to the house to arrest him, they found and deported her mother.

Her father remained in North Korea and remarried after her mother escaped to China. Before coming to China herself, she moved between her grandmother, father, and stepmother. She went to school for only three years because she had to move around so much.

When she was 12, her mother returned to China, where she married another Chinese man. After her mother left for China, she stayed with her grandmother. Her mother asked her uncle to take her to the border to deliver her to her stepfather on the Chinese side.

Her handicapped stepfather mistreated both her and her mother, even trying to beat her with an axe. Eventually, she and her siblings ran away.

²¹ RI interview, May 30, 2004.

Her mother had a job making *miso*. The employer allowed the mother and her three children to hide in a storage area for a week. At the end of the week, however, her mother went back to her husband. She does not see her mother and she and her siblings are afraid that their stepfather will force them to go back.

Now she lives with a missionary, studying Chinese and the Bible at home. "I have no worries but I want to see my mother again."²²

There is a growing problem of statelessness for the children born from marriages between North Korean women and Chinese men. Because these marriages are illegal under Chinese law, the children are not considered Chinese and are not given citizenship. For wealthier families, it is possible to buy citizenship for their children at a price of US\$1,250 but this is far out of reach for most families. The question of citizenship will be an issue within the next few years as an unknown number of stateless children approach school age. Like North Korean children, these half-Chinese children will not be able to attend school easily.

Treatment upon Deportation

The frequency of the arrest and deportation of North Koreans in China is impossible to determine with any certainty. Approximately one-third of the North Koreans interviewed by RI in Yanbian had been arrested and deported at least once, and ten percent had been arrested and deported multiple times. It is, however, impossible to draw any conclusions from these figures because of the small sample size, and more importantly, because only those sufficiently strong and determined to survive their incarceration in North Korea and make it back to China were available to be interviewed; only the survivors of a cruel system can talk.

²² RI interview, June 3, 2004.

North Koreans arrested by the Chinese police are taken to a prison near the Tumen border crossing to prepare for handover to the North Korean authorities. The North Korean officials are especially concerned with any individuals who have met with South Koreans, intending to emigrate to the South, or have met Christian missionaries, intending to return to North Korea to preach the gospel clandestinely. North Koreans deported from China are interrogated for up to a week at the border, before being assigned to a prison or labor training center depending on the severity of their crime in the eyes of the North Korean border officials.

As noted above, leaving the country without permission is illegal under the North Korean penal code, with those deemed minor offenders subject to imprisonment in labor training centers for up to three years. Traitors are subject to at least seven years imprisonment, or execution in extreme cases. The RI interviews in Yanbian, however, suggest that at some point during the famine and its aftermath, the North Korean authorities made a decision to give lesser sentences to people who were obviously going to China to ensure their own survival and that of their families. In effect, they recognized that migration to China was a safety valve for the North Korean system. The standard sentence for such individuals seems to have been reduced to one month in a labor training center at the county level, close to the person's legal residence at the time of his or her departure from North Korea.

Conditions in the labor training centers are harsh. With increasing movement between North Korea and China, and increasing numbers of arrests, the centers are crowded. One 32-year-old man told RI that 40 prisoners lived in a room about five square meters. Prisoners were expected to sleep while kneeling, and any movement or deviation was punished.²³ Depending on the center,

²³ RI interview, June 19, 2003.

rations consist of corn gruel or soup with a bit of cabbage, three times per day. The work is hard labor, such as digging canals and constructing roads. In the evening, the prisoners are subjected to political lectures. If the group consists primarily of people arrested in China, the emphasis is on loyalty to North Korea and the importance of never returning to China.

One consistent aspect of the RI interviews on conditions in the labor training centers is the policy of releasing prisoners when they become ill. No medical care is available and the authorities do not want the prisoner to die in the labor training center. A 37-year-old woman from Onsheng, who was arrested and deported three times over a one-year period, said that her husband, who had been arrested separately when he tried to leave North Korea a third time, died three days after being released from a labor training center. After her third arrest, she was able to convince the guards to release her and her daughter so that they could go see her husband's grave. They fled immediately to China.²⁴

Harsher penalties are reserved for those known to have met with foreigners or converted to Christianity with the intention of becoming missionaries themselves inside North Korea. No interviewees have direct knowledge of executions for these offenses, but one 33-year-old man from Haeryung told RI that "for meeting with foreigners a person could be sentenced to death. If someone gets caught with Bibles he or she will be sentenced to death." He himself was leaving that evening to smuggle Bibles back into North Korea.²⁵

²⁴ RI interview, June 18, 2003. On releases of ill prisoners, see also David Hawk, U.S. Committee for Human Rights in North Korea, "The Hidden Gulag: Exposing North Korea's Prison Camps" (October 2003), p. 58.

²⁵ RI interview, June 15, 2003.

In April 2000, a 22-year-old woman from Musan, who first crossed into China in 1998, was caught with thirteen others in the midst of Bible study. She was deported and given a sentence of one year, later commuted to ten months. When the Chinese deported her, they provided North Korean officials with documents detailing how she was caught in Bible study and had met South Koreans. Her interrogations focused especially on her Christian faith.

She spent a total of ten months in two different National Security Jails. Rather than sending her to a labor training center, the focus was on psychological punishment. In both prisons, she had to sit perfectly still all day. She was not allowed to speak at all. In the second prison, there was a video camera and she believed the room was bugged. Male prisoners were beaten, but the women were not. She was only 18 at the time, so the prison guards felt sorry for her. Despite possibly being treated more leniently, she was bitter about her time in prison. "I was treated worse than a dog. I would rather die than go there again."²⁶

During her time in jail, she had two trials: a pre-trial to confirm the validity of the documents provided by the Chinese; and a second trial. She was released after the second trial, as were most of the women. Two people from her group died in jail. She does not know the fate of the teachers from her Bible study. Presumably, they received a harsher sentence.

The US Committee for Human Rights in North Korea has documented eight eyewitness or first hand accounts of forced abortions or infanticide affecting women deportees who return pregnant from China.²⁷ The rationale is that the babies, being of mixed Chinese-Korean ancestry, would be a living symbol of the

²⁶ RI interview, June 4, 2004.

²⁷ David Hawk, *op. cit.*, pp. 56-72.

mother's betrayal of her homeland, and therefore must be killed. Among the horrific stories is that of a 66-year-old grandmother who while detained in the Provincial Detention Center in South Sinuiju in January 2000 helped deliver seven babies who were killed soon after birth by being buried alive. A doctor explained to her that "since North Korea was short on food, the country should not have to feed the children of foreign fathers."²⁸

The Case for Refugee Status for North Koreans in China

The 1951 Convention Relating to the Status of Refugees, to which the People's Republic of China is a state party, defines a refugee as follows:

"[An individual 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 is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."²⁹

Because few North Koreans crossing into China have experienced direct, targeted persecution as specified in the Convention definition, China considers all North Koreans to be illegal economic migrants and, as already noted above, prohibits the staff of UNHCR from visiting Yanbian to determine the refugee status of particular individuals.

There is a compelling case, however, for the majority of North Koreans in China to be considered refugees. It rests on two

²⁸ *Ibid.*, p. 62.

²⁹ 1951 Convention Relating to the Status of Refugees, Article 1 (A, 2).

pillars: 1) the nature of the North Korean political system and its impact on access to public goods, especially food; and 2) the North Korean treatment of those arrested and deported from China as mandated by the country's penal code.

In North Korea access to public goods (food, education, health care, shelter, and employment) is inseparable from the all-pervasive system of political persecution. Based on an original registration conducted in 1947, the North Korean population is divided into three classes: core, wavering, and hostile. The latter group constitutes 27% of the population. There are more than 50 subcategories.³⁰ The class status of each family is set for life and transfers from generation to generation. Members of the "hostile class" are the last to receive entitlements, which is disastrous when a comprehensive welfare regime such as that established in North Korea completely collapses, as it has since 1994. Thus, an entire class of individuals is persecuted by North Korea's political system. In this context, there is no meaningful way to separate economic deprivation from political persecution.

In addition to the fundamental discrimination within the North Korean political system, the government further limits access to food and the economic means of survival through a variety of policies that control the lives of North Korean citizens. The government controls movement within the country by requiring travel passes to move outside one's community of origin. Since foraging for food or looking for employment wherever it can be found are essential survival strategies at times of food shortages, limits on travel further prevent North Korean citizens from meeting their basic needs. Until very recently, the government blocked access to markets where income is earned through barter and trade. The government restricts the activities of international relief agencies, declaring certain areas of the country off limits

³⁰ *Human Rights Watch, op. cit.*, p. 19.

and preventing independent monitoring of the relief supplies provided. Taken together, these measures constitute violations of internationally recognized human rights embodied in covenants to which the DPRK is a state party.³¹

According to the testimony collected by RI and other human rights organizations, most North Koreans crossing the border into China are fleeing state-sponsored denial of their human rights. Members of the “hostile class” and residents of areas deliberately cut off from international food assistance have an especially strong case to be considered refugees in the sense of fleeing targeted persecution. The denial of basic rights, however, extends more broadly, and the hunger that drives people to flee is the direct result of the political system that has been created by the leaders of the North Korean government. Not since Cambodia under the Khmer Rouge has a government succeeded in creating such an all-encompassing reality of oppression and restrictions on the basic rights of the majority of its citizens. North Koreans fleeing their country, therefore, have a case for refugee status as compelling as those fleeing Cambodia from 1975-78.

The second pillar of the case for considering North Koreans in China for refugee status is the treatment they receive upon arrest and deportation is described above. Almost all North Korean refugees face severe punishment, regardless of their original motivation for leaving their country.

In its November 2002 report on North Koreans in China, Human Rights Watch argued that punishment for deportees was universal qualified North Koreans in China for the status of *refugees sur*

³¹ See *Amnesty International*, “Starved of Rights: Human Rights and the Food Crisis in the Democratic People’s Republic of Korea (North Korea),” January 2004, found on the web at <http://web.amnesty.org/library/print/ENGASA240032004>, especially pp. 9-15, and *Good Friends*, “Human Rights and the Food Crisis in North Korea: A Summarized Version,” December 2003, pp. 8-10.

place. Even if these individuals had not previously been persecuted in North Korea, they “would now probably face a high risk of abusive punishment if returned on account of their experiences in China, which have cast a light of presumed disloyalty upon them. ... [T]he United Nations High Commissioner for Refugees (UNHCR) has a longstanding understanding that such persons are entitled to the protections of the Convention and its Protocol.”³²

Both aspects of the case for refugee status for North Koreans in China have received international recognition. In April 2004, at the Sixtieth Session of the Commission on Human Rights, the Commission overwhelmingly endorsed a resolution on the Situation of Human Rights in the Democratic People’s Republic of Korea. The resolution expressed “deep concern” regarding “[s]anctions on citizens of the Democratic People’s Republic of Korea 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 labor camps,” among other serious human rights violations.³³

For its part, UNHCR has formally designated North Korean asylum seekers in China as persons of concern. According to its report to the 29th Meeting of the Standing Committee in March 2004, “UNHCR remains deeply concerned that such individuals do not have access to a refugee status determination process and are not protected from *refoulement* [forced return.]”³⁴

³² *Human Rights Watch, op. cit.*, p. 19.

³³ Economic and Social Council, Commission on Human Rights, Sixtieth session, Agenda item 9, “Situation of human rights in the Democratic People’s Republic of Korea,” E/CN.4/2004/L.21 (April 8, 2004).

³⁴ Office of the United Nations High Commissioner for Refugees, “Bullet point summary of the strategic presentation on UNHCR’s operations in Asia and the Pacific,” 29th meeting of the Standing Committee, March 9-11, 2004.

Protection for North Koreans in China

While the case for the presumption of refugee status for North Koreans in China may be clear, translation into practical protection measures remains elusive. China continues to consider all North Koreans in China as illegal economic migrants, deflecting political pressure from UNHCR and other governments to modify its stance. The Chinese position is consistent with a global trend that has reduced opportunities for asylum seekers to receive an impartial review of their claims. In fact, the relative tolerance by China of the presence of North Koreans in Yanbian contrasts favorably with the United States interception and deportation of Haitian asylum seekers, the European proposal to confine African asylum seekers to internment camps in Libya, and Australia's "Pacific Solution," which unloads Asian asylum seekers on tiny islands in the Pacific far from Australian shores.

Public awareness of the issue of human rights of North Koreans in China, however, is increasing. Activists on this issue, who belong primarily to Christian evangelical churches and affiliated conservative organizations with close ties to the Bush Administration, and their supporters in the US Congress, have a proven record of tenaciously working on an issue until it achieves critical mass in the public consciousness, at least in the United States.³⁵ China is a powerful country and essential to US long-term strategic objectives in East Asia. The North Korean refugee issue is therefore unlikely to disrupt bilateral relations. It will be an irritant, however, and the 2008 Olympics in Beijing provide a medium-term target for activists seeking more direct action to protect North Koreans in China.

³⁵ Their success in making achievement of a north-south peace agreement in Sudan the top African foreign policy priority of the Bush Administration is an example of their impact.

China has legitimate security concerns in two areas: criminal acts committed by North Koreans on Chinese soil; and a large-scale influx of North Koreans into their territory, triggered either by social upheaval inside North Korea or by the massive response to a more liberal asylum policy. China is fully justified in taking steps to enforce security in the border region and clamp down on criminal activity. The likelihood of social upheaval in North Korea relates directly to the need for de-nuclearization and some form of peaceful political evolution in the DPRK; a process in which China is completely engaged. China has policy options for liberalizing its treatment of North Korean migrants that would be unlikely to provoke a massive outflow in response.

The simplest option for China is to halt all deportations of North Koreans in China, except for those who commit criminal acts. This could be achieved quietly in order to avoid encouraging an overwhelming response from North Koreans in their home country. As an immediate humanitarian gesture, China could also grant legal residency to the spouses of Chinese citizens and their children.

The next level of policy options for China requires greater political commitment to resolve the issue of North Korean migration than is likely to be demonstrated in the near term. Additional steps could include granting all North Koreans in China indefinite humanitarian status Human Rights Watch,³⁶ or providing North Koreans with a special resident visa if they can show that they have employment and shelter.³⁷ A blanket, one-off amnesty for all North Koreans in China, with permission to remain in the country, is another possible approach.³⁸

³⁶ *Human Rights Watch, op. cit.*, p. 5.

³⁷ Hazel Smith, *op. cit.*, p. 17.

³⁸ *Ibid.*, p. 18.

These options share the advantage of allowing North Koreans to live in China rather than being based on an approach that envisages their eventual settlement as refugees in South Korea or the United States. One of the striking aspects of the RI interviews in Yanbian was the number of North Koreans who saw remaining in China as their best option. This was largely due to cultural compatibility and proximity to their homes in North Korea in case they wished to return to see their relatives, to respond to a family emergency, or to return in the event of a fundamental political change. Few RI interviewees were prepared to make the definitive break with their lives in North Korea entailed by going to South Korea or the United States. This attitude may be changing as activists raise expectations among North Koreans in China in response to the passage of the North Korea Human Rights Act, which allocates huge sums of money for support to refugee programs, including resettlement.

The top level of policy options for China enters the utopian realm, in which it would honor its obligations under the 1951 Refugee Convention and 1967 Protocol. Under these accords, China is obliged to allow UNHCR unimpeded access to North Koreans in China to review their overall situation and conduct individual status determinations. Such access would lead inevitably to the granting of refugee status to the majority of North Koreans in China. From a refugee rights perspective, this is really the only acceptable policy option, but it is the least achievable. Nonetheless, advocating this option must be the starting point for any principled campaign to protect North Koreans in China.