

**Submission by the United Nations High Commissioner for Refugees  
For the Office of the High Commissioner for Human Rights' Compilation Report -  
Universal Periodic Review:  
People's Republic of China**

**I. BACKGROUND INFORMATION**

The People's Republic of China (hereinafter China) became a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 1982. China is not a State party to either the *1954 Convention Relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*. China has acceded to a number of human rights treaties, including the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention against Torture*, the *Convention on the Elimination of Discrimination against Women*, and the *Convention on the Rights of the Child*.

UNHCR conducts refugee status determination under its mandate for individual asylum seekers as a temporary measure until the Government creates its own State structures. UNHCR's refugee status determination decisions are communicated to the Chinese authorities. Once recognized by UNHCR, the Government only permits refugees to remain in China temporarily, while a durable solution (excluding local integration) is being sought by UNHCR.

There are three distinct groups of persons of concern to UNHCR in China. The first consists of asylum-seekers and refugees. In 2011, there were 275 asylum-seekers from 15 countries. There are also 144 recognized refugees awaiting a durable solution.

The second group consists of Indo-Chinese refugees who came to China in the early 1980s from Vietnam, Laos, and Cambodia. They were granted refugee status on a *prima facie* basis. These refugees are mainly of Chinese ethnic origin and have settled mostly in rural areas in six of China's southern provinces. Currently, there are an estimated 300,000 Indo-Chinese refugees, mainly from Vietnam.

The third group consists of citizens from the Democratic People's Republic of Korea who are in China and who may be in need of international protection, and as such are persons of concern to UNHCR. The exact size of this group is unknown, because there are no official statistics.

**II. ACHIEVEMENTS AND BEST PRACTICES**

On 30 July 2012, the Standing Committee of China's National People's Congress adopted a new *Administration Law on Entry and Exit*. For the first time, it added provisions regarding

the treatment of refugees to domestic law (Art. 46). The new rules will enter into force in July 2013, and it is expected and hoped that they will subsequently result in the adoption of a comprehensive national refugee regulations, including provisions relating to refugee children.

According to the new legislation an alien who applies for status as a refugee may stay in China with a temporary identity certificate issued by a public security organ during the screening of his or her application. An alien who is determined to be a refugee may stay and reside in China with a refugee identity certificate issued by a public security organ. Under the new provision, persons may apply for refugee status and remain legally in the country while seeking asylum.

Although refugees have no legal status in China and as such do not enjoy any legal entitlement to be granted access to public services, on humanitarian grounds the Government recently adopted a policy decision to grant refugee children access to Chinese public education institutions on the same conditions as Chinese pupils. This means that refugee children will have to pay the minimum school fees applied to Chinese students.

### **III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS**

#### **Issue 1: Asylum-seekers and refugees**

The adoption of the changes in the *Law of Entry and Exit* was an important first step toward national ownership of the asylum process. The next steps should be the adoption of national asylum legislation and the creation of national institutions. At the end of 2008, a refugee regulation was drafted with input from all relevant ministries and submitted to the State Council for its final deliberation. It was never adopted, however. During UNHCR's Ministerial Conference on Refugees and Stateless Persons to commemorate the 60<sup>th</sup> anniversary of the *1951 Convention* and the 50<sup>th</sup> anniversary of the *1961 Convention* in December 2011, China pledged to accelerate the legislation process relating to refugees in light of China's national conditions and legislative process.

Despite possession of UNHCR certificates confirming their registration and status with the Office, urban asylum-seekers and refugees continue to face risks of arrest and detention in China for violation of immigration offences if they enter the country unlawfully or overstay their visas. Without valid work permits or license to do business, they cannot obtain legal employment or establish businesses.

#### **Recommendations:**

- Adopt national asylum legislation with technical support from UNHCR.
- Establish a responsible government institution in charge of refugee matters.
- Accept UNHCR's technical support in capacity-building for Government officials and in the development of a national refugee status determination procedure.

#### **Issue 2: Indo-Chinese refugees**

During UNHCR's Ministerial Conference to commemorate the 60<sup>th</sup> anniversary of the *1951 Convention* and the 50<sup>th</sup> anniversary of the *1961 Convention* in December 2011, China

pledged to create favourable conditions for the development of the Indochinese refugees and addressing their legal status. The Indo-Chinese refugees are de facto integrated and enjoy the same rights as Chinese nationals.

**Recommendation:**

- Facilitate the naturalization of the Indo-Chinese refugees.

**Issue 3: North Koreans**

North Koreans come to China for various reasons, including for economic reasons, and some may be in need of international protection.

**Recommendation:**

- Take all measures to ensure viable and effective humanitarian space for those North Korean asylum-seekers who may be determined to be in need of international protection, including issuing them identification and documentation to legally reside in China.

**Human Rights Liaison Unit  
Division of International Protection  
UNHCR  
March 2013**

## ANNEX

### Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies Universal Periodic Review: People's Republic of China

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to China.

#### **Committee on the Elimination of Racial Discrimination**

CERD/C/CHN/CO/10-13, 75<sup>th</sup> Session

15 September 2009

9. The Committee notes the lack of disaggregated statistical data regarding the socio-economic status of members of ethnic minorities, non-citizens, asylum-seekers and refugees.

**In accordance with its general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention and paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its request (A/56/18, para. 250) that the State party include, in its next periodic report, updated and detailed statistical data on the socio-economic situation of the population, disaggregated by ethnic groups and nationalities. In this regard, it recalls the importance of gathering accurate and up-to-date data on the ethnic composition of the population.**

10. While taking note of article 4 of the Constitution of the State party, stipulating that all ethnic groups in the State party are equal, the Committee reiterates its concern (A/56/18, para. 241) that the domestic legislation of the State party does not contain a definition of racial discrimination in full conformity with the definition set out in article 1 of the Convention, as it does not include a prohibition of discrimination on the grounds of descent and national origin. (art. 1)

**The Committee recommends that the State party adopt a comprehensive definition of racial discrimination, fully in accordance with article 1, paragraph 1, of the Convention, prohibiting discrimination on the basis of race, colour, descent, or national or ethnic origin. In this regard, the Committee especially draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens.**

16. While noting that the State party is in the process of drafting a refugee law, the Committee reiterates its concern (A/56/18, para. 246) that asylum-seekers from the Democratic People's Republic of Korea continue to be systematically refused asylum and forcibly returned. (art. 5(b))

**The Committee recommends that the State party adopt legislation relating to refugee status as soon as possible. Bearing in mind its general recommendation No. 30, the Committee calls upon the State party to take all necessary legal and policy measures to ensure that all asylum-seekers have the merits of their individual cases considered by an independent and impartial authority.**

27. The Committee expresses its concern about the definition of racial discrimination given in the Hong Kong SAR Race Discrimination Ordinance, which is not completely consistent with article 1 of the Convention as it does not clearly define indirect discrimination with regard to language, and it does not include immigration status and nationality among the prohibited grounds of discrimination. (art. 1 (1))

**The Committee recommends that indirect discrimination with regard to language, immigration status and nationality be included among the prohibited grounds of discrimination in the Race Discrimination Ordinance. In this regard it recalls its General Recommendation No. 30.**

29. While noting the planned legislative framework for torture claimants in Hong Kong SAR, the Committee is concerned that the State party has not adopted a refugee law as such, including a screening procedure for asylum claims. (art. 5 (b))

**The Committee recommends the adoption of a law on refugees, with a view to establishing a comprehensive procedure for the screening of individual asylum claims. It furthermore recommends that the rights of asylum-seekers to information, interpretation, legal assistance and judicial remedies be guaranteed. The Committee also encourages the renewed consideration of the ratification of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.**

32. While welcoming the adoption of new legislation on trafficking, the Committee is concerned that trafficking in persons continues to be a serious problem in the Macau SAR, bearing in mind that victims are often women and children belonging to ethnic minorities or non-citizens. (art. 5 (b) and (e)).

**The Committee recommends the reinforcement of measures to adequately prevent, combat and punish human trafficking, especially of non-citizens. It expects to receive, in the next periodic report, detailed statistical information in this regard, including on protection and reparation provided to the victims.**

### **Committee Against Torture (Hong Kong SAR)**

CAT/C/HKG/CO/4, 41<sup>st</sup> Session

19 January 2009

#### **Refugees and non-return to torture**

7. While the Committee appreciates the cooperation of HKSAR authorities with UNHCR to ensure respect for the principle of non-refoulement and protection of refugees and asylum seekers, it is still concerned that there is no legal regime governing asylum and establishing a fair and efficient refugee status determination procedure. The Committee is also concerned that there are no plans to extend to HKSAR the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol.

#### **The HKSAR should:**

- a) **incorporate the provisions contained in article 3 of the Convention under the Crimes (Torture) Ordinance;**
- b) **consider adopting a legal regime on asylum establishing a comprehensive and effective procedure to examine thoroughly, when determining the applicability of its obligations under article 3 of the Convention, the merits of each individual case;**
- c) **ensure that adequate mechanisms for the review of the decision are in place for each person subject to removal, expulsion or extradition;**

- d) **increase protection, including recovery and reintegration, to trafficked persons, especially women and children, who should be treated as victims and not criminalized;**
- e) **ensure effective post-return monitoring arrangements; and**
- f) **consider the extension of the 1951 Refugee Convention and 1967 Protocol to Hong Kong.**

### **Committee Against Torture (Macao SAR)**

CAT/C/MAC/CO/4

19 January 2009

#### **Trafficking in persons**

9. While noting the measures taken in order to reduce trafficking, including new legislation, as well as the intensification in investigation and prosecution of this crime, the Committee is still concerned at the incidence of trafficking in Macao SAR, notably in women and children, especially for the purpose of sexual exploitation.

**The Macao SAR should continue to take measures to combat trafficking in persons, notably women and children. To this end, it should:**

- a) **investigate all cases of trafficking and strengthen its efforts to prosecute and punish the perpetrators;**
- b) **increase protection, including recovery and reintegration, to trafficked persons, especially women and children, who should be treated as victims and not criminalized; and**
- c) **strengthen cooperation with the authorities of countries from or to which individuals are trafficked in order to combat this practice; such cooperation should include multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible of trafficking as well as strategies for supporting the victims.**

### **Committee Against Torture**

CAT/C/CHN/CO/4, 41<sup>st</sup> Session

12 December 2008

#### **National, ethnic or religious minorities and other vulnerable groups**

18. The Committee is greatly concerned by the allegations of targeted torture, ill-treatment, and disappearances directed against national, ethnic, religious minorities and other vulnerable groups in China, among them Tibetans, Uighurs, and Falun Gong practitioners. In addition, the return of North Korean border-crossers and refugees is also an area of concern for the Committee with regard to vulnerable groups, as articulated below.

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#### **Non-refoulement and risk of torture**

The Committee is greatly concerned by allegations that many individuals have been forcibly returned to the Democratic People's Republic of Korea, without any examination of the merits of each individual case, and subsequently been subjected to torture or cruel, inhuman or degrading treatment or punishment by the authorities. The Committee notes with concern that these individuals are referred to by the State party as "illegal immigrants" or "snakeheads" and that such labels presume that these individuals are not deserving of any protection. Similarly, persons extradited to and from neighbouring States do not benefit from legal safeguards against return despite the risk of torture. The Committee is further concerned

by the failure of the State party to clarify how it includes in its national laws or practice the prohibition on returning a person to a country where he or she faces a substantial risk of torture, and hence how the State party ensures that its obligations under article 3 of the Convention are fulfilled (art. 3).

**Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.**

**When determining the applicability of its obligations under article 3 of the Convention, the State party should establish an adequate screening process for status determination in order to determine whether persons subject to return may face a substantial risk of torture, particularly in view of the fact that it is reportedly a criminal offence to depart unofficially from the DPRK, and should provide UNHCR with access to the border region and persons of concern. In light of the large numbers of DPRK citizens who have crossed into China, the State party needs to be more active in ensuring that the obligations of article 3 are fully met. The State party should also ensure that adequate judicial mechanisms for the review of decisions are in place and sufficient legal defence available for each person subject to extradition, and ensure effective post-return monitoring arrangements.**

**The State party should provide data on the number of persons expelled or returned to neighbouring States.**

**The State party should pursue its efforts to adopt appropriate legislation to fully incorporate into domestic law its obligation under article 3 of the Convention, thereby preventing any persons from being expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would be in danger of being subject to torture.**

#### **Measures against terrorism**

28. The Committee appreciates the information on the importance given by the State party to anti-terrorist work and the information on their attempts to strengthen anti-terrorist legislation and other relevant measures, including international cooperation against terrorism. Notwithstanding this information, the Committee notes with concern that all rights in the Convention are not always respected in all circumstances.

**The Committee urges the State party to ensure that any measure to combat terrorism is in accordance with Security Council resolutions 1373 (2001) and 1566 (2004), which require that anti-terrorist measures be carried out with full respect for, inter alia, international human rights law, including the Convention and the absolute principle of non-refoulement.**

#### **Committee on the Elimination of Discrimination Against Women**

CEDAW/C/CHN/CO/6, 36<sup>th</sup> Session

25 August 2006

31. While noting that legal measures prohibiting sex-selective abortions and female infanticide and other measures are in place, such as the nationwide campaign, “Operation Caring for Girls”, launched in 2006 and a system of incentives, the Committee remains concerned at the persistence of illegal practices of sex-selective abortion, female infanticide and the non-registration and abandonment of female children, and about forced abortions.

The Committee is concerned about the impact of the adverse sex ratio, which may contribute to the increase in trafficking in women and girls.

**32. The Committee urges the State party to strengthen its monitoring of the implementation of existing laws against selective abortion and female infanticide and to enforce them through fair legal procedures that sanction officials acting in excess of their authority. It also urges the State party to investigate and prosecute the reports of abuse and violence against ethnic minority women by local family planning officials, including forced sterilization and forced abortion. The Committee recommends that the State party introduce mandatory gender-sensitivity training for family planning officials. It encourages the State party to continue to strengthen efforts to ensure that all girls are registered at birth, in particular in rural areas. It further recommends that the State party vigorously address the causes of son-preference, which remain strong in rural areas, and of the negative consequences of the one-child**

33. While noting that the State party is also party to the 1951 Convention relating to the Status of Refugees, it is concerned at the lack of laws or regulations for the protection of women refugees and asylum-seekers. The Committee expresses particular concern at the situation of North Korean women, whose status remains precarious and who are particularly vulnerable to being or becoming victims of abuse, trafficking, forced marriage and virtual slavery.

**34. The Committee calls upon the State party to adopt laws and regulations relating to the status of refugees and asylum-seekers, in line with international standards, in order to ensure protection also for women. The Committee recommends that the State party fully integrate a gender-sensitive approach throughout the process of granting asylum/refugee status in close cooperation with the Office of the United Nations High Commissioner for Refugees. It specifically encourages the State party to review the situation of North Korean women refugees and asylum-seekers in the State party and to ensure that they do not become victims of trafficking and marriage enslavement because of their status as illegal aliens.**

43. The Committee expresses concern at the situation of women asylum-seekers and refugees in Hong Kong. It notes with concern the representative's statement that the Hong Kong Special Administrative Region has no intention of having the 1951 Convention Relating to the Status of Refugees extended to Hong Kong.

**44. The Committee calls on the State party to extend the 1951 Convention Relating to the Status of Refugees to Hong Kong so as to ensure that women asylum-seekers and refugees can fully benefit from its protection.**

#### **Human Rights Committee (Hong Kong SAR)**

CCPR/C/HKG/CO/2, 86<sup>th</sup> Session

21 April 2006

10. The Committee remains concerned at the absence of adequate legal protection of individuals against deportation to locations where they might be subjected to grave human rights violations, such as those contrary to articles 6 and 7 of the Covenant.

**The HKSAR should establish an appropriate mechanism to assess the risk faced by individuals expressing fears of being victims of grave human rights violations in the locations to which they may be returned.**