

# BROOKINGS

Forced Migration Review

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## North Koreans in China in Need of International Protection

***Editor's Note: This article is part of a compilation of articles on preventing displacement, available online.***

In the face of continuing persecution of North Koreans who are forcibly returned to their country of origin by China, the international community needs to reconsider how it might better work towards securing protection for North Koreans. Some may be political refugees, others 'refugees sur place;' they may not have been refugees when they left their country but become refugees because they have a valid fear of persecution upon return.

In February 2012, the South Korean press reported that China's police were holding some 30 North Koreans who had crossed the border illegally, and were about to return them. Although this practice had been going on for many years, the South Korean government publicly protested for the first time and a number of Western and Asian governments raised the issue with China. The UN High Commissioner for Refugees publicly urged the Chinese government not to send the North Koreans back.

Behind the advocacy was the knowledge that, if returned, the North Koreans would face severe punishment. The North Korean government considers it a criminal offence to leave the country without permission and punishes persons who are returned. Those deemed to have sought political asylum in China or to have tried to reach South Korea receive the harshest treatment. They are subject to lengthy imprisonment or even execution. The group of 30 threatened with return fit these categories.

### **Grounds for protection**

In recent years, an increasing number of North Koreans arriving in the South<sup>[i]</sup> have been giving testimonies about the beatings, torture, detention, forced labour and – in the case of women impregnated by Chinese men – forced abortions or infanticide to which they have been subject following deportation.<sup>[ii]</sup> When released from detention, many escape back to China and make

the harrowing journey to South Korea.

While the Chinese government allows thousands or tens of thousands of North Koreans to hide in their country, the North Koreans have no rights and can be deported at any time. Over the past two decades, China has forcibly returned tens of thousands of North Koreans. In China's view, they are illegal migrants who cross the border for economic reasons. Their status, however, is far from clear because China has no refugee adjudication process and UNHCR has been denied access by China to North Koreans at the border.

That a definite number are seeking asylum because of a well-founded fear of persecution is probable. Some 150,000 to 200,000 people are incarcerated in North Korea in labour camps and other penal facilities on political grounds.[iii] North Koreans are regularly arrested if they express or appear to hold political views unacceptable to the authorities, listen to foreign broadcasts, watch South Korean DVDs, practise their own religious beliefs or try to leave the country without permission. Moreover, those who serve time in detention for having gone to China know that they will be under surveillance – and face discrimination – in North Korea and therefore many leave again, this time not for food or work but to seek political refuge, ultimately in South Korea.

A second consideration is that a certain number of those who cross illegally into China for economic reasons could be found to qualify as refugees if they were compelled to leave North Korea because of economic policies that discriminated against or persecuted them on political grounds. In North Korea, under the *songbun* social stratification system, citizens are assigned to a particular class based on the political loyalty of their families (core, wavering or hostile).[iv] Those in the lower categories do not have the same access to food and material supplies as do the political elite and much of the army. Their quest for economic survival could therefore be the result of political discrimination or persecution, and the right way to handle these cases would be to examine them in a refugee status determination process.

But by far the most compelling argument why North Koreans should not be forcibly returned is that most fit the category of 'refugee *sur place*'. As defined by UNHCR, refugees *sur place* are persons who might not have been refugees when they left their country but who become refugees at a later date because they have a valid fear of persecution upon return. North Koreans who leave their country for economic reasons – probably the majority – have valid reasons for fearing persecution and punishment upon return.

### **Resisting pressure**

In 2006, while on a visit to China, the High Commissioner for Refugees raised the concept of

refugees *sur place* with Chinese officials. He told them that forcibly repatriating North Koreans without any determination process and where they could be persecuted on return stands in violation of the Refugee Convention. Since 2004, UNHCR has deemed North Koreans in China without permission to be ‘persons of concern’, meriting humanitarian protection. It has proposed to China a special humanitarian status for North Koreans, which would enable them to obtain temporary documentation, access to services, and protection from forced return.

Other UN bodies have also called upon China to halt the forced repatriation of North Koreans. The Committee against Torture, the expert body monitoring implementation of the torture convention, has called on China to establish a screening process and allow UNHCR access.[v] The Committee on the Rights of the Child has called on China to ensure that no unaccompanied child from North Korea is returned to conditions where there is “risk of irreparable harm”.[vi] The reports of the UN Secretary-General and of the Special Rapporteur on human rights in North Korea as well as the resolutions of the General Assembly, adopted by more than 100 states, have called upon North Korea’s neighbouring states to cease the deportation of North Koreans.[vii]

To date, China has resisted these requests. Only in cases where North Koreans have made their way to foreign embassies or consulates or the UNHCR compound in Beijing has China felt impelled to cooperate with governments or UNHCR in facilitating their departure to South Korea or other countries. In March 2012, despite all the international appeals, China sent back to North Korea the group of 30 North Koreans – although it allowed eleven North Koreans who had been hiding in South Korean diplomatic missions in China to leave for the South.[viii]

China is concerned about potential large-scale outflows from North Korea and the impact of such flows on North Korea’s stability. It is also said to be concerned about potential Korean nationalism in its border areas where there are historic Korean claims. But by collaborating with North Korea in denying North Koreans the right to leave their country and seek asylum abroad, China is violating its obligations under refugee and human rights law and its responsibilities as a member of UNHCR’s Executive Committee.

### **Beyond the impasse**

Would it help if governments were to step up their private representations to China and also issue public statements to try to persuade China to reverse its repatriation policy? Chinese President Hu Jintao’s agreement to allow North Koreans in South Korean diplomatic missions to depart for South Korea came after talks with South Korea’s President at the end of March. If other governments were likewise to make their views known, progress might be made. And UNHCR could raise its profile. While some UNHCR staff fear that the agency could jeopardise its access

to other refugee populations in China were it to become outspoken about the North Koreans, China's practices toward the North Koreans threaten to undermine the principles of the international refugee regime. UNHCR could urge China to call a moratorium on deportations and adopt legislation incorporating China's obligations under the Refugee Convention. China's current policy, it could be pointed out, will not stop North Koreans from trying to cross the border; it will only cause more human misery and subject China to greater international opprobrium.

Because the exodus of North Koreans affects far more countries than China, a multilateral response should be developed. South Korea's constitution offers immediate citizenship to persons from the North, and other countries have been willing to take in North Koreans as well. For its part, China at a minimum should provide residence permits for North Korean women consensually married to Chinese men and for their children. International burden sharing – as introduced for other refugee populations – should be developed in this case as the best way to end the ill-treatment of North Koreans and to find solutions for them. A multilateral approach could not be more timely as hunger continues to stalk North Korea and new leader Kim Jong Eun appears to be pursuing the policies of his predecessors.

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[i] There are currently some 25,000 'defectors' in South Korea.

[ii] See David Hawk, *Hidden Gulag Second Edition*, Committee for Human Rights in North Korea, 2012 at [www.hrnk.org](http://www.hrnk.org); 'North Korean Prison Camps Massive and Growing', *New York Times*, May 4, 2011; and Department of State, 2011 Human Rights Reports: Democratic People's Republic of Korea, at [www.state.gov/j/drl/rls/hrrpt/2010/eap/154388.htm](http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154388.htm)

[iii] *Ibid.* See also Casebook of North Korea's Infringement of Human Rights, National Commission of Human Rights of Korea, April 2012, at [www.humanrightskorea.org/tag/case-book-of-north-koreas-infringement-of-human-right/](http://www.humanrightskorea.org/tag/case-book-of-north-koreas-infringement-of-human-right/)

[iv] See Robert Collins, *Marked for Life: Songbun, North Korea's Social Classification System*, Committee for Human Rights in North Korea, 2012.

[v] Committee against Torture, Concluding Observations: China, CAT/C/CHN/CO/4, 12 December 2008.

[vi] Committee on the Rights of the Child, Concluding Observations: China, CRC/C/CHN/CO/2, 24 November 2005, paras 80-82.

[vii] See UN General Assembly Resolution A/66/462/Add.3, 2011; and Report of the Special Rapporteur on the situation of human rights in the DPRK, A/66/322, 24 August 2011, para 70.

[viii] 'China to let 11 refugees in consulates to defect', *Joongang Daily*, March 28, 2012.

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