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DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

PERSECUTING THE STARVING: The Plight of North Koreans Fleeing to China

Thousands of North Koreans have been fleeing their country of origin as a result of severe food shortages that have hit the country since 1994. Their government, however, criminalizes the act of leaving the county without permission. But North Koreans continue to flee in desperation. The vast majority of those who leave without permission go to China where they face human rights violations and an uncertain future. Although China is a State Party to the 1951 Refugee Convention, it is not meeting its international obligations to protect these North Koreans.

I BACKGROUND

1. A TRAGIC FOOD SITUATION

"The children are in their teens but look barely ten" is how an ethnic Korean residing in the People's Republic of China (China) recently described North Korean children who continue to flee the famine in their country in search of food in China. Similar reports and images of starving North Korean adults and children have come to light over the past few years. They highlight the plight of possibly millions of North Koreans who have fallen victims of a famine that has led to the death from malnutrition and related diseases of an estimated two million people (almost 10 percent of the population) according to aid experts from the USA.

Since 1994, a series of natural disasters and years of state-run economic mismanagement compounded by the loss of preferential trade with the former Soviet Union and China in the early 1990s[1] have unleashed acute food shortages leading to famine. By the end of 1992, the economic situation in the Democratic People's Republic of Korea (North Korea) had become so serious that the North Korean government reportedly had to impose strict limits on food consumption, limiting individual intake to one-fourth of basic requirements.[2] From 1993 to 1995, the food situation grew worse with agricultural output reduced significantly by cold weather in 1994 and floods in 1995. The loss of over one-third of the country's GDP since 1991 and growing food shortages led large numbers of North Koreans to flee the country in an

[1] North Korea's economic decline was precipitated after its major trade partner, the former Soviet Union, demanded that North Korea pay world prices for Soviet imports, make purchases in hard currency and begin to repay its large debts. In 1992 China too put trade with North Korea on a hard currency basis.

[2] John Merrill, "North Korea in 1992: steering away from the shoals". *Asian Survey* 33 (1), January 1993.

attempt to survive. In December 1998, the Asia Regional Director of the World Food Program (WFP) described the situation in North Korea as a "famine in slow motion" in which the whole country seems to be underfed. Although the North Korean government has been reluctant to release information, in May 1999, a North Korean official said that mortality rates had risen from 6.8 per 1000 in 1995 to 9.3 per 1000 in 1998.

Following a joint mission to North Korea at the end of June 2000 by the UN Food and Agriculture Organisation (FAO) and WFP, the agencies reported that the country is facing grave food shortages again this year. The report stated "approaching its sixth year of food shortages, therefore, the country still requires large-scale food assistance to ensure adequate nutritional standards, especially for children, pregnant women and the elderly." These concerns were reiterated by the North Korean delegation in Geneva during a June meeting with the United Nations Development Program (UNDP) and 22 donor countries. The North Korean delegation asked for new international aid at the same time as it reported being hit by its worst drought in half a century. By the end of September, the official Korea Central News Agency (KCNA) sent out a new famine alert disclosing that more than 1.4 million tonnes of grain had been lost because of severe drought and typhoons this year.

Although North Korea has received large quantities of humanitarian aid from the international community, there are consistent reports that government policies have hampered the distribution of aid and the monitoring of needs. There is mounting concern that military officials, members of the Workers' Party of Korea (WPK) and those working in strategic industries are receiving more aid than ordinary citizens. Humanitarian and aid agencies working in North Korea or in the border areas with China have reported that food has been distributed in a way that discriminates against some of the most vulnerable groups of society such as the unemployed, the elderly, the homeless, children in orphanages and prisoners.[3] In March 2000, the Head of Mission of Action contre la faim (Action against Hunger) was quoted saying that several North Korean officials told her clearly that "there is one "useful" population and one "useless" population." [4] Some sources have also reported that relief food is being traded in the black market through the military and the WPK. These conditions have led some humanitarian agencies such as Médecins Sans Frontières (MSF) to pull out of North Korea on the grounds that restrictions on access had made it impossible to deliver aid in a "principled and effective" manner.[5] MSF called on donor agencies to review their aid policies towards North Korea, to

[3] *The Moscow Times* 23 May 2000. *"La Corée communiste est devenue l'enfer de la faim"*; Médecins Sans Frontières 30 September 1998

[4] *Libération*; 10 March 2000

[5] Médecins du monde, another French international humanitarian NGO, also pulled out of North Korea in 1998 after spending six months there and being denied direct access to the people who

exact greater accountability and to ensure that agencies were able to impartially assess needs and have direct access to the population. In March 2000 another aid agency, Action contre la faim, withdrew from North Korea stating that "all humanitarian assistance is channelled through the authorities and does not reach the most vulnerable sectors of society. Free and direct access to famine victims is denied".[6] Other international aid agencies such as the WFP and the UNDP, which continue to operate in the country, have also reported that inadequate access to data and the inability to travel to monitor relief distribution continue to hamper international aid work.

2. INCREASED POLITICAL AND TRADE LINKS

North Korea has remained in almost total isolation since the end of the 1950-53 Korean war and its closed border with South Korea is the last 'Cold War' frontier. But from the second half of 1999, it began to come out of its diplomatic isolation and sought to normalise relations with several countries including Japan, the United States and some European nations including more recently the United Kingdom and Germany. It forged full diplomatic ties with Italy in January this year, with Australia in May and with the Philippines in July.[7] One clear outcome of these diplomatic initiatives has been the lifting, at the end of last year, of some of the sanctions imposed on North Korea by countries like the USA and Japan. Until recently, most aid to North Korea has been in the form of food supply and fertilizer to help the farm sector recover from a series of natural disasters. But increasingly donor governments have been discussing other forms of aid with the North Korean government including direct assistance to the industrial sector.

Perhaps the most groundbreaking political move North Korea made this year was holding a summit in its capital Pyongyang with South Korea between 13 and 15 June 2000. The summit produced a declaration to seek eventual reunification. North and South Korean officials have held a series of meetings since the historic summit and have subsequently agreed to make joint efforts to ease military tension and guarantee peace on the Korean peninsula. The two Koreas now have three separate channels of dialogue on economic, military and family reunion issues. In September, the two governments also agreed to establish a joint consultative committee to push forward economic cooperation and trade. Major projects between the two

needed their help most.

[6] Action contre la faim: Dossier de presse. *Action contre la faim décide de se retirer de Corée du nord*. March 2000

[7] Italy became the first of the Group of Seven (G7) nations to establish diplomatic links with North Korea. The Philippines was the last member of the Association of South East Asian Nations (ASEAN) to establish relations with North Korea, paving the way for North Korea to join a key regional security forum, the ASEAN Regional Forum (ARF), later that month in Thailand.

countries include the construction of a railway and an expressway across the heavily fortified border. In November, economic officials from both sides initiated new economic agreements including a single currency for trade, the "Korean euro", for use for future inter-Korean trade. Also in September, the two sides agreed on the need to ease military tension and eliminate the danger of war.[8] Efforts were also made to grant permission to people from each country to reunite with their relatives. One hundred people from each side were allowed to exchange short visits in August 2000 to see long lost relatives. On 30 November, two more groups of one hundred people from North and South Korea visited each other's capital for the second round of family reunions.

The long term results of these intensive diplomatic activities by the North Korean government are difficult to measure. Currently, there appears to be no concrete plans for fundamental reforms which would signal the government's willingness for greater openness, accountability and transparency in human rights. There are no signs that the authorities are easing their restrictions on the flow of information and little is known about government and society. Soon after the inter-Korean Summit, it was reported that the North Korean leader Kim Jong Il told South Korean President Kim Dae-jung that he would revise the charter of the Workers' Party of Korea at its seventh convention.[9] It has also been reported that during a visit to Pyongyang in March this year, the Italian Foreign Minister Lamberto Dini indicated that the North Korean authorities plan to sign "some" agreements "for the protection of human rights".[10]

II ESCAPING THE FOOD CRISIS

[8] No peace treaty has ever been signed between the two countries since the end of 1950-53 war which ended with a truce.

[9] The activities of the ruling WPK remain shrouded in secrecy as there is no information about the way decisions are made and implemented. Although the WPK is in theory supposed to meet on a 'regular' basis, there has been no party congress since the Sixth Congress, held in 1980.

[10] North Korea has not acceded to the majority of international human rights treaties. In 1997, it announced that it had "withdrawn" from the International Covenant on Civil and Political Rights (ICCPR). The decision to withdraw was made after it criticised the human rights debate at the UN as being 'political'. However, in March 2000, North Korea submitted its second periodic report on its implementation of the ICCPR to the UN Human Rights Committee. It submitted its first report in 1984.

Despite recent moves to open up to the international community, hardly anything is known about the North Korean government structure, the legal system and the activities of the ruling WPK. Run on an ideology of "self- reliance" or *Juche*, hence independence from the rest of the world, North Korea's political system does not allow any opposition, imposes sharp restrictions on travel in and out of the country and has total control over the dissemination of information.

North Korea remains completely closed to all independent research into human rights issues inside the country. In a country which denies its citizens some of the most basic human rights, the full scale of the food disaster is hidden from view. North Koreans are trapped in a situation which they have no power to influence and against which they cannot protest. They are prevented from exercising their right to freedom of expression and association and their right to leave the country. In recent years, increasing reports by aid workers and foreign journalists who interviewed North Koreans in China have described serious human rights violations in North Korea. These include summary public trials and executions by shooting or hanging, regular use of torture, the imprisonment of thousands of political prisoners, and harsh conditions in prisons and other detention centres where many inmates are reported to have died of hunger and disease.

North Koreans who flee their country are usually considered by their government to be traitors and/or criminals if they leave North Korea without official permission. Article 47 of the 1987 North Korean Criminal Code states that:

> "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 concern, he or she shall be given the death penalty..."

Article 117 states:

> "A person who crosses a frontier of the Republic without permission shall be committed to a reform institution for up to three years."

To survive, thousands of starving North Koreans have left their country 'illegally', often through the 1,300 km-long land border with China. Some two to three million ethnic Koreans known as "Chosun Jok" are believed to live around the Chinese towns of Tumen, Ji'an, Yanji, Dandong and others in Jilin and Liaoning provinces. Tumen and Yanji are located in the Korean Autonomous Prefecture of Yanbian in Jilin Province which shares 520 km of its borders with North Korea. The area around the city of Yanji, some 20 km from the border with North Korea,

is thought to have the largest concentration of ethnic Koreans. North Koreans speak the same language as the 75% of the people in the Yanbian Prefecture who are ethnic Koreans.[11]

The majority of North Koreans fleeing to China are reported to cross the Tumen river which is often narrow enough to wade or swim across. The Tumen river also freezes in the winter making the crossing relatively easy. Because of lack of access to the border areas, neither Amnesty International nor any other independent organization have been able to ascertain the exact number of North Korean asylum-seekers and "illegal immigrants" currently in China. The problem of arriving at an accurate estimate of their numbers is further complicated by the fact that in many instances North Koreans go back and forth searching for food for themselves and the families they left behind. But estimates of the number of those who remain in China range from 50,000 to 300,000.

III RISKING INTIMIDATION, FEAR AND FORCED REPATRIATION

Some of the North Koreans who have been crossing the border into China's northeastern provinces of Jilin and Liaoning have risked their lives by leaving their country 'illegally' and face an uncertain future when they reach their destination. Over the past several years, as the economic situation in North Korea gradually worsened, there has been a distinct change in the type of people who cross to China. Some reports point out that around 1995, the North Korean population in China comprised relatively healthy and well-nourished men in search of better economic opportunities. At that time, China does not seem to have perceived them as a major problem and did little to stem the tide. However, in 1998 when the famine was believed to have reached its peak, more and more under-nourished women, the elderly and children too began to cross into China looking for food to survive.[12] Some non-governmental organisations (NGOs), aid workers, and journalists who work in or have visited the border areas have reported in some detail the conditions under which these so-called "illegal immigrants" live in China and the fate they may face if forcibly returned to North Korea.

North Koreans who seek refuge in China are in a very precarious situation. Some find shelter in villages and farms where they are supported by China's ethnic Korean community and ethnic Chinese people, but others are forced into begging and stealing. Others still are reported to resort to eating grass and roots in order to survive. Women and girls are particularly vulnerable as a number of reports received by Amnesty International have noted a trend in using women as 'sex slaves' sold by their parents or placing themselves in the hands of professional

[11] This part of China, formerly known as Manchuria, used to be populated by descendants of people who came from Korea at the beginning of the 17th century. There was another influx in the 19th century especially after the Korean famine of 1869.

[12] *China Rights Forum*, Summer/Fall 2000

bride traffickers. Once married to a Chinese man and registered as a resident of China, a North Korean woman's chances of being apprehended and forcibly returned to her country are believed to decrease considerably. Information received by Amnesty International also states the growing trend of women forced to turn to prostitution to feed themselves and their hungry families. The organization also received reports about an increase in the number of North Korean women being sold to Chinese bride traffickers who in turn sell these women to ethnic Korean farmers established in China who are believed to have difficulty finding wives as more and more young local women are drawn to the cities to work. Whatever their circumstances, all North Koreans who enter China 'illegally' face the risk of being pursued and apprehended by Chinese security officials and the North Korean Public Security Service (PSS) who are reported to sometimes pose as Christian missionaries.

Thousands of North Koreans are reported to have entered China during 1998, a year considered by some as the worst of the famine. However, by early 1999, the Chinese authorities started clamping down on the influx of North Koreans by taking "appropriate measures". These measures are reported to have involved forcibly returning hundreds of North Koreans back across the border and increasing tenfold the fine imposed on people harbouring or helping North Koreans from 500 to 5,000 yuan (about US$60 to US$600); 5,000 yuan believed to be approximately the equivalent of a year's income. In 1999 the number of North Koreans being forcibly repatriated reached over 7,000 according to some accounts received by Amnesty International.

Since March 2000, there have been consistent accounts of another and still harsher crackdown on North Koreans and those who help them in China. This latest crackdown is believed to have been initiated largely due to security concerns in relation to the three-day unofficial visit of the North Korean leader Kim Jong Il to China at the end of May 2000.

Amnesty International received reports claiming that about 5,000 North Koreans were forcibly returned across the Tumen Bridge (Jilin Province) in March 2000 alone, with similar numbers being returned via other crossings along the northeastern Chinese province of Liaoning. A number of these reports have stated that there is a general atmosphere of fear and intimidation as Chinese security forces and North Korean agents are active targeting not only North Korean men (as they did in the past) but also women and children. Those suspected of helping North Koreans are now believed to be fined up to 30,000 yuan (about US$3,600) making it much more dangerous for anyone wishing to assist North Koreans to do so. Other sources have noted that substantial rewards are given to Chinese citizens who turn in these "illegal immigrants". With the factories and farms in China which, in the past, offered them work and shelter now under heavy scrutiny, few North Koreans are reported to take the risk of leaving their homes except when absolutely necessary.[13] Some are reported to hide in secret tunnels

[13] *South China Morning Post* 12 May 2000. *Reuters* 9 June 2000

or caves in mountainous areas. Some of those who get caught are said to be led back across the border like cattle with wire cables through their noses or hands.[14]

THE EVENTS OF 18 APRIL 2000

Serious disturbances are reported to have taken place at Tumen Detention Centre in the northeastern province of Jilin in China in April 2000. The Centre, believed to be used to detain North Koreans who have entered China "illegally", was apparently the scene of protests by the detainees against poor treatment and forcible return to North Korea. Some sources reported that amongst the inmates, there were three North Korean ex-soldiers who strongly demanded not to be returned to North Korea for fear of being killed by the North Korean authorities. According to reports, some 80 inmates (seventy women and ten men including a four-year-old child) were involved in the disturbances which were brought to a swift end by prison guards. Some 60 inmates were subsequently forcibly returned to North Korea. One report quoted one man whose job it is to drive such people to the border say: " Yes, the girls cry; of course they cry. I heard that if they have to send a girl back, she might be tortured. Some of them are so frightened that it is as though they are in shock. All the way to the border, 60 kilometres, they stare ahead saying nothing."[15]

Amnesty International appealed to both the Chinese and North Korean governments to disclose the whereabouts and legal status of the people who were forcibly returned but the organization has received no reply from either side.

THE CASE OF SEVEN REFUGEES

In January this year, seven North Korean refugees (aged between 13 and 30), Lee Dong Myung (m), Ho Young Il (m), Bang Young Shil (f), Chang Ho Won (m), Kim Woon Chul (m), Kim Kwang Ho (m) and 13-year-old Kim Sung Il (m), were forcibly returned to North Korea by China. In November 1999, the seven refugees left their home country for China and from there moved on to Russia. While in the Russian town of Pervomaiskoe, they were discovered and arrested by the Russian Border Patrol. During an interview with Russian television, the refugees said they feared execution if returned to North Korea and they wished to go to the Republic of Korea (South Korea) or a third country. In December 1999, the UNHCR recognised them as Convention refugees. Although the UNHCR informed the Chinese and the Russian governments about its decision to recognise them as Convention refugees, Russia forcibly returned them to China on 31 December 1999. China in turn forcibly returned them to North Korea on 12 January 2000.

[14] *Reuters* 9 June 2000

[15] *South China Morning Post* 26 May 2000

The UNHCR's warnings to the Chinese government that the refugees would face "grave consequences" were to no avail. In May 2000 Chinese diplomats told the UN Committee against Torture that "after careful investigation and screening" the relevant Chinese authorities determined that the group were economic illegal migrants so handled them according to bilateral agreements.[16] They insisted that "through its handling of the case, China has not violated in a slightest way the principle of non-repatriation of refugees and the alleged violation of the Convention on the Status of Refugees is out of the question".

Amnesty International wrote to all three governments concerned requesting assurances that none of the returnees were at risk of human rights violations. Amnesty International welcomes the fact of all the three governments the organization wrote to, the Russian Federation replied in March 2000. In their reply, the Russian authorities noted that their decision to forcibly return the seven refugees was based on the fact that China, not Russia, was the country of first refuge. They added that it was, therefore, the prerogative of the Chinese government to take a decision concerning their situation, including their deportation to North Korea. Amnesty International finds this reply unsatisfactory. The Russian Federation cannot transfer their obligations under the principle of *non-refoulement* by sending refugees to another country where there are no guarantees that they will be granted effective and durable protection against forcible return.

On 8 May, a Chinese Foreign Ministry spokesman, Zhu Bangzao, on a visit to South Korea was quoted saying to reporters in Seoul that the seven refugees were "safe". On 22 June, the South Korean news agency *Yonhap* cited the South Korean Minister of Foreign Affairs and Trade as stating that six of the seven refugees were serving "short-term prison sentences" and that the remaining 13-year-old boy had been released. However, Amnesty International was not able to verify this information.

IV SERIOUS HUMAN RIGHTS VIOLATIONS OF RETURNEES

Information on the fate of those forcibly returned is difficult to obtain because of the North Korean authorities' tight restrictions on the flow of information and on any international monitoring of the human rights situation. However, a number of reports received by Amnesty International provide consistent accounts of severe human rights violations.

Individuals who were caught and subsequently escaped or were freed have reported being beaten by Chinese and North Korean border police and security officials. Various reports received by Amnesty International indicate that some of those sent back face long interrogation sessions and torture by North Korean police. Some are sent to prison or labour camps. The

[16] China and North Korea are believed to have signed a bilateral agreement on the return of illegal migrants between the two countries.

conditions of detention are reported to be extremely harsh, with inmates being subjected to torture and ill-treatment, receiving meagre food rations, contracting illnesses and being denied access to medical care. Members of families of those who manage to flee North Korea are also reported to be punished for their relatives' 'crime'. A 60-year-old North Korean woman who was interviewed by a journalist in the city of Tumen (Jilin Province) said: "My relatives, including a son and a daughter, were jailed after it was known that I escaped the first time. Now that I've escaped again, it's hard to even imagine what became of them."[17] Another North Korean woman who has been in China since 1999 reiterated similar concerns to a foreign journalist. She said she was forcibly returned to her country in 1998 and was immediately put in prison where she was forced to live on thin gruel, surrounded by dying inmates. She was also reported saying that she would not survive if she were caught again and sent back to North Korea. "There would be no reason at all to live. If I am caught, I have resolved to kill myself and I carry a cyanide tablet at all times."[18] Other testimonies collected by journalists and aid agencies provide some disturbing corroboration.

In one case, a 20-year-old farmer talked about how over that past few years, he crossed the North Korea-China regularly looking for food. When he was caught by North Korean security forces in August 2000, he recalled, the interrogations he had to endure amounted to torture. He was sent to four detention centres where he was questioned for days at a time, hung upside down between interrogations before being incarcerated in a tiny cell just one metre high and with a strong light bulb hanging from the ceiling. He said he could not stand and the light was so strong and hot that he was unable to sleep. He alleged he was fed three meagre portions of low-grade wheat porridge a day for four months. The diet made him so sick that the prison authorities, who do not want to have inmates dying in their cells, decided to release him.[19]

Another North Korean, a 21-year-old man, also interviewed by the same journalist, talked about his experiences in a labour camp where he spent six months after being caught on his return from China where he had gone to get some food. He claimed to have been subjected to torture. He was quoted saying: "The guards hit our legs until we couldn't walk. If we couldn't work, then we were deprived of sleep by being forced to stand up and down all through the night."[20]

[17] *Reuters* 9 June 2000

[18] *Reuters* 11 June 2000

[19] *Asiaweek* 12 May 2000

[20] *ibid*

In another case, a North Korean woman claimed that she was beaten and put in jail after her forced return from China. While in a security office, she said she had to undergo a violent interrogation during which she was punched and asked why she had left the country and where she had lived in China. The process, she alleged, was repeated a second time in a different security office. She was then sent to prison where she reported the conditions were very poor with inmates sleeping on the floor and food rations were meagre. Inmates' families were expected to bring in food but many had none to give. As conditions inside the prison worsened, she added, officials started releasing prisoners because they did not want to be held responsible if some of the inmates died.[21]

North Korean government officials, suspected political opponents or those who attempt to seek political asylum outside the country are particularly at risk of harsh punishments if forcibly returned. Little is known about their fate but given the provisions of the North Korea Criminal Code and the numerous reports of executions, it is not unlikely that some of them may have been executed. In 1997, Amnesty International gathered detailed eyewitness accounts from independent and unconnected sources of at least 23 people, including one woman, who were publicly executed in several locations in North Korea between 1970 and 1992. The organization reported that the death penalty is handed down to those convicted of a wide ranges of crimes, from theft, to assault and rape, and murder.[22]

Testimonies collected by journalists from North Koreans who fled to China tell of a pattern of public and secret executions. According to some of these North Koreans, secret executions are carried out when people are accused of 'political' crimes such as being critical of officials or the Workers Party. People who are accused of crimes such as theft and those who repeatedly cross the border into China are reported to be executed publicly.[23]

During research for its 1996 report on human rights violations against North Koreans who were forcibly returned to their country by the Russian authorities, Amnesty International received numerous allegations that returned North Korean refugees are executed by the North Korean authorities.[24] These included a report in June 1996 by a Russian official that a North

[21] *The New York Times* 31 May 2000. See also *China Rights Forum*, Summer/Fall 2000

[22] See Amnesty International report *DPRK; Public Executions: Converging Testimonies* (AI Index ASA 24/01/97, 1997)

[23] *International Herald Tribune* 24 February 1999

[24] See Amnesty International *DPRK/Russian Federation: Pursuit, intimidation and abuse of North Korean refugees and workers* (AI Index ASA 24/06/96, September 1996)

Korean who was forcibly returned to North Korea by the Russian authorities was shot on the spot by North Korean officials at the border in the presence of Russian border troops.

Although China is party to the 1951 UN Convention relating to the Status of Refugees, NGOs and others attempting to help North Koreans who flee to China say it is virtually impossible for asylum-seekers to access refugee determination procedures in China. The UNHCR undertook regular monitoring missions to the China-North Korea border from October 1997 to June 1999. However, this access was denied after that date by the Chinese authorities. According to several reports received by Amnesty International, China regularly sends North Koreans back to their country without seeking assurances regarding their safety and without giving asylum-seekers an opportunity to lodge a claim for asylum. To Amnesty International's knowledge, no North Koreans have been recognised as Convention refugees in China.

V CONCLUSION AND RECOMMENDATIONS

The situation of North Koreans who reach China is better documented than human rights violations suffered by North Koreans who stay in their country. But the provision of better protection for North Koreans who cross into China is hampered by the lack of access to the border areas for the UNHCR and independent human rights monitors. As more attention turns to the thousands of North Koreans who are forcibly returned to their country and to the many more who remain stranded in precarious conditions along the China/North Korea borders and in constant fear of being sent back, Amnesty International reiterates its opposition to the forcible return of any asylum-seeker who may be at risk of human rights violations on return.

Amnesty International recognises the influx of large numbers of North Koreans may be seen as posing problems for the Chinese authorities but it urges the Chinese government to deal with these issues in a manner which does not violate internationally recognised human rights and refugee law standards. As a State Party to the 1951 Convention relating to the Status of Refugees, China has the obligation to respect the fundamental principle of *non-refoulement* as outlined in Article 33 of the Convention. China has also indicated its commitment to international refugee law and human rights standards through its membership of the UNHCR Executive Committee of the High Commissioner's Programme (EXCOM).[25]

Amnesty International calls on the North Korean authorities to:

- immediately amend the provisions of the Criminal Code concerning "defection" and any other relevant legislation to bring them into line with international obligations under Article 12(2) of the International Covenant on Civil and Political Rights which stipulates

[25] EXCOM conclusions on refugee protection, adopted by consensus, are not legally binding as treaties, but represent the views of the international community and carry persuasive authority.

that "Everyone shall be free to leave any country, including his own" and to allow North Korean citizens exit and entry to North Korea;

- ensure that no one is subjected to human rights violations including arbitrary detention, torture and ill-treatment, or executed; in particular, individuals leaving North Korea or attempting to do so without official permission should not be at risk of such violations;
- make public information concerning the whereabouts and legal status of North Koreans who were forcibly returned to North Korea;
- respect the right of other states to grant asylum;
- immediately stop all operations aimed at apprehending and intimidating North Korean refugees and asylum-seekers and those who are helping them in China or any other country;
- ensure greater openness and accountability on human rights by allowing independent access to international human rights monitors;
- abolish the death penalty in law for all offences and commute all death sentences;
- accede to and ratify the 1984 Convention against Torture and Other Cruel, Inhuman and Degrading Punishment or Treatment.

Amnesty International reminds China that the granting of asylum is a peaceful and humanitarian act. In particular, the organization calls on the Chinese government to:

- respect the fundamental principle of *non-refoulement*, as set out in the UN Refugee Convention, to which China is a State Party, and other human rights treaties, and generally recognised as part of customary international law, which provides that no one shall be returned to a country where his or her life or freedom would be threatened or he or she might be at risk of serious human rights violations, including torture, imprisonment and extrajudicial execution;
- fully implement the provisions of the UN Refugee Convention, in particular ensure that the rights of all refugees and asylum-seekers in China are respected and that all asylum-seekers have access to a fair and satisfactory asylum procedure and are not subjected to *refoulement*;

- lift restrictions on access to the border areas with North Korea for the UNHCR, independent human rights monitors and other independent observers, agencies and organizations;

- ensure that North Koreans enjoy full protection of their human rights and refugee rights in China. This should particularly include taking all appropriate measures to stop immediately all operations by Chinese security forces and the North Korean Public Security Service aimed at apprehending and intimidating North Korean refugees and asylum-seekers and those who are helping them in China. Those who are suspected of violating the rights of North Korean refugees and asylum-seekers should be suspended from duty, pending investigations, and those who against whom there is a case should be brought to justice in proceedings which meet international standards for fairness;

- immediately end all bilateral re-admission agreements [with North Korea] which deny asylum-seekers and refugees access to a fair and satisfactory asylum-procedure and effective and durable protection from *refoulement.*

Amnesty International calls on the UNHCR to:

- remind the Chinese authorities to fulfill their obligations under the UN Refugee Convention, including affording North Korean refugees and asylum-seekers effective and durable protection against *refoulement* and access to a fair and satisfactory asylum procedure;

- continue to seek access to all areas of China hosting refugees and asylum-seekers in order to ensure that all refugees and asylum-seekers receive effective and durable protection against *refoulement* and receive access to a fair and satisfactory asylum procedure;

- take all measures to investigate the fate of all forcibly returned North Korean refugees and asylum-seekers in North Korea.

Amnesty International urges the international community to undertake the following steps:

- urge the North Korean authorities to take measures to ensure that no one, including returnees who had fled North Korea, is subjected to human rights violations, including arbitrary detention and ill-treatment, or the death penalty;

- urge the Chinese government to fulfill their obligations to refugees and asylum-seekers, including granting the UNHCR and other agencies and organizations unrestricted access to such people in all areas of China;

- commit adequate resources to the UNHCR and its activities for the protection of North Korean asylum-seekers and refugees in China under the principle of responsibility sharing;

- immediately end all multilateral or bilateral agreements that allow North Korean asylum-seekers or refugees to be sent back to North Korea or another country where he or she would be at risk of direct or indirect *refoulement* or serious human rights violations;