

**US DEPARTMENT OF STATE:
THE STATUS OF NORTH KOREAN ASYLUM SEEKERS AND THE US
GOVERNMENT POLICY TOWARDS THEM**

Washington, February 28, 2005

Introduction and Background

The following information is submitted pursuant to section 301 of the North Korean Human Rights Act of 2004 (P.L. 108-333) (Act or NKHRA), which requires the Secretary of State - in consultation with other appropriate departments and agencies of the United States - to submit a report that provides an assessment of the circumstances facing North Korean refugees¹ and an explanation of the USG policy towards North Korean nationals outside North Korea.

As noted in the House International Relations Committee Report No. 108-478, the "terrible human rights situation inside North Korea... has remained largely hidden from the outside world until the past several years." There is still a lack of verifiable information on North Koreans either inside or outside North Korea, and particularly those who may be in hiding. The same is true regarding the circumstances these persons face if they are forcibly returned to North Korea. The United Nations High Commissioner for Refugees (UNHCR) does not have access to North Koreans inside China. North Korea does not allow representatives of foreign governments, international or non-governmental organizations, journalists, or others visiting the country the freedom of movement that would enable them fully to assess the status of repatriated North Koreans. Nevertheless, this report represents our best assessment of the situation facing North Korean refugees today and the USG policy towards them. It is based on recent interviews with experts, published reports, refugee testimony, internal Department guidelines, input from U.S. missions abroad, consultations with the Departments of Homeland Security and Justice, discussions with foreign government officials, and other sources.

Section 301(b)(1) - Assessment of Circumstances Facing North Korean Refugees and Migrants in Hiding, Particularly in China, and Circumstances They Face if Forcibly Returned to North Korea

Circumstances Facing North Korean Refugees and Migrants in Hiding

Significant numbers of North Koreans started seeking refuge in China during the mid-1990s, many with the apparent primary motive of seeking food. Their numbers probably peaked in 1998 and 1999. During that time, the border between China and North Korea was not aggressively policed. The few reliable

sources indicate that cases of refoulement (i.e., the involuntary repatriation of North Koreans to North Korea without benefit of a requested asylum adjudication) occurred, but relatively infrequently. In 2000, credible estimates of the number of North Koreans in China ranged between 75,000 and 125,000. Despite repeated approaches by the United States and others, China refused (and continues to refuse) to abide by its obligations as a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol to grant UNHCR access to North Koreans who seek asylum in China and to permit screenings of persons asserting a need for protection. As noted later in this report, the Chinese Government challenges our legal position and asserts that North Koreans in China are "economic migrants" who have no legitimate claim to refugee status. In addition, China asserts that it is obligated to return such individuals under its agreement with North Korea entitled the "Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas."

In summer 2001 and spring 2002, there were several high-profile incidents involving North Koreans who entered UNHCR offices and foreign embassies in Beijing. In these cases, China generally allowed the North Koreans to travel to South Korea via third countries. At the same time, the Chinese conducted a periodic "Strike Hard" anti-crime campaign in China's northeast that resulted in the involuntary return of many North Koreans. According to some observers, fewer North Koreans have been crossing into China because of improved economic conditions within North Korea. Such developments have contributed to a significant decline in the North Korean population in China, with our estimate placing the current number at between 30,000 and 50,000. Some non-governmental organizations (NGOs) claim that the number is much higher.

While North Koreans were previously seen walking through Chinese cities, today most remain in hiding for fear of being deported. According to the Asia Pacific Human Rights Coalition, China has increased its monitoring of North Koreans in northeastern China since the enactment of the NKHRA in October 2004. Nevertheless, many North Koreans in China still manage to travel back and forth between the two countries, working in China to make money to buy supplies that they bring back to North Korea. Others cross the border to buy goods in China that they sell in North Korea. There are reliable reports that North Korean women have been trafficked into northeastern China as brides or to work in the sex trade.

North Koreans have been known to transit China to other countries with the goal of resettling in South Korea. Their journey can be perilous. Only three countries in Southeast Asia have become party to the 1951 Refugee Convention or its 1967 Protocol. Cambodia joined the Convention in 1992, East Timor in 2003. The Philippines is the only country in Southeast Asia to have both signed the Convention and institutionalized a regime of refugee protection.

Section 203 of the NKHRA authorizes, but does not appropriate, \$20 million for each of the fiscal years 2005 through 2008 for humanitarian assistance to North Koreans who are outside of North Korea. A survey of regional U.S. diplomatic posts gave preliminary indications that, at this time, governments hosting North Koreans refugees would strongly oppose direct USG-funded assistance for North Korean refugees on their territories.

Section 303 of the NKHRA provides that the U.S. shall undertake to facilitate the submission of applications by citizens of North Korea seeking protection as refugees. A survey of regional U.S. diplomatic posts gave preliminary indications that governments in the region hosting North Korean refugees (China in particular) would strongly oppose U.S. refugee admissions processing on their territory at this time. Without cooperation of such governments, the multi-step, often-lengthy admissions procedures leading to the departure of North Koreans for the United States will not be possible in the region.

The discreet movement of North Korean nationals to South Korea continues. Since the 1950s, over six thousand North Koreans have resettled in South Korea (1,141 in 2002, 1,281 in 2003, and 1,894 in 2004). Many have paid "brokers" in Northeast China to assist their family members in leaving North Korea. North Koreans who have reached South Korea are eligible for South Korean citizenship, stipends, job training, and other social benefits. We are exploring with South Korea ways in which we might be helpful in meeting the challenges of resettling North Korean refugees, including the admission of some eligible North Korean refugees to the United States after appropriate vetting.

Treatment Upon Forcible Return to North Korea

The North Korean Penal Code criminalizes defection and attempted defection. Individuals who leave the country for the purpose of defecting or seeking asylum are subject to a minimum of five years of "labor correction." In "serious" cases, North Korean defectors or asylum seekers are subject to an indefinite term of imprisonment and forced labor, confiscation of property, or death. Many would-be asylum seekers who were returned involuntarily have been imprisoned under harsh conditions, and some have been executed, as allowed under North Korean law. The State Department's 2004 Human Rights Report on China notes that several thousand North Koreans were reportedly detained and forcibly returned to North Korea in 2004, where many faced persecution and some of whom may have been executed upon their return, as provided in North Korean law. Some sources assert that the harshest treatment is reserved for those who have had extensive contact with Christian missionaries and other activists in China.

The U.S. Embassy in Seoul has learned from several independent organizations that maintain contact with North Koreans that North Korea's current treatment of returned migrants is generally better than it has been in previous years. Under new regulations that may be aimed at distinguishing political refugees from those

who temporarily leave the country for economic opportunities in China, the North Korean Penal Code prescribes a sentence of up to two years of "labor correction" for the lesser crime of illegal border crossing. Anecdotal reporting suggests that local security officials grant lenient treatment either in exchange for bribes or out of sympathy for detainees. In previous years, some migrants have stated that border guards had orders to shoot to kill persons attempting to cross the border into China and that the regime reportedly retaliated against the relatives of some of those who managed to leave the country. However, some evidence suggests that rampant bribery and corruption prevented these orders from being strictly enforced in 2004.

Section 301(b)(2) - Assessment of Whether North Koreans in China Have Effective Access to UNHCR and Whether China Is Fulfilling Its Obligations Under the 1951 Refugee Convention

Access to UNHCR

China denies North Koreans access to UNHCR personnel. North Koreans cannot easily access UNHCR's office in China because of China's extensive security presence there. China will not permit UNHCR staff to travel to Northeastern China.

Chinese Government Compliance With Refugee Convention.

As noted, China is not fulfilling its obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. China violates Article 31(2) of the Convention by not allowing North Korean asylum seekers in China "a reasonable period and all the necessary facilities to obtain admission into another country." China is also in violation of Article 32, which states that, "Contracting States shall not expel a refugee [who is] lawfully in their territory." China asserts that all North Koreans are illegal economic migrants whom China can summarily return, but it is longstanding and accepted international practice under the Convention and Protocol that persons who assert a need for refugee protection are entitled to a screening by UNHCR or a government to determine whether they qualify for refugee protection. For these same reasons, China also clearly violates Article 33, which states that, "no Contracting States shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." The mere fact that North Korea has labeled illegal departure from North Korea as an act of treason suggests the importance of evaluating each individual claim before a person is repatriated. China's refusal to accord UNHCR full access to North Koreans who request its assistance is contrary to Article 35's requirement that "Contracting States undertake to co-operate with (UNHCR)... in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention."

Section 301(b)(3) - Assessment of North Korean Access to U.S. Refugee and Asylum Processing and U.S. Policy Towards North Koreans Who Seek Refuge at U.S. Embassies and Consulates and Resettlement in the U.S.

The United States has long been concerned about the plight of North Korean refugees. We are deeply troubled by reports of the involuntary return of North Koreans from China to North Korea, as these returnees often face serious abuses, including the possibility of torture and execution. The United States consistently urges China to adhere to its international obligations as a party to the 1951 Refugee Convention and its 1967 Protocol by not refouling North Koreans in China before allowing the UNHCR access to individual members of this vulnerable population. The United States regularly discusses its concerns with China, South Korea, and other governments as well as with the UNHCR and concerned non-governmental and private groups.

We note that there are several key challenges to implementing section 303 of the NKHRA. North Koreans cannot easily access UNHCR's office or the U.S. Embassy and Consulates in China because of China's extensive security presence. Following September 11, 2001, China established security measures to enable its authorities to screen people entering U.S. diplomatic and consular facilities in China, thereby preventing the entry of non-American citizens who either appear to be a security threat or hold questionable identification. On two separate visits to Beijing in August 2003 and November 2004, Assistant Secretary of State Arthur E. Dewey appealed to China to allow UNHCR access to the North Korean population in China and indicated the USG's willingness to assist in facilitating the movement of North Korean refugees to third countries. China refused, insisting that North Koreans in China are economic migrants. The Department has also engaged UNHCR on this matter to ensure that it is doing what it can to protect and assist North Koreans.

Primarily due to the nature of the North Korean regime, the USG has almost no ready access to information on individual North Koreans. At the same time, North Korea has long been designated a state sponsor of terrorism. In order to provide North Korean asylum seekers access to U.S. resettlement, reliable sources must be established to enable U.S. agencies to complete required background checks on North Korean applicants. As noted in the House International Relations Committee Report No. 108-478, South Korea would be the most likely partner in this endeavor. We are currently working with South Korea toward the development of an appropriate process for vetting North Korean applicants.

Attempts at illegal entry by North Koreans into U.S. diplomatic and consular facilities pose serious security risks and other challenges to our missions abroad and would also put the asylum seekers in significant danger. The enhanced security perimeter at all overseas posts, designed to protect U.S. nationals and other employees from terrorist attacks, necessarily presents physical obstacles

against unauthorized entry. Any illegal intrusions by force or stealth are presumptively regarded as hostile until determined otherwise. Out of concern for the safety of all persons involved, the Department of State strongly discourages attempts by unauthorized persons to enter U.S. facilities illegally.

Section 301(b)(4) - Number of North Koreans Admitted Into the U.S. in Each of Past Five Years

In the past five years, no North Koreans were resettled by the U.S. refugee admissions program. According to the Department of Justice, five North Koreans were granted asylum in FY2002, three in FY2003 and one in FY2004 by immigration courts during removal proceedings. These figures do not include decisions under appeal.

Section 301(b)(5) - Estimate of Number of North Koreans With Family Connections to U.S. Citizens

Despite our inquiries, we have identified no entity with a capability for determining the number of North Koreans with relatives who are U.S. citizens.

Section 301(b)(6) - Measures Being Taken to Implement Section 303

Section 303 of the NKHRA provides that "the Secretary of State shall undertake to facilitate the submission of applications under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) by citizens of North Korea seeking protection as refugees (as defined in section 101(a)(42) of such Act (8 U.S.C. 1101(a)(42))."

Historically, when UNHCR and the international community have considered third-country resettlement of North Koreans, South Korea was determined to be the resettlement country of choice in virtually all cases. Under its Constitution, South Korea grants citizenship to resettled North Koreans within a few months of their arrival on its territory - a vastly superior legal status than would be accorded to North Koreans resettled in any other country as refugees. North Koreans also share a common language, ethnicity, and history with South Koreans. Some have family ties there. In addition, South Korea provides North Koreans with a generous package of benefits upon arrival to facilitate rapid integration.

Since enactment of the NKHRA, the Department of State has consulted with the Department of Homeland Security and the Government of South Korea to explore mechanisms through which some North Korean refugees might be considered for resettlement in the United States. A delegation of representatives from the State Department's Bureau of Population, Refugees, and Migration (PRM), the Bureau of East Asian and Pacific Affairs (EAP) and the Department of Homeland Security Citizenship and Immigration Services traveled to Beijing and Seoul January 31 to February 4, 2005, to further cooperation on this effort. The procedures under discussion would allow the United States to accept North

Korean refugees who have a compelling reason for resettling in the United States rather than in South Korea or elsewhere and would include information sharing between the USG and the South Korean Government to help address security concerns. We will continue to work with South Korea, other governments and international organizations to develop the appropriate mechanisms to allow the resettlement of some North Korean nationals in the United States as refugees.