

North Korea Harsher Policies against Border-Crossers

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I. Overview

The North Korean government has hardened its policy towards its citizens it catches crossing the border into China without state permission, or whom China has forcibly repatriated. Until around November 2004 those who crossed the border—often to find food—were typically released after questioning or served at most a few months in forced labor camps, a relatively light punishment by North Korean standards for what is considered an act of treason.¹ Recent interviews by Human Rights Watch show that this relative leniency is over: in late 2004 North Korea announced a new policy of harshly punishing border crossers with prison sentences of up to five years. Anyone imprisoned in North Korea is liable to face abusive conditions including beatings, forced labor, and starvation far worse than among the population at large.

The change of policy occurred after South Korea flew 468 North Korean refugees from Vietnam in the summer of 2004 for resettlement in South Korea. North Korea demanded their return, and cut off all dialogue with South Korea for 10 months afterwards. Immediately after the arrival of these North Koreans in South Korea, the Korean Central News Agency, North Korea's official mouthpiece, called it “premeditated allurement, abduction and terrorism committed by the South Korean authorities against people in the North in broad daylight,” quoting the (North Korean) Committee for the Peaceful Reunification of the Fatherland, which handles ties with South Korea. The statement also accused South Korea of working with the United States Congress, which only a few days previously had passed the North Korean Human Rights Act, paving the way for the US to accept North Korean refugees for resettlement.² North Korea called the Act an attempt to topple the North Korean government under the pretext of promoting democracy and a market economy.³

¹ By a decree of Kim Jong Il promising leniency for people who left for food, penalties were lessened, effective February 16, 2000. Under the decree most border crossers were released after a few days, or a few months at most. See Human Rights Watch, *The Invisible Exodus: North Koreans in the People's Republic of China*, vol. 14, no. 8(C), November 2002, <http://www.hrw.org/reports/2002/northkorea/>, p. 21.

² “N.Korea accuses South of terror over refugee influx,” Reuters, July 29, 2004.

³ “NK Official Blasts US Human Rights Policy,” *KBS Global*, November 5, 2005, http://english.kbs.co.kr/news/newsview_sub.php?menu=8&key=2005110501 (accessed February 13, 2007).

In conjunction with the tougher punishment, since at least early 2006 the North Korean authorities have made concerted efforts to discourage people from leaving the country, through officially organized meetings, decrees and announcements, and warnings of severe consequences.

Meanwhile, some Chinese officials and residents in the border area told Human Rights Watch that they expected a new exodus of North Koreans in the winter of 2006-07 and onward amid continuing food shortages plaguing the country.⁴ A widespread food shortage, made worse by a suspension of South Korea's food aid following North Korea's test firing of seven ballistic missiles in July 2006, could drive higher numbers of people to attempt to cross the border in search of food and other basic goods.⁵

The North Koreans discussed and cited in this briefing paper are generally referred to as "border crossers"⁶ rather than refugees, asylum seekers, escapees, or other terms. Each of those terms describes some, but not all, North Koreans in China. There are anywhere between several tens of thousands and several hundreds of thousands of North Koreans in China, according to humanitarian aid workers who assist North Koreans. They include those fleeing political and religious persecution, women who are in de facto marriages with Chinese men, those who have fallen victim to human trafficking, family members who are temporarily visiting China to meet their relatives (mostly without official permission) but intending to return home, people who escaped because of the food shortage or other economic reasons, and merchants who regularly cross the border for business either secretly or by bribing border guards.

⁴ A Chinese resident in the border area told Human Rights Watch that she received a phone call from a local official saying they expect a large number of North Korean border crossers this winter, and all residents are required to report them. Human Rights Watch interview with a resident of a Chinese town bordering North Korea, November 28, 2006.

⁵ Jean-Pierre de Margerie, head of the World Food Programme in North Korea, says that ordinary people, especially children, are facing their hungriest winters since the famine of the mid-1990s. Geoffrey York, "Canadian fights to feed North Korea's hungry," *Globe and Mail* (Toronto), December 9, 2006.

⁶ The North Korean authorities refer to them as "*Dogangja*," which literally means river crosser(s), but the word is often translated as border crosser(s). North Korea's borders with China and Russia are defined by two rivers, the Yalu and the Tumen. In the summer, right before a rainy season, the water is shallow enough in some parts for people to wade across. In the winter the rivers' surface freezes and people walk over the ice.

North Korea, which has been a member of the United Nations since September 1991 and a state party to the International Covenant of Civil and Political Rights (ICCPR) since December 1981,⁷ has an international legal obligation to permit North Koreans to leave and re-enter their own country. This obligation also entails an imperative to stop punishing North Korean border crossers, who have committed no crime other than leaving the country without state permission.

China is obliged under international law not to return persons to a territory where their lives would be threatened, they would be at risk of torture or other ill-treatment, or subject to other grave human rights violations. This obligation, known as the principle of nonrefoulement, is articulated in the 1951 Refugee Convention and its 1967 Protocol, both of which China has been a party to since 1982.⁸ The Chinese authorities, however, categorically label North Koreans illegal economic migrants and routinely arrest and repatriate them, in complete disregard of China's international legal obligation to protect and shelter refugees and not to return anyone to torture or ill-treatment.⁹

* * *

In late November and early December 2006 Human Rights Watch interviewed 16 North Korean border crossers who arrived in China between mid-July and early December 2006. Although small in number, they were from eight different locations, and provided Human Rights Watch with consistent testimonies about the new policy of harsher punishment for those caught crossing the border or repatriated from China. To protect their identity and their families, all interviewees in this briefing paper are identified only by their gender, age, and place of origin.

⁷ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 12(2).

⁸ Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954. Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967.

⁹ Human Rights Watch, *North Korea - The Invisible Exodus: North Koreans in the People's Republic of China*, Vol. 14, No. 8 (C), November 2002, <http://www.hrw.org/reports/2002/northkorea/>.

The Chinese authorities harass and even imprison some aid workers and missionaries who assist North Koreans. Such policies and practices make it difficult to arrange meetings with North Koreans in China, as most of them live in hiding, fearful of being exposed to strangers. This means that Human Rights Watch cannot, at this writing, confirm whether the predicted new exodus of North Koreans into China in search of food is presently taking place.

Increasing Punishment for Border Crossers

According to recent border crossers, the North Korean government since late 2004 has warned citizens throughout the country that in the future even first-time border crossers would be sent to prison. The government has reportedly indicated various prison terms from one to five years. It appears that the North Korean authorities have made concerted efforts to prevent people from leaving the country by announcing the new policy through numerous gatherings and directly through police and intelligence officers.

This reflects a hardening of North Korea's policy in place since 2000, which had been relatively lenient towards border crossers. Those arrested between 2000 and late 2004 typically were either released after questioning or served a few months at labor re-education facilities, unless they were found to have had contact with South Koreans, missionaries, or aid workers. Such contact was a factor that would result in worse punishment and led to anything from a few months to an indefinite term in prison.¹⁰

Under the new policy, according to the North Koreans we interviewed, they were told that everyone was to be sent to prison, regardless of their reason for leaving, what they did outside the country, or whom they met in China. "I heard from people that border crossers are sent to regular prison for three years now. They used to be forgiven if they didn't do anything particularly bad while in China," a 32-year-old man from Samsoo told us.¹¹ It was not possible for Human Rights Watch to confirm

¹⁰ Ibid. Pp. 21–22.

¹¹ Human Rights Watch interview with man from Samsoo, age 32, China, November 28, 2006.

whether this new policy was being strictly followed by all local officials, and whether such officials were given any kind of discretion in deciding sentences.

It appears that the authorities have primarily communicated the new policy through People's Committee Meetings, regular, compulsory gatherings at which North Koreans learn of new policies and regulations. "I heard at a People's Committee Meeting that border crossers will be punished heavily, especially if an entire family attempted it," a man from Musan told us. "Even first-time offenders get one to five years of prison term now."¹² Another man, from Hoeryong, said, "In October this year [2006] there was a state announcement that all border crossers will be sent to regular prison for at least three years. In the past, first-time offenders were sent to forced labor facilities for six months. I heard it from a People's Committee Meeting. I understand it's a nationwide instruction."¹³

In some instances, people have been made to sign statements promising not to leave without state permission. A young man from Pyongyang told Human Rights Watch,

I attended two days of People's Committee Meeting in Hoeryong City before crossing over. The authorities made people submit a written promise that they won't cross the border, and their entire families will be forcibly relocated should they break the promise. They said, starting in October this year [2006], even first-time offenders shall be sent to *kyohwaso* [regular prison] for five years.¹⁴

Different interviewees had heard of the new policy at different times: a woman in her fifties from Pyongyang told us that the policy was announced in an official decree in 2005, for example, not 2006 as one of the men quoted above declared.¹⁵ It would appear, based on comments from other interviewees, that there have in fact been repeated warnings over the past couple of years, reflecting that the new policy was

¹² Human Rights Watch interview with man from Musan, in his thirties, China, November 28, 2006.

¹³ Human Rights Watch interview with man from Hoeryong, age 38, China, November 27, 2006.

¹⁴ Human Rights Watch interview with man from Pyongyang, age 27, China, November 30, 2006.

¹⁵ Human Rights Watch interview with woman from Pyongyang, in her fifties, China, November 28, 2006.

not a temporary but a long-term change. As an elderly woman from Chungjin recounted, “In February 2005 I heard that all border crossers will be sent to regular prison. By March or April 2006 I heard the same at a People’s Committee Meeting.”¹⁶

Another North Korean interviewee said such warnings were not only meant for the general public, but also border guards themselves, who help border crossers for money:

I heard from intelligence officials that there was a state instruction on November 27, 2004, to heavily punish border crossers, and send them all to regular prison, in reaction to the defection of North Koreans to South Korea in July 2004. In July 2006 there was another instruction to harshly punish those who even attempt to cross the border. They said border guards who help such crossing shall be tried by a military tribunal or dishonorably discharged.¹⁷

None of the interviewees offered details of military tribunals, but a South Korean online news media outlet, *The Daily NK*, reported on the execution in August 2006 of three soldiers belonging to a border unit after being charged with helping a man, believed to be a former prisoner of war from South Korea, cross the border.¹⁸ Also using an anonymous source inside North Korea, *The Daily NK* reported recently that two other soldiers are to be executed after North Korean leader Kim Jong Il’s birthday on February 16, 2007, for having aided border crossers in return for money.¹⁹

Good Friends, a private humanitarian aid organization in South Korea, recently reported that the North Korean authorities have increased patrols along the border, replaced border guards suspected of having aided border crossers, and even arrested retired soldiers suspected of having crossed the border themselves last

¹⁶ Human Rights Watch interview with woman from Chungjin, age 66, China, November 29, 2006.

¹⁷ Human Rights Watch interview with woman from Wonsan, age 59, China, November 30, 2006.

¹⁸ Ahn Yoon-suk, “North Korea executes three border guards in early August,” *The Daily NK*, August 29, 2006.

¹⁹ Han Young-jin, “Two border guards to be executed in late February for aiding border crossers,” *The Daily NK*, February 1, 2007.

year [2006].²⁰ Citing an unidentified source inside North Korea, *the Daily NK* separately reported that the North Korean authorities conducted an inspection of the border security units to catch those assisting border crossers and replaced personnel.²¹

Continuing heavier punishments for contact with South Koreans or missionaries

The principle of heavier punishment for those who have had contact with missionaries or converted to Christianity while in China appears to have been retained under the new policy.

Since the foundation of the North Korean state, the government has persistently persecuted religiously active people, who were typically categorized as “hostile elements.” Christians, in particular, were seen as tools of anti-North Korea counter-revolutionary imperialist aggression. One of the most important reasons for North Korea’s repression of religious practice is its clash with the cult-like reverence of founder and former President Kim Il Sung and present leader Kim Jong Il, under the *juche* (roughly translated as “self-reliance”) ideology.²²

A woman from Saebyul explained to Human Rights Watch that this aspect of the new policy had been announced: “Before 2004, border crossers served two to three months at a forced labor facility, but now, first-time offenders serve one year in regular prison, second-time offenders three years. Those who went to church (while in China) go to *kwanliso* (political prison camp) for 10 years. I heard this new policy at a People’s Committee Meeting in late 2004.”²³ Another woman, from Musan, said,

²⁰ Good Friends, *North Korea Today*, January 10, 2007. The report also said that, starting in late December 2006, the Chinese authorities increased inspection of inns and hotels in the border area to find North Koreans and criminal suspects.

²¹ Shin Ju-hyun, “North Korea replaces 4,000 border security troops,” *The Daily NK*, January 11, 2007.

²² Out of North Korea’s 9.16 million people in August 1945, about 2 million, or 22.2 percent, practiced a religion, including Catholics, Christians, Buddhists, and members of Chondogyo, a native Korean religion. About 400,000 religious practitioners are believed to have been executed or imprisoned through the 1970s. Many survivors were forced to recant their faith. In the 1970s North Korea created religious organizations, but they are believed to be tools for North Korea’s external propaganda and for liaison with South Korean religious organizations that have donated food and other aid to North Korea, rather than genuine representatives of people with religious faith. Korea Institute for National Unification, “North Korea Human Rights White Paper 2006,” March 2006, pp. 152–171.

²³ Human Rights Watch interview with woman from Saebyul, age 40, China, December 1, 2006.

“By late 2005, there was a state instruction to treat border crossing the same as any other criminal offense. Those who converted to Christianity are sentenced to at least three years, and they are sent to a different facility. Nobody knows what happens to them. It’s the same for those who were caught while trying to go to South Korea.”²⁴

Mistreatment at Detention Facilities²⁵

North Korean authorities now consider the act of leaving the country without permission a more serious crime, several interviewees said that border crossers are now sent to regular prison (which has a harsher regime), instead of forced-labor facilities, which are usually reserved for people deemed to have committed relatively lighter crimes. But regardless of the type of detention facility, North Koreans have told Human Rights Watch that prisoners are subjected to strip searches, verbal abuse and threats, beatings, forced labor, and lack of food and medicine, among other abuses. Torture and other cruel and inhuman treatment appears widespread and can occur throughout the process of incarceration in North Korea—during arrest and interrogation through to when serving a sentence of imprisonment.

Some of our interviewees for this briefing paper had personal experience of detention. A woman who served a few months in 2006 in *jipkyolso* (a temporary detention center where people await sentencing) said,

Except for the time when we ate, washed ourselves or slept, we were ordered to sit up straight without moving. If we moved, we were punished. They would make us sit down and stand up repeatedly until we collapsed, or forced us to hang onto cell bars or bang our heads onto the cell bars. Sometimes they punished everyone if one of us

²⁴ Human Rights Watch interview with woman from Musan, age 33, China, November 26, 2006.

²⁵ The major types of detention facility in North Korea include *jipkyolso*, *rodong danryondae*, *kyohwaso*, and *kwanliso*. *Jipkyolso*, which literally means a gathering center, is where people undergo interrogation, await verdict, or serve up to a year for a misdemeanor, such as skipping work. *Rodong Danryondae*, which means a place of re-education through labor, holds people who have committed relatively lighter, non-political crime. *Kyohwaso* is a detention facility for people who have committed serious, non-political crime. People who have committed political crime are sent to *kwanliso*. Korea Institute for National Unification, “North Korea Human Rights White Paper 2006,” March 2006, pp. 45–57

couldn't keep up. Guards beat people all the time—they used sticks or belts. They also slapped or kicked inmates for disobedience.”²⁶

Another North Korean gave an account of mistreatment she witnessed at a forced labor camp in the first half of 2006. “I saw a woman forced to stand up and sit down about 100 times. She fell, with white foam in her mouth. They massaged her, and she came to.”²⁷

In North Korea, regardless of which type of detention facility one is sent to, the difference between a few months’ and a few years’ incarceration could mean the difference between life and death, not least because of the chronic shortages of food and medicine. Several North Koreans who have been in detention facilities described a typical meal as a “fistful of powdered corn stalk” that often causes stomach ache and diarrhea. The elderly woman we interviewed told us, “It doesn’t matter if it’s a police detention center, forced labor camp, or regular prison. They all give you very little food. I received a fistful of corn powder for each meal when I was at a police detention center in February 2005. There was never enough food.”²⁸

“There were about 5,000 to 10,000 people at the camp. I saw a dead body being carried out almost every day,” said another woman we spoke to, from Haeju. She continued, “Most of them died after eating the corn stalk powder they gave us, and suffered from diarrhea for about a week. So many inmates died that they wrapped the bodies in plastic and buried them in the mountain.”²⁹ The man from Hoeryong said, “While I was at a forced labor camp I got a fistful of powdered corn stalks three times a day. It was too little. And it had little nutrition. Some people there were sent home for malnutrition.”³⁰

²⁶ Human Rights Watch interview with woman from Musan, age 33, China, November 26, 2006.

²⁷ Human Rights Watch interview with woman from Saebul, age 38, China, November 26, 2006.

²⁸ Human Rights Watch interview with woman from Chungjin, age 66, China, November 29, 2006.

²⁹ Human Rights Watch interview with woman from Haeju, age 42, China, December 2, 2006.

³⁰ Human Rights Watch interview with Man from Hoeryong, age 38, China, November 27, 2006.

II. International Law Violations in North Korea's Treatment of Border Crossers

North Korea's policy of punishing border crossers is a clear violation of the fundamental right to leave one's own country. Article 13(2) of the Universal Declaration of Human Rights states, "everyone has the right to leave any country, including his own, and to return to his country."³¹ Article 12(2) of the ICCPR states, "everyone shall be free to leave any country, including his own."

The beatings, stress positions, and other abusive physical punishment in detention described above violate some of the basic rights guaranteed in the ICCPR. Article 7 states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 10 states, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

North Korea has been a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) since September 1981. Under the covenant, North Korea has an international legal obligation to provide adequate food to prisoners, who are under the direct control and care of the authorities. The Committee on Economic, Social and Cultural Rights elaborated on states' obligations to provide access to adequate food in General Comment 1, "... whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill (provide) that right directly."³²

The Committee also says in its General Comment 3(10), "in order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use

³¹ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 13(2).

³² UN Committee on Economic, Social and Cultural Rights, "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights," General Comment No. 12, The right to adequate food (Art. 11), E/C.12/1999/5 (1999), [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677foo3b73b9?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677foo3b73b9?OpenDocument) (accessed February 13, 2007).

all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”³³

In November 2006 the United Nations (UN) General Assembly adopted a resolution calling on North Korea to respect human rights and fundamental freedoms, following multiple resolutions by the UN Commission on Human Rights. In North Korea, many basic rights are not guaranteed, including the freedom of thought, association, movement, organized political opposition, labor activism, or religion. Grave violations committed by the state include arbitrary arrests, torture, lack of due process and fair trials, and executions. International human rights organizations are not allowed access to North Korea to investigate violations. For three years, North Korea has refused to engage in dialogue with Vitit Muntarbhorn, the UN special rapporteur on North Korea.

³³ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3, The nature of States parties obligations (Art. 2, par.1), (1990), [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument) (accessed February 13, 2007).

III. Recommendations

The vast majority of North Koreans who cross the border to China do so simply to survive. Criminalizing the act of leaving one's own country and harshly punishing those repatriated are flagrant violations of a fundamental right – the right to leave one's own country. Such a violation is all the more egregious as many of the North Koreans cross the border to escape persecution or because the North Korean authorities are either unable or unwilling to feed their own people, despite their stated claims to provide all citizens with adequate food.

Human Rights Watch calls on the Democratic People's Republic of Korea to

- Allow North Korean citizens to travel freely in and out of the country, especially if they are doing so in order to avoid starvation.
- Stop punishing North Koreans who are repatriated.
- Stop mistreatment of criminal suspects and prisoners.
- Allow access for international human rights monitors to assess the humanitarian and human rights conditions in the country.
- Allow aid donors to monitor aid distribution at an internationally acceptable level and frequency, as employed by the World Food Programme.

Human Rights Watch also calls on the People's Republic of China to

- Stop arresting and repatriating North Koreans.
- Allow the United Nations High Commissioner for Refugees (UNCHR) unfettered access to the border area and throughout northeastern China to determine the status of North Koreans, and to facilitate the resettlement in third countries of those granted refugee status.
- Grant North Korean women married to Chinese men legal resident status.

Human Rights Watch recommends that foreign governments, international agencies, and donors, including South Korea (which has in recent years been the largest donor to North Korea) to

- Resume food aid to the most vulnerable population in North Korea, including young children, pregnant and nursing women, and the elderly.
- While doing so, insist on being allowed to carry out an internationally acceptable level and frequency of monitoring of aid distribution, to make sure the food reaches the intended beneficiaries.
- Continue to press the Chinese authorities to allow humanitarian aid workers along the border with North Korea to assist those in need.