

Late Submission

To the Committee against Torture
Regarding List of Issues for the fifth periodic review of China

“Being Deported, Trafficked, or Stateless : Ways of life as North Koreans in China”

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Background and Framework

1. China, a State Party who ratified (4 October 1988) the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, is obliged to respect and protect human rights not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. (Articles 1 and 2.1)
2. The obligation of *non-refoulement* which is *jus cogens* in international law is specified in Article 3 of the Convention providing that “no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”
3. The Committee against Torture “recognizes the link between trafficking in human beings and torture and refers to trafficking in human beings in its concluding observations,”³ taking into consideration that victims of human trafficking are often “subjected to severe forms of physical and mental violence...that may amount to torture or at least cruel, inhuman and degrading treatment.”⁴
4. Stateless people suffer from similar inhumane conditions. “Stateless can mean a life without education, without medical care, or legal employment. It can mean life without the ability to move freely, without prospects or hope.”⁵ This could easily amount to a form of torture and the Committee against Torture has expressed its concern about stateless persons’ “particularly vulnerable situation” in its concluding observations.⁶
5. China, however, violates the obligations to respect and protect human rights enshrined by the Convention by forcibly repatriating defectors from Democratic People’s Republic of Korea and neglecting the trafficked North Korean female defectors and stateless children born to North Korean female defectors and Chinese men. The details of these violations are as follows.

Human Rights Violation of the Government of China against North Korean Defectors and their Children, relating to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Refoulement of North Korean Defectors

6. Many North Koreans cross into China for varying reasons, from escaping political and

religious persecution to avoiding economic sufferings. Though it is extremely difficult to estimate the number of North Korean defectors in China due to their illegal status, scholars and activists generally agree that there are currently at least 15,000 defectors. This is a remarkably reduced number from the estimates of the late 1990s (range: 100,000 to 300,000) as many North Korean defectors have been repatriated by Chinese government already and increasing number of defectors are now heading to the Republic of Korea.⁷

7. In North Korea, those who leave the country without permission, even children, are considered as criminals and face severe punishment upon return.⁸ Under Article 63 of the North Korean Criminal Code, leaving the country without permission may be considered as treason along with other criminal offences such as selling off national secrets, and is punishable by lengthy imprisonment with hard labor or even death penalty. Continuous testimonies on sufferings in North Korean prisons have shed light on forced labor, torture and even death for repatriated North Koreans.⁹ There are also reports on widespread practice of forced abortion and infanticide against North Korean women who are impregnated by Chinese men. This practice occurs immediately after the repatriated North Koreans are jailed.¹⁰
8. Over the past two decades, China has forcibly returned tens of thousands of North Koreans¹¹ according to the domestic immigration law and agreement signed with North Korea in 1960, 1986, 1988 and so on.¹² To mention some of the recent cases, China received nine North Korean orphan defectors from Laos in May 2013 and later repatriated them upon North Korea's request.¹³ In February 2012, China detained and repatriated some 30 North Koreans who had crossed the border illegally.¹⁴ Chinese government advocates its action by arguing that "North Koreans entering China illegally are economic migrants who must be deported."¹⁵ However, North Korean defectors should be protected since they are subject to torture or persecution on political reasons once they are repatriated, which makes them refugee(*or refugee sur place*). Their rights, therefore, should be protected under the Convention, the 1951 Convention relating to the Status of Refugee and *non-refoulement* principle. International community and human rights organization have condemned China's action in various occasions including UN Commission of Inquiry in 2013¹⁶, but it had not relented. It also rejects unimpeded access by the UN High Commission for Refugees to the border crossers.¹⁷ And it arrested and tortured those who helped North Korean defectors.¹⁸
9. In sum, China is apparently violating Article 3 of the CAT Convention by forcibly repatriating North Korean defectors.

Trafficking of North Korean Women

10. Large number of women and girls in North Korea are trafficked into China by coercion or fraud. And many of the estimated 10,000 women and girls who illegally cross borders from North Korea to China are particularly vulnerable to trafficking.¹⁹ There are also studies suggesting that "an estimated 70 percent of all defectors fleeing North Korea are women," and that "between 70 to 90 percent of these women will end up as victims of trafficking."²⁰ Increasing numbers of North Korean defectors are exposed to danger of human trafficking as Chinese government has tightened border controls and clamped down on charities or other good-willed underground networks that facilitate escape from North Korea. Those who are in need have no choice but to turn to Snakeheads that operate in shadows, with great risks of human trafficking.²¹
11. Some defectors are forcefully kidnapped right after, or as they cross the border. Others are allured by false promise of help or jobs.²² These human trafficking victims are subject to forced labor, forced *de facto* marriages, sexual exploitation and other forms of cruel,

inhuman or degrading treatment.²³ For trafficked women and girls, it is usually *de facto* marriages or sexual exploitation that awaits them as there is an increasing demand of prostitution and forced marriages from Chinese men. A skewed sex ratio, resulted from the Chinese government's one-child policy, intertwined with cultural preference for sons, serves as a direct cause of this phenomenon.²⁴ There are even brokers stationed in each village who conduct surveys on the local demand, and women are sent to those villages accordingly.²⁵ The forms of sexual exploitation they suffer vary from prostitution in brothels, webcam chat at online sex sites, to hostesses in nightclubs or karaoke bars.²⁶ Sometimes their mobility is very restricted as one human trafficking victim's testimony in a report demonstrates: when the victims are caught trying to escape from these atrocities, they are beaten to near death.²⁷

12. Even among human trafficking victims, North Korean defectors are particularly vulnerable compared to victims of other nationality as they cannot and do not actively seek for help from the government, authorities or even civilians due to the fear of repatriation.²⁸ Being trafficked victims does not grant them any amnesty. Chinese authorities have continued to forcibly repatriate defectors despite its awareness that many North Korean female defectors in China are human trafficking victims who were forced into China.²⁹ Once those victims are repatriated, they face severe persecution as other defectors do. Traffickers make use of this innate vulnerability of North Korean defectors,³⁰ who have to endure exploitative treatment and cannot come forth to seek justice to save their own lives.³¹
13. Impunity also shows the Chinese government's failure to tackle this North Korean female defectors' human trafficking issue. Under Chinese law, human trafficking is severely punishable. However, if a trafficking case involves North Korean women as victims, punishment is usually limited to a fine and the case is kept quiet. Since publicizing such cases would draw large attention to the existence of North Korean defectors in China, the Chinese government avoids raising an issue regarding them. It is extremely difficult, if not impossible, to find an official police report filed by North Korean defectors.³² As a result, no perpetrators are being punished and no victims are being rescued.
14. It is clear that the Chinese government has failed to take effective legislative, administrative, judicial or other measures to prevent human trafficking of North Korean female defectors amounting to torture in her jurisdiction.

***De-facto* Statelessness of Children with defected North Korean mothers**

15. Another related issue regarding North Korean defectors living in China is stateless children born to North Korean mothers and Chinese fathers. Scholars estimate the number of children with defected North Korean mothers to range from 10,000 to 50,000.³³ These children are most likely to be *de facto* stateless due to their mothers' illegal status. Technically, a child born in China is entitled to Chinese citizenship if one parent is a Chinese citizen under the Chinese nationality law. However, because of the danger posed to the North Korean mothers by China's policy of forced repatriation, many children end up not being listed on the '*hukou*', or household registration system³⁴
16. Legally registering a child between a North Korean mother and a Chinese father with '*hukou*' is extremely difficult because the Chinese father must submit legal proof including testimonies from witnesses that his North Korean partner has been arrested and repatriated back to North Korea. As a result, families are caught in the middle between having to leave children in *de facto* statelessness situation without household registration and having to split up the family for their children to have household registration, both of which could become root causes for abandonment and eventual stateless orphan status of the child.³⁵

17. “Statelessness is a profound violation of an individual’s human rights. [It] makes people feel like their very existence is a crime.”³⁶ Stateless persons can also be described as “legal ghosts, exposed to human rights abuses and with no recourse to justice”.³⁷ This status amounts to torture that accompanies lifelong mental sufferings and high chance of physical sufferings due to the lack of protection from the government. Its impact on children, who are often fragile and weak, is unimaginable. In fact, children without *hukou* in China live under the loss of education opportunity, exemption from medical and health services, and insecurity.
18. Thus, neglecting these *de facto* stateless children’s sufferings, the government of China is violating the Convention.

Conclusion

19. Chinese government has been grossly violating Article 3 of the Convention by forcibly repatriating North Korean defectors to their country of origin in which they are subject to torture. And the violation of the principle of *non-refoulement* makes North Korean female defectors vulnerable to human trafficking, as victims cannot seek protection from Chinese authority for fear of repatriation. Many of the trafficked North Korean female defectors become victims of sexual exploitation or are sold by brokers as brides to Chinese men in need of fertile women and live-in labor. Children born to these women and Chinese men become *de facto* stateless, which result in a situation that causes harm to the well-beings of these children. Failing to protect trafficked North Korean female defectors and *de facto* stateless children of these women, and even contributing to the causes of increased human trafficking and the statelessness cases, the government of China has breached Articles 1 and 2.1. of the Convention since human trafficking and stateless amount to torture and other cruel, inhuman, degrading treatment which are prohibited by the Convention
20. Violation of the principle of *non-refoulement*, human trafficking of North Korean women and statelessness of children are deeply intertwined and thus should be included in the list of issues for the fifth periodic review of China by the Committee against Torture as one combined theme.

Suggested Questions

1. How many North Koreans in China were deported by China between 2009 and 2014?
2. Has China monitored the returned North Koreans in terms of safety from persecution or torture?
3. Why does not China conduct Refugee Status Determination process nor allow UNHCR to have access to North Koreans at the border?
4. How many human traffickers were persecuted in China between 2009 and 2014 for engaging in trafficking of North Korean women? What were the punishments?
5. What is the plan for China to address *de facto* stateless children born to North Korean mothers?

¹Refuge pNan is a Christian NGO which assists North Koreans and refugees seeking asylum in Korea and abroad.
www.pnan.org

²APIL(Advocates for Public Interest Law) is a public Interest lawyers' organization which focus on advocating refugees, victims of human trafficking, stateless persons, long-term detained migrants and human rights victims committed by Korean corporations abroad. www.apil.or.kr

³ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment*, 2013, p. 13

⁴ Manfred Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Human Rights Council(UNHRC), A/HRC/7/3, 2008, para. 56

⁵ United Nations High Commissioner of Refugees(UNHCR), "Statelessness is an Injustice We Can Stop", *The Guardian*, Nov. 4, 2014, <http://www.theguardian.com/world/2014/nov/04/statelessness-injustice-we-can-stop-unhcr>

⁶ United Nations Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations of the Committee against Torture, Czech Republic, CAT/C/CZE/CO/4-5*, 2012, para. 19

⁷ Database Center for North Korean Human Rights(DCNKHR), *Human Rights Violation caused by China's forcibly repatriation of North Korean Defectors and Improvement Methods*, Dec 2013, (in Korean) p.6

⁸ Human Rights Watch(HRW), *UPR Submission, Democratic People's Republic of Korea*, Sept. 2013, p. 2

⁹ See Jubilee Campaign(JC), *UPR Submission, Democratic People's Republic of Korea*, 19th session, 2013, p. 2; Rachel Burford, "I was beaten and stamped on. It was a way of life": North Korean defector speaks out about finally finding happiness in New Malden", *Surrey Comet*, Mar. 9, 2015

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¹⁰ See Julian Ryall, "Escape from North Korea: 'I was sold into slavery and forced to have an abortion'", *Telegraph*, Feb. 16 2015, <http://www.telegraph.co.uk/women/womens-life/11393645/North-Korea-escapee-I-was-sold-into-slavery-and-forced-to-have-an-abortion.html>; DCNKHR, Dec 2013, p. 18

¹¹Roberta Cohen, "North Koreans in China in need of international protection", *Forced Migration Review*, No. 41.Dec. 2012. p.42.

¹² DCNKHR, Dec 2013, p.11

¹³See JC *UPRSubmission DPRK*, 2013, p. 3; Justin McCurry, "UN 'extremely concerned' for repatriated North Korean defectors", *The Guardian*, Jun. 3, 2013 <http://www.theguardian.com/world/2013/jun/03/un-repatriated-north-korean-defectors>

¹⁴See Cohen, "North Koreans in China in need of international protection", Dec. 2012

¹⁵ Roberta Cohen, "China's Forced Repatriation of North Korean Refugees Incurs United Nations Censure", *International Journal of Korean Studies*, Summer 2014, <http://www.brookings.edu/research/opinions/2014/07/north-korea-human-rights-un-cohen>

¹⁶ See Cohen, "China's Forced Repatriation of North Korean Refugees Incurs United Nations Censure", Summer 2014; Stephan Haggard, "UN seeks to persuade China to end forced repatriations to North Korea", *The Guardian*, Jul 9 2014, <http://www.theguardian.com/world/2014/jul/09/north-korea-united-nations-china-forced-repatriations>; Peter Walker, "North Korean leaders may be called to face ICC over 'human rights abuses'", *The Guardian*, Oct. 24 2013, <http://www.theguardian.com/law/2013/oct/24/human-rights-abuses-china-north-korea>

¹⁷McKenzie, "Chinese 'snakehead' gangs offer only escape for North Korea's defectors", Nov. 19 2014

¹⁸The government of China even arrested and tortured those who helped North Korean defectors. See "We didn't tortured Kim Younghwan', Chinese government blatantly lied to South Korean government. But...", *ChosunIlbo*, Aug. 1, 2012 (in Korean) http://inside.chosun.com/site/data/html_dir/2012/08/01/2012080100931.html?Dep0=twitter; Ok-jin Lee, "Confession of former Chinese Police Officer 'We Detained North Korean Defectors and tortured with electricity.'", *ChosunIlbo*, Aug. 2, 2012 (in Korean)

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¹⁹ USDS, *Trafficking in Persons 2014 Report: DPRK*

²⁰ Olivia Eons, "Human Trafficking Thrives Where Rule of Law Ends", *The Diplomat*, Mar. 16 2015, <http://thediplomat.com/2015/03/human-trafficking-thrives-where-rule-of-law-ends/>

²¹McKenzie, "Chinese 'snakehead' gangs offer only escape for North Korea's defectors", Nov. 19 2014

²²HRW, *UPR Submission DPRK*, 2013, p. 2

²³ See HRW, *UPR Submission DPRK*, 2013, p. 2; LFNKR, *UPR Submission, China*, 2013, p. 3

²⁴ See Eons, "Human Trafficking Thrives Where Rule of Law Ends", Mar. 16 2015; United States Department of State(USDS), *Trafficking in Persons 2014 Report: Country Narratives, China*, 2014, <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226700.htm>

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- ²⁹USDS, *Trafficking in Persons 2014 Report, DPRK*
- ³⁰See Taeguen Park, "Documentary on North Korean Defectors Draws Attention", *Donga Ilbo*, Feb. 10 2015, <http://news.donga.com/3/all/20150210/69578686/2>; DCNKHR, Dec, 2013, p.20
- ³¹LFNKR, *UPR Submission, China*, 2013, p. 3
- ³²Kim, Aug. 2008, p.24
- ³³Ibid, p. 22
- ³⁴United Nations Human Rights Council (UNHRC), *Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea*, Feb. 2014, p. 140
- ³⁵Kimberly Hyo-Jung Chambell, "De facto statelessness places adoption on the table for children of N.Korean women in China", *the Hankyoreh*, Jun 18. 2010, http://english.hani.co.kr/arti/english_edition/e_national/426317.html
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