

Testimony of
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I. Introduction

Chairman Kennedy, Senator Brownback, and members of the Immigration Subcommittee, thank you for inviting me to testify today to provide you with the views and recommendations of the Lawyers Committee for Human Rights on the plight of North Korean refugees. We are deeply grateful for your leadership on this and on so many other refugee protection challenges. The celebration of World Refugee Day yesterday was an opportunity to be thankful for the many ways in which refugees have enriched our society. But it is also a time for reflection on those countless refugees who have been driven from their homes, persecuted by "host" countries, and failed by the international system designed to be their safety net. This hearing is an important opportunity for us to discuss what our government can do to protect those fleeing from the human rights disaster area that is North Korea.

The Lawyers Committee for Human Rights has worked to protect refugees and promote their human rights for nearly a quarter century. Our work is impartial, holding all governments, including our own, accountable to the standards of the 1951 United Nations Convention relating to the Status of Refugees and related international instruments. In the belief that we have a special obligation as a US-based human rights organization to assist those refugees who seek asylum here in our country, the Lawyers Committee operates the largest and most successful pro bono asylum representation program in the United States. Over the years, we have helped thousands of indigent refugees from every corner of the globe secure the legal protection they need to start a new life in a land of freedom. Every day in our offices, we see those who were forced to flee their homes because of who they are or what they believe. Our work to promote vigorous refugee protection policies here and around the world is grounded not only in international law, but in this daily experience with refugees themselves.

II. The International Legal Framework

As defined in international law, a refugee is someone who is outside his or her country of nationality or habitual residence and is unwilling to return because of a well-founded fear of being persecuted on account of race, religion, nationality, membership of a particular social group or political opinion. Governments are responsible for protecting the human rights of their own citizens, but in cases where a government is no longer willing or able to secure the fundamental human rights of its citizens, and those citizens are forced to flee across an international boundary, it becomes the responsibility of the international community to ensure that their human rights are protected.

The international legal framework for refugee protection is set out in two international treaties: the 1951 Convention relating to the Status of Refugees and its associated 1967 Protocol.

Together, they form a Bill of Rights for refugees. The UN Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees is available as a guide to treaty parties on the interpretation of treaty language and how to implement their obligations.

Of particular interest in the case of North Korean refugees, the Handbook explains that an individual can become a refugee after having left her country of nationality because of treatment she would receive if she were returned.

(b) Refugees "sur place"

94. The requirement that a person must be outside his country to be a refugee does not mean that he must necessarily have left that country illegally, or even that he must have left it on account of well-founded fear. He may have decided to ask for recognition of his refugee status after having already been abroad for some time. A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee "sur place".

95. A person becomes a refugee "sur place" due to circumstances arising in his country of origin during his absence. Diplomats and other officials serving abroad, prisoners of war, students, migrant workers and others have applied for refugee status during their residence abroad and have been recognized as refugees.

96. A person may become a refugee "sur place" as a result of his own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence. Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. Regard should be had in particular to whether such actions may have come to the notice of the authorities of the person's country of origin and how they are likely to be viewed by those authorities.

With regard to fear of prosecution, as opposed to persecution, the Handbook is also instructive:

57. The above distinction may, however, occasionally be obscured. In the first place, a person guilty of a common law offence may be liable to excessive punishment, which may amount to persecution within the meaning of the definition. Moreover, penal prosecution for a reason mentioned in the definition (for example, in respect of "illegal" religious instruction given to a child) may in itself amount to persecution.

And finally, the Handbook also explains that only if an individual is motivated exclusively by economic considerations is he an economic migrant, as opposed to a refugee.

It seems clear that most, if not all, North Korean refugees who have fled into China would meet the international criteria for refugee status. The Department of State Country Reports on Human Rights Practices released this year states that "[a]ccording to the [North Korean] Penal Code, defection and attempted defection (including the attempt to gain entry to a foreign embassy for the purpose of seeking political asylum) are capital crimes...Some migrants have reported that DPRK border guards have received orders to shoot-to-kill persons attempting to cross the border into China."

III. China's Obligations Under the 1951 Convention and 1967 Protocol

China ratified both the 1951 Convention and the 1967 Protocol in 1982. China, as a party to these treaties, has declared itself part of that community which shares responsibility to protect North Korean refugees. In particular, China is bound by Article 33 of the Convention to refrain from returning any refugee "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." If there is one central, inalienable human right of refugees, it is the right not to be returned to the country of persecution. No amount of diplomatic awkwardness, no

contravening bilateral agreement can ever excuse violation of this prohibition.

Yet, as we have heard, this is precisely what China has done and seems increasingly set on doing. It argues that it is bound by an agreement with North Korea, which itself contravenes international human rights law, to return "economic migrants" who escape into Chinese territory. As the desperation of the North Korean people escalates and more are driven to make a run to the safety of foreign embassies, China has barricaded streets, stepped up security, and even entered foreign embassy buildings in violation of diplomatic laws to forcibly retrieve refugees in order to repatriate them.

IV. What Should the United States Be Doing?

Thanks to the leadership of concerned Members of Congress and the courage of humanitarian workers and those few refugees who have managed to escape and speak about their experiences, the challenge we now face is not lack of interest in this refugee crisis. The question is: what can the United States do to alleviate this suffering and ensure protection for North Korean refugees? First, the Administration should make clear to all concerned countries, in particular China and South Korea, that resettlement of North Korean refugees in the United States is a serious option that we are prepared immediately to make available. While it is certainly true that China should be granting North Korean refugees asylum and South Korea should be more aggressively offering to take in more refugees, that is not the current reality. So many times we have seen that the prolonged failure of the United States to make an offer of resettlement of those for whom no other solution is available is used by other countries as an excuse for inaction. It is past time for the United States to speak up and say that it will take in those who qualify for refugee protection. Second, the Administration must bring more pressure to bear on China to abide by its obligations under the 1951 Convention and 1967 Protocol. If it is unwilling to grant asylum to North Korean refugees, it must, first and foremost, refrain from sending them back to persecution and death. China is obligated to facilitate protection for North Korean (and all) refugees in its territory, if it is not willing to grant such protection itself. The Administration should strongly urge China to permit UNHCR to operate in the border region between China and North Korea so that it can interview those crossing the border and assess their status as refugees. And the Administration should strongly urge China to permit North Korean refugees to leave China and either be resettled or be free to seek asylum in other countries.

Third, the Administration must ensure that it is not sending China mixed signals about its international obligations towards refugees. When questioned last week about the Administration's view of a recent diplomatic communication from the Chinese government sent to embassies in Beijing which demanded that asylum seekers be turned over to Chinese authorities, State Department Spokesman Richard Boucher seemed to go to great lengths to avoid saying that the United States would not comply with such demands. The United States should make very clear to the Chinese government that it has no intention of handing asylum seekers over to a government whose stated policy is in clear violation of international obligations.

Fourth, the Administration must make absolutely sure that the United States is in no way complicit in the Chinese government's violations of international human rights law being perpetrated against the North Korean refugees. The United States provides a substantial amount of financial assistance, as well as training, to the Chinese to assist them in combating "alien smuggling" and "illegal migration." How sure are we that this assistance is not being used by or enabling the Chinese government to "combat" the flight of North Korean refugees seeking to

escape from oppression and persecution? I would urge the Senate to diligently monitor the uses to which US anti-smuggling assistance is put. North Koreans who have fled to China have been doubly victimized. I urge you to do all you can to ensure that the United States is not an unwitting accomplice to this abuse.

? Finally, in order to continue to lead effectively on this and other refugee protection issues, the Administration should make sure that our own house is in order. The situation of the North Korean people is extremely dire and deserves our urgent attention. But we need not look halfway around the world to see injustice being done to refugees. Yesterday, in his statement commemorating World Refugee Day, the President promised that "America will always stand firm for the nonnegotiable demands of human dignity and the rule of law." But as we sit here today, asylum seekers who came to America seeking protection and freedom sit in US jails or, worse, are being turned away unjustly without the chance to even ask for protection. A little over a year ago, many of us sat in this room transfixed by the testimony of refugees from Tibet, Cameroon, and Afghanistan who came here seeking freedom and found, to our great shame, handcuffs and a prison uniform. Those present were deeply moved by their courage, their love of freedom and of this, their new home, despite the injustices they suffered under our misguided immigration system. Thankfully, following that hearing, which was chaired by Senator Brownback, a bi-partisan group of Senators and Representatives introduced a bill that would restore American values to our asylum system: the Refugee Protection Act. The National Association of Evangelicals, in its 2nd Statement of Conscience released last month, focused specifically on the human rights crises in North Korea and Sudan. The Statement concludes "[i]n the case of both countries we will, in particular, work for enactment of the Refugee Protection Act ..., legislation profoundly consistent with American traditions of opening our doors to genuine refugees of religious and political persecution." I can think of no more fitting way to put the President's eloquent words of yesterday into practical effect than to pass this important piece of legislation.

V. Conclusion

Thank you for your interest in the Lawyers Committee's views on this important subject. We look forward to working with all of you to enhance the protection of refugees from North Korea and around the world.