

# The UN's Human Security Challenge: The Plight of North Korean Refugees in China

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## | ABSTRACT |

The problems arising from the presence of North Korean refugees in China warrant a human security approach, meriting protection from the UN and the international community. There are three scenarios dreaded by the refugees: first is being caught by North Korean border patrol while trying to escape; second is being subjected to human trafficking ring; and third is being repatriated after being caught by either the Chinese police or North Korea's own secret police operating in China. Despite the 1995 agreement between the UNHCR (United Nations High Commissioner for Refugees) and China, which provides the UNHCR unimpeded access to all refugees within China, the UNHCR has been passive in exerting its mandate to protect the North Korean refugees. One possible solution is the construction of a refugee camp in China or Mongolia. If China allowed for this, it would catapult itself as a genuine "soft power" deserving of the much-coveted G2 status. Otherwise, China's leadership ambition, UNHCR's reputation, and most importantly, human rights of the refugees will remain in jeopardy so long as the discriminatory *sŏngbun* system in North Korea continues.

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## I. Introduction

The concept of human security is associated with threats to humanity caused by wars, genocide, natural disasters, poverty, epidemics, economic downturns, and population displacement. Any combination of these factors causes human insecurity at both the individual and community levels. While the concept of traditional security is mainly state-centric, human security is focused on the welfare of the people. In the midst of defining the post-Cold War world order, this new concept of “people-centered” security emerged in the 1994 Human Development Report, published for the UN Development Program (UNDP). The report defined human security as a “concern with human life and dignity” as opposed to a “concern with weapons.”<sup>1)</sup> Thereafter, the UN has actively sought to promote the concept: resolutions have been adopted by the General Assembly (A/RES/64/291; A/66/763), reports prepared by the Secretary-General (A/64/701), and both the Millennium Development Goals and the Sustainable Development Goals echoed human security principles, emphasizing a “world free of poverty, hunger, disease and want, not to mention fear and violence.”<sup>2)</sup>

When the 2012 UNGA resolution (A/RES/66/290) stressed the “right of people to live in freedom and dignity, free from poverty and despair,”<sup>3)</sup> it appeared that the UN was determined to reach out to the most vulnerable in all corners of the world. But contrary to the stated determination, the outcome has been more rhetorical than substantive. In North Korea, for example, the human security goals set forth by

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1) United Nations Development Program, *Human Development Report 1994* (Oxford: Oxford University Press for the UNDP, 1994), p. 22.

2) United Nations General Assembly, “Transforming Our World: The 2030 Agenda for Sustainable Development, A/RES/70/1,” [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf) (Accessed March 3, 2020).

3) United Nations General Assembly, “Resolution Adopted by the General Assembly on 10 September 2012,” [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/66/290](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/66/290) (Accessed February 15, 2020).

the UN have had little bearing on the systematic deprivation of the people's fundamental rights, including "freedom from fear and want."<sup>4)</sup> Those who managed to escape to China in search of a better life did not fare any better under China's own discriminatory laws: they have been either forcibly repatriated or have endured inhumane treatment in hiding. The plight of the North Korean refugees in China indeed stands out among the vexing challenges to the UN and the international community. If ever there was a need for a human security approach, the North Korean refugees in China present a compelling case.

The fundamental problem is that while a normal state understands national security to encompass the human security of its own citizens, North Korea's conception of national security concerns only the regime and not the people. Ironically, as the Kim Jong Un regime becomes more secure, the human rights situation deteriorates. In the 1990s, facing severe political persecution and starvation, North Koreans fled the country *en masse* to take refuge in China. Unable to find food at home, up to 200,000 North Koreans crossed the border in search of a better livelihood. The fortunate few made it out of China to countries like Laos, Thailand, and Myanmar before finding safety in South Korea or other countries willing to take them in as asylum-seekers. The rest continue to be subjected to stringent crackdowns by the Chinese authorities. When caught, they are forcibly repatriated, since Beijing considers them "illegal economic migrants," not refugees. Those who are returned often join 120,000 other North Koreans in gulags (political prison camps). Their life stories filled with fear, hunger, and persecution are well-chronicled by some of the escapees from these camps.

The important question for the proponents of human security is: do the North Korean refugees end up finding what they seek — freedom from hunger, deprivation, and political oppression? Unfortunately, the answer is seldom "yes." This is because although they are recognized

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4) *Ibid.*

as refugees by the UN, the Chinese government prevents them from receiving international protection and assistance. Without institutional support, North Korean refugees struggle not only to find food and livelihood but also to avoid capture and repatriation. In the event of repatriation, the punishment could be death. The ordeal endured by North Korean refugees clearly contradicts the universal commitment to protect individuals from violent threats generally associated with “poverty, lack of state capacity and various forms of socio-economic and political inequity.”<sup>5)</sup>

The North Korean refugee situation calls for the human security approach, meriting protection from the UN and the international community.<sup>6)</sup> This issue is particularly urgent because while the problem continues unabated, international concern over the longstanding crisis has weakened due to attention being channeled towards North Korea’s nuclear and missile threats. A policy shift to engage Kim Jong Un by Chinese President Xi Jinping, South Korean President Moon Jae-in, and sometimes even by US president Donald Trump has not helped the situation. The need to denuclearize North Korea, especially through diplomacy, is a compelling responsibility for the global community. However, steps towards this end should not hamper efforts to address human insecurity in a society that routinely commits “crimes against humanity,” as documented in the 2014 report by the UN Commission of Inquiry (COI) on Human Rights in the Democratic People’s Republic of Korea (DPRK).<sup>7)</sup> In the face of the continuing problem concerning North Korean refugees in China, this article examines: first, the systematic

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5) Human Security Center, “The Human Security Brief 2006,” [https://www.files.ethz.ch/isn/27140/HSC\\_Brief\\_2006\\_fulltext.pdf](https://www.files.ethz.ch/isn/27140/HSC_Brief_2006_fulltext.pdf) (Accessed February 15, 2020).

6) Commission on Human Security, “Human Security Now,” <https://reliefweb.int/sites/reliefweb.int/files/resources/91BAEEDBA50C6907C1256D19006A9353-chs-security-may03.pdf> (Accessed January 20, 2020).

7) UN 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 (A/HRC/25/CRP.1),” <https://www.ohchr.org/en/hrbodies/hrc/coidprk/pages/commissioninquiryonhrindprk.aspx> (Accessed February 20, 2020).

and legal factors substantiating the escapees' claim to political refugee status; second, the applicability of the concept of human security to their plight; and third, the possibility of establishing UN refugee camps to help this particular group of victims who are viewed by one prominent advocate as "the slaves of the 21st century."<sup>8)</sup>

## II. Human Security: Theory and Practice

The term "human security" was coined in the mid-1990s amid the rapidly changing international order triggered by the end of the Cold War. The new post-Cold War security environment transformed and widened the previous concept of security, which had been centered on military aspects. With the traditional US-Soviet bipolarity no longer predominant in world politics, a catch-all concept of "comprehensive security" started taking root. This was a new, multi-dimensional approach to security that included non-military issues such as the environment, terrorism, economics, and human rights.<sup>9)</sup> The newly identified security challenges were quickly reflected in the already mentioned 1994 Human Development Report, which identified seven main components as threats to human security: economic security, food security, health security, environmental security, personal security, community security, and political security.<sup>10)</sup> According to the report, human security, no longer considered a state-centric agenda, was focused on threats to the individual, with special reference to freedom from fear and freedom from want.<sup>11)</sup> This

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8) Tim Peters quoted in Bryan Harris and Michael Peel, "Escape Route from North Korea Grows Ever More Perilous," *Financial Times* (June 23, 2017).

9) Pauline Kerr, "Human Security," in Allan Collins (ed.), *Contemporary Security Studies* (1<sup>st</sup> ed.) (Oxford: Oxford University Press, 2007), p. 92.

10) United Nations Development Program (1994), pp. 24-33.

11) *Ibid.*

UNDP report was instrumental in conceptualizing human security as part of the new security discourse.

At the 2000 Millennium Summit held at the UN headquarters in New York, Secretary-General Kofi A. Annan called for a world “free from want” and “free from fear.” This powerful appeal led to the January 2001 establishment of the Commission on Human Security. In 2003, the Commission published a seminal work, *Human Security Now*, which explored how the human component can be incorporated into the broader security agenda:<sup>12)</sup>

Human security means protecting fundamental freedom—freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people’s strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.<sup>13)</sup>

Human security is about protecting individuals and communities from all forms of political violence. But the fact that states do not always ensure the security of their people underscores the newfound interest in human security. Over the years, far more people have been killed by their own governments than by foreign enemies, generating the need to protect individuals from all threats—both internal and external. Thus, the question is, what are the most symptomatic threats that individuals must be protected from? In addressing this question, the concept of human security takes two approaches: first, the “narrow” concept of human security, which focuses on “violent threats to individuals, while recognizing that these threats are strongly associated with poverty, lack

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12) Commission on Human Security (2003).

13) UN Office for the Coordination of Humanitarian Affairs (Human Security Unit), “Human Security in Theory and Practice: Application of the Human Security Concept and the United Nations Trust Fund for Human Security,” <https://www.unocha.org/sites/dms/HSU/Publications%20and%20Products/Human%20Security%20Tools/Human%20Security%20in%20Theory%20and%20Practice%20English.pdf> (Accessed March 1, 2020).

of state capacity, and various forms of socio-economic and political inequity”<sup>14)</sup>; and second, the “broad” concept — the interpretation of what constitutes a threat to an individual expands to include “hunger, disease, and natural disasters because these kill far more people than war, genocide, and terrorism combined.”<sup>15)</sup> As the emphasis on the nature of conflicts shifted from an inter-state to a more intra-state orientation, especially in the 1990s, the UN and the international community were able to address atrocities unfolding in countries like Somalia, Rwanda, and the former Yugoslavia.<sup>16)</sup>

This new concept of security has struggled to cope with North Korea even though the concerns it addresses match the situation in this totalitarian state that has long been considered one of the worst abusers of human rights. In recognition of this notoriety, the COI report identified in February 2014 the state’s systematic and widespread “crimes against humanity,” including forced labor, forced abortions, infanticide, public executions, a massive gulag system, and overseas abductions.<sup>17)</sup> In particular, the predicament of the North Korean escapees in China poses a serious threat to the very essence of human security. If the human security approach is to succeed, activating a global political commitment, such as the UN-endorsed “Responsibility to Protect,” may be inevitable.<sup>18)</sup>

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14) Human Security Center (2006).

15) *Ibid.*

16) Aydar Gazizullin, “The Significance of the ‘Human Security’ Paradigm in International Politics,” *E-International Relations*, <https://www.e-ir.info/2016/02/29/the-significance-of-the-human-security-paradigm-in-international-politics/> (Accessed March 5, 2020).

17) Jung-Hoon Lee and Joe Phillips, “Drawing the Line: Combating Atrocities in North Korea,” *The Washington Quarterly*, Vol. 39, No. 2 (Summer 2016), p. 61.

18) The 2005 World Summit Outcome Document is a UN resolution that defines the concept of “Responsibility to Protect” and was issued during the General Assembly’s 60th session in 2005. For an outline, see Global Centre for the Responsibility to Protect, “2005 World Summit Outcome A/60/L.1,” <https://www.globalr2p.org/resources/2005-world-summit-outcome-a-60-l-1/> (Accessed March 1, 2020); for the original document, see United Nations General Assembly, “Resolution Adopted by the General Assembly on 16 September 2005,” [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_60\\_1.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf) (Accessed March 1, 2020).

### III. Are North Korean Defectors Refugees?

It is evident that the fundamental problem with the North Korean refugees begins in their country of origin — North Korea. But another major problem in dealing with this issue arises from the Chinese government's position on interpreting their status. The Chinese government classifies all North Korean defectors or refugees in China as “illegal economic migrants.”<sup>19)</sup> As such, even the Office of the UN High Commissioner for Refugees (UNHCR) in China cannot have access to these “migrants.”<sup>20)</sup> This does not imply a lack of legal recourse. In fact, the UNHCR concluded a bilateral agreement with China in 1995 that granted the UNHCR's staff in China unimpeded access to refugees within China.<sup>21)</sup> But determining who is a refugee requires interviewing the prospective asylum-seekers. With China strictly preventing UNHCR access to North Koreans near the border, the process towards refugee recognition is thwarted. The forcible repatriation of North Koreans seeking refuge in China is a contravention of China's obligations under the 1951 UN Convention Related to the Status of Refugees and its 1967 Protocol. In China, North Korean defectors, especially women and children, are left helpless. They face a multitude of threats, necessitating a response beyond conventional mechanisms.

The 1951 Convention defines a refugee as “a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality, and is unable to or, owing to such fear, is unwilling to rely on the protection of that country, or

19) Human Rights Watch, “China: Redoubling Crackdowns on Fleeing North Koreans,” <https://www.hrw.org/news/2017/09/03/china-redoubling-crackdowns-fleeing-north-koreans> (Accessed April 2, 2020).

20) Congressional-Executive Commission on China, “2005 Annual Report,” <https://www.cecc.gov/publications/annual-reports/2005-annual-report> (Accessed March 2, 2020).

21) Lili Song, *Chinese Refugee Law and Policy* (New York: Cambridge University Press, 2020), p. 58.

to return there, for fear of persecution.”<sup>22)</sup> This concept was expanded by the Convention’s 1967 Protocol and by regional conventions in Africa and Latin America to include “persons who had fled war or other violence in their home country.”<sup>23)</sup> Pursuant to the UN Convention’s stipulations, strong legal foundations were laid in recognizing North Koreans in China as refugees, not illegal economic migrants. The fact that North Korean refugees face detention, prison terms, torture, or in extreme cases, execution when repatriated back to North Korea is sufficient to classify them as “asylum-seekers” or refugees.

It is true that famine-related economic migrants cannot be classified as refugees in the traditional international legal sense. But the case of North Koreans is different; the main reason for their defection to a foreign country — economic plight — is the political outcome of a failed socialist system under totalitarian rule.

The connection between political power and economic deprivation of a large percentage of the North Korean population can be traced to the state-sponsored discrimination policy known as *sŏngbun*. North Korea is a society steeped in social stratification based on each individual’s political-ideological background as determined by the Workers’ Party of Korea (WPK). All North Korean citizens are classified into either the basic class (Kibon-gyech’ŭng), wavering class (Pokjab-gyech’ŭng), or hostile class (Chŏkdae-gyech’ŭng). *Sŏngbun* is the source of systemic discrimination based on the evaluation of a person’s religious, political, and family background spanning three generations, as well as his or her current behavior and perceived loyalty to the state.<sup>24)</sup> This system underpins the state’s socio-economic exclusion policies responsible for an inter-generational discriminatory scheme that determines who receives

22) Atle Grahl-Madsen, “Refugees, UN High Commissioner,” in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, Vol. 5 (Amsterdam, 1985), 257.

23) UN Office of the High Commissioner for Human Rights (OHCHR), “Protocol Relating to the Status of Refugees” (October 4, 1967), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolStatusOfRefugees.aspx> (Accessed March 2, 2020).

24) UNHRC (2014), pp. 64-73.

what kind of food, healthcare, education, job, and even residence.<sup>25)</sup> The *sŏngbun* class system is strictly enforced by North Korea's secret police, the Ministry for Protection of the State (Kukga Bowisŏng), which target the perceived "enemies of the state" in the lowest *sŏngbun* class. Those targeted are not only deprived of socio-economic opportunities, but often persecuted in the vast network of North Korea's detention centers, including political prison camps.

Particularly hard-hit are the country's 200,000-400,000 Christians, who are routinely persecuted and even reported to have been rounded up for public execution.<sup>26)</sup> The COI report cites Kim Il Sung making the following statement on religion: "Religion is a kind of myth. Whether you believe Jesus or Buddha, it essentially believes a myth [sic]... we cannot take religious people to the socialist society ... and religious people should die to cure their habit."<sup>27)</sup> The existence of this view and the supporting systemic apparatus contradicts the universality of equality as a fundamental right for all individuals as stipulated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. The only class exempt from the discriminatory policy is the ruling elite class, which includes the Kim family, loyal party members, military leaders, and government officials, numbering about 3-4 million, living mostly in the capital city of Pyongyang.

The hardships suffered by those in the *sŏngbun* class is compounded by the country's economic failures. The Pyongyang regime's continued military investments despite its impoverished economy was denounced in the 2016 European Parliament resolution as an act that "can be consi-

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25) For a discussion on *sŏngbun* as a tool of the state, see Greg Scarlatoiu, "Human Security in North Korea," *International Journal of Korean Studies*, Vol. 14, No. 2 (Fall 2015), pp. 128-131.

26) Christian Today, "In North Korea, Children Watch Christians Being Executed" (June 12, 2018), <https://www.christiantoday.com/article/in-north-korea-children-watch-christians-bein-g-executed/129655.htm> (Accessed February 25, 2020).

27) UNHRC (2014), p. 61.

dered criminal negligence of the basic needs of its citizens in view of the fact that some 70% of the country's 24.6 million population are food insecure ...”<sup>28</sup>) This is particularly disturbing considering the ruling elites continue to import luxury goods, invest in tourist and entertainment infrastructures, and enjoy high-end housing and medical facilities. This contrast based on class stratification underscores the North Korean refugee issue: without a proper contextual understanding of the *sŏngbun* system and its consequences, the North Korean refugee issue cannot fully be explained nor solved.

It is not surprising that most of the victims of the widespread famine in the 1990s were those of the low *sŏngbun* class, as they were the first to be cut from the government's public distribution system (baegŭpjado). The famine led to the exodus of tens of thousands of North Koreans, primarily residents of the northernmost areas bordering China—North Hamkyŏng Province in particular. These areas were, and still are, largely mining areas, where many people had been sent as a form of punishment for their poor *sŏngbun* background. With international humanitarian agencies prevented from reaching out to these people, many of them escaped to China as the only means to ensure their survival.

The right to food is one of the most fundamental human rights ensured under the existing international laws. Denial of food, especially as a weapon of persecution, can therefore substantiate a claim to refugee status by those denied. According to James C. Hathaway, a refugee law specialist: “There is today a solid basis to claim Convention refugee status at least where serious denial of food results from using food as a weapon or otherwise actively seeking to punish or harm people—for example, because of their race or religion; as well as where a generalized and serious insufficiency of food is met with a discriminatory

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28) European Parliament, “European Parliament resolution of 21 January 2016 on North Korea (2016/2521(RSP)),” [https://www.europarl.europa.eu/doceo/document/B-8-2016-0092\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-8-2016-0092_EN.html) (Accessed February 25, 2020).

response by the state based on, for example, sex or political views.”<sup>29)</sup> Additionally, the “well-founded fear of persecution” can also help determine refugee status as the UNHCR’s Handbook on Procedures recognizes that “the membership in a particular social group may be at the root of persecution,” especially if the “group’s loyalty” to the state is in doubt.<sup>30)</sup> Thus, for North Koreans in this *sŏngbun* classification, there is sufficient ground for their claim to refugee status based on their legitimate fear of persecution.

The North Korean escapees, discriminated against and persecuted based on the political or religious history of their family, fall under the definition of refugee under the 1951 Convention on Refugees. But even those who escaped to other countries purely for economic reasons plead to having been discriminated against at home for their low *sŏngbun*. Irrespective of the reasons for crossing the border, a defection from North Korea is considered a serious political crime. Those forcibly repatriated face punishment including “torture, arbitrary detention, summary execution, forced abortion, and other forms of sexual violence.”<sup>31)</sup> Perhaps more cruelly, their *sŏngbun* classification is expanded to their immediate family members, who would inherit discrimination in all facets of their lives.

The *sŏngbun* system thus causes repeated attempts to defect, further aggravating the cycle of deprivation and persecution. Cognizant of this systemic problem, the COI found that there was enough evidence to recognize many North Koreans as refugees fleeing persecution or refugees *sur place*, entitled to international protection.<sup>32)</sup> Refugee *sur place*

29) James C. Hathaway, “Food Deprivation: A Basis for Refugee Status?” *Social Research: An International Quarterly*, Vol. 81, No. 2 (2014), pp. 327-339.

30) UN High Commissioner for Refugees (UNHCR), “Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Reedited January 1992),” pp. 77-79. <https://www.unhcr.org/4d93528a9.pdf> (Accessed February 22, 2020).

31) UNHRC (2014), p. 84.

32) UNHRC (2014), p. 130.

determination is possible because North Korean defectors acquire a well-founded fear of persecution after leaving the country.<sup>33)</sup> Specifically, it is directly linked to the inhumane treatment of those returning for their crime of leaving the country without permission, attempting to seek asylum in other countries, or being helped by religious organizations while in China. Women, who constitute 70-80% of repatriated refugees, are particularly hard-hit as they are subjected to trafficking while in China, and to forced abortion, infanticide, and sexual abuse upon return.<sup>34)</sup>

The fact that the UNHCR has repeatedly asked the Chinese government, a signatory to the 1951 Convention on Refugees, to assure the protection of the asylum-seekers and that they are not forcibly repatriated back to North Korea in accordance with UN's *non-refoulement* principle, attests to the UNHCR's classification of North Korean defectors in China as legitimate political refugees fleeing persecution. The principle of *non-refoulement* guarantees that no one should be returned to a country where they would face "torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm irrespective of their migration status."<sup>35)</sup> This measure is explicitly stipulated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and other international human rights, refugee, humanitarian and customary law.<sup>36)</sup>

The discussion on whether North Koreans are refugees would be

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33) UNHCR (1992), pp. 94-96.

34) Daye Gang and Joanna Hosaniak, *They Only Claim that Things have Changed: Discrimination against Women in the Democratic People's Republic of Korea*, NKHR Briefing Report No.8 (Life & Human Rights Books Citizens Alliance for North Korean Human Rights, 2018), pp. 38-46.

35) UNHCR, "Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol," <https://www.unhcr.org/4d9486929.pdf> (Accessed February 25, 2020).

36) OHCHR, "The principle of non-refoulement under international human rights law," <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> (Accessed March 2, 2020).

incomplete without approaching this issue from the human security perspective, especially considering that one of the largest and longest humanitarian operations in the history of the UN has been conducted in North Korea.<sup>37)</sup> Better coordination between the UNHCR based in China and other UN agencies and humanitarian NGOs operating in North Korea is imperative. More importantly, Beijing's position on the issue has to be brought to align with its role in the widely-promoted UN 2030 Agenda for Sustainable Development. This agenda, unanimously adopted in 2015 by the UN member states and actively endorsed by China, echoed hitherto human security principles by emphasizing:

A world free of poverty, hunger, disease and want, free of fear and violence, with equitable and universal access to quality education, health care and social protection, to safe drinking water and sanitation, where food is sufficient, safe, affordable and nutritious, where habits are safe, resilient and sustainable, and where there is universal access to affordable, reliable and sustainable energy.<sup>38)</sup>

One of the most central, transformative promises of the 2030 Agenda and its SDGs is the “Leaving No One Behind” principle, which aims to address the factors that lead to the problem of certain vulnerable populations being left behind by the decision of those who have the power and authority to control their lives. These factors include discrimination, place of residence, socio-economic status, governance, and shocks.<sup>39)</sup> As expected, these factors apply to large portions of the North

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37) For some humanitarian aid figures of WFP, for example, see United Nations Office for the Coordination of Humanitarian Affairs, “World Food Programme & North Korea: WFP has fed millions,” *Reliefweb*, <https://reliefweb.int/report/democratic-peoples-republic-korea/world-food-programme-north-korea-wfp-has-fed-millions> (Accessed April 2, 2020).

38) United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1, para 7.

39) United Nations Development Program, “What does it mean to leave no one behind? A UNDP discussion paper and framework for implementation,” pp. 9-10. <https://reliefweb.int/report/world/what-does-it-mean-leave-no-one-behind-undp-discussion-paper-and-framework> (Accessed January 20, 2020).

Korean population, particularly those who have chosen to escape North Korea due to the persecution associated with the state implemented *sŏngbun* system. It is indeed paradoxical that China actively promotes the 2030 Agenda internationally, while at home, it continues to deny UN agencies access to the North Korean asylum-seekers. China, with the power and authority to make a difference in promoting one of the key sustainable development goals, has instead chosen to allow the perpetuation of discrimination, persecution, and poverty in North Korea, in direct contravention to the 2030 Agenda.

Without significant changes in China's approach and in UN agencies' evaluation of their methods of work in China, the exodus from North Korea will continue so long as the root causes remain unchanged: the exclusion and deprivation of individuals with low social *sŏngbun* who are "left behind" by the Pyongyang regime. Beneath the great fanfares of Agenda 2030's vow to "make a lasting impact" and achieve "transformative promise," the excluded population status of North Korean refugees in China remains unchanged.

Although the case for classifying North Koreans in China as refugees is compelling, the discourses on terminology do not matter if China continues to ignore its obligations stipulated in the 1951 Convention.<sup>40)</sup> If China refuses to recognize North Koreans as refugees, the UNHCR or other international agencies can do little to change the situation. China's refusal to recognize North Korean defectors as refugees is closely connected with its longstanding alliance with Pyongyang. On the defector issue, the two governments made an agreement in 1960 to reciprocally repatriate criminals, including illegal aliens. This agreement was reinforced

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40) For an excellent account of China's position on the North Korean refugees and an overview of the broader problem, see Roberta Cohen, "China's Forced Repatriation of North Korean Refugees Incurs United Nations Censure," *International Journal of Korean Studies*, Volume XVIII, Number 1 (Summer/Fall 2014); also in Brookings' online op-ed, "China's Forced Repatriation of North Korean Refugees Incurs United Nations Censure," <https://www.brookings.edu/opinions/chinas-forced-repatriation-of-north-korean-refugees-incurs-united-nations-censure/> (Accessed January 25, 2020).

in 1986, and again in 1993.<sup>41)</sup> In forcibly repatriating North Koreans, China is actually implementing its long-held agreement with North Korea. The bilateral arrangement serves China's political and security interest of avoiding a mass exodus from North Korea into its own territory. On the other hand, China's refusal to recognize North Korean escapees as refugees has generated a human rights nightmare. Of the tens of thousands hiding in northern China, only a handful have successfully escaped to countries like Thailand, Vietnam, Cambodia, and Laos. Only then are the escapees transported to safety in South Korea or accepted as refugees in over twenty countries such as the United Kingdom, Germany, Canada, the Netherlands, the United States, and Australia.

#### IV. The Plight of the Refugees: Facts and Figures

What began in the 1990s as a desperate attempt by North Korean defectors to escape famine and find livelihood across the border in China ended up becoming a full-fledged refugee crisis that still persists. The clamping down on border controls has made "life for North Koreans in China more dangerous than ever."<sup>42)</sup> If earlier, especially during the period of the "Arduous March,"<sup>43)</sup> the incentive for defection was economic reasons, the motivation in the past decade has been more

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41) Jae-il, Hwang, "T'albuk Nanmindŭl ui Ingwŏnsilt'ae wa Pŏpjŏkjiwi Hwakborŭl wihan NGO Hwaldong—NGO, Kugieyŏron Hwangi Wihan Chaejung Oegukgongkwan Chinip dŭng Hwldongjŏnge" [NGO Efforts to Obtain Human Rights and Legal Status for North Korean Refugees—Developments in NGO Activities Such as Entry into Foreign Embassies in China to Raise International Public Opinion], special edition, "North Korean Refugee Policy and Direction for Activities," *Pukhan* (Seoul: Pukhan Yŏnguso, 2002), pp. 72-73.

42) Quoted in Sylvia Yu, "Trafficked North Korean 'Bride' Reveals Her Desperate Flight from China," *South China Morning Post* (September 9, 2017).

43) For an overview of one of the worst famines of the twentieth century in North Korea (1994-1998) caused by the collapse of the socialist food distribution system and the regime's denial of humanitarian relief, see Stephan Haggard and Marcus Noland, *Famine in North Korea: Markets, Aid, and Reform* (New York: Columbia University Press, 2007).

political, as evident in a series of surveys conducted by the Korea Bar Association (KBA) on North Korean refugees. For example, in the 2018 survey, political refugees totaled 57.3% as those citing “longing for freedom” (31.1%), “doubt about the regime” (16.4%), and “political repression” (9.8%), far outnumbered those indicating “economic hardship” (13.1%) as the reason they fled their country.<sup>44)</sup> The 2018 results are consistent with the results of the KBA’s previous surveys in 2010, 2012, 2014 and 2016.<sup>45)</sup> Such survey results are significant in refuting the Chinese government’s identification of the North Korean escapees as illegal economic migrants.

As discussed previously, most escapees are from the hostile or wavering classes. Although there is no official tally, anywhere between 50,000 to possibly as many as 300,000 North Korean refugees live in fear and in hiding throughout China.<sup>46)</sup> During the days of engagement-oriented governments in South Korea—under Presidents Kim Dae-jung and Roh Moo-hyun—the official estimates tended to record conservative numbers to avoid provoking the Pyongyang regime by highlighting the refugee problem. Humanitarian NGOs such as Helping Hands Korea and Good Friends [Choŭn Pōtdŭl] have estimated there were 300,000 refugees in 1999, the peak year.<sup>47)</sup> The estimate was based on testimony from refugees in border areas. The Christian Council of Korea (CCK) also estimated the number of refugees dwelling long-term in China to be anywhere from 100,000 to 300,000.<sup>48)</sup> The transient population is

44) Korea Bar Association, “White Paper on Human Rights in North Korea,” <https://www.koreanbar.or.kr/pages/common/fileDown.asp?types=1&seq=5163> (Accessed February 15, 2020).

45) *Ibid.*

46) Tim Peters, “Refugees,” in John Barry Kotch and Frank-Jurgen Richter (eds.), *Korea Confronts the Future* (Singapore: Marshall Cavendish International (Asia) Private Ltd., 2005), p. 111.

47) For some figures, see Park Yōng-ja, “Chaejung T’albukja Hyōnhwang gwa Silt’ae” [Status and Situation of the Defectors in China], in National Human Rights Commission of Korea, *Chaejung T’albukja Ingwōngwanryōn Chōnmunga Kandamhoe Charyro* (March 2017), pp. 4-8.

48) Ju Hui Judy Han, *Contemporary Korean/American Evangelical Missions: Politics of Space, Gender, and Difference* (Berkeley: UC Berkeley Electronic Theses and Dissertations, 2009),

far larger, at around 1 million per year.

The escapees may manage to evade border patrols when crossing the Tuman or Amrok (Yalu) Rivers but they are far from being safe; new perils await them in China. There are three scenarios dreaded by the refugees: first, being caught by the North Korean border patrol while trying to escape; second, being subjected to a human-trafficking ring; and third, being repatriated after being caught by either the Chinese police or North Korea's own secret police operating in China. As noted by North Korea expert Tim Peters, "Despite the extraordinary odds stacked against them, North Korean refugees in astonishing numbers continue to accept the risks of their fugitive existence in China in preference to the dismal conditions in North Korea."<sup>49)</sup> It is remarkable that despite China's rise as a global leader, especially as a permanent member of the UN Security Council, and the increase in global awareness of the issue, the conditions of North Korean refugees in China have barely improved.

The lack of progress is troubling, since a decisive majority of the refugees are women, who are vulnerable to human trafficking. Trafficked victims often end up in domestic servitude, surrogacy, or prostitution. It is not a coincidence that the brokers, key players in the defection process, target women because of their commercial value. The demand for North Korean women is not surprising given China's one-child policy, which has caused a severe gender-ratio imbalance. Kim Yŏng-hwan, a South Korean human rights activist, detailed the plight of trafficked women:

These women are sold to [men in] rural areas in China and are given subhuman treatment. Women who are sold in these rural areas in China suffer from very serious abnormal living conditions. Only 20-30% of them said they were able to fare to some extent but most received inconceivable

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p. 77.

49) Peters (2005), p. 111.

subhuman treatment. Sometimes they are exploited as sex slaves or are chained “24/7” and detained. Or for example, if this woman was sold to the son, the men in the entire family—the father, the uncle, and the brothers would take advantage of this woman and she would be sexually abused by the men in the entire family.<sup>50)</sup>

The number of women fleeing North Korea is staggering, rising drastically from 116 of 947 defectors (12%) in 1998 to 2,252 of 2,914 defectors (77%) in 2009, and further to 969 out of 1,137 (85%) in 2018.<sup>51)</sup> The proportion of women refugees in China is less—an estimated 60%. According to an estimate by the NGO Crossing Borders, 56% of the 200,000 refugees hiding in China today are reportedly women.<sup>52)</sup> James D. Seymour wrote in a 2005 report commissioned by the UNHCR, “With little legal recourse, they are easily victimized.”<sup>53)</sup> He added:

Various international agreements prohibit trafficking in women. These include the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others. These rights have not been upheld by either China or North Korea in the case of women fleeing North Korea ... Indeed, women face great hazards. They are often forced into sexual slavery, and are sometimes subject to rape. Despite this, today, more than three quarters of the North Korean immigrants are women. Female refugees have more options than do males. Many women have found employment and shelter as domestic workers, though they often end up in prostitution. Even women who find more orthodox employment often find themselves over-worked and under-paid.<sup>54)</sup>

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50) UNHRC (2014), p. 118.

51) Ministry of Unification, Republic of Korea, “Pukhan Italgumin Ipgukinwŏn Hyŏnhwang” [Status of North Korean Defectors in South Korea], <https://www.unikorea.go.kr/unikorea/business/NKDefectorsPolicy/status/lately/> (Accessed May 6, 2020).

52) Crossing Borders, “North Korean Orphans,” <https://www.crossingbordersnk.org/north-korean-orphans> (Accessed February 20, 2020).

53) James D. Seymour, *China: Background Paper on the Situation of North Koreans in China*, report commissioned by the United Nations High Commissioner for Refugees, Protection Information Section (DIP) (January 2005).

The KBA's surveys have confirmed that human trafficking has hardly reduced. In the 2018 survey, some respondents attested to how they were forced to marry Chinese men or were sold to a particular workplace.<sup>55)</sup> Some knew what they were getting into, but others were deceived by the traffickers.<sup>56)</sup> Those who are able to avoid such a predicament are usually helped or sponsored by human rights NGOs or Christian workers, or receive financial assistance from family members in South Korea.<sup>57)</sup> The rest are on their own, completely dependent on the integrity of the brokers. According to the COI report, they are "lured by deceptive promises that they can 'work off' their brokerage fee" by working in a restaurant, a factory, or a farm.<sup>58)</sup> Traffickers, often disguised as brokers, put women under pressure by threatening forced repatriation.<sup>59)</sup>

Children born in China of a North Korean mother and a Chinese father present another problem intrinsic to the refugee crisis. They are usually without legal resident status and thus are deprived of basic rights to education and other public services. Despite China's Nationality Law, which provides that all children born in China are entitled to Chinese nationality if either parent is a Chinese citizen, between 20,000 to 50,000 mixed-race children grow up without birth registration and nationality.<sup>60)</sup> Beijing's treatment of these children violates not only its own law but also its obligations under the Convention on the Rights of the Child. The situation is compounded by the rewards offered for information

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54) *Ibid.*, p. 17.

55) Korea Bar Association (2010), p. 571.

56) Richard Skretteberg, "Ten Things You Should Know about Refugees from North Korea," <https://www.nrc.no/news/2018/february/ten-things-you-should-know-about-refugees-from-north-korea/> (Accessed January 20, 2020).

57) Korea Bar Association (2010), p. 571.

58) UNHRC (2014), p. 115.

59) *Ibid.*, p. 116.

60) PRC Nationality Law (Article 4) cited in Congressional-Executive Commission on China, "North Korean Refugees in China," *2018 Annual Report* (2nd Session, 115th Congress: October 10, 2018), <https://www.cecc.gov/sites/chinacommission.house.gov/files/Annual%20Report%202018.pdf> (Accessed March 12, 2020).

on refugee hideouts. Conversely, those who assist the refugees are fined and incarcerated. In the KBA's 2014 survey, 33% of the children had mothers who were repatriated to North Korea and 30% of the children said their mothers had disappeared and they did not know their whereabouts.<sup>61)</sup> Consequently, many children grow up as orphans. According to Tim Peters, there are as many as 50,000 North Korean orphans in China.<sup>62)</sup> The KBA's 2014 survey revealed that the children were separated from their mothers for an average of 8.4 years.<sup>63)</sup>

Despite the harsh and dangerous conditions in China, it is still considered a better alternative than being repatriated back to North Korea. Herein lies the final problem regarding the North Korean refugees in China—forcible repatriation. Despite knowing the extent of persecution the repatriated refugees face when returned to North Korea, Beijing has continued its callous practice of forcibly sending them back. To repeat, this is happening despite China being a signatory to the 1951 Refugee Convention which outlines the rights of the refugees and the legal obligations of member states to protect them. In fact, the essence of *non-refoulement*<sup>64)</sup> is deemed so fundamental that it is now considered a rule of customary international law.

When North Korean refugees are apprehended and repatriated, they face torture, degrading treatment, and other irreparable harm upon return. Under international human rights law, the prohibition of *refoulement* is explicitly included in the CAT and ICPPED.<sup>65)</sup> The North Korean

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61) Korea Bar Association, *Report on Human Rights in North Korea 2014* (KBA Human Rights Foundation, 2014).

62) Interview with Tim Peters at an annual human rights conference titled "North Korean Human Rights in the Age of Summit Diplomacy," co-organized by HRNK and Hankuk University of Foreign Studies (July 30, 2019).

63) Korea Bar Association (2010), p. 571.

64) United Nations High Commissioner for Refugees, "Convention and Protocol Relating to the Status of Refugees," <https://www.unhcr.org/3b66c2aa10> (Accessed February 1, 2020).

65) UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol* (January 2007), p.9. <https://www.unhcr.org/4d9486929.pdf> (Accessed March 1, 2020).

criminal code (Article 47) specifically stipulates that those who defect or “escape to another country” have “betrayed the motherland and people.”<sup>66)</sup> In general, violation of the human rights of the forcibly repatriated refugees include assaults during the investigation, sexual abuse, forced labor, long-term detention, withholding food and medical treatment, forced abortions, infanticide, and even summary execution.<sup>67)</sup>

The number may have dwindled in recent years, but the fundamental problems associated with the North Korean defectors in China remain unchanged and will persist as long as the totalitarian rule continues. The COI report in 2014 galvanized international efforts to press China to take a more humanitarian approach. China, however, has rejected the charge made in the COI report that Beijing was complicit in aiding and abetting “crimes against humanity.” North Korea has also maintained its rigid stance in penalizing the returning defectors. “Peace advocates” who prefer “quiet diplomacy” further hamper international efforts. The South Korean government’s current policy towards the North is a case in point. This engagement-oriented approach is centered on the logic that meddling in the internal affairs of China and North Korea could provoke both and thus make matters worse. This passive approach only tends to encourage inhumane behavior. Without a penal mechanism to effectively rein in China and North Korea, the need for a comprehensive plan to relieve the North Korean refugee crisis in China is urgent.

## V. The UNHCR Paradox

The UNHCR’s lack of access to North Korean refugees is generally viewed as the main reason for its ineffectiveness. But in actuality, the

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66) Seymour (2005), pp. 26-27.

67) Korea Bar Association (2010), pp. 576-603.

1995 agreement between the UNHCR and China gives the UNHCR unimpeded access to all refugees within China. Why, then, has the UNHCR not done more to help the North Korean refugees? The UNHCR Beijing Office is, after all, responsible for determining refugee status in China, as well as for providing life-sustaining assistance such as accommodation, living allowances and access to basic health care.<sup>68)</sup> The fact that China permits the presence of the UNHCR office in Beijing suggests at least a minimum level of professional partnership. In fact, China and the UNHCR have enjoyed a cooperative relationship, for example, in working together in the 1980s to support the Vietnamese refugees in China.<sup>69)</sup> The UNHCR has also provided training for Chinese government officials and held joint symposiums to address refugee protection issues.<sup>70)</sup> Thus, the lack of cooperation on North Korean refugees appears to be more an exception than the rule.

Thus, contrary to the general perception that the UNHCR lacks the legal basis to carry out its mandate in China, it actually has the wherewithal to make individual adjudication on the legal status of North Korean escapees. It is disappointing, therefore, that the UNHCR has not been more aggressive in obtaining access to interview the escapees. It is also puzzling that the UNHCR has never opted to invoke binding arbitration regarding China's refusal to allow access to North Korean defectors. Binding arbitration in the event of a bilateral dispute is permissible as stipulated in the 1995 UNHCR-China agreement.<sup>71)</sup> In such a case, China is obligated to accept an arbitrator acceptable to both parties within a 45-day period.<sup>72)</sup> Thus, the UNHCR's track record on the North Korean refugee issue has been inadequate to say the least.

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68) Lili Song, "China and the International Refugee Protection Regime: Past, Present, and Potentials," *Refugee Survey Quarterly*, Vol. 37, No. 2 (2018), pp. 149-151.

69) *Ibid.*

70) *Ibid.*

71) Peters (2005), pp. 122-123.

72) *Ibid.*

It is true that Chinese security forces guard the UNHCR office in Beijing to prevent contact by asylum-seekers. But this should provide more reason for the UNHCR to invoke its right to binding arbitration to secure unimpeded access to the North Korean refugees. At the very least, the UNHCR should have been more vocal in condemning Beijing's refusal to provide legal protection for female refugees from being trafficked within China. China, after all, is obligated under the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly in December 1979, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, adopted by the General Assembly in November 2000, to take measures to safeguard against the trafficking of women and children inside its own borders.

Nevertheless, China has shown no sign of relenting on its repatriation policy. In fact, Beijing has prevented any refugee-related situation from becoming an embarrassment by strengthening its border patrol and cracking down on North Korean sanctuaries as well as their support network. China may believe that it could be free of the North Korean refugee problem if only it could get rid of all the "illegal" North Koreans in China. However, without a significant improvement in the fundamental human rights situation in North Korea, China's "inconvenient headache" is not likely to disappear any time soon.

## VI. Solution: Why Not a Refugee Camp?

Despite its shortcomings, the UNHCR remains the best instrument available to deal with the North Korean refugee issue. But its presence in China will be ineffective until it begins to assert its right to "binding arbitration" with China. Without the ability to conduct interviews with prospective asylum-seekers, the UNHCR will be of limited use. There

are several avenues the UNHCR can explore to alleviate, at least in part, the North Korean refugee problem in China. For instance, the UNHCR could convince Beijing to open an official corridor through which North Korean refugees could pass, escorted by UNHCR officials on their way to Mongolia, Vietnam, Myanmar, or Laos.<sup>73)</sup> Unofficially, such a corridor—known as the “underground railroad”<sup>74)</sup>—is already in the works as a select few refugees are assisted to safety by humanitarian aid workers, Christian missionaries, and honest brokers. Collaboration between UNHCR and China to establish this corridor would be a leap forward, irrespective of the number of people passing through. Another suggested idea is that China could periodically announce “amnesty for illegal aliens” that could “avert untold suffering, while allowing China to save face.”<sup>75)</sup>

But perhaps the most significant breakthrough in resolving the North Korean refugee issue could be for the UNHCR to set up a refugee camp for the escapees. A refugee camp is a temporary settlement that can receive and care for refugees. If it were too politically sensitive to establish one in China, it could be set up in Mongolia with China's assent. The aforementioned corridor could be used to transit asylum-seekers from the North Korea-China border area to their destination in Mongolia. Considering many refugee camps are erected impromptu, establishing one specifically for North Korean refugees should not be complicated in practical terms.

China's decision to go along with a UNHCR-sponsored refugee camp would mean a reinterpretation of its 1960 agreement with North Korea to repatriate criminals, including illegal aliens. The agreement does not necessarily have to be terminated since some defectors may

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73) *Ibid.*

74) For an excellent account of the stories of escape from North Korea through the “underground railroad,” see Melanie Kirkpatrick, *Escape from North Korea: The Untold Story of Asia's Underground Railroad* (New York: Encounter Books, 2014).

75) Peters (2005), p. 122.

actually be illegal aliens, a classification that could be determined by UNHCR through interviews with the defectors. Considering China's previous stance on the issue, this idea may seem outlandish. But given that China itself has reportedly considered building refugee camps to deal with a possible crisis situation developing on the Korean peninsula, it is not unimaginable.<sup>76)</sup> Interestingly, China has quietly made plans to build what the Guardian describes as "a network of refugee camps along its 880-mile (1,416km) border with North Korea as it braces for the human exodus that a conflict or the potentially messy collapse of Kim Jong Un's regime might unleash."<sup>77)</sup> The existence of China's apparent plans for camps emerged in a leaked internal document from a state-run telecom giant, China Mobile, which revealed plans for at least five refugee camps in Jilin province—at Changbai riverside, in Changbai Shibalidaogou and Changbai Jiguanlizi, and the cities of Tumen and Hunchun.<sup>78)</sup> China's foreign ministry declined to confirm the report.<sup>79)</sup> This was expected, given how politically sensitive the topic can be for China. Still, the alleged secret plans for the camps attest to growing concerns in Beijing about the consequences of political instability in North Korea.

According to the document submitted by the UNHCR in preparation of China's Universal Periodic Review, the Commissioner reiterated the absolute prohibition of repatriation of individuals to countries where they face torture and other inhumane treatment, and recommended that China acknowledge the severity of treatment of North Korean returnees who left North Korea illegally.<sup>80)</sup> The Commissioner recommended that

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76) Jane Perlez, "Fearing the Worst, China Plans Refugee Camps on North Korean Border," *The New York Times* (December 11, 2017).

77) Tom Phillips, "China Building Network of Refugee Camps along Border with North Korea," *The Guardian* (December 12, 2017).

78) *Ibid.*

79) *Ibid.*

80) UNHCR, "Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report. Universal Periodic

China create a “viable and effective humanitarian space for those North Korean asylum-seekers who may be determined to be in need of international protection, including issuing them identification and documentation to legally reside in China.”<sup>81)</sup> Following up on these recent recommendations to China would have granted the UNHCR, at the minimum, access to the North Korean population fleeing the country. Subsequently, the UNHCR could have independently verified their refugee status, while allowing other UN agencies to provide humanitarian assistance to this population.

Despite the fact that China formally recognized the legal status of refugees within its territory as reflected in its own domestic law (Article 46 of China's Exit and Entry Administration Law adopted in 2012),<sup>82)</sup> Beijing still determines refugee status and considers this an aspect of state sovereignty.<sup>83)</sup> In its selective treatment, Beijing's political motivation seems to prevail over its legal obligation. Contrary to Beijing's unequivocal rejection of North Korean refugees, it welcomed Vietnamese refugees in the 1980s as a measure to destabilize the pro-Soviet regime in Vietnam.<sup>84)</sup> Beijing allowed the UNHCR access to 260,000 Vietnamese refugees and also provided them with refugee status as well as resettlement opportunities in six regions of China. Additionally, 2,500 refugees from Laos and Cambodia were accorded similar treatment.<sup>85)</sup> Evidently, the

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Review: People's Republic of China and the Special Administrative Regions of Hong Kong and Macao, July 2018, 3<sup>rd</sup> Cycle,” [www.refworld.org/docid/5b56ffde9.html](http://www.refworld.org/docid/5b56ffde9.html) (February 20, 2020).

81) *Ibid.*

82) Article 46 of China's Exit and Entry Administration Law adopted at the 27th meeting of the Standing Committee of the 11th National People's Congress of the People's Republic of China on June 30, 2012 stipulates that: “Foreigners applying for refugee status may, during the screening process, stay in China on the strength of temporary identity certificates issued by public security organs; foreigners who are recognized as refugees may stay or reside in China on the strength of refugee identity certificates issued by public security organs.” <https://www.refworld.org/docid/56b9e0f14.html> (Accessed February 21, 2020).

83) Won Geun Choi, “China and its Janus-Faced Refugee Policy,” *Asian and Pacific Migration Journal*, Vol. 26, No. 2 (2017), pp. 224-240.

84) *Ibid.*

discrepancy in China's treatment of refugees depending on their country of origin cannot be rationalized, except by political reasoning.

For China, the North Korean refugee issue is politically inconvenient. As a G2 country aspiring to be a global leader, it has embarrassed itself by continuing to turn a blind eye to human atrocities in its ally and neighbor. Through global outreach programs such as the "One Belt, One Road" initiative, China has embarked on an ambitious plan to realize, in the words of Xi Jinping, a "dream of great national renewal."<sup>86)</sup> But to be a true leader respected by the international community, China has to become a soft power in addition to a hard power—it has to embrace and champion fundamental universal values, including human rights. North Korea, probably in tandem with Hong Kong, acts as a thorn in China's side. With a growing number of Chinese netizens becoming disillusioned with their government's patronage of one of the world's worst abusers of human rights, Beijing may eventually feel the need to adjust its policy.<sup>87)</sup> If pragmatism takes over, it would not be surprising to see China opting for refugee camp construction to placate both domestic and international public opinion on the plight of the North Koreans in China. This would be a good first step for China in its efforts to become a genuine global leader.

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85) UNHCR, "Data," <https://www.unhcr.org/hk/en/> (Accessed February 21, 2020).

86) Louise Luca, "China in 2050: Will it be a Global Player or Split the World Economy?" *The Financial Times* (December 3, 2019).

87) For some insight into Chinese views on North Korea, see Peter Hays Gries, "Disillusionment and Dismay: How Chinese Netizens Think and Feel About the Two Koreas," *Journal of East Asian Studies*, Vol. 12, No. 1 (January-April 2012), pp. 31-56; see also *The Diplomat*, "What Do Chinese Netizens Think of North Korea?" <https://thediplomat.com/2015/11/what-do-chinese-netizens-think-of-north-korea/> (Accessed March 1, 2020).

## VII. Conclusion

The UNHCR's three-pronged "durable solution" to the refugee problem—voluntary repatriation to one's homeland, local integration into the country of asylum, or resettlement to a third country—is a well-conceived proposition. But this is a long-term solution applicable only to those asylum-seekers who already have refugee status.<sup>88)</sup> This is something the North Korean defectors lack. Thus, it would be much more useful if international efforts were channeled toward four goals directly addressing the problems at hand: 1) China's reversal of its repatriation policy; 2) the UNHCR securing access to the escapees; 3) construction of refugee camps for immediate relief; and 4) pressuring the country of origin—North Korea—to improve the overall human rights condition. Concrete action plans are required beyond the usual resolutions and statements. The North Korean refugee issue requires an urgent solution as the victims are deprived of universal and indivisible rights to freedom from want, from fear, and from indignities. They are unable or unwilling to return to North Korea because they are highly likely to be persecuted there. Their decision to flee may have been economically motivated, but the severe punishment they face on return is sufficient to provide them refugee status. In both China and North Korea, a human security approach is indeed appropriate considering the appalling nature of the human rights violations against these refugees.

If North Korea could be convinced to model another country in handling returning citizens, the best model would be Vietnam. When some of the Vietnamese "boat people" returned to their homeland in the 1990s, they were able to choose the category under which they were protected, such as between "provisional asylum" and "temporary protection."<sup>89)</sup> This was possible because the Vietnamese government

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88) UNHCR, "Solutions for Refugees," *The 10-Point Plan in Action*, p. 186, <https://www.unhcr.org/516d658c9.pdf> (Accessed March 2, 2020).

demonstrated leniency (except for some cases of mistreatment of those involved in dissident activities abroad or had a criminal record before leaving Vietnam) in dealing with the non-refugee-status “returnees” who had earlier chosen to flee amid the Communist takeover. In a memorandum of understanding signed between the Vietnamese government and the UNHCR in December 1988, the UNHCR was “guaranteed full access to all returnees” and the returnees were “assured humane treatment and a complete pardon for their illegal departure from the country.”<sup>90)</sup> According to the UNHCR, the returnees faced no persecution, discrimination or harassment from Vietnamese authorities for leaving Vietnam illegally.<sup>91)</sup>

In the case of North Korea, however, the regime has shown no such magnanimity, simply considering these refugees as “human scum.” It accuses them of “lying about their own country for fame and money”<sup>92)</sup> and punishes them by imprisonment, hard labor, torture, rape, infanticide, and even execution. Of course, there is no UNHCR monitoring presence in North Korea either; the contrast with Vietnam is stark.

Until North Korea changes its policy, China must be stopped from forcibly repatriating North Korean refugees in violation of its commitment to the *non-refoulement* principle. The international community must see to it that China’s 1960 agreement with North Korea on repatriating criminals, including defectors, is abrogated. The onus is on China, whose negligence is causing human trafficking and systematic rape, prostitution,

89) ‘Temporary protection’ focuses on group-based protection as opposed to individualized status determination in order to prevent the blocking of asylum systems. For an extensive discussion on the topic, see Meltem Ineli-Ciger, *Temporary Protection in Law and Practice* (Leiden: Brill Nijhoff, 2018), p. 115.

90) Immigration and Refugee Board of Canada, “Vietnam: Information on the Treatment of Returnees, VNM27680.EX” (<https://www.refworld.org/docid/3ae6ad8cc.html> (Accessed March 10, 2020).

91) *Ibid.*

92) Tim Schwarz, “From Traitors to Poster Children: Defectors ‘Forgiven’ by North Korea,” *CNN* (May 20, 2015). <https://edition.cnn.com/2015/05/19/asia/north-korean-child-defectors-revisited/index.html> (Accessed January 25, 2020).

and slave labor within its own borders. If the reports of China's secret plans for refugee camps are true, the situation would be greatly improved. Political sensitivity notwithstanding, China stands to make two significant gains by building the camps: the elimination of an embarrassing problem that would now be under the UNHCR's jurisdiction, and the transformation of its image as a genuine "soft power," a necessary condition in achieving *bona fide* G2 status.

Meanwhile, a more resolute effort has to be made to get at the root of the problem—the Kim Jong Un regime. Decades of "engagement" have failed to improve the dismal human rights condition in North Korea. If the international community is serious about wanting to make a difference, a tough decision has to be made to hit the Pyongyang regime where it hurts the most: its fragile economy. Better coordination of the existing international sanctions on North Korea may still be the best way to compel Kim Jong Un into leniency toward the returnees. A safe return would mean a sea change for the North Korean defectors in China. If the conditions in China do not meet their expectations, many will simply opt to return. The number of North Koreans rounded up and forcibly repatriated will naturally decline, easing the pressure on China. Moreover, if voluntary repatriation is institutionalized, the UNHCR would have more room to work with Beijing. Secretary-General Kofi A. Annan established the Commission on Human Security to create a world "free from want" and "free from fear." The circumstances endured by North Korean refugees merit the human security approach that Annan talked about. The question is, does the UN and the international community have the political will to confront China and North Korea for the sake of humanity and freedom? So far, the answer has been "no"—it needs to change soon to "yes."

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## [초 록]

## 인간안보 시험대에 오른 유엔: 중국 내 탈북 난민 실태를 중심으로

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중국 내 숨어 생활하는 탈북 난민들로 인해 발생하는 다양한 문제들은 체계적인 해결을 위해 인간안보라는 새로운 개념의 접근 방식이 요구된다. 중국은 난민협약과 고문방지협약 가입국이면서도 탈북자들을 불법 이민자로 규정해 국제협약에 따른 난민으로의 인정을 거부하고 있다. 더 나아가 중국은 유엔안보리 상임이사국, 유엔인권이사회 이사국의 지위를 유지하는 동시에 모든 국제인권 규약에 가입을 했으면서도 중국 내의 탈북 난민들을 북한으로 강제북송하고 있다. UNHCR 역시 이 문제에 대해 소극적인 자세를 취해왔다. 전통적인 국가 안보 개념에서 벗어나 인간의 생명과 존엄을 중시하는 안보의 새로운 패러다임인 인간안보는 ‘공포로부터의 자유’와 ‘결핍으로부터의 자유’를 중시한다는 점에서 탈북 난민들에게 시사하는 바가 크다. 본 논문은 인간안보의 일환으로 북한의 성분제도와 난민 지위의 연계성을 검토하고, 왜 탈북자들이 난민에 해당하는지, 그리고 탈북 과정에서의 인권침해 및 강제송환의 문제점은 무엇인지를 지적하고, 마지막으로 탈북민들을 위한 난민캠프 건립이 가능하다면 UNHCR은 명예를 회복하고, 중국은 G2 강국으로의 도약에 한걸음 더 나아가고, 무엇보다도 탈북 난민들은 국제기구로부터의 최소한의 보호를 받을 수 있겠다는 제안을 하고 있다.

주제어: 인간안보, 인권, 북한, 난민, 탈북자

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