

NORTH KOREAN HUMAN RIGHTS

Trends and Issues



National Human Rights Commission of the Republic of Korea

NORTH KOREAN HUMAN RIGHTS

Trends and Issues



National Human Rights Commission of the Republic of Korea

© National Human Rights Commission of the Republic of Korea 2005

This book is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of National Human Rights Commission of the Republic of Korea.

Please note that the writings in this material represent NOT
the opinions of the Commission,
but the personal opinions of individual writers.

Foreword

Since April 2003, The National Human Rights Commission of the Republic of Korea has constituted a North Korean Human Rights Research Team and continuously strived to find out more about the human rights situation in North Korea in all aspects. Our Commission has so far, organized seminars with experts and NGOs, along with international symposiums, also monitored international conferences on North Korean human rights issues, and made official visits to places where the North Korean displaced people are concerned.

Based on these results, our Commission will be forming a basic standpoint on the North Korean human rights issues, and will be developing rational and practical ways to improve the human rights situation in North Korea.

This booklet is consisted of the summaries and extracts of manuscripts from the last five seminars or conferences on the North Korean human rights issue held by our Commission. We anticipate the contents to be useful for international human rights organizations and policy makers of relevant countries, and international specialists interested in the North Korean human rights issue.

Whilst continuing on the researches to achieve objective understandings on the human rights situation in North Korea, the National Human Rights Commission of Korea will be enforcing the co-operation with the international society for the improvement of the human rights situation in North Korea.

May 2005

President Cho, Young Hoang

The National Human Rights Commission of the Republic of Korea

I NGOs Seminar on North Korean Human Rights

June 5, 2003

- The Nature of North Korean Human Rights and Appropriate Approaches • 3
Noh, Ok-Jae
-

- North Korean Human Rights in Cooperative–Antagonistic Relations: Intervention and Education • 12
Heo, Man-ho
-

- Protection of North Korean Human Rights and Simultaneous Improvements for Peace on the Korean Peninsula • 41
Cheong, Wooksik
-

CONTENTS

II Experts Seminar on North Korean Human Rights

June 5, 2003

- Discussing North Korean Human Rights • 57
Kim, Keun-Shik
-

- Ways to Solve the North Korean Human Rights Issue • 69
Lee, Won-Woong
-

- Understanding North Korean Human Rights Issues • 81
in the aspect of International Law, and a Strategic Approach
Lee, Jang-Hie
-

- North Korean Human Rights Issues : • 100
Debates in International Society and Challenges on Korea
Heo, Man-ho
-

- The North Korean Nuclear Issues and • 121
the Human Rights Issues
Ko, Yu-Hwan
-

- North Korean Human Rights and South Korean Policies • 132
Lee, Keum-Soon
-

III Food Crisis in North Korea and Human Rights of the Externally Displaced North Koreans

October 17, 2003

Human rights and humanitarian assistance in North Korea • 151
Kim, Hyung-Seok

Protecting the human rights of the Externally Displaced • 155
North Koreans
Kim, In-Hoe

North Korea's human rights and the international community • 172
Oh, Wan-Ho

IV The Human Rights situation of the Externally Displaced North Koreans and the Tasks for South Korea

June 30, 2004

Situation and Status of the Externally Displaced • 179
North Koreans and the Issue of Protecting Human Rights
Choi, Young-kwan

Proposition for a Government/NGO Cooperation for Improvements • 195
of Human Rights of the Externally Displaced North Koreans
Venerable Yusoo Sunim

CONTENTS

V The Human Rights of the Externally Displaced North Koreans: Changes in the Conditions and Policies of Countries Involved

December 22, 2004

Status of the Externally Displaced North Koreans in China • 221
and North Korean Human Rights

Cho, Cheon-Hyun

Evaluation of Planned Displacements and Challenges Faced • 239
Oh, Yeong-Pil

US Policies on the Externally Displaced North Koreans • 245
and Human Rights

Kim, Dong-Han

Chinese Policies on the Externally Displaced North Koreans • 253
Lee, Jean-Young



NGOs Seminar on North Korean Human Rights

June 5, 2003

The Nature of North Korean Human Rights and Appropriate
Approaches

Noh, Ok-Jae

Secretary-General, Good Friends

North Korean Human Rights in Cooperative-Antagonistic Relations:
Intervention and Education

Heo, Man-ho

Director of the Board, Citizens' Alliance for North Korean Human Rights

Protection of North Korean Human Rights and
Simultaneous Improvements for Peace on the Korean Peninsula

Cheong, Wooksik

Representative, Civil Network for a Peaceful Korea

The Nature of North Korean Human Rights and Appropriate Approaches

Noh, Ok-Jae

Good Friends

1. Causes of North Korea's human rights issues

Human rights concerns prior to the food crisis of the mid 1990s

The government of North Korea has been constantly criticized for its failure to protect not only the civil and political rights of its citizens, but also their economic, social and cultural rights. Too many issues have been raised as major human rights violations in North Korea: discrimination based on social status; non-existent freedoms of speech, assembly, publication, expression, and religion; lack of due process; public executions, and; forced labor camps.

Since the 1980s, North Korea has suffered from economic difficulties and consecutive natural disasters, and as well the

collapse of other socialist countries around the world from the mid 1990s, which ended up drastically downsizing the humanitarian assistance it received and elevated a number of human rights concerns to more serious levels. According to our December 1998 survey, about 3 million North Koreans died due to starvation and disease. The reality of the human rights crisis that North Koreans face on a daily basis include the basic right to feed, clothe and otherwise look after themselves as witnessed by the massive number of deaths from starvation, breakdowns in the communication system, the collapse of hospitals and the medical system in general, a paralyzed system of education, spread of contagious diseases such as paratyphoid fever, a lack of drinking water, the breakdown of family units, mass defections to China, human-trafficking of North Korean women, and forced repatriation along with the resulting criminal prosecution.

The changing characteristics of human rights issues due to the food crisis

Human rights situations have fundamentally changed both quantitatively and qualitatively since the food crisis that struck in the mid 1990s. While concerns regarding human rights in North Korea prior to the food crisis were centered upon the governing regime, the problem following the crisis is about whether the people of North Korea, except for a select few among the ruling elite, manage to scrape together the bare necessities to live. In other words, in the past, human rights were mainly about political prisoners who had been sent to labor-training camps, forced to work with minimum food and compensation. Today the concerns are for the average person who, for example, killed a cow without

authorization so that his family could eat, or sold electrical wires for needed money. Such crimes often lead to public execution or imprisonment in one of the country's labor camps. At this point, it is not just a relatively small number of political prisoners suffering from starvation unjustly behind the barbed wire of labor camps; it is the entire society that desperately fights against malnutrition and contagious diseases as a result of the food crisis. Today, we should perhaps consider those inside the labor camps to be better provided for, to be the lucky ones.

The government controls its people under a tightly enforced yet collapsing social system of control, which imposes criminal punishment for almost every effort people must make in order to survive, including moving to another city or community and even on top of the lost sense of humanity already experienced as some are forced out of desperation to exchange themselves or family members for food. In order to survive, people are being forced to do such unimaginable, horrible things.

The right to life in North Korea is much more than what Western philosophers have defined. It is directly connected to a person's life, and death, not in a way that should categorize it as one of several other basic human rights, but without question it is the most fundamental right owed to all humanity - the right to live, no less.

Causes of human rights concerns in North Korea

The current human rights problems can be traced to external factors such as the tension between North Korea and the United States and South Korea, the influence of foreign capitalist power, and even problems with the Kim Jong Il regime itself. Without pointing a finger at the dictatorship or at social control in general,

the very fact that more than 3 million people have died from hunger clearly reflects the non-humanitarianism and inhumanity of the Kim Jong Il regime.

Nonetheless, other combined factors such as economic hardships resulting from subsequent natural disasters and the reduction or disappearance of other socialist countries' economic assistance, or the U.S.-led economic sanctions need also to be considered since they are all at work behind the scenes of the North Korean food crisis.

Good Friends has insisted that the South Korean government and non-governmental organizations were also, at least partly, responsible for the dire conditions involving human rights in North Korea. Once we learn that a society is unable to help itself, we, the international community, have a moral obligation to help them revitalize, which is the very attitude of those genuinely concerned with human rights. It is such an irresponsible, inhumane attitude that on principle rejects the obvious need to provide humanitarian assistance.

2. Main issues

Prioritization of the right to food

The right to food is perhaps the most serious problem when looking at the situation in North Korea, arguably the worst case of human rights neglect that anyone has imagined. Under the food crisis that has continued for the last ten years, it is of no use to anyone involved to distinguish between political rights and economic rights.

It is not enough to conclude that there are serious violations

of rights, including the right to food, in North Korea: people barely manage to stay alive relying on herb-roots and tree-bark for nourishment, only to have families separated, to be victims of human-trafficking, and to eventually cross the border into China.

In these circumstances, human rights groups dealing with North Korea have been inexcusably focused more on political issues; the right to food has only been dealt with as one of many other rights issues, lumped together with the issues of political prisoners, abducted Japanese, or discrimination based on social status. The right to food cannot be dealt with in the same manner as other rights. These other rights, though perhaps important, are mere luxuries when compared to the right to food for those dying from starvation. When the very foundation to respect the right to food is destroyed, it can't be possible to protect or promote other human rights. The right to food should be at the top of all human rights issues and needs first to be solved before all subsequent rights can be protected.

Principle of humanitarianism

The important thing when raising human rights issues in regard to North Korea is that the issues should not be politically motivated. Of course, it is inevitable to criticize the North Korean government for allowing the conditions to become such and to raise serious charges of human rights violations faced by the North Korean people on a daily basis. However, one should consider that political, economic, social, and cultural sectors are all interrelated in the promotion of human rights in a community.

For example, the transparency problem in the food distribution system has been much talked about and this 59th UN Human Rights resolution on the situation in North Korea also raised

this issue. But when one knows the geographical conditions and infrastructure currently in place in North Korea, namely the lack of fuel, trucks and other needed energy for distributing food to all regions of the country, it should become evident that the above argument does not adequately reflect the reality in North Korea.

Some argue that all food assistance goes to the central powers or the military that support the Kim Jong Il government. This argument, however, could realistically be applied to any political regime struggling to maintain its power and legitimacy. Even the North Korean military is not immune to the effects of the food shortage, with the exception of a limited few, so that young North Koreans avoid going into military service these days. The argument not to send food to North Korea because of the problems in distribution of the aid could lead to massive starvation among North Korea's younger generation.

With respect to selling rice or other crops on the black market, it is an inevitable choice for most North Koreans who receive rice to exchange it for a larger amount of popped rice. The unfortunate reality is that North Koreans cannot help selling the rice they receive as part of the food assistance.

Food assistance should be distributed according to need. For food to be distributed to all corners of North Korea, over a million ton of food assistance is needed.

It is necessary that when the international community provides food assistance to ask for the distribution of this aid to be properly monitored and to request that independent, objective inspectors can conduct research, alongside North Korean officials if necessary, in order to increase efficiency in the food distribution system. It should be noted that reports from the World Food Program and UNICEF stated that the monitoring of food aid had

improved considerably.

The fundamental principle of promoting human rights is based on humanitarianism. In the case of North Korea, where the foundation of the right to food has completely eroded, humanitarian assistance, improvements to social infrastructures, and developmental assistance is even more urgently needed. Preconditioning the provision of assistance with the right to monitor its distribution is not only against the spirit of humanitarianism but in fact aggravates the human rights situation because it is the North Korean people who suffer from any decision not to send food; it is particularly against the principle of humanitarianism when this decision is politically motivated.

Main actors in North Korea's political system and its ruling class

Although I agree that the government of North Korea is primarily responsible for that country's horrible human rights situation, problems with its political system and regime should be resolved independently. It is an internal affair for North Koreans to choose which government and which system they support; any outside attempt to physically change a country's regime as a result of its human rights record is an intervention and nothing short of a breach of that country's sovereignty. The U.S. or the UN have no right to do so.

One can say that there is no popular support for the Kim Jong Il regime. Nevertheless, an external force is not justified in this case of attempting a regime change. Rather, it is a more humanitarian approach to attempt to uncover the reality of the situation in North Korea and then provide them with aid accordingly, in a friendly act of charity and goodwill. Resolutions

to promote human rights should be preformed in the name and spirit of humanitarianism, not steeped in political or military pressure. Assistance needs to be given in support of a country's internal efforts to genuinely protect and promote human rights in their own land.

3. Resolutions to promote human rights in North Korea

Victims' perspectives

The main source of human rights concerns in North Korea are attributable to the food shortage, so the most appropriate, and most urgent measure to take is to provide enough food for the people of North Korea. The role of human rights-related NGOs is to find out what North Koreans need and to address these needs. NGOs need to properly react to what the needs of the victims are, for instance, the need for food supplies in the past and the promotion of human rights in the present.

Constructive criticism and efforts to promote human rights in North Korea

One should urge the government of North Korea to improve the food situation and food distribution system in addition to other human rights issues. In doing so, the government of North Korea would realize that a thorough investigation of its own systems and the opening of its doors could greatly help to stabilize its political system and lessen the effects from the food shortage. The government of North Korea should make sincere efforts to protect

and promote human rights in ways that are convincing to the international community. As mentioned earlier, criticism levied on the North Korean regime and its maintenance of power are purely internal affairs and thus should be solved by the people of North Korea.

The role of South Korean NGOs

With respect to South Korean NGOs, it is important that they employ a commonsensical approach, building a common understanding, in order to solve North Korea's human rights problems. There should be a greater community among NGOs and efforts made to find commonalities rather than differences. Therefore, these groups would be able to find substantive solutions to protect and promote human rights in North Korea. Since the current issues in North Korea are the reduction in foreign humanitarian assistance, threatening the right to food of North Koreans, there should be unconditional humanitarian food assistance offered. At the same time, other human rights issues should continue to be raised.

Efforts of the South Korean government and the international community

The South Korean government should support a large-scale provision of food, medical, and energy assistance, as well as make active efforts to increase and secure the international community's help. This work cannot be performed by NGOs themselves but should be a priority of the South Korean government. The international community needs to not only promote human rights but also expand its humanitarian assistance in order to quickly resolve food crisis in North Korea.

North Korean Human Rights in Cooperative-Antagonistic Relations: Intervention and Education¹⁾

Heo, Man-ho

Citizens' Alliance

for North Korean Human Rights

I Introduction

Due to the flow of North Korean refugees in recent years, the international society has gained increasingly detailed knowledge on the human rights violations occurring in North Korea. As such, it has become necessary and urgent to draw the attention of the world to this matter and take concrete measures to improve the situation. To this end, investigations and analyses are absolutely essential.

Some factual reports already exist and various legal approaches

1) Except for several personal names, the system of romanizing the Korean alphabet is consistent with the July 7, 2000 Notice of the Ministry of Culture and Tourism of the Republic of Korea. Korean names in this article are all written in the order of family name first, and then given name.

have been attempted, particularly in terms of international law. However these efforts still fall short. First, they do not place much emphasis on the causes of the human rights violations in North Korea. Second, the legal activities do not take account of reality. Plus, when considering the socio-political nature of the question, a legal expose of the deviations is insufficient to analyze the situation and is unlikely to lead to any effective measures. Third, North Korean foreign relations with the liberal world, particularly South Korea and the United States, have been characterized by “strident antagonistic relations” whereby no external intervention has been permitted to improve the situation. Nonetheless, the recent change in North Korean behavior with respect to the free world seems to be heading in the direction of the installation of “cooperative antagonistic relations” capable of constituting a base for “true negotiation.”

The limits to the existing studies and the recent changes in the negotiation environment all necessitate further research on refining the intervention policies of the free world. An approach related to political sociology that accentuates social control will enable the identification of the causes and nature of the human rights violations occurring in North Korea. Furthermore, when the results of this work are applied to negotiation theory, this will allow for a more effective and concrete intervention policy.

II The Four Major Human Rights Issues in North Korea

1. Prisoners of War and Abductees

a. South Korean POWs

After the Korean War, some 50,000 South Korea prisoners

of war could not return to South Korea and have been detained ever since in North Korea. As I've conducted investigation on those South Korean POWs, the communists have detained about 50,000 South Korean POWs with more than 20,000 having been killed in the reconstruction of railroads and airports. Un known number of South Korean POWs have been sacrificed in biological experiments in North Korea, China, or Russia.

In 1997, the Seoul National Cemetery records still listed 102,384 persons as missing in action from the Korean War. Although an exact calculation of the number of South Korean POWs detained in North Korea is impossible, the following calculations can be used to produce a reasonable estimate. If the 88,000 MIAs estimated at the end of 1951 are subtracted from the 102,384 persons that disappeared were captured and/or killed - during the battles, the remaining 14,384 persons likely disappeared after the front was fixed. Among this last group, 7,885 were captured by the Chinese army. If the number captured by the North Korean army is then added, the percentage of captives among those missing exceeds 60%. The percentage of captives is likely to be even higher among the 88,000 listed as missing at the end of 1951, because captives are more numerous during mobile warfare than during position warfare, and the North Korean authorities employed such captives as wartime labor.

According to a South Korean official announcement, 5,066 South Korean soldiers died in the Vietnam War: 4,650 KIAs and, 416 non-battle casualties. However, based on the independent testimonies by Sub-lieutenant Bak Jeong-hwan and the case of Pfc. You Jong-cheol who was captured at the Battle of An Keh Pass and then released just after the withdrawal of the South Korean army from Vietnam, it would appear that among the 5,066 official deaths, especially among the 4,650 KIAs, many soldiers were in fact captured

by the militia of Viet-Cong militia or Viet-Minh army and sent to North Korea.

None the ten soldiers among the South Korean POWs/MIAs registered in the “Defense Prisoner of War/Missing in Action Office Reference Document” were ever included in announcements by the ROK on South Korean MIAs from Vietnam War: Cho Joon-bun, Kim Heung-sam, Kim Soo-keun, Kim Sung-mo, Lee Chang-hoon, Lee Kil-yung, Lee Yoon-dong, Min Kyung-yoon, Pak Yang-chung, and Shin Chang-wha.

b. Abductees

During the Korean War, North Korea kidnapped a reported 84,532 South Korean civilians. Their existence was denied not only by the North Korean authority but also by the South Korean government. Recently, the families of those who were kidnapped founded an organization to raise public awareness and to urge the government to not only recognize them as citizens who were kidnapped, but to begin drafting appropriate policies for their discovery and/or return. Little has been known about these kidnapped civilians but, to some extent, we may imagine how their lives must be by looking at those POWs who have returned.

After the Korean War, North Korea began by abducting 10 fishermen, then continued its abductions until reaching what today is estimated to be a total of 406 kidnapped fishermen. The current total number of abducted South Koreans is 486. Among those kidnapped, the Korean Air flight attendants, Seong Gyeong-hui and Jeong Gyeong-suk, who were taken in 1969, have been used in broadcasts to South Korea, and Hong Keon-pyo and Yi Myeong-u have been used as trainers for North Korean spies learning about South Korea’s accent and culture.

2. Political Prison Camps

There are various kinds of detention camp in North Korea, including facilities for detaining the increased number of homeless and vagrants resulting from the famine during the late 1990s, 5 or 6 large camps for political detainees (i.e. political penal-labour colonies), and 30 forced labor centers, called “Labor Correction Centers (*Nodong gyoyangso*)” or “Edification Centers (*Gyohwaso*)”.

Among these detention camps, the most serious human rights abuses occur in the political prison camps. Their official name is “Management Center Number OO (*OO Ho Gwalliso*)”. Generally, local government offices in North Korea are called *Gwalliso* (management centers) and include a reference to their location and/or function. Yet, in political prison camps, such offices only have numbers, e.g. *Gwalliso* No. 14, seemingly to hide their location and real function. By their nature and dimensions, Mr. David Hawk call the camps “political penal-labor colonies”.

It is assumed that the North Korean political prison camps have undergone several phases since the 1940s.

a. Transformation of Concentration Camps: from “Special Detention Camps of Workers” to “Zones under Special Dictatorship”

The first development phase of North Korean detention camps was just after the Second World War. According to a North Korean official record acquired by the US Department of State during the Korean War, there were 17 “Special Detention Camps of Workers(*Teukbyeol nomuja suyongso*)” in North Korea in October 1947.

Despite a variety of explanations for today’s North Korean

political prison camps to have the present figures, the key issue was related to the consolidation of power by Kim Il-sung and Kim Jong-il and their social class policy.

According to Mr. Kim Yong, a North Korean refugee and former detainee at *Gwallisos* Nos. 14 and 18, the *Gwallisos* for political detainees, managed by the National Security and Integrity Agency (*Gukga anjeon bowi bu*, North Korean secret police), were built in 1972 based on a proposal by Kim Byeong-ha, the Agency Director, following the instructions of Kim Il-sung: “Factionalists or enemies of class, whoever they are, their seed must be eliminated through three generations.”²⁾

Yet there are other testimonies and opinions that refer to earlier origins. Mr. Kang Chul-hwan, a North Korean refugee who was a

2) The North Korean secret police changed its name several times, along with its administrative hierarchical status. Originating from the Bureau of Intelligence at the Ministry of Internal Affairs (Naemu-seong), in 1962, it became the Bureau of Political Integrity (*Jeongchi-bowi-guk*) at the Ministry of Social Safety (*Sahoe-anjeon-seong*, renamed from the Ministry of Internal Affairs, and predecessor of the present Ministry of Public Security). In May 1973, the Bureau became an independent organ named the National and Political Integrity Agency (*Gukga-jeongch- bowi-bu*), then became the National Integrity Agency (*Gukga-bowi-bu*) in 1982, and finally received its current name, the National Security and Integrity Agency (*Gukga-anjeon-bowi-bu*), in 1993. However, after the death of Director YI Jin-su in 1987, a new official director was never nominated. As such, the practical director has been KIM Jong-il. The Agency also has a Prosecutorial Bureau. Since the secret police has undergone complicated changes in its name and status, the North Korean people currently call it *Bowi-bu* (Department or Agency for Integrity).

YUN Dae-il (former agent of North Korea's National Security and Integrity Agency), *Akui chuk jiphaengbu gukgaanjeonbowibuu naemak* (Inside Story of National Security and Integrity Agency, Governing Body of the "Axis of Evil"), Seoul: Wolganjoseonsa, 2002, pp.31-40.

detainee at the Yodeok Prison Camp (*Gwalliso* No.15), stated that a prison camp had already been partially built at Yodeok-gun, South Hamgyeong, before 1959.

The highest ranking North Korean defector so far, Mr. Hwang Jang-yup, insists that detention centers for political prisoners — he referred to it as a “controlled zone”—stemmed from “August Factionalist Incident” in 1958. At first, some “factionalists” were sent, but later on it was used for those against Kim Il-sung, in other words, political prisoners. At the time, Kim Il-sung claimed, “factionalists are wrong from head to toe so they must be sent to remote areas with their families.” In the wake of these words, the first political prison camp was set up in Bukchang, in the South Pyeong-an Province at the end of 1958.

After this, North Korean government conducted a national survey on citizenship re-registration from 1966 for one year and from 1967 to 1970, dividing the whole nation into three classes and 51 categories. It executed about 6,000 anti-revolutionaries, or “factionalists”, and some 15,000 families and 70,000 persons, who were spared the executions, were sent to the No. 149 zone in a remote area in accordance with the Administration Decree No. 149. Still other anti-party or anti-Kim Il-sung dissidents were sent to the so-called special control zones.

In 1968, KIM Il-sung gave instructions that “if enemies of the class create riots in the *Gwallisos*, they must be stopped forever by deploying the army”, thus the present style of prison camp was likely formed around 1968 based on the deployment of the army as prison guards.

Shortly after KIM Jong-il took power in 1980, a decision was made at the 6th Session of the Workers’ Party of Korea to send more than 15,000 dissidents to “Zones under Special Dictatorship

(*Teukbyeol dokje daesang guyeok*)”. Furthermore, internal control was tightened during the 1990s, including the reorganization and expansion of the “Zones under Special Dictatorship”, to offset the fall of the communist regimes in East Europe. It is known that 150,000 to 200,000 individuals were under detention for political reasons in 1997.

b. Types of political prison camp and recent trends

The North Korean political prison camps are located at Yodeok, Dancheon, and Deokseong-gun in South Hamgyeong, plus two camps at Onseong, Hoeryeong, and Hwaseong Buryeong-gun in North Hamgyeong, Gaecheon, Bukchang-gun in South Pyeongan, Cheonma-gun in North Pyeong-an, and Dongsin-gun in Jagang Province. These camps include “Zones under Special Dictatorship”, in other words “Absolutely Controlled Zones (*Wanjeon tongje guyeok*)”, and “Zones under Edification for Revolution (*Hyeokmyeonghwa daesang guyeok*)”. The detainees in the former type of camp are deprived of their citizenship and can never be released even after their death. Whereas, the detainees in the latter can be released, and their citizenship is sustained.

Among these camps, some limited information is known about the following camps.

Gwalliso No.14: under the authority of the secret police, *Bowibu*, located at Bobong-ri, Gaecheon-gun, in the province of South Pyeongan, and holds about 15,000 prisoners. The first generation of detainees were high-ranking Party and Government bureaucrats and military officers who opposed to Kim Il-sung's regime from the end of the 1950s to the end of the 1960s, plus their families and friends.

Gwalliso No.15: under the authority of the *Bowibu*, located at Yodeok-gun, in the province of South Hamgyeong, and holds about 20,000 detainees: families of defectors to South Korea, landlords, capitalists, and Korean Japanese who returned to North Korea and fell out of favor with the Party and Government.

Gwalliso No.16: under the authority of the *Bowibu*, located at Gochang-ri, Hwaseong-gun, in the province of South Hamgyeong, and holds about 10,000 detainees: classified as “anti-revolutionary and anti-Party elements” based on the charge of opposing the power succession to Kim Jong-il in the 1970s and early 1980s.

Gwalliso No.21: under the authority of the *Bowibu*, located at Changpyeong-ri, Gyeongseong-gun, in the province of South Hamgyeong. The approximately 15,000 detainees are said to be mostly high-ranking bureaucrats and their supporters, including Bak Geum-cheol, Kim Do-man, Choe Chang-ik, and Kim Gwang-hyeop, who were opposed to Kim Il-sung’s regime from the end of the 1950’s to the early 1970s. Rumor has it that these detainees are no longer at the camp, yet no recent information is available.

Gwalliso No.25 (Suseong Edification Center in Cheongjin City): under the authority of the *Bowibu*, located in Sunam District in Cheongjin City, and holds about 3,000 detainees: religious leaders and their families, dissident Korean Japanese and their families, and individuals expelled from Pyongyang and their families etc. The detainees produce alimentation (such as corn, bean, pork and oil), bicycles with the trade mark of Seagull (*Galmaegi*), sewing machines, heating radiators etc.

Gwalliso No.18: under the authority of the Department (Ministry) of Public Security (“*Sahoe anjeon bu (seong)*”, recently changed to “*Inmin boan seong*”), located at Deukjang-ri, Bukchang-gun, in the province of South Pyeongan, and holds about 25,000 detainees, including families of defectors to South Korea, people of faith, and other persons judged as requiring edification for revolution, such as the medical doctor Hwang Sun-il. These detainees are allowed to keep their citizenship and can be released.

Although no recent information is available on the other *Gwallisos*, Mr. Kang Myeong-do, son-in-law of former North Korean prime-minister Kang Seong-san, estimates that about 300,000 detainees are currently being held at *Gwallisos* Nos. 17, 19, 22, and 23. Except for Camp No.18 and the “Zones under Edification for Revolution” at some of the other Camps, all of the remaining detainees are deprived of their citizenship and leading lives more miserable than slaves.

According to witness accounts from North Korean refugees who recently entered South Korea, an important change occurred in the mid-1990s when the majority of the families of detainees in the “Zones under Edification for Revolution” were either released or moved to a “Zone under Special Dictatorship”. Yet, since the mid-1990s it would seem that the “Zones under Special Dictatorship” are expanding, while the “Zones under Edification for Revolution” are diminishing.

Insofar as food shortages affected the entire North Korean society, the detainees in the Yodeok Camp experienced some of the worst conditions. According to Mr. Yi Baik-ryong (pseudonym of Yi Young-guk) who was detained in the Yodeok Camp from April 25, 1995 to January 5, 1999, alongside 800 other single individuals at the detention camp, approximately 200 detainees each year died

from malnutrition and overwork. One winter, after a rumor was disseminated about a visit from international NGOs to Yodeok Camp, the detainees' shacks were deliberately destroyed and they were forced to shiver in the cold in dugouts for 20 days, he said.

According to witnesses, including Yi Baik-ryong, families of criminals are no longer sent to prison camps together. Also, a North Korean who simply visits China is neither treated as a felon nor sent to a prison camps any longer. However, this cannot lead us to conclude that human rights conditions are improving in North Korea. This is not proof that North Korean leaders have taken a serious interest in, or an active role in improving human rights but rather a reflection of the reality that these leaders could no longer control social order due to the economic hardship and severe food crisis and no longer impose strict punishment upon North Korean refugees as they did at one time.

3. Economic refugees

Since the late 1980s, the economic conditions of North Korea took a turn for the worse. Even worse than this, it was hit by several natural disasters in mid-1990s, which resulted in anywhere from 3 to 3.5 million deaths due to hunger and from 200,000 to 300,000 defections. Recently, the economic conditions are improving, but still there are many who repeatedly come and go to China in order to earn money and the government of North Korea has strengthened its border monitoring to repatriate North Koreans in China, resulting in an increase in the number of human rights abuses. In particular, human trafficking involving North Korean women has reached serious proportions.

4. Common human rights violations

The North Korea government is being forced to crack down on social control. The combination of social disintegration and the solidity of the state apparatus is deteriorating the human rights conditions as a whole and weakening human rights ideas of the public in their daily lives.

Furthermore, this phenomenon of widespread human rights abuses will have a profound influence on the humanity of the North Korean people and hinder social integration after the Korean unification.

III Political and social factors related to North Korea's human rights

1. Class discrimination policy

One important aspect about North Korea's human rights issues is that the country concentrates all its social values into *Nomenklatura*, core-elite, in order to maintain its power over the whole society, violating the rights of the marginalized majority. North Korean society, for the past 40 years, was inherited from the previous structure of inequality as a result of class policies, but at the same time it created and institutionalized a new social discrimination system.

2. North Korean *Nomenklatura's* Human rights awareness

According to Mr. Kang Myeong-do's testimony, the North Korean authority interprets human rights in its own way. In other

words, they say human rights would be meaningless “in a socialist system where workers and farmers are the masters of the State and that such issues are only to be raised under a capitalist system where workers are exploited and repressed.” This conception of human rights is commonly held among North Koreans and they generally take these rights for granted.

3. Self-repressed notion of human rights in North Korea

It is too early to talk about civil society in North Korea. In other words, it means that North Koreans have repressed their awareness or consciousness of civil rights. They have repressed even the most fundamental rights in the name of “liberalism” or “yellow wind from capitalists”, and the government’s horror politics make it impossible to claim exercise their civil rights with the existence of political prison camps or the implementation of all kinds of extreme systems of control. To locate the principle causes of North Korea’s human rights issues would be to discover why and how North Korean people’s comprehension and understanding of their rights has been oppressed and also to find the solution for improving the situation.

4. Social control in late-communist society

Most characteristic of the current North Korean society is the fact that parents are forced to abandon their children, families break up, and intellectuals deviate from normal lives due to the food crisis. Moreover, productive manufacturing activities have been stopped at work places and schools have been paralyzed, both of which are effectively destroying the state’s ability to function.

The state apparatus is immense, and it exercises a firm control over matters of public and national security. It lost the dominant power over matters related to people's livelihood. To revitalize production activities, in 1999, the North Korean authorities re-inaugurated the *Chollima* March of the 1950s and 1960s restricting the age of those who could enter market places (*Jangmadang*) to over 55, and ordering young men to return to their factories. Nevertheless, its national production base has suffered too much devastation and therefore it cannot survive without external assistance.

As stated above, the massive number of deaths and defections means that North Korean society is being dismantled. However, there is no serious organized resistance or any evident symptoms of the destruction of the political regime. This may be the result of the vertical and horizontal social control held by the secret police, *Bowibu*, the “Public Security Agency”, the “Committee of National Censorship”, the “Committee of Guidance for the Socialist Legal Life”, the “People’s Neighbourhood Association” etc.

North Korean authorities are very fast in dealing with situation through enforcing temporary control measures such as “Standing Committee of September 27” in addition to the normal control mechanisms. In this sense, the durability of the political regime can be explained by its speedy response and cruel repression rather than by the efficiency of the control.

IV. Human Rights Violations in North Korea

1. Life of Detainees in North Korea

a. Detainees from Korean War

Based on the statement of Mr. Yi Hang-gu, a squad-leader in the

22nd Brigade of the Korean People's Army, the South Korean POWs were divided into three categories. The first category was forced to engage in combat or reconnaissance at the front where they had been captured. The second and largest category was forced to perform restoration work, while the last category was imprisoned at Byeokdong-gun in the extreme north of the Korean Peninsula.

Mr. YI Hang-gu stated that the 22nd Brigade, formed on October 9, 1951, was composed of all South Korean captives, except for the officers. At that time, the UN Forces were dropping delayed time bombs along the railroads as a strategy to paralyze the communist supply routes. These bombs remained hidden one or two meters underground at the edge of the railroads and then exploded without warning. The brigades of South Korean captives were assigned to diffuse or explode these bombs. The death rate was so high that no one was expected to survive more than five assignments. Unit 218, also composed of South Korean captives, was assigned to restoration work at the aerodromes. Here, the mortality rate was also high due to the continuous UN bombardment.

After the war, the North Korean authorities demobilized these Units, which was finally completed in 1956. However, even though the captives were allowed to return to civilian life, most were still confined to hard labor in the mines, collective farms, or iron and steel plants. Their lives remained constantly controlled by the information service. They were never allowed to leave the mine for over forty years. Even their children were not permitted to travel outside the area and also compelled to work in the mines. Therefore, according to Dong Yong-seop, who escaped to South Korea in 1996 after working twenty years in a North Korean mine, such POWs were not in North Korea voluntarily and only longed to be repatriated to the South.

b. Detainees from Vietnam War

There is only very limited information on the detention and life of South Korean POWs from the Vietnam War. The North Korean authorities have refuted the existence of any South Korean captives, while successive South Korean governments have not raised the issue for various political reasons.

Once South Korean soldiers were captured by the Viet-Cong militia, it would seem that they were sent to Viet-Minh via the “Ho Chi Minh Trail” and then handed over to the North Korean forces serving there. The life of these captives in North Korea is basically unknown. It is quite possible that such MIAs were used as instructors for North Korean agents -spies or commandos- sent to South Korea. This is a feasible suggestion based on evidence related to South Korean civilians kidnapped around that time and later. However, those captives who did not comply were apparently detained in concentration camps for political prisoners.

2. Human Rights Abuses in Political Prison Camps

It is almost the same as kidnapping when an accused gets arrested. If the accused is an individual, the relevant institution, such as the Public Security Agency (police), summons that person through an official document or a telephone call, and as that individual is en route to the appointed place, *Bowibu* agents kidnap the accused.

When the abducted suspect has only committed a slight “political crime” or their crime can not be proven with hard evidence, they are escorted to a secret preliminary examination facility run by the *Bowibu*, referred to as ‘Maram *Chodaeso* (Maram Guesthouse)’. The interrogators then examine the suspect for an indefinite period of time,

which lasted twenty months in the case of Mr. An Hyeok. The suspects are subjected to severe torture to make them confess, as such, most just yearn for death.

When the suspect is classified as a “felon”, the political criminal is sent to an “Edification Center for Political Criminals” (de facto jail) in a sealed prison van without knowing their prison term. At the same time, several *Bowibu* agents break into the criminal’s house and take all of their properties and bring the families to one of the political penal-labor colonies as well.

The whole procedure of arrest, interrogation, and imprisonment in North Korea is completely out of line with the principle of *nulla poena sine lege* and *nullum crimen sine lege*, and is as antiquated and non-humanitarian a method that can be imagined for a civilized society.

a. Overwork and malnutrition

In North Korea’s political prison camps, detainees work for 12 hours a day. If they don’t reach to daily quota, they should work until 11:00 p.m., which for 15 hours a day. In order to avoid hunger in their stomach, they steal and eat fodder for pigs, drink water that washed fish storage tank, hunt and eat rats and insects, or pluck out and eat grass. If guards caught them, they might face severe punishment, even death.

b. Physical abuse in political prison camps: imprisonment, public execution, and random execution

If a detainee is sent to a lockup room, punishment facility inside the camp, they are tortured without consideration of their sex, then

beaten until near death. The detainees are then forced to sit on their knees with a four-angled rule under their legs preventing the blood circulation. If they move a little, resist, or otherwise provide problems, they are beaten heavily. Inmates in the lockup room have about 100g of rice with beans and some salt soup per day, which may not be given them at all if they move about or refuse to listen to the guards. Inmates' legs get tainted after a week or so because they endure this torture in order to get food. As a result, they are near death after three months and many die after five months. For the inmates, being sent to a lockup room is equivalent to the death penalty. Mr. Kim Yong, witnessed 15 summary executions within a two-year period at *Gwalliso* No. 14 and about 30 public executions over a three-year period after he moved to the *Gwalliso* No. 18.

c. Infanticide

The infanticides that occur in the political prison camps are the direct result of Kim Il-sung's dictates: "Factionalists or enemies of class, whoever they are, their seed must be eliminated through three generations."

Except for very limited number of political detainees held as a family, pregnancy and childbirth are considered as crimes and those involved are cruelly punished and executed along with their babies.

Many testimonies have been recorded on infanticides in various contexts. For example, in *Gwalliso* No.13, Miss Choe, a young female statistician in the 19th Working Group, had a baby after a relationship with Kim Man-sun, the second platoon leader of the guards. The inspectors from the 1st Department of the *Bowibu* threw her baby to a group of dogs, then killed Miss Choe by piercing sticks into her abdomen and sexual organs.

d. Sexual abuse and homicide

According to information obtained by Mr. Kim Yong from a fellow detainee at *Gwalliso* No.14, Kim Yeong-il, there is a special guesthouse in the Camp for officials with a higher rank than vice-ministers. When such officials visit the Camp from Pyongyang, beautiful female detainees (21 to 25 years old) are selected, washed, and presented to them. These female detainees are sexually exploited, then killed discretely to maintain secrecy

In the late 1970's, as a result of a series of sex scandals between female prisoners and *Bowibu* agents, Kim Byeong-ha, Director of the *Bowibu* ordered the execution of all of beautiful female detainees, which resulted in the deaths of 250 detainees. However, the scandals still continued.

Another shocking story was at Jongseong *Gwalliso* in the autumn of 1989. Ahn Myeong-cheol, former guard at four different *Gwalliso*, witnessed that one of the managers at the labor place committed suicide at the Jongseong *Gwalliso*. He had been exploiting female inmates who were under his authority and one of them was discovered to be pregnant. The *Bowibu* agents cut her belly and killed the unborn baby, and then killed her with an electric rod connected to her vagina. The manager became so frightened of being considered a political criminal that he committed suicide.

e. Preventable accidents

Insofar as human life is neglected in the political prison camps, it is natural that many detainees die due to accidents.

In *Gwalliso* No.11 where Mr. An Myeong-cheol was a guard, a fire broke out on a hill in mid June, 1987. About 2000 detainees were

mobilized to extinguish the fire. While concentrating on putting out the fire, the guards drove the detainees into the fire without any consideration for their safety. Consequently, 5 detainees were suffocated to death and 2 burnt to death.

In October, 1993, when Mr. An Myeong-cheol was a guard at Camp No. 22, a guard post was reconstructed. In an effort to speed up the demolition of the old post, more than 20 detainees were crushed to death when the roof collapsed. The victims were buried together on a hill in the Raksaeng area, and the incident was overlooked.

In the Camps, guard dogs were trained to discriminate between the Camp officials (guards and *Bowibu* agents) and the detainees, and to be aggressive against the latter. In May 1989, at *Gwalliso* No.13, guard dogs mauled and killed two middle school girls (13 years old). After the accident, the Vice-Director of the Camp praised the guards responsible for the dogs, commenting that they had raised and trained the dogs well. In 1991, at *Gwalliso* No.22 in Haeryeong, two young female detainees were killed and eaten by guard dogs while collecting acorns on a hill. The bodies were buried secretly.

V. Strategies for foreign intervention

1. Human rights in inter-Korean relations

a. North Korea's "Social Defense"

Even though the North Korean authorities still control dissident elements with physical coercion and closed politics, they are still seriously limited in their policy choices due to a general social weaknesses. Even though it is too early to talk about a North Korean "civil society", there is still a second dimension of social existence, a

kind of “second society”. Insofar as the institutional space is narrow, a continuing dynamic equilibrium will develop around the social disorganization where the existing social institution has become inefficient. This situation will obviously put serious pressure on the ruling political regime. As a result, to protect their regime, the North Korean leaders will even violate the human rights of their people. To avoid this situation and to anticipate positive changes to North Korea as our counterpart for national re-unification, the South Korean government has to put more importance to human rights in its policy towards North Korea as much as the inter-Korean relations are developed.

b. Multi-dimensional and sequential approaches

Before considerable development of measures of confidence between the two Koreas, no one is anticipating that the question of North Korean human rights can be solved by direct negotiations. Therefore, in the first phase, it is important to treat the issue within the whole context. Accordingly, when each measure of confidence is discussed in a concrete way in the second phase, this is when the question can be raised. In this phase, South Korea could also compensate North Korea for its loss based on benefit in another sector. As such, rather than trying to find a balance within each individual sector, South Korea should attempt to create an overall balance across all sectors. Based on this strategy, the mode of calculating profits and losses is multidimensional and sequential, i.e. the concept of time and space takes a dominant share.

2. Europe and the UN Commission on Human Rights

a. European Union

The EU has made efforts to establish diplomatic relations with North Korea since July 1997. The Inter-Korean Summit was established in June 2000 and, on October 20-21 in the same year when the third ASEM meeting was held in Seoul, the Kim Dae-jung administration encouraged European countries to have diplomatic ties with North Korea and therefore they took seriously. However, the EU's principles on external policies could not help raising human rights issues during the process of establishing diplomatic relations with North Korea. During that process, Germany, the United Kingdom, and other EU countries that hastened diplomatic relations with North Korea had quite a little different point of views with France.

However, these different views resolved a little at the EU's General Council on November 20, 2000 by adopting "EU Lines of Action Towards North Korea". The article 2 of the EU Lines emphasized "developments in the human rights situation, in particular observance of the UN Conventions on human rights" and "access by the population to external aid and the possibility for foreign NGOs to work in the DPRK under satisfactory conditions" in particular. The article 3 went on saying that "The policy of the European Union and its Member States will be based on an evaluation of the positions of the DPRK" and "at this stage, the implementation of the incentive and accompanying measures decided upon by the General Council on 9 October 2000 is a key element of the EU's action." In addition, it stated "new measures may be determined at the appropriate time by the EU."

After the EU lines has made and J. Fischer, the German

Minister of Foreign Affairs, who was with Green Party, led the negotiation with North Korea with regard to a diplomatic relationship, North Korea's human rights issues became an important agenda, taking longer time in negotiation. In particular, the last stage of negotiating the diplomatic relation, both parties have four-day-discussion on human rights problems and decided to have constant regular dialogues in this matter.

Other European countries that had diplomatic relations with North Korea kept trying to establish constant dialogues with the government of North Korea on human rights matters but the consequences were not positive. Especially, France sent several messages regarding this matter, but did not receive any response from North Korea. Therefore, France did try submitting a resolution on human rights situations in North Korea at the 58th UN Commission on Human Rights in 2002. At that point, the Kim Dae-jung administration persuaded the European Union not to submit the resolution expecting Kim Jong-il visit to Seoul as a friendly reply to the 2000 inter-Korean Summit. The rationale for this diplomatic action was to give enough time to North Korea since it was just about to open to outside world and that if the EU would submit the resolution, the government of North Korea would go back to its closed and isolated policies. At the same time, the Kim Dae-jung administration left with honor that it would respect the EU's decision. As a result, the EU expressed at the Chairperson's Statement that they would expect to see North Korea's human rights situations would be improved and see for another one year.

The year of 2002 was when human rights situations of North Korean defectors in China were exposed a lot to the international community. In other words, North Korea's human rights situations

were not becoming better and the international community found no sign that the government of North Korea had made serious efforts on this matter. Therefore, the European Council adopted a resolution [P5_TAPROV(2003) 0034] to submit a UN resolution on the situation of human rights in North Korea at the 59th UN Commission on Human Rights.

Finally, in March 2003, the draft of the UN resolution on the situation of human rights in North Korea has been made, at the second week of April, EU members and other co-sponsor countries had series of discussions together, and completed to submit the resolution on April 15, 2003. That's why the first draft was written in French. The 2003 UN resolution, therefore, had been discussed within the EU community for a long time and completed with the EU's leadership.

We should take this chance to improve human rights situations in North Korea, given an opportunity to use the United Nations authority. The UN Commission on Human Rights would make efforts to realize what said in the resolution for the next one year and discuss the consequences at the 60th Commission. Among other things, we should provide detailed information to those who mentioned in the article 1(e), a special rapporteur on the right to food; a special rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment; a special rapporteur on the religious intolerance; a working group on the arbitrary detention; and a working group on the forced or involuntary disappearance in order to initiate an investigation on human rights matters in North Korea.

b. Central and Eastern Europe

I have contacted with central and eastern European human rights activists such as Russia's Memorial; Czech Republic's People in Need Foundation, Organization for Aid to Refugees, Association for International Affairs, and Office for Documentation and Investigation of Communist Crime; Poland's Institute for Democracy in Eastern Europe Foundation; Slovakia's International Society for Human Rights, and People in Peril Foundation; Macedonia's Association for Democratic Initiative, through a preparatory meeting for the International Conference on North Korean Human Rights and Refugees held in Prague in September 2002 and the Conference in March 2003. In addition, I've met and talked seriously with President Václav Havel and some political leaders like Senate Chair Mr. Petr Pithart and House Chair Mr. Lubomir Zaorálek of the Czech Republic.

They all talked what they have experienced through the past communist system and expressed their interests in North Korea's human rights issues, hoping to take any constructive policy measures to this matter. In my opinion, leaders of central and eastern European countries may be good negotiators regarding human rights issues since the government of North Korea has less hostile feelings toward them and the human contacts are still remained between each other.

VI. Conclusion: human rights education and promotion

The past human rights problems in North Korea, given its nature of hostile inter-Korean relations, was raised mainly by some

South Korean political leaders with a political intention. Its solutions as well are hardly found because of the sensitive inter-Korean relationship. However, the present human rights problems in North Korea is being caused by the existing class policy and the extremely inefficient state system of North Korea itself while Kim Jong-il wanted to maintain his power over the unstable and struggling people from hunger and malnutrition. In other words, the scarce social resources have been concentrated only on the limited central power group in order to maintain its system and other marginalized majority should face with massive human rights violations that are taking places everywhere in North Korea.

I would like to admit that the South Korean government has certain limitations in dealing with this issue and to focus what the international and domestic human rights NGOs should do for this instead. In order to maximize human rights movements against North Korea, professionalism and specialization of each field of human rights is necessary. In other words, it is not appropriate that all human rights organizations deal with all kinds of human rights themes at the same time. And in all instances, they should closely work together.

The reason that human rights in North Korea have not received enough attention from the international community and has been ignored so far is because there have been no systematic fact-finding missions above all. We should set off research activities through sharing collected information while promoting the agenda domestically and internationally and require a global activism to pressure North Korean leaders to promote and protect human rights in North Korea.

*** Pressure on North Korean leaders: human rights monitoring, databases, and public discussion in the international community**

To unload the burden of inter-Korean relations on our shoulders and to make effective pressure on North Korean government, the internationalization of North Korea's human rights issues toward the international community is absolutely necessary. In this regard, the last April 16's human rights resolution on the situation of human rights in North Korea at the 59th UN Commission on Human Rights would be a good start. The government of North Korea, therefore, should cooperate with the Commission's investigation while the government of South Korea should take a firm position on the concerned matter in North Korea. Furthermore, the fact that monitoring on the human rights situations in North Korea and data collection is taking place in South Korea should be informed to the leaders of North Korea as well.

*** NGO leadership training programs**

Training programs for NGOs leaders who will be taking care of North Korea's human rights issues should be developed. In terms of general public human rights education, the Korea Research Foundation or the National Human Rights Commission support various projects on education, training, research, program developments but have little plan on North Korea's human rights in detail. North Korea's human rights issues whose particularity cannot be excluded and therefore the universality of human rights might not be able to be fully applied to North Korea due to its ideological, cultural, social, and economic conditions. Hence, an

appropriate human rights education is extra needed. In particular, education on North Korea's human rights must be an interdisciplinary basic research field that combines North Korean studies, inter-Korean studies, international regime, human rights theories, and social welfare studies all together.

*** Student and public education on human rights in South Korea**

In order to form a constructive perspective on North Korea's human rights issues within the South Korean society, various human rights programs should be prepared for students and citizens. We have only extreme points of views on this matter due to the lack of information and ideological bias. Therefore, the mass media should deal with North Korea's human rights issues and encourage or support North Korean refugees to write their stories. Especially, progressive media and scholars should work on this matter more actively. The main reason that west European leftist intellectuals and activists criticized the former Soviet Union and Eastern European socialist system was their human rights abuses.

*** Promotion of human rights inside North Korea**

The most difficult but the most urgent problem is to promote the idea of human rights to North Korean leaders and to make North Korean people have human rights perspectives. This is not possible either through one big event or through only South Korea's efforts. We need the international community's efforts, especially a kind of peace programs from the UNESCO or humanitarian activities from international NGOs.

In this perspective, we don't always have to worry not to provoke North Korea by mentioning human rights issues, but should take a firm action and wait until we can lead them into human rights-friendly domestic policies. Moreover, we must develop negotiating chips in order to spread human rights perspectives throughout North Korea when we deal with North Korean affairs.

Protection of North Korean Human Rights and Simultaneous Improvements for Peace on the Korean Peninsula

Cheong, Wooksik

Civil Network for a Peaceful Korea

1. Introduction

North Korea's human rights became a hot issue not just in Korea but around the world when the United Nations Human Rights Commission adopted a resolution on the situation of human rights in the Democratic People's Republic of Korea on April 16, 2003. Especially, when the EU proposed a resolution, the government of South Korea did not take part in the voting session and the National Human Rights Commission of Korea said no word on this matter, which brought a lot of strong denunciation from the domestic conservative media, the opposition party, and some non-governmental organizations. Human rights, becoming one of

major issues regarding North Korea as well as its nuclear issues, North Korea is not free from its notorious title as the worst human rights country, adding to the existing title as the largest weapons of mass destruction country. Last May when President Roh Moo Hyun visited the United States, the American media described North Korea as a land in which no human can survive.

The adoption of the 2003 UN resolution influenced quite a little to the South Korea civil society. “Conservative” media, NGOs, and political groups have led stronger denunciation against North Korea since the adoption of the UN resolution. On the other hand, “reformist or progressive” groups that have been silent or closed on the concern matter due to the delicate inter-Korean relation, inaccuracy of information, validity of the claims showed their embarrassment at the resolution. Recently, progressive groups held public or private debates in which they shared concerns and sought resolutions, but these were, in the first place, not originated from their warm interests in the human rights situation in North Korea but from an “external shock,” which we need to care a lot.

It is not new that North Korea has many human rights problems. This includes the structural nature of North Korea devoid of civil and political rights through the humanitarian crisis resulted from serious economic hardship and hostile relationship with the U.S. The former is mainly from North Korea’s “Our Style of Socialism” while the latter from North Korea’s economic collapse, subsequent natural disasters, U.S.-led economic sanctions, and antagonistic relations with South Korea, the U.S., and Japan. These two cannot be separated. Countries that have faced external threats and severe economic crisis tend to strengthen their internal censorship more in order to maintain their power. The U.S., for example, had been known for its best human rights record, but

since the September 11 terrorist attack it has limited civil liberty and human rights of its own citizens for the sake of “War against Terror.”

In fact, what our society should assume the foremost for rational discussion and realistic solutions, concerning human rights in North Korea, is to admit that there are various causes to the human rights situations in North Korea. One turns all the responsibilities for the concerned matters to the fault of the North Korean government (internal factors) while the other turns to the U.S. hostile policies toward North Korea (external factors). This neither reflects the real causes of the human rights situation of North Korea nor help find solutions, but only grows unproductive ideological controversies.

Apart from progressive or conservative, it is important to abandon an ideological habit that easily defines and verifies others and approach North Korea’s human rights issues through the eyes of North Koreans in order to genuinely lessen their sufferings. Agreeing that the role of South Korea is the most important in terms of the promotion of human rights in North Korea, we need to look back ourselves between progressive and conservative whether there is any kind of tendency to legitimate oneself through denying others.

Now, North Korea’s human rights issues cannot be covered no matter how hard one tries to hide the matter. The UN adopted a resolution and therefore the international community cannot close its eyes on the matter any longer. Under this circumstance, if one wants to close the issue, it would be a very irresponsible action not some seriousness. We might as well try to agree on a social consensus for the genuine promotion of human rights in North Korea. This article tries to touch upon what South Korean NGOs

should agree on and could agree on before we talk about what we can do.

2. Critical assessment of the UN resolution on human rights in the DPRK

The UN resolution adopted at the 59th United Nations Human Rights Commission on April 16, 2003 includes: refraining from treating their departure as treason leading to punishments of internment, inhuman or degrading treatment or the death penalty; ensuring the United Nations experts to have free and unimpeded access to all parts of the Democratic People's Republic of Korea in order for them to ensure that humanitarian assistance is delivered impartially on the basis of need; all-pervasive and severe restrictions on the freedoms of thought, conscience, religion, opinion and expression, peaceful assembly and association; child malnutrition; ensuring to move freely within the country and travel abroad; torture and other cruel, inhuman or degrading treatment or punishment, public executions, imposition of the death penalty for political reasons; and the existence of a large number of prison camps and the extensive use of forced labour.

Also it calls upon the authorities of the Democratic People's Republic of Korea to cooperate with the investigation on human rights and to request the United Nations High Commissioner for Human Rights to engage in a comprehensive dialogue with North Korea with a view to establishing technical cooperation programmes.

It is uncertain how much the UN resolution reflects the reality of North Korea's human rights situation when the information is

not enough and not accurate. Considering Externally Displaced North Koreans' witness and previous investigation of domestic and international human rights organizations regarding human rights in North Korea, the points that the UN Human Rights Commission has made in the resolution pretty much have reached to the accurate level.

Although the UN resolution included several valid points and recommendations regarding the human rights situation in North Korea, it has some intrinsic problems. First of all, it completely ignored the external factors of human rights situation in North Korea. As I mentioned above, North Korea's human rights have combined some internal and external factors. In order to improve human rights situation in North Korea, it should have included recommendations toward the international community including the U.S.—elimination of threats to the regime, removal of economic sanctions, expansion of humanitarian assistance—as well as those toward the government of North Korea. The UN Human Rights Commission completely ignored this fact.

In addition, the UN adopted the resolution at a very delicate moment when the crisis is increased in the Korean peninsula so that the Bush administration, as the worst scenario, may use the resolution as a poor excuse to attack North Korea. For instance, although there has been strong opposition from the international community, the Bush administration tried to link the Iraqi Hussein regime with terrorists and later to raise suspicion on its development of weapons of mass destruction. After everything didn't work out well, the Bush administration broke the Iraq War.

No matter who makes claims on North Korea's human rights, whether it is a government, an international agency, or a NGO, the goal should be to lessen the suffering of North Korean people.

The goal should not be to criticize engagement policies and to support hard-line policies or to lead to destroy the Kim Jong Il regime only because there are human rights problems in North Korea. Sanction against North Korea, isolation, and a regime change only worsens the human rights situation in North Korea. In other words, to require the government of North Korea to improve the situation, recognizing the Kim Jong Il regime and eliminating external causes of human rights abuses in North Korea, is the best possible solution at the moment.

3. Peace and Human Rights: not one before the other

Having been through a national division, a war, and constant feelings of antagonistic conflicts, what annoyed us was not only “the fear of war.” With a definition of the national security as a holistic field for more than 50 years to protect half of the nation from breaking up the second Korean War, the suffering we endured from our leaders’ denying any kind of acts against the government was ironic indeed the violence by the state that had been insisting to free us from the fear of war. So, in establishing a new building in the Korean peninsula including a new inter-Korean relationship, the central goal should be the promotion of human rights that we, the entire Korean nation, have never enjoyed under this abnormal historic condition.

The half South of the Korean peninsula is slowly out of this State violence, but the half North unfortunately is not yet. As two Koreas are getting closer and North Korea’s entering the international community is formulated, the conditions in North Korea will be the central focus above all other issues. This is also

a serious matter at a meeting point of two meaningful definitions of the national unification: one “unification” to solve the resolved national task to revive the national history and the other futuristic “unification” to set up the universal values such as peace, human rights, and democracy.

Being considered that human rights itself is an absolute value and that the most sacrificed value was human rights under the national division and antagonistic conflict structure, the process to solve the Korean matters should accompany with the process to normalize and promote denied, repressed, or reserved rights of people in the Korean peninsula. At the same time, if the complex nature of the human rights matters in the whole Korean peninsula including those in North Korea is not considered seriously, one can be easily trapped in the human rights absolutism with a narrow perspective. Causes of terrible human rights situations in North Korea are not only from North Korea’s structural features but also from North Korea’s isolation due to South Korea-North Korea, North Korea-the United States, and North Korea-Japan relations in the post Cold War era, a clue to resolve North Korea’s human rights problems should also be sought, being considered its internal and external factors together. Regardless of its intention, a constant reductionism that North Korea’s human rights problems are totally from its inside readily seems to the North Korean regime as a “human rights imperialism,” which tries to crush the regime to death. North Korean regime’s antagonistic responses, in turn, becomes a foundation to the argument of some South Korean conservatives that there is no hope for the Kim Jong Il regime and this ends up urging the regime change of North Korea. Unless this vicious circle is cut, the more difficult it is to solve human rights problems in North Korea.

The only way to overcome this dilemma is to establish developmental strategies of the virtuous circle of peace and human rights. Not yielding North Korea's human rights issues and at the same time ignoring the inter-Korean relation and the crisis structure of the Korean peninsula might cause a danger to harm the peace, which is the very foundation for the promotion of human rights. On the contrary, a theory that "once there is a peace, then there will be human rights automatically" is also problematic. It is not only similar with those theories during the South Korea's development dictatorship era that "once there is a national security, then there will be human rights" or "once there is an economic development, then there will be human rights," but also against a universal principle that human rights cannot be reserved in any circumstance.

The tendency to separate peace and human rights is because they think that peace and human rights are conflict concepts in the Korean peninsula. In other words, either a perspective of the current South Korean government and quite a few reformists/progressives that if one claims human rights problems of North Korea so strongly, it might harm the positive inter-Korean relationship or the peace in the Korean peninsula, or that of conservatives that human rights in North Korea should be protected only through the collapse of the Kim Jong Il regime have ignored the fact that there is a reciprocal relationship between peace and human rights. If the argument that peace is the most important factor in human rights and the value of human rights, in turn, can grow on the soil of peace is considered to be valid within our society, the minimum assumption in terms of the promotion of human rights in North Korea would be to see the relationship between peace and human rights not in a conflictual but in a

reciprocal perspective and to seek a constructive model that can be run in a virtuous circle.

In order to set up constructive strategies to run peace and human rights within a virtuous circle, we need to agree the following points:

First of all, the most controversial and at the same time the most needed agreed assumption is not to consider the Kim Jong Il regime as a target to destroy or to be transformed, but to see a counterpart to resume dialogue, negotiation, reconciliation, and cooperation. After the Bush administration, the regime transformation of the Kim Jong Il's North Korea is kept trying but this has intrinsic drawbacks because, first, there is no way to separate the regime and people in the real world not in a theory; second, if the more political, economic, and military sanctions are imposed to collapse the Kim Jong Il regime, the more people become primary victims and the more extreme uncertainty whether the Kim Jong Il regime would collapse; and third, it raises threat of war in the Korean peninsula. In the mid 1990s when the outside world including South Korea was lukewarm in the development of relationship with North Korea and in humanitarian aid to North Korea, having a fantasy that the Kim Jong Il regime might collapse, we should never forget that the Kim Jong Il regime became rather strengthened while millions of people were starving and abandoning their lives.

Second, for any purpose, humanitarian assistance including food aid should not be "a tool." In other words, humanitarian assistance should not have any condition and be increased in quantity. Linking humanitarian assistance with other human rights issues such as forced labor camps would never be human rights minded policies, holding the right to life of North Korean people

as a leverage in negotiation with North Korea. In particular, the recent food crisis in North Korea happened although there has been the biggest food production for the past seven years. The main reason for this is because the United States and Japan, the biggest food aid countries, ended the food assistance or sharply decreased assistance, raising political issues such as North Korea's nuclear or kidnapped issues. Therefore, before there will be another humanitarian disaster in North Korea, the South Korean civil society including human rights organizations should go for humanitarian assistance to North Korea and urge the South Korean government and the international community to provide more aid to North Korea regardless of any political reasons.

Third, the most primary condition for building an environment for the promotion of human rights in North Korea would be given under conciliation and termination of hostility in South-North Korea, North Korea-U.S., and North Korea-Japan relationships, still remaining in the Korean peninsula even after the Post Cold War era. Continuation of hostile relations and external threats has strengthened North Korea's stiffness in foreign relations and especially the recent tension between North Korea and the United States makes it worse than ever. This also builds up the quasi-military structure of North Korea, prefers distribution of resources to the military sector, reinforces internal censorship and repression against any kind of critic about its political system, and increases its distrust in the international community's human rights criticism whatever they are technical cooperation or political dialogue. Especially after the Bush administration when the U.S. threatened to the North Korean regime, no matter it a regime change or regime transformation, and economic sanctions began accelerating, the fact that North Korea's national security and the

right to development is extremely limited is not irrelevant to the recent human rights tragedy in North Korea. Therefore, the groups or individuals, raising human rights problems in North Korea, should not support the hard-line U.S. policies and non-engagement policies toward North Korea, but urge the normalization of relationship between North Korea and the United States, based on the package dealing negotiation.

Fourth, we need wisdom to approach to the issue in the prioritization of human rights, which right is more urgent and more important, rather than to deal with them all at once comprehensively. It is true that human rights problems are widespread in North Korea. But an attempt to deal with all human rights problems all at once not only lacks a sense of reality but also easily inclines to be attracted to an extreme idea such as destroying the Kim Jong Il regime. In terms of the seriousness of the matter and the establishment of an environment for the promotion of other human rights, we need to concentrate our strengths and wisdom for North Korea people to free from hunger and war. This means, first of all, to dissolve external factors of human rights problems in North Korea and, if this is realized, we must have more moral and realistic leverage to claim other human rights issues and to urge the promotion of human rights in North Korea.

Finally, I would like to emphasize one last thing that a constructive model that we should go for peace and human rights within a virtuous circle would solve the contradictory relationship between peace and human rights through the above-mentioned demilitarization. In fact, human rights issues between South Korea and North Korea are not based on a political system whether it is socialist or capitalist, but on an excessive militarism under the

mutually antagonistic, conflict-ridden environment. It seems essentially impossible to take care of an individual's life under a reality that takes it for granted the security-for-security principle that overwhelmed all other values, the militarization of personnel and national resources, and the wasteful military race. It is never a coincidence that human rights situations in North Korea became worse after the post Cold War experiencing the national security crisis. We should pay attention to the contrary situations between South Korea and North Korea that South Korea, along with its continuous economic development and the growth of the civil society, was able to escape from the chain of the Cold War after the post Cold War era through diplomatic normalizations with China and Russia, which has led to provide important environments for the establishment of democratic regime and the promotion of human rights, while North Korea was seriously threatened its national security and the right to development, which has deteriorated the human rights situations. The end of the Cold War structure that had shackled all Koreans became a blessing for South Korea, but for the North it resulted in disaster.

This has important implications for approaches to the Korean human rights issues, including those particular to North Korea. Deviating from the structural or ideological approaches that have resulted in more problems than solutions, followed by the mutually exclusive nature of "socialism or capitalism (or liberalism)" and subsequent problems, we can find clues to help solve the human rights problem, overcoming the imbalance between militarism and cross-approval born in the national division. A resolution of human rights issues will not succeed by meetings one side's demands or through a denunciation of the other, but through a partial compromise and extreme effort on both sides. The process of

protecting and promoting human rights will not damage inter-Korean relations, or the prospects of lasting peace on the Korean peninsula. It is, rather, an increasingly important strategy of establishing the very foundation for a virtuous co-development of peace and human rights.



Experts Seminar on North Korean Human Rights

July 30, 2003

Discussing North Korean Human Rights

Kim, Keun-Shik

Professor at Kyungnam University, Politics

Ways to Solve the North Korean Human Rights Issue

Lee, Won-Woong

Professor of North Korean Studies, Kwandong University

**Understanding North Korean Human Rights Issues in the aspect
of International Law, and a Strategic Approach**

Lee, Jang-Hie

Professor of School of Law, Hankuk University of Foreign Studies

North Korean Human Rights Issues :

Debates in International Society and Challenges on Korea

Heo, Man-ho

Professor of Kyungpook National University, Politics

The North Korean Nuclear Issues and the Human Rights Issues

Ko, Yu-Hwan

Professor of North Korean Studies, Dongguk University

North Korean Human Rights and South Korean Policies

Lee, Keum-Soon

Senior Research Fellow, Korea Institute for National Unification

Discussing North Korean Human Rights

Kim, Keun-Shik

Kyungnam University

1. Various Perceptions of Human Rights sin North Korea

It was once considered taboo for civic organizations to raise issues concerning human rights conditions in North Korea because they believed that advocating for the advancement of North Korean human rights and emphasizing that country's democratization could ultimately help its authoritative government. Militant governments in the past were successful in using the confrontational and tense relationship between the two Koreas as a tool for oppressing political opponents and maintaining power.

Upon the collapse of socialism and the end of the cold war, raising the issue of North Korean human rights was no longer considered part of a cold war mentality. Rather, it drew international attention purely as a human rights issue. As the

international community learns more about the reality of life within North Korea through Externally Displaced North Koreans, the truth about the deteriorating economy and severe food crisis, civil society groups are beginning to speak out in greater force against North Korean human rights issue. The human rights issue has, in fact, emerged as a relatively new agenda for civic organizations. Some organizations are helping North Koreans through a sense of humanism and brotherhood, and others are hoping to bring the issue to the forefront of international politics in order to put added pressure on the North Korean government.

Still, organizations hold different views on the North Korean human rights issue in spite of heightened interest largely because no one is 100% certain of the current situation inside North Korea and because they fear that their actions could have an adverse impact on the reconciliatory mood of the two Koreas.

2. Approaches to the North Korean Human Rights Issue: Universalism and Relativism

The first issue to consider regarding the debates about North Korean human rights issues is the so-called universalism and relativism of human rights. The debate about human rights conditions was usually launched from the standpoint of Western values and perceptions. In other words, the reality of the North Korean regime has been diagnosed on the basis of a Western conception of human rights as a universal value, which was developed and eventually arrived at over the course of the formation of Western democracy.

However, some people advocate for a greater degree of relativism when speaking of human rights on the grounds that each country has a unique set of circumstances and a unique culture. When the concept of human rights was first introduced in Western society, there was a conflict between those who would consider themselves democrats and those who were considered socialists. The conflict involved “the rights of citizenship and politics” versus “social, economic, and cultural rights”. Currently, the Western-style treatment of human rights is under increasing criticism and there is a rising controversy surrounding “the third world’s rights of development” and “the uniqueness of human rights in non-Western nations.”

Those advocating relativism argue that it is natural for non-Western nations to have a different conception of human rights as the West’s conception of human rights, regarded as a universal value, has been developed alongside the development of Western democracy and a greater sense of individualism.

The essence of human rights, as developed in the West, centers upon the rights of citizenship and politics, and is also generally accepted as a concept of fundamental rights in non-Western nations as well. By contrast, economic, social and cultural rights are seen as secondary rights that, while important, must be earned through hard work rather than being inalienable in nature. In this light, the debate over the human rights conditions in North Korea is centered around the rights of citizenship and politics, while economic, social and cultural rights are largely dismissed as sideline issues. In response, North Korea criticizes the West for making an issue out of human rights conditions in

a nation in which more socialist values, such as economic, social and cultural rights, also have considerable importance.

In this sense, an accurate analysis of the universalism and relativism of human rights is required in order for the debate concerning the conditions in North Korea to become more realistic.

3. Important points in the debate over human right conditions in North Korea

We consider human rights to be precisely those rights which should be respected and protected as a person's most fundamental rights. However, we should use caution when raising issues about the conditions in North Korea given the unique situation of the two Koreas.

(1) Political intention: Functional relationship between human right and cold war mentality

First of all, when discussing the North Korean human rights issue, the debate should not be politically or confrontationally motivated. The reason we are interested in human rights conditions is that we hope North Korean people will be able to enjoy the same level of universal and fundamental rights and freedoms that we ourselves do. The North Korean human rights issue should not be used for the purpose of disturbing the relationship of the two Koreas or for perpetuating cold war politics.

Under the banner of protecting human rights, some people, quite unjustifiably, intend to steer public sentiment against the

reconciliation of North and South Korea. If they try to set conditions stating that economic assistance to North Korea must be preceded by improvements to the conditions in that country, their argument appears self-contradictory in that they seem to be ignoring the very autonomy and survival of the North Korean people for the sake of improvements to human rights conditions.

Annual international conferences regarding human rights in North Korea have been sponsored and highlighted by large media groups at home and abroad. We should remain skeptical of the true motivations of those who raise these issues as newspapers continue to lead with large headlines alerting us of the miserable conditions in North Korea while at the same time raising opposition to the provision of food assistance. We cannot but doubt that these human rights conditions are used as a political tool for raising tensions and the atmosphere of confrontation between the two Koreas rather than for purported humanitarian purposes.

(2) Problems of authenticity and equilibrium

Second, issues raised about human rights conditions in North Korea should be based on an objective observation. We cannot deny that analysis and evaluation of North Korean human rights conditions have in the past been distorted, subjective and rather exaggerated.

The biggest problem with the debate concerning the North Korean human rights issue is the lack of authenticity. The majority of reports related to North Korea compiled at home and abroad are based on the testimonies of Externally Displaced North

Koreans. Externally Displaced North Koreans' testimonies alone do not constitute sufficient proof of the situation, regardless of the validity of such testimonies. To more accurately understand the human rights conditions in North Korea, objective inspections and evaluation of the current conditions need to accompany the reports from defectors.

Distortion of facts can happen when one interprets the human rights conditions in North Korea based on his or her own prejudices or provides inaccurate or exaggerated explanations. It is often the case that some people explain the law and systems related to human rights conditions in North Korea based on their own subjective judgment, intentionally distorting the facts.

Another problem is the employment of double standards when discussing conditions in North Korea. Far from objective, similar or comparable circumstances are treated or explained favorably when dealing with issues in developed nations while they are harshly criticized when presented in the context of North Korea.

Also, neglecting cultural differences between Western society and non-Western society is another flaw effecting debate over the North Korean human rights issue. It is not balanced if one blindly highlights the rights of citizenship and political freedoms as criteria for human rights while neglecting the fact that socialist countries give priority to economic, social and cultural rights. Likewise, criticizing the unique characteristics of North Korean society which are based on Confucianism and traditional Asian culture by holding them up to Western criteria is also highly problematic. If we are to objectively grasp the reality of the human rights conditions in

one country, we need to properly consider both ‘external’ as well as ‘internal’ points of view.

(3) Efficiency of improving human rights conditions

Rather than urging for an immediate and complete improvement of human rights conditions in North Korea, it would be far more effective if we were to try and induce gradual improvement through the advancement of overall quality of life in North Korea from a realistic and practical perspective. It is simply unrealistic to expect that improvements to human rights conditions, satisfying absolute criteria, will be achievable over night.

In this sense, when raising making an issue out of the human rights conditions in North Korea, we must be careful to stay away from a confrontational approach. It is time for us to encourage improvements through the promotion of stability and quality of life under the North Korean regime. Given that national security is closely linked to human rights as political instability increases the likelihood of human right violations, the stability of the North Korean regime can be seen as a precondition for improving human rights conditions in North Korea.

What is needed urgently for the improvement of North Korean human right conditions is peace on the Korean peninsula along with greater cooperation and conciliation of the two Koreas. In this way, North Korea would be able to improve its economy and better stabilize its political system, which in turn will lead to greater openness and transformation.

Additional points concerning North Koreans' entry into South Korea

- (1) Nature of defection: political refugee or illegal immigrants?
 - Are most North Koreans living in China political refugees seeking asylum or are they economic immigrants who have left their country to escape from food shortages?
 - How do we classify South Koreans who illegally immigrated to Japan or to the U.S. for economic reasons in the 1950s and 1960s?
- (2) Approach to Externally Displaced North Koreans: does it disguise other intentions? Is it in pursuit of the collapse of the North Korean regime?
 - Justification of planned defection targeting Externally Displaced North Koreans who fled their country in search of food
 - In the 1960s, for instance, some South Koreans who illegally immigrated into Japan or to the U.S. were persuaded by North Korean agents to go to North Korea in return for economic gains (comparable to the settlement assistance currently provided by the South Korean government to North Koreans seeking asylum).

4. Human rights from the North Korean point of view

In North Korea, human rights are defined as a person's autonomous rights, or the right each citizen should have in virtue of being a human being. It is stipulated that human rights are fundamental political, economic, cultural and social rights and that these rights can be protected only in a socialist society where all forms of exploitation and oppression are removed and people are the true owners of their own country. In fact, the concept of human rights in North Korea is a far cry from the Western definition.

A. Emphasis on collectivism

Above all, in terms of human rights North Korea puts emphasis on a sense of collectivism rather than on individualism. This is outlined in the North Korean Constitution, which contains provisions emphasizing collective social values and gains above the rights of individuals (citizens). In other words, the rights and obligations of individuals are based on the principle of collectivism which professes an axiom of 'one for all, all for one'. The constitution stipulates that individuals should safeguard people's political and ideological unity and solidarity, and that individuals should think highly of organizations and groups and that individuals should work hard for society as a whole.

In North Korea, human rights are more about class gains rather than individual gains. As a socialist country that supposedly exists for the wellbeing of the working class, North Korea should maintain its class system while those individual rights and freedoms that directly interfere with the betterment of the working class cannot be allowed. In other words, human rights are not granted

to anyone who opposes the development and support of the working class.

B. Priority of socio-economic and cultural rights

Generally speaking, a socialist state puts priority on the economic, social and cultural rights of its people rather than rights of citizenship and the political freedoms of individuals. From a socialist point of view, the right to life, personal liberty, and political freedom that were secured in the course of developing the Western model of democracy are unstated: they exist as a given. A socialist state, therefore, tends to lean toward those socio-economic and cultural rights that it deems Western society has failed to provide. From the perspective of a socialist state, the highest order of rights a state can ensure is to provide food, housing and clothing to its people, and to also provide education, jobs, and medical services as well as a high quality cultural life to all its people collectively rather than guaranteeing individual freedoms.

North Korea, as a socialist state, puts utmost importance on the socio-economic and cultural rights of all its citizens instead of promoting rights of individual citizenship and political freedoms associated with the further promotion of individual liberty.

On these grounds, North Korea dismisses those who criticize its human right conditions. It claims that its concept of human rights is of a higher order and that the Western concept, as it fails to guarantee socio-economic and cultural rights, is in fact in violation of human rights.

In short, North Korea insists that the most important aspect of protecting human rights is the safeguarding of collective values and socio-economic and cultural rights. Using this logic, it confronts critics head on and stresses that the conception of human rights introduced by the West is not at all, and should not be confused for, a universal concept.

5. National Human Rights Commission: roles and challenges

- Efforts to improve human rights and the moral dilemma
 - Dilemma: efforts to advance human rights in North Korea may have negative impact on the overall human right conditions of the North Korean people
 - If pressure and containment policies are employed to punish the North Korean government's violation of human rights, it is quite possible that the people of that country will suffer the aftermath
- Efforts to improve human rights and the special characteristics of the two Koreas
 - Efforts made to improve human right conditions in North Korea, and even raising the issue itself, may result in increased anti-North Korean sentiment, which in turn would lead to an intensification of tension and confrontation between the two Koreas.
 - South Korea, which is cautiously courting peaceful reunification rather than an abrupt collapse of the North Korean regime, must be careful to avoid a situation where human rights issues lead to confrontation with and breakdown of the North Korean government.

- Ultimately, the National Human Right Commission, as a government body, needs to adopt a prudent, realistic and reasonable approach towards the human rights issue in consideration of the unique circumstances of North Korea.

Ways to Solve the North Korean Human Rights Issue

Lee, Won-Woong
Kwandong University

1. Background

International interest in and criticism regarding human rights conditions in North Korea began for the most part in the 1980s. Major NGOs working for the improvement of human rights, including Amnesty International and Asia Watch, have raised issues concerning political prisoners and limited political freedoms in North Korea as well as the issue involving lumberjacks in Russia. UN-sponsored human rights agencies including the UNHCR and the Sub-Commission on the Promotion and Protection of Human Rights have been paying close attention to human rights issues in North Korea which include those related to defectors, the freedom of mobility and the freedom of religion. In April 2003, a resolution regarding human rights conditions in North Korea was passed by the 59th session of the UNHCR.

The rising international interest in North Korean human rights issues is directly met by North Korea's relatively closed, reclusive system. North Korea is obligated to comply with international pacts regarding human rights as a signatory to two human rights bills, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.

Another reason why these human rights issues have drawn so much attention at the international level can be attributed to the ongoing crisis surrounding North Korea's development of nuclear weapons as it has now officially withdrawn from the Nuclear Non-Proliferation Treaty.

As North Korea's intransigent attitudes, coupled with the seemingly headstrong attitudes of the current U.S. government, cast a shadow on prospects for security talks between the U.S. and North Korea, it is expected that the U.S. will continue to increase pressure on North Korea to improve its domestic human rights situation. Publication of the U.S. report on freedom of religion, which listed North Korea as among those countries with which we should be most concerned, and the establishment of the U.S. Committee for Human Rights in North Korea in October of 2001 are seen as starting points for a U.S. government-lead systematic attack upon human rights in North Korea.

Also worth mentioning here is the terrible food crisis that grabbed the international spotlight as it plagued North Korea, taking at least one million lives due to starvation. The food crisis in North Korea is a major structural factor that prompted a mass exodus of North Koreans. The infringement upon the human rights of

approximately 100,000 Externally Displaced North Koreans living in China has since emerged as one of the major concerns of the UNHCR and other UN agencies. With the increase in the number of planned defections, which pull dozens of Externally Displaced North Koreans into foreign diplomatic facilities in China, the issue of Externally Displaced North Koreans has become a hot potato for a great many countries and organizations including the UN, China, Russia, South Korea, Japan, Mongolia as well as the international community as a whole.

2. Variables in solving North Korean human rights issues

From a policy perspective, the debate over North Korean human rights should aim at transforming the North Korean regime and at improving human rights conditions in that country. In order to accomplish these two principle goals, the following factors should be brought into play.

a) International pressure

It is international pressure alone that transforms the debate over human rights issues into a political agenda. This does not mean that pushing for the improvement of human rights justifies indiscriminate international interventions. Today, especially in the context of a global society, the sovereignty of a nation is considered of the utmost importance to preserve while differences in culture and tradition are to be highly respected and upheld. International criticism regarding the conditions in North Korea may have an

impact on the legitimacy and validity of the North Korean government. North Korea is now compelled to respond to the requests of the international community by using its diplomacy, by presenting reasonable counterevidence, by allowing inspection by international bodies, and by participating in other international conventions regarding human rights.

A key variant in the way in which international pressure can be applied is the role of the U.S., which seems already to have made clear its intentions through its policies targeting human rights issues in North Korea.

The South Korean government and civic organizations should pay close attention to the international community and make efforts to ensure that both North and South Korea remain central players in any debates surrounding the improvement of human rights in North Korea. In particular, South Korea must actively participate in the formation of U.S. policy regarding human rights conditions in North Korea and needs to be able to persuade, whenever necessary, the U.S. government into adopting more reasonable options through suggestion of alternative, creative and feasible solutions.

If South Korea is once again isolated from the debates over the North Korean human rights issue, as it was during debates over North Korean nuclear weapons, the process of reconciliation between the two Koreas and of building a peaceful system of coexistence on the Korean peninsula is likely to be left in the hands of the superpowers.

b) Inter-Korean relations

North and South Korea have agreed, in principle, to form a unified country through a process of economic, cooperative coexistence: The Korean Confederation of Republics. At minimum, the realization of a peaceful coexistence, which precedes the final phase of unification, requires that there be a common modality of rules and principles of interaction between the two countries.

Given the international aspect of the North and South Korean problem, building trust and securing assistance from neighboring countries is essential in order to formalize or institutionalize a peaceful system of coexistence. Without solving the North Korean human rights issue as a common cultural code that can serve as the basis for establishing a military trust with other countries, including the US, a peaceful system of coexistence is not likely to be stable, even if it were to be introduced at all.

If some form of peaceful coexistence can be institutionalized, North Korea's governing elite would feel reassured that their current regime would be maintained and would ultimately feel more secure. This greater sense of security could in turn lead to improvements in the human rights conditions within the country. Institutionalizing a peaceful system of coexistence and advancing human rights in North Korea work hand in hand.

On the other hand, the North Korean ruling class could also become wary of immediate reconciliation and react by further flexing control over the regime. If this situation occurs, an overly abrupt thawing of relations between the two countries may have

a short-term negative impact on human rights conditions. Looking at the conventions involving the two nations, however, the progress of inter-Korean relations should serve as a central axis in improving human rights conditions and treating the food crisis in North Korea. This is the only possible solution that can simultaneously solve the division of the two Koreas and the human rights conditions.

c) Openness and liberalization of the North Korean regime

Advanced countries including the U.S. are putting human rights and religious issues on the agenda only on condition of economic development and political freedom in North Korea. They are asking for the liberalization of North Korea in order to mobilize political support for their policies targeting North Korea. The openness of the North Korean regime may have a direct impact on policies directed towards itself.

As agreed upon by many experts, the food crisis in North Korea is far from being resolved, without liberalization of its regime. Regime change is simply not the only solution. The immediate collapse of the current government or a swift regime change are very likely to result in a setback in human rights conditions through ensuing chaos and by prompting an intervention by foreign forces. When it comes to the improvement of human rights, regime transformation is desirable.

3. Strategic resources

Strategic resources that can be mobilized in terms of policies geared towards improving human rights conditions in North Korea are as follows:

1) Government

First, the South Korean government's active participation and interest is needed. The government should take advantage of the reconciliatory mood currently felt on the Korean peninsula as well as formal and informal diplomatic channels so as to urge the North Korean and Chinese authorities to properly address human rights conditions for Externally Displaced North Koreans. Even though it is encouraging that the government puts a high priority on the issue of divided families as an agenda item, it should do more to ensure the free mobility of divided families, free exchange of letters, and the installation of a suitable facility at Panmunjeom where divided families can meet on a regular basis.

2) International bodies and multilateral cooperative bodies

Increasingly, the most realistic approach for dealing with these human rights issues is for the international community to make proper use of UN channels in order to put diplomatic pressure on North Korea.

Even though the UN is inherently limited, with an emphasis on states, it is still effective in imposing a collective moral pressure on countries where human rights are found to be suppressed.

Apart from the UN channels, South Korea can lead in the establishment of institutions and rules regarding human rights, working with governments in North East Asia based on incremental improvements to human rights conditions within South Korea. As demonstrated in the Americas and in Europe, this multilateral approach can ease political burdens imposed upon individual countries by solving problems affecting different groups through a common cultural factor. As such, establishment of regional human rights forums can be conducive to greater peace and security in North East Asia by strengthening mutual trust and partnership amongst civic societies.

3) NGOs

Local bodies whose work involves human rights need to form a network with international NGOs and to pay more attention to the North Korean human rights issues. To maximize the effect of NGO drives and initiatives, a division of labor between local and international NGOs is desirable. Local NGOs should focus on providing assistance and information to international NGOs given the tensions involved and the possibility of conflict between the two Koreas

Media

Globalization and the mass media are greatly influencing the work to improve human rights conditions across the world.

The role played by local media has negatively impacted the human rights issue with North Korea. Suggestive journalism by a few local media groups when covering Externally Displaced North Koreans as well as excessive competition and certain media

groups' tendencies to overreact have failed to help the general public correctly assess fundamental problems involved in the North Korean human rights issues, possible priorities and feasible solutions. As the influence broadcasters continues to increase, it is time to take a serious look at the role of mass media as a strategic resource in solving the North Korean human rights issue.

4) Film

Movies that deal specifically with human rights are not popular in South Korea. We cannot ignore the potentially explosive power of a movie as long as it is able to deal with North Korean human rights issues in a realistic, serious manner. Movies that raise concerns about human rights, such as *The Killing Fields*, *Romero*, *Midnight Express*, and *Low Voice* greatly contributed to informing the public and exposing realities of grotesque human rights violations across the globe.

5) Education

The issue of North Korean human rights should constitute an important part of education concerning human rights in general. This is not to unnecessarily spread negative perceptions of North Korea, but to act as a mirror through which South Korea can hopefully improve upon its own human rights conditions. Ultimately, human rights education is an essential tool for promoting public awareness within South Korea regarding human rights in North Korea.

A universal understanding of human rights is needed to help frame the debates about North Korea's situation, and efforts should

be made to collect accurate information and possible solutions, as well as to help the public understand why solving these issues is necessary for a peaceful reunification of the Korean peninsula. The importance of human rights education is ever-increasing as the number of exchanges and contact at the private level continues to rise.

4. Conclusion

What possible solutions do we have that are truly practical? First, a change in the mindsets of the elite group and a transformation of the political system need to take place. These kinds of changes will remain quite distant if we continue to deal with the human rights issues with our focus on the collapse of the North Korean regime.

The North Korean human rights issue may be a major obstacle in the formation of a common community, precursor to complete reunification. North Korea's continuing violations of international human rights conventions, in which it voluntarily participated, and South Korea's weak-kneed responses to such violations, hardly earn the trust of more advanced countries, let alone inviting the criticism from media outlets which are sensitive to human rights issues.

The range of possible alternatives from which the South Korean government and local NGOs can select their approach is limited. It is not desirable for South Korea to damage inter-Korean relations by carelessly raising issues of North Korean human rights. Similarly, it is undesirable for the South Korean government to

just sit back and witness the serious human rights violations. Local NGOs should pursue substantial, qualitative improvements to the human rights situation through a well-thought out, systematic approach, and should work closely with their international counterparts.

North Korea puts a great importance on its international image and reputation and is sensitive to comments regarding human rights conditions within its borders. It is clear that North Korea would respond to any charges of human rights violations by withdrawing even further from the international community as part of a self-defense reflex. What is urgently needed is the clarification of South Korea's attitude towards these human rights issues. Through such clarification, the South Korean government can send a clear message to the North Korean people and the ruling class in North Korea concerning its principles of reunification.

If human rights conditions in South Korea are able to remarkably improve, thanks to increased exchange and cooperation between the two Koreas, North Korea would be faced with even greater pressure for change from the international community. The 19th century's model of reunification based on nationalism is now obsolete. Functional integration for the purpose of economic development and the improvement of human rights has emerged as the new hot issue.

A variety of factors come into play in the improvement of conditions in North Korea. Externally, the international climate or how the regional order in North East Asia would take shape, for example, could have a large impact. Internally, North Korean

people's choices and the changes in mindset of its elite group would have a equally large impact.

Realistically, it is not easy for South Korean government and civic organizations to turn a North East Asia's regional order favorable to to the improvement of human rights conditions in North Korea.

The human rights crisis faced by North Korea is not the result of confrontation between superpowers and a weak country that wants to safeguard its autonomy and sovereignty. Rather it is a manifestation of collective, entangled problems such as socialism, neighboring countries' deeply rooted nationalism, the dictatorship system of rule in conjunction with Confucianism, oppression of the communist rule, and a generally inefficient socio-economic structure. If the invisible gap between ruling class and the general public can take away the romantic curtain of 'nationalism' and 'Juche ideology', and a conflict manifests itself, the North Korean human rights issue may once again awaken us to the seriousness of the issue.

Understanding North Korean Human Rights Issues in the aspect of International Law, and a Strategic Approach¹⁾

Lee, Jang-Hie

Hankuk University of Foreign Studies

I. Introduction

Following the adoption of the UN Human Rights Commission's resolution criticizing North Korea's human rights abuses, even conservative Korean civic groups have taken a more proactive role in dealing with the issue,²⁾ and demanded that the

1) This report is a revision of the paper "Understanding and Approaching the Iraq War, North Korea's Nuclear Crisis, and North Korean Human Rights Abuse" presented by Lee Jang Hee at the Special Seminar hosted by Amnesty International Korea on June 11, 2003.

2) 200 Externally Displaced North Koreans established the "Headquarters for the Dissolution of Political Prison Camps for the Democratization of the DPRK" on June 3, 2003. Hankook Ilbo, 2003.6.4, p.A10.

National Human Rights Commission of Korea (NHRC) take a more active role in solving the human rights abuses in North Korea.³⁾ In addition to requesting information, the NHRC held a committee meeting on April 28 at which the committee formed a research team to analyze the human rights situation in North Korea and on June 5, the NHRC hosted a meeting with relevant civic groups in attendance.⁴⁾

However, in Article 4(Scope of Application) of the NHRC Law, it states, “This law is applicable only to the citizens of the Republic of Korea and foreign nationals within the borders of the ROK.” Therefore, the NHRC had no jurisdiction to deal with human rights issues for the people in the DPRK. The issue of whether North Korean citizens are indeed citizens in South Korea as well depends on how Article 3 of the Constitution is interpreted.

In the past, unification activist groups and civic groups have avoided the issue of North Korean human rights. The major factor for such avoidance was the fact that human rights and democracy was being used by the military dictatorship. Therefore, mostly conservative civics groups and conservative media dealt with the issue.⁵⁾

3) “The International Community Exposes NHRC’s Neglect of Human Rights Violations in North Korea.” People’s Politics Newsletter #5, May 2003, pp.14-15.

4) JoongAng Daily, 2003.4.28; Supplemental to Meeting Between Civics Groups and NHRC, (2003.6.5. NHRC Open Information Center, 11th Fl., 2-5 P.M.

5) Organizations that clearly expressed criticism for North Korea’s human rights violations: NK Democratization Network, National Federation of University Students for Democratization of the People in the DPRK, Asia Pacific Human Rights Association, Civil Coalition for a Better Society, Headquarters for the Protection of Externally Displaced North Koreans, NK Defectors Association, People’s Federation for the Human

However, after the collapse of socialism and end of the Cold War in the 1990s, the issue of NK's human rights could no longer be approached with the same mentality of the cold war. Civic groups became more vocal after the 1990s as worsening food shortages and economic crises of the DPRK began to threaten the lives of all the residents in North Korea and defectors raised awareness of the dire situation in the country. The response of civic groups to the plight of human rights abuses is varied.

International human rights organizations such as Amnesty International, Freedom House⁶⁾, and Asia Watch⁷⁾ criticized the human rights abuses in North Korea.

In principle, I agree with the recommendations included in the UN resolution criticizing North Korea's abuses of human rights, however, there is one fundamental problem. "Outside factors" worsening human rights abuses in North Korea were not taken into consideration.

As there are various views on the issue of human rights in North Korea⁸⁾, there are various opinions on improving the

Rights of Externally Displaced North Koreans and Abductees, Pan International Association for the Protection of North Korean Human Rights and Democratization, Coalition of Families of Abductees During the Korean War, Families of North South Koreans, Council of Families of Abductees, Baekdoo Hanla Association, Headquarters for the Dissolution of Political Prison Camps, and Headquarters of North South Social Goodwill.

6) Freedom House is a civic research organization based in New York which aims to develop democracy in countries without it. In the annual Human Rights Report released in December 1995, North Korea received the lowest ranking along with countries such as Iraq and Sudan.

7) Asia Watch released a report titled "Human Rights in North Korea" in December 1988 disclosing Pyongyang's systematic oppression of human rights and freedom as well as surveillance and control in North Korea.

situation as well.

However, for the case of Korea, measures to address the human rights issue in North Korea should only be formulated after issues such as conceptual differences of human rights between the East and West, legality of international law, special circumstances of Korea as a divided country, the case of Germany's division and unification, and foreign influences that may aggravate human rights in North Korea are comprehensively well understood.

II. Current State of Human Rights in North Korea

Currently, North Korea is a country barren of human rights. The North Korean Human Rights Report by Amnesty International points out 5 issues such as humanitarian crisis, Externally Displaced North Koreans, capital punishment, religious persecution, and recommendations by the UN Human Rights Commission.⁹⁾ In addition, the US State Department describes violations of human rights in six categories as specified in the UN Covenant B "International Covenant on Political Rights of Citizens." Included in the list were respect for life, physical integrity, civic liberties, political rights (the right of a citizen to select and change the administration), as well as government's attitude in accommodating international and non-governmental inspections of human rights violations, discriminatory practices based on religion, handicap,

8) For details on the various views of the human rights issue in North Korea, refer to Kim Dong Kyoon's "Facts, Perspective, and Approach for the issue of Human Rights in North Korea," Supplemental from Kyungnam University Far East Issues Studies Closed Workshop (2002.7.3).

9) Amnesty International Report 2002, pp.146-147.

race, language, and social standing, and respect for the rights of workers.¹⁰⁾ In the “North Korean Human Rights White Paper” published in February 1996 by the People’s Unification Institute North Korean Human Rights Data Center, lists the following six types of human rights abuses:

1. Political and Civic Human Rights
2. Economic Human Rights Violations
3. Human Rights Violations in Political Prisoner Gulags and Special Dictatorship Area (Including Completely Restricted Area and Revolutionizing Area)
4. Human Rights of Externally Displaced North Koreans
5. Human Rights of Repatriated Koreans
6. The Repatriation of Detainees in North Korea

As there is the possibility that descriptions of human rights conditions in North Korea can be distorted, an over reliance on testimony from defectors is warned against.

III. Different Views between the East and West on the North Korean Human Rights Issue

We need to be aware that there are differences in perspective between the East and West. In the West, human rights are centered on the people and stress the role of the individual in relation with the country. Therefore, in the West, civic revolutions sought civil and political freedoms for the individual. In other words, in the West, an individual’s freedom has precedence. However, in

10) For details on the six categories, refer to Shim Jae Woo’s “Keynote Report: Human Rights in North Korea,” Amnesty International Legal Committee Human Rights Seminar, 2002.12.14, pp.2-8.

non-western countries such as the East and developing countries, the focus of social, economic, cultural rights is on equality and group freedoms. North Korea views that human rights are enjoyed by individuals as a member of a society. North Korea breaks down human rights into “social political rights” which includes dignity, independence, equality, survival, and development, and “economic cultural rights”. North Korea states that human rights are respected and guaranteed in the country because under the socialist system, everyone enjoys independence and a creative lifestyle.¹¹⁾

The statement underlines the fact that even a universal value such as human rights can be different conceptually between the West where development was based on democracy and individualism and non-western countries which have different cultures and histories.

Therefore, in order to practically approach the issue of human rights in North Korea, an in-depth analysis of the universal value of human rights as well as personalized values of human rights is needed. The most important right for North Koreans at present is provision of food. The right to food is the most elemental right to survival as a human being and supercedes political freedoms. Then why are the US and the international community taking a passive role in food aid and removing economic sanctions if these countries really value human rights?

11) Comment by North Korea's Diplomatic Team Spokesman in a conversation on February 9, 1994.

IV. Constitutional Article on Territory and Human Rights in North Korea

1. The Connection between Unification Policies and Article on Territory in the Constitution

Article 3 and article 4 of the Constitution is contradictory. In Article 3, North Korea is defined as an “Anti-State” or “Incomplete Welfare State” whereas in article 4 under the premise of a peaceful unification, North Korea is viewed as a de-facto nation.

In article 1 of the 1992 North South Basic Framework, it is clearly stated “Each party shall respect counterparty’s regime or administration,” and in article 11, “the borders of North and South Korea abides by the agreement entered into in July 27, 1953 (Agreement for Truce) and are recognized as the military demarcation line and areas jointly supervised by both nations. In addition, joint membership into the UN in 1991 officially recognizes sovereignty of both North and South Korea in the international community.

The first phase of the “three phase unification plan for establishing a community of one people” centers on reconciliation and cooperation and therefore relieves tensions between the two nations and fosters trust so that ultimately an environment for peaceful unification can be in place. Despite all this, the Korean Supreme Court still persists in viewing North Korea as an “Anti-State” organization based on article 3 of the Constitution.

The Supreme Court has received much criticism by academia and the Constitutional Court for its backward views which disregard recent developments between the two Koreas and its persistence of a cold war mentality. There are two major problems

with viewing North Korea as an anti-state according to article 3. First, unification policies and policies dealing with North Korea in an effort to increase relations and cooperation between the two countries can be seen as unconstitutional. Secondly, agreements between North and South Korea can be seen as unconstitutional as well. The first article of the Basic Framework between North and South Korea recognizes each country's administration. This framework would then be considered unconstitutional and thus the agreement will lose all legal validity. In addition, unification policies, pursuing closer relations and cooperation with North Korea, will lose legal validity as well. Moreover, Kim Yong Sam's "Three Phase Plan to Build a One People Community," Kim Dae Jung administration's "Three Principles for North Korea," and the "6-15 Joint Declaration" will all be branded as unconstitutional thus thwarting all unification efforts.

2. New Approach to Article 3 of the Constitution in Promoting Peaceful Unification

Such contradictions in the constitution greatly confuse efforts for unification of the peninsula. There are two solutions for the current problem of article 3 which deals with territory. One solution is legislative and the other deals with how the article is interpreted and made into policies.

First, let's look at the legislative solution. Article 3 of the constitution for recovery of lost territory defines North Korea as an anti-state and a target we can conquer. This is not only in direct conflict with "peaceful unification" mentioned five times in the constitution, but it also conflicts with the principle of territory limits

that is a basis of the current system of peaceful co-existence. Therefore, there are two alternatives that we can take. One solution would be to eliminate article three from the constitution and the other solution is to revise article three. The revision must state, “It is the basic policy of this nation that the Republic of Korea is the territory of one people and the basis of such claims can be found in the 1953 Armistice Treaty in which the Military Demarcation Line divides the country into two systems and a peaceful unification of the two systems is to be sought after as soon as possible.” The revision would clarify that the Korean peninsula was divided into two nations, the ROK and the DPRK, and stresses the justification for peaceful unification. The former would signify that the ROK temporarily recognizes North Korea as a nation and this would be in agreement with the first article of the North South Basic Framework and the statement by the President on July 7, 1988, “North and South Korea acknowledges mutual sovereignty in the international community.” In addition, in the sense of unifying the people of Korea, the coalition of North and South Korea would acknowledge the independence of both nations internationally while simultaneously maintaining a special relationship¹²⁾ domestically.

12) In the Basic Framework, the relationship between North and South Korea is defined not as a relationship between two countries but as a “special relationship” during the process of unification. The connotation derives from the “special relationship” first used by East and West Germany after entering into a basic agreement. Prime Minister Willy Brandt coined the term in 1968.10.28 in a speech to the federal government. Texte zur Deutschlandpolitik, Band IV. BIB (Hrsg.), Marz 1970, p.12; The “special relationship” was reconfirmed in ruling by the West German Federal Constitutional Court in 1973.7.31. BVerfGE36,1,16.

In conclusion, constitution scholars are in agreement that the territory article three is in direct conflict with policies for unification that have changed due to developments between the two countries and in direct conflict with article 4 of the constitution in regards to peaceful unification.

Although there are many difficulties for legislative changes, it is one means to solve the problem fundamentally. Interpretive methods are convenient but logically unacceptable considering that article three is the basis for the national security law.

3. Revision and Transference of the Territory Article

Revising the territory article of the constitution would bring the article in accordance with preambles of the constitution, article four of the constitution, North Korean policies, and unification policies. In other words, a revision to article three is sought after in order to work towards peaceful unification of the peninsula. Therefore, efforts to revise article three is in no means a way to give North Korea the upper hand or place South Korea at a disadvantage. The US government has already recommended that the Korean government abolish the National Security Law and the Constitutional Court has pointed out problems with article three through a limited constitutional ruling.

4. Article Three of the Constitution and Human Rights in North Korea

In interpreting the constitution geared towards a peaceful unification of the Korean peninsula, the constitution views the current relationship as a peaceful coexistence and recognizes North Korea as a de-facto state and recognizes the current administration.

As a result, the citizens of North Korea cannot be recognized as citizens of South Korea, and based on article 3, the human rights of North Koreans cannot be dealt with by the government as South Korean human rights issues are dealt with. National Human Rights Commission Law Article 4 (scope of application) states that the law is only applicable to South Korean citizens and foreigners in the ROK.

V. Contradiction with the North South Basic Framework

Careful consideration to article 1 (respect for system) and article 2 (non-interference of domestic issues) must be given before raising issues of human rights and democratization in North Korea. In principle, legality and justification of a nation's system is not conditional to international approval or governmental approval¹³⁾ in international laws. Therefore, based on the fact that North and South Korea simultaneously become members of the UN in September 1991 and in December of 1991, agreed to mutually respect and recognize respective systems and government in article 1 of the basic framework, South Korea's efforts to democratize North Korea could be seen as internal intervention and could cause severe tensions between the two countries.

East Germany did not consider international criticism of human rights abuses as internal intervention. However, East

13) Government approval is provided when a third country acknowledges in the international community a new government that transferred power illegally. Conditions for government approval is that first, the new government must have actual power in the government, and second, must be willing to abide by international laws

Germany responded to allegations brought forth by member countries of CSCE because East Germany had signed International Human Rights Agreement and the CSCE. Likewise, East Germany had a responsibility to abide by those agreements. In addition, at the time the basic agreement was established in 1972, human rights were included in article two of the agreement. The North South Basic Framework fails to clearly state human rights.

VI. Characteristics of a Divided Nation Must be Considered: Human contacts should be stressed rather than human rights, and international efforts would be more effective than a North South approach

In divided Korea, it is more effective in the long run if human contact is stressed rather than human rights in maintaining relations between the two countries. If North Korea would improve human rights just because South Korea raised the issue, that would be ideal. However, reality is that by raising the issue of human rights, communication between the two countries would be terminated.

In addition, rather than South Korea raise the issue of democracy, it would be more effective if an international organization like the UN or a third party country raised the issue. In the case of Germany, West Germany focused on the 1975 Helsinki final act of the CSCE in order to increase human contacts, free flow of information, and cooperation in cultural and educational sectors. In order to avoid discussing different regimes, human rights issues were not raised and a large portion of the national budget was invested to repatriate political prisoners

detained in East Germany.¹⁴⁾ The US, in a battle between East Europe and the Soviet Union for a better system, raised the issue of human rights in Eastern Europe, not West Germany.

VII. Inducing Membership into International Human Rights Agreements such as the International Conventions on Human Rights

South Korea became party to Covenant A and Covenant B of the International Conventions on Human Rights and Covenant B Protocol¹⁵⁾ on April 10, 1990. Korea submitted national reports in accordance with covenant regulations¹⁶⁾ of membership, and the additional reports must be submitted every five years. for the first time.¹⁷⁾ North Korea signed Covenant A and B nine years earlier

14) Ministry of Unification, Legal framework for human rights and case study of East West Germany (1994.12) North Korea Human Rights Information-I, pp.318-345.

15) The three agreements were adopted in December 16, 1966 at the UN General Assembly, and went into effect in March 23, 1976. Covenant A governs economic, social, and cultural rights, and member countries are legally bound to protect such rights within their respective capabilities. Covenant B governs civil and political rights and once the covenant goes into effect, it is legally binding in the respective country. Covenant B Protocol governs legal protocols in adopting Covenant B

16) For Covenant A, the member country must submit the first report within two years

17) The first report for Covenant A was submitted in October 12, 1993, and the report was evaluated on May 2-3, 1995. The result of the evaluation was released in June 7, 1995. The first report for Covenant B was submitted on July 1, 1991, evaluated in March 22, 1992, and the results of the evaluation were released on July 29, 1992. The second report was submitted in October 2, 1999, reviewed in October 9, 1999,

in September 14, 1981 but did not sign the Covenant B Protocol. North Korea submitted the first human rights report to the UN Human Rights Committee on October 24, 1983 in accordance with article 40 of Covenant B of the International Conventions on Human Rights and submitted an addendum in May 2, 1984. North Korea submitted a second report concerning civil and political rights in accordance with Covenant B in March 2000, twelve years late of the original deadline. In July 2001, a North Korean delegation was dispatched to Geneva for review of North Korea's human rights report by the Human Rights Council and the delegation answered questions in earnest. As this example shows, North Korea is showing that it is willing to abide by international regulations in terms of human rights.¹⁸⁾

We need to induce North Korea to enter the Covenant B Protocol¹⁹⁾ as well.²⁰⁾ North Korea may be a signatory to Covenant B but it did not agree to article 41 of the same covenant, which agrees to international prosecution, and it is also not a member Covenant B Protocol which provides for individual prosecution.²¹⁾ Furthermore, North Korea has not joined the Torture Prevention Agreement or any form of anti-racial discrimination agreements. As a result we need to induce North Korea to international

and results were made available on November 1, 1999.

18) North Korea officially admitted for the first time that public executions were held at the UN Human Rights Council hearing.

19) Covenant B Protocol stipulates intervention and surveillance by the UN Human Rights Commission in the event that Covenant B is violated.

20) North Korea entered into Covenant A and B in 1981, but did not agree to Covenant B Protocol. South Korea became member to all three agreements after North Korea in 1990.

21) South Korea has agreed to both individual notification system and international notification system.

agreements and systems to ensure human rights and raise awareness in the international community to do likewise so that human rights can have international protection in North Korea.

VIII. Improvement of External Factors that Contribute to the Deterioration of Human Rights in North Korea

The UN Resolution that was adopted on April 16, 2003 criticizing North Korea for human rights abuses demands that inhumane punishment of repatriated Externally Displaced North Koreans be banned, inspections of aid efforts by UN experts be allowed, basic freedoms such as the freedom of religion, conscience, beliefs, expression, and freedom to gather be guaranteed, malnutrition of infants be resolved, the freedom to relocate be guaranteed, inhumane punishment and treatment and torture for political purposes be terminated, and that issues regarding public executions and political prison camps be resolved. However, the resolution only addresses internal factors for human rights degradation and overlooks external factors. In order for human rights to improve in North Korea, there are just as important recommendations to be made to the international community including the US such as the termination of threat to the current government, termination of economic sanctions, and increase of humanitarian relief efforts. The UN Human Rights Commission has remained silent on these issues.²²⁾

22) Jung Wook Shik, “For the improvement of human rights in North Korea and peaceful unification of the Korean peninsula” Sponsored by NHRC.

After the Iraq War, the issue of nuclear proliferation in North Korea has been strained. At such a juncture, we cannot overlook the possibility that the resolution can be utilized by the Bush administration to its advantage.

Mostly due to efforts by the US, North Korea has gained infamy as a rogue state supporting terrorists and the biggest culprit of weapons of mass destruction. At this point in time when tensions are rising due to nuclear proliferation, the US could attack North Korea with the same argument used in attacking Iraq. The best course of action at this present moment is to recognize Kim Jong Il's regime, remove external factors which aggravate human rights in North Korea, and requesting that North Korea improve its human rights record.

IX. Conclusion

In addition to legal contradictions in dealing with issues of human rights and democracy in North Korea, we need to consider strategic factors in North South relations. If South Korea raised the issue of human rights at this moment, North Korea would feel threatened and all of the private exchanges would most likely be brought to a halt. If South Korea raised the human rights issues with North Korea, it would be seen as a direct challenge to Kim Jong Il's regime and this would in no way benefit the people in North Korea and would in fact tighten the noose of oppression by agitating the regime. Ultimately, relations between the two Koreas would be greatly estranged. The most pressing issue is humanitarian in nature such as family reunions of separated families, confirmation of life or death of loved ones and increased

communication. These are promises both countries agreed to in the basic framework and issues that South Korea can directly address. It would be more realistic and practical for South Korea to delegate the task of addressing human rights and democracy to neighboring countries and international organizations such as the UN. In addition, as the most pressing issue for North Koreans is food, it is urgent that we address food aid. For now, we must focus on widening increasing human interchange and flow of information over the DMZ. In the long term, opening the borders of North Korea and inducing reform through greater exchange between the two Koreas will give North Korea the confidence to reform the establishment and these reforms will include human rights.

In principle, we firmly believe that human rights must improve in North Korea. However, in addressing human rights in North Korea, we must take into consideration the special characteristics of the relationship between the two Koreas, the effective of the method, and the current situation of North Korea. In this light, the following recommendations are made:

- 1) An evaluation of the actual state with disregard to political perspective must be made. Various channels to evaluate the current conditions of human rights in North Korea and systematic and continuous research by academia are needed.
- 2) In addition to universal values of mankind, the special characteristics inherent to the culture of North Korea must be taken into consideration. A Westernized view must not be taken.
- 3) The North Korean regime and North Korean citizens need to be differentiated and human rights must be seen through

- the eyes of the citizens of North Korea. Cessation of food aid because the North Korean government refuses to comply will only end up hurting the citizens in the country.
- 4) By accusing Kim Jong Il with oppression of human rights and attempting to change the regime is internal intervention and must be avoided as it is an abuse of power. We recognize that the North Korean government is responsible for human rights violations but the issue needs to be solved by the citizens of North Korea themselves.
 - 5) We should not overlook that North Korea has made legal reformations in regards to improving human rights by revising the constitution in 1998, the criminal law in 1999, and criminal litigation laws in 1996. North Korea is also making efforts to abide by the recommendations of the UN resolution.
 - 6) We need to be vigilant so that the US does not misuse the UN resolution adopted on April 16 to employ its military might and attack North Korea when tensions over North Korea's nuclear weapons, weapons of mass destruction, and human rights are strained, especially after the Iraq War.
 - 7) NGOs in Korea with varying opinions on the human rights issue in North Korea need to work together to come up with practical solutions.
 - 8) The South Korean government must provide large scale aid in food, medical supplies, and energy in order to preserve the basic survival of North Korean residents. In addition, the Korean government needs to take an active role in persuading the international community to increase

aid as well.

- 9) The international community should not only establish a structural foundation for improved human rights over the long term, but it should also address the more pressing issue of relieving food shortages in North Korea as a means of improving current human rights.
- 10) In an effort to increase validity of international laws in addressing human rights violations in North Korea, the international community should encourage North Korea to become member to international agreements which protect human rights such as article 41 of the International Conventions on Human Rights Covenant B, Covenant B Protocol, Agreement to Prevent Torture, and various agreements regarding racial discrimination.

North Korean Human Rights Issues : Debates in International Society and Challenges on Korea ¹⁾

Heo, Man-ho

Kyungpook National University

I. Introduction

Over the past few years, the human rights situation in North Korea has been revealed by North Korean refugees and undoubtedly is one of the most serious facing the world today. Insofar as the respect of human rights proves the level of socio-political development, the current situation in North Korea is alarming compared to the recent evolution of other communist countries. Beyond the humanitarian issue, the question of North Korean human rights holds importance in two ways.

First, the violation of human rights in everyday life distorts the consciousness and behavior of North Koreans, thereby

1) Except for several personal names, the system of romanizing the Korean alphabet is consistent with the July 7, 2000 Notice of the Ministry of Culture and Tourism of the Republic of Korea. Korean names in this article are all written in the order of family name first, and then given name.

affecting their future potential to rebuild a homogeneous society with South Koreans after national reunification. Second, after being persecuted through measures infringing on their basic human rights, the North Korean people could easily be mobilized if the North Korean authorities engage them in an irrational or desperate confrontation.

Human rights violations in North Korea have already been proven in the past, however, Westerners have often refused to believe these charges as anticommunist propaganda. Currently, the inefficiency of the North Korean political regime and the accompanying economic disaster are undeniable. The rise in the number of defectors has attracted growing interest from academia and media in the international community in the severity of human rights abuses in North Korea. In the context, international engagement on North Korean human rights issues were established by the UN Commission on Human Rights (UNCHR).

However, there were more than a few voices of opposition in South Korea. They branded these international efforts as “a strategic card to pressure North Korea”, “a pretext to invade North Korea”, “a way to induce North Korea’s collapse”, and “a hindrance to peace on the peninsula and North-South relations”. As such the recent discussion about North Korea’s human rights issues in South Korea has encompassed a number of prejudices and biases due to the very ideological nature of the issue and a lack of trustworthy information.

The social disintegration of North Korea and reinforcement of social control devices appear to be the most direct causes for the massive infringements of human rights in North Korea. Therefore the positive evolution of human rights cannot be anticipated without foreign engagements. In this respect, it is

crucial to pursue recent initiatives taken on this matter in international community, and examine the relevance of foreign engagements to search for a strategy to improve the situation in North Korea.

II. International Discussions about Human Rights Violations in North Korea

1. EU and North Korean Human Rights

The EU's principles on foreign policies could not help raising human rights issues during the process of establishing diplomatic relations with North Korea. During that process, Germany, the United Kingdom, and other EU countries that hastened diplomatic relations with North Korea had quite a little different point of views with France. However, these different views resolved a little at the EU's General Council on November 20, 2000 by adopting "EU Lines of Action Towards North Korea". It emphasized "developments in the human rights situation, in particular observance of the United Nations Conventions on human rights" and "access by the population to external aid and the possibility for foreign NGOs to work in the Democratic People's Republic of Korea under satisfactory conditions".

After the EU lines has made and J. Fischer, the German Minister of Foreign Affairs, who was with Green Party, led the negotiation with North Korea with regard to a diplomatic relationship, North Korea's human rights issues became an important agenda, taking longer time in negotiation. In particular, the last stage of negotiating the diplomatic relation, both parties have four-day-discussion on human rights problems and decided

to have constant regular dialogues in this matter.

Other European countries that had diplomatic relations with North Korea kept trying to establish constant dialogues with the government of North Korea on human rights matters but the consequences were not positive. Especially, France sent several messages regarding this matter, but did not receive any response from North Korea. Therefore, France did try submitting a resolution on human rights situations in North Korea at the 58th UNCHR in 2002. At that point, the Kim Dae-jung administration persuaded the EU member states not to submit the resolution expecting Kim Jong-il visit to Seoul as a friendly reply to the 2000 inter-Korean Summit. The rationale for this diplomatic action was to give enough time to North Korea since it was just about to open to outside world and that if the EU would submit the resolution, the government of North Korea would go back to its closed and isolated policies. As a result, the EU expressed at the Chairperson's Statement that they would expect to see North Korea's human rights situations would be improved and see for another one year.

North Korea's human rights situations were not becoming better and the international community found no sign that the government of North Korea had made serious efforts on this matter. Therefore, the European Council adopted a resolution (P5_TAPROV(2003) 0034) to submit a UN resolution on the situation of human rights in the DPRK at the 59th UNCHR.

Finally, EU members and other co-sponsor countries had series of discussions together, and completed to submit the resolution on April 15, 2003. The 2003 UN resolution, therefore, had been discussed within the EU community for a long time and completed with the EU's leadership.

2. Countries Neighboring Korea and North Korean Human Rights

Since 1999, the US has funded the international campaign to raise international awareness of human rights violations in North Korea through the National Endowment for Democracy (NED). In November 2002, Freedom House evaluated North Korea's human rights situation as "Not Free". US President George W. Bush solidified hard line policies against North Korea after surveillance satellites confirmed the existence of political prison camps in North Korea.

In February 2003, when the US Senate Foreign Relations Committee and the House International Relations Committee passed the 2003 Omnibus Bill, they recommended the State Department and the USAID to allocate ten million dollars to establishment of refugee camps, financial assistance for the organizations helping North Korean defectors, and other measures to protect the human rights of North Korean asylum seekers.

After the North Korean Defector Rescue bill, which identified North Korean refugees as non-citizens of South Korea, was passed by the US Senate in July 9, 2003, the Bush administration is reviewing plans to accommodate thousands of North Korean refugees in the US. In addition, the construction of refugee camps for North Koreans in Mongolia, and Cambodia are currently being discussed and cooperation from ally countries, including South Korea, is being requested.

Japan, seeing an opportunity to ameliorate for some of the human rights violations incurred in the past (such as the issue of comfort women), is approaching the issue under the banner of "universal values". Japan has no choice but to take an aggressive

stance in North Korean human rights issues because issues that affect Japanese citizens are related with the issues as well. Japan is currently grappling with issues such as Japanese citizens who were kidnapped to North Korea, Japanese wives of Koreans sent to North Korea, and their visit and/or return to Japan. These issues also explain Japan's efforts to include "Issue of Kidnapped Foreigners" in the North Korean Human Rights Resolution at the 59th UNCHR. As a result, Japan and the US can be great partners to South Korea in forming an international coalition to deal with the North Korean human rights abuses.

It is unlikely that China will take an active stance to deal with the issue as China has a history of friendly relations with North Korea, China may be inundated by a flood of refugees, and the fact that China will have to address human rights in China as well. However, China cannot dismiss human rights issues, especially North Korean asylum seekers, due to its significant presence in the international community, its economic relationships, and the 2008 Olympics which will be held in Peking. Refugee camps planned to be constructed in Mongolia and Cambodia cannot be realized without the support of the Chinese government. In addition, the accommodation of a large number of refugees by the US cannot be effective without the support of the Chinese government as well.

The South Korean government has waged a "silent diplomacy" with the Chinese government, but the South Korean government must secure a firm pledge of minimum cooperations from the Chinese government to deal with the issue of building refugee camps and large scale exodus of North Koreans.

After the scandal, "Refoulement of 7 North Korean refugees" in 1999, Russia has not taken a role in the question of

North Korean human rights. However, Russia is not free from human rights issues as the country also faces problems of suppressing the rights of minorities as the Chechen crisis revealed. Therefore, it is unlikely that Russia will take a proactive role in the North Korean human rights issues. Even during the vote for the UN North Korea Human Rights Resolution on April 16, Russia voted against the resolution. However, it is still possible for the Korean government to gain Russia's support for politically insensitive issues, through great efforts.

III. Five Issues Addressed by the UNCHR Resolution on North Korea: their Causes and Relevance of the Foreign Engagements

While political prison camps and children's rights were mentioned in the Resolutions on North Korea adopted by the 59th Session of the UNCHR, specific measures involved commissioning an investigation and report by thematic Special Rapporteurs and Working Groups on five main topics. Of course, the fundamental causes of the detailed human rights issues stated in the resolution can be traced back to totalitarian rule and inefficiency of the regime. Thus, the effects of UNCHR's efforts will be limited unless preceded by democratization and regime reform. Nevertheless, democratization and pluralism can be introduced through human rights improvements and particular human rights violations can be alleviated without political change.

From this perspective, let us examine the relevance of foreign engagements in terms of the five pending issues indicated in the resolution on North Korea.

1. Right to Food

North Korea's chronic food shortage is a consequence of structural problems: the end of agricultural cooperation with the former Socialist bloc, frequent and severe natural disasters owing to over-cultivation of terrace fields, inefficient agricultural management, inconsistencies in the structure of the agriculture industry, a shortage of fertilizers and insecticides due a halt in manufacturing, and overall economic crisis stemming from excessive self-reliance, lack of economic incentives and excessive resource investment in non-productive sectors.

These structural problems can not be solved without foreign engagements. They can only be overcome through a systematic, long-term overhaul of the foundations underlying North Korea's agricultural production.

According to statistics provided by international organizations, North Korea's cereal production was 5 million tons in 1993 and 4.5 million tons in 1995. This went down to 4 million in 1996 when the famine took place. However, the food crisis in North Korea owed more to a failure in food distribution to certain parts of the population than to an absolute shortage of food.

The North Korean government distributes food to soldiers first in accordance with the country's "military-first policy". In his testimony, Jin Yong Gyu (a former Sergeant First Class in the People's Army), a former driver to the deputy commander of the Operations Department, 1st District Head-Quarters, bears witness to military use of all international food aid supplies that arrived in the Wonsan harbor. During Mr. Jin's military service, he was mobilized to distribute food four or five times a year. However, to avoid foreign inspections, the military number plates were changed to civilian ones

and all the soldiers were dressed as civilians. When faced with visits from UN inspectors, rice bags were stored temporally at civilian warehouses, then transported to military units after the inspection visit. Therefore, to ensure transparency in distribution, monitoring is to be enforced and this must be a prerequisite when giving assistance.²⁾

In addition, the famine in North Korea arose partly as a consequence of distribution problems in the process of selecting aid recipients. At present, a large portion of the North Korean population is unemployed since over half the factories have stopped operating. Nevertheless, food is distributed according to age and health condition. The distribution system does not take into account social or economic standards.

“Improvement of Economic Management of July 1st” raised the legal price to eliminate the price difference with the black market. However, the rise in salaries (18 times for workers in production) could not catch up with the rise in food prices (a 558 times increase for rice and a 471 times increase for corn). Moreover, the newly set salaries are not properly paid due to the self-supporting system of the factories. The North Korean government recommends that if the factories do not earn enough to give salaries, they are to pay the

2) Currently, approximately 45 WFP personnel are said to have access to 162 of 206 counties(*gun*), which hold 85% of the total population. Thus, the Good Friends claimed that “more than 80% of transparency in food distribution is ensured.” However, Action Contre la Faim, which has withdrawn from North Korea, rejected this notion saying that, “this is a mere ‘number manipulation’”. Their argument is supported by the fact that the only place where foreign NGO personnel can gain access are the counties offices. Also, access to, and investigation of, the lowest ranks of administration and common residents, where actual distribution takes place, is still impossible, making actual monitoring practically impossible.

salaries through bank loans under the authority of the factory manager. Yet, in this case, it is difficult to pay back and thus, factory managers often issue a kind of non-binding IOUs to workers. Accordingly, after the “Improvement of Economic Management of July 1st” the situation has instead been exacerbated.

Therefore, if the food aid to North Korea is treated as an independent problem, the situation would be difficult to overcome.

The famine and economic recession in North Korea, being a structural problem, call for continuous humanitarian support because it would be difficult to overcome on its own. However, for fundamental solutions, North Korea must boldly modify its agricultural policy and cooperate with the international community by promoting a reform and opening policy. Yet, the humanitarian aid that maintains and enforces the current pressure and vicious cycle is to be avoided. Also, in order to induce reform and market opening, the frequency and intensity of the inspection on food distribution is to be raised so as to increase opportunities to come in contact with the North Korean residents.

2. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

North Korea strongly condemns torture in all their official documents or declarations. The Article 93 of North Korea’s criminal code, which was adopted by the Supreme People’s Assembly in 1992, and amended and supplemented over 4 times in 1999, stipulates that “preliminary judges should not forcefully induce the accused to accept his or her crime or to make false statements. The deposition of the accused earned forcefully cannot be used as evidence.” In addition, Paragraph 7 of the “Second Periodic Report on the

Implementation of International Covenant on Civil and Political Rights” handed in on December 25, 1999, strongly argues for “restriction of torture and inhuman treatment”.

However, “political prisoners” in North Korea generally undergo severe torture during preliminary examination. The refugees for whom I have helped write bills of indictments state that after being arrested in China and sent to North Korea, they are investigated on their possible contact with a South Korean or religionists. Moreover, they are punished with an enormous amount of battery and all kinds of inhuman treatment by the Public Security Agency (National Police) and/or the *Bowibu*, lest they should try to escape again later.

Helping the refugees file complaints is task at hand. Interestingly, if an ICCPR member nation joined the optional protocol, an individual whose human rights have been violated can use the Communication. Then, the Human Rights Committee makes a legitimate decision after examination. Thus, it is necessary that we pressure the North Korean government to adopt the optional protocol.

3. Freedom of Religion and Belief

In the North Korean society, where the principal ideology was turned into a state religion, worship activity towards Kim Il-sung and Kim Jong-il under “Ten Principles for the Establishment of the One-Ideology System of the Party”(Dangui yuil sasang chegye hwakripui sipdae wonchik) is prevalent, and holds 450,000 “Kim Il-sung Revolutionary Ideology Research Center”, which are supposedly the holy place for religion. The so-called “Ten Commandments” of North Korea, “the Ten Principles” is a standard for judging political and/or ideological criminals, who are considered to be “*Juche* religion's heresy” and moreover works as an ultimate

regulation that restricts all activities of the North Korean residents.³⁾ Therefore, free religious activity of ordinary religions cannot be permitted.

The North Korean government stipulated the *Chungwoo* Party members of the indigenous religion *Chondogyo*, Christians, Buddhists, and Catholics as a hostile and complex class when classifying the 3 strata with 51 categories according to Citizen Re-Registration Project (1966-1967) to guard and oppress them. At the time, the estimated number of religious people and their families were about 100 thousand families with 450 thousand people.⁴⁾ It is estimated that about 400,000 people from religious families have been executed or sent to political prison camps from this time. Additionally, second and third generations who have survived the purging have been classified as “insurgents” and placed under government control.⁵⁾

However, in the 1980s, North Korea was influenced by violent criticisms from South Korea and Western countries regarding the lack of religious freedom in North Korea and frequent visits and contacts made by Christian Koreans living abroad. Then, North Korea’s religion policy was alleviated through the “positive analysis” about religion in 1986. Consequently, there were changes. For instance, Bong Su Church and Jang Choong Cathedral in Pyongyang were established in September, 1988, commemorative Buddhist services

3) Philo Kim, “New Religious Policy and the State of Religious Freedom in North Korea”, in NKHR & HFHR, The 5th International Conference on North Korean Human Rights & Refugees, 29 Feb. - 2 Mar. 2004, Warsaw, Poland.

4) Yi Hang-gu, “*Bukhanui jonggyo tanapgwa sin-ang saenghwal*” (Religious Repression and Religious Life in North Korea), in *Hyeonsil chojeom* (Reality Focus), 1990 Summer Issue, p.111.

5) Philo Kim, op. cit.

were held for the first time in temples nationwide in January, 1989, and the department for study of religions was newly-organized in Kim Il-sung University in 1989. However, seeing that 86 underground Christians had been caught and executed or sent to prison camps by the *Bowuibu* in Anak-gun, South Hwanghae Province in the early 1990s, we can see that this measure was merely an act of external propaganda.⁶⁾

Yet, as the crisis in social control came resulting from the death of Kim Il-sung and food shortage, the government reinforced the religion oppression in 1998 within the country, whereas externally, it pursued dualistic religion policy. The government prohibited an expansion of a particular religion by contacting diverse religions including the Unification Church and the Russian Orthodox Church, and at the same time, it took advantage of religion as a means for “earning hard currency” and improved relationship with the United States and Russia.

The North Korean government made it a rule to carry out education on restriction of expansion of Christianity through corresponding *Bowibu* twice a year since 1997 to prohibit possible negative effects resulting from Christianity. Also, people who find a Bible are taught to report them to the relevant institution. Moreover, executions of Christians were made at least three times in November, 2001 alone according to Good Friends, a relief NGO.

Nevertheless, the fact that the UNCHR Resolution on North Korean Human Rights stopped at making only general remarks (“All-pervasive and severe restrictions on the freedoms of thought, conscience, religion, opinion and expression ...”) indicates that this problem is not fully recognized by the international community.

6) *Yonhap News*, June 15, 2001.

Currently, it would be possible to collect a considerable amount of information with thousands of refugees residing in South Korea. Therefore, it is imperative that South Korea's religious bodies or relevant NGOs carry out investigations on actual conditions and help file complaints against specific cases to visualize and publicize this issue. Yet, on the fundamental level, as in the Concluding Document of Vienna in 1989, participating nations should make it a rule to respect "the right to establish and maintain a worshipping or gathering place that religious bodies can freely access" and "the right of all the people to exchange religious education with the language of their choice." Undoubtedly, the establishment of this principle would be the last to remain unsolved as long as North Korea maintains its Communist regime. However, this nation has promised to respect the rights as UN member nation, and this will work as a pressure to realize that promise.

4. Arbitrary Detention

The procedure of detention for political prisoners is abduction rather than arrest. When a suspect of a "political crime" is an individual, the Department (Ministry) of Public Security or another administrative organization summons him or her by a subpoena or by telephone. On route to answering the summons, the suspect is then abducted, and not even the family or the summoning organization know where the suspect has been taken. Thereafter, the suspect is officially classified as missing.

It is not known whether or not the situation has improved since the amendment of criminal procedures act in 1999 due to the lack of confirmed cases. It would differ depending on the gravity of the crime, but we assume that the situation has not alleviated much. This is

supported by the statements of an ex-*Bowibu* agent, Yun Dae-ill who left North Korea and came to the South in September, 1998. According to him, “the *Bowibu* makes it a rule to treat all cases based on criminal procedures act. Yet, since there is no regulation on criminal procedures act regarding” #8, 9 incidents (#10 room incident) that have spread the rumors of the Kim family, it is not well kept. Consequently, if it is judged that a person has performed an “act that damaged the two Kims, the father and the son”, he or she is executed without even a trial. Despite the fact that the criminal procedures act has been amended afterwards, there exists no related article and cannot work to improve the situation.

During the interrogation, the suspects are forced to make false statements and treated with such violence that suspects there are desperate to commit suicide. Those who I have helped file complaints did not stay over 6 months, which is the maximum period stipulated in the articles 73 and 108 of the criminal procedures act in North Korea. However, Jang Gyeong-cheol and Jang Gyeong-su, the two sons of Sin Jeong-ae and her niece, Jang Mi-hwa stayed for about a year.

When closing the interrogation, the suspect becomes a criminal after a very formal judgment with neither witnesses nor audience. According to art. 16 of the criminal procedures act (amended on Sept. 2, 1999), “when a judgment can exert a bad social influence, a part or all of the judgment will not be open to the public.” Even though art. 14, para.1 of the ICCPR recognizes restricting publicity in exceptional cases, the extent of such exceptions must be strictly limited to moral reasons, public order, national security, and the protection of juveniles. Yet, in North Korea, no judgments related to political crimes are open to the public.

At the same time of “arrest” for supposed “political criminal”, a number of *Bowibu* agents search his or her house, confiscate all assets,

and send the family members to one of political penal-labor colonies. This is deemed to be still valid up until today. Items relevant to “confiscation of assets” are prescribed in the amended criminal law, and “withdrawal of identification cards” is stipulated in the article 13 of the People’s Registration Act.

After all, in North Korea, a “criminal” is sent to the prison camp with the criminal himself and family members not knowing what the crime is, where he or she is taken to with really nothing ready.

This type of imprisonment absolutely denies the principles of “*habeas corpus*” and “due legal process” Furthermore, a feudalistic and inhumane criminal system including the concurrent punishment of political prisoners’ family members persists. This cannot be rectified without external observation and intervention. The first step would be to demand observation and correction based on the ICCPR. However, there should also be pressure for the North Korean government to join the optional protocol to the ICCPR so that the individual communication system can be put into use.

5. Enforced or Involuntary Disappearances

a. South Korean Prisoners of War (POWs)

After the end of the Korean War in 1953, more than 50,000 South Korean prisoners of war (POWs) never made it home, forced to stay in North Korea. According to analysis by the American intelligence at the time, there were at least 29 POW camps in North Korea and 18 in China. But the POW name sheet provided by the Communist forces listed only the POWs in 11 camps in North Korea, and the POWs in the 18 other camps in North Korea and the camps in China were not included.

During the Vietnam War, in the span of 8 years and 6 months

(September 1964 to March 1973), 325,517 Korean officers and enlisted men took part in 577,487 sorties. However, an official announcement by the ROK government (July 27, 2000) counted 5,066 dead and 6 missing, but not a single POW. Yet there are cases of Lt. Bak Jeong-hwan, taken prisoner by Viet Cong guerrillas and imprisoned for almost two years in a Cambodian prison on his transfer to North Korea before being released and returned, and Private Yu Jong-cheol, taken prisoner during the battle of An Khe Pass and released 5 days after the withdrawal of Korean troops in Vietnam. These cases leads to speculation that many of the official 5,066 dead, especially the 4,650 classified as killed in action (KIAs), could have been transferred to North Korea after being captured by the Viet Cong or North Vietnamese army.

The official records of the US government such as CIA or State Department documents also strongly corroborate the existence of South Korean POWs in the early stage of the Vietnam War. According to these government papers, there were at least 18 South Korean POWs, and according to a US research report submitted in April 1968 (All POW-MIA ARPA Report), there were 20 of them.⁷⁾

b. Other Abductions

According to the second investigation conducted by the South Korean government in 1953, 84,532 South Korean civilians were abducted to the North during the Korean War. More recently, a list of 82,959 civilian abductees was published by an association of the remaining family members of such abductees. However, the North Korean authorities continue to deny the existence of any abductee,

7) Anita Lauva, *All POW-MIA ARPA Report*, "Memorandum RM5729-1 ARPA January 1969".

while successive South Korean governments have failed to pursue the issue with any real resolve.

Although the actual number is likely to be larger, the confirmed abducted number is 486 persons, since the armistice of the Korean War. Among these kidnapped detainees, some like Seong Gyeong-hui and Jeong Gyeong-suk, KAL stewardesses abducted in 1969, are used in propaganda broadcasting to the South and some others such as Hong Geon-pyo and Yi Myeong-u are used as instructors for teaching Southern manner of living and speaking to spies-to-be in the “Southernization education.” According to testimonies from a former North Korean agent An Myeong-jin, about 60 people taught him South Korean politics, economy, society and culture during his training in Kim Jong-il Political Military College. Choe Jeong-nam, a former North Korean agent, said while getting taught in Sunan *Chodaeso* (guesthouse) in Pyongyang, he received the same education that An got from Instructor Hong (Hong Geon-pyo) and Instructor Ma (alias Yi Myeong-u).

The UNCHR in its resolution called upon North Korea to “resolv[e] clearly and transparently and urgently, all the unresolved questions relating to the abduction of foreigners.” This clause was included in the resolution by the active involvement of the Japanese government with the aim of resolving the problem of kidnapped Japanese nationals in North Korea. Although there is no mentioning of kidnapping and detention of South Korean civilians and soldiers by North Korea, this problem can be approached in the category of forced, involuntary disappearance. Especially for the Vietnam War MIAs and postwar abducted, the “Working Group on Forced and Involuntary Disappearance” should allow people to lodge cases.

This matter is a classic example of something that needs to be resolved through multilateral human rights discussions. It could cause

myriad controversies, but like the Helsinki Process, a lot can be done if free personal contacts are secured.

IV. Concluding Propositions: Multi-Dimensional Approach for South Korea

According to Article 3 of the Republic of Korea's Constitution, North Korean citizens are its citizens as well. During the Cold War, the South Korean government could do very little to address the human rights issue in North Korea so there were great discrepancies between the law and reality. Of course, this situation has not been completely resolved. However, South Korean lawmakers and government officials are not taking the means that are now available to them and are derelict in their duties most likely because they have been desensitized to the reality of the situation. Article 3 of the Constitution is clear justification to deal with the North Korean human rights violations and issue of defectors as a means to protect the citizens of the ROK in the international society.

Everyone feels that North Korea's human rights must improve, but it is difficult to solve the problem due to North Korea's weak society and hostile relations between the two Koreas. Most importantly, by avoiding sensitive issues in order to improve relations with the North and hold official negotiating meetings, the South Korean government is ultimately covering up the truth and overlooking the importance of the matter. I recognize that there are limits to what the South Korean government can do to deal with the issue and would like to stress the importance of efforts of domestic and international organizations.

It is absolutely necessary to form an international consensus in order to effectively pressure North Korea and reduce the dependency on North South relations. In this sense, the North Korean Human Rights Resolution passed by the UNCHR on April 16, 2003 is a significant advancement. Efforts by the UNCHR to evaluate human rights conditions in North Korea must take precedence.

In addition, the North Korean government should be made aware that South Korea is monitoring North Korea's human rights and collecting information. It is crucial that the North be made aware that the root of human rights problems in North Korea lies in their lack of understanding about human rights.

A variety of programs are needed to educate the Korean society about the North Korean human rights issues. The mass media should deal with the issue regularly and memoirs and publications of defectors must be encouraged and financed. Progressive media agencies and scholars need to take a proactive role in this issue. The biggest reason that Western Europe's leftwing scholars and activists criticized Eastern Europe and Soviet Union was abuse of human rights.

The hardest yet most important challenge is to plant the concept of human rights into the minds of North Korean leaders and citizens. In order to accomplish this task, international cooperations are crucial and UNESCO's peace education programs and humanitarian relief efforts by international NGOs should be utilized.

In this light, rather than the South Korean government avoiding the issue in fear of a backlash from the North, the ROK leaders should patiently take a firm stance to lead the DPRK leaders to positive changes. In addition, whenever a deal is

reached between the two governments, the South Korean government should form some negotiating chips to raise respect and awareness of human rights.

The North Korean Nuclear Issues and the Human Rights Issues

Ko, Yu-Hwan

Dongguk University

1. The U.S. listed North Korea as a ‘rogue state’

The U.S. included North Korea on their list of ‘rogue states’ out of concern that North Korea could export weapons of mass destruction to terrorist groups or other so-called rogue states. In the early days of the Bush administration, the U.S. pressured North Korea to make a choice: war or diplomacy.

President Bush’s negativity towards North Korea, loathing and skeptical of Kim Jong-il, can be largely attributed to a black and white way of thinking as well as Christian fundamentalism.

North Korea appears to now realize that the current situation is far more serious than the 1993-1994 nuclear crisis because of the hawkish attitudes and actions of the U.S. against terrorist groups and countries that possess or participate in the spread of weapons

of mass destruction and also due to near depletion of resources inside North Korea.

As such, North Korea has no other option but to accommodate the requests and policies of the U.S. government. Essential to its long-term survival is for North Korea to completely abandon its nuclear program, to become a genuine member of the international community and to work at rebuilding its devastated economy.

At the root of the ongoing conflict between North Korea and the U.S. are North Korea's adherence to the stipulations of the Geneva Convention and a general thawing of the antagonistic relationship of the two countries.

The Bush administration insists that North Korea cannot maintain normal relations with the U.S., Japan, and South Korea because it is a rogue country that develops weapons of mass destruction including missiles and nuclear weapons. In response, North Korea maintains that it would back down and provide security assurances provided that the U.S. first abandon its hawkish stance towards North Korea through the signing of a non-aggression pact.

2. Resolving concerns about North Korea's nuclear weapons: dialogue or pressure, or both?

There have been two primary approaches to handling the North Korean nuclear issue: the US-led approach combining dialogue and pressure, and the attempt at peaceful resolution purely

through continued dialogue led by South Korea and China. Regarding the nuclear issue, South Korea, the U.S. and Japan all agreed to hold a series of summit meetings and form what is called the Trilateral Coordination and Oversight Group (TCOG) in hopes of solving the issue using the dialogue and pressure approach. Even though the U.S., Japan and South Korea have agreed, in principle, to seek a diplomatic solution to the North Korean nuclear issue, they also agreed to pressure North Korea through a series of “further steps” or “tougher measures” should that country step over the “red line,” which means, in other words, if North Korea continues to reprocess waste fuel rods and test long range missiles.

In the face of the escalating nuclear crisis, the U.S. and its allies chose to prevent North Korea from building weapons of mass destruction by applying pressure in the form of confinement and sanctions. Together with its allies, the U.S. has already taken actions to stop North Korea from earning money illegally through the export of weapons and illicit drug smuggling.

Some signs point to the escalating crisis in North Korea: a leadership crisis resulting from repetitive failures in policy changes, including the planned drive to improve the economy which began in the latter part of last year; general depletion of North Korea’s resources; intensification of the economic crisis due to increased monitoring by the international community, and; an increase in what could be called socially deviant behavior. If the international community steps up its confinement efforts and enforces tougher sanctions against North Korea, given the clearly deteriorating economic conditions, North Korea is undoubtedly heading towards a collapse of its regime. If North Korea fails to come up with

a way in which to solve the nuclear problem soon, it may, in the worst-case scenario, suffer a severe implosion.

Even though South Korea, the U.S., and Japan all agreed to use a mix of pressure and dialogue on a case-by-case basis through a series of summit meetings, South Korea is emphasizing the importance of dialogue while the U.S. and Japan are raising the level of pressure put on North Korea.

In the China-South Korea summit meeting held in July 2003, the two countries reached a consensus on the need to maintain peace and stability on the Korean peninsula as well as keeping it nuclear free. During the meeting, South Korea emphasized that the North Korean nuclear program should be completely dismantled in a verifiable and irreversible way while China stressed the need for the international community to assure North Korea of its security.

At the 11th Inter-Korean Ministerial talks, the two sides announced that they would work towards solving the nuclear issue peacefully through dialogue as they agreed on the need for maintaining peace and stability on the peninsula. Both North and South Korea, in a joint press release, also expressed concerns over the unwanted and undue residual tension felt across the peninsula. The focus seemed to switch from pressure tactics to dialogue following the advances made at the China-South Korea summit meeting and the Inter-Korean Ministerial talks.

In the past, North Korea insisted that the nuclear issue was purely an agenda item for US-North Korean talks and that the South

should not be involved. The North seemed to have changed its attitude, however, faced with rising pressure from the international community including from the U.S. Kim Ryung-Sung, head of the Inter-Korean talks on the North Korean side, suddenly suggested that North Korea would consult its neighbor to the south regarding the nuclear issue and that it would open up the issue to become part of the multilateral talks.

In a way, the increased international pressure clearly helped the status and agenda of the inter-Korean talks. Recently, the exchange and cooperation between the two Koreas that had come to a halt is now making steady progress. For example, North Korea has begun creating laws regarding liberalization and the opening of its door to the outside world while four agreements of economic cooperation between the two Koreas were passed at the National Assembly.

North Korea is demonstrating its intentions to continue the inter-Korean dialogue as well as economic cooperation and exchange. It is also emphasizing ‘collaboration of the same people’ and ‘trust’ even as tempers continue to escalate surrounding the nuclear crisis.

3. Role of the South Korean government in solving the North Korean nuclear crisis

The current conflict between North Korea and the U.S. continues to drag on. If we accept the North Korean view that the nuclear issue is an outcome of the antagonistic relationship

between North Korea and the U.S., settlement of the nuclear conflict may serve as a starting point for the long process of repairing this antagonistic relationship. The point is that the North Korean nuclear issue is a structural problem and one that is too deeply rooted to be solved over night.

If North Korea ignores the Americans' request to abandon its nuclear ambitions, and if the U.S. ignores the North's request to abandon its hawkish stance and to guarantee the continuance of the regime, the long-standing conflict between the two countries is far from ending.

North Korea proclaimed that it was in possession of nuclear weapons during the trilateral meeting. This can be seen as indicative of its wish to end the negotiations as soon as possible by laying out its final card. However, it is very likely that the nuclear issue will extend over a prolonged period of time because the U.S. maintains that it will join the multilateral talks but will not participate in bilateral talks if North Korea asks for rewards in return for the resumption of talks. Moreover, the U.S. indicated that it would elevate the pressure against North Korea if North Korea would not consent to joining multilateral talks. One way in which to increase the pressure can be the suspension of supplying light water reactors.

The U.S. may be pursuing regime change by intensifying the pressure against North Korea, seeing no reason to reward North Korea as it is well aware of that country's domestic situation where an economic as well as leadership crisis appears to be shaking the entire country to the brink of collapse.

Against this backdrop, it is time for South Korea to decide whether it will continue to participate in the ‘international mainstream’ for an early resolution to the nuclear issue or if it will take an independent route and pursue a more reconciliatory and cooperative approach. The ‘participatory government’ has maintained a rather offensive approach towards North Korea. The current government openly denounced North Korea’s actions regarding the nuclear issue, indicating that it would review additional countermeasures, and declaring that it would slow down its efforts to mend inter-Korean relations until the issue can be settled. It also emphasized the need for transparency and public consensus on its policy relating to North Korea.

President Roh Moo-Hyun implied a change in the dialogue and pressure tactics by making it clear that inter-Korean exchange and cooperation will be flexible depending on the progress of resolving the nuclear issue during the summit meeting between South Korea and the U.S. Nevertheless, inter-Korean cooperation and exchange has not halted since the U.S.-South Korean summit talks. The implication of change in its approach towards North Korea during the summit meeting may be interpreted as bait used hoping to induce North Korea to voluntarily abandon its nuclear program.

Given that the North Korean nuclear issue has arisen in the beginning point of the long journey towards resolving the antagonism between North Korea and the U.S., it will be inevitable that the agenda items will be divided into two categories - the nuclear issue and other, non-nuclear issues - and handled separately.

Everything rests with North Korea. Will it continue courting its own collapse for the sake of its nuclear ambitions, or will it choose survival in return for abandoning altogether its nuclear program? Trilateral as well as multilateral meetings will soon be held in order to help North Korea make an early choice. North Korea should stop insisting on there being a bilateral meeting prior to the multilateral meeting and should consider perhaps conducting bilateral talks within the multilateral framework. It would seem the only way for North Korea to survive is for it to discontinue its nuclear program and to begin allowing for compromise with the West.

4. South Korea's efforts to improve human rights conditions in North Korea

The Roh Moo-Hyun administration is emphasizing strategic thought, quite a departure from the emphasis on principles and trust it declared at the time of its inauguration. After all, it is now placing priority on national gains and results rather than on reputation and public image.

It is in this context that South Korea did not participate in the vote for the adoption of the resolution regarding the human rights condition in North Korea. The South Korean government made a strategic decision that it should not prod North Korea because it is hoping for a peaceful resolution of the more immediate nuclear issue.

The South Korean government's absence from the vote

regarding the resolution on human rights conditions should not be interpreted as overlooking or in any way condoning the conditions present in North Korea. Rather, the South Korean government appears to place priority on resolving the nuclear issue, which has a direct impact on the survival of North Korea. Both a country's survival and human rights are important. Nevertheless, human rights can be truly protected only once a nation's survival has been guaranteed.

The most strategic decision for South Korea to induce a fundamental resolution of the North Korean human rights issue is to first solve the nuclear issue peacefully and then create an environment for opening up and liberalization of North Korea, which will, in turn, lead to economic development and democratization. This is the best way to settle the North Korean human rights issue.

During the cold war era, the two Koreas waged a nerve war to earn more votes concerning inter-Korean issues at UN meetings. As seen in the votes cast in the 59th session of the UNHCR, international backing for North Korea increasingly shrank. The international community became more aware of the human rights conditions in North Korea and called for an improvement.

There are plenty of things South Korea can do to improve the human rights conditions in North Korea. First of all, the government should pay more attention to the human rights situation in North Korea and find ways to ease the situation. The National Assembly of ROK adopted a resolution for human rights improvement in North Korea in July 1st this year and the Senate

of the US passed the North Korean Refugee Relief Act in July 9th this year.

It is time for the South Korean government to desert the old paradigm of ‘quiet diplomacy’. The South Korean government should take an active role in improving North Korean human rights conditions by representing the universal human rights as the supreme value that transcends ideological, political differences. At the same time, the South Korean government should pay attention to Externally Displaced North Koreans.

Economic assistance to North Korea including food donation should continue for the time being to save North Korean people suffering from starvation. In providing assistance, there should be a mechanism to monitor and ensure a fair distribution of donated materials as well as transparency.

5. Measures concerning Externally Displaced North Koreans

It is highly likely that increasing number of North Koreans would flee their country in search of food as international pressure on the North Korean regime escalates. More and more Externally Displaced North Koreans choose to seek asylum in South Korea. The reason for a recent increase in the number of Externally Displaced North Koreans coming to South Korea lies in the so-called planned defection. North Koreans who had defected their country in the late 1990s stayed in a third country enter into foreign facilities with the aid from NGOs. It is true that the South Korean

government maintained a lukewarm reaction to Externally Displaced North Koreans out of concerns over diplomatic conflicts with countries that are home to Externally Displaced North Koreans.

The North Korean defector issue should be addressed from a humanitarian perspective, rather from a political viewpoint. In this sense, the South Korean government should make efforts to fully accommodate all Externally Displaced North Koreans wanting to seek asylum in South Korea from a humanitarian perspective, rather than selectively accommodating North Koreans out of political calculations. As for those who were forcefully repatriated to North Korea, South Korea should work with international bodies including UNHCR to help them receive the refugee status and to build settlement camps in countries that currently serve home to Externally Displaced North Koreans.

According to the World Food Programme (WFP), North Korean people wander around in search of food as food assistance from the international community decrease significantly. Given the circumstance, the most urgent issue at hand is to provide food to starving North Koreans.

The North Korean regime should face the reality that the international community is weary of providing food assistance to North Korea because its government has not made any self-relief efforts. The North Korean regime should open up its door to the international community for real gains rather than pursuing a lost cause and leaving their people starve.

North Korean Human Rights and South Korean Policies

Lee, Keum-Soon

Korea Institute for National Unification

I. Issues Raised

The adoption of the Resolution on North Korea's Human Rights by the UN Commission on Human Rights has brought the issue of North Korea's human rights abuses to the forefront both domestically and abroad.

The general perception of human rights in North Korea by the international community is so bad as to initiate a resolution by the UN Commission on Human Rights. Despite such negative views, the closed off nature of North Korea prohibits verification of the actual state of human rights in the country and is the biggest obstacle to overcome. In such circumstances, it is essential to review the discussions of the international community and to formulate Korea's policy needs in relation to human rights in North Korea. This paper aims to analyze the interests of the international community in the issue of NK human rights and recommend what

policy options Korea will have to implement.

II. The General Perception of Human Rights in North Korea by the International Community

1. UN Commission on Human Rights' Resolution on North Korea

A. Background of resolution adoption

When the UN Commission on Human Rights passed the resolution condemning human rights abuses in North Korea and calling for an improvement, some in Korea held negative views such as, “Maybe these actions were taken because the US wanted to pressure North Korea or probably wanted some reasons for invading North Korea,” or “The problem of human rights abuses affects only one segment of the population. It should not hinder the bigger issue of working towards peace on the Korean peninsula.”¹⁾ These views illustrate the lack of understanding of the reasons behind the UN resolution. Therefore, the background and contents of the UN Commission on Human Rights' resolution on North Korea will be examined, the position of the international community in regards to this resolution will be analyzed, and Korea's policy challenges on North Korea's human rights issues will be reviewed.

North Korea had selectively participated in the International Human Rights Regime and bilateral and multilateral Human Rights Forums. For example, North Korea became a party to the

1) Jae Hong Kim, “Improving human rights in North Korea starts from ‘the right to eat,’” *The Hankyoreh*, 22 April 2003.

International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights in 1981 and joined the Convention on the Rights of the Child in 1990. In consideration of negative political fallout such as the suspension of humanitarian aid and isolation from the international community that could arise from not fulfilling duties such as submitting national reports, the North Korean government submitted the second Civil and Political Rights report after a delay of 16 years in March of 2000, the second report on Economic, Social, and Cultural Rights report after a delay of over 10 years in May of 2002, and the second Rights of the Child report in May of 2002.

North Korea submitted to the UN law and system focused reports which emphasized the excellence of North Korea's socialist system in preserving human rights. In addition, the reports justified restricting human rights as a means of maintaining "national security" and "public order" in times of national division. As North Korea was in dire need of international assistance, the North Korean government acknowledged in the reports that rights may have been compromised due to economic difficulties and stressed that humanitarian aid from the international community greatly improves the preservation of human rights. In essence, the government attributed deteriorating rights to natural disasters rather than the inefficiency or seclusion of the regime, omitted specific descriptions of the situation in the country, and distorted facts in the reports. The international community grew increasingly skeptical of the duplicity of North Korea's attitude and became concerned that there was no way to truly verify any of the information provided in the reports.

At the 59th session of the UN Commission on Human Rights

(03.17-04.25), EU countries such as France, Germany, Portugal, and the rotating host country Greece denounced the human rights violations in North Korea, strongly urged the commission to focus attention on this issue and deal with it effectively, and ultimately led to the adoption of the resolution requiring North Korea to improve human rights. Of the 15 EU member countries, Ireland and France, which refused relations with North Korea, led the move to adopt the resolution.²⁾ Observation reports of human rights atrocities in North Korea and various reports of human rights conditions in the country further solidified EU countries' negative image of North Korea.

EU NGOs, stationed in North Korea to provide humanitarian assistance after the floods of 1995, requested that the North Korean government abide by the most basic of humanitarian principles (grant access for assessment of need and distribution) but when the government failed to do so, some of the NGOs (MSF, MDM, OXFAM, ACF, etc) withdrawn their field officers from North Korea despite the humanitarian need so clearly evident in the country. The opinions of these NGOs greatly influenced the decision to adopt the resolution calling for an improvement in human rights in North Korea and a movement was initiated to overcome obstacles blocking humanitarian assistance in closed-off North Korea. International human rights NGOs played a critical role in pursuing the resolution as well.

2. View of Human Rights in North Korea

A. European Union

The EU began including human rights clauses in bilateral

2) *Yonhap News*, 26 March 2003.

trade or cooperation agreements with third world countries since May of 1995. Therefore, human rights issues became a major point of contention in relationship dialogues between EU member countries and North Korea.³⁾ After the summit talks of the two Koreas, the South Korean government hosted the third ASEM in Seoul and strongly supported the development of relations with North Korea thus fueling discussions about exchange between North Korea and EU countries. England and Germany tried to accelerate initiation of exchange with North Korea while France criticized the two countries arguing for a “cooperative policy.” Differences in opinion such as these existed but the EU adopted the EU Lines of Action toward North Korea in November 20, 2000 and agreed that the EU and the member countries will take into consideration certain terms when improving relations with North Korea.

B. The US

The US government evaluated human rights offenses in different countries through the State Department’s human rights reports and USCIRF (US Commission on International Religious Freedom)⁴⁾ international religious freedom reports. The reports were very influential in the execution of US diplomatic policies. It is the view of the US that the condition of a country’s human

3) Mann Ho Huh, “Analysis of adoption process and implications of 2003 UN resolution on North Korean Human Rights,” 22nd Academic Discussion of Lives and Human Rights of Fellow North Koreans, Citizens Alliance for North Korean Human Rights, 26 May 2003.

4) The USCIRF is an independent US government organization established according to the law on international religious freedom enacted in 1998. The USCIRF has released an annual report through the State Department since 2000.

rights reflects upon the country's system.

The Assistant Secretary in charge of democracy, human rights, and labor at the State Department, which issues the Human Rights Report, criticized North Korea saying, "North Korea is one of the most oppressive regimes and is the largest prison. It is difficult to predict how to improve such a situation." The report went on to stress the importance of cooperation between Korea, Japan, and China. US President Bush had once remarked that he would be able to take action to improve the lives of North Koreans if the country abandoned its nuclear development program. As the Bush administration is believed to regard human rights abuses in North Korea as a direct result of Kim Jong Il's rule, approaching the people of North Korea separately from Kim's regime is seen as a move to put pressure on the regime.

The US Congress attempted to increase public support for North Korean human rights policies and formulate legislative measures through a congressional hearing. The US House of Representatives International Relations Committee East Asian Pacific Subcommittee (Chairman Jim Leach) held a hearing on May 2, 2002 titled "North Korea: Human Rights and a Humanitarian Challenge." At the hearing, there was a call to link food aid to North Korea with human rights issues.

The US is taking on a more aggressive stance on human rights abuses in North Korea through issues such as political prisoner camps and Externally Displaced North Koreans. Four members of the Senate Republican Policy Commission, including Chairman Jon Kyl, submitted a bill to the Foreign Relations Committee last January that would in effect cease assistance for Kim Jong Il's regime, provide assistance to Externally Displaced North Koreans, and allow them to seek refuge in the states. This bill aims to grant

defectors refugee status by classifying North Koreans as separate from South Koreans.

The Defense and Foreign Policy Forum (DFF), North Korean Defector Human Rights Protection Association, and the US Committee for Human Rights in North Korea are private US organizations working for the improvement of human rights conditions in North Korea.

At a North Korea Human Rights Conference, it was confirmed that systematic and broad human rights abuses were occurring due to Kim Jong Il's regime and the situation of human rights atrocities in North Korea was compared to Nazi or Soviet Union situations to stress the severity and urgency of the problem. However, two hard-line opinions were divided on how to improve the situation. One stream of thought was that talks will continue with the current regime if fundamental changes are seen and the other opinion was that the nature of this regime necessitates a totally new regime in order to see changes in North Korea. In terms of measures to resolve the issue of Externally Displaced North Koreans, the debates centered on providing defectors with refugee status through the UN High Commissioner for Refugees and constructing refugee camps in third world countries such as China. In addition, a bill that would increase broadcasting time for "Radio Free Asia, Voice of America" from the current 3 hours to 24 hours is currently being drafted. The radio transmission would help bring outside news to North Korean society.

There are some who feel the US is attempting to pressure the North Korean regime by attracting North Koreans to defect as cruel Chinese and North Korean policies dealing with defectors are highlighted. The US is seeking means of pressuring the North Korean regime through more active discussions on human rights

abuses in North Korea and it is expected that the US will pursue this issue separately from a security issue. One sector of the US feel a picture of a political prisoner camp is more effective at conveying the true nature of the North Korean regime to the international community than a picture of a North Korean nuclear facility.

C. China

As was stated in the keynote speech delivered at the adoption of the UN Commission's resolution on North Korean human rights, China is greatly burdened by the fact that the international community is putting pressure on North Korea due to human rights issues. China is concerned that the issue of Externally Displaced North Koreans will be connected with the current controversy and thus be criticized as well. So far, China has remained silent and allowed defectors to enter Korea by deporting defectors to a third party country so that the issue would not become a diplomatic problem. In addition, China has avoided punishing defectors while forcibly returning them to North Korea in order to avoid controversy. However, China has ignored calls by the international community to stop forced repatriation of defectors stating that they are "economic immigrants." Such actions by the Chinese government has succeeded in minimizing social problems related Externally Displaced North Koreans within the country and prevented a flow of defections into China.

D. Japan

Since the admission of kidnapping of Japanese people by the North Korean government, Japan has taken a hard-line stance against North Korea criticizing the country for human rights abuses

and political prison camps. Essays or testimonials by defectors further increase negative attitudes toward North Korea in Japanese society. In addition, the Japanese government is allowing asylum for former Korean residents in Japan and their Japanese wives who had gone to North Korea in the 1950s and 1960s but are now seeking asylum by escaping through China or a third country.

Japan is taking very limited protective measures for Externally Displaced North Koreans and is deferring protective measures that could induce a mass migration of defectors to Japan. However, Japan is currently cooperating closely with the US on issues such as nuclear missiles, smuggling of drugs, and counterfeiting of currency, and it is very likely that Japan will cooperate with the US in the human rights issues as well.

III. Policy Recommendations for the Korean government

1. Establish an objective and systematic information system on North Korea

The adoption of the UN resolution on North Korea illustrates that the issue of human rights abuses in North Korea is now an international issue. The non-participation of the South Korean government in the voting of the resolution due to efforts to increase exchange and cooperation between the two Koreas, shows clearly that we do not have a clear understanding of the human rights issue in North Korea. The lack of understanding could be due to insufficient efforts to establish an objective and systematic information system on North Korean human rights situations.

In order to establish proper policy measures, there needs to be an accumulation and analysis of information about each issue. Currently, North Korea Human Rights and Environment Team at the Ministry of Unification is in charge of human rights issues but there is insufficient cooperation between government organizations. This is because the government felt that dealing with human rights issues while the government was pursuing a sunshine policy could negatively affect inter-Korean relations. However, while the issue of North Korean human rights violations is of great interest in the international community, it would better serve the Korean government to take a proactive role and establish a systematic and objective information system on the current conditions of human rights in North Korea rather than taking the passive role it maintained in the past. In order to establish such a system and expand objective information sources, the government should increase cooperation with relevant NGOs.

2. Establish a Cooperation System with the International Community

In order to improve human rights in North Korea, cooperation with the international community is crucial. In addition to sharing information in order to better understand the situation of human rights in North Korea, it is necessary to work together and assign roles to persuade the North regime to improve human rights in the country. In campaigns to improve human rights in North Korea, western countries tend to focus on civil and political rights. However, considering that the regime is submitting human rights reports according to the Covenants on Economic, Social, and Cultural Rights and the Convention on the Rights of the Child, it would be more effective and beneficial to persuade the

international community to consider these aspects as well in dealing with the human rights issue. It is crucial to note that Covenants on Economic, Social, and Cultural rights are closely related with the Covenants on Civil and Political Rights such as transparency in distribution and benefiting those who are mostly at risk. As such, by requiring improvements to quality of life through humanitarian aid efforts and civil and political covenants, improvements based on economic, social, and cultural covenants can be induced as well without agitating a regime fearful of the current power system collapsing. Considering North Korea's resistance to issues raised by the US, it is also recommended that the EU leads strategies to persuade the regime to abide by civil and political covenants through requests to allow access to aid efforts and ensure transparency.

3. Promote Communication with North Korea on Issues of Human Rights

The South Korean government should seriously consider explaining human rights issues being raised in the international community such as the US and EU to the North Korean regime in bilateral talks behind closed doors. In addition, the Korean government needs to present a more systematized solution in humanitarian issues such as separated families and kidnapped people in meetings such as the North South Red Cross Conferences. The meetings of separated families should go beyond a one-time event and develop into a system in which families able to locate lost family members can freely communicate and meet on a regular basis. Such developments will show the international community that the governments of the two Koreas are making efforts to improve human rights.

In order to find a realistic solution to the issue of Externally Displaced North Koreans, it is crucial to convince the North Korean regime to stop the forced repatriation of defectors and abstain from punishing defectors who choose to voluntarily return to the North. In addition the Korean government must make it clear to the North that although we have no intentions of using the defector issue politically, we cannot just sit by and watch human rights abuses of defectors.

In order to find measures to improve inter-Korean humanitarian issues and human rights issues of North Koreans, both Koreas will have to pursue various forms of human rights meetings. The existing communication channel between the governments and exchange between private groups will have to be utilized in order to raise awareness and understanding in the North of the human rights discussions in the international community.

4. Expansion of Humanitarian Aid to North Korea through Strengthened Humanitarian Principles

As humanitarian aid toward North Korea is becoming drawn out, the international community is exhibiting “aid fatigue.” Different from other disaster areas, the North Korean government is maintaining social controls over the region and limits imposed by the government are preventing proper monitoring and access so that international humanitarian principles are not being adhered to despite significant progress in the region. As countries are not able to conduct the most basic needs assessment for humanitarian aid, it is difficult to ask for continued material assistance. In addition, the recent nuclear issue showed that there was a serious problem in transparency and efficiency of distribution of relief

materials.

The Korean government and private groups have chosen to induce change from the North Korean government through continued cooperative projects rather than suspend or delay humanitarian aid due to problems in getting help to people who need it the most or lack of transparency in distribution of supplies. In addition, rather than calculating social needs through socio-economic statistical data or researching actual conditions, the Korean government feels it is more realistic to gauge needs based on demands from the government and regional administrations. Therefore, we are only able to gain a partial assessment of projects rather than a systematized evaluation of actual results of total aid.

International organizations that participated in relief efforts for North Korea and domestic and international NGOs need to join together to systematically evaluate the relief efforts conducted so far. Based on their collected data, a long-term goal and direction for North Korean aid and solutions to problems in executing projects should be formulated together and shared. For the human rights of North Korean citizens to improve through humanitarian aid, the North Korean government must abide by international humanitarian principles and provide conditions favorable to the expansion of humanitarian efforts into large scale projects.

5. Provide Practical Protective Measures for North Korean Escapees

After 1990, many North Koreans fled due to severe economic difficulties in North Korea. As time passed, the escapes raised many complicated issues. Only a minority of escapees was able to enter Korea through China or other third party countries. The protection and support for escapees to relocate in South Korea is seen as

not only a humanitarian effort but also an important means of fostering an environment and foundation for reunification.

The North Korean escapee issue has developed due to social changes within North Korea and changes in the country of residence such as China. Governments of North Korea and China have pursued forced repatriation due to issues such as prostitution, contact with religious affiliations, and attempts to enter South Korea. Severe human rights abuses are occurring during this process. As the numbers of escapees increased, the severity of punishment decreased. However, the labor training camps are a form of punishment many escapees find hard to bear, especially those who had spent a substantial period of time residing in China. Despite policies to reduce the severity of punishments, harsh punishments continue to be levied according to individuals such as being sent to political prison camps.

The involvement of domestic and international human rights groups and specialized brokers in the entry of defectors to Korea has raised other issues as well. The increase in the entry of defectors through unofficial channels has resulted in new policy challenges of dealing with the entry of young women. These women often experienced trafficking or were forced to live with someone, and require treatment and counseling after entry into Korea. Their emotional scars are obstacles in their adaptation to the Korean society.

China applies international conventions only to defectors who forcibly gain entry into a foreign diplomatic mission and gain international recognition, and allows them to be deported to a third party country while arresting and repatriating to North Korea the majority of escapees residing in China. Therefore, the international community needs to be vigilant and exhibit continued interest in the human rights abuses of North Korean escapees and work

towards ending forced repatriation. In addition, we need to establish systematic supports to provide a policy to resolve the North Korean escapees issue.

First of all, an accurate assessment of the size and conditions of escapees residing in places like China need to be made before an effective measure can be formulated. We need data to be collected on information such as the population size of escapees, the geographical distribution, social background variables (such as gender, age, occupation, and family members), duration of stay in China, motive for defecting, and future destination (return to North Korea, remain in China, head to Korea).

Secondly, as the fundamental cause of planned defections is the poor living conditions of escapees residing in third party countries, measures to safeguard secure living standards for escapees are needed. If this problem can be addressed and resolved, planned defections can be controlled. This is an appealing reason for countries like China to improve living conditions for escapees. Escapees need to receive protection as an illegal immigrant through the International Organization for Migration. Related governments should issue temporary residence cards for a limited time to illegal foreigners residing in their countries in order to provide a minimum human rights protection. Mutually applying this system can be one solution. As China views North Korean escapees as illegal residents and thus making it difficult for China to officially recognize their presence in the country, Korean firms can link investment in China with guaranteeing employment for a limited period of time for escapees or the Chinese government can be persuaded to apply current illegal foreign worker policies to North Korean escapees.

Thirdly, illegal border crossings are a drawn out process and children are often born to long time escapees. A system needs

to be in place so that these children can be recognized legally and receive protection. Although they are not legal residents, women who have maintained marital relations and children born under such relationships need some sort of protective measures.

Fourth, for people who temporarily fled due to economic reasons, we need to come up with measures to induce voluntary, secure return. As the safe return of escapees depends largely on the attitude of the North Korean regime, we need to persuade the government to allow defectors safe returns to their homeland without fear of punishment as a humanitarian act. In addition, in order to discourage people from crossing national borders and help them live a secure life within North Korea, neighboring countries need to persuade the North Korean authorities to resolve humanitarian crises and provide humanitarian assistance to the North in order to help those in need.

Fifth, to resolve the conflicts between NGOs and governments in relation to the escapees issue, related government authorities need to open channels of communication to discuss the issue of illegal border crossings and form a collaborative relationship with NGOs leading planned defections. The NGOs are criticizing governments' passive policies and governments are criticizing NGOs' irresponsible actions. Governments and NGOs are limited in their abilities to resolve the issue of escapees but if they join their forces and capabilities, measures to complement each others weaknesses can be sought so that an effective plan to help escapees can be ultimately reached. Governments facing the growing problem of Externally Displaced North Koreans and NGOs need to establish an forum of exchange in order to devise realistic protective measures that takes into consideration humanitarian principles and each country's political factors.



Food Crisis in North Korea and Human Rights of the Externally Displaced North Koreans

October 17, 2003

Human rights and humanitarian assistance in North Korea

Kim, Hyung-Seok

Secretary-General, Korean Foundation for World Aid

Protecting the human rights of the Externally Displaced
North Koreans

Kim, In-Hoe

Attorney, MinByun- Lawyers for a Democratic Society

North Korea's human rights and the international community

Oh, Wan-Ho

Secretary-General, Human Rights Korea

Human rights and humanitarian assistance in North Korea

Kim, Hyung-Seok

Korean Foundation for World Aid

In light of its dismal record of human rights abuses, the international community has described North Korea as “a frozen territory of human rights,” “the dead angle from outside” and, more directly, as “one of four worst human rights violators in the world” (Choi Sung Chul, International Community and North Korean Human Rights). According to Amnesty International’s 2003 report, North Korea denied an independent human rights investigation team and still maintained widespread human rights abuses including torture in prisons, public executions, and religious repression. And while the food crisis continued, the country’s economic reforms may be negatively impacting the most vulnerable, marginalized citizens in North Korea.

Nevertheless, those who have visited North Korea for humanitarian purposes, including myself, rarely see or report seeing any human rights violations. Of course, this is not to deny that human rights problems exist in North Korea, rather it is to say

that the mobility of humanitarian workers helping within North Korea is seriously monitored and limited. It is, for this reason, perhaps more reasonable to look at the trends among South Korean non-governmental organizations (NGOs) related to humanitarian assistance and human rights than to become preoccupied with unverified information regarding human rights in North Korea.

On September 25, 2003, US religious and human rights organizations including the Hudson Institute and the Defense Forum Foundation founded what is called the North Korea Freedom Coalition and announced that they would try to pass the “Korean Peninsula Security and Freedom Act of 2003.” Senators Richard Lugar (Chair of the Senate Committee on Foreign Relations), Sam Brownback, and Edward Kennedy, along with House Representative Henry Hyde (Chair of the House Committee on International Relations) have presented the bill, which says that, unless there is significant improvement in the human rights situation in North Korea, economic assistance to that country will be cut.

Prior to this, on September 15, the Deputy Spokesperson to the US State Department, Adam Ereli, said that the US was concerned North Korea had not allowed the World Food Program (WFP) to freely monitor the distribution of food, indicating transparency in the way in which food was distributed would be one of the prerequisites for the United States’ North Korean food assistance policy. In fact, the US suspended government foreign aid and turned down approval for NGOs planning to send crops to North Korea while reducing the total amount of food assistance from 300,000 tons in 2001 to 155,000 tons in 2003, and again to 100,000 tons in 2004.

The bill was presented as a means of promoting human rights and democracy in North Korea but, in fact, it was to act as a step

toward the general collapse of the Kim Jong Il regime. Christopher Cox, Republican Policy Chair, in his September 23, 2003 interview with Chosun Ilbo, a prominent South Korean newspaper, said that we have learned from our past mistakes regarding the Sunshine Policy. "Once democracy is settled in North Korea, security issues are almost solved because Kim Jong Il will never be elected through a free election. Solving the nuclear problem is important," he said, "but our final goal should be democracy in North Korea."

Linking human rights and humanitarian assistance in North Korea may present even larger problems. First, the most serious human rights problem in North Korea is the right to food caused by a severe food shortage during the mid 1990s and there is no more essential a human rights issue than the right to life. According to the 2003 Amnesty International Annual Report, more than 13 million North Korean people still suffer from malnutrition with almost half of all North Korean children (45%) under the age of five suffering from chronic malnutrition, while in 2002 almost 4 million school-aged children were seriously lacked proper nutrition. Under these circumstances, the US attempt to block humanitarian food assistance for the sake of human rights and democracy is indeed threatening the right to life of North Korean people.

Second, it is grossly irresponsible to stop humanitarian assistance because of a lack of transparency in the system. According to a report from the Ministry of Unification, given the nature of the North Korean distribution system, there were positive indicators that food aid was in fact reaching those in need, although these perhaps did not meet international standards. According to a survey jointly conducted from September 23 to October 16, 1998 by UNICEF, the WFP, and the European Union, which looked at 1,762 North Korean children from six months to seven years of age, malnutrition in North

Korea was at a higher level than even Bangladesh and India, two places thought to have the highest rates in Asia. The United Nations Office for the Co-ordination of Humanitarian Affairs (UNOCHA) conducted similar research in February of 2003 and has reported that malnutrition has decreased largely due to continuing international humanitarian assistance. The statistics tell us that humanitarian food assistance should be continued at any cost regardless of political reasoning.

Yet another problem is presented in that the international community should raise human rights issues in North Korea, making calls for and agreeing to significant improvements. The Freedom bill, however, is an extreme approach that further aggravates the already existing political and militaristic tensions between North Korea and the US. The bill includes items such as: building a shelter for Externally Displaced North Koreans in Mongolia, an act which is likely to create diplomatic problems between China and North Korea; expanding CIA intelligence activities on North Korean human rights situations; transmitting radio-broadcasts to North Korea; and imposing economic sanctions not only by the US but also by other governments, which can, ultimately, accelerate tensions on the Korean peninsula and interfere with possible peaceful solutions for the nuclear issue.

It is clear that efforts to improve human rights in North Korea should not come from external pressures but from North Korea's own economic reform and policies of cooperation with the international community. What we can and should now do is encourage and support North Korea as a member of the international community for the sake of those 23 million North Koreans' right to life and for the right to peace of some 70 million people on the Korean peninsula.

Protecting the human rights of the Externally Displaced North Koreans

Kim, In-Hoe

MinByun— Lawyers for a Democratic Society

1. Fact-finding mission

In order to fully understand the decisions and actions of North Koreans who have left their homes, and to find the most appropriate approach to coming up with solutions, one needs to see what is really going on inside North Korea. There are some points that first need to be addressed.

First, we need to arrive at an agreed upon, hopefully precise, number of Externally Displaced North Koreans in China. A South Korean aid agency, Good Friends, estimates this number to be approximately 300,000; the UN High Commissioner for Human Rights (UNHCR) puts the number around 100,000; the Chinese government (unofficially) estimates there to be 10,000; and the South Korean government believes the number of defectors is

somewhere between 10,000 and 20,000. One reason for such huge discrepancy in the estimates is that different organizations used different means to include (or exclude) those who left their homes temporarily in order to get food or money in China and then later returned.

Second, there should be a distinction between defectors wanting to go back to North Korea and those who do not. Some reports indicate that the majority of North Koreans in China wish to return to North Korea. There should be a policy aimed at those who return whether or not they are to face persecution.

Third, it is difficult to accurately measure the number or even the exact nature of human rights violations in North Korea. It is known that two categories of human rights abuses face Externally Displaced North Koreans in China: one committed by the North Korean government and the other by the Chinese authority. Most human rights abuses by the North Korean authority are not yet verified, but if those repatriated to North Korea do face serious threat of a violation to their human rights, then they should not be returned. If they still wish to go home, they should not be punished or, at least, the punishment should be minimal. Human rights violations committed by China need to be properly addressed through diplomatic negotiations. Considering that the majority of defectors wish to return to their homeland, we should put priority on non-repatriation and create the necessary measures to protect the rights of North Koreans in China.

2. Reviewing past approaches to handling Externally Displaced North Koreans

a. Human rights in North Korea prior to the recent issue of defectors

Before human rights issues of North Koreans in China started to surface, the main human rights issue relating to North Korea was the treatment of political prisoners and abducted South Korean fishermen. Other civil liberty rights were criticized but they were not unique to North Korea and came as a result of the country's socialist system. Political prisoners and abducted fishermen were and are, however, rather unique cases. These issues were raised largely by those clearly intent on working toward the collapse of the North Korean regime and were not supported by clear evidence in the absence of a basic fact-finding mission.

b. Defectors as a new human rights issue

Issues with the treatment and status of Externally Displaced North Koreans are based on universal human rights and are quite different from the cases of political prisoners and abducted fishermen. For this reason the international community felt far more justified in bringing them to the table for serious discussion.

The defectors issue is relatively less political because it is mainly about economic rights, which are not directly related to the regime itself. Although some economic issues inside North Korea are connected with the socialist government and its policies, the economic crisis that North Korea now faces cannot directly be attributed to the government since other (non-socialist) countries also suffer from the widespread phenomenon of famine and

malnutrition and since some socialist countries have recorded impressively fast economic growth. Therefore, there are many other ways to raise the issue of Externally Displaced North Koreans without touching upon the sensitive issue of the nation's political system.

Researchers in the field can, to some extent, examine the severity of the defectors issue by looking at the number of North Koreans leaving their homes, whereas it is near impossible to shed light on possible human rights abuses inside North Korea.

Furthermore, defectors issues are different from cases in the past, as these issues with defectors have come about during the inter-Korean reconciliation policy period, in particular, the Sunshine Policy or peace and prosperity policy of the South Korean government. Public opinion in South Korea recognizes the North Korean government after the introduction of the Sunshine Policy. The issues with Externally Displaced North Koreans are, therefore, not necessarily concerned with the regime or political structure, but about genuine, universal human rights.

3. Policy suggestions for Externally Displaced North Koreans abroad

a. Related Countries

(1) North Korea

(a) Policy for returnees

There is no clear evidence that Pyongyang coordinates special police activities along the China-North Korea border in order to control and repatriate defectors as they attempt to return home.

Quite to the contrary, perhaps, it has paid rather little attention to them, which might in effect result in even worse breaches in human rights it fails to protect its own citizens from local Chinese.

(b) Punishment for returnees

Many scholars have reported that North Korea placed its People's Army around the border, in addition to its Social Security Guards, since 1993. Once North Koreans returned to across the border, as these reports claim, they were treated as "political prisoners" or "traitors" and were in some cases publicly executed. However, after the 1998 economic crisis, North Korea appears to have eased its punishment of those who left temporarily for economic reasons, according to Article 47 of its Criminal Law. Article 47, of Chapter 3 "Anti-state Acts," and Paragraph 1 on "State Sovereignty," state that acts of treason are subject to more than seven years labor reeducation and, if the activities are especially serious or damaging, those convicted are subject to the death penalty or property forfeiture. On the other hand, Article 117 of the Criminal Law states that those who crossed the border without government permission would be subject to more than three years of labor reeducation.

These provisions are similar to some found within the South Korean legal system. South Korean provisions also outline appropriate punishment for acts of espionage (Article 98 of the Criminal Law), supporting or performing acts which benefit the enemy (Articles 93, 97, and 99 of the Criminal Law), smuggling goods to the enemy territory (Article 6 of the National Security Law), and also leaving the country without government permission (Articles 3.1 and 94.1 of the Immigration Control Act). Returnees to both countries, we see, are treated differently according to their

actions, who they met or corresponded with, and other particulars surrounding their actions.

(2) China

China's official stance states that Externally Displaced North Koreans are "illegal migrants." China is a member of the "Convention relating to the Status of Refugees (the Refugee Convention)" and the "Protocol relating to the Status of Refugees (the Refugee Protocol)" but it doesn't consider North Koreans in China to be political refugees. China thinks this is a matter that needs to be resolved between China and North Korea. In particular, China has dealt with North Koreans in China according to previous agreements between the two countries such as the Agreement on Returning Illegal Smugglers forged in the early 1960s, the Agreement on the Border Area Administration in 1986, and the Decree on Kilim Border Area Management in 1998 (unofficial titles, added by translator).

In fact, China's diplomatic relations with both South Korea and North Korea make it difficult for China to either publicly protect or repatriate North Koreans found in China. They want this to be solved away from the public eye in such a way that China sends Externally Displaced North Koreans to a third country and then South Korea brings them to Seoul. In some cases, as witnessed by NGO workers in China, they have provided Externally Displaced North Koreans with clothing and food and otherwise turned a blind eye to their presence in the absence of strong demands for their return by North Korea.

This double standard toward Externally Displaced North Koreans came from China's own traditional human rights and minority policies. First, it is hard for China to allow the ethnicity

of the Korean-Chinese minorities to grow around the border area. Second, China doesn't want to involve itself in any delicate diplomatic issue between North and South Korea. Moreover, China has continually contended that the international community has no place intervening in internal affairs such as migration or refugees.

However, the number of North Koreans in China is estimated to be well into the tens of thousands and now represents one of the world's most serious human rights issues. China has been openly criticized for understating the gravity of human rights violations against Externally Displaced North Koreans and, in doing so, worsening an already bad situation that requires careful reconsideration.

(3) Russia

Although the number of Externally Displaced North Koreans in Russia is not high, it too can represent a serious international human rights issue. According to the Agreement on the Legal Cooperation on Civil and Criminal Cases between the Union of Soviet Socialist Republics and the Democratic People's Republic of Korea in 1957 (unofficial title, added by translator), North Korean workers who were sent to logging operations but left their work places should be repatriated to North Korea. Since the early 1990s, Russia has announced more tolerant policies toward North Koreans, stating that it would not allow North Koreans to stay in Russia but instead allow them to seek refuge in third-party countries.

The Russian government has cooperated with the UNHCR since late 1994 by unofficially but at least recognizing North Koreans as refugees once the UNHCR began seeing them as refugees. This can be seen as a step in the right direction, indeed

a step ahead of China, but still lacks affirmative and fundamental measures for the protection of Externally Displaced North Koreans.

(4) UNHCR

The UNHCR approved of granting North Korean woodcutters in Russia the status of refugees, affected by Amnesty International's report on North Koreans in Russia on September 9, 1996. The change in status, however, remains too passive in dealing with North Koreans in China. Nonetheless, the UNHCR investigated 150 North Koreans who had been forced to go back to North Korea near the Kilim area at the end of 1998 and announced that there might have been a few Externally Displaced North Koreans in China. This still does not provide direct assistance to the majority of North Koreans living in China.

b. South Korean NGOs

Among some of the most active groups interested in resolving the North Korean defector issues are a number of NGOs in South Korea including Citizens' Alliance for North Korean Human Rights, Good Friends, the Commission to Help Externally Displaced North Koreans, the Christian Council of Korea, the Life-line Movement, and the Committee on National Liberal Democracy.

Most of these groups have religious affiliations or are directly related to religious organizations. They not only provide North Koreans in China with food and shelter but also help them acquire refugee status despite their limited financial and operational support in China. Unfortunately, the ideas of these religious groups often conflict with those of both North Korea and China.

(1) The Government of South Korea

The South Korean government asserted that the definition of refugees should be broadened so that Externally Displaced North Koreans would not be repatriated to North Korea against their will on humanitarian grounds. In practice, South Korea receives via a third-party country those North Koreans who wish to come to South Korea according to the Guide for Handling Externally Displaced North Koreans or Refugees in a Foreign Legation (unofficial title, added by translator) and the Protection of Defecting North Korean Residents and Settlement Support Act (the Settlement Act). However, the government has been criticized for having inconsistent policies that create conflict and do not extend protection to North Koreans in third countries.

c. Laws and policies to protect Externally Displaced North Koreans

(1) Right to diplomatic protection

Perhaps the simplest way in which to protect North Koreans in China is for South Korea to insist that those Externally Displaced North Koreans are citizens of South Korea and, in this way, extend to them a degree of diplomatic protection. According to South Korea's Constitution as well as several case laws of its Supreme Court, North Koreans are also classified as citizens of South Korea. However, this approach is not persuasive to the international community including China.

(a) Legal status of North Koreans within the South Korean legal system

Supreme Court decisions and other domestic legislation are both important factors in determining the legal status of North Koreans in South Korea. According to the Supreme Court's decision in the Lee Young Soon case on November 12, 1996, any citizen living in the territory of North Korea can be a citizen of South Korea as well. Since North Korean nationality will not be recognized in South Korea, there will not be a problem of dual citizenship.

North Korea's conditions for being a citizen are stated in Article 62 of the Constitution of the Democratic People's Republic of Korea, but the Supreme Court of South Korea does not recognize the laws or legal system of North Korea. This stems from the territorial phrase of the South Korean Constitution, which states that the territorial boundary of the Republic of Korea is the whole of the Korean peninsula. Although the Supreme Court decision ruled that Mrs. Lee would not have to leave and would be protected, it presented a great deal of theoretical and practical problems.

In addition, the Settlement Act includes that North Koreans who defect and settle in South Korea are not required to take a South Korean nationality but only to register their family in the census. That which is laid out by the Immigration Control Act, however, even further confuses the issue as it states that a North Korean is considered neither as a South Korean citizen nor as a foreigner.

(b) Problems with South Korea's nationality argument

Most observers see problems in the Supreme Court decision and the Settlement Act that say North Koreans are also citizens of South Korea. According to international law and practices, only

North Korea has the authority over North Korean citizens, not South Korea. This is why West Germany could not act over or on behalf of East Germans before the unification. In addition, a third-party country like China will only consider North Korea to have a “genuine link” with or responsibility for North Koreans in the territory of China. In short, the argument whereby South Korea assumes secondary responsibility for displaced or defected North Koreans in China is currently both impracticable and inadmissible in international law.

(c) Conflicts with the Agreement on Reconciliation,
Non-aggression, and Exchanges and Cooperation
Between North and South Korea (the Inter-Korean
Agreement)

The Supreme Court decision and the Settlement Act conflict with the Inter-Korean Agreement and other inter-Korean treaties. Article 1 of the Agreement states that each party should recognize and respect the other’s political system. Article 2 states that neither party should intervene in the internal affairs of the other, which essentially means to respect the other legal system and mechanisms as well.

It was argued that the territorial phrase of the South Korean Constitution, along with the fact that the Constitution is superior to the Inter-Korean Agreement, legitimized the Supreme Court’s decision. However, the South Korean Constitution includes not only the territorial phrase but also the peace phrase in the Preamble and Article 4, both of which many scholars agree are necessarily superior to the territorial phrase.

(d) Problems with nationality

It is not important to protect the human rights of Externally Displaced North Koreans in regards to their domestic status but rather their status in international law as their domestic status cannot be extended to the international arena and it is in foreign countries where defectors stay and are faced with human rights violations.

Although the Inter-Korean Agreement is not legally binding, each party has a political responsibility to abide by the Agreement. There is no doubt that South Koreans and North Koreans are from the same nation, but in terms of state sovereignty, North Koreans are the citizens of North Korea. South Korea, therefore, cannot realistically insist that North Koreans are also citizens of South Korea, to be cared for and protected, including diplomatic protection, under its laws. It should be only in cases where neither North Korea nor China has taken appropriate actions or shown serious interest in protecting the rights of Externally Displaced North Koreans where South Korea is justified in taking action, on behalf of North Korea, for the sake of humanitarianism and sisterhood.

When a North Korean denies diplomatic protection from North Korea and seeks entry into South Korea, the South Korean government should fully protect them with guaranteed safe travel to Seoul as well as South Korean nationality. This should be done either without the procedures normally involved in attaining nationality, as required for foreigners, or with minimal registration procedures. In Germany's case, West Germany did not act upon the right to diplomatic protection towards East Germans who had lived in third-party countries, recognizing them as citizens of West Germany only if requested and encouraging them to settle in society

without a special review process.

A better solution would be to allow North Koreans South Korean citizenship through a simple, voluntary registration rather than to insist ideologically that they are already citizens of South Korea. This would also serve to undoubtedly help future dialogue and cooperation between the two Koreas.

(2) Refugee status

Considering the status of Externally Displaced North Koreans, the biggest problem is that they are categorized as a whole as economic migrants, which prevents them from being recognized as refugees under the current Refugee Convention. The 1951 Refugee Convention legitimizes China's claim that the Externally Displaced North Koreans are not refugees.

With respect to this argument, some claim that the UNHCR should give them refugee status because of the obvious threat of political persecution or punishment upon their return to North Korea, regardless of whether they left in search of food, as they may also confront the same problem in not being permitted by the government and may also be accused of expressing their will against the government. Some also argue that a new concept of "environmental refugees" should apply, under the Refugee Convention, which would allow inclusion of the North Koreans. Yet another suggestion says that North Koreans should be treated as "mandate refugees," a term which the UNHCR has long been applying to those who don't easily fit the standard refugee definition.

These arguments, to some extent, run into some theoretical and practical difficulties. However, it goes without saying that some kinds of protective measures should be decided upon in order to

promote and protect the rights of North Koreans abroad.

c. Protective measures based on sisterhood and humanitarianism

(1) Particularly of the inter-Korean relationship and the obligation to protect Externally Displaced North Koreans

As stated in the 1991 Inter-Korean Agreement, the relationship between South Korea and North Korea is unique in that it is not a regular relationship between two states, per se, but rather a relationship between two bodies on way to unification. In these circumstances, both parties should focus on respecting each other's regime with equality, mutuality, tolerance and potentiality. An important thing to keep in mind concerning inter-Korean relations is that it is a process working toward eventual, peaceful unification. This requires that each party set friendly policies toward the other and establish dialogue and cooperation in equal partnership. In other words, both North and South Korea should be the first responsible actor in each party's territory, and the second responsible in the other's, in matters of human rights and security of all living on the Korean peninsula. The second responsibility is given to separated nations like Korea or Germany before unification and, although it is unique in character in international law, it does entail an obligation to each other on the way to peaceful unification.

Therefore, there is no need to interpret the territorial phrase of the Constitution that North Koreans are also the citizens of South Korea. In terms of protecting North Koreans abroad, North Korea should take the first responsibility to protect them with its right to diplomatic protection and South Korea should be given the

second responsibility to behave under the banners of humanitarianism and sisterhood.

(2) Main actors: North and South

North Koreans abroad are different in character from other refugees since they are largely the result of a separation of state. Neighboring countries are too parsimonious to receive all defectors as refugees and to aid them humanitarian assistance. It seems impossible that Externally Displaced North Koreans will be able to receive adequate protective measures from the international community including China and Russia.

In this light, the only actors who can and should be expected to take care of North Koreans abroad are North Korea, first and foremost, and South Korea as the secondary partner. In particular, the South Korean government should be consistent in implementing its human rights policies toward North Koreans abroad so that they are no longer persecuted or suffering as a result of their defection.

Consistency from the South Korean government is likely to bring about three primary results: first, it would encourage the international community to help North Korea recover from its economic hardship which should effectively reduce the number of Externally Displaced North Koreans and at the same time possibly convince the North Korean government not to persecute those returning to North Korea so that they would be more likely to voluntarily return home; second, it could persuade neighboring countries to grant refugee status to Externally Displaced North Koreans if they are admissible and provide sufficient support and protection for the rights of those who fail to qualify as refugees and; third, those wanting to go to South Korea should be able to immigrate to Seoul through a facilitated process and be fully

taken care of in order to ease their settlement in South Korean society.

(3) Sisterhood and humanitarianism

“Justice, humanity and sisterhood” are also found in the Preamble of South Korea’s Constitution concerning national unity and should be applied to the protection of Externally Displaced North Koreans’ rights. Sisterhood and humanitarianism should be present throughout each stage, each process of unification as the South Korean government is a major player in the protection of all those living on the Korean peninsula.

(4) Respect for freewill

One of the key factors in protecting the rights of Externally Displaced North Koreans is to respect their freewill. In fact, the principle of non-repatriation stems from the idea of respecting refugees’ freewill. Especially, this applies to the majority of cases in which Externally Displaced North Koreans left to escape economic hardship and wish to later return to their homes. The international community, including South Korea, should persuade North Korea to receive those returnees without persecution, which is equally as important as dissolving the country’s economic difficulties. Of course, those who wish to go to South Korea should be received in the spirit of humanitarianism and sisterhood.

(5) International cooperation

The defectors issue is no longer simply an inter-Korean issue: it has become an international matter. It needs to be solved through international cooperation, including China and Russia, and adhere

to relevant international laws.

The South Korean government should insist and persuade the international community, whether the defectors stay temporarily or for a long time, that the South has second responsibility to protect them whereas the North, without question, has principal responsibility. Considering that there are many North Koreans in China who have been faced with human rights violations, the South Korean government should allocate proper financial and human resources and build a shelter for North Koreans and also try its best to make them be recognized as refugees so that they may be admissible.

(6) Comprehensive policies and their implementation

The acquisition of refugee status does not solve everything. The primary reason for there being so many defectors is North Korea's dismal economic situation. In order to deal with North Korea's famine, one needs to cooperate closely with the North Korean government. The mutual cooperation and understanding between the two Koreas will help establish comprehensive policies and implementation for the protection of Externally Displaced North Koreans in China.

North Korea's human rights and the international community

Oh, Wan-Ho
Human Rights Korea

1. Prerequisites for human rights approaches to North Korea

A number of prerequisites exist which must be satisfied before human rights can truly be protected in North Korea. First, the approach to North Korean human rights should be based on universal understanding of human rights whenever governments, organizations, and mass media concern themselves with human rights issues in North Korea. Second, whatever approach is adopted should be based on facts. Third, a gradual step-by-step approach is needed. For this purpose, one needs to consider the following strategies:

- 1) Encouraging North Korea to take active involvement in the international human rights discourse;
- 2) Building a channel for international human rights

organizations including the UN Human Rights Commission;

- 3) Urging investigative activities of independent international human rights institutions in North Korea;
- 4) Filing public claims on North Korea's legislations and domestic policies; and
- 5) Compiling samples that evidence the facts (e.g. public executions, criminal law, constitutional law, etc.)

2. Prioritization of human rights approaches

The more simple issues should be raised first in order to gain momentum with solid dialogues, and then beginning to gradually prioritize human rights issues among other issues, can be a feasible approach that would not provoke the North Korean government. The prioritization could be as follows:

- 1) Humanitarian issues (separated families, exchange of letters, food and medical assistance, etc.)
- 2) Emphasis on North Korea's obligation under international human rights treaties
- 3) Religious freedom
- 4) Legal matters including North Korea's criminal law
- 5) Death penalty (public execution)
- 6) Abducted Japanese
- 7) Abducted South Koreans and South Korean prisoners of war
- 8) Forceful repatriation of North Koreans
- 9) Labor-training camps
- 10) Other rights to freedom

3. International community concerned with North Korean human rights

- 1) UN Human Rights Commission and Human Rights Committee: encouraging North Korea's participation and applying pressure through passed resolutions
- 2) European countries: consolidating channels for dialogue, applying pressure with resolutions, and other attempts at new dialogue about human rights dialogues
- 3) United States: connecting human rights issues to the North's nuclear issues, strongly pressuring North Korea and, if necessary, using human rights as a means to justify a preemptive attack
- 4) Japan: raising the issue of abducted Japanese for diplomatic normalization and connecting human rights issues with nuclear issues
- 5) South Korea: sustaining the level of inter-Korean dialogue and using it to address humanitarian matters while diplomatically avoiding human rights issues
- 6) Amnesty International: attempting regular-based dialogues, focusing on particular cases rather than general issues, and emphasizing the right to food and the right to survival as being essential human rights

4. South Korean NGOs concerned with North Korean human rights

- 1) Conservative organizations: Conservative Christian organizations, Externally Displaced North Koreans' associa-

tions, and those that assist Externally Displaced North Koreans abroad believe that only the collapse of the North Korean regime will put an end to the human rights violations and are expanding their approaches in a more aggressive and offensive manner toward the North Korean government

- 2) Humanitarian organizations: dealing with disasters that call for urgent attention in North Korea, also assisting Externally Displaced North Koreans in China and providing food and medical supplies to North Korea
- 3) Progressive organizations: reminding us not to overlook human rights issues in South Korea and trying to equalize the importance of human rights values in the two countries

5. Next two or three years' situation regarding human rights issue in North Korea

- 1) Increased flow of information regarding North Korea's human rights issues
- 2) Interrelations of the human rights issue with North Korea's nuclear issue causing possible overflow of highly unreliable sources.
- 3) Increasingly guarded and aggressive responses from North Korean government
- 4) Conflicts among South Korean NGOs over human rights issues in North Korea
- 5) Increasing importance of international human rights organizations

6. Concluding remarks

When one raises the issue of human rights abuses in North Korea, one should be basing judgment on a universal understanding and recognition of human rights. Unverified information should not be allowed to cloud the discourse and a gradual approach with a long-term strategy needs to be followed. NGOs' should be become more active and progressive groups need to take comprehensive action facing the nuclear crisis. Western governments including the US should be wary of applying double standards with regard to their perception of human rights. The role of the South Korean government is significant now and will remain significant. It needs to better construct its related policies in a more clear and decisive direction.

IV

The Human Rights situation of the Externally Displaced North Koreans and the Tasks for South Korea

June 30, 2004

Situation and Status of the Externally Displaced North Koreans
and the Issue of Protecting Human Rights

Choi, Young-kwan

Professor at Chonnam University, Politics

Proposition for a Government/NGO Cooperation for Improvements
of Human Rights of the Externally Displaced North Koreans

Venerable Yusoo Sunim

President of Good Friends

Situation and Status of the Externally Displaced North Koreans and the Issue of Protecting Human Rights

Choi, Young-kwan

Chonnam University

I Nature and Realities of Externally Displaced North Koreans

The phenomenon of North Korean people escaping their country is the result of various political and economic changes that occurred in the 1990s, including the worldwide collapse of communism and the North Korean economic and constitutional crisis. In the 1990s, the food shortage in North Korea was exacerbated due to the country's consistent negative economic growth rate and the severe natural disasters that happened between 1995 and 1997. In addition, North Korea fell into an isolated state from the outside world after the country lost most allies following the collapse of communism. As a result, food rationing was curtailed beginning in 1992, which resulted in a large number of starvations.¹⁾

Many North Koreans started migrating to find food and some attempted to escape to neighboring countries to avoid extreme starvation. Finally, a mass escape of the North Koreans began in full scale in the mid 1990s. The Externally Displaced North Koreans tried to escape to various countries, including the nearest and thus most popular destinations of China, Russia, Mongolia and Vietnam.

The North Koreans' escape began as early as in the 1960s through the 1970s. The refugees of this period deserted their country for ideological reasons, such as "dissatisfaction with the political authorities" and "recognition of the superiority of the South Korea's political system." This type of escape was rarely occurred and thus the defectors were welcomed greatly by the South Korean government and people. In the 1980s, the Externally Displaced North Koreans escaped their country for more personal reasons like "disadvantageous lineage," "unsatisfactory treatment," and "fear of persecution."²⁾

It was the 1990s that the North Koreans' escape was remarkably increased. These defectors noted their motivations as "to protect their rights to live," "to free themselves from the

1) The number of death by starvation was estimated by Korean Buddhist Sharing Movement, to be approximately 3 million. The National Intelligence Service (NIS) has assessed the decreased number of North Korean population to be about 2.5 to 3 million, quoting an internal government document of North Korea. The UN Humanitarian Coordinator, David Morton, was quoted estimating the number of death to be about 1 million (The Segye Times, Nov. 19, 1999).

2) Ministry of Unification, *Changes in the minds of North Koreans and Social Oppression*, Seoul: Ministry of Unification, 1994

invasion of human rights,” and “to avoid persecution.” Above all things, they fled in desperation to survive. Some of them had escaped North Korea simply hoping to find food for themselves and their families and returned home if they found some food. In the late 1990s, however, the nature of escape started changing from an attempt to avoid starvation to fleeing from the political authority.

The natures of defectors vary slightly by the motivation of their escape. However, it is generally agreed that the Externally Displaced North Koreans escaped their home country from extreme starvation.

The neighboring countries of North Korea take very different stances on the Externally Displaced North Koreans depending on their diplomatic relations with North Korea. They define the escapees as various terms according to their national interests, such as “political exiles,” “international refugees,” “illegal immigrants,” and “traitors of fatherland.”³⁾ In particular, China’s view on the Externally Displaced North Koreans living in China is important to note. The Chinese government has regarded these refugees as

3) The North Korean authority defines the Externally Displaced North Koreans as “traitor of fatherland,” and continues to force repatriation. At preset, they keep arresting and repatriating the refugees in Yanji with collaboration with the Chinese police. On June 18, 7 Externally Displaced North Koreans imprisoned in the Tumen prison were repatriated by force. The Mongolian and Vietnamese governments regard the North Korean escapees as “refugee,” and arrange them to travel to South Korea. But, the Chinese government treats the refugees as “illegal immigrant,” and continues to arrest or return them to North Korea against their will.

“illegal immigrants” or “illegal border crossers” and maintained a strict control over them. The stance of Chinese government is somehow understandable considering its relations with the North Korean government. However, the fact that they force repatriation is viewed an invasion of human rights and thus arouses international criticisms. Also, it affects unfavorably the relations between Korea and China.⁴⁾

To understand the status of Externally Displaced North Koreans, it is necessary to consider such factors as the type of escape, the destinations for escape and the size of escape. As for the types of escape, it had been prevalently the escape by individuals until 1980s. From the mid 1990s and onward, a mass escape centering on families has become prominent.

The destinations for escape were various. Although China has been the most popular destination for the refugees, other neighboring countries such as Russia, Mongolia and Vietnam have been other options. The majority of Externally Displaced North Koreans are living in three northeast China provinces.

While the reports on the number of Externally Displaced North Koreans vary, it is estimated that there are 100,000s of refugees spreading around the three northeast China provinces. Meanwhile, there are reported to be only 1,000s of refugees living

4) Dr. Norbert Vollertsen, a German physician and human rights activist, who worked in North Korea until he was expelled, led a demonstration in front of the Chinese Embassy in Seoul on Mar. 25, 2002, against the forced repatriation of the Externally Displaced North Koreans hiding in China. The photos showing the harsh situations of the refugees were released soon after.

in other areas in China. Presently, however, there is no accurate data on the number of Externally Displaced North Koreans. It is practically impossible to get the exact number of refugees as most refugees are hiding in fear of their lives or wandering about.

According to the related organizations and individual activists, the total number of Externally Displaced North Koreans living in China ranges from 100,000 to 200,000. They estimate that there are about 1,000s of refugees spreading throughout other countries including Russia, Mongolia and South Asian countries.⁵⁾ It is critical to acquire the accurate data on the number of Externally Displaced North Koreans. The Commission to Help Externally Displaced North Koreans (CNKR) released the “Field Report on the Externally Displaced North Koreans in China,”⁶⁾ after conducting the interviews with 1,383 Externally Displaced North Koreans between October 2 and November 12, 1999. They estimated the number of refugees to be about 100,000 to 200,000.

II. The Status of Externally Displaced North Koreans

Escaping North Korea is a highly risky action that may result

5) In October 1999, the Korea Ministry of Foreign Affairs and Trade (MOFAT) released the assessment of Externally Displaced North Koreans as approximately 10,000 to 30,000. Also, the UNHCR estimated the number to be about 30,000 in October 1999. However, it announced during the press conference in June 2003 that the number of refugees had significantly increased and reached about 100,000.

6) 88.2% of the interviewed expressed no intention of returning to North Korea and the 77% said that their immediate family members had died (The Segye Times, Nov. 21, 1999).

in death.⁷⁾ It is reported that any defectors caught are forced to repatriate and suffer severe retributions including imprisonment and in the worst case, death. Therefore, the success of escape is a determinant between life and death for the North Koreans attempting to escape.⁸⁾

For the Externally Displaced North Koreans, the escaping their fatherland holds an absolute meaning as a desperate effort to survive. Nevertheless, the neighboring countries of North Korea take decidedly different stances on the status of refugees depending on their own national interests. Some intentionally take an indifferent approach, while others actively deport or repatriate the refugees, thus ignoring the refugees' human rights to life. Unfortunately, most prominent international organizations such as the United Nations High Commissioner for Refugees (UNHCR) have not been able to take any necessary measures.

The legal status of Externally Displaced North Koreans has a unique nature. The South Korean constitution defines the Externally Displaced North Koreans living overseas as Korean

7) *White Paper on man Rights in North Korea*, published by the KINU in 2002, includes the testimonies on the public execution in North Korea. North Korea implemented the public execution policy in 1997 when the food shortage problem was at its worst, in order to terrorize the people and prevent possible defection. The execution involves shooting and hanging.

8) I interviewed some refugees twice in 1996 and 1999. The interviewed showed similar tendencies: First, they were reluctant to meet me in fear of arrest and thus wanted to meet only at some secret locations. Second, they requested complete confidentiality-no face or voice should be revealed-while providing information. Third, they all accounted surprisingly detailed realities of North Korea.

citizens.⁹⁾ According to the related regulations, when a North Korean who has the permanent address, direct family and job in North Korea and who has escaped to other country than South Korea and has not obtained the nationality of the host country asks the South Korean government for protection, the government should provide him with special protection based on the humanitarian principle.

In reality, however, the South Korean government has political problems of accepting and protecting the Externally Displaced North Koreans. It is mainly because North Korea is also a member of the UN and holds her own sovereignty in the international society. Hence, the Externally Displaced North Koreans have double legal status as the citizens of both South Korea and North Korea. As a result, if a North Korean refugee stays in the country with which both South Korea and North Korea have amicable relations, the South Korean government faces a difficulty in exercising jurisdiction and also the host government encounters a political pressure. The example of such case is the status of refugees in China. The South Korean government has maintained her passive stance on the relief of refugees in consideration of the diplomatic relations with China.

Nevertheless, the fate of Externally Displaced North Koreans should not be determined by the North Korean government. It is

9) The definition of North Korean defector is presented in Clause 1 and Article 2 of the “regulations on the protection of Externally Displaced North Koreans and the settlement aid.” The humanitarian principle is defined in Article 4 and the petition for protection is stated in Article 7.

clear that the defectors risk severe potential persecution since the act of defection itself constitutes a political expression of defying the North Korean authorities, even if the initial motivation of defection was to escape from starvation. Hence, such defectors are eligible for a “refugee” status according to the customary international law and the forced repatriation constitutes a violation of international law.¹⁰⁾

It is often discussed whether the Externally Displaced North Koreans should be granted with a refugee status according to the international law. The definition of “refugee,” based on Convention relating to the Status of Refugees of 1951 and the Protocol relating to the Status of Refugees 1967, is “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” In other words, the escapees to foreign countries because of war or persecution are to be granted with a refugee status after undergoing necessary inspections and to receive appropriate protection and supports.

Many concerned organizations and activists have argued that

10) Conventionally, all nations are under an obligation to conform to “Principle of non-refoulement” regardless of their membership of the refugee related international treaty (Kum-soon Lee, *Measures for the North Korean Refugee Issues*, Seoul: KINU, 1999, pp. 20-21).

the defectors brought back to North Korea are subject to severe punishment and political persecution according to the North Korean criminal law, article 47, and therefore any Externally Displaced North Koreans should be protected as refugees based on the international law.¹¹⁾ However, it has become more difficult to grant the North Korean escapees with a refugee status. Because the North Korean government has lightened the punishment for the defectors whose motivation was obtaining food supply and somewhat improved the mistreatment of defectors in the repatriation process since the end of 1996.¹²⁾ Furthermore, according to customary international law, the power and authority to determine refugee status is vested with the host government of refugee. The UNHCR can intervene only when the host government requests or when it is absolutely necessary for protecting the refugee. At present, it is a big diplomatic burden for China to determine the Externally Displaced North Koreans as refugee.

Now, the impending task is how to protect the human rights of Externally Displaced North Koreans in such situation as that their legal status cannot be defended.

11) The North Korean criminal law, article 47, states “A citizen of the Republic shall be charged with treason and sentenced to hard labor in prison for minimum term of 7 years for defecting to another country or enemy, being engaged in espionage or assisting enemy. For one whose crime is more severe shall be sentenced to death penalty and confiscation

12) North Korea omitted the crime of treason during the amendment of their national constitution in 1998 as the number of Externally Displaced North Koreans increased, and defined the defectors not as political criminals but as general criminals.

III. Protection of the Human Rights of Externally Displaced North Koreans

1. Understanding the Realities of Externally Displaced North Koreans

Before discussing the human rights of Externally Displaced North Koreans, it is necessary to understand their status. Currently, there are not many government level official records on the Externally Displaced North Koreans. The latest official document is *White Paper on Human Rights in North Korea*, published by the Korea Institute for National Unification (KINU) in 2002, which presents relatively detailed human rights situation for the Externally Displaced North Koreans. According to this paper, the Externally Displaced North Koreans are having great difficulty in making a living and their human rights are seriously abused. In particular, the child and woman defectors are in more dour conditions. Most children are arrested and repatriated to North Korea,¹³⁾ while the women refugees suffering inhuman abuses.

For the refugees in China, the most imminent problem to solve is to free themselves from an illegal status and to live and work legally.¹⁴⁾ In order to do so, most woman refugees are forced

13) I interviewed a few adolescent refugees, called “flower swallows,” in Tumen. They testified that they have secretly traveled between North Korea and Tumen a few times. They escaped North Korea to make money in China and brought the money back to their families in North Korea and escaped the country again. Some reported that they had bribed the border guards with some money.

14) A North Korean woman and a man in his early 40s testified that some Externally Displaced North Koreans bought Chinese resident record for 50,000 yuan to obtain a legal resident status. Buying such records

to marry old Korean Chinese bachelors from farming villages or Chinese widowers. As the number of woman refugees has increased, the women became traded for marriage.¹⁵⁾ By the end of 1990s, it has become a common practice that the women refugees were sold for prostitution.¹⁶⁾ These women suffer the most harrowing human rights abuses, such as forced prostitution, confinement and physical violence. There are reported to be some criminal organizations working as systemized panders and the charge for the refugees is about the half the amount for the Chinese prostitutes.

In addition to the trading of women, the human rights abuses also include severe labor exploitation. The Externally Displaced North Koreans often fall into the victim of labor exploitation because of their illegal status. Most of them are engaged in heavy labor that the locals tend to avoid and paid with unspeakably little amount or often unpaid.¹⁷⁾ According to the research conducted

was possible because some Chinese avoided or delayed the notice of death when a family member had died so that they could sell the resident record of the death to Externally Displaced North Koreans.

15) According to the survey conducted by Good Friends, woman refugees comprise 90% of the total refugees living in Yanji, China and 85.4% of these women are married. Most women choose a marriage as only solution for survival or are traded for marriage. A woman interviewed testified that she had been forced to marry an old Chinese widower from a farming village and escaped 7 months later. At the time of interview, she was making a bare living with the help of a Korean Chinese family.

16) Yeo-sang Yoon, "Status of Externally Displaced North Koreans and Support System: With a Focus on China," Tongil Nonchong, vol. 7, no. 2, 1998

17) A refugee I interviewed testified that he was bitten by his Chinese employers and detained for a few days after he asked for his several

by the Good Friends, a Korean NGO, 69.1% of the Externally Displaced North Koreans do not work and rely on their families, relatives or newly found spouses. And 40.9% of the working refugees are provided only with food and shelters, but without wage.¹⁸⁾

The human rights abuses related to forced repatriation are also a serious issue. Since the July of 1998, the Chinese government has been cracking down the Externally Displaced North Koreans in a large scale and returning them to North Korea against their will. The government has implemented regulations to enhance such policy, including the rewards for reporting of refugees in hiding and the severe punishment for helping refugees.¹⁹⁾ It is well known fact that any defectors brought back to North Korea are subject to a severe persecution. In particular, anyone who had a contact with South Koreans or Christians is treated as political criminal and thus sentenced to extreme punishment, such as imprisonment in a concentration camp and public execution.

The severely deteriorated health of refugees is another big concern as an example of human rights violation. The child

months unpaid wages. And his wife disappeared while he was in detention. I still remember shedding tears together with the man and giving him very little money I had at the time.

18) Good Friends, *People Crossed Tuman River: Status of the North Korean Food Refugees in 2,479 Villages in the Northeast of China*, Seoul: Jeongto Publishing Co., 1999

19) According to a research (Yeo-sang Yoon, 1998), about 300 defectors a week are forced to repatriate. A special border battalion stationed by Tuman River which is also a prisoner camp is in charge of the forced repatriation. It is reported that there are about 6 to 7 similar facilities located near Tuman River.

refugees are particularly in a serious condition. The teenagers roam the streets, begging for food, and have no shelters. They sleep in the woods near towns or at stations and construction sites.²⁰⁾ Most of them are severely undernourished and physically underdeveloped. Also, many children suffer from nutrition deficiency related diseases such as tuberculosis and hepatitis. Not only children but also adult men and women are reported to suffer from various physical and mental diseases.

2. Protecting Human Rights

Now, what needs to be done to best protect the human rights of the Externally Displaced North Koreans under the circumstances where it cannot be guarded under the laws and justice?

First, it is by setting up measures through cooperation among the neighboring countries involved.

The South Korean government should more actively negotiate with China and Russia regarding the Externally Displaced North Koreans. It should be pointed out that the Chinese government would not be able to deal with sudden and massive flows of defectors. It is necessary to set up a policy that allows the defectors to stay in the third country for a certain period of time and to receive appropriate aids based on humanitarian concern. To provide the defectors with practical protection, the defectors should be given a status called “temporary refugee,” since they cannot be

20) The “flower swallows” that I interviewed near Yanjin in 1998 stated that they usually slept in the woods. Many of them were suffering from scabies.

protected by the political asylum status.²¹⁾

Based on this temporary refugee status, the Externally Displaced North Koreans can be received “temporary protection” from the host countries. The temporary protection is a system set up through the agreement of concerned nations to provide immediate protection to the refugees from wars, conflicts and human rights violation. The system allows the refugee concerned to reserve the refugee determination process and the rights of refugee such as education, social assistance and the right to work.²²⁾ The South Korean government should make a diplomatic effort to implement such a system through a close cooperation with the involved countries like China and Russia. It is very important to build a cooperative and permanent system to prepare for a sudden and

21) The temporary refugee system allows a displaced person to receive protection from the host country on the premise that he or she returns to his/her country of origin once the cause of refuge disappears, while relieving the political, economic and social burdens of the host government. In the case of Externally Displaced North Koreans, it is difficult to apply the concept of emergency refuge as it requires inevitable reasons of emergency refuge. Such reasons include internal war, the threat of mass killing and injuring and serious natural disaster. Most countries that allow emergency refuge do not want to bear any more burden by granting political asylum or refuge status.

22) The temporary protection system is a provisional measure that allows the protection of a displaced person for about 6 months and therefore it is not effective when the concerned situation prolongs. The principles of system include entry permission, non-forced deportation, humanitarian treatment and the concerned person’s voluntary returning to his/her country of origin. Temporary protection is an exceptional emergency mechanism, reserved for situations of mass influx of displaced persons. It is a system that corresponds to humanitarianism as it embraces not only political refugees but also general refugees for its beneficiaries.

massive influx of the Externally Displaced North Koreans. In this regard, the South Korean government should start talking to the concerned countries and establishing a close cooperative system with them.

Second, it is by securing a close cooperation with the United Nations and other U.N. agencies.

It is essential to use the concerned international organizations to protect the human rights of refugees along with conducting the diplomatic negotiations with the involved countries. Specifically, the South Korean government should urge the UNHCR to lead the international support for the protection and relief of Externally Displaced North Koreans. The UNHCR successfully helped solve the problem of Vietnamese refugees. The agency organized an international convention concerning Indochina refugees to help the massive boat people who escaped the communist regime at the end of Vietnam War. It implemented and operated special programs, the “Orderly Departure Program (ODP)” to help the refugee escape Vietnam safely and the Repatriation Program (ORP)” to assist the refugees in returning to Vietnam from overseas refugee camps.²³⁾

By learning from this past experience, the South Korean government should make efforts to implement the measures applicable to the Korean peninsula by having the concerned international organizations involved. To achieve this goal, it is also

23) Seong-ho Jae, “Refugee Camps, Adaptation program Must be Established in Advance,” *North Korea*, serial no. 365, May. 2002, pp. 97-98

crucial to build close cooperation with the concerned nations such as China, Russia, Japan and Mongolia. Surely, it will not be easy to persuade China to grant the defectors with refugee status and help establish measures. However, it is not an impossible task to achieve if the South Korean government further its diplomatic efforts toward China and at the same time actively induce the positive intervention of the UNHCR.

Also, building the necessary aid facilities for the refugees should be done through the cooperative efforts of the concerned countries led by the UNHCR. It is important to build refugee camps near the border areas where North Koreans cross over to China and Russia to accommodate and protect the human rights of refugees.

Proposition for a Government/NGO Cooperation for Improvements of Human Rights of the Externally Displaced North Koreans

Venerable Yusoo Sunim

Good Friends

I Introduction

- It was in the mid 1990s that the human rights violence for North Koreans became more prevalent as the severe food shortage hit the country. The common people had to find food by themselves in desperation and some attempted to cross the border in search of food supply. These Externally Displaced North Koreans¹ are different in nature from those before the 1990s and the North Korean woodcutter escapees¹ from Russia in the early 1990s. The defectors motivated

1) The South Korean government's official term for the overseas North Korean refugee is "North Korean defector." It is defined that "a person who has permanent address, immediate family member, spouse and job

by food search began to appear in 1994 and of which number reached the highest point in 1997 and 1998.

- According to the South Korean constitution Article 3, “The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands”, all North Koreans including those residing in North Korea and the defectors staying in third countries are regarded as the citizens of Republic of Korea. Therefore, the South Korean government holds the responsibility of protecting the Externally Displaced North Koreans as its citizens.

Nevertheless, the fact that there is no precise data or status on these refugees at present time suggests that the government has not been actively involved in the issue. There certainly are obstacles for the government in aggressively protecting the refugees such as the fact that most refugees are in hiding in fear for life and that there are diplomatic constraints because of the unique relations among three countries, China-North Korea-South Korea.

To date, the Externally Displaced North Koreans have been able to come to South Korea only when their situations brought the public attention through the media. This circumstance has a clear potential to grow into conflict between the South Korean

in North Korea and who have left North Korea and have not obtained a nationality of his/her hosting nation.” Yet, these defectors are called as various terms, according to political and social conditions, including defectors, North Korean food refugees, Externally Displaced North Koreans and food migrants. The Externally Displaced North Koreans staying overseas have been called as Externally Displaced North Koreans, food refugees, and North Korean migrants, and so on.

government's "quiet diplomacy," and the activities of NGOs, special brokers and activists.

- In order to deal with the issue more efficiently, it is necessary to thoroughly review the process consisting of escaping North Korea, staying in third countries and traveling to South Korea. Also, it should be noted that the nature and pattern of the defectors in the 2000s differ from those in the 1990s-the defectors tend to stay longer in China and there are more family unit defectors reaching South Korea, and the successfully escaped try to bring their family out of North Korea.

II The Circumstances of Defection

1. Major Motivations

1) Food Shortage

(1) Crossing border in search of food

- ① In the beginning of the food shortage crisis, the border crossers were mainly the people living near the border. The prolonged crisis accelerated the migration of people and those residing in other areas far from the border began to cross the border as well.
- ② The pattern of border crossing has changed over time-from simple and single crossing to repetitive crossings from short-term stay in near the China-North Korea border area to long-term stay in inlands of China far from the border for safety and money making reasons.

(2) Human rights violence for woman defectors:
forced marriage, human trafficking and
prostitution

The North Korean women are in a better position compared to men for migrating or trading, which lead them to cross the border to find food for their families. Many of these escapees are trafficked as brides for local Chinese Korean or Chinese men or for prostitution.

(3) Lightened punishment for the defectors

The force repatriation of the Externally Displaced North Koreans living in China continues to proceed based on the repatriation agreement and the border tasks agreement between the North Korean and Chinese authorities. However, it is reported that the North Korean authority, with the prolonged food shortage, has mitigated the punishment for the defectors and the remaining family members with some exceptions.²⁾

2) Support and Protection from the Korean Chinese
Community

(1) Support from the Korean Chinese community

① There are about 2 million Korean Chinese living in the

2) As the number of border crossers increased, the North Korean authority has lightened the punishment for those who cross the border temporarily to obtain food or make money. It is said that the punishment differs by the period of stay and motive of border crossing. The authorities investigate on whether an escapee had a contact with any South Korean information agencies or Christians. Anyone who contacted Christians is subject to **severe punishment**.

three northeast provinces of China, centered in Yanjin. Among these three provinces, Jilin, Heilongjiang and Liaoning, the Jilin province is the home for most Korean Chinese. And 69.5% of the total Korean Chinese population of Jilin lives in the Korean Chinese autonomous district in Yanjin. During the period of 1997 to 1998, when the food shortage crisis was its height, the Externally Displaced North Koreans could be seen in all over Yanjin.

- ② In the peak of North Korean food crisis, the Korean Chinese community tried to help the Externally Displaced North Koreans because they felt that the North Koreans were their fellow countrymen and that they owe the North Koreans help that they received during the great famine in China in the 1960s.
- ③ Many North Koreans living near the border have some relatives in China. In the beginning of food shortage crisis, early 1990s, a number of North Koreans received some help from their relatives in China through correspondence. As the food situation got exacerbated, they started crossing the border to get direct help from their relatives. However, the prolonged food shortage crisis has made the concerned relatives unable to continue to help the starving North Koreans.

2. The Plight of Externally Displaced North Koreans

1) Labor Exploitation and Forced Labor

The Chinese government continues to execute forced repatriation of the Externally Displaced North Koreans except for

those who were exposed by media, in which case the refugees are expelled to third countries and ultimately come to South Korea. Under this circumstance, the Externally Displaced North Koreans often fall into the victims of severe human rights violence. They are exploited by their employers without receiving just wages and suffer threatening and physical violence. The most common case is those laboring without wages in return for food and shelter.

2) Human Trafficking

- Some woman refugees choose to enter a de facto marriage with the local Korean Chinese men who had helped them or are trafficked as brides for local Korean Chinese or Chinese men. Through human trafficking, some women are sent to remote villages or sold for prostitution. According to the survey conducted by Good Friends in 1999, the woman defectors comprised 75.5% of the total defectors and the rate was even higher in the three northeast provinces of China excluding Yanjin to reach 90.9%. Among these women, 51.9% of them were living under a roof of marriage, of which rate was higher again in the three northeast provinces of China excluding Yanjin to record 85.4%. In a word, most North Korean woman defectors were married with family at the time of survey.
- The marriage through human trafficking and de facto marriage are not legal marriage and thus the women in such marriage are outside the boundary of legal protection. Many women under this circumstance become victims of serious abuses such as detention, rape, forced impregnation and prostitution. The children born in the families of de facto marriage are not eligible for legal resident status.

3) Limited Educational Opportunity for Children

- The child defectors are reduced to street children, called “flower swallows.” These children have no shelters and wander about street, begging for living. They are deprived of educational opportunity and health care. The children born of woman refugees are given with a very little chance for education unless they obtain legal resident status.
- These children are mostly underdeveloped as a result of serious undernourishment. They look much younger for their ages and therefore have a difficulty finding jobs. Also, many of them suffer mental damages caused by extremely harsh experiences unthinkable for the children in other parts of the world.
- Without receiving proper academic and characters education, the flower swallows roam the streets or countryside in groups and commit petty crimes like stealing. This situation has become a social issue in the Korean Chinese community and caused many members to turn their backs on the refugees.

4) Arrest and Forced Repatriation

The Chinese government’s policies of the arresting and forced repatriation of Externally Displaced North Koreans through controlling residents and the imposing a heavy fine for helping defectors have made it even more difficult for the defectors to get any help from the Korean Chinese community. Although the punishment for the defectors has somewhat been lightened, there still is a great fear among the refugees of the possible persecution waiting for them when forced back to North Korea. Considering

this, the repatriation of these defectors against their wills is a pure human rights violation regardless of the status of the defectors.

3. Recent Changes

1) Extending Food Shortage and Economic Crisis

(1) Declining escape for food

- ① The number of Externally Displaced North Koreans reached the highest from mid to late 1990s and began to decline in 2000 when the food situation slightly improved. In the period between 1997 and 1998, there were many North Koreans voluntarily returning to their country after obtaining food and some monetary supply.
- ② Even at present, the initial motivation of defection is harsh living condition in North Korea caused by food shortage. Yet the defection caused by starvation is in decline. For, North Korea has come to deal with chronic food shortage since they received international aids following mass death by starvation, and the people have also learned to cope with the situation.

(2) Increasing border crossing for trade and smuggling

As the food situation slightly improved, an increasing number of North Koreans have crossed the border not to find food but to make money. Since 2000, in particular, there have been more professional smugglers and traders than average people crossing the border to China. These traders and smugglers are reported to bribe the border guards by paying a certain amount of money.³⁾

2) Inflow of the Information about Outside World

(1) Exposed to the information about outside world

Many North Koreans are now exposed to the world outside North Korea through their experiences of crossing the border and begin to take a different view at the North Korea's political system. Witnessing the advanced economic development in China is certainly an eye-opening experience to the Externally Displaced North Koreans. As the number of people with multiple border crossing experiences increases, the information about the outside world is spreading around the country.

(2) Hope for new life

① The flows of information about the outside world lead some North Koreans still living in harsh economic situation to attempt to escape. The people with border crossing experiences realize the psychological pressure from living under the strict surveillance of the authorities and grow the desire to live in free societies and thus retry to escape.

② Hope for better life and education of children

Many Externally Displaced North Koreans have been living in China over 5 years now. Yet, their living conditions have not been improved and their human rights continue to be abused-insecure status, unjust wages, neglected children and sexual abuse of women are among the examples. For this reason, many refugees in China wish to come to South Korea where they can receive legal

3) The bribe money is usually about 300 yuan.

status, various benefits for settlement and the educational opportunity for their children. Lately, there are more the middle and upper class than the lower class found among the refugees coming to South Korea.

3) Enforced Monitoring and Increased Risk in China

(1) Enforced monitoring by Chinese government

- ① The Chinese government remained silent about the Externally Displaced North Koreans in the early stage. In the period of 1997 and 1998 when the inflow of escapees significantly increased, they began to take an action. Their policy on the refugees has had a cycle between cracking down and toleration, or lessened monitoring and increased monitoring. In 2000 when the North Korean refugee issue finally brought the international attention, the Chinese authority enforced the forced repatriation of the refugees.
- ② Being a member of the Refugee Agreement, China has disregarded her obligations and violated the human rights of the Externally Displaced North Koreans. Since the defectors and related NGOs requested the Chinese government to grant refugee status and revealed the cases of human rights violence to the world, the Chinese government has slightly changed their stance to avoid international criticism. At present, the government, through the negotiations with the South Korean government, expels only the defectors who are exposed to media to third countries from where they come to South Korea.⁴⁾

(2) Increasing burden over the defectors

- ① The Korean Chinese community has provided support for the Externally Displaced North Koreans over the past 10 years of food shortage situation. Recently, however, it begins to show signs of weariness, with the extended staying of defectors, continuous economic crisis in North Korea and bad economy in the three northeast provinces in China.
- ② Meanwhile, some long term staying defectors are found to commit crimes such as theft, human trading, smuggling and murder. At the same time, various crimes targeting the defectors continue to rise. Under this circumstance, most defectors feel unsafe about living in China.

4) The South Korean Policy of Protection and Settlement Support for Externally Displaced North Koreans

(1) Increasing family unit refugees

- ① Escape of the remaining families of early defectors
 - It is an increasing trend that the defectors successfully

4) China joined the Convention relating to the Status of Refugees and its Protocol in 1982, yet continues to assert that the Externally Displaced North Koreans are illegal border crossers, not refugees. UNHCR has stated that the Externally Displaced North Koreans in China should be protected based on humanitarianism, however not all of them is eligible for refugee status. Even if these defectors cannot be granted with refugee status, their circumstances should be serious humanitarian concerns to the international community and they should be protected against forced repatriation and receive temporary protection. Furthermore, the human rights of even illegal migrants must be protected, including right to life and protection against force labor, slavery, tortures and other inhumane treatments.

have reached and settled in South Korea go back to China and bring their families to South Korea.

- For example, some adult defectors reach South Korea first and go back to China to bring their children left in China or North Korea through the process of first escaping North Korea or China and staying in third country and finally coming to South Korea.

② Raised settlement grant

The government grant for settlement was reduced during the Kim, Young-sam administration and raised back under president Kim, Dae-jung. Currently, a North Korean refugee receives about \$40,000 of government grant for settlement with added \$8,000 per additional family member. Other benefits include housing, stipend and job training. Because of this South Korean government's support policy, more Externally Displaced North Koreans in China try to reach South Korea with help of "broker," in the condition of post payment.⁵⁾

③ South Korea for a safe location for settlement

- Although the number of Externally Displaced North Koreans has been decreasing since the year 2000, the number of the defectors coming to South Korea continues to rise. For, many Externally Displaced North Koreans living in China and other third countries wish to come to South Korea for more secure status.
- Up until May of 2004, the number of North Koreans

5) Knowing that some of the government grant for settlement is being used for other purposes such as paying brokers or assisting people in the North, the South Korean government is considering to reduce the grant and to introduce other incentives.

came to South Korea has reached 5,000. The number for 2003 only records 1,281 and the number is expected to continue to increase.⁶⁾

5) Expended Activities of Brokers

(1) Externally Displaced North Koreans as business target

- ① There are commercial brokers who facilitate the escape of North Koreans and charge them a large sum of money. In the case of South Korean prisoners of war in North, the brokers more systematically work using their network in North to help them flee. In return, they sometime receive over \$100,000 as the South Korean government grant the POWs with \$400,000 to 500,000 for settlement. Some organizations use the defectors to reveal the human rights circumstances in North Korea.
- ② Recently, the commercial brokers are more involved in facilitating the passage of Externally Displaced North Koreans in China to South Korea and the escape of remaining family members of the early defectors. These brokers work either as individuals or organizations and charge from \$1,500 to 10,000 for their services.⁷⁾

6) The number of Externally Displaced North Koreans entering South Korea a year was less than 10 in the early 1990s and began to increase in the mid-1990s. It recorded 1,139 in 2002 and 1,281 in 2003. The total of 4,410 defectors entered South Korea by the end of 2003 and 4,147 of them are currently living in the country.

7) The fee varies by several factors such as the concerned person's current location-North Korea or China, which country to pass through, whether to reach embassy/ consulate or not and how to travel, and so on. In

III Government/NGO Cooperation for Helping Externally Displaced North Koreans

1. Recommendations for the Government

1) Obtain Precise Data on the Refugees to Set Policy

(1) Obtain precise data on the Externally Displaced North Koreans

The South Korean government and NGOs hold significantly different views on the number of Externally Displaced North Koreans. This represents that the government and NGOs take a different stance in their approach to, understanding of and solution for the issue.

(2) Draw up settlement support policy

The government should understand the present circumstances including the changes happened since the peak of food shortage crisis and the realities of defectors staying for long-term in China and other countries. This is necessary to draw up a long-term and practical policy for the defectors settling in South Korea.

2) Fundamental Prevention of Escape

(1) Continue to provide humanitarian support including food and medical supply

① The basic motives for defection are food shortage and harsh economic conditions.

some cases, brokers take the concerned defectors to only the border, putting the defectors in danger. Some brokers take the fee from defectors almost by force once the defector reach South Korea and receive the government grant.

- ② The international community has been providing the North Korea with humanitarian aids since 1995. However, the amount of aids is in decline due to a few diplomatic issues such as the North's nuclear weapon program and its human rights violation.
- ③ The government should make diplomatic efforts to induce the North to guarantee the safety of voluntary returning defectors.

(2) Support for economic development

- ① Combine emergency and long-term relief
 - For a while, the food relief was the primary task under the circumstance where the North authority's food rationing stopped and the people were starved to death.
 - Having a long term view, the government should provide more than just food support. It should pay attention to a comprehensive restoration of economy of the North and to the lack or damaged social infrastructures, manufacturing facilities, raw materials and energy. It is important to provide the North with support for economic development and the foundation for them to recover from economic disaster through their own efforts.
- ② Provide comprehensive support to prepare for the Korean unification
 - The government should set up policies and provide comprehensive supports to North Korea while seeking short term strategies for the economic reform and development and the mid-to long-term economic and social management in the North. This is a necessary

process in preparing for the unification of the South and the North, not through competition between two regimes or absorption, but through peaceful and practical procedures.⁸⁾

3) Policies for the Improvement of Human Rights Condition in North Korea and for the Externally Displaced North Koreans that Parallel with the Unification Policy

(1) Efforts for the improvement of human rights condition in North Korea

① Press the North for even the minimum improvement of human rights condition

The North Koreans continue to flee and some to cross the border repeatedly even after the food situations improved. In particular, the permanent escape of middle class is in rise. This is because the human rights of average people are continuously being abused. The South Korean government should make diplomatic efforts to persuade the North to improve its people's basic human rights-the elimination of discrimination against lineage and mutual surveillance among the people, the freedom

8) Various support programs are provided by both the government and NGOs. The government offers food, medical supplies and fertilizers, while NGOs are focusing on such issues as social outcasts, agricultural development and public health. It is suggested that the support projects be executed with the consideration of other fundamental issues such as job creation and building foundation for self-recovery. For example, when supporting for greening barren mountains in the North, the government may requires the hiring of common North Koreans.

of migration and economic activities, and so on.

② Combine official and unofficial efforts for the human rights improvement and the humanitarian aids

Currently, the North Korea's economic crisis, nuclear program and human rights issue have negative effects on the international aids and investment. The South Korean government needs to raise this concern to the North authority and induce an improvement in human rights condition. This is also a task for NGOs. They must campaign for the economic support for the North on the condition of human rights improvement.

③ Cooperate with the UN Human Rights Committee

The government needs to execute humanitarian aids while pressing the North, cooperating with the UN Human Rights Committee, to comply with the committee's agreement on the human rights of people including children and women.

(2) Combine Unification Policy and Aggressive Human Rights Diplomacy⁹⁾

① Actively involve in the Externally Displaced North Koreans issue

- In the passage of defectors coming from the North to the South, there are hollow zones for human rights protection as jurisdiction shifts through territories.¹⁰⁾

9) The government's diplomatic policy toward the Externally Displaced North Koreans may not be completely opened to the public, including NGOs. Therefore, it is only presumed that government's stance is "quiet diplomacy." This is why the government and NGOs should build cooperative relations and share the information.

First of all; the Externally Displaced North Koreans are not subject to the diplomatic protection by North Korea as they deserted their country by their will.¹¹⁾ The host governments and as well as the South Korean government have mostly neglected these refugees with an excuse that the refugees are not under their own jurisdiction. For this reason, there have been a very little amount of government level aids provided to these refugees.

- The government needs to use various diplomatic tactics. Its current policy, called “quiet diplomacy,” lacks strategic efficiency.
- Using the media has proved to be effective for bringing overseas refugees to South Korea, pressing the North

10) The North Korean authority regards the Externally Displaced North Koreans as “traitors of fatherland” and the Chinese and South Korean governments view them respectively as “illegal immigrants,” and “obstacle to the relations between the South and the North.” Under this circumstance, it is practically impossible to provide any relief aids to the defectors without the cooperation of Chinese government. The defectors exposed to the media mostly are dispelled to third countries and travel to South Korea, which is processed through the government’s “quiet diplomacy.” As a result, however, the Chinese government enhances the monitoring, arrest and forced repatriation of other defectors, thus putting the concerned defectors in even more insecure situation.

11) Without the elimination of such practices as forced repatriation and persecution, the possibility of defectors returning voluntarily to North Korea is very low. Most of the defectors have no intention of returning to the North. Even when anyone returns to the country, the protection of his/her human rights cannot be guaranteed. For this reason, the South Korean government should promote the protection of human rights of all Externally Displaced North Koreans including those who voluntarily return to the North.

to improve its human rights condition. It is also possible to bring the matters up to diplomatic issues.¹²⁾

② Support for the concerned countries

- It is possible for some overseas refugees to resettle in the host countries if their human rights are respected, including the guarantee of personal safety and the prohibition of forced labor. It is realistically improbable for South Korea to accept all overseas refugees. Therefore, the government should actively seek measures for the refugees to resettle in their host countries.
- The South Korean government has been offering support and investment to the countries that overseas refugees pass through when traveling to South Korea. However, the government needs to take more aggressive stance on the issue and request certain issues to those countries. For example, the government can negotiate with the Chinese authority to induce them to hire the Externally Displaced North Koreans when investing in the country.
- It is important to actively negotiate with the concerned countries regarding the legal resident status of refugees. In particular, the government needs to negotiate with the Chinese government to solve such issues as the legal status of North Korean women and their children born

12) The government's passive reaction to the North Korean defector issue often leads the concerned NGOs to take some provocative or extreme measures to attract the national or global attention. Only then, the government takes any necessary actions and which inevitably reduces its negotiating power and limits the options for solutions. Sometimes, the government has to bear some damages in other areas in order to gain the support from the concerned NGOs.

in the territory and the educational opportunity for these children.

③ Cooperate with the UN agencies

The Chinese government continues to refuse to grant the Externally Displaced North Koreans with refugee status. It asserts that North Koreans in China are illegal migrants. The Externally Displaced North Koreans who are returned involuntarily to North Korea face severe retaliation and some are sentenced to death. This circumstance calls for the intervention of UNHCR and the cooperation of China. In addition, the South Korean government should seek the cooperation from the International Labor Organization (ILO) and the International Organization for Migration (IOM) in order to protect the basic human rights of Externally Displaced North Koreans.¹³⁾

2. Different Roles of Government and NGOs

1) Appropriate Roles of NGOs

(1) Provide relief aid to Externally Displaced North Koreans

- ① The South Korean government has diplomatic constraints in providing open and direct assistance to the overseas refugees staying under different jurisdiction. Under the current circumstances, the government cannot directly

13) The Chinese government has remained indifferent toward the Chinese criminal organizations or individuals, responsible for human trafficking, physical assault and pandering targeting the Externally Displaced North Koreans in China. Also, the government has not offered any compensation to the victims.

access to the refugees and therefore it is important for the government to embrace the NGO's approaches and understand the need for sharing roles and information.

- ② At present, a number of NGOs, led by missionaries, are actively engaging in the relief activities for Externally Displaced North Koreans. For these organizations, it is necessary to build collaborative relations among them while recognizing each other's independency. Also, they need to set up a common guideline for working on relief activities as some organizations are engaging excessively in evangelization or self-promotion, which may not benefit the refugees.

(2) Recognize differences and build cooperation

- ① Recognize the differences in the view on North Korea and the approaches to the issue
- The government should make diplomatic efforts toward the North Korean authorities and other government regardless of their political stances.
 - The government needs to understand the differences among NGOs in their views on the North and approaches to the North Korean human rights issue. It should consistently promote its unification policy while embracing different voices of NGOs.
- ② Consider the national interests and negotiating power
- It is important to respect the difference between the government's approach and the NGOs' approach and to be open for sufficient discussions and understanding. In addition, the NGOs need to cooperate with the government to help increase its negotiating power in the

consideration of national interests.

(3) Create public opinion and take comprehensive approaches

- ① Create public opinion and engage in practical activities in preparing for the unification.

The government and NGOs must more aggressively raise the public awareness of the fact that solving the overseas North Korean refugee issues and assisting the settlers in South Korea are an important part of the preparation for the national unification.

- ② Take multifaceted and comprehensive approaches

As noted above, there are many different issues to be considered-the human rights conditions inside North Korea, humanitarian aids and economic support for the North, Externally Displaced North Koreans, the North Koreans resettling in South Korea and the peaceful relations between the South and the North. In order to solve these pending issues, it is essential to take multifaceted and comprehensive approaches.

2) Establish a Committee on Externally Displaced North Koreans

- (1) Establish a committee comprising government agencies and NGOs

- The NGOs must understand that the government has diplomatic constraints in dealing with the Externally Displaced North Koreans. They should assist the

government in enhancing its negotiating power rather than attacking it for its passive approaches. In addition, the NGOs need to make greater efforts to raise the awareness of international community of the circumstances of Externally Displaced North Koreans and the necessity of granting them refugee status.

- The government should recognize the efficiency of NGOs' activities and view them as a part of comprehensive strategy rather than attacking them for manipulating the media.
- ① Share the information and obtain precise data on Externally Displaced North Koreans.
- ② Divide the roles between the government and NGOs regarding the support for the Externally Displaced North Koreans.
- ③ Discuss major issues.
- ④ Build a guideline for activities.

(2) Measures for commercial brokers

- ① Safety of the brokers
 - The commercial brokers hold a potential risk of creating diplomatic dispute between South Korea and China. At the same time, they cannot assure their own safety.
 - As noted above, the Chinese government has been deporting the Externally Displaced North Koreans exposed to the media to third countries and remaining silent about their traveling to South Korea. This circumstance may lead some brokers and defectors to attempt rather risky methods to attract the media including entering foreign embassies. Furthermore, the

defectors who cannot afford to leave China are in even more insecure condition as the Chinese government enhances the monitoring of the remaining defectors.

② Human rights violence

- Generally, brokers or the defectors resettled in South Korea facilitate any remaining family members in the North to escape the country. When the defectors are working as brokers in China, they are risking forced repatriation by the North authorities, even when they hold the South Korean nationality.
- Many brokers help the Externally Displaced North Koreans not out of humanitarian cause but to simply make money. These brokers sometimes devise and carry out highly risky escape plans that may put the concerned defectors in dangerous situations.



The Human Rights of the Externally Displaced North Koreans: Changes in the Conditions and Policies of Countries Involved

December 22, 2004

Status of the Externally Displaced North Koreans
in China and North Korean Human Rights

Cho, Cheon-Hyun

Reporter of the monthly magazine, *Marl*

Evaluation of Planned Displacements and Challenges Faced

Oh, Yeong-Pil

Video Journalist

US Policies on the Externally Displaced North Koreans
and Human Rights

Kim, Dong-Han

President, Law & Human Rights Research Institute

Chinese Policies on the Externally Displaced North Koreans

Lee, Jean-Young

Professor at Inha University, Politics

Status of the Externally Displaced North Koreans in China and North Korean Human Rights

Cho, Cheon-Hyun

Monthly magazine *Marl*

I Raising an Issue

Missionaries and NGOs at home and abroad have been showing a great deal of interest in Externally Displaced North Koreans and in providing assistance. However, their noble intentions have begun to deteriorate over time. One problem is that missionaries and NGOs are attempting to help these refugees without first establishing a clear goal and understanding of exactly what they are doing.

According to the results of an NGO survey, China is currently home to approximately 300,000 Externally Displaced North Koreans. This figure is somewhat inflated, however, because it has been discovered that the NGO allowed a single defector to fill

out dozens of identical survey responses. Given that the total population of Yanbian was approximately 350,000 at the time of the survey, and that most Externally Displaced North Koreans are said to be staying in Yanbian, the estimate of 300,000 makes little sense. It is nearly impossible to accurately calculate the number of Externally Displaced North Koreans living in China because they tend to lead reclusive lives.

With a few exceptions, the large majority of NGOs active in helping Externally Displaced North Koreans are missionaries. It is unclear whether the principle goal of these missionaries is to improve human rights conditions for the defectors or, rather, to spread the gospel. Of course, their goals are subject to change from time to time.

Among NGOs and missionaries there exists a large difference in opinion because there is little exchange of information. Most of the criticism is directed at the South Korean government rather than NGOs or missionaries whenever the media exposes unfortunate incidents surrounding Externally Displaced North Koreans, even though it is often the NGOs and missionaries pulling the strings. We cannot but doubt the real intentions of the NGOs involved. If an action that is intended to help an individual results in infringing upon the rights of others, that act cannot be said to be justified. There must be a change in the general perception of North Koreans, as they should not merely be perceived as objects of sympathy, devastated by starvation and poverty.

II Current Status and Conditions of Externally Displaced North Koreans in China

1. Current Status

My research into the status of Externally Displaced North Koreans now living in China involved detailed questionnaires and individual interviews over the course of nearly two years, from August 2001 to October 2003.

The general breakdown of respondents is as follows: 40% were in their 30s, constituting the largest age group; 19% were in their 60s; 17% were in their 20s; 14% were in their 40s. There is a relatively large percentage of defectors in their 60s primarily because many in this age group were actually born in or have relatives living in China. Another characteristic worth noting is that many of those who went to North Korea during the Great Famine or the Great Proletarian Cultural Revolution in the 1960s have since returned to China.

Roughly 78% of respondents had received secondary education and 16% had received post-secondary education. Given that 12% responded that their quality of life in North Korea was relatively higher than other households, their reasons for fleeing their country cannot simply be summarized as an attempt to escape economic hardship: more accurately, perhaps, they wanted to enjoy a better life.

The largest number of defections, about 29%, took place in the years 1998 and 1999. According to the results of the survey,

the number of individuals attempting to flee North Korea began dropping after the year 2000 when the food situation in that country started to gradually improve. In contrast, the number of defectors entering South Korea at that time actually started increasing. This is not because the total number of North Koreans leaving their country increased, but those who had been staying in China started, in larger numbers, coming to Korea following the announcement of the South Korean government's policy to accommodate all North Koreans seeking asylums in South Korea. Most of the defectors that I met with entered South Korea between the end of 2002 and 2004. Among 41 North Koreans seeking asylum in South Korea, only 19 were found to have actually made their way into the country.

When asked about their reasons for fleeing North Korea, 31% said it was to avoid starvation; 16% to make money, even though they did not at the time have a problem with getting food; 13% to receive help from relatives in Korea and China; 9% to avoid punishment or monitoring; 8% to follow the recommendations from relatives or family members who had already fled the country, and; 5% said they were seeking asylum in a country with a different socio-political system than North Korea.

The survey shows that North Koreans leave their country not only because of the food shortage but also because they wish to enjoy a higher quality of life or to avoid punishment. It was found that Externally Displaced North Koreans fled their country in search of food in the 1990s but, more generally, in pursuit of a better life since the year 2000. In rare cases, some North Korean women had been forcefully taken out of the country by various

brokers or human traffickers.

When asked about the frequency of border crossings, 60% replied that they had crossed the border just one time; 28% said they had crossed twice; 7% said three times; and 5% responded more than four times. When asked about whether they had been caught by the North Korean authority, 44% answered yes. Most of them were forcefully sent back to North Korea. Thanks to the easing of punishment given to repatriates following the historic inter-Korean summit in June 2000, many returnees decided to make another attempt at leaving North Korea. Some people were released before repatriation to North Korea by successfully bribing Chinese police. Mrs. Choi Jung-Hee (40, assumed name) who fled North Korea again after she had been forcefully sent back to North Korea reported the followed:

“According to changes in policy, repatriates are supposed to receive assistance to help them lead a stable life back in North Korea. Specifically, policies dictate that a returnee should be sent back to his or her hometown and provided with a house and a job. That is non-sense. How can the North Korean society afford that? The enforcement body cannot help but keep them loose without any protection. The enforcement body orders us not to go to China but how can it expect us not to try? Returnees have no choice but to cross the border again since there is no way in which to make a living. So, we have an endless cycle of defection, repatriation and defection.”

According to defectors, they are very afraid of being caught by the Chinese police (75%) and being forcefully repatriated to

North Korea (70%). They are also worried about having enough subsistence, good health, and the education of children. Other concerns are an inability to provide economic assistance to family members left behind in North Korea, the fate of those caught by the authorities, and also language problems.

2. Types of Externally Displaced North Koreans in China

North Korea and China have long maintained close relations. It is nothing new for the people of China and North Korea to cross their border and settle in the region in which they chose to live. When defectors stay long enough, they are allowed to live permanently in that region. Strictly speaking, the Korean-Chinese ethnicity (“Chosŏn”) is made up of Koreans who fled to China in search of food during the end of Chosŏn Dynasty and during the period of Japanese rule. This is, in a sense, a continuance of history where people of the two countries come and go for economic reasons. Most Externally Displaced North Koreans are from Hamgyeong Province and they are by nature a very mobile people.

The longer they remain in China, and as the prospect of asylum in South Korea is made increasingly possible, Externally Displaced North Koreans are today thinking quite differently than their predecessors. The three most appealing “destinations” for these defectors are South Korea (41%), North Korea (34%) and China (21%). Some responded that they wished to go to the US or Japan, while still others said they had not yet made up their mind. One thing we need to note is that, for safety purposes, those

who want to return to North Korea do not wish to expose themselves. It was difficult to talk to them because they were particularly reluctant to meet with South Koreans. In contrast, it was quite easy to contact those seeking asylum in South Korea because they were hoping to use every possible way to facilitate their move.

The Externally Displaced North Koreans with whom I have met up to present can be classified into the following three categories:

1) Those wishing to settle in China

They want to stay in China and make money until a time when North Korea opens up to the international community. They want neither to go to South Korea nor to return North Korea and believe that they cannot readjust to life in North Korea because they have been in China for too long.

Women who married the Han-Chinese (or the Korean-Chinese) and have children in China also want to settle in that country. They get married either by choice, for physical safety, or are forced to as victims of human trafficking. As they establish a family and as their marriage continues, they no longer consider the possibility of going to South Korea or back to North Korea. Because marriage between the Chinese and defected North Koreans is illegal in China, they cannot evade forced repatriation to North Korea once they are caught by the police. As a result, forced separation results in the inevitable breakdown of families. To avoid stricter crackdown by the Chinese authority, many defectors increasingly opt to come the South Korea.

2) Those wishing to return to North Korea

They go to China in order to make money and plan to go back to their country once they have sufficient finances. The main reason for them to leave North Korea was to support their family members who remain in North Korea and, as a result, wish to eventually return to their country and hometown. People in this category are not entertaining thoughts of leaving their family or their country permanently.

They begin to regret leaving North Korea over time because their life in China is a far cry from what they expected. Lee Ki-Soon (42, assumed name), a North Korean defector living in China with her family left in North Korea said as follows:

“This is not a country for us. I regret coming here. I regret this over and over again. I keep thinking about going back to my homeland. I have no intention to live in another country. If I could be forgiven, I would go back right away. I mean it. I would rather starve in my homeland.”

The main reasons why they can't return to North Korea, even though they so much wish to do so, are fear of punishment and not enough money. Even though the punishment of Externally Displaced North Koreans has been considerably relaxed, defectors stay in China because they are dubious of exactly how relaxed such punishments have become and are also afraid of being stigmatized upon their return. When asked whether they would go back to their homeland if welcomed without punishment, 58% said that they would. When asked about their reasons for wishing to go home, they answered as follows: because they want to live in

their homeland (9%); because of siblings left in North Korea (9%); because they are people of the DPRK (7%), and; they have family members left in North Korea (7%).

3) Those wishing to settle in South Korea

Externally Displaced North Koreans wish to come to South Korea for a variety of reasons. First, economic reasons take up the largest proportion. Because Externally Displaced North Koreans are aware of the fact that they would be offered settlement assistance and living grants from the South Korean government, they opt for South Korea in pursuit of a better life. Some defectors have a vague idea, without specific reasons, that they would lead a better life in South Korea. Oh Eun-Mi (39, assumed name) said:

“had no other motivations but money when I chose South Korea. I just wanted to earn money and lead a happy life. It was all because of money. I did not realize the power of money. It separates families, disintegrates a nation, and can destroy everything. I want to go to South Korea because of money. There is simply no other reason.”

Second, as the chance of making it to South Korea becomes higher, thanks to brokers, and as rumors lead one to believe that he or she can make lots of money in that country, those who had originally intended to settle in China begin reconsidering their options. Another reason is for people considering going to South Korea is their fear of forced repatriation as crackdowns by the Chinese authority become intensified. Among those who said they wanted to settle in China when I first met them, an increasing number of them are now hoping to settle in South Korea while

many have already made their way across the sea. Kim Jeong-Rae (41, assumed name) has already defected to South Korea and has this to say:

“I came to South Korea because I hated hiding. I heard that the Chinese police arrest North Koreans as soon as they see them. In truth, I came to South Korea because I wanted to work rather than keep hiding.”

Third, those who committed crimes such as human trafficking or smuggling in China have no other choice but to opt for South Korea.

Fourth, those who already entered South Korea want their family members left in China or North Korea to follow their lead. In this case, remaining family members chose to come to South Korea without much deliberation as they were persuaded either by brokers or by their family members.

Another reason is that some Han-Chinese, or Korean-Chinese, men use defected North Korean women as tools to help them enter South Korea. It costs about 10 million KRW for a Chinese man to come to South Korea while it costs only 3 million KRW for a defected North Korean woman to do so. Chinese men provide their North Korean spouses with passage to South Korea as well as financial assistance. In return, North Korean spouses invite their Chinese husbands in a form of international marriage as soon as they acquire South Korean citizenship.

Yet another reason some people seek asylum in South Korea

is to be able to provide a good educational environment for their children. These people have already acquired information about South Korea and use China as only a temporary base en route to South Korea.

Along with the reasons listed above, the fact that it is increasingly easy for North Koreans to enter South Korea must also be considered as a motivating factor.

In addition, some people frequently cross the border for reasons of business. They cannot be regarded as defectors. Because they are engaged in smuggling, they often choose to come to South Korea when faced with possible arrest or punishment from North Korean and Chinese authorities.

In the mean time, some North Koreans with valid visas and travel documents also opt to remain in China as illegal aliens once their visas expire. Some return to North Korea after making a considerable amount of money while others choose to go to South Korea. Many North Korean people with proper certificates for travel are staying and are earning a living in China as the North Korean government began issuing such certificates as of February of this year to those wishing to visit relatives in China. People in this category are highly likely to join the group of North Koreans seeking asylum in South Korea.

3. Hardships of Externally Displaced North Koreans

Externally Displaced North Koreans are exposed to various forms of human rights infringements including labor exploitation, threats, and violence because they are not in a position to exercise

their rights, being illegal aliens that run the risk of forced repatriation. This is comparable to the human rights conditions of foreign laborers and Korean-Chinese laborers working in Korea.

Chinese-Koreans and relatives in China did at one time provide assistance to defectors for a short period, but become more and more limited as their stay in China prolongs. At the same time, they become reluctant to help defectors because they themselves can be fined. In some worst cases, some Korean-Chinese report defectors to the Chinese authority.

Some defectors are hard workers, trying hard to forge their own paths, while others are merely looking for a free ride, using NGOs and missionaries as their ticket to a better, more comfortable life. Some defectors watch South Korean television programs in China with 73% of respondents saying that they are able to get information about South Korea through the mass media including the TV or Internet. In particular, young defectors use the Internet and have mobile phones.

Children who wander around China without guardians are deprived of educational opportunities and tend to gather together in conducting mischief. The general perception of defectors is getting worse in China because some adult defectors are guilty of committing crimes such as theft, drug smuggling, murder and human trafficking.

Most women defectors regret their time in China. They are found to be deeply depressed because of general insecurity and the fear of arrest. They are going through an unbearably hard time

in China and say that they would like to dissuade others from coming to China. They feel their lives are even worse because they had no idea that they would lead such a miserable life prior to coming to China. They come to a belated realization that it would be better to starve in North Korea than to be forced to endure such physical and mental ordeal in China. Indeed, some of the conditions women are forced to endure are nothing less than traumatic.

Women defectors who are married in China for security or economic reasons are de facto wives whose marriage is not fully protected or recognized by law. Most of such marriages are the result of human trafficking. Most women defectors, however, fall into the category of victims of human trafficking without even realizing that this is the case.

If a victim of human trafficking was married in North Korea and was forced to marry a Chinese man, she has families both in China and North Korea. She will, then, go through a hard time because of her feelings for the family left in North Korea. In most cases, North Korean women are trafficked within China although some are trafficked within North Korea and brought to China against their will. Until 1999, the majority of human traffickers were North Korean.

Women defectors are better able to adapt to life in China than their male counterparts because it is relatively easy for women to find places to live and work. Most female defectors, both young and old, live together with Chinese widowers and work at restaurants or farms. Some work in red light districts though it is not true that

the majority of female defectors are sold for such work. They prefer to work in red light districts because they do not have to show their IDs and can make a relatively large amount of money quickly. Another reason is that the owners of such establishments help hide and protect North Korean women because they also will be fined if the women are caught.

III Shortcomings of NGOs and Missionaries

There are many NGOs and missionaries working to protect the human rights of Externally Displaced North Koreans. When we examine their actions, however, it is doubtful that these organizations truly understand the human rights they are allegedly working to protect. If the rights of a great many others are infringed upon for the sake of only a few people, it is not a legitimate way of going about protecting human rights.

The majority of Externally Displaced North Koreans speak in a single voice in their denunciation of planned defections. According to the survey, some viewed NGOs and missionaries as helpful and well-intentioned, while others perceived them as nothing less than exploitive. Kim Yeong-Sun, who has been living in China for eight years, said the following:

“Defectors are just pawns. Their true objective is to isolate North Korea by elevating the defector issue to international status. They advocate for human rights but how can they film Externally Displaced North Koreans entering foreign facilities and then distribute the footage to the media if they truly wish to protect

defectors? Their faces are broadcast all over the world. Fortunately, some defectors do make their way to South Korea, but the aftermath of such media coverage is a much harder life for everyone else who remains in China.”

There are problems with the NGOs’ activities. Their programs are inconsistent and their one-time events and planned defections are not only irresponsible but can sometimes be seriously detrimental to North Koreans.

Local NGOs work separately from each other without forming a network. Instead, they prefer to work more closely with international NGOs for financial assistance.

As stated earlier, most NGOs are missionary in nature, disguising their true objectives of expanding the reach of their religion or church. Another problem is that they do not have a clear understanding of the reality of Externally Displaced North Koreans and believe that material assistance is what the defectors really need. In other words, missionaries are causing defectors to become too reliant upon their assistance instead of working to teach them how to survive. This is why defectors stay at hiding places provided by missionaries during the winter, then leave when the spring comes.

Despite their collective experience in the field, NGOs are calling for infeasible solutions. They call on the South Korean government to unconditionally accommodate defectors without considering the practicality of their requests or even international law. Their arguments are remnants from the cold war mentality

and are flawed in their rhetoric and presupposition that all North Koreans seeking asylum in South Korea are good people trying to escape an evil place. It is an antiquated way of thinking at a time when conciliation, cooperation and unification of the two Koreas all make up the agenda for policy.

In addition, Japanese NGOs and private broadcasters are using Externally Displaced North Koreans to highlight the issue of North Korea's past kidnappings of Japanese and to propagate the image of North Korea as part of an axis of evil. Some domestic NGOs and missionaries are indirectly engaged in this campaign. Japanese media companies are utilizing networks in Korea and China to acquire video material and information related to North Korea.

It is contradictory for NGOs who are advocating the protection of human rights to be swayed by monetary factors as they join hands with Chinese brokers and Japanese media. NGOs cannot escape the charge that they are in fact operating as businesses. They ask Externally Displaced North Koreans to pay a fee in return for a new life in South Korea and sell the film of North Koreans entering foreign facilities to media outlets. In rare cases, NGOs and missionaries forge a symbiotic relationship. Information acquired through these sources should not be accepted at face value but should be taken with due caution.

Another important factor is that there are no organizations in place to properly monitor and evaluate the activities, internal and external, of NGOs. The mass media, which is supposed to act as some sort of watch dog, instead airs the footage without

editor and gives a tacit approval to NGOs and missionaries in order to secure future sources of information. For example, media coverage of an agent from the National Intelligence Service disguised as a missionary, the imposter of Kim Eun-Chul, imposter of wife of war prisoner Jun Yong-II, documents on experimentation involving live bodies, and Korean-Japanese Lee Joo-Im's defection from North Korea, all created quite a stir. NGOs and missionaries did not assume responsibility and the government did nothing to correct the situation or to prevent it from happening again. The government continually fails to consistently handle the defection issue and has been kept busy instead dealing with the implications of the media coverage of Externally Displaced North Koreans. As a result, the government's make-shift policies do not bring about tangible benefits but instead add burden to its citizens. As the dust settles, two things became quite clear: there is a lack of morality within NGOs as well as lowered confidence in the South Korean government. In the end, those defectors who remain in China are left to suffer in the aftermath.

IV Suggestions

The laws relating to the protection of Externally Displaced North Koreans stipulate that all Externally Displaced North Koreans should be provided with assistance. However, this assistance is, in reality, concentrated only upon those who choose to settle in South Korea.

The education program provided at Hanawon is insufficient because short-term educational programs are uniform in content and fail to reflect the differences among defectors. As stated earlier,

North Koreans defect for a variety of reasons and, in light of this, educational content needs to be tailored to meet the different needs of each defector.

The South Korean government should pay attention to Externally Displaced North Koreans living outside of its territory. Some defectors remain adrift for several years. As well, the government provides citizenship, but no settlement assistance to those who have stayed in China for more than 10 years before coming to South Korea. The government needs to come up with measures to help these displaced citizens as well. In addition, the governments of South Korea and China must cooperate to help Externally Displaced North Koreans who have established families not only in North Korea but also in China.

In the long term, rather than concentrating assistance upon those who enter South Korea, the government should shift its focus to helping North Korea develop its economy so that its citizens are no longer forced to leave for economic reasons and defectors who have been adrift in foreign countries may at last return to their country. In this way, we may finally see real progress in the efforts to re-unify the two Koreas.

Evaluation of Planned Displacements and Challenges Faced

Oh, Yeong-Pil¹⁾

Video Journalist

I Problems concerning planned defection

It should be mentioned first and foremost that planned defections pose a physical threat to Externally Displaced North Koreans and their families. If a planned defection succeeds and is reported through the media, families of Externally Displaced North Koreans are put at risk while failed attempts at defection are likely to put the individuals themselves at risk.

Second, planned defection may have a negative impact on other Externally Displaced North Koreans and NGOs who remain in China.

1) The author was arrested by Chinese police in March 2003 for helping North Korean defectors enter South Korea together with Korean Christian organizations and Japanese media. After 16 months in custody, he realized the problems connected to planned defection and issued a declaration of conscience- Editor's note

Most Externally Displaced North Koreans staying in China wish to settle there or to return to their country as soon as their financial goals have been met. However, once the press reports on an incidence of North Korean entry into foreign government facilities or embassies within in China, the Chinese authority is forced to further crackdown on Externally Displaced North Koreans and the NGOs who are helping them. As a result, Externally Displaced North Koreans are either caught and repatriated, or they are forced to search for safer places. Consequently, the activities of organizations helping Externally Displaced North Koreans in good faith suffer.

Third, planned defection encourages and promotes the activities of brokers whose primary, if not sole, motivation is money. Brokers gather Externally Displaced North Koreans and receive KRW 3~5 million per person in return for helping them gain entry into South Korea. The problem is that brokers force or deceive Externally Displaced North Koreans into signing a disadvantageous memorandum and make their adaptation to the Korean society even more difficult as they demand Externally Displaced North Koreans pay their fees as soon as they receive the South Korean government's grant.

Forth, planned defection causes a great deal of diplomatic friction. It increases diplomatic tensions between the three players, South Korea, China and North Korea, which further loosen the foothold of the South Korean government.

Fifth, Externally Displaced North Koreans become a political tool through planned defection. Some political forces in South

Korea, the US, and Japan who are antagonistic toward North Korea use planned defection as a political tool to isolate North Korea. Even though they allege that they promote planned defection in order to improve the conditions of Externally Displaced North Koreans, they fail to use their power and influence to help those failed defectors who have been imprisoned.

II Changing realities for Externally Displaced North Koreans

Policies toward Externally Displaced North Koreans continue to change, depending on the political interests of the stakeholders. While the problems of the past (including the dire human rights conditions of Externally Displaced North Koreans) are gradually being addressed, new issues are emerging (such as the change in motivation behind fleeing North Korea and in the entities which help defectors). In detail, the following are emerging as a new trend.

- 1) Motivations for fleeing North Korea are changing.
If North Koreans in the past fled their country for reasons such as escaping starvation, poverty, and political oppression, they are now defecting for more ideological reasons such as being able to provide a better educational environment for their children as well as the desire for increased quality of life and liberty.
- 2) Brokers and NGOs helping Externally Displaced North Koreans are increasingly
dependent on the US for moral and financial support upon

the effectuation of the North Korea Human Rights Act.

- 3) The Chinese authority reinforced a crackdown on NGOs helping Externally Displaced North Koreans.
- 4) Through more frequent debates and greater exposure of the problems related to planned defections, through seminars and general media coverage, the public's perception of planned defection is changing.
- 5) North Korea eased its crackdown on and punishment of Externally Displaced North Koreans
- 6) There have been adjustments and contractions made to the financial assistance offered to help defectors adapt to South Korean society; the settlement assistance grant has decreased from KRW 37.5 million to KRW 20 million per household.
- 7) Signs of North Korea opening up to the outside world as a result of economic cooperation between the two Koreas.
- 8) Changes in US policy towards North Korea following the re-election of President Bush.
- 9) Increase in new forms of brokers geared directly towards North Koreans seeking asylum in South Korea.
- 10) Increase in the number of planned defections to save family members remaining in North Korea.

III Helping Externally Displaced North Koreans adapt to South Korean society

A great deal of attention should be paid to Externally Displaced North Koreans staying in South Korea because they

receive less attention than those staying in China. North Koreans settling in South Korea are having difficulty adapting to and settling into South Korean society for a number of psychological reasons including loneliness, feelings of alienation, difficulty in accepting different social systems, difficulty in finding jobs, and also because of the cynical attitudes held by some South Koreans toward Externally Displaced North Koreans. Programs need to be developed in order to address these problems.

- 1) Expand indirect (non-financial) assistance while reducing direct (financial) assistance
- 2) Shift from “free assistance” to “paid assistance,” including making available low interest loans
- 3) Expand psychiatric treatment
- 4) Expand job training and education programs
- 5) Encourage closer cooperation among defectors by helping them form communities
- 6) Build more alternative schools for children who fled their country
- 7) Establish links between social and religious organizations

IV Conclusion

The North Korean refugee issue is a universal problem because it is related to human rights and concerns all global citizens. Those who use planned defection as a means to achieve financial or political gains need to consider the effects of their actions as they are serving only to make lives of Externally Displaced North Koreans even harder than they already are. If some

wish to continue facilitating planned defection, they should do so only in good faith.

Externally Displaced North Koreans who have made their way to South Korea deserve more attention and care than they currently receive. We must not forget that they are our brothers and sisters and are undoubtedly suffering the separation from their beloved family members.

US Policies on the Externally Displaced North Koreans and Human Rights

Kim, Dong-Han

Law & Human Rights Research Institute

I Introduction

This paper will review the US policy towards Externally Displaced North Koreans by taking a look at the process of enacting the North Korea Human Rights Act in the US from the proposal of the bill to its signing by the President, with a special focus on chapter 3 of the Act that deals with protection measures for Externally Displaced North Koreans.

II Enactment Process of the North Korea Human Rights Act¹⁾

1) Kim Soo-Am · Lee Geum-Soon, *The North Korea Human Rights Act by the US Congress: Significance and Outlook* (Aug. 2004 Analysis on

The origins of the North Korea Human Rights Act can be directly traced to the North Korean Refugee Relief Act of 2002. The US congress was in the process of putting into effect what was called the North Korean Freedom Act of 2003, legislature that was separate from the North Korean Refugee Relief Act.

At the time, Representative James A. Leach, Chair of the Subcommittee on Asia and the Pacific, along with 16 other representatives, proposed the North Korea Human Rights Act after revising and suggesting amendments to the North Korean Freedom Act of 2003. On March 1, 2004, the North Korea Human Rights Act of 2004 passed with unanimous approval in the Council on Foreign Relations and received likewise unanimous support in the House of Representatives on July 21 of that same year following a review by the Judiciary Committee. On September 28, the US Senate unanimously passed the revised bill. The partially revised bill was reintroduced to the House of Representatives and unanimously passed, revealing the general sentiment of the US Congress regarding human rights conditions in North Korea. The bill was signed by the US President on October 18th, 2004 and immediately came into effect upon his signing, the final step of legislation.

Legislation of the North Korea Human Rights Act by Congress should not at all be surprising. After all, the US has legislated bills before which infringe upon other nations' sovereignty in efforts to tame those countries that stand in its way of global management. In this same context, the US Congress legislated the Eastern Europe Democratization Act, under the banner of helping Eastern Europe during the period of turmoil that followed the dismantling of the former Soviet Union.

Korean Reunification 2004-16, Korea Institute for National Unification

III Key Elements of the North Korea Human Rights Act

The Act sets forth the following five elements as its objectives.

- 1) Protection of and respect for basic human rights in North Korea
- 2) Encouragement of a more lasting and humanitarian solution to the troubling circumstances of Externally Displaced North Koreans
- 3) Improvement of the transparency, accessibility and monitoring of humanitarian assistance to North Korea
- 4) Facilitation of the flow of information inside and outside of North Korea
- 5) Acceleration of the peaceful reunification of the Korean peninsula founded on a democratic system of government

Looking at the contents of the Act, we can divide them into the following three general categories.

- 1) Promotion of the human rights of North Koreans
- 2) Provision of assistance to destitute North Koreans
- 3) Protection of North Koreans seeking asylum

IV US Policy toward Externally Displaced North Koreans outlined in the North Korea Human Rights Act

Analysis of the North Korea Human Rights Act reveals the intention of the US Congress to induce the US government to engage in the active protection of refugees. The Act specifies that

the US State Department should compile a report on the current status of Externally Displaced North Koreans as well as government policy that targets them in conjunction with other federal institutions. The State Dept. must then submit its findings to relevant committees and judiciary committees of the Senate and the House of Representatives within 200 days following legislation of the Act.

Clauses stipulating that the US should inspect whether Externally Displaced North Koreans are allowed to contact the UN High Commissioner for Refugees (UNHCR) and that the Chinese authority complies with the Convention relating to the Status of Refugees can be interpreted as an act of interference or intervention in China. It is expected that these clauses will spark conflicts between the US and China concerning Externally Displaced North Koreans.

Concerning qualifications for Externally Displaced North Koreans to be granted refugee status, the Act clearly states that a North Korean defector, while enjoying legal rights as a citizen of the Republic of Korea, as laid out in South Korea's Constitution, is not to be deprived of his or her qualifications in applying for refugee status. The act also clarifies that it has no intention to undermine citizenship given to North Koreans in accordance with the Constitution of the Republic of Korea. This clause is interpreted as a drastic loosening of the otherwise strict qualifications for granting refugee status to North Koreans.

Regarding the treatment of North Koreans, sections 207 and 208 of the US Immigration and Nationality Act clarify that the

people of the DPRK are not to be considered citizens of the ROK. The US State Department is required to facilitate North Koreans' application for refugee status in compliance with section 207. This clause also explicitly encourages North Koreans to apply for status as refugee. At the same time, this clause strongly calls on the UNHCR to play more active roles and to increase their involvement.

The US is anticipated to press hard on the Chinese government using the UNHCR as its medium. This pressure is comparable to the US intervening in the national affairs of the Chinese government. The effectiveness of the clauses is yet to be seen. First, we need to wait and see how the UNHCR reacts as it is not an organization that unconditionally follows the suggestions of the US. Next, we need to take into account the reaction of the Chinese government. It is obvious that China will not accept recommendations that could be seen to damage its sovereignty. Given past points of conflict between China and the US concerning human rights conditions in China, the requirements laid out in the US laws are likely to remain declarative at best.

V Influence of the US North Korea Human Rights Act on Externally Displaced North Koreans

The US seems to encourage Externally Displaced North Koreans to apply for refugee status in the name of protecting their rights. As a result, greater numbers of Externally Displaced North Koreans may dream of a new life in the US. It is also possible that there will be an exodus of North Koreans who expect support

and a warm welcome from the US. North Koreans will soon be disillusioned, however, as they learn of the US's true intentions.

Defectors who are inspired by the American dream, as they attempt to enter the US, will learn that what the US is really seeking is symbolic as it's true intention is to deal another blow to the Kim Jong-il regime, inducing a massive defection of North Koreans. Can we really be expected to believe that the US will tolerate a mass exodus of North Koreans to its ports while it is in the process of applying increasingly stricter rules of immigration for South Koreans?²⁾ The goal of inducing North Koreans to flee their country is, simply put, to dismantle the Kim Jong-il regime and to work toward changing North Korea's social system.

The US considers this course of action natural. It is aware that its North Korea Human Rights Act is readily interpreted as one of several steps toward inducing the collapse of the North Korean regime, as alleged by North Korea, yet the US continues to play at hiding its political pursuits under the banner of protecting Externally Displaced North Koreans.

VI The Act's Implications for the Protection of Externally Displaced North Koreans' Human Rights

The North Korean Human Rights Act calls for a greater engagement and attention from the Chinese government regarding

2) "Application to defect to the US by North Koreans who entered the US government's facilities in Bladivostok were denied" Choongang Ilbo, Nov. 3, 2004

the protection of Externally Displaced North Koreans, in particular those within China. It is highly likely that this request will serve to aggravate US-China relations. If the US and China fail to resolve this issue, the conditions of Externally Displaced North Koreans within the Chinese territory may deteriorate even further.

The Chinese government stepped up its regulation of Externally Displaced North Koreans following the enactment of the North Korea Human Rights Act and has repatriated all its arrestees back to North Korea.

As stated earlier, the US is hoping to convey the intention of protecting the fundamental human rights of Externally Displaced North Koreans through its North Korea Human Rights Act, which fails to be more than a mere symbolic gesture (Article 303).

Since US policy towards North Korea, within the context of the North Korea Human Rights Act, is based on a relatively brief period of observation (2005~2008), the US government is highly likely to wriggle loose from the situation once it becomes too complicated and out of control. It is impractical to expect the US to sincerely pursue the protection of human rights of Externally Displaced North Koreans through the North Korea Human Rights Act.

The Act stipulates that annual assistance in the amount of \$20 million to Externally Displaced North Koreans and NGOs helping Externally Displaced North Koreans should be budgeted for on an annual basis. In fact, the budgetary requirement could not be met for the year 2005 because the budget-planning period

ended in September while the Act went into effect on October 18. The budget for granting settlement assistance to Externally Displaced North Koreans was excluded in the Omnibus Appropriations Bill of November 20, 2005.³⁾

By encouraging North Koreans to flee their country, the clauses within the Act, which pertain directly to Externally Displaced North Koreans, only serve to provoke increased suspicion of the US government's intentions regarding an eventual collapse of the North Korean regime. It is believed by some that the Act may benefit some North Koreans but ultimately fail to significantly improve the human rights conditions of the vast majority of asylum seekers. In this light, the North Korea Human Rights Act cannot evade criticism that it merely ensures the livelihood of Korean and American organizations working for the democratization of North Korea and who support the migration of North Koreans.

3) Gyeonghang Sinmun, page 4, Dec. 13, 2004

Chinese Policies on the Externally Displaced North Koreans

Lee, Jean-Young

Inha University

I ssues to be considered when studying China's policy towards Externally Displaced North Koreans

1. Current debates

The Chinese government, in cooperation with North Korea, forcefully repatriates North Koreans who are seeking asylum within its territory because it considers Externally Displaced North Koreans as illegal economic migrants. China maintains that Externally Displaced North Koreans are illegal residents who have entered China in search of food rather than for political reasons. It also cautions the UNHCR in extending refugee status to Externally Displaced North Koreans for the sake of greater stability on the Korean peninsula and, in effect, complicating matters with respect to China's position. China's recent policy towards Externally Displaced North Koreans is two-pronged, giving tacit

approval to Externally Displaced North Koreans who wish to go to South Korea or a third-party country because it fears criticism from the international community while continuing to closely monitor Externally Displaced North Koreans.

China's policy towards Externally Displaced North Koreans within its territory can be outlined as follows from the perspective of South Korea.

- Externally Displaced North Koreans illegally cross the border for economical reasons thereby they should be regarded as illegal aliens
- Externally Displaced North Koreans have been forcefully sent back to North Korea in cooperation with the North Korean authority
- China's treatment of Externally Displaced North Koreans is in clear violation of the obligations of signatories to the UN Refugee Convention as well as general UN Refugee Protocol
- Externally Displaced North Koreans are deprived of their rights to council UNHCR
- Chinas policy is to simultaneously tolerate, if not condone, North Korean defector's relocating to Korea from fear of international criticism while it continues to keep a close eye on the whereabouts of Externally Displaced North Koreans
- China insists that their policy is founded upon Chinese national law, international law and humanitarianism
- China has maintained a strong stance since the passage of North Korea Human Rights Act by the US Congress
- The Korean government has maintained a silent diplomatic

stance towards China's policy and the NSC has become the central body in addressing issues related to Externally Displaced North Koreans

- Overall, it should be noted that China's double-handed policy toward Externally Displaced North Koreans fails to meet international standards concerning human rights. China has strongly warned NGOs as well as the South Korean government for their work in assisting Externally Displaced North Koreans.

2. Other considerations

- China's policy towards Externally Displaced North Koreans provides an interesting and perhaps unique subject from the perspective of Chinese foreign relations because China's treatment of asylum seekers is both an internal and an external matter that has taken center stage just at the time when the country's diplomatic policies, traditional and new, are overlapping.

It is noteworthy that the North Korean defector issue should not be considered merely as pertaining to illegal migrant workers, but also as a litmus test of Chinese diplomacy. In other words, China's policy towards Externally Displaced North Koreans can be viewed as an extension of its policy relating to the Korean peninsula in general.

This issue reflects changes in China's overall diplomatic posturing as well as its diplomatic policies regarding the Korean peninsula and Northeast Asia. In particular, this issue can and

should be viewed as telling of China's relationship with the Korean peninsula since the emergence of the North Korean nuclear issue. Another interesting point is that the North Korean defector issue presents an internal challenge to China, which is already facing other challenges with racial minority groups.

II China's human rights philosophy and Externally Displaced North Koreans from a diplomatic perspective

1) China's stance towards the Korean Peninsula during Hujintao's rule

The North Korean nuclear issue falls under all of China's three diplomatic priorities (relations with super powers, relations with neighboring countries and important conflicts), which Chinese diplomats have been pursuing since 1991. At the same time, the North Korean nuclear issue has served and continues to serve as an important medium through which China can check its diplomatic policy mechanisms, establish new diplomatic policies, establish a new order in Northeast Asia, maintain influence over the Korean peninsular and, finally, pursue a multi-polar, omni-directional diplomacy. China's three interests in addressing the North Korean nuclear issue (maintenance of stability on the Korean peninsula, non-proliferation of nuclear weapons, and peaceful resolution through dialogue) are in line with Hujintao's diplomatic strategies.

If we consider China's attitudes displayed during the rule of Kim Jong-il to be an expression of its stance towards the North

Korean nuclear issue, China's diplomacy involving the Korean peninsula can be perceived as ① a process of establishing a new order in Northeast Asia, ② neglecting the unique relationship it had in the past with North Korea, ③ failing to consider South Korea's rise in economic and industrial strength, and ④ downgrading the overall significance of the Korean peninsula. This is comparable to the nature of the US-South Korean relationship where things are viewed within the context of the US diplomatic strategies and its general stance regarding the region, and as an extension of the US-Japanese relationship. In other words, China, with greater economic power, is now shifting its diplomatic focus to other super powers and adopting a more independent stance towards the Korean peninsula.

In a nutshell, China treats Externally Displaced North Koreans within the framework of its greater policy towards the Korean peninsula. China's treatment of asylum seekers should be seen within the context of China-US relations and in line with China's status in the Northeast Asia region.

2) Characteristics of debates concerning human rights in China

- The debate surrounding human rights in China surfaced during the reform period (1978) and intensified following the 1989 confrontation at Tiananmen Square. The international community is highly critical of the poor human rights conditions in China.
- Out of fear that human rights issue in China, including the Tiananmen incident would restrict China's role in the international community, China has been actively

participating in multilateral as well as bilateral talks involving human rights since 1990.

- China's approach to human rights since Tiananmen can largely be divided into the periods before and after 1997.
- If China could be said to be defensive and passive before 1997, it has been proactive and rather more aggressive following 1997.
- China became a signatory to the International Covenant on Economic, Social and Cultural Rights in 1997 and to the International Implementations of International Covenant on Civil and Political Rights in October of 1998.
- These acts reflect China's confidence in its international status following its rapid economic growth over the past 20 years and the changes in its approach to human rights.

China's approach to human rights since 1997 can be outlined as follows: ① becoming increasingly proactive buoyed by steady economic advancement; ② using the issue as a political card in promoting unity among the Chinese people by emphasizing Chinese nationalism; ③ obscuring its human rights problems by highlighting human rights challenges faced by the US and inducing European countries to drop discussions about China's human rights conditions in return for economic gains, and; ④ seeking understanding among Asian countries about its position at the multilateral front and actively participating in international activities in accordance with international rules and regulations, and carefully applying these changes to its domestic policies.

- In conclusion, China's stance towards human rights issues is ambiguous as it places priority on domestic stability and unity while encouraging other countries to better understand its position while it gradually and partially adopts international standards.

3) China's stance towards human rights in North Korea

- China's stance towards human rights conditions in North Korea is also two-sided: it restrains from intervening directly with North Korean policies while ignoring or circumventing North Korea's policy approach towards human rights.
- China's attempt to get around the issue of human rights abuses in North Korea can be seen in its handling of Externally Displaced North Koreans.
 - In the past, China agreed to repatriate Externally Displaced North Koreans because it viewed the issue as a bilateral issue that dealt only with the matter of illegal migrant workers while not taking into consideration any possible human rights issues.
 - China also viewed Externally Displaced North Koreans as people who were temporarily migrating in search of food rather than as those defecting for political or even survival reasons.

Outline of China's attitudes towards Externally Displaced North Koreans

- 1) A matter of national security

- ① Illegal economic migrants ② bilateral issue between China and North Korea ③ border stability/security ④ national affairs ⑤ religious affairs
- 2) Diplomatic and international issues
 - ① Status in the international community ② role and status in Northeast Asia ③ participation in international activities ④ correlation with human right issues in China
- 3) Worries about mutually conflicting issues

III Korea's countermeasures

A shift in focus to consider the human rights of individual defectors

- 1) From political to administrative and economic standpoints: pursuit of real gains
- 2) Establishment of a new system of governance based on mutual understanding
- 3) Building of communication channels between government and private sector, including NGOs

A change in viewpoint required from three dimensions

- 1) Non-political approach to political issues
- 2) A comprehensive and integrated view of North Korean issues including defectors and human rights is required, but in terms of policy, clear-cut distinctions are required
- 3) Regard Externally Displaced North Koreans not as refugees or illegal economic migrants, but as migrants of the global village

- A concerted effort by the integrated Korean regime
- (1) The will to do something is quite separate from capability and practice
No less than a paradigm shift is required of the Korean government, but this will most likely result in a greater economic burden.
- (2) Importance of forming a council composed of government, NGOs, and religious groups
- (3) Need for fostering mutual understanding with international NGOs
- (4) Cooperation with inter-governmental organizations
- (5) Problem solving through a collective of international NGOs
- (6) Hybrid INGO: formation of a group composed of government, IGOs, NGOs and INGOs

North Korean Human Rights

Trends and Issues



National Human Rights Commission of the Republic of Korea

100-842 16 Euljiro 1-ga, Jung-gu, Seoul, Korea
tel +82 2 2125 9724 fax +82 2 2125 9728 www.humanrights.go.kr