

## Note

### **Human Rights Situation in North Korea: Lack of Significant Progress from the United Nations Human Rights Mechanisms and What Can be Done**

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#### I. INTRODUCTION

The United Nations (U.N.) human rights system has made efforts to address the human rights violations in North Korea; however, there have been no improvements.<sup>1</sup> North Korea is a party to most of the main U.N. human rights treaties, but it has not been implementing the provisions of these treaties effectively.<sup>2</sup> As a party to these treaties, North Korea is required to send in state reports to the respective committees to monitor the implementation of these treaties,<sup>3</sup> but North Korea has not done so regularly.<sup>4</sup> On the occasions that the committees receive

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1. See generally Cholpon Orozobekova, *UN Again Takes Up North Korea's Human Rights Abuses*, DIPLOMAT (Dec. 14, 2016), <http://thediplomat.com/2016/12/un-again-takes-up-north-koreas-human-rights-abuses/> (explaining actions that need to be taken to address the situation in North Korea).

2. Patricia Goedde, *Legal Mobilization for Human Rights Protection in North Korea: Furthering Discourse or Discord?* 32 HUM. RTS. Q. 530, 551 (2010). See *Ratification Status for Democratic People's Republic of Korea*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=47&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=47&Lang=EN). See also *Status of Treaties*, UNITED NATIONS TREATY COLLECTION, <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

3. *Monitoring the Core International Human Rights Bodies*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

4. Goedde, *supra* note 2, at 551–52.

the state reports from North Korea, they have addressed the different concerns and listed recommendations for North Korea to take.<sup>5</sup> However, North Korea has not been taking any steps to improve the human rights situation.

Other countries like South Korea and the United States have been taking steps to address the human rights situation in North Korea. Both countries have passed legislation and created different commissions and non-governmental organizations (NGOs) to further this goal.<sup>6</sup> These measures have not been effective in bringing visibility or change to the human rights situation.<sup>7</sup> The U.N. needs to intervene and aid other countries in their intervention if it hopes to have any impact, given that intervening directly in the actions of the North Korean government has proven unsuccessful.

Much focus has rightly been on addressing the problems within North Korean borders like nuclear disarmament, but the country has not done anything to improve the lives of its citizens.<sup>8</sup> The U.N. and other countries should continue to prioritize aiding North Korean refugees to better understand the

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5. See generally *Monitoring the Economic, Social, and Cultural Rights*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx> (describing the general role of the Committee on Economic, Social, and Cultural Rights, which is applicable to other human rights treaties committees).

6. See Susan Ferrechio, *House Reauthorizes North Korean Human Rights Law*, WASH. EXAMINER (Sept. 25, 2017), <https://www.washingtonexaminer.com/house-reauthorizes-north-korea-human-rights-law> ("The House voted unanimously Monday to reauthorize a 2004 North Korea human rights law . . ."); *Introduction*, NAT'L HUM. RTS. COMMISSION OF KOREA, <https://www.humanrights.go.kr/site/homepage/menu/viewMenu?menuid=002005001> (summarizing the role of the National Human Rights Commission of Korea, which was created in South Korea). See generally Nazanin Zadeh-Cummings, *Aid From the Enemy: American and S. Korean NGOs in the DPRK*, NK NEWS (Dec. 6, 2016), <https://www.nknews.org/2016/12/aid-from-the-enemy-american-and-s-korean-ngos-in-the-dprk/> (explaining the role of NGOs from South Korea and the United States in North Korea).

7. See generally *Human Rights in North Korea Need Major Improvement*, BORGAN PROJECT (Jan. 14, 2018), <https://borgenproject.org/facts-about-human-rights-in-north-korea/> (explaining that the human rights situation has not improved in North Korea and more work is needed by committees and other organizations).

8. See *North Korea: Celebrations Hide Human Rights Violations*, HUM. RTS. WATCH (Jan. 5, 2017, 6:52 PM), <https://www.hrw.org/news/2017/01/05/north-korea-celebrations-hide-human-rights-violations> (statement of Phil Robertson) ("If Kim Jong-Un intends to fulfil his pledges, he should end his government's predatory policies that rely on intimidating, extorting, and abusing the North Korean people, and systematically suppressing all basic rights.").

violations in North Korea through the refugees' firsthand accounts of life in North Korea.

This paper will analyze the different U.N. human rights mechanisms that have been activated to address the human rights problems in North Korea and why these mechanisms have not worked. Part II will give a brief overview of the human rights violations in North Korea. Part III will examine how the U.N. human rights system has acted vis-à-vis this situation and how the North Korean government and other countries have responded. Part IV will analyze why the U.N.'s legal mechanisms have not had more success in the case of North Korea. Lastly, Part V will list recommendations for the U.N. human rights system.

## II. HUMAN RIGHTS VIOLATIONS IN NORTH KOREA

In order to recommend effective action, it is crucial to understand the nature and dimension of human rights violations in North Korea. The main perpetrator of these violations is the North Korean government itself.<sup>9</sup> The human rights violations that will be discussed will include treatment of political prisoners, economic repression, and treatment of refugees. This list does not encompass all of the human rights violations in North Korea but understanding the basics of these violations will give some insight into what is going on in the troubled regime.

### A. TREATMENT OF POLITICAL PRISONERS

Arbitrary detention and the treatment of political prisoners are pressing issues. These political prisoners are detained for committing what are regarded as acts of disloyalty to the government,<sup>10</sup> including; "criticizing the Kim family and its policies, trying to defect to South Korea, having a family member who cooperated with the Japanese, organizing a Christian service, or getting caught up on the wrong side of factional political disputes."<sup>11</sup> The political prisoners are placed in penal

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9. See Christine Hong, *Reframing North Korean Human Rights*, 45 *CRITICAL ASIAN STUD.* 511, 519 (2013).

10. Roberta Cohen, *Human Rights and Humanitarian Planning for Crisis in North Korea*, 19 *INT'L J. KOREAN UNIFICATION STUDIES* 1, 3 (2015).

11. *Id.*

labor camps, also known as “*kwanliso*,” or controlled areas, which are hidden from public view.<sup>12</sup> These political prisoners are not formally charged in any trials<sup>13</sup> and most of them are incarcerated for life and denied contact with the outside world.<sup>14</sup> Not only are the guilty sent to these labor camps, but their entire families are sent as well, solely because of their familial association.<sup>15</sup> In these camps, the prisoners are subject to forced labor, torture, starvation, and execution.<sup>16</sup>

#### B. ECONOMIC REPRESSION OF NORTH KOREAN CITIZENS

Political repression of North Koreans is a major human rights issue, but economic repression remains a problem as well. In the 1990s, North Korea suffered a huge famine, which killed more than one million people.<sup>17</sup> The famine was caused by a series of policies that North Korea established, which “imposed a planned economy that focused on heavy industry, an input-intensive collectivized agriculture system, and tight control over individual livelihood choices.”<sup>18</sup> According to surveys of political freedom and civil rights by Freedom House, North Korea consistently ranked as the least free country in the world, and the Index of Economic Freedom declared the North Korean economy as one of the most repressed.<sup>19</sup> At the end of 2008, the government devalued the currency, which wiped out private stores of money.<sup>20</sup> Because of the currency devaluation, many

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12. *Id.*; U.S. DEP'T OF STATE, DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA 2015 HUMAN RIGHTS REPORT 4 (2015); *North Korea World Report 2016*, HUM. RTS. WATCH (2016), <https://www.hrw.org/world-report/2016/country-chapters/north-korea#fa1cab>.

13. Cohen, *supra* note 10, at 3.

14. *Id.* Dominic Midgley, *What's the Truth About North Korea's Prison Camps?*, SUNDAY EXPRESS (Mar. 20, 2016), <http://www.express.co.uk/news/world/654167/North-Korea-prison-camps-American-Otto-Warmbier> (“Most camps are situated in remote mountain valleys completely shut off from the outside world and escape is virtually impossible.”).

15. Cohen, *supra* note 10, at 3. *See North Korea World Report 2016*, *supra* note 12; U.S. DEP'T OF STATE, *supra* note 12, at 4.

16. *North Korea 2015/2016*, AMNESTY INT'L, <https://www.amnesty.org/en/countries/asia-and-the-pacific/north-korea/report-korea-democratic-peoples-republic-of/>; Cohen, *supra* note 10, at 3.

17. WALTER C. CLEMENS JR., NORTH KOREA AND THE WORLD: HUMAN RIGHTS, ARMS CONTROL, AND STRATEGIES FOR NEGOTIATION 116 (2016). *See* Cohen, *supra* note 10, at 10.

18. CLEMENS JR., *supra* note 17, at 130.

19. *Id.* at 115–16.

20. *Id.*

families' life savings shrank to a mere amount, and families had to salvage whatever they could find in order to buy the basic necessities.<sup>21</sup>

Hunger continues to be a huge problem in North Korea. Even though the harvests increased in 2012, people's intake of protein decreased, and there was uneven distribution of food.<sup>22</sup> This led to malnutrition and famine for some North Koreans.<sup>23</sup> Walter C. Clemens Jr., associate at the Harvard University Davis Center for Russian and Eurasian Studies, stated that "in 2013, the U.N. World Food Program estimated that 28 percent of children under five suffered from chronic malnutrition and 4 percent were acutely malnourished. More than one in four persons needed food aid, but only one in seventeen would receive it."<sup>24</sup>

The food policies in North Korea were used as a way for North Koreans to compel obedience to the regime. By monopolizing access to food, the uneven distribution of food was prioritized for those who are useful to the survival of the political regime.<sup>25</sup> The monopolization of food infringes on a person's right to food.<sup>26</sup> However, instead of embracing economic reforms, North Korea continues to "maintain a system of inefficient economic production and discriminatory resource allocation."<sup>27</sup>

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21. *Id.* See David McNeill, *North Koreans Dare to Protest as Devaluation Wipes Out Savings*, INDEPENDENT (Dec. 3, 2009), <http://www.independent.co.uk/news/world/asia/north-koreans-dare-to-protest-as-devaluation-wipes-out-savings-1833156.html>.

22. CLEMENS JR., *supra* note 17, at 119. See *North Korea 2015/2016*, *supra* note 16 ("Food production had been stagnant in 2014, while the drought of 2015 had reduced the production of rice and other cereals by more than 10%.")

23. CLEMENS JR., *supra* note 17, at 119–20. See *Famine Hit North Korea's Rice Basket in 2012, Report Says*, REUTERS (Feb. 7, 2013), <http://www.reuters.com/article/us-korea-north-famine-idUSBRE91616820130207>.

24. CLEMENS JR., *supra* note 17, at 120

25. *Id.* at 124.

26. See Comm. on Economic, Social, and Cultural Rights, General Comment No. 12: The Right to Adequate Food (Art. 11) on Its Twentieth Session, U.N. Doc. E/C.12/1999/5, ¶ 15 (1999) (explaining that states should not take any measures that would prevent and deprive individuals of access to adequate food). See also International Covenant on Economic, Social and Cultural Rights art. 11, Dec. 16, 1966, S. Treaty Doc. No. 95–19, I.L.M. 360 (1967), 993 U.N.T.S. 3 [hereinafter ICESCR].

27. Compare Cohen, *supra* note 10, at 14, with CLEMENS JR., *supra* note 17, at 119–20.

## C. TREATMENT OF REFUGEES IN CHINA AND SOUTH KOREA

A human rights issue that goes beyond the borders and responsibility of the North Korean government is the protection of refugees. Because of all the human rights abuses that are occurring in North Korea, many of its citizens defect to other foreign countries to find a better life. Most of the refugees end up fleeing to the neighboring countries of South Korea and China.<sup>28</sup> It is difficult for the refugees to escape directly to South Korea because of the Demilitarized Zone (DMZ), which is heavily mined and filled with North Korean military units;<sup>29</sup> an “easier” solution is to initially defect to China, but, as described below, they will face obstacles from the Chinese government.<sup>30</sup>

Although China acceded to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, they signed a bilateral agreement with North Korea in 1986 to repatriate North Koreans who entered China illegally,<sup>31</sup> which violates the non-refoulement obligation.<sup>32</sup> China asserts that North Koreans entering illegally are not refugees but economic migrants.<sup>33</sup> During the great famine in the 1990s, China temporarily allowed entrance to hundreds of thousands of North Koreans who fled North Korea.<sup>34</sup> However, for the past two decades, the Chinese government has forcibly pushed back tens of thousands who were trying to enter China by erecting restrictive barriers at its borders, stationing more troops at the border, and sending

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28. *See More than 1,000 North Korean Defect Every Year. It's Dangerous But Here's How They Do It*, GLOBAL NEWS (Nov. 14, 2017), <https://globalnews.ca/news/3859804/how-many-north-korean-defectors/>.

29. *Id.*

30. MIKYOUNG KIM, *SECURITIZATION OF HUMAN RIGHTS: NORTH KOREAN REFUGEES IN EAST ASIA* 21 (2012); Cohen, *supra* note 10, at 10.

31. Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas, China-N. Kor., Aug. 12, 1986, [http://www.nkfreedom.org/UploadedDocuments/NK-China-bilateral\\_treaty.pdf](http://www.nkfreedom.org/UploadedDocuments/NK-China-bilateral_treaty.pdf).

32. Convention Relating to the Status of Refugees art. 33, July 28, 2951, 189 U.N.T.S. 136 (entered into force Apr. 22, 1954) [hereinafter Refugee Convention]. As parties to the Refugee Convention, it is binding upon the countries that are parties to it. Therefore, the countries must abide by the obligations that are listed in the Refugee Convention. However, by violating the non-refoulement obligation through signing the bilateral agreement, China is not adhering to its obligations as a party to the Refugee Convention.

33. *Id.* art. 1 (defining the word “refugee”). Goedde, *supra* note 2, at 557–58. *North Korea World Report 2016*, *supra* note 12.

34. Cohen, *supra* note 10, at 10.

refugees back to North Korea.<sup>35</sup> There is no doubt that a consequence of repatriation is that they will be punished by the North Korean government “through torture, arbitrary detention, summary execution, forced abortions, and other sexual violence.”<sup>36</sup>

Unlike China, South Korea is legally and political obligated to allow North Koreans to settle in South Korea.<sup>37</sup> The South Korean Constitution considers all North Koreans to be citizens,<sup>38</sup> making it difficult for the defectors to be recognized as refugees in other foreign countries because of the South Korean citizenship.<sup>39</sup> In 2016, the South Korean “government resettled approximately 894 such persons through August, an increase of 15 percent over the same period in 2015.”<sup>40</sup> As stated previously, the DMZ makes it difficult for North Koreans to directly cross the border, so other options to escape include underground tunnels or boats at sea, but these tactics are difficult to accomplish.<sup>41</sup> Because of cultural and social differences, many North Korean refugees have had difficulties in adjusting to life in South Korea and have also faced discrimination.<sup>42</sup>

Although the human rights violations that were discussed do not encompass all of the violations, this list gives a basic insight into what is happening in North Korea. Since the North Korean government is the main perpetrator of these violations and they do not have any intention to improve the lives of their citizens, consequently, the situation in North Korea is continually getting worse.<sup>43</sup> Due to the growing abuse in North

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35. *Id.* at 12.

36. CLEMENS JR., *supra* note 17, at 119, 129–30.

37. Cohen, *supra* note 10, at 14.

38. Seunghwan Kim, *Determining the Refugee Status of North Koreans in Canada*, 28 INT’L J. REFUGEE L. 85, 86 (2016). See also DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 3 (S. Kor.).

39. Goedde, *supra* note 2, at 558.

40. U.S. DEP’T OF STATE, DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA 2016 HUMAN RIGHTS REPORT 14 (2015)

41. Cohen, *supra* note 10, at 12.

42. *Id.* at 15.

43. See Anna Fifield, *Life Under Kim Jong Un: Recent North Korean Escapees Relate How the Secretive Country Has Changed Under the “Great Successor,”* WASH. POST (Nov. 17, 2017), [https://www.washingtonpost.com/graphics/2017/world/north-korea-defectors/?utm\\_term=.8ddea0b38e71](https://www.washingtonpost.com/graphics/2017/world/north-korea-defectors/?utm_term=.8ddea0b38e71) (“When Kim Jong Un became the leader of North Korea almost six years ago, many North Koreans thought that their lives were going to improve . . . . But the ‘Great Successor,’ as he is called by the regime, has turned out to be every bit as brutal as his father and grandfather before him.”).

Korea, the U.N. has taken action through their different mechanisms to try to curtail the problems.

### III. RESPONSES TO HUMAN RIGHTS VIOLATIONS IN NORTH KOREA

#### A. UNITED NATIONS RESPONSE TO HUMAN RIGHTS VIOLATIONS

Within the U.N., there are different mechanisms that are designed to play a huge role in responding to human rights abuses. The system of protection and promotion of human rights is supplementary to the numerous other powerful spaces within the U.N. considering security questions and global politics. It is crucial to understand the role of the U.N. human rights bodies to explore their potential impact on the human rights of North Koreans. This section provides an overview of the actions taken by U.N. human rights bodies regarding the rights of North Koreans and discusses their impact.

The U.N. General Assembly passed the first resolution regarding the human rights situation in North Korea in 2008.<sup>44</sup> It acknowledged that member states are obligated to protect human rights and strongly urged North Korea to put an end to the systemic violations of human rights.<sup>45</sup> In 2015, the General Assembly passed another resolution, which condemned the long-standing and ongoing systematic, widespread and gross violations of human rights in North Korea.<sup>46</sup> The resolution took into consideration the reports that detailed the human rights violations and recognized that the North Korean government has refused to allow the Special Rapporteur to enter the country and has consistently denied the violations.<sup>47</sup> Also, the resolution continues to encourage other U.N. bodies and Member States to ensure that the operations to improve the human rights situation in North Korea runs smoothly.<sup>48</sup>

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44. G.A. Res. 62/167, Situation of Human Rights in the Democratic People's Republic of Korea (Dec. 18, 2007).

45. Goedde, *supra* note 2, at 544–46.

46. G.A. Res. 70/172, Situation of Human Rights in the Democratic People's Republic of Korea (Dec. 17, 2015).

47. *Id.*

48. *See id.*

The U.N. Commission on Human Rights (UNCHR) established the Special Rapporteur for the situation in North Korea in 2004.<sup>49</sup> The Special Rapporteur's role is to investigate, monitor, and recommend solutions to human rights problems.<sup>50</sup> The Rapporteur conducts on-site missions in their assignment countries within the mandate.<sup>51</sup> Through these on-site missions, the Rapporteur can make direct, urgent appeals to governments, can receive complaints from individuals, and make detailed recommendations to governments.<sup>52</sup> The most recent report to the General Assembly from the Special Rapporteur summarized and updated the measures that the U.N. have taken.<sup>53</sup> Because the situation in North Korea is complicated, the High Commissioner for Human rights designated two independent experts to work with the Special Rapporteur "to focus on issues of accountability for human rights violations . . . ."<sup>54</sup>

The Human Rights Council is responsible for promoting and protecting human rights around the world. In 2013, the Council set up the U.N. Commission of Inquiry (COI) into the human rights situation in North Korea.<sup>55</sup> The COI's main focus is to investigate North Korea's "systematic, widespread and grave" violations with a view to "ensuring full accountability, in particular where these violations may amount to crimes against humanity."<sup>56</sup> The COI found crimes against humanity were

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49. *Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, <http://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/KP/Pages/SRDPRKorea.aspx>.

50. *Special Procedures of the Human Rights Council*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

51. *Id.*

52. *Id.*

53. G.A., Rep. on the Promotion and Protection of Human Rights: Human Rights Situations and Reports of Special Rapporteurs and Representatives on Its Seventy-First Session, U.N. Doc. A/71/402 (2016).

54. *Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, *supra* note 49. The situation is complicated because the North Korean government will not allow anyone to enter the country, which defeats the purpose of the role of the Special Rapporteur. *Id.*

55. Roberta Cohen, *Human Rights in North Korea: Addressing the Challenges*, 22 INT'L J. KOREAN UNIFICATION STUD. 29, 39–40 (2013).

56. *Id.* at 40. The U.N. COI was specifically established to focus on the human rights issues in North Korea. See *United Nations Human Rights Office of the High Commissioner*, COMMISSION OF INQUIRY ON HUM. RTS. IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, <http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/AboutCoI.aspx>.

committed in political prison camps<sup>57</sup> and the Human Rights Council called for the immediate dismantlement of the camps and the referral of this situation to the International Criminal Court, which was supported by the General Assembly.<sup>58</sup> COI reports have been crucial in shedding light on the situation in North Korea, and other U.N. bodies have extensively used these reports.<sup>59</sup>

The Human Rights Council has several other mechanisms that have examined the human rights situation in North Korea. First, it established a universal periodic review (UPR), which assesses the fulfillment of each U.N. member state's human rights obligations.<sup>60</sup> The goal of the UPR is to ensure that human rights obligations will be reviewed on a regularly scheduled basis for all states, regardless of specific treaty obligations.<sup>61</sup> According to the national report submitted in 2014, North Korea made efforts by adopting a series of human rights laws and setting up institutional measures to protect and promote human rights.<sup>62</sup> Despite the efforts in promoting human rights and improving rights to its citizens, it admitted that the country still continues to face serious challenges and obstacles.<sup>63</sup> After the Working Group provided North Korea with the recommendations of actions that other Member States submitted for the country to take to promote human rights in their society, North Korea accepted more than half of the recommendations and stated that it would implement these

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57. Cohen, *supra* note 10, at 4. See also InternationalLaw Blogger, *Systematic, Widespread, and Grave Human Rights Violations in North Korea*, INT'L LAW PROF BLOG (Mar. 18, 2014), [http://lawprofessors.typepad.com/international\\_law/2014/03/north-korea.html](http://lawprofessors.typepad.com/international_law/2014/03/north-korea.html); CLEMENS JR., *supra* note 17, at 125.

58. See G.A. Res. 69/188, ¶ 8 (Dec. 18, 2014); Human Rights Council, Rep. of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea on Its Twenty-Fifth Session, U.N. Doc. A/HRC/25/63 (2014); Cohen, *supra* note 10, at 4. However, the U.N. Security Council did not refer the situation to the International Criminal Court because it is believed that China and Russia prevented its referral. Brian Padden, *South Korea Urges UN to Refer DPRK Leaders to ICC*, VOA (Feb. 28, 2017), <https://www.voanews.com/a/south-korea-icc-north-korea-crimes-against-humanity/3743144.html>.

59. See G.A. Res. 70/172, *supra* note 46.

60. G.A. Res. 60/251, at 3 (Apr. 3, 2006).

61. *Id.*

62. Human Rights Council, National Rep. Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 on Its Nineteenth Session, U.N. Doc. A/HRC/WG.6/19/PRK/1 (2014).

63. *Id.*

measures.<sup>64</sup> North Korea regards the UPR as an important mechanism in assessing the human rights situation, and said that they are committed to considering the recommendations from the Working Group.<sup>65</sup>

Lastly, the Treaty Bodies have also reviewed the human rights obligations not only of North Korea, but also of South Korea and China with regard to the treatment of North Korean refugees. Treaty Bodies are committees of independent experts that monitor implementation of human rights treaties.<sup>66</sup> By being a party to a treaty, the State party has an obligation to take steps to ensure that everyone in the State can enjoy the rights that are laid out in the treaty,<sup>67</sup> and the State has an obligation to send reports to the respective committees of each signed treaty.<sup>68</sup> Currently, North Korea has signed four key international human rights treaties.<sup>69</sup>

North Korea is a party to the International Covenant on Civil and Political Rights (ICCPR).<sup>70</sup> It attempted to withdraw from the treaty in 1997, but the provisions in the ICCPR do not allow withdrawal from the treaty unless other states approve the withdrawal, which did not happen.<sup>71</sup> The Human Rights Committee, which is the committee to the ICCPR, sent out its most recent observations in 2001, which shows the unresponsiveness of North Korea in sending its reports on the implementation of the treaty.<sup>72</sup>

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64. Rep. of the Working Group on the Universal Periodic Review of the Democratic People's Republic of Korea, U.N. Doc. A/HRC/27/10/Add.1 (2014).

65. *Id.*

66. *Monitoring the Core International Human Rights Bodies*, *supra* note 3.

67. Vienna Convention on the Law of Treaties art. 18, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) [hereinafter VCLT]. Even though North Korea has not ratified this treaty, the provisions of this treaty have become customary international law.

68. *Monitoring the Core International Human Rights*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, <http://www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx>.

69. *North Korea World Report 2016*, *supra* note 12.

70. International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 [hereinafter ICCPR].

71. Sarah E. Kirsch, *North Korea as a Signatory to the International Covenant on Civil and Political Rights 1* (unpublished manuscript) (on file with author).

72. Human Rights Comm., *Consideration of Reprs. Submitted by State Parties Under Art. 40 of the Covenant on Its Seventy-Second Session*, U.N. Doc. CCPR/CO/72/PRK (2001). In 2002, North Korea sent an addendum addressing the concerns identified by the Committee in the 2001 Concluding Observations.

North Korea is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well, which is monitored by the Committee on Economic, Social and Cultural Rights (CESCR).<sup>73</sup> The most recent report from the CESCR was written in 2003, which included a recommendation to set up a mechanism for effective monitoring and to seek international assistance.<sup>74</sup> North Korea was supposed to submit a periodic report to the committee by 2008, but they have yet to do so.<sup>75</sup>

Additionally, North Korea is a party to the Convention on the Rights of the Child (CRC).<sup>76</sup> They are also parties to the Optional Protocol.<sup>77</sup> In 2016, North Korea submitted its report, which was supposed to be submitted in 2012.<sup>78</sup> In 2017, the committee released its concluding observations, which called to end torture of children in detention and child labor.<sup>79</sup>

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*See* Human Rights Comm., Replies Submitted by the Government of the Democratic People's Republic of Korea under Rule 70A of the Rules of Procedure of the Human Rights Committee (CCPR/C/Rev.6 and Corr.1) in response to the concerns identified by the Committee in its Concluding Observations (CCPR/CO/72/PRK) Adopted Pursuant to Rule 70, Paragraph 5, of the Rules of Procedure on Its Seventy-Fifth Session, U.N. Doc. CCPR/CO/72/PRK/Add.1 (2002). Since 2002, North Korea has not submitted a periodic report to the Human Rights Committee. *See Human Rights Committee*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx>, ("All State parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years)."); *see also* ICCPR, *supra* note 70, art. 40.

73. ICESCR, *supra* note 26.

74. Comm. on Economic and Social and Cultural Rights, Rep. of the Comm. on Its Thirty-First Session, U.N. Doc. E/C.12/1/Add.95 (2003).

75. *See id.* ¶ 49; *Monitoring the Economic, Social, and Cultural Rights*, *supra* note 5 ("All State parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years.").

76. Convention on the Rights of the Child, Nov. 29, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

77. Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, Optional Protocol, Sept. 9, 2014, 2171 U.N.T.S. 227. This Optional Protocol requires parties to prohibit the sale of children, child prostitution, and child pornography. Article 2 of the Optional Protocol defines the three terms. *Id.* art. 2.

78. *See* Comm. on the Rights of the Child. Consideration of Reps. Submitted by State Parties Under Article 44 of the Convention, U.N. Doc. CRC/C/PRK/5 (2016).

79. *See* Comm. on the Rights of the Child, Concluding Observations on the Fifth Periodic Rep. of the Democratic People's Republic of Korea, U.N. Doc. CRC/C/PRK/CO/5 (2017); Stephanie Nebehay, *U.N. Panel Calls on North Korea*

The last international human rights treaty that North Korea signed was the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).<sup>80</sup> In 2005, the committee summarized in its report that North Korea has not implemented the provisions of the treaty.<sup>81</sup> In April 2016, North Korea submitted a report to the committee of CEDAW, which described the legislative, administrative, and other measures adopted by the country.<sup>82</sup> It went into great detail of the adopted different measures of each article in the CEDAW.<sup>83</sup> In November 2017, the Committee concluded that North Korean women are still disadvantaged in education and employment opportunities and subjected to sexual assault and violence at work and home respectively, along with concerns of rape and mistreatment in detention.<sup>84</sup>

The U.N. human rights system has been making efforts in promoting human rights in North Korea through different capacities, but it still continues to be a challenge. Each of the components in the human rights system, however, is limited in its ability to promote change.<sup>85</sup> Nevertheless, it remains a question whether there will be any improvements in North Korea in the near future by implementing different measures, or if they will continue to remain silent in promoting human rights.

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*to End Torture, Child Labor*, REUTERS (Oct. 4, 2017, 7:36 AM), <https://www.reuters.com/article/us-northkorea-un-children/u-n-panel-calls-on-north-korea-to-end-torture-child-labor-idUSKBN1C91QM>.

80. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

81. Comm. on the Elimination of Discrimination against Women, Rep. of the Comm. on Its Thirty-Second Session, U.N. Doc. A/60/38 (2005).

82. Comm. on the Elimination of Discrimination against Women, Consideration of Reports Submitted by State Parties Under article 18 of the Convention, U.N. Doc. CEDAW/C/PRK/2-4 (2016).

83. *See id.*

84. *See* Comm. on the Elimination of Discrimination against Women, Concluding Observations on the Combined Second to Fourth Periodic Reports of the Democratic People's Republic of Korea, U.N. Doc. CEDAW/C/PRK/CO/2-4 (2017); *see also* Stephanie Nebehay, *North Korean Women Suffer Discrimination, Rape, Malnutrition: UN*, REUTERS (Nov. 20, 2017, 6:20 AM), <https://www.reuters.com/article/us-northkorea-un-rights/north-korean-women-suffer-discrimination-rape-malnutrition-u-n-idUSKBN1DK1EN>.

85. The components in the U.N. human rights system is limited because they cannot overreach the countries' sovereignty. *See infra* Section IV(A).

B. NORTH KOREA'S RESPONSE TO THE UNITED NATIONS  
HUMAN RIGHTS SYSTEM

The COI report played a huge role in addressing the human rights issue in North Korea. In its 2014 report, COI addressed all the human rights violations that were occurring in North Korea and, for the first time, directly addressed those who were responsible for the violations.<sup>86</sup> By sending a warning to the North Korean government and making this report public, the North Korean government will realize that the world knows about the human rights violations, and they will ultimately be punished for their actions if they continue disregarding human rights.<sup>87</sup> This report has led to other U.N. bodies taking action and North Korea accepting the recommendations from the General Assembly resolution and releasing its own human rights report.<sup>88</sup>

Even though different human rights abuses have been recognized through testimonies from defectors and different reports, the North Korean government still denies much of the abuse.<sup>89</sup> In their report by the North Korea's Association for Human Rights Studies, North Korea blamed foreign countries for condemning their apparent lack of human rights and stated that their "citizens feel proud of the world's most advantageous human rights system."<sup>90</sup> The lack of responsiveness from the North Korean government and their denial of allowing rapporteurs and experts to investigate the country<sup>91</sup> have made the process of understanding the human rights situation in North Korea an even bigger challenge.<sup>92</sup> Even if NGOs or other human rights experts have access to enter the country, they are restricted in their methods of collecting information and the

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86. Gianluca Spezza, *Assessing the Impact of the UN's Human Rights in North Korea Report*, NK NEWS (Feb. 18, 2014), <https://www.nknews.org/2014/02/assessing-the-impact-of-the-uns-human-rights-in-north-korea-report/>.

87. *Id.*

88. See *North Korea World Report 2016*, *supra* note 12; see also Adam Taylor, *North Korea Wrote a 53,558-word Report on its Human Rights Record. The Conclusion? It's Pretty Good.*, WASH. POST (Sept. 17, 2014), [https://www.washingtonpost.com/news/worldviews/wp/2014/09/17/north-korea-wrote-a-53558-word-report-on-its-human-rights-record-the-conclusion-its-pretty-good/?utm\\_term=.a2343f98e987](https://www.washingtonpost.com/news/worldviews/wp/2014/09/17/north-korea-wrote-a-53558-word-report-on-its-human-rights-record-the-conclusion-its-pretty-good/?utm_term=.a2343f98e987).

89. Cohen, *supra* note 10, at 3.

90. Taylor, *supra* note 88.

91. Cohen, *supra* note 55, at 32.

92. See RICHARD KAGAN ET AL., HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (NORTH KOREA) 1-11 (1988).

places they can visit.<sup>93</sup> Despite these challenges, the different human rights abuses that are occurring in North Korea have been documented.

North Korean political camps hold and punish prisoners who have committed political crimes through hard labor.<sup>94</sup> The government denies the existence of these political camps, even though reports, testimonies, and satellite photographs have been released to prove their existence.<sup>95</sup> The regime has insisted that the information from the COI is fabricated from those who have betrayed North Korea and other hostile forces.<sup>96</sup> The country has even threatened prison guards, inmates and communities surrounding the camps with retaliation if any information about these camps is disclosed to the public.<sup>97</sup> Despite its denial, NGOs have gathered firsthand accounts from those who were placed in the camps, in which the prisoners have detailed the brutality and existence of these camps.<sup>98</sup>

#### IV. WHY THE UNITED NATIONS MECHANISMS HAVE BEEN COMPLETELY INEFFECTIVE IN NORTH KOREA

U.N. mechanisms are working extensively to advance human rights in North Korea; however, there has not been any significant progress with the situation. These mechanisms are still not enough in addressing this situation, and there are other factors that pose problems in advancing human rights in North Korea. This section will explore the different obstacles.

##### A. THE ROLE OF THE U.N. HUMAN RIGHTS SYSTEM IS LIMITED

Despite the human rights mechanisms that have been established, there is a limit to how much the U.N. can intervene. While one of the purposes of the U.N. is to develop friendly relations among nations, it needs to be based on equal rights and

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93. Cohen, *supra* note 55, at 32.

94. U.S. DEP'T OF STATE, PRISONS OF NORTH KOREA 1–2 (2017).

95. Cohen, *supra* note 10, at 3.

96. Cohen, *supra* note 55, at 41.

97. Cohen, *supra* note 10, at 3.

98. Cohen, *supra* note 55, at 41.

self-determination<sup>99</sup>—essentially, the U.N. needs to respect countries' sovereignty.<sup>100</sup> However, in order to maintain stability and friendly relations among nations,<sup>101</sup> the U.N. requires all states to cooperate with the promotion of human rights.<sup>102</sup> As a member of the U.N., North Korea is bound to the U.N. Charter.<sup>103</sup> However, they are not adhering to the provisions of the U.N. Charter and to all of the human treaties that they have ratified.

Punishing a country for not adhering to its treaty provisions is an unlikely solution to get a country to comply. When drafting a treaty, the goal is to get as many countries to sign and ratify it in order for the treaty to go into full effect,<sup>104</sup> thereby discouraging punishment provisions. Not only would it affect treaty implementation, but also the U.N. needs to remember to respect other states' sovereignty, which is essential in maintaining and promoting their vision.<sup>105</sup> Having North Korea ratify treaties is one step in advancing human rights; however, difficulties occur when they are not complying with the treaty provisions, especially when it denies that human rights violations are occurring.<sup>106</sup> The role of a Special Rapporteur includes conducting on-site missions of their assigned country.<sup>107</sup> In order to visit the country, the rapporteur will need an invitation to the country in order to conduct these missions.<sup>108</sup> North Korea has rejected the mandate of a Special Rapporteur of North Korea, and it has repeatedly denied requests from the Special Rapporteur, making it difficult for the Special Rapporteur to obtain direct evidence from North Korea.<sup>109</sup> Ultimately, the human rights mechanisms are based on non-compulsory enforcement mechanisms.<sup>110</sup> The system is based on

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99. U.N. Charter art. 1, ¶ 2.

100. *See id.*

101. *Id.*

102. *Id.* art. 56.

103. G.A. Res. 46/1, Admission of the Democratic People's Republic of Korea and the Republic of Korea to Membership in the United Nations (Sept. 17, 1991).

104. *See* JEFFREY L. DUNOFF ET AL., INTERNATIONAL LAW, NORMS, ACTORS, PROCESS: A PROBLEM-ORIENTED APPROACH 60 (4th ed. 2015).

105. U.N. Charter, *supra* note 99, art. 1.

106. Goedde, *supra* note 2, at 552–53.

107. *Special Procedures of the Human Rights Council*, *supra* note 50.

108. *Id.*

109. Goedde, *supra* note 2, at 546.

110. *See Strengthening International Human Rights Mechanisms*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, <http://www.ohchr.org/EN/AboutUs/>

a set of incentives and disincentives, but this system does not work with the case in North Korea. Therefore, it is hard for the U.N. human rights mechanisms to act alone in advancing the human rights situation in North Korea.

B. NORTH KOREA IS NOT AFFECTED BY USUAL INCENTIVES  
FOR COOPERATION AND DISINCENTIVES FOR VIOLATIONS

Many of the human rights mechanisms are not effective due to the uncooperativeness of the North Korean government. As stated before, the oversight bodies of the human rights treaties that North Korea is a party to face problems with lack of responsiveness from the North Korean government.<sup>111</sup> North Korea has an obligation to send reports to each committee of each treaty that they have signed, but it has not fulfilled its obligation.<sup>112</sup> However, North Korea *has* made progress in sending reports to two different treaty committees despite the delay; it has sent reports to the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women.<sup>113</sup> Both of these committees had sessions in 2017 to review their reports and provide their list of recommendations for North Korea to undertake.<sup>114</sup>

Even with these reports, North Korea does not follow the list of recommendations. By looking at North Korea's history, it has shown that the North Korean government desires neither change nor reform.<sup>115</sup> The government believes rights are conditional, not universal, and it prioritizes collective rights over individual rights.<sup>116</sup> In order to maintain control of the government, the leaders have to maintain the status quo—

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Pages/StrengtheninginternationalHRmechanisms.aspx.

111. *Reporting History—Democratic People's Republic of Korea*, BAYEFSKY.COM, <http://www.bayefsky.com/docs.php/area/rephistory/state/47>; Goedde, *supra* note 4, at 552.

112. Goedde, *supra* note 2, at 551.

113. *Reporting Status for Democratic People's Republic of Korea*, UNITED NATIONS HUM. RIGHTS OFF. HIGH COMM'R, [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/countries.aspx?CountryCode=PRK&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=PRK&Lang=EN).

114. *Id.*

115. James Burt, *Engaging North Korea Using the Universal Periodic Review*, EUROPEAN ALLIANCE FOR HUMAN RIGHTS IN NORTH KOREA, Mar. 2015, at 7.

116. Robert Weatherly & Song Jiyoung, *The Evolution of Human Rights Thinking in North Korea*, 24 J. COMMUNIST STUD. & TRANSITION POL. 272, 274 (2008).

abuse and subjugation of the North Korean population.<sup>117</sup>

While North Korea continues to deny the human rights violations, it still minimally cooperates with the U.N. human rights bodies by submitting reports to the different mechanisms.<sup>118</sup> However, its interaction with the U.N. does not have any positive effect. The government's purpose for interacting with the human rights bodies is to challenge the claims that were made in the different resolutions.<sup>119</sup> It wants to show the world that there is not a major human rights problem in North Korea.<sup>120</sup>

### C. OTHER COUNTRIES ARE NOT PRIORITIZING HUMAN RIGHTS AS AN ISSUE

The human rights situation is an issue that needs more consideration in the United States, China, and South Korea. The United States has the largest Korean population outside northeast Asia and is active in human rights advocacy and the resettlement of North Korean refugees.<sup>121</sup> Many North Koreans defect through China, but China is violating its international obligations by repatriating them back to North Korea.<sup>122</sup> South Korea has resettled approximately 30,000 North Korean refugees,<sup>123</sup> but conservative and progressive forces differ on how to approach the human rights situation. However, one should note that these countries have considered the nuclear disarmament issue.<sup>124</sup> While this is a challenging problem that

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117. Burt, *supra* note 115, at 7.

118. See *Reporting History—Democratic People's Republic of Korea*, *supra* note 111.

119. See Taylor, *supra* note 88. See generally Hamish Macdonald, *North Korean Foreign Minister to Attend UN Human Rights Council*, NK NEWS (Feb. 23, 2015), <https://www.nknews.org/2015/02/north-korean-foreign-minister-to-attend-un-human-rights-council/?c=1491780062940> (explaining that the foreign minister went to visit the Human Rights Council to counter the claims made in a report).

120. See Taylor, *supra* note 88.

121. See North Korean Human Rights Reauthorization Act of 2017, H.R. 2061, 115th Cong. (2017).

122. *Id.* See AsiaToday, *50,000-200,000 N. Korean Defectors Estimated to be Residing in China*, HUFFINGTON POST, [https://www.huffingtonpost.com/asiatoday/50000-200000-n-korean-def\\_b\\_10857816.html](https://www.huffingtonpost.com/asiatoday/50000-200000-n-korean-def_b_10857816.html).

123. See *Number of N. Korean Defectors in South Tops 30,000*, YONHAP NEWS (Nov. 13, 2016), <http://english.yonhapnews.co.kr/national/2016/11/13/56/0302000000AEN20161113001200320F.html>; Goedde, *supra* note 2, at 539–40.

124. *Ten Practical and Specific Measures for Advancing Human Rights in*

neighboring countries need to confront, they still need to prioritize the human rights problem in their policy and diplomacy efforts.

The differing views in South Korea on how to approach the human rights situation are one reason why the situation has not been improved in North Korea. Conservative forces are more proactive in the human rights issue, especially Christian-based churches.<sup>125</sup> They are motivated and have the desire to rescue North Koreans in a spiritual sense by converting them to Christianity, given the lack of religious freedom in North Korea.<sup>126</sup> On the other hand, progressive forces prefer to prioritize normalization of relations with North Korea.<sup>127</sup> They view prioritizing human rights over normalization of relations as jeopardizing the relationship.<sup>128</sup> They also argue that conservative forces are using human rights as a means to support the regime collapse in North Korea.<sup>129</sup> Despite these conflicting views, South Korea created the National Human Rights Commission of the Republic of Korea (NHRCK) in 2001.<sup>130</sup> It was created to serve a check-and-balance function vis-à-vis the government.<sup>131</sup> It held fact finding missions, organized annual forums, listed recommendations, and invited participants from all reaches of the human rights activist community.<sup>132</sup>

NGOs like The Committee for Human Rights in North Korea (HRNK) and Defense Forum Foundation (DFF), and nonprofit organizations like Liberty in North Korea (LiNK) were created to address this situation. In 2001, a group of distinguished foreign policy and human rights specialists created the HRNK.<sup>133</sup> Its purpose was to research and raise awareness regarding human rights issues through publishing

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*United States Policy Toward North Korea*, COMM. FOR HUM. RIGHTS IN N. KOR., <http://www.hrnk.org/publications/policy-recommendations.php>. See also MORSE TAN, *NORTH KOREA, INTERNATIONAL LAW AND THE DUAL CRISES: NARRATIVE AND CONSTRUCTIVE ENGAGEMENT* 244 (2015).

125. Goedde, *supra* note 2, at 539.

126. *Id.*

127. *Id.* at 539-40.

128. *Id.* at 540.

129. *Id.*

130. *Id.* at 539.

131. *Id.* at 542-43.

132. *Id.* at 543.

133. *About HRNK*, COMM. FOR HUM. RIGHTS IN N. KOR., <http://www.hrnk.org/about/about-hrnk.php>.

reports and working with global human rights treaties.<sup>134</sup> The DFF was formally established in 1987 by Chadwick R. Gore to provide a forum for speakers to address critical defense issues in the United States.<sup>135</sup> Its purpose is to publicize and educate the United States Congress about not only human rights issues in North Korea, but also human rights issues worldwide.<sup>136</sup> LiNK was founded in 2004 at Yale University.<sup>137</sup> Its focus is to rescue North Korean refugees hiding in China and resettling them either in South Korea or the United States.<sup>138</sup> They also are raising awareness of human rights issues in North Korea through media production by producing several documentaries about North Korean refugees, documenting personal stories of refugees, and conducting research.<sup>139</sup> Many college campuses throughout the United States have established a LiNK student group to provide awareness to the college community.<sup>140</sup> Their role is important in not only bringing awareness, but also funding rescue missions through donations.<sup>141</sup> In 2004, the United States passed the North Korean Human Rights Act (NKHRA) of 2004.<sup>142</sup> It provided humanitarian assistance to North Koreans inside North Korea, provided grants to private, non-profit organizations to promote human rights, democracy, rule of law and the development of a market economy in North Korea, and provided humanitarian assistance to defectors.<sup>143</sup> However, this act wasn't well received by South Korea's liberal

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134. Goedde, *supra* note 2, at 537.

135. *Mission and History*, DEF. F. FOUND., <http://www.defenseforumfoundation.org/mission-and-history/about.html>.

136. *Id.*

137. See Traci G. Lee, *Grassroots Organization Aims to 'Change the Narrative' About North Korea*, NBC NEWS (Feb. 11, 2016), <https://www.nbcnews.com/news/asian-america/grassroots-organization-aims-change-narrative-about-north-korea-n516261>.

138. LIBERTY IN NORTH KOREA, <http://www.libertyinnorthkorea.org/rescue-refugees/> (last visited Jan. 20, 2017).

139. *Id.*

140. *Id.* See Tess Hanson, *Students on Campus and Worldwide Seek Liberty in North Korea*, DAILY CALIFORNIAN (Apr. 29, 2016), <http://www.dailycal.org/2016/04/29/students-on-campus-and-worldwide-seek-liberty-in-north-korea/>.

141. See Evan Kirkpatrick, *Dangerous Escapes Aided By 'Liberty In North Korea'*, FORBES (May 31, 2014), <https://www.forbes.com/sites/evankirkpatrick/2014/05/31/dangerous-escapes-aided-by-liberty-in-north-korea/#30d596c6462f>; LIBERTY IN NORTH KOREA, *supra* note 138.

142. See North Korean Human Rights Act, H.R. 4011, 108th Cong. (2004); Goedde, *supra* note 2, at 560–65. This Act was reauthorized in 2008, 2012, and 2017.

143. Goedde, *supra* note 2, at 561.

contingent; they believed that this would undermine the efforts for normalization of relations, which is what the progressive forces wanted.<sup>144</sup> Despite the efforts made by the United States, the priority with the past presidential administrations has always been nuclear disarmament.<sup>145</sup>

Unlike South Korea and the United States, China is an important ally with North Korea. China is North Korea's "biggest trading partner, and main source of food, arms, and energy. It has helped sustain Kim Jong-un's regime and has historically opposed harsh international sanctions on North Korea in the hope of avoiding regime collapse and a refugee influx across their 870-mile border."<sup>146</sup> China has no desire to change their policies in improving the human rights situation in North Korea. As stated previously, China violates their non-refoulement obligation under the Refugee Convention by repatriating North Korean refugees.<sup>147</sup> The United Nations High Commissioner for Refugees (UNHCR) has requested access to North Koreans in China in order to determine their status as refugees, but China has restricted their access.<sup>148</sup> Also, China increased its trade with North Korea each year, and their main priority is maintaining stability.<sup>149</sup> Therefore, as an ally with North Korea, China has no desire to change its policies or even improve the human rights situation in order not to disrupt the status quo.

#### V. RECOMMENDATIONS TO ADVANCE THE HUMAN RIGHTS SITUATION IN NORTH KOREA

It is challenging for the U.N. human rights mechanisms to act alone in advancing the protection of human rights in North Korea. It is essential for other countries to get involved through implementing different programs and laws and for the human rights mechanisms within the U.N. to work together.

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144. *Id.* at 561–62.

145. EMMA CHANLETT-AVERY ET AL., *NORTH KOREA: U.S. RELATIONS, NUCLEAR DIPLOMACY, AND INTERNAL SITUATION 2* (Cong. Research Serv., 2016).

146. Eleanor Albert & Beina Xu, *The China-North Korea Relationship*, COUNCIL ON FOREIGN REL. (Feb. 8, 2016), <http://www.cfr.org/china/china-north-korea-relationship/p11097>.

147. Refugee Convention, *supra* note 32, art. 33. *Id.*

148. *Ten Practical and Specific Measures for Advancing Human Rights in United States Policy Toward North Korea*, *supra* note 124.

149. Albert & Xu, *supra* note 146.

A. THE UNITED NATIONS SHOULD ENCOURAGE OTHER  
COUNTRIES TO BROADEN THEIR POLICIES BY  
PRIORITIZING HUMAN RIGHTS ISSUES

The United States, South Korea, and China need to broaden their policies and continue to work with the U.N. to advance the human rights situation. The United States should broaden their policy by integrating bilateral and multilateral approaches to human rights issues and nuclear disarmament in order to promote human rights.<sup>150</sup> Also, it is important for the United States to address specific human rights concerns like the treatment of prisoners and defectors and the economic repression of North Korean citizens.

South Korea needs to prioritize focusing on the human rights issue in North Korea instead of prioritizing the maintenance of their relations with North Korea.<sup>151</sup> It should continue to support the NHRCK because this commission struggled with balancing the act of providing awareness of the human rights situation without condemning the North Korean government.<sup>152</sup> Also, by cooperating with the UNHCR, they should develop a plan to assure that emergency displacement over borders is effectively and humanely managed.<sup>153</sup> South Korea needs to realize the importance of basic rights for everyone, which includes those in North Korea.<sup>154</sup>

The main issue with China is the repatriation of North Korean refugees.<sup>155</sup> It is important for China to respect the rights of North Koreans and to adhere to their ratified treaties.<sup>156</sup> The Chinese government needs to work with the UNHCR to develop new policies in respecting the rights of North Korean defectors. It is certain that most of the refugees will cross through the North Korea-China border, and it is a huge burden

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150. *Ten Practical and Specific Measures for Advancing Human Rights in United States Policy Toward North Korea*, *supra* note 124.

151. *See id.*

152. Goedde, *supra* note 2, at 543.

153. *Ten Practical and Specific Measures for Advancing Human Rights in United States Policy Toward North Korea*, *supra* note 124.

154. *See* G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

155. CLEMENS JR., *supra* note 17, at 129–30.

156. VCLT, *supra* note 67, art. 18. *See China Must Not Send North Korean Refugees to Their Deaths!*, INT'L SOC'Y FOR HUM. RTS., <http://www.ishr.org/countries/north-korea/china-must-not-send-north-korean-refugees-to-their-deaths/>.

for China to handle the refugees that are entering their country.<sup>157</sup> The UNHCR and other countries should establish a program to accommodate asylum arrangements, so other countries in the region can provide temporary asylum to the refugees.<sup>158</sup> A similar program was implemented in the past for the Vietnamese refugees in the 1970s.<sup>159</sup> South Korea needs to take the initiative because their Constitution protects the rights of North Korean refugees.<sup>160</sup> The program is not asking countries in the Asian region to permanently resettle every refugee, but it provides a temporary safe haven before the refugees can claim asylum in either that country or another country abroad.<sup>161</sup>

The United States made an important step in extending the NKHRA until 2022, which urged China to halt repatriation of North Koreans and should extend it even further.<sup>162</sup> This act clarified the eligibility of North Koreans for asylum in the United States, directed the State Department to facilitate the submission of applications, and authorized up to \$20 million per year for humanitarian assistance to North Koreans outside of North Korea.<sup>163</sup> In order to fully implement the NKHRA, the United States should establish an administration that can specifically focus on the resettlement of North Korean refugees.<sup>164</sup> Therefore, it is important to educate those in the administration on the human rights violations and the circumstances that North Korean refugees face and include personnel who are knowledgeable in this field and fluent in Korean.<sup>165</sup>

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157. *Ten Practical and Specific Measures for Advancing Human Rights in United States Policy Toward North Korea*, *supra* note 124.

158. *Id.*

159. *Id.* See Judith Kumin, *Orderly Departure from Vietnam: Cold War Anomaly or Humanitarian Innovation?*, 27 REFUGEE SURV. Q. 104, 104 (2008).

160. DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] arts. 2, 3 (S. Kor.); Goedde, *supra* note 2, at 558.

161. *Ten Practical and Specific Measures for Advancing Human Rights in United States Policy Toward North Korea*, *supra* note 124.

162. North Korean Human Rights Reauthorization Act of 2017, H.R. 2061, 115th Cong. (2017).

163. *Id.* *Ten Practical and Specific Measures for Advancing Human Rights in United States Policy Toward North Korea*, *supra* note 124.

164. *Ten Practical and Specific Measures for Advancing Human Rights in United States Policy Toward North Korea*, *supra* note 124.

165. *Id.*

It is crucial to provide aid to those who are still in North Korea.<sup>166</sup> Hunger is one of the biggest issues that North Koreans are facing.<sup>167</sup> In 2008, the North Korean government allowed access to relief workers to conduct inspections.<sup>168</sup> In conjunction with the World Food Programme (WFP), the United States and other countries should communicate with the North Korean government to again allow relief workers access in order to monitor the situation.<sup>169</sup> The WFP and other humanitarian relief organizations should supply food aid to not only prisoners, but also to everyone else who do not have access to food.<sup>170</sup>

B. THE UNITED NATIONS SHOULD EXPAND THE ROLE OF ITS MECHANISMS AND ENCOURAGE THE MECHANISMS TO WORK TOGETHER.

Different human rights mechanisms within the U.N. are working within their capacity to advance this issue. They should continue working together and find different ways to respond to the situation in North Korea. The General Assembly and the Human Rights Council should extend the human rights monitoring and reporting mechanisms that were used before the COI was established.<sup>171</sup> Mechanisms include periodic reports of the U.N. Secretary-General and the UNCHR as well as the mandate of the Special Rapporteur on the situation of human rights.<sup>172</sup> These mechanisms need to focus on ensuring accountability and making sure that North Korea is implementing the recommendations from the COI and the UPR.<sup>173</sup>

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166. *Id.*

167. See Goedde, *supra* note 2, at 533.

168. *Ten Practical and Specific Measures for Advancing Human Rights in United States Policy Toward North Korea*, *supra* note 124.

169. See *id.*; see also *World Food Programme*, KOREA, DEMOCRATIC PEOPLE'S REPUBLIC (DPRK), <https://www.wfp.org/countries/korea-democratic-peoples-republic-dprk/overview>.

170. U.S. DEP'T OF STATE, *supra* note 12, at 4; *North Korea World Report 2016*, *supra* note 12; *Ten Practical and Specific Measures for Advancing Human Rights in United States Policy Toward North Korea*, *supra* note 124.

171. TAN, *supra* note 124, at 246 (2015). See Christine Chung, *Moving Forward on North Korean Human Rights*, 38 NORTH (July 27, 2015), <http://38north.org/2015/07/cchung072715/>.

172. TAN, *supra* note 124, at 246.

173. *Id.*

The Human Rights Council and the General Assembly should continue supporting the UNCHR by establishing a structure to help ensure accountability for the human rights violations.<sup>174</sup> It should expand investigations into North Korea's human rights record and put a stronger emphasis on collecting evidence to increase the number of documented events.<sup>175</sup> It is important to send in personnel to the region to investigate and to be able to communicate with victims of these human rights violations and with prisoners.<sup>176</sup> Ultimately, this work should facilitate the U.N.'s efforts to hold those who are accountable for these violations.<sup>177</sup>

Communication within the human rights bodies is important; each of these bodies should continue writing reports to update on the situations. These reports need to be shared amongst the Human Rights Council and other U.N. organs.<sup>178</sup> It is important that all of these bodies are on the same playing field, so they can continue working together. Other countries and non-profit organizations need to be continually informed of the strategies of the U.N. bodies, and in turn, they need to continually work with the U.N. in order to advance the human rights situation.

## VI. CONCLUSION

The human rights situation in North Korea is complex and requires every actor to be involved and work together. The North Korean government is not cooperative with the U.N. and does not follow-up with recommendations listed from the different treaty bodies and the COI. The country vehemently denies all the abuses and state that its Constitution and laws afford equal rights to everyone. Through reports and accounts of those who have defected the country, human rights violations are still occurring, and there has not been any progress.

The U.N. plays an important role in communicating with the North Korean government, but their efforts have been limited. It is important that other countries like South Korea and the United States broaden their policies and place a stronger

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174. *Id.*

175. *See also* Chung, *supra* note 171.

176. TAN, *supra* note 124, at 246.

177. *Id.*

178. *Id.* at 247.

emphasis on human rights. NGOs are making an effort in bringing awareness and should continually work with the United Nations and other countries. These proposed solutions will take time to implement and all greatly depend on how the North Korean government responds to these programs.

The U.N., other countries, and non-profit organizations should utilize its resources in aiding those who have defected from North Korea. Although providing aid to those who are in North Korea is important as well, the difficulties of entering North Korea and the uncooperativeness of North Korea makes this task challenging. By working with refugees, it will help shed light of what is going on in North Korea, since there is no direct access. Nevertheless, there is still hope for change: the North Korean government is now working and communicating with the U.N. bodies by sending in reports. Their actions are unpredictable, so the U.N. and other countries need to be ready for any major changes that will happen within the political structure of North Korea.