

Human Rights and Humanitarian Planning for Crisis in North Korea

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Abstract

Human rights and humanitarian communities are unprepared for the possibility of radical change on the Korean Peninsula that could lead to a humanitarian crisis. The first and most obvious challenge will be to provide security and assistance for the population, including the more than 100,000 political prisoners held in secret *kwanliso* camps as well as foreign abductees and their families. Transitional justice and accountability will be essential to deter retribution and create a foundation for the rule of law. Managing migration to minimize potentially overwhelming refugee and internally displaced population flows will be critical to stability. Rights Up Front and the Responsibility to Protect may need to be applied. Success requires effectively planning for and addressing human rights and humanitarian concerns.

Keywords: North Korea, South Korea, human rights, humanitarian, reunification, political prisoners, refugees, internally displaced persons, IDPs, accountability, transitional justice, United Nations

Introduction

In military and political circles, contingency plans exist for nearly any scenario in North Korea—political evolution in the North leading to peaceful reunification with South Korea, collapse of the Kim regime, fighting among military factions, and a possible takeover by foreign forces. Whatever the scenario, there has been little or no input from human rights and humanitarian actors in the design of the contingency plans. Yet, almost any scenario requires the provision of adequate food, medicine, potable water and sanitation to mitigate disruption or turmoil in the North. In the case of mass migration, protection, assistance and developmental solutions will be required for refugees and internally displaced persons (IDPs).

It will also be essential to establish a secure environment to safeguard the North Korean population from violence, human rights abuse and criminal activity. Plans to achieve political transition, economic recovery, the establishment of the rule of law, and transitional justice will also be needed.

Human rights and humanitarian concerns, therefore, should figure prominently in any scenario, but the relevant actors have not yet come together to prepare. No established forum exists to bring human rights and humanitarian groups together, and there has been no effort to create one. More importantly, there is little common ground. For humanitarian actors, even talking about change in North Korea violates their *modus operandi* of neutrality, impartiality and cooperation with the government. Any planning, they fear, could create the appearance of their seeking to unravel the regime (aka “regime change”) and lead to government restrictions on their operations or expulsion from the country. Preserving access, however limited, is a goal of its own. By contrast, human rights advocates openly seek reform by exposing violations, raising public awareness and making recommendations for civil, political, economic and social change. Accountability means those who have perpetrated crimes against humanity are held responsible, but humanitarian groups and those who ‘engage’ with North Korea tend to emphasize reconciliation. However, to prepare for eventual reunification, both groups will need to be involved to ensure that their concerns are reflected in contingency planning.

This paper identifies human rights and humanitarian concerns that will need attention in the event of a change in the North, for example:

- Protecting, assisting and finding solutions for North Korea’s political prison population of more than 100,000, and those abducted from abroad;
- Identifying who should be held accountable for the Kim regime’s crimes and abuses, effective judicial arrangements and how to assure transitional justice; in addition;
- Effectively managing refugee flows and internal displacement.

The paper also examines how application of the United Nations’ (UN) Human Rights Up Front (HRuF) approach to North Korea could encourage early involvement of humanitarian and development

organizations on the ground to handle human rights concerns. It also discusses the UN's responsibility to protect (R2P) doctrine given the likelihood that some military forces, whether of South Korea, the United States or China, will be involved in any stabilization effort.

Of course, actual events could defy all planning. For example, if China absorbed the North economically and then attempted political (possibly even military) domination of the country,¹ the chance for reunification would all but disappear. Still, South Korea, the U.S., Japan, the United Nations, other countries, and doubtless the North Koreans as well, would oppose such action.

This paper assumes change will occur in North Korea, that South Korea, the U.S., and China will play significant roles, and that given Korea's history, the UN and its military command will also be substantially involved. The scenario and timing cannot be known, but early preparations can better anticipate and address problems inherent to reunification.

Saving Political Prisoners in the *Kwanliso* Camps

The freeing of political prisoners in hidden North Korean camps will be one of the most daunting human rights challenges in any upheaval, whether peaceful or violent. An estimated 80,000 to 120,000 are incarcerated in four political prison or penal labor camps, known as the *kwanliso* or *controlled areas*.² Satellite photographs and testimonies pinpoint the camps to be in the mountains of North and South Hamgyong provinces and in South Pyongan province. Additional camps may appear in higher resolution satellite photographs to which governments and intelligence agencies have access.

The North Korean government denies the existence of the *kwanliso* and threatens prison guards, released inmates and communities near the camps with severe reprisals for disclosing information. Most of the *kwanliso* prisoners are incarcerated for life and denied contact with the outside world,³ having committed -- in the eyes of the regime -- acts of disloyalty like 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 ending up on the wrong side of factional political disputes. There are no formal charges or trials. The government often sends entire families to the camps on the basis of guilt by association.

Over the past five decades, more than one hundred thousand are believed to have perished from a combination of deliberate starvation, torture, brutality, forced labor, illnesses and executions in these camps. The UN Commission of Inquiry (COI), set up by the Human Rights Council in 2013, found crimes against humanity committed in the political prison camps,⁴ and called for the camps' immediate dismantlement and the referral of the situation to the International Criminal Court (ICC). The UN General Assembly endorsed this.⁵

In the event of an armed conflict or revolution, camp authorities "have received orders to kill all prisoners," according to former prison guard Ahn Myong-chol, in order "'to eliminate any evidence' about the existence of the camps."⁶ The initial order appears to originate with Kim Il-sung, later reaffirmed by Kim Jong-il. "Drills" also have been held "on how to kill large numbers of prisoners in a short period of time."⁷ Guards from other camps, as well as former prison officials, confirm this account.

Rescuing prisoners should be given a high priority, even at a time of chaos. The camps and their brutality now symbolize a principal way in which the Kim regime has maintained its power. Rescuing prisoners and holding those responsible accountable will signal the end of a regime based on terror and punishment. The UN risks its own credibility if it seems unwilling to act on its own well-publicized findings and recommendations concerning the camps. In addition, the most acute cases of hunger, disease and ill-treatment are found in these facilities, making immediate rescue efforts essential. Comparisons drawn between camps in North Korea and the concentration camps of World War II⁸ behoove the UN, given its founding, to take strong action. Nazi Germany's efforts to hide evidence of the camps and murder inmates only increased the enormous importance of rescuing survivors and of maintaining camp structures. Testaments to the crimes of the Third Reich became the touchstone of international efforts to develop the concepts of war crimes and crimes against humanity and punish those responsible.

Greater awareness of North Korea's camps creates the expectation that efforts will be made to save the prisoners in the event of disruption or turmoil. Accounts of prison survivors have flooded the airwaves alongside NGO reports (e.g., *Hidden Gulag* by the Committee for Human Rights in North Korea⁹). Detailed editorials and worldwide news stories have focused on the camps and CNN has shown the satellite

photographs pinpointing their location. In 2013, the UN High Commissioner for Human Rights met for the first time with camp survivors.¹⁰ That same year, the U.S. Secretary of State John Kerry, in his confirmation hearings before the Senate, called “the prisoners of gulags in North Korea” an important issue for the United States.¹¹ The website of the UN carries the testimonies of North Korea’s camp survivors, and UN resolutions regularly call for the dismantlement of the camps and the release of “all political prisoners unconditionally and without any delay.”¹² Failing to try to save prisoners would be a shameful legacy for the international community.

Women prisoners, whose plight the COI report details, require particular attention.¹³ Many have been subjected to brutal treatment and will need protection against potential sexual assaults by other prisoners, guards, or the local population. If Chinese military forces are involved in liberating the camps -- some of the largest *kwanliso* camps are geographically close to China—their troops will need to be sensitized. At the end of the Second World War, Red Army troops are known to have engaged in “a sexual rampage” in the camp of Ravensbruck holding women prisoners: “Countless inmates were raped: the young and the old; the sick and the well.”¹⁴

The Chinese government has regularly voted against resolutions at the UN condemning North Korea’s practices.¹⁵ Neither has it been willing to hold talks with the United States and South Korea over contingency plans in the event of a collapse, reportedly because of its alliance with North Korea and the fear that such talks, if they became known, could affect stability in the country. China also might be keeping its plans confidential especially if they involve any takeover of areas rich with minerals and ports. Further, China might see the rescue of North Korean prisoners as a threat to its own practice of punishing political dissenters. Nonetheless, the U.S. and South Korea should be making known to China their concerns about the camps and the need to respect and save prisoners. China announced in 2014 that it had closed some of its own reeducation camps, although some contend prisoners were simply moved around.¹⁶ While often insensitive to world opinion, China could gain favor internationally and with any ‘new Korea’ by supporting the rescue and rehabilitation of the Kim regime’s political prisoners. The Human Rights Council has called on states with relations with the DPRK to “use their influence” to encourage North Korea to “close political prison camps.”¹⁷

In preparation for gaining timely access to the camps, a 2013 RAND study recommended that intelligence be amassed in advance, in particular

...on the activities of the prison staff, their potential preparations to defend or destroy the camps, the defenses in and around the camps (e.g., any minefields or electrified fences), and information about the camp command staff.¹⁸

Former prisoners estimate roughly one guard per 50 prisoners for a total of 2,400 to 4,000 in the *kwanliso* today, in addition to a higher number of security service and administrative personnel. In Camp 16, the largest of the camps, escapees report elevated guard posts “equipped with machine guns,” meant to “massacre prisoners in emergency situations.”¹⁹

The goals of a military operation would be to take over the camps, establish order (subduing guards and any military personnel around the camps), prevent prisoner killings or abuse, and collect information for trials.²⁰ Ideally, foreign military personnel would assume control of the camps, take into custody those in charge, and provide safe conditions for a contingent of aid workers to bring in food, medical supplies, clothing and other needed items.

Those entering the camps must be prepared to protect themselves from infectious diseases, such as tuberculosis, incidences of which have recently spiked in North Korea.²¹ Special skills and certain foods will also be needed to ameliorate extreme malnutrition and emaciation. Reports indicate substantial numbers die each year from starvation, nutritional deficiency and diseases, such as pellagra,²² vector-borne and diarrheal disease resulting from inadequate water and sanitation facilities. Others suffer from black lung disease contracted from forced labour in coal mines. Arranging for organizations like the International Committee of the Red Cross (ICRC), which has an office in Pyongyang, and UN humanitarian agencies to enter camps will be essential.²³ The World Food Program (WFP) is reported to have operations in some of the very provinces where the camps are located. The World Health Organization (WHO) operates a Health in Prison Program in other countries, and should develop a plan for the health of North Korean prisoners, and also look into rumored accounts of medical experimentation in the camps.²⁴ UNICEF’s expertise with children will be needed for those children suffering mistreatment and starvation after

being dispatched to the camps with their families or placed in the camps after trying to depart the country illegally. Women subjected to forced abortions or infanticide, whether in detention centers, prisons or the *kwanliso*, will need special attention as well.

Health workers experienced in dealing with psychological trauma are a necessary asset to help prisoners psychologically recover, especially those in the ‘total control zones’ subjected to sustained inhuman treatment. Perhaps North Koreans formerly held in prisons and detention facilities and now living in South Korea or elsewhere would elect to help with rehabilitation, after receiving special training. Their experiences and understanding of the language and culture would allow them to appreciate the problems facing survivors. Creating such a corps of defectors requires preplanning for faster activation when called on.

Plans determining how and where to relocate liberated prisoners, reunite them with family, secure employment, and distribute reparations need to be created. Indeed, a special office should be set up for prisoners’ rehabilitation and resettlement. Many survivors of the *kwanliso* simply cannot be expected to resume their lives and find jobs and houses outside the camps unassisted. After being incarcerated for so long, they might not know where to go or what to do.²⁵ The opening of camps from World War II and the Soviet gulags can provide valuable insights into how best to support and rehabilitate those treated so brutally.²⁶

Accountability and Transitional Justice

A new Korea should expect those responsible for crimes against humanity to be held accountable. Sometimes after human rights and humanitarian emergencies, the quest for reconciliation and peace supersedes the quest for justice. However, the systematic, widespread and grave crimes committed by North Korea’s Kim regime against so many of its people for so long will be hard to relegate to a secondary position. The COI’s 400-page report documented decades-long governmental crimes against humanity:

...extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of populations, the enforced disappearance of persons and the inhumane act of knowingly causing prolonged starvation.²⁷

It will be difficult to ignore this litany of crimes in light of the record compiled to date and UN resolutions since 2014 calling for referral of North Korea's human rights situation to the ICC. In addition, a joint statement in 2015 of Presidents Barack Obama and Park Geun-hye expressed their governments' commitment to "ensure accountability" for human rights violations in the DPRK.²⁸ UN Secretary-General Ban Ki-moon has also emphasized the need for accountability:

Efforts to engage the Government of the Democratic People's Republic of Korea to improve the human rights situation in the country must go hand in hand with efforts to hold perpetrators of crimes accountable.²⁹

Of course, North Koreans directly involved with or who benefitted from the regime, or who spent much of their lives adulating the Kim regime, may not be so ready to hold their leaders accountable. There are also South Koreans who deny or minimize North Korea's criminal record. But this makes the educational value of dealing with the regime's crimes even more essential. The introduction of human rights principles as a unifying force to underpin a new Korea should be a central goal. It should also help deter North Korea's many victims of violations from taking the law into their own hands in what is called 'retributive justice.'

Making it known that trials will be held should help reinforce the collection of evidence by the UN's Seoul office, set up in 2015 by the High Commissioner for Human Rights (OHCHR). It is intended to continue the COI's work of identifying state institutions and individuals to facilitate "United Nations efforts to prosecute...those most responsible for crimes against humanity."³⁰ And institutions like the Data Base Center for North Korean Human Rights (NKDB), the National Human Rights Commission of Korea, and various NGOs have also been collecting names and evidence. Outside military forces that become involved should be expected to turn over information for use in trials.

Whom to hold responsible must be determined carefully but should begin with those who gave the orders, namely Kim Jong-un and his top lieutenants in the Workers' Party and National Defense Commission. Even if not directly involved in committing crimes against humanity, they would still be personally liable if crimes were perpetrated by persons under their control or they failed to prevent them. In a letter to Kim Jong-un, accompanying the COI report, Justice Michael Kirby, COI

chair, explained that any official “who commits, orders, solicits or aids and abets crimes against humanity incurs criminal responsibility.”³¹ Of course, those who directly carried out serious crimes would be subject to prosecution, especially security forces personnel, prison or border guards, or officials from the military, Public Prosecutor’s Office, judiciary or Workers’ Party. And some government offices, such as the Ministry of State Security (formerly State Security Department), will need to be disbanded and many of its agents tried or retired, depending on their role.

At the same time, not all collaborators or bystanders must be tried, For a such as truth commissions or investigative commissions (employed in the past by South Korea), combined when appropriate with select amnesties, lustration (i.e., removal from positions of authority) and reparations agreements can be introduced. As for the “million man army,” it would not be possible or wise to try most defense officials and military officers as it “would only increase animosity and make integration more difficult.”³² Similarly, not all members of North Korea’s elite have been associated with political crimes and should be assured they will not be prosecuted; indeed, many will be needed to participate in the country’s transition and development. However, dividing elites based on possible criminal responsibility grounds should begin now, with certain categories of officials identified to be removed from public office.³³ The Presidential Committee for Unification Preparation in South Korea has reportedly developed a plan for classifying and dealing with elite figures in the Workers’ Party, the military and other institutions.³⁴

Announcing measures to ensure accountability in advance may deter criminal acts on occasion. Fear of accountability has reportedly caused some North Korean officials to modify some practices. These include not carrying out forced abortions routinely in detention centers, not torturing prisoners regularly in long term labor facilities (the *kyo-hwa-so*) and not automatically imprisoning entire families.³⁵ However, these reports are based on anecdotal information and no actual *policy* changes are known to have taken place. For instance, many relatives and colleagues of Jang Sung-taek were reported to have been exiled or imprisoned after his execution, underscoring the continued usage of guilt by association. Nonetheless, some officials may think twice if aware of the possibility of trials. While some might destroy evidence and flee, those who commit serious crimes often leave detailed records; some may even try to trade information in exchange for amnesty.

Bringing the case of North Korea before the ICC will be challenging. North Korea has not accepted the court, so a referral of the case (while the DPRK is standing) would have to be made by the Security Council, with China and Russia expected to cast a veto. "To bring human rights issues to the International Criminal Court does not help improve a country's human rights conditions," China has asserted.³⁶ South Korea, for its part, has signed the Rome Statute, but probably could not bring a case until reunification, although some debate exists about this matter.³⁷ The ICC, however, may not be the only or even the most effective judicial forum to use in the case of North Korea. The court may only prosecute crimes committed after July 2002, but the crimes against humanity committed in North Korea extend back over many decades. Furthermore, the court could be expected to prosecute only the most serious cases, whereas the number of North Koreans meriting prosecution would be far greater. Some have proposed a special or *ad hoc* international tribunal as an alternative solution. But the track records of such tribunals (e.g., the former Yugoslavia³⁸ and Rwanda) have been mixed, the costs prohibitive, and the Security Council would have to be involved. A tribunal established by the General Assembly based on the 'Uniting for peace' resolution from the Korean War and the principle of universal jurisdiction has recently been suggested.³⁹

Another effective arrangement might be a 'hybrid court,' a domestic court with an international component set up in association with the United Nations.⁴⁰ A domestic court could be tailored to the needs of the Korean situation and ensure its educational value for all Koreans, while the inclusion of international judges and prosecutors would overcome the potential criticism of 'victor's justice' and likely prove more impartial and credible. An Asan Institute poll of more than 1,000 South Koreans over the age of 19 found that 48.8 percent of the respondents believed the international community should play the leading role in a process of redress for human right abuses in North Korea whereas 29.2 percent favored the Korean government's undertaking this on its own.⁴¹ Some international lawyers have suggested that a hybrid tribunal for North Korea be established by a multilateral treaty with the UN General Assembly, in which the U.S., Japan, Australia and other countries in the region participate as well.⁴²

A special effort will be required to prevent China from impeding trials. Although China did not veto special UN tribunals on Rwanda and the former Yugoslavia, it has expressed opposition to international court

proceedings against North Korea. It may also need to be persuaded to turn over North Korean leaders wanted by a Korean or international tribunal for crimes against humanity if they flee to China. An important consideration for China is whether its own officials will be implicated in such trials. The COI report found that Chinese officials might be “aiding and abetting crimes against humanity” by collaborating with North Korea in forcibly repatriating North Koreans to conditions of danger.⁴³ In the case of Cambodia, where a hybrid domestic/international tribunal was set up by the UN to prosecute the Khmer Rouge, China dropped its objections to the trials when it became clear that its relationship with the Khmer Rouge would not be highlighted.⁴⁴

David Tolbert, President of the International Center for Transitional Justice and former deputy chief prosecutor of the International Criminal Tribunal for the Former Yugoslavia, has recommended steps be taken now to prepare the groundwork for accountability and transitional justice for North Koreans.⁴⁵ This would mean the continued identification of institutions and individuals responsible, maintaining national and international awareness of the human rights abuses committed, and building knowledge of transitional justice in South Korea and the Korean diaspora. Applying such justice requires selection of the most effective method of accountability—the ICC, a specialized tribunal, a hybrid court, whether to try persons in absentia, whether to apply universal jurisdiction, or a combination thereof. Transitional justice will also include creating truth commissions, reparations agreements and reconciliation processes as well as introducing the rule of law, legal and institutional reforms and property restitution in the North. South Korea’s experience with some of these steps, given its own political transformation, should be of help, but involvement by North Koreans in the decision-making must be a part of the process for transitional justice to work effectively.⁴⁶

Managing Migration

Protecting refugees and internally displaced persons will be a major concern in the event of turmoil or change in the North. It is often predicted that China and South Korea will be overrun by refugees. According to a Council on Foreign Relations report, South Korean planners have projected “scenarios in which up to one million refugees might flee the North,” most going to China and South Korea with lesser

numbers to Russia and Japan.⁴⁷ However, such analyses often underestimate the barriers to refugee flows.

For instance, China might seal its borders to block the mass entry of North Koreans. Although tens, if not hundreds of thousands of North Koreans fled over the border into China during the great famine in the 1990s, China's policies are different today. Over the past two decades, China has forcibly pushed back tens of thousands of North Koreans seeking entry, erecting restrictive barriers at its borders and stationing troops to keep North Koreans out. Although China has also tolerated thousands of North Koreans residing illegally in its territory, leaked Chinese contingency plans of unconfirmed authenticity detail the creation of camps or special zones inside North Korea to forestall the entry of North Koreans. China is said to fear active North Korean military units establishing a foothold of resistance among refugees in China's border areas.⁴⁸ It might also be reluctant to allow in large numbers of North Koreans who could upset the demography of historically disputed border areas between China and North Korea or place undue economic strain on China's undeveloped regions.⁴⁹

North Koreans heading toward South Korea will come up against the heavily mined Demilitarized Zone (DMZ), where flooding has made the location of mines unpredictable. A U.S. military officer stationed there described the situation as a "humanitarian crisis in the making,"⁵⁰ and warned that North Korean military units concentrated at the DMZ may threaten potential refugees. Of course, tunnels reportedly underneath the DMZ, Highway One from Kaesong, or boats at sea all may provide escape routes, but none of these options can be easily accomplished.

If order can be restored in the North by international troops (e.g., from South Korea, the U.S. or U.S./UN command forces, and China), preferably under an agreed UN framework, and access to food and medicines made available, many North Koreans might stay put, at least initially. And if their survival is not at risk, North Koreans can be urged to stay in their home areas until order is restored. The contingency plans of South Korea, the United States and China all designate stabilization a top priority, focused on averting refugee outflows and helping people survive *where they are*. North Koreans might also, of their own accord, find a safer part of their own country to which to flee. In emergency situations, most people prefer to remain displaced in their own country rather than cross borders. They may be strongly attached to their country, have limited resources, be too old or infirm to leave, or find it too

challenging to adapt to new languages or lifestyles in a neighboring state. Moreover, if opportunities and incentives are provided to North Koreans to contribute to the building and transformation of their country, they may wait and see whether prospects exist for a better life at home. Some thousands of North Koreans who earlier defected to the South and other countries may seek to return to the North to assist with reunification and development, especially if given support and incentives to do so.

There will of course be certain groups in North Korea that will seek to flee across borders no matter what the scenario, and their numbers may be significant. They include:

- The Kim family and top Kim regime officials (from the Workers' Party, the Ministry of State Security, the Ministry of People's Security, and the military), their families and aides who presumably would try to negotiate refuge with China to avoid retribution and prosecution; estimated at 10,000.⁵¹
- The top one to five percent of the favored elite in Pyongyang who fear reprisals or retributive loss of employment, privileges and influence. Their numbers could range in the tens of thousands and they may seek to go to China, Russia or even South Korea.⁵²
- Ethnic Koreans from South Korea or Japan who will want to return to their countries after having been forcibly taken by North Korea (mostly in connection with the Korean War) or who went to North Korea as part of an organized movement from Japan and then remained in the DPRK against their will. Although estimated to be nearly 200,000, many may be advanced in years or no longer alive.⁵³ South Korea and Japan will most assuredly take in those originating from their countries who wish to return.
- Foreigners abducted from Japan and other countries, numbering a hundred or so, seeking to depart. Japan will seek to bring back abductees and has asked the U.S. to assure their safety.⁵⁴
- South Korean prisoners of war still detained in the North, now estimated to number 500 to 600.⁵⁵
- North Koreans seeking from the outset to join relatives in other countries, seeing little future for themselves in the

North. This number could be substantial, although entry to countries other than South Korea may be problematic.

The extent to which China is ready to take in North Korea's 'high command' and other favored elite is unknown. The Chinese military contingency plan mentioned above reportedly speaks of placing "key military and political figures" in camps and investigative facilities along the border.⁵⁶ Some sources report Chinese preparations for placing up to 300,000 people in a special zone.⁵⁷

South Korea, by contrast, is legally and politically obligated to allow in North Koreans because its Constitution considers all North Koreans to be citizens. The only exceptions are North Koreans deemed criminals (a category that will require reinterpreting, given North Korea's usage of the term⁵⁸) and those guilty of crimes against humanity. However, South Korea will not want to jeopardize the economic progress and stability of its country by quickly accepting large numbers of North Koreans it cannot easily absorb. A significant number of the 29,000 North Koreans already in the South have found it difficult to adjust to a fast moving, democratic and capitalistic society. A South Korean government task force has envisaged that 200,000 North Koreans will be permitted to relocate to the South but not until the first three years of reunification, followed by calibrated increases, resulting in a total of a million and a half during the first decade.⁵⁹ In the event of an unmanageable emergency overflow, South Korea may find it necessary to set up camps and take other broader measures.⁶⁰

South Korea needs to develop, in cooperation with the UN High Commissioner for Refugees (UNHCR), a plan to assure that emergency displacement over borders is effectively and humanely managed. Some of the more challenging questions will involve criteria for determining which North Koreans the South should immediately take in and which states are prepared to take in large numbers of the favored elite who fear reprisals at home. The overall plan would have to include China, Russia, Japan, and other states (e.g., Mongolia, South Asia) that have a history of taking in North Koreans or allowing them to transit.

If Korea were to be reunified under South Korean leadership, the new Korea would also have to enact special policies and laws to deal with IDPs. In a reunified Korea, those displaced in the North and those fleeing from North to South would no longer be considered refugees but rather persons forcibly uprooted *within their own country* by conflict,

human rights violations or disasters (according to the IDP definition⁶¹). Under international law, the principal responsibility for IDPs rests with their national government. South Korea has no doubt been putting aside resources for absorbing North Koreans coming to the South. But when it comes to those internally displaced in the Northern part of the country as a result of disruption, it would be wise for a newly reunified Korea to cooperate with the international community which has special organizational structures for dealing with IDPs. Specifically, the UN Office for the Coordination of Humanitarian Affairs (OCHA) serves as overall coordinating body for the protection, assistance and early recovery of IDPs.

Under OCHA's 'cluster' system, different international agencies assume leadership in their areas of expertise. UNHCR, for example, is the agency in charge of camp management, emergency shelter and protection, while UNICEF, WFP, UNDP and others manage food, medicine, health care, sanitation, child protection and early recovery. The UN Special Rapporteur on the Human Rights of Internally Displaced Persons (an independent expert under OHCHR) could be expected to help with the development of a policy or law on IDPs, so that all phases of displacement, including return, resettlement and reintegration, can be addressed.

Because not all internal movement in the North will be *forced*, however, thereby triggering the UN's 'IDP regime,' attention must also be paid to *voluntary* migration, that is, when North Koreans move from their home areas on a voluntary basis. Long-standing restrictions on internal movement in the North could make North Koreans cautious about relocating, but it is also possible that new freedoms might embolden some to do so. Significant numbers, for example, residing in undeveloped and poverty stricken rural areas may decide to relocate to cities like Pyongyang with better electricity, consumer goods and jobs. And should state enterprises collapse, the military be demobilized or recovery efforts happen too slowly, a good number of North Koreans may decide to head south. A framework for migration will need to be developed since unmanaged massive voluntary migration can also reach crisis proportions and there will be need to balance freedom of movement in a reunified Korea with public safety and health. Indeed, the International Organization for Migration (IOM) should be asked to become involved.

Although plans are clearly needed, international and UN agencies have been reluctant to date to become involved, given the political sensitivities. There is, however, a way to move forward. Agencies can begin to draw up a regional response framework under a *natural* disaster umbrella. North Korea is vulnerable to flooding and to the effects of climate change, and it is acceptable for agencies to develop natural disaster plans.⁶² Such arrangements could include the stockpiling of imperishable goods as well as standby arrangements with different governments (e.g., South Korea, China, Japan, the U.S.) to make perishable supplies available in the event of an emergency. If the emergency is sudden political disruption, the natural disaster plans can be adapted to the new emergency.

The UN Human Rights up Front Strategy and North Korea

One way to engage UN humanitarian agencies on the ground with human rights concerns is for the UN to apply its Human Rights Up Front approach (HRuF) to North Korea. Introduced into the UN by Secretary-General Ban Ki-moon in 2013, HRuF calls upon the entire UN system to be involved in developing “a system wide strategy” for a country if it faces serious violations of human rights.⁶³ Its application to the DPRK would mean that all relevant UN agencies, in particular those engaged on the ground, would agree to take steps to monitor and promote human rights. The COI report,⁶⁴ the Secretary-General,⁶⁵ and the Special Rapporteur for human rights support such action in the DPRK.⁶⁶ Ban Ki-moon’s latest report to the General Assembly devoted, for the first time, a section on the role humanitarian organizations can play in addressing human rights.⁶⁷

The clearest way to accomplish this goal would be to make reference to human rights in the UN’s Strategic Framework for the DPRK. This document establishes the priorities of the UN in North Korea and is negotiated with the North Korean government by the UN Resident Coordinator who serves as head of the Country Team (CT). Humanitarian organizations would then have a strong basis for raising with North Korean authorities the human rights principles the DPRK itself accepted at the UN’s Universal Periodic Review (UPR) in 2014.⁶⁸ These principles include non-discrimination in food distribution, access by humanitarian organizations to the most vulnerable and gender equality. Such principles are important to raise with North Korea because their violation affects humanitarian operations on the ground. For

example, the COI report found that North Korea's *songbun* system, which classifies citizens by political loyalty, has a discriminatory impact on North Koreans when it comes to food distribution, healthcare, education and housing, areas in which UN agencies are engaged.⁶⁹ The COI report also found "pervasive" and "official" discrimination against women.⁷⁰ Furthermore, since the stated goal of humanitarian agencies is to reach the most vulnerable, the UN should be thinking about how to gain access to prisons, detention centers and the penal labor camps (*kwanliso*). In its 2015 resolution, the UN General Assembly specifically listed political prisoners as one of the most vulnerable groups suffering from chronic malnutrition and called for the monitoring of their conditions.⁷¹

Making an effort to gain access to prisons, however challenging, could produce health benefits for the entire society. The WHO has found that in countries where TB is rife, such as North Korea,⁷² "effective TB control in prison" protects not only prisoners, staff and visitors, but "the community at large."⁷³ The application of HRuF to North Korea would mean seeking to gain entry to the prisons in an effort to curb the spread of TB. Similarly, for agencies like the UN Economic and Social Commission for Asia and the Pacific (ESCAP), the application of HRuF would mean ensuring that the training programs it sponsors for North Koreans include adequate numbers of women and that any training in business management emphasizes freedom of information, unrestricted access to the internet, and the UN Global Compact's principles on labor standards. UNESCO for its part should be looking into how to introduce into North Korea educational programs on human rights, which North Korea accepted at the UPR and which UNESCO regularly conducts throughout the world.

Incorporating human rights objectives into the UN system's policies and programs with North Korea would not only create a foundation for more effective humanitarian and development programming but contribute to a more effective response should there be disruption in North Korea. To date, international staff have been cautious in carrying forward human rights recommendations so as not to interfere with their access and cooperation with the government, but adding a human rights dimension to their work would benefit the host country and better prepare it for reunification. As a recent HRNK-JBI paper observed, "If the UN values its presence in the country and ability to work with the DPRK government above all other principles, it risks buttressing the

regime and its grave abuses and thus unintentionally supporting its persistent resistance to reform and evolution.”⁷⁴ Humanitarian agencies would do well to heed the 2015 call of the General Assembly to implement the human rights recommendations in the COI report.⁷⁵

The Responsibility to Protect (R2P)

In 2014, the General Assembly observed that the DPRK has “the responsibility to protect its population from crimes against humanity” but has not been assuming that responsibility.⁷⁶ The resolution, however, did not call for the application of the UN concept of the Responsibility to Protect (R2P) to North Korea.

The need to apply the concept was first raised by the COI report, which called upon the international community to “accept its responsibility to protect” the population of North Korea, given the government’s unwillingness to do so. The international response, the report said, had been inadequate for decades despite “the role played by the international community (and by the great powers in particular) in the division of the Korean peninsula.”⁷⁷

The UN has hesitated, owing to the country’s inaccessibility, autocratic leadership, nuclear capability and huge army. China’s Security Council veto could also be expected to prevent R2P’s application while Western countries and South Korea might not be inclined to invoke the concept as well. Controversy has surrounded R2P’s application, especially since the military intervention in Libya in 2011 and the ‘regime change’ and chaos that followed. Nonetheless, at the behest of Australia, France and the United States, the Security Council in 2014 voted by 11 to 2 (China, Russia) to place the North Korean human rights situation on the Council’s agenda. This step linked the nature of the regime to regional and international peace and security although no explicit mention of R2P was made.

Were there to be severe turmoil and mass killings on the Korean peninsula, the R2P concept might become a realistic option. Secretary-General Ban Ki-moon, for example, in speaking in April 2014 about the lawlessness in the Central African Republic said “the world agreed on our collective responsibility to protect a population when the state is unwilling or unable to do that basic job.”⁷⁸ The UN Security Council five days later authorized the deployment of UN troops and police with the mandate to protect civilians, support a political transition, facilitate humanitarian assistance and promote human rights and accountability.⁷⁹

In the case of North Korea, the presence of South Korean military forces, U.S. forces and the United Nations Command (UNC), as well as nearby Chinese troops, would undoubtedly pre-empt the need for recruiting many other troops for a UN peacekeeping mission. China has already made clear that it “will never allow a war or chaos to occur on its doorstep.”⁸⁰ What will need to be worked out is the extent to which South Korea, the U.S. and China can coordinate their interventions so that the North is stabilized and reunification, or some other agreed solution, can take place with as little bloodshed and disruption as possible. China has long feared North-South reunification as a potential means of expanding U.S. influence and putting American troops on its border. Therefore, an agreement would need to be reached that a Seoul-led reunified nation would not pose threats to its neighbors or bring U.S. troops to the Chinese border, but would work with China to bring stability and economic growth to the entire peninsula and region. Reunification could take place in stages, allowing for a consensual process to develop between North and South Koreans as well as consultations with outside states.

The value of a UN framework - and the involvement of the UN in the Korean War gives it the foundation for playing a strong role - would be to bring international legitimacy to the process, ensure that outside powers work together effectively, and that R2P’s emphasis on civilian protection and the prevention of serious human rights crimes be given a prominent place. If Security Council agreement were not possible, a General Assembly resolution could be sought.

Ideally, an international military mission would be authorized to stabilize the North, promote security for civilians, protect aid workers and their material assistance, and have the authority to detain and hold for trial those suspected of crimes against humanity. International humanitarian actors would address emergency needs and work to maintain the civilian character of aid while development agencies and the corporate community would be turned to in order to promote recovery and rebuilding. Although R2P does not formally include rebuilding, increasingly it is recognized that for lasting peace to be secured, rebuilding must be an integral follow up to R2P. As one leading scholar observed: “the preventive element of R2P” connects to “how the international community should manage any future transitions in the [Democratic People’s Republic of Korea] DPRK.” The “risk of mass violence is greatest during political transitions.”⁸¹

This makes it essential for a sizeable human rights and protection component to be included in any military mission to assist with the establishment of rule of law programs, an independent judiciary, human rights institutions, local elections, a political transition, and a transitional justice program. And as emphasized earlier, North Korean defectors should be encouraged to play an important role as a bridge with training provided now to help them develop the range of skills needed for the transition.⁸²

Concluding Comment

Planning and coordination will be needed among governments, international organizations, non-governmental organizations and civil society to assure that humanitarian and human rights concerns are addressed in the event of upheaval in North Korea. Advance planning should contribute to finding solutions for issues such as the rescue of political prisoners, transitional justice and accountability, and the management of internal and external migration. Human rights principles must be incorporated into humanitarian and development programming so that discriminatory food and medical policies can be addressed. And states should not be the only ones with contingency plans. International organizations and NGOs should undertake such arrangements, beginning now to develop plans for dealing with change in North Korea and building a cohesive unified Korea based on human rights and humanitarian standards.

Notes:

¹ See Andrew Natsios, “Transitional Justice in North Korea Following a Change of Regime: An Exploration of Four Possible Scenarios,” *Transitional Justice in Unified Korea*, eds. Baek Buhm-suk & Ruti G. Teitel, The Asan Institute for Policy Studies, Palgrave Macmillan, 2015, pp. 224-227 [henceforth *Transitional Justice*].

² See UN General Assembly, Report of the commission of inquiry on human rights in the Democratic People’s Republic of Korea, A/HRC/25/63, 7 February 2014, para. 61 [henceforth COI report].

³ COI report, para. 59; and UN General Assembly, Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea, A/HRC/25/CRP.1, 7 February 2014, para. 729 [henceforth COI report 2].

⁴ COI report 2, para. 1033.

⁵ UN General Assembly, Resolution on Situation of human rights in the DPRK, A/RES/69/188, December 18, 2014, operative para. 2 (a) (ii).

⁶ COI report 2, para. 732.

⁷ Ibid.

⁸ COI report, para. 60.

⁹ David Hawk, *The Hidden Gulag*, Second edition, Committee for Human Rights in North Korea, 2012.

¹⁰ See Roberta Cohen, "The High Commissioner for Human Rights and North Korea," in F. Gaer and C. Broecker, eds., *The United Nations High Commissioner for Human Rights: Conscience for the World*, Martinus Nijhoff, 2014, pp. 300-1.

¹¹ John Kerry, Opening Statement at Nomination Hearing, U.S. Senate Committee on Foreign Relations, January 24, 2013.

¹² See for example UN General Assembly, Resolution on Situation of human rights in the DPRK, A/RES/69/188, December 18, 2014, operative para. 2 (a) (ii); and UN Human Rights Council, Resolution on Situation of human rights in the DPRK, A/HRC/RES/25/25, March 26, 2014, operative para. 2 (e).

¹³ COI report 2, paras. 763-766.

¹⁴ Roger Moorhouse, book review, *Washington Post*, May 31, 2015, of *Ravensbruck: Life and Death in Hitler's Concentration Camp for Women*, by Sarah Helm, Doubleday, 2015.

¹⁵ In 2014 and 2015, China voted against the resolution in the General Assembly on human rights in the DPRK. The 2015 vote was 119 to 19 (including China) with 48 abstentions.

¹⁶ Dennis Lynch, "China Closes Re-education Through Labor Camps," *International Business Times*, January 10, 2014.

¹⁷ UN Human Rights Council, Resolution on Situation of human rights in the DPRK, A/HRC/RES/25/25, March 26, 2014, operative para. 16.

¹⁸ Bruce W. Bennett, *Preparing for the Possibility of a North Korean Collapse*, Rand Corporation, 2013, pp. 237, 243-4.

¹⁹ "North Korea Imagery Analysis of Camp 16," HRNK and All Source Analysis, December 15, 2015, p. 4.

²⁰ Ibid. pp. 241-3.

²¹ From fewer than 50 cases per 100,000 persons in 1994, the number increased to 380 cases per 100,000 in 2011, according to the World Health Organization, see Megan Phelan, "Science Reporter in North Korea Investigates Efforts to Fight TB," American Association for the Advancement of Science (AAAS), April 25, 2013. In 2014, some 5,000 died of TB, see "North Korea Launches First National TB Survey," *VOA News*, November 18, 2015.

²² COI report 2, para. 769.

²³ See Roberta Cohen, "Must U.N. agencies also fail in North Korea?" *38 North*, April 21, 2015.

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- ²⁴ See https://en.wikipedia.org/wiki/Human_experimentation_in_North_Korea
- ²⁵ David Hawk, *North Korea's Hidden Gulag: Interpreting Reports of Changes in the Prison Camps*, Committee for Human Rights in North Korea, 2013, pp. 27-29.
- ²⁶ See, for example, Eric Lichtblau, "Surviving the Nazis, Only to Be Jailed by America," *New York Times*, February 8, 2015.
- ²⁷ COI report, paras. 75-6.
- ²⁸ Joint Statement on North Korea, The Nelson Report, October 16, 2015
- ²⁹ UN General Assembly, Report of the Secretary-General on the Situation of human rights in the DPRK, A/70/393, September 25, 2015, para. 67.
- ³⁰ COI report, para. 94 (c).
- ³¹ COI report, Annex 1, Correspondence with the Supreme Leader of the DPRK and First Secretary of the Workers' Party of Korea, Kim Jong-un, January 20, 2014.
- ³² "North Korea's million man army in post-unification Korea," *NKNews*, May 31, 2015.
- ³³ See Lavinia Stan, "Confronting North Korean Communist Abuses" *Transitional Justice*, op. cit. p. 147; and Cho Jung-hyun, "Transitional Justice in a Reunified Korea: Some Initial Observations," *Transitional Justice*, op. cit. pp. 212-214, 217.
- ³⁴ "Forced unification is being studied," *Korea JoongAng Daily*, March 11, 2015. See also "Is Peaceful Korean Unification Possible?" *New York Times* editorial, December 12, 2014; and Seong-Phil Hong, "Transitional Justice in North Korea: Accountability for Human Rights Atrocities," Center for Strategic and International Studies, August 20-21, 2010.
- ³⁵ See O. Yi and D.S. Hong, "Start Thinking Now About Transitional Justice in a Post-Transition North Korea," PacNet #51, Center for Strategic and International Studies, July 11, 2013; David Hawk, Interview, October 2013; KINU reports cited in Roberta Cohen, "Human Rights in North Korea: Addressing the Challenges," *International Journal of Korean Unification Studies*, KINU, Vol. 22, No. 2, 2013, pp. 47-49; "NK carries out public execution of nearly 1,400 people since 2000: report," *Yonhap*, July 1, 2014; "Refugee testimony hints at slight improvement in NKorean prisons," *The Hankyoreh*, July 2, 2015; and Lee Sang Yong, "Marginal improvement at 'kyohwaso' amid international pressure," *NK News*, November 25, 2015.
- ³⁶ Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference, February 17, 2014, at <http://www.china-un.org/eng/fyrth/t1129283.htm>.
- ³⁷ See, for example, comments of David Scheffer and Morse Tan, Panel on Accountability, International Bar Association conference on U.S. Policy toward North Korea, Johns Hopkins SAIS, at <https://www.youtube.com/watch?v=6rVT3A89pgI>.
- ³⁸ The Yugoslav tribunal brought to justice 120 serious offenders, leading

Bosnia to set up a domestic court to deal with lesser offenders.

³⁹ UN General Assembly, Report of the Special Rapporteur on the situation of human rights in the DPRK, A/HRC/31/70, paras. 33-35, 37, January 19, 2016.

⁴⁰ See comments of David Scheffer, Morse Tan, Param Preet Singh, Michael Kirby and David Tolbert, IBA Panel on Accountability, op.cit.; and Morse Tan, *North Korea, International Law and the Dual Crises: Narrative and Constructive Engagement*, Routledge, 2015.

⁴¹ The Asan Institute for Policy Studies, *ASAN POLL: Survey on South Korean Perceptions of Transitional Justice in Post-Unification Korea*, Seoul, 2013.

⁴² See comments of David Scheffer, IBA Panel on Accountability, op. cit.

⁴³ COI report, Annex II, pp. 30-35; and COI report 2, paras. 51, 90 (f), 436. See also Roberta Cohen, "China's Forced Repatriation of North Korean Refugees Incurs United Nations Censure," *International Journal of Korean Studies*, Spring/Summer 2014.

⁴⁴ Interview with Sophie Richardson, Human Rights Watch, 2013.

⁴⁵ See comments of David Tolbert, op. cit. IBA Panel on Accountability.

⁴⁶ See Lavinia Stan, "Confronting North Korean Communist Abuses: Some Possible Markers," *Transitional Justice*, op. cit. pp. 143-149. See also Baek Buhm-Suk, Lisa Collins, and Kim Yuri, "Epilogue," *Transitional Justice in Unified Korea*, pp. 242-244.

⁴⁷ Council on Foreign Relations, *Preparing for Sudden Change in North Korea*, 2009.

⁴⁸ "Report: China's Military Prepared for Collapse Scenario," *Daily NK*, May 5, 2014.

⁴⁹ Cohen, "China's Forced Repatriation of North Korean Refugees," op. cit.

⁵⁰ Interview with Col. David Maxwell, November 15, 2019.

⁵¹ The overall estimates of personnel in these offices are: 50,000 in the SSD, 310,000 in the MPS and 10,000 in the Military Security Command, Interview with Robert Collins, May 11, 2014; and see Ken E. Gause, *Coercion, Control, Surveillance and Punishment: An Examination of the North Korean Police State*, Committee for Human Rights in North Korea, 2012, pp. 17, 27 and 37.

⁵² Collins, *ibid.*

⁵³ COI report, paras. 64-73; see also Yoshi Yamamoto, *Taken: North Korea's Criminal Abduction of Citizens of Other Countries*, Committee for Human Rights in North Korea, 2011.

⁵⁴ "Japan has asked U.S. to rescue North Korea abductees if a crisis breaks out," *The Japan News*, July 31, 2015.

⁵⁵ "Human rights organization to sue Kim Jong Un over POWs," *NK News*, June 17, 2015.

⁵⁶ "Report: China's Military Prepared for Collapse Scenario," *Daily NK*, May 5, 2014.

⁵⁷ See Richard Bush, “China’s Response to Collapse in North Korea,” Center for Security Studies, Angelo State University, November 14, 2013.

⁵⁸ Given that North Korea considers it criminal to watch a South Korean DVD, leave the country, complain about lack of food or medicine, or read the Bible, the “criminal” status meted out to North Koreans would have to be reconsidered, see Cho Jung-hyun, “Transitional Justice in a Reunified Korea: Some Initial Observations,” *Transitional Justice*, op. cit. p. 216.

⁵⁹ Marcus Noland, “Unification planning: the South Korean government gets serious,” North Korea: Witness to Transformation (blog), November 13, 2014.

⁶⁰ See Bennett, *Preparing for the Possibility*, op. cit., p. 74.

⁶¹ Guiding Principles on Internal Displacement, Introduction (2), at <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Standards.aspx>.

⁶² Kim Eunjee, “Experts: N. Korea Expresses Vulnerability to Effects of Climate Change,” *VOA*, November 23, 2015.

⁶³ See “Rights Up Front,” May 2014, at <http://www.un.org/sg/rightsupfront/doc/RuFAP-summary-General-Assembly.htm>; see also Secretary-General Ban Ki-moon, “Human Rights Up Front? Initiative,” at <http://www.un.org/sg/rightsupfront/>.

⁶⁴ COI report, para. 94 (g) and COI report 2, para 1209.

⁶⁵ UN General Assembly, Report of the UN Special Rapporteur on Human Rights in the DPRK, October 24, 2014, A/69/33701, para. 24.

⁶⁶ UN General Assembly, Report of the UN Special Rapporteur, *ibid.* paras. 22-24.

⁶⁷ UN General Assembly, Report of the UN Secretary-General on the Situation of human rights in the DPRK, A/70/393, paras. 61-65, September 25, 2015.

⁶⁸ UN General Assembly, Report of the Working Group on the Universal Periodic Review: DPRK, July 2, 2014, A/HRC/27/10; and Add. 1, September 12, 2014.

⁶⁹ COI report, paras. 32-33, 39.

⁷⁰ COI report 2, paras. 350, 352, 354.

⁷¹ See UN General Assembly, Resolution on the Situation of human rights in the DPRK, A/C.3/70/L.35, October 30, 2015, para. 4.

⁷² See Daniel Wertz, “A Chance for Progress in North Korean Human Rights,” *The Diplomat*, November 11, 2014.

⁷³ World Health Organization, at <http://www.who.int/tb/challenges/prisons/en/>; and <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/who-health-in-prisons-programme-hipp>.

⁷⁴ “How to Implement the UN’s Human Rights up Front Strategy (HRuF) in the DPRK: Suggested Questions and Recommendations for UN Agencies, Funds and Programs,” the Committee for Human Rights in North Korea (HRNK) and the Jacob Blaustein Institute for the Advancement of Human Rights (JBI), June 2015.

⁷⁵ UN General Assembly, Resolution on the Situation of human rights, op. cit., para. 16.

⁷⁶ UN General Assembly, Resolution on Situation of human rights in the DPRK, A/RES/69/188, December 18, 2014, preambular para. 6.

⁷⁷ COI report, para. 86.

⁷⁸ Global Centre for the Responsibility to Protect, Central African Republic, at http://www.globalr2p.org/regions/central_african_republic

⁷⁹ UN Security Council, Resolution 2149 on Central African Republic, April 10, 2014.

⁸⁰ *The Chosun Ilbo*, April 30, 2014.

⁸¹ Alex J. Bellamy, "A chronic protection problem: the DPRK and the Responsibility to Protect," *International Affairs*, 91:2, 2015, p. 229

⁸² Sandra Fahy, "Internal Migration in North Korea: Preparation for Governmental Disruption," *Asia Policy*, No. 20, July 2015, pp. 137-14.