

Across the Border: The Humanitarian Crisis of North Korean Asylum Seekers in China

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GLOBAL
HUMAN
RIGHTS
DEFENCE

INTRODUCTION

In the complex landscape of international human rights, the plight of North Korean asylum seekers in China presents an urgent and intricate challenge. According to Human Rights Watch, the Chinese government's forced return of approximately 60 North Korean asylum seekers on April 26th, 2024 has sparked significant international concern.¹ These individuals now face severe risks, including enforced disappearance, torture, sexual violence, wrongful imprisonment, forced labour, and execution upon their return to North Korea. This alarming incident followed a high-level meeting on April 13th, 2024 between North Korean leader Kim Jong Un and Zhao Leji,² China's third-highest official, heightening fears among North Korean exiles and human rights activists that China may accelerate its repatriation efforts.

On a broader scale, the situation of North Korean refugees in China is dire. Estimates suggest that between 10,000 and 300,000 North Koreans live in hiding within China, primarily in the Jilin province along the border, blending in with Chinese citizens of Korean ethnicity.³ China's official policy on North Korean refugees is forcible repatriation, upon which these individuals face brutal consequences, including torture, violent interrogations, and imprisonment in labour camps.⁴ This policy starkly contrasts with China's international human rights obligations and highlights a severe humanitarian crisis.

This report delves into the multifaceted challenges faced by North Korean refugees in China through a comprehensive human rights lens. It explores the socio-political dynamics, legal frameworks, and humanitarian implications of China's treatment of North Korean asylum seekers. By conducting a comparative analysis of China's refugee policies in the context of its bilateral treaties with both South and North Korea, this study seeks to elucidate the complex interplay of diplomatic relations, regional security concerns, and human rights considerations shaping these policies. This analysis underscores the urgent need for international intervention and policy reform to protect these vulnerable individuals and uphold their fundamental human rights.

¹ Lina Yoon, "China Forcibly Returns 60 Refugees to North Korea" (2024) Human Rights Watch.

² *Ibid*

³ *Ibid*

⁴ *Ibid*

1. HISTORICAL AND POLITICAL BACKGROUND

Understanding the historical and political context is crucial for comprehending the challenges faced by North Korean refugees in China today, as well as the socio-political dynamics and legal frameworks shaping China's policies towards them.

The historical and geopolitical interplay between China and North Korea constitutes a complex nexus, deeply entrenched since the latter's inception as a sovereign state. Despite occasional discord, notably surrounding North Korea's nuclear aspirations, this relationship has been metaphorically likened to "lips and teeth," underscoring its profound symbiosis.⁵ Formative alliances between Chinese and Korean communists during the early 20th century against Japanese occupation laid the groundwork for a steadfast relationship. This solidarity was further solidified during the Korean War, where Chinese troops supported North Korean forces.⁶ China has consistently backed North Korea's leadership, from Kim Il-sung to Kim Jong-un, while fostering robust economic cooperation between the two nations.

North Korea, acknowledged as one of the world's most isolated and repressive regimes, gained international attention during the "Arduous March" famine from 1994 to 1998, which claimed the lives of between 300,000 and 3 million people due to starvation and hardship.⁷ This severe famine, driven by unsuccessful agricultural policies, led to widespread environmental degradation and a drastic reduction in food production—from 5.4 million metric tons of grain in 1989 to 3.4 million tons in 1995.⁸

As the famine ravaged North Korea, the vast number of fatalities catalysed a surge in North Korean refugees seeking sanctuary in China.⁹ Despite concerted efforts to assuage the crisis, the Kim dynasty's authoritarian grip remained steadfast, perpetuating a harsh milieu characterised by systemic rights violations.

Within this repressive regime, citizens are stratified into distinct categories through the *songbun* system, a rigid social classification framework that determines individuals' socio-political status based on their family background and perceived loyalty to the state.¹⁰ Established in the 1950s under Kim Il-sung's leadership, *songbun* plays a critical role in every aspect of life in North Korea, including access to education, employment, healthcare, and even food rations.¹¹ The system categorizes the population into three main groups:

⁵ Christina Ahn, "China and the North Korean Refugee Crisis" (2018) 5 BYU Asian Studies Journal 5, Article 2.

⁶ Seung-Hyun Yoon and Seung-Ook Lee, "From Old Comrades to New Partnerships: Dynamic Development of Economic Relations between China and North Korea" (2013) Geographical Journal 179, no. 1: 19–31.

⁷ Ken E. Gause, "Can the North Korean regime survive Kim Jong Il?" (2008) Journal of Defense Analysis, 20(2), 93–111.

⁸ *Ibid.*

⁹ Bernhard Seliger, "Income, Wealth, and Political Power in North Korea" (2006) North Korean Review 2(2):5-22.

¹⁰ Norbert Eschborn and Ines Apel, "NORTH KOREAN REFUGEES IN SOUTH KOREA: ARDUOUS ESCAPE AND DIFFICULT INTEGRATION" (2014) ARMY AND SOCIETY pp. 59-84

¹¹ *Ibid.*

approximately 28 percent of the populace, designated as "most loyal" (*haekshim*), enjoy significant privileges and opportunities.¹² About 45 percent are categorized as "wavering" (*dongnyo*), requiring ongoing ideological indoctrination to ensure their loyalty. Conversely, the remaining 27 percent, denoted as "hostile" (*choktae*), face systematic discrimination, restricted access to resources, and heightened surveillance, making their daily lives a struggle for survival.¹³ This classification system not only entrenches inequality but also reinforces the regime's control over the population.¹⁴

China, due to its geographical proximity, has become the primary destination for North Korean defectors. However, these refugees face the constant threat of repatriation. If caught and returned to North Korea, they suffer severe punishments, including interrogation, torture, forced labour, and potentially life imprisonment in re-education camps.¹⁵ Despite these dangers, many North Koreans continue to risk their lives to escape the oppressive regime.¹⁶ Notwithstanding the historical ties and economic cooperation, China's approach to these refugees has been influenced by its complex relationship with North Korea and concerns about regional stability and national security.¹⁷

Understanding this historical and political context is crucial for comprehending the challenges faced by North Korean refugees in China today. This backdrop highlights the socio-political dynamics and legal frameworks shaping China's current policies towards these refugees. This report aims to analyse these issues through a human rights lens, focusing on the implications for the refugees and the broader humanitarian considerations.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

2. LEGAL FRAMEWORK

2.1. INTERNATIONAL HUMAN RIGHTS LAW

01

Definition of a Refugee

A refugee, as defined by the 1951 Refugee Convention¹⁸ and expanded by the 1967 Protocol,¹⁹ is a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside their country of nationality and is unable or unwilling to avail themselves of the protection of that country, or, in the case of a stateless person, is outside their country of former habitual residence and is unable or unwilling to return. The 1967 Protocol removes the Convention's initial temporal and geographic restrictions, extending this definition to all individuals who meet these criteria, regardless of when or where their persecution occurred. However, North Koreans often do not qualify for refugee status under this definition, as their primary reason for fleeing is frequently economic hardship.²⁰

02

Grounds for Refugee Status²¹

1. **Persecution Based on Political Opinion:** Political persecution involves more than just overt dissent against government policies or involvement in political activism. It also includes any perceived opposition to the ruling regime, which may arise from association or familial ties. Refugees must demonstrate that they have been or will be persecuted for their political beliefs, actions, or affiliations.
2. **Persecution Based on Religion:** Religious persecution includes not only active practice of a religion but also identification with a group that holds particular religious beliefs. Even if an individual is not an active practitioner, they may still be targeted because of their association with a religious group. This persecution can manifest in various forms, including discrimination, violence, or restrictions on religious freedoms.
3. **Persecution Based on Race:** Racial persecution involves harm due to racial identity, often evidenced by systemic discrimination or targeted violence. Refugees must demonstrate that they are persecuted because of their race, which can include any form of harm due to their racial identity.

¹⁸ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) UNTS 189.

¹⁹ Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) UNTS 606.

²⁰ *Id* at 5

²¹ *Id* at 19 Art 1A(2).

4. **Persecution Based on Nationality:** Persecution based on nationality includes adverse treatment due to one's national origin or ethnic group. This form of persecution often intersects with racial discrimination and can involve systematic exclusion or violence against a particular nationality or ethnic group.
5. **Persecution for Membership in a Particular Social Group:** This category is broad and includes persecution based on characteristics such as gender, sexual orientation, family ties, or clan affiliations. Individuals in this group are often targeted because of shared characteristics that are fundamental to their identity or conscience.

03

Refugee Sur Place²²

Refugee sur place is a category recognised by the UN for individuals who were not initially refugees when they left their country but later become refugees due to a well-founded fear of persecution if they return. The UNHCR emphasises that while initial defections from North Korea may be driven by food shortages rather than overt persecution, deported defectors face severe risks, including execution, arbitrary detention, torture, and abuse in prison camps. This danger is compounded by North Korea's 1987 Criminal Code, which criminalises defection.

2.2. SOUTH KOREAN LAW

The legal status of North Korean defectors is a complex issue that intersects with both South Korean domestic law and international law. This section explores the Republic of Korea's constitutional claims over the entire Korean peninsula, the implications of dual nationality under international refugee law, and the recognition of North Korea as a sovereign state. These factors significantly influence how North Korean asylum seekers are treated under South Korean law and their eligibility for refugee status.

01

Peninsula Jurisdiction

When the Republic of Korea was established in 1948, it asserted authority over the entire Korean peninsula and has never acknowledged the legitimacy of the Pyongyang government. According to Article 3 of South Korea's constitution, anyone born on the peninsula is legally considered a citizen of the Republic of Korea.²³ Furthermore, because of this, South Korea theoretically has the capacity to extend diplomatic safeguarding to these North Korean

²² UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/IP/4/Eng/REV.1 (1992).

²³ Constitution of the Republic of Korea (1948) (amended 2021) art 3.

asylum seekers under its jurisdiction as South Korean citizens, which would potentially safeguard them upon crossing the border into China.²⁴

02 Problem of Dual Nationality

Under the South Korean constitution, North Koreans can be interpreted as "dual nationals," disqualifying them from refugee status under Article 1A(2) of the 1951 Convention. This article stipulates that individuals with multiple nationalities must seek protection in each of their countries of citizenship first.²⁵

03 North Korea as a recognised state:

North Korea, officially known as the Democratic People's Republic of Korea (DPRK), is recognised as a sovereign state under international law. It meets the criteria established by the Montevideo Convention on the Rights and Duties of States,²⁶ which include a defined territory, a permanent population, an established government, and the capacity to engage in diplomatic and foreign relations. Despite its controversial and often isolated position within the global community, North Korea holds membership in the United Nations, further affirming its status as a recognised state. The DPRK maintains diplomatic relationships with various countries and participates in international organisations, underscoring its capacity to engage with the global community. Therefore, the acknowledgment of North Koreans as South Korean nationals is predominantly relevant within the framework of domestic legislation in South Korea. Conversely, in practical terms, the DPRK has functioned independently as a sovereign entity in various aspects.²⁷

2.3. CHINESE LAW

²⁴ Whiejin Lee, "The Status of North Korean Refugee and Their Protection in International Law" (2016) *The Journal of East Asian Affairs* 30, no. 2 p 43–82.

²⁵ Jin Wong Kang, "Human Rights and Refugee Status of the North Korean Diaspora" (2013) *North Korean Review* 9, no. 2 p.4–17.

²⁶ Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19.

²⁷ *Id* at 13 and 14.

The status and treatment of North Korean defectors in China is a complex issue deeply influenced by domestic legal frameworks, bilateral agreements, and international human rights obligations. This section examines China's approach to North Korean refugees, the bilateral border control agreement between China and North Korea, and China's international obligations under human rights conventions. Together, these factors shape the challenging environment faced by North Korean asylum seekers in China.

01

Recognition of North Korean refugees

China's legal framework regarding North Korean refugees is primarily focused on deportation rather than protection. Despite international norms and conventions related to refugees, China does not formally recognise North Korean defectors as refugees. Instead, they are categorised as "illegal (economic) migrants" under Chinese law. Chinese legislation prohibits individuals and organisations from assisting North Korean refugees, considering such actions as violations punishable by law.²⁸

02

China-North Korea Bilateral Border Control Agreement

In 1986, China and North Korea signed a bilateral agreement that specifically addressed the issue of North Korean refugees. This agreement outlined protocols for the return of North Koreans found within Chinese territory and established security measures along the border between the two countries. As per this agreement, China committed to returning North Korean citizens apprehended within its borders back to North Korea. Additionally, the agreement likely included provisions for cooperation in maintaining security along the border, aiming to prevent unauthorized crossings and ensure the stability of the region.²⁹

03

International Human Rights Obligations

China's treatment of North Korean asylum seekers contravenes its international human rights commitments, notably under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) adopted in 1984³⁰, the Refugee Convention of 1951³¹ and its 1967 Protocol.³² China ratified the CAT on October 4, 1988, and both the Refugee Convention and its Protocol on September 24, 1982. The CAT obliges China to refrain from repatriating individuals to

²⁸ Deborah Da Sol Jeong, "North Korean Refugees Along the Route to Freedom: Challenges of Geopolitics" (2020) SIT Study Abroad.

²⁹ *Ibid.*

³⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

³¹ *Id* at 11

³² *Id* at 12

countries where they risk torture. Given the documented human rights violations in North Korea, including torture and arbitrary detention, China's deportation policy for North Korean asylum seekers raises CAT compliance concerns.³³ Similarly, as a signatory to the Refugee Convention, China is bound to respect the right of individuals fleeing persecution to seek asylum. However, by labelling North Korean defectors as "illegal economic migrants" rather than refugees, China diverges from the Refugee Convention's principles, which forbid the forced return of refugees to life-threatening situations.³⁴

2.4. CHINA-SOUTH KOREA RELATIONS

The complex legal status of North Korean refugees as South Korean nationals outlined in Section 2.2, albeit recognised only under South Korean municipal law, underscores a significant diplomatic challenge in the China-South Korea bilateral relationship. While technically South Korean citizens, North Korean refugees find themselves without protection from the South Korean government until they reach South Korean embassies or territory.³⁵ This peculiar legal situation reflects South Korea's reluctance to provoke diplomatic tensions with Beijing or Pyongyang over constitutional technicalities, leading to a cautious approach in extending protection to North Koreans within China.³⁶ Consequently, this diplomatic stance leaves North Korean refugees vulnerable to exploitation by other nations, which may cite the absence of South Korean protection as justification to overlook their plight.³⁷

South Korea lacks an active policy to protect North Koreans in China, even though under their Constitution all North Koreans are South Korean nationals

This nuanced dynamic illustrates the intricate interplay between legal frameworks, diplomatic considerations, and humanitarian imperatives within the China-South Korea relationship. While South Korea may prioritise maintaining stable relations with China and North Korea, its stance on providing protection to North Korean refugees within China raises questions about its commitment to upholding human rights principles and its obligations under international law. Moreover, this delicate diplomatic balance highlights the challenges faced by South Korea in navigating the complex geopolitical landscape of Northeast Asia while addressing humanitarian crises such as the plight of North Korean refugees. As such,

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Id* at 9.

³⁶ *Ibid.*

³⁷ *Ibid.*

the China-South Korea bilateral relationship serves as a microcosm of the broader geopolitical tensions and humanitarian concerns shaping the region.

3. SOCIO-POLITICAL DYNAMICS

In delving into the multifaceted challenges faced by North Korean refugees in China, it becomes imperative to navigate through the intricate socio-political landscape that frames their experiences.

For North Koreans seeking refuge from their oppressive regime, crossing the challenging 1,420-kilometer border with China presents a formidable obstacle.³⁸ The northeastern region of China, particularly the Yanbian Prefecture of Jilin Province, attracts defectors due to its substantial population of nearly two million ethnic Koreans residing near the North Korean border.³⁹ However, strict regulations outlined in the China-North Korea Bilateral Border Control Agreement make entering China an illegal act. Consequently, defectors rely on brokers to facilitate their escape, often resorting to bribery to evade both North Korean and Chinese border patrols.⁴⁰ This precarious situation renders them susceptible to exploitation. If caught in China, North Korean refugees face the grim possibility of repatriation and subsequent punishment upon their return to North Korea.⁴¹

Estimates suggest that there is a significant population of North Koreans residing in China, ranging from 10,000 to 300,000 individuals.⁴² Despite having successfully crossed the border and chosen to carry a life hidden from the authorities, living in China as an undocumented "economic migrant" subjects North Korean refugees to a life marked by persistent fear, severe poverty, and exploitation.⁴³ Among North Koreans in China, women and children are often the primary victims of human rights abuses.

3.1. WOMEN

Statistics indicate that a significant percentage of female North Korean refugees, approximately 90 percent, are victims of human trafficking, with nearly half coerced into prostitution and over 30 percent sold into forced marriages.⁴⁴ These women are often targeted for "mail-order bride" arrangements due to their vulnerable circumstances, despite the fact

³⁸ *Id* 16.

³⁹ *Ibid*.

⁴⁰ *Ibid*.

⁴¹ Andrei Lankov, "North Korean Refugees in Northeast China" (2004) *Asian Survey* 44(6), 856-873.

⁴² Human Rights Watch, "North Korea Report: Summary Recommendations" (2002).

⁴³ *Id* 16.

⁴⁴ RFNK and PSCORE, "FORCED REPATRIATION OF MOTHERS FROM NORTH KOREA The impact on Chinese citizens: husbands and children in crisis" (2023) UN UPR China 45th Session.

that such marriages lack legal recognition and offer no protection against repatriation.⁴⁵ The demand for North Korean women in Northeast China arises from a shortage of brides, stemming from China's One-Child Policy.⁴⁶ To address this gender imbalance, Beijing tacitly permits many North Korean refugees to remain in the region, contributing to the Chinese economy through low-skilled, low-wage labour.⁴⁷ This sets the stage for further exploration of the challenges faced by North Korean women in China.

01

Involuntary Residence in China due to human trafficking

Involuntary border crossings due to trafficking or abduction occur in 11.3 percent of cases among North Korean defectors.⁴⁸

02

Regional Temporary Residence Permit

Since 2020, North Korean women residing in China have been provided with Temporary Residence Permits, subjecting them to fines ranging from 5,000 to 8,000 yuan for non-compliance, with the exact amount varying based on the region.⁴⁹ However, these permits impose significant limitations on their freedom of movement. While they permit local travel via bus or taxi, they restrict holders from utilising air and train transportation, as well as accessing healthcare services, even if they are willing to pay for them.⁵⁰

Additionally, these North Korean women are required to report to public security agencies twice a month for cell phone inspections, which constitutes a clear intrusion into their privacy and a violation of their fundamental human rights.⁵¹

03

Childbirth Experience

In China, North Korean women face significant challenges and dangers, especially during childbirth. Due to their legal status, they are deprived of access to essential medical care during labour. Desperate, they often resort to clandestine hospital visits at night, paying hefty bribes for treatment. However, they are promptly discharged from the hospital after giving birth. This precarious situation exacerbates the vulnerability of childbirth, exposing both mothers and newborns to unsanitary conditions and

⁴⁵ Hee-Soon Yoon, “Sex Slaves: The Prostitution, Cybersex & Forced Marriage of North Korean Women & Girls” (2019) London: Korea Future Initiative.

⁴⁶ *Id* 22.

⁴⁷ *Id* 29.

⁴⁸ *Ibid*.

⁴⁹ *Ibid*.

⁵⁰ *Ibid*.

⁵¹ *Ibid*.

3.2. CHILDREN

The children with North Korean mothers and Chinese fathers encounter further challenges as they are considered "stateless" children. No state, including North Korea, China, or even South Korea, is willing to extend citizenship and safeguard their rights.⁵³

01 Chinese Law

In 2012, amendments to the law allowed a child born in China with a Chinese father and a forcibly repatriated North Korean mother to be eligible for Chinese citizenship upon proof.⁵⁴ However, the phrasing of this legal revision suggests that children born to Chinese fathers and North Korean mothers, whose mothers remain in China, do not meet the criteria for Chinese citizenship.

02 Hardships of Stateless Children

Children without citizenship often refrain from seeking medical assistance or enrolling in education programmes, fearing that doing so might inadvertently lead to the detection of their mothers by authorities, who would then repatriate them.⁵⁵ This heightened vulnerability places these children in particularly dire circumstances, compounded by Seoul's reluctance to engage in diplomatic tensions with Beijing to extend protection.

03 Babies of Mothers Deported to North Korea

In accordance with North Korea's policy that perceives the birth of Chinese infants as an act of treason, pregnant women are compelled to undergo forced abortions. Furthermore, North Korean security agents have been reported to drown newborn Chinese infants in the presence of their mothers.⁵⁶ Despite being aware of North Korea's

⁵² *Ibid.*

⁵³ *Id* 29.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Id* 29.

stance on Chinese babies, the Chinese government repatriates pregnant women against their will, implicating itself in these egregious human rights abuses.⁵⁷

4. RECOMMENDATIONS

4.1. ESTABLISHMENT OF REFUGEE RECOGNITION PROCEDURE

China should implement a formal Refugee Recognition and Resettlement Procedure for North Korean defectors to adhere to international law and address humanitarian concerns effectively. Under international law, North Korean defectors are immediately recognised as *refugees sur place* due to the credible threats of persecution they face if repatriated, including torture, detention, and execution. Despite this, China's current practice of categorising them as illegal economic migrants and forcibly returning them to North Korea violates its obligations under the 1951 Refugee Convention and the 1967 Protocol and the Convention Against Torture 1984.

Apart from the need to safeguard its relationship with North Korea, China's position towards North Korean defectors stems from concerns of a potential influx of refugees destabilising the economy and posing national security threats. However, a structured resettlement procedure can manage these fears by ensuring that defectors are systematically processed, provided with necessary support, and potentially resettled in third countries. This approach would distribute the responsibility among the international community, mitigating the economic and social impact on China.

Drawing parallels to China's historical treatment of "Indochina Refugees" and "Myanmar border crossers," it is evident that China has a precedent for refugee recognition and integration.⁵⁸ With over 300,000 Indo-Chinese refugees already *de facto* integrated and provided with legal protection under Chinese domestic law,⁵⁹ China has demonstrated its capability and existing legal framework to support refugees. The Indo-Chinese refugees are notably the only group formally recognised as refugees by China, proving that the nation can institute and manage a refugee recognition procedure effectively.

Establishing a clear and fair process for recognising and resettling refugees would align China with its international commitments, safeguard human rights, and demonstrate a responsible stance in the global arena. Moreover, it would offer North Korean defectors a humane and lawful avenue to seek protection, thus addressing the pressing humanitarian crisis while maintaining regional stability.

⁵⁷ *Ibid.*

⁵⁸Y. Wang, "A Review of North Korean Defectors in International Law - Focusing on Related Chinese Policies" (2018) Seoul National University.

⁵⁹ *Ibid.*

4.2. PROVISIONAL PROTECTION⁶⁰

Provisional protection for North Korean defectors in China could serve as a vital measure to uphold human rights and maintain social stability. By granting access to basic human rights such as healthcare, education, and employment, China would not only be adhering to its international commitments but also fostering a more orderly and humane society. Such protection would address the immediate humanitarian needs of defectors, ensuring they are not left in precarious situations where they are vulnerable to exploitation and abuse.

Providing healthcare would ensure that defectors are not subjected to preventable diseases and medical conditions, which would benefit public health in general. Access to education would enable North Korean children to build a future and integrate better into society, reducing the long-term burden on social services. Allowing employment would give defectors the means to support themselves and contribute to the economy, rather than being forced into illicit activities or dependent on humanitarian aid.

Furthermore, provisional protection would help stabilise social order by mitigating the desperation that drives illegal activities and social unrest. When people are assured of their basic rights, they are more likely to become constructive members of society rather than sources of instability. Therefore, establishing a framework for provisional protection for North Korean defectors is not only a humanitarian imperative but also a practical approach to maintaining social harmony and upholding China's international obligations.

CONCLUSION

⁶⁰ UN UPC China 43rd Session (2023).

In conclusion, the plight of North Korean refugees in China is a multifaceted issue deeply rooted in historical, geopolitical, and socio-economic contexts. Despite the strong historical ties between China and North Korea, the treatment of North Korean defectors remains a significant human rights concern. China's policy of categorising these defectors as illegal economic migrants rather than refugees and forcibly repatriating them contravenes its obligations under international human rights law, particularly the Convention against Torture and the Refugee Convention.

The bilateral agreements between China and North Korea, such as the 1986 border security agreement, further complicate the situation, emphasising repatriation and security over humanitarian considerations. South Korea's reluctance to create diplomatic tensions with China and North Korea means that it does not actively protect North Korean defectors, despite technically recognising them as South Korean nationals.

North Korean women in China face severe exploitation, including human trafficking and forced marriages, driven by their vulnerable status and the gender imbalance resulting from China's One-Child Policy. Children born to these women suffer statelessness and lack basic rights, as their legal status remains unresolved and they live in constant fear of their mothers being repatriated.

Given these challenges, it is imperative for China to establish a formal refugee recognition procedure for North Korean defectors. Drawing on precedents set with the "Indochina Refugees" and "Myanmar border crossers," China has the capacity and legal framework to provide necessary protections. Provisional protection, including access to healthcare, education, and employment, would not only uphold China's commitment to human rights but also contribute to social stability by integrating refugees into the society and economy.

Ultimately, addressing the humanitarian needs of North Korean defectors in China is a moral and legal imperative. By instituting a structured refugee recognition and protection framework, China can fulfill its international obligations, enhance regional stability, and uphold the fundamental rights and dignity of these vulnerable individuals.

TREATIES AND LEGISLATION

Constitution of the Republic of Korea (1948) (amended 2021) art 3.

B

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

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Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) UNTS 189.

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Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) UNTS 606.

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