

# Prospects for Pragmatic Engagement on Human Rights with North Korea

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## **Prospects for Pragmatic Engagement on Human Rights with North Korea**

The human rights situation within North Korea is dire, with widespread violations of political and civil rights. Continuing food shortages and economic problems have also led to accusations of systematic violations of economic and social rights. Moreover, there are few mechanisms through which the international community can address these problems. Whatever slender venues of engagement existed in 2008 and before have largely disappeared as a result of the worsening tensions between North Korea and the outside world.

Engagement with North Korea, however, has proven to be cyclical, with times of greater and lesser contact. The current crisis will likely give way to dialogue, negotiations, and the rebuilding of relations between North Korea and the international community. It is therefore worth taking a moment to review quickly the record of addressing North Korea’s human rights record and identify some strategies that would have a greater likelihood of success once prospects for engagement become more propitious. This paper will argue that the human rights paradigm is largely ineffective in dealing with a state like North Korea and that the paradigm of “human security” could lead to more measurable improvements inside the country.

### **Human Rights Strategies**

There have been essentially four different approaches to addressing North Korea’s human rights situation: name and shame, governmental response, international mechanisms, and direct action. The first tier, which involves NGOs, has focused on gathering and distributing information about conditions inside North Korea. Activist organizations have produced reports on the prison and labor camp system,<sup>1</sup> food and human rights,<sup>2</sup> religious freedom,<sup>3</sup> and other issues. These efforts are designed to “name” the problem and “shame” the government of North Korea into abiding by international standards. Governments have also employed this strategy, for instance, with the State Department’s annual review of the North Korean human rights situation.

The second tier involves governmental action, often at the legislative level. The Japanese Diet, for instance, has attempted to shut down all money transfers to North Korea, largely in response to the abduction issue. In the United States, Congress passed the North Korea Human Rights Act in 2004 (reauthorized in 2008), which establishes a special representative for North Korean human rights, funds NGOs, and supports radio stations beaming information into North Korea. Additionally, an attempt was made to pressure China into changing its policy toward North Korean refugees by threatening it with trade sanctions if it didn’t stop forcible repatriation.<sup>4</sup> But that legislative attempt failed because a broad-based coalition never came together to support it.

The third tier has focused on international mechanisms. Activists have worked through the European Union and the UN system, which has yielded several resolutions, including

those by the Commission on Human Rights and the UN General Assembly. The UN Special Rapporteur has cooperated with nongovernmental organizations in his attempts to gather information on the situation inside North Korea. Activists are now exploring other international legal levers. A recent report evaluates the potential to bring a case against North Korea to the International Criminal Court (ICC) on three separate charges (genocide, crimes against humanity, and war crimes).<sup>5</sup> Another report, entitled "Failure to Protect" and commissioned by Vaclav Havel, Kjell Magne Bondevik, and Elie Wiesel, similarly recommends that the UN Secretary General establish a committee to look into whether intervention into North Korea, under the "responsibility to protect" doctrine, is warranted.<sup>6</sup>

Finally, there has been direct action. Several NGOs from the United States, South Korea, Japan, and elsewhere work with North Korean refugees on the Chinese border and employ cross-border strategies such as smuggling video cameras and Bibles into North Korea and sending money or printed materials by balloon.

These four strategies have had limited success. The "name and shame" efforts have indeed provided a useful picture of the extent of human rights violations. But the North Korean government appears to be singularly impervious to outside criticism and has not changed its policies as a result of the many reports and critiques. The governmental strategies, meanwhile, seem to have only strengthened the North Korea's belief that outside forces are bent on destabilizing the regime. Attempts to use international mechanisms have had a similar effect with the added problem of further alienating North Korea from the UN and other international bodies. Direct action, finally, has demonstrably helped North Korean defectors. But it has also likely endangered North Koreans within North Korea by linking them to outside groups and exposing them up to government suspicions.

At the same time, several governments have been active in "quiet diplomacy" to resolve human rights issues or build capacity. Several governments (Sweden, the United States) have held trainings on law and human rights with North Korean officials. And the South Korean government has worked behind the scenes to relocate North Korean refugees in China, Thailand, and other countries. South Korea's efforts have yielded concrete results, though often at the expense of official contact with the North. It is difficult to evaluate the impact of the capacity-building since it is, by design, intended to have long-term effects.

In general, the U.S. government has separated the issues of human rights and security. During the Six Party Talks, although some critics argued for the inclusion of human rights in the discussions, U.S. negotiators focused on the nuclear issue and suggested that at some point in the future, never identified with precision, the talks would include the larger range of issues, including human rights.

## **Human Security Framework**

Any pragmatic approach to North Korean human rights should have two tiers. It should lay out a “human security” framework that places human rights alongside other challenges to the individual and collective security of North Koreans. And it should identify specific issues that are less politically sensitive and that could serve to initiate discussions with North Korean officials. These discussions would focus on the benefits of coming into compliance with international standards, including resources for capacity-building and building relationships with potential investors.

The human rights framework emphasizes the rights of individuals (freedom of speech or assembly), the rights of groups such as women and minorities, and the rights of a society to food or shelter. The human security framework, meanwhile, looks at the security of individuals and groups and how to strengthen their security against both chronic threats and unexpected disruptions.

This framework has several advantages when dealing with North Korea. First, the regime understands “security” language and thinks more in terms of threats than in terms of rights. Second, North Korea views the human rights framework, because of the connection between the Helsinki accords and the eventual collapse of Soviet and East European communism, as inherently incompatible with its political system. Third, the human security framework allows for negotiators to discuss development – i.e., concrete economic investment in North Korea – rather than simply the signing of conventions that the government in Pyongyang views (at best) as a nuisance rather than as a good in itself or, minimally, a means to an end.

The human security framework cannot entirely replace the four strategies identified above. But for the purposes of effectively dealing with North Korea, governments and international institutions should consider emphasizing human security rather than human rights. The NGO sector can continue to focus on “name and shame” strategies in the hope that such an approach will prove more effective in the future as North Korea comes into greater compliance with international standards.

### **Strategic Opportunities: Disability and Labor**

North Korea has signed four UN human rights conventions (on political and civil rights, economic and social rights, women, and children). In addition, it acceded to the genocide convention in 1989. At least two groups have worked with North Korea on compliance with these conventions: the Swedish government and HuRights Osaka. They have focused on providing educational trainings so that North Korea can meet the reporting and implementation requirements. This quiet work keeps open channels of communication between North Korean officials and the UN. It also trains a cadre of lower level officials who can have greater influence on North Korean politics when political circumstances change.

As the current diplomatic cycle moves from confrontation back to engagement, these efforts at capacity-building should continue. But human security advocates can expand

this work by addressing conventions that North Korea hasn't yet signed. Two likely candidates would be disability and labor.

The UN convention on the rights of the disabled was opened for signature in 2007.<sup>7</sup> It currently has 139 signatories and 58 ratifications. The Convention has widespread international support. It is relatively non-political, in the sense that it doesn't challenge any of the political principles of North Korea. It has an explicit social development emphasis. Of course, the Convention is couched in the language of human rights: looking at people not as objects but as subjects who claim their rights in society. But since North Korea has ratified similar conventions on women and children, this circumscribed focus on rights should not pose any conceptual difficulty.

Moreover, North Korea has already made important progress in addressing the issue of disability. In 2003, the government passed a disability law that ensures equal access for persons with disabilities to public services (though it hasn't yet passed implementing legislation).<sup>8</sup> Various international NGOs work with and in North Korea on the issue. The International Red Cross provides assistance to the Songrim and Rakrang Physical Rehabilitation Centers while Handicap International and the European Union support the Hamhung Physical Rehabilitation Center, the Hamhung Orthopedic Hospital, the Suung Lake Rehabilitation Center, and the Wonsan Deaf School. Finally, the North Korean government created one of its first GONGOs (government-organized non-governmental organization) to interact with international NGOs on the disability issue.

Opening up a discussion with North Korea on disability issues could take place on two levels. An off-the-record session with North Korean officials on the importance and implications of signing the disability convention could take place in Geneva, and could focus on the opportunities for capacity-building for officials, administrators, and health-care workers. A second discussion could take place at the NGO level to discuss the potential of expanding work on the ground to include infrastructure development that prioritizes access for the disabled but would also benefit the larger community (schools, public transportation). In the first case, the target audience in North Korea would be key decisionmakers as well as top officials in the appropriate line ministries (i.e., public health). In the second case, the audience would expand to include institutional managers (hospitals, schools) and eventually infrastructure and care providers (architects, nurses).

A second strategic opportunity would be labor. North Korea is not a member of the International Labor Organization and has thus not ratified the core labor standards: freedom of association and the right to collective bargaining; the elimination of forced and compulsory labor; the abolition of child labor; and the elimination of discrimination in the workplace. Membership in the ILO, however, does not require ratification of the core labor standards. The United States, for instance, has only ratified two of the five.

Since its system originates in communism, North Korea has placed a special emphasis on workers and, at least formally, the rights of workers within the system. On paper, North Korea's labor laws support these rights, though in practice, the government exerts a great

deal of control over all essential labor issues. But North Korea's formal labor laws and residual adherence to communist ideology at least allows an opening for a discussion about ILO membership.

The first step is to determine North Korea's reasons for not joining. There are only a couple dozen countries outside the ILO. When the Maldives became the latest member this year, the debate in the parliament revealed some very specific reasons for the earlier refusal to join. Politicians in the Maldives were concerned that the ILO would impose additional obligations on the country and somehow force the country to respect freedom of religion (for expatriate workers). Once assured that the ILO would not force any additional obligations or require freedom of religion, the Maldives parliament voted in favor of membership. A session on ILO membership with representatives from North Korea and recently joined members (Maldives, Laos) might address North Korea's explicit concerns. North Korea might gain valuable advice of ILO members that have similarly authoritarian societies (Myanmar, China, Egypt). In addition, such a session would provide North Korea with a list of the benefits of ILO membership. These would include the basic elements (access to capacity-building and technical assistance on labor issues and management development, access to the business community, information about emerging issues and so on). North Korea would also gain access to new programs such as the joint initiative with the Gates Foundation on microinsurance.<sup>9</sup> The ILO began an initiative on export-processing zones in 2008 "to foster effective, coordinated national policies on decent work, which encourage investment and trade and promote core labour standards and adherence to national laws."<sup>10</sup> The advisory services now being developed by the ILO could help North Korea fit Kaesong into a larger development and human security strategy.

Second, the experience of managers and workers at the Kaesong Industrial complex should be investigated thoroughly. The rules governing labor relations at Kaesong have been worked out bilaterally between North and South Korea, outside the ILO system. The two countries are currently arguing over a new set of North Korean demands. Provided the two sides can come to an agreement and the complex continues to function, it will be an important testing ground for assessing North Korean labor practices. Currently, the complex employs 40,000 North Korean workers.

From the preliminary data collected, North Korean workers at Kaesong have seen a clear improvement in their human security.<sup>11</sup> Rather than being worked to death, the Kaesong employees are, through access to higher wages and better food, being restored to health. North Korean workers at one factory were able to work for only 5.5 hours at first; after a year of improved diet — lunches provided by South Korean firms, food provided during night shifts — they can now work 6.5 hours. Labor regulations provide for 48-hour work weeks, overtime pay, vacation, maternity leave, and so forth. As such, the project meets basic food security needs and establishes important labor standards that, in practice, exceed conditions at other North Korean workplaces.

As with the disability issue, North Korea can be drawn into these discussions not so much through threats but through the promise of benefits. Bringing North Korean labor law in greater harmony with international standards, it can be explained, will improve the environment for capital investment in the country. While the expansion of Kaesong or the creation of a joint shipbuilding site depends on South Korean investment, other industrial zones will depend on capital from other countries (from Europe, say, or the Middle East). Participation in the ILO can facilitate such connections for North Korea.

These two issues – disability and labor – are by no means the only strategic opportunities for finding pragmatic connects with North Korea on human security issues. Even more controversial topics such as mobility and refugee policy can be addressed in pragmatic terms through, for instance, trainings on international standards and policies. However, the dialogue should begin with the least politically controversial issues and only move into more sensitive topics when a degree of trust has developed.

### **Admission Ticket?**

When relations between North Korea and the international community improve, the issue of human rights will again become an agenda item for negotiators. In general, negotiators have held to a realist position by focusing on the traditional security issues and relegating human rights to a side issue.

It is likely that negotiators will repeat Christopher Hill’s insistence that North Koreans will have to address their human rights record as part of their admission ticket to the international community. In congressional testimony in 2008, Hill amplified this point: “The issue of human rights will be a key element of the normalization process. We will continue to press the DPRK for the kind of meaningful progress that will be necessary for the DPRK to join the international community.”<sup>12</sup>

To say that an improved human rights record is a ticket into the international community for North Korea separates the terms too starkly. North Korea’s human rights situation will change largely *through* engagement with the international community not prior to it. If North Korea views human rights only instrumentally, as a price it has to pay, it will never take human rights seriously in any fundamental or institutional sense. Moreover, unless the international community begins to address these issues through a human security paradigm, it will continue to miss opportunities to engage North Korea in a way that can improve the lives of its citizens in direct, meaningful ways.

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<sup>1</sup> David Hawk, “The Hidden Gulag: Exposing North Korea’s Prison Camps,” Committee for Human Rights in North Korea, 2003; <http://www.hrnk.org/hiddengulag/toc.html>

<sup>2</sup> Stephan Haggard and Marcus Noland, “Hunger and Human Rights: The Politics of Famine in North Korea,” Committee for Human Rights in North Korea, 2005; <http://www.hrnk.org/hungerHumanRights.html>

<sup>3</sup> David Hawk, “Thank You, Father Kim Il Sung,” U.S. Commission on International Religious Freedom, 2006; [http://www.uscirf.gov/images/AR\\_2006/north\\_korea\\_commission\\_study.pdf](http://www.uscirf.gov/images/AR_2006/north_korea_commission_study.pdf)

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<sup>4</sup> Seung-Ryun Kim, “U.S. Organizations for North Korean Human Rights Pursue Retaliatory Tariff Law against China,” *Dong-A Ilbo*, July 8, 2005;

<http://english.donga.com/srv/service.php3?bicode=060000&biid=2005052631948>

<sup>5</sup> Paolo Cammarota et al., “Legal Strategies for Protecting Human Rights in North Korea,” Skadden/U.S. Committee for Human Rights in North Korea, 2007; <http://www.hrnk.org/legalStrategies-1107.pdf>

<sup>6</sup> See, e.g., Vaclav Havel and Kjell Magne Bondevik, “North Korea’s Crimes Against Humanity,” *Boston Globe*, September 19, 2008;

[http://www.boston.com/bostonglobe/editorial\\_opinion/oped/articles/2008/09/19/north\\_koreas\\_crimes\\_agai\\_nst\\_humanity/](http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2008/09/19/north_koreas_crimes_agai_nst_humanity/)

<sup>7</sup> See, UN Convention on the Rights of the Disabled; <http://www.un.org/disabilities/>

<sup>8</sup> “Democratic People’s Republic of Korea,” *Landmine Monitor*;

[http://lm.icbl.org/index.php/publications/display?url=lm/2008/countries/north\\_korea.html](http://lm.icbl.org/index.php/publications/display?url=lm/2008/countries/north_korea.html)

<sup>9</sup> International Labor Organization, “ILO and Gates foundation join forces to develop range of insurance products in developing countries,” press release, December 6, 2007;

[http://www.ilo.org/global/About\\_the\\_ILO/Media\\_and\\_public\\_information/Press\\_releases/lang--en/WCMS\\_088398/index.htm](http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_088398/index.htm)

<sup>10</sup> International Labor Organization, “InFocus Initiative on Export Processing Zones,” <http://www.ilo.org/public/english/dialogue/sector/themes/epz.htm>

<sup>11</sup> Yang Moon Soo, “North Korean Human Rights and the Kaesong Industrial Complex,” *The Peace Foundation*, June 29, 2006;

[http://www.peacefoundation.or.kr/english/board/view.php?&bbs\\_id=tpf01&page=&doc\\_num=56](http://www.peacefoundation.or.kr/english/board/view.php?&bbs_id=tpf01&page=&doc_num=56)

<sup>12</sup> Christopher R. Hill, “North Korean Six-Party Talks and Implementation Activities,” Statement before the Senate Committee on Armed Services, July 31, 2008; <http://www.2006un.org/nuclear/215151>