

STUDENT CONTRIBUTION

North Korean Escapees in China: Granting *Prima Facie* Refugee Status Based on a Group Determination

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For the past twenty years, the UNHCR has faced a complex situation of North Koreans moving illegally across the North Korean border into Chinese territory. Although this mass influx is generally understood to be a 'refugee' crisis, North Korean escapees have not officially been granted refugee status by China, nor are they recognized as such by the UNHCR. In response, academics have argued that North Korean escapees should be granted international refugee status under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. More specifically, academics have claimed that North Korean escapees should be granted refugee status because they meet the criteria outlined in Article 1A(2) of the Convention under the traditional, individualized interpretation of the 'refugee' definition. Whilst the author is in full agreement with the conclusion that North Korean escapees should be considered refugees under the Convention, this article reviews the problems with applying the individualized interpretation of the Convention definition to North Korean escapees, and instead offers an alternative method of establishing refugee status: North Korean escapees should be granted prima facie refugee status based on a group application of the Convention definition. This article is premised on the view that the manner in which countries address refugee flow is not only a matter of international concern and policy, but of international law. Consequently, the focus of this article will be the 1951 Convention and 1967 Protocol, given their primacy as the key legal instruments outlining the definition of a refugee

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and countries' obligations towards persons who meet that definition.

Keywords

North Korean Refugees, North Korean Defectors, North Korean Escapees, North Koreans in China, Refugee Status, *Prima Facie* Refugee, Group Determination of Refugee Status, UNHCR, Article 1A(2)

I. Introduction

For the past twenty years, the Office of the United Nations High Commissioner for Refugees¹ (“UNHCR”) has faced a complex situation of North Koreans² moving illegally across the North Korean border into Chinese territory. More recently, this flow of North Korean escapees³ has intensified, resulting in a mass influx of tens of thousands of North Koreans crossing into northeastern China. Characterized as the “North Korean refugee crisis” by the media and international organizations, numerous articles and reports have documented the plight of North Korean escapees in China, detailing the impoverished lives of North Koreans who live in constant fear of being forcibly repatriated back to North Korea, where they will face imprisonment, labour camp detention, or execution upon return.

Although the mass influx situation is generally understood to be a refugee crisis, North Korean escapees have not officially been granted international refugee status by China, nor are they recognized as such by the UNHCR. The main purpose of this article is to evaluate whether North Korean escapees should be granted refugee status, and if so, to determine the most effective approach under international law to award status recognition to North Korean escapees. The recognition or non-recognition of refugee status is central to any discussion concerning the afflictions faced by North Korean escapees since international legal status delineates the rights and protections that the Chinese government, the UNHCR, and the international community must provide to

¹ The UNHCR is the principal United Nations agency mandated to provide assistance and international protection to refugees and other persons of concern.

² The term ‘North Korean’ refers to a ‘national’ of the Democratic People’s Republic of Korea (“DPRK”).

³ Although many writers on the issue have chosen to categorize North Koreans who are illegally in China as “North Korean refugees,” this article will use the alternative term of “North Korean escapees.” As will be discussed in this article, a specific legal definition is attached to the term ‘refugee.’ Reference to North Koreans in China as ‘refugees’ is problematic since they have not yet been awarded international refugee status.