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The North Korean Famine and Food Shortage: The Problem, the Politics, and the Policy

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THIS PAPER IS SUBMITTED IN SATISFACTION OF THE COURSE REQUIREMENT AND
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Abstract: MODERN THEORIES OF FAMINE LARGELY CONCUR THAT FAMINE IS NOT THE SIMPLE CONSEQUENCE OF A LACK OF FOOD. TODAY, STUDIES CONFIRM THAT GLOBAL FOOD SUPPLIES ARE ADEQUATE TO CURE HUNGER AND PRESUMABLY, TO PROVIDE SUFFICIENT RELIEF IN CASES OF FAMINE. YET FAMINES PERSIST FOR LONG PERIODS AND ON LARGE SCALES. THE RECENT NORTH KOREAN FAMINE OF 1995-98 TOOK THE LIVES OF APPROXIMATELY ONE MILLION PEOPLE AND INFLICTED INCALCULABLE AMOUNTS OF SUFFERING ON ITS VICTIMS. EVEN IF VIEWED SOLELY IN TERMS OF ITS DEMOGRAPHIC IMPACT, THE FAMINE CAN BE EASILY CHARACTERIZED AS DISASTROUS. BUT A MORE COMPREHENSIVE EXAMINATION OF THE PHENOMENON REVEALS A FAR MORE DISTURBING POSSIBILITY: THE NORTH KOREAN GOVERNMENT, UNDER THE HARSH RULE OF KIM JONG IL, MADE EITHER SHORT-SIGHTED OR DELIBERATE POLICY CHOICES THAT CAUSED AND/OR PERPETUATED FAMINE CONDITIONS. THERE IS CONSIDERABLE EVIDENCE THAT A GOOD PORTION OF INTERNATIONAL FOOD AID FAILED TO REACH THE INTENDED BENEFICIARIES BECAUSE THE GOVERNMENT IMPROPERLY DIVERTED RELIEF TO BLACK MARKETS OR TO POLITICALLY FAVORED SEGMENTS OF THE POPULATION. THESE ACTS OF SUBVERSION HAVE CAUSED SCHOLARS AND INTERNATIONAL AID ORGANIZATIONS TO RECONSIDER WHETHER CONTINUING SUCH AID IS APPROPRIATE. THIS PAPER UNDERTAKES THAT INQUIRY IN THE HOPES OF PROVIDING A REALISTIC AND PRAGMATIC ASSESSMENT OF THE NORTH KOREAN RELIEF EFFORTS.

I. Introduction

Famine is certainly not a new phenomenon,¹ and for most people, it is not difficult to understand what is meant by the term “famine.” Perhaps most simply and commonly, the idea of prolonged starvation comes to mind. While this observation is not incorrect, it is incomplete. There is an extensive literature simply on the definition of famine, the goal of which is to provide a more complete understanding of what factors characterize this unfortunate phenomenon.² Although there is no one precise definition that emerges from these sources, the various definitions paint a similar picture. According to one scholar, famine is a “widespread [and/]or extreme” food shortage accompanied by “human mortality from starvation.”³ Another scholar defines famine as “a prolonged total shortage of foods, in a limited geographic area, and leads to widespread disease and death from starvation.”⁴ And the World Food Programme (WFP) defines it as “the incidence of serious food shortage across a country that dangerously affects the nutrition levels, health and

¹Recent famines include the Ukrainian famine of 1932-33, the Bengali famine of 1943 (2 million deaths), the Chinese famine of 1958-62 (30 million deaths), the Bangladeshi famine of 1974 (1.5 million dead), and the Cambodian famine in the late 1970s (unknown casualties). ANDREW S. NATSIOS, *THE GREAT NORTH KOREAN FAMINE* 7 (2001). For more information on these famines and still others, see ARTICLE 19, *STARVING IN SILENCE: A REPORT ON FAMINE AND CENSORSHIP* 17-138 (1990) (discussing the Chinese and East African famines); ARLINE T. GOLKIN, *FAMINE: A HERITAGE OF HUNGER – A GUIDE TO ISSUES AND REFERENCES* xi-xiii (1987) (providing a chronology of famines from Egypt in 3500 B.C. to East Africa in 1948-86); *id.* at 51-101 (discussing nineteenth and twentieth century famines in further detail); Lillian M. Li, *Feeding China's One Billion: Perspectives from History*, in *FAMINE* 28, 28-38 (Kevin M. Cahill ed., 1982); Kevin M. Cahill, *The Clinical Face of Famine in Somalia*, in *FAMINE, supra*, at 39, 39-43; Frances D'Souza, *Famine: Social Security and an Analysis of Vulnerability*, in *FAMINE* 1, 11-47 (G.A. Harrison ed., 1988) (providing case studies of the famines in Lesotho, Mozambique, and Ethiopia); MARTIN RAVALLION, *MARKETS AND FAMINES* 57-101 (1987) (discussing the economics of rice markets during the Bangladesh famine).

²The definitions provided in the text represent only a very small sampling of the academic discussions on the definition of famine. *See also, e.g.*, DAVID ARNOLD, *FAMINE: SOCIAL CRISIS AND HISTORICAL CHANGE* 7 (1988) (“If hunger can be likened to disease, famine constitutes its epidemic rather than endemic state, the multiplication of existing conditions of inequality, poverty and malnutrition into a crisis of massive proportions.”); William J. Byron, *Whose Right to Food?*, in *FAMINE* (Kevin M. Cahill ed.), *supra* note 1, at 63, 63 (adopting the definition of famine as being “a protracted total shortage of food in a restricted geographic area, causing widespread disease and death from starvation” (internal quotation marks omitted) (quoting William A. Dando, *Six Millennia of Famine: Map and Model*, 8 *PROCEEDINGS OF THE ASS'N OF AM. GEOGRAPHERS* 20 (1976))); D'Souza, *supra* note 1, at 7 (“[F]amine can be defined as a reduction in normally available food supply such that individuals, families, and eventually whole communities are forced to take up abnormal social and economic activities in order to ensure food.”); LAURIE DE ROSE, ELLEN MESSER, & SARA MILLMAN, *WHO'S HUNGRY? AND HOW DO WE KNOW?: FOOD SHORTAGE, POVERTY, AND DEPRIVATION* 2 (1998) (describing famine as a condition “in which widespread severe food shortage had led to elevated mortality and mass movements of populations in search of food”).

³G.B. MASEFIELD, *FAMINE: ITS PREVENTION AND RELIEF* 3-4 (1963).

⁴*Introduction* to *FAMINE* (Kevin M. Cahill ed.), *supra* note 1, at 1.

livelihood of many people, to the extent that there is a large incidence of acute malnutrition and many people have died of hunger.”⁵ In short, famine is much more than starvation⁶ – its nature is far more disastrous and its consequences more far-reaching.⁷

An interesting aspect of famine that is not apparent from the definitions is the disparate extents to which the relevant region is impacted. Although famine “involves fairly widespread acute starvation, there is no reason to think that it will affect *all* groups in the famine-affected nation.”⁸ As astutely highlighted by famine expert Amartya Sen,

it is by no means clear that there has ever occurred a famine in which all groups in a country have suffered from starvation, since different groups typically do have very different commanding powers over food, and an over-all shortage brings out the contrasting powers in stark clarity.

....

The importance of inter-group distributional issues rests not mere in the fact that an over-all shortage may be very unequally shared by different groups, but also in the recognition that some groups can suffer acute absolute deprivation even when there is no over-all shortage.⁹

Sen makes a number of important points in this passage, but perhaps most interestingly, he strongly suggests

⁵AMNESTY INT’L, STARVED OF RIGHTS: HUMAN RIGHTS AND THE FOOD CRISIS IN THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (NORTH KOREA) 2 (2004), *available at* <http://web.amnesty.org/library/index/engasa240032004> (quoting the WFP definition).

⁶*See* AMARTYA SEN, POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION 39 (1981). Famines encompass starvation but starvation does not necessarily result in famine. Author Bernard Shaw presents an alternative distinction between starvation and famine in the following dialogue between two Irish American characters:

Malone: Me father died of starvation in the black 47. Maybe you’ve heard of it?

Violet: The Famine?

Malone: No, the starvation. When a country is full o food and exporting it, there can be no famine. Me father was starved dead; and I was starved out to American in me mother’s arms.

G. BERNARD SHAW, MAN AND SUPERMAN 196 (Penguin 1946), *quoted in* SEN, *supra*, at 40. Shaw essentially makes the point that famine cannot exist when there are sufficient resources to feed the population and thereby suggests that the Irish famine was a deliberate policy choice made by the government. This implication ought to be kept in mind when considering the cause of the North Korean famine, as discussed in section III.B.3.

⁷ *See Introduction*, to FAMINE (Kevin M. Cahill ed.), *supra* note 1, at 1 (“Though blood may flow in both, there is a clear difference between a minor laceration and a hemorrhage. So too we must not confuse undernutrition or even hunger with famine. Famine is of a different scale....”).

⁸ SEN, *supra* note 6, at 43 (emphasis added).

an economic and political dimension to famine. The fact that certain individuals are more privy to famine while other individuals in the same geography are less so, makes clear that famine may not merely be about the absence of food, but more likely about the *access* to food. This observation lends to another suggestion (though Sen may not have intended to make this further point): there is an ethical dimension to famine as well. If disparities in an individual's access to food are permitted or tolerated for so long that a famine results, then the absence of intervention by the government or any other interested organization may indicate a moral failure to address basic human needs.

These preliminary observations about the economic, political, and moral dimensions of famine fit easily under Sen's "entitlement approach," an influential theory that has shaped much of famine scholarship. The entitlement approach challenges the traditional theory of famine, or the theory of food availability decline (FAD), and posits a new paradigm from which to understand the occurrence of famine. The theory of FAD purports that famines are the simple consequence of a shortage of food.¹⁰ The entitlement approach rejects that causation and views famine as a more dynamic phenomenon, that is, as "a relation between people and food in terms of a network of entitlement relations."¹¹ Under this view, famine is about the inability of "different sections of the population to establish command over food, using entitlement relations operating in that society depending on its legal, economic, political, and social characteristics."¹² Because famine is essentially the result of a systematic collapse of entitlement mechanisms in a particular region, this means that famine can erupt *without* a decline in food production. While the entitlement approach does not discount food shortages as a possible cause of famine, it criticizes any theory that considers this one factor a sufficient or even necessary condition for famine.¹³

¹⁰*Id.* at 154; *cf.* DEROSE, MESSER & MILLMAN, *supra* note 2, at 2 (noting that famine is usually viewed as "a production failure").

¹¹SEN, *supra* note 6, at 159.

¹²*Id.* at 162; *see id.* at 45.

¹³In other words, the FAD theory does not provoke the questions necessary to acquire a more robust understanding of famine: A food-centered view tells us rather little about starvation. It does not tell us how starvation can develop even without a decline in food availability. Nor does it tell us – even when starvation is accompanied by a fall in food supply – why some

Contemporary theories of famine concur with the basic idea underlying the entitlement approach, and they acknowledge that their occurrence is not simply the result of an organic cause, such as a lack of resources owing to a natural disaster.¹⁴ Without disputing the variety of possible factors relevant to the onset of famine, modern accounts converge when it comes to identifying a particularly troubling root of famine:

[I]n the contemporary world, the sources of food insecurity increasingly can be traced not to natural causes but to human ones. Today there is no reason for anyone to starve as a result of weather conditions, food shortages, or even failures in distribution. *Global food supplies are adequate.*

....

... With effective institutions and adequate physical supplies, the occurrence of famine increasingly signals not the lack of food or capacity, but some fundamental political or governance failure. Natural conditions are no longer our primary adversaries: humans are.¹⁵

This assessment is a sobering one, as it preempts blame-shifting with its clear pronouncement that famine is a human choice. In entitlement-approach terms, famine suggests that policymakers and legislatures have constructed legal rights in a way so as to obstruct access to food irrespective of availability. Whether such policies or laws are pursued intentionally or unintentionally, culpability remains on the shoulders of society.

Consider the troubling implications through a very simplified micro-example: Country *X* needs at least 1,000 tons of grain each year to meet all of its citizens' minimum nutritional needs. Under ordinary circumstances, *X*'s grain production levels exceed 5,000 tons (leaving an excess of 4,000 tons). *X* is the only exporter

groups had to starve while others could feed themselves. The over-all food picture is too remote an economic variable to tell us much about starvation.... If some people had to starve, then clearly, they didn't have enough food, but the question is: *why* didn't they have food? What allows one group rather than another to get hold of the food that is there?

Id. note 6, at 154.

¹⁴See, e.g., ARNOLD, *supra* note 2, at 7 (noting that a famine's "proximate cause" may be "natural disasters" or "man-made calamity like civil war" but that these are "often no more than the *precipitating* factors, intensifying or bringing to the fore a society's inner contradictions and inherent weaknesses" (emphasis added)); *id.* at 29-42 (discussing some of the more traditional theories of famine causation); Byron, *supra* note 2, at 63 ("The notion that famines are man-made is not new."); D'Souza, *supra* note 1, at 7 ("It is now fairly generally accepted that famine is rarely, if ever, the result of absolute food shortages but due rather to the unequal distribution of available food.").

of grain, as all other countries suffer from domestic shortfalls. Due to a recent hurricane, production fell drastically to 500 tons and full agricultural rehabilitation is not expected for at least another five years. These are the circumstances that accord with the FAD theory: the cause of famine here is the shortage in food supplies, or more specifically, an overall shortage in grain and total unavailability of import resources. The scenario painted is an unlikely one – in fact, it is descriptively inaccurate since research indicates an adequate supply of food. Consider an amendment to the hypothetical, noting the way just one variable can complicate the issue: X has stored at least 100,000 tons in grain reserves in the event of such a catastrophe. This means that X does not need external assistance, if available, for at least ten years. But how should the government allocate these resources: equitably among all of its citizens, proportionate to an individual's height and weight, or through a policy of first-come-first-served? Moreover, should X attempt to meet its preexisting export obligations, since other countries are depend on their resources to meet their own nutritional minima? If so, should its obligation be met in full or only a certain percentage? What considerations would be relevant for determining its domestic and/or foreign distribution policy? And to what extent?

Or consider what would happen if Country Y experiences an “agricultural revolution” at the same time as X 's hurricane, raising its yearly domestic production to 5,000 tons. This means, at least theoretically, that Y displaces X as the central exporter of grain. But does Y have the same obligation to meet X 's previous export obligation? If the surplus is not enough to compensate for X 's decrease in output, since X produced at least 5,000 tons per year before the hurricane, how would Y determine which countries receives aid? Would the establishment of a market appear too capitalistic a response in the face of potential famine? Or would it be the only orderly way of controlling distribution among a number of clamoring countries? Furthermore, would Y have a legal or ethical obligation to provide relief to X , which previously imported its surplus during Y 's “lean seasons”? If so, how would compliance be enforced? Under what conditions would

it be fair to decrease or halt relief? Should relief flow indiscriminately or should contingencies be built in as external monitoring mechanisms?

The number of issues that must be resolved increase dramatically when even a few simple considerations are added to the picture. The latter two versions of the hypothetical, which more aptly simplify the present reality among countries with respect to food resources, raise much more complicated questions. Both situations arise where there is a sufficient supply (at least temporarily) but also where a fair theory of distribution and relief is not easy to construct. Today, that theory remains unclear. Whatever idea of entitlement we currently possess, it involves the persistent hunger of certain populations. But if the cause of famine is really a matter of human choice and policymaking, then there is an upside to this attribution. Hurricanes, floods, and other natural disasters are uncontrollable environmental forces. On the other hand, errors in entitlement constructs are reparable. Simply, it means there is something that can be done – and hopefully, something that *will* be done – irregardless of the complexity of issues.

The recent North Korean famine presents a formidable array of such complications. North Korea experienced a devastating famine in the mid- to late-1990s that resulted in the death and the mental as well as nutritional injury of several million peoples. When Eri Kudo, a WFP relief worker, asked one woman during a family visit to look into her kitchen, he found a sad but telling picture of the severe impact of the famine on the North Korean citizens: “[The] woman had only a large rice bowl containing a watery porridge of rice and grated corn – mainly water. [This] was for her entire family – three bowls of that porridge for the day for five family members.”¹⁶ This snapshot may still represent everyday life for some North Koreans, as even a decade of generous aid has not lifted the country from need. Approximately 40,000 North Korean children

¹⁶BRADLEY K. MARTIN, UNDER THE LOVING CARE OF THE FATHERLY LEADER: NORTH KOREA AND THE KIM DYNASTY 553 (2004).

die from malnutrition and other nutrition-related diseases every year.¹⁷ Others risk imprisonment, political ostracism, and even their lives in a simple search for food.

Given these circumstances, humanitarian aspirations to relieve such suffering seem at least normatively attractive, if not necessary. But unfortunately, the situation is more murky in the context of North Korea. Known as the most closed, secretive, and according to some, brutal regime in the world today, many questions surround the North Korean famine. Because of accusations that the famine was a direct policy choice by the North Korean government and that the international relief resources are primarily invested into its military at the cost of “agricultural production, industrial output, exports, trade, and political relations,”¹⁸ there are many who now doubt whether relief ought to be provided at all. And those who advocate continuing relief naturally wonder what type of conditions ought to be imposed in order to ensure distribution that accords with donors’ intentions.

Because of these complications, the intellectual task of determining the cause and proper response to famine in the context of North Korea is most challenging. This paper attempts to reexamine the North Korean famine, turning a keen eye toward the various policy issues raised by the recent crisis in the hopes of providing a balanced and pragmatic approach to handling the sensitive issues that are involved. It also recognizes the significance of developing a more sophisticated response to the crisis given the national as well as international implications raised:

¹⁷Jae-Young Kim, *North Korea’s Children Are Starving*, THE DONG-A ILBO, Feb. 8, 2006, <http://english.donga.com/srv/service.php3?bicode=040000&biid=2006020822199>.

¹⁸Sue Lautze, *The Famine in North Korea: Humanitarian Responses in Communist Nations*, Feinstein Int’l Famine Ctr. *4 (Feinstein Int’l Famine Ctr., Working Paper, June 1997), available at <http://nutrition.tufts.edu/pdf/research/famine/nkorea.pdf>.

First, for purely humanitarian reasons it is important to better understand the long-term nature of food problems in North Korea. Is the recent demand for aid expected to be a regular occurrence? Second, for the world grain trade, it is useful to know if North Korea is likely to become a regular customer through foreign aid or commercial sales. Finally, North Korea may be vulnerable to political instability or even military action prompted in part by food shortages. If such shortages are chronic, then without policy restructuring, North Korea may be the source of substantial security concerns for the region, and indeed for the world.¹⁹

Moreover, the North Korean famine ought to be looked at because the question of famine relief itself raises provocative issues of “how to balance moral values against political, diplomatic, and geostrategic interests.”²⁰ There are real tradeoffs between choosing realist or idealist strategies, such that policymakers, government officials, and even laymen ought to reconsider the humanitarian effort in North Korea: “What may seem to be the most economically or politically expedient policy... may turn out to be a singularly ineffective or counterproductive way of pursuing national interests. And what may seem to be the correct moral course may in fact lead one into deeper and darker moral dilemmas while achieving little or nothing of substance.”²¹ The truth of the matter may be that doing “good” without a careful analysis of the multiple, cross-cutting interests may result in further “bad.” This paper endeavors to provide a fresh perspective on the North Korean famine, in the hopes that a critical reconsideration of the problem would promote the most thoughtful use of resources.

II. Country Profile

A. A Brief History

²⁰NATSIOS, *supra* note 1, at xi.

²¹*Id.* at x.

Some may consider the long history of North Korea as tragic²² – and such sentiment would not be without good reason. At the same time, it is hard to dispute that this same history is compelling, even remarkable. Despite the end of the Cold War and fall of Communism, North Korea and its seemingly anachronistic form of government remains intact. While “nationalist Stalinist” regimes collapsed, the Kims’ “Communist monarchy” survived.²³ Although it is impossible to recount all of the historical details here, “it is difficult (indeed, impossible) to understand [North Korea’s] present without knowledge of its past.”²⁴ Therefore, the history recounted below should not merely be absorbed as interesting background material but also as a critical insight into the inner workings and mentality of a truly unique regime. Because much of North Korea’s current existence has been shaped by its past, policymakers, whether for food or other humanitarian relief efforts, must maintain a precise yet sensitive awareness of this distinct history.

1. *The Birth of North Korea.* – With the end of World War II and Japan’s formal surrender in August 1945, the Korean peninsula was immediately separated into two zones, divided by the 38th parallel; the United States occupied the south and the Soviet Union the north.²⁵ This division was originally created as a temporary solution until a formal trusteeship among the United States, United Kingdom, Soviet Union, and China could be established.²⁶ Such an arrangement, however, was never reached; the countries failed to

²² See, e.g., ANDREI LANKOV, FROM STALIN TO KIL IL SUNG: THE FORMATION OF NORTH KOREA, 1945-1960, at vii (2002) (characterizing North Korean history as “a story of spectacular failure”).

²³ *Id.* at 196. Explanations as to North Korea’s resilience vary. See, e.g., *id.* at 196-97 (“The experience of North Korea demonstrates that... the Stalinist regimes can be very tenacious if they succeed in cutting their populace off from outside influences, are ready to resist foreign pressures stubbornly, and refuse to reform themselves whatever hardships such a decisions imposes on the populace.”).

²⁴ *Id.* at xiii.

²⁵ U.S. Dep’t. of State, Bureau of East Asian and Pacific Affairs, Background Note: North Korea (Nov. 2005), <http://www.state.gov/r/pa/ei/bgn/2792.htm>.

²⁶ There are those who blame the Soviet Union and the United States for the present division of the Korean peninsula, attributing fault on these foreign nations for imposing their belligerence on a third-party nation. See, e.g., LANKOV, *supra* note

agree or compromise on the issue of establishing a national government.²⁷ As a result, “two separate nations with diametrically opposed political, economic, and social systems” were born.²⁸

On August 15, 1945, only six days after entering World War II, the Soviet Union occupied what is now North Korea, ousting Japanese colonialists.²⁹ It was not long after that the Soviet Union began its “sovietisation” or “communisation” of this new territory.³⁰ Part of the initiative included conscripting Soviet Koreans to Pyongyang, the headquarters of the Soviet army charged with the North’s occupation.³¹ One of these arrivals was Kim Il Sung,³² then a captain in the Soviet army and a former anti-Japanese guerilla commander.³³ Regarded as “young, energetic” as well as loyal to Soviet interests, Soviet authorities eventually decided on Kim Il Sung as the future leader of North Korea when attempts to cooperate with existing local authorities appeared more and more unworkable.³⁴ Kim Il Sung’s ascendancy to power was formalized with a rally in his honor³⁵ and with the formation of the North Korean Bureau of the Communist Party of Korea, which was established as a part of the overall Soviet effort to maintain oversight over those territories under its Communist control.³⁶ After some political restructuring, including the conversion of the Bureau into the

22, at 7-8.

²⁷The question was submitted to the UN General Assembly, but the rapid changes in the countries’ domestic and foreign policies affirmed that any trusteeship arrangement would no longer be impossible. U.S. Dep’t of State, *supra* note 25.

²⁸*Id.* The Republic of Korea, or South Korea as more commonly known, was created on August 15, 1948 with the election of Syngman Rhee as the first president. *Id.*

²⁹See LANKOV, *supra* note 22, at 1. Of course, Korean history predates the mid-twentieth century by thousands of years. For a capsule of relevant events during the earlier part of its existence, see U.S. Dep’t of State, *supra* note 25.

³⁰LANKOV, *supra* note 22, at 7 & n.12. Or, more precisely, this process of creating a pro-Soviet government was called “sovietisation of the liberated territories.” *Id.*

³¹*Id.* at 5, 16-17.

³²Kim Il Sung’s arrival into North Korea was timely though by no means arranged. Some commentators therefore describe his rise to leadership as almost accidental. See *id.* at 17-18, 59 (“Had he arrived in Pyongyang a few weeks later or been sent to another large city, his fate would have been different.”).

³³*Id.* at 17.

³⁴*Id.* at 17-18.

³⁵During the public rally, Kim Il Sung – true to propagandist form – recited a speech written by the political department of the Soviet army. It is reported that parts of the speech were actually incomprehensible because the speech was originally written in Russian and then awkwardly translated into Korean. Officials also heralded the new leader as a “national hero” and “outstanding guerrilla leader.” The attendees, however, either had no idea of who Kim Il Sung was or doubted such characterizations. See *id.* at 19.

³⁶*Id.* at 20. Interestingly, and contrary to the North Korean historiography asserting Kim Il Sung’s exclusive leadership, the first leader of the Bureau was Kim Yong Bom. Kim Yong Bom, however, was soon replaced, officially placing Kim Il Sung as the leader of the North Korean Communists. *Id.* at 21-22.

Central Committee of the North Korean Communist Party (formed in the spring of 1946),³⁷ the North Korean Workers' Party arose as the official party by late August 1946.³⁸ Through a series of speedy but comprehensive reforms, from the formation of land redistribution plans to its own army, “[f]or all practical purposes, by the end of 1947 a separate state had emerged.”³⁹ Following the unanimous approval of the Constitution, the Democratic People’s Republic of Korea was officially born on September 9, 1948.⁴⁰

2. *The Era of Kim Il Sung.* – Kim Il Sung took power from the day of North Korea’s birth and held onto his reign for the next forty-nine years – a remarkably long term of office for any world leader.⁴¹ Throughout his dictatorship, Kim Il Sung exerted incredible influence over North Korea.⁴² His profound influence is illustrated in part by the fact that he sits posthumously as the “Eternal President” of the government by constitutional mandate.⁴³

Although Kim Il Sung lacked formal education, he proved to be a “shrewd and highly ambitious politician,”

³⁷*Id.* at 28.

³⁸*Id.* at 31.

³⁹*See id.* at 32-41. Kim Il Sung did not rise to power and the form of government did not establish itself without some resistance; one salient example of opposition includes an unsuccessful assassination attempt. *See id.* at 22-26.

⁴⁰*Id.* at 47.

⁴¹*Id.* at 49. The fact that Kim Il Sung’s was able to rule over North Korea for such a long period of time and sustain a regime that outsiders characterize as oppressive, is not to be casually disregarded as the product of chance or fortuity. Certainly, a number of factors may account for his dominance, but “[e]ven the most consistent adherent of historical determinism would hardly disagree that the personality of a leader leaves some impact on a country’s fate.” *Id.*; *see also* MARTIN, *supra* note 17, at x (“The North Korean changes, not likely to be reversed quickly or easily, were largely the work of two men: Kim Il-sung and his son Kim Jong-il...”). Though this particular discussion is beyond the scope of this paper, there are interesting arguments to be constructed, using information about Kim Il Sung’s upbringing and experiences that may explain how a seemingly “normal” man was able to capture the minds of an entire citizenry for nearly half a century. For biographical information on Kim Il Sung, *see* MARTIN, *supra* note 17, at 49-76. But as with almost all research on North Korea, readers should be aware that even biographical information is not entirely verifiable or accurate, given not only a lack of access to information, but also the fact that his biography was reconstructed to be “politically more appropriate” when he came to power. *Id.* at 49-50.

⁴²*See* LANKOV, *supra* note 22, at 49.

⁴³Dae-Kyu Yoon, *The Constitution of North Korea: Its Changes and Implications*, 27 *FORDHAM INT’L L.J.* 1289, 1301 (2004). The 1998 revisions to the North Korean constitution officially appointed Kim Il Sung to this post-humus position.

“a master of political intrigue,” and a “skilled tactician.” He possessed “remarkable skill in manoeuvring [sic] and an uncanny ability to exploit contradictions between his enemies, as well as his friends.”⁴⁴ By the early 1960s, after deflating several domestic and foreign policy threats,⁴⁵ Kim Il Sung became “not only supreme, but also the *omnipotent* ruler of North Korea – no longer merely ‘first among equals.’”⁴⁶ He became the “Great Leader, the Sun of the Nation, the Marshal of the Mighty Republic.”⁴⁷ And North Koreans did not merely look to Kim Il Sung as a figure of political prominence, but they also regarded him with great personal affinity. First-hand reports recount citizens sincerely characterizing Kim Il Sung as their loving and caring father.

As Kim Il Sung earned god-like status among the people (and as Soviet control gradually weakened over the country), he became better positioned to institute and indoctrinate his vision of government and society for North Korea. Kim Il Sung was originally inspired by the Marxist-Leninist ideal of socialism, which characterized the law as a means of establishing a proletariat dictatorship.⁴⁸ He expressed these type of views in a public address before legal workers in 1958, stating that “the law... is an important weapon for implementing the policies of [the] State” and that “law must be subordinated to policies and must not be divorced from them.”⁴⁹ Thus, he made clear that what would shape North Korean government was official policy rather than law. In practical terms, this meant Kim Il Sung himself would dictate and control every aspect of North Korean government and society since official policy was essentially his construct and there were no democratic checks to promote any form of accountability. Kim Il Sung also preempted potential

⁴⁴LANKOV, *supra* note 22, at 62.

⁴⁵For examples of these domestic and foreign policy issues and a lengthier treatment of Kim Il Sung’s political ingenuity during these situations, see *id.* at 62-71, 77-135.

⁴⁶*Id.* at 62-63 (emphasis added).

⁴⁷*Id.* at 49.

⁴⁸Patricia Goedde, Essay, *Law “Of Our Own Style”: The Evolution and Challenges of the North Korean Legal System*, 27 *FORDHAM INT’L L.J.* 1265, 1270-71 (2004).

⁴⁹*Id.* at 1271-72 (quoting Sung Yoon Cho, *The Judicial System of North Korea*, 11(2) *ASIAN SURVEY* 1171, 1180 (Dec. 1971) (quoting KIM IL SUNG, 1 *SELECTED WORKS* 384)). Kim Il Sung’s understanding of the law and its purpose explains why the current regime still subsumes the role of law and the North Korean Constitution under party directives. See *infra* section II.B.1.(b).

dissension toward his theory of government by executing Stalinist-type purges to “purify” the state of those who opposed his ideals.⁵⁰ He forcefully resisted reformists who wanted to subsume party policy under the law as being “tainted with a bourgeois legal consciousness.”⁵¹

Although this form of socialist thought remains a dominant theme in present-day North Korea, Kim Il Sung reformed his political ideology to embrace the doctrine of *juche*, which became the official state doctrine in 1972.⁵² *Juche* embodies the principle that North Korea ought to be prominent and preeminent in all aspects of life.⁵³ Its three pillars of political sovereignty, independent economy, and military self-defense pervade everyday life for North Koreans.⁵⁴ But just as significantly, the doctrine conveniently reinforced Kim Il Sung’s power, as *juche* by definition required him to “officially” disdain foreign influence and control, permitting him to remain in sole control over North Korean affairs.⁵⁵

3. *Kim Jong Il’s Ascendancy.* – When Kim Il Sung died in 1994, his son Kim Jong Il came to power, though he did not assume the office of President, as that position was memorialized in honor of the late leader. Rather, Kim Jong Il became the General Secretary of the Party and the Chairman of the National Defense Commission. On July 26, 1998, Kim Jong Il was officially and unanimously elected to the SPA, and his positions were deemed the “highest post of the state.”⁵⁶ His election, much like his father’s, was accompanied by public declarations of adoration for the new leader. One voter fawningly exclaimed, “Experiencing the same glee that our people felt when they held Great Leader Kim Il-sung in high esteem as head of state fifty years ago, I cast my ballot for the Supreme Commander, Kim Jong-il.”⁵⁷ Although technically a “new” leader, Kim Jong Il thus far has not strayed far from his father’s methods of governing.

⁵⁰Goedde, *supra* note 48, at 1271; Yoon, *supra* note 43, at 1290.

⁵¹Goedde, *supra* note 48, at 1271.

⁵²*Id.* at 1272.

⁵³LANKOV, *supra* note 22, at 62.

⁵⁴Goedde, *supra* note 48, at 1272-73.

⁵⁵“It is also likely that the ambitious Kim, who had long been living among constant eulogies, enjoyed the notion of himself as a world-class theoretician and philosopher.” LANKOV, *supra* note 22, at 67.

⁵⁶MARTIN, *supra* note 17, at 551. In accordance with North Korean tradition and in honor of his father, Kim Jong Il waited three full years before officially assuming control.

⁵⁷*Id.*

In addition to adhering strictly to the doctrine of *juche*, Kim Jong Il maintains a shroud of secrecy over his personal and public affairs.

B. Present Day North Korea

Given the myriad of obstacles faced during its history, North Korea's resilience is noteworthy. Even as the Soviet Union collapsed, as its allies refused diplomatic relations after the Korean War, as "the great socialist experiment" was overrun by market capitalism, and as constitutional democratic politics emerged as the new political order, North Korea did not waiver throughout these larger geopolitical changes.⁵⁸ Despite – or perhaps because of – this tenacious adherence to its established form of government, what is currently known about North Korea remains limited in terms of both scope and accuracy. Restricted access and limited availability of information make it difficult to compose any descriptive accounts.⁵⁹ This section summarizes the key aspects of North Korean society with these caveats in mind.

1. Government. – (a) Branches of Government. – North Korea is a highly centralized communist state composed of three branches of government – the executive, legislative, and judicial – that are controlled

⁵⁸In fact, when China and Russia began incorporating aspects of market capitalism in the 1980s and 1990s, North Korea criticized its former allies as "betraying socialism and the communist revolution." NATSIOS, *supra* note 1, at 10. Part of North Korea's tenacity may be explained by its need to "save face" given its harsh remarks toward those abandoning socialist economic systems.

⁵⁹Almost all primary and secondary sources that report on any aspect of North Korea include at least a brief acknowledgement of the practical limitations of their research. Certainly, most accounts would require at least some revision if North Korea were to ever grant unhampered access to its archives.

by the Korean Workers' Party (KWP), to which all government officials belong.⁶⁰ Its executive branch consists of a chief of state, called the President of the Presidium of the Supreme People's Assembly (SPA), and the head of government, called the Chairman of the National Defense Commission.⁶¹ When Kim Jong Il formally took power three years after his father's death, he was named General Secretary and confirmed as Chairman of the National Defense Commission by the SPA.⁶² Kim Yong Nam serves as the President of the Presidium of the SPA, a position recognized to be nominal and titular.⁶³

The legislative branch is made up by the SPA. Despite a regular four-year election cycle and formal recognition as "the highest organ of state power,"⁶⁴ the legislature usually only meets twice a year in order to rubber-stamp decisions made by the KWP.⁶⁵ The judicial branch includes the Central Court and lower provincial, city, county, and military courts, all of which are checked by the SPA and the President.⁶⁶

(b) Role of Law. – In spite of the categorical division of the government, the "actual lines of power and authority" remain unclear.⁶⁷ Thus, outsiders often characterize North Korea as a totalitarian state that is above the law. It has been described as "a derivative of North Korean party policy, a means to implement State objectives, a party code that citizens should follow, and a ruthless mechanism by which to punish those that do not."⁶⁸ Moreover, the North Korean legal system is often attributed with the following traits: "totalitarianism, single party rule, no civil society, socialist conceptions of rights as bourgeois, emphasis on

⁶⁰U.S. Dep't of State, *supra* note 25.

⁶¹*Id.*

⁶²*Id.*

⁶³*Id.*

⁶⁴*Id.*

⁶⁵*Id.*

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸Goedde, *supra* note 48, at 1268.

duties to State, law as a tool of State interest, party policy preceding laws, and lawyers as State workers.”⁶⁹

In short, the role of law in North Korea is understood as being significant to the extent that the government chooses to make it significant.⁷⁰

A large part of this reputation is attributed to the North Korean government structure and, necessarily, its practical and pervasive impact on everyday life. As well-known to the international community, North Korea operates under a long-standing dictatorship under which Kim Jong Il possesses Pope-like authority among North Koreans. His words are regarded as “the quintessential source of enlightenment” and all other sources of authority, such as the law or the constitution, are subsumed under his leadership.⁷¹ This dictatorship is reinforced by the KWP, which is not only constitutionally sealed as the primary party but also legally granted almost unfettered discretion in forming party directives.⁷² The KWP consists of “party elites and chief governmental and military figures” and maintains its dominance over the citizens via surveillance and indoctrination.⁷³ The party operates in dynastic succession, determining an individual’s status on the basis of one’s family name; those born into a “politically dangerous class” necessarily face “a lifetime of general or strict surveillance.”⁷⁴

Accordingly, the role of the Constitution and constitutional law in North Korea has similarly been criticized as a subterfuge for political propaganda.⁷⁵ The text is regarded as “a tool to showcase the superiority of

⁶⁹*Id.* at 1267-68.

⁷⁰*See id.* at 1268.

⁷¹Yoon, *supra* note 43, at 1291.

⁷²*Id.* at 1290-91 (“The DPRK shall conduct all activities under the leadership of the Workers’ Party.” (quoting N. KOREA CONST. art. 11 (1998))). There are a number of other intra- and extra-legal forces that contributed to the establishment of North Korea’s one-man regime: “the build-up of pervasive intelligence mechanisms, strong military forces, indoctrination of the people with a cult of personality, and near inclusive isolation of the populace from the outside world.” Yoon, *supra* note 43, at 1290.

⁷³*Id.*

⁷⁴Goedde, *supra* note 48, at 1274.

⁷⁵*See* Yoon, *supra* note 43, at 1290-91, 1304 (“[Law] acts as a secondary instrument to enforce and realize the leader’s directives, leaving its efficacy as a thing of ridicule. Thus, law in North Korea is naturally mobilized for *political* purposes...” (emphasis added)). Any analysis of the North Korean Constitution is largely limited to a textual interpretation since case law is not public, rendering irrelevant any analysis of precedent. *Id.* at 1289; *see also* Goedde, *supra* note 48, at 1265. While such analyses must be digested with the practical limitations in mind, there is still a plethora of compelling “secondary” sources for

the State's system to its citizens and outside observers.”⁷⁶ Actual protection of individual liberties comes at the government's discretion, rendering fruitless any recourse to the Constitution for the effectuation of such rights.⁷⁷ Rather, the Constitution is prescriptive: it “outlines the institutional apparatus of the State and delineates the current policy objectives of the Party.”⁷⁸

Technically, the North Korean Constitution is amendable by the SPA. But practically, given the totalitarian state, amendments are “endorsed without opposition and manipulated by the country's top leadership.”⁷⁹ Indeed, all of the major and minor revisions have been approved by a unanimous vote.⁸⁰ The political reality is that any constitutional or legal change must come from top-down: “[R]evisions are possible at anytime the country's leadership decides to change the direction of State management or keep in step with environments in flux.”⁸¹

use.

⁷⁶Yoon, *supra* note 43, at 1304.

⁷⁷*Id.* at 1304-05.

⁷⁸Goedde, *supra* note 48, at 1275.

⁷⁹Yoon, *supra* note 43, at 1290 & n.1.

⁸⁰See Goedde, *supra* note 48, at 1276; *see generally* Yoon, *supra* note 43.

⁸¹Yoon, *supra* note 43, at 1305.

2. Economy. – When North Korea formally separated from its southern counterpart in 1953, the government established a centrally planned economy, much like those economies of the former Soviet Union.⁸² When Communist Eastern Europe collapsed in 1989 and the Soviet Union thereafter followed, these economies restructured, liberalizing trade and investment.⁸³ North Korea, however, did not follow suit. It attempted to establish Special Economic Zones (SEZ) to create manufacturing facilities, create jobs, and improve production. But problems ranging from infrastructure to investment prospects kept these plans from fruition.⁸⁴ North Korea did implement minor changes such as sharply increasing its wages and prices, permitting markets and small private sectors, amending foreign investment laws, and devaluing its currency.⁸⁵ The concomitant changes in enterprise and individual economic behavior were met with a severe inflation.⁸⁶ But for the most part, North Korea maintains tight control over its economy. In fact, in October 2005, North Korea reinstated the public distribution system, which had shut down during the famine for lack of resources, and accordingly prohibited the private sale of grain on the market.⁸⁷

Although its economy is often unstable, North Korea, contrary to presumptions, is not financially destitute.

Its gross domestic product (GDP) in 2004 was reported at \$40 billion, with its per capita GDP at \$1,700.⁸⁸

North Korea's per capita income is estimated to be between \$1,200 and \$2,000, which is larger than those

⁸²Haggard & Nolan, *supra* note 15, at 12.

⁸³U.S. Dept of State, *supra* note 25.

⁸⁴*Id.*

⁸⁵*Id.*

⁸⁶*Id.*

⁸⁷*Id.*

⁸⁸*Id.*

countries in South Asia and Africa that also suffer chronic food shortages.⁸⁹ Its economic troubles therefore do not stem from fiscal incapacity but rather, the government's insistence on allotting about 25% of its entire GNP to the military.

⁸⁹Kim, Lee & Sumner, *supra* note 19, at 521. These South Asian and African countries have per capita incomes that are below \$1,000. *Id.*

North Korea's main trading partners now include China, Japan, India, Russia, South Korea, and Thailand.⁹⁰ Figures from 2003 estimate imports of petroleum, coal, machinery, textiles, and grain at \$2.1 billion; exports of minerals, metallurgical products, textiles, and fishing products are estimated at \$1.2 billion.⁹¹ North Korea is also known to make hundreds of millions of dollars from the sale of missiles, narcotics, and counterfeit items (e.g., cigarettes, U.S. currency).⁹²

3. Agriculture. – North Korea is a relatively small country, spanning 12 million hectares,⁹³ or about 47,000 square miles.⁹⁴ Collective, socialist farms represent the “basic institutional structure” of North Korea’s agriculture⁹⁵ and make up about 30% of the total population (as of 1998).⁹⁶ Of the total land area, approximately 14% is arable, most of which is occupied by rice and corn production.⁹⁷ The summer growing season lasts June to October – which is the only possible time for growing food⁹⁸ – is short, with “cold snaps” sometimes cutting across the country because of North Korea’s susceptibility to Siberia’s cold winds.⁹⁹ Under these “ordinary climactic conditions” and considering the country’s appropriate diet needs for its population, “a 12 percent shortfall of grain might be expected in any given year.”¹⁰⁰

4. Military. – A description of North Korea would not be complete without some mention of the government’s military and defense capacities. North Korea expressly pursues a “military first” policy. Accordingly,

⁹⁰U.S. Dept of State, *supra* note 25. The United States, though it previously prohibited all trade with North Korea, has eased sanctions since 1989. Both imports and exports are permitted though neither are conducted at more than marginal levels. *Id.*

⁹¹*Id.*

⁹²*Id.*

⁹³Kim, Lee & Sumner, *supra* note 19, at 521.

⁹⁴U.S. Dept of State, *supra* note 25. The country is about the size of Mississippi.

⁹⁵These collective farms are the result of the Land Reform Act, which was one of the first statutes passed after North Korea’s establishment in 1946. The Act redistributed almost half of the country’s total farmland from private landowners to farmers and then converted them into collective farms. For a more specific discussion of how the Act accomplished collectivization, see Kim, Lee & Sumner, *supra* note 19, at 521.

⁹⁶*Id.* In 1948, farm households made up as much as 75% of the population.

⁹⁷*Id.*

⁹⁸Daniel Goodkind & Loraine West, *The North Korean Famine and Its Demographic Impact*, 27 *Population & Dev. Rev.* 219, 221 (2001) (citing Food & Agricultural Org., FAO/WFP Crop and Food Supply Assessment Mission to the Democratic People’s Republic of Korea (Special Report, Nov. 16, 2000)).

⁹⁹Kim, Lee & Sumner, *supra* note 19, at 521.

¹⁰⁰Goodkind & West, *supra* note 98, at 221 (citing Kim, Lee & Sumner, *supra* note 19). In other words, North Korea’s adherence to *juche* in the context of food production and consumption is an ideal, not a realistic possibility.

the North Korean army is the fourth largest in the world and its special operations forces is the second largest.¹⁰¹ Approximately 20% of all men between 17 and 54 years of age serve in the regular armed forces and there is a total of 1.2 million armed personnel.¹⁰² More than 25% of its GDP is devoted to the military, with the number of tanks, artillery, and other weaponry often far outnumbering the stock of other countries such as South Korea.¹⁰³

5. *Foreign Relations & Policy.* – North Korea undoubtedly is still the most isolationist country in the world. But there have been small, gradual openings. Its bilateral relationships now include various countries such as Australia, Canada, Germany, Italy, Philippines, and the United Kingdom.¹⁰⁴ North Korea also continues to maintain a diplomatic relationship with South Korea though its policy wavers from time to time. Currently, it is seeking to develop economic ties and to garner South Korean public support for better North-South relations; at the same time, North Korea continues to criticize its southern counterpart for their security relationship with the United States.¹⁰⁵

With respect to its nuclear weapons, North Korea expressed intentions to normalize relations with the United States by agreeing to future discussions of highly sensitive issues such as human rights abuses, criminal activities, terrorism, and of course, proliferation and weapons programs.¹⁰⁶ Again, these “openings” are not watershed moments of North Korean history. More accurately, they merely reflect a few minor counter-examples to North Korea’s usual isolationism.

¹⁰¹U.S. Dept of State, *supra* note 25.

¹⁰²*Id.*

¹⁰³*Id.*

¹⁰⁴*Id.*

¹⁰⁵*Id.*

¹⁰⁶*Id.*

III. The Famine and Food Shortage Crisis

In the mid- to late-1990s, North Korea experienced one of the worst famines in the twentieth century. An important clue as to the extent of the famine's devastation was the government's sudden openness to the international community, at least relative to its usual isolationist disposition. Since the end of the Korean War, North Korea had consistently criticized the United States and South Korea, expressing fear of invasion by these two countries.¹⁰⁷ Yet on June 21, 1995, as part of an inter-Korean accord on emergency rice aid, North Korea agreed to receive an unprecedented 150,000 ton rice loan from South Korea.¹⁰⁸ And in September 1995, North Korea publicly announced a food shortage and appealed to the WFP and other governments for help.¹⁰⁹ While these acts and statements are normally routine for a country hit by natural disasters, the international community took note of what were aberrant moves for a country like North Korea. Given the government's firm adherence to *juche* and the fact that it had repeatedly rejected offers from willing governments and organizations in the past, this departure from the country's doctrine constituted "ideological heresy" – "an admission of failure that would cause the regime to 'lose face.'"¹¹⁰ There was definite reason for concern.

A. Impact

The precise demographic impact of the famine remains uncertain,¹¹¹ since the government's intense secrecy

¹⁰⁷NATSIOS, *supra* note 1, at 6.

¹⁰⁸Kim, Lee & Sumner, *supra* note 19, at 519.

¹⁰⁹NATSIOS, *supra* note 1, at 5.

¹¹⁰*Id.* at 6.

¹¹¹This section examines the impact of famine on the affected population largely in terms of the victims' physical and mental consequences, though it recognizes that this may not be the "best" approach to studying impact. See ARNOLD, *supra* note 2,

prevents access to the necessary data for any robust analysis or for even raw quantitative figures.¹¹² In a series of official media reports, North Korea estimated that about 220,000 people had died from 1995 to 1998.¹¹³ According to North Korean refugees, the estimate ran significantly higher, as their figure reached about 3.5 million casualties from starvation and other related illnesses during the same period.¹¹⁴ A fairly recent study specifically focusing on the North Korean famine's demographic impact concluded that there were 600,000 to 1 million famine-related deaths from 1995 to 2000.¹¹⁵ One million deaths is the equivalent of about five percent of North Korea's total population.¹¹⁶

Apart from physical deaths, millions of North Koreans are reported to still be enduring other consequences of the famine,¹¹⁷ including stunted development, impaired health, and psychological breakdowns.¹¹⁸ A 1998 nutritional survey by the WFP, UNICEF, EU, and the DPRK Institute of Child Nutrition revealed that 16% of the population and 30% of children between 2 and 12 years of age suffered acute malnutrition (wasting), and as much as 60% suffered chronic malnutrition (stunting).¹¹⁹ Studies have also reported other consequences that have not yet been quantified, though they have a significant demographic impact

at 74 (“[T]here is a danger, in representing human experience exclusively in these terms, of overlooking the ways in which the famine-struck actively resist the onset of hunger and destitution, and, for as long as they are able to do so, do not passively accept the statues of ‘victims’.... To see starvation *only* as a pathological or physiological state is to deny to famine sufferers the capacity for self-help, for moral indignation and rational protest.”).

¹¹²Kim, Lee & Sumner, *supra* note 19, at 520.

¹¹³Goodkind & West, *supra* note 98, at 219 (citing S. CHINA MORNING POST, May 10, 1999; HONG KONG STANDARD, May 10, 1999).

¹¹⁴Fiona Terry, *Feeding the Dictator*, THE GUARDIAN, Aug. 6, 2001, available at <http://www.guardian.co.uk/comment/story/0,,532339,00.html>; see also Goodkind & West, *supra* note 98, at 219-20 (re-stating a French newspaper's estimates of about 3.5 million deaths). The North Korean government denounced such big estimates as “vicious rumors.” Goodkind & West, *supra* note 98, at 220.

¹¹⁵Goodkind & West, *supra* note 98, at 220. The authors frankly acknowledge that, despite a comprehensive study, the figure is still “uncertain.” *Id.* For details about the study's methodology, sources, and findings, see *id.* at 225-33. See also *id.* at 234 (explaining three qualifications to the estimated number of famine deaths).

¹¹⁶HAGGARD & NOLAN, *supra* note 15, at 7.

¹¹⁷As a general matter, it is reported that epidemics often accompany famines for “both physiological and social reasons.” Namely, the “self-mobilization of the weak and hungry” to other neighboring regions resulted in the “spreading [of] disease... to [those] not directly affected by hunger.” ARNOLD, *supra* note 2, at 23.

¹¹⁸See, e.g., HAGGARD & NOLAN, *supra* note 15, at 9; see also *id.* at 18 (As in other famines, most of these excess deaths were not due to starvation per se. As caloric intake falls, immune systems weaken and people typically succumb to diseases such as tuberculosis before starving to death....”).

¹¹⁹Jongean Lee, *Study of the International Food Security Regime: Food Aid to North Korea During the Famine of 1995-2000*, 11 CARDOZO J. INT'L & COMP. L. 1037, 1042 (2004) (citing United Nations Consolidated Inter-Agency Appeal for Democratic People's Republic of Korea. Jan.-Dec. 2000 (Nov. 1999)). Note that because the survey was conducted in 1998, these statistics may not accurately reflect the full impact of the famine.

during famines; these include stillbirths, miscarriages, and foregone conceptions. Of those who managed to escape to China, leaving the famine crisis as well their families behind, several admit being unable to lead a “normal life” in their new surroundings; children in particular report suffering intense anxiety merely over the prospect of having to return to North Korea.¹²⁰ As to both casualties and subsequent health and mental consequences, the groups most affected included children and the elderly.¹²¹

Apart from statistics and data, another indicator of the famine’s severe impact includes anecdotal evidence about the effect of food shortages on the military. These stories may be more telling as to the famine’s devastation, since the military represents “the best-fed large segment of the populace” and yet it also fell prey to the famine. One official relayed the following story of two North Korean frontline unit soldiers who were found by the South Koreans ashore:

[The soldiers] got washed away in a boat while checking their nets seeking protein. They stayed approximately two days in the boat, and were almost dead when rescued. [The South Koreans examined the soldiers]. They found both had liver dysfunction due to chronic malnutrition. Both had kidney dysfunction and skin discoloration. Both had severe dental problems. The big one was five feet five and a half inches tall. The other one was four-foot-eleven. The big one, nineteen years old, weighed 98 pounds. The little one, twenty-two, was eighty-nine pounds.¹²²

Upon their return, the official noted that the physical demeanor of these soldiers were not aberrations from the unit, but entirely reflective of the others’ size. He also speculates that, drawing from first-hand witness, that other army men are “chronically undernourished,” “not in very good health,” and failing to reach “genetic potential.”¹²³

¹²⁰Kim, *supra* note 16. Indeed, escaping North Korea does not by itself restore these refugees’ lives. For example, North Korean girls living in China are sometimes trafficked and sold for as little as \$50 and as “much” as \$1,200. *Id.*

¹²¹HAGGARD & NOLAN, *supra* note 15, at 18; *see also* AMNESTY INT’L, *supra* note 5, at 25.

¹²³*Id.*

B. Causes

There have been a number of different reasons proffered as the cause of the famine and the current food shortage in North Korea.¹²⁴ The explanations most frequently discussed are summarized below. In evaluating the factors, it seems likely that all of the aforementioned causes contributed to the problem though perhaps North Korea's politically-driven policymaking appears to be the most culpable.

1. Political Changes & Economic Impact. – Despite North Korea's assertion of *juche*, whether the government has actually adhered to the strict doctrine is dubious, especially given the reports of reliance on other socialist countries throughout its history.¹²⁵ During the Soviet occupation, for example, the Soviet Union provided considerable assistance – an estimated \$1,146 million in credits and grants between 1945-1970.¹²⁶ Specifically, the Soviet Union provided heavy subsidies for energy, petroleum, fertilizer, and manufactured products;¹²⁷ at times, it would even accept unmarketable North Korean goods or simply permit debt to be paid when North Korea was able to do so in order to spur the new economy.¹²⁸ Indeed, it was this type of generous assistance that helped build the North Korean economy and turn it into a relative success early in its existence.¹²⁹

¹²⁴ See, e.g., Goodkind & West, *supra* note 98, at 219 (“The origins and duration of the North Korean famine can be attributed to a series of natural calamities, human and organizational deficiencies in responding to them, and the general economic decline of the country experienced after the collapse of the Soviet Union.”).

¹²⁵ Some South Korean revisionist historians question how significant a role the Soviet Union actually played in North Korea's development. *But see* LANKOV, *supra* note 22, at 194 (“[T]he Soviet presence (indeed, omnipresence) was the single most important fact of North Korean politics of the late 1940s.”).

¹²⁶ *Id.* at 63 (citing Nicholas Eberstadt, Marc Rubin & Albina Tretyakova, *The Collapse of Soviet and Russian Trade with the DPRK, 1989-1993: Impact and Implications*, 4 KOREAN J. NAT'L UNIFICATION 87-104 (1995)); *see also* AMNESTY INT'L, *supra* note 5, at 6-7.

¹²⁷ HAGGARD & NOLAN, *supra* note 15, at 13; Kim, Lee & Sumner, *supra* note 19, at 519.

¹²⁸ LANKOV, *supra* note 22, at 63.

¹²⁹ *See id.* Soviet (and Chinese) aid were not limited to those mentioned above. Other forms of assistance ranged from providing free weapons to training North Korean workforces. *Id.* The Soviet Union did temporarily cut off aid when North

By the early 1980s, however, the economy began suffering from the lack of market incentives (as did other socialist economies)¹³⁰ and the Soviet Union's collapse in 1991 exacerbated what became North Korea's "severe economic decline."¹³¹ Soviet exports drastically fell from \$1.97 billion to \$0.58 billion in just one year from 1990 to 1991; and by 1993, export levels had declined to a mere 10% of its previous contributions.¹³² The impact was obvious: North Korea suffered severe supply shortages for their agricultural needs,¹³³ including its petroleum supply, which in turn failed to satisfy North Korean demand for fuel and feedstock for petrochemical plants.¹³⁴

Despite some temporary assistance from China,¹³⁵ the political and economic impact of these geopolitical changes left a considerable impression on North Korea.¹³⁶ Although China initially increased its exports, from \$0.39 billion in 1990 to \$0.66 billion in 1993 (and then back down to \$0.47 billion in 1994), its partnership with North Korea substantially fell short of the previous Soviet contributions.¹³⁷

North Korea faced other foreign policy troubles during its 1992-1994 nuclear crisis with the United States.¹³⁸

Korea began turning to China in the mid-1960s for political as well as cultural alliance. *Id.* at 65-66.

¹³⁰See Goodkind & West, *supra* note 98, at 220 (noting that problems with the North Korean economy "occurred well before the summer floods of 1995 that formally precipitated the famine").

¹³¹*Id.* at 220.

¹³²*Id.* at 221.

¹³³Kim, Lee & Sumner, *supra* note 19, at 519. At the same time, these political events weakened Soviet control, providing Kil Il Sung an excellent opportunity to hoard control over North Korea. Indeed, he capitalized on "this newly-found independence... to increase his personal power." LANKOV, *supra* note 22, at 64. There is some speculation that if the Soviets retained relatively the same quantum of control, North Korea might be "less repressive and economically more successful." *Id.*

¹³⁴*Id.* at 522.

¹³⁵HAGGARD & NOLAN, *supra* note 15, at 13. China eventually demanded hard currency for its exports, thereby cutting off trade with North Korea. *Id.*

¹³⁶It was only after the collapse of the Soviet Union that the North Korean government realized its extensive reliance on foreign aid – that it was "a much greater role in the... economy than Pyongyang propaganda had ever been prepared to admit." LANKOV, *supra* note 22, at 75. In other words, *juche* proved to be a fiction.

¹³⁷Goodkind & West, *supra* note 98, at 221 (citing Nicholas Eberstadt, Christina W. Harbaugh, Marc Rubin & Loraine A. West, *China's Trade with the DPRK, 1990-1994*, KOREA & WORLD AFF., Winter 1995, at 665-85).

¹³⁸HAGGARD & NOLAN, *supra* note 15, at 13. At least one commentator has drawn a correlation between the collapse of the Soviet Union and the nuclear crisis, arguing that North Korea played the "nuclear card" out of its desperation for foreign aid. See LANKOV, *supra* note 22, at 75.

While Kim Il Sung successfully extracted economic aid from the United States by using its mysterious nuclear program as bait,¹³⁹ he also drew considerable attention from the media and the international community, most of which was negative. These problems with foreign countries then compounded with domestic issues, especially the death of Kim Il Sung at the close of the nuclear crisis in 1994.¹⁴⁰ All in all, the various political and economic changes debilitated North Korea and may have prevented it from being able to meet even the “basic needs” of its citizens.¹⁴¹

2. Agronomic Changes. – In the early 1990s, a cold front hit the Korean peninsula, damaging crops and creating pest problems.¹⁴² In 1995, this situation was further exacerbated by a series of floods that devastated over 400,000 hectares of arable land.¹⁴³ Grain production as a result was reduced by 1.9 million tons,¹⁴⁴ or about 30% of the total amount of grain necessary to feed the people.¹⁴⁵ Then in 1996, another set of floods hit the “breadbasket” section of North Korea, that is, the area responsible for producing 60% of the country’s food grain; loss of grain production was estimated at about 300,000 tons.¹⁴⁶ By 1996, the

¹³⁹ LANKOV, *supra* note 22, at 76.

¹⁴⁰ HAGGARD & NOLAN, *supra* note 15, at 13. Kim Il Sung died on July 8, 1994 in Pyongyang from a sudden heart attack. LANKOV, *supra* note 22, at 76.

¹⁴¹ Goodkind & West, *supra* note 98, at 221 (listing the U.S. trade embargo and North Korea’s inability to purchase grain in the international market as other reasons for the economic crisis).

¹⁴² Kim, Lee & Sumner, *supra* note 19, at 519-20.

¹⁴³ *Id.*; Goodkind & West, *supra* note 98, at 221 (citing USAID, North Korea Food/Health Emergency Fact Sheet #2, Fiscal Year 1998, July 28, 1998, <http://iys.cidi.org/humanitarian/hsr/98b/0005.html>; Judith Katona-Apte & Ali Mokdad, *Malnutrition of Children in the Democratic People’s Republic of North Korea*, 128 J. NUTRITION 1315-19 (1998)). In addition to the devastation caused to land, about 500,000 people were displaced, and almost 300 health facilities were damaged, one of which was the only facility capable of producing an oral rehydration solution. Goodkind & West, *supra* note 98, at 221, 223.

¹⁴⁴ Kim, Lee & Sumner, *supra* note 19, at 519-20; Goodkind & West, *supra* note 98, at 221 (citing USAID, North Korea Food/Health Emergency Fact Sheet #2, Fiscal Year 1998, July 28, 1998, <http://iys.cidi.org/humanitarian/hsr/98b/0005.html>; Judith Katona-Apte & Ali Mokdad, *Malnutrition of Children in the Democratic People’s Republic of North Korea*, 128 J. NUTRITION 1315-19 (1998)).

¹⁴⁵ Goodkind & West, *supra* note 98, at 221 (citing UNITED NATIONS DEVELOPMENT PROGRAMME, THEMATIC ROUNDTABLE MEETING ON AGRICULTURAL RECOVERY AND ECONOMIC PROTECTION IN THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (DPRK), *available at* <http://www.undp.org/execbrd/pdf/drkext.pdf> (1998)).

¹⁴⁶ Goodkind & West, *supra* note 98, at 221 (citing FOOD & AGRICULTURAL ORG., FAO/WFP CROP AND FOOD SUPPLY ASSESSMENT MISSION TO THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (Special Report, Jun. 3, 1996)).

agronomic problems obstructing production efforts were deemed chronic.¹⁴⁷

The floods were followed by droughts in 2000 and 2001. The latter drought was determined to be the “largest spring drought in recorded history” and the damages created loss of soil moisture, depletion of reservoirs, and destruction of irrigation systems. As a result, wheat, barley, and potato productions all declined.¹⁴⁸

Annual Grain Production

Year	Production (tons)
1990	9,100,000
1994	7,083,000
1995	3,499,000
1996	2,502,000
1997	2,685,000
1998	3,202,000
1999	4,281,000
2000	3,262,000

SOURCE: AMNESTY INT’L, *supra* note X, at 11 (using North Korean Government 2nd Periodic report to CESCR 22 tbl. 7 (2002)).

Coupled with these natural disasters, North Korean agriculture was also impacted by the political and economic changes discussed above. Because the government relied on industrial imports, such as chemical fertilizers, insecticides, and fuel, electrical irrigation systems and basic agricultural needs were no longer sustainable at the same levels once political changes stripped North Korea of the benefits of subsidies.¹⁴⁹

These shortages necessarily affected production levels; for example, nitrogen fertilizer production fell 136,000

¹⁴⁷Kim, Lee & Sumner, *supra* note 19, at 519-20. Early in 1997, there was some anticipation that North Korea’s crop production would improve, but higher temperatures and less rainfall than average left the situation less than hopeful. Reports of grain losses ranged between 700,000 tons to 1.9 million tons. Goodkind & West, *supra* note 98, at 223 (citing *Drought-Hit DPRK Has Shower of Rain, but No Gain for Land*, THE PEOPLE’S KOREA, Aug. 6, 1997, available at http://www1.korea-np.co.jp/pk/003rd_issue/97080505.htm; Katona-Apte & Mokdad, *supra* note 144).

¹⁴⁸AMNESTY INT’L, *supra* note 5, at 7.

¹⁴⁹HAGGARD & NOLAN, *supra* note 15, at 13-14.

tons (from 217,000 tons to 81,000) between 1995 to 1997.¹⁵⁰

3. *Politics & Policy.* – Some scholars, while admitting that the economic and agricultural changes were pertinent factors, contend that the North Korean famine was ultimately the product of poor policy decisions driven by political considerations. This line of argument essentially attributes fault on the North Korean government along two dimensions: first, it may suggest fault along causation, and second, along perpetuation. On the “least culpable” end, North Korea may be responsible for the famine in that it failed to take sufficient action to curtail the effects of a famine created by uncontrollable natural forces. On the “most culpable” end, North Korea created the famine through a series of deliberate policy decisions and then perpetuated the famine by refusing to undertake sufficient remedial action.¹⁵¹ The latter possibility seems especially difficult to believe, given its amoral (or immoral) implications. But factoring in what is known about the nature and operation of the North Korea government, the argument emerges as a tenable possibility.

To begin with, compared with more affluent countries in its region, such as South Korea and Japan, North Korea actually has a higher self-sufficiency ratio for grain consumption in a normal year; South Korea and Japan rely on imports for more than half of their grain where as North Korea has only a 12% domestic shortfall.¹⁵² Thus, “the food shortfalls could be easily overcome by increased imports of grain,”¹⁵³ meaning that North Korea could have designed an agricultural policy that incorporated imports from foreign economic systems¹⁵⁴ or that other states could have “restructured trade policy [to] recognize[] North Korea’s position

¹⁵⁰Goodkind & West, *supra* note 98, at 221 (citing UNITED NATIONS DEVELOPMENT PROGRAMME, THEMATIC ROUNDTABLE MEETING ON AGRICULTURAL RECOVERY AND ECONOMIC PROTECTION IN THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (DPRK), *available at* <http://www.undp.org/execbrd/pdf/drkext.pdf> (1998)).

¹⁵¹In the middle, of course is an explanation that confers a moderate degree of blame along both dimensions. For instance, North Korea may have adopted misguided agricultural policies that created famine conditions, being unaware of the devastating consequences, but it may have made genuine attempts at remedying the deficiencies by asking the international community for help.

¹⁵²Kim, Lee & Sumner, *supra* note 19, at 532.

¹⁵³*Id.*

¹⁵⁴*See id.*

as a natural food importer.”¹⁵⁵ Yet rather than adopt a policy that would rely on outside assistance, North Korea attempted to respond to these agricultural constraints and food shortages with responses that would not contradict the radically self-sufficient ideals of *juche* doctrine.¹⁵⁶ For instance, the government promoted a “Let’s eat only two meals a day” campaign in 1991.¹⁵⁷ Refugees testified that the government also began reducing or cutting off food distributions at around this time, with PDS stations closing in several locations as early as 1994.¹⁵⁸

Other pieces of evidence further corroborate the idea that the famine was a deliberate choice on the part of the North Korean government. A particularly disturbing report documented a public statement by Kim Jong Il in 1996 where he argued that only 30% of the population was needed to “reconstruct a victorious society.”¹⁵⁹ Moreover, although the floods were certainly devastating and impacted production levels, studies revealed that North Korea’s grain output began its decline *before* the floods in the early 1990s.¹⁶⁰ And a nutritional survey in 1998 reported that “children have been suffering from inadequate food supply *for many years*.”¹⁶¹ Early warning signs *were* in place. In fact, famine experts could have easily recognized the potential onset

¹⁵⁵*Id.* This reflects just one possible policy choice, not the only choice at North Korea’s disposal. The point is that *something* could have been done to remedy its domestic shortfall, though admittedly, such a response would have contradicted the government’s adherence to *juche*.

¹⁵⁶Admittedly, these poor agricultural policy choices were not new policies suddenly adopted by the regime; rather, they trace back to North Korea’s origins. When the 38th parallel was officially drawn in 1953, separating the North from the more agrarian South – originally the “breadbasket” for the peninsula – the new North Korean government naturally fixed upon food security as one of its main policy goals. HAGGARD & NOLAN, *supra* note 15, at 12. Though this was an understandable concern, North Korea miscalculated when it decided that maintaining the ideals of self-sufficiency at the national, provincial, and county levels could still help effectuate its goals. *Id.* This “wrong turn” was not only a rhetorical error but also a practical one: North Korea’s high ratio of people to arable land, northern latitude, and short growing season would not permit a self-sufficiency-based policy. *Id.* at 12-13.

¹⁵⁷Goodkind & West, *supra* note 98, at 221 (citing Marcus Noland, Sherman Robinson & Tao Wang, *Famine in North Korea: Causes and Cures* (Inst. for Int’l Econ., Working Paper 1999)).

¹⁵⁸HAGGARD & NOLAN, *supra* note 15, at 14.

¹⁵⁹Terry, *supra* note 114.

¹⁶⁰HAGGARD & NOLAN, *supra* note 15, at 13; *see also* NATSIOS, *supra* note 1, at 11 (“Although the floods of 1995 marked the official beginning of the great North Korea famine, food shortages began *well before* the official date of the appeal for help.” (emphases added)).

¹⁶¹Lee, *supra* note 119, at 1042 (emphasis added) (citing United Nations Consolidated Inter-Agency Appeal for Democratic People’s Republic of Korea. Jan.-Dec. 2000 (Nov. 1999)).

of famine if they had been permitted free access to investigate the situation.¹⁶² The government, however, never let on to its problems or any other information until the situation had considerably worsened. It was only when famine had swept through many regions of the country and at least hundreds of thousands had suffered that North Korea asked for international relief. For the North Korean government, which probably had some knowledge of its food shortages, the floods proved fortuitous: it gave the government a legitimate, objectively verifiable reason for requesting extensive international aid.

In light of the above evidence, scholars therefore argue that “even with considerable attention to agricultural production in the past, it seems clear that North Korea’s food problems are due to policy choices by the government, not simply to a lack of national income.”¹⁶³ In this view, the government is the “chief culprit” for the famine and food crisis:¹⁶⁴

Dictatorial and omnipresent, the regime held rigidly to a self-destructive agricultural system and impoverishing industrial policies while walling itself off from the rest of the world. When its food supply failed, it had no foreign exchange with which to buy food and no friends from whom to ask for food. The regime then made the situation far worse by deciding for political reasons to triage one area of the country and to reduce rations to farmers nationwide. Most analyses of the North Korean famine... have been conducted using the disciplines of public health, nutrition, national agricultural production, and food aid distribution. But famines at their core are principally economic and political phenomena with public health and nutritional consequences, not vice versa.¹⁶⁵

A recent study by the U.S. Committee for Human Rights in North Korea reiterated that the famine crisis of the 1990s was avoidable, if only North Korea had made more humanitarian policy choices. For instance, rather than using foreign aid to *supplement* its domestic production and importation of food supplies, the

¹⁶²NATSIOS, *supra* note 1, at 6-7.

¹⁶³Kim, Lee & Sumner, *supra* note 19, at 521 (emphases added).

¹⁶⁴NATSIOS, *supra* note 1, at x. Natsios refers specifically to the North Korean famine of the 1990s, but his arguments regarding the North Korean government’s failure to respond to the specific crisis generally apply to the country’s recurring food shortage problem.

government chose to *substitute* such aid.¹⁶⁶ This study extrapolated North Korea's food supplies using the country's 1993 commercial food imports levels and concluded that, at both the high-end and low-end estimations, North Korea would have *exceeded* the average human consumption need if it had continued its usual rates of production and received imports.¹⁶⁷ Yet when North Korea began receiving aid, the saved expenses were allocated elsewhere, namely to the North Korean military.¹⁶⁸

From objective statistical data about agricultural productions to more sensational reports of North Korea's callousness toward human suffering, a considerable amount of evidence supports the notion that the famine was both caused and perpetuated by the government itself. Rather than acknowledging its inability to support domestic food needs with its own supplies, North Korea insisted on its adherence to *juche*. In short, ideology trumped all other considerations, even potential starvation. This form of single-mindedness also characterized North Korea's response to relief efforts, as it chose to substitute and divert aid even though such subversive acts would delay the alleviation of famine consequences.

C. The Responses to the Famine

Initially, the international community hesitated at North Korea's sudden appeal for help. Political reasons lurked in the background and the simple lack of information raised further concern about the extent of North Korea's crises. Eventually, as the famine and news of its devastation spread, several governments and segments of the international community responded to the crisis.

¹⁶⁶HAGGARD & NOLAN, *supra* note 15, at 7, 11.

¹⁶⁷*Id.* at 16-17 & fig.3.

¹⁶⁸*Id.* at 7, 11.

1. The North Korean Government's Response. – Since the 1950s, more than a majority of North Koreans have received their food through the public distribution system (PDS). The PDS requires collective farmers in agricultural regions to donate a portion of their production to the government and then reallocates the surplus to urban regions, which cannot grow their own foods.¹⁶⁹ About 62% of the entire North Korean population, which represents the entire urban population, receives food through this government-run system.¹⁷⁰ Before the floods, recipients were generally allotted 600-700 grams per day while high officials, military men, heavy laborers, and public security personnel were allotted slightly larger portions of 700-800 grams per day.¹⁷¹

Decreases in production affected the quantum of food available through the public distribution system. Shortages were compounded when the North Korean government imposed further restrictions on collective farmers. When farmers, who had never been covered by the PDS, were mandated by the government to reduce their own food allotments from 167 kilograms to 107 kilograms of grain per person each year, they responded by withholding portions of the required amount of grain.¹⁷² Famine refugees reported that the government decreased PDS rations to 150 grams in 1994 and to as low as 30 grams by 1997.¹⁷³ It was further reported that the PDS failed to provide *any* food from April to August 1998 (the “lean” season) as well as from March to June 1999.¹⁷⁴ In January 1998, the North Korean government publicly announced that the PDS would no longer distribute rations and that families needed to somehow procure their own food supplies.¹⁷⁵ As the failure of its public distribution system became more difficult to conceal, North Korea appealed for international relief, consistently invoking the floods as the reason for its need of assistance.

¹⁶⁹Goodkind & West, *supra* note 98, at 223.

¹⁷⁰*Id.*

¹⁷¹*Id.* at 224. It is often pointed out that actual distribution often failed to meet official quotas even before the famine.

¹⁷²*Id.*

¹⁷³*Id.* (citing W. Courtland Robinson, Myung Ken Lee, Kenneth Hill & Gilbert M. Burnham, *Mortality in North Korean Migrant Households: A Retrospective Study*, 354 THE LANCET 291-95 (1999)). Amnesty International reports that only 6% of the population could be supplied through the PDS by 1997. AMNESTY INT’L, *supra* note 5, at 8-9.

¹⁷⁴AMNESTY INT’L, *supra* note 5, at 9.

¹⁷⁵*Id.*

There are other reports that the PDS stopped distributions entirely in more marginalized, rural regions in the northern and eastern parts of the country.¹⁷⁶ For example, the mountainous provinces of North and South Hamgyong and Rynagang stopped receiving shipments even though these regions were among the most PDS-dependent areas.¹⁷⁷ Rather than food coming through some equitable, predictable channels, people came to rely on the efforts of “entrepreneurial local leaders” who had to exercise political clout or gather enough resources to get to distribution points.¹⁷⁸

¹⁷⁶ See HAGGARD & NOLAN, *supra* note 15, at 17.

¹⁷⁷ AMNESTY INT’L, *supra* note 5, at 9.

¹⁷⁸ Lautze, *supra* note 18, at *9. Such a situation is unsurprising, as it is consistent with overall concerns about the fairness of the PDS. Distribution by the government has been known to depend on a subjective system of beneficiary identification. For many citizens, it was important to remain loyal to the government so as not to ruin one’s chances to receive adequate food. If an individual was perceived as displaying “even a sign of suspicion that [one] has lost blind faith,” the North Korean government inflicted far-reaching sanctions: the suspected individual would not only be precluded from food aid, but he could also lose opportunities for medical aid, education, and employment. See HAGGARD & NOLAN, *supra* note 15, at 7.

A Sample Public Distribution System Schedule

Occupation/Age Group	Per Capita Daily Ration (g)	Population Distribution		Ratio of Rice to Corn		Pyongyang Area
		(thousands)	(%)			
Heavy-labor workers	800	4905.45	22.91	6:4	3:7	
Special security	800	603.3	2.82	7:3	7:3	
High-ranking gov't officials	700	4.8	0.02	10:0	10:0	
Military	700	603.3	2.82	6:4	3:7	
Regular laborers	600	4905.45	22.91	6:4	3:7	
Office workers	600	1976.3	9.23	6:4	3:7	
College students	600	591.7	2.76			
Secondary school students	500	2182.5	10.19	6:4	3:7	
Primary school students	400	2397.5	11.2			
Preschool students	300	1270.6	5.93			
Aged and disabled	300	104.9	0.49			
Children under 3 years	100-200	1866	8.71			

Source: HAGGARD & NOLAN (adapting Kim, Lee & Sumner (1998)).

2. *The North Korean Citizens' Response.* – As the famine conditions worsened, particularly in the rural regions of the country, North Koreans took to various survival mechanisms. At one end, North Koreans simply resorted to gathering wild foods, such as roots, corn stalks, and grass; a “common” meal often consisted of a mixture of finely ground grass and cereal.¹⁷⁹ According to the FAO and the WFP, these “alternative” foods exacerbated nutritional deficiencies and other health problems such as children’s diarrhea.¹⁸⁰

Other families sought assistance from relatives living in more arable areas. Still other families attempted a more entrepreneurial response by engaging in black market sales and exchanges or setting up barter and trading relationships.¹⁸¹ The informal markets ranged from asset-for-asset exchanges to more illicit forms of prostitution and human trafficking.¹⁸² It is estimated that about 300 farmer or consumer markets emerged by the end of the 1990s and that these arenas provided 70-80% of food needs (though the food was provided at prices that were 3 to 3.5 times higher than the PDS prices).¹⁸³

At the more extreme end, some individuals resorted to “distress migration,”¹⁸⁴ escaping North Korea and

¹⁷⁹AMNESTY INT’L, *supra* note 5, at 10.

¹⁸⁰*Id.*

¹⁸¹HAGGARD & NOLAN, *supra* note 15, at 19.

¹⁸²*Id.* at 22.

¹⁸³AMNESTY INT’L, *supra* note 5, at 12 (citing Meredith Woo-Cumings, *The Political Ecology of Famine: The North Korean Catastrophe and Its Lessons* 30 (Asian Development Bank Institute, Research Paper No. 31, Jan. 2002)).

¹⁸⁴D’Souza, *supra* note 1, at 8. Unfortunately, many refugees did not encounter significant changes in their situation even when they successfully escaped North Korea. For example, North Koreans who escaped to China often “live[d] in appalling conditions and [became] vulnerable to physical, emotional and sexual exploitation.” They also lived in constant fear of being caught, as Chinese government surveillance increased in response to the influx of refugees from North Korea.

Because the Chinese government does not offer asylum rights, even when individuals flee in the face of persecution, detected refugees can be forcibly repatriated into their countries. See AMNESTY INT’L, *supra* note 5, at 30-31. As the following first-hand testimony reveals, repatriated refugees often face harsh, even torturous treatment upon their arrival in North Korea:

I was caught in August 2001 in China. Right after my arrest, I was sent to a Chinese police station, then a Chinese detention centre for seven days; later I was transferred to the border police for three days (interrogated by patrol (border) police for one day); the National Security Police then detained me for 10 days for interrogation; I was then sent to a labour training camp for 15 days. I was finally detained in a detention centre in Chongjin for three months. At the border patrol detention centre, I was asked how long I had stayed in China; if I had met South Koreans or church people; I was undressed and completely checked, even my vagina was checked by one person to see if I had hidden any money.

....

often fleeing to nearby China. Because North Korea criminalizes all travel conducted without permits, these escapees risked much for just the hope of leaving behind their predicament.¹⁸⁵ Indeed, if a North Korean citizen were caught crossing “a frontier of the Republic,” he could be subject to punishment of up to three years in a political penal labor colony.¹⁸⁶ These facilities were established in direct response by the North Korean government to the increase in illegal movements within and outside the country; called “9-27 camps,” the facilities are known to inflict torture and even force abortions and commit infanticide against pregnant women.¹⁸⁷

3. *The International Community’s Response.* – In 1997, UNICEF reported a dramatic increase in the number of North Korean children suffering from severe food shortages. At least 80,000 children were considered severely malnourished and “in imminent peril of succumbing to starvation or disease”;¹⁸⁸ and about 800,000 children under five were suffering “milder” forms of malnutrition.¹⁸⁹ UNICEF also revealed that the group of children most susceptible to these health consequences were orphans, with about 50% of children in orphanages detected as being “severely malnourished.”¹⁹⁰

Despite such compelling reports, public enthusiasm for providing relief to North Korea languished at first.¹⁹¹

The WFP¹⁹² ultimately responded to North Korea’s appeal for assistance. After a team of technical experts

My husband tortured in the next room to where I was interrogated; he was handcuffed and beaten by a stick. It appears that he confessed to plans (that we were going to South Korea). I heard that he could not walk, that all his teeth had gone; he died in November 1998. I never saw him again. I found out about my husband’s death [by torture] only in February 2000 when I was transferred to a provincial detention facility...

Id. at 32-33 (quoting Testimony by Kim with Amnesty International (Dec. 7, 2002)).

¹⁸⁵HAGGARD & NOLAN, *supra* note 15, at 20. The ability to emigrate and immigrate is a fundamental right in the Universal Declaration of Human Rights as well as the International Covenant on Civil and Political Rights. North Korea, despite being a state party to the ICCPR, still punishes travel without permits. *Id.*

¹⁸⁶AMNESTY INT’L, *supra* note 5, at 29 (internal quotation marks omitted) (quoting N. KOREAN CRIMINAL CODE, art. 117).

¹⁸⁷HAGGARD & NOLAN, *supra* note 15, at 20. The term “9-27 camp” derives from the date (Sept. 27, 1995) that Kim Jong Il issued an order establishing these detention facilities. These facilities are reportedly overcrowded and mistreat its detainees. For example, some detainee testimonies state that food consists of 80 kernels of corn for every meal, or of three to four spoons of corn meal mixed with hot water. AMNESTY INT’L, *supra* note 5, at 34-35.

¹⁸⁸AMNESTY INT’L, *supra* note 5, at 9.

¹⁸⁹*Id.*

¹⁹⁰*Id.* (citing Andrew Natsios, *The Politics of Famine in North Korea* 5-11 (U.S. Institute of Peace, Special Report No. 51, Aug. 1999)).

¹⁹¹*See, e.g.*, NATSIOS, *supra* note 1, at 5 (noting that if it had been any other country, the international community would have probably responded “without much hesitancy”).

¹⁹²Originally created in 1963 as an experimental program, the WFP has grown into the “world’s largest international food aid

with the Food and Agricultural Organization¹⁹³ (FAO) assessed the agricultural conditions and the level of production, the WFP requested donations from the United States, Canada, and the European Union.¹⁹⁴ As a result of the international community's contributions, North Korea is currently one of the largest recipients of food aid in the world. Every year, it receives about 1 million tons of food, most of which comes through the WFP.¹⁹⁵ Since 1995, the WFP alone has provided 1.8 million metric tons, valued at \$635 million, to North Korea.¹⁹⁶ And during the famine, the WFP rapidly and substantially increased aid from 5,000 to 387,000 tons, making up almost 50% of all foreign aid received by North Korea.¹⁹⁷ North Korea has also received substantial aid – over \$2 billion during the last ten years – from other governments.¹⁹⁸ The United States alone has contributed over \$600 million in food aid,¹⁹⁹ possessing the title of the “largest donor of humanitarian assistance since 1995.”²⁰⁰

In order to better carry out its relief efforts, the WFP also established offices in North Korea for the purposes of monitoring food distribution. Forty-one international aid workers were stationed in the central Pyongyang office as well as in the Chongjin, Hamhung, Sinuiju, Wonson, and Hyesan offices.²⁰¹

organization combating hunger in underdeveloped nations with severe food shortages.” The twin aims of the WFP is to meet emergency food needs and to support economic and social development. United Nations World Food Programme, Introduction, History, Mission, http://www.wfp.org/aboutwfp/introduction/index.asp?section=1&sub_section=1 (last visited Mar. 15, 2006); *see also* Lee, *supra* note 119, at 1039-40.

¹⁹³Founded in 1945, the FAO is the UN agency charged with executing the “international efforts to defeat hunger.” Its four main purposes include: (1) putting information within reach; (2) sharing policy expertise; (3) providing a meeting place for all nations; and (4) bringing knowledge to the field. The Food and Agricultural Organization of the United Nations, FAO at Work: About Us, <http://www.fao.org/UNFAO/about/index.en.html> (last visited Mar. 6, 2006); *see also* Lee, *supra* note 119, at 1038-39. Whereas the WFP delivers emergency food aid, the FAO focuses more on agricultural rehabilitation and development.

¹⁹⁴NATSIS, *supra* note 1, at 6.

¹⁹⁵Terry, *supra* note 114.

¹⁹⁶Lee, *supra* note 119, at 1043.

¹⁹⁷Goodkind & West, *supra* note 98, at 224.

¹⁹⁸HAGGARD & NOLAN, *supra* note 15, at 10.

¹⁹⁹*See* Goodkind & West, *supra* note 98, at 224-25 (citing *N. Korea Back from the Brink: Aid Helps End Mass Starvation*, WASH. POST, Sept. 5, 2000, at A01) (describing the United States as a “major bilateral donor”).

²⁰⁰HAGGARD & NOLAN, *supra* note 15, at 10. To put the donation amount in different terms, \$600 million in food aid is about 2 million metric tons of grain. *Id.*

²⁰¹Lee, *supra* note 119, at 1043.

D. The Problems with Relief Assistance

In recent years, a “fatigue among donors” has settled for a myriad of reasons.²⁰² Various organizations, including Action Against Hunger, Care International, Doctors Without Borders, Doctors of the World, and Oxfam have withdrawn their operations in North Korea.²⁰³ The response efforts allude to at least two clear reasons for this fatigue – one practical, the other political.²⁰⁴ Although the practical necessarily flows from the political in the context of North Korea, this section identifies the more specific problem, which is a distinct issue relevant to relief efforts generally, and then discusses the larger problem in order to highlight the additional complications that compound the former issue.

1. Monitoring & Compliance. – In theory, the WFP directs its relief to those North Koreans who are determined to be the most “vulnerable” to famine: school children, pregnant women, new mothers, the elderly, and the sick.²⁰⁵ In practice, however, there is widespread suspicion about whether WFP is effectuating its purpose. North Korean refugees from the WFP’s target locations report that they never received any aid.²⁰⁶ Others report that aid is sold to the market, permitting resale of these donations at inflated prices. Still others reports state that as much as 90% of aid is diverted to the military (10%) and government officials (80%).²⁰⁷ These reports are further corroborated by objective pieces of evidence, such

²⁰²HAGGARD & NOLAN, *supra* note 15, at 10.

²⁰³Goodkind & West, *supra* note 98, at 225.

²⁰⁴Of course, problems with relief assistance are predictable, whether the recipient of aid is North Korea or not. Because food distribution requires “a high degree of organization and management,” there are a number of administrative problems that arise. Delays with distribution and shortage of rations are not uncommon in any relief effort. See HELEN YOUNG, FOOD SCARCITY AND FAMINE: ASSESSMENT AND RESPONSE 56-58 (Oxfam Practical Health Guide No. 7, 1992).

²⁰⁵Terry, *supra* note 114.

²⁰⁶*Id.*

²⁰⁷Goodkind & West, *supra* note 98, at 225 (citing *N. Korea Refugees Insecure in China*, WASH. POST, Apr. 9, 2000, at B6).

as the North Korean submarine found in South Korean waters possessing foods packaged with international donor labels.²⁰⁸

The divergence between distribution plans and distribution results is primarily attributable to organizations' inability to properly monitor relief efforts. To make sure the food is en route to the intended beneficiary, agencies are permitted "spot checks" at any point.²⁰⁹ But once the food is dropped off, the North Korean government cuts off organizations like the WFP, entrusting its PDS with subsequent allocation and distribution. Of course, this means that even if the government passed all of the random spot checks conducted by the agencies, it could still circumvent donor plans by withholding and/or diverting relief at the actual distribution sites.²¹⁰ Other strict rules governing monitoring procedures makes information about beneficiary receipt limited and often unavailable. For example, aid agencies must provide at least one-week notice for any visits to sites, and unannounced visits to homes or schools are prohibited. A government translator also accompanies monitors throughout their visit and translate at their discretion.²¹¹ In short, all of these hurdles means there is no way of knowing whether the food that is provided is actually reaching the intended beneficiaries.²¹² Because research suggests that food distribution, even food received as part of a relief effort, is contingent upon a citizen's perceived loyalty to the government,²¹³ there is definite reason to question whether relief is being distributed according to the donors' intentions.

This lack of monitoring further prevents donor organizations from determining appropriate timelines as well as the amounts necessary for adequate relief. Without having accurate agricultural production information, for example, donors may not know whether aid should be increased or decreased for a particular time period.

²⁰⁸ *Id.*

²⁰⁹ Lautze, *supra* note 18, at *8.

²¹⁰ *See id.*

²¹¹ Terry, *supra* note 114.

²¹² HAGGARD & NOLAN, *supra* note 15, at 7.

²¹³ *Id.* at 9.

This is generally the problem of “additionality,” that is, the issue of whether food relief is being provided “*over and above* what others of similar status living elsewhere are receiving.”²¹⁴ If North Korea is actually receiving a quantum of aid that is at or above the amount of food distributed through its public distribution system, then – apart from humanitarian incentives – the government may choose to hoard or divert extra resources.²¹⁵ This type of economic diversion may actually be more prevalent than the usual idea of diversion to military or government officials.²¹⁶ Along with diverting resources, North Korea may also be using international aid as “balance-of-payments” support – in other words, “allocat[ing] the savings in commercial imports to other priorities, including military ones and luxury imports for the elite.”²¹⁷ Indeed, it is hard to justify North Korea’s expenditures during a time of professed need. For example, in 1999, North Korea reduced commercial grain imports to less than 200,000 metric tons, but in the same year, it purchased forty MiG-21 fighters and eight military helicopters from Kazakhstan.²¹⁸

In sum, lack of monitoring ultimately puts more discretion into the hands of the North Korean government, which has yet to temper suspicions about whether it can be trusted to implement its donors’ intentions. Information asymmetry therefore raises a number of concerns along different points of the food relief effort. North Korea may permit spot checks, but it ultimately has discretion to assign the final distribution points, and these areas do not necessarily have to be those regions that are most in need.²¹⁹ Rather, the government may very well designate areas over which it has substantial surveillance and control. This possibility is a likely one, especially given that North Korea often prevents visitors and even food relief workers from entering certain parts of the country. Presumably, these “off-limits” regions are those parts that are not “safe” for

²¹⁴Lautze, *supra* note 18, at *8.

²¹⁵*Id.*

²¹⁶*See* HAGGARD & NOLAN, *supra* note 15, at 24.

²¹⁷*Id.* at 16.

²¹⁸*Id.*

²¹⁹*See* Lautze, *supra* note 18, at *11.

outsiders to witness.

2. North Korean Unwillingness to Change. – Relief organizations have attempted to change the terms of aid but have been met with little success. For example, Doctors Without Borders (Medecins Sans Frontieres) gave up their efforts when they realized that the government was blatantly engineering situations to their own benefit. Healthy-looking children suddenly appeared when the organization raised concerns about whether food was being properly allocated; then sickly-looking children appeared when the North Korean government demanded a need for more food.²²⁰ Some refugees confirmed these suspicions, as they admitted to delivering food from military storage to nurseries prior to a UN visit and to inflicting further damage to flood-devastated areas prior to a UN inspection.²²¹ Because of grave suspicions that North Korea was distributing aid only according to government perceptions about a citizen's loyalty and usefulness to the government, MSF withdrew its operation.²²²

The above complications with monitoring and the Doctors Without Borders example all point to the broader problem of North Korea's secretiveness and unaccountability. The common suggestion in the literature seems to be that North Korea wants the benefits of food relief without giving up any of its controls. Thus, even though international aid organizations and bilateral donors are the ones generously providing what North Korea is requesting, the government itself remains unrelenting when it comes to the terms of relief provision.²²³

²²⁰Terry, *supra* note 114.

²²¹*Id.*

²²²*Id.*

²²³The fact that North Korea seems to have all the leverage in these aid provision relationships is difficult to understand. Common sense would dictate that the one in need would be more amenable to donors imposing certain conditions of relief. But this type of asymmetry is exactly what makes the North Korean famine and its food relief efforts so challenging. Presumably, aid organizations are strongly motivated by their desire to provide relief for North Korean citizens who are innocent victims of a dictatorial regime. Hence, this motivation must be sufficiently compelling such that the apparent unfairness of the donor-recipient relationship becomes secondary to the moral consideration.

E. Effectiveness of Relief Efforts

The number of and the frequency with which criticisms are launched against the North Korea food relief effort are many and recurring. Whatever the validity of these arguments, the effort has not been a *complete* failure. The PDS, a substantial part of which had collapsed during the famine, has revived in part.²²⁴ It was reported that the PDS was able to increase daily rations to 319 grams by September 2003 because of food relief provisions and improved domestic production.²²⁵ The PDS is also now able to distribute 350 grams of food per person per day – though this is still short of the 450 grams determined to be an individual’s “absolute minimum caloric intake.”²²⁶

Furthermore, the WFP Assistance Executive Director Jean-Jacques Graisse reported after a visit to a North Korean kindergarten that “the children look far better than they did two years ago when the food assistance started,” commenting that “[t]he food *was* delivered and *has* produced positive results among children.”²²⁷ A survey in 2002 conducted by UNICEF, WFP, and the North Korean government revealed “considerable improvement” in children’s nutrition levels. For example, in 1998, the ratio of underweight children was 60.6%, but by 2002, the ratio had dropped to just 20.1%.²²⁸ Chronic malnutrition (stunting) declined from 62% to 42% and acute malnutrition (wasting) also declined from 16% to 9% during the same period.²²⁹

Thus, it is not descriptively accurate to argue that food relief efforts have been completely undermined by the North Korean government. The sentiment underlying that argument, however, is the important point to

²²⁴Granted, some may not regard the reinstatement of the PDS to be an improvement since this government-run distribution system allocates food according to subjective and unpredictable criteria. But the point remains that there is an overall increase in available supplies.

²²⁵AMNESTY INT’L, *supra* note 5, at 9.

²²⁶HAGGARD & NOLAN, *supra* note 15, at 20. There are several studies that discuss methods of quantitatively measuring hunger. *See, e.g.*, DEROSE, MESSER & MILLMAN, *supra* note 2, at 20-49.

²²⁷MARTIN, *supra* note 17, at 553 (internal quotation marks omitted).

²²⁸AMNESTY INT’L, *supra* note 5, at 25 (citing CENTRAL BUREAU OF STATISTICS, REPORT ON THE DPRK NUTRITION ASSESSMENT (Nov. 2002)).

²²⁹*Id.* at 36.

remember as the discussion now turns to policy recommendations. Critics of continuing North Korean food relief rightly recognize that food relief is not as efficacious as it *could* be, especially given the generosity of donations over the past ten years. It is true that food *is* being wasted since relief efforts are not reaching the most needy populations, and at the same time, these unmonitored distributions may be perpetuating the very problems infecting current relief efforts. The larger question is, what ought to be done given these circumstances? The final Part attempts to tackle this consideration.

IV. Policy Prescriptions

The worst of the famine has certainly passed. North Korea, however, is by no means fully recovered nor is it entirely immune from a reoccurrence of such a crisis. According to the FAO categorization of food deprivation groups, North Korea is still a “group five” member, meaning it is among the group of countries with the “highest and greatest depth of hunger.”²³⁰ Some NGOs report that North Korea’s “chronic food emergency” has already extended into this decade²³¹ and that much of the improvement is only attributable to the generous food aid donated by the international community.²³² And in its 2005 report, Amnesty International concluded that North Korea “continued to fail in its duty to uphold and protect the right to food, exacerbating the effects of the long-standing food crisis.”²³³ Hunger and chronic malnutrition therefore continue to plague children and urban residents who depend on the increasingly insufficient public distribution of food rations – they are thereby forced to spend up to 85% of their income on food sold on private markets for 10 to 15 times the amount charged by the government.²³⁴

²³⁰Lee, *supra* note 119, at 1037. The FAO determines categorizations based on the prevalence and depth of hunger in the country.

²³¹See, e.g., HAGGARD & NOLAN, *supra* note 15, at 9.

²³²*Id.*

²³³AMNESTY INT’L, REPORT 2005: NORTH KOREA, <http://web.amnesty.org/report2005/prk-summary-eng> (last visited Feb. 16, 2006).

²³⁴See *id.*; see also AMNESTY INT’L, *supra* note 5, at 10.

With North Korea's severe food shortages continuing, there are inevitable policy choices that must be made by North Korea, its diplomatic partners, and humanitarian organizations. With the benefit of hindsight, it is useful to examine the relief efforts initiated in response to the 1995-98 famine in order to construct an effective response for similar future crises. With the consequences and vestiges of the famine still being felt, a reconsideration of the terms of food relief becomes a timely topic.

The discussion in Part III makes clear that the issue is not merely an absolute lack of resources. To a large extent, the perpetuation of food shortages in North Korea is a *deliberate*, political choice. Given this, what is the proper response? This question, though it necessarily involves a myriad of issues and is not satisfied by a simple answer, carries some urgency. In August 2005, North Korea requested the United Nations to halt food aid.²³⁵ This abrupt request for the WFP as well as other NGOs to abandon their relief efforts followed the European Union's criticism of North Korea's deplorable human rights record.²³⁶ North Korea, however, insisted that its agricultural productions had sufficiently increased to free it from over the decade of assistance it had been receiving.²³⁷ The WFP's December withdrawal from the country included the closing of five regional offices outside Pyongyang and 19 food factories.²³⁸ The withdrawal also drew heavy criticism from the international community. The United States, for example, remarked that lack of WFP presence in North Korea would hamper any effective monitoring of food distribution.²³⁹ Others speculated that North Korea was making a pure political move, in the hopes of regaining control over its public distribution system.²⁴⁰

Then in December 2005, North Korea asked the World Food Program, which had been distributing food for

²³⁵Voice of America News, *U.S. Criticizes North Korea for Halting UN Food Aid*, Dec. 29, 2005, <http://www.voanews.com/english/archive/2005-12/2005-12-29-voa56.cfm?CFID=45345611&CFTOKEN=43113923>.

²³⁶News from Russia, *World Food Program Resumes Suspended North Korea Aid*, Jan. 13, 2006, <http://newsfromrussia.com/world/2006/01/13/71111.html>.

²³⁷*See id.*

²³⁸*Id.*; Digital Chosun Ilbo, *WFP Halts Food Aid to North Korea*, Jan. 8, 2006, <http://english.chosun.com/w21data/html/news/200601/200601080002.html>.

²³⁹Voice of America News, *supra* note 235.

²⁴⁰Digital Chosun Ilbo, *supra* note 238.

about 6 million of its people, to amend its relief efforts from food to development.²⁴¹ And the WFP subsequently announced its intention to resume suspended assistance under a new plan of economic development assistance along with food relief for about 3 million North Koreans.²⁴² Doubts surround the new program, with some aid workers noting that implementation might be too hurried to be effective.²⁴³ There are also concerns with whether the United States can continue to legally support a “development” project since the country is only permitted to provide “emergency humanitarian aid” to North Korea.²⁴⁴

Given the recent suspension and resumption of WFP aid, what is the appropriate policy response? Admittedly, the question presupposes the shortcomings of past efforts, but the question remains why North Korea still depends so heavily on foreign aid even after a decade of generous donations? These practical and legal issues are important, but there is a broader consideration at the threshold that must be resolved prior to offering any recommendations: should aid be given at all to North Korea?

A. Should Relief Be Provided?

The answer to whether famine relief ought to be provided to North Korea appears to be a simple one, at least if the issue is solely conceived in normative terms. But there are actually strong sentiments on *both* sides of the issue. If the question were reframed at a higher level of generality, there are few, if any, who would reject the basic argument that victims of famine ought to be provided relief. But the North Korean famine presents a unique set of considerations that complicate an otherwise “simple” matter.

²⁴¹News From Russia, *supra* note 236.

²⁴²*See, e.g., id.*

²⁴³*See id.*

²⁴⁴*Id.* WFP spokesman Gerald Bourke acknowledged this potential legal barrier and remarked that the effort would be officially called a “protracted relief and recovery operation” and that sufficient monitoring mechanisms might enable the United States to continue giving aid to North Korea under the new program. *Id.*

1. *Halt All Relief.* – On its face, opponents of continuing aid appear severe, even unsympathetic to the plight of North Koreans who are largely innocent victims of North Korea’s faminogenic policies. But these critics do not challenge the view that relief efforts could alleviate North Korea’s seemingly perpetual problem with food shortages. Rather, they question whether relief, as a matter of fact, is doing so. In short, they argue that continuing food relief provisions to a secretive, uncooperative country merely “feed[s] the dictator” and “props up Kim Jong Il’s grotesque regime.”²⁴⁵ They observe that

[r]ural tractors have abandoned tractors and reverted to ploughing by hand or with livestock. Mercedes Benz belonging to the ruling elite ply the streets of the capital, while ordinary citizens dig for roots and edible plants in the grass strips lining the five-lane boulevards. The public distribution system on which three-quarters of the population depend for food, only provides rations on important dates, like the birthdays of Kim Il-sung or Kim Jong-il.²⁴⁶

Other intra-country perspectives offer further evidence for these critics’ accusations. For instance, they point to the country’s significant military budget as evidence of North Korea’s economic capacity – or at least, as proof that the country is not so fiscally incapacitated that it absolutely *needs* external assistance in order to survive. If North Korea wanted, it could simply reallocate its existing budget so that more resources are poured into alleviating food shortages. Indeed, it is difficult to resolve the fact that North Korea somehow managed to maintain a 1.1 million man defense force²⁴⁷ while approximately five percent of its total population died from famine. It also seems problematic to support continuation of aid in light of North Korea’s recent expenditures. With Kim Jong Il purchasing approximately \$5.2 million worth of weapons from Russia in the summer of 2001,²⁴⁸ why should North Korea continue to receive aid, especially if the same aid could be reallocated to a poorer yet more fiscally responsible government?

²⁴⁵Terry, *supra* note 114.

²⁴⁷Terry, *supra* note 114.

²⁴⁸*Id.*

These critics emphasize the disturbing reality that, in spite of food relief, perverse disparities remain between the political favored and disfavored. In fact, they go further to argue that the provision of food relief actually *perpetuates* these conditions because continuation of aid actually legitimizes the North Korean government.²⁴⁹ As a former aid worker argued, “The purpose of humanitarian aid is to save lives. By channeling it through the regime responsible for the suffering, it has become part of the system of oppression.”²⁵⁰ Thus, according to this side of the debate, continuing aid enables the North Korean government, which is the real root of the food shortages problem, to remain in power.

²⁴⁹See, e.g., HAGGARD & NOLAN, *supra* note 15, at 7 (“In connection with the North Korean tragedy, we have therefore to pose the question whether through giving humanitarian aid we are at the same time reinforcing perhaps the worst political regime on the planet, a regime prepared to reinforce its power in the most drastic of means.”).

²⁵⁰Terry, *supra* note 114.

2. “A Hungry Child Knows No Politics.” – Commentators on this side of the debate acknowledge the deep political concerns underlying foreign governments’ decisions to halt aid, to make aid contingent on compliance, or to impose sanctions. But they emphasize the immediate consequences of such political decisionmaking, namely the loss of “hundreds of thousands of lives.”²⁵¹ Given the extent of human suffering caused by food shortages, proponents of continuing aid argue that the most normatively appealing policy response is to meet the demand. In short, the argument is that “political and strategic considerations [should be put] aside in favor of the moral obligation to feed the hungry.”²⁵² This view presumably accepts the fact that food aid to a government such as North Korea will be imperfect.²⁵³

* * *

In an ideal world, the solution would be to work towards both short- and long-term goals so that food relief is provided while regime change is being implemented. The problem is that, in the context of North Korea, the two answers at the ends of the spectrum are not perfectly reconcilable. While this paper acknowledges the serious political implications of continuing aid to North Korea, it nonetheless argues that food relief should continue because of overwhelming normative considerations. It is perhaps the better of two evils, but it is at least the better alternative.

²⁵¹Natsios, *supra* note 1, at x.

²⁵²*Id.*

²⁵³*Cf.* Haggard & Nolan, *supra* note 15, at 10 (presenting, though later refuting, the argument that meeting economic needs by acting on the “humanitarian impulse” to provide food aid, for example, “provides the foundation for subsequent political development”).

First of all, there is normative consensus between the two sides of the debate despite the seemingly polar positions. Those who advocate discontinuing aid do not argue that North Korean citizens do not deserve food relief. Rather, their discontent lies squarely with the government's misappropriation of aid and its rigid insistence on secrecy. These critics' answer to the question is not a resolute "no" – more accurately, it is "no, not under the present conditions of relief." And those who advocate continuing relief are not in any way disagreeing with the troubling import of the aforementioned implications. Continuing aid does not necessarily mean that aid must be provided in the same manner in the future. Thus, it is fair to conclude that neither side would disagree with the general proposition that North Koreans ought to benefit from food relief but that the method of distribution needs serious reform. Continuing aid leaves open the opportunity to fulfill both these objectives; discontinuing aid closes that door.

Second, opponents of continuing aid depend upon a questionable casual argument. In simple economic terms, this side makes the basic argument that the short-term losses (famine victims) are worth less than the potential long-term gain (political change)²⁵⁴ because, in their view, realization of this long-term gain will prevent many more future short-term losses. In other words, stopping aid creates a situation in which North Korea is more likely to implement governmental changes, which in turn creates a more humanitarian government that is more likely to prevent future famines and food shortages. This line of thinking is tenuous since it is not merely the provision of international aid that is keeping the regime in power. Halting food relief does not guarantee the collapse of Kim Jong Il's dictatorship.²⁵⁵ The practical import of this position may be that North Koreans continue to die from lack of food while the government maintains its present form of operation.

²⁵⁴For the proponents, the opposite is true. The short-term losses are sufficiently valuable that saving even some lives is worth more than the possibility halting food relief in the hopes of motivating regime change. Furthermore, proponents of continuing aid leave the possibility of regime change entirely out of its set of relevant considerations, suggesting it is morally improper to insert political factors into the calculation.

²⁵⁵See HAGGARD & NOLAN, *supra* note 15, at 35 ("If the current regime was capable of surviving a devastating famine, it is highly dubious to assume that coordinated, wholesale reductions in food aid will necessarily lead to improved conditions or policy reform.").

Third, opponents of continuing aid rest on a morally unattractive premise. The argument that halting aid might create regime change manifests a “questionable utilitarian logic” that the certain loss of innocent human lives is tolerable in the face of uncertain protection of lives in the future.²⁵⁶ Norms within the international community run directly counter to this type of valuation.

The conclusion that food aid should continue is not the end of the matter. In fact, answering in the affirmative provokes a series of complicated pragmatic questions about *how* aid ought to be delivered: Who should deliver aid? Should aid be contingent? How should compliance be enforced? These issues are complex in and of themselves, but in the context of North Korea, they are even more provocative.

How Should Relief Be Provided?

B.

As expected, the literature on the recent Korean famine often provides a number of recommendations for three general categories of actors: North Korea, donor governments, and international aid organizations. While the recommendations from the various commentators are not entirely uniform, they do share similar underlying messages. They also share similar deficiencies. This section provides recommendations in direct response to the two main problems that infected past relief efforts. The next section then offers a series of other relevant considerations that ought to shape policymaking.

1. A Starting Point: Acknowledge North Korea’s Political Reality. – Given the number of considerations involved in constructing a sophisticated policy, an obvious and easy starting point is to address the two problems with past relief efforts, as discussed in section III.C. This section begins with the problem

²⁵⁶ *Id.*

of North Korea's unwillingness to change, as that provides a framework from which to consider all other policy recommendations. Balancing and reconciling the policy considerations is complicated enough; the ethical, political, and legal issues are not only manifold but also intricately intertwined. But to do so in the context of the North Korean government poses a formidable challenge. North Korea has been described as a "hard" state, that is, a state that has "repeatedly shown a willingness to allow its population to suffer extreme deprivation."²⁵⁷ It is also suspected, and proven to an extent, that humanitarian aid *is* diverted according to North Korea's policy preferences; often, this entails feeding political friends, the social elite, and the military.²⁵⁸ Any proposed prescriptions, whether aimed at the North Korean government itself or at donor governments and international aid organizations, must first take into account North Korea's political reality.

(a) Prescribing Change for the North Korean Government. – The recommendations aimed at the North Korean government recognize that the cooperation of the state is incredibly important and instrumental to effectuating meaningful food relief. But in spite of the normative appeal of these recommendations, they are shortsighted – and very possibly, unrealistic. Broadly speaking, none of these recommendations discuss feasibility or likelihood of implementation. Perhaps the topic is purposely ignored to avoid deterring humanitarian organizations, but whatever the reason, its absence is a glaring weakness.

For example, the U.S. Committee for Human Rights in North Korea states that it is imperative for North Korea to "[l]ift the manifold restrictions and impediments that it continues to place on the humanitarian community and abide by the international agreement to which it is a signatory."²⁵⁹ It is easy to agree with the

²⁵⁷ *Id.*; see also Voice of America News, *supra* note 235 (reporting that it is "common practice for North Korea to 'ignore the needs of its people' and 'let them starve for inexplicable reasons'") (quoting U.S. State Department spokesman Adam Ereli).

²⁵⁸ See Lautze, *supra* note 18, at *4.

²⁵⁹ HAGGARD & NOLAN, *supra* note 15, at 34-35.

statement, but it is far from clear how and whether this could be assured. Moreover, the recommendation does not give a reason *why* the North Korean government might agree to implement these changes. The reasons from a humanitarian organization’s perspective are clear. If, for example, the North Korean government permitted unlimited access to all parts of the country, food relief organizations can provide more accurate assessments of need and establish more effective monitoring schemes. But what would compel the government itself to do this? The same regime that imposed “extreme deprivation on its people” remains in power without internal contest. Despite ever-present criticisms, food relief is still available to the North Korean government. Indeed, adopting such a recommendation may be *adverse* to North Korean interests, presuming that it wants to keep its current form of government – a more likely presumption than any other alternative. Taking the above example, permitting aid workers to explore previously unseen regions of North Korea would probably introduce unnecessary complications for the government. The extent of the famine might reinvigorate criticisms from other states regarding North Korea’s human rights record, for example.

(b) A General Note to Donor Governments and International Relief Organizations. – One extreme line of recommendations that some international organizations advocate is the reform and eventual overhaul of the North Korean government. Again, as with the recommendations directing North Korea to comply with international norms, for example, these suggestions recognize that the government itself needs change. They are correct to point out that North Korea’s food shortage problem involves not only “production and capacity,” but also “distribution and entitlement.” And while the former may be amendable through policy changes, the latter necessarily depends on “*fundamental* features of the political system.”²⁶⁰ Thus, for instance, relief efforts must be cognizant – though not necessarily compliant with – the government’s firm adherence to the *juche* ideology as the “ultimate paradigm” for any state activity.²⁶¹

²⁶⁰*Id.* at 35 (emphasis added).

²⁶¹Yoon, *supra* note 43, at 1291.

Famine scholars often point to the fact that throughout all of history, there have been *no* famines in democratic countries. As explained by Amartya Sen, democracies make the government accountable to its citizens so that when people express their outrage toward crises such as famines, the government responds. Moreover, democracies also permit the press to publicize the crisis.²⁶² These studies are interesting but the extent of their relevance to North Korea ought to be tempered, as the “resiliency of the despotic leadership and their extent of control over society” is often “grossly underestimated.”²⁶³ North Koreans have known no other system than the one that presides over them at present.²⁶⁴ The possibility of severe food shortages motivating a type of popular uprising is romantic at best.²⁶⁵ Visions for broad social and/or legal reform ought to acknowledge that the North Korean regime is still very much in control, at least over its indoctrinated populace.

It is true that constitutional change might be another avenue through which to implement these larger-scale plans, but it must simultaneously be noted that amendments are accomplished in a very restrictive manner. The idea of change must be accompanied by a compelling reason for change.²⁶⁶ For example, “[i]f an open-door policy is the inevitable option that must be chosen to overcome the country’s current economic difficulty, law will be one of the most important vehicles to win over foreigner’s trust in... North Korea’s system.”²⁶⁷ Given the realities of the current North Korean government, there must be sufficient self-interest at stake.

²⁶²NATSIOS, *supra* note 1, at 7.

²⁶³Lautze, *supra* note 18, at *6.

²⁶⁴This is not to say that Kim Jong Il’s reign is invincible to criticism. In fact, his leadership could be criticized in terms not inconsistent with North Korean cultural ideology or political philosophy. In North Korean thinking, the floods of the mid-1990s and the subsequent famine could also be regarded as “a sign of heaven’s disapproval of a lack of righteousness in [Kim Jong Il’s] administration and a signal that it is time for a change.” MARTIN, *supra* note X, at 553.

²⁶⁵See Lautze, *supra* note 18, at *6-7.

²⁶⁶See Yoon, *supra* note 43, at 1305 (“They have tried to lessen the gap between law in the book and law in action.”). For a brief history of the changes to the North Korean constitution since the first text was developed in 1948, see *id.* at 1292-1304.

²⁶⁷*Id.* at 1305 (“Relevance of law in managing a society should be enhanced in North Korea to draw foreign attention and entice economic cooperation.”).

Thus, any policy prescription must be mindful of the dynamic political interests that must be accommodated. For the same reasons mentioned above, North Korea is unlikely to initiate radical changes to its government when the status quo favorably entrenches Kim Jong Il's dominance over the country.

North Korea may very well collapse, as some scholars predict (or hope), but this possibility does not reflect the current reality. These recommendations reflect speculative ideals, arguing for what should be done if the North Korean government were not the type of government that it really is. At present, more energy ought to be expended in devising the most feasible solution for North Korea as it presently exists.

2. Improve Monitoring Efforts. – (a) The Value of Information Access and Dissemination. –

“After nearly a decade of relief efforts, North Korean practices still fall well below international norms with respect to transparency and non-discrimination in the distribution of humanitarian relief.”²⁶⁸ *The fact that some relief organizations have been given access to some of the more vulnerable populations in North Korea is certainly a good starting point. But “[s]imple possession of information is inadequate; it is the open exchange of information that alleviates famine.”*²⁶⁹ *Admittedly, the reason that aid organizations are not sharing information is not for reasons of selfishness. Most likely, their continued access to the same populations depends on their cooperation with the North Korean government. They do not want to risk releasing privileged information for fear of losing access. Although this is a valid concern, relief organizations must be reminded of the significance of information exchange in the broader scheme of relief aid.*

“The role that the free exchange of information plays in preventing and alleviating famines and prompting

²⁶⁸HAGGARD & NOLAN, *supra* note 15, at 23.

²⁶⁹Lautze, *supra* note 18, at *11.

effective responses has been well-documented.”²⁷⁰ At the most basic level, information raises awareness in the international community. Particularly with an isolationist state such as North Korea, information provides an “in,” opening avenues for relief efforts as well as a means for multilateral organizations and states with bilateral diplomatic relationships with North Korea to intervene.²⁷¹

Furthermore, information is necessary to uphold the two-pronged approach that most donors adopt when providing food aid: (1) targeting vulnerable populations and (2) monitoring food deliveries.²⁷² Direct relief requires a range of affirmative acts, from “procurement, purchase, transportation, storage, and distribution” – all of which require “reliable information regarding the dimensions of the tasks involved.”²⁷³ Often, the effectiveness of these approaches is undermined by the North Korean government’s lack of transparency and therefore “critical gaps” persist with respect to “the socio-economic, political and geographic distribution of suffering.”²⁷⁴ Monitoring then is no more than a “leaky sieve” and targeting efforts are rendered useless without North Korean’s cooperation or frankness.²⁷⁵ Therefore, suspicions about diversion of food relief are heightened – and there are reasons to remain dubious. In April 2004, when a devastating train accident left citizens of Ryongchon, North Korea in need of food and medical aid, various international donors gave generously to help the victims and the community recover. Yet when an employee from a Japanese NGO visited Chongjin’s Sunam Market, he captured an unsettling conversation with a vendor on videotape:

²⁷⁰*Id.* at *2-3.

²⁷¹Of course, the availability of information alone does not necessarily guarantee the involvement of the international community. There may be cross-cutting interests that discourage participation. For example, the United States probably chose to dismiss information about the Chinese famine since such news came at the height of McCarthyism. *See id.* at *3.

²⁷²HAGGARD & NOLAN, *supra* note 15, at 11.

²⁷³GOLKIN, *supra* note 1, at 36. The need for information is very much a pragmatic need. In order to conduct an accurate and thorough assessment of the famine-affected region, there is a considerable amount of research that must be done across a broad range of issues. For instance, information about mortality, morbidity, malnutrition, and continuing threats to health are just some of the indicators that must be determined; and all of these factors demand more quantitative analysis than speculative estimates. These assessments also require collecting and evaluating information from a number of different sources, which makes *access* to information as important as its availability. *See* YOUNG, *supra* note 204, at 10-43 (providing a basic guideline for NGOs or other food relief organizations on how to conduct assessments).

²⁷⁴Lautze, *supra* note 18, at *3.

²⁷⁵*See* HAGGARD & NOLAN, *supra* note 15, at 11-12.

Vendor: Buy some rice.
 Recorder: The quality of rice seems good.
 Vendor: It is the rice from the recent aid.
 Recorder: From where?
 Vendor: From aid to Ryongchon. I went all the way to Ryongchon to get this rice.
 Recorder: Oh, that's why it's expensive.²⁷⁶

Perhaps a less obvious need for accurate information is its importance to the donee government, that is, to North Korea. Although it may be difficult to believe, there is some evidence that not all North Korean officials are aware of the extent of food shortages. Visitors commented that officials who traveled with them outside of Pyongyang were actually “caught off guard by the extent of malnutrition and hunger witnessed in the countryside.”²⁷⁷ Such lack of information dissemination would not be unprecedented. Relatively new research about the Ukrainian and Chinese famines report that neither Stalin nor Mao were cognizant of the famine’s devastation, at least during the famine’s initial onset.²⁷⁸

The limitations of the above point are obvious. First of all, it was not merely the lack of information that contributed to the famine or to its continuation. Stalin and Mao, once they became aware of the problem, did not design or implement emergency relief efforts; rather, they made intentional decisions *not* to confront the problem for political and personal reasons.²⁷⁹ Second, access to information might have *negative* consequences, especially in regimes that are tightly controlled by one dominant leader. Both Stalin and Mao demoted or even went so far as to execute officials who questioned official government policies.²⁸⁰ Third, information may have no practical effect on the government. Regimes like North Korea might very well be entirely callous toward accounts of human suffering.

²⁷⁷Lautze, *supra* note 18, at *2; *see also id.* at *11.

²⁷⁸*Id.* at *2.

²⁷⁹*Id.* In fact, both Stalin and Mao ensured that a “shadow of secrecy” covered their famine crises. Internal compliance was assured through intense repression of dissidents, including the use of torture, executions, public humiliation, and exile. *Id.*

²⁸⁰*Id.*

At the same time, there are benefits – however marginal – to increasing levels of information available on an internal level. Just as it may be true that North Korean officials are ambivalent toward the effects of famine, it may just as likely be true that an acute awareness of the extent of suffering endured by their own people might provoke moral, if not, political consciences. A general conscience-raising may increase likelihood of information “leaking” or for internal dissidence. Given that there are already those who question the strength of Kim Jong Il’s leadership, at least relative to the force of control possessed by Stalin or Mao,²⁸¹ internal factions may not face the same brutal forms of retributions. Or, because the demise of the North Korean regime is considered by some to be “inevitable,” internal opposition and factions could very well fast-forward its fall. Moreover, information places the onus of responsibility on the possessor of information for disclaimed consequences.²⁸² Officials could then be held politically responsible for public statements that are later proven false. This would at least decrease the amount of leverage the North Korean government currently possesses, providing donor states and international organizations an objective, verifiable reason for conditioning relief on North Korean cooperation. It would also be a reason that the North Korean government would have more difficulty discounting as unreasonable if they were publicly caught disaffirming relevant information.

(b) Feasibility of Implementation. – If there were doubts about the value of information exchange, the necessity of free exchange and dissemination ought to be clear by this point. The more difficult issue is whether this value can be effectuated in North Korea. History confirms an important point.²⁸³ In 1931-32, about six to eight million people died as a result of a severe famine that swept across the Ukraine and parts

²⁸¹ See, e.g., *id.* at *1.

²⁸² Of course, the one who possesses information also possesses an additional degree of leverage when negotiating terms of food relief. But the argument here looks forward to the consequences of a broken negotiation or a negotiation conducted under false pretenses – a very likely possibility when dealing with the North Korean government.

²⁸³ But see ARNOLD, *supra* note 2, at 2 (“The superficial physical similarities between one famine and another, which are often what strike casual observers most forcefully (as if all famine ‘victims’ were reduced to a single timeless anonymity of destitution and misery), are treated by man historians these days with great caution and are taken to conceal enormous and ineluctable differences between once society or one age and another.”).

of the former Soviet Union.²⁸⁴ Then in 1958-62, more than 30 million people died from famine in China.²⁸⁵ Both famines, apart from their devastating consequences, occurred in Communist countries under the rule of fierce leaders – Stalin and Mao, respectively. Because of the similarities, ranging from the governments’ control of everyday life to the centralization of agricultural and economic policies, these historical incidents provide a relevant framework from which to understand the recent North Korean famine.²⁸⁶ The basic lesson that emerges from the Ukrainian and Chinese famines is the importance of acknowledging the obstacles Communist systems pose in opposition to humanitarian efforts – namely, the lack of information access and the “prioritized allocation of limited resources” according to a government-created hierarchy. This feature of the North Korean’s political reality must inform all food relief strategies.²⁸⁷ Failure to incorporate these considerations is likely to result in an unwise strategy that may impede and/or exacerbate existing conditions. As the current situation stands, unfettered flow and exchange of information is more an ideal than a realistic possibility. But there may be ways of at least increasing the amount of information that is currently available. For example, there are technical improvements such as modern inventory-management systems that can “reduce the scope for diversion and assure donors that their contributions were used as intended.”²⁸⁸ There are also longer-term prospects that depend on the successful implementation of the types of recommendations listed below. For example, a vigorous push for expansion of human rights in North Korea could liberalize the country’s perception of speech and press rights. The likelihood of realizing this goal therefore ultimately depends on the prospect for larger-scale change in other aspects of the North Korean government.

C. Other Recommendations

²⁸⁴Lautze, *supra* note 18, at *1.

²⁸⁵*Id.*

²⁸⁶*See id.* (noting isolationism, internal political struggles, and precariousness of the military as other similarities among the three countries).

²⁸⁷*See id.*

²⁸⁸HAGGARD & NOLAN, *supra* note 15, at 37.

1. Recommendations for Donor Governments. – (a) Admit the Danger of Politicizing Relief.

– North Korea’s insular and unaccountable system of distribution naturally causes concern. In a government as notorious as North Korea’s, concerns are heightened into fears of corruption. Yet several countries still provide generous amounts of aid. There are two obvious motivations underlying this willingness to give aid even to a dictatorial regime such as North Korea. On the one hand is the moral impetus. Certainly, the role of humanitarianism and a desire to “do good” should not be lightly cast aside. On the other hand, another motivation, that may not be as philanthropic but just as compelling, is political considerations.²⁸⁹ Countries such as the United States and South Korea have unhidden political stakes in maintaining a relationship with North Korea. Indeed, the reason for famine aid might be partly explained as an effort at stabilizing an already unpredictable regime during its domestic crisis.²⁹⁰ In fact, the United States, Japan, and South Korea expressly endorse a “soft-landing” policy, which uses food aid as a means of keeping dialogue open and maintaining amiable relations.²⁹¹ This line of thinking accords with a general truism: “History teaches us that famine may threaten the survival of the people of a communist nation but it will not threaten the dominant political regime.”²⁹² Taking that statement as true, it becomes more understandable why food relief to North Korean citizens may be viewed as appropriate by these donor governments despite the oft-criticized nature of that government. There *is* a disconnect: Withholding food relief does not necessarily punish North Korea as much as it directly affects its citizens.

But there is also reason to suspect that such political uses of food aid are actually steps backward in the

²⁸⁹ *But see* D’Souza, *supra* note 1, at 5 (admitting the politicization of aid but also purporting that “a late response can be more likely attributed to lack of precise and usable information rather than purely to evidence of political manipulation).

²⁹⁰ *See* Goodkind & West, *supra* note 98, at 219 (surmising that such fears of destabilization were probably misplaced).

²⁹¹ Terry, *supra* note 114.

²⁹² Lautze, *supra* note 18, at *12.

larger effort to relieve North Korea of its food shortage problem. For one, nongovernmental organizations seeking to impose stricter monitoring mechanisms, for example, are undermined in their efforts when foreign governments directly contribute provisions of food for various political ends.²⁹³ North Korea has no reason to comply with monitoring requests because it bears no risk losing relief. Thus, although each state's effort to maintain friendly relations with North Korea may further its own interests, it may be doing so at the cost of realizing greater changes within the government. The problems that other governments encounter in their diplomatic relationships with North Korea are not too different than the problems underlying food relief efforts. At bottom, both sets of problems go to the dictatorial, secretive nature of North Korean government. This is an issue that cannot be remedied through piecemeal efforts; it requires wholesale change. But this wholesale change is not realizable if states continue to reinforce the existing government by complying with one-sided demands. The potential threat that North Korea poses to the international community is not to be undermined, but it seems reasonable that North Korea should not be permitted to dictate the terms of these diplomatic relationships. The subsequent recommendations in this section are designed to restore the balance in favor of donor governments.

(b) Channel Food Through the WFP. – The two largest bilateral donors, that is, those donors that do not channel food through the WFP, are China and South Korea. Both governments provide concessional sales or grants of food without conditioning relief on any grounds. South Korea, for example, continues to commit a tremendous quantity of food (about 90% of total WFP appeals) without requiring food relief to go to the most vulnerable populations. As previously mentioned, these unconditional grants create problems for international aid organizations that are attempting to establish better monitoring mechanisms. When South

²⁹³ See HAGGARD & NOLAN, *supra* note 15, at 7.

Korea provides assistance without any contingencies, it directly hampers the ability of other organizations to demand means of monitoring distribution.²⁹⁴ Permitting North Korea to preserve its multiple avenues of relief simply increases its bargaining leverage.

However, it is not enough for NGOs and other food donors to reprimand states for using humanitarian assistance as a foreign policy tool. Although the criticism may be descriptively accurate, it is perhaps an ideal at present more than the reality.²⁹⁵ The question must focus instead on how to motivate states to comply with more apolitical humanitarian organizations whose primary concern is relief rather than, for example, extracting diplomatic concessions.

Accordingly, states ought to be reminded of the benefits of channeling relief. First of all, donors ought to coordinate their efforts under trustworthy umbrella organizations in order to impose greater accountability on the part of the North Korean government. When states channel their donations through nongovernmental organizations such as the WFP, fewer political interests are likely to complicate relief efforts. Admittedly, this is not to propose that all NGOs are entirely apolitical but it is to say that their interests differ from those of states. NGOs such as the U.S. Committee for Human Rights in North Korea are independent organizations, created solely for the purpose of researching issues such as food shortages. Its aim is singular. It has no tradeoffs or concessions to make with the North Korean government. Granted, there are criticisms of the humanitarian relief effort as well, but in the end, “the sheer value realized by the access and presence of UN agencies, donor observers, private foundations, and NGOs should not be underestimated.”²⁹⁶

Second, channeling relief subtracts political considerations from provision of aid relief and thereby ensures

²⁹⁴*Id.* at 12.

²⁹⁵*See, e.g.,* Lautze, *supra* note 18, at *12 (“Fully understanding the political nature of this emergency is essential....”).

²⁹⁶Lautze, *supra* note 18, at *3.

that North Korean citizens' suffering is not only alleviated when their government appears cooperative to the donor government. It is uncontroversial to purport that states often have and are motivated by political interests even in the context of humanitarian relief. One example is the United States's public statement justifying an "inadequate humanitarian response":

We do not favor the current economic system of North Korea, which is a communist system, which has clearly failed the people.... [I]t is that system that has failed the North Korean people and has led to the starvation and deprivation that millions of North Koreans are now experiencing. So are we going to put into North Korea billions of dollars of American or Western or Asian money... to subsidize a communist economic system? No way.... We are not going to spend billions of dollars of American money to prop up a decrepit, ancient oxymoron, which is communist economics.²⁹⁷

Japan's recent decision to halt food its aid to North Korea is also illustrative. In May 2004, Prime Minister Junichiro Koizumi had pledged 250,000 tons of food aid to North Korea but decided later that year to withdraw its promise.²⁹⁸ North Korea, in a seemingly cooperative move, had handed over the cremated remains of one of Japan's abductees, Megumi Yokoto.²⁹⁹ But when DNA analysis established that the remains were not that of Yokoto, but of two unknown individuals, Japan's relations with North Korea unsurprisingly soured.³⁰⁰ In addition to suspending aid, Japan remarked that it would not participate in the WFP's new development program until North Korea demonstrated a "sincere attitude" regarding the abduction.³⁰¹

These examples illustrate the flip-side of how politics can run against relief efforts. Just as states may use

²⁹⁸Malaysian National News Agency (Bernama), *Japan to Continue to Suspend Food Aid to North Korea*, Jan. 30, 2006, <http://www.bernama.com/my/bernama/v3/news.php?id=178035>. About half of the pledged amount had already been disbursed by time of suspension. *Id.*

²⁹⁹*Id.* Yokota was abducted in 1997 at age 13. As for abductees that have not been repatriated, North Korea claimed that they had either died or had never entered the country. Japanese officials has remarked that these explanations were "unconvincing." *Id.*

³⁰⁰*Id.*

³⁰¹*Id.*

concessional food grants in order to procure a better relationship with North Korea, it can use the same grants to sanction the government. This tactic may make sense in political terms, but whether bargaining with food relief is normatively desirable is arguable. Thus, channeling aid actually provides states with a convenient method of appearing apolitical with respect to humanitarianism since they would still participate in relief efforts but be one step removed from the terms of delivery. Relatedly, this would at least compel North Korea to consider relief on more favorable terms for international organizations. If diplomatic partners are channeling relief, then North Korea has less of a reason – at least no reason it can publicly espouse – to criticize these states for an unwillingness to cooperate. In fact, North Korea would look even more suspicious if it demanded South Korea and the United States, for example, to provide relief directly to the government. It would further confirm suspicions that the government has reason to evade monitoring procedures.

(c) Demonstrate a Commitment to Human Rights. – Donor governments should attempt to take a broader perspective on the issue of food relief, recognizing that the problem is not one-dimensional. The benefits of promoting human rights are explored more fully below, but there are ways for states to cooperate with the international community’s efforts. For example, it is well known that North Koreans escape not merely because of food shortages but also due to the oppressive nature of the regime. Organizations such as Amnesty International therefore urge China – where most North Koreans flee – to provide asylum seekers to a “fair, satisfactory” process and to refrain from returning refugees when it knows they may be subject to human rights abuses upon repatriation.³⁰²

Adopting these type of policies or laws may be an attractive route for many governments to take. Firstly, these measures are entirely within the sovereign domain of each country. Secondly, although liberalizing refugee laws may be viewed by the North Korean government as retributive, there are strong international

³⁰²AMNESTY INT’L, *supra* note 5, at 40-41.

norms and human rights considerations that cut in the other direction. Also, it may be difficult for the North Korean government to publicly argue against laws that offer protection for citizens claiming persecution or starvation.

(d) Recognize State Sovereignty and Focus on Issues of Compliance. – In any discussion of international law, a dominant, recurring issue is that of state sovereignty. Whether humanitarian aid, for example, is desirable as a normative matter does not resolve whether that aid can be distributed or received. Common sense suggests that a destitute country should willingly – and perhaps gratefully – accept such foreign aid. But of course, the political, diplomatic, and cultural dynamics at work make aid distribution a more complicated matter.

Naturally, broader questions about state sovereignty arise. What is the role of foreign governments in humanitarian crises?³⁰³ To what extent should a state become involved in internal, domestic affairs? Even if extensive involvement is possible, what is the likelihood of enforceability? These are many of the same considerations surrounding international human rights law. Instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICE-SCR) explicitly contain provisions in support of an individual's right to food and freedom from hunger.³⁰⁴

In fact, international conventions such as the 1996 World Food Summit reaffirmed “the right of everyone

³⁰³Professor and Father Francis Winters argues for the adoption of “political morality,” which requires “universaliz[ation of]... the rights that one demands for oneself.” Under his theory, any rights that a country insists on for its own citizenry becomes obligated to grant the same right to citizens of other countries that “do not disqualify themselves as partners in the international political system by unjust or expansionist policies.” Byron, *supra* note 2, at 64 (internal quotation marks omitted) (quoting FRANCIS X. WINTERS, *POLITICS AND ETHICS* 95 (1975)).

³⁰⁴*See* International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) (providing “the fundamental right of everyone to be free from hunger”).

to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free of hunger.”³⁰⁵ More than 185 countries, including North Korea, subscribed to such statements.³⁰⁶

While the expressive value of such statements is not to be undermined, the extent to which public endorsements ought to be valued should be kept in mind. Perhaps reaffirmations of normative commitments actually hinder prospective action. Because such statements partially relieve institutional – and in this case, international – inertia, they may be given more weight than they perhaps deserve. In short, it is easier to say what the problem is than to do something about it. Reemphasizing commitments may also get countries “off the hook”, at least temporarily. The North Korean food shortage problem is concededly an involved issue that lacks a simple, one-time solution; making statements of commitment provides a visible signal without compelling action. If essentially no one has been able to resolve the problem, then there is little incentive for one group or government to pressure others to follow suit, especially when doing so involves resources that are necessarily being detracted from more pressing issues that may have simpler solutions.

3. Recommendations for International Aid Organizations. – (a) Understand the Nature of the Current Food Shortage. – As a preliminary and practical matter, it is important for international aid organizations to stay abreast of changes in North Korea’s need for food relief in order to appropriately tailor their efforts. When the North Korean government failed to meet the severe demand for food through its public distribution system, its socialist economy was largely displaced by a “bottom-up marketization.”³⁰⁷ Despite formal criminalization of acts such as traveling in search of food and trading, the government failed to entirely suppress these means of survival during the famine. As a result, the current food shortages “bear closer resemblance to food emergencies in market and transition economies, where access to food is deter-

³⁰⁵Rome Declaration on World Food Security, Nov. 1996, available at <http://www.healthydocuments.info/nutrition/doc32.html>.

³⁰⁶HAGGARD & NOLAND, *supra* note 15, at 9.

³⁰⁷*Id.* at 11.

mined by one's capacity to command resources in the marketplace."³⁰⁸ This means that currently, food shortages are primarily affecting the underemployed and unemployed working class.³⁰⁹ Policy prescriptions must take appropriate note of the changed nature of the food shortage.

(b) Establish Basic Norms. – “The desire to articulate clear norms among the humanitarian community is not simply an exercise in idealism; it is also designed to solve a particular set of incentive problems that can emerge in any humanitarian operation.”³¹⁰ Setting forth clear norms enables international aid organizations to construct strategies that are consistent with those goals and to better anticipate situations that may require them to either amend or abandon their efforts. Clarifying these basic issues at the threshold prevents the organization's theory of relief from being muddied by impulsive decisionmaking.

For example, in the case of the WFP, the agency has decided that one of its primary purposes is to allocate distributions on the basis of need; the most vulnerable populations, regardless of age, sex, social status, ethnicity, or any other classification are to be targeted first. Having established this as its priority, the WFP can then move forward with designing monitoring procedures that make sure that the needy are being fed. When it suspects that its goals are being averted, the WFP can then reconsider its distribution strategy to ensure compliance with their own norms. In essence, norms provide a framework for relief and they also impose a check on existing efforts.

Thus, if some food relief organizations establish the same type of norm as the WFP with respect to reaching the most needy populations, but they are not able to garner the relatively “broad” access that the WFP has been able to secure, then they ought to reconsider their participation in the food relief effort. It may be a sad reality that, despite their willingness, not all groups may have the capacity to carry on a meaningful food relief effort in North Korea. Humanitarianism must confront logistical limitations. At the same time, “[t]heir scarce human and financial resources could... [be] deployed to other areas of need where local governments

³⁰⁸ *Id.* at 9.

³⁰⁹ *Id.* at 22.

³¹⁰ *Id.* at 23.

would be more supportive of their mission.”³¹¹

Each organization that decides to involve itself in providing aid for the North Korean food shortage must carefully think through its objectives. In addition to the terms of monitoring, organizations may want to consider more specific conditions under which aid ought to be distributed. For example, whether aid should be extended if access to that region is denied, or how compliance ought to be measured so that international organizations are actually *negotiating* terms rather than readily complying with all of North Korea’s requests. Resolving these types of issues from the beginning will better focus the organizations’ efforts.

(c) Promote Human Rights. – The problem of food shortage in North Korea is not a problem that is independent of the government. The fact that the government may have kept secret its crisis for political reasons, or that it may be physically or economically diverting food at the expense of its citizens all indicate the lack of respect for basic human rights in North Korea. Without some transformation in the basic thinking of the government – whether it is motivated by economic, humanitarian, or pragmatic concerns – food shortages may very well continue to plague the country. Therefore, the need to promote human rights should not be considered as merely aspirational, but as a necessary precondition to securing North Koreans’ right to food.

The relationship between human rights and the right to food is indeed symbiotic. Human rights, whether they are conferred or not, cannot be enjoyed without the right to food; and the right to food, without human rights, becomes no more than a survival mechanism.³¹² Moreover, denials of certain rights, such as the North Korean’s criminal prohibitions on the freedom of movement directly impede citizens from exercising basic survival mechanisms. In North Korea, travel certificates take up to 15 days to process and are issued on narrow grounds: Visitation of relatives is permitted though certificates rarely issue for this purpose; marriage

³¹¹*Id.* at 38.

³¹²See AMNESTY INT’L, *supra* note 5, at 1 (“Human rights are universal, interdependent and indivisible.”).

or funerals of close relatives are permitted and more frequently recognized.³¹³ The effect of these procedures kept most citizens confined to their home regions, deterring migration in search of food during the famine. The ironic consequence of this prohibition was that those citizens who remained loyal to the government by complying with movement restrictions died in their hometowns while those who rebelled by illegally scavenging for food managed to survive.³¹⁴ Denial of other rights, such as the freedom of expression and the press, prevented accurate dissemination of information crucial to efforts aimed at relieving the consequences of famine.³¹⁵ From the perspective of donor organizations, this lack of information regarding actual need hindered efforts to target the most vulnerable populations. From the perspective of North Korean citizens, the dearth of available information not only suppressed political dissidents but precluded them from knowing what was going on within their own country.

Having established the reasons motivating this recommendation, it is again important to consider the issue of implementation. North Korea is presently a state party to numerous international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).³¹⁶ All of these instruments speak of an individual's right to food.³¹⁷ Notably, the ICESCR provides that state parties must

³¹³*Id.* at 15. If an individual cites a relative's funeral as the reason for seeking a travel certificate, he must also provide documents verifying the fact of death. *Id.*

³¹⁴*Id.* at 16.

³¹⁵Amartya Sen goes so far as to argue that "uncensored and active news reporting helps to prevent famines." *Id.* at 20 (internal quotation marks omitted) (citing Larry Kilman, *Free Press... A Nation's Health Indicator*, THE HINDU, May 3, 2003); see also ARTICLE 19, *supra* note 1, at 3.

³¹⁶AMNESTY INT'L, *supra* note 5, at 2.

³¹⁷Article 6 of the ICCPR provides for "the right to life", which must be protected by state parties taking active measures "to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics." *Id.* at 6 (internal quotation marks omitted) (quoting Office of the High Commissioner for Human Rights, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, ¶ 2, U.N. Doc. HRI/GEN/1/Rev.4 (2000)). Article 27(1) of the CRC provides that every child has a right to a standard of living that guarantees adequate physical, mental, spiritual, moral, and social development; to that end, under Article 24(2)(c) and 27(3), state parties are

“take appropriate steps to ensure the realization of [the right to food].”³¹⁸ In a subsequent clarification of what satisfies this obligation, the Committee on Economic, Social and Cultural Rights squarely rejected defining the right to food narrowly (e.g., as a certain amount of caloric intake) and held that “[t]he right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”³¹⁹ Technically then, North Korea has an international obligation to abide by the terms of these instruments, some of which provide more expansive rights than the North Korean Constitution.³²⁰

Of course, the reality is that North Korea has not fulfilled these international obligations and many critics would also argue that North Korea is not even working towards these obligations. If organizations are serious about relieving North Koreans from the oppressive reign of Kim Jong Il, then they must aggressively seek methods of promoting and enforcing human rights norms within the country. This initiative may include raising awareness in the international community as well as designing methods of permeating the North Korean’s paternalistic embrace of its citizenry. The fact the North Korea responded to the European Union’s criticisms of its human rights record by asking the WFP to withdraw provides at least some circumstantial evidence that the government is sensitive to external feedback. This may be because the government fears that such information might be communicated to its “oblivious” citizens and/or because such comments undermine the pervasive control North Korea possesses over all aspects of its society. Whatever the reason, NGOs and other segments of the international community ought to devote substantial resources and energies into the human rights initiative. Although these efforts may take longer to realize, they offer the benefit of long-term, deep-rooted change.

expected, *inter alia*, to combat diseases, malnutrition, and provide material assistance. AMNESTY INT’L, *supra* note 5, at 5. Article 14 of CEDAW provides that state parties must “take all appropriate measures to eliminate discrimination against women in rural areas” in areas such as health care (Article 12) as well as economic and social life (Article 13). *Id.*

³¹⁸*Id.* at 3 (internal quotation marks omitted) (quoting ICESCR, *supra* note 303, art. 11.1).

³¹⁹The UN Special Rapporteur on the right to food considers this comment as “the existing authoritative interpretation of the right to food.” AMNESTY INT’L, *supra* note 5, at 4.

³²⁰For example, the North Korean Constitution does not confer economic, social, and cultural rights. *Id.*

3. Look to Development. – Relatedly, NGOs and UN agencies like the FAO should remember to maintain a long-term perspective as to North Korea’s economic, social, and agricultural development. Several scholars concur that that famine is preventable,³²¹ but that “[f]amine prevention requires... long-range needs [to] be addressed.”³²² Development efforts expand the focus from immediate relief to more chronic problems such as poverty and malnutrition, which are the “most visible and dramatic aspect of hunger.”³²³ With studies confirming that a focus only on stopping starvation fails to restore victims both physically and economically, there is a sense that *more* must be done.³²⁴ Practically, this means enlisting the help of established organizations committed to development.

4. Stay Involved. – Lastly, the recommendation to “stay involved” is a motivational one. Several sectors of society are able to participate on some level to alleviate the problems of North Korea’s food shortage. On an individual level, the public ought to remember that they possess “enormous influence on [their] legislators and other policy makers simply by asking them to adopt specific measures toward the prevention of hunger and famine.”³²⁵

It is true that the North Korean problem presents a very challenging issue, but there is a great danger with avoiding the difficult issues simply because they are difficult. As one author warns:

Western society is on the brink of collapse – not into crime, violence, or madness or redeeming revolution, as many would believe – but into withdrawal. Withdrawal from the whole system of values and obligations that has historically been the basis of public, community and family life. Western societies are collapsing not from an assault on their most cherished values, but from a voluntary, almost enthusiastic abandonment of them by people who are learning to live private lives of an unprecedented completeness with the aid of the momentum of a technology which is evolving more and more into a pattern of socially atomizing appliances.³²⁶

³²¹ See D’Souza, *supra* note 1, at 5.

³²² Arthur Simon, *Developing a Coordinated and Coherent U.S. Government Policy*, in Famine (Kevin M. Cahill ed.), *supra* note 2, at 152, 152.

³²³ *Id.* at 153 (“Famine is only the tip of the iceberg.”).

³²⁴ GOLKIN, *supra* note 1, at 47.

³²⁵ Simon, *supra* note 322, at 159.

It is important to keep a realistic, balanced understanding with respect to the proper methodology of relief efforts, but it is just as important to remember the ethical dimension of the North Korean famine. Both donor governments and international aid organizations ought to recognize the potentially crucial roles they possess in effectuating change.

V. Conclusion

The North Korean famine is a unique phenomenon for more than one reason. As a general matter, famine itself is an unusual occurrence.³²⁷ Although it may seem more “understandable” that famine erupts in Communist regimes, famine is rare even in those societies. Apart from the Ukrainian famine during 1932-33, which was deliberately imposed as a part of Stalinization, there have been no peacetime famines in relatively advanced societies.³²⁸ Thus, the North Korean famine is properly characterized as “an exceptional... event.”³²⁹

The famine might be even more “exceptional” because of the unique nature of the regime that currently exercises power. North Korea remains a mysterious force in the international community, with much of the commentary focusing on Kim Jong Il’s pervasive control over the society as a whole. Given what is known and speculated about North Korea, it may no longer seem surprising that the government did indeed create and perpetuate a famine. Whatever moral or political criticism may follow that proposition, the more important focus may be on what the international community ought to do in response to the present reality.

³²⁷ See, e.g., ARNOLD, *supra* note 2, at 6 (“Even in the most impoverished societies, famines are not everyday occurrences...”); Robert W. Kates & Sara Millman, *On Ending Hunger: The Lessons of History*, in HUNGER IN HISTORY: FOOD SHORTAGE, POVERTY, AND DEPRIVATION 389, 404 (Lucile F. Newman et al. eds., 1990) (“[F]amine is already rarer and becoming even rarer.”). But see Dennis G. Carlson, *Famine in History: With A Comparison of Two Modern Ethiopian Disasters*, FAMINE 5, 5-6 (Kevin M. Cahill ed., 1982) (stating that famines are “frequent” occurrences though admitting that they are less so in the New World).

³²⁸ NATSIOS, *supra* note 1, at 7.

³²⁹ ARNOLD, *supra* note 2, at 6.

As noted before, one can continue to hope for a radical change in leadership or even democratization – but at the moment, these remain *hopes* rather than possibilities.

Indeed, it is frustrating to learn about such a devastating incident in North Korea for more than one reason. First of all, a famine itself is an unfortunate crisis. Too many people die and suffer from the simple lack of food. Given the adequacy of global food supplies and the theoretical capacity to feed the hungry, famine emerges as an even harsher phenomenon. It has been almost half a century now since the “threshold of theoretical food sufficiency” has been met.³³⁰ As one commentator noted, “effective... early-warning systems, national and global emergency food reserves, and improved experience with distribution” has brought the end of famine “well within sight.”³³¹ Perhaps because of these realities, aspirational rhetoric has abounded in the past several decades about the global ability to end hunger. For example, when Henry Kissinger served as the U.S. Secretary of State, he stated during a multinational conference that, “In ten years time no child will go to bed hungry.”³³² Expressive commitments were soon matched with international initiatives such as the Bellagio Declaration in 1989, which was promoted in an effort to overcome hunger in the 1990s.³³³ Despite all of this, the famines encountered in the past century have been “among the worst in human history.”³³⁴

Secondly, famine in North Korea seems to present an insurmountable number of problems. The recommendations pale in comparison to the gravity of the issue at hand. One is left wondering whether anything

³³⁰This threshold is an amount sufficient to provide a “near-vegetarian diet for all if distributed according to need.” Kates & Millman, *supra* note 327, at 404.

³³¹*Id.*

³³²ARTICLE 19, *supra* note 1, at 12.

³³³See DEROSE, MESSER & MILLMAN, *supra* note 2, at 185-86.

³³⁴Harrison, *supra* note 330, at xiii.

truly can be done in this situation. In all honesty, perhaps there is not that much we can do to improve the situation in North Korea. But even if our efforts prove imperfect, there are steps to be taken.

The recommendations above have been categorized under their respective headings for organizational purposes, but policymakers must be cognizant of not only the multidimensional but also the interrelated nature of the North Korean food shortage problem.³³⁵ A comprehensive policy must consider the merits and shortcomings of the proposed recommendations in tandem. The problem of food aid, as demonstrated above, is not simply a matter of scarcity of resources. Rather, there are “many roots”³³⁶ and the various considerations must be considered in conjunction with one another. Admittedly, it appears that not all of the recommendations are neatly reconcilable. For example, some have argued that food aid takes precedence over human rights concerns since the latter is “meaningless in the absence of the basic sustenance required to maintain life itself.”³³⁷ But this is to treat two interrelated factors as mutually exclusive options: “a famine of this magnitude could only have occurred in a system in which the political leadership was insulated from events on the ground and lacking in accountability to the people.”³³⁸ In other words, guarantee of human rights in North Korea may produce more honest, dependable distributions of food relief. Thus, those interested in providing food aid must not possess a parochial vision of its relief efforts. Rather, cooperative dynamism is necessary among and across willing donors.³³⁹

In another sense, the North Korean famine is not so different. The North Korean government is not the first to perpetuate famines “as a matter of policy or punishment as through ignorance or wilful [sic] neglect.”³⁴⁰

Unfortunately, history is replete with incidences of dictatorial leaders going to considerable lengths to en-

³³⁵ See G. Ainsworth Harrison, *Introduction*, to *FAMINE* (G. Ainsworth Harrison ed.), *supra* note 1, at xiii (“[T]here are numerous interlocking factors that produce famine...”); *id.* at xvi (“To deal with these co-operation at all levels, from research and development to financial and political aid, is needed.”).

³³⁶ HAGGARD & NOLAN, *supra* note 15, at 10.

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ See DEROSE, MESSER & MILLMAN, *supra* note 2, at 187 (emphasizing “the need for greater cooperation between the different sectors of society that potentially impact on food policy”).

³⁴⁰ ARNOLD, *supra* note 2, at 97 (providing examples of other intentional famines).

trench their own power. But that same history provokes a more hopeful possibility. At other points in history, famine served as a significant “historical marker[]” that influenced the future course of the country.³⁴¹ This means that despite the devastation that often accompanies famine, famine also brings potential for change. Because famine is a type of “collective catastrophe,” the incidence is remembered within the “collective memory” of those who were affected as well as those who simply observed its occurrence.³⁴²

The task, as simple as it sounds, is for the international community to remember the tragic crisis that befell North Korea this past decade. The situation ought not to be recorded in scholarship for the sake of documenting history, but it ought to provoke serious questions about the nature of the North Korean government as well as the course of action that we ought to pursue given this knowledge. Famine brings to light deeper issues that underlie our collective society. Food has always been “one of the principal sinews of power,”³⁴³ and an individual’s access to or denial of food is not merely about maintaining that person’s ability to live a healthy life – it is at least about the pervasiveness that state power and legal rights possess over individual lives. When we acknowledge that something *can* be done, though the steps may appear too incremental for some, then it seems only right that something ought to be done. Although it may prove unsatisfactory, perhaps all we can do at this present moment is to maintain vigilant awareness of the North Korean problem in the hopes that, when the opportunity arises, we can construct a thoughtful and comprehensive plan to effectuate much more meaningful change.

³⁴¹For example, Ireland’s “Great Hunger” in the 1840s is described as a “major watershed in the history of Ireland and the Irish people [because it] ‘completely altered the course of Irish history, left an indelible mark on the mentality, attitudes, and beliefs of the Irish, and made Ireland into a demographic anomaly which singles it out as *sui generis* in modern European history.’” *Id.* at 11 (quoting JOEL MOKYR, WHY IRELAND STARVED: A QUANTITATIVE AND ANALYTICAL HISTORY OF THE IRISH ECONOMY, 1800-1850 (1983)).

³⁴²*See id.* at 16.

³⁴³*Id.* at 3.