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THE THAI IMMIGRATION'S DECRIMINALIZATION PRACTICES
TOWARDS NORTH KOREAN REFUGEES



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A Thesis Submitted in Partial Fulfillment of the Requirements
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ปรากฏการณ์อพยพเข้าสู่ประเทศไทยของผู้ลี้ภัยชาวเกาหลีเหนือยังคงมีจำนวนเพิ่มขึ้นทุกปี เจ้าหน้าที่ชาวไทยได้ปรับใช้ นโยบายเพื่อดำเนินการกับผู้ลี้ภัยเกาหลีเหนือตามขั้นตอนและระเบียบแบบแผนภายใต้การกำกับของสำนักงานตรวจคนเข้าเมืองไทย เพื่อคุ้มครองสิทธิของผู้ลี้ภัยและคงไว้ซึ่งอำนาจอธิปไตยของไทย ผลของนโยบายนี้คือ ผู้ลี้ภัยชาวเกาหลีเหนือจะถูกคัดตติกลงโทษให้จ่ายค่าปรับ หรือ ควบคุมตัว ในข้อหาเข้าประเทศอย่างผิดกฎหมาย โดยศาลยุติธรรม หลังจากนั้นจะถูกกักตัวที่ศูนย์ควบคุมผู้ต้องกักเขตกรุงเทพฯ จนกว่าจะมีโอกาสเดินทางไปยังประเทศที่สาม ผู้ลี้ภัยเกาหลีเหนือในประเทศไทยอยู่ภายใต้กฎหมายตรวจคนเข้าเมืองแห่งชาติ ซึ่งยังขาดข้อกำหนดหรือบทบัญญัติสถานะของผู้ลี้ภัย อย่างไรก็ตาม ทางกรมไทยยังไม่เคยส่งตัวผู้ลี้ภัยเกาหลีเหนือกลับประเทศ

สำนักงานตรวจคนเข้าเมืองได้ดำเนินการเปลี่ยนสถานะคนกลุ่มนี้ให้เป็นผู้ลี้ภัยตามกฎหมายในทางปฏิบัติ เพื่อที่จะปรับสิทธิมนุษยชนของผู้ลี้ภัยชาวเกาหลีเหนือภายใต้การควบคุมตัว จากผลการศึกษาชี้ให้เห็นว่า พวกเขาคือผู้ลี้ภัยที่ได้รับการคุ้มครองทางพลตินัย สิ่งนี้ช่วยปกป้องสิทธิของผู้ลี้ภัย แต่ก็ปฏิเสธไม่ได้ว่ายังคงมีสภาพการณ์ในปัจจุบันบางประการที่ไม่ได้รับการแก้ไข เช่น ความรวดเร็วของกระบวนการการตั้งถิ่นฐานใหม่ สภาพความเป็นอยู่ที่ควรจะดีขึ้นในศูนย์ควบคุมผู้ต้องกัก เป็นต้น

การศึกษานี้ใช้วิธีการวิจัยเชิงคุณภาพเพื่อสำรวจสถานการณ์ที่เกิดขึ้นจริง เรื่องนโยบายและขั้นตอนการเปลี่ยนสถานะผู้ลี้ภัยเกาหลีเหนือให้ถูกกฎหมายในระหว่างที่ถูกควบคุมตัวอยู่ในศูนย์ควบคุมผู้ต้องกักกรุงเทพฯ โดยเก็บข้อมูลจากการสัมภาษณ์ผู้ให้ข้อมูลหลัก วิเคราะห์ข่าว และบทความ เพื่อที่จะรวบรวมข้อมูลให้เป็นปัจจุบัน นอกจากนี้ การศึกษานี้ได้ทบทวนวรรณกรรมเรื่อง ตราสารระหว่างประเทศที่เกี่ยวข้องกับผู้อพยพพร้อมด้วย เพื่อใช้ในส่วนการตีความสถานะตามกฎหมายของผู้ลี้ภัยเกาหลีเหนือ

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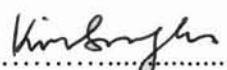
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The phenomenon of North Korean asylum seekers entering Thailand continues to grow in number every year. To protect the rights of the North Korean asylum seekers as well as Thailand's sovereignty, Thai authorities have adopted a policy of formalizing the process for dealing with North Korean asylum seekers under the supervision of the Thai Immigration Bureau. The result of the policy has been that North Korean asylum seekers are sentenced to a punishment of a fine or detention for their illegal entry in a court of law and then detained at the Immigration Detention Center in Bangkok until travel to a third country is possible. North Korean asylum seekers in Thailand are subject to the national immigration laws, which lack provisions for refugee status determination. However, Thailand has never repatriated North Korean asylum seekers.


In order to improve the human rights of North Korean asylum seekers under detention, the Thai Immigration Bureau has implemented decriminalization practices towards North Korean asylum seekers. As a result, they are *de facto* asylum seekers receiving protection. This helps to protect the asylum seekers rights. However, it is undeniable that the current conditions could still be improved, i.e. faster resettlement process for them and more decent condition in the detention center.

This study employed qualitative research methods to investigate the actual situation of the Thai Immigration Bureau's decriminalization policy towards North Korean asylum seekers in the IDC Bangkok. Data was collected through Interviews with key informants as well as from news articles in order to gather up-to-date information. In order to define the legal status of North Korean asylum seekers, the study relied on a review of the relevant literature on international instruments relating to refugees.

Field of Study: Southeast Asian Studies

Student's signature.....

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CONTENTS

	Page
Abstract (Thai).....	iv
Abstract (English).....	v
Acknowledgements.....	vi
Contents.....	vii
List of Tables.....	xi
List of Figures.....	xii
List of Abbreviations.....	xii
Chapter I. Introduction.....	1
1.1. Rationale.....	1
1.2. Significance of the Study.....	3
1.3. Objectives.....	4
1.4. Methodology.....	5
1.4.1. Documentary Research.....	5
1.4.2. Field Research.....	5
1.4.2.1. Target Sampling.....	6
1.4.2.2. Data Collection.....	6
1.4.2.3. Data Analysis.....	8
1.5. Limitation of the Study.....	8
Chapter II. Asylum Seekers in International Law and Decriminalization.....	10
2.1. International Legal Instruments Relating to Refugees and Related International Laws.....	10
2.1.1. Definition of Asylum Seekers.....	11
2.1.2. United Nations Refugee Instruments.....	11

	Page
2.1.3. United Nations Human Rights Instruments.....	14
2.1.4. UNHCR Instruments.....	15
2.1.5. Customary Laws.....	15
2.1.6. Bali Process.....	16
2.2. Core Principles as Enshrined in International Laws.....	17
2.2.1. Non- <i>Refoulement</i>	17
2.2.2. Non-Penalization.....	18
2.3. Obligation of Thailand.....	19
2.4. Refugee <i>sur place</i>	20
2.5. Concept of Decriminalization.....	21
2.5.1. Definition of the Term.....	22
2.5.2. Decriminalization of Illegal Entry and Stay of Refugees.....	23
Chapter III. North Korean Asylum Seekers.....	24
3.1. Severeness of Human Rights Violation in North Korea.....	24
3.1.1. Torture.....	26
3.1.2. Political Prison Colonies: Labour Camps.....	28
3.1.3. Food Shortage.....	30
3.1.4. Human Trafficking and Smuggling.....	32
3.2. Status of North Korean Asylum Seekers in Foreign Countries.....	34
3.2.1. Status of Refugee <i>sur place</i>	35
3.2.2. Sensitiveness of North Korean Asylum Seeker Issue.....	40
3.2.2.1. Country of Origin.....	40
3.2.2.2. Country of Resettlement.....	42
3.2.2.3. Transit Countries.....	43
3.3. Status of North Korean Asylum Seekers in Thailand.....	44
3.3.1. Refugees Status in Thailand.....	44

	Page
3.3.2. Thailand's Policy of Tolerance towards North Korean Asylum Seekers.....	48
3.3.2.1. Policy before August 2006.....	49
3.3.2.2. Formalization of Process in 2006.....	50
3.3.2.3. Hunger Strike in 2007 and the Aftermath.....	53
Chapter IV. The Thai Immigration's Decriminalization Practices towards North Korean Asylum Seekers.....	56
4.1. Process from Arrival to Deportation of North Korean Asylum Seekers in Thailand.....	56
4.2. Analyze Decriminalization Practices in Each Process.....	59
4.2.1. Not to Report to Embassy of North Korea.....	59
4.2.2. Reduction of Detention Period.....	60
4.2.3. Exempt of Restriction.....	61
4.2.4. Flexibility of Detention Period.....	61
4.2.5. Exit Permit: Permission to Travel out of Thailand.....	62
4.2.6. Process of Decriminalization of North Korean Asylum Seekers	62
Chapter V. Conclusion.....	64
5.1. Conclusion on Status of North Korean Asylum Seekers in Thailand.....	64
5.1.1. Conclusion on North Korean Asylum Seekers' Status in Thailand.....	64
5.1.2. Conclusion on <i>de facto</i> Decriminalization.....	66
5.2. Discussion.....	67
5.3. Recommendation.....	70

	Page
References.....	72
Bibliography.....	76
Appendix.....	77
Biography.....	81



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

LIST OF TABLES

		Page
Table 1.	Number of Persons Detained and Deported from the Thai immigration Detention Center in Bangkok, by region and country, 1999-2002, and in 2003.....	50
Table 2.	Number of Detained North Korean Refugees in Maesai Immigration Office	51
Table 3.	Number of North Koreans entering South Korea.....	51


 ศูนย์วิทยทรัพยากร
 จุฬาลงกรณ์มหาวิทยาลัย

LIST OF FIGURES

	Page
Figure 1.	Process of Decriminalization of Refugee.....23
Figure 2.	Process of Decriminalization of Refugee <i>sur place</i>24
Figure 3.	Process from Arrival to Deportation of North Korean asylum seekers in Thailand.....57
Figure 4.	Process of Decriminalization of North Korean Refugee.....63



ศูนย์วิทยพัทพยกร
จุฬาลงกรณ์มหาวิทยาลัย

LIST OF ABBREVIATIONS

HRW	Human Right Watch
HSA	Headquarters of Security Agency
IDC	Immigration Detention Center
PSA	People's Safety Agency
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
WFP	World Food Programme



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

CHAPTER I

INTRODUCTION

1.1. RATIONALE

Conflict and persecution are key explanatory variables for refugee flows and displacement within and across borders globally. Ethnic and civil conflict, state building, state collapse and failure, and government persecution are all inherently violent processes and can lead directly to mass forced migration. (Newman, 2003) As a case study groups for victims of forced displacement, this study focuses on North Korean asylum seekers who fled their home country to seek shelter in Thailand.

In recent decades, a great number of North Korean asylum seekers have fled to China, driven by human rights abuses in their country of origin. They have been motivated by a broad array of human rights violations and related deprivations: political repression and lack of basic freedoms, unwarranted detentions, torture and public execution, and prolonged famine caused by economic mismanagement. As a result, both a large number of those who have faced persecution by the regime as well as others who have been forced to move across borders in search of basic necessities have sought refuge outside the country. Some of these migrants subsequently try to seek asylum in other countries, including many who cross into Thailand to seek refuge before resettling in third countries.¹

Forced displacement is both a threat to, and a product of, the international system of nation-states. (Turton, 2002) As Turton's states, refugees are produced by the threat of persecution with their nation of origin but after they flee across borders, they also become a threat to the receiving nation's interior security by crossing into

¹ Muntarbhorn, Vitit. 2007. "Address of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea". At *the International Conference on the North Korean Human Rights Situation*, 18 September 2007, Bangkok, Thailand.

their territory. Adelman describes refugee flows as ‘the Achilles’ heel’ of the nation-state system. He notes that the twentieth century became the century of refugees because of the increasing partition of the globe into a system of individual nation-states within which states were assigned the role of exclusive protectors of the rights of their citizens. After the globe had been fully divided in this manner, those fleeing persecution in one state had nowhere to go but into the sovereign territory of another state, which required the entrance permission of the second state. (Adelman, 1999)

Thailand has become the top choice of asylum country for North Korean asylum seekers to pass through as a final transit and meeting point for scattered families to reunite in before resettlement to third countries. According to the report of the Ministry of Unification of South Korea, 38% of North Koreans who resettled in South Korea were from Thailand in 2007, which is the highest rate among transit countries.² This raises the first question addressed by this study: As Thailand does not legally recognize migrants entering its territory as refugees, what are the pull-factors that attract North Korean asylum seekers to the country?

Thailand has a history of providing safe shelter to over a million displaced persons from neighbouring countries over the last several decades. Towards North Korean asylum seekers, Thailand has always been cooperative in assisting North Korean’s to resettle to third countries rather than attempting to repatriate them. Although Thai authorities have tried to implement tough measures to deal with asylum seekers at its borders, and has detained and prosecuted such persons as well as those assisting them to cross into Thailand without payment, statistics show that most North Korean asylum seekers still prefer Thailand in spite of the strict and punitive policies of the Thai authorities.

² Ministry of Unification of Republic of Korea. 2008. “The Parliament Investigation Statistic data”: Total 2,544 of North Korean Asylum seekers resettled in South Korea in 2007, 38% of them are from Thailand, 28% from Southeast Asian countries except for Thailand, 18% from Mongolia, and 15% from China. *available from:* <http://nk.joins.com/news/view.asp?aid=3212721>

Thailand now faces a new phase of refugee concerns due to the increasing influx of North Korean asylum seekers to the country. The carrying capacity of the Immigration Detention Center (IDC) in Bangkok has become overwhelmed, bringing with it human rights concerns about the detention conditions and the broader policies towards refugees in Thailand. However, from Thailand's point of view, the situation has been interpreted quite differently. Delays in the visa process by resettlement countries such as the U.S.A. and South Korea are viewed as the cause of the over-accumulation of North Korean asylum seekers in the detention center rather than the policies of the Thai Immigration Bureau. As stated earlier, it is true that North Korean asylum seekers in Thailand are dealt with as immigration offenders and prosecuted in accordance with national laws. In practice however, none of the North Korean asylum seekers have been forcibly repatriated unlike some other immigration offenders in Thailand. In addition, they are provided with special treatment, which this study refers to as "decriminalization practices." These practices show that even though Thai authorities do not provide legal entitlement to refugee status, North Korean asylum seekers are not treated as ordinary criminals but rather victims of forced migration. In this respect, this thesis argues that not only the opportune geographic location of Thailand but also the Thai Immigration Bureau's decriminalization practices toward North Korean asylum seekers have been a contributing pull-factor for asylum seekers to Thailand.

1.2. SIGNIFICANCE OF THE STUDY

This research is the first study on the situation in Thailand as a receiving country for North Korean asylum seekers. There have been many studies on North Koreans fleeing their home nation but very few exist related to their experiences in transit countries. More specifically, there are no studies that have been conducted which focus on the decriminalization practices of Thai immigration officers towards North Korean asylum seekers. Therefore, this research makes a unique contribution to the academic literature available on Thai immigration policies and

decriminalization practices towards North Korean asylum seekers.

The study showed that the Thai Immigration Bureau's decriminalization practices have helped to bring about the improvement of human rights for North Korean asylum seekers even though they are not allowed to gain refugee status under Thai law. It was also found that Thailand's efforts to protect North Korean asylum seekers' human rights faces the twin burdens of a limited budget and potentially conflicting national security concerns. The whole process from arrival of North Korean asylum seekers in Thailand to resettlement in third countries was also analyzed to provide a better understanding of the procedures involved.

A thorough literature review on international refugee laws and the history of refugees in Thailand was conducted to provide a background for the study. It was found that there have been many incidents of refugee crises in modern Southeast Asian history and that Thailand has inordinately been in the center of these situations as an asylum country. This study reviewed the refugee policies of the Thai Government since its first recognition of displaced persons, analyzed the situation of North Korean asylum seekers in Thailand since their first arrival and aggregated the statistical data available on North Korean asylum seekers from various sources.

1.3. OBJECTIVES

This research has three objectives:

- i) To define the status of North Korean asylum seekers in Thailand based on international refugee instruments and examine their situation in Thailand;
- ii) To investigate the Thai Immigration Bureau's decriminalization practices toward North Korean asylum seekers in the Bangkok IDC;
- iii) To analyze Thailand's policy of promoting and protecting human rights through a case study of decriminalization practices toward North Korean asylum seekers.

1.4. METHODOLOGY

Methodology of this research included documentary research and qualitative field research. The documentary research was carried out to review the international refugee instruments and existing literature related to North Korean asylum seekers in order to establish the context for North Korean asylum seekers' claims to refugee status. The qualitative field research was designed to assess Thai policies and practices towards North Korean asylum seekers.

1.4.1. Documentary Research

There are few academic resources available that directly relate to the situation of North Korean asylum seekers in Thailand because they are a fairly recent phenomenon. In addition, the relatively small scale flows of North Korean asylum seekers into Thailand compared with those from Myanmar, Lao PDR and Cambodia, means that there are fewer NGOs or academic researchers working on the issue. However, there have been a large number of internet news articles reporting on noteworthy events related to this refugee population in Thailand, i.e. The Thai Police crackdown and arrest of 172 North Korean asylum seekers at a safe house in Bangkok in 2006, or the hunger strike of North Korean asylum seekers in the Bangkok IDC in 2008.

In addition to internet-based news media, the academic literature available was used to review the situation of human rights of North Korean asylum seekers, the history of refugees in Thailand and international refugee law.

1.4.2. Field Research

This thesis assessed the Thai policies towards North Korean asylum seekers

as well as the actual practice of decriminalization in the IDC by employing qualitative research methods. As the study target group involved with the policy is not that large, key informant interview was chosen as the main data collection tool.

1.4.2.1. Target sampling

To examine the actual condition of decriminalization practices in the IDC, the study focused on the Thai immigration officials who are responsible for the North Korean asylum seekers in the Bangkok IDC as the primary study target group. To verify the reliability of the responses of the Thai immigration officials in the IDC, additional informants from other organizations and institutions were also interviewed. These included North Korean asylum seekers themselves are detained in the IDC in Bangkok, South Korean officials from the Ministry of Foreign Affairs and Trade who are responsible for North Korean asylum seekers in Thailand and NGO activists who work on the human rights concerns of North Korean asylum seekers in Thailand.

1.4.2.2. Data collection

Originally, it was planned that the research would include an exploratory field trip to the IDC to investigate the decriminalization practices of the Thai immigration authorities in the IDC through interview with Thai immigration officials and North Korean asylum seekers who are detained in the IDC. However, despite three official interview requests and four informal efforts through personal channels, all of the requests for interviews with asylum seekers were rejected by the Thai Immigration Bureau. The reasons given for the rejections were that the topic is too sensitive to Thai national security and that moreover, the Thai Immigration Bureau does not have the authority to grant interviews with North Korean detainees to non-relatives. Therefore, in consideration of the time and resources available, the research methods were reconceptualised.

To collect data from Thai immigration officers, a questionnaire was sent and

completed by the research subjects. The questionnaire was comprised of thirteen questions and divided into two parts. The first part mainly pertained to questions about the policy upon which decriminalization is based and the second part addressed the process of decriminalization in practice.

A group interview with North Korean asylum seekers was finally allowed in March 2011. Due to time limitations, it was not possible to count the exact number of interviewees present. The total number was approximately 40, the majority of whom were female adults with a few male adults and children also present. The research subjects had been detained in the IDC for approximately 3 weeks. Only 40 minutes were permitted for the interview by the authorities.

The research also conducted individual interviews with three male North Korean asylum seekers during the same period. To gain more detailed information from the interviews with asylum seekers a questionnaire had to be used as the research tool as the interviewer is not able to understand the North Korean dialect exactly.

Interviews with South Korean Government officials and NGO activists were carried out with relevant informants. The interviews with NGO activists helped with providing an understanding of the situation of North Korean asylum seekers in Thailand more comprehensively however, most of the data gathered during these interviews was anecdotal in nature.

An online community website for North Korean asylum seekers who have already resettled in South Korea was also used as an informal source of data for this research. The site proved to be the most extensive source of information available relating to the conditions for North Korean asylum seekers under detention in the IDC Bangkok.

1.4.2.3. Data analysis

To explain the process of decriminalization in the IDC, the research documented every case of decriminalization practices found through both the interviews conducted and from secondary sources of data such as news articles found on the internet.

Since the data collected from the IDC Officer completely denied the existence of decriminalization practices, the data collected from Thai authorities contradicted that collected from North Korean asylum seekers and NGO human rights advocates. The study privileged the data collected from the interviews with North Korean asylum seekers and NGOs because the data from the two different sources supported each other and were triangulated by further sources from internet websites.

1.5. LIMITATION OF THE STUDY

It should be stated that the political sensitivity of the topic proved to be a significant barrier for a master's level research project. In addition, the rapidly evolving nature of the issue was also an obstacle to finding up-to-date sources of secondary data. Compared with the literature available on asylum seekers from Myanmar, Lao PDR and Cambodia in Thailand, the volume of material on North Korean asylum seekers is still very limited. As a result, there were less relevant statistical data and fewer published research studies to review on North Korean asylum seekers. In addition, the responsible Thai authorities are reluctant to release information relating to Thailand as a transit country likely because they do not wish to further entrench Thailand as resettlement route for North Korean asylum seekers.

The limited amount of theoretical work available on decriminalization cases within the field of refugee studies should also be mentioned. This lack of an appropriate theoretical framework made it difficult to determine the rationale for the Thai Immigration Bureau's policy exception towards North Korean asylum seekers

and whether it can be viewed as a case of decriminalization of migrants who are not granted refugee status from the asylum country.

As a topic for further research, it would be valuable to conduct a study that addresses whether the formalization of the process for assessing the asylum claims of North Korean's in Thailand is still more beneficial for asylum seekers when that process includes detention in the IDC.



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CHAPTER II

ASYLUM SEEKERS IN INTERNATIONAL LAW AND DECRIMINALIZATION

2.1. INTERNATIONAL LEGAL INSTRUMENTS RELATING TO REFUGEES AND RELATED INTERNATIONAL LAWS

International refugee law is a set of rules and procedures that is designed to protect both persons seeking asylum from persecution and those recognized as refugees under the relevant instruments. These are primarily concerned with the defining the term “refugee” and the scope of protection required for their human rights.

The main source for international refugee legislation is treaty law, notably the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention) and its companion 1967 Protocol. The 1951 Convention is the cornerstone of most of the international norms, instruments and agreements concerning the rights of refugees. Thus, all of the legal literatures on international refugee protection generally refer to these two instruments.

In addition, there are other international laws related to human rights which may be relevant to refugees. These include the general United Nations instruments on human rights such as the 1948 Universal Declaration of Human Rights and the 3 International Human Rights Covenants of 1966 (The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the International Covenant on Civil and Political Rights).

There is also the concept of customary international law which is applicable to the treatment of refugees. Customary international law applies to all states irrespective of whether they are a party to relevant treaties or not.

Due to its importance in the handling of refugee situations globally, every word and phrase of the definition of the term “refugee” in the instruments has been subject to interpretative disputes serving different interests. State actors advocated a narrow interpretation of the Convention’s definition following restrictive trends towards providing asylum to refugees, while non-state actors including the asylum seekers themselves continue to try to broaden the scope of the definition in order to address newly emerging forms of conflict and suffering.

In this section, the study examines the international instruments and laws which define the status of refugees and range of protections offered to them.

2.1.1. Definition of Asylum Seekers

It is important to clarify that the term “asylum seeker” refers to persons who have applied for asylum but whose refugee status has not yet been determined. The terms asylum seeker and refugee are often confused in practical usage however, UNHCR defines an asylum seeker as “*someone who says he or she is a refugee but whose claim has not yet been definitively evaluated.*”³

To determine the refugee status of asylum seekers, recipient countries rely upon the international instruments and laws which are described in the following section.

2.1.2. United Nations Refugee Instruments

The United Nations (UN) has adopted two instruments relating to refugees: the 1951 UN Convention relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees. Immediately following World War II, the UN adopted the Refugee Convention which sets out the definition of the term “refugee”

³ UNHCR. Asylum Seekers. Available from : <http://www.unhcr.org/pages/49c3646c137.html>

and defines the rights of refugees and responsibilities of receiving countries. The 1951 Refugee Convention defines the term “refugee” as a person who:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In 1967, due to concerns that new refugee situations may not fall within the scope of the Convention and that equal status should be enjoyed by all refugees, the Protocol relating to the Status of Refugees was adopted to make the content of the Refugee Convention apply globally and irrespective of the time period.

Therefore, the term “refugee” was redefined as a person who:

~~As a result of events occurring before 1 January 1951 and~~ owing to well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence ~~as a result of such events~~, is unable or, owing to such fear, is unwilling to return to it.

Thus, according to this provision, refugees are defined by three basic characteristics:

- they are outside their country of origin or outside the country of their former habitual residence;

- they are unable or unwilling to avail themselves of the protection of that country owing to a well-founded fear of being persecuted;
- the persecution feared is based on at least one of five grounds: race, religion, nationality, membership of a particular social group or political opinion.

The 1951 Refugee Convention contains the following fundamental principles of refugee law: prohibition of penalties on account of their illegal entry or presence, prohibition of expulsion or return (“*refoulement*”) and facilitation of assimilation and naturalization of refugees. The most basic of these is the principle of non-*refoulement* in Article 33 whereby “no contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Five additional standards for the rights of refugees are propounded by the UN Convention and Protocol:

1. The refugee has the right to be treated in the same manner as other aliens generally
2. The contracting states are to provide refugees with the same rights and treatment within their territories that is accorded to their own nationals, including on matters of artistic rights and industrial property, access to courts, rationing, public relief, labor legislation and social security, fiscal charges and conditional wage-earning employment
3. Refugees have the right to be treated at least as favorably as local nationals in relation to the practice of their religion
4. The contracting states are to accord to refugees the most favorable treatment provided to nationals of a foreign country in the same circumstances such as the right of association and general wage-earning employment
5. The contracting states are to accord to refugees the right to treatment

as favorable as possible and in any event not less favorable than that accorded to aliens generally in the same circumstances. This includes such rights as those to movable and immovable property, self-employment, liberal professions, housing and education beyond the elementary level.

These instruments are the basis in international law for the status and protection of refugees. As of April 2011, 147 States have signed one or both of the UN agreements relating to refugees. However, the Nation of Thailand, which is the context for this study, has not yet signed either one of these instruments.

2.1.3. United Nations Human Rights Instruments

In addition to the refugee specific UN agreements, there are other instruments which are relevant to the rights of refugees. These include the United Nations instruments on human rights such as the 1948 Universal Declaration of Human Rights and the 3 International Human Rights Covenants of 1966 (The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights, and The Optional Protocol to the International Covenant on Civil and Political Rights). These instruments establish basic minimum rights standards for the benefit of human beings.

In particular, the 1948 Universal Declaration of Human Rights has significant bearing upon the rights of refugees. The Declaration contains two provisions reinforcing the right of refugees to leave their country of origin and seek asylum in other countries: Article 13(2) states that “everyone has the right to leave any country, including his own and to return to his country” and Article 14(1) states that “everyone has the right to seek and to enjoy in other countries asylum from persecution.” These provisions are considered as customary rules binding on all states regardless of other treaties.

2.1.4. UNHCR Instruments

UNHCR's refugee instruments are embodied in the 1950 Statute of the UNHCR. The UNHCR's Statute established a definition of the term "refugee" similar to that of the 1951 Convention but not limited by time and geographical factors. The rationale of the Statute was that the UNHCR's role would not be limited to any one country since all countries would be able to seek the UNHCR's assistance irrespective of accession to the 1951 Convention. In the Asian context, the statute has provided an important legal basis for UNHCR action, especially as the majority of Asian States have not acceded to the 1951 UN Refugee Convention and its 1967 Protocol. However, the definition of refugee status contained within the Statute still shares the same limitations as that contained within the 1951 Convention and 1967 Protocol in regards to the restriction of refugee status to those who have fled their countries based upon a "well-founded fear of persecution."

2.1.5. Customary laws

Beyond the rules of international law established by treaties, it is also possible for customary rules of international law to be established through the practice of state governance. A customary rule of international law is usually considered to arise when two conditions are fulfilled: substantial uniformity among states in applying the rule and the generally shared opinion that it should have binding force.

As stated above, some of the provisions of the 1948 Universal Declaration of Human Rights may be considered as customary rules binding on all states. In terms of the 1951 Refugee Convention and 1967 Protocol, there are now over a hundred states which are parties to these instruments which indicate that the greater part of the international community considers itself bound by the principles enunciated therein. Uniformity of practice and the binding force of at least one of the principles of the 1951 Refugee Convention imply that non-parties cannot ignore such principles. This

would apply to the key principle in refugee law of *non-refoulement*.

Even if a state is not bound by this principle as part of a treaty, the trend suggests that they are bound by the duties of custom. This is exemplified by condemnations from world public opinion when refugees are repatriated by the recipient country. In practice however, it is not always strictly observed by states facing large-scale refugee influxes. Even in the face of recognized international custom, host nations may sometimes invoke national security to reject or limit refugee in-flows. The extent of acceptance of this practice very much depends upon the response of the international community in alleviating the burden of countries of first asylum.

2.1.6. Bali Process

Following large numbers of illegal boat arrivals in the Asia-Pacific Region, The Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime was held in February 2002 and brought together 38 source, transit and receiving countries from throughout the Region. Since that time, there have been over 30 targeted workshops aimed at building capacity and cooperation within the region to address the core objectives of the Bali Process. The Process adopted an objective relating to refugees which states that it will “*assist countries to adopt best practices in asylum management, in accordance with the principles of the Refugee Convention.*”⁴ The Bali Process also includes a mechanism for the development of regional responses to specific situations of irregular migration. Thailand has coordinated work on legislation, law enforcement and to document fraud issues as part of the Process.

⁴ The Core Objectives of the Bali Process as Defined by Ministerial Conferences.

Bali Process. Available from :

<http://www.baliprocess.net/index.asp?pageID=2145831401>

2.2. CORE PRINCIPLES AS ENshrINED IN INTERNATIONAL LAWS

2.2.1. Non-Refoulement

The principle of “non-refoulement” forbids the expulsion of a refugee into an area where the person might be again subjected to persecution. The principle is officially enshrined in the 1951 Convention relating to the Status of Refugees and is also contained in the 1967 Protocol and the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 33 of the 1951 UN Refugee Convention contains the following provision:

No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Article 3 of the 1984 Torture Convention prohibits parties from returning, extraditing or refouling any person to a state *where there are substantial grounds for believing that he would be in danger of being subjected to torture.*

The Committee against Torture has held that this danger must be assessed not just for the initial receiving state but also to states to which the person may be subsequently expelled, returned or extradited. Thailand ratified this Convention in 2007.

Non-refoulement is a key principle in international refugee law, which concerns the protection of refugees from being returned to places where their lives or freedoms could be threatened. It is considered as a customary international law as

stated above. Therefore even for states which are not a party to the UN Refugee Convention have an obligation to fulfill the principle.

2.2.2. Non-Penalization

1951 Refugee Convention prohibits penalization of refugees on account of their illegal entry. The Article 31 of the 1951 Refugee Convention provides as follows:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Given the irregular nature of the migration of asylum seekers, traveling through legal channels is rarely possible. As a result, these migrants are forced to violate national immigration laws with their illegal entry or presence. In order to address this, international refugee laws prevent penalizing the asylum seekers during the qualification process for refugee status.

However, in many countries where there is an absence of a specific protection framework for refugees, such as Thailand, refugees are formally penalized for illegal

entry and may be subject to arrest, prosecution, detention, caning and deportation.

2.3. Obligation of Thailand

Thailand has been recognized worldwide as a regional centre for civil society action, including the work of human rights defenders, based upon its humanitarian policies towards refugees and asylum seekers. Thailand is a party to the 1948 Universal Declaration of Human Rights and the International Human Rights Covenants of 1966 (The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights as well as the 1984 Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment).

However, in terms of instruments for protection of refugees and irregular migrants, it has not signed the 1951 Convention relating to the Status of Refugees or the 1967 Protocol relating to the Status of Refugees. Thailand therefore has no specialized legal framework relating to asylum seekers or refugees within its national legislation. However, this does not mean that Thailand does not have any obligation to protect refugees within territory.

One example of these obligations is that Thailand is a party to the 1948 UN Universal Declaration of Human Rights. This treaty establishes the right to seek asylum as follows:

- Article 13(2), whereby everyone has the right to leave any country, including his own and to return to his country;
- Article 14(1), whereby everyone has the right to seek and to enjoy in other countries asylum from persecution.

Thus, Thailand has an obligation to uphold this provision by providing refuge to those who are seeking asylum within its territory out of a fear of persecution in

their country of origin.

Additionally, Thailand has an obligation to respect the principle of non-*refoulement* as it is considered to be a customary rule of international refugee law. Furthermore, Thailand is a party to the 1984 Convention against Torture which contains provisions related to the principle of non-*refoulement*. Therefore, in principle Thailand should not repatriate or expel anyone with a legitimate claim to asylum from its territory.

2.4. Refugee *Sur place*

As defined by UNHCR, refugees *sur place* are persons who are not refugees when they leave their country but become refugees at a later date because of a valid fear of persecution if they return. UNHCR provides a definition of a refugee *sur place* as follows:

PARA 94- *The requirement that a person must be outside his country to be a refugee does not mean that he must necessarily have left that country illegally, or even that he must have left it on account of well-founded fear. He may have decided to ask for recognition of his refugee status after having already been abroad for some time. A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee “sur place.”*

PARA 95- *A person becomes a refugee “sur place” due to circumstances arising in his country of origin during his absence. Diplomats and other officials serving abroad, prisoners of war, students, migrant workers and others have applied for refugee status during their residence abroad and have been recognized as refugees.*

PARA 96- *A person may become a refugee “sur place” as a*

*result of his own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence. Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. Regard should be had in particular to whether such actions may have come to the notice of the authorities of the person's country of origin and how they are likely to be viewed by those authorities.*⁵

North Korean asylum seekers in foreign countries, including Thailand, should be afforded refugee *sur place* status based upon these definitions. More detail on the status of refugee *sur place* for North Korean asylum seekers will be discussed in the following chapter.

2.5. Concept of Decriminalization

The concept of decriminalization has been primarily used in the field of criminal law. The decriminalization of certain acts which do not harm other persons helps to bring progress in protecting basic human rights. In the case of this study, the concept of decriminalization is applied in order to prove that the Thai Immigration Bureau's efforts to protect the human rights of asylum seekers through decriminalization practices have decreased their level of vulnerability in Thailand.

Legally, North Korean asylum seekers who enter Thailand are committing a criminal act in contravention of Thai immigration law.⁶ North Korean asylum

⁵ Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees, Geneva, 1979, para. 94-6.

⁶ Immigration Act In the name of his Majesty King Bhumibol, Enacted on the 24th of February B.E. 2522, The 34th year of the present reign Whereas it is deemed proper to revise the Law on Immigration

seekers are not given the status of refugees by Thai authorities, so they are unable to gain legal status within Thai territory. However, this study considers the hypothesis that Thai immigration authorities do recognize the legal rights of asylum seekers to a certain degree and has practiced a policy of tolerance in its dealings with North Korean asylum seekers within its territory. In other words, while Thai authorities do not legalize the action of entering and staying in Thailand by North Korean asylum seekers, they have decriminalized the act of entering and staying in some measure by differentiating them from other nationalities of offenders of Thai immigration law. Therefore, this study designates the practices of the Thai immigration authorities as “decriminalization practices,” and tries to examine their ramifications in the following section.

2.5.1. Definition of the Term

Decriminalization is the reduction or abolition of criminal penalties in relation to certain acts. The reverse process is criminalization. Decriminalization reflects changing social and moral views. A society may come to the view that an act is not harmful and therefore should no longer be criminalized or is otherwise not a matter to be addressed by the criminal justice system. Examples of social issues which have been the subject of changing views on criminality over time in various societies and countries include: homosexuality; prostitution; polygamy; possession, use and sale of various psychoactive drugs (especially cannabis) that were made illegal mostly in the twentieth century; breastfeeding in public; non-sexual public nudity and anabolic steroid use.⁷

While decriminalized acts are no longer considered crimes, they may still be the subject of regulation. An example of this would be the licensing and regular medical testing of prostitutes or a monetary penalty in place of a criminal charge for the possession of a decriminalized drug. This should be contrasted with legalization,

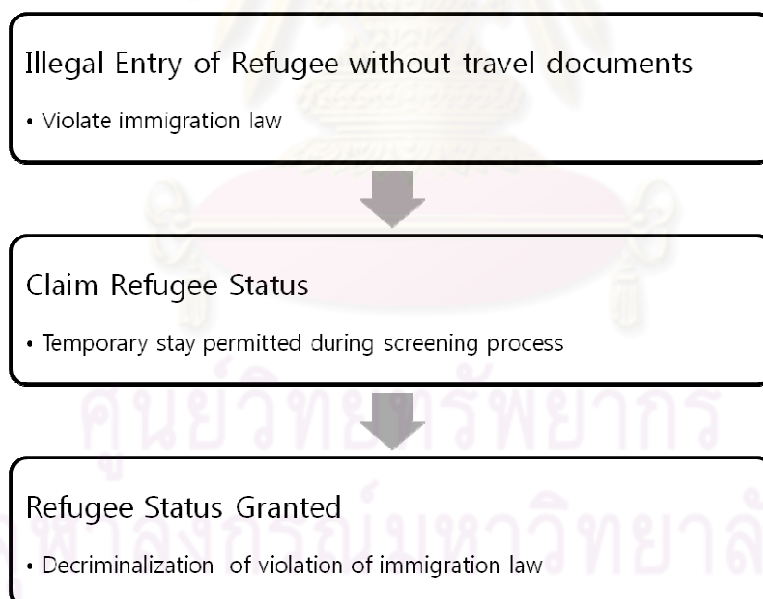
⁷ Decriminalization. U.S. Law Dictionary. Available from http://www.uslaw.com/us_law_/d/Decriminalization

which removes all or most legal punishments for a previously illegal act.

2.5.2. Decriminalization of Illegal Entry and Stay of Refugees

The term decriminalization is not generally used in relation to refugee protection but it is suitable to designate the process of claiming refugee status as decriminalization. The receiving country decriminalizes the offense of illegal immigration by granting refugee status. In most cases, refugees illegally enter receiving countries, so they are considered offenders under national immigration law. When the government of the receiving country grants them the legal status of refugee, the government decriminalizes their offense of immigration law.

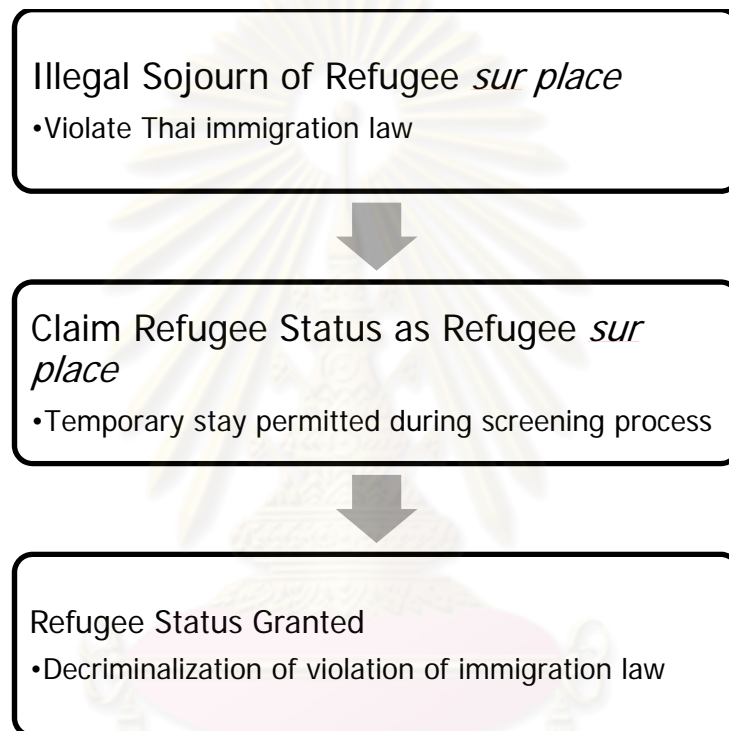
Figure 1. Process of Decriminalization of Refugee



Another example of decriminalization is refugee status *sur place*, which is granted to refugees who have stayed illegally in a foreign country and cannot go back to their country of origin for fear of persecution. An immigrant who becomes an asylum seeker during a temporary stay in a foreign country would normally be considered to be an illegal immigrant when their visa for stay has expired. This is

because the asylum seeker is in violation of the national immigration laws until their claim to refugee *sur place* has been processed. If the asylum seeker attains refugee status, the violation of immigration law is decriminalized without penalty.

Figure 2. Process of Decriminalization of Refugee *sur place*



For the case of North Korean asylum seekers, the Thai immigration authorities have protected North Korean asylum seekers' rights through decriminalization practices. Although refugee status is not granted to North Korean asylum seekers in Thailand, there is a decriminalization process for North Korean asylum seekers in the Bangkok IDC which provides exceptional treatment to the asylum seekers during their detention period. The study will discuss this topic in more detail in Chapter 4.

CHAPTER III

NORTH KOREAN ASYLUM SEEKERS

3.1. SEVERENESS OF HUMAN RIGHTS VIOLATION IN NORTH KOREA

It is the severeness and urgency of human rights violation problem why issue of North Korean asylum seekers deserve the immediate attention of the international community. The brutal dictatorship mainly contributes to the severeness and urgency of problem. North Korea is a heavily controlled totalitarian dictatorship that severely punishes any challenges to its authority or even the semblance of dissent. Many North Koreans are facing persecution by the state for criticizing the government, having religion except for worship their dictator, even travelling in and out of country without permission.

The phenomenon of North Koreans' mass defect from the country of origin can be in itself a very clear evidence of the human rights situation in the country. No matter what the main reason of fleeing the country is hunger, political oppression, or absence of vision in the future, it is imaginable that how the situation of human rights in the country severe, considering they dare to escape despite fear of strict punishment leading to death. Before the mass occurrence of North Korean asylum seekers, it has been possible for the international society to only presume that the situation might be not so good based upon its non-democratic totalitarian political situation, because of the strict control of immigration and information by the state. However, the actual situation of human rights violation in the country revealed by testimonies of North Korean asylum seekers is horrible.

Correspondingly U.N. General Assembly has adopted resolutions for North Korean human rights every year since 2005. In March 2010, the U.N. Human Rights Council passed a resolution "deploring the grave, widespread and systematic human rights abuses in the Democratic People's Republic of Korea, in particular the use of torture and labour camps against political prisoners and repatriated citizens of

Democratic People's Republic of Korea.” According to the report of the U.N. Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea in 2010⁸, presented to U.N. Human Rights Council, “human rights violations were harrowing and horrific in the country”. The Special Rapporteur stated that the human rights situation in the country that the abuses against the general population are both egregious and endemic. He described that there is a myriad of reports on instances of torture. And there is a conglomeration of huge camps for political prisoners and their families, who are often held there in perpetuity, in which the lives of the camps are lost only too easily to hunger and slave labor, brutality and atrocity. He also pointed out that the public executions take place in the state, and people and their families are forced to watch them.

More details on the human rights violation in North Korea will be described in the next.

3.1.1. Torture

The interrogation toward the defectors has totally depended upon forced confessing to crimes by torture. They have given rise to poignant nomenclature such as “pigeon torture”, “airplane torture”, and “pumping torture”. The “pigeon torture” is that prisoners are handcuffed to an iron bar with their hands behind their backs and left unable to sit or stand, causing every muscle of their bodies to become stiff, and the “airplane torture” is that prisoners are beaten with their hands and feet tied behind them and their bodies strung up so that they hang against the ground. And the “pumping torture”, a mean of sexual torture for female in particular, is that they make prisoners in naked and repeat sitting down and standing up.

For instance, according to Jeong, male defector, who had been interrogated at the underground cell⁹ for nine months from 1999 to 2000, they beat him with

⁸ Vitit Muntarbhorn, 2010, *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (A/HRC/13/47)*

⁹ Prisons on the ground were for those ordinary escapers and the underground ones

various means without caring whether he dies or not. After a few hours of beating, the back of his head and all the teeth were broken and his weight decreased from 75 kg to 38 kg. He said the most horrific one was the “pigeon torture”, beaten while hung in the air, bones seemed to break through the bosom, and all the muscles seemed paralyzed. In the underground cell, any screaming or torturing pain could not be heard or known to those on the ground. Endless torturing and fear for death made him confess falsely and approve of the charge of espionage imposed by the security agency.

For another instance, according to Lee’s testimony, a male teenage defector, severe treatments and punishments were accorded to ‘street children (kot-je-bi)’ and also to those who committed minor offenses for the means of survival. He was fifteen years old when he was arrested. Following his arrest, he was put under interrogation for a fortnight at the PSA(People’s Safety Agency), and was transferred to a detention facility in the HSA(Headquarters of Security Agency) for further investigation and torture. Although he had been a legal minor at the time, he was subject to harsh torture: he was hanged upside down and beaten; whacked with thick wooden sticks while handcuffed and thrown on the floor. There was a rotation of several people from evening to midnight for the beatings. During the investigation in daytime, he was compelled to lie down on the floor with a blanket covering over his body so that the sound of the beatings would not be too loud from the inside. The investigation rooms were dark solitary confinements without any windows and he was detained there for days without any food at all. Two months of investigation under such harsh conditions and torture forced him to confess and succumb to the accusations made against him.

were for political criminals or other espionage criminals, which were even without guards.

3.1.2. Political Prison Colonies: Labour Camps¹⁰

According to the statements of most defectors, various types of human rights violation even during arrest and pre-trial examination process have been happened which is all banned in modern society such as; violence or harsh treatment in the arrest and questioning process, treating the arrested person as a criminal without due grounds, torturing to death in the interrogation, and an application of guilt-by-association system.

The suspects of the 'deviation', such as dissents of the regime or the system, people with religions, escapees or border crossers, and repatriates arrested in China and returned to North Korea, are known to not even undergo due process of arrest or preliminary hearing in the process of detaining¹¹ then and also to put them under extreme forms of torture and various forms of inhumane treatment. Upon being arrested in china and repatriated to the North, they were investigated about whether they had contacted South Koreans or religious helpers, and then received harsh treatment; discourage further attempts to flee the country.

In the prison camps, even trivial violations of any regulations end in execution by firing squad. According to the 'Ten Laws and Regulations' of the camps, prisoners will be immediately executed by firing squad in cases of fleeing; having witnessed or not reporting an attempt of fleeing; arbitrary movement to another

¹⁰ Man-ho Heo, 2009, *Political Prison Colonies in North Korea: System and Repercussions*, paper presented to "The 9th International Conference on North Korean Human Rights & Refugees"

¹¹ In the 2006 interview on 100 North Korean defectors by the KBA (Korean Bar Association), 90% of respondents said "no" when they were asked if the investigation agency follows due legal procedure in North Korea. When asked if due procedure is observed when people are put into a detention facility, 71.1% of the interviewees said the North Korean authorities kept investigating for more than two months without any warrants.

region without the approval; trespassing of the authorities' areas or of destruction of property; theft or possession of any weaponry; overlooking or colluding the theft or possession of any weaponry; theft or concealment of all food; intentional damage or theft of all facilities; having discontent against or physically abusing protection guard in charge; dishonesty or disobedience to the orders of protection guard in charge; concealment or protection of an outsider; possession, concealment, collusion, or non-reporting of goods from outside; negligence or non-observance of tasks given; unapproved physical contact between a male and a female; and not acknowledging, disobeying, or having opinions over one's wrongdoings. Such provisions are intended to thoroughly isolate the detainees from outside, oppress their freedom of expression and opinion, and deprive of their minimum physical freedom so as to adapt them to slave labour.

The prisoners also experienced an excessive labour and undernourishment. The detainees have to work 15 hours a day, only receiving 20 to 30 grains of corn and a bowl of salt water. As such, the detainees took 15 minutes to move 100 meters and became dizzy with any digging. These detainees were mostly attacked by pellagra, a disease related to protein deficiency, and/or various epidemics originating from undernourishment, and even mental disease. To appease their hunger, the detainees often stole pig fodder, used the wastewater from cleaning fish storage tanks as soup, caught worms, hunted rats, and ate the bark off trees and grass. Yet, if such activities were caught by the camp guards, a heavy punishment was imposed, even sometimes leading to death.

Sexual abuse and killing of female detainees and infanticides are also occurred in the camps. As an example from the testimonies of defectors, a young female detainee had a baby after a relationship with a guard, and an inspector threw her baby to a group of dogs, and then killed her by piercing sticks into her abdomen and sexual organs. For another example, inspectors opened a young pregnant detainee's abdomen, took out the fetus, and trampled on it. Then they stuck a metal rod into her sexual organs and electrocuted her.

3.1.3. Food Shortage

Although the country recovered from the 1990s famine that killed millions, North Korea's lack of high-quality seeds, fuel, fertilizer, advanced agricultural technologies, and even decent storage facilities have repeatedly resulted in domestic production being far too inadequate to feed its entire population.¹² In September 2009 the World Food Programme reported that a third of North Korean women and children are malnourished and the country will run short by almost 1.8 million metric tons of food, which North Korea would need to import or obtain as aid.¹³ The dependency system of the North Korea whereby the people were given food rations by the State through a public distribution system collapsed in the 1990s, especially with the huge food shortages in the mid-1990s, due to natural disasters coupled with mismanagement of the part of the authorities. The regime then started to accept international food aid. The situation concerning food shortages in 2009 (with impact on 2010) remains severe. In 2008, WFP initiated an emergency relief programme targeted to cover 6.2 million people, mainly children, pregnant and lactating women, and the elderly. However, due to a shortfall of aid, influenced most probably by the world community's disapproval of the country's nuclearization process, the organization was able to help fewer than 2 million people in 2009.¹⁴

It is also essential to stress that the food problem is not simply food shortage but distorted food distribution, from which the elite benefits. Logically, it would seem that if the authorities are not able to satisfy the basic needs of the people, the people should be able to participate in activities which can help generate income, and thereby produce or buy their own food as well as sustain their livelihood. Yet, in 2005 the State began to clamp down on the market system that had developed between 2000 and 2004 and to reimpose its control over the population and revert to the

¹² Human Rights Watch, 2009, World Report Chapter: North Korea.

¹³ WFP, Annual Report 2009. See <http://www.wfp.org/content/annual-report-2009>

¹⁴ Vitit Muntarbhorn, 2010, *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea* (A/HRC/13/47)

public distribution system. The irony is that the system has been dysfunctional for a long time and cannot hope to satisfy the basic food needs of the population. A recent study divides up the population into five groups for food rationing: priority 1, high-level government officials; priority 2, security and law enforcement personnel; priority 3, workers at industrial units; priority 4, other general workers and residents; priority 5, farmers¹⁵. Currently, the fourth and fifth groups are in dire straits.¹⁶

3.1.4. Human Trafficking and Smuggling

U.N Special Rapporteur described in his report in 2007 that the asylum situation of North Koreans was “a major business”. There are many intermediaries exploiting those who seek refuge in other countries and this is interlinked with rampant human smuggling, trafficking and extortion. The exploiters range from criminals to public officials in various countries, given that asylum by its very nature concerns several countries and is a trans-frontier phenomenon.¹⁷

When the ‘fleeing North Korean crisis’ was happened in the middle of 1990s, the share of gender was not much different. Because of its hidden nature, it is difficult to say how many North Koreans have fled their country of origin. But, recently, various sources indicate obviously that the share of female among the total number of North Korean defectors is dramatically getting increased. That is because female is advantageous to the ‘survivor’ in the process of fleeing. And the possibility of

¹⁵ Pomnyun Sunim, “Humanitarian aid to North Korea: how to approach it?”, unpublished paper, 15 October 2009, p. 2. cited in Vitit Muntarbhorn, 2010, *Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea* (A/HRC/13/47)

¹⁶ Vitit Muntarbhorn, 2010, *Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea* (A/HRC/13/47)

¹⁷ Vitit Muntarbhorn. 2007. *Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea* (A/HRC/4/15)

survivor is proportioned to possibility of being a victim of human trafficking.¹⁸

In the early stage of fleeing North Korea, the survivor measure of fleeing North Koreans was mostly providing physical labour and getting shelter in China. Therefore, male labour was valuable. But, as the discrepancy in the gender share of population in the rural area in China is skewed with over 30 male for every woman, the demand of Chinese men on the North Korean women has been increased. Therefore, marriage of human trafficking between Chinese men and North Korean women has been generalized. As a result, more and more intermediaries involve this 'business'.¹⁹

About 80% of North Korean female migrants, who does not have any friends or relatives who can help them in China, experienced human trafficking after fled the country of origin. And the majority of them find themselves forced into marriage with Chinese men. The human traffickers who contact to North Koreans firstly are mostly Korean ethnic in China or North Koreans fled before them. They work as brokers introducing North Korean women and girls to crime syndicates.²⁰

¹⁸ Sun-young Park. 2009. "Fact of encroachment on human rights of North Koreans in the process of fleeing North Korea and the countermeasure". a paper presented in the fifth policy seminar on 'the Fact of encroachment on human rights of North Koreans in the process of fleeing North Korea and the countermeasure'. available from:

<http://www.sy0406.com/swboard/view.php?bcode=2&page=&no=3938>(researcher's own translation from Korean)

¹⁹ Yeo-sang Yoon. 2008. "Needs for the secured and prompt entry and actual fact finding". a paper presented in the "North Korea" May, 2008. P.71-72 cited in Park. 2009. "Fact of encroachment on human rights of North Koreans in the process of fleeing North Korea and the countermeasure".

²⁰ Ok-hee Chae. 2008. "Experience of Human Rights Abuse of North Korean Women in China". P.57-58. paper presented in Park. 2009. "Fact of encroachment on human rights of North Koreans in the process of fleeing North Korea and the

According to the study of Norma K. Muico, traffickers often approach North Korean women with promises of food, shelter, and employment. They also instil fear in the women claiming it is very dangerous in China and thus, the women need their help. Once the traffickers have gained the confidence of the women, the women are either taken to an apartment where they are confined until the sale is completed or taken directly to the Chinese buyer. Numerous testimonies of North Korean women trafficked into forced marriage indicate that they are physically and sexually abused by their husbands. To prevent their wives from escaping, the women are locked up, chained or have their clothing removed.²¹

In terms of the 'escape fee' for fleeing North Korea, males are required to pay in advance, but female can fleeing without payment. But when they fled North Korea, they are asked sexual labour. The dealing price of young woman age around 26 is 5,000 CNY (about 26,000 THB) in average. The North Korean female migrants are sold to Chinese man as a wife or concubine, Karaoke and bars or as prostitute in the rural area of China. To cross the border into for asylum, North Koreans have to pay 'broker fee'. In case of humanitarian brokers, such as NGOs, missionaries, the fee is about 3,000 ~ 5,000 USD. But most of the cases are related to the human traffickers or smugglers of criminal syndicates, and the fee goes up to 15,000 USD. The criminal brokers can make money by human trafficking firstly, and taking the border crossing fee again.²²

Human trafficking is a crime, while at the same time it is a pull factor of

countermeasure”.

²¹ Norma K. Muico, 2007, “International Campaign Against Trafficking of North Korean Women in China”, a paper presented in the 7th International Conference on North Korean Human Rights and Refugees

²² Ok-hee Chae. 2008. “Experience of Human Rights Abuse of North Korean women in China”. P.57-58. paper presented in Park. 2009. “Fact of encroachment on human rights of North Koreans in the process of fleeing North Korea and the countermeasure”.

North Koreans' asylum. That is a way of escape for North Korean asylum seekers from the starvation and persecution in the country of origin. The three role of human trafficking in the issue of North Korean migration are those; first, role of generator which is encouraging the cross-border migration by false advertising in the border area of North Korea; second, human traffickers act as a distributor, which is mobilizing them in proper places to make money by human trafficking and to claim asylum when they afford the cost; and the third role is negotiator that is helping them to avoid the crackdown against illegal migrants by bribery in the transit countries during the migration of fleeing North Korea and contact with proper person for the asylum claim such as South Korean embassy, government of the related countries, and NGOs. The possibility of border crossing by humanitarian brokers is cheaper and safer than by the criminal one, but it is very limited. So for now, relying on the criminal brokers is most general way. As a result, North Koreans have to stand the various encroachments on human rights.²³

3.2. STATUS OF NORTH KOREAN ASYLUM SEEKERS IN FOREIGN COUNTRIES

Until the mid-1990s, the North Korean asylum seekers arrived in South Korea were welcomed with adulation and considerable amount of rewards. The number of them is not large, and most of them were elite members of the military or Communist Party from Pyongyang brought valuable intelligence of North Korea. Those who sought asylum in either South Korea or the Western countries were easily granted the status of refugee or political refugee during their journey though Chinese territory. However, the number of today's refugees has been increased, averaging more than 2,000 a year since 2006, and with rare exception, they are farm laborers,

²³ Seong-ho Jeh. 2008. "Encroachment on human rights of North Koreans and problem of broker" a paper presented in the "North Korea" May, 2008. P.71-72 cited in Park. 2009. "Fact of encroachment on human rights of North Koreans in the process of fleeing North Korea and the countermeasure". P.31-32

factory workers, low-level soldiers, and clerks from impoverished regions. Because of their large number and the reason of fleeing country at first time, it is hard for them to get a legal status until they resettle in the third countries. Therefore, they have to face vulnerable human rights violations throughout four to seven years of itinerary from North Korea to final destination.

There have been arguing on the defining of legal status of North Koreans who have fled their country of origin with economic reason and stayed in the foreign countries. The bitter disputes have been continued over a decade on the legality of granting refugee status to the North Korean asylum seekers. The general tendency of international society, including international organizations, national governments, and NGOs, determined that they deserve refugee status, but the other parties mostly the States who are facing or expected to face problem of the influx of North Korean asylum seekers have adhered that they are not refugee but economic migrants.

With regard to restrict definition of UN 1951 Convention and 1967 Protocols, it is hard to categorize those who fled North Korea for economic reasons as refugees. The narrow sense of interpretation gives a handle to use to those states which are denying granting refugee status to North Korean asylum seekers in their territory. However, there have been clear rationales based upon the international refugee law which prove the justification of North Korean asylum seekers for refugee status even in case of their reason of fleeing country is originated with economic factors.

In this regard, this part will examine the legality of the status of the North Korean asylum seekers in Thailand, based on the international refugee laws and various interpretations on them.

3.2.1. Status of Refugee *sur place*

North Koreans who fled their country of origin from the fear of persecution on having the opposing opinion to their national system of dictatorship are clearly

accorded with general concept of refugee or asylum seekers. Mostly for the early period of North Koreans' escaping country and seeking asylum, they crossed border into China with a fear of persecution on having different opinion of political, religious or other grounds.²⁴ This is corresponded to the definition of UN's 1951 Convention relating to the Status of Refugees and its 1967 Protocol. According to the Refugee Convention, a person is deemed a refugee when he or she is outside her country of origin because of "a well-founded fear of being persecuted" in that country "for reasons of race, religion, nationality, membership of a particular social group or political opinion and therefore is unable or unwilling to avail himself of the protection of that country".²⁵ Under the one-party communist dictatorial government, North Korean elites who eager for the political freedom crossed into China and sought to asylums in the third countries. And there are still some of North Koreans who fled the country with a fear of persecution on having opinion against the authorities' oppression.

These days, however, a great number of North Koreans cross border for economic reason. Therefore, there have been long debates on the status of those who fled for economic reason. Generally, persons who fled their country for suffering from hunger would not be identified as "refugees". However, there is a need of international protection for North Korean asylum seekers crossing into China or other countries for reasons of economic hardship. This argument is rooted in the ground of that the effective refugee status can be formed if they have been compelled to leave because of government economic policies tantamount to political persecution.

North Korea is ruled by one-party communist hereditary dictatorial power. The relationship between the authorities and the general population from the

²⁴ Roberta Cohen. 2010. "Legal Grounds for Protection of North Korean asylum seekers", a paper presented in the 10th International Conference on Human Rights & Refugees

²⁵ UNHCR. 1951 Convention relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees

inception of the regime, half a century ago, had been based upon control of the population through a dependency system, whereby the people were given food rations by the State through a public distribution system. However, the authorities' distribution system collapsed in the 1990s, especially with the huge food shortages in the mid-1990s, due to natural disasters coupled with mismanagement on the part of the authorities. It is also essential to stress that the problem is not simply food shortage but distorted food distribution, from which the elite benefits. As stated above in the part of Food Shortage, even if the authorities are not able to satisfy the basic needs of the people, the people could not be able to participate in activities which can help generate income, and thereby produce or buy their own food as well as sustain their livelihood. Worst of all, the State began to clamp down on the market system that had developed for years and to re-impose its control over the population and revert to the public distribution system which has been dysfunctional for a long time and cannot hope to satisfy the basic food needs of the population. As Muntarbohrn points out, the food is distributed by the government firstly to the persons such as the armies and the Party members based on the political royalty, therefore the fourth and fifth groups are in dire straits.²⁶ So the lower class of *Sungbun*, a class system of North Korea, cannot satisfy the basic food needs under this public distribution system. Many of the North Koreans crossed into China during periods of famine are reported to come from the unprivileged classed, in particular, the "impure," "wavering" or "hostile" classed under the *Sungboon*.²⁷ Their quest for economic survival could well

²⁶ Vitit Muntarbohrn, 2010, *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (A/HRC/13/47)*

²⁷ Committee for Human rights in North Korea, *Lives for Sale: Personal Accounts of Women Fleeing North Korea to China*, 2010. P. 12; and Joshua Kurlantzick & Jana Mason, *North Korean asylum seekers: The Chinese Dimension*, in *The North Korean asylum seeker Crisis: Human Rights and International Response*, eds. Stephan Haggard and Mmarcus Noland, *U.S. Committee for Human Rights in North Korea*, 2006, pp. 16, 41, 43. cited in Roberta Cohen. 2010. "Legal Grounds for Protection of North Korean asylum seekers", a paper presented in the 10th International Conference on Human Rights & Refugees

be based on political persecution.

According to the report of the UN Special Rapporteur on the situation of human rights in the North Korea, in the interviews which the Special Rapporteur has had throughout the years with scores of those who have sought refuge in neighboring countries, a large number of interviewees indicated that they had left the country because of hunger and other forms of deprivation. And a number also have indicated situations of persecution in the country of origin, for example, a relative who fell out of favor with the authorities, with subsequent persecution of the whole family. But certainly ambiguity is remained in claiming refugee status as far as they do not fled owing a well-founded fear of being persecuted for reasons defined by U.N. Convention.

Therefore, categorizing North Korean asylum seekers as '*refugee sur place*' is so far the most pertinent and compelling definition. Generally, persons suffering from hunger would not be identified as "refugees" unless the criteria for the classification of UN's 1951 Convention and its 1967 Protocol as described above are fulfilled. In reality, many of the persons suffering from hunger can be seen as refugees *sur place*, because there is the threat of persecution or punishment if they are sent back to the country of origin, on the basis of their having left the country without the required exit visa. As discussed above, UNHCR defines that refugees *sur place* are those; "who are not refugee when they leave their country, but become refugees at a later date because of a valid fear of persecution upon return".²⁸ U.N. Special Rapporteur also defined that even in cases where refugees have not left the country of origin for fear of persecution, if they fear subsequent persecution, for example, fear of being punished if they are to be sent back to the country of origin,

²⁸ UNHCR. 1979. Handbook on Procedures and Criteria for Determining Refugee Status Under 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees, Geneva. cited in Roberta Cohen. 2010. "Legal Grounds for Protection of North Korean asylum seekers", a paper presented in the 10th International Conference on Human Rights & Refugees

they may also be characterized as refugees, or more precisely refugees *sur place*.²⁹

There is strict control over migration in the North Korea. People require an exit visa to leave the country, and face sanctions in the case of failure to abide by the national law. The North Korean government deems it a criminal offense to leave the country without permission. So when they are returned, they can expect to undergo arrest and detention and may also undergo beatings, sexual violence, forced labor, forced abortion, torture and even death in some cases. Stringent punishment is in particular meted out to North Koreans who have ever associated abroad with foreigners, for example, missionaries, aid workers or journalists, sought “political asylum” in foreign countries, tried to obtain entry into South Korea, or in the case of North Korean women, married and became pregnant by foreign men.³⁰ In this regard, it is possible to establish that the North Korean who are seeking refuge in foreign countries, including certain numbers of those crossing into China for economic survival, merit refugee status and international protection for the refugees under the terms of the 1951 Convention.

UNHCR urged the needs of international protection for North Korean asylum-seekers, considering the following factors:

- (i) The very serious human rights situation in the North Korea
- (ii) The existence of groups which are particularly prone to persecution, in particular on account of their family or political background
- (iii) The practice of the North Korea of penalizing unauthorized departures from its territory for political reasons, with punishment ranging from several weeks to several years or even execution

²⁹ Vitit Muntarhorn. 2007. “Situation of human rights in the Democratic People’s Republic of Korea”. Report of the Special Rapporteur. United Nations. P. 10-11

³⁰ Roberta Cohen. 2010. “Legal Grounds for Protection of North Korean asylum seekers”, a paper presented in the 10th International Conference on Human Rights & Refugees

(iv) The abusive conditions in “re-education” facilities.³¹

As the State Party has an obligation to protect refugees in its domain, it is important to interpret the law precisely. However, it is more important to understand intent of the law and to apply it rightly. The underlying rationale behind refugee status is that the refugee is not protected by the country of origin and is thus entitled to international protection. It is undeniable fact that North Koreans both in and out of the country need international protection urgently.

3.2.2. SENSITIVENESS OF NORTH KOREAN ASYLUM SEEKER ISSUE

Ten countries are directly related to the North Korean asylum seekers issue with geographical reason; North Korea is a country of origin; South Korea is a major resettlement country; China is first arrival country which is the only bordering country of North Korea; and there are transit countries, i.e. Russia, Mongolia, Myanmar, Laos, Cambodia, Vietnam and Thailand. In addition, a number of nations and international organizations are actively willing to involve into the issues on the Human Rights of the North Koreans both in and out of their origin country, which are; U.S. Japan, Canada, Australia, U.N. and E.U. The sensitiveness of the issue is originated by this variety of relating parties and their interests.

3.2.2.1. Country of Origin

The position of North Korea towards North Korean asylum seekers has always been very firm. The North Korean government has insisted that North Koreans either who sought refuge in foreign countries or were/are willing to resettle in South Korea are those who abducted or misled by South Korean agency, acting for collapse of North Korea. As a response to “The 2nd International Conference on North Korean Human Rights & Refugees”, which dealt with North Korean asylum seekers

³¹ Vitit Muntarbhorn. 2007. “Situation of human rights in the Democratic People’s Republic of Korea”. Report of the Special Rapporteur. United Nations. P. 10-11

problem in the North Korea-China border area and issues on the situation on the human rights of North Korean women refugees in China, North Korea denied the existence of North Korean asylum seekers; North Korea commented that it is true there are many migrants crossing border with China to visit their relatives staying in North-eastern area of China, but it is not necessary to comment on categorizing those travelers as “refugees.”³² Another example shown in the case of Vietnam’s 468 North Korean asylum seekers issue in 2004, North Korea commented ‘Vietnam’s deportation of 468 of North Korean asylum seekers to South Korea’ is a conspiracy to ‘U.S. and South Korea’s abduction of North Korean citizens’.

On this wise, on public occasions such as though public broadcasting, international meetings, and many occasions of high-level governmental meetings, North Korea has continuously urged that U.S. and South Korean governments had to send those victims of abduction back to North Korea and stopped misleading the innocent citizen of North Korea to leave their family and homeland.

At the same time, North Korea and China made an agreement on the repatriation of illegal North Korean migrants in China back to North Korea, so Chinese government enforced crackdown against North Korean asylum seekers and send them back to North Korea. In North Korea internally, on the other hand, the restriction on cross-border became much severer and the punishment for unauthorized migration get more rigorous.³³

³² Choseon Joongang Tongshin. 2000. “No Refugee Problem exists between Choseon(North Korea) and China, cited in Young-hwan Lee. 2009. “Fleeing Process of North Korean asylum seekers”. Eunsuk Park and 6 others. 2009. 『Understanding North Korean asylum seekers』 . pp. 45~89.

³³ for details on the punishment and torture for citizens deported back, see “Severeness of Human Rights Violation in North Korea”

3.2.2.2. Country of Resettlement

South Korea is where the most North Korean asylum seekers have resettled. The government of South Korea has been implementing the policy supporting those North Korean resettled citizens with accordance to its constitution. Those North Koreans who arrived at South Korea are provided education for adjustment to the new society by staying in education facility and accommodation named Hanawon, and resettlement fund amount of 30,000,000 KRW per one person.

Assisting and supporting those North Korean asylum seekers have made South Korean government place at disadvantageous place in foreign relations with North Korea and China. Since 1998, the new government has implemented “sunshine policy” as a foreign policy towards North Korea by providing aids, investing to industries and trying to start direct conversation between South and North Korea. This policy resulted in great movement in inter-Korean relations, that is, the Two Korean Summit(Inter-Korean Summit) in 2000. To make a great progress in relation with the North Korea, however, South Korean government had to give up assisting North Korean asylum seeker in official way. Until current government won the election to presidency in 2008, the North Korean asylum seekers’ human rights and security were even vulnerable due to lack of South Korean government’s effort of protection.

Since current government has changed the policy towards North Korea by taking a hard line, the situation relating to North Korean asylum seekers’ resettlement in South Korea have been somewhat improved. The current administration has announced the progressive protection for North Korean asylum seekers in foreign countries, and its effort resulted in foreign affairs as well as domestic affairs: the President Lee urged China to stop forcibly repatriating North Korean asylum seekers during a summit in 2008; the South Korean administration urged Thailand permit to establish refuge for North Korean asylum seekers in Thailand; the capacity of Hanawon has been enlarged; relating laws and acts are improved in Governments and

Parliament.

3.2.2.3. Transit Countries

Lee divided the North Korean asylum seekers' fleeing route into the "northern route" and the "southern route". (Young-Hwan Lee, 2009). The northern route includes China, Russia, and Mongolia. Lee pointed out the crux on this route and of each country; China's repatriation policy towards North Korean asylum seeker and restriction on the UNHCR's action in their territory; Russia's discord of policy towards North Korean asylum seekers between central government and local government where the North Korean asylum seekers cross into; Mongolia's pro-China foreign policy and the dangerous of Gobi desert on the route.

In terms of southern route, it includes the five Southeast Asian countries, i.e. Laos, Myanmar, Vietnam, Cambodia, and Thailand. Lee notes that the common problem which these Southeast Asian countries have been faced is so-called 'dilemmas of transit countries'. In this region, protection of North Korean asylum seekers has become a buck passing of stated countries' foreign affairs since the case of 468 North Korean asylum seekers in Vietnam in 2004. Observed the troubles which Vietnam should go through, the other countries in the region shrunk back from protecting North Korean asylum seekers, or being publicized the fact that they are protecting them. And it has resulted in enhancing the entry barrier towards North Korean asylum seekers.

After the case of Vietnam in 2004, Thailand has been emerged as the fastest and safest transit site among the North Korean asylum seekers. The number of North Korean asylum seekers is still very small compared to those from Myanmar, Laos, Cambodia or Vietnam, but Thailand is also faced with the dilemmas concerned about the possibility of change into mass influx, foreign relation between South and North Korea and between U.S and China, insecurity of borderland, and so on. Thailand, therefore, on the one hand, has tried to prevent the 'pull-factors' attracting more

refugee in its territory, and on the other hand, prevent publicizing the fact protecting North Korean asylum seeker in Thailand to the international community.

3.3. STATUS OF NORTH KOREAN ASYLUM SEEKERS IN THAILAND

3.3.1. Refugees Status in Thailand

For many decades, Thailand has attracted various types of refugees from the neighbour countries. Not only the geographical accessibility, but its liberal and humanitarian base policies acted as a pull-factor for those refugee seeking asylum and new residence in Thai territory. In this section, the study reviews on the Thailand's history of refugee and its refugee protection environment in accordance with the engagement with the international instruments relating to the human rights protection.

Asylum-seekers have come to Thailand for many centuries, and Thai policy towards asylum-seekers, traditionally, was liberal, based upon age-old notion of asylum (Vitit Muntarbhorn, 1992). Thailand is not a party to the U.N. refugee convention and the protocol, so there has been no consistent legal basement for the protection of refugees in its domain. And it has complete discretion in dealing with refugees and asylum-seekers. However, it is well-known fact that Thailand has long been providing sanctuary to groups fleeing conflict or political repression in nearby countries. And towards each group, it implemented flexible policy in accordance with the situation.

After the Second World War, there were 50,000 Vietnamese who found refuge from war by seeking asylum in Thailand. Thailand let those people seek refuge in the country, recognizing them as “displaced persons from Indochina,” which means that they illegally crossed the Thai border. These displaced persons are supervised at various holding centres.(Supang Chantavanich, 1988)

It was 1954 that the Thai government officially recognized displaced person in the local immigration act, after then, the policy has been changed in accordance with the situations. According to Muntarbhorn, the term ‘displaced person’ was defined as early as in 1954 by clause 3 of the ‘Regulation Concerning Displaced Persons from Neighboring Countries’, as comprising ‘he who escapes from dangers due to an uprising, fighting or war, and enters in breach of the Immigration Act’, and displaced persons are divided into two group:

- those whose government has failed to ask for prior official permission for them to enter Thailand, and
- those entering of their own volition.

Although displaced persons are affected by immigration law, they are exempted from it as a matter of policy because they are less politically sensitive to the Thai authorities. The term ‘displaced person’ was applied to pre-1979 arrivals.

After the fall of the Pol Pot regime in 1979 and the occupation of Kampuchea by Vietnamese forces, another massive influx of Khmer refugees residing near the border came into Thailand. These refugees are recognized as “illegal immigrants” by the Thai Government and are supervised in various border encampments. (Supang Chantavanich, 1988) Since then, for the post-1979 arrivals, ‘illegal immigrants’ or ‘illegal entrants’ are used generally to indicate the status of asylum-seekers. This stratification of the terminology shows that the policy of Thai government has been changed.

Muntarbhorn noted that Thai policy has been based upon a ‘closed-door’ policy with a few brief exceptions. This policy was generally known as ‘humane deterrence’, which continues to guide action towards refugees until the 1989 Comprehensive Plan of Action. This policy of ‘humane deterrence’ was introduced in 1980 when the Thai border was closed to Cambodians, and then to Vietnamese and Laotian entrants. Human deterrence was based on the following principles:

1. The Thai border would be closed to new arrivals.
2. Those illegally entering Thailand would be kept under close detention in austere camps.
3. There would be no resettlement of new arrivals.
4. Treatment of those persons would be of a minimum standard not higher than strictly necessary for their subsistence. (Vitit Muntarbhorn, 1992)

It was evident that Thailand could not manage the problems created by the huge and abrupt displacement of Indochinese refugees by herself. The Thai Government therefore requested United Nations' help in managing the situation. In September 1975, the Thai Government and the UNHCR issued a mutual press release that Thailand's acceptance of Indochinese displaced persons was based on humanitarian grounds. Later, in December of the same year, the Thai Government and the UNHCR signed an agreement on the principle of voluntary resettlement, voluntary repatriation, and non-*refoulement* for Indochinese refugees. This led to the UNHCR relief and assistance missions in Thailand in July 1977 and the establishment of the UNHCR Regional office in Bangkok later on. (Supang Chantavanich, 1988)

Muntarbhorn noted that throughout the 1970s and 1980s policy towards asylum seekers as a whole was extremely complex and was dependent upon a variety of factors such as country of origin, ethnic group, time of entry, and means of transport. For instance, in case of Cambodian asylum seekers, those arriving before December 1982 are eligible for resettlement in third countries, and are understood to be immune to relocation to the border, while those arriving between August 1984 and September 1985 are not eligible for resettlement unless they are close relatives of the other groups mentioned. Those who came after September 1985 fall clearly under immigration law and are subject to relocation to the border if discovered. (Vitit Muntarbhorn, 1992)

While, as for the Laotian asylum seekers, in 1985 there was a significant development in that screening to determine their status was introduced to distinguish between bona-fide cases, and mala-fide cases. The Thai authorities are in charge of the screening with the UNHCR in an observer capacity. Initially the criterion used for screening was based upon the persecution element, complemented by four examples:

- soldiers and civil servants of previous regimes;
- former employees of foreign embassies and international organizations;
- those who have participated in activities which are deemed to be antagonistic to the Communist government (in Laos); or
- those with direct relatives in third countries. (Vitit Muntarbhorn, 1992)

By contrast, for the Vietnamese boat people who arrived before 1989, temporary refuge in was granted generally in Thailand based upon the situation that the third countries used broad criteria in offering them resettlement places as a priority group when the exodus started first. However, as the accumulation of arrivals and those rejected by the third countries as well as the marked rise in arrivals in 1988, the Thai government adopted in that year an interdiction policy of refusing the Vietnamese even temporary refuge. (Vitit Muntarbhorn, 1992)

In terms of case of Burmese refugees before 1989, they were liberally permitted to stay temporarily in Thailand. In November of same year, the government even stated explicitly a policy of temporary refuge for the Burmese. However, in 1990, some of Burmese refugees were push back into Burma, and policies turns more restrictively. The local policy makers have been to avoid internationalizing the Burmese issue, and they have prevented international agencies from becoming involved. (Vitit Muntarbhorn, 1992)

Other national refugees in Thailand have been treated on a case-by-case basis. In case of Iranian asylum seekers, they were not to be regarded as refugees by Thai authorities, but they were allowed to be accommodated in Thailand before resettlement. For the non-Indo-Chinese Refugees, while some of them have been detained in Bangkok prisons, others have been allowed to live in ordinary accommodation. (Vitit Muntarbhorn, 1992)

This stratification implies that at times there would be a conflict between state discretion and international norms for refugee protection, in particular the principle of *non-refoulement*. (Vitit Muntarbhorn, 1992) Throughout various experiences of influx of asylum seekers in territory, Thailand has added more inflexibility on resettlement, but tolerated as far as possible for them to seek asylum in other region. In case of North Korean asylum seekers, Thailand recognizes them not as refugee, but as illegal entrants, while at the same time it does not repatriate them. And it detained those asylum seekers until they resettle in the third country.

3.3.2. THAILAND'S POLICY OF TOLERANCE TOWARDS NORTH KOREAN ASYLUM SEEKERS

Since the Vietnamese route closed in 2004, Thailand became the safest sanctuary for North Korean asylum seekers. It was in 2006 that Thai government firstly recognized the seriousness of North Korean asylum seekers' issues and made an official decision on the North Korean asylum seekers. The policy became more restrict when North Korean asylum seekers in the Thai Immigration Detention Center in Bangkok went on a hunger strike against over-crowded cell and delay of resettlement process in 2007.

Like all the refugee-host countries, Thailand has been in dilemma: on the one hand, it has to protect universal human rights as a member of international society; on the other hand, it has to preserve its sovereignty securing its own citizen's rights and

benefits. The insecure factors relating to the issues of North Korean asylum seekers which Thailand has pointed out are as below:

- the foreign relations with North Korea and China(Comment of Thai Foreign Minister, 2008)
- security issues on the borderland(Measai Immigration Office, 2008)
- spread of crime network in border area due to relevance of smugglers and brokers(Measai Immigration Office, 2008)
- possibility of attracting mass influx of North Korean asylum seekers into Thailand in future(Measai Immigration Office, 2008)
- burden on the expense and facilities in detaining North Korean asylum seekers(Measai Immigration Office, 2008)
- attention of international society on Thailand's refugee policy and human rights protection(Lee, 2009)

In spite of those concerns on the North Korean asylum seeker issues, Thailand has implemented humanitarian policy with tolerance for such burden until today. In very recent years, the number of North Korean asylum seekers who resettled in South Korea passing through Thailand reached more than 80 percent. Basically Thailand keeps so-called "policy of tolerance" on the humanitarian basis in a large view. However the policies and situation in Thailand have changed from time to time at the practical level.

3.3.2.1. Policy before August 2006

Until 2004, the main route passed by North Korean asylum seekers was Vietnam, so very few crossed the border of Thailand, accommodated by NGOs and Christian missionaries. When the Vietnamese government actually took a policy of closing door towards North Korean asylum seekers after the Vietnam's 468 of North Korean asylum seekers' deportation case, it became one of the most pressing matter of foreign relation and security in the other four Southeast Asian countries. It turns

out that Thailand has been replaced the main route, as seen from the number of North Korean entrants in Thailand sharply increased since 2005. But in this time, most of the North Korean asylum seekers were illegally accommodated out of immigration's control unless they caught by policemen.

Table 1. Number of Persons Detained and Deported from the Thai immigration Detention Center in Bangkok, by region and country, 1999-2002, and in 2003

Region / Country	1999 – 2002		2003	
	Detained	Deported	Detained	Deported
Total	178,909	176,777	61,623	61,930
East/Southeast Asia	169,393	167,780	58,322	58,719
Myanmar	86,246	86,599	24,511	24,900
Cambodia	59,307	57,948	23,531	23,547
Lao PDR	16,402	16,095	8,306	8,396
China	5,361	5,290	1,210	1,187
Others	2,077	1,848	764	679

Source: Thai Immigration Detention Center, cited in Ho Jung Lee, 2008.

3.3.2.2. Formalization of Process in 2006

It was August 2006 that Thailand had changed its direction of policy towards North Korean asylum seekers more clearly; to eliminate pull-factors attracting more refugees. Thai policemen raided on a safe house of North Koreans' temporary shelter in Bangkok, and arrested 175 of North Korean asylum seekers. Two days after arrest, they were sentenced 6,000 THB of fine and deportation for illegal entry at the North Bangkok Criminal Court.

Since this event, there was expectation that Thailand would close the border as Vietnam did. However, Thailand adopted policy that not only not to send those arrested North Korean asylum seekers back to North Korea, but to cooperate for their resettlement to the third country as a final transit temporarily. As seen from Table 2,

the number of detained North Korean asylum seekers in Maesai Immigration Office in 2007 is increased almost twice of 2006.

Table 2. Number of Detained North Korean asylum seekers in Maesai Immigration, Thailand

/ Year	2003	2004	2005	2006	2007	mid-2008
Detained NKR	40	28	100	367	614	342

Source: Maesai Immigration Office, 2008

Table 3. Number of North Koreans entering South Korea

Year	~'04	'05	'06	'07	'08	'09	Total
Total	6,303	1,383	2,018	2,544	2,809	2,927	17,984

Source: Ministry of Unification, Republic of Korea, 2011

As seen from Table 3, the number of North Koreans entering the South Korea has been gradually increased. Given the fact that the major plight route of North Korean asylum seekers is Thailand, it is possible to estimate that staying situation for those refugees in Thailand. The South Korean parliament investigation statistic data indicated that total 38% of North Koreans who resettled in South Korea in 2007 were form Thailand. Currently it is estimated that about 80% of North Koreans came through Thailand. So it is possible to estimate the number of North Korean asylum seekers entering the South Korean through Thailand as Table 4. Another estimation is also allowed as follows: There are average 40 of North Korean asylum seekers were detained in IDC per every week since 2009, so it is approximately 2,000 persons that North Korean asylum seekers who passed through Thailand.(Bangkok Immigration, 2011)

Table 4. Estimation of North Korean asylum seekers entering South Korea through Thailand

/Year(% of TH)	'05(40%)	'06(40%)	'07(40%)	'08(40%)	'09(80%)	Total
Total	1,383	2,018	2,544	2,809	2,927	17,984
Estimation	553	807	1,018	1,124	2,342	5,844

There were various interpretations to this event. For the background of Thai government's determination, it is dominant that Thailand wanted to eliminate the recognition which Thailand is the safest place for their resettlement. Because there have been expectation that there would be more than 100,000 North Koreans in China who would try to entered Thailand in a few years.(Lee, 2009) The concerns on the mass influx of the North Korean asylum seekers into Thailand led the government to decide to crackdown and arrest those refugees. This, however, resulted in intense pressure from the international society; e.g. the after day of arrest, the E.U. passed a resolution that urged Thailand to release those North Korean asylum seekers and cooperate for their resettlement, while there was neither pressure nor comments from the North Korean side.

In addition, the physical difficulties originated from the 7,000 km of long distance and transportation also acted a big role in Thailand's decision. (Lee, 2008) It was obvious that neither those North Korean asylum seekers nor their government did not afford to the cost of traveling back to North Korea. Therefore it was the only choice for Thailand to detain them until someone pay for the cost of deporting the North Korean asylum seekers from Thailand to the third countries. As a result Thailand decided not to block the border towards North Koreans, but to cooperate further for their resettlement with a tolerance on their temporal passing through Thailand.

At the end, Thailand formalized the process of dealing with North Korean asylum seekers by entrusting the management of North Korean asylum seekers same as illegal entrants with Thai Immigration Bureau until the entry process finished by the resettlement countries. In addition, some settlements have been set up as well during this period. As a result, the waiting time in Thailand has been shortened due to

the formalization though the freedom of North Korean asylum seekers is restricted during detention.

3.3.2.3. Hunger Strike in 2007 and the Aftermath

In April 2007, 414 of North Korean asylum seekers in the Immigration Detention Center (IDC) in Bangkok went on hunger strike against delay of flight to South Korea. The procedure from detention to the deportation usually takes time for three months, but at that time, the procedure has been delayed more than four months and the number of detainees in the cell for North Korean asylum seekers, especially for women, accumulated until there is no space for sitting on the floor. The strike went on for three days, and settled down when South Korean official came and convinced them there will be no repatriation to North Korea and would allow traveling to South Korea faster.(Lee, 2009)

The cause of delay is still not clarified, but presumed that the number of persons permitted to travel by South Korean side was too small to satisfy the increased number of entry. Both Thailand and South Korea have noticed the seriousness of situation before the hunger strike started, but both side stood until the other side found solution. Thai immigration refused to transfer the North Korean asylum seekers to other detention, while South Korean authorities refused to enlarge the number of travel permission.

Thai government could not avoid criticism from the international society when the news of hunger strike and situation in the detention center were released. The immigration officials normally recognize the fear of North Korean asylum seekers being possibly sent back. They have been generous towards them. Although Thai authorities did not change its policy after the event of North Korean asylum seekers' hunger strike, but the recognition of Thai officials on the North Korean asylum seekers has changed from someone pitiful to someone troublesome. And restriction has been tightened in accessing to outside, such as not allowing phone call

or visitor. (Lee, 2009)³⁴

Since the foreign policy of South Korean administration toward North Korea has been changed in 2008, the process of entry into South Korea became much faster and no policy change shown until 2009. In February 2009, however, entry of North Korean asylum seekers to South Korea seemed to face a setback since Thai Foreign Minister met with North Korean ambassador to Thailand, and expressed that;

“Thailand didn’t want further inflow of North Koreans who want to go to a third country, asking North Korea to consult this matter with China.”(Thai Foreign Minister, 2009)³⁵

But after this meeting, there was no change on the policy of Thailand towards North Korean asylum seekers. In the 6th General Assembly of the International Parliamentarians’ Coalition for North Korean asylum seekers and human rights held in Chiang Mai on November, 2009, Thai immigration expressed its recognition on the refugee status of North Koreans and cooperation for the latter’s traveling to the third countries:

“They come to Thailand because; unlike in China and Laos, they will not be sent home, where they could face execution. We don’t have the policy to send them back to North Korea. We want to take care of them until they are accepted into a third country. It’s not the same as people coming from Cambodia or Laos. North Koreans come here because of political problems. So we want them to get to a third country.”(ChiangSen Immigration Official, 2009) ³⁶

³⁴ Lee, Young hwan (2009) and interview with South Korean officials and NGOs

³⁵ 2009. 19 NK Refugees Arrive in South. Available from http://www.koreatimes.co.kr/www/news/nation/2010/12/117_39131.html

³⁶ Schearf, D. Increasing Numbers of North Korean Refugees Head to Thailand.

Up to the present, Thailand has adhered to the policy adopted in 2006, giving the custody to the North Korean asylum seekers to the Thai Immigration Bureau. Under the control of the immigration, although they are given status of illegal entrants and detained in the prison, there have been “decriminalization practices” for these refugees’ minority rights as a refugee not as an ordinary criminal in the detention center. More details on this “decriminalization practices” of Thai immigration will be discussed in the following chapter.



VOA News.com. Available from

<http://www.voanews.com/english/news/asia/Increasing-Numbers-of-North-Korean-Refugees-Head-to-Thailand--80377682.html>

CHAPTER IV

THE THAI IMMIGRATION'S DECRIMINALIZATION PRACTICES TOWARDS NORTH KOREAN ASYLUM SEEKERS

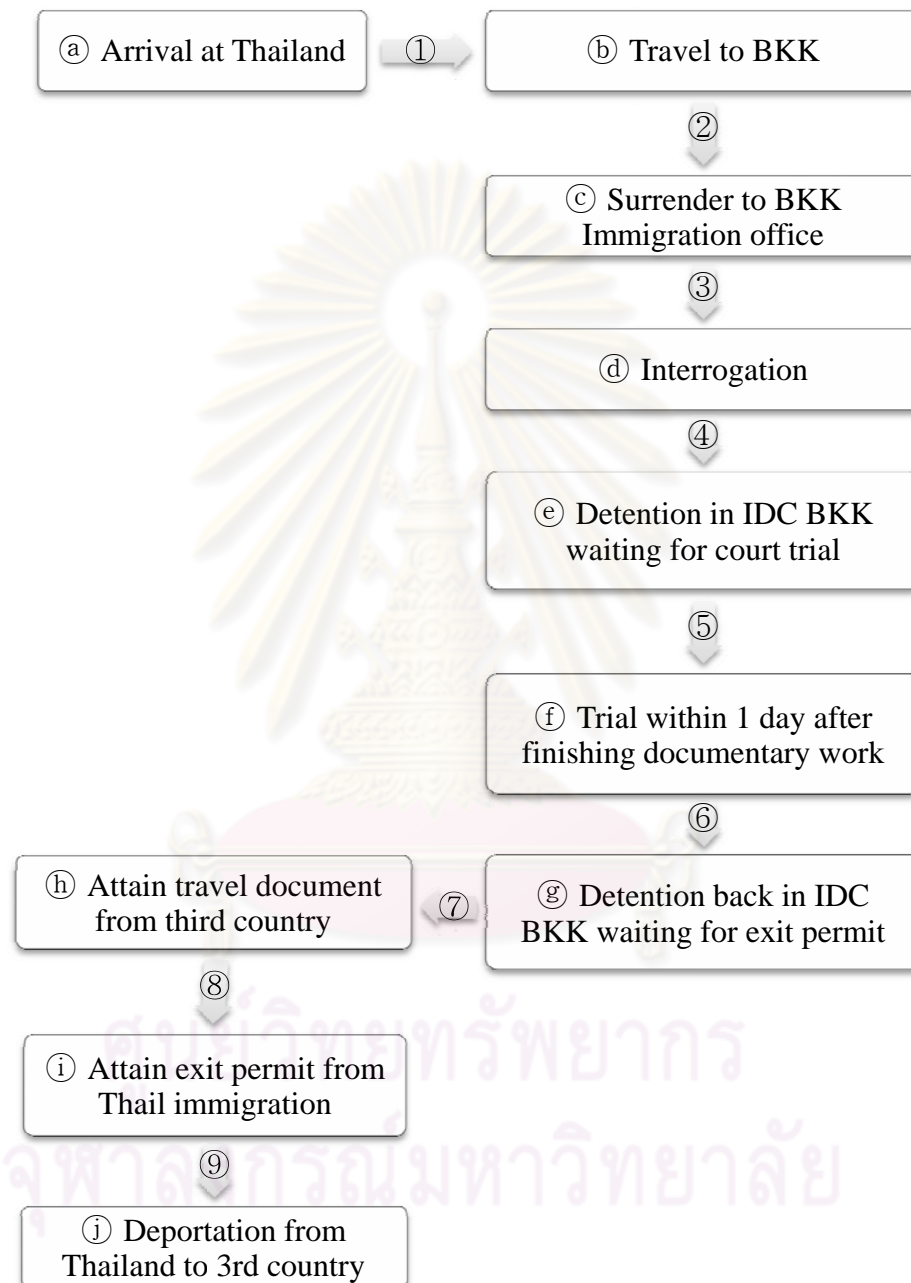
As stated earlier, North Korean asylum seekers who entered Thailand are not allowed to attain refugee status, but allowed to wait for the resettlement process to a third country in Thailand. In other words, the act of illegal entrants of those refugees itself is not legalized by Thai authorities, but their status as a refugee or non-criminal are protected in some manner by the Thai immigration's decriminalization practices.

In this chapter, the study analyzes the findings from the interviews with Thai immigration officials, the North Korean asylum seekers, and other relevant persons such as South Korean government official, and South Korean NGOs' human rights activists. The research results show that there are a number of exceptional practices towards the North Korean asylum seekers in Thai immigration. The study demonstrates each procedure of the whole process that is from the detention of North Korean asylum seekers under the Thai immigration to the deportation to the third countries. Then analyse whether the practice of decriminalization is implemented in the procedure or not.

4.1. PROCESS FROM ARRIVAL TO DEPORTATION OF NORTH KOREAN ASYLUM SEEKERS IN THAILAND

Based on the answers of Thai immigration official in Immigration Detention Center in Bangkok and the North Korean asylum seeker, as well as the South Korean human rights activist in Thailand, this study synthesize the process from arrival to the deportation of North Korean asylum seekers in Thailand. This process has been formed since 2008, after the event of crack down 175 of North Korean asylum seekers at the safe house in Bangkok, and the South Korean government's change of policy.

Figure 3. Process from Arrival to Deportation of North Korean asylum seekers in Thailand



‘Figure 3’ shows the most preferred process of North Korean asylum seekers. Once North Korean asylum seekers arrive in Thailand, they try to travel to Bangkok by themselves. This is because it is the fastest route for the North Korean asylum seekers to attain permission to travel to the third country. In this case, the whole

process generally takes time for one month. Some of them, however, caught by border patrol, or surrender themselves to local police station. There are various reasons for this case; strengthening of border control, out of money to travel to Bangkok, brokers' irresponsibility, and so on. In this case, they are arrested at the local police station for drawing up report, and detained to wait for being brought to the local court. The time took from the report drawn to be brought to the court is less than 2 days. From the court, they are sentenced to penal to fine for illegal entry or detention in case they do not afford to pay it. The amount of fine is different according to the area, but normally 6,000 Thai Baht. For those who cannot pay the fine, detention for 90 days is sentenced with accordance to the Thai immigration law. However, in most case, they are sent to Bangkok detention center before 90 days.

Those who travel to Bangkok by themselves go to Bangkok immigration office and surrender themselves as a North Korean asylum seeker. Some of them go to South Korean embassy to claim refugee status, but they are also sent to Immigration office by South Korean embassy. As state earlier, since 2007, the process of North Korean asylum seekers' deportation has been formalized, every North Korean asylum seekers who claim their refugee status in Thailand is sent to immigration office. When they are Bangkok immigration office, they are sent to Immigration Detention Center. They are interrogated to draw up a report, and detained in IDC. In a one day after finishing to report, they are tried for punishment of illegal entry, and then detained back in IDC.

After the trial, they wait for permission to travel to the third country. Those who have been detained and tried at the other province are transferred to IDC in Bangkok to wait for the travel permission. It takes three weeks in the shortest case. In recent years, every North Korean asylum seeker chooses to go to the South Korea, because the South Korean government provides the best condition for the resettlement. When the travel document, temporally passport is issued and flight to South Korea is arranged by South Korean government, they are permitted to travel to South Korea. Then the North Korean asylum seekers are handed over from Thai

immigration to the South Korean embassy at the airport. From this stage, they can travel as South Korean citizen, holding South Korean travel document.

4.2. ANALYZE DECRIMINALIZATION PRACTICES IN EACH PROCESS

4.2.1. Not to Report to Embassy of North Korea

This case of decriminalization is found in the process of ④ of 'Figure 3'. When there is an offender of immigration law, Thai immigration reports the case to the embassy of its national according to the immigration law. But since its early period of this North Korean asylum seekers' case, Thai immigration has never reported those refugees to the embassy of North Korea, even though it categorizes them as illegal entrants. As a result, none of North Korean asylum seekers who arrived in Thailand has been repatriated to North Korea. This is due to humanitarian responsibility of Thai government to defend the principle of "non-*refoulement*". The study already described the efforts of Thai government to protect refugees through the history in the former chapter. Thailand has always been responsible to defend minimum human rights of refugees. The principle of "non-*refoulement*" is the most essential in the refugee protection. Although Thailand has not legalized North Korean asylum seekers' status, it has defended those refugees' rights by not only repatriating them.

In addition, not only not to send them back to North Korea, but not to report their information to the embassy of North Korea is very critical for those refugees. The study already pointed out that a large number of North Korean migrants are aware of the fear of persecution on the family who left in country. North Korean asylum seekers are categorised as refugee *sur place* in the earlier chapter. Most of these refugees firstly fled country to seek money or food, so they left the other family members at home. After that they failed to go back to their family, or decided to resettle in third countries and then help escape of the other family members later. Therefore, they have the fear of persecution not only when they are sent back to

North Korea, but also when fact of their migration is reported to the authorities, because their family members who are in North Korea will face severe persecution even threatening their life.

For North Korean asylum seekers, this is the only and the most urgent protection; not to send them back to the North Korea or China, and not to report their information to North Korean embassy or authorities. And this has been well-defended by Thai government.

4.2.2. Reduction of Detention Period

It is shown in the process of ⑧ in the 'Figure 3' that the Thai immigration reduce period of detention for North Korean asylum seekers who failed to pay fine to the illegal entry. According to the Thai immigration law, the detention period in this case is 90 days. The Northern Bangkok court usually sentences 6,000 Thai Baht of fine or 90 days of detention. After those refugees are detained back in the IDC Bangkok, the Thai immigration usually does not obligate them to serve the whole sentenced period exactly. Same case is found at the immigration detention center in provinces. Those who are tried at the local court are sentenced 60 days or 90 days of detention replacing fine, but before the sentenced period finished, they are transferred to IDC in Bangkok.

This practice is mainly due to lack of detention capacity in the detention center of Thai immigration. But, on the other hand, those refugee's rights are partly protected by this practices. It is more clearly understood when this practice is compared to the case of North Korean asylum seekers who detained in the local prison instead of immigration detention center. For those who arrested in the province, as most unfortunate case, the court sentence those who cannot afford to pay fine to detain in the local prison in the province. In that case, the detainees cannot expect the reduction of detention period, but have to bare treatment same as the other criminal prisoners. Therefore, no matter Thai immigration recognize those refugees' human

rights in reducing the detention period or only consider about their capacity of detention center, it is obvious that the practice helps to improve situation of North Korean detainees.

4.2.3. Exempt of Restriction

North Korean asylum seekers in IDC Bangkok are allowed to go out for shopping in the neighbour two or three times per a week. They are allowed to buy stuffs at the supermarkets, make phone calls with public phone, take food from restaurants, and buy medicines at a pharmacy if they need. This kind of exceptional tolerance is not allowed to ordinary detainees who have possibility to run away. Although Thai immigration official denied that they are allowing those refugees to go out for shopping, the fact is found from various sources; interview with North Korean asylum seekers, interview with human rights activists, even from news articles.³⁷

This case decriminalization is also reflection of the fact that Thai immigration's recognition towards the situation of North Korean asylum seekers: They are not criminals, and they have no will of escape from the detention, but they are refugees who cannot go back to their country of origin. It is deniable that this partial freedom permitted to those refugees by Thai immigration helps to bring about improvement of human rights situation of North Korean asylum seekers in IDC Bangkok.

4.2.4. Flexibility of Detention Period

It sounds contradictory that prolonging the period of detention contributes to

³⁷ Kim, So-yeol. 2008. 태국 수용소 탈북여성들, 추석 맞아 ‘깜짝 외출’.

Available from : <http://www.fromdailynk.com/korean/read.php?cataId=nk00100&num=61515>

Thai immigration's decriminalization. But in case of delay of resettlement procedure, it is helpful for the North Korean asylum seekers to prolong their detention period. Because being under detention is the only way for those refugees to stay in Thailand. It is necessary to note that detaining those refugees is also burden to Thai immigration. Under this circumstance, Thai immigration and the government have tolerated the accumulated North Korean asylum seekers in their facility.

It is easily to criticise that Thai government should not detain those refugees, or provide more space for them. However, if it is that easy to do, why none of neighbouring countries does not help those refugees, by blocking from border or sending them back to China? Those criticisms never reflect North Korean asylum seekers' real concern. And therefore, this study argues that the practice of prolonging detention period is a case of Thai immigration's decriminalization practice which contributes to protect North Korean asylum seekers' rights.

4.2.5. Exit Permit: Permission to travel out of Thailand

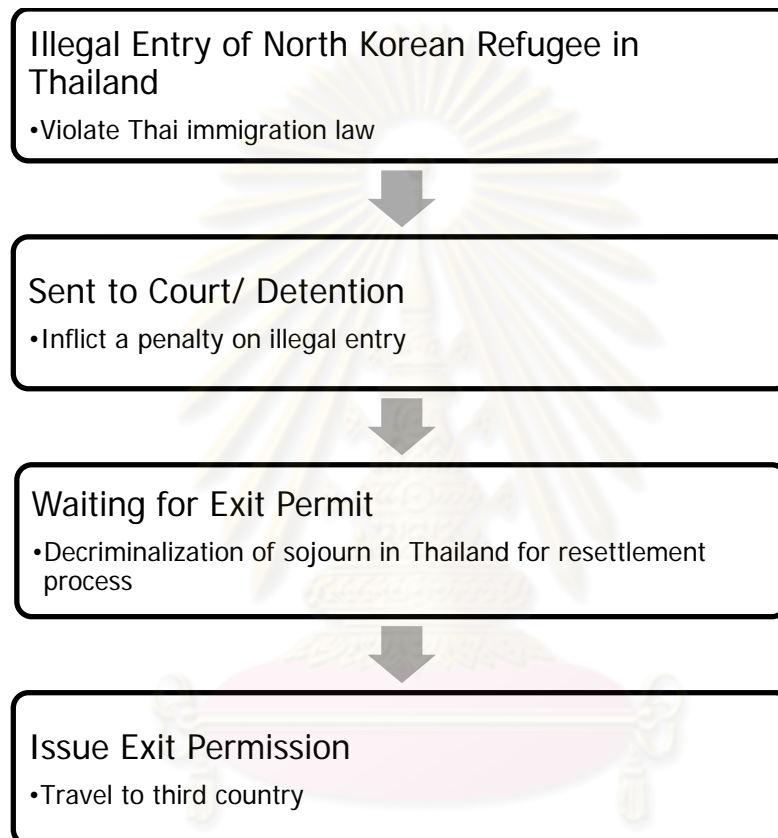
After all procedures to enter South Korea are settled by its government, Thai immigration permits North Korean asylum seekers to travel out of Thailand. This is included to process ① and ② in the "Figure 3". Thai immigration transports those refugees to the airport, and hand them over to South Korean government official. Those refugees pass the passport control at the airport holding travel document issued by government of South Korea. Thai immigration usually permits 40 persons of North Korean asylum seekers per every week to travel out of Thailand, considering the situation of resettlement capacity in South Korea.

4.2.6. Process of Decriminalization of North Korean asylum seekers

To conclude, decriminalization process of North Korean asylum seekers by Thai immigration is described as Figure 4. The illegal entry of those refugees is

punished by being sent to court. After the punishment, Thai immigration decriminalizes the stay of North Korean asylum seekers in Thailand.

Figure 4. Process of Decriminalization of North Korean asylum seeker



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

CHAPTER V

CONCLUSION

5.1. Conclusion on Status of North Korean Asylum Seekers in Thailand

As discussed in Chapter 3, this thesis analyzed the claims to refugee status of North Koreans in Thailand based upon the international refugee instruments and the academic literature. From the review of literature, the study found out that there is general consensus on the deservedness of North Korean asylum seekers' claims to refugee status by the international community. It is generally agreed that the refugee status of North Korean asylum seekers in Thailand can be justified as follows:

1. Those who fled their country of origin and crossed into Thailand with a well-founded fear of persecution because of their political opinions against the rule of dictatorship in North Korea are refugees in accordance with the definition of the UN Refugee Convention and Protocol
2. Those who fled their country of origin for economic reasons are refugees *sur place* based upon the expected persecution which they would face if they are sent back to North Korea.

In conclusion, North Korean asylum seekers should never be sent back to their country of origin, in accordance with international refugee law, and should be protected within nations where they seek asylum.

5.1.1. Conclusion on North Korean Asylum Seekers' Status in Thailand

Since Thailand is not a party to the UN Refugee Convention, it can exercise discretion in its policies towards refugee issues. Consequently, there is no national legal basis for North Korean asylum seekers in Thailand to claim refugee status. The

only legal document which is applied by Thailand in the case of North Korean asylum seekers is Thai immigration law, which has no provision relating to refugees. However, this does not mean that the rights of refugees do have any legal protections in Thailand. Although the policy towards North Korean asylum seekers has been changed based upon political expediency at times, the basic principles of humanitarian law have generally been respected. Most importantly, the principle of ‘*non-refoulement*’ has been upheld since the earliest case of North Korean claims to asylum in Thailand. In addition, the Thai government has always been cooperative in facilitating refugee resettlement to third countries.

The legal status of North Korean asylum seekers in Thailand is similar to that of illegal migrants in that they do not have valid travel documents. They therefore fall under the status of immigration law offenders because of their illegal entry into the country. All of the procedures for punishment of the illegal entry are conducted and there is no exceptional treatment except for a simplification and shortening of the process. During this procedure, asylum seekers are detained in the Bangkok IDC.

The reason that Thai authorities do not lessen the severity of the punishment for the asylum seekers’ illegal entry are as follows: concerns about the possibility of attracting a mass influx of North Korean asylum seekers into Thailand in the future, interests in maintaining harmonious foreign relations with North Korea and China, national security concerns in its border territory, concerns about the spread of transnational crime networks of smugglers and brokers, the effects of limited budgetary support, and concerns about the international attention focused on Thailand’s refugee policies and human rights protections. Based upon these considerations, reduction or cancellation of punishment for the illegal entry of North Korean asylum seekers is equivalent to legalization of entry for refugees. Therefore, it is unlikely that Thai authorities will change the current official policies to any major degree.

5.1.2. Conclusion on *de facto* Decriminalization

With regards to North Korean asylum seekers, there is neither an applicable legal provision nor any official document in Thailand related to their treatment. However, in practice the study found that there is a form of *de facto* decriminalization exercised towards North Korean asylum seekers. This practice of decriminalization applied to North Korean asylum seekers in IDC Bangkok is described in the former chapter. The most important aspect of this practice is that it upholds the principle of *non-refoulement*. The Thai Immigration Bureau has never sent refugees back to North Korea or deported them to their previous country of transit. In addition, Thai immigration authorities have never reported information about North Korean asylum seekers to their embassy. This is an exceptional practice that does not conform to the standards of Thai immigration law. In addition, the detention period for the punishment of their illegal entry has been reduced for North Korean asylum seekers and they are allowed a significant degree of freedom movement even while detained. North Korean asylum seekers are allowed to go out of the IDC for shopping in the neighbourhood two or three times per a week. They are also allowed to stay in Thailand until the preparations for their travel to a third country are complete.

In conclusion, Thai immigration authorities have decriminalized the North Korean asylum seekers' stay in Thailand. Although they still have to endure detention in the IDC, the decriminalization has helped to secure the protection of North Korean asylum seekers' from the prospect of *refoulement* or deportation. This is as far as the Thai government will go in legalizing the entry of North Korean asylum seekers in Thailand although it is still possible for the Thai Immigration Bureau to consider additional ways to improve the conditions of detention for North Korean asylum seekers. In summation, the Thai immigration authority's decriminalization practices have brought about improvements in the human rights situation of North Korean asylum seekers in Thailand.

5.2. DISCUSSION

Not an Ideal but Practical Policy

This thesis proposed the hypothesis that the Thai immigration authority's decriminalization practices towards North Korean asylum seekers have contributed to protecting their human rights and human security. This hypothesis is accepted. Thai authorities have formalized the process for dealing with North Korean asylum seekers and given custody of the asylum seekers to the Thai Immigration Bureau. By formalizing the process, the refugees gain legal protection for further stay in Thailand until they are resettled in third countries. This may not be an ideal but practical policy for North Korean asylum seekers.

In terms of formalizing the decriminalization process, the study found out that there is no legislative basis established for the policy yet, and no official policy documents exist for procedures on North Korean asylum seekers by the Thai Immigration Bureau. The only legal basis which is applied to their cases is Thai immigration law, according to which the actions of North Korean asylum seekers entering Thailand are illegal and subject to prosecution and punishment. Being placed into detention is required of refugees wishing for further stay and their human rights are restricted in this situation.

However, this study tried to understand this fact from a different perspective. Although Thai immigration authorities penalize the entry of asylum seekers without the proper travel documents required by law, through their detention they are at least allowed to remain in Thailand until they travel to a third country for resettlement. Moreover, Thai immigration authorities exempt North Korean asylum seekers from some of the standard restrictions faced during their detention in the IDC. Detainees are allowed to go out of the IDC and to bring food and other items from outside back with them which helps to improve their living conditions. Through the process of decriminalization, refugees are able to attain semblance of legal status in Thailand,

even though they are not formally recognized as refugees.

It could be disputed whether the status of detainees in the IDC is better than that of illegal migrants staying illegally but freely outside of the prison. More research is necessary to answer this question. There is a greater likelihood of the violation of human rights in the absence of formal legal status and before Thai authorities formalized the process relating to North Korean asylum seekers in Thailand, North Korean asylum seekers were simply regarded as illegal migrants under the law. The situation meant that North Korean asylum seekers were forced to violate Thai immigration law again after entry by illegally staying in Thailand. As Newman has shown, human rights are much more vulnerable when a person fails to gain legal status from any state. (2003)

While detention is not an ideal way of protecting refugees, given the fear of repatriation in other countries, it does offer the best conditions available so far for North Korean asylum seekers. In many Asian countries, the rights of refugees established under international refugee laws are not respected by their own citizens. In practice therefore, it is hard to expect receiving countries to protect refugees' rights exactly as written in international law.

Protecting Human Rights vs. Political Expediency

The decriminalization practices of Thai immigration authorities have resulted in bringing about an improvement in the human rights of North Korean asylum seekers in some ways. They are now protected by law even though they are forced to live under conditions of detention and many exceptional practices have been introduced to improve the conditions of their stay in the IDC. However, it would be difficult to say that Thailand cannot do more to protect the rights of North Korean asylum seekers who seek asylum in Thailand.

Thai policy towards North Korean asylum seekers is may be considered as

biased towards the needs of political expediency. While Thai immigration authorities have appealed for relief from the burden of expenses of detaining North Korean asylum seekers on the one hand, the Thai Government also officially rejected the proposal of the South Korean Government to provide accommodation for North Korean asylum seekers in Thailand. It would significantly reduce the costs associated with hosting North Korean asylum seekers as well as provided better protection for the rights of the asylum seekers. In case of Iranian asylum seekers, they were not to be regarded as refugees by Thai authorities, but they were allowed to be accommodated in Thailand before resettlement. (Muntarbhorn, 1992) However, the Thai government had been unwilling to accept this proposal because it will be against the Thai Immigration law. At the end, Thailand turned down the proposal stating that they still consider any undocumented North Korean migrants entering Thailand as illegal entrants.³⁸ This statement exemplifies Thailand's primary concern in this matter which is not the protection of asylum seekers' rights but instead preventing the influx of more North Korean asylum seekers into Thailand.

In addition, Thailand is still repatriating other ethnicities of refugees, e.g. Burmese refugees, and restricts the movement of refugees to designated camps. Today there are nearly 105,000 registered refugees and some 10,000 asylum seekers from Myanmar living in Thailand. Most of the refugees come from ethnic minority groups within Myanmar, primarily the Karen and the Karenni, who are fleeing from conflict in Myanmar's eastern border jungles. Thailand has hosted Burmese refugees in its border areas for over 25 years, who now reside in 9 government controlled camps in 4 of its border provinces. Admission to the refugee camps on the Thai side of the border is governed by a national screening mechanism however, the number of those who have yet to receive a status determination continues to grow. Refugees and asylum seekers living outside the camps are considered illegal migrants under Thai law and are at risk of arrest, detention and deportation. Refugees who remain in the camps are provided with basic food, shelter, medical care and schooling provided by NGOs. Although their basic needs are met, refugees have no freedom to leave the

³⁸ 2009. Thai Foreign Minister's Press Conference

camps. Some of refugees who were born in the camps are now raising their own children there and frustration levels are high. As a result, rape, domestic violence and substance abuse have become chronic problems within the camps. Taking this broader context into consideration, Thai policy towards refugees and asylum seekers still leaves much to be desired in some respects.

5.3. RECOMMENDATION

Thailand is legally obligated to protect North Korean asylum seekers only as much as is legislated under national immigration law, which lacks any specific provision relating to refugee status. Despite this, Thailand has never repatriated North Korean asylum seekers back to their country of origin. However, it is also undeniable that Thailand's policy is much more dependent upon political expediency than humanitarian responsibility. So far, China and North Korea have not put any significant pressure on Thailand relating to the North Korean asylum seeker issue. However, if additional diplomatic pressure is applied by the North Korean or Chinese side, it is hard to anticipate how the policy of Thailand towards North Korean asylum seekers might change.

Thus, it is necessary to secure additional formal legal protections of North Korean asylum seekers' rights in Thailand. Ideally, this would take the form of Thailand recognizing them as refugees under the definitions of international law. However, in order to be realistic and pragmatic, the most important concern for the time being is to increase the efficiency of the resettlement process to third countries. There was outstanding improvement in this regard before 2007 and after 2008 in terms of the efforts of the South Korean Government. The Government expedited the resettlement process considerably and as a result, a greater number of North Korean asylum seekers have been able to depart from Thailand more rapidly than before.

The most effective solution to protect North Korean asylum seekers would be for their country of origin to stop persecuting its own people. Fundamentally, the

ideal solution would be not to generate forced migration from the country origin from the beginning. The second most effective solution would be for China to stop repatriating North Korean asylum seekers back to North Korea. If China stops repatriation of North Korean asylum seekers, then there will be no more North Korean asylum seekers in Thailand. However, as both of these solutions fall outside the scope of this research, a more relevant concern for this study is what can be implemented by Thailand as a solutions-oriented approach to the situation.

Most of all, it would be a major improvement in the protection of North Korean asylum seekers' human rights if the Thai government would allow accommodation of asylum seekers in separate facilities without detaining them in the Bangkok IDC. North Korean asylum seekers are not criminal offenders but victims of forced migration in need of protection.



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จุฬาลงกรณ์มหาวิทยาลัย

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ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย



APPENDIX

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

APPENDIX

QUESTIONNAIRE FOR IDC OFFICIAL

1. When did the North Koreans come at the first time into Thailand and surrendered themselves as a refugee at Thai immigration?

ชาวเกาหลีเหนือเข้ามาในประเทศไทย และยอมให้สำนักงานตรวจคนเข้าเมืองจับกุมในฐานะผู้อพยพครั้งแรกเมื่อไร

How did the Thai immigration deal with them?

ทางสำนักงานกองตรวจคนเข้าเมืองมีวิธีดำเนินการต่อผู้อพยพชาวเกาหลีเหนืออย่างไรบ้าง

How has the policy of Thai immigration changed since then?

ตั้งแต่นั้นมานโยบายของสำนักงานตรวจคนเข้าเมืองเปลี่ยนแปลงไปอย่างไร

2. What are the major laws referred to in the case of North Korean asylum seekers?

กฎหมายหลัก ที่ใช้กับชาวเกาหลีเหนืออพยพ คือ อะไร

3. What status is granted to those North Korean asylum seekers in Thailand?

สถานะ (ตามกฎหมาย)ใดที่ชาวเกาหลีเหนืออพยพได้รับในประเทศไทย

4. What terminology (in Thai words) is used to designating them in IDC?

คำเฉพาะหรือนิยามใด ที่สำนักงานตรวจคนเข้าเมืองไทย (ที่ศูนย์กักกันผู้อพยพ) ใช้กำหนดสถานะสำหรับชาวเกาหลีเหนืออพยพ

5. Please explain the detaining process of North Korean asylum seekers.

กรุณาอธิบายขั้นตอนการควบคุมตัวที่ใช้กับชาวเกาหลีเหนืออพยพ

6. Please explain the deporting process of North Korean asylum seekers.

กรุณาอธิบายขั้นตอนการส่งตัวออกนอกประเทศที่ใช้กับชาวเกาหลีเหนืออพยพ

7. How long does the whole process take time from detaining to deporting?

การกักตัวจนกระทั่งส่งตัวออกนอกประเทศ มีระยะเวลารวมทั้งสิ้นนานเท่าใด

8. Compared to other ethnic refugees (e.g. Burmese refugees) in IDC, what kind of exceptional tolerance has been given to North Korean asylum seeker detainees?

หากเปรียบเทียบกับผู้อพยพทั่วไป (เช่น ผู้อพยพชาวพม่า) ในศูนย์กักกันผู้อพยพชาวเกาหลีเหนือได้รับการยกเว้น (หรือสิทธิพิเศษ) ในเรื่องใดบ้าง

9. Referring to the IDC regulations and Thai immigration law, what kind of rights has been restricted to North Korean asylum seeker detainees?

พิจารณาจากกฎเกณฑ์ของศูนย์ควบคุมผู้ต้องกัก และกฎหมายสำนักงานตรวจคนเข้าเมือง ชาวเกาหลีเหนืออพยพ ต้องปฏิบัติ หรือ ถูกจำกัดสิทธิ อย่างไรบ้างในฐานะผู้ต้องกัก

10. What is the major problem do you meet in dealing with North Korean asylum seekers?

อะไรคืออุปสรรค หรือ ปัญหาในการดำเนินการกับชาวเกาหลีอพยพเกาหลีเหนือ

11. Do you think that more assistance is needed for North Korean asylum seekers during their staying in Thailand? (Yes / No)

ท่านคิดว่า ระหว่างที่ถูกควบคุมตัวในประเทศไทย ผู้ต้องกักชาวเกาหลีเหนืออพยพน่าจะได้รับความช่วยเหลือด้านอื่นๆเพิ่มเติมหรือไม่

12. What kind of other assistance is needed for North Korean asylum seekers during their staying (detaining) in Thailand?

ท่านคิดว่ามีความช่วยเหลืออื่นใดที่ผู้ต้องกักชาวเกาหลีเหนืออพยพมาจะได้รับตลอดระยะเวลาที่ถูกควบคุมตัวในประเทศไทย เพราะเหตุใด

Who should provide the more assistance for North Korean asylum seekers?

ผู้ใดเหมาะสมที่จะให้ความช่วยเหลือด้านนั้นๆ สำหรับผู้ต้องกักชาวเกาหลีเหนือ

13. Please provide me the statistic information relating to the North Korean asylum seekers.(shares by year, gender, age, resettle countries)

กรุณาให้ข้อมูลทางสถิติในเรื่อง จำนวนผู้ต้องกักชาวเกาหลีเหนืออพยพจำแนกตามเพศ อายุ รวมทั้งประเทศที่ชาวเกาหลีเหนืออพยพเลือกไปตั้งรกรากใหม่ เป็นรายปีเท่าที่ทางศูนย์ฯ จะให้ได้จะเป็นพระคุณอย่างสูง

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