



A Submission to the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

Re: call for inputs concerning the progress in accountability for human rights violations in the DPRK for the Special Rapporteur's report to the 55th Human Rights Council session in March 2024

February 14, 2024

This submission is public and may be quoted as required.

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1. Introduction

The Transitional Justice Working Group (TJWG) is a human rights documentation group that aims to realize justice and accountability. Since its founding in 2014, TJWG has mapped the locations of public executions and other state-sanctioned killings and burial sites, and investigated North Korea (DPRK)’s abductions of South Korean citizens and non-repatriation of South Korean (ROK) POWs as well as internal disappearances perpetrated mainly by the Ministry of State Security (MSS). TJWG has built an international network with groups documenting mass atrocities through collaboration and exchange of experiences. TJWG also successfully advocated for South Korea’s accession to the UN Enforced Disappearance Convention and is currently calling for the enactment of its domestic implementing legislation.

As we mark the 10th anniversary of the landmark COI report, it is necessary to consider all measures that can be taken to ensure justice and accountability for North Korea’s crimes against humanity and other grave human rights violations. We therefore set out below an update to the COI report and other proposals to this end.

2. An update to the COI report

The Special Rapporteur has called for inputs concerning the progress in accountability for human rights violations in the DPRK. To promote accountability, we call upon the Special Rapporteur to prepare an update to the report of the Commission of Inquiry on human rights in the Democratic People’s Republic of Korea, with the support of an independent expert appointed by the Human

Rights Council to support the preparation of the update, and to submit the update to the Human Rights Council at its 61st session in March 2026. The UN Human Rights Council should adopt a resolution to authorize such an update to the COI report at its 55th session.

In 2014, the COI report recommended in its landmark report that: “The Human Rights Council should ensure that the conclusions and recommendations of the commission do not pass from the active attention of the international community. Where so much suffering has occurred, and is still occurring, action is the shared responsibility of the entire international community”.¹ Ten years later, it is time for the preparation of an update to the COI report, with the Human Rights Council’s authorization, to ensure that the COI’s conclusions and recommendations “do not pass from the active attention of the international community”.

We note in this regard the COI’s recommendation that the pre-COI country-specific human rights monitoring and reporting mechanisms on the DPRK, including the Special Rapporteur on the situation of human rights in the DPRK, should be “mandated to focus on ensuring accountability, in particular for crimes against humanity, and should report on the implementation of the [COI’s] recommendations”.²

We recommend that the following issues are addressed in the update to the COI report:

- (1) the implementation of the recommendations contained in the COI report;
- (2) the overall human-rights situation and trend under Kim Jong-un’s leadership;
- (3) the COVID-19 pandemic’s impact on civil, political, economic, social and cultural rights;
- (4) the human rights dimensions to peace and security;
- (5) the women and peace and security agenda;
- (6) the DPRK’s overseas workers as well as prison labor and labor mobilization in the DPRK;
- (7) the abductees and unrepatriated POWs and the more recent foreign detainees;
- (8) access to information for the North Korean people;
- (9) the internal and cross-border movement of North Korean people; and
- (10) access to food, medicine and other life essentials for the North Korean people

The COI’s recommendations make clear that any update to the COI report should include an appraisal of their implementation in the past ten years. Such an appraisal would be closely tied to the

¹ A/HRC/25/63, para. 94(f); A/HRC/25/CRP.1, para. 1225(f).

² A/HRC/25/63, para. 94(b); A/HRC/25/CRP.1, para. 1225(b).

assessment of the overall human-rights situation and trend in the DPRK under Kim Jong-un, Supreme Leader and First Secretary of the Workers' Party of the DPRK, who had been in power for only two years at the time of the COI report.

The update to the COI report would also need to document the impact of the COVID-19 pandemic, one of the most devastating and wide-reaching events in the DPRK as well as the world in the past decade, on the civil, political, economic, social and cultural of the North Korean people. The human rights dimensions to peace and security and the women and peace and security agenda, two thematic issues highlighted by the Special Rapporteur in her annual report last year,³ may also be topics to be covered in greater detail in the update to the COI report.

The update can also investigate the DPRK's overseas workers whose number has grown since the COI report despite the requirement of their mandatory repatriation by Security Council resolution 2397 (2017) and the ongoing prison labor and labor mobilization in the DPRK in the recent years. An update on the unresolved issue of foreign abductees and unrepatriated prisoners of war (POWs) as well as the documentation of the more recent detention of foreign citizens would also be appropriate.

Lastly, the update to the COI report can also cover the state of the North Korean people's access to information, internal and cross-border movement and access to food, medicine and other life essentials following upon on the COI report's investigation of violations of the freedoms of thought, expression and religion; violations of the freedom of movement and residence, including the freedom to leave one's own country and the prohibition of refoulement; and violations of the right to food and related aspects of the right to life.

To cover this broad range of issues in the update to the COI report, we believe that the Special Rapporteur would need to be supported not only by the Office of the High Commissioner for Human Rights (OHCHR), including its field-based structure in Seoul, but also by an independent expert with the requisite expertise and experience in the topics to be covered by the update who would be appointed by the Human Rights Council for the duration of the update's preparation.

On the 10th anniversary of the COI report, the international community has the shared responsibility to act to ensure accountability for North Korea's crimes against humanity and other long-standing and ongoing systematic, widespread and gross violations of human rights. The preparation of an update to the COI report by the Special Rapporteur with the support of OHCHR and an independent expert appointed by the Human Rights Council would be one such action.

Theoretically, even without an explicit authorization from the Human Rights Council, the Special Rapporteur on the situation of human rights in the DPRK and/or other special procedures mandate-holders can prepare an update to the COI report in execution of their mandates.

The Special Rapporteur on the situation of human rights in the DPRK in particular has been requested by the Human Right Council to submit regular reports to the Council and to the General

³ Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, A/78/526 (12 October 2023).

Assembly on the implementation of his/her mandate, “including on the follow-up efforts made in the implementation of the recommendations of the commission of inquiry” in Council resolutions 25/25 of 28 March 2014 (A/HRC/RES/25/25), 28/22 of 27 March 2015 (A/HRC/RES/28/22), 31/18 of 23 March 2016 (A/HRC/RES/31/18), 34/24 of 24 March 2017 (A/HRC/RES/34/24), 37/28 of 23 March 2018 (A/HRC/RES/37/28), 40/20 of 22 March 2019 (A/HRC/RES/40/20), 43/25 of 22 June 2020 (A/HRC/RES/43/25), 46/17 of 23 March 2021 (A/HRC/RES/46/17), 49/22 of 1 April 2022 (A/HRC/RES/49/22), 52/28 of 4 April 2023 (A/HRC/RES/52/28).

Given sufficient resources and political will, the UN special procedures can take on considerable documentation and accountability roles. The Special Rapporteur on extrajudicial, summary or arbitrary executions have conducted extensive inquiries into the killings of Jamal Kashoggi (A/HRC/41/36)⁴ and Quassem Soleimani (A/HRC/44/38).⁵ Similarly, the issue of “comfort women” has been covered extensively in the reports by the Special Rapporteur on violence against women, its causes and consequences⁶ and the Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during wartime.⁷

The 2010 joint study on global practices in relation to secret detention in the context of countering terrorism by four mandate holders⁸ and the follow-up report by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism⁹ provide another model.

3. Treaty bodies

⁴ Inquiry into the killing of Mr. Jamal Kashoggi: Special Rapporteur on extrajudicial, summary or arbitrary executions, <https://www.ohchr.org/en/special-procedures/sr-executions/inquiry-killing-mr-jamal-kashoggi>

⁵ A/HRC/44/38: Use of armed drones for targeted killings - Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (15 August 2020), <https://www.ohchr.org/en/documents/thematic-reports/ahrc4438-use-armed-drones-targeted-killings-report-special-rapporteur>

⁶ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45: Report on the mission to the Democratic People’s Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime, E/CN.4/1996/53/Add.1 (4 January 1996)

⁷ Appendix: An analysis of the legal liability of the Government of Japan for “comfort women stations” established during the Second World War, E/CN.4/Sub.2/1998/13 (22 June 1998).

⁸ Joint study on secret detention of the Special Rapporteur on torture & other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of human rights & fundamental freedoms while countering terrorism, the Working Group on Arbitrary Detention & the Working Group on Enforced or Involuntary Disappearances, A/HRC/13/42 (19 February 2010).

⁹ Follow-up report to the joint study on global practices in relation to secret detention in the context of countering terrorism: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, A/HRC/49/45 (25 March 2022).

North Korea is a state party to the ICCPR, ICESCR, CEDAW, CRC and CRPD. However, it has not submitted its periodic reports on the implementation of the ICCPR and the ICESCR to the Human Rights Committee (HRC) and the Committee on Economic, Social and Cultural Rights (CESCR) for over twenty years. Given that the HRC has sent its list of issues prior (LOIPR) to the submission of the third periodic report of the DPRK (CCPR/C/PRK/QPR/3),¹⁰ the DPRK must be urged to respond to the LOIPR.

The Human Rights Council can add language to this effect in the upcoming annual North Korean human rights resolution at its 55th session. We note that “urging the Government of the Democratic People’s Republic of Korea to respond to the list of issues on the initial report of the Democratic People’s Republic of Korea sent by the Committee on the Rights of Persons with Disabilities within the deadline” was added to preambular paragraph 14 of resolution 52/28 of 4 April 2023 and that North Korea submitted its replies on 13 December 2023.¹¹

Since North Korea has yet to submit its replies to the HRC’s LOIPR, the Human Rights Council should add “urging the Government of the Democratic People’s Republic of Korea to respond to the list of issues prior to reporting on its third periodic report sent by the Human Rights Committee” in the upcoming North Korean human rights resolution.

It is also important for North Korea to ratify or accede to the remaining international human rights treaties, in particular the CAT and CERD, to allow regular monitoring by the treaty bodies. This is also in line with recommendations 126.5, 126.6, 126.7, 126.8, 126.11, 126.12, 126.13, 126.14, 126.33, 126.34 accepted by the DPRK¹² at its 3rd Universal Periodic Review (UPR) on 9 May 2019:

126.5 Ratify all remaining main human rights instruments, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol (Greece);

126.6 Ratify all the core human rights instruments to which it is not yet a party (Honduras);

126.7 Consider acceding to the core international human rights treaties to which it is not yet a party (Islamic Republic of Iran);

¹⁰ List of issues prior to reporting (LoIPR), CCPR/C/PRK/QPR/3 (22 Jun 2021), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FPRK%2FQPR%2F3

¹¹ Reply to List of Issues, CRPD/C/KEN/RQ/1 (13 Dec 2023), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FKEN%2FRQ%2F1

¹² Report of the Working Group on the Universal Periodic Review: Democratic People’s Republic of Korea: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/42/10/Add.1 (28 August 2019), <https://undocs.org/A/HRC/42/10/Add.1>

126.8 Continue ratifying the remaining core human rights conventions (Iraq);

...

126.11 Ratify other international human rights instruments to which it is still not a party, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination (Republic of Korea);

126.12 Accede to the core international human rights treaties to which it is not yet a State party and thoroughly implement its obligations under the treaties to which it is a party (State of Palestine);

126.13 Ratify the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia);

126.14 Ratify the International Convention on the Elimination of All Forms of Racial Discrimination (Montenegro);

...

126.33 Ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (Togo);

126.34 Take steps aimed at eliminating violence against women, including ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Namibia);¹³

We therefore suggest that the Human Rights Council add “Encouraging the Government of the Democratic People’s Republic of Korea to consider ratifying and acceding to the remaining international human rights treaties, which would enable a dialogue with the human rights treaty bodies” in the upcoming North Korean human rights resolution.

The treaty bodies’ review of China and Russia can also be used to further the accountability for North Korea’s human rights violations. For the first time, North Korean human rights NGOs made concerted efforts to raise the issue of North Korean refugees in China at a treaty body by making multiple submissions for the Committee on the Elimination of Discrimination against Women (CEDAW)’s review of China’s ninth periodic report (CEDAW/C/CHN/CO/9) on 12 May 2023 which resulted in substantive findings and recommendations in the concluding observations (CEDAW/C/CHN/CO/9).

The North Korean refugee has been addressed in the Committee against Torture (CAT)’s

¹³ Report of the Working Group on the Universal Periodic Review: Democratic People’s Republic of Korea, A/HRC/42/10 (25 June 2019), <https://undocs.org/A/HRC/42/10>

review of China's fourth periodic report (CAT/C/CHN/CO/4, para. 26) and fifth periodic report (CAT/C/CHN/CO/5, paras. 46-47), the Committee on the Elimination of Racial Discrimination (CERD)'s review of China's tenth to thirteenth periodic reports (CERD/C/CHN/CO/10-13, para. 16) and combined fourteenth to seventeenth periodic reports (CERD/C/CHN/CO/14-17, paras. 51-54) and the Committee on the Rights of the Child (CRC)'s review of China's second periodic report (CRC/C/CHN/CO/2, paras. 80 and 82) and combined third and fourth periodic reports (CRC/C/CHN/CO/3-4, paras. 75, 81 and 83).

The Committee on the Rights of the Child (CRC)'s review of China's combined fifth and sixth report (CRC/C/CHN/5-6) will provide another opportunity to hold China accountable for its handling of North Korean refugees.

With respect to Russia, the Committee against Torture (CAT)'s review of the seventh periodic report (CAT/C/RUS/7) and the Committee on Economic, Social and Cultural Rights (CESCR)'s review of the seventh periodic report (E/C.12/RUS/7), the Committee on the Rights of the Child (CRC)'s review of the combined sixth and seventh reports (CRC/C/RUS/6-7), the Committee on the Rights of Persons with Disabilities (CRPD)'s review of the combined second and third reports (CRPD/C/RUS/2-3) should be utilized to raise concerns about the North Korean workers who seek asylum in Russia especially in light of the recent rapprochement between Pyongyang and Moscow.

Although Russia was formally expelled from the Council of Europe on 16 March 2022 for its unjustified and unprovoked military attack against Ukraine in blatant violation of international law and accordingly the European Court of Human Rights ceased to be competent to address applications against Russia from 16 September 2022, the submission of individual communications to the Committee against Torture (CAT), the Human Rights Committee (HRC) and the Committee on the Elimination of Racial Discrimination (CERD) remain possible.

4. Special procedures

The special procedures have raised various North Korea-related human rights issues in their communications (allegation letters, urgent appeals and "other letters"), press releases, country visits and annual reports. Notably, the special procedures have raised concerns about China's detention and deportation of North Korean refugees during the COVID-19 pandemic¹⁴ and the impending repatriation after the pandemic¹⁵ in allegation letters to China and expressed alarm about the reported repatriation of hundreds of North Koreans in October 2023.¹⁶

¹⁴ AL CHN 8/2021 (23 August 2021), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26571>

¹⁵ AL CHN 9/2023 (18 July 2023), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28210>

¹⁶ China must not forcibly repatriate North Korean escapees: UN experts (17 October 2023),

In 2016, the Special Rapporteur on the situation of human rights in the DPRK have also raised concerns about the DPRK-Russian bilateral treaties that limit the freedom of movement for North Koreans in allegation letters to the DPRK¹⁷ and Russia.¹⁸ The Special Rapporteur and other special procedures mandate-holders can also send communications to China and the DPRK to consider terminating bilateral treaties that enable the forcible repatriation of North Korean refugees in violation of the principle of non-refoulement.

The Special Rapporteur on the situation of human rights in the DPRK and other special procedure mandate-holders can also submit *amicus curiae* briefs in support of justice and accountability in civil and criminal court cases concerning North Korea's crimes against humanity and other grave human rights violations.

A number of country mandates (the DPRK and Russia) and thematic mandates (execution, torture, arbitrary detention, enforced disappearances, violence against women and girls, discrimination against women and girls, repatriation, health and migrants) are particularly important in the context of North Korean human rights issues.

The Working Group on Enforced or Involuntary Disappearances (WGEID) has been particularly active in documenting cases of disappearances in North Korea. As of 12 May 2023, the WGEID has transmitted a total of 404 cases of disappearances to the DPRK although none has been clarified.¹⁹ While North Korea's complete lack of cooperation with the WGEID is deplorable and disappointing, the sheer number of cases continues to put pressure on North Korea, creates incentives for the DPRK government to treat the reported individuals less harshly and provides open-source information for use accountability work.

The WGEID can also issue general allegations relating to obstacles in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance to the DPRK as it has done recently to Algeria, Mexico, Sudan, Syria, the UAE, Yemen, El Salvador, Guatemala, Honduras, Mexico and Nicaragua.²⁰

The WGEID decided at its 102nd and 103rd sessions to express its grave concern in relation to the enforced disappearances in Syria and the DPRK respectively by writing to the President of the Human Rights Council, the President of the General Assembly, the President of the Security Council and the Secretary-General, asking for the adoption of any appropriate action that they may deem

<https://www.ohchr.org/en/press-releases/2023/10/china-must-not-forcibly-repatriate-north-korean-escapees-un-experts>

¹⁷ AL PRK 1/2016 (15 February 2016),
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=17685>

¹⁸ AL RUS 1/2016 (15 February 2016),
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=17335>

¹⁹ Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/54/22 (8 August 2023).

²⁰ Id. para. 30

appropriate.²¹ The WGEID informed the respective Governments of that step in letters dated 5 March 2014 and 12 June 2014, respectively.²²

The WGEID's press release²³ and allegation letter²⁴ urging North Korea to repatriate South Korean prisoners of war (POWs) and civilian abductees on the 70th anniversary of the outbreak of the Korean War and its press release²⁵ and allegation letter²⁶ urging North Korea to repatriate the abductees of the Korean Air Lines YS-11 hijacking on the 50th anniversary have been helpful in raising the visibility and reiterating the need for justice and accountability for these issues.

The Working Group on Arbitrary Detention (WGAD) has found the deprivation of liberty of North Korean citizens and foreign abductees, being in contravention of the provisions of the UDHR and the ICCPR, arbitrary in the following cases:

- Opinion No. 4/2012 (Democratic People's Republic of Korea) concerning Shin Sook Ja, Oh Hae Won and Oh Kyu Won [Adopted on 2 May 2012], A/HRC/WGAD/2012/4 (16 July 2012)
- Opinion No. 47/2012 (Democratic People's Republic of Korea) concerning Kang Mi-ho, Kim Jeong-nam and Shin Kyung-seop [Adopted on 15 November 2012], A/HRC/WGAD/2012/47 (6 September 2013)
- Opinion No. 34/2013 (Democratic People's Republic of Korea) concerning Kim Im Bok, Kim Bok Shil, Ann Gyung Shin, Ann Jung Chul, Ann Soon Hee, and Kwon Young Guen [Adopted on 13 November 2013], A/HRC/WGAD/2013/34 (4 April 2014)
- Opinion No. 35/2013 (Democratic People's Republic of Korea) concerning Choi Seong Jai, Hong Won Ok, Kim Seong Do, Kim Seong Il, Lee Hak Cheol, Lee Gook Cheol, Kim Mi Rae and Lee Jee Hoon [Adopted on 13 November 2013], A/HRC/WGAD/2013/35 (15 January 2014)
- Opinion No. 36/2013 (Democratic People's Republic of Korea) concerning Choi Sang Soo,

²¹ Post-sessional document: 102nd session (3–7 February 2014), A/HRC/WGEID/102/1 (7 May 2014), paras. 156-157; Post-sessional document: 103rd session (7–16 May 2014), A/HRC/WGEID/103/1 (25 July 2014), paras. 67-68.

²² Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/27/49 (4 August 2014), para. 32.

²³ UN experts urge DPRK to repatriate abductees on 70th anniversary of the Korean War (25 June 2020), <https://www.ohchr.org/en/press-releases/2020/09/un-experts-urge-dprk-repatriate-abductees-70th-anniversary-korean-war>

²⁴ AL PRK 2/2020 (23 June 2020), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25386>

²⁵ UN experts urge North Korea to repatriate 11 abducted from plane hijack 50 years ago (13 February 2020), <https://www.ohchr.org/en/press-releases/2020/02/un-experts-urge-north-korea-repatriate-11-abducted-plane-hijack-50-years-ago>

²⁶ AL PRK 1/2020 (11 February 2020), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25066>

- Choi Seong II, Kim Hyeon Sun, Kim Gyeong II and Park Sung Ok [Adopted on 13 November 2013], A/HRC/WGAD/2013/36 (4 April 2014)
- Opinion No. 29/2015 concerning Song Hyeok Kim (Democratic People's Republic of Korea) [Adopted on 3 September 2015], A/HRC/WGAD/2015/29 (2 November 2015)
 - Opinion No. 32/2015 concerning Hyang-sil Kwon (Democratic People's Republic of Korea) [Adopted on 3 September 2015], A/HRC/WGAD/2015/32 (2 November 2015)
 - Opinion No. 80/2017 concerning Il Joo, Cheol Yong Kim, Eun Ho Kim, Kwang Ho Kim and Seong Min Yoon (Democratic People's Republic of Korea) [Adopted on 22 November 2017], A/HRC/WGAD/2017/80 (27 December 2017)
 - Opinion No. 81/2017 concerning Mi Sook Kang and Ho Seok Kim (Democratic People's Republic of Korea and China) [Adopted on 22 November 2017], A/HRC/WGAD/2017/81 (26 December 2017)
 - Opinion No. 54/2018 concerning Kyeong-Hee Kang, Seung Cheol Kim, Keum Nam Lee and Myung-Ju Lee (China and the Democratic People's Republic of Korea) [Adopted on 23 August 2018], A/HRC/WGAD/2018/54 (23 October 2018)
 - Opinion No. 52/2019 concerning Eun Sil Kang (Democratic People's Republic of Korea) [Adopted on 16 August 2019], A/HRC/WGAD/2019/52 (17 September 2019)
 - Opinion No. 57/2019 concerning Lee Hak Su (Democratic People's Republic of Korea) [Adopted on 18 November 2019], A/HRC/WGAD/2019/57 (27 January 2020)
 - Opinion No. 69/2019 concerning Hwang Won (Democratic People's Republic of Korea) [Adopted on 20 November 2019], A/HRC/WGAD/2019/69 (7 February 2020)

The WGAD in its opinions No. 4/2012,²⁷ No. 47/2012,²⁸ No. 34/2013,²⁹ No. 35/2013,³⁰ No. 36/2013³¹ and 54/2018³² concerning the DPRK held that “widespread or systematic imprisonment or

²⁷ Opinion No. 4/2012 (Democratic People's Republic of Korea) concerning Shin Sook Ja, Oh Hae Won and Oh Kyu Won [Adopted on 2 May 2012], A/HRC/WGAD/2012/4 (16 July 2012), para. 26.

²⁸ Opinion No. 47/2012 (Democratic People's Republic of Korea) concerning Kang Mi-ho, Kim Jeong-nam and Shin Kyung-seop [Adopted on 15 November 2012], A/HRC/WGAD/2012/47 (6 September 2013), paras. 19 and 22.

²⁹ Opinion No. 34/2013 (Democratic People's Republic of Korea) concerning Kim Im Bok, Kim Bok Shil, Ann Gyung Shin, Ann Jung Chul, Ann Soon Hee, and Kwon Young Guen [Adopted on 13 November 2013], A/HRC/WGAD/2013/34 (4 April 2014), paras. 31, 33 and 35.

³⁰ Opinion No. 35/2013 (Democratic People's Republic of Korea) concerning Choi Seong Jai, Hong Won Ok, Kim Seong Do, Kim Seong Il, Lee Hak Cheol, Lee Gook Cheol, Kim Mi Rae and Lee Jee Hoon [Adopted on 13 November 2013], A/HRC/WGAD/2013/35 (15 January 2014), paras. 33, 35 and 37.

³¹ Opinion No. 36/2013 (Democratic People's Republic of Korea) concerning Choi Sang Soo, Choi Seong II, Kim Hyeon Sun, Kim Gyeong II and Park Sung Ok [Adopted on 13 November 2013], A/HRC/WGAD/2013/36 (4 April 2014), paras. 32, 34 and 36.

³² Opinion No. 54/2018 concerning Kyeong-Hee Kang, Seung Cheol Kim, Keum Nam Lee and Myung-Ju Lee (China and the Democratic People's Republic of Korea) [Adopted on 23 August 2018], A/HRC/WGAD/2018/54

other severe deprivation of liberty in violation of the fundamental rules of international law may constitute crimes against humanity". The Special Rapporteur on the situation of human rights in the DPRK quoted some of these cases as underlining the consistent pattern of gross human rights violations, which has continued with impunity, and reiterated that grave human rights violations in the prison camps — (or) even the mere existence of such camps — under slave-like conditions for political prisoners, may qualify as crimes against humanity.³³

The WGAD has consistently warned countries that widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity since its annual report³⁴ and case against Syria in 2011.³⁵ The WGAD repeated this warning against Egypt,³⁶ Iran,³⁷ China,³⁸ the UAE,³⁹ Bahrain⁴⁰ and Saudi Arabia⁴¹ in its recent jurisprudence.

It is also noteworthy that the WGAD found the deprivation of liberty of North Korean

(23 October 2018), para. 57.

³³ Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, UN Doc. A/68/319 (14 August 2013), paras. 29 and 30.

³⁴ Report of the Working Group on Arbitrary Detention, A/HRC/16/47 (19 January 2011), para. 54

³⁵ Opinion No. 1/2011 (Syrian Arab Republic) concerning Mohamed Ahmed Mustafa; Hassan Ibrahim Saleh and Maarouf Ahmad Malla Ahmad [Adopted on 3 May 2011], A/HRC/WGAD/2011/1 (24 February 2012), para. 21.

³⁶ Opinion No. 36/2023 concerning Islam Nasser Abdulnabi Abdulmoneim, Anas Hassan Ahmed Shafiq Mohamed Abu Zakary, Abdurahman Osama Mohamed Alaqeed, Mostafa Ahmed Ali Shaaban, Mohamed Ezzat Taha Omran, Mohamed Nasr Abdulhamid Ibrahim, Gehad Aayed Soliman Ayad, Mohamed Salah Ahmed Bayomi, Ahmed Yossri Rabea Abdulghany and Gehad Abdulkhaiq Awda Saeed (Egypt) [Adopted on 28 August 2023], A/HRC/WGAD/2023/36 (27 September 2023), para. 94; Opinion No. 40/2023 concerning Aya Mohamed Ibrahim al-Afifi (Egypt) [Adopted on 29 August 2023], A/HRC/WGAD/2023/40 (20 October 2023), para. 52.

³⁷ Opinion No. 37/2023 concerning Olivier Vandecasteele (Islamic Republic of Iran) [Adopted on 28 August 2023], A/HRC/WGAD/2023/37 (2 October 2023), para. 79.

³⁸ Opinion No. 38/2023 concerning Maimaiti Abulaiti (China) [Adopted on 29 August 2023], A/HRC/WGAD/2023/38 (27 September 2023), para. 51.

³⁹ Opinion No. 43/2023 concerning Selim Diyaboğlu (United Arab Emirates) [Adopted on 29 August 2023], A/HRC/WGAD/2023/43 (21 September 2023), para. 60.

⁴⁰ Opinion No. 47/2023 concerning Abduljabbar Isa Abdulla Hasan Mohamed, Fadhel Abbas Abdulla Hasan Mohamed, Ahmed Abdulla Marhoon Rashed, Hasan Ali Abdulla Rashed Ahmed Rashed, Mohamed Abduljabbar Mansoor Ali Husaini Sarhan and Faris Husain Habib Ahmed Salman (Bahrain) [Adopted on 30 August 2023], A/HRC/WGAD/2023/47 (11 December 2023), para. 133.

⁴¹ Opinion No. 56/2023 concerning Salman Fahed Alodah and Khaled Alodah (Saudi Arabia) [Adopted on 1 September 2023], A/HRC/WGAD/2023/56 (13 October 2023), para. 119.

nationals by China for their repatriation arbitrary, being in contravention of the provisions of the UDHR, in Opinion No. 81/2017 and Opinion No. 54/2018.

Unfortunately, the WGAD has not taken up any case concerning North Korea since 2019. It is hoped that the WGAD will resume issuing Opinions concerning North Koreans, including those detained and deported by China, taking the opportunity to reiterate the warning to the DPRK that widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.

We note in this connection, the WGAD's finding of the deprivation of liberty of three Uyghurs by China arbitrary even though the details of their detention were "exceptionally scarce" since the Chinese authorities confirmed that they were in custody in Opinion No. 88/2022.⁴² The WGAD in this regard recalled the 2022 OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, PRC⁴³ which documented "the persistent failure of the authorities to provide any information concerning the detention of individuals belonging to the Uyghur minority and the near impossibility for their family members or others to ascertain the fate of the detainees".⁴⁴

The similar standard of proof also applied by the WGAD in finding the "the exceptionally serious and uncontested allegations" of deprivation of liberty of members of the Uyghur ethnic and religious minority in Vocational Educational and Training Centres (VETCs) or so-called re-education camps arbitrary despite "exceptionally scarce" details in Opinions No. 8/2022,⁴⁵ No. 6/2023,⁴⁶ No. 38/2023⁴⁷ is applicable in equal measure to the North Koreans deprived of their liberty in North Korea and China.

It may also be worth adding a reference to the WGAD's case-law concerning North Korea's

⁴² Opinion No. 88/2022 concerning Qurban Mamut, Ekpar Asat and Gulshan Abbas (China) [Adopted on 18 November 2022], A/HRC/WGAD/2022/88 (24 March 2023), paras. 56-58.

⁴³ OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China (31 August 2022), <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region>

⁴⁴ The WGAD also quoted the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism's 2022 follow-up report (A/HRC/49/45) on the 2010 joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42) which highlighted "The ongoing flow of credible information pointing to a sustained practice of mass arbitrary detention" of Uyghurs in the Xinjiang Uyghur Autonomous Region (para. 33).

⁴⁵ Opinion No. 6/2022 concerning Abdurashid Tohti, Tajigul Qadir, Ametjan Abdurashid and Mohamed Ali Abdurashid (China) [Adopted on 30 March 2022], A/HRC/WGAD/2022/6 (23 May 2022), paras. 25-31.

⁴⁶ Opinion No. 6/2023 concerning Naghmat Hamit, Tajinisa Yimin and Dilixiati Wulibaiyi (China) [Adopted on 28 March 2023], A/HRC/WGAD/2023/6 (1 May 2023), paras. 49-55.

⁴⁷ Opinion No. 38/2023 concerning Maimaiti Abulaiti (China) [Adopted on 29 August 2023], A/HRC/WGAD/2023/38 (27 September 2023), paras. 21-24.

abduction of foreign citizens in the upcoming annual North Korean human rights resolution at the 55th Human Rights Council session in preambular paragraph 19 of resolution 52/28 of 4 April 2023 which already refers to “the identical and non-substantive replies by the Democratic People’s Republic of Korea to the numerous communications transmitted by the Working Group on Enforced or Involuntary Disappearances”.

The interactive dialogues with the WGEID and WGAD during the 57th Human Rights Council session (9 September 2024 to 9 October 2024) will also offer opportunities to like-minded governments and CSOs to discuss and publicize the individual cases and situation of enforced disappearances and arbitrary detention committed by North Korea.

5. Universal Periodic Review (UPR)

The DPRK participated in the third cycle of the UPR on 9 May 2019 where it accepted 132 of the 262 recommendations. It is important to monitor in particular the DPRK’s implementation of the accepted recommendations including the ratification of or accession to the remaining international human rights treaties, in particular the CAT and CERD.

Regrettably, no DPRK-based CSO is able to submit a stakeholder report since independent CSOs cannot operate in the DPRK. Therefore, it is important for the CSOs based outside North Korea to submit relevant stakeholder reports by 8 April 2024, the submission deadline, and make advocacy efforts ahead of North Korea’s 4th UPR which is scheduled to take place on 7 November 2024 during the UPR Working Group’s 47th session (Oct - Nov 2024).

It will be important in particular to field advance written questions and recommendations to North Korea concerning the implementation of the recommendations from the COI and the Special Rapporteur on the situation of human rights in the DPRK and other special procedures and the treaty bodies, in particular those relating to ensuring justice and accountability for North Korea’s crimes against humanity and other grave human rights violations.

The UPRs of China and other countries where North Korean escapees do not enjoy safe passage and are at risk of refoulement without the refugee status determination are also important to highlight their aiding and abetting of North Korea’s crimes against humanity and other grave human rights violations.

The issue of North Korean refugees has been raised in every UPR of China. At China’s 1st UPR on 9 February 2009, Canada recommended that China “(g) take immediate measures to implement the recommendations of November 2008 of the Committee against Torture, particularly on the inadmissibility in court of statements made under torture and the nonrefoulement of refugees from the Democratic People’s Republic of Korea” while the Netherlands “noted the Chinese position on the protection of ethnic minority rights, and looked forward to further explanations on the death penalty

and on UNHCR's role with regard to refugees from the Democratic People's Republic of Korea".⁴⁸

For China's 2nd UPR on 22 October 2013, the following recommendations, directly or indirectly referring to North Korean refugees and asylum-seekers, were made by Canada, Czechia and South Korea:

186.66. Invite the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea to visit North-Eastern China to meet officials and North Korean citizens who have fled to China (Canada);

...

186.241. Protect North Korean refugees in accordance with international law, honouring the principle of non-refoulement (Czech Republic);

186.242. Accept the recommendations of UNHCR on refugee issues including the adoption of national asylum legislation (Republic of Korea);

186.243. Provide adequate protection to asylum seekers and cross-border refugees including especially those from neighbouring countries, in accordance with humanitarian considerations and relevant international norms such as the principle of non-refoulement (Republic of Korea);⁴⁹

For China's 3rd UPR on 6 November 2018, the USA, Austria and Germany submitted the following written questions in advance referring specifically to North Korean refugees and asylum-seekers:

UNITED STATES OF AMERICA

...

- Under China's ratification of the UN Convention Against Torture, specifically Article 3, what steps is the government taking to ensure North Korean and Burmese refugees, many of them women and children, are not forcibly repatriated back to their home countries to face certain excessive punishments such as torture and even death?

...

AUSTRIA

⁴⁸ Report of the Working Group on the Universal Periodic Review: China, A/HRC/11/25 (5 October 2009), paras. 28(g) and 30.

⁴⁹ Report of the Working Group on the Universal Periodic Review: China (including Hong Kong, China and Macao, China), A/HRC/25/5 (4 December 2013), paras. 186.66, 186.241, 186.242 and 186.243.

- Austria is concerned about reports that persons from DPRK have been denied access to refugee determination procedures in China. What efforts are currently being undertaken to ensure that the principle of non-refoulement is fully incorporated into domestic legislation?

...

GERMANY

...

- Does China abide by the principle of non-refoulement, including in cases of North-Korean refugees in China?⁵⁰

At China's 3rd UPR, Mexico made the following recommendation that may be applicable to North Korean child refugees and asylum-seekers:

28.301 Take measures to ensure all children, especially those of asylum seekers and refugees, have access to education (Mexico);⁵¹

For China's 4th UPR on 23 January 2024, Canada and South Korea submitted the following written questions in advance:

CANADA

...

- How is the Government adhering to the principle of non-refoulement set out in Article 3 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, particularly with regard to North Koreans?

...

REPUBLIC OF KOREA

- Could China provide information on the asylum procedures that escapees from [sic] foreign origin including the Democratic People's Republic of Korea have access to?

⁵⁰ Third Cycle: Date of consideration: Tuesday 6 November 2018 - 09:00 - 12:30: "Questions submitted in advance" https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session31/CN/AdvanceQuestionsChina_rev1.doc

⁵¹ Report of the Working Group on the Universal Periodic Review: China, A/HRC/40/6 (26 December 2018), para. 28.301.

- We would like to ask what measures China is taking to protect and support women escapees from [sic] foreign origin including the Democratic People's Republic of Korea who are exposed to trafficking, forced marriage, and other forms of exploitation.
- We would like to ask what measures China is taking to protect and support children born in China to women escapees from [sic] foreign origin including the Democratic People's Republic of Korea who are categorized as "illegal immigrants" according to the Chinese domestic law.⁵²

At China's 4th UPR, the following recommendations, directly or indirectly referring to North Korean refugees and asylum-seekers, were made by Czechia, South Korea, the UK, Uruguay and Afghanistan:

Speaker: 24 Czechia ENGLISH

...

Refrain from the forcible repatriation of North Korean refugees to the DPRK (Czechia #5);

Speaker: 99 Republic of Korea ENGLISH

Provide adequate protection to escapees from [sic] foreign origin including the Democratic People's Republic of Korea (Republic of Korea #1);

Respect relevant international norms such as the principle of non-refoulement (Republic of Korea #2);

Consider adopting a national refugee law as part of its efforts to implement the 1951 Convention relating to the Status of Refugees (Republic of Korea #3);

...

Speaker: 134 United Kingdom of Great Britain and Northern Ireland ENGLISH

Cease the restriction of civil society and independent media, end forced repatriations, and stop targeting human rights defenders (United Kingdom of Great Britain and Northern Ireland #4);

...

⁵² Fourth cycle: Date of consideration: Tuesday 23 January 2024 - 09:00 - 12:30, "Questions submitted in advance" <https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/sessions/session45/cn/upr-session45-Advance-Questions-China.docx> See also "Questions submitted in advance and Addendum, <https://uprmeetings.ohchr.org/Sessions/45/China/Pages/default.aspx>

Speaker: 137 Uruguay SPANISH

Strengthen measures to guarantee the protection of asylum seekers and their non-refoulement (Uruguay #3);

...

Speaker: 143 Afghanistan ENGLISH

Observe the international principle of non-refoulement and provide protection to migrants and refugees (Afghanistan #1);⁵³

The adoption of the outcome of the China UPR at the 56th Human Rights Council (18 June 2024 - 12 July 2024) will provide another opportunity for states and CSOs to raise the issue of North Korean refugees and asylum-seekers.

It is important to continue to ask advance questions and make recommendations concerning the observance of the principle of non-refoulement, the protection of refugees and asylum-seekers and provision of safe passage with respect to the North Korean escapees in the UPRs of other countries as well to prevent the aiding and abetting of North Korea's crimes against humanity and other grave human rights violations.

While Russia's 4th UPR on 13 November 2023 has already passed with few references to North Korean or other refugee issue, other than Congo's recommendation 35.360 ("Ensure adequate protection for asylum-seekers benefiting from international protection"),⁵⁴ it is not too late to field questions or recommendations at Vietnam's 4th UPR on 7 May 2024, Laos's 4th UPR during the 49th session (Apr – May 2025) and Mongolia's 4th UPR during the 50th session (Oct - Nov 2025).

6. The Office of the United Nations High Commissioner for Human Rights (OHCHR), including its field-based structure in Seoul

The former-Commission on Human Rights requested the High Commissioner to "to engage in a comprehensive dialogue with the authorities of the Democratic People's Republic of Korea with a view to establishing technical cooperation programmes in the field of human rights" and to submit "his/her findings and recommendations" to the Commission in its resolution 2003/10 of 16 April 2003 (E/CN.4/RES/2003/10), 2004/13 of 15 April 2004 (E/CN.4/RES/2004/13) and 2005/11 of 14 April

⁵³ China Review - 45th Session of Universal Periodic Review (23 January 2024), <https://webtv.un.org/en/asset/k1z/k1z43db5bt>

⁵⁴ Report of the Working Group on the Universal Periodic Review: Russian Federation, A/HRC/55/14 (21 December 2023), para. 35.360.

2005 (E/CN.4/RES/2005/11).

In accordance with Human Rights Council decision 2/102 requesting the High Commissioner to continue with the fulfilment of her activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies, the High Commissioner submitted her annual reports to the Council.⁵⁵

In January 2013, then-High Commissioner Navi Pillay was a powerful champion of a full-fledged international inquiry into serious crimes that had been taking place in North Korea for decades and her support was crucial in the Human Rights Council's decision to create the DPRK COI.⁵⁶ In February 2014, she welcomed the COI report and called on the international community to follow up the COI's recommendations "call[ed] on the international community, in line with the report's recommendations, to use all the mechanisms at its disposal to ensure accountability, including referral to the International Criminal Court".⁵⁷

In 2014, the COI recommended that the pre-COI country-specific human rights monitoring and reporting mechanisms on the DPRK, including the periodic reports of the High Commissioner for Human Rights, should be "mandated to focus on ensuring accountability, in particular for crimes against humanity, and should report on the implementation of the [COI's] recommendations".⁵⁸

The COI also recommended that: "The United Nations High Commissioner for Human Rights, with full support from the Human Rights Council and the General Assembly, should establish a structure to help to ensure accountability for human rights violations in the Democratic People's Republic of Korea, in particular where such violations amount to crimes against humanity. The structure should build on the collection of evidence and documentation work of the Commission, and further expand its database. It should be field-based, supported by adequate personnel deployed to the region so as to enjoy sustained access to victims and witnesses. In addition to informing the work of human rights reporting mechanisms and serving as a secure archive for information provided by relevant stakeholders, the work of such a structure should facilitate United Nations efforts to prosecute, or otherwise render accountable, those most responsible for crimes against humanity".⁵⁹

⁵⁵ Report of the United Nations High Commissioner for Human Rights on the human rights situation in the Democratic People's Republic of Korea, A/HRC/4/60 (22 January 2007); Report of the United Nations High Commissioner for Human Rights on the human rights situation in the Democratic People's Republic of Korea, A/HRC/7/47 (22 February 2008).

⁵⁶ OHCHR, Pillay urges more attention to human rights abuses in North Korea, calls for international inquiry (14 January 2013), <https://www.ohchr.org/en/press-releases/2013/01/pillay-urges-more-attention-human-rights-abuses-north-korea-calls>

⁵⁷ OHCHR, Pillay calls for urgent action on "historic" DPRK report: DPRK: Pillay calls for urgent action (18 February 2014), <https://www.ohchr.org/en/press-releases/2014/02/pillay-calls-urgent-action-historic-dprk-report>

⁵⁸ A/HRC/25/63, para. 94(b); A/HRC/25/CRP.1, para. 1225(b).

⁵⁹ A/HRC/25/63, para. 94(c); A/HRC/25/CRP.1, para. 1225(c).

The COI further recommended the High Commissioner for Human Rights to continue the OHCHR's engagement with the DPRK, offering technical assistance and enhancing advocacy initiatives, and "facilitate the implementation of a strategy led by the Special Rapporteur and involving all concerned human rights mechanisms of the United Nations system, to address, coherently and without delay, the special issue of international abductions and enforced disappearances and related matters described in this report".⁶⁰

The High Commissioner was also recommended by the COI to "report to the Human Rights Council and other appropriate United Nations organs on the implementation of the recommendations contained in the Commission's report".⁶¹

Accordingly, the Human Rights Council in operative paragraph 10 of its resolution 25/25 of 28 March 2014 (A/HRC/RES/25/25) "[r]equest[ed] the Office of the United Nations High Commissioner for Human Rights to follow up urgently on the recommendations made by the commission of inquiry in its report, and to provide the Special Rapporteur with increased support, including through the establishment of a field-based structure to strengthen monitoring and documentation of the situation of human rights in the Democratic People's Republic of Korea, to ensure accountability, to enhance engagement and capacity-building with the Governments of all States concerned, civil society and other stakeholders, and to maintain visibility of the situation of human rights in the Democratic People's Republic of Korea, including through sustained communications, advocacy and outreach initiatives."

In February 2017, the group of independent experts on accountability noted that OHCHR has an important role to play with regard to taking steps towards ensuring accountability for human rights violations in the DPRK, "as an independent and impartial office that can collect, preserve and analyse information, including for the international community" and has established a field-based structure in Seoul pursuant to Human Rights Council resolution 25/25.⁶² The group recommended that the Human Rights Council and General Assembly "Strengthen OHCHR through additional resources, including its field-based structure in Seoul, to enable the Office to increase its contribution towards accountability".⁶³

Since 2017, the Human Rights Council has requested the High Commissioner to provide an oral update on the progress made in the implementation of the recommendations made by the group of independent experts on accountability one year and to submit a full written report in the next in resolutions 34/24 of 24 March 2017, 37/28 of 23 March 2018, 40/20 of 22 March 2019, 43/25 of 22 June 2020, 46/17 of 23 March 2021, 49/22 of 1 April 2022 and 52/28 of 4 April 2023.

⁶⁰ A/HRC/25/63, para. 94(d); A/HRC/25/CRP.1, para. 1225(d).

⁶¹ A/HRC/25/63, para. 94(e); A/HRC/25/CRP.1, para. 1225(e).

⁶² Report of the group of independent experts on accountability, A/HRC/34/66/Add.1 (24 February 2017), para. 66.

⁶³ Report of the group of independent experts on accountability, A/HRC/34/66/Add.1 (24 February 2017), para. 86(b).

Accordingly, the High Commissioner provided oral updates at the 37th session in 2018,⁶⁴ the 43rd session in 2020⁶⁵ and the 49th session in 2022⁶⁶ and submitted full written reports at the 40th session in 2019,⁶⁷ 46th session in 2021⁶⁸ and the 52nd session in 2023.⁶⁹

It should also be added that OHCHR can in theory and practice prepare an update to the COI report even without an explicit authorization by the Human Rights Council. The High Commissioner's responsibility as set out in paragraph 4 (a) and (b) of General Assembly 48/141 of 20 December 1993 that created his Office should be, among other things:

- (a) To promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights;
- (b) To carry out the tasks assigned to him/her by the competent bodies of the United Nations system in the field of human rights and to make recommendations to them with a view to improving the promotion and protection of all human rights;

In this connection, the High Commissioner has been requested by the Human Rights Council in its resolution 25/25 of 28 March 2014 (A/HRC/RES/25/25) to establish the field-based structure in Seoul "to ensure accountability" and the Human Rights Council in its resolutions 34/24 of 24 March 2017, 40/20 of 22 March 2019, 46/17 of 23 March 2021 and 4 April 2023 decided to strengthen the capacity of the OHCHR, including its field-based structure in Seoul, to "to allow the implementation of relevant recommendations made by the group of independent experts on accountability in its report aimed at strengthening current monitoring and documentation efforts, establishing a central information and evidence repository, and having experts in legal accountability assess all information and testimonies with a view to developing possible strategies to be used in any future accountability process".

⁶⁴ OHCHR, Oral Updates on DPRK and Eritrea by United Nations Deputy High Commissioner for Human Rights (14 March 2018), <https://www.ohchr.org/en/statements/2018/09/oral-updates-dprk-and-eritrea>

⁶⁵ OHCHR, Statement by Michelle Bachelet United Nations High Commissioner for Human Rights (10 March 2020), <https://www.ohchr.org/en/statements/2020/03/statement-michelle-bacheletunited-nations-high-commissioner-human-rights>

⁶⁶ OHCHR, Oral update on the situation of human rights in the Democratic People's Republic of Korea by the United Nations High Commissioner for Human Rights (21 March 2022), <https://www.ohchr.org/en/statements-and-speeches/2022/03/oral-update-situation-human-rights-democratic-peoples-republic>

⁶⁷ Promoting accountability in the Democratic People's Republic of Korea - Report of the United Nations High Commissioner for Human Rights, A/HRC/40/36 (7 March 2019)

⁶⁸ Promoting accountability in the Democratic People's Republic of Korea – Report of the United Nations High Commissioner for Human Rights, A/HRC/46/52 (11 January 2021)

⁶⁹ Promoting accountability in the Democratic People's Republic of Korea - Report of the United Nations High Commissioner for Human Rights, A/HRC/52/64 (18 January 2023)

The 2022 OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, PRC⁷⁰ provides a practical example of OHCHR taking the initiative to ensure justice and accountability in the absence of political will and action from the Human Rights Council and General Assembly.

- (a) OHCHR should hold China accountable for the forcible repatriation of North Korean refugees

According to the COI report, North Koreans who flee their country can be subjected to torture, sexual and gender-based violence, arbitrary detention, enforced disappearance and even execution and forced abortion and infanticide upon their forcible repatriation.⁷¹ The DPRK COI concluded that “crimes against humanity have been and, are still being committed, against persons who try to flee the DPRK, including against persons forcibly repatriated from China”.⁷²

On 16 December 2013, the DPRK COI wrote a letter to Beijing, “in which it summarized its concerns relating to China’s policy and practice of forced repatriation of DPRK citizens [including] particular concern about Chinese officials providing specific information on such persons to DPRK authorities” and urged Beijing to “caution relevant officials that such conduct could amount to the aiding and abetting of crimes against humanity where repatriations and information exchanges are specifically directed towards or have the purpose of facilitating the commission of crimes against humanity in the DPRK”.⁷³

However, China, which is a party to the UN Refugee Convention and Protocol and Torture Convention that codify the principle of non-refoulement as well as the Palermo Protocol on trafficking, continues to arbitrarily detain and forcibly repatriate North Korean escapees.⁷⁴ The COI thus recommended “China and other States” to “respect the principle of non-refoulement” and “abstain from forcibly repatriating any persons to the Democratic People’s Republic of Korea, unless the treatment there, as verified by international human rights monitors, markedly improves”.⁷⁵ No such marked improvement of treatment in North Korea has yet to take place.

⁷⁰ OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China (31 August 2022), <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region>

⁷¹ A/HRC/25/CRP.1, paras. 380-434.

⁷² *Id.*, paras. 1098-1114.

⁷³ *Id.*, para. 1197.

⁷⁴ *Id.*, paras. 435-477.

⁷⁵ *Id.*, para. 1221 (a).

Despite countless interviews with North Korean escapees by OHCHR Seoul, the High Commissioner has rarely mentioned China's forcible repatriation of North Koreans and never named China in the oral updates and written reports. The oral update to the UN Human Rights Council on March 21, 2022 stated: "I recall again that persons repatriated to the Democratic People's Republic of Korea face a significant likelihood of torture and other serious human rights violations. I urge Member States to provide them with full protection against the risk of refoulement and safe pathways in accordance with international human rights and refugee law obligations."⁷⁶ However, the statement did not name China, the Member State most responsible for the refoulement of North Korean refugees and failure to provide them with safe pathways.

In the High Commissioner's 2023 report, the section on "Female victims of trafficking" states that OHCHR "interviewed women who had been trafficked into neighbouring States, often for marriage or for work. Some of the interviewees had been arrested in the neighbouring State, forcibly returned by the neighbouring State's authorities, and imprisoned for having left the Democratic People's Republic of Korea, usually without a trial".⁷⁷ According to OHCHR, "Interviewees who had been trafficked into neighbouring countries reported living in fear that if their origins were discovered, they would be repatriated and imprisoned".⁷⁸

The High Commissioner's briefing at the Security Council on 17 August 2023 continued this trend of not naming China for its forcible repatriation of North Koreans: "It is estimated that thousands of North Koreans are currently at risk of being repatriated involuntarily to their home country, where they may be subjected to torture, arbitrary detention or other serious human rights violations. The precarious human rights situation that I have just described means that they have an undeniable, compelling need for international protection. I therefore urge all States to refrain from forcibly repatriating North Koreans, and to provide them with the required protections and humanitarian support."⁷⁹

North Korea's self-imposed border lockdown in response to the COVID-19 pandemic since January 2020 halted China's forcible repatriation of North Korean refugees, but China has resumed the deportation of North Korean detainees, most notably with the return of over 500 North Korean detainees on October 9, 2023,⁸⁰ despite the calls to respect the principle of non-refoulement by

⁷⁶ OHCHR, Oral update on the situation of human rights in the Democratic People's Republic of Korea by the United Nations High Commissioner for Human Rights (21 March 2022), <https://www.ohchr.org/en/statements-and-speeches/2022/03/oral-update-situation-human-rights-democratic-peoples-republic>

⁷⁷ Promoting accountability in the Democratic People's Republic of Korea - Report of the United Nations High Commissioner for Human Rights, A/HRC/52/64 (18 January 2023), para. 33.

⁷⁸ *Id.*, para. 34.

⁷⁹ In DPRK, steps to advance human rights and justice are vital to building sustainable peace, Türk says: Open discussion on human rights in the Democratic People's Republic of Korea (17 August 2023), <https://www.ohchr.org/en/statements/2023/08/dprk-steps-advance-human-rights-and-justice-are-vital-building-sustainable-peace>

⁸⁰ Lina Yoon, "China Forcibly Returns More than 500 to North Korea: Returnees, Mostly Women, Face Torture,

human rights NGOs on September 21, 2023⁸¹ and UN human rights experts on July 18, 2023.⁸² The High Commissioner and his spokespersons, as well as the officials of OHCHR Seoul, should make statements to condemn China or to urge it to respect the principle of non-refoulement for North Korean refugees in response.

We share the Uyghur community's concern⁸³ about OHCHR's omission of any reference to the landmark conclusion of its 2022 Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, PRC⁸⁴ that "the extent of arbitrary and discriminatory detention of members of Uyghur and other predominantly Muslim groups, pursuant to law and policy, in context of restrictions and deprivation more generally of fundamental rights enjoyed individually and collectively, may constitute international crimes, in particular crimes against humanity" in its compilation of information for China's 4th UPR.⁸⁵ This is in stark contrast to OHCHR's compilation of information for North Korea's 2nd UPR on 1 May 2014⁸⁶ and 3rd UPR on 9 May 2019⁸⁷ which made explicit reference to the allegation of crimes against humanity raised by the Special Rapporteur on the situation of human rights in the DPRK, the WGAD, the High Commissioner and the COI.

The High Commissioner should express concerns about China's resumption of the forcible repatriation of North Korean refugees, in particular the 10/9 mass deportation, and urge "China and

Sexual Abuse, Forced Labor", HRW (October 12, 2023), <https://www.hrw.org/news/2023/10/12/china-forcibly-returns-more-500-north-korea>

⁸¹ Open Joint Letter to President Xi Jinping re: China's Forcible Repatriation of North Korean Refugees (September 21, 2023), <https://www.hrw.org/news/2023/09/21/letter-human-rights-watch-president-xi-jinping>

⁸² AL CHN 9/2023 (18 July 2023), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28210>

⁸³ Written testimony of Rushan Abbas, Founder and Executive Director of Campaign for Uyghurs (CFU) at the Congressional-Executive Commission on China (CECC) hearing on the PRC's Universal Periodic Review and the Real State of Human Rights in China (February 1, 2024 - 10:00am), <https://www.cecc.gov/events/hearings/the-prcs-universal-periodic-review-and-the-real-state-of-human-rights-in-china>

⁸⁴ OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China (31 August 2022), para. 148, <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region>

⁸⁵ China: Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/45/CHN/2 (15 November 2023), paras. 62-63.

⁸⁶ Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Democratic People's Republic of Korea, A/HRC/WG.6/19/PRK/2 (24 February 2014), paras. 16, 26 and 27.

⁸⁷ Compilation on the Democratic People's Republic of Korea Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/33/PRK/2 (26 February 2019), paras. 38 and 42.

other countries” to “provide them with full protection against the risk of refoulement and safe pathways in accordance with international human rights and refugee law obligations” in his oral update to the 55th Human Rights Council session on March 20, 2024 as well as his full written report to the 58th Human Rights Council session in early 2025. It is important for the High Commissioner to name China in his oral update to hold it accountable for its violation of the principle of non-refoulement and to end the impunity for its decades-long aiding and abetting of North Korea’s crimes against humanity.

- (b) OHCHR should adopt terms of reference (TOR) for the OHCHR DPRK accountability project and hold closed-door briefings of the OHCHR DPRK accountability project’s work to Member States, CSOs and outside experts

In February 2017, the group of independent experts on accountability identified “Ensuring continued information and evidence gathering, using sound methodologies and protocols that respect international norms and standards, including with regard to victim and witness protection, consent and confidentiality” as a practical step that can be taken immediately to contribute to a comprehensive approach towards accountability in the DPRK, in line with international standards.⁸⁸ The group of independent experts also recommended that Member States should “Ensure that the methodology used to document and collect information and evidence on human rights violations in the Democratic People’s Republic of Korea meets international norms and standards, including with regard to criminal procedure and issues of consent, confidentiality and victim and witness protection”.⁸⁹

The group of independent experts further recommended that the Human Rights Council and the General Assembly should strengthen OHCHR to enable it to increase its contribution towards accountability for human rights violations in the DPRK by “Strengthening current monitoring and documentation efforts in line with international norms and standards including on consent, and its capacity to receive, preserve and consolidate information and evidence pertaining to the human rights situation in the Democratic People’s Republic of Korea through a central and independent repository for use in any future accountability mechanism and to channel relevant information to United Nations human rights mechanisms” and “Supporting an assessment by international criminal justice experts of available information and evidence, including on the crime base, command structures and linkages, to identify gaps and develop possible investigation and prosecution strategies as well as blueprints for suitable international or internationally assisted court models”.⁹⁰

In this regard, it is worth noting that other accountability mechanisms such as the OHCHR

⁸⁸ Report of the group of independent experts on accountability (24 February 2017), A/HRC/34/66/Add.1, para. 80(e).

⁸⁹ *Id.*, para. 84(d).

⁹⁰ *Id.*, para. 86 (b) (iii) and (iv).

Sri Lanka accountability project⁹¹ which was created by Human Rights Council resolution 51/1 of 6 October 2022 have terms of reference (TOR) that transparently set out (1) the mandate; (2) the collection, consolidation, analysis and preservation of information and evidence; (3) the development of possible strategies for future accountability processes; (4) advocacy for victims and survivors; (5) advancement of accountability through support to relevant judicial and other proceedings; (6) standards and procedural requirements; (7) the composition; (8) privileges and immunities; and (9) other provisions.⁹²

It stands to reason that the High Commissioner can draft and approve TOR for the OHCHR DPRK accountability project that clarifies and publicizes, at a minimum, the mandate; the collection, consolidation, analysis and preservation of information and evidence; the victim and witness protection, consent and confidentiality; the strategies for future accountability processes; and advancement of accountability through support to relevant judicial and other proceedings.

The High Commissioner can also hold closed-door briefings of OHCHR accountability project's work since 2014 to Member States, CSOs and outside experts to review the methodology used to document and collect information and evidence and to assess the available information and evidence including on the crime base, command structures and linkages, to identify gaps and develop possible investigation and prosecution strategies.

7. The United Nations High Commissioner for Refugees (UNHCR)

(a) UNHCR's response to China's forced repatriation of North Koreans

In December 1998, the Citizens' Alliance for North Korean Human Rights (NKHR), the oldest NGO dedicated to North Korean human rights founded in 1996, reported upon the first known incident of mass round-up and deportation of about 150 North Koreans by the Chinese authorities in Tonghua, Jilin province and appealed to Chinese President Jiang Zemin and the UN High Commissioner of Refugees (UNHCR) to treat North Korean escapees as refugees under international law.⁹³ The U.S. Committee for Refugees and Immigrants stated in its World Refugee Survey 1999

⁹¹ OHCHR Sri Lanka accountability project (2021), <https://www.ohchr.org/en/hr-bodies/hrc/sri-lanka-accountability/index>

⁹² OHCHR Sri Lanka accountability project: Terms of Reference, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sri-lanka/OHCHR-Sri-Lanka-accountability-project-Terms-Reference.pdf>

⁹³ Kim Tae-sik, "Chinese Public Security Authorities Round Up 150 North Korean Escapees and Transfer Them to North Korea [중공안당국 탈북자 1 백 50 명 검거,北압송]", Yonhap News 1998.12.21., <<https://n.news.naver.com/mnews/article/001/0004346357?sid=103>>

that “in January 1999, after years of generally tolerating the presence of thousands of North Korean “illegal immigrants,” China began expelling large numbers of North Koreans”.⁹⁴

At its peak, the U.S. Committee for Refugees and Immigrants in its World Refugee Survey 2004 noted that: “Non-governmental organizations estimate that China forcibly deports between 150-200 Northern Koreans per week amounting to an estimated 7,800 forced deportations during 2003.”⁹⁵ According to World Refugee Survey 2005, “China refouled at least 5,000 North Koreans and as many as 200 per week during crackdowns, at times permitting North Korean security forces to enter its territory to abduct refugees, and tightened security along the border” in 2004.⁹⁶ The U.S. Committee for Refugees and Immigrants reported that: “Incidents of refoulement decreased in 2005, as the North Korean population was significantly smaller than its peak in the late 1990s”⁹⁷; by the time of the 2008 Beijing Olympics: “Deportations of North Koreans dropped to the lowest levels in recent years, largely due to a lower refugee population. China deported fewer than 1,000 during the year, as compared to 1,800 in 2006. It maintained tight security in the immediate border region and around Olympic venues in Beijing, but did not launch other systematic efforts to locate and deport North Koreans”.⁹⁸

The agreement signed between China and the UN High Commissioner of Refugees (UNHCR) in December 1995 when its mission office in Beijing which was established in 1979 was upgraded to a branch office⁹⁹ provides in article III (5) that “In consultation and cooperation with the Government, UNHCR personnel may at all times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation”.¹⁰⁰ However, when a UNHCR assessment mission to the China/North Korea border revealed the presence of some North Korean refugees among the undocumented North Korean population in China in May 1999, the Chinese

⁹⁴ U.S. Committee for Refugees World Refugee Survey 1999 - China, (including Hong Kong and Tibet) (1 January 1999), <https://www.refworld.org/publisher,USCRI,ANNUALREPORT,HKG,3ae6a8a61f,0.html>

⁹⁵ U.S. Committee for Refugees World Refugee Survey 2004 – China (25 May 2004), <https://www.refworld.org/docid/40b459368.html>

⁹⁶ U.S. Committee for Refugees and Immigrants World Refugee Survey 2005 – China (20 June 2005), <https://www.refworld.org/docid/42c9288d2f.html>

⁹⁷ U.S. Committee for Refugees and Immigrants World Refugee Survey 2006 – China (14 June 2006), <https://www.refworld.org/category,COI,USCRI,,CHN,4496ad0820,0.html>

⁹⁸ World Refugee Survey 2008 – China (19 June 2008), <https://www.refworld.org/docid/485f50ca7b.html>

⁹⁹ Ministry of Foreign Affairs of the People’s Republic of China, “China's relation with UNHCR” (2003-09-27), https://www.fmprc.gov.cn/eng/wjb_663304/zzjg_663340/gjs_665170/gjzzyhy_665174/2594_665176/2600_665188/200309/t20030927_598044.html

¹⁰⁰ Agreement between the Government of the People's Republic of China and the Office of the United Nations High Commissioner for Refugees on the upgrading of the UNHCR Mission in the People's Republic of China to UNHCR Branch Office in the Republic of China, <https://www.nkfreedom.org/UploadedDocuments/UNHCR-China1995Treaty.pdf>

government reprimanded UNHCR for the results of the mission and refused to permit UNHCR's formal involvement with the population.¹⁰¹ The UNHCR had classified these North Korean escapees as refugees on account of the politically discriminatory food distribution policies in North Korea.¹⁰²

In response to China's deportation of 7 North Koreans recognized as refugees by the UNHCR in Russia in January 2000, UN High Commissioner for Refugees Sadako Ogata stated that "We are gravely concerned by the Chinese decision to deport people whom UNHCR has recognised as refugees under the 1951 Refugee Convention".¹⁰³ However, the Chinese government claimed that it has to deal with the issue "prudently".¹⁰⁴ UNHCR has offered to assess the asylum claims of North Korean asylum-seekers jointly with the Chinese authorities to no avail.¹⁰⁵

During his visit to China in March 2006, then-UN High Commissioner for Refugees António Guterres in his own words had "very intense, frank and meaningful discussions" with the Chinese officials about North Koreans in China some of whom are in need of protection as "refugees sur-place"

¹⁰¹ U.S. Committee for Refugees World Refugee Survey 2000 – China (1 June 2000), <https://www.refworld.org/docid/3ae6a8cc4.html> ("However, a May 1999 UNHCR assessment mission to the China/North Korea border revealed the presence of some North Korean refugees among the undocumented North Korean population in China. The Chinese government reprimanded UNHCR for the results of the mission and refused to permit UNHCR's formal involvement with the population."); Lee Hyeok-jae and Jee Hae-bum, "The UN recognizes North Korean escapees as 'refugees' [유엔, 탈북자에 첫 '난민' 인정]", Chosun Ilbo 1999.10.14, https://www.chosun.com/site/data/html_dir/1999/10/14/1999101470026.html ; Ko Seung-il, "UNHCR recognizes some of North Korean escapees as refugees [UNHCR, 탈북자 일부 난민 인정 입력]", Yonhap News 1999.10.14, <https://n.news.naver.com/mnews/article/001/0004479815?sid=100> ; Korea Herald "Seoul reacts cautiously to U.N. move on North Korean refugees in China", 1999.10.15, <https://n.news.naver.com/mnews/article/044/0000012041?sid=104>

¹⁰² Roberta Cohen, "Can the UN Secretary-General Help the 2,000 North Koreans Detained in China? With every reason to believe North Koreans would face persecution and torture back home, the U.N. must take a stronger stance on China's repatriation of North Korean refugees" (July 5, 2023), <https://thediplomat.com/2023/07/can-the-un-secretary-general-help-the-2000-north-koreans-detained-in-china> ("Indeed, Guterres would do well to reveal that UNHCR staff, when allowed access to the China-North Korea border in the mid 1990s, classified starving North Koreans as refugees, because they were subject to North Korea's politically discriminatory food distribution policies. To squash such findings, China barred UNHCR from the border in the late 1990s, and in 2008 ended the access of North Koreans to the UNHCR office in Beijing, which had helped small groups of North Koreans to depart. China's collusion with North Korea in undermining the Refugee Convention through bilateral agreements that treat asylum seekers as criminals must be stopped.").

¹⁰³ Public Information Section, "UNHCR protests Chinese deportation of North Koreans" (13 January 2000), <https://www.unhcr.org/news/news-releases/unhcr-protests-chinese-deportation-north-koreans>

¹⁰⁴ Christian F. Mahr, "North Korea: Scenarios from the Perspective of Refugee Displacement", Rosemarie Rogers Working Paper Series #11 (February 2002), p. 21, <https://dspace.mit.edu/handle/1721.1/97603>

¹⁰⁵ Kris Janowski, "UNHCR seeks access to North Koreans detained in China", (21 January 2003), <https://www.unhcr.org/news/unhcr-seeks-access-north-koreans-detained-china>

because of the “risk of deportation back to their countries of origin [that] is associated with the risk of persecution in those areas covered by the 1951 Refugee Convention”.¹⁰⁶ In May 2013, then-High Commissioner Guterres publicly “expressed grave concern” over the safety and security of nine North Koreans who were reportedly deported from Laos to China.¹⁰⁷ The Chinese government warned him against making “irresponsible remarks”.¹⁰⁸

The Exit and Entry Administration Law of the People’s Republic of China, adopted on June 30, 2012 and entered into force on July 1, 2013, provides in article 46 that: “Foreigners applying for refugee status may, during the screening process, stay in China on the strength of temporary identity certificates issued by public security organs; foreigners who are recognized as refugees may stay or reside in China on the strength of refugee identity certificates issued by public security organs.”¹⁰⁹ However, China has yet to adopt the domestic procedure for refugee status determination.

Since around this time, UNHCR has become conspicuously silent about China’s repatriation of North Koreans. This appears to coincide with UNHCR’s active efforts to engage China’s Belt and Road Initiative (BRI).¹¹⁰ In June 2017, the UN High Commissioner for Refugees, Filippo Grandi, stated that “The Belt and Road initiative is about international cooperation for peace, prosperity and inclusion” and expressed his hope that “China can invest some of those resources directly in countries hosting large numbers of refugees and displaced people. In doing so, it can empower refugees and their host communities in a win-win situation for all.” He added that: “Through its many development projects, China can help to stabilize areas in conflict and address the root causes of displacement”.

Beijing’s contribution to refugee programs had already skyrocketed by that time from \$2.8 million in 2016 to \$12.5 million in the first five months of 2017, “much of it on the sidelines of the recent Belt and Road Forum”.

¹⁰⁶ António Guterres, “Statement to media by Mr. António Guterres, United Nations High Commissioner for Refugees, on the conclusion of his Mission to the People’s Republic of China, Beijing, 23 March 2006” (23 March 2006), <https://www.unhcr.org/publications/statement-media-mr-antonio-guterres-united-nations-high-commissioner-refugees>

¹⁰⁷ UNHCR, “UNHCR chief calls on states to respect non-refoulement after North Koreans deported from Laos” (30 May 2013), <https://www.unhcr.org/news/news-releases/unhcr-chief-calls-states-respect-non-refoulement-after-north-koreans-deported>; See also Shin Hyon-hee, “UNHCR ups efforts to protect N.K. defectors” (March 2, 2014), <https://www.koreaherald.com/view.php?ud=20140302000452> (“Dirk Hebecker, representative for UNHCR Korea, says his agency provides financial and technical support for defectors on their way to South Korea, while boosting cooperation with neighboring countries and other U.N. entities.”)

¹⁰⁸ Terril Yue Jones, “China warns U.N. against ‘irresponsible remarks’ on North Koreans”, Reuters (JUNE 3, 2013), <https://www.reuters.com/article/us-korea-north-china-idUSBRE95209W20130603>

¹⁰⁹ Exit and Entry Administration Law of the People’s Republic of China (Adopted at the 27th meeting of the Standing Committee of the Eleventh National People’s Congress on June 30, 2012), http://english.www.gov.cn/archive/laws_regulations/2014/09/22/content_281474988553532.htm

¹¹⁰ UN Refugee Agency chief seeks to deepen cooperation with China (8 June 2017), <https://www.unhcr.org/news/news-releases/un-refugee-agency-chief-seeks-deepen-cooperation-china>

If China continues to deny UNHCR personnel “unimpeded access to refugees”, including North Korean refugees, “at all times” as stipulated in article III (5) of the 1995 PRC-UNHCR agreement, UNHCR should consider instituting arbitration against China under article XVI (Settlement of Disputes) of the agreement which allows for arbitration of “any disputes between the Government [of the People's Republic of China] and UNHCR arising out of or relating to this Agreement”.¹¹¹

The US Congress in section 304 (b) (1) and (2) of the North Korean Human Rights Act of 2004 expressed its sense that “if the Government of China continues to refuse to provide the UNHCR with access to North Koreans within its borders, the UNHCR should initiate arbitration proceedings pursuant to Article XVI of the UNHCR Mission Agreement and appoint an arbitrator for the UNHCR” and that “because access to refugees is essential to the UNHCR mandate and to the purpose of a UNHCR branch office, a failure to assert those arbitration rights in present circumstances would constitute a significant abdication by the UNHCR of one of its core responsibilities”.¹¹²

UNHCR should also consider terminating the 1995 agreement in accordance with Article XVII (4) thereof and downgrading or closing its office in Beijing. As of 31 December 2022, China hosts 807 asylum-seekers (310 female and 497 male) and 331 refugees (154 female, 177 male) with a total of 183 minors from 50 countries of origin.¹¹³ This number is difficult to justify UNHCR’s continued presence despite China’s outright denial of UNHCR’s access to North Korean refugees and asylum-seekers.

UNHCR should also issue a country-specific guidance for North Korea.¹¹⁴ Such a guidance will provide a clear guideline on how governments should treat North Korean refugees and asylum-seekers. To this end, North Korean human rights and refugee NGOs should participate in UNHCR’s global and regional NGO consultations that take place biennially on an alternating basis¹¹⁵ starting

¹¹¹ Agreement between the Government of the People's Republic of China and the Office of the United Nations High Commissioner for Refugees on the upgrading of the UNHCR Mission in the People's Republic of China to UNHCR Branch Office in the Republic of China, <https://www.nkfreedom.org/UploadedDocuments/UNHCR-China1995Treaty.pdf>

¹¹² H.R.4011 - North Korean Human Rights Act of 2004, 108th Congress (2003-2004) <https://www.congress.gov/bill/108th-congress/house-bill/4011/text>

¹¹³ Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report - Universal Periodic Review: Fourth Cycle, 45th Session: PEOPLE’S REPUBLIC OF CHINA AND THE SPECIAL ADMINISTRATIVE REGIONS OF HONG KONG AND MACAO (UNHCR, July 2023), Universal Periodic Review Fourth Cycle - China - UN Contributions, <https://www.ohchr.org/en/hr-bodies/upr/cn-un-contributions-s45>

¹¹⁴ UNHCR USA, Overview of UNHCR Country-Specific Guidance, <https://www.unhcr.org/us/what-we-do/u-s-asylum-resources/country-information-and-guidance>

¹¹⁵ Global Consultations with NGOs, <https://www.unhcr.org/global-consultations-ngos>

with the global NGO consultation on 11–14 June 2024.¹¹⁶

(b) UNHCR’s submissions for OHCHR’s compilation of information for China’s UPRs

UNHCR’s submission for OHCHR’s compilation of information for China’s 1st UPR¹¹⁷ included no reference to North Koreans. However, UNHCR’s submission for OHCHR’s compilation of information for China’s 2nd UPR, under Issue 3 (North Koreans), stated that “North Koreans come to China for various reasons, including for economic reasons, and some may be in need of international protection” and concluded with the recommendation to:

Take all measures to ensure viable and effective humanitarian space for those North Korean asylum-seekers who may be determined to be in need of international protection, including issuing them identification and documentation to legally reside in China.¹¹⁸

In UNHCR’s submission for OHCHR’s compilation of information for China’s 3rd UPR, under Issue 2 (North Koreans), UNHCR “noted that the position of the Government of China is that North Koreans come to China for economic reasons and that they are therefore not asylum seekers, however it should be emphasised that some of these individuals may be in need of international protection” and recommended that the Government of China:

(a) Acknowledge the severity of treatment issued to those returnees who are deemed to have left North Korea illegally.

(b) Take all measures to ensure viable and effective humanitarian space for those North Korean asylum-seekers who may be determined to be in need of international protection,

¹¹⁶ Global Consultations with NGOs, 11–14 Jun 2024, Geneva International Conference Centre (CICG), <https://indico.un.org/event/1009549>

¹¹⁷ Input provided by the United Nations High Commissioner for Refugees into the Office of the High Commissioner for Human Rights’ Compilation Report for the Universal Periodic Review of CHINA (Protection Policy and Legal Advice Section, Division of International Protection Services, UNHCR, September 2008), Universal Periodic Review - China - Reference Documents, <https://www.ohchr.org/en/hr-bodies/upr/uprcnun-contributions-s4>

¹¹⁸ Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report - Universal Periodic Review: People’s Republic of China (Human Rights Liaison Unit, Division of International Protection, UNHCR, March 2013), Universal Periodic Review Second Cycle - China - Reference Documents, <https://www.ohchr.org/en/hr-bodies/upr/uprcnun-contributions-s17>

including issuing them identification and documentation to legally reside in China.¹¹⁹

In UNHCR's submission for OHCHR's compilation of information for China's 4th UPR, under Issue 3 (Protection of North Koreans), UNHCR again "noted that the position of the Government of China is that North Koreans travel to China for economic reasons and that they are therefore not asylum-seekers; however, it should be emphasised that some such individuals may be in need of international protection" and recommended that the Government of China:

- a) Acknowledge the severity of treatment issued to those returnees who are deemed to have left North Korea illegally.
- b) Take all measures to ensure viable and effective humanitarian space for those North Korean asylum-seekers who may be determined to be in need of international protection, including issuing them identification and documentation to legally reside in China.¹²⁰

For China's next UPR, to urge China to end its aiding and abetting of North Korea's crimes against humanity against repatriated North Koreans, UNHCR should recommend that China:

- (1) Protect North Koreans in accordance with international law, including the principle of non-refoulement, by ending their forcible repatriation;
- (2) Ensure access to the refugee status determination (RSD) procedure and safe pathways for North Koreans

8. The Secretary-General of the United Nations

All North Korean human rights resolutions adopted by the General Assembly, from its resolution 61/174 of 19 December 2006 (A/RES/61/174), has requested the Secretary-General to

¹¹⁹ Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: 3rd Cycle, 31st Session: PEOPLE'S REPUBLIC OF CHINA AND THE SPECIAL ADMINISTRATIVE REGIONS OF HONG KONG AND MACAO (UNHCR, March 2018), Universal Periodic Review - China - Reference Documents, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRCNUNContributionsS31.aspx>

¹²⁰ Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Fourth Cycle, 45th Session: PEOPLE'S REPUBLIC OF CHINA AND THE SPECIAL ADMINISTRATIVE REGIONS OF HONG KONG AND MACAO (UNHCR, July 2023), Universal Periodic Review Fourth Cycle - China - UN Contributions, <https://www.ohchr.org/en/hr-bodies/upr/cn-un-contributions-s45>

submit a comprehensive report on the situation in the DPRK to the General Assembly. Accordingly, the Secretary-General has submitted annual reports to the General Assembly since 2007.

In 2014, the COI recommended that the pre-COI country-specific human rights monitoring and reporting mechanisms on the DPRK, including the periodic reports of the Secretary-General, should be “mandated to focus on ensuring accountability, in particular for crimes against humanity, and should report on the implementation of the [COI’s] recommendations”.¹²¹

The COI further recommended that the “United Nations Secretariat and agencies should urgently adopt and implement a common “Rights up Front” strategy to ensure that all engagement with the Democratic People’s Republic of Korea effectively takes into account, and addresses, human rights concerns, including those collected in the present report” with the aim of helping “to prevent the recurrence or continuation of crimes against humanity in the Democratic People’s Republic of Korea” and that the strategy “should contemplate the possibility of the Secretary General referring the situation to the Security Council”.¹²²

Then-UN High Commissioner for Refugees António Guterres, during his visit to China in March 2006, had “very intense, frank and meaningful discussions” with the Chinese officials about North Koreans in China some of whom are in need of protection as “refugees sur-place” because of the “risk of deportation back to their countries of origin [that] is associated with the risk of persecution in those areas covered by the 1951 Refugee Convention”.¹²³ In May 2013, then-High Commissioner Guterres publicly “expressed grave concern” over the safety and security of nine North Koreans who were reportedly deported from Laos to China.¹²⁴ The Chinese government warned him against making “irresponsible remarks”.¹²⁵

Secretary-General António Guterres therefore is no stranger to North Korean human rights issue, especially when it concerns North Korean refugees and asylum-seekers in China and other countries. It is noteworthy in this regard that he has been calling upon the international community to

¹²¹ A/HRC/25/63, para. 94(b); A/HRC/25/CRP.1, para. 1225(b).

¹²² A/HRC/25/63, para. 94(g); A/HRC/25/CRP.1, para. 1225(g).

¹²³ António Guterres, “Statement to media by Mr. António Guterres, United Nations High Commissioner for Refugees, on the conclusion of his Mission to the People's Republic of China, Beijing, 23 March 2006” (23 March 2006), <https://www.unhcr.org/publications/statement-media-mr-antonio-guterres-united-nations-high-commissioner-refugees>

¹²⁴ UNHCR, “UNHCR chief calls on states to respect non-refoulement after North Koreans deported from Laos” (30 May 2013), <https://www.unhcr.org/news/news-releases/unhcr-chief-calls-states-respect-non-refoulement-after-north-koreans-deported>; See also Shin Hyon-hee, “UNHCR ups efforts to protect N.K. defectors” (March 2, 2014), <https://www.koreaherald.com/view.php?ud=20140302000452> (“Dirk Hebecker, representative for UNHCR Korea, says his agency provides financial and technical support for defectors on their way to South Korea, while boosting cooperation with neighboring countries and other U.N. entities.”)

¹²⁵ Terril Yue Jones, “China warns U.N. against 'irresponsible remarks' on North Koreans”, Reuters (JUNE 3, 2013), <https://www.reuters.com/article/us-korea-north-china-idUSBRE95209W20130603>

extend protection to “citizens of the Democratic People’s Republic of Korea who have crossed international borders irregularly” and “to ensure that they are protected and not repatriated” in his annual reports to the General Assembly since 2019.

67. The Secretary-General recommends that the international community:

...

(c) In line with efforts to counter trafficking in persons, extend protection to citizens of the Democratic People’s Republic of Korea who have crossed international borders irregularly (many of whom are female victims of trafficking), and take steps to ensure that they are protected and not repatriated;¹²⁶

66. The Secretary-General recommends that the international community:

...

(c) Extend protection to citizens of the Democratic People’s Republic of Korea who have crossed international borders irregularly, taking into account the different needs and experiences of men and women, and take steps to ensure they are protected and not repatriated;¹²⁷

56. The Secretary-General recommends that the international community:

...

(c) In line with efforts to counter trafficking in persons, extend protection to citizens of the Democratic People’s Republic of Korea who have crossed international borders irregularly (many of whom are female victims of trafficking), and take steps to ensure that they are protected and not repatriated;¹²⁸

52. The Secretary-General recommends that the international community:

¹²⁶ Report of the Secretary-General on the situation of human rights in the Democratic People’s Republic of Korea, A/74/268 (2 August 2019), para. 67(c).

¹²⁷ Report of the Secretary-General on the situation of human rights in the Democratic People’s Republic of Korea, A/75/271 (30 July 2020), para. 66(c).

¹²⁸ Report of the Secretary-General on the situation of human rights in the Democratic People’s Republic of Korea, A/76/242 (28 July 2021), para. 56(c).

...

(d) Extend protection, in a gender-sensitive manner, to citizens of the Democratic People's Republic of Korea who have crossed international borders irregularly, and ensure that they are not forcibly repatriated.¹²⁹

58. The Secretary-General recommends that the international community:

...

(d) Extend protection to citizens of the Democratic People's Republic of Korea who have crossed international borders irregularly as well as people who have escaped from overseas labour deployments, and ensure that they are not forcibly repatriated, in accordance with the absolute prohibition on refoulement under international human rights law;¹³⁰

Previously, the Secretary-General's reports in 2010-2014 included even stronger words that referred to the obligation under the 1951 Refugee Convention although it is unclear why these reports mentioned this specific international legal obligation while other reports had no mention at all about North Korean refugees and asylum-seekers.¹³¹

88. I wish to remind neighbouring countries and the international community in general of their obligation, under the 1951 Convention relating to the Status of Refugees, to provide protection to those fleeing the Democratic People's Republic of Korea in order to seek asylum. Furthermore, I urge countries providing asylum to engage closely with organizations

¹²⁹ Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/77/247 (29 July 2022), para. 52(d).

¹³⁰ Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/78/212 (21 July 2023), para. 58(d).

¹³¹ Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/62/318 (4 September 2007); Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/63/332 (26 August 2008); Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/64/319 (24 August 2009); Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/70/393 (25 September 2015); Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/71/439 (7 October 2016); Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/72/279 (3 August 2017); Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/73/308 (6 August 2018).

working on refugee issues, including UNHCR.¹³²

79. I wish to remind neighbouring countries and the international community in general of their obligations under the 1951 Convention relating to the Status of Refugees to provide protection to those fleeing the Democratic People's Republic of Korea and seeking asylum. The fundamental principle of non-refoulement applies to all.¹³³

64. Finally, the Secretary-General urges the countries neighbouring the Democratic People's Republic of Korea to respect the principle of non-refoulement under the 1951 Convention relating to the Status of Refugees, to refrain from forcibly returning persons fleeing persecution from the Democratic People's Republic of Korea and to provide international protection to such people.¹³⁴

73. The Secretary-General appeals to the countries neighbouring the Democratic People's Republic of Korea to respect the principle of non-refoulement under the 1951 Convention relating to the Status of Refugees, to refrain from forcibly returning persons fleeing persecution from the Democratic People's Republic of Korea and to provide international protection to such people. This includes indirect refoulement. The duty not to refool encompasses any measure that could have the effect of returning a person to the frontiers of territories where his or her life or freedom would be threatened, or where he or she would risk persecution.

74. The Secretary-General appeals to the Government to show transparency and to share information with the international community on the status and treatment of persons who were forcibly returned to the country.¹³⁵

56. The Secretary-General makes the following recommendations:

¹³² Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/65/391 (24 September 2010), para. 88.

¹³³ Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/66/343 (7 September 2011), para. 79.

¹³⁴ Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/67/362 (13 September 2012), para. 64.

¹³⁵ Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/68/392 (19 September 2013), paras. 73-74.

...

(b) To the international community:

...

(v) Respect the international human rights law principle of non-refoulement and refrain from forcibly returning to the Democratic People's Republic of Korea persons seeking asylum, given the grave risks they face upon return.¹³⁶

In light of China's resumption of the forcible repatriation of North Korean refugees, in particular the 10/9 mass deportation, the Secretary-General should speak more forcefully about the issue by urging China and other countries to: "Extend full protection to citizens of the Democratic People's Republic of Korea who have crossed international borders irregularly as well as people who have escaped from overseas labour deployments against the risk of refoulement and provide safe pathways in accordance with international human rights and refugee law obligations".

The Secretary-General should also urge the DPRK government to: "show transparency and to share information with the international community on the status and treatment of persons who were forcibly returned to the country".

The Secretary-General has in the past reiterated "the availability of his good offices to promote dialogue with the [DPRK Government] on ways to strengthen the protection and promotion of human rights in the Democratic People's Republic of Korea":

65. With a view to taking further the aforementioned recommendations, the Secretary-General wishes to reiterate the availability of his good offices to promote dialogue with the Government of the Democratic People's Republic of Korea on ways to strengthen the protection and promotion of human rights in the Democratic People's Republic of Korea.¹³⁷

75. The Secretary-General reiterates the availability of his good offices to promote dialogue with the Government on ways to strengthen the protection and promotion of human rights in the Democratic People's Republic of Korea.¹³⁸

¹³⁶ Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/69/639 (5 December 2014), para. 56(b)(v).

¹³⁷ Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/67/362 (13 September 2012), para. 65.

¹³⁸ Report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea, A/68/392 (19 September 2013), para. 75.

The Secretary-General should also consider invoking his power under article 99 of the UN Charter (“The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.”) to ask the Security Council to discuss North Korea’s human rights situation as a threat to the maintenance of international peace and security especially if the DPRK resumes its nuclear tests. Secretary-General Guterres famously invoked this rarely used power to have the Security Council debate the situation in Gaza in December 2023.¹³⁹

We note that article 99 was first invoked by the Secretary-General with respect to his statement to the Security Council on June 25, 1950 at the outbreak of the Korean War.¹⁴⁰ Since then, successive Secretaries-General have explicitly or implicitly invoked to address threats to the maintenance of international peace and security although last explicit invocation dates back to December 1971 during the Bangladesh Liberation War.¹⁴¹ The implicit powers of the Secretary-General in the spirit of Article 99 have also been more liberally construed to include the right to initiate fact-finding missions, investigative commissions and the offer of good offices or mediation.¹⁴²

The Secretary-General should offer his good offices to promote dialogue with the DPRK on ways to strengthen the protection and promotion of human rights in the Democratic People’s Republic of Korea and with other governments to resolve issues arising from the repatriation of refugees, asylum seekers and other citizens of the DPRK.

9. The Human Rights Council and General Assembly

It is important for the member states to raise the North Korean human rights and refugee issues to raise their visibility at the high-level segment of the Human Rights Council and General Assembly. The consistency of the message is important. For instance, South Korean President Yoon Suk-yeol has not spoken about North Korean human rights in his speeches at the General Assembly in September 2022 and 2023.

¹³⁹ Letter by the Secretary-General to the President of Security Council invoking Article 99 of the United Nations Charter, <https://www.un.org/en/situation-in-occupied-palestine-and-israel/sg-sc-article99-06-dec-2023>

¹⁴⁰ Repertory of Practice of United Nations Organs (<https://legal.un.org/repertory>) ; Art. 99, Repertory, vol. V (1945-1954), paras. 5 and 10, https://legal.un.org/repertory/art99/english/rep_orig_vol5_art99.pdf

¹⁴¹ Repertory of Practice of United Nations Organs (<https://legal.un.org/repertory>) ; Art. 99, Repertory, Suppl. 5, vol. V (1970-1978), para. 22, https://legal.un.org/repertory/art99/english/rep_supp5_vol5_art99.pdf

¹⁴² Repertory of Practice of United Nations Organs (<https://legal.un.org/repertory>) ; Art. 99, Repertory, Suppl. 8, vol. VI (1989-1994), para. 5, https://legal.un.org/repertory/art99/english/rep_supp8_vol6_art99.pdf

The member states and CSOs should raise North Korea-related issues in the sessions of the Human Rights Council and the Third Committee of the General Assembly in the interactive dialogues with the special procedures, treaty bodies and UNHCR. The general debates are also important occasions for North Korea-related issues to be highlighted.

The General Assembly can hold the DPRK accountable for its ongoing crimes against humanity and its failure to ensure justice and accountability for those responsible by declining to accept the DPRK delegation's credentials. While there is no precedent for expulsion of a member state from the under article 6 of the UN Charter, the General Assembly effectively barred the Apartheid South African delegation from participating in the General Assembly for 20 years in 1974-1994.¹⁴³ The General Assembly can take a similar robust measure against the DPRK, another racist, pariah state bent on becoming a nuclear weapon state.

Alternatively, the precedent set by General Assembly resolution 2758(XXVI) of October 25, 1971 which decided to “recognize the representatives of [the PRC's] Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it” (A/RES/2758(XXVI)) could be used against the DPRK.

In other words, the General Assembly could simply vote to recognize that “the representatives of the Government of the Republic of Korea as the only legitimate representatives of Korea to the United Nations, and to expel forthwith the representatives of Kim Jong Un from the place which they unlawfully occupy at the United Nations and in all the organizations related to it”.

More practically, strengthening the language in the North Korean human rights resolutions, most immediately in the resolution to be adopted by the 55th Human Rights Council session, concerning South Korean POWs, abductees and detainees as well as China's forcible repatriation of North Korean refugees and other issues concerning improvement of human rights and accountability would be most welcome.

- (a) 55th HRC resolution: the issues of South Korean POWs, abductees and detainees in North Korea

We call for strengthening the language in preambular paragraph 20 from previous Human Rights Council resolutions 46/17 of 23 March 2021, 49/22 of 1 April 2022 and 52/28 of 4 April 2023 concerning the South Korean POWs (“Noting with concern the allegations of continued violations of the human rights of unrepatriated prisoners of war and their descendants”) by striking “continued” and inserting “continued denial of the right of repatriation under the Geneva Convention relative to the Treatment of Prisoners of War and” and by striking “descendants” and inserting “descendants, in

¹⁴³ South Africa's 1974-1994 Assessments No Longer Due and Payable, According to Text Adopted by General Assembly (15 December 1995), <https://press.un.org/en/1995/19951215.ga9038.html>

particular forced labour, enslavement, torture, imprisonment, enforced disappearance, execution, discrimination based on the songbun system and enforced separation of families”.

With respect to the 6 South Korean detainees (Kim Jung-wook, Kim Kook-kie, Choi Chung-gil, Kim Won-ho, Ko Hyon-chol and another individual whose name is not known), we call for replacing “nationals of other countries” in operative paragraph 2(l) (“Providing nationals of other countries detained in the Democratic People’s Republic of Korea with protections”) and “nationals of other States Members” in preambular paragraph 20 (“Noting with concern ... the issue of nationals of other States Members detained in the Democratic People’s Republic of Korea with no information available regarding their health or the conditions of their detention”) in resolution 52/28 of 4 April 2023 with “nationals of the Republic of Korea” or “nationals of other countries/States Members, in particular the Republic of Korea” given that the only known remaining foreign detainees in North Korea are all from South Korea.

We also urge specific references to the names of the known South Korean detainees in the resolution light of the past Human Rights Council resolutions concerning Myanmar, namely resolution 34/22 of 24 March 2017 (“the killings of constitutional legal expert and senior National League for Democracy adviser Ko Ni, in January 2017, land and environmental activist Naw Chit Pan Daing, in November 2016, and journalist Soe Moe Tun, in December 2016”), resolution 37/32 of 23 March 2018 (“the killings of constitutional legal expert and senior National League for Democracy adviser Ko Ni, in January 2017, land and environmental activist Naw Chit Pan Daing, in November 2016, and journalist Soe Moe Tun, in December 2016, the rape and murder of Kachin school teachers Maran Lu Ra and Tangbau Hkawn Nan Tsing in January 2015”; “immediately release journalists Wa Lone and Kyaw Soe Oo”), resolution 39/2 of 27 September 2018 (“Expresses grave concern that the journalists Wa Lone and Kyaw Soe Oo, who were investigating the Inn Dinn killings, have been jailed, prosecuted and sentenced, and calls for their immediate and unconditional release”), resolution 40/29 of 22 March 2019 (“reiterates its call for the immediate and unconditional release of journalists Wa Lone and Kyaw Soe Oo”), resolution 43/26 of 22 June 2020 (“Welcomes the release of journalists Wa Lone and Kyaw Soe Oo”), resolutions 46/21 of 24 March 2021, 49/23 of 1 April 2022 and 52/31 of 4 April 2023 (“Calls for the immediate and unconditional release of President Win Myint, State Counsellor Aung San Suu Kyi and all those who have been arbitrarily detained, charged or arrested on specious grounds during and in the aftermath of 1 February 2021”).

- (b) 55th HRC resolution: China’s policy and practice of forcible repatriation of North Korean refugees

Operative paragraph 6¹⁴⁴ of resolution 52/28 of 4 April 2023 added a reference to

¹⁴⁴ “6. Reiterates its deep concern at the findings of the commission of inquiry and subsequent investigations of the Office of the United Nations High Commissioner for Human Rights concerning the situation of refugees and asylum seekers returned to the Democratic People’s Republic of Korea and other citizens of the Democratic People’s Republic of Korea who have been repatriated from abroad and made subject to sanctions, including

“subsequent investigations of the Office of the United Nations High Commissioner for Human Rights” concerning the situation of refugees and asylum seekers returned to the Democratic People’s Republic of Korea and other citizens of the Democratic People’s Republic of Korea who have been repatriated from abroad and obligations under international human rights law, “including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”.

We urge greater protection for North Korean refugees by striking “those who seek refuge” and inserting “those who seek refuge, to refrain from sharing information about the contacts and conduct of refugees, asylum seekers and other citizens of the Democratic People’s Republic of Korea with the Government of the Democratic People’s Republic of Korea, to revise or terminate treaties that require their forcible repatriation” and by striking “instruments” and inserting “instruments and requests the Secretary-General to offer good offices to resolve issues arising from the repatriation of refugees, asylum seekers and other citizens of the Democratic People’s Republic of Korea” in operative paragraph 6.

Operative paragraph 6 also refers to “internment, torture, cruel, inhuman and degrading treatment or punishment, sexual and gender-based violence, enforced disappearance or the death penalty” that repatriated North Korean refugees, asylum seekers and other citizens are subjected to in North Korea. We ask that North Korea’s particularly gruesome practice of forced abortion and infanticide be emphasized by striking “violence” and inserting “violence, including forced abortion and infanticide against repatriated mothers and their children based on gender and racial grounds”.

- (c) 55th HRC resolution: Other issues concerning improvement of human rights and accountability

We note that “urging the Government of the Democratic People’s Republic of Korea to respond to the list of issues on the initial report of the Democratic People’s Republic of Korea sent by the Committee on the Rights of Persons with Disabilities within the deadline” was added to preambular paragraph 14 of resolution 52/28 of 4 April 2023 and that North Korea submitted its replies on 13 December 2023¹⁴⁵ while still failing to submit its replies to the list of issues prior to

internment, torture, cruel, inhuman and degrading treatment or punishment, sexual and gender-based violence, enforced disappearance or the death penalty, in this regard strongly urges all States to respect the fundamental principle of non-refoulement, including where the Government of the Democratic People’s Republic of Korea exerts pressure on returning States to effectuate such returns, to treat humanely those who seek refuge and to ensure unhindered access to the Office of the United Nations High Commissioner for Refugees and the Office of the United Nations High Commissioner for Human Rights, with a view to protecting the human rights of those who seek refuge, and once again urges States to comply with their obligations under international human rights law, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention relating to the Status of Refugees and the Protocol thereto, in relation to persons from the Democratic People’s Republic of Korea who are covered by those instruments;”

¹⁴⁵ Reply to List of Issues, CRPD/C/KEN/RQ/1 (13 Dec 2023),

reporting (LOIPR) on its third periodic report sent by the Human Rights Committee (HRC).¹⁴⁶

We therefore ask that the following phrase is added at the end of preambular paragraph 18 of the same resolution (“Recognizing the important work of the treaty bodies in monitoring the implementation of international human rights obligations, and emphasizing the need for the Democratic People’s Republic of Korea to comply with its human rights obligations and to ensure regular and timely reporting to the treaty bodies”): “and urging the Government of the Democratic People’s Republic of Korea to respond to the list of issues prior to reporting on its third periodic report sent by the Human Rights Committee”.

Operative paragraph 18(r) of General Assembly resolution 78/218 of 19 December 2023, as well as the General Assembly’s all other North Korean human rights resolutions since resolutions 66/174 of 19 December 2011, “[s]trongly urges the Government of the Democratic People’s Republic of Korea to respect, protect and fulfil all human rights and fundamental freedoms and, in this regard ... [t]o consider ratifying and acceding to the remaining international human rights treaties, which would enable a dialogue with the human rights treaty bodies”. We ask that the Human Rights Council’s resolution also urges ratification of or accession to the remaining human rights treaties.

In operative paragraph 2(a) of resolution 52/28 of 4 April 2023, with respect to freedom of thought, conscience and religion or belief and the rights to freedom of opinion, expression and association, “reviewing laws, including the Law on Rejecting Reactionary Thought and Culture, and practices suppressing the aforementioned rights” was added. We ask that a reference to the Youth Education Guarantee Law and the Law on Protecting the Pyongyang Cultural Language, two other infamous COVID-era laws suppressing these rights with draconian punishments, is added and that “reviewing” is replaced by “repealing or revising” in operative paragraph 2(a).

In operative paragraph 2(d) of resolution 52/28 of 4 April 2023, the Human Rights Council urged the DPRK to take steps including “Promoting equal access to food, including by allowing humanitarian access to all people in need and full transparency regarding the provision of humanitarian assistance so that such assistance is provided to persons in vulnerable situations, including individuals in detention, children, and pregnant and lactating women and girls”. We ask that “in particular in political prison camps,” is added after “detention,” to highlight the need to issue equal access to food for the political prisoners.

Moreover, operative paragraph 1(a) of resolution 52/28 of 4 April 2023, for the first time specifically referred to “the freedom to seek, receive and impart information and ideas of any kind, regardless of frontiers” codified in article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR). We ask that the phrase “either orally, in writing or in print, in the form of art, or through any other media of his or her choice” from article 19 (2) of the ICCPR is also added to

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FKEN%2FRQ%2F1

¹⁴⁶ List of issues prior to reporting (LoIPR), CCPR/C/PRK/QPR/3 (22 Jun 2021),

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FPRK%2FQPR%2F3

paragraph 1(a) to emphasize a variety of media for information dissemination.

Operative paragraph 18(m) of General Assembly resolution 78/218 of 19 December 2023, as well as the General Assembly's all other North Korean human rights resolutions since resolutions 72/188 of 19 December 2017, "[s]trongly urges the Government of the Democratic People's Republic of Korea to respect, protect and fulfil all human rights and fundamental freedoms and, in this regard ... [t]o become a member of the International Labour Organization, to enact legislation and adopt practices to comply with international labour standards and to consider ratifying all the relevant conventions, in particular the core labour conventions of the International Labour Organization". We ask that the Human Rights Council's resolution also urges the ILO membership, legislation and practice in compliance with international labor standards and ratification of the ILO Core Conventions.

Preambular paragraph 7 of Human Rights Council resolution 52/28 of 4 April 2023, as well as the Human Rights Council's all other North Korean human rights resolutions since resolution 34/24 of 24 March 2017, states that: "Recalling the responsibility of the Democratic People's Republic of Korea to protect its population from crimes against humanity, and noting that the General Assembly, in its resolution [71/202, 72/188, 73/180, 74/166, 75/190, 76/177, 77/226 or 77/226 respectively], recalled that the commission of inquiry had urged the leadership of the Democratic People's Republic of Korea to prevent and suppress crimes against humanity and to ensure that perpetrators were prosecuted and brought to justice". On the 10th anniversary of the COI's historic report, we urge that the following phrase is added at the end of preambular paragraph 7: "and in this regard inviting the Democratic People's Republic of Korea to become a party to the Rome Statute of the International Criminal Court or to accept the exercise of jurisdiction of the International Criminal Court, in accordance with article 12 (3) of the Rome Statute, while recalling the authority of the Security Council to refer the situation in the Democratic People's Republic of Korea to the International Criminal Court".

It is also important for the Human Rights Council to recognize the progress made in the pursuit of civil claims against the North Korean government in the courts of South Korea, Japan and the United States.¹⁴⁷ We therefore ask that the following paragraph is newly added in the resolution: "Welcomes the progress made on accountability efforts through the pursuit of civil claims against the Government of the Democratic People's Republic of Korea in the proceedings and judgments in the courts of the Republic of Korea, Japan and the United States of America".

10. The Security Council

Following the COI report, the Security Council had public briefings and open meetings of the North Korean human rights situation for four consecutive years on December 22, 2014; December

¹⁴⁷ Promoting accountability in the Democratic People's Republic of Korea: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/52/64 (18 January 2023), <https://undocs.org/A/HRC/52/64>

10, 2015; December 9, 2016 and December 11, 2017. Given the ongoing crimes against humanity and other grave human rights violations in North Korea, it is fortunate that the Security Council resumed the open meeting on August 17, 2023—for the first time, without a procedural vote.

The rotating presidencies of Japan, South Korea and the United States in March, June and December this year provide excellent opportunities to continue the Security Council's discussion of North Korean human rights issues.

Given the objections to considering the North Korean human rights issue at the Security Council on the ground that it does not concern peace and security, it would be helpful to hold a debate on particular topics such as (1) the abductees and unrepatriated POWs and the more recent foreign detainees; (2) North Korea's dispatch of overseas workers and export of goods in violation of Security Council sanctions that also involve forced labor or prison labor; (3) the cross-border movement of North Korean people.

It is also important for the North Korean human rights and refugee issues to be raised in other thematic discussions like women and peace and security agenda and the human rights dimensions to peace and security.

To further the victim/survivor centred approach, we ask more governments to give North Korean escapees an opportunity to tell their stories at the Security Council. The statements by Seohyun Lee and Joseph Kim at the Security Council on August 17, 2023 demonstrated again why it is important for the international community to hear from the victims and survivors.

The Security Council's inability to refer the situation in the DPRK to the ICC as recommended by the COI, the resolutions of the Human Rights Council and General Assembly is disappointing. In fact, the Security Council has failed to act to condemn North Korea's military provocations including dozens of missile tests that are manifestly in violation of the previous resolutions adopted by the Security Council.

If the DPRK resumes nuclear tests and a resolution is vetoed by Russia and/or China, the General Assembly will automatically meet within 10 days under resolution 76/262 of 26 April 2022 (A/RES/76/262). In the General Assembly debate, the like-minded countries should raise North Korea's atrocious human-rights record that enables its nuclear and missile programs.

11. The International Criminal Court (ICC)

Although the Security Council's referral of the situation in the DPRK to the ICC is blocked by Russian and/or Chinese vetoes, more creative efforts should be made to establish the ICC's jurisdiction for North Korea's human rights violations arising to international crimes.

The ICC's ongoing investigation of the crime against humanity of deportation with respect to

the Rohingya population deported from Myanmar to Bangladesh is one example of such creative efforts.¹⁴⁸ A dramatic increase in the seaborne wave of “boat people” from North Korea to South Korea and/or Japan or transnational repression committed by North Korea could open possibilities for the ICC to open article 15 investigations on the ground that crimes have been partially committed in the territories of the state parties to the Rome Statute.

Armenia’s recent ratification of the Rome Statute to which, according to an international lawyer, gives Armenia “a viable avenue to seek criminal accountability for the heinous atrocities committed by Azerbaijanis on Armenian territory”¹⁴⁹ points to the possibility of the ICC opening an investigation for North Korea’s commission of war crimes and crimes against humanity on South Korean soil if it decides to live up to its bellicose language.

While the chances of the DPRK actually launching an attack against South Korea appears slim given that it is busy exporting its weapons to Russia—the weapons it would need if it really intended to launch a war—the possibility of local provocations like the sinking of the South Korean vessel Cheonan or the shelling of Yeonpyeong Island in 2010 cannot be completely ruled out.

The office of the prosecutor (OTP) in fact opened a preliminary examination and published an article 5 report:

2. On 6 December 2010, the Office of the Prosecutor (OTP) announced that it had opened a preliminary examination to evaluate whether two incidents that occurred in 2010 in the Yellow Sea, namely the sinking of a South Korean warship, the Cheonan, on 26 March 2010 and the shelling of South Korea’s Yeonpyeong Island on 23 November 2010, could amount to war crimes under the jurisdiction of the Court. This report presents the findings of the Office on jurisdictional issues.

3. The Prosecutor has concluded that, at this stage, the Statute requirements to seek authorization to initiate an investigation of the situation in the Republic of Korea have not been satisfied, based on a thorough legal and factual analysis of the information available. Nonetheless, nothing in this report should be construed as condoning in any way the resort to armed force by the Democratic People’s Republic of Korea described below. Furthermore, having noted the recurrent threats issued by North Korea against its neighbour, the Prosecutor stresses that should any future acts be committed that appear to fall under the Court’s jurisdiction, she remains prepared to initiate a preliminary examination into such acts and, if appropriate, investigate and prosecute the perpetrators of crimes under the Rome Statute.¹⁵⁰

¹⁴⁸ Bangladesh/Myanmar: Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19, <https://www.icc-cpi.int/bangladesh-myanmar>

¹⁴⁹ James Joseph, Armenia becomes 124th State Party to International Criminal Court (November 16, 2023), <https://www.jurist.org/news/2023/11/armenia-becomes-124th-state-party-to-international-criminal-court>

¹⁵⁰ Situation in the Republic of Korea: Article 5 Report (23 June 2014), <https://www.icc-cpi.int/news/situation-republic-korea-article-5-report>

North Korea's growing involvement in Russia's aggression and atrocities in Ukraine where the OTP has an ongoing investigation is another area to keep an eye on.¹⁵¹ If North Korea sends mercenaries or workers to the Russian-occupied territories of Ukraine and they are involved in the commission of war crimes or other atrocities there, the ICC can and should exercise jurisdiction over them.

12. The International Court of Justice (ICJ)

In the recent years, a number of cases have been brought before the ICJ, the principal judicial organ of the United Nations, under the dispute resolution clause in international human-rights treaties, most notably the Genocide Convention, CERD and CAT. The Gambia's Genocide Convention case against Myanmar,¹⁵² Armenia and Azerbaijan's CERD cases against each other,¹⁵³ Ukraine's case against Russia for the latter's (allegedly false) allegation of genocide,¹⁵⁴ Canada and the Netherlands' CAT case against Syria¹⁵⁵ and South Africa's Genocide Convention case against Israel¹⁵⁶ are some of the latest cases.

Interestingly, the DPRK acceded to the Genocide Convention on January 31, 1989 without any reservation.¹⁵⁷ Article IX of the Genocide Convention can provide the jurisdictional ground to bring a case against the DPRK.

Article IX

¹⁵¹ Situation in Ukraine, ICC-01/22, <https://www.icc-cpi.int/situations/ukraine>

¹⁵² Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), <https://www.icj-cij.org/case/178>

¹⁵³ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), <https://www.icj-cij.org/case/180> ; Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), <https://www.icj-cij.org/case/181>

¹⁵⁴ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), <https://www.icj-cij.org/case/182>

¹⁵⁵ Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), <https://www.icj-cij.org/case/188>

¹⁵⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), <https://www.icj-cij.org/case/192>

¹⁵⁷ Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Admittedly, the definition of genocide in article II of the Genocide Convention, especially the intent element and the protected group element, does not make it easy to prove the commission of genocide in a court of law.

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

In 2014, the COI did briefly consider the possibility of “political genocide” or “politicide” but “in light of finding many instances of crimes against humanity, [it did] not find it necessary to explore these theoretical possibilities here” and concluded that it “was not in a position to gather enough information to make a determination as to whether the authorities at the time sought to repress organized religion by extremely violent means or whether they were driven by the intent to physically annihilate the followers of particular religions as a group” with respect to Christian Solidarity Worldwide (CSW)’s allegation of genocide against religious groups.¹⁵⁸

1158. Such crimes might be described as a “politicide”. However, in a non-technical sense, some observers would question why the conduct detailed above was not also, by analogy, genocide. The Commission is sympathetic to the possible expansion of the current understanding of genocide. However, in light of finding many instances of crimes against humanity, the Commission does not find it necessary to explore these theoretical possibilities here. The Commission emphasizes that crimes against humanity, in their own right, are crimes of such gravity that they not only trigger the responsibility of the state concerned, but demand a firm response by the international community as a whole to ensure that no further

¹⁵⁸ A/HRC/25/CRP.1, paras. 1155-1159.

crimes are committed and the perpetrators are held accountable.

1159. In its testimony before the Commission, Christian Solidarity Worldwide submitted that there were indicators of genocide against religious groups, specifically Christians, in particular in the 1950s and 1960s.¹⁶⁴¹ The Commission established, based on the Democratic People's Republic of Korea's own figures, that the proportion of religious adherents among the DPRK's population, who were mainly Christians, Chondoists and Buddhists, dropped from close to 24 per cent in 1950 to 0.016 per cent in 2002.¹⁶⁴² The Commission also received information about purges targeting religious believers in the 1950s and 1960s. However, the Commission was not in a position to gather enough information to make a determination as to whether the authorities at the time sought to repress organized religion by extremely violent means or whether they were driven by the intent to physically annihilate the followers of particular religions as a group. This is a subject that would require thorough historical research that is difficult or impossible to undertake without access to the relevant archives of the DPRK.

Following the COI report, Hogan Lovells published a report commissioned by Human Liberty that looked more extensively into the possibility of North Korea's commission genocide in relation to three possible groups:

1. Genocide in relation to members of the "hostile class"
2. Genocide in relation to Christians
3. Genocide in relation to children with Chinese lineage¹⁵⁹

The Hogan Lovells report agreed with the COI that "the limitations on the categories of Protected Group under the Genocide Convention narrow the scope for making a finding that genocide has been committed in the DPRK" but recommended "further investigation of the possibility of genocide being committed by the DPRK regime in respect of these three groups".

As is evident from the COI Report and reports from other commentators, the lack of access to information in the DPRK poses a barrier to analyzing and addressing potentially serious human rights violations. We agree with the COI that the lack of clear evidence makes it difficult to come to any firm conclusions as to whether genocide is being committed in the DPRK.

We also agree with the COI that the limitations on the categories of Protected Group under the Genocide Convention narrow the scope for making a finding that genocide has been

¹⁵⁹ Hogan and Lovells, *Crimes against humanity: An independent legal opinion on the findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea* (May 2014), pp. 42-60, <http://humanliberty.org/wp-content/uploads/2014/06/20140612-DPRK-Report.pdf>

committed in the DPRK. It is our opinion that, to the extent that it is necessary to take a purposive approach to the definition of Protected Groups under the Genocide Convention in respect of the DPRK, this is entirely consistent with case law and other customary international law that has emerged from international criminal tribunals and other international bodies to date.

We consider there to be good arguments that the targeting by DPRK State-controlled officials of groups classified by the DPRK as being in the hostile class, Christians, and children of Chinese heritage with the intent to destroy such groups could be found to amount to genocide if the necessary further investigation is carried out.

As such, we recommend further investigation of the possibility of genocide being committed by the DPRK regime in respect of these three groups. This further investigation should include both the collection of testimony from victims, refugees and defectors, which should so far as possible be collected to a court evidence standard, as well as further consideration of the applicable legal tests for genocide and identification of the strongest possible arguments on the basis of the evidence gathered.

The ICJ can also exercise of its advisory jurisdiction with regard to the human rights situation in the DPRK if the General Assembly or other organs of the United Nations and specialized agencies passes a resolution seeking the ICJ's advisory opinion on "legal question(s)". For instance, the General Assembly in its resolution 77/247 of 30 December 2022:

18. Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?

Global Rights Compliance (GRC) proposed that the General Assembly seek an advisory

opinion concerning the DPRK's non-compliance with the CEDAW in its report.¹⁶⁰ Given the past practice, the General Assembly, if it has the political will, need not confine itself to seeking the ICJ's advisory opinion on the DPRK's CEDAW obligations but also include the DPRK's all treaty obligations as well as its obligation not to commit crimes against humanity (and/or genocide).

13. A "people's tribunal"

Given the likely difficulty of initiating proceedings in the ICC, the ICJ or any other tribunals in the near future, the CSOs can raise the visibility of the issue, document and make an authoritative legal findings of the crimes and violations committed in and by the DPRK and provide some measure of justice and accountability for the victims by holding a "people's tribunal" for North Korea.

The tradition of "people's tribunals" which goes back to the so-called "International War Crimes Tribunal" organized in 1966 by Bertrand Russell and Jean-Paul Sartre, also known as the Russell Tribunal on the US military intervention in Vietnam. In 2001, the Tokyo Women's International War Crimes Tribunal on Japan's Military Sexual Slavery which was organized by Violence Against Women in War-Network Japan (VAWW-NET Japan) and groups from other countries issued guilty verdicts against the Emperor Hirohito and Japan's wartime leaders for the so-called "comfort women" system.¹⁶¹

More recently, in March 2020, the Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China (China Tribunal) released its final judgment based on its hearings.¹⁶² The International People's Tribunal on Iran's Atrocities of November 2019 (Aban Tribunal) was also successful in bringing to light the Iranian government's bloody suppression of national protests in November 2019.¹⁶³

There have been "people's tribunals" for North Korea in the past on the topic of political prison camps¹⁶⁴ and detention centers.¹⁶⁵ Other possible topics for DPRK "people's tribunals" may

¹⁶⁰ Strengthening Legal Capacity to Pursue Accountability in the Democratic People's Republic of Korea: An Accountability Strategy Report (edited short-version) (September 2022), paras. 17-31, https://globalrightscompliance.com/wp-content/uploads/2022/09/31.08.22GRC-Accountability-Strategy-Report_edited_short-version_FINAL_TG.pdf

¹⁶¹ Christine M. Chinkin, "Women's International Tribunal on Japanese Military Sexual Slavery", *The American Journal of International Law* Vol. 95, No. 2 (Apr., 2001), pp. 335-341, <https://www.jstor.org/stable/2661399>

¹⁶² China Tribunal: Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China, <https://chinatribunal.com>

¹⁶³ International People's Tribunal on Iran's Atrocities of November 2019, <https://abantribunal.com>

¹⁶⁴ International Bar Association and Hogan Lovells, Report: Inquiry on Crimes Against Humanity in North Korean Political Prisons (December 2017), <https://www.hoganlovells.com/-/media/hogan->

be the forced repatriation of North Korean refugees; forced abortion and infanticide against repatriated mothers and their children based on gender and racial grounds; and foreign abductees, detainees and unrepatriated prisoners of war (POWs).

Given that “people’s tribunals” are not actual courts of law but mock trials organized by international civil society, an effective media strategy would be the key prerequisite to achieve the goal of raising the visibility and recognition and sense of justice and accountability for the victims. It is also important to ensure that the trial records are preserved in an online format accessible to the public in the long term as there is no permanent record-keeping system as is the case in ordinary courts of law.

14. Like-minded countries

Like-minded countries or “friends of the North Korean people” can and should play an active part in ensuring justice and accountability for North Korea’s crimes against humanity and other grave human rights violations.

(a) Friends of the North Korean people: Fact-finding and disclosure of information

The South Korean government arguably has done the most in terms of fact-finding work and information disclosure, but it can still do much more. South Korea’s Truth and Reconciliation Commission, originally conceived and primarily concerned with the domestic human-rights violations in mind, also has the mandate to investigate North Korea’s human rights abuses, including massacre and abduction of South Korean citizens. The Korean War-era massacres committed by both North Korean and South Korean forces before and during the Korean War formed a significant part of the Commission’s work.

While the families of those killed by the South Korean security forces recognized as such by the Truth and Reconciliation Commission have been able to win compensation against the South Korean government in civil action thanks to the Supreme Court’s case-law in 2010, the families of those killed by North Korean forces cannot sue the North Korean government in North Korean court. A bill introduced by a group of lawmakers from the ruling conservative party in January 2022 that would provide for a uniform compensation for both classes of victims, saving the trouble of enduring a multi-year lawsuit for the victims of the South Korean forces’ killings too, is pending before the

lovells/pdf/2017/dprinquirylegalopinion121217hl.pdf

¹⁶⁵ HRNK & IBA Release Report on Crimes Against Humanity in North Korean Detention Centers (June 22, 2022), <https://www.hrnk.org/events/announcements-view.php?id=88>

National Assembly.¹⁶⁶ The Truth and Reconciliation Commission recommended the government and the National Assembly to pass the legislation.¹⁶⁷

However, the bill has been stalled because of the objection from the Ministry of Finance that has expressed rather exaggerated concerns about imposing excessive budgetary burden on the government. It is ironic to say the least that the current government which has pledged to champion North Korean human rights is standing in the way of long-delayed reparation for the worst atrocities committed by the North Korean forces during the Korean War. If the government does not reconsider its opposition, the treaty bodies and special procedures should raise the issue.

The South Korean government has also created separate investigative commissions for the wartime and post-armistice abductions of South Korean citizens by North Korea, but it has yet to create a truth commission for the unrepatriated prisoners of war (POWs) from the Korean War, the Vietnam War and other inter-Korean armed clashes on land and sea in the post-armistice period. There is currently a bill pending before the National Assembly introduced in June 2021 by Cho Tae-yong, then-member of the National Assembly, who has successively served as the ambassador to the United States, the National Security Adviser and now the Director of National Intelligence.¹⁶⁸

However, the government of President Yoon Suk-yeol who invited three POWs that had escaped from North Korea in the 2000s to his inauguration ceremony on May 10, 2022 has been lukewarm in moving this bill to create the POW investigative commission because of the bureaucratic and budgetary inertia, especially from the Ministry of National Defense. If the government does not take speedy action, the treaty bodies and special procedures should raise the issue.

The South Korean government, especially its military and civilian intelligence services, also possess information that, if made public, could further justice and accountability efforts. As early as in 1982, the South Korean intelligence used aerial photos and three defectors' testimonies to inform the foreign correspondents about the political prison camps in North Korea ahead of Kim Il-sung's birthday¹⁶⁹ which resulted in the publication of a New York Times article quoting "South Korean

¹⁶⁶ ROK National Assembly, Bill to Partially Amend the Framework Act on Settling the Past for Truth and Reconciliation (Bill no. 2114446) proposed by 15 members including Kim Yong-pan on January 17, 2022, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_D2X2Q0G1Y1V1C1Q4T4R8F2Y7A2N8G7

¹⁶⁷ The Truth and Reconciliation Commission, The decision for the policy recommendation of the compensation legislation for the cases clarified as truth (November 29, 2022), https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR_00000000710

¹⁶⁸ ROK National Assembly, Bill for the Act on Fact-Finding and Restoration of Honor for the Korean War-era Prisoners of War (Bill no. 2111051) proposed by 29 members including Cho Tae-yong on June 24, 2021, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_B2M1Z0V6A1G6R0M9E1M1C2O7Q1B1L2

¹⁶⁹ Kang Byung-cheol, "<Diplomatic Documents> Government simultaneously exposed North Korea's prison camps ahead of Kim Il-sung's birthday", Yonhap News (April 1, 2013), <https://www.yna.co.kr/view/AKR20130329197500043>

intelligence officials” on April 11, 1982.¹⁷⁰

More recently, the South Korean intelligence recently made public the full texts of North Korea’s secret draconian laws such as the Law on Rejecting Reactionary Thought and Culture, the Youth Education Guarantee Law and the Law on Protecting the Pyongyang Cultural Language.

However, the South Korean intelligence agencies in general appears reluctant to disclose information about North Korea’s human rights situation, doing so only under political pressure or on rare occasions. For instance, the progressive governments of Presidents Kim Dae-jung and Roh Moo-hyun regularly made public the updates about the information about the unrepatriated POWs in North Korea obtained from the escapees by the intelligence services until 2007 under pressure from the conservative opposition, but the succeeding conservative administrations reportedly stopped doing so because they no longer faced such political pressure.

The US government’s use of its intelligence in the lead-up to the Russian invasion of Ukraine in February 2022 to foil Russia’s false-flag operations to justify its aggression¹⁷¹ and advance disclosure of Kim Jong-un’s summit with Putin to deflate, discourage and warn against the Pyongyang-Moscow rapprochement¹⁷² show the utility of the timely disclosure of key information.

South Korea and other like-minded governments should, to the extent possible, make public information they have concerning:

1. Secret laws, including the draconian laws curtailing freedoms and rights as well as procedural and substantive laws used by the Ministry of State Security to prosecute, try and sentence political prisoners in its secret courts;
2. The multi-year high-resolution satellite imagery and defectors’ statements concerning the political prison camps (kwaliso) and ordinary prisons (kyohwaso) and their analysis to shed light on the changing location, physical size and prison population of these camps and prisons;
3. Information concerning the chain of command of the Ministry of State Security (MSS) and other criminal organizations including the organizational chart and the top cadres;
3. Regular updates on the list and number of unrepatriated POWs whose names, fate (alive, dead or unknown) and/or other personal information have been ascertained from their fellow

¹⁷⁰ Henry Scott Stokes, “North Korea is said to hold 105,000 for ideology”, New York Times, April 11, 1982, <https://www.nytimes.com/1982/04/11/world/north-korea-is-said-to-hold-105000-for-ideology.html>

¹⁷¹ Aamer Madhani, Lorne Cook and Suzan Fraser, “US says new intel shows Russia plotting false flag attack”, Associated Press, February 4, 2022, <https://apnews.com/article/russia-ukraine-business-europe-belarus-jens-stoltenberg-43c9151532de706a2edec5684dfcf07d>

¹⁷² Edward Wong and Julian E. Barnes, “Kim Jong-un and Putin Plan to Meet in Russia to Discuss Weapons”, New York Times, September 4, 2023, <https://www.nytimes.com/2023/09/04/us/politics/putin-kim-meeting-russia-north-korea-weapons.html>

POWs and escapees who have resettled in South Korea;

4. Regular updates on the “border wall” constructed by North Korea to prevent North Koreans from crossing the border without authorization to China based on high-resolution satellite imagery and witness statements;

5. Estimates about the number of North Koreans in China and Russia as undocumented migrants or overseas workers by Chinese and Russian locality;

6. The location and population of holding centers used by the Chinese Public Security in the detention and repatriation of North Korean refugees and asylum-seekers;

7. The annual number of resettled North Korean defectors in South Korea who have gone missing for more than three years after going to China;

8. The annual number of Chōsen-seki (朝鮮籍) Koreans or other resident Koreans in Japan who had went to North Korea and then went missing afterwards based on the records and statistics kept by Japan’s Ministry of Justice, the Immigration Services Agency and the Public Security Intelligence Agency

(b) Friends of the North Korean people: Legal framework for justice and accountability

South Korean and Japan have ratified the Rome Statute, but Japan has not codified crimes against humanity, war crimes or genocide in its national legal system which could create difficulties in the punishment, extradition to other countries or surrender to the ICC or other international tribunals of the perpetrators found within Japan’s jurisdiction. It is important for Japan to speedily codify these international crimes in its domestic law. South Korean and Japan should also accept or ratify the amendments on the crime of aggression to the Rome Statute (Kampala amendments) and codify the crime of aggression in their national laws.

South Korea and Japan have also ratified the CAT and CED. However, neither South Korea nor Japan has taken any steps to criminalize torture in the domestic legal system. Moreover, while South Korea is currently in the process of enacting an Act on Punishment of Crime of Enforced Disappearance, Prevention of Enforced Disappearance and Remedies for Victims, etc. which includes the codification of the crime of enforced disappearance, Japan’s official position is that the existing criminal code is sufficient in prosecuting and punishing the crime of enforced disappearance. To ensure justice and accountability for these serious crimes, however, their domestic codification is essential.

While South Korea is a state party to the Convention on the Prevention and Punishment of Genocide (Genocide Convention), Japan has yet to ratify or accede to the Genocide Convention. With the possibility of bringing an ICJ case against the DPRK in mind, it would be highly desirable for Japan to become a state party to the Genocide Convention and to codify the crime of genocide

domestically if it fails to incorporate all crimes under the ICC’s jurisdiction. The Genocide Convention will also codify Japan’s international obligation to prevent and punish genocide.

The International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) which has neither South Korea nor Japan as a party to may be useful in light of the opinion by legal experts that “apartheid-like practices and policies” have developed “in different regions of the world, from Rakhine State, to the Occupied Palestinian Territories, and even North Korea”.¹⁷³

The Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes (Ljubljana-The Hague MLA Convention) which was adopted at the 18th Plenary Session of the MLA Diplomatic Conference in Ljubljana on 26 May 2023 and which will be open for signature by all states until 14 February 2025 is another treaty that may help ensure justice and accountability.¹⁷⁴

The draft Convention on Crimes Against Humanity currently under consideration by the Sixth Committee of the General Assembly finally has a good chance of being realized.¹⁷⁵ It is hoped that South Korea and Japan will quickly ratify the Convention, if and when it is adopted in a diplomatic conference.

The United States, another important state, is unlikely to become a party to the Rome Statute in the near future; even more worryingly, it has not codified crimes against humanity under national law. If the United States fails to join the ICC, it should at least speedily ratify the new Convention on Crimes against Humanity and realize the domestic criminalization.

For the civil litigations against the DPRK government or its officials, service of court documents, the state immunity and statute of limitations have been the major impediments although lawyers and judges have found creative ways to circumvent them. Easing these impediments through legislation or court practices would greatly facilitate local lawsuits for North Korea’s crimes against humanity and other grave human rights violations.

- (c) Friends of the North Korean people: Targeted sanctions for those responsible for North Korea’s grave human rights violations (Magnitsky sanctions or global human rights sanctions regime)

¹⁷³ Victor Kattan and David Johnson, “The Crime of Apartheid beyond Southern Africa: A Call to Revive the Apartheid Convention’s “Group of Three”” (September 21, 2023), <https://www.ejiltalk.org/the-crime-of-apartheid-beyond-southern-africa-a-call-to-revive-the-apartheid-conventions-group-of-three>

¹⁷⁴ MLA (Mutual Legal Assistance and Extradition) Initiative, <https://www.gov.si/en/registries/projects/mla-initiative>

¹⁷⁵ Leila Nadya Sadat and Akila Radhakrishnan, Continued Positive Momentum on Crimes Against Humanity Treaty (November 9, 2023), <https://www.justsecurity.org/90024/continued-positive-momentum-on-crimes-against-humanity-treaty>

While targeted sanctions for those responsible for North Korea's grave human rights violations (Magnitsky sanctions or global human rights sanctions regime) cannot be substitute for judicial accountability, it does have the effect of "naming and shaming" the authors of North Korea's grave human rights violations, symbolically and/or practically sanctioning them and giving certain satisfaction to the victims. Such targeted sanctions will also be in line with the COI's recommendation that "The Security Council should also adopt targeted sanctions against those who appear to be most responsible for crimes against humanity".¹⁷⁶

The states and jurisdictions like the United States, the European Union, the United Kingdom, Canada, Australia and Norway that already have the Magnitsky laws should add North Korean individuals and entities to the sanctions list based on the information shared by human rights NGOs.

Moreover, South Korea and Japan should consider enacting their own versions of the Magnitsky laws. Such enactment would be significant as no non-Western countries have adopted targeted sanctions for human rights violators to this date.

South Korea already has 194 individuals and 145 entities on its list of unilateral sanctions in relation to North Korea's WMD program and cybercrimes.¹⁷⁷ It should not be too difficult for South Korea to revise and expand the existing laws to include those responsible for human rights violations to this list.

Japan likewise has adopted targeted sanctions against North Korea. HRW and the University of Tokyo have held a symposium about the Magnitsky legislation in 2021.¹⁷⁸ There have been cross-party support for the enactment of a Magnitsky law in the political circle as well.¹⁷⁹

(d) Friends of the North Korean people: Resolutions/motions, written/oral questions to the

¹⁷⁶ A/HRC/25/63, para. 94(a); A/HRC/25/CRP.1, para. 1225(a).

¹⁷⁷ ROK MOFA, Unilateral sanctions against North Korea [대북 독자제재], https://www.mofa.go.kr/www/wpge/m_25834/contents.do

¹⁷⁸ Symposium on Sanctioning Human Rights Violations: Magnitsky Laws in the World – Lessons Learned (Apr 8, 2021), <https://www.utokyointlaw.com/post/symposium-sanctioning-human-rights-violations-magnitsky-laws-in-the-world> ; UTokyo International Law Hub, "Magnitsky Laws in the World: A Symposium on Sanctioning Human Rights Violations (with Human Rights Watch)", https://www.youtube.com/playlist?list=PLCiRZMWcJOow_33cMa45sjOEazCifU4oP

¹⁷⁹ Jun Aoki, "Lawmakers to launch group for Japan's 'Magnitsky Act' against human rights violations", Mainichi Japan, January 28, 2021, <https://mainichi.jp/english/articles/20210128/p2a/00m/0na/033000c> ; Daisuke Akimoto, "It's Time to Enact Japan's Magnitsky Act: Such legislation would boost Japan's credentials as a defender of human rights and practitioner of values-based diplomacy", The Diplomat, February 27, 2021, <https://thediplomat.com/2021/02/its-time-to-enact-japans-magnitsky-act>

executive, debates and hearings/events by legislatures

The members of national legislatures or the European Parliament can also contribute to raising the visibility of the justice and accountability efforts for North Korea's crimes against humanity and other grave human rights violations.

The most visible actions that legislatures can take would be the adoption of resolutions/motions on North Korean human rights. Recently, on April 7, 2022, the European Parliament adopted such a resolution with a particular focus on religious persecution which "Stresse[d] the importance of securing accountability for past and ongoing crimes against humanity".¹⁸⁰ It would be helpful for legislatures to follow the lead of the South Korean National Assembly in adopting a resolution condemning China's repatriation of North Korean refugees and urging the observance of the principle of non-refoulement.¹⁸¹

It would be also helpful for members of legislatures to submit written questions or raise issues in the debate time to the executive branch to seek the clarification of the government's position or to urge concrete actions by the government. For instance, in response to a question raised by Robert Buckland, a member of the UK House of Commons, on 17 October 2023 whether the foreign secretary "has had recent discussions with his Chinese counterpart on China's responsibilities under the 1951 Refugee Convention on the non-refoulement of refugees", Anne-Marie Trevelyan, the Minister of State for Indo-Pacific, replied 25 October 2023 that: "We are aware of reports of North Korean refugees being forcefully repatriated to North Korea. We emphasise directly to the Chinese authorities that they should not be detaining and forcefully repatriating North Korean refugees."¹⁸²

¹⁸⁰ European Parliament resolution of 7 April 2022 on the human rights situation in North Korea, including the persecution of religious minorities (2022/2620(RSP)), https://www.europarl.europa.eu/doceo/document/TA-9-2022-0123_EN.html

¹⁸¹ ROK National Assembly, Resolution urging an end to China's forcible repatriation of North Korean escapees (Bill no. 2125661) (Chair of the Foreign Affairs and Unification Committee), November 30, 2023, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_Y2J3G1K1O3K0F0C9N3J8A2U4R1L8T6 ; A Resolution passed by the National Assembly of the Republic of Korea has expressed grave concern about the fate of North Korean refugees forcibly returned to the DRPK and has urged an end to China's forcible repatriation of North Korean escapees to North Korea (December 3, 2023), <https://www.davidalton.net/2023/12/03/in-a-resolution-passed-by-the-national-assembly-of-the-republic-of-korea-has-expressed-grave-concern-about-the-fate-of-north-korean-refugees-forcibly-returned-to-the-drpk-and-has-urged-an-end-to-china>

¹⁸² China: Refugees, Question for Foreign, Commonwealth and Development Office, UIN 202974, tabled on 17 October 2023, <https://questions-statements.parliament.uk/written-questions/detail/2023-10-17/202974> ; See also, Lord Alton's question ("To ask His Majesty's Government whether they discussed the repatriation of North Korean escapees to China with President Yoon of the Republic of Korea during his state visit; and, if so, what response they received from him.") on November 22, 2023 and the response from Lord Ahmad, the Minister of State for the Middle East, North Africa, South Asia, Commonwealth and United Nations ("The UK is utilising all bilateral and multilateral channels to raise the issue of forced repatriation of Democratic People's Republic of

Such statements from the high-ranking government officials raises the profile of North Korean human rights and refugee issues and have the added benefit of green-lighting working-level diplomats and officials to speak as forcefully as their superiors have said publicly on these issues.

Parliamentary debates likewise can be effective in policy deliberation, raising the public awareness and reaffirming or strengthening the government's commitment to ensure justice and accountability. A debate on the DPRK at the UK House of Lords on December 14, 2023 is a good example.¹⁸³

Hearings or other public events held in the legislatures also provide important forums for North Korean human rights advocates. The United States Congressional-Executive Commission on China (CECC) has held a number of hearings that directly addressed China's forced repatriation of North Korean refugees¹⁸⁴ and that debated China's 4th UPR where a submission concerning North Korean refugees in China could be raised.¹⁸⁵

The 2023 European Forum on North Korean Human Rights, co-hosted by the United Kingdom All-Party Parliamentary Group on North Korea (APPG North Korea) and the Korea Institute for National Unification (KINU) at the UK Parliament on October 24, 2023 is another example of a public event highlighting North Korean human rights issues to the lawmakers, the media and the general public.¹⁸⁶

Korea (DPRK) escapees by China. The Prime Minister held productive discussions with the Republic of Korea's (ROK) President Yoon during his state visit, which included China's forced repatriation of escapees and the wider human rights situation in the DPRK. The UK actively promotes the implementation of the 1951 UN Refugee Convention which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom.” . North Korea: Refugees, Question for Foreign, Commonwealth and Development Office, UIN HL502, tabled on 22 November 2023, <https://questions-statements.parliament.uk/written-questions/detail/2023-11-22/hl502>

¹⁸³ North Korea, Volume 834: debated on Thursday 14 December 2023, <https://hansard.parliament.uk/lords/2023-12-14/debates/D4E4C414-BDE7-453A-B4A7-76408E753B5E/NorthKorea>

¹⁸⁴ Congressional-Executive Commission on China (CECC) hearing on North Korean Refugees and the Imminent Danger of Forced Repatriation from China (June 13, 2023 - 10:00am), <https://www.cecc.gov/events/hearings/north-korean-refugees-and-the-imminent-danger-of-forced-repatriation-from-china>

¹⁸⁵ Congressional-Executive Commission on China (CECC) hearing on the PRC's Universal Periodic Review and the Real State of Human Rights in China (February 1, 2024 - 10:00am), <https://www.cecc.gov/events/hearings/the-prcs-universal-periodic-review-and-the-real-state-of-human-rights-in-china>

¹⁸⁶ 2023 European Forum on North Korean Human Rights on 24 October, 2023 (Oct 24, 2023), <https://www.davidalton.net/2023/10/24/joint-statement-by-the-united-kingdom-all-party-parliamentary-group-on-north-korea-appg-north-korea-and-the-korea-institute-for-national-unification-kinu-focusing-on-chinas-forced-repat>

- (e) Friends of the North Korean people: Intra-governmental and inter-governmental coordination

Japan has the inter-ministerial Headquarters for the Abduction Issue in the Prime Minister's office that is headed by the Prime Minister and his deputy is the Chief Cabinet Secretary. The existence of such a high-level governmental coordination body attests to the Japanese public's deep interest in the issue of Japanese abductees, especially the case of Yokota Megumi, the high-school girl abducted by the North Korean security service in 1977.

Despite having far more abductees and unrepatriated prisoners of war (POWs) and legally recognizing all North Koreans as its own citizens, South Korea has no similar governmental control tower for the North Korean human rights issues. There have been calls to create South Korea's equivalent of the Headquarters for the Abduction Issue, but to no avail.

The lack of policy coordination and implementation has resulted in serious disconnects between the Ministry of Foreign Affairs (MOFA), the Ministry of Unification (MOU), the Ministry of National Defense (MND) and the National Intelligence Service (NIS) as well as within each ministry or agency. One area where the inter-ministerial coordination functions efficiently without much friction is in the sanctions work where years of experience working together have resulted in the institutionalization of division of labor and communication.¹⁸⁷

At the international level, South Korea, the United States and Japan “commit[ted] to strengthening cooperation to promote respect for human rights in the DPRK and reaffirm[ed] a shared commitment to the immediate resolution of the issues of abductees, detainees, and unrepatriated prisoners of war” in the trilateral summit statement on August 18, 2023. However, the three countries have not agreed to the creation of a trilateral working group as it has done to combat North Korea's illicit cyber activities in the same statement.

South Korea and the United States have resumed the bilateral consultation on DPRK human rights in November 2023,¹⁸⁸ but the absence of Japan contrasted with the Trilateral Special Representative consultations on the DPRK, primarily on security issues.¹⁸⁹ It would be important to persuade the Japanese government and public that the discussion of North Korean human rights in

¹⁸⁷ ROK MOFA, Unilateral sanctions against North Korea [대북 독자제재], https://www.mofa.go.kr/www/wpge/m_25834/contents.do

¹⁸⁸ Yi Wonju, “S. Korea, U.S. revive consultative meeting on N.K. human rights after 6 years”, Yonhap News, November 16, 2023, <https://en.yna.co.kr/view/AEN20231116007700315>

¹⁸⁹ U.S. Senior Official for the DPRK Pak Participates in Trilateral Special Representative Consultations in Seoul (JANUARY 19, 2024), <https://www.state.gov/u-s-senior-official-for-the-dprk-pak-participates-in-trilateral-special-representative-consultations-in-seoul>

general will help resolve, not distract from, the issue of the Japanese abductees including Yokota Megumi.

It would be ideal to create a loosely organized Friends of the North Korean People that includes other like-minded countries on the North Korean human rights issues to publicize the issues internationally, coordinate the discussion at the Security Council, jointly draft Human Rights Council and General Assembly resolutions and share information for the purposes of Magnitsky sanctions against responsible North Korean individuals and entities.

(f) Friends of the North Korean people: Actions by human rights ambassadors

While South Korea has appointed Dr. Lee Shin-wha as the Ambassador for International Cooperation on North Korean Human Rights and the United States has appointed Julie Turner as the Special Envoy on North Korean Human Rights Issues with the rank of an ambassador, Japan has no equivalent position. Japan's Headquarters for the Abduction Issue is headed by the Prime Minister and his deputy is the Chief Cabinet Secretary, but the Headquarters addresses only the issue of Japanese abductees, not North Korean human rights issues in general, and the positions are too senior to coordinate with the North Korean human rights ambassadors of South Korea and the United States. Japan's Ministry of Foreign Affairs also has the Ambassador for Human Rights and International Peace and Stability, Mr. TSUTSUMI Naohiro, but the mandate of this office is unclear.

It would be desirable for Japan to appoint a dedicated North Korean human rights ambassador, preferably a woman, to raise the visibility of the issue internationally and to coordinate all North Korean human rights issues, including the issue of Japanese abductees, with South Korea and the United States.

Since the 1980s, eleven European countries (Estonia, Finland, France, Germany, Lithuania, Luxembourg, the Netherlands, Slovakia, Spain, Sweden and the United Kingdom) have created the post of human rights ambassadors.¹⁹⁰ In addition, the European Union (EU) has a Special Representative for Human Rights. While the powers of these human rights ambassadors vary, a number of them speaking separately or jointly about North Korean human rights and refugee issues will have a symbolic impact in the international court of public opinion and even positively influence the concrete policies of governments, especially those that have diplomatic ties and presence in the DPRK, with respect to justice and accountability.

¹⁹⁰ Government of the Netherlands, Introducing the European Human Rights Ambassadors: A Joint Blog (13-11-2020), <https://www.government.nl/latest/news/2020/11/13/introducing-the-european-human-rights-ambassadors>