

Congressional-Executive Commission on China

Hearing

on

North Korean Refugees and the Imminent Danger of Forced Repatriation from China

2360 Rayburn House Office Building

Tuesday, June 13, 2023 - 10:00am ET

<https://www.youtube.com/watch?v=yb5a5ahftT4>

Statement of Ethan Hee-Seok Shin

Legal Analyst

Transitional Justice Working Group (TJWG)

China's complicity in the crimes against humanity committed in and by North Korea:

The need for international action to pierce the fog of totalitarianism and

to hold Beijing accountable to its domestic law, international law and humanitarian principles

I. Introduction

On May 30, 2023, the UN Committee on the Elimination of Discrimination against Women (CEDAW) released its concluding observations for China's periodic report where the Committee expressed its concern that China "is a country of destination for trafficking in women and girls from North Korea for purposes of sexual exploitation, forced marriage or concubinage"; that "North Korean women and girls defectors are categorically classified as "illegal migrants" and some are forcibly returned"; and that "children born in the State party to North Korean women are deprived of their rights to birth registration, nationality, education and health care because their birth cannot be registered without exposing the mother to the risk of deportation to North Korea".¹

The Committee went on to recommend China to: "(a) Ensure that North Korean women and girls victims of trafficking are not criminalized for violations of immigration laws and have access to temporary residence permits and to basic services, including medical treatment, psychosocial counselling, education, alternative income-generating opportunities and

¹ Concluding observations on the ninth periodic report of China (30 May 2023), CEDAW/C/CHN/CO/9, para. 29, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FCHN%2FCO%2F9&Lang=en>

rehabilitation programmes; (b) Provide the Office of the United Nations High Commissioner for Refugees, and relevant humanitarian organizations, full and unimpeded access to victims of trafficking from North Korea; (c) Regularize the status of North Korean and other women victims of trafficking who marry (voluntarily) or (by forced marriage or are in an unregistered union and) have a child with a Chinese citizen, and ensure that their children obtain birth registration, are eligible for Chinese nationality and have access to education and health care without discrimination (and would be allowed to leave China together with their North Korean mother/defector)".²

The extensive reference to trafficking and other grave human rights violations against North Korean refugees in China by a UN human rights treaty body was the culmination of a joint effort by human rights NGOs and activists, including Ms Kim Jeong-ah of the Rights for Female North Korean Defectors (RFNK), herself a North Korean escapee in South Korea who had to leave behind two daughters, one in North Korea and another in China.³ It was also a timely intervention by a committee of independent experts to hold China accountable for its treatment of the North Korean refugees who face the imminent danger of forcible repatriation if and when North Korea lifts its COVID-19 imposed border closure policy.

China's complicity in the crimes against humanity committed in and by North Korea has already been thoroughly documented in the groundbreaking fact-finding report by the UN Commission of Inquiry (COI) in 2014. The Chinese government's longstanding policy of forcible repatriation of thousands of North Korean refugees has resulted in their torture, sexual and gender-based violence, forced abortion, infanticides and disappearance in gulags and executions that amount to crimes against humanity.

It is a cruel twist of history that the deadliest pandemic to strike humanity in this century has succeeded in halting the deportation of North Korean refugees since January 2020. This ironic respite is expected to come to an end as North Korea finally lifts its border closure.

² Id., para. 30.

³ Citizens' Alliance for North Korean Human Rights (NKHR), Transitional Justice Working Group (TJWG) and Improving North Korean Human Rights Center (INKHR), 12 Apr 2023, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FCSS%2FCHN%2F52277&Lang=en>; International Federation for Human Rights (FIDH) & Database Center for North Korean Human Rights (NKDB), 11 Apr 2023, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FCSS%2FCHN%2F52257&Lang=en>; People for a Successful COrean REunification (PSCORE), 11 Apr 2023, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FCSS%2FCHN%2F52221&Lang=en>; Rights for Female North Korean Defectors (RFNK), 11 Apr 2023, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FCSS%2FCHN%2F52270&Lang=en>

II. The fog of totalitarianism

It is difficult to obtain accurate information about the situation of North Korean escapees in China because of the deliberate policy of information blackout enforced by Beijing along with Pyongyang. As the past experience demonstrates, it is possible to pierce this fog of totalitarianism, but China's coming technological dystopia, first tested in Xinjiang and then expanded to cover China proper, designed mainly to perfect internal control, is making it ever more difficult to contact or assist the North Korean refugees.

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.⁴ The U.S. Committee for Refugees World Refugee Survey 2004 noted that: "Non-governmental organizations estimate that China forcibly departs between 150-200 Northern Koreans per week amounting to an estimated 7,800 forced deportations during 2003."⁵

The international concerns raised by China's high-profile deportation of North Korean refugees prompted the Congressional-Executive Commission on China (CECC) to hold a hearing about the topic 11 years ago in March 2012.⁶

However, in the more recent years, the various measures accelerated and justified in the name of combating COVID-19, including the utilization of high-tech surveillance technology long preceding the pandemic, by China and North Korea have taken the totalitarian control to a whole new level.

During the pandemic, North Korea has diverted its scarce resources not only for WMD development but also for building a border wall which made unauthorized border crossing

⁴ 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>>

⁵ U.S. Committee for Refugees World Refugee Survey 2004 – China (25 May 2004), <<https://www.refworld.org/docid/40b459368.html>>

⁶ Congressional-Executive Commission on China, "China's Repatriation of North Korean Refugees" (2118 Rayburn House Office Building Washington, DC 20515 | Monday, March 5, 2012 - 2:30pm to 4:30pm), <<https://www.cecc.gov/events/hearings/chinas-repatriation-of-north-korean-refugees>>

extremely difficult for North Koreans in most areas. Human Rights Watch (HRW) released its findings based on satellite imagery last November⁷; Reuters and the Middlebury Institute last month released the analysis of satellite images of the North Korean border that revealed North Korea's construction of border walls during the pandemic period.⁸

Not unlike the Berlin Wall, created in 1961 by East Germany to stem the flight of its citizens to West Berlin, this new border wall may be called a “Juche wall” or “Juche curtain” designed to make the Chinese border almost impassable for the North Korean people trying to flee their country.

The situation is not better on the Chinese side. According to the Citizens' Alliance for North Korean Human Rights (NKHR), which has been rescuing North Korean escapees in China and elsewhere since the mid-1990s, the recent identification cards that are difficult to forge and widespread installation of closed-circuit television (CCTV) have significantly increased the risk of exposure for North Korean refugees attempting to move across China. The increased risks have resulted in unaffordable prices for hiring the brokers to smuggle them from China to freedom and some have even committed suicide in despair. The AI-based facial recognition program has made the North Korean refugees' internal movement by public transportation within China almost impossible.⁹ The monitoring of the WeChat messaging service also poses a risk for the North Korean refugees and their supporters.¹⁰ All this appears to have resulted in the soaring price tag for the North Korean refugees wanting to escape from China.¹¹

Now, Action & Unity for Human rights (NAUH) also confirmed that cost of movement for North Korean refugees willing to make their way to South Korea has quadrupled. The spread

⁷ HRW, “North Korea: Covid-19 Used as Pretext to Seal Border: Enhanced Fences, Guard Posts Further Restrict Movement, Trade” (November 17, 2022), <https://www.hrw.org/news/2022/11/17/north-korea-covid-19-used-pretext-seal-border>

⁸ Josh Smith and Sudev Kiyada, “North Korea spent the pandemic building a huge border wall” (MAY 27, 2023), <<https://www.reuters.com/graphics/NORTHKOREA-BORDER/byvrlwjreve/index.html>>

⁹ Kim Myong-song, “China's AI Eradicates North Korean Escapees through Tailing and Monitoring by Facial Recognition [안면인식으로 미행·감시, 탈북민 씨말리는 중국 AI]”, Chosun Ilbo 2023.05.24, <https://www.chosun.com/politics/north_korea/2023/05/24/FOFQFLMCURFOZH6GDS53H5A274>

¹⁰ Ji Jeong-eun, “North Korean Escapees Support Groups Concerned by China's Increased Surveillance as a Result of Messenger Censorship [탈북자 지원단체들 “중국 메신저 검열로 감시 확대 우려]”, RFA 2022.02.14, <https://www.rfa.org/korean/in_focus/human_rights_defector-02142022094421.html>

¹¹ William Kim, “China Arrests About 20 North Korean Escapees in a Month; The Cost of Rescuing One Person Skyrockets to Surpass 10,000 Dollars [중국, 한 달 새 탈북민 20 여 명 체포...구출 비용 1 인당 1 만달러 넘게 폭등]”, VOA 2023.2.24, <<https://www.voakorea.com/a/6976835.html>>

of CCTVs and AI technology has made movement within China dangerous for the unregistered North Koreans leading to their capture. While it is sometimes possible to bribe the captured North Korean refugees out from prison, they or their families may not have enough money to buy freedom or, if North Korean women had fled from their Chinese husbands before getting caught by the authorities, the latter may not be willing to make payment. In the case of capture, the international attention is crucial as interventions from the UN or foreign embassies could nudge the Chinese authorities to quietly release the detainees or at least not expedite their deportation to North Korea.

Next Station, another group helping North Koreans abroad, has stated that North Korean women escapees who have married Chinese men are blacklisted and interrogated by the local Public Security officials if they have been connected by social network to North Korean refugees previously caught escaping to South Korea or if their phone numbers are saved in the captured refugees' phones. While they are returned home after the monthly interrogations, they live under the constant fear of arrest and detention by the authorities who ask them to reveal any contact with South Koreans or Christian missionaries. Because the long journey across China to escape to Southeast Asia has become almost impossible because of the COVID-related internal movement restrictions, the escape route to Mongolia has gained popularity, but many escapees are apprehended in Inner Mongolia before they can reach the Mongolian border.

III. China's domestic law, international law and humanitarian principles

In reaction to the exodus of North Korean refugees from the late 1990s, the Chinese government came to adopt its official position that it will handle them in accordance with its domestic law, international law and humanitarian principles. When formally asked by Seoul to treat the North Korean escapees as refugees in 1999, Beijing initially claimed that the issue was an internal matter and relied upon its bilateral treaty with Pyongyang to justify the deportations.¹² In May 2000, the Chinese government pledged to address the North Korean escapees issue in accordance with three principles: (1) observe international law, international

¹² Kwon Dae-yeol, "The North Korean Escapees Are Chinese-North Korean Issue; Chinese Ambassador to South Korea Expresses Hardline View ["탈북자는 중국-북한의 문제" 주한 중대사, 강경입장 밝혀], Chosun Ilbo 1999.09.02., <https://www.chosun.com/site/data/html_dir/1999/09/02/1999090270467.html>

custom and domestic law; (2) ask for the safety of the person from North Korea in line with humanitarian principles; and (3) consider the peace and stability in the Korean peninsula.¹³

Following a spate of attempts by North Korean escapees to enter UNHCR office, embassies and consulates in China, Beijing adopted its “domestic law, international law and humanitarian principles” formula in 2002.¹⁴ Unfortunately, China’s policies since then fail to satisfy its domestic law, international law and humanitarian principles.

1. Domestic law

Article 32 of the Constitution of the People's Republic of China provides that: “The People’s Republic of China may grant asylum to foreigners who request it on political grounds.”¹⁵ Moreover, article 46 of the Exit and Entry Administration Law, enacted in 2012, states 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;

¹³ Hwang Yoo-Sung, “Chinese Spokesperson Zhu Bangzao Says China Will Play Active Role for the Achievement of Inter-Korean Talk [주방짜오 중대변인 " 中 남북회담 성사 적극적 역할 "], Donga Ilbo 2000-05-08, <<https://www.donga.com/news/article/all/20000508/7533284/1>>

¹⁴ 发言人否认有关中日双方已就将擅闯日驻沈阳总领馆的朝鲜人尽快送往第三国达成一致的报道: (2002-05-15 16:58), <https://www.mfa.gov.cn/web/gjhdq_676201/gj_676203/yz_676205/1206_676404/fyrygth_676412/200205/t20020515_7975508.shtml>

¹⁵ Constitution of the People’s Republic of China (Adopted at the Fifth Session of the Fifth National People’s Congress and promulgated by the Announcement of the National People’s Congress on December 4, 1982; amended in accordance with the Amendment to the Constitution of the People’s Republic of China adopted at the First Session of the Seventh National People’s Congress on April 12, 1988, the Amendment to the Constitution of the People’s Republic of China adopted at the First Session of the Eighth National People’s Congress on March 29, 1993, the Amendment to the Constitution of the People’s Republic of China adopted at the Second Session of the Ninth National People’s Congress on March 15, 1999, the Amendment to the Constitution of the People’s Republic of China adopted at the Second Session of the Tenth National People’s Congress on March 14, 2004, and the Amendment to the Constitution of the People’s Republic of China adopted at the First Session of the Thirteenth National People’s Congress on March 11, 2018), <<http://www.npc.gov.cn/englishnpc/constitution2019/201911/1f65146fb6104dd3a2793875d19b5b29.shtml>>

foreigners who are recognized as refugees may stay or reside in China on the strength of refugee identity certificates issued by public security organs.¹⁶

However, China has failed to institute the “screening process” for North Korean asylum seekers or to provide them with “temporary identity certificates issued by public security organs”. This is not unlike China’s similar failure to extend national legal protection to the ethnic refugees from Myanmar.¹⁷

During the CEDAW Committee’s review of China on May 12, 2023, the Chinese delegation made the following response to the concerns raised about the forcible repatriation of North Korean women refugees and trafficking victims in China:

“They came to China and *most of them* were for economic reasons. So we believe that this not pertain to a TIP [trafficking in persons] issue. So we don’t have a relevant data or statistics in this regard. At the same time, I'd like to clarify also that the Chinese government, when treating these women, we use our domestic law as well as international law, in particular the humanitarian principle to appropriately address these issues, these North Korean women who entered illegally in China.” [emphasis added]¹⁸

It is interesting that the Chinese diplomat stated that “most of them”, not “all of them” came to China for economic reasons. It is puzzling therefore why the Chinese authorities have not data concerning the number of North Korean escapees who came for economic reasons and others who came for other reasons such as fleeing political persecution.

China’s incongruent argument bears the question: If China cannot respect its own national law, how can it expect to be respected by the rest of the international community?

¹⁶ 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>

¹⁷ Lili Song, “Refugees or Border Residents from Myanmar? The Status of Displaced Ethnic Kachins and Kokangs in Yunnan Province, China”, *International Journal of Refugee Law*, Volume 29, Issue 3, October 2017, Pages 466–487 (Published: 13 September 2017), <<https://academic.oup.com/ijrl/article/29/3/466/4157312>>

¹⁸ UN Web TV, 1977th Meeting, 85th Session, Committee on the Elimination of Discrimination against Women (CEDAW): Consideration of China (12 May 2023), <<https://media.un.org/en/asset/k17/k17kia36io>>

2. International law

China acceded to the UN Refugee Convention and Protocol in 1982 mainly in response to the influx and the need for international support in the resettlement of ethnic Han Chinese or other ethnic minorities from Vietnam and Laos. It has cooperated with UNHCR to that end and has even allowed UNHCR to access asylum seekers from Pakistan, Iraq, Somalia and Eritrea.¹⁹ When it comes to the North Korean escapees, China categorically rejects the individualized determination of their status and gives no access to UNHCR. Despite the obvious persecutions that await the North Koreans deported back to North Korea, it refuses to recognize them as refugees *sur place*.

China is also in violation of the principle of non-refoulement under not only article 33 of the Refugee Convention but also article 3 of the Torture Convention to which it is also a party. While article 33 of the Refugee Convention only protects “refugees”, the status that China has refused to extend to the North Korean escapees, article 3 of the Torture Convention applies to all persons regardless of their legal status (“No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”). It is noteworthy that the annual North Korean human rights resolution adopted by the UN Human Rights Council on 4 April 2023, for the first time made a reference to the Torture Convention when urging states to respect the principle of non-refoulement although China is not specifically named.²⁰

China has in the past also repatriated South Korean prisoners of war (POWs) who had escaped from North Korea. The forcible repatriation of Mr. Han Man-taek in January 2005 and another unnamed POW in 2017 are the most publicized cases although there could be more less known instances. Such repatriations also engage China’s legal responsibility under the Geneva Convention (III). Although China recognizes the special status and history of South Korean POWs and sends most of them to South Korea unlike other escapees from North Korea, these cases illustrate China’s lack of consistency.

Beijing justifies the deportation of North Koreans under the bilateral treaties with Pyongyang such as the Bilateral Agreement on Mutual Cooperation for the Maintenance of State

¹⁹ Roberta Cohen, “CHINA’S FORCED REPATRIATION OF NORTH KOREAN REFUGEES INCURS UNITED NATIONS CENSURE” (2014), <<https://www.brookings.edu/wp-content/uploads/2016/06/North-Korea-UN-Cohen.pdf>>

²⁰ Resolution adopted by the Human Rights Council on 4 April 2023: 52/28. Situation of human rights in the Democratic People’s Republic of Korea, A/HRC/RES/52/28, <<https://undocs.org/A/HRC/RES/52/28>>

Safety and Social Order (July 1998)²¹ and the Civil and Criminal Law Cooperation Treaty (2003).²² The former treaty provides in article 4 (1) that “Those who do not hold legal documents or have used a crossing point not specified in the documents will be treated as illegal border crossers” and in article 4 (2) that “Illegal border crossers will be returned to the other side with information on their identity and specific situation”.²³

However, such bilateral treaties cannot enable the forced return of North Korean refugees in violation of the international obligation to respect the right to asylum under article 14 (1) of the Universal Declaration, the right to leave one’s own country under article 12 (2) of the Covenant, and the principle of non-refoulement under article 3 (1) of the Torture Convention.

3. Humanitarian principles

Any elementary consideration of humanitarian principles should result in granting of a legal status for the North Korean escapees and the stopping of their deportations back to North Korea where torture, sexual and gender-based violence, forced abortion, imprisonment in brutal labor camps and even executions await them. It is surreal that Beijing talks about humanitarian principles or humane treatment for them in North Korea.

Some Chinese people, including the officials, actually display such humanitarian considerations for North Korean refugees where their government fails to do so. One North Korean escapee stated that Public Security agents who apprehended her quietly released her because they decided that their job was bringing criminals to justice, not arresting and deporting innocent women whose only crime was fleeing North Korea.

²¹ Ministry of Foreign Affairs of the People's Republic of China, [中华人民共和国公安部 朝鲜民主主义人民共和国国家安全保卫部 关于在边境地区维护国家安全和社会秩序的工作中相互合作的议定书], <http://treaty.mfa.gov.cn/Treaty/web/detail1.jsp?objid=1531876990894>

²² Ministry of Foreign Affairs of the People's Republic of China, [中华人民共和国和朝鲜民主主义人民共和国关于民事和刑事司法协助的条约], <http://treaty.mfa.gov.cn/Treaty/web/detail1.jsp?objid=1531876855012>

²³ Protocol between the PRC Ministry of Public Security and the DPRK Social Safety Ministry for Mutual Cooperation in Safeguarding National Security and Social Order in Border Areas: This document was made possible with support from MacArthur Foundation (June 9, 1964), <<https://digitalarchive.wilsoncenter.org/document/protocol-between-prc-ministry-public-security-and-dprk-social-safety-ministry-mutual>>

Some ethnic Korean Chinese pastors who assisted the North Korea escapees in China face assassination or kidnapping by North Korean agents while the Chinese government turns a blind eye. These ethnic Korean Chinese pastors are on their own and can expect no help or protection from any government.

It is ironic that the Chinese authorities deport North Korean women to North Korea where forced abortion or infanticide of their babies awaits them because of the “Chinese blood” is viewed as corrupting “Korean racial purity”. I cannot think of any country other than North Korea that carries out mass abortions or infanticides on such a racist ground; nor can I think of any country other than China that would enable such mass abortions or infanticides against “its own blood”.

As Roberta Cohen has repeatedly pointed out, UNHCR in 2004 categorized North Korean escapees in China as “persons of concern” meriting humanitarian protection and proposed that China create a special humanitarian status for them to provide them with temporary documentation, access to services and protection against refoulement. Beijing has all but ignored this proposal.

In the recent years, Public Security officials in certain localities in China have issued 1-page documents, misleadingly called “residence permits”, to the North Korean women married to Chinese men for a considerable financial price. However, this should not be confused with the special humanitarian status recommended by UNHCR in 2004. While these documents allow the holders to move, for instance by bus, within the locality, they are primarily a means of control for the local Public Security authorities that enables a systematic monitoring of the North Korean women. These permits are not a pathway to a full-fledged Chinese citizenship, do not provide access to medical or other basic services and certainly do not allow traveling beyond the localities let alone resettling in a third country like South Korea. In fact, the local Public Security officials discourage their contact with South Koreans and Christian missionaries and encourage them to report such contacts by other North Korean refugees.

These North Korean women are also effectively denied lawful job opportunities because of their precarious legal status. They are forced to make a living from illegal activities such as drug trafficking and prostitution which in turn lead to their arrests by the authorities. In short, the existence of North Korean women is tolerated by the local authorities only in so far as they serve as wives to sometimes abusive Chinese husbands and as mothers to their children deprived of individual freedom or agency.

The fundamental problem is that the central government in Beijing views North Korean refugees mainly as pawns in geopolitics rather than human beings with dignity and rights. Perhaps one should expect no less from a government that has incarcerated over a million Muslim Uyghurs in Xinjiang as slave laborers. Nevertheless, Beijing’s geopolitical calculations and concerns are also divorced from the reality on the ground and colored by paranoia.

It is true that Hungary's decision in 1989 to open its borders with Austria which created the corridor for a mass exodus of East Germans to West Germany triggered the sudden fall of the Berlin Wall. However, North Korea in 2023 is nothing like East Germany in 1989 as much as one wishes so. There are no indications whatsoever that the North Korean people are ready to escape their country *en masse* to a third country through a possible Chinese corridor. The policy inertia from the 1990s when North Korea was actually on the brink of collapse continues to take its toll. It is difficult to see how the current policies serve China's geopolitical interests.

IV. The need for international actions

Given the dire human rights and humanitarian crisis that will unfold in the event of the resumption of the forcible repatriation of North Korean refugees in China, the international community must act now to pierce the fog of totalitarianism and to hold Beijing accountable to its domestic law, international law and humanitarian principles.

As a preliminary matter, the international community must call upon China to release relevant information, data and statistics including: (1) the number of North Korean detainees that are awaiting deportation to North Korea; (2) the number of North Koreans who have been issued "residence permits" by the local authorities and their legal significance; (3) the known number of children borne between North Korean women and their Chinese husbands; and (4) the procedure for applying for the refugee status by North Koreans if one exists.

China also needs to (1) end the policy of refoulement for North Korean escapees; (2) implement the process for individualized determination of the refugee status for North Korean asylum seekers as it is required to do under both the UN Refugee Convention and Protocol as well as article 46 of the Exit and Entry Administration Law with UNHCR's technical assistance; (3) provide North Koreans with temporary documentation, access to health and other basic services and protection against refoulement; and (4) permit North Korean refugees and their children to emigrate from China and resettle in third countries such as South Korea.

As China is unlikely to heed such calls voluntarily, the international community must take concrete actions to effect a change. China's fourth cycle Universal Periodic Review (UPR) will take place in early 2024 where the UN Member States can publicly raise concerns and make specific recommendations concerning North Korean women in China. It would be desirable to see many human rights NGOs making written submissions by the impending deadline on July

18, 2023 and to make concerted advocacy efforts to government delegations, most notably at the pre UPR session on December 1, 2023.²⁴

As the 10th anniversary of the COI report on North Korea approaches, there have been calls for an updated, strengthened UN accountability mechanism for North Korea's crimes against humanity that takes into account the models offered by Syria IIM and Myanmar IIMM which are mandated to prepare case files to facilitate criminal prosecution. If such a new robust UN accountability mechanism is created for North Korea, it needs to also document the perpetrators and accomplices on the Chinese side.

The international community should also consider transforming Office of the High Commissioner for Human Rights (OHCHR) Seoul which currently only has mandate over North Korea into a Regional Office for Northeast Asia including China, similar to the OHCHR Regional Office for South-East Asia in Bangkok established in 2002²⁵ or the OHCHR Regional Office for Central Asia in Bishkek, Kyrgyzstan established in 2008.²⁶ OHCHR came close to establishing a Regional Office for Northeast Asia in Seoul in 2008, but China reversed and torpedoed the plan at the last minute following the international outcry over a series of self-immolation by Tibetan monks in protest against China's oppression. It is not too late to revive the plan and see it through this time in spite of Beijing's opposition.

The United Nations High Commissioner for Refugees (UNHCR) also needs to play a more active role for the North Korean refugees in China as it once did in the past. In September 1999, François Foinat, Director of UNHCR for Asia Pacific region, acknowledged the existence of a "small group of refugees" among North Koreans in China. UNCHR was barred from accessing the border regions afterwards although it continued to seek access from Beijing.²⁷ Since 2004, UNHCR has considered North Korean escapees in China as "persons of concern" who deserve humanitarian protection. During his visit to China in March 2006, then-High Commissioner António Guterres in his own words had "very intense, frank and meaningful discussions" with the Chinese officials about North Koreans in China and the need to treat them as "refugees sur-place."²⁸ Even as late as May 2013, then-High Commissioner Guterres publicly

²⁴ <https://www.upr-info.org/en/review/china>

²⁵ OHCHR Regional Office for South-East Asia, <<https://bangkok.ohchr.org/who-we-are>>

²⁶ OHCHR – Central Asia Regional Office, <<https://www.ohchr.org/en/countries/asia-pacific-region/ohchr-central-asia-regional-office>>

²⁷ Kris Janowski, "UNHCR seeks access to North Koreans detained in China" (21 January 2003), <<https://www.unhcr.org/news/news/unhcr-seeks-access-north-koreans-detained-china>>

²⁸ 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),

“expressed grave concern” over the safety and security of nine North Koreans who were reportedly deported from Laos to China;²⁹ Beijing panned it as “irresponsible remarks.”³⁰

However, UNHCR has been conspicuously silent and absent on the North Korean refugee issue since 2013. At the same time, High Commissioner Filippo Grandi has been a regular visitor to Beijing and a champion of China’s Belt and Road Initiative which he said could “definitely” help with global refugee work.³¹ UNHCR can be asked to make public the contributions it has received directly or indirectly from the Belt and Road Initiative for its resettlement projects over the years if this information is not publicly available already.

UN Secretary-General António Guterres should play a more active role in offering good offices to ask President Xi Jinping to reconsider China’s policy towards North Korean refugees given his extensive experience handling the issue during his previous stint as the High Commissioner for Refugees. The United States and other countries must actively seek Secretary-General Guterres’s involvement. The South Korean government officials in particular who likes to say that “for South Koreans, people in the North are not just anybodies” should put their money where the mouth.

In the joint summit statement by Presidents Yoon and Biden on April 26, 2023, the two countries pledged to “strengthen cooperation to promote human rights in the DPRK as well as to resolve the issues of abductions, detainees, and unrepatriated prisoners of war” and condemned “the DPRK’s blatant violation of human rights and the dignity of its own people and its decision to distribute its scarce resources to weapons of mass destruction development”. While symbolic, this sent a strong signal to Pyongyang that South Korea and the United States will not simply forget issues like the six South Korean citizens detained by North Korea in the past decade (Kim Kuk-gi, Choi Chun-gil; Kim Jeong-wook; Kim Won-ho, Ko Hyon-chol and another individual whose name is not known) and gave hope to their families in South Korea that their loved ones will be returned home as was the case for the last three US citizens (Kim Dong Chul, Tony Kim and Kim Hak Song) released on May 9, 2018.

<<https://www.unhcr.org/publications/statement-media-mr-antonio-guterres-united-nations-high-commissioner-refugees>>

²⁹ 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>>

³⁰ Reuters, “China warns U.N. against ‘irresponsible remarks’ on North Koreans” (JUNE 3, 2013), <<https://www.reuters.com/article/us-korea-north-china-idUSBRE95209W20130603>>

³¹ Xinhua, “Belt and Road Initiative helps with refugee work: UNHCR” (2018-08-12), <<https://www.chinadaily.com.cn/a/201808/12/WS5b6f7a52a310add14f385415.html>>

Earlier, on December 9, 2022, 31 states at the United Nations, including South Korea and the United States, expressed “concern with the human rights situation of citizens of the Republic of Korea detained in the DPRK, abductions and enforced disappearances of Japanese and Republic of Korea citizens, and other nationals who are kept against their will in the DPRK, and unrepatriated prisoners of war” and strongly urged “the DPRK to resolve all outstanding issues with detainees, abductees, and disappeared and immediately return them to their homes.”³²

In the same vein, the two governments should prepare bilateral and multilateral statement at the UN General Assembly or Human Rights Council expressing concerns about the North Korean refugees in China, in particular urging China to end their *refoulement* without individualized determination of the refugee status. It may also be helpful to highlight China’s legal and political responsibility if and when the UN Security Council can secure the elusive 9th vote to finally resume a public briefing and discussion about the North Korean human rights situation.

Also, given China and Russia’s recent propensity to veto any resolutions against North Korean military provocations at the UN Security Council, once cannot rule out the possibility of convening an emergency special session at the UN General Assembly if North Korea embarks upon a major escalation with the resumption of a nuclear test or actual cross-border attacks against South Korean targets. Last year, the Russian invasion of Ukraine was promptly taken up by an emergency special session of the UN General Assembly immediately after the expected vetoing at the UN Security Council. If a similar scenario plays out for North Korea, the UN General Assembly should also discuss related crimes against humanity and other grave human rights violations, including China’s complicity.

Committed states may also institute proceedings against the DPRK at the International Court of Justice (ICJ) for its violation of the Genocide Convention as the latter made no reservation to the dispute resolution clause (article IX) granting jurisdiction to the ICJ when it became a state party in 1989 unlike China which did make such a reservation.³³ It has been argued in the past that North Korea’s mass forced abortions and infanticides against pregnant North Korean women repatriated from China and their children on racial grounds as well as the extermination of the Christian population amount to genocide.³⁴ If this indeed the case, any state

³² Joint Statement Delivered by Ambassador Linda Thomas-Greenfield on the Human Rights Situation in the Democratic People’s Republic of Korea (December 9, 2022), <<https://usun.usmission.gov/joint-statement-delivered-by-ambassador-linda-thomas-greenfield-on-the-human-rights-situation-in-the-democratic-peoples-republic-of-korea>>

³³ UNTC, 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>

³⁴ Robert Park, the author of “North Korea and the Genocide Convention” (2011); Hogan Lovells (2014) Crimes Against Humanity: An independent legal opinion on the findings of the Commission of Inquiry on Human Rights in

party to the Genocide Convention can bring proceedings against the DPRK at the ICJ as The Gambia recently did against Myanmar for the latter's "ethnic cleansing" and mass deportation of the Rohingya.³⁵ China's role and complicity can be discussed in such an ICJ proceeding.

Collection of more information about the prison facilities housing North Korean detainees in China using satellite images, coupled with possible interviews with former guards or inmates, may be helpful in raising visibility of the issue and identifying the officials responsible. BuzzFeed has identified 268 new prisons built in Xinjiang since 2017 using satellite imagery and testimonies of former prisoners using this method.³⁶ This information can also be used to identify local officials responsible for the operation of these prisons for the purpose of targeted sanctions under the Global Magnitsky Act.

Congress can also consider strengthening the existing sanctions legislation against North Korea to target the Chinese individuals and entities that are complicit in North Korean human rights violations. The North Korea Sanctions and Policy Enhancement Act (NKSPEA) already provides that "any significant goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by the labor of North Korean nationals or citizens shall be

the Democratic People's Republic of Korea, pp.42-60; Human Rights Abuses and Crimes Against Humanity in North Korea, Meeting and hearing before the Subcommittee on Africa, Global Health, Global Human Rights and International Organizations of the Committee on Foreign Affairs, House of Representatives (June 18, 2014), <<https://www.govinfo.gov/content/pkg/CHRG-113hhrg88389/html/CHRG-113hhrg88389.htm>>, <<https://foreignaffairs.house.gov/hearing/subcommittee-briefing-and-hearing-human-rights-abuses-and-crimes-against-humanity-in-north-korea>>, statement by the Honorable Lee Jong Hoon, Ambassador-at-Large for Human Rights, Republic of Korea ("I am here to make public for the very first time the commissioned work by Hogan Lovells, which unequivocally endorses the findings and recommendations of the COI. But Hogan Lovells goes a step further to charge that the North Korean regime may be guilty of the crime of genocide. ... The Human Liberty report contends that an argument for genocide could be made on the basis that these mixed-race children who are victims of infanticide will qualify as a protected group under international law on racial and ethnic grounds. Considering the strict and narrow defines of the term genocide, the COI report was hesitant in charging the North Korean regime of genocide, suggesting instead that perhaps the term political genocide might be more applicable. The Human Liberty report prepared by Hogan Lovells, however, finds enough evidences to conclude that in North Korea genocide is taking place."); Jonathan Cheng, "As World Attention Fades, A Fresh Call for North Korea "Genocide" Label", June 17, 2014, <<https://www.wsj.com/amp/articles/as-world-attention-fades-a-fresh-call-for-north-korea-genocide-label-1403056510>>; Lee, Hyunmok, "Rethinking the 1948 Genocide Convention for North Korean Political Camps" (2019), Maurer Theses and Dissertations 62, <<https://www.repository.law.indiana.edu/etd/62>>

³⁵ ICJ, "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>>

³⁶ Megha Rajagopalan, Alison Killing and Christo Buschek, "Built to Last", BuzzFeed, August 27, 2020, <<https://www.buzzfeednews.com/article/meghara/china-new-internment-camps-xinjiang-ughurs-muslims>>

deemed to be prohibited under section 1307 of title 19 and shall not be entitled to entry at any of the ports of the United States”.³⁷

Given that the North Korean escapees repatriated from North Korea to China provide slave labor from North Korea’s labor camps that serve Chinese businesses and overseas North Korean workers still in China in violation of UN sanctions also serve Chinese businesses in northeastern China, the Chinese exporters from this area may be required to prove that North Korean labor was not involved in their products.

In light of “juche wall” or “juche curtain” that the North Korean government has been busily building along its border with China, alternative **escape** routes for North Koreans such as the direct seaborne flight from North to South Korea will take on greater importance in the future. There have been reports of North Korean “boat people” being turned back by the South Korean forces during the previous Moon Jae-in administration in South Korea although forcible repatriation of two North Korean fishermen, Mr. Woo Beom-seon and Mr. Kim Hyun-wook, in November 2019 remains the only publicly exposed case. The words about these incidents travel fast through the remaining families in the North of escapees and have effectively discouraged many North Koreans from risking their lives to flee directly to the South by sea. Not only should the South Korean government fully investigate the past allegations of refoulement of North Korean escapees but more importantly implement institutional reforms to guarantee the due process rights, including the right to an attorney during the interrogation and judicial control of the process, of the newly arriving seaborne escapees to prevent recurrence of forcible repatriation in the future regardless of who is in power in Seoul.

It is important to secure a safe passage to a third country for permanent resettlement like South Korea for the few North Korean refugees who are still miraculously able to make their way to Mongolia, Vietnam, Laos and other transit countries. As making the long journey to southern China becomes more difficult, many North Korean escapees are heading to Mongolia but this is also a journey fraught with danger and even if they cross the border into Mongolia proper, their fate remains uncertain. Last month, the Mongolian border guard briefly announced the capture of four North Koreans on their website before quickly taking down the posting.³⁸ It is not encouraging the current Mongolian government allowed the Chinese police operating in Ulaanbaatar to apprehend and repatriate a political dissident from Inner Mongolia.³⁹ Diplomatic

³⁷ <https://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter99&edition=prelim%20>

³⁸ Ifang Bremer, “Mongolia detains 4 North Koreans who illegally crossed into country from China: Expert says Ulaanbataar may be trying to curry favor with Pyongyang ahead of key diplomatic anniversary” (May 18, 2023), <<https://www.nknews.org/2023/05/mongolia-detains-4-north-koreans-who-illegally-crossed-into-country-from-china>>

³⁹ Southern Mongolian Human Rights Information Center (SMHRIC), “Chinese police makes arrest on Mongolian soil, deporting prominent writer” (May 11, 2023), <https://www.smhric.org/news_720.htm>

and political efforts must be made with respect to the key bordering countries like Mongolia, Vietnam and Laos to make them more hospitable for the North Korean defectors.

Lastly, I would like to conclude by conveying a message to the Congressional-Executive Commission on China from Ms. Kim Jeong-ah of the Rights for Female North Korean Defectors (RFNK), a courageous North Korean woman escapee who had to leave behind one daughter in North Korea and another in China when fleeing to South Korea, on her behalf: Ms. Kim specifically told me to share with you the pain of continuing her human rights advocacy despite being diagnosed with liver cirrhosis after 14 years of forced separation with her daughter in China because of a Chinese man that she had to forcibly marry through human trafficking; she said that the RFNK submission to the CEDAW Committee was made through this painful process; she concluded by imploring me to remind the esteemed members of the Commission that the heart-wrenching pain of North Korean women escapees like her in South Korea is not some experience from 14 years in the past but an ongoing ordeal—so long as China persists with its policy of refolement.

Thank you.