

August 11, 2023

High Commissioner Volker Türk
Office of the United Nations High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

ATTN:

Ravina Shamdasani, Chief Spokesperson for the Office of the United Nations High Commissioner for Human Rights (OHCHR)

Ilze Brands Kehris, Assistant Secretary-General for Human Rights and Head of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in New York

James Heenan, Representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Seoul

Re: Office of the United Nations High Commissioner for Human Rights (OHCHR)'s unacceptable silence on China's forcible repatriation of North Korean refugees

Dear High Commissioner Türk,

We are writing to express our concern about the unacceptable silence of you and the Office of the United Nations High Commissioner for Human Rights (OHCHR), including its “field-based structure” in Seoul, on China’s policy and practice of enforced disappearance and forcible repatriation of North Korean refugees, in particular in the recent thematic report on the enforced disappearance and abductions by North Korea and in the regular reports and updates to the UN Human Rights Council. It is important to hold China accountable for these grave human rights violations and to urge China to observe its legal obligations by ending the enforced disappearance and forcible repatriation of North Korean escapees and implementing the procedure for the individualized determination of the refugee status in reports and statements by you and other OHCHR officials. This is particularly urgent as North Korea may lift the self-imposed COVID border restrictions ahead of the 2023 Hangzhou Asian Games (September 23 to October 8) which will enable the resumption of the forcible repatriation of reportedly as many as 2,000 North Koreans detained as “illegal migrants” in China.¹ This would also be in line with the findings and recommendations by the UN Commission of Inquiry on human rights in the DPRK (DPRK COI), special procedures, treaty bodies and Universal Periodic Reviews (UPRs).

1. Findings and recommendations by the UN Commission of Inquiry on human rights in the DPRK (DPRK COI) and other UN human rights bodies

The UN Commission of Inquiry on human rights in the DPRK (DPRK COI) found that: “The gravity, scale and nature of [systematic, widespread and gross human rights violations in North Korea] reveal a state that does not have any parallel in the contemporary world”.² According to the DPRK COI, 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.³ 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.⁴ The DPRK COI recommended “China and other States” to “respect the principle of non-refoulement” and “abstain from forcibly repatriating any persons to the

¹ Report of the UN Special Rapporteur on the situation of human rights in the DPRK to the General Assembly (13 October 2022), A/77/522, para. 9 (“The Special Rapporteur has received information that as many as 2,000 escapees from the Democratic People’s Republic of Korea are currently detained in China as “illegal migrants” and are at risk of being repatriated to their country once the border reopens.”), <https://undocs.org/A/77/522>

² Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea (7 February 2014), A/HRC/25/CRP.1, para. 1211, <https://undocs.org/A/HRC/25/CRP.1>

³ Id., paras. 380-434.

⁴ Id., paras. 435-477.

Democratic People’s Republic of Korea, unless the treatment there, as verified by international human rights monitors, markedly improves”.⁵ No such marked improvement of treatment in North Korea has yet to take place.

According to the DPRK COI, “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”.⁶ On 16 December 2013, the 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”.⁷

The DPRK COI recommended the UN High Commissioner for Human Rights “with full support from the Human Rights Council and the General Assembly” to “establish a [field-based] 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” and to “facilitate United Nations efforts to prosecute, or otherwise render accountable, those most responsible for crimes against humanity”.⁸ Accordingly, the UN Human Rights Council requested the OHCHR “to follow up urgently” on the COI’s recommendations “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”.⁹ In June 2015, OHCHR established a “field-based structure” in Seoul (OHCHR Seoul).

The UN special procedures, including the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea and the Working Group on Enforced or Involuntary Disappearances (WGEID), and treaty bodies, especially the Committee against Torture (CAT) and Committee on the Elimination of Discrimination against Women (CEDAW), have repeatedly called upon China to respect the principle of non-refoulement with respect to North Korean escapees. Various countries have made the same recommendations to China during its Universal Periodic Reviews (UPRs).

2. OHCHR’s thematic report: "These wounds do not heal" - Enforced disappearance and abductions by the Democratic People's Republic of Korea

Given this background, OHCHR’s silence on China’s grave human rights violations against North Korean refugees and aiding and abetting of crimes against humanity in North Korea through arbitrary detention and forcible repatriation is difficult to understand or justify. OHCHR’s thematic report on the enforced disappearance and abductions by North Korea published this March is a case in point.¹⁰ Section IV (Context) of the OHCHR report refers to “enforced disappearance in the Democratic People’s Republic of Korea, including following repatriations”, but in these four paragraphs, China is mentioned only once in passing.¹¹ In Section V (Impact of enforced disappearance on victims) under the heading of “C. Obstacles faced by relative in the search of forcibly disappeared persons and in obtaining reparations”, the report notes that “Under previous Governments of the Republic of Korea, families of forcibly disappeared persons experienced surveillance, harassment, and in some cases arbitrary detention by police and intelligence services. These practices

⁵ Id., para. 1221 (a).

⁶ Id., paras. 1098-1114.

⁷ Id., para. 1197.

⁸ Id., para. 1225 (c).

⁹ Human Rights Council resolution 25/25 of 28 March 2014 on the situation of human rights in the Democratic People’s Republic of Korea, A/HRC/RES/25/25, para. 10, <https://undocs.org/A/HRC/RES/25/25>

¹⁰ OHCHR, "These wounds do not heal" - Enforced disappearance and abductions by the Democratic People's Republic of Korea (28 March 2023), <https://www.ohchr.org/en/documents/reports/these-wounds-do-not-heal-enforced-disappearance-and-abductions-democratic-peoples>

¹¹ Id., paras. 23-26.

continued until the late 1990s” and that “Victims of the Paradise on Earth campaign emphasized to OHCHR they expect to receive a similar level of attention and support from the Government of Japan as the recognized abductees, to raise awareness at both the domestic and international level”.¹² While raising important issues, it makes the absence of any reference to the far more serious obstacles imposed by China all the more conspicuous and incomprehensible.

Section VI (Victims’ perspectives on truth, justice including accountability and reparations for violations suffered as a result of enforced disappearance) devotes only a single paragraph about the guarantees of non-recurrence without any reference to the ongoing enforced disappearance and forcible repatriation of North Korean refugees by China. The section also notes that: “Some victims, including relatives of forcibly disappeared persons, emphasised that the Government of the Republic of Korea is also partly responsible for the long-standing enforced disappearance cases of its citizens. The families of forcibly disappeared persons said that the Republic of Korea should also restore the victims’ reputations and compensate victims who were subjected to surveillance and discrimination for several years in the past”.¹³ Again while raising important points, the conspicuous and incomprehensible silence about China’s responsibility in the section is puzzling since it is difficult to believe that none of the victims interviewed by OHCHR mentioned it. Section VI also states that “victims also pointed to the lack of political will from [Member States other than North Korea] to pursue prosecutions” under the heading of “Criminal prosecution of those responsible” but fails to mention the criminal prosecutions and convictions against North Korean and Chinese nationals for their role in the abduction of North Korean, South Korean and other nationals from China to North Korea in South Korean and Chinese courts, including the two South Korean and Chinese court cases cited in the 2014 DPRK COI report (paras. 977-979).¹⁴

Section VIII (Recommendations) continues this trend with 6 recommendations to “Member States whose nationals are victims of enforced disappearances by the Democratic People’s Republic of Korea, including relatives of forcibly disappeared persons” followed by 4 recommendations to “the international community” which includes a brief recommendation to “Uphold the principle of non-refoulement by not forcibly returning individuals to the Democratic People’s Republic of Korea who are at risk of serious human rights violations, such as torture, forced labour and enforced disappearance” without naming China—in contrast to the COI’s robust, country-specific recommendations.¹⁵

3. OHCHR’s regular reports and updates to UN Human Rights Council

OHCHR’s selective silence on China extends beyond this report to the regular written “reports” and “oral updates” to the UN Human Rights Council every March. This was not always the case. In February 2016, OHCHR submitted a report¹⁶ which extensively referred to “risk of prolonged unlawful detention, ill-treatment and torture” for those repatriated to North Korea from “China and other countries” and “credible reports of trafficking of women from [North Korea] into China”.¹⁷ The 2016 report specifically mentioned “forced marriage to Chinese men and other forms of sexual exploitation”, the extreme vulnerability of North Korean women in China, the statelessness of “children born to those women and fathered by Chinese men” and abortions carried out on repatriated pregnant women in North Korea “to prevent the women from giving birth to children that were half Chinese”.¹⁸ The High Commissioner recommended “the international community” to strictly adhere to the principle of non-refoulement.¹⁹

However, OHCHR’s annual reports and updates to the UN Human Rights Council from 2018 have made no recommendation to observe the principle of non-refoulement except for the oral update in March 2022 (“I recall again that persons repatriated to the Democratic People’s Republic of Korea face a significant likelihood of torture and other serious

¹² Id., paras. 60 and 63.

¹³ Id., para. 82.

¹⁴ Id., paras. 77-79.

¹⁵ Id., pp. 50-52.

¹⁶ Role and achievements of the Office of the United Nations High Commissioner for Human Rights with regard to the situation of human rights in the Democratic People’s Republic of Korea - Report of the Office of the United Nations High Commissioner for Human Rights (1 February 2016), A/HRC/31/38, <https://undocs.org/A/HRC/31/38>

¹⁷ Id., paras. 31-33, 36.

¹⁸ Id., paras. 36-37.

¹⁹ Id., para. 61.

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.”).²⁰

The 2021 and 2023 reports repeated the identical recommendations to Member States to “Take steps to ensure that efforts aimed at securing a lasting peace on the Korean Peninsula give due priority to the human rights of the people of the Democratic People’s Republic of Korea, restoring the dignity of victims by respecting and upholding their rights to truth, justice, reparation and guarantees of non-recurrence”.²¹ However, such recommendations sound hollow without specific recommendation for the protection of North Korean refugees in China.

The most recent 2023 report takes OHCHR’s reluctance to name China to a new level. 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”.²² 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”.²³ It is not difficult to see that “the neighbouring State” is the OHCHR jargon for China.

4. OHCHR’s non-participation in public events concerning forcible repatriation of North Korean refugees in China and lack of official expression of concerns

Because of the growing concerns about North Korea’s lifting of its COVID border restrictions in force since January 2020, especially with the participation of the North Korean athletes in the 2023 Hangzhou Asian Games (September 23 to October 8), and the resumption of the forcible repatriation of as many as 2,000 North Koreans reportedly detained as “illegal migrants” in China, Seoul-based NGOs will be organizing public events, the earliest one on August 11, urging China to end the policy and practice of forced repatriation. However, OHCHR Seoul has declined the invitations to these events without giving reasons. Moreover, OHCHR Seoul has yet to officially express its concerns about the possible resumption of China’s deportation of North Korean refugees.

The OHCHR headquarters in Geneva has also been silent on the issue. On 10 April 2023, you commented that you are “very concerned that two prominent human rights defenders in China – Ding Jiayi and Xu Zhiyong – have been sentenced to lengthy prison terms, at variance with international human rights law standards”.²⁴ You added that “Human rights law requires ... respect for fair trial and due process rights, and proper investigations into any allegations of ill-treatment” and that you “will follow up on these cases with the authorities”. We cannot agree more, but your comment on China’s two human rights defenders makes the silence of you, your spokespersons and other senior OHCHR officials on China’s possible deportation of as many as 2,000 North Koreans detainees all the more conspicuous and incomprehensible.

5. Way forward

²⁰ 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 delivered by Ilze Brands Kehris, Assistant Secretary-General at 49th Session of the HRC (21 March 2022), <https://www.ohchr.org/en/statements-and-speeches/2022/03/oral-update-situation-human-rights-democratic-peoples-republic>

²¹ Promoting accountability in the Democratic People’s Republic of Korea - Report of the United Nations High Commissioner for Human Rights (11 January 2021), A/HRC/46/52, para. 74 (b), <https://undocs.org/A/HRC/46/52> ; Promoting accountability in the Democratic People’s Republic of Korea - Report of the United Nations High Commissioner for Human Rights (18 January 2023), A/HRC/52/64, para. 57 (b), <https://undocs.org/A/HRC/52/64>

²² Promoting accountability in the Democratic People’s Republic of Korea - Report of the United Nations High Commissioner for Human Rights (18 January 2023), A/HRC/52/64, para. 33, <https://undocs.org/A/HRC/52/64>

²³ Id., para. 34.

²⁴ OHCHR, Comment by UN Human Rights Chief Volker Türk on sentencing of human rights defenders in China (10 April 2023), <https://www.ohchr.org/en/statements/2023/04/comment-un-human-rights-chief-volker-turk-sentencing-human-rights-defenders>

In your speech marking the 30th anniversary of the World Conference on Human Rights (14-25 June 1993) which led to the creation of OHCHR, you proclaimed that “We have championed the rights of children, of indigenous peoples, of minorities, of older people, of people with disabilities as well as of migrants and refugees. All while holding the world’s most powerful to account”.²⁵ However, the North Korean migrants, refugees and asylum-seekers, including women and children, on the receiving end of China’s policy and practice of enforced disappearance and forcible repatriation may ask whether OHCHR is really willing and able to hold China to account.

It is still not too late for OHCHR to publicly urge China to end the enforced disappearance and forcible repatriation of North Korean escapees and to implement the procedure for the individualized determination of the refugee status. It is never easy to hold the world’s most powerful to account: this is why your predecessor, Michelle Bachelet, was able to release the OHCHR “assessment” that China’s arbitrary and discriminatory detention of millions of ethnic Uyghurs and other Muslim minorities in Xinjiang “may constitute international crimes, in particular crimes against humanity” only in the final minutes of her term on 31 August 2022.²⁶ But OHCHR must end the blatant, casual politicization of the issue if it is to champion the rights of North Korean escapees facing arbitrary detention, human trafficking, deportation and other grave violations and abuses in China.

Thank you.

Sincerely,

Signature organizations and individuals (as of August 11, 2023)

1969 KAL Abductees’ Families Association

Association of North Korean Defectors (NKD)

Citizens’ Alliance for North Korean Human Rights (NKHR)

Justice for North Korea

Korean War POW Family Association

Mulmangcho

No Chain

North Korea Strategy Center (NKSC)

Save North Korea

Stepping Stone

THINK

Transitional Justice Working Group (TJWG)

²⁵ OHCHR, After 30 years, the UN’s human rights Office is “a force for unity” (6 June 2023), <https://www.ohchr.org/en/statements-and-speeches/2023/06/after-30-years-uns-human-rights-office-force-unity>

²⁶ 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>