**PETITION TO:**

**UNITED NATIONS GENERAL ASSEMBLY**

**HUMAN RIGHTS COUNCIL**

**WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Ms. Priya Gopalan (Malaysia)

Vice-Chair on Communications: Dr. Matthew Gillett (New Zealand)

Vice-Chair on Follow-Up: Dr. Ganna Yudkivska (Ukraine)

Dr. Miriam Estrada-Castillo (Ecuador)

Mr. Mumba Malila (Zambia)

Established and its mandate extended and clarified pursuant to:

the preamble and articles 1(3), 13(1)(b) and (2), 22, 55(3), 56, 62(2) and 68 of the Charter of the United Nations

resolutions 1991/41, 1994/32, 1997/50, 2000/36, and 2003/31 of the former Commission on Human Rights

resolutions 6/4, 15/18, 24/7, 33/30, 42/22 and 51/8 of the Human Rights Council

In the matter of

one Democratic People’s Republic of Korea citizen deprived of her liberty in China before being deported to and deprived of her liberty in the Democratic People’s Republic of Korea

**Ms. KIM CHEOL-OK [김철옥]**

v.

**CHINA**

**DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA**

5 December 2023

Respectfully submitted by:

 Transitional Justice Working Group (TJWG) [전환기 정의 워킹그룹]

May it please the Working Group,

We submit that Ms. Kim Cheol-Ok, a North Korean national, was arrested and detained by the Chinese authorities from 5 April 2023 to 9 October 2023, at which point she was deported to North Korea, where she presumably remains in detention. We add that Ms. Kim’s deprivation of liberty in and by China, being in contravention of articles 2, 3, 5, 6, 8, 9, 10, 13 (1) and (2), and 14 (1) of the Universal Declaration and article 3 (1) of the Torture Convention, is arbitrary and falls within categories I, II, III and V while her deprivation of liberty in and by North Korea, being in contravention of articles 2, 3, 5, 6, 8, 9, 10, 11 (1), 13 (1) and (2), 14 (1) of the Universal Declaration of Human Rights; articles 2 (1) and (3); 7; 9 (1), (2), (3) and (4); 12 (1) and (2); 14 (1) and (3) (b) and (d); and 16 of the Covenant, is arbitrary and falls within categories I, II, III and V.

*Background: North Korean escapees in China*

Since its founding in 1948, the North Korean state has tried and succeeded in maintaining a strict control over the flow of information and people in and out of the country. However, North Korea’s economic collapse and severe famine in the mid-1990s resulted in a mass exodus of North Koreans to China. According to the World Refugee Survey 2002 by the U.S. Committee for Refugees and Immigrants, the estimates about the number of North Korean refugees in China ranged from 10,000 to 500,000, though most NGOs gave 300,000 as the upper estimate while Médecins Sans Frontières (MSF) estimated 200,000.[[1]](#footnote-1)

In response, the Chinese government has not only refused to provide refuge to North Korean escapees but has also adopted the policy of forcibly returning them as “illegal” economic migrants despite the various human rights violations and abuses awaiting them in North Korea and the practice and willingness of South Korea and other countries to accept those who are willing to settle there. This policy persists to this date.

China appears to fear a repeat of then-Communist Hungary’s decision to open its borders with Austria which created the corridor for a mass exodus of East Germans to West Germany and within months triggered the sudden, unexpected fall of the Berlin Wall in 1989. Many indeed believed that the North Korean state was on the brink of collapse in the 1990s. North Korea’s economic and food situation has stabilized considerably since then and few foresee an imminent collapse, but China’s “zero tolerance” policy towards North Korean escapees shows no sign of relenting over two decades later.

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 for Refugees (UNHCR) to treat North Korean escapees as refugees under international law.[[2]](#footnote-2) The U.S. Committee for Refugees and Immigrants stated in its World Refugee Survey 1999 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”.[[3]](#footnote-3)

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.”[[4]](#footnote-4) 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.[[5]](#footnote-5) 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”[[6]](#footnote-6); 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”.[[7]](#footnote-7)

The agreement signed between China and the UN High Commissioner for Refugees (UNHCR) in December 1995 when its mission office in Beijing established in 1979 was upgraded to a branch office[[8]](#footnote-8) 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”.[[9]](#footnote-9) 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 government reprimanded UNHCR for the results of the mission and refused to permit UNHCR’s formal involvement with the population.[[10]](#footnote-10) The UNHCR classified had classified these North Korean escapees as refugees on account of the politically discriminatory food distribution policies in North Korea.[[11]](#footnote-11)

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”.[[12]](#footnote-12) However, the Chinese government claimed that it has to deal with the issue “prudently”.[[13]](#footnote-13) UNHCR has offered to assess the asylum claims of North Korean asylum-seekers jointly with the Chinese authorities to no avail.[[14]](#footnote-14)

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” 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”.[[15]](#footnote-15) 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.[[16]](#footnote-16) The Chinese government warned him against making “irresponsible remarks”.[[17]](#footnote-17)

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.”[[18]](#footnote-18) However, China has yet to adopt the domestic procedure for refugee status determination.

The 2014 United Nations Commission of Inquiry on human rights in the Democratic People’s Republic of Korea (DPRK COI) found that the North Korean government committed crimes against humanity against persons forcibly repatriated from China.[[19]](#footnote-19) According to the DPRK COI, North Koreans who flee their country are at risk of torture, sexual and gender-based violence, arbitrary detention, enforced disappearance and even execution and forced abortion and infanticide upon their forcible repatriation.[[20]](#footnote-20) The COI recommended the DPRK to “cease to regard citizens repatriated from China as political criminals or to subject them to imprisonment, execution, torture, arbitrary detention, deliberate starvation, illegal cavity searches, forced abortions and other sexual violence”.[[21]](#footnote-21)

However, China, despite being a party to the UN Refugee Convention and Protocol and the Convention against Torture, which codify the principle of non-refoulement, continues to arbitrarily detain North Korean escapees and forcibly return them.[[22]](#footnote-22) The DPRK COI 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.”[[23]](#footnote-23) There has been no documentation of such improvement of treatment.

On 16 December 2013, the DPRK COI wrote a letter to Beijing summarizing 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 urging 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.”[[24]](#footnote-24) In its reply of 30 December 2013, Beijing reiterated “its position that DPRK citizens who have entered China illegally do it for economic reasons. Therefore they are not refugees” and while maintaining that “China will continue to prudently and properly handle the issues of DPRK citizens who enter China illegally in accordance with its domestic law, international law as well as humanitarian principles, on the premise of safeguarding national sovereignty and fundamental interests, bearing in mind the stability of the Korean Peninsula”.[[25]](#footnote-25)

China also justifies the deportation of North Koreans under the bilateral treaties with North Korea such as the Bilateral Agreement on Mutual Cooperation for the Maintenance of State Safety and Social Order (July 1998)[[26]](#footnote-26) and the Civil and Criminal Law Cooperation Treaty (2003).[[27]](#footnote-27) 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”. There was the enactment of the Jilin Province Border Management Regulations in November 1993 and its revision in 1998 to facilitate the roundup of North Korean escapees.[[28]](#footnote-28)

China’s policy and practice of forced repatriation of North Koreans ignore the UN Committee against Torture (CAT)’s repeated recommendations for China to respect the principle of non-refoulement and to provide UNHCR with unimpeded access for the purpose of the refugee status determination.[[29]](#footnote-29) Various countries have made recommendations concerning North Korean escapees to China during its Universal Periodic Reviews.[[30]](#footnote-30)

In May 2023, the UN Committee on the Elimination of Discrimination against Women raised concerns about the trafficking of North Korean women and girls for purpose of sexual exploitation, forced marriage or concubinage; their categorical classification as “illegal migrants” and forcible return; and deprivation of their children’s rights to birth registration, nationality, education and health care and recommended China to: (a) ensure that North Korean women victims of trafficking are not criminalized and have access to temporary residence permits and to basic services; (b) provide UNHCR and relevant humanitarian organizations with full and unimpeded access to North Korean women victims of trafficking; and (c) regularize the status of North Korean women victims of trafficking who marry 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 with their mothers.[[31]](#footnote-31)

During the height of the Covid-19 pandemic, on 23 August 2021, the UN human rights experts, including the Working Group on Arbitrary Detention (WGAD), sent an allegation letter to Beijing bringing to its attention information concerning “the arrest, detention and threat of repatriation of at least 1,170 individuals of the Democratic People’s Republic of Korea (DPRK) in China, who have been arrested and detained for over a year since the borders between the DPRK and China were shut in January 2020 due to COVID-19 concerns”.[[32]](#footnote-32) The letter also referred to information that “on 14 July 2021, [the Chinese government] repatriated over 50 individuals of the DPRK who had been detained over a year in Shenyang” and added that “if that is the case, we are concerned that the other individuals may be facing the imminent risk of repatriation”.[[33]](#footnote-33)

In its reply of 27 September 2021, the Chinese government stated that: “The individuals in question are persons from the Democratic People’s Republic of Korea who have entered China for economic reasons using illegal channels. The illegal immigrants from the Democratic People’s Republic of Korea are illegal immigrants, not refugees. Their entry and residence in China violated the laws and regulations of the country’s entry and exit procedures and undermined the country's orderly administration of entry and exit over the border. The principle of “non-*refoulement*” does not apply to persons from the Democratic People’s Republic of Korea who enter China illegally. The relevant Chinese administrative departments have been properly handling the problem of illegal entry of persons from the Democratic People’s Republic of Korea, in accordance with international law, domestic law and humanitarian principles, and in particular have ensured the legitimate rights and interests of women, their minor children and unaccompanied minors from the Democratic People’s Republic of Korea, to the maximum extent”.[[34]](#footnote-34)

On 18 July 2023, the UN human rights experts, including the Working Group on Arbitrary Detention (WGAD), sent another joint letter to China concerning the alleged arbitrary detention of at least 2,000 North Korean escapees, approximately 70 percent whom are women, and their risk of refoulement to North Korea which may put them at risk of serious human rights violations, including arbitrary detention, torture, enforced disappearance and extrajudicial killings.[[35]](#footnote-35)

According to North Korea’s state-run Korean Central News Agency (KCNA) on 27 August, the National Emergency Disease Control Command decided to authorize the return of North Korean citizens residing overseas in response to the easing of the global pandemic situation on 26 August.[[36]](#footnote-36)

On September 21, 2023, as North Korea appeared to be moving to lift its border restrictions, human rights NGOs concerned about the widely expected resumption of forcible repatriation of North Korean detainees in China around the 19th Asian Games in Hangzhou, China (23 September to 8 October 2023) sent an open letter to Chinese President Xi Jinping calling for a legal status for the North Korean escapees and the stopping of their deportations back to North Korea.[[37]](#footnote-37)

However, it was reported that China repatriated at least 500 North Korean detainees on the night of October 9.[[38]](#footnote-38) UN human rights experts, including the Working Group on Arbitrary Detention (WGAD), also expressed alarm at the reported repatriations and called upon China to “respect the principle of non-refoulement guaranteed under international law”.[[39]](#footnote-39) They added that: “Hundreds of individuals reportedly remain in detention facing the same fate”.

 *Ms. Kim Cheol-Ok’s arrest and detention by Chinese authorities and her forcible repatriation to North Korea*

**Ms. KIM Cheol-Ok [김철옥] or Jin Tieyu [金铁玉]** is a citizen of the Democratic People’s Republic of Korea born on 18 August 1983 and raised in Musan County, North Hamgyong Province. During the great famine that ravaged her country in the 1990s, she was trafficked to China and married a Chinese man at the age of 14 in 1998 and gave birth to a daughter at the of 15 in 1999.

Ms. Kim has lived with her family in Xinzhuangzhen, Yushu [county-level city], Changchun [prefecture-level city], Jilin Province [吉林省 长春市 榆树市 新庄镇] for 25 years. While Ms. Kim’s daughter was registered as motherless and given the Chinese nationality by virtue of having a Chinese father, Ms. Kim was never given any legal status in China despite having lived with her Chinese family for a quarter century and being able to speak Chinese only as she lost her Korean proficiency because of her lack of contact with North Koreans since 1998 when she was only 14.

As an “illegal economic migrant” from North Korea, Ms. Kim had to make annual payments of up to 2,000 yuan to the police in Yushu City for her protection and was regularly summoned and questioned by the authorities to prevent her fleeing to South Korea where North Korean defectors are treated as its full citizens. In these summons, Mr. Kim was told to stay home away from the public and she would have to quit her part-time jobs in restaurants or farms to stay home for 2-3 weeks before resuming her work.

On 5 April 2023, Ms. Kim left home around 9 am and was arrested with two other North Korean escapees, Ms. Park Ok-Ran [박옥란] or Piao Yulan [朴玉兰] (born on 1 September 1977), Ms. Kim Geum-Hee [김금희] or Jin Jinxi [金妗熙] (born on 12 September 1981) and their Chinese male driver, by agents from the Changbai Korean Autonomous County Public Security Bureau [长白朝鲜族自治县 公安局] or Changbai County Public Security Bureau [长白县 公安局] at the Mishazi Service Area [米沙子服务区] in Dehui, Changchun, Jilin Province [吉林省 长春市 德惠市] on the Changyu Expressway [长余高速公路], a section of the G1 Beijing–Harbin Expressway [北京－哈尔滨高速公路] or Jingha Expressway [京哈高速]. She was taken and detained at the Baishan City Detention Center [白山市 拘留所] in Hunjiang District, Baishan [prefecture-level city], Jilin Province [吉林省 白山市 浑江区]; Baishan City encompasses the Changbai Korean Autonomous County.

The Changbai County Public Security Bureau authorities came from an area five hours’ drive from Ms. Kim’s place of residence or the Mishazi Service Area. It appears therefore that her arrest was a result of a sting operation organized by the authorities to arrest “human traffickers” or to apprehend North Korean women who want to flee to South Korea or other third countries. Ms. Kim was reportedly attempting to find her way to her elder sister who has settled in the United Kingdom.

Ms. Kim’s family was not informed about her arrest at the Mishazi Service Area or her detention at the Baishan City Detention Center. The Chinese male driver who was later released by the Changbai County Public Security Bureau told a mutual acquaintance about what transpired and she in turn relayed what she was told to Ms. Kim’s family on 16 April 2023.

On 17 April, Ms. Kim’s family visited the Baishan City Detention Center to meet with her. They could not call the Baishan City Detention Center because its phone number was not available. It took them five hours by bus and train to get there around noon. They were met not by the investigating authorities, but by the officials of the Baishan City Detention Center who said that Ms. Kim Cheol-Ok, along with her two companions, was being held at the Baishan City Detention Center, but Ms. Kim could not be met because of the ongoing investigation. Ms. Kim’s family was instead shown the CCTV footage of Ms. Kim in her detention cell with 2, 3 fellow inmates wearing private clothes that she wore when she left home on 5 April and in fair conditions. Ms. Kim’s family left clothes and money to the officials for their delivery to Ms. Kim before returning home.

On 20 April, Ms. Kim’s family visited the Baishan City Detention Center for the second time. However, unlike during the first visit three days earlier, Ms. Kim’s family was turned away at the entrance gate. Ms. Kim’s family left clothes and money to the officials at the gate again for their delivery to her before returning. Ms. Kim’s family saw three or four other unrelated family members of inmates also turned away at the gate.

On 20 April, Ms. Kim’s family contacted the South Korean government to extend protection and assistance to her.

In early May, Ms. Kim’s family was contacted regarding a separate matter by OHCHR Seoul, which was had been created by Human Rights Council resolution 25/25 of 28 March 2014 “to follow up urgently on the recommendations made by the commission of inquiry in its report … 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”.

Ms. Kim’s family explained her situation to the officials at OHCHR Seoul. It was decided that Ms. Kim’s case will be shared with UN human rights experts, who mentioned her case in the joint urgent appeal of 7 June 2023 to China, described as having “lived in China since 1998 and her Chinese family is willing to receive her if released”.[[40]](#footnote-40)

Ms. Kim’s family tried to hire a lawyer to represent her, but those who were approached all declined citing the lack of experience working with North Korean escapees or fear of government persecution if they take up a case concerning a North Korean escapee.

Ms. Kim’s family had to rely on personal connections in the government to learn that she has been accused of forming an illegal border-crossing gang. Ms. Kim’s family was worried that the Chinese authorities have stopped releasing North Korean women escapees with Chinese husbands and children in return for bribes from early 2023 but hoped that she was not at imminent risk of repatriation as she had already lived in China with her family for 25 years and does not even speak Korean anymore.

On 20 June, Ms. Kim’s family again visited the Baishan City Detention Center to meet with her. However, the officials again turned them away at the entrance gate.

On 14 August, Ms. Kim’s family was discretely informed that the border crossing between China and North Korea in Tumen [county-level city], Yanbian Korean Autonomous Prefecture, Jilin Province [吉林省 延边朝鲜族自治州 图们市] will open shortly. The North Korean government had closed the border with China following the outbreak of COVID-19 in January 2020.

In the afternoon of 9 October, Ms. Kim’s family was informed that she will be returned to North Korea through Nanpingzhen, Helong [county-level city], Yanbian Korean Autonomous Prefecture, Jilian Pvoince [吉林省 延边朝鲜族自治州 和龙市 南坪镇] around 7 pm.

A few days later, it was reported that China repatriated over 500 North Korean detainees on the night of 9 October. However, North Korea refuses to confirm the arrest and detention of the over 500 repatriated North Koreans, including Ms. Kim, following their forced repatriation from China.

*Analysis of the violations*

1. *Ms. Kim’s arrest and detention by Chinese authorities and her forcible repatriation to China*

The Working Group has in the past found China’s arrest, detention and forced transfer of escapees from the Democratic People’s Republic of Korea arbitrary, falling within categories I, II, III and V, in paragraphs 45-50 of opinion No. 54/2018 and paragraphs 18-20 of opinion No. 81/2017.

Moreover, as a signatory to the International Covenant on Civil and Political Rights since 1998, China is obliged under article 18 (a) of the 1969 Vienna Convention on the Law of Treaties to refrain from acts which would defeat the object and purpose of the Covenant, including the repeated denial of the rights to liberty and to fair trial under its articles 9 and 14.[[41]](#footnote-41)

*Category I*

Ms. Kim was not presented with an arrest warrant for her arrest warrant by the agents of the Changbai County Public Security Bureau at the time of her arrest on 5 April 2023.

For a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest, assuming *arguendo* that such a law existed. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, which the Chinese officials failed to implement in the present case.[[42]](#footnote-42)

International law on the right to personal liberty includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to personal liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[[43]](#footnote-43)

There are no valid grounds such as arrest *in flagrante delicto* to justify an exception to this rule in the present case. In its jurisprudence, the Working Group has consistently found that an arrest is considered to have been made *in* *flagrante delicto* if the accused is either apprehended during the commission of a crime or immediately thereafter, or is arrested in hot pursuit shortly after a crime has been committed.[[44]](#footnote-44)

To invoke a legal basis for deprivation of liberty, the Chinese authorities should have informed Ms. Kim of the reasons for her arrest, at the time of arrest, and promptly informed her of the charges.[[45]](#footnote-45) Their failure to do so violated articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) and (2) of the Covenant, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and renders her arrest devoid of any legal basis.

Furthermore, Ms. Kim was forcibly disappeared by the Chinese authorities from 5 April 2023 until her family’s visit to the Baishan City Detention Center to see her on 17 April. She continued to be held *incommunicado* until her deportation on 9 October.

Enforced disappearances violate international law and constitute a particularly aggravated form of arbitrary detention.[[46]](#footnote-46) Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention, lacks any valid legal basis under any circumstance and is inherently arbitrary as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.[[47]](#footnote-47)

Moreover, the practice violates the right to be brought promptly before a judge and to challenge the lawfulness of detention before a court to ensure judicial oversight of deprivation of liberty as a fundamental safeguard of personal liberty which is essential in ensuring that detention has a legal basis per article 10 of the Universal Declaration of Human Rights.[[48]](#footnote-48) It also prevents the disappeared person from exercising the right to an effective remedy under article 8 of the Universal Declaration.[[49]](#footnote-49)

The act of enforced disappearance is defined in a way that clearly distinguishes it from related offences, such as enforced deprivation of liberty, abduction, kidnapping and incommunicado detention, among others and the following three cumulative minimum elements should be contained in any definition: (a) deprivation of liberty against the will of the person concerned; (b) involvement of governmental officials, at least indirectly by acquiescence; and (c) refusal to disclose the fate and whereabouts of the person concerned.[[50]](#footnote-50)

Ms. Kim’s enforced disappearance by the Chinese authorities and the failure to investigate or to bring those responsible to justice violated articles 3, 5, 6, 8, 9 and 10 of the Universal Declaration of Human Rights, as well as principles 1, 2, 6, 7 (1), 15, 16 (1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and articles 2 (1) and (2), 3, 10 (1), (2) and (3), 13 (1), (2) and (3), 14, 19 of the Declaration on the Protection of all Persons from Enforced Disappearance, and renders his deprivation of liberty devoid of any legal basis.

The Chinese officials failed to bring Ms. Kim promptly before a judge within 48 hours of her arrest barring absolutely exceptional circumstances, as per the international standard set out in the Working Group’s jurisprudence.[[51]](#footnote-51) His pre-trial detention, which should be the exception rather than the rule, lacked a legal basis as it was not based on an individualized determination that it is reasonable and necessary, taking into account all the circumstances, for such purposes specified in law as to prevent flight, interference with evidence or the recurrence of crime, accompanied by consideration of alternatives, such as bail, electronic bracelets or other conditions, rendering detention unnecessary in the particular case.[[52]](#footnote-52) Therefore, the Government has violated articles 3 and 9 of the Universal Declaration of Human Rights as well as principles 11, 37 and 38 of the Body of Principles.[[53]](#footnote-53)

In addition, the Chinese officials did not afford Ms. Kim the right to take proceedings before a court so that it may decide without delay on the lawfulness of her detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights as well as principles 11, 32 and 37 of the Body of Principles.[[54]](#footnote-54) The UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37) affirms that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and is essential to preserve legality in a democratic society (paras. 2-3). This right, which as a core component of the prohibition of all forms of arbitrary deprivation of liberty constitutes customary international law and a peremptory norm (*jus cogens*) (para. 11) applies to all forms and situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes, irrespective of the place of detention or the legal terminology used in the legislation (annex, para. 47 (a) and (b)).[[55]](#footnote-55) Effective judicial oversight and control of deprivation of liberty are essential in ensuring that detention has a legal basis.[[56]](#footnote-56)

Ms. Kim was also effectively deprived of her right to legal counsel and representation, which is procedurally inherent in the right to liberty and security and the prohibition of arbitrary detention, in and by China, in violation of articles 3 and 9 of the Universal Declaration of Human rights, as well as principles 15, 17 and 18 of the Body of Principles and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers.[[57]](#footnote-57) In accordance with principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and must be promptly informed of this right upon apprehension; nor should access to legal counsel be unlawfully or unreasonably restricted.[[58]](#footnote-58) The Working Group reiterates that access to legal counsel from the outset of detention is an essential safeguard in ensuring that the detainee can challenge the legal basis for his or her detention.[[59]](#footnote-59)

*Category II*

Ms. Kim’s deprivation of liberty in and by China resulted from her exercise of the right to freedom of movement, the right to leave any country, including her own, and to return to her country, the right to seek and to enjoy in other countries asylum from persecution under articles 13 (1) and (2) and 14 (1) of the Universal Declaration of Human Rights.

Ms. Kim left North Korea because she was deprived of her right to food and as then-UN High Commissioner for Refugees António Guterres stated in March 2006 and she was in need of protection as “refugees sur place” because of the risk of deportation back to North Korea that is associated with the risk of persecution in those areas covered by the 1951 Refugee Convention.[[60]](#footnote-60)

The Working Group has previously condemned China’s arrest and detention of the escapees as a clear violation of the principle of non-*refoulement*, enshrined in article 33 of the Convention relating to the Status of Refugees and the Protocol thereto, both to which China is a party, and arbitrary as resulting from the exercise of the right to seek and enjoy asylum under article 14 (1), falling within category II.[[61]](#footnote-61)

Even assuming *arguendo* China’s official position that the escapees from the Democratic People’s Republic of Korea are economic migrants that are not entitled to protection as refugees under international law, the forced repatriation violates the non-*refoulement* provisions in article 3 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which China is a party, and article 8 (1) of the Declaration on the Protection of all Persons from Enforced Disappearance, given the substantial grounds to believe that he would be in danger of torture and enforced disappearance.

In December 2015, the Committee against Torture has expressed concern at China’s rigorous policy of forcibly repatriating all nationals of the Democratic People’s Republic of Korea on the ground that they have illegally crossed the border solely for economic reasons and urged China to immediately cease forcible repatriation of undocumented migrants and victims of trafficking to the Democratic People’s Republic of Korea, and allow United Nations High Commissioner for Refugees (UNHCR) personnel unimpeded access to nationals of the Democratic People’s Republic of Korea who have crossed the border, in order to determine if they qualify for refugee status.[[62]](#footnote-62)

In May 2023, the Committee on the Elimination of Discrimination against Women raised concerns about the trafficking of North Korean women and girls for purpose of sexual exploitation, forced marriage or concubinage; their categorical classification as “illegal migrants” and forcible return; and deprivation of their children’s rights to birth registration, nationality, education and health care and recommended China to: (a) ensure that North Korean women victims of trafficking are not criminalized and have access to temporary residence permits and to basic services; (b) provide UNHCR and relevant humanitarian organizations with full and unimpeded access to North Korean women victims of trafficking; and (c) regularize the status of North Korean women victims of trafficking who marry 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 with their mothers.[[63]](#footnote-63)

*Category III*

Ms. Kim was forcibly transferred to the Democratic People’s Republic of Korea by the Chinese authorities without the benefit of a fair and public hearing by an independent and impartial tribunal. The Working Group has held in paragraph 62 of opinion No. 33/2020 that involuntary expulsion to a foreign State without a hearing by judicial authorities cannot be in conformity with the due process of the law.

As the Working Group has previously observed,[[64]](#footnote-64) international law regarding extradition provides procedures that must be observed by countries in arresting, detaining and returning individuals to face criminal proceedings in another country in order to ensure that their right to a fair trial is protected. Those procedures have not been observed in the present case. Furthermore, it is disturbing that Ms. Kim never had any access to legal counsel.

China’s forced repatriation of escapees to the Democratic People’s Republic of Korea has the veneer of legality in the form of the following four treaties:[[65]](#footnote-65)

* the Mutual Cooperation Agreement for the Extradition of Defectors and Criminals (Democratic People’s Republic of Korea–People’s Republic of China Agreement on Repatriation of Illegal Entrants) (c. 1966);
* the Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas (c. 1986);
* the Bilateral Agreement on Mutual Cooperation for the Maintenance of State Safety and Social Order (July 1998)[[66]](#footnote-66); and
* the Democratic People’s Republic of Korea–People’s Republic of China Civil and Criminal Law Cooperation Treaty (2003)[[67]](#footnote-67)

Even assuming *arguendo* that all four treaties qualify as valid, binding legal documents, they may facilitate the forced return of escapees 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.

Mr. Marzuki Darusman, then-Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, expressed precisely this concern with respect to the treaty reportedly signed between the Democratic People’s Republic of Korea and Russia on 2 February 2016, that calls for “transferring and readmitting individuals who have illegally left and are illegally present” on the territory of either country” in the communications to Russia (OL RUS 1/2016[[68]](#footnote-68)) and the Democratic People’s Republic of Korea (OL PRK 1/2016[[69]](#footnote-69)) of 15 February 2016.

Individuals should not be expelled to another country when there are substantial grounds for believing that their life or freedom would be at risk, or they would be in danger of being subjected to torture or ill-treatment (see Report of the Working Group on Arbitrary Detention, 9 January 2007, A/HRC/4/40, paras. 44–45). In addition, the risk of arbitrary detention in the receiving State must also be among the elements taken into consideration before individuals are expelled. In this case, the Chinese government did not avail itself of the option of resorting to the regular extradition procedure, or obtaining credible assurances from the Democratic People’s Republic of Korea on due process and fair trial guarantees or on prevention of torture and enforced disappearance.[[70]](#footnote-70)

Therefore, China’s forced repatriation of Ms. Kim without due process or individualized judicial determination violated the principle of non-*refoulement*, especially its obligation under article 3 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[[71]](#footnote-71) and article 8 (1) of the Declaration on the Protection of all Persons from Enforced Disappearance.

Given the above, the violations of the right to a fair trial and due process, as set out in articles 9 and 10 of the Universal Declaration, are of such gravity as to give Ms. Kim’s deprivation of liberty in and by China an arbitrary character, falling within category III.

*Category V*

China has repatriated Ms. Kim because she was a North Korean national. The Working Group has already held that, with respect to China’s consistent pattern of systematic return of nationals of the Democratic People’s Republic of Korea arrested at the border, their detention due to their nationality is discriminatory in nature and therefore their arrest and detention fall within category V.[[72]](#footnote-72)

Ms. Kim’s arrest, detention and forced repatriation due to his presumed nationality is equally discriminatory in nature, in violation of articles 2 and 7 of the Universal Declaration, and therefore fall within category V.

1. *Ms. Kim’s arrest and detention in and by the Democratic People’s Republic of Korea following her forcible repatriation from China in January 2005*

The Working Group has in the past found the arrest and detention of the escapees forcibly returned to the Democratic People’s Republic of Korea from China arbitrary, falling within categories I, II, III and V, in paragraphs 20-25 of opinion No. 29/2015, paragraphs 18-22 of opinion No. 32/2015, paragraphs 51-56 of opinion No. 54/2018 and paragraphs 21-31 of opinion No. 81/2017.[[73]](#footnote-73)

*Category I*

Ms. Kim was not presented with an arrest warrant for her arrest by the authorities of the Democratic People’s Republic of Korea at the time of her removal from China on 9 October 2013.

For a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest, assuming *arguendo* that such a law existed. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, which was the Democratic People’s Republic of Korea failed to implement in the present case.[[74]](#footnote-74)

International law on the right to personal liberty includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to personal liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[[75]](#footnote-75)

There are no valid grounds such as arrest *in flagrante delicto* to justify an exception to this rule in the present case. In its jurisprudence, the Working Group has consistently found that an arrest is considered to have been made *in* *flagrante delicto* if the accused is either apprehended during the commission of a crime or immediately thereafter, or is arrested in hot pursuit shortly after a crime has been committed.[[76]](#footnote-76)

To invoke a legal basis for deprivation of liberty, the Democratic People’s Republic of Korea authorities should have informed Ms. Kim of the reasons for her arrest, at the time of her unlawful expulsion from China on 9 October 2023, and promptly informed her of the charges.[[77]](#footnote-77) Their failure to do so violated articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) and (2) of the Covenant, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and renders his arrest devoid of any legal basis.

Since 9 October 2023, Ms. Kim has been subjected to enforced disappearance and *incommunicado* detention by North Korean authorities. Enforced disappearances violate numerous substantive and procedural provisions of the Covenant and constitute a particularly aggravated form of arbitrary detention.[[78]](#footnote-78)

Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention, lacks any valid legal basis under any circumstance and is inherently arbitrary as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.[[79]](#footnote-79)

Moreover, the practice violates the right to be brought promptly before a judge and to challenge the lawfulness of detention before a court to ensure judicial oversight of deprivation of liberty as a fundamental safeguard of personal liberty which is essential in ensuring that detention has a legal basis per article 10 of the Universal Declaration of Human Rights and articles 9 (3) and (4) and 14 (1) of the Covenant.[[80]](#footnote-80) It also prevents the disappeared person from exercising the right to an effective remedy under article 8 of the Universal Declaration and article 2 (3) of the Covenant.[[81]](#footnote-81)

The act of enforced disappearance is defined in a way that clearly distinguishes it from related offences, such as enforced deprivation of liberty, abduction, kidnapping and incommunicado detention, among others and the following three cumulative minimum elements should be contained in any definition: (a) deprivation of liberty against the will of the person concerned; (b) involvement of governmental officials, at least indirectly by acquiescence; and (c) refusal to disclose the fate and whereabouts of the person concerned.[[82]](#footnote-82)

The Democratic People’s Republic of Korea’s failure to investigate or bring to justice perpetrators of enforced disappearances, violations of articles 7 and 9, and frequently, 6 of the Covenant, that are recognized as criminal under international law can in and of itself give rise to a separate breach of article 2 (3) of the Covenant, and they are crimes against humanity when committed as part of a widespread or systematic attack on a civilian population per article 7 of the Rome Statute of the International Criminal Court.[[83]](#footnote-83)

Ms. Kim’s enforced disappearance in and by the Democratic People’s Republic of Korea and the failure to investigate or to bring those responsible to justice violated articles 3, 5, 6, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 2 (3), 7, 9 (1), (3) and (4), 14 (1) and 16 of the Covenant, as well as principles 1, 2, 6, 7 (1), 15, 16 (1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and articles 2 (1) and (2), 3, 10 (1), (2) and (3), 13 (1), (2) and (3), 14, 19 of the Declaration on the Protection of all Persons from Enforced Disappearance, and renders his deprivation of liberty devoid of any legal basis.

The Democratic People’s Republic of Korea failed to bring Ms. Kim promptly before a judge within 48 hours of her arrest barring absolutely exceptional circumstances, as per the international standard set out in the Working Group’s jurisprudence[[84]](#footnote-84) after her unlawful removal from China in on 9 October 2023. Her pre-trial detention, which should be the exception rather than the rule, lacked a legal basis as it was not based on an individualized determination that it is reasonable and necessary, taking into account all the circumstances, for such purposes specified in law as to prevent flight, interference with evidence or the recurrence of crime, accompanied by consideration of alternatives, such as bail, electronic bracelets or other conditions, rendering detention unnecessary in the particular case.[[85]](#footnote-85) Therefore, the Government has violated articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) and (3) of the Covenant as well as principles 11, 37 and 38 of the Body of Principles.[[86]](#footnote-86)

In addition, the Democratic People’s Republic of Korea has not afforded Ms. Kim the right to take proceedings before a court so that it may decide without delay on the lawfulness of his detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and articles 2 (3) and 9 (1) and (4) of the Covenant as well as principles 11, 32 and 37 of the Body of Principles.[[87]](#footnote-87) The United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37) affirms that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and is essential to preserve legality in a democratic society (paras. 2-3). This right, which as a core component of the prohibition of all forms of arbitrary deprivation of liberty constitutes customary international law and a peremptory norm (*jus cogens*) (para. 11), applies to all forms and situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes, irrespective of the place of detention or the legal terminology used in the legislation (annex, para. 47 (a) and (b)).[[88]](#footnote-88) Effective judicial oversight and control of deprivation of liberty are essential in ensuring that detention has a legal basis.[[89]](#footnote-89)

Ms. Kim was also effectively deprived of her right to legal counsel and representation, which is procedurally inherent in the right to liberty and security and the prohibition of arbitrary detention, in and by the Democratic People’s Republic of Korea, in violation of articles 3 and 9 of the Universal Declaration of Human rights, as well as principles 15, 17 and 18 of the Body of Principles and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers.[[90]](#footnote-90) In accordance with principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and must be promptly informed of this right upon apprehension; nor should access to legal counsel be unlawfully or unreasonably restricted.[[91]](#footnote-91) The Working Group reiterates that access to legal counsel from the outset of detention is an essential safeguard in ensuring that the detainee can challenge the legal basis for his or her detention.[[92]](#footnote-92)

*Category II*

Ms. Kim’s deprivation of liberty in and by the Democratic People’s Republic of Korea resulted from her exercise of the right to freedom of movement, the right to leave any country, including her own, and to return to her country and the right to seek and to enjoy in other countries asylum from persecution under articles 13 (1) and (2) and 14 (1) of the Universal Declaration of Human Rights and articles 12 (1) and (2) of the Covenant.

Ms. Kim left North Korea because she was deprived of her right to food and as then-UN High Commissioner for Refugees António Guterres stated in March 2006 and she was in need of protection as “refugees sur place” because of the risk of deportation back to North Korea that is associated with the risk of persecution in those areas covered by the 1951 Refugee Convention.[[93]](#footnote-93)

North Korea’s arrest and detention of the escapees, including Ms. Kim, are arbitrary as resulting from their exercise of the rights under articles 13 (1) and (2) and 14 (1) of the Universal Declaration of Human Rights and articles 12 (1) and (2) of the Covenant.

*Category III*

During and after Ms. Kim’s unlawful removal from China to the Democratic People’s Republic of Korea, the latter State failed to respect her right to legal assistance at all times, which is inherent in the right to liberty and security of person, as well as the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) and (3) (b) and (d) of the Covenant, as well as principles 15, 17 and 18 of the Body of Principles and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers. The Working Group considers that this violation substantially undermined and compromised Ms. Kim’s capacity to defend herself in any subsequent judicial proceedings.[[94]](#footnote-94)

The Government also denied Ms. Kin’s due process right to be visited by and to correspond with her family and to be given adequate contact with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations, in accordance with principles 15 and 19 of the Body of Principles and rules 43 (3) and 58 of the Nelson Mandela Rules.[[95]](#footnote-95) As the Human Rights Committee has observed in paragraph 58 of its general comment No. 35 (2014), giving prompt and regular access to family members, as well as independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention and infringement of personal security.

Ms. Kim’s arrest, detention and unlawful removal from China to the Democratic People’s Republic of Korea occurred at the latter State’s request and as a result of close collaboration between the two States. The Democratic People’s Republic of Korea is also responsible for the failure to afford Ms. Kim her due process rights during her unlawful expulsion from China.[[96]](#footnote-96)

*Category V*

Mr. Kim’s deprivation of liberty resulted from her status as a North Korean escapee, in violation of articles 2 and 7 of the Universal Declaration of Human Rights, articles 2 (1) and 26 of the Covenant and article 5 (a) and (b) of the International Convention on the Elimination of All Forms of Racial Discrimination, falling under category V.

We accordingly ask the Working Group to:

- render the opinion that:

With regard to China, the deprivation of liberty of Kim Cheol-ok, being in contravention of articles 2, 3, 5, 6, 8, 9, 10, 13 (1) and (2), and 14 (1) of the Universal Declaration and article 3 (1) of the Torture Convention, is arbitrary and falls within categories I, II, III and V.

With regard to the Democratic People’s Republic of Korea, the deprivation of liberty of Kim Cheol-ok, being in contravention of articles 2, 3, 5, 6, 8, 9, 10, 11 (1), 13 (1) and (2), 14 (1) of the Universal Declaration of Human Rights; articles 2 (1) and (3); 7; 9 (1), (2), (3) and (4); 12 (1) and (2); 14 (1) and (3) (b) and (d); and 16 of the Covenant, is arbitrary and falls within categories I, II, III and V.

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2. Kim Tae-sik, “Chinese Public Security Authorities Round Up 150 North Korean Escapees and Transfer Them to North Korea [中공안당국 탈북자 1 백 50 명 검거,北압송]”, Yonhap News 1998.12.21., <https://n.news.naver.com/mnews/article/001/0004346357?sid=103> [↑](#footnote-ref-2)
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10. 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> [↑](#footnote-ref-10)
11. 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.”). [↑](#footnote-ref-11)
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43. The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See decisions No. 1/1993, paras. 6–7; No. 3/1993, paras. 6–7; No. 4/1993, para. 6; No. 5/1993, paras. 6, 8 and 9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6–7. For more recent jurisprudence, see opinions No. 38/2013, para. 23; No. 48/2016, para. 48; No. 21/2017, para. 46; No. 63/2017, para. 66; No. 76/2017, para. 55; No. 83/2017, para. 65; No. 88/2017, para. 27; No. 93/2017, para. 44; No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; No. 82/2018, para. 29; No. 6/2020, para. 40; No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; No. 31/2020, para. 41; No. 32/2020, para. 33; No. 33/2020, para. 54; No. 34/2020, para. 46; No. 82/2020, para. 39; No. 83/2020, para. 63; No. 86/2020, para. 58; No. 87/2020, para. 106; No. 89/2020, para. 54; and No. 92/2020, para. 45. [↑](#footnote-ref-43)
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45. See opinions No. 10/2015, para. 34; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; No. 46/2019, para. 51; No. 51/2019, para. 57; No. 56/2019, para. 78; No. 65/2019, para. 60; No. 71/2019, para. 71; No. 82/2019, para. 74; No. 6/2020, para. 41; No. 13/2020, para. 48; No. 14/2020, para. 51; No. 31/2020, para. 42; No. 33/2020, para. 55; No. 34/2020, para. 47; No. 61/2020, para. 66; No. 64/2020, para. 54; No. 65/2020, para. 75; No. 67/2020, para. 66; No. 68/2020, para. 66; No. 69/2020, para. 34; No. 73/2020, para. 45; No. 74/2020, para. 56; No. 76/2020, para. 51; No. 77/2020, para. 59; No. 78/2020, para. 43; No. 79/2020, para. 29; No. 80/2020, para. 27; No. 82/2020, para. 40; No. 83/2020, para. 64; No. 84/2020, para. 39; No. 86/2020, para. 60; No. 87/2020, para. 107; No. 88/2020, para. 84; No. 89/2020, para. 55; No. 90/2020, para. 43; and No. 92/2020, para. 48. [↑](#footnote-ref-45)
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47. See Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, article 1 (1) (“Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.”) and opinions No. 82/2018, para. 28; No. 18/2019, para. 33; No. 22/2019, para. 67; No. 26/2019, para. 88; No. 28/2019, para. 61; No. 29/2019, para. 54; No. 36/2019, para. 35; No. 41/2019, para. 32; No. 42/2019, para. 48; No. 51/2019, para. 58; No. 56/2019, para. 79; No. 6/2020, para. 43; No. 31/2020, para. 43; No. 32/2020, para. 36; No. 41/2020, para. 61; No. 42/2020, para. 74; No. 63/2020, para. 33; No. 78/2020, para. 44; No. 79/2020, para. 30; No. 82/2020, para. 41; No. 87/2020, para. 110; No. 92/2020, para. 50; No. 2/2021, para. 59; No. 25/2021, para. 44; No. 30/2021, para. 53; No. 34/2021, para. 78; and No. 42/2021, para. 62. The Working Group and other human rights experts have also classified secret detention as being *per se* arbitrary, falling within category I. Joint study on global practices in relation to secret detention in the context of countering terrorism, A/HRC/13/42 (20 May 2010), para. 20. See also Report of the Working Group on Arbitrary Detention, A/HRC/16/47 (19 January 2011), para. 54 and opinions No. 13/2020, para. 52; No. 31/2020, para. 44; 32/2020, para. 36; No. 33/2020, paras. 58 and 74; No. 34/2020, para. 50; and 92/2020, para. 51. See also the Human Rights Council’s resolutions on integrity of the judicial system: resolutions 31/2 of 23 March 2016, paras. 10, 11 and 16; 37/3 of 22 March 2018, paras. 8, 9 and 16. [↑](#footnote-ref-47)
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73. See also opinions No. 34/2013, No. 35/2013 and No. 36/2013. The Working Group in fact considered the case of a Republic of Korea POW and his son, Mr. Choi Sang Soo and Mr. Choi Seong Il, who escaped to China but was forcibly transferred back to the Democratic People’s Republic of Korea in case No. 36/2013. [↑](#footnote-ref-73)
74. See, for example, opinions No. 46/2017, para. 19; No. 75/2017, para. 35; No. 93/2017, para. 44; No. 9/2018, para. 35; No. 10/2018, paras. 45-46; No. 36/2018, paras. 40; No. 46/2018, par. 48; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; No. 46/2019, para. 51; No. 65/2019, para. 59; No. 71/2019, para. 70; No. 72/2019, para. 40; No. 82/2019, para. 74; No. 6/2020, par. 39; No. 11/2020, para. 37; No. 13/2020, para. 46; No. 14/2020, para. 49; No. 25/2020, para. 34; No. 31/2020, para. 40; No. 32/2020, para. 32; No. 33/2020, paras. 53 and 71; No. 34/2020, para. 44; No. 61/2020, para. 65; No. 65/2020, para. 75; No. 68/2020, para. 66; No. 69/2020, para. 34; No. 73/2020, para. 44; No. 74/2020, para. 54; No. 76/2020, para. 51; No. 78/2020, para. 41; No. 79/2020, para. 28; No. 82/2020, para. 38; No. 83/2020, para. 62; No. 84/2020, para. 38; No. 86/2020, para. 58; No. 87/2020, para. 105; No. 89/2020, para. 53; No. 91/2020, para. 56; and No. 92/2020, para. 44. See also earlier opinions No. 28/2016; No. 1/2017, paras. 44-45; and No. 6/2017, paras. 39-40. [↑](#footnote-ref-74)
75. The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See decisions No. 1/1993, paras. 6–7; No. 3/1993, paras. 6–7; No. 4/1993, para. 6; No. 5/1993, paras. 6, 8 and 9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6–7. For more recent jurisprudence, see opinions No. 38/2013, para. 23; No. 48/2016, para. 48; No. 21/2017, para. 46; No. 63/2017, para. 66; No. 76/2017, para. 55; No. 83/2017, para. 65; No. 88/2017, para. 27; No. 93/2017, para. 44; No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; No. 82/2018, para. 29; No. 6/2020, para. 40; No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; No. 31/2020, para. 41; No. 32/2020, para. 33; No. 33/2020, para. 54; No. 34/2020, para. 46; No. 82/2020, para. 39; No. 83/2020, para. 63; No. 86/2020, para. 58; No. 87/2020, para. 106; No. 89/2020, para. 54; and No. 92/2020, para. 45. [↑](#footnote-ref-75)
76. See No. 46/2012, para. 30; No. 3/2018, para. 44; No. 9/2018, para. 38; No. 23/2019, para. 75; No. 69/2020, para. 30; and No. 74/2020, para. 54. See also earlier opinions No. 61/2011, paras. 48–49; No. 67/2011, para. 30; No. 53/2014, para. 42; No. 36/2017, para. 85; and Report of the Working Group on Arbitrary Detention on its visit to Mexico (27 October to 10 November 2002), E/CN.4/2003/8/Add.3 (17 December 2002), paras. 39 and 72 (a). [↑](#footnote-ref-76)
77. See opinions No. 10/2015, para. 34; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; No. 46/2019, para. 51; No. 51/2019, para. 57; No. 56/2019, para. 78; No. 65/2019, para. 60; No. 71/2019, para. 71; No. 82/2019, para. 74; No. 6/2020, para. 41; No. 13/2020, para. 48; No. 14/2020, para. 51; No. 31/2020, para. 42; No. 33/2020, para. 55; No. 34/2020, para. 47; No. 61/2020, para. 66; No. 64/2020, para. 54; No. 65/2020, para. 75; No. 67/2020, para. 66; No. 68/2020, para. 66; No. 69/2020, para. 34; No. 73/2020, para. 45; No. 74/2020, para. 56; No. 76/2020, para. 51; No. 77/2020, para. 59; No. 78/2020, para. 43; No. 79/2020, para. 29; No. 80/2020, para. 27; No. 82/2020, para. 40; No. 83/2020, para. 64; No. 84/2020, para. 39; No. 86/2020, para. 60; No. 87/2020, para. 107; No. 88/2020, para. 84; No. 89/2020, para. 55; No. 90/2020, para. 43; and No. 92/2020, para. 48. [↑](#footnote-ref-77)
78. Human Rights Committee, general comment No. 35: Article 9 (Liberty and security of person), adopted by the Committee at its 112th session (7–31 October 2014), CCPR/C/GC/35 (16 December 2014), para. 17. See also opinions No. 5/2020, para. 74; No. 6/2020, para. 43; No. 11/2020, para. 41; No. 13/2020, para. 52; No. 20/2020, para. 82; No. 23/2020, para 66; No. 31/2020, para. 43; No. 33/2020, para. 73; No. 34/2020, para. 49; No. 39/2020, para. 35; No. 41/2020, para. 61; No. 42/2020, paras. 59 and 74; No. 50/2020, para. 45; No. 52/2020, para. 55; No. 63/2020, para. 33; No. 73/2020, para. 46; No. 77/2020, para. 61; No. 78/2020, para. 44; No. 79/2020, para. 30; No. 87/2020, para. 110; No. 90/2020, para. 47; No. 1/2021, para. 76; No. 2/2021, para. 59; No. 25/2021, para. 44; No. 27/2021, para. 38; No. 37/2021, para. 65; No. 38/2021, para. 83; and No. 42/2021, para. 62. [↑](#footnote-ref-78)
79. See Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, article 1 (1) (“Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.”) and opinions No. 82/2018, para. 28; No. 18/2019, para. 33; No. 22/2019, para. 67; No. 26/2019, para. 88; No. 28/2019, para. 61; No. 29/2019, para. 54; No. 36/2019, para. 35; No. 41/2019, para. 32; No. 42/2019, para. 48; No. 51/2019, para. 58; No. 56/2019, para. 79; No. 6/2020, para. 43; No. 31/2020, para. 43; No. 32/2020, para. 36; No. 41/2020, para. 61; No. 42/2020, para. 74; No. 63/2020, para. 33; No. 78/2020, para. 44; No. 79/2020, para. 30; No. 82/2020, para. 41; No. 87/2020, para. 110; No. 92/2020, para. 50; No. 2/2021, para. 59; No. 25/2021, para. 44; No. 30/2021, para. 53; No. 34/2021, para. 78; and No. 42/2021, para. 62. The Working Group and other human rights experts have also classified secret detention as being *per se* arbitrary, falling within category I. Joint study on global practices in relation to secret detention in the context of countering terrorism, A/HRC/13/42 (20 May 2010), para. 20. See also Report of the Working Group on Arbitrary Detention, A/HRC/16/47 (19 January 2011), para. 54 and opinions No. 13/2020, para. 52; No. 31/2020, para. 44; 32/2020, para. 36; No. 33/2020, paras. 58 and 74; No. 34/2020, para. 50; and 92/2020, para. 51. See also the Human Rights Council’s resolutions on integrity of the judicial system: resolutions 31/2 of 23 March 2016, paras. 10, 11 and 16; 37/3 of 22 March 2018, paras. 8, 9 and 16. [↑](#footnote-ref-79)
80. See opinions No. 20/2020, para. 82; No. 42/2020, para. 74; No. 50/2020, para. 45; No. 52/2020, para. 56; No. 77/2020, para. 64; No. 87/2020, para. 110; No. 1/2021, para.85; and No. 37/2021, para. 6. [↑](#footnote-ref-80)
81. See opinions No. 87/2020, para. 110; and No. 37/2021, para. 6. [↑](#footnote-ref-81)
82. Report of the Working Group on Enforced or Involuntary Disappearances: Addendum: Best practices on enforced disappearances in domestic criminal legislation, A/HRC/16/48/Add.3 (28 December 2010), para. 21, citing “General comment on article 4 of the Declaration on the Protection of All Persons from Enforced Disappearance” in Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1996/38 (15 January 1996) (paras.54-58), para. 55. See also opinion No. 78/2020, para. 44. [↑](#footnote-ref-82)
83. General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, adopted on 29 March 2004 (2187th meeting), CCPR/C/21/Rev.1/Add. 13 (26 May 2004), para. 18. [↑](#footnote-ref-83)
84. See opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; No. 20/2019, para. 66; No. 26/2019, para. 89; No. 30/2019, para. 30; No. 36/2019, para. 36; No. 42/2019, para. 49; No. 51/2019, para. 59; No. 56/2019, para. 80; No. 76/2019, para. 38; No. 82/2019, para. 76; No. 6/2020, para. 45; No. 14/2020, para. 53; No. 31/2020, para. 45; No. 32/2020, para. 38; No. 33/2020, para. 75; and No. 34/2020, para. 51. See also Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 33, citing *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008), paras. 7.3–7.5. See also CCPR/C/79/Add.89, para. 17; CCPR/C/SLV/CO/6, para. 14; and CCPR/CO/70/GAB, para. 13. [↑](#footnote-ref-84)
85. Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 38. See also Report of the Working Group on Arbitrary Detention, A/HRC/19/57, (26 December 2011), paras. 48-58 and opinion No. 26/2019, para. 89. [↑](#footnote-ref-85)
86. See opinions No. 74/2020, para. 57; No. 78/2020, para. 49; No. 82/2020, para. 46; and No. 92/2020, para. 52. [↑](#footnote-ref-86)
87. See opinions No. 74/2020, para. 58; No. 78/2020, para. 50; No. 82/2020, para. 47; and No. 92/2020, para. 53. [↑](#footnote-ref-87)
88. See opinions No. 56/2016, para. 49; No. 38/2017, para. 83; No. 70/2017, para. 57; No. 4/2018, para. 53; No. 92/2017, para. 50; No. 2/2018, para. 51; No. 4/2018, para. 53; No. 8/2018, para. 40; No. 42/2018, para. 77; No. 51/2018, para. 83; No. 67/2018, para. 71; No. 17/2019, para. 61; No. 38/2020, para. 36; and No. 66/2020, para. 49. See also Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), UN Doc. CCPR/C/GC/35, para. 40. [↑](#footnote-ref-88)
89. See opinions No. 35/2018, para. 27; No. 39/2018, para. 35; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; No. 65/2019, para. 64; No. 71/2019, para. 72; No. 76/2019, para. 38; No. 82/2019, para. 76; No. 6/2020, para. 46; No. 14/2020, para. 54; No. 31/2020, para. 46; No. 32/2020, para. 39; No. 33/2020, para. 52; and No. 34/2020, para. 52; No. 82/2020, para. 47; and No. 89/2020, para. 57. [↑](#footnote-ref-89)
90. See opinion No. 84/2020, para. 43. [↑](#footnote-ref-90)
91. See also Human Rights Committee, general comment No. 32 (2007), para. 34. [↑](#footnote-ref-91)
92. See opinion No. 40/2020, para. 29. [↑](#footnote-ref-92)
93. 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 [↑](#footnote-ref-93)
94. See also Human Rights Committee, general comment No. 32 (2007), para. 34. [↑](#footnote-ref-94)
95. See opinions No. 35/2018, para. 39; No. 44/2019, paras. 74–75; No. 45/2019, para. 76; and No. 84/2020, para. 70. [↑](#footnote-ref-95)
96. See opinion No. 84/2020, paras. 71-72. [↑](#footnote-ref-96)