

January 3, 2024

President Yoon Suk-yeol

CC. Prime Minister Han Duck-soo
Foreign Minister Park Jin
Unification Minister Kim Yung-ho
Acting Justice Minister Lee Noh Kong
National Defense Minister Shin Won-sik

Re: South Korea's responsibility as a global pivotal state to raise the issue of the forcible repatriation of North Korean refugees, including South Korean POWs and their families, through advance written questions as well as UPR recommendations for China's 4th Universal Periodic Review (UPR) on January 23, 2024

Dear President Yoon Suk-yeol,

We urge your government, as a global pivotal state, to raise the issue of the forcible repatriation of North Korean refugees, including South Korean POWs and their families, through advance written questions as well as UPR recommendations for China's 4th Universal Periodic Review (UPR) on January 23, 2024.

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".¹ 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.² 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.³ 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".⁴ 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".⁵ On 16 December 2013, the DPRK COI wrote a letter to Beijing, "in which it summarized its concerns relating to China's policy and practice of forced repatriation of DPRK citizens [including] particular concern about Chinese officials providing specific information on such persons to DPRK authorities" and urged Beijing to "caution relevant officials that such conduct could amount to the aiding and abetting of crimes against humanity where repatriations and information exchanges are specifically directed towards or have the purpose of facilitating the commission of crimes against humanity in the DPRK".⁶

When a UNHCR (UN High Commissioner for Refugees) 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

¹ 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>

² Id., paras. 380-434.

³ Id., paras. 435-477.

⁴ Id., para. 1221 (a).

⁵ Id., paras. 1098-1114.

⁶ Id., para. 1197.

involvement with the population.⁷ The UNHCR classified these North Korean escapees as refugees on account of the politically discriminatory food distribution policies in North Korea.⁸

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”.⁹ 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.¹⁰

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 for North Korean escapees. Various countries have made similar recommendations to China during its Universal Periodic Reviews (UPRs).

However, China’s policy and practice of forced repatriation of North Korean refugees have continued since then. During the height of the Covid-19 pandemic, on August 23, 2021, the UN human rights experts sent a 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”.¹¹ 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”.

On 18 July 2023, the UN human rights experts sent another 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.¹²

⁷ U.S. Committee for Refugees World Refugee Survey 2000 – China (1 June 2000), <https://www.refworld.org/docid/3ae6a8cc4.html> ; Ko Seung-il, “UNHCR recognizes some of North Korean escapees as refugees”, 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>

⁸ 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.

⁹ 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>

¹⁰ UNHCR, “UNHCR chief calls on states to respect non-refoulement after North Koreans deported from Laos” (30 May 2013), <https://www.unhcr.org/news/news-releases/unhcr-chief-calls-states-respect-non-refoulement-after-north-koreans-deported>

¹¹ Joint allegation letter to China by Tomás Ojea Quintana, Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea; Miriam Estrada-Castillo, Vice-Chair of the Working Group on Arbitrary Detention; and Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, JAL CHN 8/2021, August 23, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26571> (accessed September 5, 2023).

¹² Joint allegation letter to China by Matthew Gillett, Vice-Chair on Communications of the Working Group on Arbitrary Detention; Elizabeth Salmon, Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea; Aua Baldé, Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Felipe González Morales, Special Rapporteur on the human rights of migrants; Reem Alsalem, Special Rapporteur on violence against women and girls, its causes and consequences; Dorothy Estrada-Tanck, Chair-Rapporteur of the Working Group on discrimination against women and girls, JAL CHN 9/2023, 18 July 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28210> (accessed September 5, 2023).

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 North Korean escapees and the stopping of their deportations back to North Korea.¹³

However, it was reported that China repatriated at least 500 North Korean detainees on the night of October 9, 2023, the day after the closing of the Hangzhou Asian Games.¹⁴ The UN human rights experts also expressed alarm at the reported repatriations and called upon China to “respect the principle of non-refoulement guaranteed under international law”.¹⁵ They added that: “Hundreds of individuals reportedly remain in detention facing the same fate”.

The victims of the 10/9 repatriation of North Korean escapees included a South Korean POW family¹⁶ and a North Korean woman escapee who has lived in marriage with a Chinese man for 25 years and whose daughter recently bore her a granddaughter.¹⁷ It has been reported that previously the Chinese authorities forcibly repatriated 80 North Koreans on August 29 and 40 others on September 18 this year, and nearly 50 North Koreans in July 2021.¹⁸

In the case of South Korean POWs and their families, we note that China repatriated POW Han Man-taek in January 2005¹⁹, three POWs’ families of 9 persons (4, 3 and 2 from each family) in October 2006²⁰ and a POW, a Mr. Kim, in February 2017.²¹

For China’s 1st UPR on February 9, 2009, Canada recommended that China “take immediate measures to implement the recommendations of November 2008 of the Committee against Torture, particularly on the inadmissibility in court of statements made under torture and the nonrefoulement of refugees from the Democratic People’s Republic of Korea” while the Netherlands “looked forward to further explanations on the death penalty and on UNHCR’s role with regard to refugees from the Democratic People’s Republic of Korea”.²²

¹³ Open Joint Letter to President Xi Jinping re: China’s Forcible Repatriation of North Korean Refugees (September 21, 2023), <https://www.hrw.org/news/2023/09/21/letter-human-rights-watch-president-xi-jinping> (accessed November 7, 2023).

¹⁴ Human Rights Watch (HRW), “China Forcibly Returns More than 500 to North Korea: Returnees, Mostly Women, Face Torture, Sexual Abuse, Forced Labor” (October 12, 2023), <https://www.hrw.org/news/2023/10/12/china-forcibly-returns-more-500-north-korea> (accessed November 7, 2023).

¹⁵ OHCHR, “China must not forcibly repatriate North Korean escapees: UN experts” (17 October 2023), <https://www.ohchr.org/en/press-releases/2023/10/china-must-not-forcibly-repatriate-north-korean-escapees-un-experts> (accessed November 7, 2023).

¹⁶ Jang Hee-jun, “Exclusive: “Chinese public security returned North Korean escapees one-on-one; systematic involvement suspected [단독] “中 공안, 탈북민 일대일 복송”...조직적 개입 의혹”, Asia Business Daily (October 29, 2023), <https://view.asiae.co.kr/article/2023102703091013187>

¹⁷ Ahn Joon-ho, “Exclusive: A North Korean woman escapee sold to China at 15 forcibly repatriated to North Korea after 25 years [단독] 15 살에 중국에 팔려간 탈북 여성, 25 년 만에 강제 복송”, VOA (October 13, 2023), <https://www.voakorea.com/a/7308447.html>

¹⁸ HRW, “China Forcibly Returns More than 500 to North Korea: Returnees, Mostly Women, Face Torture, Sexual Abuse, Forced Labor” (October 12, 2023), <https://www.hrw.org/news/2023/10/12/china-forcibly-returns-more-500-north-korea>

¹⁹ Hwang Il-do, “The forcible repatriation of POW Han Man-taek to North Korea [국군포로 한만택 강제 복송]”, Shindonga (December 27, 2005), <https://shindonga.donga.com/politics/article/all/13/105053/1>

²⁰ Baek Seung-koo, “9 POW family members handed over to South Korean consulate general in China forcibly repatriated to North Korea”, Monthly Chosun (February 2007), <https://monthly.chosun.com/client/news/viw.asp?nNewsNumb=200702100001> ; Baek Seung-koo, “Choi Sung-ryong, Head of the Abductees’ Family Union who first revealed the mass repatriation of POW families to North Korea”, Monthly Chosun (February 2007), <https://monthly.chosun.com/client/news/viw.asp?ctcd=&nNewsNumb=200702100002> ; MOFA, “Concerning the article on repatriation of POW families to North Korea (Monthly Chosun February edition) (January 17, 2007), https://www.mofa.go.kr/www/brd/m_4080/view.do?seq=291232

²¹ Lee Chae-hyun, “POW in his 80s abandoned by government and forcibly repatriated to North Korea after coming to China”, TV Chosun (September 29, 2017), https://news.tvchosun.com/site/data/html_dir/2017/09/29/2017092990150.html

²² Report of the Working Group on the Universal Periodic Review: China, A/HRC/11/25 (5 October 2009), paras. 28(g) and 30, <https://undocs.org/A/HRC/11/25>

For China's 2nd UPR on October 22, 2013, Canada made the recommendation 186.66 ("Invite the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea to visit North-Eastern China to meet officials and North Korean citizens who have fled to China") while the Czech Republic made the recommendation 186.241 ("Protect North Korean refugees in accordance with international law, honouring the principle of non-refoulement").²³

In the written questions submitted in advance of China's 3rd UPR on November 6, 2018, the United States ("Under China's ratification of the UN Convention Against Torture, specifically Article 3, what steps is the government taking to ensure North Korean and Burmese refugees, many of them women and children, are not forcibly repatriated back to their home countries to face certain excessive punishments such as torture and even death?"), Austria ("Austria is concerned about reports that persons from DPRK have been denied access to refugee determination procedures in China. What efforts are currently being undertaken to ensure that the principle of non-refoulement is fully incorporated into domestic legislation?") and Germany ("Does China abide by the principle of non-refoulement, including in cases of North-Korean refugees in China?") asked relevant questions.²⁴

South Korea was not able to make its statement for China's 1st UPR on February 9, 2009,²⁵ but it "welcomed the revision of the Exit-Entry Administration Law on the refugee status determination process" and made recommendations 186.242 and 186.243 for China's 2nd UPR on October 22, 2013. By contrast, South Korea did not raise the issue through advance written questions or recommendations for China's 3rd UPR on November 6, 2018.

Therefore, we urge South Korea to submit the following written questions in advance of China's 4th UPR on January 23, 2024:

1. Does China abide by the principle of non-refoulement in accordance with the Refugee Convention and Protocol as well as the Torture Convention, including in cases of North Korean refugees in China?
2. Article 46 of the Exit and Entry Administration Law, adopted in June 30, 2012 and entered into force on July 1, 2013, provides 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". Provide information concerning "screening process" and the number of (1) "foreigners applying for refugee status", (2) "temporary identity certificates issued by public security organs" and (3) "refugee identity certificates issued by public security organs" per year since 2013 disaggregated by nationality, gender and age.
3. What steps have been taken to revise or terminate bilateral treaties with North Korea to the extent that they conflict with China's international obligation to respect the principle of non-refoulement?
4. On October 9, 2023, China reportedly deported over 500 North Korean detainees, including a family of an unrepatriated prisoner of war from the Republic of Korea. Is it China's position that none of them were "refugees" under international law? If so, by what process and by which or whose authority was this determination made?
5. Does China treat the abductees, detainees, and unrepatriated prisoners of war (POWs) from the Republic of Korea and their families who escape from North Korea like others who flee from North Korea? Or does China consider the former to be citizens of the Republic of Korea who are entitled to a different treatment?
6. How many North Koreans, disaggregated by gender and age, (1) have been arrested and detained; and (2) have been deported to North Korea as "illegal migrants" per year since 2013? How many North Koreans, disaggregated by gender and age, (1) have applied for refugee status; and (2) have been recognized as refugees per year since 2013? What are the circumstances meriting such status?
7. How many women, disaggregated by nationality and age, have been reported to the Chinese authorities as trafficked victims per year since 2013? Are there any legislation or procedures to protect trafficked women and

²³ Report of the Working Group on the Universal Periodic Review: China (including Hong Kong, China and Macao, China), A/HRC/25/5 (4 December 2013), paras. 186.66 and 186.241, <https://undocs.org/A/HRC/25/5>

²⁴ ADVANCE QUESTIONS TO CHINA (FIRST BATCH) – REV., https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session31/CN/AdvanceQuestionsChina_rev1.doc

²⁵ Report of the Working Group on the Universal Periodic Review: China, A/HRC/11/25 (5 October 2009), para. 26, <https://undocs.org/A/HRC/11/25>

to allow foreign victims to remain in the Chinese territory, temporarily or permanently for humanitarian reasons, such as forced pregnancy caused from trafficking and/or raising children born under the circumstances?

8. What measures have been taken to ensure medical service for undocumented North Korean women during pregnancy, childbirth or post-natal period and to ensure immunization and other medical needs for their unregistered children?
9. Publish the number of foreign citizens detained in China, disaggregated by nationality, gender and age per year since 2013.
10. The Commission of Inquiry on human rights in the DPRK (COI) wrote a letter to the Chinese government on 16 December 2013 summarizing its concerns relating to China's policy and practice of forced repatriation of North Koreans and expressing its particular concern about Chinese officials providing specific information on such persons to DPRK authorities. The COI urged the Chinese government 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 North Korea. Has the Chinese government cautioned its officials as urged by the COI?

Moreover, we urge South Korea to make the following UPR recommendations:

1. Provide adequate protection to refugees and asylum seekers, including especially those from neighbouring countries, in accordance with their international obligations such as the principle of non-refoulement [under the Refugee Convention and Protocol as well as the Torture Convention]
2. Guarantee a safe passage for North Koreans who wish to go to a third country that is willing to accept them
3. Protect victims of trafficking, including North Koreans, and allow them to remain in the Chinese territory for humanitarian reasons, such as forced pregnancy caused from trafficking and/or raising children born under the circumstances
4. Publish statistics concerning refugee application and recognition, disaggregated by nationality and gender, under [article 46 of] the Exit and Entry Administration Law
5. Publish the number of North Korean escapees detained and deported from China per year, including the ROK POWs and their families

Thank you.

Sincerely,

Signature organizations and individuals (as of January 3, 2024)

Kim Kyu Li (elder sister of Kim Cheol-ok who was repatriated by China to North Korea on October 9, 2023)

Citizens' Alliance for North Korean Human Rights (NKHR)

Committee for Human Rights in North Korea (HRNK)

HanVoice

Justice For North Korea

Korean War POW Family Association

Mulmangcho

No Chain

Stepping Stones

THINK

Transitional Justice Working Group (TJWG)