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Moving Forward on North Korea: The Case for Bold Transitional Justice Initiatives in South Korea

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INTRODUCTION

The North Korean regime is one of the most repressive in the world. As Michael Kirby, the chair of the landmark United Nations Commission of Inquiry (UN COI) on Human Rights in the Democratic People's Republic of Korea, noted in his remarks at the 25th session of the UN Human Rights Council in Geneva on March 17, 2014:

The Commission of Inquiry has found systematic, widespread, and grave human rights violations occurring in the Democratic People's Republic of Korea. It has also found a disturbing array of crimes against humanity. These crimes are committed against inmates of political and other prison camps; against starving populations; against religious believers; against persons who try to flee the country—including those forcibly repatriated by China. These crimes arise from policies established at the highest level of the State. They have been committed and continue to take place in the Democratic People's Republic of Korea, because the policies, institutions and patterns of impunity that lie at their heart remain in place. The gravity, scale, duration and nature of the unspeakable atrocities committed in the country reveal a totalitarian State that does not have any parallel in the contemporary world.¹

If the yardstick for success is longevity, North Korea also is one of the modern era's most successful regimes. For more than 75 years, the Kim dynasty—led by Kim Il Sung, his son Kim Jong Il, and now his grandson Kim Jong Un—has managed to ward off internal and external threats, while providing few benefits to most of its citizens, including basic necessities such as an adequate supply of food. The regime's oppressive policies, including unparalleled control of its citizens, pervasive indoctrination, extrajudicial killings, and a vast network of political prisons, labor camps, and

¹ “Statement by Michael Kirby Chair of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea to the 25th session of the Human Rights Council, Geneva, 17 March 2014,” Office of the High Commissioner for Human Rights, March 17, 2014, www.ohchr.org/en/statements/2014/03/statement-mr-michael-kirby-chair-commission-inquiry-human-rights-democratic.

detention centers, have prevented domestic discontent from posing an existential threat to the regime. The regime's longevity is all the more remarkable given that, unlike most family dynasties, the Kim family does not enjoy a surfeit of natural resources to buoy its reign.

The Kim regime's future arguably is more secure today than at any time in recent memory. It is now one of only nine states that possess nuclear weapons, helping it to deter coercion to which nonnuclear powers might be susceptible. Further, the Kim regime has recently enjoyed stronger support from Russia and China, which have blocked potentially damaging United Nations Security Council resolutions against it and provided it with essential military, economic, and humanitarian assistance. China in particular views a collapse of the North Korean state as a serious threat to its interests and is committed to ensuring the Kim regime's longevity.

It is likely that the North Korean government will remain viable in the future, with regime change unlikely, and the prospects for reunifying the Korean Peninsula in the near or medium term even less likely. In fact, in January 2024, Kim Jong Un proclaimed at a meeting of the Supreme People's Assembly that North Korea was abandoning peaceful reunification with South Korea as a key policy goal. He went on to state that North Korea would no longer treat South Korea as a partner in reconciliation and reunification efforts, and instead viewed it as a "primary foe" and "principal enemy."²

The gravity of the Kim regime's past and ongoing human rights violations coupled with the reality of the regime's durability requires both immediate and future-oriented action to ensure justice and peace for the affected Koreans and the Korean Peninsula in general in the long term. A comprehensive transitional justice (TJ) process must begin today to ensure thorough documentation of North Korean human rights abuses; to ensure accountability for these abuses in the future; to create a foundation for future closure, healing, and reparation; and to facilitate reconciliation and sustainable peace in a future, reunified Korean society.

For the foreseeable future, TJ measures must be carried out unilaterally by South Korea with the help of outside actors, focusing first on the nearly 40,000 individuals who have escaped from

² Bong-geun Jun, "North Korea Has Lost the 'Unification Competition'," United States Institute of Peace, February 1, 2024, www.usip.org/publications/2024/02/north-korea-has-lost-unification-competition.

North Korea, most of them now living in South Korea. Ordinary South Koreans will be a second beneficiary of these TJ processes, helping to prepare them for an eventual, peaceful reunification of the Korean Peninsula. A third beneficiary of these processes—North Koreans still living under Kim rule—will be the hardest to reach. They, too, deserve attention for their ongoing suffering. They also deserve access to accurate information about South Korea and its allies, painting a picture significantly at odds with the Kim regime’s narrative.³ False narratives (e.g., South Korea is hungry for war) have remarkable staying power and will surely complicate efforts at peaceful reunification, even decades from now. In the meantime, it is essential that North Koreans are exposed to an alternate narrative that comports with reality.

TRANSITIONAL JUSTICE: UNILATERALLY PREPARING FOR POSSIBLE REUNIFICATION

Transitional Justice in South Korea and Lessons from the Past

TJ is a multidisciplinary field of theory and practice that seeks to help societies address legacies of conflict and serious human rights violations to ensure justice, promote reconciliation, and usher in a sustainable peace. TJ recognizes that addressing and redressing past injustices is critical to building a more stable and just society in the future.⁴ It also can help prevent future abuses by addressing the root causes of conflict and repression and promoting accountability for those responsible.

³ For example, in response to an annual report on North Korean human rights issued by the South Korea Ministry of Unification in early 2023, North Korea countered with a report on South Korean human rights abuses, claiming that the South Korean government subjects its people to the worst human rights violations in the world. It included the assertion that South Korea has become a “living hell, exterminating the human rights of its population” since President Yoon replaced Moon as president. In contrast to the Moon administration, President Yoon has taken a harder line on North Korea’s human rights record.

⁴ The term *transitional justice* emerged in the early 1990s to describe mechanisms—some quite experimental at the time—that were being used in countries in which important political and social transitions were taking place. Post World War II, TJ measures were implemented in Germany without the actual use of the phrase. In former Soviet bloc countries in Eastern and Central Europe, the concept was applied to the transition of those countries from communist to democratic states. In certain Latin American countries, TJ was applied to transition from dictatorial regimes to democratic states. Perhaps the most popular form was the establishment of the Truth and Reconciliation Commission in South Africa, established to aid its transition into a postapartheid regime. The common thread running through these and other examples was the fact that these societies elected to grapple with past crimes rather than wipe the slate clean, as was the case in Russia, for example.

Mechanisms that promote accountability, transparency, rules-based governance, and democracy, in turn, support the Western-led international order. TJ initiatives have the power to inoculate societies from the perils posed by contemporary politicians and influencers who peddle inaccurate narratives about a grim past.

TJ can take various forms. Criminal prosecutions are among the most visible, as they seek to hold perpetrators accountable for their crimes and underscore that such behavior will not be tolerated in the future. Truth and reconciliation commissions also provide an important platform for victims to share their stories and for societies to acknowledge past injustices, whether or not they are accompanied by comprehensive criminal prosecutions of culpable parties. So, too, can other truth-telling processes, memorialization, and educational programs, all of which can help victims recover from their trauma.⁵ Reparations often have an important place in TJ processes as well, providing tangible recompense for violations endured by victims. Institutional reform is another aspect of TJ, particularly of the police, internal security apparatus, the military, the justice system, and other institutions that may have been complicit in past abuses. This often involves the removal of violators from their positions.⁶

The TJ initiatives discussed herein are not predicated on cooperation by the Kim regime. Various actors within South Korea (i.e., NGO leaders, the artistic community, the clergy), home to the largest North Korean diaspora in the world, can take unilateral steps, with assistance from the international community, including the United Nations, the European Union, NGOs, foundations, and countries such as the United States.

The TJ initiatives discussed here are also limited to those that are practical and necessary in the near and medium term. Criminal prosecutions and institutional reform are longer-term aspirations, but documentation work and public airings of the findings, including the work undertaken by the International Bar Association (IBA) and the Committee for Human Rights in North Korea (HRNK),

⁵ Transitional Justice Working Group, *Exploring Grassroots Transitional Justice: North Korean Escapee Views on Accountability for Human Rights Abuses*, February 2019, https://en.tjwg.org/wp-content/uploads/2021/10/2019-Exploring-Grassroots-Transitional-Justice_English.pdf.

⁶ Lustration also can be an important component of TJ processes, as was the case after the collapse of communism in Eastern Europe in 1989. It has become less used than other TJ measures over time.

are realistic and critical ways to advance TJ goals in the present. Above all, this paper argues for a comprehensive inquiry into which TJ processes might be most meaningful for North Korean escapees and ordinary South Koreans, and which might be most effective in preparing these very different populations for the eventual reunification of the Korean Peninsula, even if that remains decades away. Devising TJ mechanisms well suited for traumatized North Korean escapees on the one hand, and ordinary South Koreans on the other, will be challenging, contested, and necessary. Many South Koreans suffer from “North Korea fatigue” and may not wish to be reminded of the grim reality of present-day North Korea and the difficulties endured by escapees in their midst. Also, the prospects for reunification appear increasingly bleak in light of Kim Jong Un’s 2024 announcement that North Korea is abandoning its long-standing goal of peaceful unification as well as younger South Koreans’ apathy about this subject relative to older generations.

Anecdotal evidence and surveys suggest TJ processes may present challenges for North Korean escapees as well. In a 2019 survey of more than 300 escapees conducted by the South Korean NGO Transitional Justice Working Group (TJWG), nearly 85 percent said they viewed themselves as victims of the regime’s policies.⁷ Further, more than 97 percent agreed that it was important that the escapee community play an active leadership role in designing TJ initiatives.⁸ Yet 84 percent of those surveyed expressed fear of participating in human rights–related work involving North Korea, primarily due to the fear of possible repercussions against family members who remained in North Korea.⁹ These well-founded fears will limit the number of North Korean escapees who are prepared to engage in public-facing TJ initiatives, but historically, enough have been willing to come forward to render future TJ initiatives meaningful and effective. Such was the case with the UN COI and documentation efforts by the United Nation’s Seoul office, as well as the IBA, HRNK, and other actors. In fact, numerous escapees have described their assistance in documentation efforts as cathartic, viewing it as an act of service to those who remain in North Korea.

⁷ Transitional Justice Working Group, *Exploring Grassroots Transitional Justice*, 26.

⁸ Transitional Justice Working Group, *Exploring Grassroots Transitional Justice*, 38.

⁹ Transitional Justice Working Group, *Exploring Grassroots Transitional Justice*, 38–39.

Another important conclusion of the above-referenced TJWG survey was that an overwhelming number of North Korean escapees in South Korea see TJ processes as important and meaningful to them. When presented with the four TJ mechanisms below, more than 98 percent of the survey respondents viewed them as “very important” or “quite important”:¹⁰

1. Financial Compensation for Victims of Human Rights Abuses: 98.4 percent
2. Prosecuting Perpetrators of Human Rights Abuses: 98.4 percent
3. Perpetrators Make Official Apologies: 98.1 percent
4. Nonjudicial Truth-Telling Mechanism: 98.4 percent

In short, escapees have made it clear they yearn for justice and recognition of the harm they endured at the hands of the Kim regime. As will be discussed below, a near-term priority will be to conduct in-depth surveys with a much larger pool of escapees, focusing first on those living in South Korea, and then in other countries.

South Koreans are no strangers to TJ mechanisms. The Korean Peninsula possesses a rich, ancient history of truth-seeking from which South Korea (and eventually North Korea) can draw. The core document in traditional truth-seeking in premodern Korea was the *sillok*, a written history of a monarch’s reign, composed after their death and based on records compiled by court historians during the monarch’s lifetime. This was based on Confucian morality that called for the condemnation of corrupt officers of a previous regime.¹¹

Modern truth commissions have also addressed many of the same societal needs fulfilled by Korean *sillocks*, such as providing moral lessons based on human rights principles rather than Confucian principles and promoting nation building. In December 2005, a South Korean Truth and Reconciliation Commission (Committee on Clearing Up Past Incidents for Truth and Reconciliation) was established to investigate violence, massacres, and human rights abuses that occurred between

¹⁰ Transitional Justice Working Group, *Exploring Grassroots Transitional Justice*, 31–32, 34–35.

¹¹ James B. Palais, “Records and Record-Keeping in Nineteenth-Century Korea,” *Journal of Asian Studies* 30, no. 3 (1971): 583–91.

Japan's rule over Korea in 1910 until the end of authoritarian regimes in 1993. Of the 11,174 cases and petitions it received, it accepted 76 percent.¹² Among the commission recommendations were (1) a policy of memorialization by organizing events, establishing historical records and monuments, and furthering peace education, and (2) passage of laws to provide reparations to victims.

South Korea has not displayed an appetite for in-depth inquiries into the horrors of the North Korean regime despite the multitude of firsthand accounts since the late 1990s and early 2000s, when scores of North Korean escapees began arriving in South Korea. South Korea's inaction was rendered more conspicuous when the UN COI released its grim findings in 2014, representing the 66th year of Kim rule. Notably, it was left to the United Nations, then under the direction of Secretary General Ban Ki-moon, a South Korean, to conduct the first and only exhaustive, public inquiry into North Korean human rights abuses. Since then, South Korea has not undertaken any similarly ambitious inquiries. A South Korea-led inquiry is necessary given the additional data that have been accumulating since 2014, but as noted, "North Korea fatigue" is a known phenomenon among the South Korean population, and in fact the world.

South Korea must overcome its resistance to public-facing TJ measures aimed at addressing North Korean human rights abuses. When devising such measures, South Korea and the international community can draw on lessons from around the world, including from an exhaustive review of past TJ processes in the Peacebuilder's Paper, issued by the International Center for Transitional Justice in 2019:

Transitional justice will maximize its contribution to sustainable development if it is context and gender specific; designed to foster long-term change; owned by and substantially led by victims, civil society actors, and local government; innovative, pragmatic, and problem-solving oriented, not reliant on template approaches; and supported but not designed or implemented by international actors. To increase its potential for success, it

¹² "Truth Commission: South Korea 2005," United States Institute of Peace, April 18, 2018, www.usip.org/publications/2012/04/truth-commission-south-korea-2005; the commission reportedly had an annual budget of \$15–20 million and 240 staff members.

should also be strategic, comprehensive, and aligned with political, peacebuilding, human rights, and development strategies. . . . Importantly, nonjudicial measures of transitional justice, particularly truth commissions, can be justice measures within a broader accountability framework and should therefore be considered as prominent tools in providing access to justice. (Truth-seeking efforts led by civil society and other non-state actors . . . do not play the same role in the acknowledgment of wrongdoing and therefore cannot easily replace state-led efforts.)¹³

Most examples of TJ processes involve societies that have recently completed a momentous transition. The most prominent example of TJ is South Africa's truth and reconciliation processes. TJ processes undertaken in the wake of East Germany's collapse and its reunification with West Germany may be more relevant to the Korean Peninsula. After Germany's reunification, multiple TJ efforts were undertaken, including criminal justice measures aimed at people who had engaged in political violence and human rights violations in East Germany, rehabilitation and compensation measures aimed at people who had experienced political oppression and human rights violations, lustration measures that led to the removal of judges and political leaders who had committed abuses, and the opening of the Stasi's secret service files.¹⁴ One lesson from Germany is that an announcement of TJ initiatives *before* an eventual reunification could have a significant impact.¹⁵ If these plans are communicated to North Korea, it could affect how individuals in positions of power choose to act in the immediate term.¹⁶ Nevertheless, the unlikelihood of a near-term transition on the Korean Peninsula will limit the immediate relevance of some of these TJ processes.

¹³ "On Solid Ground Building Sustainable Peace and Development After Massive Human Rights Violations," International Center for Transitional Justice, May 2019, www.ictj.org/sites/default/files/ICTJ_Report_WG-TJ-SDG16+2019_Web.pdf.

¹⁴ Constantin Goschler, "German Reunification and the Challenge of Transitional Justice," in *Transitional Justice in Unified Korea* (New York: Palgrave Macmillan, 2015), 123–35.

¹⁵ Goschler, "German Reunification and the Challenge of Transitional Justice," 132.

¹⁶ Goschler, "German Reunification and the Challenge of Transitional Justice," 132.

Other TJ processes that merit study include the Czech Republic,¹⁷ Albania,¹⁸ and Romania,¹⁹ with the latter two the closest analogues to North Korea in terms of their brutality and hermetic nature.²⁰ A concerted effort must be made to expose both South Koreans and the North Korean diaspora (in South Korea and beyond) to TJ processes so that they can begin crafting a comprehensive TJ approach informed by lessons from around the world.

The Centrality of Documentation in Advancing Transitional Justice

Regardless of which TJ mechanisms are implemented, having the most thorough factual record of what has transpired during the Kim family's reign will aid the TJ process. A chief assumption behind the need for thorough documentation is that memories fade and victims die. There are many elderly North Korean escapees whose stories are not yet fully told and who are unlikely to see the Korean Peninsula reunified in their lifetime. They deserve as many of the benefits of TJ mechanisms as is practicable during their remaining years.

The international community's interests and the long-term prospects for reunification are both advanced by documentation efforts that will help the world—but primarily South Koreans, the North Korean diaspora, and North Koreans who remain in North Korea—answer three questions:

1. What is the full extent of the human rights abuses committed by the Kim regime (e.g., how many people were incarcerated, tortured, or died unnecessarily due to the regime's actions or from North Korea's at times preventable failure to provide its population with an adequate supply of food)?

¹⁷ Mandrit Kamoli, "The Unfinished Business of Transitional Justice: Reparation of Former Political Prisoners in Post-Communist Albania," in *Transitional Justice in Albania: A Compilation of Papers by Young Albanian Researchers*, Organization for Security and Co-operation in Europe Presence in Albania and Konrad-Adenauer-Stiftung, 30–53, www.osce.org/files/f/documents/e/4/445090.pdf.

¹⁸ Civil society, media, and ordinary citizens have led the TJ movement in Albania. Among the measures that Albania undertook was rehabilitating and financially compensating former prisoners, beginning in 1991 after the fall of the communist regime and continuing today. Further, under the 1996 Genocide Law, former high-ranking members of the nomenklatura were condemned. Albania has also employed truth commissions.

¹⁹ Ilir Kalemaj, "Transitional Justice and Democratic Consolidation in Post-Communist Eastern Europe: Romania and Albania," in *Transitional Justice in Albania: A Compilation of Papers by Young Albanian Researchers*, Organization for Security and Co-operation in Europe Presence in Albania and Konrad-Adenauer-Stiftung, 54–75, www.osce.org/files/f/documents/e/4/445090.pdf.

²⁰ Kalemaj, "Transitional Justice and Democratic Consolidation," 54–75.

2. Within North Korea, under whose direction were these abuses carried out, focusing on the leadership in Pyongyang, but also at the provincial/local level?
3. Which countries thwarted efforts by external actors (e.g., United Nations, United States) to address the Kim government's worst human rights abuses?

Regarding the third question, just as it was important for Holocaust survivors to understand the role that external actors played in facilitating Germany's efforts to exterminate all European Jews (e.g., the Vichy government in France), North Korean citizens and escapees invariably will one day demand a full accounting of outside assistance provided by countries such as Russia and China. China in particular has played a decisive role in supporting the Kim regime and continues to repatriate escapees to North Korea in clear violation of international law, unnecessarily imperiling their lives given that South Korea is eager to provide them with safe haven.

There also is a need for thorough documentation of the human rights abuses committed against North Koreans *inside* China and *inside* Russia through forced labor, sex trafficking, forced marriages, and so on. An annual report chronicling China's and Russia's transgressions might prove useful, especially at the time of a possible reunification, when China and Russia may seek to persuade North Koreans to favor a path advanced by Beijing and Moscow and to reject options advanced by South Korea and the United States. To be clear, an accounting of how China and Russia have harmed North Koreans (i.e., propping up the Kim regime through economic assistance, military cooperation, Security Council vetoes, etc.) is valuable and needed for its own sake, irrespective of any future reunification.

Documentation Case Study: IBA/HRNK Inquiry on Crimes Against Humanity in North Korean Detention Centers

In 2017, the IBA conducted an Inquiry on Crimes Against Humanity in North Korean Political Prisons,²¹ which was followed by an Inquiry on Crimes Against Humanity in North Korean

²¹ *Report: Inquiry on Crimes Against Humanity in North Korean Political Prisons*, International Bar Association and Hogan Lovells, December 2017, www.hoganlovells.com/-/media/hogan-lovells/pdf/2017/dprinquirylegalopinion121217hl.pdf.

Detention Centers, conducted jointly by the IBA and HRNK in 2022.²² Both inquiries were inspired by, and seen as a natural follow-on to, the UN COI, the gold standard for UN-driven documentation efforts.

Objectives of both IBA inquiries included (1) documenting crimes for use at some future date, including TJ initiatives that South Korea may undertake before any reunification, and (2) educating the international community, human rights advocates, and ordinary citizens (primarily in South Korea and North Korea) about North Korea’s ongoing crimes against humanity in the hopes of increasing resources and diplomatic efforts aimed at curbing those crimes in the immediate term.²³

In both inquiries, eminent international judges determined that there was a reasonable basis to conclude that Kim Jong Un and other regime officials committed and continue to commit crimes against humanity under the 1998 Rome Statute of the International Criminal Court (ICC). Both inquiry reports recommended that the ICC investigate those responsible for operating North Korea’s political prisons and detention centers, ranging from Kim Jong Un at one end to low-level prison guards at the other.

In the 2022 inquiry, four renowned international jurists—Navi Pillay (inquiry chair, South Africa), Dame Silva Cartwright (New Zealand), Silvia Fernández (Argentina), and Wolfgang Schomburg (Germany)—presided over an in-person hearing featuring live testimony from North Korea experts and survivors of North Korean detention centers. These luminaries brought with them decades of experience on some of the most consequential international criminal tribunals of the last

²² *Report: Inquiry on Crimes Against Humanity in North Korean Detention Centers*, International Bar Association, Debevoise & Plimpton, and the Committee for Human Rights in North Korea, June 2022, www.ibanet.org/document?id=Inquiry-on-Crimes-Against-Humanity-in-North-Korean-Detention-Centers-2022; North Korea denies political prisons even exist, but satellite photos confirm their existence, as well as the existence of detention centers, labor camps, and other penal institutions. Most people who are sentenced to a political prison initially spend time in a detention center before being transferred, often without notice to family members. Estimates of North Korea’s political prison population typically range from 80,000 to 150,000. Only a small fraction of political prisoners are released or escape. It is widely viewed as a death sentence, with most people perishing from poor nutrition, starvation, torture, execution, or overwork.

²³ The 2017 and 2022 inquiries sought to advance three main goals: (1) increase public awareness of grave human rights violations in North Korea’s political prisons and detention centers; (2) explore the practical and legal options of holding the architects and overseers of North Korea’s political prisons and detention centers accountable for alleged crimes against humanity if the evidence demonstrates that there are reasonable grounds to conclude such crimes have been committed; and (3) further develop a model for conducting inquiries that other civil society organizations may wish to replicate when accountability for past or ongoing human rights violations has proven elusive due to inaction by the international community or otherwise.

half century, including the ICC, the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia, and the Extraordinary Chambers in the Courts of Cambodia. In the case of Judge Pillay, she served as the UN high commissioner for human rights when the landmark UN COI on North Korean human rights was launched under Justice Michael Kirby's chairmanship.

The IBA/HRNK's 2022 report, in support of the inquiry and hearing, exhaustively documented the crimes against humanity committed in connection with North Korea's network of detention centers, focusing primarily on crimes committed in the last 20 years (*after* the passage of the Rome Statute).²⁴ The four jurists spearheading the inquiry determined there were reasonable grounds to conclude that the following 10 (of 11) crimes against humanity enumerated in the Rome Statute had been, and continued to be, committed: (1) murder, (2) extermination, (3) enslavement, (4) forcible transfer, (5) imprisonment or severe deprivation of physical liberty, (6) torture, (7) sexual violence, (8) persecution, (9) enforced disappearance, and (10) other inhumane acts. Only the 11th crime of apartheid was not found to have been committed, although some have argued that North Korea's *song-bun* system is a form of apartheid that renders this crime applicable as well.

The inquiry also found reasonable grounds to conclude that the following classes of individuals may be subject to prosecution for some or all of the 10 crimes referenced above, including Kim Jong Un in his capacity as head of state; members of the Organization and Guidance Department; members of the State Affairs Commission; members of the Ministry of Social Security (formerly known as the Ministry of People's Security); and members of the Ministry of State Security. The legal basis for holding these individuals accountable for crimes against humanity under the Rome Statute included two bases for criminal responsibility: (1) *individual criminal* responsibility under Article 25 (i.e., direct perpetration), and (2) *superior responsibility* under Article 28 (i.e., liability of military

²⁴ "North Korea: IBA Report Calls for Investigation of Supreme Leader Kim Jong-Un and Other High-Level Officials for Crimes Against Humanity," International Bar Association, June 27, 2022, www.ibanet.org/North-Korea-IBA-report-calls-for-investigation-of-Supreme-Leader-Kim-Jong-un-and-other-high-level-officials-for-crimes-against-humanity; the IBA and HRNK also produced a documentary entitled *A Living Hell: Crimes Against Humanity in North Korean Detention Centers and the Quest for Accountability*, www.youtube.com/watch?v=jegrL-uxccA.

Figure 1. Accountability Chart

The following chart lists the eleven Crimes Against Humanity enumerated in the Rome Statute, the treaty that gave rise to the ICC. Additionally, this chart lists the ten classes of individuals who may be subject to investigation and prosecution for committing crimes associated with North Korea's pretrial detention centers known as *ku-ryu-jang*, holding centers known as *jip-kyul-so*, and labor training camps known as *ro-dong-dan-ryeon-dae*.

	Kim Jong-un	Korean Workers' Party (KWP)	Organization and Guidance Department	State Affairs Commission	Ministry of People's Security (MPS) ^a	Ministry of State Security (MSS) ^b	MPS Officers	MSS Officers	MSS Agents and Prison Guards	MPS Agents and Prison Guards
1. Murder	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
2. Extermination	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
3. Enslavement	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
4. Forcible Transfer	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙		
5. Imprisonment	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
6. Torture	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
7. Sexual Violence	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
8. Persecution	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
9. Enforced Disappearance	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙		
10. Other Inhumane Acts	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
11. Apartheid										

^a The MPS has a force of approximately 300,000 and is responsible for policing and general population control, including the investigation and preliminary examination of crimes that are not considered "political." The MPS also engages in surveillance, maintains the citizen registration system, and issues internal travel documents to monitor and control the movement of citizens. The MPS is currently known as the Ministry of Social Security.

^b The MSS has approximately 50,000 personnel. It conducts counterintelligence and internal security functions, enforces the Monolithic Ideological System through surveillance and investigations of political crimes, and monitors activities against the regime to identify "antistate" criminals through mass surveillance networks.

Source: Reproduced with permission from the International Bar Association and Committee on Human Rights in North Korea, Report: *Inquiry on Crimes Against Humanity in North Korean Detention Centers*, www.ibanet.org/document?id=Inquiry-on-Crimes-Against-Humanity-in-North-Korean-Detention-Centers-2022, 152; Copyright 2022, IBA and HRNK.

commanders and civilian superiors for the failure to prevent or punish the crimes of their *subordinates*). The report's evidentiary findings are perhaps best encapsulated in figure 1, which identifies the individuals or classes of individuals susceptible to prosecution for crimes against humanity.

The 2022 report called on North Korea's government and the international community to urgently take all necessary actions to ensure the cessation of crimes against humanity in the detention centers and to ensure compliance with the obligations contained in human rights treaties to which North Korea is a party. The inquiry also called for accountability of those responsible for crimes against humanity in North Korea using all possible avenues, including investigation and prosecution before the ICC, a special international tribunal, or national courts through the exercise of universal

jurisdiction.²⁵ It also called for targeted sanctions and nonjudicial TJ mechanisms that can play a role in a comprehensive approach to address gross human rights violations, such as national consultations, truth and reconciliation commissions, and reparations programs.

Increasing Civil Society’s Capacity to Play a Leadership Role in Transitional Justice Processes

Civil society has an integral role to play in all aspects of TJ. Without an engaged civil society, it is unlikely that TJ mechanisms will yield a satisfying outcome, especially for the many victims who rely on NGOs to advocate on their behalf. Professor Sarah Son observed:

NGOs in South Korea focused on North Korean human rights issues have shown greater determination than the South Korean government in working closely with the North Korean escapee community and using the information gathered from them to push for accountability for the North Korean regime. This was particularly relevant after the passing of the North Korea Human Rights Act in 2016 . . . when the provisions of the act barely stuttered into action or never materialised at all. This was largely thanks to . . . a new [Moon] government in 2017, which de-emphasised North Korean human rights in the interests of inter-Korean engagement.²⁶

Based on recent history, Seoul-based NGOs—working with sympathetic actors within the South Korean government, but also the United Nations and other international actors—will need to take the lead in pressing the South Korean government to play a more energetic role in devising a coherent, long-term approach to TJ processes.²⁷ This effort should also be multidisciplinary, relying not

²⁵ The IBA/HRNK report relied heavily on UN COI findings that China may be aiding and abetting crimes against humanity by repatriating North Korean escapees in violation of international law.

²⁶ Sarah A. Son, “Chasing Justice: Victim Engagement with Accountability for Human Rights Abuses in North Korea,” *Asian Studies Review* 44, no. 4 (2020): 621–40; Son also noted that many of the South Korean NGOs critical to the TJ process are run by South Koreans, not North Korean escapees, because the North Korean human rights movement began in the mid-1990s, by which time few North Koreans had escaped. This is something that needs to be corrected, either organically or with active assistance from outside actors.

²⁷ Son, “Chasing Justice.”

only on human rights organizations but also leaders from health-related fields (especially mental health professionals), academia, the clergy, law, the arts community, media/journalism, and other disciplines.

A potential five-step process to advance a bold TJ initiative in South Korea could take the following shape:

1. Identify leaders in five to seven key disciplines (e.g., health care/mental health community, human rights, academia, arts, clergy, law, local and national government) who are committed to devising comprehensive TJ mechanisms informed by the views of key stakeholders.
2. Provide training for these leaders on the full array of TJ processes, drawing on Korean traditions and arranging study tours to countries that have completed TJ processes (e.g., Germany, South Africa) and countries that currently are implementing TJ processes.
3. Undertake a comprehensive, yearlong consultation process that includes devising a TJ survey that targets North Korean escapees living in South Korea as well as South Korean citizens. To the extent resources are available, the North Korean diaspora outside of South Korea should also participate in the survey. The survey should be supplemented by extensive, one-on-one interviews (in person and virtual) and in-person focus groups in South Korea to determine which of the wide array of TJ mechanisms would be most effective in the context of a *preunified* Korean Peninsula.
4. Educate the South Korean population on the results of the TJ survey and begin preparing them for the commencement of various TJ mechanisms.
5. Begin carrying out TJ processes favored by the greatest number of people reached in the consultation process referenced in #3 above. Initial activities might include a weekly radio or television program that features a different escapee each week recounting what life was like in North Korea, what drove them to escape, and the hardships they endured upon arriving in South Korea, such as mental health challenges, financial challenges, and difficulty integrating into South Korean society.

Two segments of civil society merit special mention for future, successful TJ initiatives:

Religious Groups, Particularly the Christian Church. Although South Korea is a secular society, roughly 30 percent of the country identifies as Christian. The Christian community can play an outsized role in promoting healing and advancing TJ processes.²⁸ Further, Christians are the most persecuted subgroup in North Korea,²⁹ making it natural for them to engage more forcefully on North Korean human rights issues and TJ initiatives. The clergy might also be able to play a role in helping South Koreans to bridge the gap with the alienated North Korean escapee community in South Korea. Korean churches can model the (biblical) values of hospitality, forgiveness, and humility, thereby fostering mutual respect between North and South Koreans.³⁰ There are also North Korean Christians living outside of South Korea, including in the United States, who might be able to assist in TJ processes. Finally, non-Christian religious leaders also should be included in any dialogue on the role religious institutions might play in TJ processes. After all, persecution against *all* religious adherents in North Korea is extreme.

The Artist Community. The arts have a unique power to bring people together, to educate, and to spark dialogue on sensitive matters that might not otherwise be discussed freely.³¹ The artist community can address the issues of North/South troubles, dashed hopes of a reunification, and what it takes to surmount the difficult past endured by North Korean escapees, especially those who spent

²⁸ Church leaders played a key role in various TJ processes in Chile, Guatemala, and elsewhere. In the South African Truth and Reconciliation Commission, there was an explicit appeal to Christianity as an authorized and legitimate method of truth-telling and a way to foster reconciliation. South Korean church leaders might even take the lead on a targeted inquiry into the persecution of Christians in North Korea. Any such church-led inquiry could investigate China's practice of repatriating individuals that it identifies as being Christian when they are handed over to North Korean officials.

²⁹ *Report: Inquiry on Crimes Against Humanity in North Korean Detention Centers*, 119, ¶ 254.

³⁰ S. A. Son, "Identity and Social Reconciliation in a Postconflict Korea: What Role for the Church?" *International Bulletin of Mission Research* 42, no. 2 (2018), 143–51.

³¹ Rachel Hughes, "Reparations of the Extraordinary Chambers in the Courts of Cambodia: A Brief Update," International Institute for Asian Studies, Newsletter 80, Summer 2018, www.iias.asia/the-newsletter/article/reparations-extraordinary-chambers-courts-cambodia-brief-update; the arts have played an important role in Cambodia's path toward normalcy, including by contributing to TJ processes, such as facilitating outreach activities by formal institutions, and mobilizing citizens to engage in official processes and to campaign for formal justice.

months or longer in North Korea's penal system. Given the power of the arts, there should be a concerted effort to accelerate the output of the artistic community through grants and other incentives. Foundations, the government, and high-net-worth individuals should be encouraged to provide funds with no strings attached to various artists, with the only constraint being that such funded efforts must be relevant to reunification and TJ issues. Separate funds should be more targeted, such as commissioning playwrights and theater companies to directly tackle issues around TJ, the assimilation of North Koreans into South Korean society, and anxieties around the conflict between North and South Korea. The same could be done for the musical community through contests or other publicity-friendly initiatives.

Given the appetite among North Koreans for South Korean media content, some of the suggestions above could be commissioned with this group explicitly in mind. Among other things, such content could counter the regime's false narrative about South Korea, shining an unwelcome light on the privation North Koreans experience relative to their South Korean brethren. Because such content undermines the Kim regime's mythology, it has intensified its war on South Korean culture in recent years, severely punishing or executing citizens who demonstrate an affinity for South Korean fashion, music, hairstyles, and even slang.³² The Kim regime likely recognizes that the clamor for consumer goods and Western pop culture in the Soviet Union contributed to public disillusionment and its eventual dissolution.³³

International Actors

The international community can also help implement TJ initiatives in South Korea. To date, the South Korean government has been at least one step behind the NGO community and the United Nations on all matters relating to North Korean human rights and TJ. While the current South

³² See South Korea's Unification Ministry *2024 Report on North Korean Human Rights*, www.unikorea.go.kr/eng_unikorea/news/Publications/ronkhr/. Notably, the Moon administration refused to make public the 2023 annual human rights report, suppressing it for fear it might undermine engagement with North Korea. The Yoon administration, which viewed this and other measures as appeasement, resumed public dissemination of the report in 2024; see also Jessie Yeung and Yoonjung Seo, "Why North Korea Is So Afraid of K-Pop," CNN, July 24, 2021, <https://edition.cnn.com/2021/07/23/asia/north-korea-culture-war-kpop-intl-hnk-dst/index>.

³³ Yeung and Seo, "Why North Korea Is So Afraid of K-Pop."

Korean government likely will be more receptive than the previous Moon administration, it still may hesitate to lead the type of bold TJ effort called for by the current situation.

The United Nations in particular may be the most important international actor in these efforts. The UN office in Seoul is dedicated to North Korean human rights and TJ-type efforts, namely documentation. It has a great deal of experience working with escapees and is largely seen as having been a positive force with respect to North Korean human rights and TJ efforts to date. Globally, the United Nations has vast TJ experience it can draw on to help ensure South Korea benefits from lessons learned over the last 50 or more years. It is unlikely that the United Nations' Seoul office possesses funds to support bold, multiyear TJ initiatives in South Korea, but it could request additional funds in upcoming budget cycles.

European countries with embassies in Seoul are also sources of diplomatic support, technical expertise, and funding that could help advance TJ efforts in South Korea. Countries that have implemented successful TJ processes (i.e., Germany, Romania, Czech Republic) might be willing to fund study trips for both civil society leaders and South Korean government officials. This could prove indispensable and eye-opening, especially for North Korean escapees who have engaged in very little international travel.

Similarly, international NGOs, including private foundations, think tanks, bar associations, transitional justice NGOs, and human rights NGOs, can provide technical expertise, and perhaps funding too, especially in the case of foundations. Large international law firms might be another source of expertise and assistance, much of which could be provided pro bono.

Special mention should be made of the United States in the context of South Korean TJ processes. As South Korea's closest, most important ally, the United States should be prepared to play an especially important role in advancing any TJ process. With a large military presence in South Korea, it has an enormous stake in the peaceful reunification of the Korean Peninsula. Assisting one-half of the reunification equation (South Korea) to prepare its citizens for an eventual reunification squarely advances US interests.

One measure the United States can take to demonstrate a deep commitment to the TJ process is to extend a hand to North Koreans who manage to escape. For example, the United States could

assign special immigration status to escapees, allowing for Temporary Protected Status (TPS) and work authorization for North Korean escapees. Citizens from countries with far less grave conditions, such as Venezuelans, enjoy TPS. One of the grounds for granting TPS to North Korean escapees might be the food insecurity from which North Korea objectively can be said to be suffering,³⁴ but it also could be tied to acute human rights abuses. Because the Kim regime is almost certain to react negatively to this gesture, the United States could counter by demanding proof that food insecurity and human rights abuses are no longer a concern, at which point TPS could be lifted.³⁵

PUBLIC EDUCATION ABOUT TRANSITIONAL JUSTICE

Educational efforts focused on North Korean human rights abuses and general hardships endured by escapees before fleeing North Korea can help advance the TJ process. Among other things, this might help chip away at the taboo in South Korea about discussing North Korean human rights issues. It also might lessen the prejudice endured by North Koreans. Teaching open-minded youth about the current situation in North Korea could encourage a more empathetic stance toward North Korean escapees in their midst, as well as their brethren who remain in North Korea.

Efforts to increase escapees' fluency with TJ issues also is essential. The Citizens' Alliance for North Korean Human Rights has facilitated study tours to Europe, enabling escapees to learn about ongoing TJ processes, including the creation of archives and the exhumation of graves.³⁶ These types of study tours build the confidence of participants and expose them to the range of remedies that might translate well in South Korea, which enhances their capacity to contribute to TJ processes upon their return.³⁷

³⁴ Sung Whui Moon and Do Hyung Han, "Food Shortage Spreads in North Korea, with Some Starving Farmers Unable to Work," Radio Free Asia, May 23, 2023, www.rfa.org/english/news/korea/food-05232023121954.html.

³⁵ Two senior US government officials (current and former) with whom the author spoke said this option merited investigation to see if it is legally and politically viable.

³⁶ Son, "Chasing Justice."

³⁷ Son, "Chasing Justice."

Another education-related initiative that might be beneficial, for both escapees and ordinary South Koreans, is regular public hearings or “town halls” at which attendees ask experts or representatives of the South Korean government about a range of topics, including mental health challenges faced by people who have lived in highly repressive regimes; international criminal justice issues that feature retired South Korean judges who have served on the ICC or the International Criminal Tribunal for the former Yugoslavia; and special government benefits and services to which escapees are entitled.

Raising awareness about TJ issues and past human rights violations through mass media can help build a shared vision for a future based on human rights principles. Television, radio programs, and social media are primary vehicles for reaching South Koreans. At the same time, much of this content can also be used for transmission into North Korea. Since its inception, the Kim regime has indoctrinated its citizens with inaccurate narratives about South Korea and the United States, one that harms the prospects for the eventual peaceful reunification of the Korean Peninsula. Public education initiatives undertaken today could pay dividends in the future by ensuring both South and North Koreans have a more accurate understanding of each other’s shared humanity, culture, and history. As noted above, there is an eager audience in North Korea for South Korean media content, and this should be exploited, especially given what is known about the efficacy of such efforts. In the 2019 TJWG survey, when North Korean escapees were asked how they heard about the concept of human rights while still living in North Korea, respondents cited the following sources:³⁸

1. Friends of family: 29 percent
2. Illegal USBs/CDs: 20 percent
3. State newspapers or TV: 18 percent
4. Neighbors: 17 percent
5. Foreign radio: 17 percent
6. Workplace: 14 percent

³⁸ Transitional Justice Working Group, *Exploring Grassroots Transitional Justice*, 28.

7. Foreign TV: 11 percent
8. School: 11 percent
9. Colleagues: 9 percent
10. Other: 7 percent
11. Foreign reading material: 6 percent

It is likely that a significant percentage of the people who make up the friends of family, neighbors, and colleagues learned about human rights through the other listed sources (i.e., illegal USBs, foreign radio, foreign TV, and foreign reading material) before informing others. In short, educating North Koreans about highly sensitive subjects such as human rights has the potential to be remarkably effective, even in the world's least penetrable country.

CONCLUSIONS AND RECOMMENDATIONS

Near- and medium-term prospects for the peaceful reunification of the Korean Peninsula are poor, and steadily worsening. An emboldened Kim regime—with its nuclear arsenal, an increasingly advanced missile program, and the support of China and Russia—is singularly focused on its own survival. If peaceful reunification was ever a priority for Kim Jong Un, it is no longer today. Even if the seemingly entrenched Kim regime falls unexpectedly, China and Russia may seek to prevent a reunified Korean Peninsula dominated by a key United States ally. After decades-long exposure to anti-West propaganda, ordinary North Koreans are not likely to oppose internal forces (e.g., North Korea's security apparatus) or external forces, namely China and Russia, intent on ensuring North Korea remains independent of, and a thorn in the side of, South Korea and the West.

To the greatest degree possible, the Yoon administration, or its successor, should depoliticize the North Korea issue, conceding that neither “proengagement” administrations on the one hand or hard-liners on the other have managed to secure game-changing concessions from North Korea or moved the two Koreas materially closer to peaceful reunification. Just as the “who lost Russia?” debate is a largely empty exercise—Putin lost Russia, not the United States or Europe—it should be

stipulated that it was not feeble or unimaginative thinking by South Korea and the West that “lost” North Korea; instead, it was the Kim family’s single-minded quest to prolong its rule at all costs.

Given the above, South Korea should focus on doing right by its own people, preparing them for a possible reunification in the very distant future. A key recommendation of this paper is that South Korea should unilaterally implement a bold TJ initiative that delivers a modicum of justice to the roughly 40,000 North Korean escapees in South Korea and also prepares its remaining population for peace and reconciliation with North Korea in the future. There is robust support for TJ among the escapee community. Ordinary South Korean citizens will almost certainly be more skeptical of the need for TJ measures. This is where leadership from the South Korean government, buttressed by outside support (e.g., the United Nations, the United States), is essential.

Finally, South Korea should redouble efforts to transmit information and media content into North Korea in order to prepare North Koreans for reunification in the distant future. First, it must aggressively counter the poisonous, destabilizing narratives the Kim regime continues to disseminate about South Korea and the West, particularly about their supposed hunger for a hot war. There is also a moral imperative to reach as many North Koreans as possible to acknowledge their suffering and provide them with hope.³⁹ As Lee Sang Yong, editor-in-chief of *Daily NK*, has noted: “The responsibility is on the world outside the [Democratic People’s Republic of Korea] to craft a comprehensive strategy to flood the country with external information. North Korean citizens are thirsty for outside information and actively ask questions about their own society.”⁴⁰

³⁹ Special mention must be made of the need to reach North Korea’s Christian population, one of the most persecuted segments of North Korean society. The Kim regime’s decades-long effort to eradicate Christianity may constitute a genocide under the Genocide Convention. The UN COI, citing North Korea’s own figures, noted the population of religious adherents composed mostly of Christians, Buddhists, and Chondoists plummeted from roughly 24 percent in 1950 to 0.016 percent in 2002, despite the absence of any significant emigration of North Koreans during this period, whether Christian or otherwise. The Kim regime likely achieved this steep decline in the Christian population through relentless persecution. Today, Christians constitute a disproportionate percentage of the population in North Korea’s political prisons, with the mere possession of a Christian Bible serving as grounds for imprisonment in a political prison. If a Christian is found in possession of a Bible, their children, spouse, and parents are likely to be imprisoned as well under the regime’s “evil seed” policy.

⁴⁰ Sang Yong Lee, “North Korea’s War Against Outside Information and Culture,” 38 North, The Stimson Center, May 25, 2023, www.38north.org/2023/05/north-koreas-war-against-outside-information-and-culture/.