

United States Commission on International Religious Freedom

Hearing

on

Religious Freedom in North Korea and North Korean Refugees: Trends and U.S. Policy Options

Thursday, September 26, 2024

10:30 AM-12 PM ET

<https://www.uscirf.gov/events/hearings/religious-freedom-north-korea-and-north-korean-refugees-trends-and-us-policy>

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From the Jerusalem of the East to the 3G personality cult of Kimilsungism-Kimjongilism:  
The totalitarian, genocidal persecution of Christianity and other religions in North Korea and  
the need to ensure human rights and accountability for the North Korean people and refugees

I. Historical background

It is difficult to believe today that North Korea was eight decades ago a place teeming with Christian and other religious activities. Various Protestant denominations, the Catholic Church, Buddhist temples and the native Chondo religion boasted millions of believers before the Communist takeover during the Soviet occupation. Pyongyang was then called “the Jerusalem of the East”.

But the North Korean state’s decades-long totalitarian persecution, which may be characterized as a genocide, turned the whole country into a barren land stripped of fundamental religious freedom and other basic human rights. In 1950, a quarter of the population had a religion; in 2002, that ratio had dropped to 0.16 or 0.27 percent depending on the two versions of statistics provided by the North Korean government.<sup>1</sup> Christian Solidarity Worldwide (CSW)

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<sup>1</sup> Christian Solidarity Worldwide (CSW), North Korea: Case to Answer - A Call to Act: The urgent need to respond to mass killings, arbitrary imprisonment, torture and related international crimes (20 Jun 2007), p. 65, <<https://www.csw.org.uk/2007/06/20/report/35/article.htm>>. In 1950, there were 2,132,000 religious believers (1,500,000 Cheondo, 375,000 Buddhists, 200,000 Protestants and 57,000 Catholics) or 23.69 percent of the total population (9 million) according

concluded in 2007 that genocide has been committed against the Christian population in North Korea.<sup>2</sup>

While making no conclusion about possible genocide, the UN Commission of Inquiry (COI)'s landmark report concluded ten years ago that: "The gravity, scale and nature of these violations reveal a state that does not have any parallel in the contemporary world".

Karl Marx famously claimed that "Religion is the sigh of the oppressed creature, the heart of a heartless world, and the soul of soulless conditions. It is the opium of the people."

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to the Korean Workers' Party (KWP) Yearbook, while Christian Solidarity Worldwide (CSW) provides the "realistic estimate" of 2,557,000 religious believers or 28.41 percent of the total population. In 2002, there were 37,800 religious believers (15,000 Chondo, 10,000 Buddhists, 12,000 Protestants and 800 Catholics) according to the replies submitted by the DPRK in response to the concerns identified by the Human Rights Committee in its concluding observations on the DPRK's second periodic report under the International Covenant on Civil and Political Rights. Concluding observations of the Human Rights Committee: Democratic People's Republic of Korea, UN Doc. CCPR/CO/72/PRK/Add.1 (5 August 2002), para. 5, <<https://undocs.org/CCPR/CO/72/PRK/Add.1>>. Given that the DPRK reported that its population as of 2000 was 22,963,000, this would mean 0.16 percent of the population. Core Document Formng Part of the Reports of the States Parties: Democratic People's Republic of Korea, UN Doc. HRI/CORE/1/Add.108/Rev.1 (16 July 2002), para. 4, <<https://undocs.org/HRI/CORE/1/Add.108/Rev.1>>. However, a North Korean official named Kim Yong Chol stated in his response to a question from Mr. Ivan Shearer, a member of the Human Rights Committee, that there were 63,000 religious believers (40,000 Chondo, 10,000 Buddhists, 10,000 Protestants and 3,000 Catholics) or 0.27 percent of the population. Human Rights Committee: Seventy-second session: Summary Record of the 1946<sup>th</sup> Meeting (Held at the Palais Wilson, Geneva, on Friday, 20 July 2001, at 3 p.m.), UN Doc. CCPR/C/SR.1946 (30 October 2001), para. 63, <<https://undocs.org/CCPR/C/SR.1946>>.

<sup>2</sup> Christian Solidarity Worldwide (CSW), North Korea: Case to Answer - A Call to Act: The urgent need to respond to mass killings, arbitrary imprisonment, torture and related international crimes (20 Jun 2007), p. 67 ("Available evidence demonstrates that Christians have been targeted and that various attacks or measures constituting the objective element of genocide have been committed or imposed against members of the group. A considerable number of members of religious groups have been systematically targeted for their belief as such, not least on the basis of its incompatibility with the ideology of Juche. The discriminatory nature of the practice and the policy of subjecting members of religious groups to detention, inhuman prison conditions, torture and, in some cases, arbitrary killings, is indicative of genocidal intent. This applies in particular to the height of religious persecution in the 1950s and 1960s."), <<https://www.csw.org.uk/2007/06/20/report/35/article.htm>>.

Given this dialectical materialist tradition, it should not come as a surprise that the Soviet forces that occupied the northern half of Korea after World War II and the founder of the North Korean state, Kim Il-Sung, quickly began the brutal persecution and liquidation of organized religion, especially Christianity.

Many fled to South Korea before and during the Korean War (1950-1953), which saw the massacres of the Christian population by the North Korean forces that prompted South Korea to accede to the Genocide Convention in October 1950.<sup>3</sup> Raphael Lemkin's letter addressed to the

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<sup>3</sup> South Korea's Truth and Reconciliation Commission has recently been investigating the massacres committed by the Communist Forces against Christians, Buddhists and other religious believers during the Korean War. Truth and Reconciliation Commission of Korea (TRCK), Press release entitled "The fact-finding on the case concerning the death of religious persons by the hostile forces during the Korean War period (1) [한국전쟁기 적대세력에 의한 종교인 희생사건(1) 진실규명]", 2024.04.16.,

<[https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR\\_000000000710&nttlId=321245](https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR_000000000710&nttlId=321245)>; Press release entitled "The fact-finding on the case concerning the death of religious persons by the hostile forces around the Korean War (2) [한국전쟁 전후 적대세력에 의한 종교인 희생사건(2) 진실규명]", 2024.04.30.,

<[https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR\\_000000000710&nttlId=321345](https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR_000000000710&nttlId=321345)>; Press release entitled "The fact-finding on the case concerning the death of religious persons by the hostile forces around the Korean War (3) [(직권조사) 한국전쟁 전후 적대세력에 의한 종교인 희생사건(3) 진실규명]", 2024.06.12.,

<[https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR\\_000000000710&nttlId=321546](https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR_000000000710&nttlId=321546)>; Press release entitled "The fact-finding on the case concerning the death of Christians in the Chungcheong region (4) [(직권조사 결과) 충청지역 기독교인 희생사건(4) 진실규명]", 2024.06.26.,

<[https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR\\_000000000710&nttlId=321620](https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR_000000000710&nttlId=321620)>; Press release entitled "The case concerning the death of religious persons by the hostile forces during the Korean War period (5) – fact-finding for the South Jeolla region [한국전쟁기 적대세력에 의한 종교인 희생사건(5) - 전남지역 진실규명], 2024.08.21.,

<[https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR\\_000000000710&nttlId=321889](https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR_000000000710&nttlId=321889)>; Press release entitled "The case concerning the death of religious persons by the hostile forces around the Korean War (6) – fact-finding for the case concerning the death of Christians in the South Jeolla region [한국전쟁 전후 적대세력에 의한 종교인 희생사건(6) -

South Korean president, foreign minister and ambassador in Washington helped secure the quick accession and the South Korean ambassador in turn sent letters to about 50 countries, including the United States, urging the speedy ratification of the Genocide Convention warning the liquidation of Christians in Korea.<sup>4</sup>

After Stalin's death, his protégé Kim Il-sung witnessed Khrushchev's denunciation of his predecessor's cult of personality and reign of terror in 1956. Factions within the Korean Workers' Party (KWP) were even inspired and emboldened by Khrushchev to mount the most serious but ultimately unsuccessful challenge to Kim Il-sung's rule.

Following Mao Zedong's death, Deng Xiaoping ended the Cultural Revolution, initiated the "Reform and Opening Up" policy and adopted a collective leadership within the Chinese Communist Party (CCP). Though China has remained a communist one-party state and even Deng's mixed legacy is being dismantled by Xi Jinping's attempt to turn back the clock, China today is a far cry from half a century ago.

Kim Il-sung long outlived Stalin and Mao thanks to his youth and resolved the succession issue quite differently from his two Marxist-Leninist mentors. In 1967, Kim Il-sung purged the Kapsan faction within the KWP, which not only questioned his personality cult and policy choices but also put forward its leader as his successor instead of Kim's preferred choice at the time—his younger brother Kim Yong-ju. The last remaining obstacle to the family succession was removed. Kim Il-sung then dropped Kim Yong-ju in favor of his son Kim Jong-il.

In 1974, Kim Il-sung promulgated the "Ten Principles for the Establishment of a Monolithic Ideological System" which not only codified unconditional obedience to Kim Il-sung but also exhorted the completion of his "revolutionary achievement"—inserted at his son Kim Jong-il's insistence—"for generations". One defector refers to the Ten Principles as "Kim Jong-il's Ten Commandments" and credits it for the hereditary succession of power, an unprecedented feat in a Communist state.

Ironically, Kim Il-sung hailed from a Christian family and this Christian influence evidently played a role in the establishment of his "Monolithic Ideological System". Even the Ten Principles bear an uncanny resemblance to the Ten Commandments, which he must have known by heart.

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전남지역 기독교 희생사건② 진실규명], 2024.09.25.,

<[https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR\\_000000000710&ntfd=322059](https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR_000000000710&ntfd=322059)>.

<sup>4</sup> John Cooper, Raphael Lemkin and the Struggle for the Genocide Convention (Palgrave Macmillan, 2008), pp. 113, 182-183.

After Kim Il-sung's death in 1994, Kim Jong-il in 1997 proclaimed the elder Kim's birthday (April 15) as "the Day of the Sun" and adopted a new year-numbering system where his birthyear (1912) counts as Juche year 1. So in North Korean parlance, we are now living in Juche year 113.

Kim Jong-un, who succeeded his father Kim Jong-il proclaimed the "Ten Principles for the Establishment of a Monolithic Guidance System" in 2013. The new Ten Principles calls for the "Kimilsungism-Kimjongilismization of the entire society" and refers to Kim Il-sung and Kim Jong-il as "our Party and people's eternal leader and the sun of Juche (self-reliance)".

The hereditary personality cult bordering on a religious cult in North Korea means that power is monopolized in the Party, which in turn is monopolized by a deified Kim. Therefore, the Ten Principles supersedes the "Rules of the Korean Workers' Party (KWP)" which in turn supersedes the "Socialist Constitution" in North Korea's normative hierarchy.

The "Socialist Constitution", last revised in 2023, itself leave no doubt in this regard with its stipulation that "The Democratic People's Republic of Korea is guided in its building and activities only by great Kimilsungism-Kimjongilism" (article 3) and that "The Democratic People's Republic of Korea shall conduct all activities under the leadership of the Workers' Party of Korea" (article 11).<sup>5</sup>

Because Kim Jong-un is the linchpin of the existing system, his absence without a viable dynastic heir could see North Korea revert to rule by a collective leadership of the KWP. While the Communist party-state dual structure may continue, it would certainly be less tyrannical and oppressive than the existing hyper-personalized, pseudo-religious power structure. One may even see a North Korean Khrushchev or Deng Xiaoping rise among the Party cadres.

However, Kim Jong-il is relatively young and the reports of his death have been greatly exaggerated in the past. Therefore, the third-generation personality cult in North Korea is likely to continue in the foreseeable future.

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<sup>5</sup> National Committee on North Korea (NCNK), "DPRK Constitution (2019)", <[https://www.ncnk.org/resources/publications/dprk-constitution-2019.pdf/file\\_view](https://www.ncnk.org/resources/publications/dprk-constitution-2019.pdf/file_view)>. In original Korean: "제 3 조 조선민주주의인민공화국은 위대한 김일성-김정일주의를 국가건설과 활동의 유일한 지도적지침으로 삼는다. ... 제 11 조 조선민주주의인민공화국은 조선로동당의 령도밑에 모든 활동을 진행한다."

## II. The legal mechanism of religious persecution

The “Ten Principles for the Establishment of a Monolithic Guidance System” and the “Rules of the Korean Workers’ Party (KWP)” are silent about religious freedom or any human rights, but article 68 of the “Socialist Constitution” provides that:

Citizens have freedom of religious belief. This right is granted through the approval of the construction of religious buildings and the holding of religious ceremonies.

Religion must not be used as a pretext for drawing in foreign forces or for harming the State or social order.<sup>6</sup>

While the first sentence of article 68 appears to guarantee the broad freedom of religious belief, the second sentence narrows it down to “the construction of religious buildings and the holding of religious ceremonies”. The vagueness of the term “drawing in foreign forces” or “harming the State or social order” can legitimize any state oppression.

### 1. Legal provisions against “superstitious acts”

In legal terms, it is important to note that North Korea makes a clear distinction between “religion (종교)” and “superstition (미신)”. While organized religion, including Christianity, is on paper entitled to constitutional protection, “superstitious acts” like praying to the Buddha or the shamanist deity or fortune-telling are subject to public crackdown and punishment.

The North Korean government does not publish all its laws and even some basic codes like the Criminal Code are not accessible to its citizens, but the South Korean National

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<sup>6</sup> National Committee on North Korea (NCNK), “DPRK Constitution (2019)”, <[https://www.ncnk.org/resources/publications/dprk-constitution-2019.pdf/file\\_view](https://www.ncnk.org/resources/publications/dprk-constitution-2019.pdf/file_view)>. In original Korean: “제 68 조 공민은 신앙의 자유를 가진다. 이 권리는 종교건물을 짓거나 종교의식 같은것을 허용하는것으로 보장된다. 종교를 외세를 끌어들이거나 국가사회질서를 해치는데 리용할수 없다.”

Intelligence Service (NIS) regularly compiles and publishes North Korea's legal codes on its website.<sup>7</sup>

North Korea has multiple laws that explicitly police and punish “superstition”. Article 291 under “Chapter 8. The Crimes of Violations of the Socialist Communal Life Order [사회주의공동생활질서를 침해한 범죄]” of the Criminal Code criminalizes “acts of superstition” as follows:

Article 291 (Crime of act of superstition)

A person who commits an act of superstition shall be punished by training through labor.

In cases where the act of superstition was committed habitually or the act of superstition caused grave consequences, reform through labor for not more than five years shall be prescribed.

In cases where the circumstances are grave, reform through labor for not less than five years and not more than ten years shall be prescribed.<sup>8</sup>

North Korea's first Criminal Code enacted in 1950, which was modeled after the 1926 Soviet Criminal Code, did not contain provisions concerning “superstition”. The revised Criminal Codes of 1974 and 1987, which the North Korean government refused to publish the full texts, did not appear to penalize “superstition” either.<sup>9</sup> The current Criminal Code, first

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<sup>77</sup> NIS, Compilation of North Korea's legal codes (북한법령집), [https://www.nis.go.kr/AF/1\\_2\\_1.do](https://www.nis.go.kr/AF/1_2_1.do).

<sup>8</sup> In original Korean: “제 291 조 (미신행위죄) 미신행위를 한자는 로동단련형에 처한다. 상습적으로 미신행위를 하였거나 미신행위로 엄중한 결과를 일으킨 경우에는 5 년이하의 로동교화형에 처한다. 정상이 무거운 경우에는 5 년이상 10 년이하의 로동교화형에 처한다.”

<sup>9</sup> ROK Ministry of Justice, “Study on North Korean law: The new Criminal Code [북한법연구(VII): 신형법]” (1985), Choi Jong Ko, “North Korean law [북한법]”, (2001). North Korea typically does not publish its main laws, other than the “Socialist Constitution”, limiting the access to the select few experts.

adopted in 1990, appeared to be the first to criminalize “superstition”.<sup>10</sup> Articles 267 and 268 under “Chapter 8. The Crimes of Violations of the Socialist Communal Life Order” of the Criminal Code, as adopted in 1990 and revised in 2004, provided that:

Article 267 (Crime of act of superstition)

A person who commits an act of superstition upon receiving money or goods several times shall be punished by reform through labor for not more than two years. In cases where the circumstances are grave, reform through labor for not more than five years shall be prescribed.<sup>11</sup>

Article 268 (Crimes of encouraging act of superstition)

A person who spreads an act of superstition to several persons for selfish purpose or other motives shall be punished by reform through labor for not more than two years. In cases the act described in the previous clause was done to many persons or was done upon receiving a large amount of money or goods, reform through labor for not more than three years shall be prescribed. In cases where the circumstances are grave, reform through labor for not less than three years and not more than seven years shall be prescribed.<sup>12</sup>

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<sup>10</sup> In 2005, the North Korean government allowed a South Korean publisher to publish a total of 112 laws in force in North Korea in 2004. This included the Criminal Code, as first adopted on December 15, 1990 and revised on April 29, 2004.

<sup>11</sup> In original Korean: “제 267 조 (미신행위죄) 돈 또는 물건을 받고 미신행위를 여러번 한자는 2 년이하의 로동단련형에 처한다. 정상이 무거운 경우에는 5 년이하의 로동교화형에 처한다.”

<sup>12</sup> In original Korean: “제 268 조 (미신행위조장죄) 리기적목적 그밖의 동기에서 여러 사람에게 미신행위를 류포한자는 2 년이하의 로동단련형에 처한다. 앞항의 행위를 많은 사람에게 하였거나 대량의 돈 또는 물건을 받고 한 경우에는 3 년이하의 로동교화형에 처한다. 정상이 무거운 경우에는 3 년이상 7 년이하의 로동교화형에 처한다.”

Article 305 of the Administrative Punishment Law (행정처벌법) prescribes the following administrative punishment, relatively lighter sanctions for acts violating the law but not amounting to crimes, including reeducation through labor (로동교양처벌) at the reeducation through labor corps (로동교양대) for a period ranging from 5 days to 6 months:

Article 305 (Act of superstition)

A person who commits an act of superstition shall be punished by reeducation through labor for not more than three months.

In cases where the circumstances are grave, reeducation through labor for not less than three months shall be prescribed.<sup>13</sup>

The old People's Security Policing Law (인민보안단속법), which has now been replaced by the Social Security Policing Act (사회안전단속법), the foundational law for the Ministry of People's Security (now the Ministry of Social Security) or the regular police, stipulated in article 21 that:

Article 21 (Act of believing in superstition or spreading wicked words)

People's security institutions shall police ***acts of superstition such as fortune-telling*** or acts of fabricating or skewing fact or spreading wicked words.<sup>14</sup>

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<sup>13</sup> In original Korean: “제 305 조 (미신행위) 미신행위를 한자에게는 벌금처벌 또는 3개월이하의 로동교양처벌을 준다. 정상이 무거운 경우에는 3개월이상의 로동교양처벌을 준다.”

<sup>14</sup> In original Korean: “제 21 조 (미신을 믿거나 요언을 퍼뜨리는 행위) 인민보안기관은 점을 치는것과 같은 미신행위를 하거나 사실을 날조, 왜곡하거나 요언을 퍼뜨리는것 같은 행위를 단속한다.”

The Inminban Organization Operation Law (인민반조직운영법) enacted in 2023 with the aim of strengthening North Korea’s unique neighborhood watch-like inminban (people’s units) that all North Koreans are required to be members provides in article 20 that:

Article 20 (Struggle with the anti-socialist, non-socialist phenomena)

The inminbanjang (the head of inminban) shall explain in depth the state’s legal norms and provisions to the inminban members and work with substance to raise a sound revolutionary ethos in the inminban so that various anti-socialist, non-socialist phenomena, including violent crimes and acts of superstition, acts of commerce and acts of delinquency, will not appear.<sup>15</sup>

Article 15 of the Mass Reporting Law (군중신고법) adopted in 2019 provides in article 15 that:

Article 15 (Contents to report)

Institutions, enterprises, organizations and citizens must report on the following crimes and illegal acts:

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<sup>15</sup> In original Korean: “제 20 조 (반사회주의, 비사회주의적 현상과의 투쟁) 인민반장은 반원들속에 국가의 법규범과 규정을 깊이 해설하고 인민반안에 건전하고 혁명적인 생활기풍을 세우기 위한 사업을 실속있게 벌려 강력범죄와 미신행위, 장사행위, 불량행위를 비롯한 온갖 반사회주의, 비사회주의적 현상들이 나타나지 않도록 하여야 한다.”

10. Acts of delinquency, acts of lust, ***acts of superstition***, acts of prostitution, acts of gambling or acts of instigating or enabling such acts<sup>16</sup>

The Law on Rejecting Reactionary Thought and Culture (반동사상문화배격법), which has won notoriety since its enactment in 2020, also lumps materials “preaching superstition” together with pornographic materials and prescribes lengthy prison terms for their consumption or possession and life or even death sentence for their production, import and distribution.

Article 23. Prohibition of Viewing and Reproducing Adult Videos, and Spreading Superstition.

Any citizen shall not view, distribute, and reproduce sexually explicit movies and photographs, adult videos, and ***superstitious propaganda materials***.<sup>17</sup>

...

Article 29. Crime of Distributing Adult Videos and Sexually Explicit Materials and Spreading Superstition

Any person who views or possesses adult videos, sexually explicit or ***superstitious movies, video recordings, compilations, books, photographs, or drawings*** shall be sentenced to 5 to 10 years of reform through labor. If the severity of the crime is deemed high, the offender shall be sentenced to reform through labor for 10 years or more.

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<sup>16</sup> In original Korean: “제 15 조 (신고할 내용) 기관, 기업소, 단체와 공민은 다음과 같은 범죄 및 위법행위에 대하여 신고하여야 한다. ... 10. 불량행위, 음탕한 행위, 미신행위, 매음행위, 도박행위를 하거나 그러한 행위를 추기거나 조건을 보장하여주는 행위”

<sup>17</sup> DailyNK, Reactionary Ideology and Culture Rejection Act of the Democratic People’s Republic of Korea (Unofficial translation), [https://www.dailynk.com/english/wp-content/uploads/sites/2/2023/03/PDF-반동사상문화배격법\\_영한본.pdf](https://www.dailynk.com/english/wp-content/uploads/sites/2/2023/03/PDF-반동사상문화배격법_영한본.pdf) In original Korean: “제 23 조(성록화물시청, 재현, 미신전파 금지) 공민은 색정영화, 색정사진, 성록화물과 미신을 설교한 출판선전물을 시청, 류포하거나 재현하는 행위를 하지 말아야 한다.”

Any person who produces, brings in or distributes adult videos, sexually explicit or superstitious movies, video recordings, compilations, books, photographs, or drawings shall be sentenced to reform through labor for life.

Any person who produces, brings in or distributes a large amount of adult videos, sexually explicit or superstitious movies, video recordings, compilations, books, photographs, and drawings to a large number of people, or who supports or encourages other people to view or read them in a group shall be sentenced to death.<sup>18</sup>

The only known legal provision that explicitly penalizes “religion” as such can be found in article 41 of the 2021 Youth Education Guarantee Law (청년교양보장법), another infamous pandemic-era law along with the Law on Rejecting Reactionary Thought and Culture (반동사상문화배격법) and the Law on Protecting the Pyongyang Cultural Language (평양문화어보호법), but it is unclear why this law departed from other laws in explicitly banning religious activity:

Article 41 (Items that the youth must not do)

The youth must not do the following acts:

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<sup>18</sup> DailyNK, Reactionary Ideology and Culture Rejection Act of the Democratic People’s Republic of Korea (Unofficial translation), <[https://www.dailynk.com/english/wp-content/uploads/sites/2/2023/03/PDF-반동사상문화배격법\\_영한본.pdf](https://www.dailynk.com/english/wp-content/uploads/sites/2/2023/03/PDF-반동사상문화배격법_영한본.pdf)>. In original Korean: “제 29 조(성록화물, 색정, 및 미신전파죄) 성록화물 또는 색정 및 미신을 설교한 영화나 록화물, 편집물, 도서, 사진, 그림 같은 것을 보았거나 보관한자는 5년 이상 10년 이하의 로동교화형에 처한다. 정상이 무거운 경우에는 10년 이상의 로동교화형에 처한다. 성록화물 또는 색정 및 미신을 설교한 영화나 록화물, 편집물, 도서, 사진, 그림같은 것을 만들었거나 류입, 류포한 경우에는 무기 로동교화형에 처한다. 많은 량의 성록화물 또는 색정 및 미신을 설교한 영화나 록화물, 편집물, 도서, 사진, 그림같은 것을 만들었거나 류입, 류포하였거나 많은 사람에게 류포한 경우 또는 집단적으로 시청, 열람하도록 조직하였거나 조장한 경우에는 사형에 처한다.”

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### 3. Acts of religion and superstition<sup>19</sup>

#### 2. The punishment of religious activities without legal basis

But paradoxically, in practice, religious (largely Christian) activities are punished far more severely than “superstitious activities”, though typically in secret, by the government.<sup>20</sup>

Under article 50 of North Korea’s Criminal Procedure Law (형사소송법), the investigators (수사원) and preliminary examiners (예심원) of “security institutions (보위기관)” conduct the investigation (수사) and preliminary examination (예심) of “anti-state and anti-nation crimes”. The “anti-state and anti-nation crimes” are the offenses provided for in chapter 3 (articles 60-73) of the Criminal Code and include article 60 (Act of Subverting the State), article 62 (Anti-State Propaganda and Agitation), article 63 (Treason against the Fatherland) and article 68 (Treason against the Nation).

However, in addition to its own investigators and preliminary examiners, the Ministry of State Security (MSS) also has its own prosecutors and judges, despite the absence of any known statutory basis for the latter. Those that are deemed to be guilty of political offenses are usually prosecuted and tried in secret by the MSS prosecutors and judges under an undisclosed set of rules and then executed or sent to political prison camps (kwanliso) run by the MSS. The MSS in effect acts as police, prosecutor, judge, jury and executioner for political crimes.

The MSS can also collectively punish the families of political prisoners through guilt by association, which again has no known legal basis but is practiced by the MSS to deter potential dissidents with the fear and guilt that not only themselves, but their loved ones too may end up in political prison camps.

While “superstition” is typically, though not always, handled under the ordinary criminal procedure resulting in draconian but public punishment, religion like Christianity is tried and punished much more severely by the MSS which prefers to deal with its victims in secret. There

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<sup>19</sup> In original Korean: “제 41 조 (청년들이 하지 말아야 할 사항) 청년은 다음과 같은 행위를 하지 말아야 한다. ... 3. 종교와 미신행위”

<sup>20</sup> ROK Ministry of Unification, “Report on North Korean Human Rights”

are no clear legal provisions for punishing Christian or religious activities, as opposed to “superstitious activities”, but this does not prevent the MSS from punishing people for organizing an underground church or possession or distribution of Bibles or under its own secret substantive and procedural law.

The refugees, asylum-seekers and other citizens repatriated from China are subjected to harsh interrogation by the MSS, often entailing torture, about their contacts with South Koreans and/or Christian missionaries or access to the Bible in China as well as any attempts to defect to South Korea or other countries. Those who have committed these “political offenses” are sent to political prison camps (kwanliso) or executed by the MSS while those who are deemed to have crossed the border for economic reasons without committing these offenses are punished more leniently under the regular criminal procedure.

The charges leveled against foreign missionaries, including the three South Korean missionaries, Kim Jung-wook, Kim Kook-kie and Choi Chun-gil detained in North Korea for the past 10-11 years, offer some clues about the possible legal basis for the punishment of Christians in North Korea. The common charges against the three South Korean missionaries included article 60 of the Criminal Code (Conspiracy to subvert the state) which was in force at the time and carries the death penalty or life imprisonment.

Missionary Kim Jung-wook, who marked his 4,000<sup>th</sup> day in detention last Friday, “confessed” to and apologized for “anti-Republic criminal acts”, including “anti-Republic religious acts” of giving sermons to North Koreans insulting their political system and making them slander North Korea as well as paying them to establish 500 underground churches in North Korea to bring down the North Korean political system.<sup>21</sup> Presumably, the North Korean state considers that such acts amount to “drawing in foreign forces” or “harming the State or social order” for the purpose of article 68 of the “Socialist Constitution”.

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<sup>21</sup> Korean Central News Agency (KCNA), “South Korean intelligence spy confesses to anti-Republic hostile acts at press conference [남조선정보원 첩자 기자회견에서 반공화국적대행위 자백]”, 2014. 2. 27., <<http://www.kcna.co.jp/calendar/2014/02/02-27/2014-0227-025.html>> or <<https://kcnawatch.xyz/newstream/1452058708-933482557/남조선정보원-첩자-기자회견에서-반공화국적대행>>.

#### 4. The silent persecution of Christianity and other religions

North Korea's propaganda machine tends to loudly rail against those arrested for "superstitious acts" like fortune-telling on the par with the consumption of South Korean dramas or music or assisting escape from North Korea, but it is more muted and cautious about reporting on arrests of Christians. In fact, the North Korean officials in general are instructed not to publicize cases concerning Christianity—not unlike the cases concerning the criticism of the deified Kim family or spreading words about the fabricated lineage or sordid private life of the Kim rulers.

One reason for the silence on punishments may be the absence of laws (with article 41 of the Youth Education Guarantee Law being an important exception) that publicly penalize religion which would contradict article 68 of the "Socialist Constitution". North Korea maintains the façade of religious freedom with organizations purporting to represent Catholic, Protestant, Buddhist and Chondo faiths and maintain Potemkin churches.

However, the more fundamental reason may be that the regime recognizes Christianity or any other organized religion as an existential threat to its totalitarian rule and does not wish to arouse the people's interest or curiosity by advertising the punishment of Christians. From the regime's point of view, it is better for the punishment to remain a secret among the trusted Party cadres to prevent ordinary North Koreans from becoming aware of Christian teachings or the existence of underground Christians.

In violation of the spirit of article 68 of the "Socialist Constitution", the North Korean people receive extensive anti-religious, anti-Christian education as part of the indoctrination program throughout their life cycle. The North Korean refugees state that they were taught in North Korea that the Bible is a document that slanders North Korea.<sup>22</sup> The old American missionaries are portrayed as cruel foreigners who branded "bandit (도적)" on the forehead of a child with a fountain pen for eating their apple or luring children with candies for biological experiments. The Christians are described as agents of imperialist invaders.

Although there are a few churches in Pyongyang and elsewhere in North Korea for external propaganda purposes, the people living in the vicinity are not aware of their existence. In fact, North Koreans say that they were not aware of any official state-sanctioned churches in the country.

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<sup>22</sup> ROK Ministry of Unification, "Report on North Korean Human Rights", pp. 278-279.

### III. North Korea's international legal obligations

It is worth noting that North Korea is a state party to a number of human rights treaties, namely the two International Covenants, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD).

North Korea's religious persecution and anti-religious education are therefore in violation of articles 2 (1), 18, 20 (2), 24 (1), 26 and 27 of the International Covenant on Civil and Political Rights; articles 2 (2), 13 (1) and (3) of the International Covenant on Economic, Social and Cultural Rights; articles 2 (1), 14 (1) and (3), 29 (1) (d) and 30 of the Convention on the Rights of the Child. However, North Korea has failed to submit periodic reports to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights for over 20 years and it has also missed the deadlines for the submission of periodic reports to the Committee on the Rights of the Child.

Although the UN General Assembly adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief in 1981, it has failed to adopt a binding treaty on the subject-matter with a monitoring body composed of independent experts. Such a treaty and the jurisprudence of its treaty body may have been helpful in clarifying the international normative standards on religious freedom even if North Korea never ratified the treaty.

The religious persecution in North Korea is not simply a matter of conventional human rights violations but amounts to international crimes such as crimes against humanity that engage the individual criminal responsibility of the perpetrators.

In 2014, the UN Commission of Inquiry on Human Rights in the DPRK (COI DPRK) found that "persons who are considered to introduce politically or ideologically subversive influences are subject to crimes against humanity" and that "among the foremost victims are religious believers who practise outside the small number of state-controlled religious institutions [comprising] independent communities of Christians who usually come into contact with the religion through Korean-language churches operating in the border areas of China."<sup>23</sup>

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<sup>23</sup> Report of the detailed findings of the Commission of Inquiry on human rights in the Democratic People's Republic of Korea, A/HRC/25/CRP.1 (7 February 2014), paras. 1087-1088.

The COI DPRK concluded that murder, imprisonment, torture and persecution against Christians were being committed as part of a widespread or systematic attack directed against any civilian population.<sup>24</sup>

The COI DPRK noted the submission by Christian Solidarity Worldwide (CSW) that according to the official statistics, roughly a quarter of the North Korean population followed a religious belief in 1950 but the number had dropped to 0.16 percent by 2002.<sup>25</sup>

However, the COI stopped short of passing a judgment on possible genocide against Christian and other religionists, stating that it “was not in a position to gather enough information to make a determination as to whether the authorities at the time sought to repress organized religion by extremely violent means or whether they were driven by the intent to physically annihilate the followers of particular religions as a group”.<sup>26</sup>

It is worth noting in this regard that North Korea acceded to the Genocide Convention on January 31, 1989 and the Convention entered into force for North Korea 90 days later on May 1, 1989.<sup>27</sup> Importantly, North Korea did not declare any reservations including for Article IX, the compromissory clause which brings within the jurisdiction of the International Court of Justice (ICJ) “disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention.”

Therefore, if there are credible factual and legal findings that North Korea has violated the Genocide Convention since May 1989, other states parties to the Genocide Convention that have not declared a reservation to Article IX can technically bring a case against North Korea at the ICJ.

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<sup>24</sup> Id., paras. 1087-1097.

<sup>25</sup> Id., para. 244.

<sup>26</sup> Id., para. 1159.

<sup>27</sup> UNTC, Convention on the Prevention and Punishment of the Crime of Genocide, <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-1&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4)>.

#### IV. Recommendations

While the state of religious freedom and other human rights in North Korea is bleak, the international community cannot turn a blind eye to it. Indeed, the low visibility of the situation of the North Korean people and refugees is one of the fundamental challenges of the North Korean human rights movement.

Existing international venues and opportunities like the Universal Periodic Review (UPR) for North Korea, China and other relevant countries, the annual interactive dialogues on North Korean human rights situation at the UN General Assembly's Third Committee in October and the UN Human Rights Council in March and the annual North Korea resolutions adopted on these occasions, the Security Council's discussion of North Korean human rights situation are some of the more notable ones.

The DPRK's fourth cycle UPR on November 7, 2024 will be an important occasion for governments to raise various issues concerning North Korea's religious persecution through advance questions and recommendations.<sup>28</sup>

An important way to follow up on the DPRK UPR would be to hold a congressional hearing, similar to the hearing held by the Congressional-Executive Commission on China (CECC) on February 1 this year, following the China UPR on January 23, 2024.<sup>29</sup> I had the privilege of submitting a written testimony on behalf of my NGO concerning China's forcible repatriation of North Korean refugees at the CECC hearing.

The Senate Foreign Relations Committee (SFRC) or the House Foreign Affairs Committee (HFAC) or their subcommittees or the Tom Lantos Human Rights Commission (TLHRC) can hold such a hearing after the DPRK UPR on November 7.

The European Parliament and other legislatures can and should also hold hearings or pass resolutions in the aftermath of the DPRK UPR. Such legislative actions can also take place after the 58<sup>th</sup> UN Human Rights Council's formal adoption of the Working Group's report on the DPRK UPR, which will reveal North Korea's acceptance or non-acceptance of each of the UPR recommendations in March 2025.

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<sup>28</sup> OHCHR, Universal Periodic Review - Democratic People's Republic of Korea, <<https://www.ohchr.org/en/hr-bodies/upr/kp-index>>.

<sup>29</sup> CECC, "The PRC's Universal Periodic Review and the Real State of Human Rights in China" (Thursday, February 1, 2024 - 10:00am), <<https://www.cecc.gov/events/hearings/the-prcs-universal-periodic-review-and-the-real-state-of-human-rights-in-china>>.

## 1. South Korean missionaries Kim Jung-wook, Kim Kook-kie and Choi Chun-gil

In the short term, the least unpromising “low-lying fruits” would be securing the release and return of the three South Korean missionaries detained in North Korea. Unlike other South Korean abductees and unrepatriated prisoners of war (POWs), who Pyongyang claims have “voluntarily” chose to stay with new spouses and children in North Korea for decades, missionaries Kim Jung-wook, Kim Kook-kie and Choi Chun-gil have been imprisoned against their will even by North Korea’s own admission. North Korea has already released Korean American and Korean Canadian missionaries that it similarly tried and sentenced to life on “humanitarian grounds”.

North Korea’s stance on the three South Korean missionaries is also different from its stance on the other three South Korean citizens, formerly North Korean defectors, who have detained in North Korea—Kim Won-ho (김원호), Ko Hyon-chol (고현철) and Park Ho-jin (박호진).<sup>30</sup> The North Korean government may be unwilling to recognize the latter three’s South Korean nationality, instead deeming them to be traitors to the DPRK.

I would like to take this opportunity to thank the USCIRF for adding missionaries Kim Jung-wook, Kim Kook-kie and Choi Chun-gil to the Frank R. Wolf Freedom of Religion or Belief Victims List on behalf of their families.<sup>31</sup> Last Friday, on September 20, 2024, USCIRF Chair Stephen Schneck also noted that: “Today marks 4,000 days since the North Korean gov detained South Korean (ROK) missionary Kim Jung-wook. He and ROK missionaries Kim Kook-kie and Choi Chun-gil remain wrongfully imprisoned in #NorthKorea for their work ministering to North Koreans.”<sup>32</sup> Again, the families are heartened by the USCIRF’s interest and support on this matter.

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<sup>30</sup> Jung Hye-kyung, ““Even the fate unknown”; 4,000 days of detention in North Korea; An appeal from the family [“생사도 알 수 없어” 북한 억류 4,000 일...가족의 호소]”, SBS News 2024.09.20, <[https://news.sbs.co.kr/news/endPage.do?news\\_id=N1007806946](https://news.sbs.co.kr/news/endPage.do?news_id=N1007806946)>.

<sup>31</sup> Kim Jung-wook, <<https://www.uscirtf.gov/religious-prisoners-conscience/forb-victims-database/kim-jung-wook>> Choi Chun-gil, <<https://www.uscirtf.gov/religious-prisoners-conscience/forb-victims-database/choi-chun-gil>>. Kim Kook-kie, <<https://www.uscirtf.gov/religious-prisoners-conscience/forb-victims-database/kim-kook-kie>>.

<sup>32</sup> <<https://x.com/USCIRF/status/1837116200007930367>>.

USCIRF's call last Friday was joined by South Korea's Minister of Unification,<sup>33</sup> the US State Department spokesperson<sup>34</sup> and the Canadian embassy in Seoul.<sup>35</sup> Christian Solidarity Worldwide (CSW) and my NGO, TJWG, also released a joint statement to this end.<sup>36</sup> Three days earlier, on September 17, at the 57<sup>th</sup> UN Human Rights Council in Geneva, the South Korean and US delegates called for the release of the three missionaries during the interactive dialogue with the Working Group on Arbitrary Detention (WGAD).

TJWG has also made submissions to the International Religious Freedom or Belief Alliance (IRFBA) to add the three South Korean missionaries to IRFBA's list of religious prisoners of conscience on behalf of their families. It would also be encouraging for South Korea, currently a friend of IRFBA, to become its full member<sup>37</sup> and propose joint actions by IRFBA members to publicize North Korea's detention of the three missionaries based on precedents like a joint statement on Archbishop Tadeusz Kondrusiewicz.<sup>38</sup>

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<sup>33</sup> ROK Ministry of Unification (MOU), "Unification Minister's Statement regarding the 4000th Day of the Arbitrary Detention of Kim Jung-wook in North Korea", 2024-09-20, <[https://www.unikorea.go.kr/eng\\_unikorea/news/releases/?boardId=bbs\\_0000000000000034&mode=view&cntId=54307](https://www.unikorea.go.kr/eng_unikorea/news/releases/?boardId=bbs_0000000000000034&mode=view&cntId=54307)>. The Koran original at "김정욱 선교사 억류 4,000 일 계기 통일부장관 성명",

<[https://www.unikorea.go.kr/unikorea/news/release/?boardId=bbs\\_0000000000000004&mode=view&cntId=55590](https://www.unikorea.go.kr/unikorea/news/release/?boardId=bbs_0000000000000004&mode=view&cntId=55590)>.

<sup>34</sup> U.S. Department of State, "Four Thousandth Day of Detention in the DPRK for Missionary Kim Jung-Wook", Press Statement: Matthew Miller, Department Spokesperson (September 19, 2024), <<https://www.state.gov/four-thousandth-day-of-detention-in-the-dprk-for-missionary-kim-jung-wook>>.

<sup>35</sup> "Today marks 4,000 days since South Korean missionary Kim Jung-wook was detained in North Korea. He and five other South Koreans currently in detention were denied a fair trial. Canada calls for their release and for North Korea to meet its international human rights obligations." <<https://x.com/CanEmbKorea/status/1836845627126206510>>.

<sup>36</sup> Urgent appeal calling for the release and return of three South Korean missionaries 20 Sep 2024, <<https://www.csw.org.uk/2024/09/20/report/6318/article.htm>>.

<sup>37</sup> U.S. Department of State, "International Religious Freedom or Belief Alliance", <<https://www.state.gov/international-religious-freedom-or-belief-alliance>>.

<sup>38</sup> Ministry of Foreign Affairs, Republic of Latvia, "Initiative of Minister of Foreign Affairs of the Republic of Latvia - Joint Statement on the denial of Archbishop Tadeusz Kondrusiewicz of Minsk-Mogilev re-entry to Belarus", <<https://www.mfa.gov.lv/en/article/initiative-minister->

This coming October and December will mark the 10th year of missionaries Kim Kook-kie and Choi Chun-gil's detention in North Korea respectively. Perhaps on the next occasion, statements could be issued in the name of South Korean Foreign Minister Cho Tae-ryul and his US counterpart, Secretary of State Blinken, who issued a similar statement on 1,000<sup>th</sup> day of the detention of the two Canadian Michaels in China on September 5, 2021.<sup>39</sup> Other governments can join too by doing something as trendy as posting on social media as Canada did on September 20.

U.S. Ambassador at Large for International Religious Freedom Rashad Hussain, Australia's Ambassador to the Holy See and representative on freedom of religion or belief issues Chiara Porro and other diplomats with a mandate over religious liberty could join too.

The human rights NGOs and faith-based organizations and churches can also make an important contribution with their advocacy campaign and prayer sessions dedicated to the release and return of the three South Korean missionaries on the 10<sup>th</sup> year of missionaries Kim Kook-kie and Choi Chun-gil's detention.

For the DPRK UPR on November 7, it would be helpful for the interested governments to ask advance questions to the DPRK about the fate and whereabouts of missionaries Kim Jung-wook, Kim Kook-kie and Choi Chun-gil and to recommend that North Korea immediately and unconditionally return all abductees, detainees and unrepatriated prisoners of war, in particular the three missionaries. Mentioning the three missionaries' names in the advance questions and recommendations will send a particularly strong message to Pyongyang.

Similarly, countries can raise the issue of the three detained missionaries by their names at the speeches, interactive dialogues and even resolutions at the UN Human Rights Council and General Assembly.

It would also be important for like-minded countries like the United Kingdom, Germany and Sweden that have diplomatic relations with North Korea to raise the matter with the North Korean government either through the North Korean embassies in their capitals or their embassies in Pyongyang.

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[foreign-affairs-republic-latvia-joint-statement-denial-archbishop-tadeusz-kondrusiewicz-minsk-mogilev-re-entry-belarus?utm\\_source=https%3A%2F%2Fwww.google.com%2F](https://www.google.com/?utm_source=https%3A%2F%2Fwww.google.com%2F)>.

<sup>39</sup> U.S. Department of State, "1,000th Day of Arbitrary Detention of Michael Kovrig and Michael Spavor in China", Press Statement: Antony J. Blinken, Secretary of State (September 5, 2021), <<https://www.state.gov/1000th-day-of-arbitrary-detention-of-michael-kovrig-and-michael-spavor-in-china>>.

Sweden recently announced that its diplomats, who had been forced out during the COVID-19 pandemic, have returned to its embassy on September 13.<sup>40</sup> It is widely expected that other Western embassies will follow suit.

## 2. The forcible repatriation of North Korean refugees from China and other states

Ten years ago, the Commission of Inquiry on Human Rights in the DPRK (COI DPRK) wrote a letter to the Chinese government expressing “particular concern about Chinese officials providing specific information on such persons to DPRK authorities” and urging it “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”.

The COI also recommended China and other states to “Respect the principle of non-refoulement. Accordingly, 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. Extend asylum and other means of durable protection to persons fleeing the Democratic People’s Republic of Korea who need international protection. Ensure that such persons are fully integrated and duly protected from discrimination. Stop providing information on activities and contacts of persons from the Democratic People’s Republic of Korea living in China to the State Security Department and other security agencies in the Democratic People’s Republic of Korea. Allow persons from the Democratic People’s Republic of Korea free access to diplomatic and consular representations of any state that may be willing to extend nationality or other forms of protection to them”.

There is no indication that the treatment of repatriated North Korean refugees has improved, markedly or otherwise, including the religious persecution, and yet China continues with its forcible repatriation in manifest violation of the principle of non-refoulement as its mass deportation on October 9, 2023 (10/9 deportation) and other subsequent deportations demonstrate.

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<sup>40</sup> “Pressmeddelande från Utrikesdepartementet: Svenska diplomater har återvänt till Pyongyang [Press release from the Ministry of Foreign Affairs: Swedish diplomats have returned to Pyongyang]” (13 September 2024), <https://www.regeringen.se/pressmeddelanden/2024/09/svenska-diplomater-har-atervant-till-pyongyang/>.

I also note that the hundreds of those sent back to North Korea in the 10/9 deportation included a family of South Korean prisoner of war (POW) from the Korean War.<sup>41</sup> This highlights China's well-recorded practice of deporting South Korean POWs and their families, including the repatriation of POW Han Man-taek in January 2005,<sup>42</sup> three POWs' families (4, 3, and 2 from each family) in October 2006<sup>43</sup> and a POWs, a Mr. Kim, in February 2017.<sup>44</sup>

The 10/9 deportees also included Ms. Kim Cheol-ok, 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.<sup>45</sup>

At the China UPR on January 23, 2024, several recommendations were made concerning North Korean refugees in China and their forcible repatriation. Czechia made the most

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<sup>41</sup> 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>>.

<sup>42</sup> 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>>.

<sup>43</sup> 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](https://www.mofa.go.kr/www/brd/m_4080/view.do?seq=291232)>.

<sup>44</sup> 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](https://news.tvchosun.com/site/data/html_dir/2017/09/29/2017092990150.html)>.

<sup>45</sup> 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>>.

straightforward and robust recommendation to China to “Refrain from the forcible repatriation of North Korean refugees to the DPRK” echoing its previous recommendation during China’s second UPR on October 22, 2013 to “Protect North Korean refugees in accordance with international law, honouring the principle of non-refoulement”. South Korea (Republic of Korea) made three recommendations: “Provide adequate protection to escapees from [sic] foreign origin including the Democratic People’s Republic of Korea”; “Respect relevant international norms such as the principle of non-refoulement”; and “Consider adopting a national refugee law as part of its efforts to implement the 1951 Convention relating to the Status of Refugees”. While the latter two recommendations echoed the earlier ones from China’s second UPR on October 22, 2013, a direct reference to North Korean escapees in the first one by South Korea, notwithstanding the use of the diplomatically convoluted and grammatically incorrect phrase “escapees from [sic] foreign origin including the Democratic People’s Republic of Korea”, was unprecedented.

It is also noteworthy that South Korea submitted three written questions in advance: “Could China provide information on the asylum procedures that escapees from [sic] foreign origin including the Democratic People’s Republic of Korea have access to?”; “We would like to ask what measures China is taking to protect and support women escapees from [sic] foreign origin including the Democratic People’s Republic of Korea who are exposed to trafficking, forced marriage, and other forms of exploitation”; and “We would like to ask what measures China is taking to protect and support children born in China to women escapees from [sic] foreign origin including the Democratic People’s Republic of Korea who are categorized as “illegal immigrants” according to the Chinese domestic law”.<sup>46</sup> This was the first time since North Korea (DPRK)’s first UPR on December 7, 2009 that South Korea submitted written advance questions in any UPR.

I also note that Canada submitted an advance written question to China in which it expressed its concerns about China’s non-observance of the principle of non-refoulement in relation to North Korean refugees: “How is the Government adhering to the principle of non-refoulement set out in Article 3 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, particularly with regard to North Koreans?” The United Kingdom (“Cease the restriction of civil society and independent media, end forced repatriations, and stop targeting human rights defenders”), Uruguay (“Strengthen measures to guarantee the protection of asylum seekers and their non-refoulement”) and Afghanistan (“Observe the international principle of non-refoulement and provide protection to migrants and refugees”) also appeared to have touched upon the issue without naming North Korea.

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<sup>46</sup> Questions submitted in advance and Addendum, <[https://uprmeetings.ohchr.org/Sessions/45/China/DL\\_UPRDocuments/Advance%20Questions%20-%20China.docx](https://uprmeetings.ohchr.org/Sessions/45/China/DL_UPRDocuments/Advance%20Questions%20-%20China.docx)>.

For the upcoming DPRK UPR on November 7, it would be important for like-minded governments to submit advance written questions concerning the fate and whereabouts of Kim Cheol-ok and other North Korean refugees repatriated from China to North Korea and recommend that North Korea end the arbitrary detention of Kim Cheol-ok and other repatriated North Korean refugees. The South Korean ambassador urged North Korea to end the arbitrary detention of repatriated North Koreans at the interactive dialogue with the WGAD at the Human Rights Council last week. Again, mentioning Ms Kim Cheol-ok's name in the advance questions and recommendations will send a clear message to Pyongyang.

It is also time for South Korea to address the repatriated North Koreans as “refugees” in the DPRK UPR. While the Ministry of Unification has made a clear statement that the North Korean escapees in China are refugees,<sup>47</sup> the Ministry of Foreign Affairs which decides the statements to be made at the UN has refrained from using the R-word to describe undocumented North Koreans. The foreign ministry makes the technical argument that not all such North Koreans qualify as “refugees” under international law even though other like-minded countries including the United States have no such qualms. If this is the real reason for the hesitancy, the South Korean foreign ministry should consider using terms like “refugees, asylum-seekers and other citizens” which is used in UN resolutions.

South Korea and the United States should add a commitment to end the forcible repatriation of refugees from the DPRK and permit their third-country resettlement in the next joint summit statement in addition to the commitments to promote respect for human rights in the DPRK and to resolve the issues of abductions, detainees, and unrepatriated prisoners of war in the previous summit statements.<sup>48</sup>

Congress can also consider strengthening the existing sanctions legislation against North Korea to target the Chinese individuals and entities that are complicit in North Korean human

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<sup>47</sup> Kim Ho-jun, “Kim Yung-ho says “The North Korean escapees in China are refugees; should be allowed to go to South Korea [김영호 "중국 내 탈북민은 난민... 한국에 입국할 수 있어야"]”, Yonhap News 2023-08-16, <<https://www.yna.co.kr/view/AKR20230816049151504>>

<sup>48</sup> Leaders’ Joint Statement in Commemoration of the 70th Anniversary of the Alliance between the United States of America and the Republic of Korea (April 26, 2023), <<https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/26/leaders-joint-statement-in-commemoration-of-the-70th-anniversary-of-the-alliance-between-the-united-states-of-america-and-the-republic-of-korea>>; The Spirit of Camp David: Joint Statement of Japan, the Republic of Korea, and the United States (August 18, 2023), <<https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/18/the-spirit-of-camp-david-joint-statement-of-japan-the-republic-of-korea-and-the-united-states>>.

rights violations. The North Korea Sanctions and Policy Enhancement Act (NKSPEA) already provides that “any significant goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by the labor of North Korean nationals or citizens shall be deemed to be prohibited under section 1307 of title 19 and shall not be entitled to entry at any of the ports of the United States”.<sup>49</sup>

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

### 3. Accountability for the religious persecution in North Korea

The DPRK UPR on November 7 would be an important venue to ask questions concerning the legal provisions policing and penalizing “superstition” in North Korean laws and “acts of religion and superstition” in the 2021 Youth Education Guarantee Law as well as the secret set of laws used by the MSS to punish Christians and other religionists. The like-minded states should also recommend that North Korea to end the persecution of “superstition” or religion by legal or extralegal means.

In light of the ongoing crimes against humanity and possible genocide against the Christian population and other groups in North Korea, there needs to be serious discussion about the atrocity determination for North Korea.<sup>50</sup> The Secretary of State can make such a determination based on the atrocity risk assessment framework under the Elie Wiesel Genocide

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<sup>49</sup> §9241a. Rebuttable presumption applicable to goods made with North Korean labor, <<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title22-section9241a&num=0&edition=prelim>>.

<sup>50</sup> Olivia Enos, “The US Needs to Issue an Atrocity Determination for North Korea”, Hudson Institute (April 30, 2024), <<https://www.hudson.org/human-rights/us-needs-issue-atrocity-determination-north-korea-olivia-enos>>.

and Atrocities Prevention Act of 2018.<sup>51</sup> The atrocity determination has been made for Ethiopia in March 2023<sup>52</sup> and Sudan in December 2023.<sup>53</sup>

Congress can also send a clear message to North Korea and the broader international community with the speedy passage with bipartisan support of the North Korean Human Rights Reauthorization Act which died in the 117<sup>th</sup> session and has an uncertain prospect in the current 118<sup>th</sup> session.

Another accountability option suggested by Christian Solidarity Worldwide (CSW) in its recent report concerns instituting a Genocide Convention case against North Korea at the International Court of Justice (ICJ). Since the Gambia's filing of a Genocide Convention case against Myanmar for the mass killing and deportation of Rohingya in 2018, there have been a flurry of cases brought under the compromissory clause of the Genocide Convention (and the Convention against Torture and the Convention on the Elimination of All Forms of Discrimination against Women).

Lastly, the mandate of the OHCHR DPRK accountability project, which was created by the UN Human Rights Council 2014 to continue the work of the COI DPRK can be clarified and strengthened to explicitly include: (1) collection and consolidation of evidence and information concerning the international crimes committed by North Korea to prepare case files and (2) support for the judicial process in international and domestic courts on par with other OHCHR accountability works like the OHCHR Sri Lanka Accountability Project.

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<sup>51</sup> U.S. Atrocity Risk Assessment Framework (December 21, 2022), <<https://www.state.gov/u-s-atrocity-risk-assessment-framework>>.

<sup>52</sup> “War Crimes, Crimes Against Humanity, and Ethnic Cleansing in Ethiopia”, Press Statement: Antony J. Blinken, Secretary of State (March 20, 2023), <<https://www.state.gov/war-crimes-crimes-against-humanity-and-ethnic-cleansing-in-ethiopia>>.

<sup>53</sup> “War Crimes, Crimes Against Humanity, and Ethnic Cleansing Determination in Sudan”, Press Statement: Antony J. Blinken, Secretary of State (December 6, 2023), <<https://www.state.gov/war-crimes-crimes-against-humanity-and-ethnic-cleansing-determination-in-sudan>>.