

Participatory Transitional Justice as Anticipatory Project: North Korea, Diasporas and Uncertain Futures

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ABSTRACT[∞]

This article examines how insights from the transitional justice literature can be applied to North Korea, where the political system prevents grassroots, participatory approaches to accountability, truth-telling, commemoration and reconciliation. The North Korean diaspora, while a potential grassroots community, largely consists of escapees with tenuous or secretive ties to their home country. We argue that the participatory elements of the anticipatory transitional justice efforts are necessarily transnational and must be focused on enabling conditions for a future transition scenario. Political opportunity structures, particularly those shaped by the South Korean state, are critical in facilitating victim engagement. Our findings contextualize the purpose of anticipatory efforts and highlight ways to better address challenges faced by victim constituencies. Additionally, we provide insight into how broader political and structural environments can enable or restrain meaningful action, offering strategies for advancing transitional justice in anticipation of change in North Korea.

KEYWORDS: Accountability, diaspora, North Korea, participation, South Korea, transitional justice

INTRODUCTION

Layered over a satellite image of Hyesan, a city in North Korea's northeast Ryanggang province, overlapping coloured circles link together testimonies on public execution sites from North

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[∞] The authors would like to thank Danielle Ide-Tobin for her valuable research assistant work. They would also like to thank the participants of the 2021 online workshop on transitional justice in North Korea, and colleagues at the Deakin University School of Humanities and Social Sciences reading group for their comments on an early draft. This work was supported by a grant from the Academy of Korean Studies (grant number AKS-2020-C-07).



Figure 1. Mapping Project by Transitional Justice Working Group (TJWG).

Korean interviewees. This map (Figure 1) is published in a civil society report identifying trends in human rights abuses inside North Korea (also known as the Democratic People's Republic of Korea, or DPRK).¹ Behind the pink and yellow circles are individual narratives, imperfect recollections and long-suppressed memories.

The mapping project seeks to provide a layer of evidentiary legitimacy to stories that escape North Korea but are impossible to physically verify. Without access to the sites referenced in testimonials, the report's Seoul-based authors use Geographical Information System (GIS) technology to synthesize stories collected by human rights researchers from North Koreans living in South Korea. Individually, the stories are disjointed and sometimes even contradictory but, coupled with the GIS technology, a physical map emerges, against which the collected testimonies take firmer shape. The satellite images synthesize the stories by providing both an element of physical corroboration as well as a tangible form.

As well as supporting international advocacy on North Korean human rights, this work is also intended to contribute to future transitional justice efforts. This includes the identification of sites in North Korea with potential caches of documents that may play a role in future legal proceedings, by gathering information to support accountability processes and by supporting future historians in their ability to recount North Korea's past.² For now, however, the maps sit in databases, are distributed in civil society reports and wait for the time when they may achieve their full intended use.

The mapping project is part of a broader, multifaceted North Korean transitional justice project that includes a range of different actors, approaches and perspectives. Uniting these civil

¹ Ahyeon Park et al., 'Mapping Killings under Kim Jong-Un: North Korea's Response to International Pressure,' Progress Report (Seoul: Transitional Justice Working Group, December 2021), 30, <http://en.tjwg.org/mapping-project-north-korea/>. Accessed 20 February 2025.

² *Ibid.*, 36–39.

society efforts is an understanding that this work is necessarily anticipatory and participatory. It is anticipatory in the sense that it is building a database and preparing the groundwork for a future that is unknown, in terms of both its proximity and its circumstances. It is participatory in the sense that it is victim focused; almost all the evidence derives from witness testimony that is corroborated by other witness testimony to build patterns, as well as by the sort of satellite imaging work described above. The lack of clarity around what the future political, social or economic conditions for transitional justice might look like, and the difficulty of establishing true participatory mechanisms without access to the North Korean population, mean that the North Korean transitional justice project is not well understood. In this article we ask how insights from the transitional justice literature can be adapted to the case of North Korea, to build better understandings of the scope and limitations of existing and future efforts.

Despite the advances that have been made in understandings of the human rights conditions inside North Korea,³ little scholarly work has been undertaken into what a meaningful transitional justice process might look like in a future scenario on the Korean peninsula.⁴ In this article we draw on insights from the broader transitional justice knowledge base and reconceptualize it in the North Korean context. We also draw on our combined experience researching and working alongside the broader North Korean diaspora (which include escapees and their descendants), South Korean family members of abductees to North Korea, NGOs, South Korean prisoners of war, international organizations and foreign policy specialists operating within and alongside what is often referred to as the ‘North Korean human rights movement.’ We bring first-hand experience of participation in the design of civil society human rights documentation projects paired with victim engagement initiatives,⁵ as well as scholarly research into the historical formation of the movement and its relationship with humanitarian engagement.⁶ Some of the discussion we include reflects key lessons from an international workshop we held online in October 2021 with scholars and practitioners on transitional justice and North Korea.

We begin this discussion with an exploration of the two concepts central to this article – anticipatory and participatory transitional justice – defining and clarifying these terms. Following this, we explore the limitations and risks inherent to an exclusively top-down approach to transitional justice on the Korean peninsula, further clarifying the need for the anticipatory transitional justice project to explore more options for greater bottom-up participation. We then shift our attention to the transitional justice knowledge base and briefly provide an overview of some important lessons learned from two well-researched cases of participatory transitional justice, namely Colombia and Nepal. Following this, we expand our gaze to work that seeks to open new spaces for actors and approaches to transitional justice, including the role that transgenerational diaspora communities might play. The article’s final sections then turn attention to the Korean peninsula, first outlining the challenges inherent to pursuing justice in the context of a closed, authoritarian state, before exploring the ways in which current efforts seek to overcome some of these serious challenges. The article concludes with a reflection on how these findings might be applied to the North Korean transitional justice project.

³ For an overview, see Andrew Yeo and Danielle Chubb, eds., *North Korean Human Rights: Activists and Networks* (Cambridge: Cambridge University Press, 2018). <https://doi.org/10.1017/9781108589543>.

⁴ An important exception is: Buhm-Suk Baek and Ruti G. Teitel, eds., *Transitional Justice in a Unified Korea* (New York: Palgrave Macmillan, 2015).

⁵ Sarah Son, ‘Exploring Grassroots Transitional Justice: North Korean Escapee Views on Accountability for Human Rights Abuses’ (Seoul: Transitional Justice Working Group, February 2019); Sarah Son et al., ‘Mapping the Fate of the Dead: Killings and Burials in North Korea,’ Progress Report (Seoul: Transitional Justice Working Group, June 2019).

⁶ Danielle Chubb, *Contentious Activism and Inter-Korean Relations* (New York: Columbia University Press, 2014); Danielle Chubb and Nazanin Zadeh-Cummings, ‘International Engagement with North Korea: Disability, Human Rights and Humanitarian Aid,’ *Third World Quarterly* 44(1) (2023): 134–151. <https://doi.org/10.1080/01436597.2022.2141217>.

TRANSITIONAL JUSTICE AS ANTICIPATORY AND PARTICIPATORY

The North Korea transitional justice project requires us to expand our understanding of the temporal boundaries of the transition process, as well as the conceptual boundaries of what it means to curate a participatory model. As Sirleaf argues in an editorial post-script to a 2024 Special Issue on race and transitional justice, the ‘question’ of Palestine highlights the limitations of transitional justice, whose parameters have precluded the study of cases where no formal transition has taken place; ‘there is an unwarrantedly myopic focus on transitional justice periods in the field.’⁷ The case of North Korea also raises the question of how it is possible to talk of a participatory process in the absence of a grassroots movement ‘on the ground.’ The definition of what local, bottom-up, victim-focused participatory transitional justice might look like requires some consideration.

By anticipatory transitional justice, we mean processes that are necessarily forward-looking, but do not rely on a pre-conceived image of when, how and why such a transition might take place. As such, anticipatory transitional justice involves preparing the groundwork for a future that is unknown, both in terms of its proximity and its circumstances. This understanding of anticipatory transitional justice is partially captured by what Gready describes as the shifting temporal parameters of transitional justice, which may reach far into the past as well as into the future, with ‘interventions during conflict and authoritarian rule, designed to sow the seeds for future peace and transitional justice.’⁸ Yet despite this recognition of the need to expand the temporal landscape of transitional justice, our review of the literature did not unearth any studies examining transitional justice work that is entirely anticipatory: this article is a contribution towards filling that gap.

Participatory transitional justice processes, also known as bottom-up justice or transitional justice ‘from below,’ focus on the participation of victims and other community members who have been impacted by human rights abuses and/or conflict.⁹ The call for participatory transitional justice in the wider literature came from a recognition of the limitations of processes that relied heavily on outside institutions enforcing international human rights norms without regard for local contexts, often with sub-optimal or harmful results. In response to these experiences and insights, there has been a call for the localization of transitional justice, and a range of alternatives and/or complements to the top-down approach have been proposed and trialled.¹⁰ These include hybrid approaches which seek to marry top-down approaches with insights from the local context, and a wider range of alternative, grassroots approaches which, by their nature, challenge some of the core assumptions of what justice looks like in a transitional setting.

These definitions of participatory justice also need expanding, to encompass the work being undertaken in the anticipatory North Korea project. Here, we share Firchow and Selim’s understanding of meaningful participation as a process that allows for flexibility and openness to new actors, ideas and knowledge transfer with the goal of allowing ‘local voices [to] affect the outcome of a process, foment local empowerment and self-mobilisation and lead to positive and possibly transformational change in society.’¹¹ In planning for a future transitional justice process in North Korea, there is therefore a need to first understand victim constituencies and explore

⁷ Matiangai V. S. Sirleaf, ‘Palestine as a Litmus Test for Transitional Justice,’ *International Journal of Transitional Justice* 18(1) (2024): 168. <https://doi.org/10.1093/ijtj/ijae012>.

⁸ Paul Gready, ‘Introduction,’ in *From Transitional to Transformative Justice*, ed. Paul Gready and Simon Robins (Cambridge: Cambridge University Press, 2019), 22. <https://doi.org/10.1017/9781316676028.001>.

⁹ Pamina Firchow and Yvette Selim, ‘Meaningful Engagement from the Bottom-Up? Taking Stock of Participation in Transitional Justice Processes,’ *International Journal of Transitional Justice* 16(2) (2022): 188. <https://doi.org/10.1093/ijtj/ijab031>.

¹⁰ Examples of work calling for a localized approach include Firchow and Selim, *supra* n 9; Lia Kent, ‘Local Memory Practices in East Timor: Disrupting Transitional Justice Narratives,’ *International Journal of Transitional Justice* 5(3) (2011): 434–455. <https://doi.org/10.1093/ijtj/ijr016>; Rosalind Shaw, Lars Waldorf and Pierre Hazan, *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford: Stanford University Press, 2010).

¹¹ Firchow and Selim, *supra* n 9 at 189.

ways to empower these constituencies to participate actively and with determining powers in the design and implementation of transitional justice processes. This involves critically exploring what ‘grassroots,’ ‘participatory’ and ‘victim-led’ even means in a context like North Korea, where there is no recognizable civil society on the ground. We aim to start this conversation and propose a conceptualization that puts the North Korean diaspora at its centre, involving North Korean ‘escapees,’ their descendants (who identify as part of this diaspora in an intergenerational sense) and divided families, separated from their kin after the end of the Korean War. The question of whether a process can be considered participatory in the absence of full access to the local population is one we consider in more detail below.

Before turning our attention to the literature, it is important to clarify why we place such significance on participatory transitional justice when powerful players have such an important role to play on the Korean peninsula, as best exemplified by the UN Commission of Inquiry (COI) into North Korean human rights. There are two key reasons for this. The first is that the COI, a state-driven process, was only brought about after decades of civil society campaigning; the questions of human rights in North Korea were frequently subjugated by the international community in favour of a focus on the North Korean government’s nuclear programme. The risk, moving forward, is that traditional security concerns will once again dominate the attentions of powerful interests on the Korean peninsula, unless a bottom-up process is already well established. Second, and perhaps more concerning, is the risk that in the case of a change in the status quo on the Korean peninsula, any transitional justice process will quickly become top-down as the international community steps into what is likely to be a governance lacuna that will follow any collapse of the strong authoritarian structures currently in place. It is likely that South Korean actors, who will bring to the table literacy in international norms, as well as economic and political power, will quickly dominate the transition process. Building capacity among grassroots, diaspora actors is a way to hedge against this risk.

Participatory Transitional Justice Cases in the Literature: Colombia and Nepal

The transitional justice literature has seen a significant increase in efforts to develop participatory, victim-centred approaches. In this section, we briefly examine key lessons from the cases of Colombia and Nepal that are particularly relevant to the context of North Korea. Colombia is often cited as a case study for participatory transitional justice, illustrating an ongoing conflict where efforts have been made to move beyond the paradigm of victims as mere witnesses to seeing them as active participants in decision-making. Similarly, in Nepal, truth-seeking played a central role in organizing victims from marginalized groups, yet an adequate response to victims’ needs – and thus meaningful participation – remained elusive. In both cases, the failure to build political citizenship within communities of victims and survivors has limited the realization of genuine participation. These experiences offer valuable insights for addressing the challenges of transitional justice in North Korea.

Decades of violent conflict among state, paramilitary and guerrilla forces had a significant impact on the lives of Colombians, displacing millions. The 2011 Victims and Land Restitution Law (‘Victims’ Law’) laid the groundwork for groups that had previously been rendered invisible during peace processes and required participation of victims in public policy design. The subsequent 2012–2016 peace process featured victims and local civil society groups as ‘crucial interlocuters.’¹² Victims organizations have continued to play a role in highlighting victim

¹² Mikje de Waardt and Sanne Weber, ‘Beyond Victims’ Mere Presence: An Empirical Analysis of Victim Participation in Transitional Justice in Colombia,’ *Journal of Human Rights Practice* 11(1) (2019): 210. <https://doi.org/10.1093/jhuman/huz002>.

experiences through the postconflict transitional justice process, including through legal pathways with the extension of the Victims' Law,¹³ as well as other processes of memorialization and truth-seeking.¹⁴ However, human rights groups in Colombia cautioned early on that, without changes, the Victims' Law had shortcomings that might impede efforts to bring justice to survivors.¹⁵ More than a decade later, one of the barriers reported by participants was the complexity of the judicial process which had both practical and moral implications for meaningful participation.¹⁶

In Nepal, a grassroots victims' movement emerged following a decade-long conflict, challenging the approaches of more mainstream NGOs. This movement highlighted the uneven impact of the conflict, which disproportionately affected the country's most marginalized communities living in parts of the country where international NGOs often lacked deep engagement or experience. The grassroots efforts underscored the limitations of NGOs less integrated into Nepalese societal dynamics.¹⁷ Central to this movement was the pursuit of truth-seeking, notably regarding disappearances, a defining human rights violation of the conflict.

The 2006 Comprehensive Peace Accord (CPA) included a commitment by the signatories to establish a high-level Truth and Reconciliation Committee. However, over nearly two decades, the commissions set up to fulfil this mandate – the Truth and Reconciliation Commission and Commission of Investigation on Enforced Disappeared Persons – have failed to deliver accountability that adequately addresses victims' needs. This is despite the deep roots that such claims have within Nepal; the centrality of truth-seeking to the transition process was established before the CPA, and came from the efforts of victims' families, putting pressure on the warring parties to provide answers about the plight of the disappeared.¹⁸

The cases of Nepal and Colombia illustrate how transitional justice processes can falter when top-down approaches fail to meaningfully incorporate victims' needs and perspectives. In Nepal, the neglect of grassroots participatory movements has left victims feeling alienated; the shortcomings of the transitional justice process lay not just in the failure to prosecute perpetrators of human rights crimes, but in the absence of efforts to take into account the actual needs, wishes and expectations of victims, who have remained marginalized throughout the process.¹⁹ Similarly in Colombia, despite significant strides towards victim inclusion, barriers such as bureaucratic complexity have hindered meaningful participation. Both cases highlight the broader limitations of transitional justice processes that do not adequately centre victims' voices, not only in truth-seeking and accountability efforts but also in shaping policies and practices that directly impact their lives. We return to these lessons later, when considering how the anticipatory North Korea transitional justice project must address entrenched inequalities by providing explicit opportunity structures to allow for the development of a more genuinely participatory component.

¹³ Justice for Colombia, 'Colombia Extends Victims' Law until 2031,' Justice for Colombia, 19 November 2020, <https://justiceforcolombia.org/news/colombia-extends-victims-law-until-2031/>. Accessed 20 February 2025.

¹⁴ Camilo Tamayo Gomez, 'Recognition as Transitional Justice "From Below": Analysing Victims' Grassroots Activism in Postconflict Colombia,' *International Journal of Transitional Justice* 16(3) (2022): 321. <https://doi.org/10.1093/ijtj/ijac024>.

¹⁵ Amnesty International, 'Colombia: The Victims and Land Restitution Law,' Amnesty International Analysis (London: Amnesty International, 17 April 2012), <https://www.amnesty.org/en/documents/amr23/018/2012/en/>. Accessed 20 February 2025.

¹⁶ de Waardt and Weber, *supra* n 12 at 211–214.

¹⁷ 'Victim-centred' transitional justice is thus related to participatory transitional justice, but not analogous to it, because victim-centred transitional justice alone does not guarantee participation in shaping processes and outcomes. We use the term 'victim-led' as a synonym for 'participatory' transitional justice. See Paul Greedy and Simon Robins, 'Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and "New" Civil Society,' *The International Journal of Human Rights* 21(7) (2017): 268–269. <https://doi.org/10.1080/13642987.2017.1313237>.

¹⁸ Renee Jeffery, 'Truth Commissions and Democratic Transitions: Neither Truth and Reconciliation nor Democratization in Nepal,' *Journal of Human Rights* 20(3) (2021): 326. <https://doi.org/10.1080/14754835.2021.1886059>.

¹⁹ Simon Robins, 'Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal,' *International Journal of Transitional Justice* 5(1) (2011): 81–82. <https://doi.org/10.1093/ijtj/ijq027>.

Participation in the Face of Repression: Diaspora and Transgenerational Action

Structural barriers to participation in transitional justice not only affect marginalized communities at home, as seen in the Nepal and Colombia cases, but are also experienced by diaspora communities. At the international level, there are practical impediments to the meaningful participation of diaspora, as they often sit outside state-centric and territorial understandings of what citizenship means. As a result, involvement of diaspora can be limited to the provision of evidentiary testimony in official processes such as commissions of inquiry.²⁰ However, diasporic action can be an important arena for participation especially when home country repression limits domestic participation, or transitional justice action is anticipatory (preparing for unknown future transition), and especially when, such as in the case of North Korea, there is both repression and future uncertainty.

While the previous subsection looked at two prominent cases in the participatory transitional justice literature, we here turn to cases with more direct parallels to North Korea. Specifically, we examine cases of participation across borders, in defiance of repressive authoritarian regimes and in anticipation of future undefined transitions. Stokke and Wiebelhaus-Brahm describe the anticipatory work of the Syrian diaspora as ‘prospective’ transitional justice, fuelled by multiple motivations including moral obligation and institutional survival, similar to those articulated by participants in the North Korean human rights movement.²¹ Activists have gathered around these parallels, such as human rights documentation practitioners working with Syrian victims going to South Korea to train civil society interviewers working with North Korean victims of violence.

For ‘bottom-up’ participatory approaches, the role of civil society in driving and supporting transitional justice mechanisms is now seen as pivotal to the success of transitional justice for its ability to bridge between the grassroots, the national and the international dimensions of transitional justice processes.²² Diasporas can play a critical role in this bridging, using diverse mechanisms to link with local actors, resulting in ‘more effective transitional justice outcomes, through greater inclusiveness and more comprehensive truth-telling, and progress in reconciliation processes.’²³ Transitional justice discourse and practice have become transnational, particularly in situations where victims’ narratives have struggled to achieve domestic recognition.²⁴ Diaspora engagement can thus support domestic action, but can also represent a unique form of participatory transitional justice action. Diasporic action can span not only place but also time, and transitional justice initiatives can foster intergenerational diaspora to take active roles.

Activists within diaspora groups have launched symbolic initiatives to prepare for future criminal justice proceedings, aiming to highlight victim grievances, lend legitimacy to calls for accountability and educate members of the diaspora about the possibilities and limitations of criminal justice proceedings as a transitional justice mechanism. This dual purpose – participation and capacity building – is evident in efforts like the Iran Tribunal (2012) and the China Tribunal (2020), organized by the Iranian and Uyghur diasporas, respectively. These victim-led tribunals united a dispersed diaspora, offered victims opportunities to testify alongside expert

²⁰ Larissa van den Herik and Mirjam van Reisen, ‘International Commissions of Inquiry in a Networked World: Unveiling the Roles of Diasporas through an Eritrean Case Study,’ *International Journal of Transitional Justice* 13(3) (2019): 417–434. <https://doi.org/10.1093/ijtj/ijz020>.

²¹ Espen Stokke and Eric Wiebelhaus-Brahm, ‘Syrian Diaspora Mobilization for Prospective Transitional Justice in the Absence of Transition,’ *Journal of Human Rights* 21(4) (2022): 500–516. <https://doi.org/10.1080/14754835.2021.2007365>.

²² Gready and Robins, supra n 17 at 12.

²³ Huma Haider, ‘Transnational Transitional Justice and Reconciliation: The Participation of Conflict-Generated Diasporas in Addressing the Legacies of Mass Violence,’ *Journal of Refugee Studies* 27(2) (2014): 209. <https://doi.org/10.1093/jrs/feu002>; see also Maria Koinova and Dženeta Karabegović, ‘Causal Mechanisms in Diaspora Mobilizations for Transitional Justice,’ *Ethnic and Racial Studies* 42(11) (2019): 1809–1829. <https://doi.org/10.1080/01419870.2019.1624802>.

²⁴ Camilla Orjuela, ‘Mobilising Diasporas for Justice. Opportunity Structures and the Presence of a Violent Past,’ *Journal of Ethnic and Migration Studies* 44(8) (2018): 1357–1373. <https://doi.org/10.1080/1369183X.2017.1354163>.

evidence and created spaces for accountability in the absence of official forums. Similarly, Syrian activists in exile have documented war crimes and crimes against humanity, applying legal expertise and big data methodologies. These efforts have resulted in formal legal proceedings in courts across Europe, Australia, Canada and the United States, using the principle of Universal Jurisdiction.²⁵

Participatory approaches to transitional justice have increasingly adopted non-traditional, creative and anticipatory approaches including memorialization, institution-building, truth-seeking and community rehabilitation. Transgenerational dimensions are also notable, as the children and grandchildren of victims often take up these efforts.²⁶ For example, in Korea, descendants of those abducted to North Korea during and after the 1950–1953 Korean War have sought to challenge the state-imposed marginalization of victim memory by sharing their stories through digital memorials near the North-South Korean border.²⁷ This illustrates two points: first, the silence of one generation does not prevent the transmission of victimization's impact to subsequent generations, who may decide to speak out. Second, advancements in media connectivity have expanded digital and physical avenues for transitional justice practices, particularly in public memorialization beyond state control. However, digital tools, while enabling participation, face limits under authoritarian regimes. Syrian diaspora efforts, from social media campaigns to organized documentation of rights violations, have confronted digital repression aimed at silencing their actions.²⁸

Studies of transnational and transgenerational participation in transitional justice also reveal valuable insights into areas for improvement. A common theme across the literature relates to the power dynamics inherent to the political space of transitional justice. While the diasporic space can in some instances reify the power dynamic from the home country and thereby constrain or deny dissident voices that stray from an acceptable script, in other cases the diaspora acts as a strong counterpoint in opposition to the discourses that are deemed acceptable back in the home state.²⁹ Other efforts to bypass the political arena and provide opportunities for healing and transition may come with the risk that, having dislocated a particular discourse, it can be very difficult to re-enter what is by its very nature a constrained political space.³⁰

Decades of transitional justice experiences and attempts to meaningfully incorporate grassroots voices have generated a wealth of insights for future participatory efforts. Central to all of these is the finding that, for participation to be meaningful, real and ongoing effort must be made to adapt any transitional justice processes to the local context. While there is often a place for the rigour and authority of external, top-down judicial bodies, these are most effective when they act in support of processes that have support and buy-in from affected communities, and when they are accessible to these communities in a practical way. Before considering how we might apply these lessons to the North Korea project, we first outline the historical and political context in which actors operate. First, we examine the 'hard case' of North Korea, specifically the question of what civil society might mean in a restricted authoritarian space, before moving to the question of what transitional justice means in the context of a divided Korea.

²⁵ Universal jurisdiction refers to the idea that a national court may prosecute individuals for serious crimes against international law, based on the principle that such crimes harm the international community itself, which individual states may act to protect. It is generally invoked when alternative bases of jurisdiction are not available, such as when the defendant is a non-national of the state.

²⁶ Jenny Wüstenberg, *Civil Society and Memory in Postwar Germany* (Cambridge: Cambridge University Press, 2017). <https://doi.org/10.1017/9781316822746>.

²⁷ 'National Memorial for Abductees during the Korean War,' <https://www.abductions625.go.kr/home/en/index.html> (accessed 8 November 2023).

²⁸ Chris Tenove, 'Networking Justice: Digitally-Enabled Engagement in Transitional Justice by the Syrian Diaspora,' *Ethnic and Racial Studies* 42(11) (2019): 1950. <https://doi.org/10.1080/01419870.2019.1569702>.

²⁹ Orjuela, supra n 24 at 1370.

³⁰ Yifat Gutman, *Memory Activism: Reimagining the Past for the Future in Israel-Palestine* (Nashville, TN: Vanderbilt University Press, 2017), 149.

CHALLENGES TO PARTICIPATORY TRANSITIONAL JUSTICE ON THE KOREAN PENINSULA

Underpinning the broader international move towards participatory transitional justice approaches is an assumption that civil society – even a fledgling one – exists to support and organize these efforts. The North Korea case requires specific consideration because it is a restricted, totalitarian context that counters assumptions about how victims and local actors may organize themselves or communicate with other actors both within their own country and across state borders. In this section, we establish that the North Korea case contains challenges to dominant understandings of transitional justice, and in particular participatory transitional justice. We do so by exploring issues of civil society, dissent and shared understandings of rights.

Civil society represents an alternative space where critical and diverse perspectives can organize. For Hastings et al., civil society is ‘foremost a *space* in relation to other spheres (i.e., state and markets), and only secondarily ... an actor in relation to other actors (i.e., government and business actors).’³¹ In North Korea, while the building blocks for such a space exist, there is currently no recognizable, overt or institutionalized civil society sphere. For generations, North Koreans have lived under the control and personality cult of the Kim regime.³² To deter popular resistance, the regime has employed tools including policies to prevent independent organizing and reinforce dependence on the state, control and manipulation of information and use of force to prevent and quash emerging opposition.³³ The prevalence of grey and black markets may support elements that bolster a form of civil society, like social capital and new avenues to share information, but the regime has shown it is skilled in ‘co-opting market participants, and retains the tools to manipulate and constrain the public sphere even if it has lost its monopoly on the spread of ideas and information.’³⁴

While open, organized dissent is absent in North Korea, we must assume that resistance to regime policies and ideas does exist, even if ‘dissent’ or ‘grassroots resistance’ may not look familiar. Elsewhere, historical accounts reveal how powerless and repressed individuals and communities have engaged in everyday resistance and become skilled in engaging in subtle, everyday acts of defiance, which carry with them their own logic and philosophy of justice.³⁵ Research with North Korean escapees tells us that North Koreans place high value on their ‘inner autonomy’ in the context of the extraordinary ‘performative demand’ placed upon them in public, where they are monitored by constant state surveillance.³⁶ Additionally, the private consumption of illegal media content from outside North Korea has had the effect of building trust within intimate relational settings, such as families and close friends, who are bound to one another through complicity in illegal activities that defy the state’s extraordinarily robust efforts at information control.³⁷ Thus, while the absence of a ‘civil society’ inside North Korea is an important factor that must be taken into account in current anticipatory efforts, it does

³¹ Justin V. Hastings, Daniel Wertz and Andrew Yeo, ‘Market Activities & the Building Blocks of Civil Society in North Korea,’ 2021, 20–21, www.ncnk.org. Emphasis in original.

³² The country’s founder, Kim Il Sung (born 1912, died 1994), ruled from North Korea’s founding in 1948 until his death. His son, Kim Jong Il (born 1941, died 2011), then assumed the role of Supreme Leader. Kim Jong Il’s son, Kim Jong Un (born 1982 or 1983), became the third generation of the Kim regime to rule the country in 2011, following his father’s death.

³³ Daniel Byman and Jennifer Lind, ‘Pyongyang’s Survival Strategy: Tools of Authoritarian Control in North Korea,’ *International Security* 35(1) (2010): 44–74.

³⁴ Hastings et al., *supra* n 31 at 19.

³⁵ See e.g., James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1987); Anna Johansson and Stellan Vinthagen, *Conceptualizing ‘Everyday Resistance’: A Transdisciplinary Approach* (New York: Routledge, 2020); Forrest D. Colburn, ed., *Everyday Forms of Peasant Resistance*, 2nd ed. (Abingdon: Routledge, 1989).

³⁶ Hyang Jin Jung, ‘Do They Mean What They Act? Surveillance, Theatricality, and Mind-Heart among North Korean Defectors,’ *Acta Koreana* 16(1) (2013): 89.

³⁷ Peter Ward and Steven Denney, ‘How Autocracies Disrupt Unsanctioned Information Flows: The Role of State Power and Social Capital in North Korea,’ *Problems of Post-Communism* 71(2) (2024): 177–191. <https://doi.org/10.1080/10758216.2023.2180038>.

not follow that resistance does not exist; it most likely does, but outside the usual political paradigms.

Even where this sort of undercover resistance may exist, and even among the sections of the population that desire change, there is an absence of literacy in the language of liberal human rights and justice. Goedde frames this as a lack of 'rights consciousness' among the general population.³⁸ This is not to say that rights discourses more broadly defined do not exist in North Korea. Historical rights movements in North Korea tackled issues such as workers' and women's rights, connecting such rights with the values of peace and justice.³⁹ While the language of rights used inside North Korea may not be familiar to liberal concepts as they are commonly understood in Western countries, it is a language well understood by North Korea and used to progress the country's own priorities.⁴⁰ Indeed, the language of rights was added to the North Korean Constitution in 2009, where collective and state rights are prioritized over the rights of the individual.⁴¹ However, the state-espoused concept of rights is inherently antithetical to transitional justice, as the Kim regime's constructions of rights do not also regard the regime as a rights violator. The lack of 'rights consciousness' is thus perhaps more accurately a lack of a particular form of thinking about rights, along with the lack of a 'rights structure' (domestic civil society and accountability mechanisms). These factors present a significant challenge for those who wish to bring a liberal human rights lens to North Korea, or (more significantly) who wish to encourage a diffusion of these norms.⁴²

CURRENT APPROACH TO TRANSITIONAL JUSTICE ON THE KOREAN PENINSULA

In the face of totalitarian restrictions inside North Korea and a wholly unknown situation of what transition will entail, current approaches to transitional justice take place outside of North Korea. South Korean civil society, with Seoul as a hub, plays a significant role. This section first presents a short overview of the history of transitional justice in Korea. It then explores the unification-centred approach to transitional justice, before delving into the contemporary landscape characterized by the 2014 UN COI on North Korean Human Rights and civil society action.

Transitional justice is not a new idea in the Korean context; it was introduced in the two decades following South Korea's democratization, via the establishment of a Truth and Reconciliation Commission in the mid-2000s to investigate incidents regarding human rights abuses, violence and massacres that occurred from the period of Japanese colonial rule of the Korean Peninsula (1910–1945) to the time of South Korea's authoritarian regimes, the last of which ended in the late 1980s.⁴³ The investigations were limited to crimes committed by South Korean governments, thus restricting the purview of transitional justice to South Korea's own transition from authoritarianism, leaving the larger North Korea question unaddressed.

South Korean state-led discourse on transitional justice in relation to North Korea is largely absent; in its place is a 'unification' policy. South Korean unification policy under successive democratic governments since the late 1980s has closely mirrored the model of state-led

³⁸ Patricia Goedde, 'Human Rights Diffusion in North Korea: The Impact of Transnational Legal Mobilization,' in *North Korean Human Rights: Activists and Networks*, ed. Andrew Yeo and Danielle Chubb (Cambridge: Cambridge University Press, 2018), 154–176. <https://doi.org/10.1017/9781108589543.009>.

³⁹ Suzy Kim, *Among Women Across Worlds: North Korea in the global Cold War* (Ithaca: Cornell University Press, 2023).

⁴⁰ Jiyoung Song, *Human Rights Discourse in North Korea: Post-Colonial, Marxist and Confucian Perspectives* (London: Taylor & Francis Group, 2011).

⁴¹ Robert Weatherley and Jiyoung Song, 'The Evolution of Human Rights Thinking in North Korea,' *Journal of Communist Studies and Transition Politics* 24(2) (2008): 272–296. <https://doi.org/10.1080/13523270802003111>.

⁴² Goedde, supra n 38 at 155.

⁴³ Jae-Jung Suh, ed., *Truth and Reconciliation in South Korea: Between the Present and Future of the Korean Wars* (New York: Routledge, 2020).

peace activism based on a traditional model often found in postconflict settings.⁴⁴ As a result, unification policy and the official discourse surrounding it was for decades predominantly future-orientated, proposing a linear plan to move from the present problem (division and war) to a predetermined, but vaguely defined future solution (reconciliation first and, eventually, unification).

North Korea's position towards unification underwent a significant shift in early 2024, with the country's leader, Kim Jong Un, renouncing peaceful unification as a goal. In August 2024, the South Korean government produced its own revised unification policy, focused on a narrow definition of what a unified peninsula might look like, essentially eschewing reconciliation as an interim goal. The future of this policy is unclear, and unification discourse in both Koreas is thus at a volatile moment, highly subject to changes in response to this shift. The ambiguity of the future remains.

In this contentious context, acknowledgement of violence and abuse perpetrated by actors internal to the 'pan-Korean' nation has proven time and again to be unsavoury to ruling elites in both North and South Korea, as unsatisfactory efforts to address the violence of authoritarian governments in South Korea have found. Similar to the post-transition nation-building narratives common elsewhere that privilege 'forgiving and forgetting',⁴⁵ unification discourse projects a broad forecast of economic prosperity and global power for a united Korea, which is at times accompanied by references to a familial sense of *jeong*⁴⁶ between the two Koreas, which makes them uniquely placed to put the painful history of antagonism (and violence perpetrated by both states against their own populations) firmly behind them.⁴⁷

The 2014 UN COI into North Korean human rights found that crimes against humanity were taking place inside North Korea. The findings transformed the conversation about North Korean human rights from one about verifiability, to what one activist called a 'discursive shift on the international level towards accountability'.⁴⁸ Some of the initial scholarship on transitional justice applied to North Korea in the period around the UN COI report noted the complications arising from inter-Korean unification as a prerequisite or concurrent process alongside transitional justice.⁴⁹ Questions were raised around the type and form of transition that might occur in North Korea (sudden or gradual, violent or peaceful, unification or two-state scenario); defining the scope of human rights abuses and limits on who might face prosecution; building national consensus for a transitional justice process; and the logistical priorities around re-building the nation-state – again, whether in a single- or two-state scenario.⁵⁰ A transitional justice process would certainly demand mechanisms, institutional capacity and knowledge well beyond the scope of unification planning as it has been discussed since the division of the peninsula.

⁴⁴ Gutman, *supra* n 30 at 18.

⁴⁵ Kent, *supra* n 10 at 8.

⁴⁶ Lucy Kyekyung Lee, 'Hanmaeum, One Heart-Mind: A Korean Buddhist Philosophical Basis of Jeong (情)', in *Emotions in Korean Philosophy and Religion: Confucian, Comparative, and Contemporary Perspectives*, ed. Edward Y. J. Chung and Jea Sophia Oh, Palgrave Studies in Comparative East-West Philosophy (Cham: Palgrave Macmillan, 2022), 259–278.

⁴⁷ 'South Korea's Moon Jae-in Makes Unprecedented Mass Games Speech', *BBC News Asia*, 19 September 2018, <https://www.bbc.com/news/world-asia-45578491>. Accessed 20 February 2025.

⁴⁸ Joanna Hosaniak, 'NGOs as Discursive Catalysts at the United Nations and Beyond: An Activist's Perspective', in *North Korean Human Rights: Activists and Networks*, ed. Andrew Yeo and Danielle Chubb (Cambridge: Cambridge University Press, 2018), 147. <https://doi.org/10.1017/9781108589543.008>.

⁴⁹ Buhm-Suk Baek and Yunje Lee, 'Pursuing Criminal Responsibility for Human Rights Atrocities in the DPRK', *The Korean Journal of International Law* 62(1) (2017): 63–95; Baek and Teitel, *supra* n 4 at 5; Junghyun Cho, 'A Study on Transitional Justice in the Context of Reunified Korea', *Seoul International Law Journal* 21(1) (2014): 25–42; Jinyoung Hong, 'Research on the Criminal Accountability for Crimes of the North Korean Regime Through International Criminal Mechanism', *The Justice* 161 (2017): 333–382; Hun Joon Kim, 'The Diffusion of Global Transitional Justice Norms and Its Impact: The Case of South Korea', *Journal of Korean Politics* 26(1) (2017): 101–126; Soo Am Kim, Junghyun Cho and Buhm-Suk Baek, 'Transitional Justice on the Korean Peninsula', *Korea Institute for National Unification*, 2014.

⁵⁰ Baek and Teitel, *supra* n 4 at 5; James Burt, 'A Truth Commission for a Future North Korea', Discussion Paper (Korea Future Initiative, January 2017); Seong-Phil Hong, 'Transitional Justice in North Korea: Accountability for Human Rights Atrocities in North Korea' (The Korea Project, Korean Studies Institute, University of Southern California, 2010).

Practically, since the UN COI, efforts towards accountability and consideration of a future transitional justice process in North Korea have involved a multi-directional process of transnational networking among South Korean civil society organizations who have already been documenting human rights violations in North Korea for over two decades, setting in place the UN infrastructure in South Korea to connect international expertise with knowledge, while also working tentatively to expand the dialogue around the concept of transitional justice as it might be applied to the situation in North Korea. While North Korean escapees have always been involved in civil society efforts to raise awareness about human rights abuses in North Korea, whether as self-styled 'defector-activists,' or as key contributors to reports and hearings, the role that testimony played in the COI and its recommendations has served to amplify the value of victim narratives.⁵¹

A change of government in South Korea in 2017 demonstrated the capriciousness of state policy in relation to the civil society agenda. As part its policy of rapprochement towards North Korea, the Moon Jae-in government (2017–2022) sought to impose pressure on civil society groups to bring their advocacy work in line with government objectives or face de-registration.⁵² Concurrently, the South Korean government all but suspended its commitments under its 2016 North Korean Human Rights Act, including the publication of its own documentation of violations. Civil society groups were thus forced to adapt to new and varying government-imposed constraints on their ability to function according to their objectives and the recommendations of the UN COI report. Within these domestic constraints, the efforts of South Korean civil society organizations and institutions in the years since the UN COI looked to international examples and built solidarity with international actors.

In 2022, we saw an abrupt turn back to a focus on human rights in North Korea by the South Korean government of Yoon Suk-yeol. President Yoon's administration revived the work of the government's Center for North Korean Human Rights Records, which was finally permitted to publish its first report in early 2023.⁵³ The government also appointed a South Korean Ambassador for North Korean Human Rights (a post that had remained empty for six years) and dispatched the Ministry of Unification, the Korea Institute for National Unification and other representative bodies to the United States and Europe to remind international partners and policy communities of South Korea's commitment to human rights and change in North Korea.⁵⁴ While civil society organizations within the North Korean human rights movement are now facing fewer constraints domestically than under the previous government, they are only ever a maximum of five years away – the length of a presidential term – from another potential change of government and renewed pressure on their activities to engage with victim groups.

LOOKING TO THE FUTURE: CREATING OPPORTUNITIES AND ENGAGING THE DIASPORA

With the above context in mind, the central question for the anticipatory North Korean transitional justice project is how to gain meaningful insights into the affected communities, and how

⁵¹ Danielle Chubb, 'North Korean Defector Activism and the South Korean Politics,' in *De-Bordering Korea: Tangible and Intangible Legacies of the Sunshine Policy*, ed. Valerie Gelézeau, Koen De Ceuster and Alain Delissen (Albion: Routledge, 2013), 106–257; Sarah Son, 'Chasing Justice: Victim Engagement with Accountability for Human Rights Abuses in North Korea,' *Asian Studies Review* 44(4) (2020): 621–640. <https://doi.org/10.1080/10357823.2020.1734536>; Jay Song, 'The Emergence of Five North Korean Defector-Activists in Transnational Activism,' in *North Korean Human Rights: Activists and Networks*, ed. Andrew Yeo and Danielle Chubb (Cambridge: Cambridge University Press, 2018), 201–223. <https://doi.org/10.1017/9781108589543.011>.

⁵² Sarah Son, 'North Korea Human Rights Activists in South Korea Struggle under Moon Jae-In,' NKPRO, 7 July 2021, <https://www.nknews.org/pro/north-korea-human-rights-activists-in-south-korea-struggle-under-moon-jae-in/>.

⁵³ Ministry of Unification, '2023 Report on North Korean Human Rights' (Seoul: Center for North Korean Human Rights Records, 2023).

⁵⁴ Ramon Pacheco Pardo, 'The EU's Human Rights Sanctions on North Korea,' 38 *North* (blog), 26 March 2021, <https://www.38north.org/2021/03/pressure-and-principles-the-eus-human-rights-sanctions-on-north-korea/>. Accessed 20 February 2025.

to ensure the participation of local voices, in the absence of a grassroots civil society inside North Korea that is literate in the legal language that characterizes transitional justice scenarios. In this final section we argue that all efforts to prepare for a future just transition on the Korean peninsula must remain committed to the core principle of meaningful participation, and make efforts to creatively incorporate local voices in the absence of traditional civil society touchpoints. More specifically, we argue that the participatory elements will be necessarily transnational and transgenerational, and must be focused on the identification of enabling conditions for these elements. We know from the literature that diaspora communities play an important role during transitions, and that these transnational communities are also transgenerational, with second- and third-generation diaspora becoming involved in transitional justice-related activism.⁵⁵

North Korean escapees who have settled in South Korea have a constitutional claim to ROK citizenship, but face challenges integrating into society. The majority are not former members of the North Korean elite, but rather farmers, members of the military, teachers or factory workers. Over 70 percent are women, who have often not been in state employment prior to leaving the North, but have instead been engaged in the burgeoning 'grey' markets. Their participation in the informal economy makes it easier for these women to leave the country, as they are less likely to be missed from state jobs. These women have also often been victims of human-trafficking networks in China during their efforts to flee North Korea, resulting in life-altering trauma.⁵⁶ Moreover, escapees are not a homogenous or ideologically unified group; socio-political hierarchies among citizens in North Korea can reproduce among the diaspora, leading some to seek distance between themselves and other escapees.⁵⁷

The term diaspora is used here as an inclusive one and is not limited to those who themselves have lived in North Korea; it also includes their children. We call these the first and second generations, respectively. As Orjuela writes, 'Diasporic consciousness needs to extend not only across space but also across time; for a diaspora to continue to exist, new generations need to carry on the torch of memory.'⁵⁸ She further argues that transitional justice can support this diaspora survival. There is thus a type of symbiosis: transitional justice efforts can support the existence of a diaspora, and diaspora can drive the shape of transitional justice efforts. In the context of the anticipatory North Korea project, intergenerational efforts take on additional importance because victims may not themselves live to witness justice, accountability and change in their homeland.

In response to the growth of transitional justice discourse and the gradual emancipation of victims' voices from state-imposed filters, some groups within the North Korean human rights movement have been working with international stakeholders to consider what it means to pursue a victim-centred approach to transitional justice, in terms of how such an approach should shape research methods, outreach programmes and engagement with victims and informants.⁵⁹ We know from experiences in Colombia and Nepal that structural barriers pose serious impediments to meaningful inclusion, even in the face of participatory efforts. Most importantly, supporting diaspora to drive agendas and engagement requires interrogating and modifying opportunity structures. Political opportunity structure, a concept used in the study of social movements, focuses not on movements themselves but on the external structures that impact

⁵⁵ For a detailed discussion of the demographics and politics of the North Korean diaspora, see: Sheena Chestnut Greitens, *Politics of the North Korean Diaspora*, Cambridge Elements (Cambridge: Cambridge University Press, 2023).

⁵⁶ Sang Kyung Bae, 'North Korean Defectors' Human Trafficking Victimization en route to South Korea,' *Korea Institute of Criminology and Justice* (1 December 2018).

⁵⁷ Jay Jiyoung Song and Markus Bell, 'North Korean Secondary Asylum in the UK,' *Migration Studies* 7(2) (2019): 160–179, <https://doi.org/10.1093/migration/mxx074>.

⁵⁸ Camilla Orjuela, 'Passing on the Torch of Memory: Transitional Justice and the Transfer of Diaspora Identity across Generations,' *International Journal of Transitional Justice* 14(2) (2020): 361–362. <https://doi.org/10.1093/ijtj/ijaa005>.

⁵⁹ Son, *supra* n 52 at 26.

them.⁶⁰ In order for transitional justice to follow agendas set ‘from below,’ there must be opportunity structures that enable the setting of those agendas, as well as international support of those agendas. However, these opportunities must be sufficient to overcome persistent barriers, including a lack of understanding of accountability and transitional justice among affected communities, as well as the day-to-day demands on their time, energy and personal security.

The challenges that escapees face settling into South Korea extend to the transitional justice realm. Efforts by civil society organizations in South Korea to engage victim constituencies have, to date, been largely limited to data collection. Organizations have not achieved meaningful representation within their staff from the North Korean escapee community due to lack of interest, poor organizational capacity (such as salaries and benefits), insufficient skills and training and fear within the escapee community of endangering family members still in North Korea by getting involved in human rights advocacy.⁶¹ International advocacy among civil society groups and institutions usually takes place in English, creating barriers to self-representation by North Korean victims and witnesses.

Victim narratives are also shaped by South Korea’s socio-political conditions. Control over these narratives begins when North Koreans are granted passage to South Korea under its citizenship provisions for all those residing on the peninsula and its adjacent islands. Scholarly research identifies this as the exercise of ‘disciplinary citizenship’ over North Korean migrants, starting with months of ‘training’ aimed at providing them with the practical skills perceived as necessary for navigating South Korea’s competitive neoliberal society.⁶² This training prioritizes economic productivity as a basis for social rights, cleanses newcomers of ‘perceived backward or immoral’ traits, governs their everyday behaviour and creates individually responsible ‘subjects of a neoliberal market society.’⁶³ Through government agencies, welfare support, police monitoring and life-skills training, North Korean migrants are rewarded for developing economic independence and exhibiting gratitude towards South Korea. Critics argue that these measures serve to construct ‘docile subjects at the bottom of the social ladder.’⁶⁴

Despite these constraints, younger members of the North Korean diaspora are starting to show greater agency. This is despite the efforts of the South Korean state to closely manage the lives and identities of North Koreans, as well as the threat of North Korean transnational surveillance and retaliation against the activists and against their family members that remain inside North Korea. While the North Korean case is distinctive in that internet communications do not support transnational mobilization against the regime with those inside the country, as seen in other cases such as Syria,⁶⁵ platforms such as YouTube, memoirs, TED talks and in-person events have amplified diaspora voices globally.

Since the UN COI, civil society groups have researched how transitional justice discourse affects the victims of North Korean state violence. The Database Center for North Korean Human Rights reports that escapees often lack knowledge of human rights, accountability or its mechanisms.⁶⁶ The North Korean human rights movement rarely uses the term ‘transitional justice,’ focusing instead on ‘accountability’ in both judicial and non-judicial terms. While escapees support South Korean state messaging around unification as a desirable policy vision, many lack

⁶⁰ Mattias Wahlström and Abby Peterson, ‘Between the State and the Market: Expanding the Concept of “Political Opportunity Structure,”’ *Acta Sociologica* 49(4) (2006): 363–377. <https://doi.org/10.1177/0001699306071677>.

⁶¹ Son, *supra* n 51 at 26.

⁶² Jung-eun Lee, ‘Disciplinary Citizenship in South Korean NGOs’ Narratives of Resettlement for North Korean Refugees,’ *Ethnic and Racial Studies* 38(15) (2015): 2691. <https://doi.org/10.1080/01419870.2015.1037781>.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Dana M. Moss, ‘The Ties That Bind: Internet Communication Technologies, Networked Authoritarianism, and “Voice” in the Syrian Diaspora,’ *Globalizations* 15(2) (2018): 265–282. <https://doi.org/10.1080/14747731.2016.1263079>.

⁶⁶ Bobae Su, Minju Sung and Suyoung Yang, ‘North Korea’s Non-Socialist Group: Inspections, Crackdowns and Human Rights Violations in a Panoptic Society,’ Research Report (Seoul: Database Center for North Korean Human Rights, 16 January 2023), 161.

awareness of transitional justice mechanisms and the potential of their application to North Korea. Activists report that victims often expect international law or foreign intervention to provide swift and certain justice, leading to disappointment when their emotional appeals are met with requests for patience. However, when presented with potential avenues for accountability in civil society research studies, affected individuals prove more than capable of offering sophisticated perspectives on the various possible mechanisms for justice and the parties that might be involved, as well as ideas about transitional justice mechanisms that would speak to their personal needs and desires.⁶⁷ A survey of over 400 escapees found that while most respondents reported reluctance to become directly involved in public-facing or leadership roles in this area due to safety and other concerns, there was a high level of support for transitional justice processes, particularly mechanisms such as truth-telling and criminal justice proceedings.⁶⁸

This survey, conducted by a grassroots organization, highlights the value of creating informal, safe spaces for exploring transitional justice with the diaspora. Some efforts are already bearing fruit. In August 2024, a group of young North Korean escapees created the 'Washington Declaration for the Dignity, Hope and Freedom of North Koreans,' urging global democratic leaders to fight for the rights and freedoms of North Korean citizens. The declaration emphasizes the need to empower members of the North Korean diaspora to work with international partners and reflects growing diaspora capacity to organize around shared goals.⁶⁹

However, opportunity structures for victim participation are impacted by practical, everyday challenges. Economic and social precarity forces escapees to focus primarily on survival, leaving little energy or emotional capacity to engage in work that demands recalling past experiences of victimization and contributing to forms of redress. Without financial compensation, escapees are rarely willing to invest in the time required to work with civil society organizations. United Kingdom-based NGO Korea Future has reported on the challenges women face in engaging with activities in this field due to a lack of strong female role models, childcare responsibilities and a lack organizational provision to pay salaries that would make it worthwhile to leave their children in the care of paid providers.⁷⁰

Looking to the future, participatory and anticipatory transitional justice work requires the enhancement of opportunity structures for escapees, their children and future generations. These are not solely focused on transitional justice, but must also include addressing the economic and social precarity that is a reality for much of the North Korean diaspora, and acts as a barrier to becoming more active citizens in their new societies. As we have previously argued, the policy implications for third countries include a need to reject securitized narratives in favour of more nuanced, people-centred ways of thinking about North Korea through teaching, media narratives and pathways for North Koreans who have settled in South Korea or elsewhere to study in third countries.⁷¹ These recommendations are broader than the transitional justice project, but without such wider consideration of the wellbeing of North Korean people – both the diaspora and those inside the country – opportunity structures will remain limited.

Finally, the abovementioned Korea Future report noted that North Korean escapees surveyed in both South Korea and the United Kingdom describe a high level of trust in civil society organizations within the North Korean human rights movement, and that this trust is higher than their level of trust in the South Korean government and its institutions. The report states that

⁶⁷ Ibid.

⁶⁸ Son, *supra* n 52 at 26.

⁶⁹ Carolyn Stewart, 'Dignity, Hope, Freedom: Young North Korean Defectors Sign Declaration on Fundamental Rights,' *National Endowment for Democracy*, 1 August 2024, <https://www.ned.org/dignity-hope-freedom-young-north-korean-defectors-sign-declaration-on-fundamental-rights/>. Accessed 20 February 2025.

⁷⁰ Korea Future, 'We Want Our Stories to Be Heard': Barriers to North Korean Women's Leadership and Participation in the Human Rights Movement,' September 2021.

⁷¹ Nazanin Zadeh-Cummings, Sarah Son and Danielle Chubb, 'Preparing for Transitional Justice in North Korea,' *Australian Journal of International Affairs* 76(2) (2022): 121–129. <https://doi.org/10.1080/10357718.2021.2022597>.

this is 'likely due to [civil society's] perceived impartiality and a long-standing commitment to human rights.'⁷² As described above, insulating the work mandated by South Korea's North Korean Human Rights Act (2016) from changes in government mood has proven difficult to date, and the South Korean government is adept at evading international scrutiny of its efforts at times to restrain the work of the North Korean human rights movement in order to foster rapprochement with North Korea. In addition, civil society organizations in South Korea receive only limited and typically project-specific funding from the South Korean government, with the remainder (and often the majority) of their income coming from US-based funders such as the National Endowment for Democracy or, occasionally, from other, smaller donors abroad. International efforts to support robust transnational solidarity, and diversity and sufficiency in funding for South Korean civil society organizations, will ensure that they are able to continue to build on their expertise in working alongside and in support of North Korean survivors of abuses.

CONCLUSION

The discussion in this article identifies a wide range of barriers to cultivating 'bottom-up' approaches to transitional justice in North Korea. As desirable as this is, given the lessons from the transitional justice literature, engaging victim groups faces numerous complex challenges. What emerges from our analysis is the importance of political opportunity structures in advancing 'anticipatory' and 'participatory' transitional justice. Specifically, the South Korean state's role in creating opportunity at two levels appears critical: engagement with civil society organizations and with victims, particularly in recognizing and reducing challenges experienced at the level of the 'everyday.'

The ebb and flow of political fortunes have shifted support for the North Korean human rights movement depending on which party holds the South Korean presidency. Yet civil society organizations have made significant progress since the UN COI, improving their engagement methods with victim groups. They have built resilience against Seoul's shifting mood towards North Korea, improved their understanding of victim needs and trialled new approaches to enhance the data available on the situation in North Korea, past and present. Moreover, they have made progress translating transitional justice discourse for victim audiences through outreach, surveys and international advocacy. Nonetheless, as the discussion above demonstrates, gaps remain in their capacity to innovate due to domestic politics, limited funding and challenges presented by North Korea's closed society.

For victims themselves, the interplay between political opportunity structures and their everyday challenges, choices and experiences becomes critical. Even if opportunities for anticipatory and participatory transitional justice arise, their ability to engage often depends on their freedom, confidence and ability to participate while addressing immediate survival needs. The transnational dimension of such efforts adds further barriers for North Korean escapees confined to South Korea, particularly those who do not speak English or the language of international human rights.

Given the role of international allies and actors in the North Korean human rights movement, as evidenced by the UN COI, addressing these challenges begins with emphasizing to international stakeholders the South Korean state's role in facilitating or impeding grassroots efforts towards transitional justice. Despite independent UN recognition of North and South Korea,

⁷² Korea Future, 'Survivor-Centred Justice: North Korean Perspectives,' October 2024, <https://www.koreafuture.org/news/survivor-perspectives-on-justice-for-north-korea>. Accessed 20 February 2025.

their interdependence influences South Korean politics in ways often misunderstood by international interlocutors. Wary of negative consequences, South Korean civil society groups often hesitate to explicitly communicate the constraints they face.

Overcoming these challenges also requires innovative, ethnographic and action-orientated research with the North Korean diaspora to build deeper knowledge of their needs and the differences between North and South Koreans. While there is a significant body of anthropological and sociological research on North Koreans living in South Korea, it has so far failed to give sufficient consideration to the impact of victimhood resulting from injustices experienced in North Korea and its implications for anticipatory and participatory transitional justice.

True grassroots, participatory transitional justice on the Korean peninsula will require the participation of the one constituency whose voices matter most: those living inside North Korea. In the meantime, however, it is still incumbent upon scholars and practitioners to ensure that the barriers to participation are removed for a fuller cross-section of the North Korean diaspora. Further research extending from what we have presented here might consider, first, a deeper comparison of the ways in which cultural, political and social differences might affect the applicability of lessons learned in other contexts. Second, future research could explore the comparative strategies employed by diaspora activists from authoritarian contexts, thereby offering more detailed inspiration for North Korean migrant communities. This article has gone some way to laying the groundwork for such research, while also pointing to key items for targeted advocacy around planning for the future of North Korea.