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To cite this article: Nazanin Zadeh-Cummings, Sarah Son & Danielle Chubb (2022) Preparing for transitional justice in North Korea, Australian Journal of International Affairs, 76:2, 121-129, DOI: [10.1080/10357718.2021.2022597](https://doi.org/10.1080/10357718.2021.2022597)

To link to this article: <https://doi.org/10.1080/10357718.2021.2022597>



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Published online: 18 Jan 2022.



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Preparing for transitional justice in North Korea

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ABSTRACT

The further isolation of North Korea in response to the Covid-19 pandemic is a timely reminder that when it comes to the question of how to bring about change with relation to North Korea, a combination of creative and differentiated approaches are needed. In this piece, we argue that preparations for a just future transition on the Korean peninsula must start now. This commentary considers the possibilities for Australia to support just transition, in whatever form it may take, through immediate action not focused on bilateral or state-centric relations, but instead through other spaces in a broadly defined civil society. Effective Australian support for transitional justice and overall wellbeing of North Koreans must overcome structural barriers to opportunity for North Koreans within Australia, as well as barriers of overly securitised paradigms.

KEYWORDS

North Korea; transitional justice; Australia

Since the outbreak of the novel coronavirus (COVID-19) in neighbouring China led the Democratic People's Republic of Korea (DPRK, also known as North Korea) to close its borders in January 2020, the country has become progressively more isolated from the rest of the world. Cross-border migration has dropped dramatically; in the first half of 2021, the Settlement Support Centre for North Korean Refugees (Hanawon) reported an 85% decrease in the number of North Koreans moving to South Korea for resettlement, following a 63% drop in 2020 (Jung 2021). For aid workers and diplomats, movement is also constrained. In March 2021, it was reported that all United Nations (UN) and non-governmental organisation (NGO) staff had left the country (O'Carroll 2021a). With the closure of the Romanian embassy in October 2021, the final European Union country officials remaining in the country departed. Pyongyang now lacks any official Western presence and just a handful of foreign embassies remain, with only skeleton staff.¹

This isolation is not likely to drastically ease any time soon; although the DPRK appears to have the infrastructure and capacity for a COVID-19 vaccination programme (Shafik, Ryder, and Park 2021), to date the country has refused offers of vaccine supply (The Associated Press 2021). Even under these circumstances, and with the international

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community warning of a looming economic and humanitarian crisis (UN Office for the Coordination of Humanitarian Affairs 2021, 81), Pyongyang continues to develop and test ballistic missiles.² For human rights activists, humanitarians, and policy makers who seek to improve the lives of the North Korean people, these latest developments are a stark reminder of how wedded the elite is to existing structures of power and how resistant the regime is to change. With fewer North Koreans able to leave the country, the capacity of human rights advocates and institutions to learn about conditions inside the country has become even harder.

However, even in this era of isolation and challenging circumstances, the international community must keep thinking about how to support possible futures of the North Korean people both in the short and long term. This includes potential pathways beyond the current regime. On the one hand, the North Korean regime has proven resilient against change; on the back of a series of crises during the 1990s, the Kim family managed to hold onto power. On the other hand, the DPRK's current almost total isolation due to COVID-19 should serve as a reminder that change on the Korean peninsula is an ever-present possibility that could impact tens of millions of North and South Koreans. Should a change take place, ordinary North Koreans will likely face challenges due to generations of isolation leaving them ill-prepared for engagement with the outside world, as well as urgent humanitarian and human rights-related needs. It is therefore imperative that the international community consider in advance how it can support possible futures for the North Korean people, and any significant change in the status quo will necessarily involve a reckoning with what it meant to live under the DPRK's authoritarian rule.

One of the approaches currently being explored by some civil society groups in Seoul and overseas is the question of how to prepare the Korean peninsula for future *transitional justice* scenarios. Necessarily forward-looking in nature in the Korean context, this sort of anticipatory transitional justice work has international precedents and in those cases is usually driven by non-state actors (Teitel 2016, 1–3). Yet while transitional justice brings to mind a series of specific and formal legal mechanisms aimed at addressing past injustices, these tend to be insufficient during difficult transitions (Balint 1996). Consequently, laying the foundation for justice requires approaches that are both multi-dimensional and context-specific. This commentary first turns to an example of current efforts in the transitional justice space, then argues for a move away from narrow conceptions of transitional justice, before finally considering the implications of this argument for Australia in relation to North Korea.

Current efforts

The 2014 UN Commission of Inquiry (COI) dedicated to the situation of human rights in the DPRK brought about a shift in focus for the North Korean human rights movement. The COI process was largely brought about by a broad transnational network of activists which had until then been focused on information sharing and awareness raising (Chubb and Yeo 2018, 2). One of the paradigm shifts that has occurred since the COI has been towards a new focus on accountability (Hosaniak 2018, 144–48) and this shift has created opportunities for new conversations about, among other things, transitional justice (Baek, Collins, and Yuri 2016, 20; Cohen 2016, 76–82).

Since 2014, Seoul-based activists have undertaken much of this work on accountability, and transitional justice specifically. South Korean NGO *Transitional Justice Working Group* (TJWG) defines transitional justice as ‘a range of mechanisms designed to address the legacy of massive human rights abuses in societies emerging from long periods of conflict or totalitarian rule’ and has focused primarily on the mechanisms that might be appropriate in a future transitional justice scenario. In 2019, TJWG surveyed 450 North Koreans resettled in South Korea, to learn how victims of the DPRK regime perceive the necessity of, and possible routes toward, justice, remedy, and restoration (Son 2019). The survey found that 84.6% of respondents considered themselves victims of the regime’s policies.³ This understanding of harm went beyond incidents of physical violence (47.7% reported physical violence – e.g. beating, torture, rape, sexual assault – while living in North Korea) or wider harm (75.4% reported wider harm – e.g. physical violence and/or repatriation, arrest, detention, or close family killed by execution or starvation), suggesting that the experience of harm in a context like North Korea is broader than documented accounts may indicate.

The survey also asked respondents to consider the importance of five common transitional justice mechanisms instituted in other settings: financial reparations, non-judicial truth-telling, criminal prosecutions, official apologies and exhumations of burial sites. Non-judicial truth-telling gained the most positive approval. However, interviewees gave differing responses regarding the mechanisms they perceived as beneficial for themselves individually, compared to those they felt would serve North Korean society. Crucially, while 97.4% of those surveyed felt it was important for victims to have an active leadership role in designing transitional justice processes, 84% expressed fear of participating in North Korea-focused human rights work (primarily due to safety concerns for family still in the DPRK).

While these kinds of surveys can at this stage only document the perspectives of North Koreans living *outside* the country, they still provide insight into how North Korean people may understand future justice once given some distance from life under a totalitarian regime, and the types of challenges that will stand in the way of the establishment of transitional justice mechanisms. In a post-transition North Korea, it is likely that a significant portion of the population will have had some experience of the harms relayed in these surveys and, like those in the 2019 survey, express a range of views on what they think transitional justice should look like, as well as a diversity of opinions on who should lead such processes and their own willingness to become involved. These issues illustrate the varied temporal aspects of transitional justice. Not only must work be anticipatory, facing towards an unknown and uncertain future, but it must also be grounded in the realities and limitations of the current context. In other words, transitional justice work related to North Korea is at once preparatory and contemporary.

Preparing for transitional justice in Korea: moving beyond paradigmatic approaches

One way of approaching transitional justice is to take a formal, legalist approach. This requires the development of mechanisms for accountability following a transition, as a way for a nation to grapple with a violent past and seek punishment for those responsible for the violence (Harris-Rimmer 2010, 123–28), and is already taking place thanks to the

recommendations of the UN COI which lays the foundations for mechanisms like documenting violations and building legal cases. However, the uncertainty of the necessarily forward-looking processes that preparing for transitional justice in Korea involves behoves us to also consider the limitations of such approaches; as has been the experience in other contexts, the imposition of a top-down technical approach can be problematic, such as in its tendency to assume that transitional justice has a linear progression (Kent 2011; Balint, Evans, and McMillan 2014).

Just as the shape that transition on the Korean peninsula might take is uncertain, so too is the question of *how* the justice process will unfold; rather than assuming a linear journey we must take a necessarily holistic view that recognises the sticky temporal dimension, where accountability and truth telling will not take any pre-determined path. Related to this is the question of which actors might need to be involved; the holistic view of future transition recognises that there are many types of actors (and not just formal, state bodies) that must be given space to contribute both directly and indirectly. This idea is one that finds resonance in the transitional justice literature, which refers to 'local' and 'grassroots' initiatives and actors.⁴

The isolation of the North Korean people means that it is not possible for international actors to work with grassroots organisations to build the capacity for their involvement in potential transitional justice processes. Yet such capacity will be crucial, and it is worth considering how to build such capacity outside North Korea, broadening the scope of who might be considered as 'local' in this context. These actors might include North Koreans currently residing in South Korea and overseas, as well as Korean diaspora in third countries (including Australia).

Supporting a just future in a transitional Korea: what is Australia's role?

Australia has by now been witness to several transitional justice processes in its region, as well as at home, and is deeply invested in a smooth transitional process on the Korean peninsula, should such events transpire. Currently, however, the potential for Australian actors to play a constructive role in the Korean peninsula's preparation for future transitional justice scenarios is undermined by two barriers that inhibit the development of a sophisticated Australian perspective on the challenges that might face a future unified Korea. The first of these is the reification of the Australian government's securitised narratives around North Korea in society more broadly, and specifically in higher education and the media. The second is the absence of efforts to interact with North Koreans who have left the DPRK and seek to rebuild their lives in a new country. While Australia's diplomats speak of their commitment to international accountability processes, we argue here that a commitment to justice in transitional contexts must go beyond an in-principle position and must be open to acknowledging diffuse pathways to achieving these goals.

Barrier 1: reification of securitised narratives

Whether the North Korean regime will ever lose its grip on power is unknown, as is the question of what may fill a power void. Yet in the case of regime collapse, it is likely that the story of the Korean peninsula will be one of a society – or societies – seeking to come

to terms with a violent history of war and division and the legacy of this separation, particularly on those emerging from life under an oppressive political regime. Australia's official policies towards the Korean peninsula are unlikely to easily incorporate these kinds of considerations, as Australia views the future of the Korean peninsula primarily through the lens of security.

Instead, if Australian institutions and organisations wish to play a constructive role in a future Korea, they must start now to consciously counter overly-securitised approaches that centre the regime at the expense of the North Korean people. One study of Australian media coverage found a 'negative and often sensationalist view of North Korea' (Dalton *et al.* 2016, 2) which centres around five metaphors: conflict (DPRK as a military peril), psychopathology (DPRK as lacking rationality and predictability), pariah (DPRK as a hermit), Orwellian (DPRK as a sadistic dystopia), and basket case (DPRK as a poverty-stricken country). These framings have the effect of dehumanising North Koreans, privileging fear and scandal over nuanced understandings. This media coverage both reflects and reinforces popular views of North Korea.

These narratives around North Korea perpetuate largely because so little is known about the country. Even in university curricula, North Korea often appears only in the context of its status as a security threat. Australian university graduates run the risk – particularly outside the confines of Korean Studies – of little exposure to the history of North Korea and its people, their culture or their interactions with their state and the outside world. Instead, graduates of international relations, international law, diplomacy or security studies enter their workforces – government, the media, policy analysis – having either had their existing assumptions about North Korea reinforced or having not considered North Korea, or its people, at all.

Australia is home to several burgeoning Korean Studies programmes resulting from the global growth in the popularity of Korea as a focus of academic study, recognising the role of Korea as an international player and a valuable partner across a range of industries. There is therefore expanding capacity in expertise and resources to provide teaching content that deconstructs unhelpful, established paradigms about North Korea. There are notable, recent examples of this kind of work, such as an English translation of North Korean escapee interviews with teams of Monash University Korean Studies students completing the translations (Il and Zulawnik 2021). However the expansion of people-centred teaching approaches to North Korea must not be limited to Korean Studies. Ideally, academic expertise should also be equipped and encouraged to work closely with media industries to apply evidenced-based research to broaden the presentation of North Korea beyond the traditional security paradigm.

The first step towards a nuanced Australian perspective may therefore be a very preliminary one: the injection of fresh ideas into our discussions of North Korea, not just as an isolationist state, but as a country whose people may have their own unique perspectives on their own future.

Barrier 2: structural barriers to North Korean voices

The knowledge gap around North Korean society, culture, economic and politics can be improved through greater interaction with what might be called 'everyday' North Koreans; individuals who have left the DPRK and have not necessarily sought a

public-facing role but wish to rebuild their lives through study and training. Australia is a world leader in education, yet North Koreans – those still living in the DPRK and those that have resettled in the ROK or elsewhere – face structural barriers in entering Australia even for short-term activities. These barriers curtail not only opportunities to expose Australians directly to North Koreans, but also prevent Australia from supporting North Koreans who directly or indirectly seek to contribute to planning and designing a future transitional justice process as members of a concerned diaspora.

Jung, Dalton, and Willis (2017) argue that onward movement – or continued migration by North Korean refugees beyond the ROK – can provide a valuable sense of freedom and opportunity but is only available to small numbers of individuals. Because the ROK constitution recognises North Korean escapees as South Korean citizens, third countries often refuse to recognise North Koreans who have fled the country as ‘stateless’ or as otherwise in need of protection, thus closing pathways for seeking asylum. UN High Commissioner for Refugees data reports that from 2000–2020, 168 North Koreans applied for asylum in Australia of which 26 were granted asylum, 87 were rejected, and 21 had their applications otherwise closed (United Nations High Commissioner for Refugees 2021). The last accepted applications were in 2011.

There are examples of North Korean escapees coming to Australia for short term activities, notably through the University of Technology Sydney’s Australia-Korea Foundation supported programme that provides 30 weeks of English classes in Sydney to North Koreans that have resettled in South Korea. However, beyond these programmes there are few opportunities for North Koreans to come to Australia for study. Unlike the UK’s *Chevening* Scholarship which encourages North Koreans living in South Korea to submit applications, the equivalent *Australia Awards* do not offer such pathways. Open only to students who have citizenship in a small number of developing nations (a list which does not include the DPRK), this precludes North Koreans who either live in a country that is not on the list (such as South Korea) or who do live in a developing country but are living there without the citizenship of that state. While not excluded explicitly from participation in Australia’s generous scholarships and short courses opportunities, they are ineligible to apply by default.

As Australia looks to a wider border reopening to international students in 2022, there is an important opportunity to expand these programmes to allow North Koreans settled in South Korea or third countries to apply, and to support the development of other programmes. As well as the UK, there are examples of successful programmes in the US and Canada, where pathways have been developed to recognise the unique conditions of North Korean escapee’s claims to citizenship and challenges in adjusting to life in South Korea. In October 2021, Canadian NGO HanVoice announced the success of an eight-year advocacy campaign to launch a private sponsorship programme for North Korean refugees to resettle in Canada.⁵ In the US, the North Korean Human Rights Act (Leach 2004, sec. 302) states that ‘North Koreans are not barred from eligibility for refugee status or asylum in the [US] on account of any legal right to citizenship they may enjoy under the Constitution of the [ROK].’ These avenues not only speak to Jung, Dalton, and Willis’s (2017) argument for possibility of onward movement, but also provide an channel for Canadians and Americans to be exposed to North Korean voices.

It is possible that the status quo on the Korean peninsula will remain intact for many decades to come, and the North Korean regime has proven itself in the past as resilient against major change and crisis. Australia's future planning for the Korean peninsula is currently limited to anticipating a security crisis, with little in place for imagining either what a post-conflict transition will entail, or any efforts to move beyond the paradigm of status quo / collapse and imagine a range of possible change scenarios. In any of these change scenarios, the voices of the North Korean people will have a chance to be heard for the first time since the division of the peninsula. It is imperative that Australian perspectives on North Korea expand beyond a narrative that focuses exclusively on the Kim regime, and instead seeks to understand better the experiences of everyday North Koreans. Such activity, which includes broader teaching and media narratives as well as pathways for North Koreans to study in Australia, can lay the groundwork for support to future transitional justice processes and, more broadly, support for North Koreans' futures.

Notes

1. As of October 2021, only the following countries retained embassies in North Korea: China, Cuba, Egypt, Laos, Mongolia, Palestine, Russia, Syria and Vietnam (O'Carroll 2021b). In addition to embassy staff, foreigners living for extended periods in North Korea have notably included humanitarian workers. While the numbers of foreign staff were relatively small compared to other contexts – for example, the World Food Programme in 2019 employed 13 international staff and the UN Development Programme had 6 expatriate workers (Nichols 2019) – humanitarians working for resident UN agencies and NGOs, as well as those coming into the country on a regular basis for non-resident work, have provided a valuable presence and two-way flow of information since international humanitarian aid programming began in 1995.
2. At the time of publication, the DPRK's most recent missile test was a hypersonic missile test on 13 January 2022.
3. A high proportion of North Koreans living outside North Korea report having experienced harm since many are already disaffected from the regime, having left the country and settled elsewhere. In this way, the population surveyed is what Song and Denney (2019, 453) describe as a self-selecting sample of North Koreans with a particular experience of life under authoritarian rule.
4. See for example: (Sperfeldt and Oeung 2019; Kent 2011; Wallis, Jeffery, and Kent 2016).
5. <https://hanvoice.ca/work/refugees>

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This research has been funded by a grant from the Academy of Korean Studies. The authors particularly thank the participants of two grant-funded workshops held in 2021 for their valuable insights.

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