**PSCORE Comments and Textual Suggestions on the Draft Convention on the Right to Development**

For Consideration of the

Office of the United Nations High Commissioner for Human Rights



**People for Successful COrean REunification (PSCORE)**

**August 2021**

**www.pscore.org**

**Submission in response to the Office of the United Nations High Commissioner for Human Rights’ call for comments and textual suggestions relating to the Draft Convention on the Right to Development (A/HRC/WG.2/21/2)**

Submitted via email to r2d@ohchr.org 20th August 2021

Thank you for the opportunity to provide a submission in response to the draft convention on the right to development presented by the Chair of the Intergovernmental Working Group on the Right to Development in its 21st session (A/HRC/WG.2/21/2). This is an opportunity to draw upon ongoing research on the experiences of North Korean defectors and the massive and ongoing repression of the human rights of North Korean citizens by the Democratic People’s Republic of Korea (DPRK). Our submission draws on our expertise of having researched, written, and published in these areas since 2006.

We welcome the opportunity to discuss any aspects of our submission, recommendations, and research further with members of the Working Group and Council.

Yours sincerely,

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| **Comments and Textual Suggestions** |

**Original Text of Article 5 – Relationship with the Right to Self-Determination**

*5. States shall take resolute steps to prevent and eliminate massive and flagrant violations of the human rights of persons and peoples affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and the refusal to otherwise recognize the fundamental right of peoples to self-determination.*

**Our Textual Suggestion:**

To add the following highlighted phrase to Article 5:

*States shall take resolute steps to prevent and eliminate massive and flagrant violations of the human rights of persons and peoples affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and the refusal,* ***including by the State itself,*** *to otherwise recognize the fundamental right of peoples to self-determination.*

**Our Comment:**

We recommend emphasizing the responsibility of the State to not only prevent and eliminate human rights violations resulting from external situations, but to also eliminate the human rights violations conducted by the State internally. In repressive authoritarian States like the DPRK, the most direct and eminent force subjugating North Korean citizens is the DPRK government itself. The external forces that have aided the oppression of North Korean citizens, for instance, have largely been passive, indirectly arising by virtue of international trade conducted in agreement with the North Korean government (*see Comment #3*). We therefore write this recommendation with tyrannical regimes such as the DPRK in mind. The State, with the consent of the governed, has the most direct and meaningful access to eliminate the barriers to the fundamental freedoms of its citizens; by the same token, the State can unjustly perpetrate the barriers the international community has agreed to eradicate.

The DPRK’s active oppression of its citizens has been well-documented. We specifically point to its prison camps, religious discrimination, and manipulated elections to demonstrate the imminent and huge threat of the regime to realizing the right of self-determination.

 The U.S. Department of State estimates that between 80-120,000 North Koreans are subjected to forced labor in prison camps.[[1]](#footnote-1) Those detained are not informed of their accused crime or legal rights, and there exists no system to validate the arrest warrant. Their deprivation of liberty through detention or imprisonment may consequently be entirely arbitrary, and often is. Reasons for arrest can include mere accusations—as opposed to a court verdict—of attempting to defect to South Korea, being registered as unemployed for more than 15 days,[[2]](#footnote-2) and owning or distributing the Bible.[[3]](#footnote-3)

 Indeed, the persecution of Christians and those who exercise their religious freedom is particularly harsh. In accordance with Article 18 of the International Covenant on Civil and Political Right (ICCPR), Article 68 of the DPRK Constitution grants religious freedom to its citizens. Religious activities, however, are systematically suppressed on the grounds of harming social and political order. Those of religious faith, particularly Christians, are regularly executed,[[4]](#footnote-4) tortured, or imprisoned in the prison camps.[[5]](#footnote-5) The de facto repression of the fundamental right to liberty and freedom of religion to exercise control over the population demonstrates the State’s refusal to recognize its citizens’ right to self-determination.

The condition of the prison camps themselves further attest to the complete neglect for human rights by the DPRK. Defectors have repeatedly and consistently testified on the inhumane conditions of these prison camps, from starvation and torture to the abuse of women and children.[[6]](#footnote-6) Many prisoners die of malnutrition and treatable diseases. These prisoners are not only deprived of their right to self-determination through unjust loss of liberty, but are more fundamentally deprived of the right to life by virtue of the lack of proper sanitation, medical care, and nutrition.[[7]](#footnote-7) **The right to life precedes the right to self-determination, and the right to self-determination precedes the right to development.** This is evident as one cannot freely pursue her development without her life or liberty; one similarly cannot consistently develop her values and reap its benefits without the ability to freely pursue them. The DPRK’s severe abuse of fundamental freedoms pose a major barrier to realizing the global right to development; preventing and eliminating these internal violations are as significant to advancing the right to development as external forces.

The DPRK’s un-democratic elections serve as another barrier to fulfilling self-determination. In accordance with Article 25 of the ICCPR, Article 6 of the North Korean Constitution guarantees a “universal, direct, and equal suffrage by secret ballots.” The Constitution, however, also grants the Workers Party of Korea (WPK) legal control over all national institutions in North Korea.[[8]](#footnote-8) The WPK’s sole de jure control over the State ultimately undermines North Koreans' right to free political and civil participation regardless of universal suffrage. This reality is further exacerbated by the highly limited information dissemination and barriers to opposition votes. Due to censorship laws and prohibition of the freedom of assembly and expression, many citizens do not know names or faces of the representatives for whom they are voting.[[9]](#footnote-9)

North Korean Delegate laws expressly prohibit parties from encouraging “no” votes, abstentions, and sabotaging elections.[[10]](#footnote-10) This, in addition to monitoring during the ballot process and the ability to identify opposing votes, makes North Korean elections a de facto way for the WPK to control the election results of the population. The effect of the highly restricted political freedom is demonstrated by the 2014 presidential election results, in which not a single vote was cast against Kim Jong Un, a patently impossible outcome in a free and fair election with competing candidates. The DPRK regime prevents its citizens from truly participating in its own self-governance and reaping the benefits of a true democracy.

 Article 5 stresses the importance of taking action against external forces acting against the rights of citizens; we stress that the primary threats to human rights in some countries such as the DPRK are not external, but rather internal and committed by the State itself. These internally committed abuses pose a major barrier to successfully realizing the global right to development. We would like to add the phrase ‘*including by the State itself*’ to recognize that the very government in question has the potential to harm its own citizens, as well as to emphasize the States’ duty to recognize this potential and rightly protect the fundamental right of peoples to self-determination.

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**Original Text of Article 10 – Obligation to Respect**

*State Parties undertake to refrain from conduct, whether expressed through law, policy or practice, that:*

1. *Nullifies or impairs the enjoyment and exercise of the right to development within or outside their territories;*
2. *Impairs the ability of another State or international organization to comply with that State’s or that international organization’s obligations with regard to the right to development;*
3. *Aids, assists, directs, controls or coerces, with knowledge of the circumstances of the act, another State or international organization to breach that State’s or that international organization’s obligations with regard to the right to development;*
4. *Causes an international organization of which it is a member to commit an act that, if committed by the State Party, would constitute a breach of its obligation under the present Convention and the State Party does so to circumvent that obligation by taking advantage of the fact that the international organization has competence in relation to its subject matter.*

**Our Textual Suggestion:**

To add the following highlighted phrase to Article 10 subsection (c):

1. *Aids, assists, directs, controls or coerces, with knowledge,* ***or with reasonable expectations to have knowledge,*** *of the circumstances of the act, another State or international organization to breach that State’s or that international organization’s obligations with regard to the right to development;*

**Our Comment:**

 We recommend the inclusion of a stipulation that a State Party refrain from the conduct described in Article 10 subsection (c) if it can be reasonably expected that the State Party has knowledge of an act that breaches a State Party or international organization’s obligations with regard to the right to development, as a State Party may not always have explicit knowledge of an act, but it should have known about the act given the surrounding information and data.

Human trafficking, and particularly bride trafficking, runs rampant between the North Korean-Chinese border. The ratio of men to women at marriageable ages in the three Chinese provinces closest to the North-Korean Chinese border – Liaoning, Jilin, and Heilongjiang – is 14 to 1.[[11]](#footnote-11) This disparity between the ratio of men to women has created a bride trafficking industry in China, where men purchase women to be their wives. The dire economic situation and lack of opportunities in North Korea for women render North Korean women particularly vulnerable to being lured into the trafficking industry with promises by traffickers that they will find work and be able to earn money in China. The industry has become highly organized; Steve Kim – the founder of 318 Partners, an organization that rescues trafficked women in China – explains that an entire trafficking system has been constructed in North Korea and China.[[12]](#footnote-12) The U.S. Committee for Human Rights in North Korea surveyed 1,346 North Korean refugees in China and found that the majority of those interviewed knew of women being trafficked in China.[[13]](#footnote-13)13 However, North Koreans in China, including trafficking survivors, are not treated as refugees but often deported back to North Korea where they face the likely possibility of being sent to prison or labor camps. By doing so, China is allowing vulnerable North Koreans to be sent back to a country that will punish them for leaving. It is unclear the extent to which China is aware that they are repatriating bride trafficking survivors, as well as the extent to which North Korea is aware of a bride trafficking industry, but it can be reasonably argued that both governments should know about the industry given the extensive trafficking system established crossing the border and that, unfortunately, it is common for North Koreans in China to know of a trafficking survivor.

We therefore respectfully submit the suggestion that State Parties be held to a standard of conduct both if it knows or should have known about an act that could violate the right to development.

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**Original Text of Article 15 – Special or Remedial Measures**

*1. States Parties recognize that certain human persons, groups and peoples, owing to their age, disability, marginalization, vulnerability, indigeneity or minority status, may require special or remedial measures to accelerate or achieve de facto equality in their enjoyment of the right to development.*

*2. States Parties recognize that developing and vulnerable States, owing to historical injustices, conflicts, environmental hazards, climate change or other disadvantages, including of an economic, technical or infrastructural nature, may require special or remedial measures through mutually agreed international legal instruments, policies and practices for ensuring equal enjoyment of the right to development by all human persons and peoples. Such measures may, as appropriate, include:*

*(a) Recognition of common but differentiated responsibilities, taking into account*

*different national circumstances;*

*(b) The provision of special and differential treatment;*

*(c) Preferential terms on trade, investment and finance;*

*(d) The creation of special funds or facilitation mechanisms;*

*(e) The facilitation and mobilization of financial, technical, technological,*

*infrastructural, capacity-building or other assistance;*

*(f) Other mutually agreed measures consistent with the provisions of the present Convention.*

**Textual Suggestion:**

To add the following after Paragraph 2:

*3. State Parties receiving special and/or remedial assistance shall, under a good faith obligation to cooperate, undertake measures with assisting State Parties to accelerate or achieve de facto equality of vulnerable groups.*

**Comment:**

 We recommend adding the aforementioned third paragraph to Article 15 in order to signify an obligation upon State Parties that receive such special or differential treatment. Currently, Paragraph 1 recognizes the need for special or remedial measures in certain instances, and Paragraph 2 provides ways in which such assistance may be rendered by other State Parties. However, nothing in this article as it is currently written requires recipient State Parties to actively try to use such assistance toward ensuring equal enjoyment of the right to development by all human persons and peoples in order to achieve meaningful results. While we recognize the urgent needs of developing countries, we also stress the necessity for state accountability so that such assistance is ultimately used toward the benefit of the people, not the government’s own aims. We would also like to note that if this change to Article 15 is to be accepted, it would also apply to Article 13, Paragraph 4, which addresses State Parties’ duty to cooperate. North Korea is an example of a State that could benefit from such an obligation.

North Korea is a party to the following human rights treaties: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). However, it has failed to make satisfactory efforts in helping vulnerable groups—mainly women, children, and people with disabilities—enjoy the right to development despite the government having received special and remedial assistance by other States toward the fulfillment of this objective.

 As it currently stands, the absence of a provision in this article explicitly requiring recipient State Parties to reasonably cooperate with assisting State Parties does nothing to incentivize the former to actually use the aid toward achieving equality of vulnerable groups. In fact, North Korea’s noncooperation and lack of accountability has continued to hinder progress throughout the years. For example, upon ratifying CEDAW in February 2001, North Korea was required under Article 18 to submit implementation reports to the UN Secretary-General every four years. Although North Korea initially complied and submitted its first report in 2002, it delayed submitting the required second, third, and fourth periodic reports until 14 years later in 2016, when it finally provided a flawed combined report that was based on the government’s own findings and not verified by any external source.[[14]](#footnote-14) Furthermore, in an alleged effort to maintain self-reliance after the COVID-19 pandemic, the North Korean government has sent away all humanitarian groups from the country. Despite having access to millions of doses of COVID-19 vaccines through the UN-backed Covax program, the government continues to deny the presence of infections and to prevent humanitarian aid workers from entering the country to access the distribution channels to properly administer the doses that could protect the North Korean people from this life-threatening virus.[[15]](#footnote-15) Such actions show that the North Korean government is putting its own political desires to maintain a guise of self-reliance above the health, safety, and welfare of its own people, in direct contradiction to the idea of people-centered development.

 In North Korea, women, children, and people with disabilities continue to face discrimination and other hardships. In violation of CEDAW, the government has not taken meaningful steps towards eradicating discrimination against women. Women still have limited access to social status and activities, easily fall victim to domestic and sexual violence without any social institution to rely on for help, and are more prone to excessive labor due to a double burden of having to pursue economic activities outside the home while taking care of household duties pursuant to traditional gender roles.[[16]](#footnote-16) Both men and women are restricted from forming or joining labor unions of their choice, in violation of Article 8, Paragraph 1 of the ICESCR. Furthermore, the Korea Democratic Women’s Union, which is not a true labor union, requires forced labor among women in addition to their regular employment and does little to help victims of domestic abuse, despite claiming to promote women’s empowerment throughout the nation. Furthermore, women have made up only 15-20% of the deputies of the Supreme People’s Assembly and 20-30% of the deputies in local People’s Assemblies since the 1970s, and the only female member of the Political Bureau of Central Committee, which is the main part of the Workers’ Party of Korea in charge of making all its decisions, is Kim Jong-un’s sister, Kim Yo-jong. Thus, there is no free, active, or meaningful participation in the public sphere for North Korean women.

Meanwhile North Korean children suffer from low health and welfare—with a severe gap between the conditions of children living in Pyongyang and those in other regions of the country—and are mobilized and exploited for child labor.[[17]](#footnote-17) They are required to take part in political ideology education by the Korean Children’s Union, which requires participation in ideological activities and promotes propaganda. Rather than focusing on improving literacy rates and building academic knowledge and skills in young people, schools and the government itself take part in exploiting children for labor under the guise of teaching them civic values and creating resourceful citizens. They are removed from the classroom and mobilized throughout the country, where they are required to take part in construction projects, agricultural work, and collecting items, such as scrap metal, to meet government quotas. This stunts their development and puts them at grave risk of death and injury.

People with disabilities also have not seen much improvement, with their overall human rights situation remaining quite poor despite the North Korean government having adopted certain UN recommendations.[[18]](#footnote-18) In violation of the CRC, there is still inadequate access to special education to disabled children, with only eleven schools for those with hearing or visual disabilities. Furthermore, most rehabilitation centers are centered in Pyongyang, despite significant numbers of disabled people living in other cities or provinces. Therefore, more needs to be done to improve conditions for the disabled.

 Using the aid it receives to improve the conditions of the vulnerable groups mentioned above would have made the development people-centered. Instead, North Korea has been misappropriating funds and violating UN sanctions by diverting resources toward its nuclear arms program and unequally distributing aid toward the army and elite rather than to the average citizen.[[19]](#footnote-19) The presence of luxury goods and cars in the North Korean market, despite being restricted by sanctions, also shows the need for greater oversight in trade, particularly where aid or special treatment is being given to help vulnerable groups but significant improvement has yet to be seen.[[20]](#footnote-20) Therefore, especially for recipient State Parties that have an ongoing record of human rights violations, it is necessary to place such a duty to cooperate so that the results are exclusively aimed toward meeting the economic, social, cultural, and political needs of the *people*, not of government officials.

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**Article 21 – International Peace and Security**

**Original Text of Article 21 – International Peace and Security**

*1. States Parties reaffirm their existing obligations under international law to promote*

*the establishment, maintenance and strengthening of international peace and security in*

*consonance with the principles and obligations contained in the Charter of the United*

*Nations, including the peaceful settlement of disputes.*

**Textual Suggestion:**

To add the following highlighted phrase to Article 21:

*1. States Parties reaffirm their existing obligations under international law to promote*

*the establishment, maintenance and strengthening of international peace and security in*

*consonance with the principles and obligations contained in the Charter of the United*

*Nations, including* ***all United Nations Security Council resolutions and*** *the peaceful settlement of disputes.*

**Comment:**

In pursuing international disarmament to realize the global right to development, we agree with the need to stress the peaceful settlement of disputes. We also draw attention to, however, the necessity to re-emphasize the obligation of member states to observe UNSC resolutions, particularly with regard to the DPRK.

The DPRK has continuously and flagrantly violated UNSC resolutions by growing their WMD and ballistic missile programs over the past decade. The state was estimated, on average, to have spent between 13%-23% of its GDP on military defense spending every year from 2007-2017.[[21]](#footnote-21) Despite numerous UNSC resolutions against the DPRK, implementation and enforcement of said resolutions have been far from universal.

 The UN Panel of Experts on North Korea, established pursuant to Resolution 2874 (2009), reported that against Resolutions 2094 (2013) and 2371 (2017), the DPRK has been able to access global financial systems through joint ventures, offshore bank accounts, and virtual assets.[[22]](#footnote-22) More urgently, requests to expel income-earning North Koreans in member states in accordance with Resolution 2397 (2017) have also gone mostly unenforced. The Panel further reported an increase in the maritime trade of sanctioned goods between the DPRK and several other countries since previous years. These financial violations are particularly problematic, as **the** **revenue generated by North Korean expats and resources obtained from maritime trade are believed to directly finance the Kim Regime**.[[23]](#footnote-23)

 While the DPRK revealed the development of new ballistic missiles in 2020,[[24]](#footnote-24) North Koreans have experienced food shortages that have been severely exacerbated by the COVID-19 pandemic. The DPRK has refused international aid, though food imports from China, North Korea’s primary trading partner, have reduced dramatically due to the pandemic.[[25]](#footnote-25) Kim himself warned of an ‘arduous march,’ a reference to the deadly famine from 1994-1998 that was estimated to have killed millions.[[26]](#footnote-26)

 Efforts to financially and politically pressure the DPRK into disarmament have been repeatedly undermined by, willful or otherwise, the weak enforcement of UNSC Resolutions.The DPRK has prioritized military power over the national health and well-being of its own citizens, and it has been able to continuously finance its military prowess with the aid of the international community. **As the DPRK continues to invest its resources into military defense as opposed to its own citizens, the DPRK will continue to pose a threat to human-centered development as well as international peace and security**. We stress re-emphasizing the importance of observing UNSC resolutions in order to protect the most vulnerable in the DPRK and advance the international right to development.

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23. Ibid. p.14-27; 51-52 [↑](#footnote-ref-23)
24. Ibid. p. 10-14 [↑](#footnote-ref-24)
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