

ILLICIT IT: BANKROLLING KIM JONG UN

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CONTENTS

	Page
WITNESSES	
Klinger, Bruce, Senior Research Fellow for Northeast Asia, The Heritage Foundation's Asian Studies Center	7
Lee, Jean, Journalist, Former Pyongyang Bureau Chief, Associated Press	20
Scholte, Suzanne, President, Defense Forum Foundation	29
Jun, Jenny, Research Fellow, Center for Security and Emerging Technology ...	39
INFORMATION FOR THE RECORD	
Information submitted for the record	47
APPENDIX	
Hearing Notice	87
Hearing Minutes	89
Hearing Attendance	90
ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD	
CRDF Global: The DPRK'S Evasion of U.S. and UN Sanctions	91
North Korea's Human Rights Situation: Focusing on Overseas Workers and Defectors	92
The Root of All Evil	112

ILLICIT IT: BANKROLLING KIM JONG UN

Thursday, July 27, 2023

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE INDO-PACIFIC,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:22 p.m., in room 2200, Rayburn House Office Building, Hon. Young Kim (chair of the subcommittee) presiding.

Mrs. KIM OF CALIFORNIA. The Subcommittee on the Indo-Pacific of the Foreign Affairs Committee will come to order.

The purpose of this hearing is to examine how North Korea is using illicit cybertactics to undermine international sanctions and fund its nuclear weapons program. I now recognize myself for an opening statement.

First of all, thank you so much for your patience. We had delays after delays in today's committee hearings we were involved in, and, as well as the vote series.

So, we are here, thank you, Ranking Member, for being here. Today marks the 70th anniversary of the signing of the Korean War armistice, which ended hostilities on the Korean peninsula.

In solemn recognition of this anniversary, I am holding this hearing entitled Illicit IT: Bankrolling Kim Jong Un to highlight the atrocities of the Kim regime and to shed a light on how the regime is able to circumvent international sanctions to fund its human rights abuses and its nuclear program.

As a Korean-American with family members who fled North Korea during the Korean War, this is an issue that is deeply personal to me. Having grown up in South Korea in the aftermath of the Korean War, it is an honor for me to hold this hearing as Chairwoman of the Indo-Pacific Subcommittee.

I salute this to South Koreans who bravely fought for their freedom and to American troops who answered the call to defend a country they never knew and a people they never met.

Since the collapse of the 2018 peace talks in Hanoi, North Korea has significantly ramped up its nuclear aggression. It is launching intercontinental ballistic missiles more frequently. And, with each launch is improving its arsenal.

Given that North Korea is one of the most heavily sanctioned countries in the world, this begs a careful examination from Congress as to how North Korea is able to generate enough revenue to continue expanding its arsenal.

North Korea engages in a long list of illicit activities, including human trafficking, slave labor, drug trafficking, arms proliferation, and cybercrime to generate revenue and sabotage the free world. Today's hearing focuses on the latter.

The North Korean Cyber Army works side by side with the Korean People's Army, supporting its espionage and sabotage missions. In March 2023, North Korean hackers launched a large scale cyberattack against the software firm 3CX, which affected thousands of businesses, including in the healthcare industry that stores sensitive information about their customers and patients.

North Korea also uses cyberattacks to generate revenue for its nuclear program. We reasonably believe that North Korea was behind the 2017 WannaCry ransomware attack which affected 300,000 users in at least 150 countries.

In 2016, North Korean hackers attempted a billion-dollar digital heist on Bangladesh, Bangladesh's National Bank and managed to skirt off with \$81 million. North Korea is also notorious for hacking cryptocurrency portfolios and laundering money through cryptocurrency platforms.

It is important to note that these hackers are not sitting together somewhere in a dimly lit room somewhere in Pyongyang, because they're all over the world and mostly operating outside of North Korea, namely China.

Despite these previous cyberattacks even affecting Chinese individuals and organizations, the People's Republic of China refuses to do anything about it.

This is because the PRC actively helps to facilitate North Korea's cybercrime by providing it with the digital infrastructure it needs to carry out these attacks. And, it does so because it does not want to see the Kim regime fail.

If you want to see the Kim regime fail in its illegal ventures, then we must ensure that we enhance our sanctions and law enforcement activities targeting North Korea's cybercrime.

We must also remember that while hostilities on the Korean peninsula ended 70 years ago, North Korea is a still hostile actor. Kim Jung Un murders and terrorizes his own people to ensure that he can remain in power. And, he has no real interest in peace with the free world.

We must be vigilant in ensuring there are no loopholes in our sanctions policies that he can exploit to denying his own people's basic human rights. And, we must work with our allies and partners in the Indo-Pacific to ensure that we send Kim Jung Un a strong and united message that his behavior will not be tolerated.

I also call on the Administration to ensure that human rights in North Korea remains at the forefront of our Indo-Pacific policy. I introduced North Korea Human Rights Reauthorization Act, which authorizes activities to get outside information into North Korea and calls for the confirmation of a Special Envoy on North Korea and calls for the reunification of divided families.

I believe this legislation will ensure that we do not let human rights in North Korea become a peripheral issue. And, I will push to get this legislation signed into law during this Congress.

With that, the Chair now recognizes the Ranking Member, the gentleman from California, Mr. Bera for his opening statement.

Mr. BERA. Thank you, Madam Chairwoman for holding this critical hearing. And, thank you to the witnesses for sharing your expertise with the Subcommittee.

As the Chairwoman pointed out, today marks the 70th anniversary of the Korean Armistice Agreement. And, this gives us an opportunity to pay honor and the tremendous debt that we owe to those who sacrificed in the conflict, including the thousands of American, Korean, and U.N. troops who lost their lives.

In addition though, it also allows us to pay homage to the partnership and friendship and alliance that was borne out of that shared sacrifice and the strength of the US-ROK alliance, friendship, relationship that continues to grow every day.

As the Chairwoman pointed out, North Korean cyber activity represents a critical threat to the U.S., its allies, and international institutions. Given the country's resource constraints, the DPRK conducts asymmetric warfare through its cyber program.

In recent years, North Korean cyber actors have targeted governments, banks, hospital systems, and private businesses, robbing those institutions of billions of dollars. Sources estimate that the financial gain to North Korea from their cyber-criminal activities has increased from about \$1 billion in 2017 to \$2 billion in 2020.

These attacks have continued since the DPRK sealed its borders during the COVID-19 pandemic, with the U.S. Treasury estimating that North Korea stole at least \$1.7 billion just in cryptocurrencies in 2022. This activity is used to evade sanctions and directly support Kim Jung Un's regime, including North Korean ballistic missile and nuclear activities.

As a doctor, we've also seen troubling evidence of North Korean ransomware against our hospital and health systems. This undermines and threatens our ability to care for our patients and impacts every Member of Congress in every district, because we all have those hospitals.

Finally, like many authoritarian governments, North Korea uses the cyber domain to extinguish threats to the regime. The 2014 Sony Picture hack was a watershed moment when North Korea uses cyber tools to prevent the studio from showing a movie that was critical of Kim Jung Un's rule.

While we may have been amused that the Kim regime was threatened by a Seth Rogen film, we should also understand the DPRK is willing to use these instruments to intimidate opposition outside its borders.

We need to be aware of how the cyber domain can be used to shore up authoritarian regimes. In light of this, the Biden Administration is making a strong effort to counter North Korea's malign cyber activities.

The Cybersecurity and Infrastructure Agency, CISA at the Department of Homeland Security has made North Korean cyber activity a priority, informing the public and private sector of DPRK malicious actions.

President Biden has also strengthened our alliance with South Korea as well as our trilateral partnership with South Korea and Japan, making it easier to align our policies in response to the DPRK's provocative behavior.

In 2022, Presidents Biden and Yoon established the first U.S.-ROK working group meeting on the DPRK cyber threat. During South Korean President Yoon's State visit in April, Presidents Biden and Yoon committed to establish a U.S.-ROK strategic cyber-

security cooperation framework to expand cooperation on deterring and combating cyber activities.

With that, I applaud the foundation President Biden has laid. And, it is now time for more to be done. And, I think we can work in a bipartisan way as Members of Congress to continue to support these activities.

And with that, I look forward to hearing from our witnesses and I'll yield back.

Mr. CONNOLLY. Madam Chair?

Mrs. KIM OF CALIFORNIA. Yes?

Mr. CONNOLLY. I want to thank you for having the hearing. But, just a point of personal privilege if I may, I want to welcome my former constituent, I think you're now former, and my former opponent, Suzanne Scholte, who has been steadfast in her advocacy for human rights on the Korean peninsula and calling out the Korean regime. But also, trying to promote reconciliation.

And, I really appreciate her presence here. And, I am doing this now, because I am nervous, we are going to have votes and we'll scatter to the four winds, because the Congress is out for 6 weeks once we have this vote.

So, welcome Suzanne. And thank you, Madam Chair.

Mrs. KIM OF CALIFORNIA. Thank you for mentioning that. We do have votes that are about to be called for. So, we're going to try to rush through this as fast as possible.

But, we want to hear from our witnesses and have an opportunity for our members to ask questions as well. Other members of the Committee are reminded that opening statements may be submitted for the record. And, we are pleased to have a distinguished panel of witnesses before us today on this very important topic.

First, Bruce Klinger is a Senior Research Fellow at the Asian Study Center at the Heritage Foundation. Thank you for joining us. Ms. Jean Lee is a journalist and former Pyongyang Bureau Chief with the Associated Press. Thank you for joining us.

And, Ms. Suzanne Scholte, as said was a dear friend who were partners in crime, I guess, on this very important issue, currently serves as President of the Defense Forum Foundation. Thank you for being with us.

Last, Ms. Jenny Jun, is a Research Fellow at the Center for Security and Emerging Technology. With that, I want to thank you all for being here. Your full statements will be made part of the record. And, I will ask each of you to keep your spoken remarks to 5 minutes or under in order to allow time for member questions.

So, let me now recognize Mr. Klinger for your opening statement.

**STATEMENT OF BRUCE KLINGER, SENIOR RESEARCH FELLOW
FOR NORTHEAST ASIA, THE HERITAGE FOUNDATION'S
ASIAN STUDIES CENTER**

Mr. KLINGER. Chairwoman Kim, Ranking Member Bera, and distinguished members of the Committee, I thank you for the opportunity to appear before you. I will summarize my written testimony.

North Korea's cyberattack capabilities pose a multifaceted threat to national security since the regime has successfully penetrated

and inflicted damage on military, government, media, and infrastructure computer networks.

North Korea's sophisticated cybercrimes enable the regime to finance its prohibited nuclear and missile programs and evade international sanctions in ways that are more efficient, less risky, and far more lucrative than its past illicit activities.

How successful have these cybercrimes been? By 2019, North Korea had cumulatively gained \$2 billion from cybercrime.

Last year, in the world's largest cryptocurrency heist ever, North Korean hackers stole \$620 million from a crypto-token based online video game. And, as Representative Bera pointed out that North Korean hackers, just last year, stole \$1.7 billion worth of cryptocurrency.

By comparison, North Korea's legitimate international trade last year was only \$1.5 billion. And, the U.S. has estimated that in the last 2 years alone, North Korea has largely funded its weapon of mass destruction programs through cyberheists of cryptocurrencies and hard currencies.

Another cash cow for North Korean cybercrimes has been its IT workers operating overseas. The U.N. Security Council Resolution 2397 required all countries to repatriate all of their North Korean workers within their borders by December 2019.

Despite that edict, thousands of highly skilled North Korean information technology workers currently operate in China, Russia, and other countries. They use false identities and fraudulently gain employment as freelance computer engineers with tech and virtual currency companies around the world.

Some North Korean IT workers can earn more than \$300,000 per year, with 90 percent of their wages going back to the regime. Overall, the program generates hundreds of millions of dollars annually for the regime to fund its nuclear and missile programs.

In recent years, Washington and Seoul have both stepped up the law enforcement efforts to combat North Korea's cyberattack strategies. And, the inauguration of South Korean President Yoon Suk Yeol has been particularly noteworthy for South Korea upholding the rule of law.

Under the Yoon Administration, South Korea issued its first ever independent sanctions targeting North Korean cyber activities. And, was the first country to sanction North Korean hacking group Kimsuky.

Despite these recent efforts, more needs to be done. The U.S. should augment its engagement with international partners. One example would be utilizing the Quad senior cyber group to engage with other Indo-Pacific nations, especially South Korea, to coordinate enhanced cyber defenses.

Also, target the North Korean overseas IT workers. The U.S. should pressure countries to eject or extradite North Korean workers to reduce the substantial source of illicit funding for the regime's nuclear missile programs.

And, the U.S. should encourage or urge companies to conduct more rigorous identification checks and stringent authentication measures to prevent inadvertent hiring of North Korean IT workers as independent contractors.

Also, need to enhance enforcement against illicit cyber and money laundering operations. Successive U.S. Administrations have refrained from significant actions against Chinese entities, providing technology, equipment, training, and safe haven to North Korean hackers.

Washington should pressure China and other nations to dismantle North Korean hacking networks on their soil. And, Washington has yet to impose fines on Chinese banks for laundering North Korean illicit funds.

And, the U.S. should target banks, financial institutions, and front companies that are used to launder money stolen by North Korea. We also need to augment regulation of cryptocurrency exchanges.

The U.S. should review existing legislation and regulations to ensure cryptocurrency exchanges have sufficient security against cyberattacks and to prevent money laundering.

We should support third-party civil suits against enablers of cyberattacks. Congress should enact legislation that facilitates civil suits against foreign States that have repeatedly sponsored or facilitated cyberattacks against U.S. critical infrastructure or any entity that willfully or negligently facilitates a cyberattack against a U.S. person or U.S. critical infrastructure.

We should also enhance cyber administrative enforcement authority. Congress could grant an appropriate Federal agency, such as the Cybersecurity and Infrastructure Security Agency, administrative forfeiture authority to seize and forfeit hackers' infrastructure and other proceeds or facilitated property, which would reduce demand on limited judicial and prosecutorial resources.

In conclusion, the U.S. in conjunction with foreign governments and the private sector, needs to augment cyber defenses and respond more forcefully to attacks. Failure to do so enables North Korea to continue undermining the effectiveness of international sanctions and leaves the U.S. and its partners exposed to a potentially devastating cyberattack. Thank you.

[The prepared statement of Mr. Klinger follows:]

Testimony Submitted to The Committee on Foreign Affairs,
 Subcommittee on Indo-Pacific
 United States House of Representatives
 “Illicit IT: Bankrolling Kim Jong Un
 July 27, 2023
 Bruce Klingner
 Senior Research Fellow, Asian Studies Center
 The Heritage Foundation

My name is Bruce Klingner. I am Senior Research Fellow in the Asian Studies Center at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Chairwoman Kim, Ranking Member Bera, and distinguished Members of the House Foreign Affairs Committee. I thank the Committee for the opportunity to submit testimony on the dangers that North Korea’s cyber operations pose to the United States, its allies, and the international financial system.

North Korea’s nuclear weapons and missile pose a direct military threat and means to coerce the United States and its allies. Pyongyang has long threatened to use its nuclear weapons in preemptive attacks and vowed never to abandon its “trusted shield and treasured sword.

Similarly, Pyongyang’s cyberattack capabilities pose a multi-faceted threat to national security since the regime has successfully penetrated and inflicted damage on military, government, media, and infrastructure computer networks. North Korea is in the top tier of global cyber threats and could inflict devastating damage during a crisis by simultaneously targeting an array of critical sectors.

Kim Jong Un declared that cyber warfare is a “magic weapon”¹ and an “all-purpose sword that guarantees the North Korean People’s Armed Forces ruthless striking capability, along with nuclear weapons and missiles.”²

¹ “N.Korea Boosting Cyber Warfare Capabilities,” *The Chosun Ilbo*, November 5, 2013, http://english.chosun.com/site/data/html_dir/2013/11/05/2013110501790.html.

² Kong Ji-young, Lim Jong-in, and Kim Kyoung-gon, “The All-Purpose Sword: North Korea’s Cyber Operations and Strategies,” in proceedings, 11th International Conference on Cyber Conflict: Silent Battle, ed. Tomáš Minárik, Siim Alatalu, Stefano Biondi, Massimiliano Signoretti, Ihsan Tolga, and Gábor Visky (Tallinn, Estonia: NATO CCD

North Korea's sophisticated cybercrimes have enabled the regime to evade international sanctions and finance its prohibited nuclear and missile programs. Pyongyang has modified its strategy as cyber defenses were improved, shifting from traditional financial institutions to cryptocurrency providers then to decentralized finance (DeFi) platforms. Regime tactics continue to evolve.

New tools for an old strategy

The North Korean regime has a long history of using criminal activities to acquire money. Earlier criminal efforts included counterfeiting of currencies, pharmaceutical drugs, and cigarettes; production and trafficking of illicit drugs, including opium and methamphetamines; trafficking in endangered species products; and insurance fraud.

Cybercrimes enable the North Korean regime to gain currency and evade international sanctions in ways that are more efficient, cost-effective, and lucrative than past illicit activities and more recent smuggling and ship-to-ship transfers of oil. The regime's cybercrimes are global in scope, provide astronomical returns on investment, and are low-risk since they are difficult to detect and attribute with little likelihood of international retribution.

In 2015, North Korea began cyber robberies to gain revenue for the beleaguered, heavily sanctioned regime. Pyongyang began with attacks against traditional financial institutions such as banks, fraudulent forced interbank transfers, and automated teller machine (ATM) thefts. The most famous of these was when North Korean stole \$81 million from the Central Bank of Bangladesh's New York Federal Reserve account. An attempt to steal an additional \$851 million was thwarted by an alert bank officer who noticed a typographical error.

After the international community took notice of these attacks and increased protections, the regime shifted to targeting cryptocurrency exchanges, which proved to be far more lucrative. By 2020, according to one U.N. member state, North Korean "attacks against virtual currency exchange houses [had] produced more illicit proceeds than attacks against financial institutions."³ North Korea has now switched almost 100 percent of their operations to cryptocurrency-related hacks.⁴

North Korea is unique amongst nations with cyber-attack capabilities because it devotes so much of its efforts to generating illicit crypto revenue and evading sanctions. Other nations prioritize their offensive operations on espionage, sabotage, and disinformation campaigns. Pyongyang continues operations in all of those categories but, according to Harvard University Belfer

COE [Cooperative Cyber Defence Centre of Excellence] Publications, 2019), p. 143, https://ccdcoc.org/uploads/2019/06/CyCon_2019_BOOK.pdf.

³ United Nations Security Council, Report of the Panel of Experts Established Pursuant to Resolution 1874, S/2020/840, August 28, 2020, p. 43, <https://undocs.org/S/2020/840>.

⁴ Shannon Vavra, "Cash-Starved North Korea Eyed in Brazen Bank Hack," *The Daily Beast*, November 22, 2021, <https://www.thedailybeast.com/cash-starved-north-korea-eyed-in-brazen-bank-rakyat-indonesia-hack>

Center's 2020 Cyber Power Index, North Korea was the only country observed pursuing wealth generation via illegal cyber means."⁵

North Korea's cyber capabilities pose a grave threat

Despite North Korea's reputation as a technically backwards nation, U.S. officials have long warned of the regime's cyberattack prowess, citing it as one of the top four cyber threats in the world.⁶

In February 2023, the Director of National Intelligence assessed that North Korea's cyber program poses a "sophisticated and agile espionage, cybercrime, and attack threat [which is] fully capable of achieving a range of strategic objectives against... a wide target set in the United States."⁷ U.S. Cybersecurity and Digital Policy Ambassador Nathaniel Fick declared that North Korea's cyber activities pose a "grave threat" to international peace and security.⁸

North Korea has developed a comprehensive program to train thousands of cyberwarriors. While most toil covertly, North Korean university students have demonstrated they are the best in the world. North Korean contestants from Kim Chaek University of Technology and Kim Il Sung University swept the top four prizes in a May 2023 computer program coding contest of 1700 contestants hosted by U.S. IT company HackerEarth. In 2020, North Korean students won the CodeChef coding contests for six months running in a competition of 30,000 university students from around the world.⁹

Scoping the North Korean cybercrimes threat

As with any criminal activity, it is difficult to assess how much North Korea has gained from its cybercrime operations. Governments, financial institutions, and law enforcement agencies may be unaware of some cybercrimes or unable to determine the perpetrator conclusively. Even with a successful cybercrime, North Korean hackers may not have been able to convert all of the cryptocurrency into hard cash, and some victimized financial institutions were able to recover some or all of their lost currency.

In October 2022, Secretary of Homeland Security Alejandro Mayorkas said, "in the last two years alone, North Korea has largely funded its weapons of mass destruction programs through

⁵ Alex O'Neill, "Cybercriminal Statecraft: North Korean Hackers' Ties to the Global Underground," Harvard Kennedy School Belfer Center, March 2022, <https://www.belfercenter.org/sites/default/files/files/publication/Cybercriminal%20Statecraft%20-%20Alex%20O%27Neill.pdf>.

⁶ Chang Jae-soon, "U.S. Intelligence Chiefs Pick N. Korea as Major Cyber Threat," Yonhap News Agency, January 6, 2017, <https://en.yna.co.kr/view/AEN20170106000200315>.

⁷ Office of the Director of National Intelligence, Annual Threat Assessment of the U.S. Intelligence Community," February 6, 2023, <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf>.

⁸ Shreyas Reddy, "Washington and Seoul seek 'Preemptive Action Against North Korean Cyberattacks,'" NKNews.org, February 8, 2023, <https://www.nknews.org/2023/02/washington-and-seoul-seek-preemptive-action-against-north-korean-cyberattacks/>.

⁹ "N.Korean Hackers Among Best in the World," *The Chosun Ilbo*, July 10, 2023, <https://www.msn.com/en-si/news/other/n-korean-hackers-among-best-in-the-world/ar-AA1dEtKC>.

cyber heists of cryptocurrencies and hard currencies.”¹⁰ In May 2023, Deputy National Security Adviser for Cyber and Emerging Technology Anne Neuberger estimated that approximately half of North Korea’s missile program has been funded by cyberattacks and cryptocurrency theft.¹¹

A U.S. Treasury Department official declared that Pyongyang’s use of cybercrimes to fund its nuclear and missile programs is a “very significant national security concern.”¹² Chainalysis, a blockchain analysis firm, estimated that North Korean hackers accounted for more than 50 percent of the total global losses arising from cryptocurrency hacks.¹³

In 2019, the U.N. Panel of Experts estimated that North Korea had cumulatively gained \$2 billion from cybercrime to fund its weapons of mass destruction programs.¹⁴ During 2020, 2021, and 2022, North Korea is estimated to have stolen at least \$316 million,¹⁵ \$400 million,¹⁶ and \$1.7 billion¹⁷ worth of cryptocurrency, respectively.

Major North Korean crypto heists, include:

- 2018: In Japan, Coincheck declared that \$532 million was stolen.¹⁸
- 2018: North Korean groups hacked into an unidentified digital currency exchange and stole nearly \$250 million worth of digital currency.¹⁹

¹⁰ Esther Chung, “North’s Ripped off \$1B in 2 Years, Says Mayorkas,” *Korea JoongAng Daily*, October 19, 2022, <https://koreajoongangdaily.joins.com/2022/10/19/national/northKorea/north-korea-crypto-nuclear/20221019175828916.html>.

¹¹ Sean Lyngaas, “Half of North Korean Missile Program Funded by Cyberattacks and Crypto Theft, White House Says,” CNN, May 10, 2023, <https://www.cnn.com/2023/05/10/politics/north-korean-missile-program-cyberattacks/index.html#:~:text=About%20half%20of%20North%20Korea's,White%20House%20official%20said%20Tuesday>.

¹² Byun Duk-kun, “N. Korea Poses Grave Threat to Cyber Security, Cutting Off Illicit Funds to Weapons Program Important: U.S. Official,” *Yonhap News*, July 20, 2023, <https://en.yna.co.kr/view/AEN20230720000300325>

¹³ <https://www.koreaherald.com/view.php?ud=20220817000755>.

¹⁴ United Nations Security Council, Report of the Panel of Experts Established Pursuant to Resolution 1874, S/2019/691, August 30, 2019, pp. 4 and 26, <http://undocs.org/S/2019/691>.

¹⁵ United Nations Security Council, “Letter Dated 2 March 2021 From the Panel of Experts Established Pursuant to Resolution 1874,” March 4, 2021, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2021_211.pdf.

¹⁶ Chainalysis, “North Korean Hackers Have Prolific Year as Their Unlaundered Cryptocurrency Holdings Reach All-time High,” January 13, 2022, <https://blog.chainalysis.com/reports/north-korean-hackers-have-prolific-year-as-their-total-unlaundered-cryptocurrency-holdings-reach-all-time-high/>.

¹⁷ Chainalysis, “2022 Biggest Year Ever for Crypto Hacking with \$3.8 Billion Stolen, Primarily From DeFi Protocols and by North Korea-Linked Attackers,” February 1, 2023, <https://blog.chainalysis.com/reports/2022-biggest-year-ever-for-crypto-hacking/>.

¹⁸ Marie Huillet, “Report: North Korea-Sponsored Hacks Comprise 65 Percent of Total Crypto Stolen,” *CoinTelegraph*, October 19, 2018, <https://cointelegraph.com/news/report-north-korea-sponsored-hacks-comprise-65-percent-of-total-crypto-stolen>

¹⁹ U.S. Department of State; U.S. Department of the Treasury; U.S. Department of Homeland Security; and U.S. Department of Justice, Federal Bureau of Investigation, “DPRK Cyber Threat Advisory: Guidance on the North Korean Cyber Threat,” April 15, 2020, p. 4, https://home.treasury.gov/system/files/126/dprk_cyber_threat_advisory_20200415.pdf.

- 2020: The Lazarus Group stole \$275 million from the KuCoin currency exchange. KuCoin's CEO stated that the exchange recovered \$204 million worth of the stolen funds.²⁰
- 2022: In the largest cryptocurrency heist ever, North Korean hackers stole \$620 million by penetrating the Ronin Network, an Ethereum-linked sidechain system for Axie Infinity, a crypto token-based online video game. The game enables its 2.5 million participants to accumulate cryptocurrency.²¹
- 2022: London-based blockchain analytics firm Elliptic revealed that Lazarus Group had stolen \$100 million in cryptocurrency from Harmony's Horizon Bridge blockchain bridge service that allows users to transfer cryptocurrency across different blockchains.²²
- 2023: North Korean hackers gained an estimated \$100 million in cybercurrency from Atomic Wallet, a cryptocurrency wallet provider.²³

For context, North Korea's total GDP in 2019 was \$29 billion.²⁴ In 2022, Pyongyang's total legitimate international trade was \$1.59 billion.²⁵

North Korea's other cyber cash cow – overseas IT workers

UN Security Council Resolution 2397 (adopted in December 2017) required all UN member states to repatriate all North Korean workers within their borders by December 2019. Despite this edict, thousands of highly skilled North Korean information technology workers currently operate in China, Russia, Belarus, Singapore, the Philippines, and Malaysia.²⁶ The North Koreans use false foreign identities and fraudulently gain employment as freelance computer engineers with technology and virtual currency companies located in North America, Europe, and Asia.

²⁰ Chainalysis, "Lazarus Group Pulled off 2020's Biggest Exchange Hack and Appears to Be Exploring New Money Laundering Options," February 9, 2021, <https://blog.chainalysis.com/reports/lazarus-group-kucoin-exchange-hack>.

²¹ Choe Sang-Hun and David Yaffe-Bellany, "How North Korea Used Crypto to Hack Its Way Through the Pandemic," *The New York Times*, July 1, 2022, <https://www.nytimes.com/2022/06/30/business/north-korea-crypto-hack.html>.

²² Ji Da-gyum, "N.Korean Hackers Steal \$1b in Crypto From DeFi Protocols This Year: Report," *The Korea Herald*, August 17, 2022, <https://www.koreaherald.com/view.php?ud=20220817000755>.

²³ Ekin Genç, "Atomic Wallet Faces \$100m Lawsuit Following North Korean Hack," *DL News*, July 7, 2023, <https://www.dlnews.com/articles/defi/atomic-wallet-faces-lawsuit-following-north-korean-hack/>.

²⁴ Bank of Korea, "Gross Domestic Product Estimates for North Korea in 2019," July 31, 2020, <https://www.bok.or.kr/eng/bbs/E0000634/view.do?nttlId=10059560&menuNo=400069>

²⁵ "N. Korea's Trade Reliance on China Hits 10-Year High in 2022," *Yonhap News*, July 20, 2023, <https://en.yna.co.kr/view/AEN20230720005300320>.

²⁶ Choe Sang-Hun and David Yaffe-Bellany, "How North Korea Used Crypto to Hack Its Way Through the Pandemic," *The New York Times*, July 1, 2022, <https://www.nytimes.com/2022/06/30/business/north-korea-crypto-hack.html>.

Some North Korean IT workers can each earn more than \$300,000 per year with 90% of the wages going to the regime.²⁷ Overall, the program generates hundreds of millions of dollars annually for the regime to fund its nuclear and missile programs.²⁸

Most of the North Korean IT workers are likely engaged in legal computer activity, in sectors including software development, business, health and fitness, social networking, entertainment, and lifestyle. They have often been involved in virtual currency companies which enable them to launder illicitly obtained funds back to North Korea.²⁹

Some North Korean workers, however, have engaged in malicious cyber activities utilizing their access through foreign companies. The South Korean government identified a significant percentage of the North Korean IT workers are subordinate to entities which have been designated for sanctions under UN Security Council resolutions, such as the Munitions Industry Department and Ministry of National Defense.³⁰

Uncertainties of stolen cryptocurrency value

While North Korea has garnered extensive cryptocurrency holdings from repeated cyberattacks, there are several unknowns about the overall benefits of the thefts.

How much remains as cryptocurrency? Pyongyang has demonstrated a talent for stealing and laundering cryptocurrency but it is unclear how effective the regime has been in cashing out the proceeds to traditional currency. The sheer volume of the thefts may make it difficult to convert the cryptocurrency. Chainalysis identified \$170 million in yet-to-be-laundered funds linked to 49 separate hacks by North Korea during 2017-2021.³¹ There have been several reports that government agencies or cyber security companies have been able to claw back some of the stolen cybercurrency before North Korea was able to convert it to cash.

What is the final cash out value of the stolen cryptocurrency? It is unlikely that North Korea has been able to convert crypto to cash on a 1 for 1 basis instead perhaps only achieving one-third of the cryptocurrency value.

²⁷ U.S. Department of the Treasury, "Treasury Targets DPRK Malicious Cyber and Illicit IT Worker Activities," July 21, 2023, <https://home.treasury.gov/news/press-releases/jy1498>.

²⁸ South Korea Ministry of Science and ICT, "Advisory on the Democratic People's Republic of Korea Information Technology Workers," December 8, 2022, https://www.msit.go.kr/eng/bbs/view.do?sessionId=v6ZsDT2kgbFqUkjfPQ49KAO4wUfcT-qCn9P0BkTu.AP_msit_1?sCode=eng&mPid=2&mId=4&bbsSeqNo=42&nttSeqNo=754#:~:text=IT%20workers%20located%20overseas%20form,via%20online%20freelance%20work%20platforms.&text=UNSCR%202397%20adopted%20in%20December,overseas%20workers%20by%20December%202019.

²⁹ U.S. Department of the Treasury, "Treasury Targets DPRK Malicious Cyber and Illicit IT Worker Activities," July 21, 2023, <https://home.treasury.gov/news/press-releases/jy1498>.

³⁰ South Korea Ministry of Science and ICT, "Advisory on the Democratic People's Republic of Korea Information Technology Workers," op. cit.

³¹ Chainalysis, "North Korean Hackers Have Prolific Year as Their Unlaundered Cryptocurrency Holdings Reach All-time High," op. cit.

How did the global downturn in the cryptocurrency markets impact North Korea? The \$170 million that North Korea stole during 2017-2021 decreased in value to \$65 million by 2022.³² The \$625 million stolen in 2022 from the Ronin network would have been devalued to about \$250 million.³³

U.S. and South Korea respond to North Korean cybercrimes

North Korea has scored numerous cybercrime successes providing billions of dollars in illicit gains to fund the regime's nuclear and missile programs. However, in recent years Washington and Seoul have both stepped up law enforcement efforts to combat North Korea's cyberattack strategies.

The inauguration of South Korean President Yoon Suk Yeol has been particularly noteworthy for rejecting his predecessor's turning a blind eye to North Korean transgressions and instead upholding laws as well as working in greater coordination with the United States and the international community. Under the Yoon administration, South Korea issued its first ever independent sanctions targeting North Korean cyber activities and was the first country to sanction North Korean hacking group Kimsuky.

Recommendations

Assess the threat. The Director of National Intelligence should prepare classified and unclassified National Intelligence Estimates defining the extent of North Korean cyber capabilities, past attacks, and the potentially greater threat from future operations, including during a crisis or hostilities on the Korean Peninsula. The Intelligence Community should assess potential future hacking methods against cryptocurrency, DeFis, blockchain, and other financial technology.

The reports should encompass North Korean interaction with Russian and other criminal groups, use of Chinese and other financial institutions for laundering illicit funds, and presence of North Korean IT workers in UN member states.

Enhance coordination with private sector. The U.S. National Cybersecurity Strategy calls for "greater collaboration by public and private sector partners to improve intelligence sharing, execute disruption campaigns at scale, deny adversaries the use of U.S.-based infrastructure, and thwart global ransomware campaigns."³⁴

The U.S. should continue issuing threat advisories that provide detailed technical details of North Korean cyber organizations, recent cyberattacks, ways to evade cyber defenses, and money

³² Josh Smith, "Insight: Crypto Crash Threatens North Korea's Stolen Funds As It Ramps Up Weapons Tests," Reuters, June 29, 2022, <https://www.reuters.com/technology/crypto-crash-threatens-north-koreas-stolen-funds-it-ramps-up-weapons-tests-2022-06-28/>.

³³ Daniel Van Boom, "North Korea's Crypto Hackers Are Paving the Road to Nuclear Armageddon," CNET, October 9, 2022, <https://www.cnet.com/culture/features/north-koreas-crypto-hackers-are-paving-the-road-to-nuclear-armageddon/>.

³⁴ The White House, "National Cybersecurity Strategy," March 2023, <https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf>.

laundering alert government and private-sector entities to take appropriate actions to improve cyber defenses. Widespread public dissemination of cyberthreat information and directly engaging banks, financial institutions, and companies enables identifying cyber vulnerabilities, best practices, and remedial measures.

Engage international partners. The U.S. should expand efforts to coordinate with foreign governments, law enforcement agencies, and financial regulatory agencies at the national level and, through them, regional and domestic partners. Washington should take the lead in engaging with foreign financial institutions and businesses to disseminate information on North Korean cyber hacking and money-laundering tactics, techniques, and procedures as well as eliciting information on cyberattack or suspicious activities.

The U.S. should utilize the Quad (Australia, India, Japan, and the United States) Senior Cyber Group to engage with other Indo-Pacific nations, especially South Korea, to coordinate enhanced cyber defenses. At its February 2023 meeting, the Group committed to greater sharing of information and technology with regional partners to strengthen preventive measures against malicious cyber-attacks and improve response capabilities.³⁵

Target North Korean overseas IT workers. UN resolution 2397 required the expulsion of all North Korean workers on foreign soil by December 2019. The U.S. should request countries to eject or extradite North Korean workers, particularly those engaged in IT work, to reduce a substantial source of illicit funding for the regime's nuclear and missile programs. Failure to do so could lead to sanctions against government agencies, companies, or individuals or termination of U.S. Department of Commerce technology export licenses of nations.³⁶

The U.S. should also urge companies to conduct more rigorous identification checks and stringent authentication measures to prevent inadvertent hiring of North Korean IT workers as independent contractors.

Enhance enforcement against illicit cyber and money laundering operations. While Washington and Seoul have imposed sanctions and criminal indictments against North Korean cyber agents in recent years, more needs to be done. The Bank Secrecy Act, Section 312 of the USA Patriot Act, and other U.S. regulations require U.S. financial institutions to take anti-money laundering measures to ensure that correspondent bank accounts of foreign entities are not used for money-laundering purposes in U.S. financial institutions.³⁷

³⁵ "Quad Senior Cyber Group Joint Cybersecurity Statement," University of California Santa Barbara, February 2, 2023, <https://www.presidency.ucsb.edu/documents/quad-senior-cyber-group-joint-cybersecurity-statement>.

³⁶ Joshua Stanton, "DOJ Indicts 2 Chinese Men for Laundering Stolen South Korean Bitcoin for North Korean Hackers," One Free Korea, March 2, 2020, <https://freekorea.us/2020/03/doj-indicts-2-chinese-men-for-laundering-stolen-south-korean-bitcoin-for-north-korean-hackers/>.

³⁷ U.S. Department of the Treasury, Office of the Comptroller of the Currency, "Bank Secrecy Act (BSA)," <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html> (accessed August 6, 2021), and Fact Sheet, "Section 312 of the USA PATRIOT Act: Final Regulation and Notice of Proposed Rulemaking," U.S. Department of the Treasury, Financial Crimes Enforcement Network, December 2005, <https://www.fincen.gov/sites/default/files/shared/312factsheet.pdf>.

Washington should ensure that financial entities fully comply with existing regulations, including those that apply to cryptocurrency, or risk losing their access to the SWIFT financial transaction network or ability to maintain correspondent accounts in the U.S. financial system.

Successive U.S. administrations have refrained from significant actions against Chinese entities providing technology, equipment, training, and safe haven to North Korean hackers. Washington should pressure China and other nations to dismantle North Korean hacking networks on their soil. The North Korean Sanctions and Policy Enhancement Act, authorizes punitive measures against who “have knowingly engaged in, directed, or provided material support to conduct significant activities in undermining cybersecurity.”³⁸

Washington has yet to impose fines on Chinese banks for laundering North Korean illicit funds. The Departments of Treasury and Justice should target banks, financial institutions, and front companies that are used to launder money stolen by North Korea.

Augment regulation of cryptocurrency exchanges. The U.S., in conjunction with other nations, should review existing legislation and regulations that are applicable to cryptocurrency exchanges to ensure sufficient security against cyberattacks and prevent money-laundering. Cryptocurrency assets should be subject to enhanced monitoring and compliance standards to impede cybercrimes.

Financial regulators should identify additional measures to prevent decentralized finance (DeFi) platforms and other emerging financial technology to circumvent U.S. regulations on anti-money laundering combating the financing of terrorism.³⁹

Support third-party civil suits against enablers of cyberattacks. Congress should enact a limited exception to the Foreign Sovereign Immunities Act to facilitate civil suits against foreign states that have repeatedly sponsored or facilitated cyberattacks against U.S. critical infrastructure.

Similarly, Congress should enact a limited waiver of nonliability provisions, such as section 230 of the Communications Decency Act, allowing for the recovery of civil damages against any person or entity that willfully or negligently facilitates a cyberattack against a U.S. person or U.S. critical infrastructure. Private actors should be empowered to sue state-sponsored hackers to obtain civil judgments against hackers and their state sponsors, for cyberattacks on U.S. critical infrastructure.⁴⁰ An additional measure would be to allow recovery from the assets of third-party enablers, such as the Chinese bankers that are laundering North Korea's stolen cryptocurrency.

³⁸ North Korea Sanctions and Policy Enhancement Act of 2016, Public Law No: 114-122, [https://www.congress.gov/bill/114th-congress/house-bill/757#:~:text=201%20The%20bill%3A%20\(1,a%20jurisdiction%20of%20primary%20money.](https://www.congress.gov/bill/114th-congress/house-bill/757#:~:text=201%20The%20bill%3A%20(1,a%20jurisdiction%20of%20primary%20money.)

³⁹ Jason Bartlett, “Following the Crypto: Using Blockchain Analysis to Assess the Strengths and Vulnerabilities of North Korean Hackers,” Center for New American Strategy, February 2022, <https://s3.us-east-1.amazonaws.com/files.cnas.org/documents/BlockchainAnalysisEES.pdf?mtime=20220216090240&focal=none>.

⁴⁰ The Homeland and Cyber Threat (HACT) Act, which would allow claims in federal or state court against foreign states that conduct or participate in cyberattacks against U.S. nationals, is currently pending before the U.S. Congress, <https://www.congress.gov/bill/117th-congress/house-bill/1607?s=1&r=5>.

Enhance cyber administrative enforcement authority. The FBI, U.S. Immigration and Customs Enforcement, and the Justice Department often disrupt cyber threats by filing *ex parte* injunctive suits and obtaining orders from federal district courts to seize the domains and servers that constitute hackers' Command and Control (C2) infrastructure, including domains, botnets, and malicious code. Currently, no federal agency has the authority to forfeit hackers' C2 infrastructure administratively.

Congress could grant an appropriate federal agency, such as the Cybersecurity and Infrastructure Security Agency, administrative forfeiture authority to seize and forfeit hackers' C2 infrastructure and other proceeds or facilitating property which would reduce demand on limited judicial and prosecutorial resources and expedite the government's response.

Congress should consider giving an appropriate federal agency civil penalty authority, against facilitators that knowingly or negligently facilitate malicious cyberattacks that may be traceable to states that have repeatedly sponsored cyberattacks against U.S. persons or U.S. critical infrastructure. Such authority would be analogous to the Treasury Department's penalty authority against banks that facilitate money laundering by failing to comply with their know-your-customer obligations.

Conclusion

North Korean cyber operations are a strategic threat to the United States, its partners, and the international financial network. Pyongyang's cybercrimes provide a means to evade sanctions and undermine international efforts to curtail the regime's prohibited nuclear and missile programs.

The United States, in conjunction with foreign governments and the private sector, needs to augment cyber defenses and respond more forcefully to attacks. Failure to do so enables North Korea to continue undermining the effectiveness of international sanctions and leaves the United States and its partners exposed to a potentially devastating cyberattack in the future.

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Mrs. KIM OF CALIFORNIA. Thank you so much.

Ms. LEE.

**STATEMENT OF JEAN LEE, JOURNALIST, FORMER
PYONGYANG BUREAU CHIEF, ASSOCIATED PRESS**

Ms. LEE. Chairwoman Kim, Ranking Member Bera, distinguished members of this Subcommittee, thank you so much for inviting me to testify today.

I'm honored to be here on this day of all days, the 70th anniversary of the armistice that brought the Korean War to a halt. It also happens to be my father's birthday. He got the best birthday gift that a child of war could wish for when he woke up that day, a cease-fire. So, happy birthday, dad.

But, that truce was never replaced by a peace treaty. So, the conflict remains unresolved. We call it the forgotten war. But, the Kim family in North Korea holds tight to the narrative of war and uses it to justify the building of nuclear weapons.

Now, there's a new battleground, cyberspace. Kim Jung Un's warriors are using science and technology to fight and steal on his behalf through cyber theft, cyber espionage, and cyberwarfare.

So, today I'd like to share observations based on years of watching North Korea not only from a distance as an analyst, but also as a journalist who spent many years reporting from Pyongyang.

My first trip to North Korea was in 2008. My last was in 2017. I was the first American journalist to join the Pyongyang press corps. And, in 2012 I opened an AP Bureau in Pyongyang, just as Kim Jung Un was coming to power.

I had a front row seat to the making of the mythology around this young, new leader. The goal was to paint him as the reincarnation of his revered grandfather, but, a modern incarnation who would use computers to take his analog country into the future.

Science and technology became a tool for building loyalty among his future power base. My North Korean staff loved gadgets, cell phones, laptops, blue tooth headsets, they were all status symbols in a country that doles out electronics as political prizes.

Propaganda posters promote computers and mathematics and they link them to missiles. The main science center is shaped like an atom.

I suspected that hacking was being promoted internally as a form of patriotism. And, those suspicions were confirmed with a series of bold cyberattacks blamed on North Korea, Sony Pictures in 2014, the Bangladesh bank heist in 2016, and WannaCry in 2017.

There is a tendency to underestimate North Korean hackers. And, I wanted to find a way to scare the public into paying attention.

So, in 2020, I joined the BBC to carry out investigative reporting on the Lazarus Group for a podcast series that we called the Lazarus Heist. And we explore who the hackers are, how they're trained, how they operate, where the money is going.

We explore how cyber figures into Kim Jung Un's strategic thinking and planning. And, we put the attacks into political and historical context.

After all, Kim Jung Un is a millennial. He spent time in Switzerland. He could see how computers were changing the world. He

may have kept his—he may keep his people in the dark and disconnected, but he’s an early adopter.

He also grew up with sanctions and saw the opportunity in cyberspace for getting around these sanctions. He recognized cyber theft as a low cost, high yield form of robbery. And, that cyberspace offers a convenient cloak of anonymity.

So, he sent his top math geniuses to China, to Southeast Asia, Russia, and the Middle East, to learn how we live, bank, and socialize online. Many went as legitimate IT workers. And the FBI says while they’re programming by day, they are hacking by night.

It’s hard to get what is the extent of the theft, but the count is in the billions. In May, the Deputy National Security Advisor for Cyber said half the funding for North Korea’s nuclear weapons maybe coming from cyber theft.

To their credit, the FBI and the Department of Justice have been relentless in their pursuit. Treasury has been aggressive with targeted sanctions. The State Department has been holding cyber working group meetings with their South Korean counterparts.

But, the challenge is multiplying. Illicit financing may have been a game of cat and mouse under Kim Jung Il. It is now more like whack-a-mole.

Where the hackers fall short on sophistication, they make up for it in persistence, patience, and motivation. They’re clever, resourceful, they target vulnerabilities in technology that is evolving quickly.

So, the counter-strategy has to be more ambitious than simply whacking faster. This threat needs to be elevated among the public as well as policymakers.

This is about national and global security. Keep in mind that Russia’s Defense Minister is in Pyongyang right now touring a display of nuclear weapons.

Cyber theft buys Kim time to shut the world out. And, that complicates prospects for diplomacy. That endangers us and imperils ordinary North Koreans who pay the price with their well-being when their leader prioritizes weapons.

This hearing is a promising development. And, I hope it spears more strategic thinking on North Korea. I look forward to your questions.

[The prepared statement of Ms. Lee follows:]

Testimony before the House Committee on Foreign Affairs

Subcommittee on Indo-Pacific

"Illicit IT: Bankrolling Kim Jong Un"

Jean H. Lee

Journalist

Host of the Lazarus Heist podcast, BBC World Service

Former Korea director, Woodrow Wilson International Center for Scholars

Former AP Pyongyang/AP Seoul bureau chief

July 27, 2023

U.S. Capitol, 2200 Rayburn House Office Building

Chairwoman Kim, Ranking Member Bera, distinguished Members of the Subcommittee: Thank you for inviting me to testify at today's hearing on "Illicit IT: Bankrolling Kim Jong Un."

I am honored to be here on the Hill on this day, of all days, the 70th anniversary of the armistice that brought the Korean War to a halt. It was on this day 70 years ago that my father received the best birthday gift that a child of the war could wish for: a cease-fire. He turned 13 that day. Unfortunately, that truce never became a peace treaty, and 70 years later, the war that Kim Il Sung started in 1950 with tanks and rifles is being carried on by his grandson Kim Jong Un. But the grandson's weapons of choice are not rifles but ballistic missiles and nuclear bombs, weapons that take the conflict well beyond the confines of the Korean Peninsula.

Today, there is a new battleground that did not exist in the grandfather's era: cyberspace. Infantrymen are not Kim Jong Un's prized soldiers; his star warriors are nuclear scientists and computer hackers who are using science and technology to fight and steal on their leader's behalf. And unless we include this new battleground in the strategy to counter North Korea, there is little chance of constraining a weapons program that is growing more threatening and more destabilizing by the day.

New leader, new threats

North Korea today is more isolated than ever. The borders remain closed to most trade and traffic, and international sanctions remain in place. And yet, Kim Jong Un has the resources to conduct an unprecedented, accelerated campaign of illicit weapons testing. This year's highlight was the [test launch](#) two weeks ago of the centerpiece of his arsenal: the Hwasong-18, a solid-fuel intercontinental ballistic missile designed to carry multiple warheads with the range to strike us here in Capitol Hill.

We are aware of the threats these weapons pose. But what can be done to stop North Korea at a time when nuclear negotiations and diplomacy remain stalled?

I believe the key to building a counter strategy lies in understanding who Kim Jong Un is, what drives him, how he sees the world, and how he is seeking to build his legacy, at home and abroad. It requires understanding how he is using science and technology to build loyalty among the next generation. It requires understanding how he has incorporated computers and technology into the Kim family tactics for illicit financing and asymmetric. It requires understanding that Kim has put cyber tactics at the center of his strategic thinking, and that he is circumventing traditional measures, such as sanctions, by waging a hidden war in cyberspace through cyber warfare, cyber espionage and cyber theft.

My colleagues here today are deeply knowledgeable about nuclear proliferation, illicit financing, human rights, and cybersecurity. My testimony seeks to complement their expertise by sharing observations and analysis based on years of watching North Korea, not just from Washington as an analyst but also up close, on the ground in Pyongyang, as a journalist. My observations and analysis are solely my own.

From 2008 to 2017, I made extensive visits to North Korea, where I became the first American journalist allowed to join the foreign press corps in Pyongyang. I was there for the last few years of Kim Jong Il, the succession period to prepare Kim Jong Un to succeed him, and the early years of Kim Jong Un's rule when I opened an AP news bureau in Pyongyang.

One thing that caught my eye was the strategy of using science and technology to build up this young new leader's profile in a country where he was a stranger to his people. The goal was to paint him as the reincarnation of his revered grandfather — but a modern version, a visionary who would use computers to take his analog country into the 21st century.

I spent a lot of time in computer labs at North Korea's top universities, in conversation with students and professors. It was apparent that a targeted investment was being made in some students, at some well-outfitted facilities, to train them to be very skilled at computing. I wondered if there was another purpose. The North Koreans are efficient; they think several steps ahead. There is almost no spontaneity in a country as rigid as North Korea. And there is always more than one purpose for every policy directive, including computers.

These suspicions were confirmed with the Sony Pictures hack in 2014, a cyberattack in which hackers not only took down the company's network, locking employees out of their computers and offices, but also stole private communications and unreleased films. The theft included a comedy called "The Interview" that portrayed the assassination of Kim Jong Un. The cyberattack, threats and humiliating revelations that ensued were an act of revenge and disruption -- and a chance for the suspected hackers to plant a flag about their cyber capabilities. President Obama named North Korea as the culprit.

From there, the hackers set their sights on theft, and nearly succeeded in stealing \$1 billion from the Bangladesh Bank in 2016. Then, in 2017, hackers took more than 300,000 computers in 150 countries hostage in exchange for ransom in what is known as the WannaCry attack.

Some of these cyberattacks may ring a bell. But it is easy to underestimate cyberattacks from hackers who hail from a country disconnected from the Internet. There is a tendency to overlook North Korean hackers as a serious threat.

LEE Written Testimony, HFAC Indo-Pacific Subcommittee, July 27, 2023

In 2020, I joined the BBC to carry out investigative reporting and research that allowed me to revisit these cyberattacks in greater detail as well as explore more recent cryptocurrency thefts. The goal was to explain the attacks in simple, straightforward terms, investigate how North Korean hackers operate, and to put the cyberattacks into political context. The podcast series is called the [Lazarus Heist](#), a name that highlights how these hackers operate as modern-day bank robbers. The name comes from the nickname the Lazarus Group, given to them by a private cybersecurity firm, after the Biblical figure who comes back from the dead.

Hacking as a form of patriotism

Relying on illicit sources of funding is nothing new for North Korea. North Korea's economic struggles deepened following the collapse of the Soviet Union in 1991 and the loss of the safety net that the Eastern bloc provided. Shifting geopolitics compelled Kim Il Sung to reconsider his foreign policy, and he began to see ballistic missiles and nuclear weapons as a path to guaranteeing North Korea's relevance and security — and his family's hold on power.

That investment in ballistic missiles and nuclear weapons has drawn sanctions ever since. North Korea has adapted to life with sanctions by becoming creative with its methods for illicit financing. Under Kim Jong Il, that included [supernotes](#), counterfeit cigarettes, methamphetamines, and smuggled luxury to keep his power base happy, according to the FBI, which embarked on elaborate ruses to trap North Korea and its partners.

Kim Jong Un, born in the mid-1980s, is a millennial who was educated in Switzerland and could see how computers were changing the world. He was in his early 20s when his father suffered a stroke in 2008, hastening his appointment as heir apparent. The inner circle now faced the challenge of how to engineer a transition of leadership to a young man, particularly the peers who would be his power base.

Science and technology became the platform for building loyalty. My North Korean staff, like my South Korean staff, loved all tech gadgets. Cellphones, Bluetooth headsets and laptops became status symbols as the regime doled out electronics as political prizes. The message was clear around us: Propaganda posters promoted computers and mathematics, linking them to ballistic missiles and nuclear weapons. A TV drama I [analyzed for the Korea Economic Institute](#) encouraged students to serve their country through science and technology.

Students who showed promise in math were given special access to resources, and placed under enormous pressure to perform. The best were sent abroad to compete for North Korea in international Math Olympiads. The next step, according to one former Math Olympiad winner who defected during a competition in Hong Kong, told me would be to apply their skills in the military as “cyber warriors.”

Hackers were sent abroad to China, Southeast Asia and the Middle East to learn how we live, bank and socialize online in the rest of the world. Many were on legitimate visas as IT workers.

In June 2018, the FBI filed a 179-page [criminal complaint](#) charging a North Korean identified as Park Jin Hyok with conspiracy to commit computer fraud and abuse, and conspiracy to commit wire fraud, between September 2014 and August 2017. Park has not been arrested. But the complaint, unsealed in September 2018, helped to paint a portrait of one of the key suspects behind the cyberattacks on Sony Pictures, the Bangladesh Bank and the networks targeted by WannaCry.

The FBI described Park as a computer programmer who graduated from a top university in Pyongyang before being dispatched to Dalian, China, as early as 2002 to work for a North Korean company to create gaming and gambling programs for global clients. By day, he was a programmer. By night, he was a hacker, according to the FBI. Agents followed him online as he set up an email address, drafted a resume and proceeded to use social media to lay the groundwork for the attacks that would unfold in 2014, 2016 and 2017.

Each of the attacks outlined by the FBI, and brought to life in the Lazarus Heist, was meticulously and methodically planned. Each cyberattack targeted different elements of computing networks and financial systems. They may have started with the seizure of Sony's private network but with WannaCry, the intrusion was global.

With the Bangladesh Bank heist, the hackers managed to gain access to the global SWIFT banking system. The goal was to steal \$1 billion dollars. The heist sped along until one small detail happened to trigger a check in the Fed. Most of the payment were stopped but five transactions went through. Eventually, the North Koreans are believed to have pocketed \$81 million, much of the cash laundered at a casino in the Philippines.

The final haul from the Bangladesh theft may have been relatively small but the scope and scale of the attempt revealed an ambitious campaign on the part of the suspected hackers as well as a vast network of middlemen and money launderers across Asia.

In 2016 and 2017, the UN Security Council sought to stop the flow of financing with tough sanctions supported by China and Russia. Member nations were to send North Korean workers home by December 2019. However, many IT workers are believed to remain abroad, as outlined in the [most recent UN Panel of Experts report](#).

It is important to note that after ramping up testing in 2017, Kim Jong Un declared himself satisfied with his nuclear program and shifted to a phase of diplomacy. However, the

cyberattacks did not cease during the season of diplomacy in 2018 and 2019. In Season 2 of the Lazarus Heist, we weave a spate of cyberattacks in with the timeline for diplomacy to show how the North Koreans may have been looking to shore up funds as a contingency even as Kim was negotiating a nuclear deal. Those negotiations failed, and North Korea retreated into isolation in late 2019.

Meanwhile, the cyberattacks, the missile tests, and the cat-and-mouse chase have continued.

In February 2021, the Department of Justice announced [new charges against three North Koreans](#) accused in attacks that yielded \$1.3 billion from cyber and cryptocurrency thefts. In March 2022, the Lazarus Group was accused of stealing nearly \$620 million in cryptocurrency from an online video game called Axie Infinity that runs on the Ethereum blockchain in what the US government called the [largest virtual currency heist](#) to date. In June 2022, the blockchain company Harmony Bridge reported a theft of \$100 million; the FBI named the Lazarus Group as suspects.

Where is that money going? In May, Deputy National Security Advisor for Cyber & Emerging Tech Anne Neuberger estimated that [half of the funding](#) for North Korea's nuclear weapons may be coming from cyber theft.

Conclusion

The FBI and Department of Justice have been relentless in their pursuit of North Korean hackers. In addition to the indictments against three North Koreans, the FBI has been working with partners at home and abroad to target the middlemen allegedly hired by North Koreans. They include the 2021 arrests of the Nigerian social media influencer [Ramon Abbas](#), aka Hushuppi, and [Ghaleb Alaumary](#), known online as Big Boss.

But the challenge is multiplying. While illicit financing during the Kim Jong Il years might be characterized as a game of cat and mouse, the chase in the Kim Jong Un era is now more like whack-a-mole due to the nature of the Internet.

UN Security Council sanctions are only effective when enforced by member nations; that is not happening. Strategic competition between the United States and China, and geopolitical divisions between the West and Russia over the Ukraine war, make further attempts to bring Russia and China on board with new, tightened UN sanctions difficult.

The U.S. Treasury has been aggressive in targeting specific companies and individuals, as well as technology utilized by hackers. In May 2022, Treasury [sanctioned the virtual currency mixer Blender](#), allegedly used to launder stolen cryptocurrency from the Axie Infinity heist. In August

2022, they [added the mixer Tornado Cash](#), linked to the Harmony Bridge theft. An [advisory](#) issued by the State Department, Treasury and FBI warned against hiring North Korean IT workers.

Cybersecurity firms such as [Mandiant](#) and [Chainalysis](#) have been aggressive in tracking suspected hackers.

However, policymaking has been slow to keep up. North Korean cyberattacks must not be limited to discussions about cybersecurity but must be woven into discussions about sanctions, diplomacy, the military, the economy and Kim Jong Un's strategic thinking. Further investment must be made to bring the worlds of law enforcement, cybersecurity and policy together. This effort should include partners and allies, including South Korea, which has been a target of North Korean cyberattacks for far longer than the United States. Political interests — in both the United States and South Korea — must not overshadow the shared urgency of addressing North Korea's cyber ambitions.

It may be hard to fathom how North Korea — one of the poorest countries in the world, a country disconnected from the global Internet, a nation so bereft of electricity that it appears like a black hole from space — could possibly produce some of the world's most successful hackers. But where they fall short in sophistication, the North Koreans make up for in sheer persistence, patience and motivation. It is that very desperation that drives the hackers' ambitions. They are clever and resourceful, and spend enough time on their mission to identify weaknesses in new technologies, particularly in regulation when it comes to cryptocurrency. Cyber theft is a low-cost, high-yield tactic. Cyberspace and the difficulty of attribution provide a convenient cloak.

I am grateful for the Committee's attention to this issue. This is a matter of national and global security. Unchecked, North Korea's campaign of cyber theft will continue to have destabilizing consequences by contributing to the nuclear threat. Financial gain through cyber will give Kim Jong Un more space and motivation to shut out the world, dimming prospects for diplomacy. That isolation and defiance threaten to jeopardize the peace and stability of a region important to the United States and its allies. And finally, I would like to make a plea on behalf of the 26 million people of North Korea who pay the ultimate price when resources are focused on nuclear weapons, not basic necessities, and when their leader chooses a path of isolation that keeps them locked in a repressive, anachronistic existence while the rest of the region flourishes around them.

Thank you for your attention to this issue. I look forward to your questions.

Mrs. KIM OF CALIFORNIA. Thank you, Ms. Lee. And, happy birthday to your father too.

I now recognize Ms. Scholte for your opening statement.

STATEMENT OF SUZANNE SCHOLTE, PRESIDENT, DEFENSE FORUM FOUNDATION

Ms. SCHOLTE. Thank you. And, thank you, Congressman Connolly for your kind words. And, thank you, Congresswoman Kim and Congressman Bera for hosting this hearing.

It does come at an urgent time. And, is the 70th anniversary of the Armistice. But, there is different histories being told on the Korean peninsula on the Armistice Day.

Tragically, the people north of the DMZ will be told lies to foment hate against our country and the Republic of Korea.

Now, I've been asked to assess how North Korea manipulates economic aid and regime financing to conduct its human rights atrocities. We have two developing human rights atrocities that demand our urgent attention.

First, is the 2000 children, women, and men currently in detention in China facing repatriation. And, of course, the ongoing tragedy facing the entire population of North Korea.

North Korea is not just a communist dictatorship with its Juche religion as guiding principles. It's also a kleptocracy that is used its power and personal gain at the expense of the North Korean people.

Kim Jong Un will never make a decision that would improve the lives of the North Korean people. His only concern is his own well-being and power. We must take the actions necessary to help the people of North Korea to stop these ongoing atrocities.

During the North Korean famine for example, at the start of the 1990's, there was enough humanitarian aid that was sent from the international community that no North Korean should have starved. Instead, three million people died because Kim Jong Il used that aid as a weapon against the North Korean people.

With my testimony I'm submitting a report recently produced by the Center for North Korean Human Rights of the INSS, which documents in addition to the illicit IT, disturbing and shocking findings about the ongoing overseas slave labor, the smuggling of coal, gold, and weapons, the proliferation of nuclear technology to Iran and Cuba, and insurance fraud.

These illicit funds are used to support Kim's lavish lifestyle and develop his nuclear and missile development program. I want to quote a high-ranking defector, Lee. Mr. Lee who oversaw business deals for the Kim regime out of China, and he describes where the illicit money goes.

It's typically the funds generated by IT workers goes directly into Kim Jung Un's personal account. Ninety percent of the current IT workers for example, are affiliated with Office 313, the Guidance Unit, and 75 Guidance Unit under the Military Industry Department, which is the department that develops the nuclear weapons program and also the Reconnaissance General Bureau.

So, the revenues these IT workers make goes to Office 39, which is handled by Kim Jong Un. It's personally controlled by him. And,

he uses it to his own personal wealth, to maintain the system, and to develop his nuclear missiles program.

And, I want to cite a statistic that was produced by the Korean Institute of Defense Analysis earlier this year, in face of the fears we have another Arduous March maybe starting in North Korea, that what they have spent on the nuclear program could feed the population of North Korea for 4 years.

The root of all evil, money, crime, and law in North Korea, I'm going to submit this report written by Josh Stanton for this hearing, which documents—published by the Committee for Human Rights in North Korea.

Josh Stanton, I quote from his report, North Korea is a nation rich in natural resources, yet among Pyongyang's long list of crimes against humanity, none has killed or harmed more of its people than its misappropriation of wealth from the enslaved people who extract it from its soil, seas, and mines. It uses this stolen wealth and the proceeds of its financial crimes to enrich the oligarchy, perpetuate enslavement and repression, proliferate weapons of mass destruction, and threaten peace in the region.

Stanton has proposed trying—using the existing resolutions, the existing statutes that we have to find, freeze and forfeit and stop these funds.

I'm also submitting a statement from Rosa Park-Takola, she's a Senior Project Lead for the DPRK Counterproliferation at CRDF Global. And, she manages the sanctions evasion portfolio.

And, she cites another thing we need to be concerned about, maritime. The fact that they're labeling ships. And, they're getting in goods that have been sanctioned that way.

So, what must be done? Very quickly, and I can go into a lot more detail later during Q&A, we've got to save the refugees.

Our State Department should announce now that we will sanction any Chinese official involved with the repatriation of these children, women, and men.

We should aggressively use the tools that we have, you talked about the sanctions. It's true, North Korea is heavily sanctioned.

But, we're not enforcing the sanctions. Our sanctions against the North are extremely weak. And, I cite this report by Josh Stanton, third, the most important thing, we've got to make human rights our No. 1 priority.

And, I'm submitting a report. This is just published citing ongoing atrocities. These are recent eyewitnesses and testimonies.

And, we need to tell the people the truth. We need to get information into North Korea by land, sea, and air.

[The prepared statement of Ms. Scholte follows:]

Suzanne K. Scholte
President, Defense Forum Foundation
House Committee on Foreign Affairs
July 27, 2023
Hearing: "Illicit IT: Bankrolling Kim Jong Un"

Congressional hearing: "Illicit IT: Bankrolling Kim Jong Un."

Testimony of Suzanne Scholte

Thank you to Congressman Michael McCaul, Gregory Meeks, Young Kim, Ami Bera and Members of this Committee for organizing this hearing and inviting me to testify. It is my honor. This hearing comes at a most urgent time for the people of North Korea and on a memorable date July 27, marking the 50th anniversary of the Korean Armistice. Two histories will be told today on the Korean peninsula and tragically the history told North of the DMZ will be one full of the lies aimed specifically to foment hate of our country and the Republic of Korea.

While the title of the hearing today is specifically about Illicit IT, I have been also asked to specifically assess how North Korea manipulates economic aid and regime financing to conduct human rights atrocities.

We have two developing human rights atrocities facing the people of North Korea at this moment that demand our attention. First, the fate of 2,000 North Korean children, women, and men currently in detention in China and the ongoing tragedy in North Korea which according to recent testimonies is facing another arduous march that could be as severe as what happened in the 1990s when three million people needlessly starved to death.

It is important to remember that the Democratic People's Republic of Korea is not just a communist dictatorship with its Juche religion as its guiding principles, it is also a kleptocracy. The detailed information that has been provided by our other witnesses shows this is a regime that achieves its power, status, and personal gain at the expense of the North Korean people.

Kim Jong Un will never make a decision that would improve the lives of the North Korean people -- his only concern is to improve his own well-being and strengthen his power. We must take the actions necessary to help the people of North Korea, and not the Kim regime, or we are going to see another human rights atrocity that could have been prevented.

During the North Korean famine that started in the 1990s, there was enough humanitarian aid sent from the international community that no North Korea should have starved. Instead, three million people died because Kim Jong Il used that aid as a weapon against his own people.

With my testimony I am submitting several important documents. First, is a detailed report prepared by the **Center for North Korean Human Rights of the Institute for National Security Strategy: North Korea's Human Rights Situation: Focusing on Overseas Workers and Defectors**

This think tank has documented disturbing and shocking findings about the ongoing overseas slave labor of North Korean citizens as well as other illicit activities of the regime from weapons sales to insurance fraud and how these help fund the nuclear and missile development programs as well as the lavish lifestyle of Kim Jong Un. According to the testimony of a high-ranking defector Lee xx who was very involved in helping the Kim family financially through business in China: *"Typically, the fund generated by IT workers go to Kim Jong Un's personal account. 90% of the current IT workers overseas are affiliated with Office 313 Guidance Unit and 75 Guidance Unit under the Military Industry Department (developing nuclear missile program) and the Reconnaissance General Bureau. Thus, the revenues these IT workers make go to Office 39, which handles Kim Jong Un's personal bank account, through their affiliated institutions such as the Military and Industry Department. Only Kim Jong Un can withdraw money from his personal bank account. For instance, Kim Jong Un often utilizes his personal slush fund to purchase luxurious commodities, maintain the system, and develop a nuclear missile program. These North Korean IT workers overseas wire their earnings to the bank accounts of North Korean government officials in China who deal with the regime's financials. And these officials smuggle the earnings of IT workers into North Korea through the North Korea-China border."*

Furthermore, the INSS document complements and supports the testimony of expert witness, Bruce Klingner, about the extent of their cyber-crimes that have amassed billions over the years this report notes additional illegal activities which the INSS has documented.

The INSS report also documented additional ongoing forced overseas labor – slave labor of North Korean citizens. This practice has continued despite the fact that UN Security Council Resolution 2397 required all overseas North Korean workers to return to North Korea by December 2019. It is estimated that the profit from these exploited overseas workers provides the regime \$300 million in foreign currency.

Quoting from the report about:

-- *Without receiving even basic human rights protection, overseas North Korean workers are degraded into "money-making machines" of the North Korean regime, and the COVID-19 pandemic has prolonged their enslavement period.*

These workers have no protections, are exploited, and suffer long working hours, most of their pay goes to the regime and quoting from the report:

-- *Recipient countries of North Korean workers do not apply their state labor laws on North Korean workers, and even the public ignore and neglect human rights violations occurring in their own countries.*

North Korea also smuggles coal, gold and weapons that brings in another \$200 million to the regime.

Quoting from the report of just illicit funds from illegal foreign currency:

--The amount of illegal foreign currency acquired by North Korea through cyber hackings, overseas workers, and smugglings over the past five years is estimated at \$500million~\$1billion per year, however, the detailed amount and proportion of expenditure on WMD development have yet to be confirmed.

--It is highly possible that a significant amount of the earnings is diverted to nuclear missile development, as the affiliated agencies and personnel of the WPK's Military Industry Department and Ministry of Defense are also involved in cyber hackings, gold bullion exports, and the dispatch of overseas workers.

The Korean Institute of Defense Analysis estimates that what the Kim regime has spent on its nuclear program over the last 50 years could cover North Korea's food shortages for 4 years!

The INSS also documents the proliferation of weapons to Iran and Cuba. One example:
-- General Office 99 of Machine-Building Industry Department generates a huge amount of revenues for the regime by building weapons (missiles) factories. For each project, North Korea makes more than \$50,000,000.
- North Korea has sold its weapons to Iran, shared weapons technology with Tehran, and helped Iranian weapons manufacturing firms to produce weapons with North Korean technology.

The INSS has also reported that North Korea has been able to generate about \$20,000,000 in international reinsurance markets.

With my testimony I am also including a link to the recent publication ***The Root of All Evil: Money Rice, Crime and Law in North Korea*** written by Joshua Stanton and published by the **Committee for Human Rights in North Korea**. As Mr. Stanton writes, "North Korea is a nation rich in natural resources. Yet among Pyongyang's long list of crimes against humanity, none has killed or harmed more of its people than its misappropriation of wealth from the enslaved people who extract it from its soil, seas, and mines. It uses this stolen wealth and the proceeds of its financial crime to enrich its oligarchy, perpetuate enslavement and repression, proliferate weapons of mass destruction (WMD), and threaten peace in the region and the world."

Stanton proposes a long-term, multinational legal strategy, using existing UN resolutions and conventions and US Statutes to find, freeze, forfeit and deposit the proceeds of the North Korean government's kleptocracy into international escrow. These funds could then be used to help the people of North Korea. Link to report and specific suggestions: https://www.hrnk.org/uploads/pdfs/RoAE_Web_0407.pdf

Finally, to further support these testimonies I am also including a statement from Rosa Park-Tokola, a Senior Project Lead for DPRK Counterproliferation at *CRDF Global*. She manages the countering DPRK sanctions evasion portfolio and further provides complimentary evidence for this Committee but she also cites yet another critical area in which we must be vigilant: **maritime**.

According to Park-Tokola, the DPRK has been relying on maritime trade to procure and sell sanctioned goods. The DPRK has been adept at [vessel identity laundering](#) by tampering with or falsifying the identity of vessels as well as ship-to-ship transfers and false cargo.

So, what can be done?

First, save the refugees – the approximately two thousand North Korean children, women and men currently being held in detention centers in China, they have been literally trapped in China since North Korea became one of the first countries to shut down its border on January 22, 2020, in response to the COVID pandemic. What is of particular concern about this group is the only way they could have escaped during the COVID pandemic, across this dangerous border, is they had resources. This means they were either Korean Workers Party members of a stature to obtain the financing to pay brokers and bribes for their escape OR had their escape financed by family members in South Korea. This subjects them all to horrific torture and public execution upon forceful repatriation, as it is a crime punishable by death for North Koreans to seek resettlement in South Korea.

Thus, the international community must appeal to Xi Jinping to honor his international treaty obligations, specifically the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, and the Convention Against Torture.

The United States and the international community must announce NOW that it will sanction any Chinese official involved in the forceful repatriation of any North Koreans back to North Korea, pointing out they will also be pursued in international court for being complicit in murder, if these fears are, indeed, realized.

The Republic of Korea must continue to remind China that these North Korean refugees are, in fact, citizens of the Republic of Korea under its constitution. There is no reason for them to be a burden on China. In fact, South Korea successfully rescued a family of four who were flown, in November 2021, directly from China to South Korea during the Moon Jae-in administration, an administration that was more hostile to North Korean refugees than any other in South Korea's history.

There are credible rumors that the North Korea/China border will reopen soon because North Korea, which is facing more starvation reminiscent of the Arduous March, must increase exports to, and imports from, China. While there is no way that Kim Jong Un can allow the North Korea border to fully reopen, trading routes are expected to reopen between China and the border cities of Sinuiji and Hoeryong in North Korea. The

terrifying fear for all of us human rights advocates is that China's first export to North Korea will be the nearly two thousand North Korean children, women, and men currently detained, at least half of whom are believed to have been attempting to reach South Korea.

Second, aggressively use the tools already available that Josh Stanton outlined in his report and Bruce Klingner outlined in his testimony. We absolutely need to do more to enforce the current sanctions and stop aiding and abetting the crimes of this regime by our lack of action. We should ensure that sanctions enacted by the United Nations are fully enforced, but also that the United Nations carries out its responsibilities. As former special Envoy for North Korea Human Rights Ambassador Jung Hoon Lee has often cried out regarding North Korean Refugees in China: *UNHCR, just please do your job!*

Third, all actions we take should be focused on the human rights of the North Korean people and the opposite of what the Kim regime wants. We need to act on behalf of the North Korean people because he never will. It is our responsibility as well as the responsibility of all people blessed to have been born in freedom to uphold the rights of those living under tyranny.

We can no longer dispute the fact that crimes against humanity are being committed every day by the Kim regime, that hundreds of thousands of children, women and men are suffering in political prison camps and detention centers, that young people are being shot because they listened to KPOP music and women are being tortured because they made a phone call to South Korea.

Fourth, we must communicate TRUTH to the people of North Korea through all means possible. I want to close on a hopeful note and share some hopeful news.

As I have testified before we must reach the people of North Korea especially the elites who wake up every morning with only two choices: being slaves to Kim Jong Un or death. Today, North Koreans will be fed a steady diet of lies that the United States attacked North Korea and caused the war, that South Korea is a colony occupied by the Yankee imperialist wolves, that we are their enemy.

The reason you held this hearing today is your testimony to them that you care about the people of North Korea. No one needs to hear that more than them. Thus, we should exploit all means impossible to reach them by land, by sea and by air.

We must do this because we must do all we can to help the administration of Yoon Suk Yeol which has devoted itself to preserving liberal democracy in South Korea and promoting freedom and human rights for the North Korean people. I am also submitting with my testimony the **2023 Report on North Korea Human Rights** recently published by the **Ministry of Unification** which significantly is based on interviews of thousands of recent North Korean escapees citing incidences between 2017 and 2022 to document the ongoing horrific situation.

Because so much information was getting into North Korea, North Koreans were starting to learn the truth about South Korea and the outside world. It is why Kim Jong Un had to shut the country down and COVID gave him the best opportunity to keep it sealed.

Adding to this tragedy was the anti-leafletting law passed during the previous administration of Moon Jae In – specifically at the request of the Kim Jong Un regime. We – North Korean escapees, South Korean and American human rights advocates -- were winning the information campaign and Kim had to act.

Thus, he convinced the Moon administration to get an anti-leafletting law passed. This law drew bipartisan concern in this Congress with both Democratic and Republican lawmakers expressing concern that this law is unconstitutional violating both the Republic of Korea's Constitution and its international treaty obligations as a signatory to the International Covenant on Civil and Political Rights. Article 19 of this covenant provides that ***'Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'***

But, this law is still in effect until the Korean Assembly votes to overturn it -- something not likely to happen as too many members of the Assembly have no problem infringing on the rights of South Koreans citizens because they are sympathetic to the Kim regime.

Even though they face 3 years imprisonment and or up to \$30,000 fine because of the anti- leafletting law, the North Korean escapees have said ***we will never stop sending help and information to North Korea as long as we have the support to do this work.***

They have never stopped.

North Korean escapees have successfully carried out regularly rice bottle, balloon, and water balloon launches, and cross border transfers.

The Yoon administration cannot help with these efforts but they know it is what needs to be done.

As high ranking North Korean defector Kim Dong Su, senior advisor at INSS, stated last week the importance of emphasizing the human rights conditions is critical and he pointed out. "It is time they knew they are the masters of their own destiny, no longer the slaves of the Kim regime."

But we must tell them the truth because it is the truth that will set them free.

Additional recommendations in addition to passing the North Korean Human Rights Reauthorization Act and vigorous enforcement of current sanctions and UN resolutions.

Enhancements to the North Korea Sanctions and Policy Enhancement Act. One of the best ways to fight North Korea's cyberattacks continues to be to dry up Pyongyang's ability to profit from it, and to deny it safe haven in China or Russia. Unfortunately, the Biden Administration is not enforcing our sanctions laws aggressively.

- Congress should amend section 104(a) of the North Korea Sanctions and Policy Enhancement Act to prohibit transactions by U.S. persons or within U.S. jurisdiction that knowingly facilitate the transfer of cryptocurrency to or from the Government of North Korea, or of any property derived from or traceable to cryptocurrency.
- Congress should amend section 104 of the NKSPEA with a rule of construction clarifying that the Justice Department may seek the forfeiture of property of the Government of North Korea that is involved in prohibited conduct, as defined in sections 104(a), (b), or (g), regardless of whether the President has designated the person engaging in the transaction for conduct prohibited by section 104. This will greatly expand the government's North Korea sanctions enforcement capacity while protecting the due process rights of claimants to challenge forfeitures of property in the federal courts.
- Congress should redouble its oversight of the Biden Administration's enforcement of the NKSPEA and the Anti-Money Laundering Act of 2020, which have reverted to historical lows unseen since the passage of the NKSPEA. This oversight should include regular briefings on designations, civil penalties, Chinese and Russian obstructionism of the UN. Panel of Experts established under Resolution 1874.
- Congress should request regular updates on the compliance of three major Chinese banks with grand jury and Patriot Act subpoenas in the U.S. District Court for the District of Columbia, regarding suspected money laundering and sanctions violations on behalf of North Korea, for which all three banks were held in contempt of court for noncompliance in 2019.
- Congress should also request updates on criminal investigations of the individual corporate officers responsible for the long-standing course of criminal conduct between British American Tobacco and the Government of North Korea, to which BAT recently pled guilty and agreed to pay \$629 million in fines, penalties, and forfeitures. It should request regular briefings on the government's investigation of any financial institution's participation in BAT's criminal conspiracy with the Government of North Korea. Finally, it should consider whether issuers of securities doing business with the Government of North Korea should be required to disclose this business in their annual filings with the Securities and Exchange Commission, as the SEC has historically required for governments

that expose the issuer to boycott, sanctions, and liability risks.

- Congress should enact legislation redirecting a portion of the fines, penalties, and forfeitures assessed for violations of North Korea sanctions to an escrow fund to provide humanitarian aid and freedom of information programs to the people of North Korea, subject to the monitoring conditions of the NKSPEA.
- Congress should extend the NKSPEA's sunset date.

XXXXXX

Mrs. KIM OF CALIFORNIA. Thank you, Ms. Scholte. Those three reports that you mentioned will be submitted into the record without objection.

Let me now recognize Ms. Jenny Jun for your opening statement.

**STATEMENT OF JENNY JUN, RESEARCH FELLOW, CENTER
FOR SECURITY AND EMERGING TECHNOLOGY**

Ms. JUN. Thank you. Chairwoman Kim, Ranking Member Bera, and members of the Subcommittee, thank you for the opportunity to testify before you today on this very important and timely topic.

My comments today are my own. Today I will highlight three points. First, if North Korea considers nuclear bombs to be the ultimate weapon, it considers cyber capabilities to be a Swiss Army knife.

North Korea frequently uses its cyber capabilities as a means to further a variety of national goals. Hackers rob things and steal cryptocurrency, some of which trickles into funding for their nuclear missile program.

They conduct industrial espionage related to COVID-19 research. They punish movie makers when the regime perceives that they hurt Kim Jong Un's public image.

How often North Korea uses cyber capabilities in all these cyber settings pose a different policy problem than responding to its nuclear threat. It is important not to underestimate their capabilities to echo Jean.

North Korea's hackers have proven again and again they're persistent, bold, and creative. They keep tabs on the latest cybertech trends, and quickly adopt relevant tactics and techniques as part of their own tool kit.

Their country's general political and economic isolation should not fool us into thinking that their hackers are also unaware of the latest hacking techniques.

Perhaps what makes me most worried about North Korea's cyber threat is that they're occasionally not afraid to launch operations that are brazen and destructive.

Figuratively, they will rob the bank and set fire to it to get rid of evidence instead of carefully going in and out without anyone noticing.

North Korean hackers have a higher tolerance for operational risks. And, they're sometimes willing to tradeoff staying under the radar for fast grabs.

This happens because they care less about their operations being attributed back to them, because they have no international reputation to preserve. This makes the North Korean cyber threat different from other sophisticated threat actors.

Second, the proceeds from North Korea's vast cybercrime enterprise are a lifeline for the Kim regime. North Korea has come up with a long list of daring and innovative ways to use cyber means to earn cash.

And, if they find a new method, they will exploit it quickly and widely to maximize gains from it before the window of opportunity disappears. They're not likely to stop any time soon.

Cybercrime is a much more efficient and lower risk way of generating foreign cash than their previous illicit financing mechanisms.

For an easy comparison, North Korea's total exports in 2022 were only \$160 million with a heavy dependence on mineral exports to China.

Their next export category was hair wigs. This pales in comparison to how much they can steal in a single cyberattack.

For almost two decades, sanctions have been a main policy lever, vis-a-vis North Korea. Whether it was to change their behavior or to slow down their weapons program. However, North Korea has been able to stay resilient to this, in part through a cybercrime enterprise.

Third, combating North Korea's cybercrime is a cat and mouse game. And, it is a problem that has been managed not deterred.

The U.S. and its allies will not be able to persuade North Korea to cease activity in this space altogether. Instead, we should set two goals. The first goal should be to mitigate the frequency and scale of North Korea's cybercrime.

Thankfully, the U.S. Government is already aware of this problem, and it has to take important steps through indictments, sanctions, and direct seizures. There is a broader effort toward regulating virtual assets and exchanges in general, which will certainly help to put pressure on North Korea.

Over the past year, the U.S. and South Korea have also been in close coordination on this issue. At the same time, North Korea continues to innovate on their money laundering scheme to get around such crack downs. So far, North Korea is winning this cat and mouse game.

The second goal should be to shape the way that North Korea conducts its cyber operations in such a way that reduces systemic risks of accidents and widespread collateral damage so as to prevent incidents such as WannaCry from happening again.

The combination of these two goals are seemingly at odds with each other. And, maintaining a balance between them will be our key challenge.

Our efforts to whack the mole faster than they appear will also encourage North Korea to engage in riskier tactics in cyberspace. And, because North Korea has a higher risk tolerance than others, we cannot lose sight of the second goal in lieu of the first.

This concludes my remarks. I would like to thank the Subcommittee for convening the hearing on this pressing issue. I look forward to your questions.

[The prepared statement of Ms. Jun follows:]

**Testimony before the House Foreign Affairs Committee
Subcommittee on Indo-Pacific**

“Illicit IT: Bankrolling Kim Jong Un”

Jenny Jun
Research Fellow, CyberAI
Center for Security and Emerging Technology (CSET), Georgetown University

July 27, 2023

Chairwoman Kim, Ranking Member Bera, and members of the Subcommittee, thank you for the opportunity to testify before you today on this important and timely topic. It is an honor to be here. My name is Jenny Jun, Research Fellow in the CyberAI Project at the Center for Security and Emerging Technology (CSET) at Georgetown University. I am also finishing my PhD at Columbia University where I have conducted research on cyber coercion. My comments today are my own and not to be attributed to CSET, Atlantic Council, or Columbia University.

North Korea’s Cyber Operations

If nuclear bombs are North Korea’s ultimate weapon, then cyber capabilities are its Swiss army knife. North Korea frequently uses its cyber capabilities to further a variety of national goals from stealing cryptocurrency to fund its nuclear and missile program to espionage on organizations related to COVID-19 research.¹ Through cyber operations, North Korea is able to target globally despite its physical isolation. Kim Jong-un himself allegedly referred to cyber capabilities as an “all-purpose sword,” according to a 2013 briefing by the South Korean National Intelligence Service.² How often North Korea uses cyber capabilities and in diverse settings poses a vastly different policy problem than responding to its nuclear and missile threat.

North Korea’s hackers have proven time and time again that they are quick learners who are persistent, bold, and creative. They learn fast from major cyber incidents and quickly adopt relevant tactics, techniques, and procedures (TTP) as part of their own toolkit. For example, just months after the public disclosure of the Sunburst/SolarWinds campaign in December 2020, North Korea was observed leveraging software supply chain attacks.³ We are now seeing more of such attacks in high-profile incidents in 2023 such as the compromise of the voice-over-internet-protocol (VoIP) software 3CX and cloud-based directory-as-a-service platform JumpCloud.⁴ In another example, North Korea started using wiper malware in 2013 during the DarkSeoul campaign against South Korea, months after a 2012 Iranian wiper attack against Saudi Aramco. The year after, wipers featured as a major component in North Korea’s cyber attack against SONY Pictures Entertainment.

What makes me most worried about North Korea’s cyber threat is that they are sometimes not afraid to launch operations that are brazen and destructive with a singular determination to achieve the task at hand, even if it means that their operations are less discreet as a result. For example, in 2018 North Korea reportedly destroyed 9,000 workstations and 500 servers through a wiper attack on Banco de Chile, in order to obfuscate investigation of a \$10 million fraudulent SWIFT

transaction in a bank heist.⁵ Not only do such techniques increase the extent of the victim's damage, they are indicative of a certain North Korean mindset that has a disregard for diplomatic consequences as a result of attribution.

This problem is compounded by the observation that in cyberspace, restraint is often costly to achieve in terms of time and resources.⁶ Operational elements such as thorough testing of malware to minimize accidents and collateral damage or refraining from indiscriminate targeting and automation may take a back seat compared to an incentive to exploit as many targets as possible using a particular tool to maximize profit within a limited timeframe. Such operational choices are evident in past North Korean behavior in cyberspace, in which hackers enabled fraudulent ATM cash withdrawals simultaneously in 23 different countries as part of its FASTcash campaign.⁷ North Korea is different from other state-sponsored Advanced Persistent Threats (APT) marked by their tolerance of more operational risk and a willingness to trade off secrecy for expediency.

North Korea's Cryptocurrency Theft

While North Korea has engaged in small-scale cyber crime since at least 2009, the frequency and scale of its operations have gone up dramatically since 2015.⁸ North Korea has come up with a potpourri of daring and innovative ways to earn money through cyber means, often coming in waves of campaigns including fraudulent SWIFT transactions targeting banks, fraudulent ATM cash withdrawals, ransomware, protection rackets, credit card skimming, cryptocurrency mining and cryptojacking, fraudulent Initial Coin Offerings (ICO), offering services as foreign IT workers, and most notably large scale cryptocurrency thefts.⁹

The cash-strapped country has long relied on illicit finance to prop up its regime. The revenue generated by cyber means is a lifeline for the regime, and North Korea is unlikely to scale down its operations anytime soon. For an easy comparison, North Korea's total exports in 2022 were a meager \$160 million with heavy dependence on mineral exports to China, where 96.7% of total exports were outbound for China and minerals accounted for 41.3% of total exports.¹⁰ On the other hand, North Korea's total imports in 2022 were \$1.4 billion.¹¹ Whether through cyber means or not, North Korea absolutely needs additional revenue from illicit finance given this situation.

Estimating how much money North Korea ends up making through its diverse cyber crime enterprise is a very difficult but essential task that needs further collaborative research, especially if those estimates are to be used in turn to estimate North Korea's progress in its nuclear and missile program. For one, it is important to note that the dollar equivalent of the amount of virtual assets stolen initially does not necessarily go back to the regime in its entirety. Aside from the fact that cryptocurrency values are highly volatile, North Korea loses an unknown percentage of the initial bounty as they try to launder the asset through various intermediaries for a fee and sometimes cash them out in fiat currency. For example, of the approximately \$620 million worth of Ethereum stolen in the infamous 2022 Axie Infinity/Ronin Bridge hack, about \$455 million was laundered through Tornado Cash, a virtual currency mixer, and a portion of the money, each \$30 million and \$5.9 million, have since been seized by law enforcement.¹² Sometimes North Korea just sits on large sums of unlaundered cryptocurrency assets without moving them around, and sometimes North Korea may never need to cash them out in fiat currency if they are using the proceeds to self-fund further cyber espionage operations.¹³ What we know with a higher degree of certainty is

that the sum of these criminal proceeds, even after heavily discounting for the above, are likely to safely surpass the \$160 million in official exports by the regime and is thus an essential part of the regime's survival strategy. What we are less sure is a more precise range of estimates that can then be used for a variety of other projections about the regime.

What to do about it?

North Korea's illicit financing through cyber means is a management problem, not a deterrence problem. U.S. and its like-minded partners will not be able to persuade North Korea to cease activity in this space altogether through threats of punishment. For the foreseeable future, the dynamic will be that of a cat-and-mouse game or a whack-a-mole, and the goal would be to mitigate the frequency and scale of North Korea's cyber crime enterprise through various policy levers and cooperation with international partners. The other part of this management problem would be to shape the way North Korea conducts its cyber operations in such a way that reduces systemic risks of accidents, widespread collateral damage, and/or third-party exploitation, so as to prevent incidents such as WannaCry.

Fortunately, the U.S. government is well aware of the cyber threat posed by North Korea and has taken important steps to curtail their activity in coordination with the private sector, including indictments on North Korean hackers and money laundering intermediaries, sanctions on key entities and individuals, and direct freezing and seizure of virtual assets. Outside of the North Korean context, there is a move towards more domestic regulation of cryptocurrency transactions and exchanges and in coordination with groups such as the Financial Action Task Force (FATF). The U.S.-ROK alliance has revived its Working Group on the DPRK Cyber Threat last year, and has published relevant joint advisories and issued joint sanctions.

Still, challenges remain in this cat-and-mouse game. After authorities and cooperating cryptocurrency exchanges started to freeze about \$1 million of the approximately \$100 million in stolen virtual assets from the 2023 Atomic Wallet hack, North Korean hackers began to launder their assets through the Russia-based Garantex cryptocurrency exchange, which has been already sanctioned by the Office of Foreign Assets Control (OFAC) since April 2022 but has continued to operate despite the designation.¹⁴ Even after OFAC designated an Ethereum wallet address associated with the 2022 Axie Infinity/Ronin Bridge hack on the Specially Designated Nationals (SDN) List, hackers simply sent bits of Ethereum to new, unsanctioned wallets, then continued to launder money through Tornado Cash, up to \$455 million.¹⁵ Last year cryptocurrency mixers such as Blender.io and Tornado Cash have been sanctioned, though there is also an ongoing legal battle over whether decentralized smart contract protocols such as Tornado Cash count as an "entity" and "property" that can be sanctioned by OFAC.¹⁶ In the meantime, North Korea has turned to a variety of other ways to launder its virtual assets.

In conclusion, North Korea's cyber capabilities are not to be underestimated, and the regime is determined to continue to generate foreign cash through illicit finance, especially through cyber means. These revenue sources are a lifeline for their regime, and North Korea continues to skillfully evade sanctions despite many dedicated efforts by the U.S. government and the international community. I would like to thank the subcommittee for their attention to this important and timely matter. I look forward to your questions.

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- ⁴ Pierre Jourdan, "Initial Results from Mandiant Incident Response," *3CX*, April 11, 2023 <https://www.3cx.com/blog/news/mandiant-initial-results/>; Austin Larsen et al., "North Korea Leverages SaaS provider in a Targeted Supply Chain Attack," *Mandiant*, July 24, 2023 <https://www.mandiant.com/resources/blog/north-korea-supply-chain>
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- ⁹ "Guidance on the North Korean Cyber Threat," *CISA*, June 23, 2020 <https://www.cisa.gov/news-events/cybersecurity-advisories/aa20-106a>
- ¹⁰ "2022 North Korean Foreign Trade Trends," *Korea Trade-Investment Promotion Agency (KOTRA)*, July 20, 2023, https://kosis.kr/bukhan/extrIPbictn/selectExtrnCmmrcTrend.do?menuId=M_03_02_05 (korean)
- ¹¹ Ibid.
- ¹² "U.S. Treasury Sanctions Notorious Virtual Currency Mixer Tornado Cash," *U.S. Department of the Treasury*, August 8, 2022 <https://home.treasury.gov/news/press-releases/jv0916>; Erin Plante, "\$30 Million Seized: How the Cryptocurrency Community Is Making It Difficult for North Korean Hackers To Profit," *Chainalysis*, September 8, 2022 <https://blog.chainalysis.com/reports/axie-infinity-ronin-bridge-dprk-hack-seizure/>; Zhiyuan Sun, "Norwegian police recover \$5.9M stolen from Axie Infinity Ronin hack," *Cointelegraph*, February 16, 2023 <https://cointelegraph.com/news/norwegian-police-recover-5-9m-stolen-from-axie-infinity-ronin-hack>
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Mrs. KIM OF CALIFORNIA. Thank you very much.

We were kind of in consultation with the members and the Ranking Member to determine what to do, because we—our votes will be called any minute now.

But, since the bell hasn't run, I think what I'll do is recognize myself for 5 minutes of questioning. And then, given time, we will go with the Ranking Member for questions. And then, we'll have to take a recess and come back.

So, with your understanding, I want to ask the first questions to Mr. Klinger and Ms. Scholte. Regarding the sanctions, you know, how has the United States used the sanctions to try and deter DPRK cyberattacks?

And, has the U.S. ever imposed secondary sanctions in relation to North Korea's cybercrime?

Mr. KLINGER. Thank you very much. Sanctions against cybercrimes as well as just overall against North Korea, you know, it's not a magic bullet. It's one tool of a comprehensive integrated strategy against North Korea.

But, we have underutilized it. There's very strong legislation of the U.S. as well as U.N. Security Council Resolutions.

But, the question, I think, has always been, why have not we fully enforced them? In the previous Administration, the President announced there were 300 North Korean entities that he was not sanctioning because we were talking so nicely to North Korea and it would be an insult to Kim Jong Un to impose them.

After the talks broke down, we never imposed those. The predecessor of this Committee sent to the White House a list of 12 Chinese banks that it felt were committing money laundering crimes in the United States. No actions were taken against any of them.

And, we've imposed \$9 billion in fines on European banks for money laundering for Iran. But, zero dollars in fines on Chinese banks for doing the same for North Korea.

So, I think with cybercrimes, you know, we've seen that in the last several years there have been very extensive efforts by South Korea and the U.S. to sanction or impose fines. Or, to even be able to claw back some of the stolen cryptocurrency.

But, it's always very difficult, particularly with cybercrimes, to identify the perpetrator or then to punish them. So, doing more of the same may not seem, you know, satisfying.

But, it is a question with law enforcement, you have to constantly maintain pressure on the criminals in order to, in some cases, just maintain the status quo.

Mrs. KIM OF CALIFORNIA. Ms. Scholte, do you want to add to that?

Ms. SCHOLTE. I echo exactly what Mr. Klinger said. We eased up on the Chinese banks. And, we never reimposed and enforced those things.

And, there's a—some detailed information in this, the Root of Evil that Josh Stanton prepared. But, we just backed off.

And, we have not been aggressive. And, we have these tools that we're not using. So, I just want to echo that.

Mrs. KIM OF CALIFORNIA. So, you know, under that scenario, since our current sanctions are not being enforced properly, do you

think secondary sanctions are, or will be an effective tool in holding actors like North Korea accountable?

Mr. KLINGER. I think we should. If someone is, some entity is in violation of our laws, sometimes indirectly in supporting direct criminals, then there should really be no hesitation in enforcing our laws.

And, Chinese banks and businesses have been particularly egregious in their support of North Korean cybercrimes.

Mrs. KIM OF CALIFORNIA. And, conceptually applying this, the secondary sanction type of the regime to other U.S. tools, like export controls, is something worthwhile that the United States policymakers should consider?

Mr. KLINGER. Very much so.

Mrs. KIM OF CALIFORNIA. OK. Ms. Lee and Mr. Klinger, I want to also ask for your thoughts on what sort of coordination of illicit cyber activities, if any, is there between North Korea and the PRC?

And, what about Russia? Do we have any coordination?

Mr. KLINGER. We know that North Korean government agencies and affiliated hacking groups have been in coordination with Russian criminal groups. And, they have provided the tools and software and other means for hacking that have supported North Korea.

With China, they have provided safe haven to North Korean hackers. They presumably have also provided training and hardware and software for North Korea to engage in hacking activity on Chinese soil.

Mrs. KIM OF CALIFORNIA. Ms. Lee, can you add to that, please?

Ms. LEE. I would echo that as well. And, as you pointed out, as Bruce pointed out, North Korean workers were supposed to be back under U.N. Security Council Resolutions by December 2019.

However, it is understood that many of them are still in China and Russia. And, continue to carry out illicit activities that violate U.N. Security Council Resolutions.

So, while China and Russia may refute that they provide any specific training, they are still violating U.N. Security Council Resolutions by allowing them to stay and operate in their countries.

Mrs. KIM OF CALIFORNIA. Very good. Well, thank you. Let me now recognized Ranking Member Bera for 5 minutes of questioning.

Mr. BERA. Thank you, Madam Chairwoman. I'm going to yield my 5 minutes to Representative Sherman, because I'll be returning, and will ask at that time.

Mr. SHERMAN. I thank the gentleman. Seventy years, and we've had the most manifestly failed policy as we would have anywhere in the world.

The North Korean people are starving and it's not every year. But, in some years. This human rights condition is beyond description.

But, worse than any of that is the threat we face from their nuclear program. We pound the table and we say CVID, complete, irreversible, verifiable.

And, then we pound the table again. We complement this with weak-ass sanctions that maybe annoy the North Koreans. They'd

like to get out of them, but not enough to change their nuclear or other policies.

And then, we sometimes trim around the edges and talk about how we can make this sanction a little tougher and that sanction a little tougher.

I do not think we're—Mr. Klinger, if our sanctions were 10 or 20 percent more effective, would that cause, you know, so a little tougher, would that cause North Korea to abandon its nuclear program?

Mr. KLINGER. I think I—

Mr. SHERMAN. Or, would we need to do an awful lot more than that?

Mr. KLINGER. We have to enforce our own laws for the sake of enforcing our own laws. And, I do not see a benefit in not enforcing our laws.

Mr. SHERMAN. Well, that is—

Mr. KLINGER. Out of the idea that it wouldn't help.

Mr. SHERMAN. The one detriment about talking about enforcing our own laws a little better, is it distracts us. And, we get a little better at what we're doing that's ineffective.

And, we'll have another 20 years where every year we pound the table and say CVID. And, North Korea develops even more and more nuclear weapons.

My concern is, we put economic pressure on them. The one thing they have a surplus of that could be sold in the market is nuclear weapons.

And, if they do not have a surplus now, they're producing more. And, at some point they'll have more than their own doctrines require.

We had a conference earlier today that I put together on the Peace in Korean Peninsula Act, which would push the State Department to at least negotiate a peace treaty. Not that that would solve all problems.

But, it's not a concession to North Korea any more than Eisenhower's decision to sign an Armistice 70 years ago today was a concession.

When it comes to cyber, we tend to play defense. I do not know if anybody has the expertise here. But, how much harm could we do to the North Korean economy if we played offense and we tried to disrupt their economy?

Does anyone have the expertise? I do not. I'm not sure that can be discussed in an unclassified setting in any case.

Mr. KLINGER. It would be difficult, I think, to assess. Because in large part, the North Korean economy is not as tightly connected to the internet as the United States system is.

Mr. SHERMAN. OK. I'll point out when I say weak-ass sanctions that if we just sanction an individual Chinese bank, then they'll—and, we've been so weak they have not even bothered to react to that.

They can have some of their banks do business with North Korea and some of their banks do business with us. And then, the banks that do business with us, we cannot sanction for doing business with North Korea.

They have not even bothered to do that, because as Bruce just pointed out, we—what they cannot avoid is across the board tariffs on China to be maintained for as long as China plays the critical role it does in helping this regime continue its nuclear program.

Of course, that would hurt Walmart profits. So, instead of doing something that might protect our State from North Korean nuclear weapons and a freezing of their missile program, we continue to keep doing what we have been doing, when it hasn't worked, and expect a different result.

And, think that we can achieve a slightly better result if we just do it a little better. If we were close, you know, you get close and you think, gee, if I just work a little more, it's going to get there. I do not think we're close.

Finally, Mr. Klinger, I spent this whole day trying to fight the idea of deregulating crypto and allowing that to become another currency. Right now, the number of transactions in crypto are not a thousandth of what they are on the dollar.

But, more crypto transaction target is to follow. If cryptocurrency was a real currency, would that be a boon to North Korea?

Mr. KLINGER. It maybe a way for them to facilitate commerce without being reliant on the centrality of the U.S. dollar to the international financial system.

We know that the majority of all international transactions in the world is denominated in dollars. Which means it has to go through a U.S. Treasury Department regulated bank in the U.S.

And, we know that the majority of North Korean international transactions are denominated in dollars. So, if they can do it in cyber, it's a way of evading that form as well too.

Mr. SHERMAN. That's why I got involved in the crypto—or, I'd like unanimous consent to put a packet of 20 different articles describing how North Korea uses cryptocurrency into the record.

[The information referred to follows:]

North Korea hackers suspected in new \$35 million crypto heist

By [Sean Lyngaas](#)

Updated 7:37 AM EDT, Wed June 7, 2023

New YorkCNN —

North Korean hackers were likely behind the theft of at least \$35 million from a popular cryptocurrency service, multiple crypto-tracking experts told CNN Tuesday.

It's the latest in a string of hacks of cryptocurrency firms linked to Pyongyang that US officials worry could be used to fund the North Korean regime's nuclear and ballistic weapons programs.

The hackers drained the cryptocurrency accounts of certain customers of Atomic Wallet, an Estonia-based company that claims 5 million users of its software.

Atomic Wallet said on Saturday that "less than 1%" of monthly users appeared to be affected by the hack. The firm has not specified how much money might have been stolen or who was behind the hack. CNN has requested comment from the firm.

Some of the apparent victims of the hack took to Twitter to beg the hackers for their money back, posting their cryptocurrency addresses in case the hackers took pity on them.

North Korean hackers have [stolen billions of dollars](#) from banks and cryptocurrency firms over the last several years, providing a key source of revenue for the regime, according to reports from the United Nations and private firms.

In the Atomic Wallet incident, the hackers' money-laundering techniques and the tools they used matched telltale North Korean behavior, according to [London-based crypto-tracking firm Elliptic](#).

An independent cryptocurrency tracker known as ZachXBT told CNN that North Korean hackers were very likely responsible. The amount confirmed stolen could rise above \$35 million as Atomic Wallet continues to investigate the incident, the analyst said.

"The pattern was similar to what we saw with the laundering of Harmony funds back in January," ZachXBT said, referring to the laundering of \$100 million stolen from a California-based firm.

The FBI blamed North Korea for the hack of Harmony. CNN reported on how private investigators and South Korean intelligence operatives were able to claw back a fraction of that money.

Thwarting North Korean hacking and money laundering has quickly become a national security priority for the Biden administration. About half of [North Korea's](#) missile program has been funded by cyberattacks and cryptocurrency theft, a White House official said last month.

CNN has requested comment from the FBI on the Atomic Wallet hack.

PRESS RELEASE

Tuesday, July 19, 2022

Office of Public Affairs

The Justice Department today announced a complaint filed in the District of Kansas to forfeit cryptocurrency paid as ransom to North Korean hackers or otherwise used to launder such ransom payments. In May 2022, the FBI filed a sealed seizure warrant for the funds worth approximately half a million dollars. The seized funds include ransoms paid by health care providers in Kansas and Colorado.

“Thanks to rapid reporting and cooperation from a victim, the FBI and Justice Department prosecutors have disrupted the activities of a North Korean state-sponsored group deploying ransomware known as ‘Maui,’” said Deputy Attorney General Lisa O. Monaco today at the International Conference on Cyber Security. “Not only did this allow us to recover their r payment as well as a ransom paid by previously unknown victims, but we were also able

9/12/23, 10:16 AM Office of Public Affairs | Justice Department Seizes and Forfeits Approximately \$500,000 from North Korean Ransomware Actors...

identify a previously unidentified ransomware strain. The approach used in this case exemplifies how the Department of Justice is attacking malicious cyber activity from all angles to disrupt bad actors and prevent the next victim."

According to court documents, in May 2021, North Korean hackers used a ransomware strain called Maui to encrypt the files and servers of a medical center in the District of Kansas. After more than a week of being unable to access encrypted servers, the Kansas hospital paid approximately \$100,000 in Bitcoin to regain the use of their computers and equipment. Because the Kansas medical center notified the FBI and cooperated with law enforcement, the FBI was able to identify the never-before-seen North Korean ransomware and trace the cryptocurrency to China-based money launderers.

Then, as a result, in April 2022, the FBI observed an approximately \$120,000 Bitcoin payment into one of the seized cryptocurrency accounts identified thanks to the cooperation of the Kansas hospital. The FBI's investigation confirmed that a medical provider in Colorado had just paid a ransom after being hacked by actors using the same Maui ransomware strain. In May 2022, the FBI seized the contents of two cryptocurrency accounts that had received funds from the Kansas and Colorado health care providers. The District of Kansas then began proceedings to forfeit the hackers' funds and return the stolen money to the victims.

"Reporting cyber incidents to law enforcement and cooperating with investigations not only protects the United States, it is also good business," said Assistant Attorney General Matthew G. Olsen of the Justice Department's National Security Division. "The reimbursement to these victims of the ransom shows why it pays to work with law enforcement."

"These sophisticated criminals are constantly pushing boundaries to search for ways to extort money from victims by forcing them to pay ransoms in order to regain control of their computer and record systems," said U.S. Attorney Duston J. Slinkard for the District of Kansas. "What these hackers don't count on is the tenacity of the U.S. Justice Department in recovering and returning these funds to the rightful owners."

"The FBI is dedicated to working with our federal and private sector partners to disrupt nation state actors who pose a critical cyber threat to the American people," said FBI Cyber Division Assistant Director Bryan Vorndran. "Today's success demonstrates the result of reporting to the FBI and our partners as early as possible when you are a victim of a cyber attack; this provides law enforcement with the ability to best assist the victim. We will continue to pursue these malicious cyber actors, such as these North Korean hackers, who threaten the American public regardless of where they may be and work to successfully retrieve ransom payments where possible."

"Today's announcement reiterates the FBI and Justice department's continued commitment working with our critical infrastructure and private sector partners to identify and disma

TOP

9/12/23, 10:16 AM Office of Public Affairs | Justice Department Seizes and Forfeits Approximately \$500,000 from North Korean Ransomware Actors...

cyber threats, including new and emerging ransomware variants,” said Special Agent in Charge Charles Dayoub of the FBI Kansas City Field Division. “Because of swift reporting by the victim medical center, action was taken to lessen the loss to the victim company, as well as identify the malware deployed, preventing additional cyber-attacks. The relationship between the FBI and our private sector partners are critical to discover, disrupt and dismantle cyber threats to our nation’s infrastructure.”

On July 6, 2022, based on information obtained during the Department’s investigation, the FBI, the Cybersecurity and Infrastructure Security Agency (CISA) and the Department of the Treasury issued a [joint cybersecurity advisory](#) regarding the North Korean threat to U.S. health care and public health sector organizations, which included indicators of compromise and mitigation advice.

Deputy Attorney General Lisa O. Monaco; Assistant Attorney General Matthew G. Olsen of the Justice Department’s National Security Division; U.S. Attorney Duston J. Slinkard for the District of Kansas; Special Agent in Charge Charles Dayoub of the FBI’s Kansas City Field Office; and Assistant Director Bryan Vorndran of the FBI’s Cyber Division made the announcement.

The FBI is investigating the case.

Updated July 19, 2022

Topic

CYBERCRIME

Components

[Federal Bureau of Investigation \(FBI\)](#)

[Cyber Division \(FBI\)](#)

[National Security Division \(NSD\)](#)

[Office of the Deputy Attorney General](#)

[USAO - Kansas](#)

Press Release Number: 22-767

TOP

9/12/23, 10:16 AM

Office of Public Affairs | U.S. Citizen Who Conspired to Assist North Korea in Evading Sanctions Sentenced to Over Five Years a...

[Para Noticias en Español](#)**PRESS RELEASE****U.S. Citizen Who Conspired to Assist North Korea in Evading Sanctions Sentenced to Over Five Years and Fined \$100,000**

Tuesday, April 12, 2022

For Immediate Release

Office of Public Affairs

A U.S. citizen who conspired to provide services to the Democratic People's Republic of Korea (DPRK or North Korea), including technical advice on using cryptocurrency and blockchain technology to evade sanctions, was sentenced to 63 months in prison after pleading guilty to conspiracy to violate the International Emergency Economic Powers Act (IEEPA).

According to court documents, Virgil Griffith, 39, began formulating plans as early as 2018 to provide services to individuals in the DPRK by developing and funding cryptocurrency infrastructure there, including to mine cryptocurrency. Griffith knew that the DPRK could use these services to evade and avoid U.S. sanctions, and to fund its nuclear weapons program and other illicit activities.

Pursuant to the IEEPA and Executive Order 13466, U.S. persons are prohibited from exporting any goods, services or technology to the DPRK without a license from the Department of the Treasury, Office of Foreign Assets Control (OFAC).

In April 2019, Griffith traveled to the DPRK to attend and present at the "Pyongyang Blockchain and Cryptocurrency Conference" (the DPRK Cryptocurrency Conference). Even though the

9/12/23, 10:16 AM Office of Public Affairs | U.S. Citizen Who Conspired to Assist North Korea in Evading Sanctions Sentenced to Over Five Years a...

Department of State had denied Griffith permission to travel to the DPRK, Griffith delivered presentations at the DPRK Cryptocurrency Conference, tailored to the DPRK audience, knowing that doing so violated sanctions against the DPRK.

At the DPRK Cryptocurrency Conference, Griffith and his co-conspirators provided instruction on how the DPRK could use blockchain and cryptocurrency technology to launder money and evade sanctions. Griffith's presentations at the DPRK Cryptocurrency Conference had been approved by DPRK officials and focused on, among other things, how blockchain technology such as "smart contracts" could be used to benefit the DPRK, including in nuclear weapons negotiations with the United States. Griffith and his co-conspirators also answered specific questions about blockchain and cryptocurrency technologies for the DPRK audience, including individuals whom Griffith understood worked for the North Korean government.

After the DPRK Cryptocurrency Conference, Griffith pursued plans to facilitate the exchange of cryptocurrency between the DPRK and South Korea, despite knowing that assisting with such an exchange would violate sanctions against the DPRK. Griffith also attempted to recruit other U.S. citizens to travel to North Korea and provide similar services to DPRK persons and attempted to broker introductions for the DPRK to other cryptocurrency and blockchain service providers. At no time did Griffith obtain permission from OFAC to provide goods, services or technology to the DPRK.

Assistant Attorney General Matthew G. Olsen of the Justice Department's National Security Division and U.S. Attorney Damian Williams for the Southern District of New York made the announcement.

The FBI's New York Field Office investigated the case, with valuable assistance provided by the National Security Division's Counterintelligence and Export Control Section, the Justice Department's Office of International Affairs, and the Singapore Police Force.

Assistant U.S. Attorneys Kimberly Ravener and Kyle A. Wirshba for the Southern District of New York and Trial Attorney Matthew J. McKenzie of the National Security Division's Counterintelligence and Export Control Section are prosecuting the case.

Updated July 21, 2022

Topics

EXPORT CONTROL

NATIONAL SECURITY

9/12/23, 10:14 AM

Office of Public Affairs | United States Files Complaint to Forfeit 280 Cryptocurrency Accounts Tied to Hacks of Two Exchanges b...

[Para Noticias en Español](#)**PRESS RELEASE****United States Files Complaint to Forfeit 280 Cryptocurrency Accounts Tied to Hacks of Two Exchanges by North Korean Actors**

Thursday, August 27, 2020

For Immediate Release

Office of Public Affairs

The Justice Department today filed a civil forfeiture complaint detailing two hacks of virtual currency exchanges by North Korean actors. These actors stole millions of dollars' worth of cryptocurrency and ultimately laundered the funds through Chinese over-the-counter (OTC) cryptocurrency traders. The complaint follows related criminal and civil actions announced in March 2020 pertaining to the theft of \$250 million in cryptocurrency through other exchange hacks by North Korean actors.

"Today's action publicly exposes the ongoing connections between North Korea's cyber-hacking program and a Chinese cryptocurrency money laundering network," said Acting Assistant Attorney General Brian C. Rabbitt of the Justice Department's Criminal Division. "This case underscores the department's ongoing commitment to counter the threat presented by North Korean cyber hackers by exposing their criminal networks and tracing and seizing their ill-gotten gains."

9/12/23, 10:14 AM Office of Public Affairs | United States Files Complaint to Forfeit 280 Cryptocurrency Accounts Tied to Hacks of Two Exchanges b...

“Today, prosecutors and investigators have once again exemplified our commitment to attribute national security cyber threats, to impose costs on these actors, and bring some measure of relief to victims of malicious cyber activities,” said Assistant Attorney General John C. Demers of the Justice Department’s National Security Division. “Although North Korea is unlikely to stop trying to pillage the international financial sector to fund a failed economic and political regime, actions like those today send a powerful message to the private sector and foreign governments regarding the benefits of working with us to counter this threat.”

“As part of our commitment to safeguarding national security, this office has been at the forefront of targeting North Korea’s criminal attacks on the financial system,” said Acting U.S. Attorney Michael R. Sherwin of the District of Columbia. “This complaint reveals the incredible skill of our Cryptocurrency Strike Force in tracing and seizing virtual currency, which criminals previously thought to be impossible.”

“Despite the highly sophisticated laundering techniques used, IRS-CI’s Cybercrimes Unit was able to successfully trace stolen funds directly back to North Korean actors,” said Don Fort, Chief of IRS Criminal Investigation (IRS-CI). “IRS-CI will continue to collaborate with its law enforcement partners to combat foreign and domestic operations that threaten the United States financial system and national security.”

“FBI efforts to stop the flow of threat finance around the world are central to our strategy to address transnational crime,” said Assistant Director Calvin A. Shivers of the FBI’s Criminal Investigative Division. “This strategy is strengthened by the skills and expertise we continue to develop in virtual asset investigations such as this, which enable the FBI and our partners to identify and seize illicit assets.”

“As North Korea becomes bolder and more desperate in their efforts to steal money using sophisticated money laundering techniques, HSI will continue to apply pressure by exposing their fraudulent transactions,” said Special Agent in Charge Steven Cagen of U.S. Immigration and Customs Enforcement’s Homeland Security Investigations (HSI) Denver. “We are committed to safeguarding the interest of the United States against the criminal elements in North Korea to protect the integrity of the cyber financial system.”

“At U.S. Cyber Command, we leverage a persistent engagement approach to challenge our adversaries’ actions in cyberspace,” said Brigadier General Joe Hartman, Commander of the Cyber National Mission Force. “This includes disrupting North Korean efforts to illicitly generate revenue. Department of Defense cyber operations do not occur in isolation. Persistent engagement includes acting through cyber-enabled operations as much as it does sharing information with our interagency partners to do the same.”

“Today’s complaint demonstrates that North Korean actors cannot hide their crimes within the anonymity of the internet. International cryptocurrency laundering schemes undermine the

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integrity of our financial systems at a global level, and we will use every tool in our arsenal to investigate and disrupt these crimes,” said Special Agent in Charge Emmerson Buie Jr. of the FBI’s Chicago Field Office. “The FBI will continue to impose risks and consequences on criminals who seek to undermine our national security interests.”

The forfeiture complaint filed today details two related hacks of virtual currency exchanges.

As alleged in the complaint, in July 2019, a virtual currency exchange was hacked by an actor tied to North Korea. The hacker allegedly stole over \$272,000 worth of alternative cryptocurrencies and tokens, including Proton Tokens, PlayGame tokens, and IHT Real Estate Protocol tokens. Over the subsequent months, the funds were laundered through several intermediary addresses and other virtual currency exchanges. In many instances, the actor converted the cryptocurrency into BTC, Tether, or other forms of cryptocurrency – a process known as “chain hopping” – in order to obfuscate the transaction path. As detailed in the pleadings, law enforcement was nonetheless able to trace the funds, despite the sophisticated laundering techniques used.

As also alleged in the pleadings, in September 2019, a U.S.-based company was hacked in a related incident. The North Korea-associated hacker gained access to the company’s virtual currency wallets, funds held by the company on other platforms, and funds held by the company’s partners. The hacker stole nearly \$2.5 million and laundered it through over 100 accounts at another virtual currency exchange.

The funds from both of the above hacks, as well as hacks previously detailed in a March 2020 forfeiture action (1:20-cv-00606-TJK), were all allegedly laundered by the same group of Chinese OTC actors. The infrastructure and communication accounts used to further the intrusions and fund transfers were also tied to North Korea.

The claims made in this complaint are only allegations and do not constitute a determination of liability. The burden to prove forfeitability in a civil forfeiture proceeding is upon the government.

The investigation was conducted by IRS-CI’s Washington, D.C. Cyber Crimes Unit, the FBI’s Chicago and Atlanta Field Offices, and HSI’s Colorado Springs Office with additional support from the FBI’s San Francisco Field Office. Trial Attorney C. Alden Pelker of the Criminal Division’s Computer Crime and Intellectual Property Section, Trial Attorney David Recker of the National Security Division’s Counterintelligence and Export Control Section and Assistant U.S. Attorneys Zia M. Faruqui, Jessi Camille Brooks, and Christopher Brown are prosecuting the case, with assistance from Supervisory Paralegal Specialist Elizabeth Swienc and Legal Assistant Jessica McCormick.

Support to this effort was provided by FBI’s San Francisco Field Office and the U.S. Attorney’s Office of the Northern District of Georgia.

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Support to this effort was also provided by United States Cyber Command. More information about the command's efforts to combat North Korean and other malware activity can be found on [Twitter](#) and [VirusTotal](#).

The year 2020 marks the 150th anniversary of the Department of Justice. Learn more about the history of our agency at www.Justice.gov/Celebrating150Years.

Updated July 13, 2022

Attachment

[280 Virtual Currency Accounts Complaint](#) [PDF, 1 MB]

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Two Chinese Nationals Charged with Laundering Over \$100 Million in Cryptocurrency From Exchange Hack

Monday, March 2, 2020

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For Immediate Release

Office of Public Affairs

Forfeiture Complaint Details Over \$250 Million Stolen by North Korean Actors

Two Chinese nationals were charged with laundering over \$100 million worth of cryptocurrency from a hack of a cryptocurrency exchange. The funds were stolen by North Korean actors in 2018, as detailed in the civil forfeiture complaint also unsealed today.

In the two-count indictment unsealed today in the District of Columbia, 田寅寅 aka Tian Yinyin, and 李家东 aka Li Jiadong, were charged with money laundering conspiracy and operating an unlicensed money transmitting business.

"These defendants allegedly laundered over a hundred million dollars worth of stolen cryptocurrency to obscure transactions for the benefit of actors based in North Korea," said Assistant Attorney General Brian A. Benczkowski of the Justice Department's Criminal Division. "Today's actions underscore that the Department will pierce the veil of anonymity provided by cryptocurrencies to hold criminals accountable, no matter where they are located."

"Today, we are publicly exposing a criminal network's valuable support to North Korea's cyber heist program and seizing the fruits of its crimes," said Assistant Attorney General John C. Demers of the Justice Department's National Security Division. "This case exemplifies the commitment of the United States government to work with foreign partners and the worldwide financial services industry to disrupt this blended threat."

"The hacking of virtual currency exchanges and related money laundering for the benefit of North Korean actors poses a grave threat to the security and integrity of the global

financial system,” said U.S. Attorney Timothy J. Shea of the District of Columbia. “These charges should serve as a reminder that law enforcement, through its partnerships and collaboration, will uncover illegal activity here and abroad, and charge those responsible for unlawful acts and seize illicit funds even when in the form of virtual currency.”

“North Korea continues to attack the growing worldwide ecosystem of virtual currency as a means to bypass the sanctions imposed on it by the United States and the United Nations Security Council. IRS-CI is committed to combatting the means and methods used by foreign and domestic adversaries to finance operations and activities that pose a threat to U.S. national security,” said Internal Revenue Service-Criminal Investigation (IRS-CI) Chief Don Fort. “We will continue to push our agency to the forefront of complex cyber investigations and work collaboratively with our law enforcement partners to ensure these nefarious criminals are stopped and that the integrity of the United States financial system is preserved.”

“The FBI will continue to actively work with our domestic and international law enforcement partners to identify and mitigate illicit movement of currency,” said Assistant Director Calvin Shivers of the FBI’s Criminal Investigative Division. “Today’s indictment and sanctions send a strong message that the United States will not relent in holding accountable bad actors attempting to evade sanctions and undermine our financial system.”

“This case shows how important robust partnerships across the U.S. Government are in disrupting criminal actors,” said Acting Assistant Director Robert Wells of the FBI’s Counterintelligence Division.

“This indictment shows what can be accomplished when international law enforcement agencies work together to uncover complex cross-border crimes,” said Acting Executive Associate Director Alysa Erichs of U.S. Immigration and Customs Enforcement’s Homeland Security Investigations (HSI). “HSI is committed to upholding the rule of law and investigating those that would steal cryptocurrency for their illicit purposes.”

According to the pleadings, in 2018, North Korean co-conspirators hacked into a virtual currency exchange and stole nearly \$250 million worth of virtual currency. The funds were then laundered through hundreds of automated cryptocurrency transactions aimed at preventing law enforcement from tracing the funds. The North Korean co-conspirators circumvented multiple virtual currency exchanges’ know-your-customer controls by submitting doctored photographs and falsified identification documentation. A portion of the laundered funds was used to pay for infrastructure used in North Korean hacking campaigns against the financial industry.

The pleadings further allege that between December 2017 and April 2019, Yinyin and Jiadong laundered over \$100 million worth of virtual currency, which primarily came from virtual currency exchange hacks. The defendants operated through independent as well as linked accounts and provided virtual currency transmission services for a fee for customers. The defendants conducted business in the United States but at no time registered with the Financial Crimes Enforcement Network (FinCEN).

The pleadings further allege that the North Korean co-conspirators are tied to the theft of approximately \$48.5 million worth of virtual currency from a South Korea-based virtual currency exchange in November 2019. As with the prior campaign, the North Korean co-conspirators are alleged to have laundered the stolen funds through hundreds of automated transactions and submitted doctored photographs and falsified identification documentation. The pleadings identify how the North Korean co-conspirators used infrastructure in North Korea as part of this campaign.

The civil forfeiture complaint specifically names 113 virtual currency accounts and addresses that were used by the defendants and unnamed co-conspirators to launder funds. The forfeiture complaint seeks to recover the funds, a portion of which has already been seized.

The charges in the pleadings are merely allegations, and all defendants are presumed innocent until proven guilty beyond a reasonable doubt in a court of law.

Today, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) also imposed sanctions on Yinyin, Liadong, and numerous cryptocurrency addresses related to their involvement in activities facilitating North Korean sanctions evasion based on their services and support for malicious cyber enabled activities linked to North Korean actors.

The investigation was led by the IRS-CI, the FBI, and HSI. The Korean National Police of the Republic of Korea provided assistance and coordinated with their parallel investigation.

The cases are being handled by Trial Attorney C. Alden Pelker of the Criminal Division's Computer Crime and Intellectual Property Section, Trial Attorney David Recker of the National Security Division's Counterintelligence and Export Control Section, and Assistant U.S. Attorneys Zia Faruqui and Christopher B. Brown, Paralegal Specialists Brian Rickers, and Legal Assistant Jessica McCormick of the U.S. Attorney's Office for the District of Columbia. Additional assistance has been provided by former Assistant U.S. Attorney Youli Lee.

The year 2020 marks the 150th anniversary of the Department of Justice. Learn more about the history of our agency at [www.Justice.gov/Celebrating150Years](https://www.justice.gov/Celebrating150Years).

Updated July 22, 2022

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The Washington Post
Democracy Dies in Darkness

LEGAL ISSUES

Two Chinese nationals indicted in cryptocurrency laundering scheme linked to North Korea

By [Spencer S. Hsu](#) and [Ellen Nakashima](#)

March 3, 2020 at 6:05 a.m. EST

The United States on Monday charged two Chinese nationals with laundering more than \$100 million in stolen cryptocurrency from a 2018 cyberattack linked to North Korea's illicit nuclear missile and weapons development program.

The new indictment, accompanied by sanctions and a civil forfeiture complaint seizing 113 cryptocurrency accounts filed in federal court in Washington, marks the first and largest enforcement action of its kind by the United States to deter North Korea's cryptocurrency financing.

"The hacking of virtual currency exchanges and related money laundering for the benefit of North Korean actors poses a grave threat to the security and integrity of the global financial system," said Timothy J. Shea, U.S. attorney for Washington.

The charges come after a U.N. sanctions monitoring panel reported last summer that North Korea has raised up to \$2 billion for its weapons development program through cyberattacks, including "increasingly sophisticated" raids against financial institutions and cryptocurrency exchanges to steal, launder and generate funds.

Large-scale attacks by North Korea on cryptocurrency exchanges that deal in virtual money such as bitcoin and Ethereum and rely on blockchain technology "generate income in ways that are harder to trace and subject to less government oversight and regulation than the traditional banking sector," the [U.N. expert panel reported](#) in August.

"The United States will continue to protect the global financial system by holding accountable those who help North Korea engage in cybercrime," Treasury Secretary Steven Mnuchin said.

The charges and enforcement actions Monday are linked to an estimated \$250 million in stolen funds. About \$68 million of the funds laundered by the two defendants flowed to nine named Chinese banks, the government said. The case underscores the role played by China's banking system that has agitated relations between Beijing and Washington, people familiar with the case said.

The U.S. Treasury Department's Office of Foreign Assets Control alleged that Tian Yinyin and Li Jiadong provided material support for "a malicious, cyber-enabled activity" and assisted an attack by Lazarus Group, a North Korean government cyber group that has carried out the bulk of North Korea's malicious hacks against U.S. and foreign banks, corporations and other targets.

The Trump administration in September sanctioned the group, whose accused exploits include an attempted ransomware attack on hundreds of thousands of WannaCry users in 2017, and the 2014 hack of Sony Pictures after it backed a satirical movie depicting the assassination of North Korean leader Kim Jong Un.

The Treasury Department at that time sanctioned the Lazarus Group and two subgroups dubbed Bluenoroff and Andariel, saying all three are controlled by North Korea's primary intelligence agency, the Reconnaissance General Bureau.

North Korea has resorted to hacks against financial institutions to obtain income in the face of global sanctions imposed over its nuclear program that have starved its access to foreign currency and the world banking system, experts say.

The U.S. indictment, handed up Thursday and unsealed Monday, comes amid a renewed rise in tensions over North Korea's missile threat. North Korea on Monday launched two short-range projectiles off its east coast in its first weapons test in three months. The test came a year after Kim's failed summit meeting with President Trump and amid allegations that nuclear talks have broken down.

Pyongyang has pledged never to give up its nuclear weapons, which the United States and its allies say must be the goal of any negotiations. North Korea has separately denied allegations of orchestrating cyberattacks and cyberheists.

The U.S. actions will be seen by North Korea as part of the administration's "hostile policy," said Jung Pak, a senior fellow at the Brookings Institution and a former CIA analyst. "It highlights that the two countries are on parallel tracks. . . . They're going to lob missiles. We're going to do what we're doing, which is designate, investigate," Pak said.

The U.S. charges appear to bolster the U.N. panel's accusations on Pyongyang's "deceptive practices" and exploitation of weak enforcement by cryptocurrency exchanges and foreign banks.

U.S. criminal filings allege that Tian and Li received funds from North Korean co-conspirators who had attacked four cryptocurrency exchanges since 2017. Court documents do not name the exchanges, but the details link them to publicly reported hacks that the U.N. panel tied to North Korea's revenue generation efforts. They include a December 2017 hack on Yobit that took 17 percent of its assets and sent it into bankruptcy, a \$49 million hack on Upbit in November 2019, and \$30 million stolen in June 2018 from Bithumb — all three of South Korea.

Much of the laundered money came from a nearly \$250 million, previously undisclosed hack in 2018 of another Asian exchange, court documents said. The intrusion came after an employee unwittingly downloaded malware while communicating with a potential client, the documents said.

U.S. court documents allege that Tian and Li sent roughly 2,500 deposits with \$67.3 million in stolen funds to nine Chinese banks: China Guangfa Bank, Agricultural Bank of China, China Everbright Bank, China CITIC Bank, China Minsheng Bank, Huaxia Bank, Industrial Bank, Pingan Bank and Shanghai Pudong Development Bank.

Tian and Li are not in U.S. custody and are assumed by U.S. authorities to be in China

U.S. court filings did not accuse the banks of any wrongdoing. Regulators said banks are typically required under “know your customer” regulations to question clients and identify the source of such large deposits, and to report suspicious transactions, several people familiar with the process said.

Commercial blockchain analysis firms helped U.S. investigators trace hacked funds, knowing that although cryptocurrencies are known to attract criminals seeking anonymity, all transactions to individual accounts are recorded in public ledgers that can be amassed into large data sets.

One such firm, Chainalysis, profiled Lazarus in a January report on the state of crypto-crime that said the North Korean-linked entity had conducted one of the “most elaborate phishing schemes” the industry has ever seen.

Monday’s actions are likely to be “just the first” of U.S. government actions to follow the money from its Lazarus revelations, Chainalysis spokeswoman Maddie Kennedy said. The firm estimated that seized cryptocurrency accounts still hold about \$15 million, and it is advising clients of any exposure to accounts named by the U.S. government.

“A not insubstantial part of North Korea’s gross domestic product is based on stealing cryptocurrency funds,” Kennedy said. U.S. authorities are “showing that ... anyone who helps facilitate those who are stealing illicit funds are going to be held responsible.”

The investigation was a massive and complex undertaking. After identifying accounts that received tens of thousands of related transactions, U.S. investigators followed up with requests for associated customer financial account and communications records under domestic and foreign legal authorities from more than 100 private entities.

“These are not the only two individuals we’re aware of that are involved in this type of activities,” IRS Criminal Investigation Special Agent Christopher Janczewski said.

The case was cracked when unidentified North Korean co-conspirators made a key error covering their tracks, according to court documents.

Court filings said attackers layered — or “peeled” — transfers through more than 5,000 transactions, including by using one-time use cryptocurrency wallets, through multiple countries before converting proceeds to government-backed currencies.

But they failed to “peel” one bulk transfer worth about \$1.6 million which investigators traced to a North Korean-linked source, the charges said. Separately investigators traced North Korean co-conspirators logging in from Pyongyang and using North Korean cellphone infrastructure, according to court documents.

The same North Korean co-conspirators involved, the U.S. alleged, were also engaged at that time in a massive phishing campaign posing as advertisers for a Los Angeles firm or prospective clients or developers for cryptocurrency exchanges. The co-conspirators, court documents said, had a fake Twitter and LinkedIn page created with the name “Waliy Darwish” and Celas LLC, which produced a malicious software code that gave direct access to the downloader’s system.

Celas shared a server and IP address with known malware named Fallchill that the FBI and Homeland Security Department have associated with the government of North Korea, and the Celas application used a language code associated with North Korea, court documents said.

The phishing campaign targeted thousands of work and personal email accounts at exchanges around the world, including of prominent executives in the industry, court documents said.

Ken Gause, a North Korean expert and director of the adversary analytics program at C.N.A., a think tank, cautioned against assuming that all hacked funds go to North Korea’s nuclear program saying the Kim family, a wider elite, and civilian economy all likely benefit.

Gause warned that enforcement actions may not disrupt evolving attacks, which he called “an unending game of whack-a-mole.”

CORRECTION: An earlier version of this story referred incorrectly to Ripple as a virtual money exchange. Ripple is a software company that is a majority owner of virtual currency XRP, but is independent of it.

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The Washington Post
Democracy Dies in Darkness

LEGAL ISSUES

U.S. brings massive N. Korean sanctions case, targeting state-owned bank and former government officials

By [Spencer S. Hsu](#) and [Ellen Nakashima](#)

May 28, 2020 at 4:37 p.m. EDT

The U.S. government has charged 28 North Korean and five Chinese individuals with facilitating more than \$2.5 billion in illegal payments for Pyongyang's nuclear weapons and missile program in what court papers describe as a clandestine global network operating from countries including China, Russia, Libya and Thailand.

In a 50-page federal indictment unsealed Thursday in Washington, D.C., the Justice Department accused the individuals of acting as agents of North Korea's Foreign Trade Bank in what officials say is the largest North Korean sanctions violations case charged by the U.S.

Working for the FTB — which is North Korea's primary foreign currency bank and under sanctions for facilitating nuclear proliferation — the agents allegedly set up more than 250 front companies and covert bank branches around the world to mask payments transiting the U.S. financial system, including through several Chinese banks and for equipment from Chinese telecommunications giants Huawei Technologies Co. and ZTE Corp., charging documents said.

Those charged include two former FTB presidents, Ko Chol Man and Kim Song Ui; two former co-vice presidents, Han Ung and Ri Jong Nam; and Han Ki Song, who allegedly operated FTB's covert branch in Thailand and served in North Korea's primary intelligence agency.

"Through this indictment, the United States has signified its commitment to hampering North Korea's ability to illegally access the U.S. financial system, and to limiting its ability to use proceeds from these illicit actions to enhance its illegal weapons of mass destruction program," Michael R. Sherwin, acting U.S. Attorney for D.C., said in a statement.

The massive enforcement action comes as United Nations experts have detailed North Korea's widespread evasion of sanctions by using agents of state-owned and other banks overseas to facilitate a global web of illicit oil, arms and coal deals to bring in foreign currency. The efforts have been augmented through offshore, ship-to-ship transfers, large-scale cryptocurrency hacks and ransomware attacks.

The Justice Department moves highlight Washington's stalled diplomatic effort to eliminate Pyongyang's nuclear missile and weapons capabilities, analysts said. The actions also reflect an internal U.S. election-year debate over whether President Trump's withholding of tougher sanctions and emphasis on personal diplomacy with Kim Jong Un can succeed if existing American pressure tactics are not effectively enforced, analysts said.

The Trump administration had outpaced predecessors at building a global coalition to pressure Pyongyang before talks started. But the biggest hole in sanctions enforcement remains U.S. reluctance to penalize major Chinese banks through which North Korea's illicit funds flow for fear of triggering Chinese retaliation and a wider financial war.

The indictment reveals the extent to which the government believes China has facilitated the illicit network. Though U.N. member states since early 2016 are supposed to have expelled branches of North Korean banks, the indictment said such branches are still operating in Beijing and Shenyang, China.

And it said that five Chinese citizens have been overseeing covert FTB branches, including in Shenyang and Libya.

"This adds to the already overwhelming evidence that China's government is willfully assisting Kim Jong Un in his violations of North Korea sanctions," said Joshua Stanton, who helped write the 2016 law that strengthened North Korea sanctions.

"I'll believe it's 'maximum pressure' when those banks begin to face nine- and 10-digit penalties, like the ones President Obama imposed on European banks that broke Iran sanctions," said Stanton, who has advised House and Senate staffers on North Korea sanctions law.

Evans J.R. Revere, a former State Department official focused on East Asia, lauded the U.S. government for going after Chinese banks and other entities enabling North Korea's illicit activities. "This will complicate U.S.-China relations, but that may be a necessary risk if the U.S. is serious about pressuring Pyongyang," he said.

The charges against North Korean bank officials and agents marks an escalation of U.S. enforcement efforts, potentially restricting the number of countries where Pyongyang is willing to risk sending its personnel and signaling greater U.S. willingness to risk confrontation with host countries to expel, arrest or extradite them, analysts said.

None of the defendants are in custody, officials said. The U.S. government also filed asset forfeiture charges and has already quietly seized more than \$63 million, the indictment said.

U.S. officials including Secretary of State Mike Pompeo and Trump national security adviser Robert C. O'Brien have complained publicly this year that China and Russia have weakened sanctions and aided illegal smuggling. The Justice Department last year charged Huawei, which is supported by the Chinese government, with bank fraud and Iranian sanctions violations. In 2017, ZTE pleaded guilty to violating U.S. sanctions against Iran and North Korea, and paid \$1.19 billion in fines imposed by the U.S. government.

Thursday's actions reflected the latest U.S. legal actions scrutinizing those two firms' conduct in particular, as well as that of five unnamed Chinese banks that worked with FTB, even as Washington and Beijing have moved to ease tensions over a trade war championed by Trump.

Thursday's indictment did not name Huawei, but included allegations that align with reporting last July by The Washington Post that Huawei allegedly partnered with a Chinese state-owned firm, Panda International Information Technology Co. Ltd., and a second company to build a major North Korea wireless telecom network, according to documents and people familiar with the projects.

The indictment charged two co-defendants with arranging to pay for Panda's work in North Korea through U.S. dollars by stating falsely to a Chinese bank in 2014 that an FTB front company in Shenyang was wiring payments to Panda and the second company, Dandong Kehua Economic and Trade Co., for legitimate equipment purchases, as previously reported by The Post.

According to the charges, an employee for Huawei, referred to as "Chinese telecommunications company 1" in the indictment, also received a receipt showing that a Nov. 5, 2015, payment to a Chinese company for a shipment of electronic goods to North Korea had been blocked by a U.S. bank. The following day the employee received an updated receipt from the company and an FTB agent in Shenyang that falsely stated the goods' destination was Hong Kong, when it was in fact North Korea, the indictment said.

Spokespeople for Huawei and Panda could not immediately be reached for comment.

In a statement last year, Huawei said it "has no business presence" in North Korea, and "is fully committed to comply with all applicable laws and regulations in the countries and regions where we operate, including all export control and sanction laws and regulations" of the U.N., United States and European Union.

The indictment also reveals details of an earlier prosecution involving a Hong Kong shell firm hit with sanctions in 2017 that worked with Chinese telecommunications maker ZTE.

The new indictment charges three defendants who officials say managed the Mingzheng International Trading Limited front company to launder money for FTB. The activity occurred, according to the indictment, despite intermittent failures in which three Chinese banks at times blocked payments, and one advised that a U.S. bank stopped the transaction because of U.S. sanctions aimed at the proliferation of weapons of mass destruction.

The indictment said Mingzheng and Dandong Kehua worked with "Chinese telecommunications company 2," a reference that aligns with ZTE, to purchase handsets from at least 2013 to 2015 despite a prohibition on shipment to embargoed countries.

The U.S. indictment draws on Chinese bank records, including a recorded July 2014 phone call by one Mingzheng manager about opening an account with "Chinese Bank 4," which later passed on the U.S. sanctions warning.

The records appear to be ones requested under Justice Department subpoenas upheld last July by a U.S. appeals court to three large Chinese banks linked to Mingzheng that U.S. investigators were probing, and which later identified themselves as the Bank of Communications, China Merchants Bank and Shanghai Pudong Development Bank

Simon Denyer and Carol Morello contributed to this report

9/12/23, 10:07 AM

North Korean Foreign Trade Bank Rep Charged for Role in Two Crypto Laundering Conspiracies | USAO-DC | Department of Ju...



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FOR IMMEDIATE RELEASE

Monday, April 24, 2023

North Korean Foreign Trade Bank Rep Charged for Role in Two Crypto Laundering Conspiracies

WASHINGTON – Two federal indictments, unsealed today in the District of Columbia, charge a North Korean Foreign Trade Bank ("FTB") representative for his role in money laundering conspiracies designed to generate revenue for the Democratic People's Republic of Korea, through the use of cryptocurrency. A third indictment charges one of the co-conspirators in a separate scheme.

The indictments were announced by U.S. Attorney Matthew M. Graves, Assistant Attorney General of the Criminal Division Kenneth A. Polite, Jr., and Special Agent in Charge Robert W. "Wes" Wheeler, Jr. of the FBI's Chicago Field Office.

Sim Hyon Sop ("Sim"), 39, a North Korean national, is charged with conspiring with three over-the-counter ("OTC") traders, Wu HuiHui ("Wu"), 34, a Chinese national living in Jinan, Shandong, China; Cheng Hung Man ("Cheng"), 59, a Hong Kong British National (Overseas) living in Hong Kong, and an unknown user of the online moniker "live:jammychen0150" ("Chen"), to launder stolen cryptocurrency and use the funds to purchase goods through Hong Kong-based front companies for the benefit of North Korea. Sim directed these payments, which were made in U.S. dollars, through Chen. Chen then recruited Wu and Cheng, both of whom were OTC traders, to find sham front companies and facilitate the payments to avoid U.S. sanctions against North Korea.

The second indictment alleges a conspiracy between Sim and various North Korean IT workers to launder proceeds of illegal IT development work. The IT workers gained employment at U.S. crypto companies using fake identities and then laundered their ill-gotten gains through Sim for the benefit of the North Korean regime, and in contravention of sanctions imposed against North Korea by the Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the United Nations. Those sanctions were imposed to impede the development of North Korea's ballistic missiles, weapons production, and research and development programs.

"Today's indictments reveal North Korea's continued use of various means to circumvent U.S. sanctions," said U.S. Attorney Graves. "We can and will 'follow the money,' be it through cryptocurrency or the traditional banking system, to bring appropriate charges against those who would help to fund this corrupt regime."

9/12/23, 10:07 AM North Korean Foreign Trade Bank Rep Charged for Role in Two Crypto Laundering Conspiracies | USAO-DC | Department of Ju...

"The charges announced today highlight the ways in which North Korean operatives have innovated their approach to evading sanctions by exploiting the technological features of virtual assets to facilitate payments and profits, and targeting virtual currency companies for theft," said Assistant Attorney General Kenneth A. Polite, Jr. of the Justice Department's Criminal Division. "We will continue to work to disrupt and deter North Korean actors and those who aid them by following the money on the blockchain and shining a light on their conduct."

"The growing popularity of virtual currencies has provided new and unique opportunities for criminals to engage in illicit transactions, but what has not changed is our commitment to investigating these crimes," said Special Agent in Charge Wheeler. "I am proud of the work that the FBI and partners have accomplished in support of today's indictment."

Since 2017, as part of its cyber campaign, North Korean hackers have executed virtual currency-related thefts to generate revenue for the regime, including through the hacking of virtual asset services providers, such as virtual currency exchanges. A portion of the proceeds from those virtual currency theft and fraud schemes was sent to virtual currency address 1G3Qj4Y4trA8S64zHFsaD5GtiSwX19qwFv, which Sim and his OTC trader coconspirators used to fund payments for goods for North Korea.

To generate revenue for the regime, North Korea also deploys IT workers to obtain illegal employment in the cryptocurrency industry. According to court documents, North Koreans apply for jobs in remote IT development work without disclosing that they are North Korean in order to circumvent sanctions. These IT workers bypass security and due diligence checks by using fake, or fraudulently obtained, identity documents and other obfuscation strategies to hide their true location from online payment facilitators and hiring platforms. The IT workers request payment for their services in virtual currency and then send their earnings back to North Korea via, among other methods, FTB representatives like Sim.

JA third indictment unsealed today in the District of Columbia separately charges Wu with operating an unlicensed money transmitting business. According to that indictment, Wu operated as an OTC trader on a U.S.-based virtual currency exchange without a license and conducted over 1,500 trades for U.S. customers, totaling over \$800,000.

A concurrent action was taken today by the Department of the Treasury, sanctioning Sim, Wu, and Cheng.

The charge of conspiring to launder monetary instruments is punishable by a maximum of 20 years in prison. The charge of operating an unlicensed money transmitting business is punishable by a maximum of 5 years in prison.

The investigation was conducted by the FBI's Chicago Field Office. The case is being prosecuted by Trial Attorney Jessica Peck of the Justice Department's National Cryptocurrency Enforcement Team (NCET), Assistant U.S. Attorneys Steven Wasserman and Christopher Tortorice of the U.S. Attorney's Office for the District of Columbia, and Trial Attorney Emma Ellenrieder of the National Security Division's Counterintelligence and Export Control Section. Paralegal Specialists Brian Rickers and Angela De Falco and Legal Assistant Jessica McCormick provided valuable assistance. Significant assistance was also provided by the U.S. Attorney's Office for the Central District of California, FBI's Los Angeles Field Office, former IRS-Criminal Investigation Special Agent Chris Janczewski, and former FBI analyst Nick Carlsen.

An indictment is merely an allegation. All defendants are presumed innocent until proven guilty beyond a reasonable doubt in a court of law.

Attachment(s):

[Download 23cr128_sop_indictment](#)

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Topic(s):

National Security

Cybercrime

Financial Fraud

Component(s):

[Federal Bureau of Investigation \(FBI\)](#)

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Press Release Number:

23-217

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Office of Public Affairs | Three North Korean Military Hackers Indicted in Wide-Ranging Scheme to Commit Cyberattacks and Fin...

[Para Noticias en Español](#)**PRESS RELEASE****Three North Korean Military Hackers Indicted in Wide-Ranging Scheme to Commit Cyberattacks and Financial Crimes Across the Globe**

Wednesday, February 17, 2021

For Immediate Release

Office of Public Affairs

Indictment Expands 2018 Case that Detailed Attack on Sony Pictures and Creation of WannaCry Ransomware by Adding Two New Defendants and Recent Global Schemes to Steal Money and Cryptocurrency from Banks and Businesses while Operating in North Korea, China

Note: [Audio](#) and [Transcript](#) of the February 17, 2021 press call is available on our videos page.

A federal indictment unsealed today charges three North Korean computer programme participants in a wide-ranging criminal conspiracy to conduct a series of destructive

TOP

<https://www.justice.gov/opa/pr/three-north-korean-military-hackers-indicted-wide-ranging-scheme-commit-cyberattacks-and#:~:text=A federal indictm...> 2/10

9/12/23, 10:15 AM Office of Public Affairs | Three North Korean Military Hackers Indicted in Wide-Ranging Scheme to Commit Cyberattacks and Fin...

cyberattacks, to steal and extort more than \$1.3 billion of money and cryptocurrency from financial institutions and companies, to create and deploy multiple malicious cryptocurrency applications, and to develop and fraudulently market a blockchain platform.

A second case unsealed today revealed that a Canadian-American citizen has agreed to plead guilty in a money laundering scheme and admitted to being a high-level money launderer for multiple criminal schemes, including ATM “cash-out” operations and a cyber-enabled bank heist orchestrated by North Korean hackers.

“As laid out in today’s indictment, North Korea’s operatives, using keyboards rather than guns, stealing digital wallets of cryptocurrency instead of sacks of cash, are the world’s leading bank robbers,” said Assistant Attorney General John C. Demers of the Justice Department’s National Security Division. “The Department will continue to confront malicious nation state cyber activity with our unique tools and work with our fellow agencies and the family of norms abiding nations to do the same.”

“Today’s unsealed indictment expands upon the FBI’s 2018 charges for the unprecedented cyberattacks conducted by the North Korean regime,” said the FBI Deputy Director Paul Abbate. “The ongoing targeting, compromise, and cyber-enabled theft by North Korea from global victims was met with the outstanding, persistent investigative efforts of the FBI in close collaboration with U.S. and international partners. By arresting facilitators, seizing funds, and charging those responsible for the hacking conspiracy, the FBI continues to impose consequences and hold North Korea accountable for its criminal cyber activity.”

“The scope of the criminal conduct by the North Korean hackers was extensive and long-running, and the range of crimes they have committed is staggering,” said Acting U.S. Attorney Tracy L. Wilkison for the Central District of California. “The conduct detailed in the indictment are the acts of a criminal nation-state that has stopped at nothing to extract revenge and obtain money to prop up its regime.”

“This case is a particularly striking example of the growing alliance between officials within some national governments and highly sophisticated cyber-criminals,” said U.S. Secret Service Assistant Director Michael R. D’Ambrosio. “The individuals indicted today committed a truly unprecedented range of financial and cyber-crimes: from ransomware attacks and phishing campaigns, to digital bank heists and sophisticated money laundering operations. With victims strewn across the globe, this case shows yet again that the challenge of cybercrime is, and will continue to be, a struggle that can only be won through partnerships, perseverance, and a relentless focus on holding criminals accountable.”

The hacking indictment filed in the U.S. District Court in Los Angeles alleges that Jon Chan[~] Hyok (전창혁), 31; Kim Il (김일), 27; and Park Jin Hyok (박진혁), 36, were members of unit Reconnaissance General Bureau (RGB), a military intelligence agency of the Democratic

TOP

People's Republic of Korea (DPRK), which engaged in criminal hacking. These North Korean military hacking units are known by multiple names in the cybersecurity community, including Lazarus Group and Advanced Persistent Threat 38 (APT38). Park was previously charged in a [criminal complaint](#) unsealed in September 2018.

The indictment alleges a broad array of criminal cyber activities undertaken by the conspiracy, in the United States and abroad, for revenge or financial gain. The schemes alleged include:

- **Cyberattacks on the Entertainment Industry:** The destructive cyberattack on Sony Pictures Entertainment in November 2014 in retaliation for "The Interview," a movie that depicted a fictional assassination of the DPRK's leader; the December 2014 targeting of AMC Theatres, which was scheduled to show the film; and a 2015 intrusion into Mammoth Screen, which was producing a fictional series involving a British nuclear scientist taken prisoner in DPRK.
- **Cyber-Enabled Heists from Banks:** Attempts from 2015 through 2019 to steal more than \$1.2 billion from banks in Vietnam, Bangladesh, Taiwan, Mexico, Malta, and Africa by hacking the banks' computer networks and sending fraudulent Society for Worldwide Interbank Financial Telecommunication (SWIFT) messages.
- **Cyber-Enabled ATM Cash-Out Thefts:** Thefts through ATM cash-out schemes – referred to by the U.S. government as "FASTCash" – including the October 2018 theft of \$6.1 million from BankIslami Pakistan Limited (BankIslami).
- **Ransomware and Cyber-Enabled Extortion:** Creation of the destructive WannaCry 2.0 ransomware in May 2017, and the extortion and attempted extortion of victim companies from 2017 through 2020 involving the theft of sensitive data and deployment of other ransomware.
- **Creation and Deployment of Malicious Cryptocurrency Applications:** Development of multiple malicious cryptocurrency applications from March 2018 through at least September 2020 – including Celas Trade Pro, WorldBit-Bot, iCryptoFx, Union Crypto Trader, Kupay Wallet, CoinGo Trade, Dorusio, CryptoNeuro Trader, and Ants2Whale – which would provide the North Korean hackers a backdoor into the victims' computers.
- **Targeting of Cryptocurrency Companies and Theft of Cryptocurrency:** Targeting of hundreds of cryptocurrency companies and the theft of tens of millions of dollars' worth of cryptocurrency, including \$75 million from a Slovenian cryptocurrency company in December 2017; \$24.9 million from an Indonesian cryptocurrency company in September 2018; and \$11.8 million from a financial services company in New York in August 2020 in which the hackers used the malicious CryptoNeuro Trader application as a backdoor.
- **Spear-Phishing Campaigns:** Multiple spear-phishing campaigns from March 2016 through February 2020 that targeted employees of United States cleared defense contractors, energy companies, aerospace companies, technology companies, the U.S. Department of State, and the U.S. Department of Defense.
- **Marine Chain Token and Initial Coin Offering:** Development and marketing in 2017 TOP 2018 of the Marine Chain Token to enable investors to purchase fractional ownership,

9/12/23, 10:15 AM Office of Public Affairs | Three North Korean Military Hackers Indicted in Wide-Ranging Scheme to Commit Cyberattacks and Fin...

interests in marine shipping vessels, supported by a blockchain, which would allow the DPRK to secretly obtain funds from investors, control interests in marine shipping vessels, and evade U.S. sanctions.

According to the allegations contained in the hacking indictment, which was filed on Dec. 8, 2020, in the U.S. District Court in Los Angeles and unsealed today, the three defendants were members of units of the RGB who were at times stationed by the North Korean government in other countries, including China and Russia. While these defendants were part of RGB units that have been referred to by cybersecurity researchers as Lazarus Group and APT38, the indictment alleges that these groups engaged in a single conspiracy to cause damage, steal data and money, and otherwise further the strategic and financial interests of the DPRK government and its leader, Kim Jong Un.

Money Launderer Charged in California and Georgia

Federal prosecutors today also unsealed a charge against Ghaleb Alaumary, 37, of Mississauga, Ontario, Canada, for his role as a money launderer for the North Korean conspiracy, among other criminal schemes. Alaumary agreed to plead guilty to the charge, which was filed in the U.S. District Court in Los Angeles on Nov. 17, 2020. Alaumary was a prolific money launderer for hackers engaged in ATM cash-out schemes, cyber-enabled bank heists, business email compromise (BEC) schemes, and other online fraud schemes. Alaumary is also being prosecuted for his involvement in a separate BEC scheme by the U.S. Attorney's Office for the Southern District of Georgia.

With respect to the North Korean co-conspirators' activities, Alaumary organized teams of co-conspirators in the United States and Canada to launder millions of dollars obtained through ATM cash-out operations, including from BankIslami and a bank in India in 2018. Alaumary also conspired with Ramon Olorunwa Abbas, aka "Ray Hushpuppi," and others to launder funds from a North Korean-perpetrated cyber-enabled heist from a Maltese bank in February 2019. Last summer, the U.S. Attorney's Office in Los Angeles [charged Abbas in a separate case](#) alleging that he conspired to launder hundreds of millions of dollars from BEC frauds and other scams.

Accompanying Mitigation Efforts

Throughout the investigation, the FBI and the Justice Department provided specific information to victims about how they had been targeted or compromised, as well as information about the tactics, techniques, and procedures (TTPs) used by the hackers with the goals of remediating any intrusion and preventing future intrusions. That direct sharing of information took place in the United States and in foreign countries, often with the assistance of foreign law enforcement partners. The FBI also collaborated with certain private cybersecurity companies by sharing and analyzing information about the intrusion TTPs used by the members of the conspiracy.

TOP

9/12/23, 10:15 AM Office of Public Affairs | Three North Korean Military Hackers Indicted in Wide-Ranging Scheme to Commit Cyberattacks and Fin...

In addition to the criminal charges, the FBI and the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, in collaboration with the U.S. Department of Treasury, today released a joint cybersecurity advisory and malware analysis reports (MARs) regarding North Korean cryptocurrency malware. The joint cybersecurity analysis and MARs highlight the cyber threat North Korea – which is referred to by the U.S. government as HIDDEN COBRA – poses to cryptocurrency and identify malware and indicators of compromise related to the “AppleJeus” family of malware (the name given by the cybersecurity community to a family of North Korean malicious cryptocurrency applications that includes Celas Trade Pro, WorldBit-Bot, Union Crypto Trader, Kupay Wallet, CoinGo Trade, Dorusio, CryptoNeuro Trader, and Ants2Whale). The joint cybersecurity advisory and MARs collectively provide the cybersecurity community and public with information about identifying North Korean malicious cryptocurrency applications, avoiding intrusions, and remedying infections.

The U.S. Attorney's Office and FBI also obtained seizure warrants authorizing the FBI to seize cryptocurrency stolen by the North Korean hackers from a victim in the indictment – a financial services company in New York – held at two cryptocurrency exchanges. The seizures include sums of multiple cryptocurrencies totaling approximately \$1.9 million, which will ultimately be returned to the victim.

Jon, Kim, and Park are charged with one count of conspiracy to commit computer fraud and abuse, which carries a maximum sentence of five years in prison, and one count of conspiracy to commit wire fraud and bank fraud, which carries a maximum sentence of 30 years in prison.

In relation to the case filed in Los Angeles, Alaumary has agreed to plead guilty to one count of conspiracy to commit money laundering, which carries a maximum sentence of 20 years in prison.

The charges contained in the indictment are merely accusations and the defendants are presumed innocent unless and until proven guilty beyond a reasonable doubt.

The investigation of Jon, Kim, and Park was led by the FBI's Los Angeles Field Office, which worked closely with the FBI's Charlotte Field Office. The U.S. Secret Service's Los Angeles Field Office and Global Investigative Operations Center provided substantial assistance. The FBI's Cyber Division also provided substantial assistance.

The investigations of Alaumary were conducted by the U.S. Secret Service's Savannah Field Office, FBI's Los Angeles Field Office, and the U.S. Secret Service's Los Angeles Field Office and Global Investigative Operations Center. The FBI's Criminal Investigative Division also provided substantial assistance.

The case against Jon, Kim, and Park is being prosecuted by Assistant U.S. Attorneys Anil Antony and Khaldoun Shobaki of the Cyber and Intellectual Property Crimes Section, w TOP

9/12/23, 10:15 AM Office of Public Affairs | Three North Korean Military Hackers Indicted in Wide-Ranging Scheme to Commit Cyberattacks and Fin...

substantial assistance from Trial Attorney Scott Claffee of the Department of Justice National Security Division's Counterintelligence and Export Control Section.

Assistant U.S. Attorneys Antony and Shobaki are also prosecuting the case against Alaumary, in which the U.S. Attorney's Office for the Southern District of Georgia and the Criminal Division's Computer Crimes and Intellectual Property Section (CCIPS) provided substantial assistance. Assistant U.S. Attorneys Antony and Shobaki, along with Assistant U.S. Attorney Jonathan Galatzan of the Asset Forfeiture Section, also obtained the seizure warrants for cryptocurrency stolen from the financial services company in New York.

The Criminal Division's Office of International Affairs provided assistance throughout these investigations, as did many of the FBI's Legal Attachés, as well as foreign authorities around the world. Numerous victims cooperated and provided valuable assistance.

Updated July 13, 2022

Attachments

[Indictment.pdf](#) [PDF, 327 KB]

[Jon Hyok Wanted Poster.pdf](#) [PDF, 425 KB]

[Kim Il Wanted Poster.pdf](#) [PDF, 800 KB]

[Park Hyok Wanted Poster.pdf](#) [PDF, 218 KB]

Topics

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Components

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Press Release Number: 21-154

TOP

Mrs. KIM OF CALIFORNIA. OK. Without objection. The gentleman's time has expired. But, because this is an important issue, I would like to give Ms. Scholte, who has been wanting to respond to the Congressman.

Ms. SCHOLTE. Yes. Congressman Sherman, you very much focused on the solution to this issue in 2017. You held a roundtable with the North Korean defector NGO leaders that were involved in the information campaign.

It was powerful. That's the solution to this. Just focusing on the nuclear issue feeds the lie that that regime tells its own people, that we do not care about them.

We have to communicate the truth to the people of North Korea. And, that roundtable, you were so moved by those people that were risking their lives to get information into North Korea.

We need to be stepping up the information campaign. The people of North Korea need to know the truth, that there's a hearing like this where we're talking about the suffering that's happening to the people of North Korea.

We need to put human rights at the forefront. We need to do everything we can to help support the North Korean defectors and the work that they're doing.

Mrs. KIM OF CALIFORNIA. Thank you very much. The votes have been called. And, the Committee will now stand in recess.

We'll be back in about 10 to 15 minutes. Don't go away.

[Recess.]

Mrs. RADEWAGEN [presiding]. Thank you so much for your patience. And, it can be crazy on the Hill at this time of the year.

So, let's see, let's just move right along here. I now recognize myself for 5 minutes. And, I represent American Samoa. Even though we're thousands of miles away from North Korea, we too have been fearful of their malign actions.

A few years ago, my home hosted a North Korean freighter that we seized after it was caught illegally transporting goods.

So, Mr. Klinger, how can security dialogs like the Quad or AUKUS impact DPRK activities? Do they escalate? Provide deterrence? Change nothing at all?

Mr. KLINGER. Well, I think efforts amongst the Indo-Pacific nations to coordinate on not only security threats but criminal activity, is beneficial. You know, it is not directed, you know, to escalate tensions or to undermine efforts at diplomacy.

But, it's, you know, security we're trying to have a broad coalition of democracies and like-minded nations throughout the Indo-Pacific to address common security threats.

It's not only nuclear weapons and missiles, but it's criminal activity as well as Chinese efforts to intimidate nations throughout the region.

So, what we've seen is as the Chinese and North Korean threats have grown, nations throughout the Indo-Pacific have banded together more strongly to resist those efforts by not only North Korea, but also China.

Mrs. RADEWAGEN. So, Mr. Klinger, with the limited dialog between the U.S. and DPRK, how has the DPRK been increasing their collaboration in recent years with other State or non-State actors?

Mr. KLINGER. What we've seen is over the decades, even when the U.S. was engaged with North Korea, they continued developing and refining, expanding their nuclear and missile arsenals.

So, even when we had treaties and agreements with them, they continued to build those weapons in defiance. The first four international agreements with North Korea on nuclear weapons were arms control. And, they ended, they failed, because North Korea was cheating on them.

The second set of four failed international agreements on denuclearization failed because North Korea did not fully comply with them.

We've also had 253 inter-Korean agreements. And, those have not moderated North Korean behavior. And, the U.S. is, right now, is repeatedly saying they're trying to engage not only in nuclear weapon issues, but on repatriation of war remains, or risk reduction, or tension reduction issues.

And, North Korea is the one that has repeatedly rejected repeated end treaties for engagement. Not only by the U.S. but other nations.

Mrs. RADEWAGEN. So, do DPRK attacks have the potential to escalate or trigger a geopolitical incident or even potentially a war?

Mr. KLINGER. They certainly have very dangerous nuclear and missile and biological and chemical warfare capabilities. They also have very large conventional weapons force.

We've seen in the last year when they've engaged in very extensive conventional force exercises, in some cases firing missiles south of the maritime demarcation line between the Koreas. They have flown large numbers of aircraft close to the DMZ.

So, they have—and, even when the U.S. and South Korea stopped large scale military exercises in 2018, North Korea did not reciprocate. They continued their winter training cycle, summer training cycle, and other large scale exercises.

Mrs. RADEWAGEN. So, Ms. Scholte, what exactly does the DPRK do with the State or commercial secrets and money that they obtain through cybercrime?

Ms. SCHOLTE. Based on the testimony of North Korean defectors, high-ranking ones that have been involved in this, the funds that come from their illicit activities are used No. 1, for the lavish lifestyle of the dictator.

No. 2, to keep the security apparatus that keeps the people under surveillance. And, the third thing is, to develop their nuclear weapons program.

Now, I wanted too just, if I may, just explain what I think the solution to this all is. I absolutely believe that when Hwang Jang-yop defected, he was the highest ranking defector. He was the creator of the Juche religion.

He was the right-hand name of Kim Il Sung and the tutor for Kim Jong Il. And, when Hwang Jang-yop defected, he had completely turned against that regime.

And, he said, human rights is their Achilles heel. Giving the people of North Korea the knowledge that they're entitled to human rights is the most important weapon that we have by getting information into North Korea.

And, for too long we've focused on thinking that we can make a deal. As Bruce was pointing out, to making some deal with Korea, they've never abided by any agreement. They use north—they use talks to extract concessions and aid. They continue to threaten.

And so, I think that we're losing the opportunity. We need to be focusing on getting information into North Korea by land, by sea, and by air.

And, that's why we were winning the information campaign. That's why Kim Jong Un shut the border down. He's trying to—he's killing people for listening to K-Pop music.

Mrs. RADEWAGEN. Thank you. I would now like to recognize Ranking Member Bera.

Mr. BERA. Thank you.

Mrs. RADEWAGEN. For 5 minutes of questions.

Mr. BERA. Thank you, Chairwoman. Ms. Jun, in your testimony you State that North Korea's illicit financing through cyber means is a management problem, not a deterrence problem.

Since North Korea has not really been persuaded to cease malign cyber activity through acts of punishment, you believe our goals should be to mitigate the frequency and scale of North Korea's cyber regime enterprise through various policy levers and cooperation with international partners.

Can you highlight some of the policy levers that you think we ought to be using and, you know, how effective those measures would be?

Ms. JUN. Certainly. Thank you, Congressman. So, I think there are basically two ways to look at this. A set of things we can do before the hack occurs, and a set of things we can do after the hack occurs.

So, before the hack occurs, as my colleagues Bruce and Jean have mentioned, there are things we can do in terms of making sure that North Korean IT workers leveraging fake identities operating abroad, can no longer do so, because companies have stricter identity verification mechanisms, because third party States harboring these IT workers are now abiding by U.N. sanctions to, you know, stop harboring these people and repatriate them back to North Korea.

There are things we can do in terms of regional, at a regional level. And, I think actually, the U.S. and South Korea alliance is a perfect segue into thinking about this from a more Indo-Pacific strategy.

So, the U.S.-Korea alliance has been doing great in terms of responding to the North Korean cyber threat, in terms of issuing sanctions, advisories, everything. Reimagining and expanding the alliance to think about the cyber cooperation in terms of an Indo-Pacific strategy, would really help to help with things like capacity building in Southeast Asia, to help, to bolster our cyber defenses in this area.

And also, there are things we can do after the hack occurs in terms of shorting the lag time between when the money is first stolen and the time it takes to end up in Kim's pockets.

And so, there are a number of things that the U.S. Government, specifically OFAC has already done, such as designating certain

cryptocurrency exchanges and cryptocurrency mixers and individual bit coin wallet addresses as under the SDN list.

However, these are not being properly enforce. And, you know, for example if one wallet address is under the sanctions list, they can quickly transfer their money to a fresh new wallet that is not sanctioned and therefore, continue to launder that way.

They also are wiring money through already sanctioned exchanges such as Russia-based Garantex Cryptocurrency Exchange, which is already under sanctions, but has no barriers to North Korea's criminal enterprise.

Mr. BERA. OK. Mr. Klinger, you touched on the utilization of authorities that the Administration already has for secondary sanctions. You know, whether that's Chinese banks or other entities that, you know, maybe in some ways employing these North Korean workers, et cetera.

Do you want to expand on Ms. Jun's answer and, you know, policies that we already have outside of just secondary sanctions on the banks?

And then maybe policies that we do not have, that we should be thinking about, address this.

Mr. KLINGER. I always wonder why there would be any reason for hesitation in fully enforcing our laws. You know, we can debate about denuclearization or arms control and have good debates on that.

But, to me it seems, when you come to cybercrimes, there should be no question as too fully enforce the laws. And, it's just how do you do that?

Certainly, cybercrimes are very difficult to discern and identify sort of beyond a reasonable doubt who's the perpetrator. They're meant to be very difficult to discern.

But, once you do, then you need to go after all of those that are involved or facilitating that behavior. And, I think the U.S. and South Korean have been doing that to a greater degree in recent years.

So, we have the authorities, or even cybersecurity companies, have been able to claw back a large part of some of the money that has been stolen.

So, you know, authorities that would—additional authorities that would enable U.S. law enforcement or regulatory agencies too more efficiently do that, I think, should be looked into.

Mr. BERA. And, just kind of continuing, Ms. Lee, I think Mr. Klinger appropriately pointed out that while the Biden Administration said the door is open, you know, we're open to dialog, obviously Kim Jong Un has shut that door and is not willing to dialog.

You know, an interesting thing obviously happened last week with the Private who ran across the border. A dialog is going to occur, I have to imagine.

You know, again, whether that's a month from now, 2 months from now, et cetera. But, you know, given, you know, what—there's still a lot that remains to be seen for us to learn.

But, just from your perspective, your expertise, your time in North Korea, how do you see this issue of dialog, and you know, and where we ought to go and what we ought to do?

Ms. LEE. I do think, and I hope that things will shift after this big anniversary and these celebrations are over. And, that the visit by the Chinese and high-level Chinese delegation and the Russian Defense Minister suggests that the border will start to open up.

I do not think that that means that outreach to the United States is imminent. I do believe that Kim Jong Un is going to sit back and wait to see what happens with the next U.S. Presidential election.

But, I do think it's good to look back at what happened in 2017, 2018, and 2019, to remember and put into context what we're seeing now.

I do look at 2017, for example, as a year, I call it in my podcast, fire and fury, where Kim Jung Un wanted to buildup that, his nuclear program to the point where he felt that he could step out into the world as a figure of respect, standing shoulder to shoulder with the leaders of the countries around him.

He was not in that position before 2017. He was the young heir to an impoverished country. He felt in 2017 that he had done enough. And he pivoted to diplomacy.

But, unfortunately those negotiations did not succeed. And, he must have felt that it was not enough. So, he has shut himself off in order to expand that weapons program.

I do hope that eventually there comes a time where he decides it is enough and it's time to pivot and open his country up. Because he knows that the North Korean people are tired of war. They're tired of resources being pumped into that program.

He just wants to reach a point where he can claim the weapons without having to give them all up, negotiate them some for impression.

Mr. BERA. Thank you. My time has expired. I yield back.

Ms. LEE. Did you want to talk about the Private in North Korea? Can I take a few seconds to talk about that?

Mrs. RADEWAGEN. Yes. Go ahead.

Ms. LEE. And, I do not think that we will—as you say, it maybe weeks. I hope it's not months.

They are certainly trying to figure out how best to handle him. How best to make the most of having an American soldier in their custody.

I do hope that it becomes an opportunity for diplomacy. It becomes an occasion for them, a face-saving moment for them to reach out to the United States because they have an American soldier in their custody.

And, that it does not become an occasion for them to use it to their advantage in a more, in a way that would bring harm to him. But, it could go either way.

I do not think he has the kind of value that they may think. And, once they make that decision, I hope that they will release him, or at least engage with the United States and use it as an opportunity for some contact.

Mrs. RADEWAGEN. I would now like to recognize Mr. Barr for 5 minutes of questions.

Mr. BARR. Thank you, Madam Chair. And, thank you to our witnesses. And, to any of our witnesses, I wanted to ask you about some of the sanctions evasion tactics of the regime in North Korea.

Obviously you've testified that the cyber-criminal activity that is occurring allows not only for sanctions evasion, but for North Korea to finance its missile and nuclear programs.

But, in 2020, in the Fiscal Year NDAA, we included legislation, my bill, the Otto Warmbier North Korea Nuclear Sanctions Act, that imposed at the time, the toughest financial sanctions ever directed at North Korea, in order to cutoff Pyongyang's ability to earn hard currency.

And, it was a secondary sanctions bill. It targeted foreign banks. And, I think some of the testimony today is that there's not enough sanctions activity on banks that allow for the illicit financing of the DPRK.

So, my question is, what's happening there? Why aren't these sanctions on banks proceeding?

And, despite whatever sanctions are there, it's pretty clear that Chinese firms and banks are continuing to help North Korea circumvent U.S. sanctions.

So, anyone want to comment on that? And, why we do not see more secondary sanctions on especially Chinese banks?

Mr. KLINGER. Well, I remember testifying before this Committee about a decade ago when people said why aren't we fully enforcing our laws against China? And, my answer was, I do not know.

It's been through successive Administrations. Just to point out, back in, I believe, it was 2005 when the U.S. imposed measures against Banco Delta Asia, a bank in Macau, it led to at least two dozen financial institutions throughout the world to cutoff North Korea, including the Bank of China defying the government of China and cutting off North Korea, because they were afraid of secondary sanctions from the United States.

So, a North Korean official told a White House official, you finally found a way to hurt us. Once the Bush Administration reversed that action to improve the atmosphere for six-party talks, then the Bank of China and the others went back to engaging with North Korea.

So, it shows that if we enforce our laws, it can get financial institutions who are fearful of secondary sanctions, to even defy their own governments.

And so, it can have an impact in reducing North Korea's ability to engage with the outside world.

Mr. BARR. Well, in its March 2020 report, the U.N. Panel of Experts concluded that the DPRK continues to access international banking channels in violation of United Nations sanctions, mainly by using third-party intermediaries.

But, now we have in a 2020 NDAA, 3 years ago, we had the toughest economic sanctions authorization. We authorized the executive branch to impose secondary sanctions on Chinese and other foreign banks facilitating the illicit finance of this regime. And, we see no action.

Does anyone else besides Mr. Klinger want to comment on this? And, I mean, and confirm for me that Congress has given the Administration the authorities. But, is the Biden Administration actually using them?

And, if not, why not?

Ms. SCHOLTE. I do not understand it. Because we have the tools and we're not abiding by our own sanctions. And, you have a situation now where it was all these other ways that they're making money, not just with illicit activities with IT, but also with the slave labor.

I mean, there's people—that practice was supposed to end. And, there are countries where, I think you had it in your testimony, where there are North Koreans that are slave laborers.

And, their income goes, they're cash cows for the regime. And, they are subjected to miserable working conditions.

So, there's all kinds of things that are not being done. Why are they not being done? I do not know. But, I—well, I would like to mention about the information campaign.

Mr. BARR. Well, I'd love for you to comment on that. But, just the secondary sanctions, the idea is, the foreign bank, whether it's Chinese or any other, would have a choice to make.

You either do business with North Korea and the proceeds of their cyberattacks or whatever, you know, their laborers, you know, sending money back to the regime, however they do.

They have a choice. This bank has a choice. They can do business with North Korea or they can have access to the U.S. financial system. But, they cannot do both.

That is a powerful tool in our quiver. And, it is not being use. And, Congress has authorized the Treasury Department to utilize this tool. And, they're sitting on their hands over there.

So, if—anyway, my time has expired. But, if anybody else wants to comment on that, I'd invite it.

Ms. SCHOLTE. I'm just going to add, there's a very interesting chart just totally illustrates your point that's in this book that Josh Stanton prepared which shows the drop of Treasury designations, sanctions dropping dramatically in 2020, after the Singapore and Hanoi summits. And then, hardly going back up again.

So, yes, there's a whole gap there.

Mr. BARR. Am I right that it is mainly Chinese banks that are facilitating?

Ms. SCHOLTE. I would say mostly. But, probably 80 percent. But, there's other banks.

Mr. KLINGER. Yes. I would say the Chinese banks are the largest facilitators of North Korean behavior. And, I mentioned earlier that this Committee several years ago sent a list of 12 Chinese banks, they sent a list to the White House in 2017 that believed they were committing money laundering crimes in the United States and no action was taken against any of those banks.

Mr. BARR. Well, a policy of chasing diplomacy without actually using the tools that we have, is attempting to negotiate from a position of weakness. And, we're not going to achieve diplomatic goals without actually using the tools that we have.

So, with that I yield.

Mrs. RADEWAGEN. Thank you. Well, I want to thank all the witnesses for their valuable testimony and, of course, the members for their questions. The members of the Committee may have some additional questions and we will ask you to respond to these in writing.

Pursuant to Committee rules, all members may have 5 days to submit statements, questions, and extraneous materials for the record, subject to the length limitations.

Without objection, the Committee stands adjourned.

[Whereupon, at 3:48 p.m., the subcommittee was adjourned.]

APPENDIX



**COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE HEARING NOTICE**
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128

Subcommittee on the Indo-Pacific
Young Kim (R-CA), Chairwoman

July 20, 2023

Revised

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs to be held at 2:00 p.m. in Room 2200 of the Rayburn House Office Building. The hearing is available by live webcast on the Committee website at <https://foreignaffairs.house.gov/>.

DATE: Thursday July 27, 2023

TIME: 2:00 PM

LOCATION: Rayburn 2200

SUBJECT: Illicit IT: Bankrolling Kim Jong Un

WITNESSES: Mr. Bruce Klingner
Senior Research Fellow, Asian Studies Center
The Heritage Foundation

Ms. Jean H. Lee
Journalist and former Pyongyang Bureau Chief, Associated Press

Ms. Suzanne Scholte
President
Defense Forum Foundation

****** **Ms. Jenny Jun**
Research Fellow
Center for Security and Emerging Technology

****NOTE:** Witnesses added

*NOTE: Witnesses may be added.

By Direction of the Chair

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202 -226-8467 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee

To fill out this form online: Either use the tab key to travel through each field or mouse click each line or within blue box. Type in information.

COMMITTEE ON FOREIGN AFFAIRS
MINUTES OF FULL COMMITTEE HEARING

Note: Red boxes with red type will NOT print.

Day 27 Date July Room RHOB-2200

Starting Time 2:23 PM Ending Time 3:43

Recesses ☐ (____ to ____) (____ to ____) (____ to ____) (____ to ____) (____ to ____) (____ to ____)

Presiding Member(s)

Check all of the following that apply:

Open Session ☒

Executive (closed) Session ☐

Televised ☐

Electronically Recorded (taped) ☐

Stenographic Record ☐

To select a box, mouse click it, or tab to it and use the enter key to select. Another click on the same box will deselect it.

TITLE OF HEARING:

Illicit IT: Bankrolling Kim Jong Un

COMMITTEE MEMBERS PRESENT:

Chairwoman Kim, Ranking Member Bera, Rep. Sherman, Rep. Buck, Rep. Connolly, Rep. Barr, Rep. Radvagen

NON-COMMITTEE MEMBERS PRESENT:

HEARING WITNESSES: Same as meeting notice attached? Yes ☒ No ☐

(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: (List any statements submitted for the record.)

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED 3:43 PM

Note: Please include accompanying witnesses with their titles, etc. (please note the fact that they are accompanying witnesses)

Clear Form

Full Committee Hearing Coordinator

Committee on Foreign Affairs Subcommittee on the Indo-Pacific

118th Congress

ATTENDANCE

Meeting on: Illicit IT: “Bankrolling Kim Jong Un”

Date: July 27, 2023

Convened: 2:23

Adjourned: 3:43

[illegible]

CRDF GLOBAL: THE DPRK'S EVASION OF U.S. AND UN SANCTIONS

Illicit IT: Bankrolling Kim Jong Un

Thursday, July 27, 2023

Rayburn House Office Building Room 2200

CRDF GLOBAL: The DPRK's Evasion of U.S. and UN Sanctions

The DPRK (North Korea) evades U.S. and UN sanctions through a complex revenue-generating system of IT workers and other overseas labor, cryptoassets and cyber-enabled financial crimes, traditional money laundering, and illicit and deceptive shipping practices.

Part of the wave of overseas labor deployed by the DPRK despite the [UNSCR 2397](#) to expel DPRK overseas laborers by December 2019, IT workers particularly generate substantial revenue (estimated at more than \$500 million) for the DPRK. The [North Korean IT workers](#) abuse freelance platforms, abuse their privileged access as contractors, and often misrepresent themselves while generating funds that directly benefit the DPRK regime and its WMD and missile programs. A common tactic used by North Korean IT workers is to pretend to be a citizen of the Republic of China and using this false identity to request payment in cryptocurrency.

In the financial sector, the DPRK has been successful in not only traditional money laundering, but also in cyber-enabled financial theft and money laundering. In cryptoassets alone, the DPRK has stolen [an estimated \\$1.2 billion](#). They are also infamous for extortion campaigns like the [WannaCry 2.0 ransomware attack](#) and the [Sony Pictures attack](#). With sophisticated, state-sponsored hackers like the Lazarus Group, the DPRK has invested heavily in the human capital required to conduct these illicit cyber operations that pose a significant threat to the security of countries around the world in both the public and private sectors.

In the maritime space, the DPRK has been relying on maritime trade to procure and sell sanctioned goods. The DPRK has been adept at [vessel identity laundering](#) by tampering with or falsifying the identity of vessels as well as ship-to-ship transfers and false cargo. There are many cases of ship-to-ship transfers for the procurement of refined petroleum and the export of coal. The [Courageous](#) case study is one such example. The most concerning development in recent years has been the DPRK's acquisition of cargo ships, which demonstrates that the DPRK is invested in continuing to evade sanctions through maritime means.

Combating DPRK sanctions evasion will take continued, amplified, and concerted effort among U.S. government agencies as well as with our international partners. It will be essential for the U.S. government to continue to prioritize the work being done to mitigate DPRK sanctions evasion and its direct threats to national security.

Rosa Park-Tokola is a Senior Project Lead for DPRK Counterproliferation at *CRDF Global*. She manages the countering DPRK sanctions evasion portfolio. The views expressed here are her own and do not necessarily reflect the position of CRDF Global or its partners.

**NORTH KOREA'S HUMAN RIGHTS SITUATION: FOCUSING
ON OVERSEAS WORKERS AND DEFECTORS**

**North Korea's Human Rights Situation:
Focusing on Overseas Workers and Defectors**

**Institute of National Security Strategy (INSS)
Center for North Korean Human Rights
Seoul, Korea**

[Table of Contents]

1. North Korea's Foreign Currency Earnings from IT and Dispatched Workers Overseas
 - 1) North Korean earnings from hacking and illicit IT activities
 - 2) Profits earned through the forced labor of overseas NK workers
 - 3) Income from cyber hackings and other illegal activities
 - 4) Illegal Foreign Currency Earnings Dedicated to Nuclear Missile Development
2. Human Rights Tragedy of Overseas North Korean Workers
 - 1) Human Rights Violations in North Korea
 - 2) Response of Recipient Countries of Overseas NK Workers
3. Human Rights Abuse of North Korean Defectors in China
 - 1) Human Rights Violations in China
 - 2) Human Rights Violations in North Korea
4. Problems of the Reactionary Ideology and Culture Rejection Act
 - 1) Elements of Unjust Laws of "Human Rights Violations"

Appendix

Reference Material #1: Illicit IT Activities of Overseas NK Workers, etc. (in Korean)

Reference Material #2: Advisory on DPRK IT Workers (in English)

1. North Korea's Foreign Currency Earnings from IT and Dispatched Workers Overseas

- 1) North Korean earnings from hacking and illicit IT activities
- North Korea has dispatched thousands of high-skilled IT personnel to various countries in Asia and Africa, and has reaped in foreign currency by obtaining IT jobs in such regions.
- Under disguised identities as foreigners, North Koreans work as freelancers in the IT field:
 - Receive orders from companies in advanced countries to develop computer software and mobile applications, illegally acquiring foreign currency amounting to hundreds of millions of dollars every year.
 - In particular, it is estimated that virtual assets worth about 860 billion won (700 million

dollars) were stolen from Harmony (U.S.) and SkyMavis (Vietnam) last year.

- Most of the North Korean IT personnel are affiliated with organizations designated as sanction targets according to the UN Security Council resolutions on North Korea, such as the WPK's Military Industry Department and Ministry of Defense.
- A significant portion of the funds earned by North Korean IT personnel are transferred to these organizations and used for North Korea's nuclear missile development.

2) Profits earned through the forced labor of overseas North Korean workers

- North Korea has currently dispatched over 100,000 construction, medical, and IT workers to 40 countries, despite UN Security Council Resolution 2397, which requires all overseas North Korean workers to be repatriated by December, 2019.
- Overseas North Korean workers serve as a major source of foreign currency income for North Korea, earning an estimated annual income of \$300 million in foreign currency.

3) Income from cyber hackings and other illegal activities

- Last year, the amount of illegal foreign currency acquired by North Korea through the smuggling of coal, gold, and weapons amounted to 200 million dollars.
- * Under the UN sanction adopted five times since 2016, North Korea is prohibited from exporting minerals, agricultural and marine products, and textile products, which are the country's main means of earning foreign currency.

4) Illegal Foreign Currency Earnings Dedicated to Nuclear Missile Development

- The amount of illegal foreign currency acquired by North Korea through cyber hackings, overseas workers, and smugglings over the past five years is estimated at \$500million~\$1billion per year, however, the detailed amount and proportion of expenditure on WMD development have yet to be confirmed.
- It is highly possible that a significant amount of the earnings is diverted to nuclear missile development, as the affiliated agencies and personnel of the WPK's Military Industry Department and Ministry of Defense are also involved in cyber hackings, gold bullion exports, and the dispatch of overseas workers.

2. Human Rights Tragedy of Overseas North Korean Workers

Without receiving even basic human rights protection, overseas North Korean workers are degraded into "money-making machines" of the North Korean regime, and the COVID-19 pandemic has prolonged their enslavement period.

1) Human Rights Violations in North Korea

- Excessive Working Hours: Overseas workers are forced to 12 hours of daily labor without any days off, in poor working environments without any breaks allowed except for mealtime.
* “North Korean Workers in Vladivostok, Russia, 16 Hours of Full Labor during the Day, and Juche Revolution Education during the Evening” (Joongang Daily, May 2023)
- Embezzlement of Wages: North Korean authorities extort most of the income earned by overseas workers, and even this is deducted from personal allowances if the earning goal is not achieved, resulting in a considerable number of “empty-handed returnees.”
* “Jung Pak, U.S. Deputy Special Representative for DPRK: 90% of North Korean IT Workers’ Income, Collected by the North Korean Regime” (Chosun Ilbo, May 2023)
- Poor Working Environment: Physical damage is frequently caused by industrial accidents due to laborers being mobilized for intense work without safety devices, however, overseas workers do not receive appropriate treatment.
* “North Korean Construction Workers without Proper Safety Gear Work Dangerously on High Rise Buildings” (Joongang Daily, May 2023)
- Surveillance · Control: Virtually all aspects of the workers’ privacy are strictly controlled through group confinement, passport retrievals, and prohibition of external contacts and information.
* “North Korean Authorities Gather Surveillance Data of Overseas North Korean Workers in Russia” (RFA, October 2022)

2) Response of Recipient Countries of North Korean Workers

- Overseas North Korean workers are degraded to the status of illegal aliens under the UN Security Council sanctions against North Korea, and are situated in adverse circumstance in which they are not protected by both North Korean authorities or by the countries of dispatch.
- Recipient countries of North Korean workers do not apply their state labor laws on North Korean workers, and even the public ignore and neglect human rights violations occurring in their own countries.

3. Human Rights Abuse of North Korean Defectors in China

North Korean defectors in China, as illegal aliens, are left in the “blind spot of human rights,” and are exposed to sexual exploitation, human trafficking, the risk of forced repatriation, and harsh punishment by North Korean authorities.

1) Human Rights Violations in China

- Human Trafficking: North Korean women are exposed to human trafficking in the form of forced marriage to finance their escape, and are defenseless against sexual abuse, violence, and labor exploitation.

* “North Korean Defector, ‘When Sold to Chinese Men, We Were Beaten and Treated as Animals’” (Yonhap News, May 2023)

- Forced Repatriation: China regards North Korean defectors as illegal “economic migrants,” not refugees, and actively sympathizes with human rights violations such as detaining North Korean defectors in detention centers for forced repatriation.

* UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) Report, “It is a concern that China classifies North Korean women as migrants, forcibly repatriates them, and deprives children born of North Korean women of their rights, such as nationality registration, education, and medical care.” (May 2023)

- Expansion of Detention Facilities: China has set up detention facilities that can accommodate a large number of people in the border area between China and North Korea, raising the possibility of repatriation of North Korean defectors to North Korea when the border is reopened.

* The Database Center for North Korean Human Rights (NKDB), disclosed photos of detention centers in China and the estimated number of detainees (600~2,000) during a U.S. Congressional hearing (June 2023)

2) Human Rights Violations in North Korea

- Punishment of Repatriated Defectors: Repatriated defectors undergo strip searches, torture, and forced abortions, and harsh punishments. According to the defecting purpose, repatriated defectors are imposed with correctional labor or even the death penalty.

* North Korean defector (forcibly repatriated in 2014), “I was strip-searched and investigated as a spy by the North Korean Security Department” (Daily NK, September 202)

4. Problems of the Reactionary Ideology and Culture Rejection Act

Despite the efforts of North Korean authorities to control the influx of external culture, the North Korean residents enjoy South Korean culture, with the spread of culture imitation intensifying.

⇒ Due to the practical limits of internal control, a special law was enacted on December 4, 2020.

1) Elements of Unjust Laws of “Human Rights Violations”

- Violation of the freedom of expression (Universal Declaration of Human Rights Article 19) and the right to access information (ICCPR Article 19): North Korea’s control of access to external information and its expansion of crackdown targets, violate “the freedom to seek, receive, and transmit all information.”

* Article 15 (Basic Demand for the Prohibition of Viewing and Disseminating Reactionary Ideology and Culture): Institutions, enterprises, organizations and citizens must never view, disseminate, or reproduce reactionary ideology and culture.

- Excessive Punishment (Universal Declaration of Human Rights Violations Article 18, ICCPR Article 18): The level of punishment for the influx and viewing of external information and culture is significantly raised to the level of serious crimes such as murder and rape, and can even impose the death penalty.
 - * Unspecific conditions for punishable offenses enable excessive punishments => violates the principle of legality
 - * Article 28 (Crime of Propagating Ideological Culture of Hostile Countries): In the case of importing, distributing, or disseminating a large number of films, recordings, compilations, or publications from hostile countries, or in the case of encouraging group viewings and readings, life-time correctional labor punishment or the death penalty shall be imposed.
 - * (Example) In October 2022, two teenage students in Hyesan city were executed for watching and distributing South Korean films (RFA, February 2023)
- Joint Responsibility (Universal Declaration of Human Rights Violations Article 7): Imposing responsibility for mutual surveillance in the society and at home, and forcing such reporting activities, is a clear violation of human rights as an element of guilt-by-association.
 - * Article 34 (Crime of Non-Reporting): A person who is aware of the inflow, viewing or dissemination of sexual recordings of puppet states or hostile countries, and fails to report them shall be punished by labor training.
 - * (Example) Teenage boy in Sinuiju was caught watching pornography and his parents were also deported to a rural area.

Appendix

[Reference Material #1]

[Reference 1]

(INSS)

1. The Cases of North Korea's illegal IT Activities Abroad

<Chart> Generating foreign currencies through hacking, program development, IT workers and collaboration

The estimates are shown below according to each organization.

Name	Total Amount	Published	Reference
Chainalysis	\$3.2 billion	2023	2018-2022
	\$1.65 billion	2023	2022
Elliptic	\$2.3 billion	2023	2017-2022 Japan Nikkei analysis
UN	\$630 million ~\$1	2023	UN Security Council Sanctions

	billion		Committee on North Korea Report
The Korea International Trade Association	\$2.3 billion	2023	Cyber hacking + Illegal exports
	\$1.65 billion	2023	43.4% of the world's total amount of extortion

I. North Korea's Approach to Foreign Currency Earnings Through IT Workers

○ Under the Kim Jong Ur regime, due to the strong sanctions on North Korea, North Korea started to look to sending IT workers abroad to avoid sanctions and increase its profitability. North Korean central ministries and departments are hiring IT workers and sending them abroad competitively. Earning foreign currencies through IT workers has become North Korea's main strategy.

- To manage and execute Kim Jong Un's direct orders, these government institutions must earn foreign currencies and send them to Kim Jong Un.
- North Korea's government institutions such as the Ministry of Defense, the Reconnaissance General Bureau, the Korean State Railway, the Yookhaeunsung, the Committee on Education, and the Ministry of Communication Industry manage information centers or computer centers under their jurisdiction to earn foreign currencies to secure "revolution fund." These institutions often compete against one another to recruit IT workers.
- North Korea makes software and web development contracts with China, Russia, Southeast Asian countries, and European countries to earn foreign currencies. As these North Korea IT workers advance their skills, they now often generate more revenues.
- Hiring locals in a foreign country to open an IP address, using their identities, and taking program orders online. Often, these IT workers get paid through PayPal accounts.
- North Korean IT workers abroad take orders to program Chinese and Southeast Asian companies' security, management, manufacturing programs. They typically make about \$50,000 - \$1 million.

○ North Korea also has created an IT special district in Najin-Sonbong district to earn foreign currencies inside North Korea.

- Forming an IT district and hosting workers in the district.
- Approximately 3,000 IT workers
- These IT workers are mostly dispatched from internal government institutions that have procedural restrictions on sending workers abroad.
- The Internet is available in this district.
- Sometimes, North Korean IT workers abroad hand over projects to the ones working in the district.

○ Since 2010, North Korea opened an online market connected to the outside world at the Korea

Computer Center and allowed IT workers in North Korea to make foreign transactions with a permission from the government.

○ The Ministry of Communications Industry is affiliated with the party cabinet and the Department of Military Industry. They have sent many program developers to China. Also, they have been deeply involved in developing missile launch technologies. (In 2021, the Bureau of Information Technology was restructured into the Ministry of Communications Industry)

○ Countries that host North Korea IT workers

- Typically, China (over 80%) and Russia.
- In China, 1 Dandong, 2 Yanji, 3 Shenyang, 4 Changchun, 5 Beijing, 6 Dalian, and 7 Harbin
- Some Southeast Asian countries and African countries (South Africa, Mozambique, and etc).

○ The number of IT workers abroad

- By the end of 2019, it was estimated 3,500 workers.
- Currently, it is estimated 3,000 workers.
- With strong sanctions on North Korea, approximately 300 – 500 IT workers were sent back to North Korea.
- 2,000 from China, 500 from Russia, and the rest from various countries.
- Until the COVID-19 pandemic, North Korea significantly increased the number of IT workers dispatched to Russia.

○ North Korean government institutions that have dispatched IT workers abroad.

- The Department of Military Industry and the Military (the Reconnaissance General Bureau, the Disintegration of Enemy Force Bureau, and the Committee on the National Defense) have sent the most IT workers abroad.
- Office 313 (the Korea Computer Center) under the Department of Military Industry
- The 75 Guidance Bureau under the Department of Military Industry.
- The Pyongyang Information Center under the Party's Finance and Budget Department.
- The Department of National Digitization (in 2021, it was integrated into the Ministry of Posts and Telecommunications and the Ministry of Electronic Industry and restructured as the Ministry of Information Industry).

○ The examples of North Korean IT workers earning foreign currencies.

- A IT worker typically earns \$5,000 - \$7,000 a month. The IT workers wire the money to a borrowed-name bank account (with a Chinese identity) for each group of IT workers. The head of each group:

- gives back 10 – 20% of the earning to an individual IT worker.
- calculates how much do they need to send back to North Korea. Once it is calculated, they cash out the earnings and hand deliver them to Pyongyang typically once or twice a year.
- pays Chinese companies (individuals) who allowed them to open borrowed-name bank accounts. Typically, \$500 - \$1,000 per IT worker.
- spends on food and lodging for their groups.
- takes the rest.

- (Example) A North Korean man in his 40s living in Liaoning, China, registered on a Japanese freelance technician recruitment website under the identity of a South Korean national acquaintance and subcontracted 7 tasks since 2019, including updating map apps, repairing a large Internet shopping mall website, and modifying a local government app. (Reported via KBS on May 18th, 2022)

- North Korean students who studied in India are the most wanted talents in North Korea, and these IT workers make \$20,000 - \$40,000 a month.

○ The timeline of North Korea's dispatch of IT workers abroad.

- North Korean IT workers started to be sent abroad in 2005.

- Between 2009 and 2010, sending IT workers to overseas became very active,

- Due to China's participation in sanctions enforcement targeting North Korea in 2019, the number of IT workers abroad decreased.

○ The ways of North Korea IT workers to earn foreign currencies.

- Settling down in a foreign country

- Establishing a front company using a Chinese identity.

- The front company invites North Korean IT workers to work for the company.

- Forging the identities of North Korean IT workers

- Once a North Korean IT worker arrives in a foreign country, the first thing they do is create a fake identity.

- The early days, these IT workers typically used Chinese identities. But, now, they also use Eastern European, Western European, and even American identities to create their fake identities.

- These IT workers often use illegal websites to steal someone's identity.

- Also, they often reach out to incompetent foreign IT workers and borrow their identities. These North Korean IT workers often come up with a cover story to hide their actual identity. When they approach a foreign IT worker, they say they need a Western identity to get more projects in the West.

- Through the ways mentioned above, these North Korean IT workers sometimes get a job with American companies and in rare cases, even as chief technology officers.

- Getting projects through online markets.
- Once these North Korean IT workers secure their fake identities, they bid for various projects posted online.
- Typically, they use websites such as upwork.com and freelancer.com.
- Once they build on their resume, it gets much easier for them to get a job with foreign IT companies.
- If they get a job with a foreign IT company, they can make around \$3,000 - \$8,000 a month.
- Exploiting the nature of remote work environment, sometimes, well-trained IT workers try to get multiple jobs at the same company using different identities.
- In early 2000s, these North Korean IT workers often only got involved in projects that the Chinese companies, which lent their company names, gave them.
- Later, as earning foreign currencies through IT workers became very important, these IT workers started to bid for projects online by themselves.
- These projects range from developing games to mobile apps to E commerce.
- Experienced North Korea IT workers hand these projects to foreign IT workers in India, Bangladesh, and Ukraine. This way, they can make so much more money.

- On cyber hacking

- The operation of cyber hacking team is extremely secretive.
- North Korean IT workers overseas are aware of the North Korean cyber hackers, but they don't know what kind of tasks they perform.
- The cyber hacking team gathers ample data base from illegal websites such as gambling websites.
- The data base they acquire from these illegal websites often serve as the foundation of their hacking activities.
- The cyber hacking team is stationed in China and prepares for its operations there. However, when they need to take on very significant operations, they often execute their operations out of Malaysia or a third country.

II. The Acquisition of Foreign Currency Through IT Workers Overseas

○ In Bulgaria, between 2012 and 2016, they earned \$6 million.

- Total earnings: \$6 million in 4 years.
- Name of Group: Computer Mission
- Name of Affiliated Institution: The 3rd Industry General Bureau (Korea Computer Center)
- Number of Overseas Workers: 60 (overall)
- Country of Operation: Bulgaria
- Time: 2012~2016

- Main Operation: Developing software programs
- Name of Benefactor: Workers' Party of Korea Finance and Budget Department (Revolutionary fund)
- Amount: \$2 million a year
- The Workers' Party of Korea Military Industry Department's interference has continued to increase.
- The Military Industry Department dispatched its IT workers to secure the funding for nuclear and ballistic missile programs. Up until November, 2019, it was estimated that they sent at least 1,000 IT workers abroad through subordinate entities or front companies.
- "Sobaeksoo Trading Company" and "Sobaeksoo Federation," which got involved in supplying nuclear development materials to the regime, dispatched IT workers to Vietnam. Albatross (company) of Vietnam worked with North Korean IT workers sent by at least two North Korean companies related to the Military Industry Department. These North Korean IT workers remained in Vietnam the last time it was checked (December 2019).
- Zhongguo Shenyang Yueli Decoration Co. Ltd hired 5 North Korean IT developers in April 2019, to develop AI products. These 5 IT workers were with "Namdaechun Trading Company" under the Academy of National Defense Science, which is listed in the sanctions list.

- The activities of Korea Computer Center (KCC) in China
- The center has multiple IT workers and fake companies in Dandong, Yanbian and other regions in China.
- According to an informant from KCC, there was a certain time period when KCC sent almost all their personnel to abroad that its office in Pyongyang was empty.
- KCC once borrowed Dandong Haotong Commercial Trade Co. Ltd. Identity.
- Also, Jung Sung-Hwa, the head of KCC Yanbian Office, runs Yanbian Silverstar Network Technology Co. Ltd., which is affiliated with the Military Industry Department. This raises speculation that KCC might contribute to North Korea's military industry.

○ In Nepal

- North Korea established Yong Bong Chand IT company in Nepal, and this shows how North Korean IT companies hide their identities and make contracts with local customers.
- On its website, it doesn't mention anything about North Korea and offers customers virtual and in-person options for making transactions. Thus, customers often fail to think about the possibility of doing business with North Korea.
- Various cases of North Korean IT workers' efforts to conduct fake employment scams.
- Some hackers attempt to hid their identities by forging their passports or college degrees. Further, they often try to get a job online through a third party.
- In June 2023, a North Korean IT worker attempted to get a job with an overseas office of a South Korean energy company and got caught. Sometimes, they post their profiles on LinkedIn.
- In the past, some of these IT workers got a job with American companies. Especially, by exploiting the nature of the remote work environment begot by COVID-19, after getting a job with an American

company, they hid their identities by executing most work through calls and messages and hiring an actor for video calls.

- Further, these North Korean IT workers often work as freelancers doing business with people from China, Russia, Canada, Serbia, Ukraine, and the U.S.

2. The Exploitation of North Korean Workers Abroad

I. The Recent Trend

○ In the past, the main areas were logging, construction, and farming. But now, the areas are developing in the direction of maximizing the use of available resources such as restaurant, IT, fisheries, dewatering, hotel, and medical care.

- It is estimated that there are about 20,000 – 25,000 North Korean workers working in Jilin and Liaoning (Dandong), China. These workers work on fishery, manufacturing accessories and electronic components. The North Korean workers working in the aforementioned regions significantly contribute to the regime's efforts to generate revenues.

- Dandong, China, is known to host the most North Korean overseas workers. As of November 2022, approximately 80,000 workers.

• At that time, China conducted PCR tests on almost every resident of Dandong City, and that's how it was revealed. The estimate above only considered workers from clothing and electronic components manufacturing firms. The total estimate is expected to go up once senior members and party elites in the city are also counted.

II. The Cases of Exploitation

○ In Russia

- Between late March and early April 2023, North Korea sent 350 workers to Moscow and St. Petersburg and 100 workers to Vladivostok. After the breakout of the Ukrainian War, North Korea has started to send more workers to Moscow and St. Petersburg regions. These workers typically cover their identities as students, visitors, and cultural exchange participants. The workers in Russia typically make more than the ones in China. For instance, if a worker is with a trading company under the military, they send about 740,000 won (\$577.67) to the regime. But, if a worker is not with any government agency, they send about 1,150,000 won (\$897.74) to the regime.

○ Mansudae Art Studio of the Propaganda and Agitation Department

- It has been generating foreign currency for the regime by selling artworks in China, it is currently based in 798 Art Zone in Beijing.

- Under Mansudae Overseas Projects Group, which is currently sanctioned by the U.N., it is still very active in Senegal participating in various public infrastructure projects such as constructing a food processing firm.

- It constructed “Africa Renaissance” in Senegal and monuments in Zimbabwe, Congo, and Namibia.
- It is currently working on a project to construct a shrine in Cambodia.
- To earn foreign currency, North Korea invested \$10 million of construction expenses in building Angkor Panorama Museum.
- The museum is 6,000m² and 34 meter tall. It took 4 years to finish the construction of the museum and a total of 63 technicians and artists were involved in the project.
- For the first 10 years, North Korea will keep the earnings of the museum. And then, North Korea and Cambodia will divide the earnings. However, eventually, the Cambodian government will get to keep the museum with the full rights.
- It is estimated that North Korea’s actual investment is around \$4 - \$5 million. North Korea overvalued Mansudae Art Studio’s figure paintings and sculptures to overstate its total investment figure.
- Mansudae Art Studio officially sent its agent to Peru in 2009. Also, its agents sell many art pieces in China and Russia through legal and illegal means.
- Restaurants and Artistic Handicrafts Stores (in 2016)
- These restaurants and stores are located in China, Cambodia, Vietnam, and Thailand. Typically, Korean-Chinese join to invest in these restaurants and stores. (Cambodia has 8 restaurants. Typically, 2 – 3 restaurants per country)
- Overseas Infrastructure Projects in Malaysia, Bangladesh, and Nepal
- These workers typically participate in mining and waterpower generation. It is estimated that there are about 290 mine workers in Malaysia.
- Korea South-South Cooperation Corporation under the Ministry of External Economic Relations send technicians to Bangladesh’s mines and Nepal’s hydroelectric power generation construction site.
- Dispatching Medical Teams Abroad
- North Korea has sent its medical workers to Nigeria and Tanzania.
- According to North Korea’s “medical cooperation agreement” with Angola, approximately 20 North Korean medical personnel are working in Angola.
- North Korea also sends medical personnel to Vietnam, Cambodia, and Laos where medical infrastructure is still developing. These North Korean medical personnel often perform or share their knowledge in oriental medicine.
- North Korean Athletes Abroad
- Since 2017, with strong sanctions on North Korea, North Korea has been heavily relied on North Korean athletes (especially soccer players) abroad to generate its revenues.
- These athletes often make more than 100 – 1,000 North Korean workers abroad combined.
- For instance, Han Kwang-Sung (with Al-Duhail SC for 5 years for \$5.25 million). Choi Sung-Hyuk

(Arezzo SS for \$24,000). Park Kwang-Ryong (Austria SKN St. Polten paid \$9.4 million for transfer fee)

- The above players graduated from Pyongyang International Soccer School in 2013 and got listed in the sanctions list. Their teams released them.

- Often, North Korean Embassies around the world handle the revenues generated by athletes and artists, and the revenues go directly towards Kim Jong Un.

- Also, North Korea has dispatched Taekwondo, soccer, and table tennis coaches to approximately 10 countries, including Libya, Cambodia, Czech, Bulgaria, and Laos, through exchange programs.

○ Salary Levels and Exploitation Cases

- IT workers: \$5,000 - \$7,000 monthly per person. But, they only get to keep \$150-200. (Sometimes, they get \$50 - \$70 bonus)

- According to the business contract between North Korea and Shandong Guannuo Food Co., Ltd, for 3 years, North Korean workers get paid for \$350 and managers for \$700. But, they are forced to send back approximately 90% of their income to the regime.

- Typically, China contracts with North Korean companies to pay \$400 - \$600 per worker. But, the workers actually get \$50 - \$70, and the rest goes to the North Korean government.

3. Other Illegal Means to Generate Foreign Currency

I. Weapons Proliferation

- General Office 99 of Machine-Building Industry Department generates a huge amount of revenues for the regime by building weapons (missiles) factories. For each project, North Korea makes more than \$50,000,000.

- North Korea has sold its weapons to Iran, shared weapons technology with Tehran, and helped Iranian weapons manufacturing firms to produce weapons with North Korean technology.

- North Korea sold a very sophisticated weapons technology and systems such as SLBM and air defense system. Iran also sold its drone technology to North Korea.

- The triad missile system that Iran tried to adopt in 2021 might potentially got its base from North Korea's indigenous cruise missile system.

○ In Cuba

- Between 2005 – 2009, North Korea sold different types of weapons to Cuba, and it is still dispatching its weapons technicians to Cuba. Typical route to bring cash to North Korea from Cuba is from Havana to Beijing to North Korea.

II. Insurance Scams

○ Through international reinsurance markets, North Korea has been able to generate about \$20,000,000 annually.

4. Cases of Waste of Resources Against Human Rights

I. Nuclear missile development

○ Before and after 2014, the Trade Representative Office in China ordered the purchase of special steel for the development of nuclear submarines. They tried to buy it through Russia but failed.

- Through the Chinese mafia, they reached out to a company that produces special steel that meets the order standards, but they could not buy it because it was impossible to purchase it in large quantities.

II. Spending money on personal protection and luxuries

○ Hundreds of millions of dollars in funds earned through overseas dispatch are used most of all for security-related items and luxuries, such as weapons necessary for Kim Jong-un's personal security, poison and metal detection equipment, and anti-eavesdropping equipment.

○ Luxury cars, liquor, wine, yachts, swimming pool operation, and purification facilities, and even buttons, needles, threads, and zippers used by the Kim family are procured from Europe.

- - Spent foreign currency like water on the purchase of high-end products for the Kim family

- This wastage was not affected at all even during the Arduous March period when millions of people died from starvation.

- Until 2015, dispatched personnel from the '3rd Floor Clerk's Office', which specializes in purchasing supplies necessary for the Kim family's daily life, were stationed in many countries and actively engaged in activities.

- Currently, most of the dispatched personnel have withdrawn due to strengthened sanctions against North Korea, but they are still active in China, Russia, and some Eastern European countries.

- After transferring money to Europe through a Russian bank account in Vladivostok, the Kim family have bought luxury goods: expensive luxury watches and fabrics, food ingredients, salmon, cheese, alcohol, and cigarettes. Cars such as Mercedes-Benz are purchased through a borrowed name company in Europe through a special order method and then obtained through China. The clothes of the Kim family are specially made using fabrics obtained from France or Italy.

-Purchase only luxury, top-of-the-line, and most expensive products from Italy, France, and Switzerland.

- Purchase almost all types of groceries, such as wine, cheese, meat products, fishery products, processed foods, coffee, tea, and cooking oil, and airlift them to Pyongyang on a regular basis (1-2 times a week) until the time before sanctions against North Korea were strengthened.

- Daily necessities, luxuries, clothing
- expensive pedigree pet dogs and horses;
- high-quality musical instruments and sound equipment;
- expensive furniture
- Advanced kitchen equipment
- Luxury yachts, luxury cars, etc.

- Secretly invited chefs in the fields of pizza, pasta, and baking to train the chefs of the Kim family.
- Invite artists that the Kim family especially likes
- Invited world-renowned stars such as Kim Jong-il's favorite symphony orchestra conductor Andre Liu, Hong Kong movie star Jackie Chan, and Kim Jong-cheol's favorite rock singer Eric Clapton to North Korea in secret several times.
- At the time, Pyongyang instructed the diplomatic missions that were negotiating invitations to make it happen unconditionally, even if they promised to pay for the performance fee without limits, but it failed in the end.
- Periodic purchases of luxurious watches, clothing, and groceries in large quantities to be wasted on the luxury and gift politics of close associates.
- Instructions for purchasing women's underwear and swimsuits with specific sizes, quantities, and colors were delivered.
- Since sanctions against North Korea were strengthened, normal food supply from Europe has been suspended, but it is still intermittent.
- DPRK skillfully bypassed the sanctions network and continued to bring luxury cars and other luxury items used by the Kim family.

III. Expenditure on surveillance and maintenance of public security organs

○ In order to block the influx of external information and defections from North Korea, which are critical factors for maintaining the Kim Jong-un regime, a fund of 20 to 25 million US dollars is invested only in the purchase of high-tech radio wave-blocking equipment and thermal imaging cameras.

- Expansion of security cameras to block North Korean defectors, operation of mobile phones for location tracking, installation of security cameras according to the viewing distance between border guard posts, and 24-hour location tracking devices attached to defectors who have defected from North Korea or those subject to correctional labor.

○ Tremendous funds were invested in the research, development, or purchase of wiretapping/tailing equipment and radio frequency wiretapping equipment to monitor and control North Koreans and foreigners residing in Pyongyang.

▬ Expand the introduction of handwriting verification programs (finger printers) to control similar incidents such as dissident graffiti.

[Reference Material #2]

**ADVISORY ON THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA
INFORMATION TECHNOLOGY WORKERS**

[Background]

The Ministry of Foreign Affairs, Ministry of Science, Information, Communication and Technology, Ministry of Unification, Ministry of Employment and Labor, Fair Trade Commission, National Police Agency, and National Intelligence Service of the Republic of Korea are issuing this joint advisory on December 8, 2022, which requests enhanced due diligence and more stringent identity verification process from domestic companies to avoid hiring or engaging in business contracts with DPRK IT workers who disguise their nationality and identities.

DPRK IT workers are located all around the world, obfuscating their nationality and identities. They earn hundreds of millions of dollars a year by engaging in a wide range of IT development work, including freelance work platforms (websites/applications) and cryptocurrency development, after obtaining freelance employment contracts from companies around the world.

After 2016, North Korea’s exports plummeted due to tightened sanctions. As a result, DPRK IT workers’ role in earning foreign currency and financing nuclear and missile program for the regime has been ever-growing.

The ROK government preemptively reviewed the identity verification process of freelance work platforms, considering the possibility of DPRK IT workers obtaining employment contracts from domestic companies. Consequently, we concluded that it is indeed possible for DPRK IT workers to obtain employment from domestic companies by obfuscating their identity.

A significant percentage of DPRK IT workers are subordinate to entities which have been designated for sanctions under UN Security Council resolutions, such as Munitions Industry Department and Ministry of National Defense. Moreover, the vast majority of their gross earnings are remitted back to these entities and used for North Korea’s nuclear and missile development.

Therefore, the act of offering employment to DPRK IT workers and paying for their work accompanies reputational risks and potential legal consequences for companies, in accordance with relevant domestic acts, such as the Development of Inter-Korean Relations Act. There is also the possibility of violating relevant UN Security Council resolutions. As such, companies are advised to take extra caution in this regard.

[How DPRK IT workers operate]

North Korea dispatches thousands of highly skilled IT workers all over the world, including Asia and Africa. IT workers located overseas form groups and live together, and they earn foreign currency by obtaining IT development work via online freelance work platforms.

UNSCR 2397 adopted in December 2017 requires each member state to repatriate all DPRK overseas workers by December 2019. However, these people illicitly and skillfully bypass local authority’s surveillance by ditching the work visa to obtain a different type when they enter the country. They then work as an IT worker and earn foreign currency.

They present themselves as non-North Korean nationals and work as freelance IT workers, obtaining employment contracts from companies located in developed countries in North America, Europe and East Asia. These IT workers generate significant amount of revenue by engaging in IT development work, such as mobile applications and software development.

DPRK IT workers are presumed to be engaging in wide-ranging types of work, including the development of Decentralized Applications(DApp), smart contracts and digital tokens, as well as mobile and web-based applications that span a range of fields and sectors, including business, health and fitness, social networking, sports, entertainment, and lifestyle.

Although DPRK IT workers usually obtain employment contract from foreign IT companies and engage in seemingly normal IT work, such as software development, in some cases they are involved in malicious cyber activities, such as obtaining illicit gains by taking advantage of vulnerabilities in smart contract codes. Therefore, domestic blockchain companies must exercise extra caution so as to avoid employing DPRK IT workers.

[How DPRK IT workers hide their identity]

DPRK IT workers forge their identities and nationality when they look for employment contract and create an account on a freelance work websites.

Forging identification documents is one of the easiest ways to obfuscate their identities. They illicitly collect foreigners' driver's licenses and identification cards, and replace the photos on identification document with their own using Photoshop. Moreover, they utilize a 'proxy phone call authentication service website' when having to go through the process of phone call authentication.

Recently, global freelance work platforms tightened their authentication process, which led DPRK IT workers to borrow freelance work platform accounts from various foreigners in return for distributing certain amount of the generated revenue.

In some instances, DPRK IT workers engage other foreign freelance programmers and establish a business partnership. They collaborate with these non-North Korean freelance workers on projects which were originally commissioned to those workers and split the generated revenue.

DPRK IT workers usually look for targets to borrow proxy accounts via social media. The owners of proxy accounts create accounts on freelance work websites and complete email, phone call, and ID card authentication process for DPRK IT workers. They then provide these authenticated accounts for DPRK IT workers to use.

In order to obtain employment contracts, freelance workers are normally required to carry out the task provided by client companies during the interview. DPRK IT workers favor online text-based chat instead of video interviews. When companies insist on video interviews, DPRK IT workers will show their intermediaries' faces and come up with various excuses, i.e. that they have audio problems due to technical issues. They will then persuade the companies to conduct an interview by phone rather than a video, in which DPRK IT workers themselves will participate in-person. DPRK IT workers are highly skilled when it comes to software development, and some of them are proficient in foreign languages, including English.

Sometimes, even when companies are conducting a real video interview, DPRK IT workers will remotely access the computer of proxy account's owner and demonstrate programming themselves.

The revenue generated via proxy accounts will first be deposited to the proxy's bank account, some of which will be paid to the owner of the account. The rest of the revenue will be transmitted to local IT

team's bank accounts, which are mainly based on global digital payment platforms.

After establishing a business relationship with client companies that commissioned program development, DPRK IT workers typically propose direct communication with clients on a separate platform, instead of the original freelance platform website, thereby minimizing the commission fee for proxy accounts and establishing longstanding business partnership with client companies.

[Precautions for IT field contractor platform]

If an account on a freelance work platform conforms to many of the characteristics cited below, the account may actually belong to DPRK IT workers. We recommend platforms to take special attention in such cases.

- Multiple logins into one account from various IP addresses in a relatively short period of time;
- Developers are logged into their accounts continuously for a whole day;
- Developers log into multiple accounts on the same platform from one IP address;
- Developer accounts whose cumulative working hours exceed several thousand hours;
- Developer accounts receiving high ratings, especially when client companies which engaged in ratings have a payment account identical to that of the account owner;
- New developer accounts using same or similar documents with those submitted by existing accounts.

We highly recommend IT freelance work platform companies to take tightened measures to verify identity of programmers, such as adding one more authentication step using video call for newly created accounts and requiring client companies to conduct a video interview before signing contracts with freelance programmers.

[Precautions for client companies commissioning program development]

Client companies commissioning program development are recommended to confirm whether their partners are DPRK IT workers through stringent authentication procedures.

In particular, if an unknown programmer offers a relatively small development fee, while requesting to communicate via online text-based chat or phone call rather than a video interview, it is highly likely that they are DPRK IT workers or those who are closely related. As such, you should take extra care in having transactions with them.

While conducting a video interview, stringent authentication measures are recommended, such as requiring real ID card during the interview or confirming whether information on identification documents matches information provided for the contract.

When existing cooperation partners are assumed to be involved in identity forgery or related to DPRK IT workers, appropriate due diligence measures, such as video calls without advance notice, can be taken.

[Precautions regarding lending accounts]

In addition, if an unknown person requests the creation of an account on a freelance IT work platform and a foreign payment platform or asks you to lend a copy of identification documents in return for

certain amount of money, they are likely to be DPRK IT workers or those who are related to them. As such, you should exercise extra caution.

[Conclusion]

We hope this advisory on DPRK IT workers will prove to be helpful in establishing a more secure and reliable online freelance work system and also contribute towards cutting off DPRK's illicit foreign currency revenues which are used for its nuclear and missile development.

Under close cooperation with the international community, the ROK government will continue to raise domestic and international awareness of DPRK IT workers. We will also make further efforts to enhance due diligence of freelance IT work platforms and client companies.

If you have information about illicit DPRK activities, such as DPRK IT workers obfuscating their identities and nationality to obtain employment contracts from domestic companies, please report to police(112), Ministry of Foreign Affairs(02-2100-8149) and other relevant institutions.

ROK Government

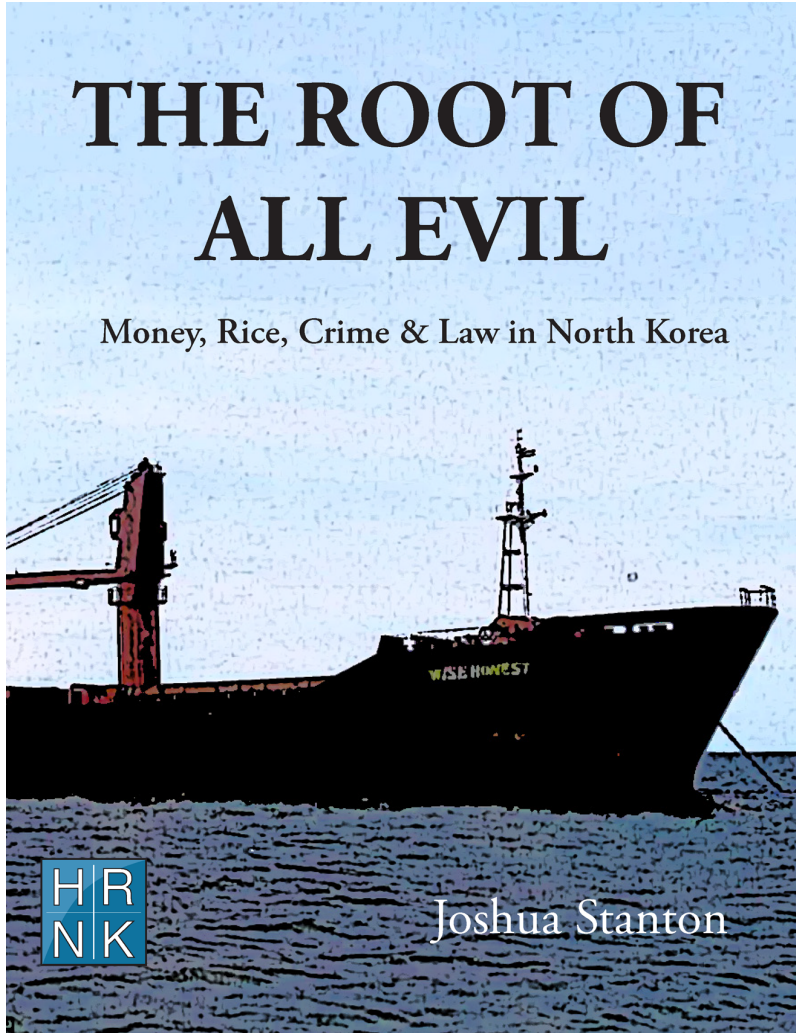
Ministry of Foreign Affairs, Ministry of Science, Information, Communication and Technology, Ministry of Unification, Ministry of Employment and Labor, Fair Trade Commission, National Police Agency, and National Intelligence Service

112

THE ROOT OF ALL EVIL

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Money, Rice, Crime & Law in North Korea



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Money, Rice, Crime & Law in North Korea

TABLE OF CONTENTS

Board of Directors	VI
About the Committee for Human Rights in North Korea (HRNK)	VI
Acknowledgements	VII
About the Author	VIII
Dedication	VIII
Foreword	IX
Executive Summary	X
 Part I—Hunger & Kleptocracy in North Korea	 11
A. The Expendable Millions	11
B. Kim Jong-un & the Age of Red Privilege	16
C. Corruption in North Korea: The State as Perpetrator, Exporter, & Victim	27
D. The Hungry as Human Shields	32
Part II—Legal Authorities Against North Korean Kleptocracy	34
A. A Pre-History of North Korea Sanctions	34
B. Kim Jong-il's Road Not Taken	37
C. UN Authority to "Seize and Dispose of" North Korean State Property	40
D. UN Anti-Corruption Conventions	45
E. U.S. Judicial Remedies Against Corruption	48
1. Domestic Anti-Kleptocracy Authorities	51
2. Anti-Kleptocracy Enforcement Capacity in the U.S. Government	52
Part III—U.S. National Enforcement of North Korea Sanctions	55
A. 2005-2016: Minimum Pressure	56
B. 2016-2021: Medium Pressure	60
1. Effects of Medium Pressure on the North Korean Economy	70
2. May 2018: President Trump Preempts Maximum Pressure	73
3. 2018 to 2021: Strategic Patience 2.0	81
C. Disposition of Blocked & Forfeited Proceeds of North Korean Kleptocracy	87
Part IV—Escrow: Toward a Durable Peace Through Justice	91
A. How Not to Give Sanctions Relief: History, Law, & Politics	91
1. UN Limits on Sanctions Relief	94
2. U.S. Statutory Limits on Sanctions Relief	95
3. NKSPEA Limits on Sanctions Relief	96
4. Political Limits on U.S. Sanctions Relief	103
5. Congressional Power to Limit Sanctions Relief	106
B. How to Give Sanctions Relief: The Objectives of Escrow	108

THE ROOT OF ALL **EVIL**

Joshua Stanton

1. Building a Global Coalition for a Lasting Peace	111
2. Targeting Sanctions for Justice and Peace	118
3. Escrow & Diplomacy	120
Appendix A—UN & U.S. Sanctions Against the Government of North Korea	123
Appendix B—Model Escrow Legislation for North Korean State Kleptocracy	137

Money, Rice, Crime & Law in North Korea

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ABOUT THE COMMITTEE FOR HUMAN RIGHTS IN NORTH KOREA

The Committee for Human Rights in North Korea (HRNK) is the leading U.S.-based nonpartisan, non-governmental organization (NGO) in the field of North Korean human rights research and advocacy, tasked with focusing international attention on human rights abuses in that country. It is HRNK's mission to persistently remind policymakers, opinion leaders, and the general public that more than 20 million North Koreans need our attention. Since its establishment in October 2001, HRNK has played an important intellectual leadership role in North Korean human rights issues by publishing over 50 major reports (available at <https://www.hrnk.org/publications/hrnk-publications.php>). Recent HRNK reports have addressed issues including North Korea's overseas workers, the influx of outside information into North Korea and the regime's response, the health and human rights of North Korean children, and North Korea's political prison camps.

HRNK is the first and only NGO that solely focuses on North Korean human rights issues to receive consultative status at the United Nations (UN). It was also the first organization to propose that the human rights situation in North Korea be addressed by the UN Security Council. HRNK was directly and actively involved in all stages of the process supporting the work of the UN Commission of Inquiry (COI) on North Korean human rights. Its reports have been cited numerous times in the report of the COI, the reports of the UN Special Rapporteur on North Korean human rights, a report by the UN Office of the High Commissioner for Human Rights, two reports of the UN Secretary-General António Guterres, and several U.S. Department of State Democratic People's Republic of Korea Human Rights Reports. HRNK has also regularly been invited to provide expert testimony before the U.S. Congress.

THE ROOT OF ALL **EVIL**

Joshua Stanton

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The unnamed correspondents of the Daily NK and Rimjin-gang, who speak the truth from inside North Korea at the risk of their lives and those of their families, have made an inestimable contribution to this paper, and to our understanding of their homeland. Professor Sung-Yoon Lee of Tufts University has shared his historical and cultural knowledge with me during our many years of friendship. Former Congressman Ed Royce and his able staffers, Matthew Zweig and Hunter Strupp, made the North Korea Sanctions and Policy Enhancement Act (NKSPEA) and Title III of the Countering America's Adversaries Through Sanctions Act the law of the land. Bill Neucomb, Stephanie Kleine-Ahlbrandt, and Aaron Arnold—all former U.S. Representatives to the U.N. Panel of Experts established under Resolution 1874—engaged me in many thoughtful discussions about building an international enforcement coalition.

Many FBI Special Agents and Intelligence Analysts, and the U.S. Attorney's Office for the District of Columbia, gave me the privilege of acting as a consultant in several of their money laundering, sanctions, and asset forfeiture cases involving North Korea. I am especially grateful to former Assistant U.S. Attorneys Zia Faruqui and Arvind Lal, and former FBI Intelligence Analyst Nick Carlsen. Anthony Ruggiero, a former Treasury and Senate staffer who later worked in the National Security Council, often exchanged and cross-checked information about sanctions enforcement history with me. I am deeply indebted to the HRNK Board, to Dr. Nicholas Eberstadt and Robert Joseph for their careful reviews and thoughtful comments, and to Greg Scarlatou for offering me the intellectual freedom to go beyond a survey of how sanctions obstruct evil and explain their untapped potential as an instrument of justice. Maria Del Carmen Corte, Rosa Park-Tokola, and Raymond Ha spent many hours proofreading, cite-checking, formatting, and designing this paper's cover,

which features a ship that was seized and forfeited under the authority of the NKSPEA. Throughout this process, my wife was my support, my muse, and a constant resource of wisdom and encouragement.

What I learned from all of these interactions and countless others braided into a vision of how law and diplomacy can be instruments of economic justice, accountability, and peace in Korea. Justice is not a distant goal that must await historical inevitabilities. Peace is not a condition in which our economy ails and abets a state's war against one set of defenseless subjects, or its preparations to subjugate the next one. We owe it to the people of Korea not to delay justice—or thereby, to deny it—but to use our laws to hasten it, and the day when all Koreans can live freely as a nation once again.

Money, Rice, Crime & Law in North Korea

ABOUT THE AUTHOR

JOSHUA STANTON is an attorney in Washington, D.C., with twenty-five years of military and civilian experience in criminal and civil litigation and administrative law. He is the principal drafter of both comprehensive U.S. North Korea sanctions laws, the NKSPEA and title III of the CAATSA. He continues to assist House and Senate staffers from both parties and various federal agencies with the drafting, targeting, and enforcement of North Korea sanctions. From 1998 to 2002, he served as a U.S. Army Judge Advocate in South Korea. In 2006, he testified before the House International Relations Committee. He was the first to identify and publish satellite imagery of three North Korean prison camps, Camp 16 (Hwasong), Camp 25 (Chongjin), and Camp 12 (Cheongo-ri). His work has been cited in *The Wall Street Journal*, *The Washington Post*, *Reuters*, *Le Monde*, *The Guardian*, *The Daily Telegraph*, and "Last Week Tonight" with John Oliver. His op-eds have been published in *The New York Times*, *The Washington Post*, *Foreign Policy*, and *Foreign Affairs*. Since 2017, he has served as an uncompensated consultant to the U.S. Attorney's Office for the District of Columbia on the enforcement of sanctions and anti-money laundering enforcement relating to North Korea. The views he expresses are solely his own and do not represent the views of any member or committee of Congress, an organization, or a government agency.

DEDICATION

This paper is dedicated to COL (Ret.) Josiah Wallace, 1924-2021. COL Wallace, a graduate of West Point's Class of 1946, served in and was wounded in both Korea and Vietnam. After retiring to my home town of Rapid City, South Dakota, COL Wallace and his wife, Vicki, raised six children. He also administered my Oath of Commission as an officer in the United States Army, attended my wedding in Seoul, and lived to see a prosperous democracy grow from the barren soil he had watered with his blood so long ago. Among his many decorations was a posthumous award of the Peace Medal from the South Korean government. His example set me on a path that forever bound my life to Korea by ties of service, love, and belief in the destiny of one free Korea.

THE ROOT OF ALL EVIL

Joshua Stanton

FOREWORD

A government's budget is perhaps the most faithful embodiment of its values and priorities. It concretely defines the scope of the government's duties and obligations. It specifies which citizens and entities will pay for the fulfillment of these responsibilities. It reflects, in its composition, an implicit judgment about which issues and problems are deemed to be most urgent.

For this reason, the annual budget is one of the most intensely debated subjects in democratic countries. Through their elected representatives, citizens have a voice in deciding how their private property may be directed toward public ends. There are officials and agencies that rigorously inspect the use of government funds. A free and independent press can also expose the misdeeds of corrupt officials. Above all, the people can hold the government accountable for how it uses the nation's collective wealth.

None of this is possible in North Korea. However, as Joshua Stanton rightly notes in *The Root of All Evil: Money, Rice, Crime & Law in North Korea*, his second report for HRNK, "the people of a nation hold the highest claim to its wealth." North Korea is no exception. In the following pages, Stanton presents a thoroughly researched and carefully crafted proposal for how the United States, together with a coalition of like-minded countries, could exercise its financial and diplomatic influence to freeze and direct the North Korean regime's ill-begotten funds toward the pressing humanitarian needs of the North Korean people.

Stanton begins Part I by marshaling a wide array of evidence to support his characterization of the North Korean regime as a kleptocracy. In Part II, he exhaustively documents the relevant domestic and international legal authorities that could be used to address Pyongyang's kleptocratic activities. Next, in Part III, he reviews the successes and shortcomings of U.S. sanctions enforcement against North Korea, relying on his deep expertise in this area to clarify common misconceptions about the role of sanctions in U.S. policy toward North Korea over the past three decades.

The first three parts of this report are an invaluable resource for any reader who is concerned about the human rights situation in North Korea and how the outside world might address it. Nonetheless, Stanton makes a vital and truly unique contribution in the last part of the report. He justifies and delineates a policy roadmap to achieve "a just and lasting peace" on the Korean Peninsula, a policy that "returns the fruit of a nation to its rightful owners"—the people of North Korea.

There is limited data about the size and composition of North Korea's annual budget, but there is sufficient information to identify some of the regime's priorities. They include the development of nuclear weapons and sophisticated missile capabilities, as well as the procurement of luxury goods and amenities for the ruling Kim family and the core elite. Critically, the regime continues to operate an apparatus of repression that commits crimes against humanity in a 21st-century Gulag Archipelago. The people of North Korea cannot, at present, freely discuss and debate how they might use the rightful fruits of their labor to promote their common welfare. If they could, they would arrive at a vastly different set of priorities.

The model legislation in Appendix B of this report is entitled "In North Korea, Money Is the Root of All Evil Act." In its shortened form, "North Korea MIRAE Act," it aptly includes the Korean word for future (*mirae*). There is no single solution on the path to a just and lasting peace on the Korean Peninsula. Arriving at that destination will require the collective wisdom and imagination of the international community. Nevertheless, those of us who are concerned about the future of the Korean Peninsula would do well to carefully review and consider Stanton's proposal in *The Root of All Evil*.

Raymond Ha
Director of Operations & Research

March 29, 2023

Money, Rice, Crime & Law in North Korea

EXECUTIVE SUMMARY

North Korea is a nation rich in natural resources. Yet among Pyongyang's long list of crimes against humanity, none has killed or harmed more of its people than its misappropriation of wealth from the enslaved people who extract it from its soil, seas, and mines. It uses this stolen wealth and the proceeds of financial crime to enrich its oligarchy, perpetuate enslavement and repression, proliferate weapons of mass destruction (WMD), and threaten peace in the region and the world.

Since the UN Security Council approved its first sanctions against North Korea in 2006, weak, uneven, and divided enforcement has deprived them of their full and intended effects. Yet between late 2005 and early 2007, and again between 2016 and 2018, stronger U.S. enforcement of financial sanctions demonstrated their potential to damage the finances of North Korea's oligarchy. Historically, Pyongyang has been the most receptive to diplomatic engagement and agreements to disarm during periods when it was under the greatest financial duress. Its demands have consistently prioritized sanctions relief, and it has consistently reneged on its agreements after securing them.

New U.S. sanctions laws enacted since 2016 limit the President's power to ease sanctions until Pyongyang meets benchmarks related to disarmament, transparency, and reform—including progress on human rights. Transparency is the *sine qua non* of verifiable disarmament. Progress on human rights and the transparent delivery of food aid can be tests of the sincerity of Pyongyang's promises.

This report proposes a long-term, multilateral legal strategy, using existing United Nations resolutions and conventions, and U.S. statutes that are either codified or proposed in appended model legislation, to find, freeze, forfeit, and deposit the proceeds of the North Korean government's kleptocracy into international escrow. These funds would be available for limited, case-by-case disbursements to provide food and medical care for poor North Koreans, and—contingent on Pyongyang's progress toward disarmament and reforms—to rehabilitate the nation's infrastructure.

Recent events suggest that other issuers of convertible currencies may be willing to join with the United States to support common goals—to impede Pyongyang's proliferation, hold human rights abusers accountable, and fund humanitarian and development aid. This financial coalition should redouble the freezing and forfeiture of the proceeds of Pyongyang's kleptocracy and hold those proceeds in trust for the North Korean people. Because China and Russia have historically acted in bad faith, this coalition must be formed outside the UN framework.

Because Pyongyang is unlikely to accept an agreement except under severe duress, the coalition must target its enforcement carefully, focusing on specific trading networks that fund the military and security forces that perpetrate human rights abuses, repressing demands for change from the population, and maintaining blockades on trade and information. By defunding the police state, the coalition can frustrate the state's repression, create space for market-driven economic and social change, indirectly improve the production and distribution of food, and raise domestic political pressures on Pyongyang. If Pyongyang accepts a verifiable disarmament agreement, the coalition could use escrow funds to offer limited, conditional, and monitored disbursements to ease those pressures.

THE ROOT OF ALL EVIL

Joshua Stanton

Part I—Hunger & Kleptocracy in North Korea

A. The Expendable Millions

In 1997, a *Washington Post* reporter was allowed into the city of Hamheung, in the mountains that ring North Korea's east coast, to investigate reports of a famine in the isolated country. There, he interviewed the director of a local orphanage, who told him that some parents who could no longer feed their children had begun to abandon them "to nature." Some of these children died where their parents left them. In other cases, people would bring them to the orphanage, which was "surrounded by high hills covered with graves and stone markers." The orphanage director told the reporter that he was looking at "an old burial ground," but the reporter also saw "many new graves."¹

Two years later, a *Reuters* reporter also visited an orphanage in the city, and also observed that it was "surrounded on all three sides by hills covered in graves." Many of the 118 children who resided there looked malnourished or stunted. Others were pale or seemed to have difficulty concentrating. All their parents had either died or abandoned them.²

In 1997, Jang So-yeon lived in Hamheung. When her sister fell ill with cholera, she stayed with her in the hospital. Decades later, after her escape from North Korea, she told a reporter how the staff "laid the patients out like goods in a warehouse," and that they "could hear people crying in the next ward, and see people dying." Staff piled the dead outside the building. "Once a week, a truck came and took all the bodies away." The smell of death filled the streets. The hills around the city became cemeteries. "Up in the mountains, there were graves everywhere. Some were not well covered up—it was bare, there was no soil—and the bodies were coming out."³

Refugees from the city spoke of "apocalyptic" death rates. One estimated that a third of the city's population of 700,000 perished. He described a city of vacant houses, of apartment buildings where entire floors were emptied by the deaths of families who once lived there.⁴ At the station, crowds waited for days for trains bound for Hyesan, near the border with China, to find food. Some did not survive to board them. Railroad workers who dragged away twenty bodies every morning soon gave up on the grim task of recording their names. A hellish three-day journey awaited the rest, of whom perhaps half were discarded along the way—starved, suffocated in the packed carriages, fallen from the undersides or rooftops of the cars, or electrocuted by the overhead power lines.⁵

1 Keith B. Richburg, "Beyond a Wall of Secrecy, Devastation," *The Washington Post*, October 19, 1997.

http://www.washingtonpost.com/wp-dyn/content/article/2006/10/18/AR2006101800728_pf.html.

2 "North Korea: Whole Generation of Children Affected by North Korean Famine," *Reuters Television*, May 19, 1999, <https://web.archive.org/web/20110713071049/http://www.itnsource.com/shotlist/RTV/1999/05/19/905190018/>.

3 Andrew Salmon, "Starved in North Korea and kidnapped in China," *Asia Times*, November 26, 2019, <https://www.asiatimes.com/2019/11/article/arduous-odyssey-a-nth-korean-defector-remembers/>.

4 Andrew Natsios, *The Great North Korean Famine: Famine, Politics & Foreign Policy* 202 (Washington, D.C.: United States Institute of Peace, 2001).

5 *Id.* 72-80.

Money, Rice, Crime & Law in North Korea

Anyone with an internet connection can corroborate the most horrific part of Jang So-yeon's story. Google Earth imagery of the eastern cities of Wonsan, Hamheung, and Heungnam published in the years after the famine shows what appear to be hundreds of thousands of makeshift graves in the hills overlooking the cities.⁶ Since 2000, these vast cemeteries have begun to wash downhill. Year by year, forests have risen to reclaim the dead, who now exist only in the mute memories of the bereaved, for whom the very cry for justice is a crime punishable by death—because not one of these people had to die.

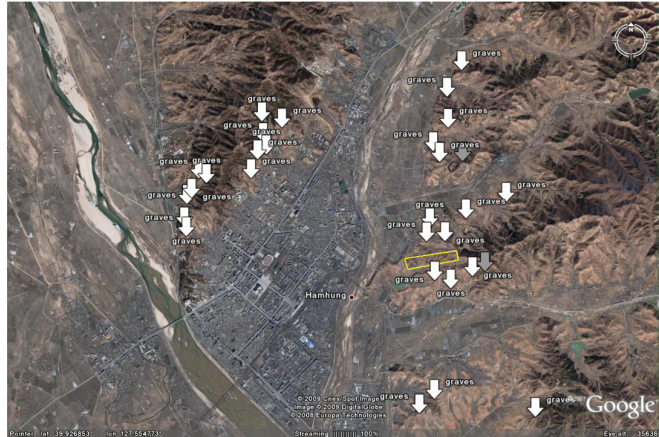


Satellite imagery of the hills around Hamheung, North Korea (via Google Earth)

⁶ Joshua Stanton, "39.91 N, 127.55 E: Hamheung, Haunted City," *One Free Korea blog*, January 21, 2009, <https://freekorea.us/2009/01/21/Hamheung/>. In other regions, such as the northeastern city of Chongjin, anecdotal reports suggest that mass burials in common graves were more typical. Barbara Demick, *Nothing to Envy: Ordinary Lives in North Korea* (New York, NY: Spiegel & Grau, 2009), 169-70; Natsios, "The Great North Korean Famine," 76. Although cremation is increasingly accepted in South Korea, where land is expensive and relatives can visit the ashes of their loved ones at Buddhist temples, it is not accepted in North Korea, where these conditions are very different. "Please, Bury Me Somehow": Forced Cremations Frighten Elders, Threaten Chuseok Traditions," *Rimjin-gang*, September 24, 2019, <http://www.asiapress.org/rimjin-gang/2019/09/society-economy/chuseok-traditions/2/>. Recent directives by the state to move cemeteries into mass graves to make room for forests or reservoirs have enraged the poor in rural South Pyongan Province, who are powerless to do anything but obey. Mun Dong-hui, "N. Korean Officials Anger Locals after Demolishing Graveyard," *Daily NK*, November 13, 2019, <https://www.dailynk.com/english/north-korean-officials-anger-locals-after-demolishing-grave-site/>.

THE ROOT OF ALL **EVIL**

Joshua Stanton



Satellite imagery of the hills around Hamhung, North Korea (via Google Earth)

Hamhung had been marked for this fate by its own government, but few of those sacrificed would have known this when they died. Andrew Natsios, a former aid worker and later Administrator of the U.S. Agency for International Development (USAID), cited UN survey data to suggest that the state had “triaged” the eastern and northeastern provinces, diverting the nation’s limited food supply to the capital, the military, Party elites, and workers in “essential” (often military) industries. Aid workers observed that the state resisted and frustrated their efforts to assess the needs of these triaged regions and send food there—among them, the eastern port cities of Heungnam and Wonsan.⁷

In 2014, a UN Commission of Inquiry (COI) found evidence of Pyongyang’s culpability for crimes against humanity, including “the inhumane act of knowingly causing prolonged starvation.”⁸ The UN COI’s detailed findings cite widely divergent mortality estimates, but between 1993 and 1999, North Korea’s Great Famine killed “at the very least hundreds of thousands

⁷ Natsios, *supra* note 4 at 105-09, 120, 184-85, & 202.

⁸ United Nations Human Rights Council, Report of the *Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea*, A/HRC/25/63 ¶ 76 (2014), <https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIDPRK/Report/A.HRC.25.63.doc>.

Money, Rice, Crime & Law in North Korea

of innocent human beings [who] perished due to massive breaches of international human rights law.” It estimated that the toll may have been as high as 2.5 million.⁹ Kim Dong-su, a North Korean agricultural envoy who negotiated with UN aid agencies before defecting in 1998, said that the famine killed up to 2.8 million people.¹⁰ High-ranking defector Hwang Jangyop, who claimed to have had access to North Korean government estimates, said the toll was 2.5 million.¹¹ Natsios aggregated refugee interviews, statistically controlled projections, and census data from North Korean county offices to arrive at an estimate of up to 2.5 million dead.¹²

Millions of North Koreans did not die because their country was too poor to feed them. It lies in a temperate zone with two long, once-rich coastlines. Its excellent natural harbors are within a day’s voyage of three industrialized trading partners. Most of its people are literate. It inherited mines, infrastructure, and heavy industry upon its founding.¹³ It is unafflicted by hostilities other than those provoked by its own government. It is rich in coal, iron, gold, copper, vanadium, timber, and rare-earth minerals. Its perennial food crisis is not the consequence of an uninterrupted, thirty-year series of meteorological miracles by which alternating floods or droughts halted at the Demilitarized Zone and permanently stunted the development of children in only the northern half of Korea.

Various press accounts, citing defectors and intelligence sources, allege that during the famine, Kim maintained offshore cash reserves of between \$4 and \$5 billion, more than enough to feed the dead of Hamheung—and of every other city, village, and farm in North Korea—many times over.¹⁴ The Japanese government estimated that North Korea’s front organization in Japan remitted between \$650 million and \$850 million to Pyongyang during the famine.¹⁵

9 United Nations Human Rights Council, *Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, A/HRC/25/CRP.1 ¶¶ 667-69 (2014), https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIDPRK/Report/A.HRC.25.CRP.1_ENG.doc (hereinafter UN COI).

10 “Millions dead from starvation says North Korean defector,” *BBC News*, February 18, 1998, <http://news.bbc.co.uk/2/hi/asia-pacific/57740.stm>.

11 UN COI, *supra* note 9 ¶ 667.

12 Natsios, *supra* note 4, at 202-15; Andrew Natsios, “The Dangers of the Coming North Korean Famine,” *U.S. News & World Report*, November 12, 2012, <https://www.usnews.com/opinion/blogs/world-report/2012/11/12/the-political-consequences-of-famine-in-north-korea>.

13 Robert A. Scalapino and Chong-shik Lee, *North Korea, Building of the Monolithic State* (Berwyn, Penn., The KHU Press, 2017).

14 Andreas Lorenz, “Joyful Dancing,” *The New York Times*, November 8, 2004, <https://www.nytimes.com/2004/11/08/international/europe/joyful-dancing.html>; Jay Solomon and Hae Won Chi, “In North Korea, Secret Hoard Of Cash Props Up a Regime,” *Wall Street Journal*, July 14, 2003, <https://www.wsj.com/articles/SB105813345248381600>; “Kim Jong-un’s Secret Billions,” *Chosun Ilbo*, March 12, 2013, http://english.chosun.com/site/data/html_dir/2013/03/12/2013031201144.html.

15 Nicholas Eberstadt, “Financial Transfers from Japan to North Korea: Estimating the Unreported Flows,” *Asian Survey* 36, no. 5 (May 1996), https://www.jstor.org/stable/2645498?seq=1#page_scan_tab_contents.

THE ROOT OF ALL **EVIL**

Joshua Stanton

Had Pyongyang instead cut its military budget by just one percent, it could have imported enough food to feed every hungry North Korean.¹⁶ The UN COI found that even “a marginal redistribution of state military expenditure toward the purchase of food could have saved the population from starvation and malnutrition.”¹⁷ It cites economist Marcus Noland’s estimates that North Korea’s national income was \$12.4 billion even at the height of the famine, and that Kim could have fed all of the hungry for one to two percent of this—between \$100 million and \$200 million.¹⁸

Instead, North Korea’s descent into famine coincided with a sharp increase in military spending, including on nuclear and ballistic missile programs that certainly cost billions of dollars, and on conventional weapons. In the early 1990s, Kim Jong-il purchased the first of thirty MiG-29 fighters from Belarus and Russia for approximately \$35 million each. Annual operating and maintenance costs for these aircraft, which strain the defense budgets of middle-income Eastern European states, may have run into the millions of dollars annually, and the cumulative cost may amount to perhaps a billion dollars.¹⁹ A single long-range missile test in 1998 cost an estimated \$20 million.²⁰ In 1999, in the latter years of the famine, Kim bought another forty MiG-21s from Kazakhstan.²¹ During these critical years, as North Korea slipped into famine, the state reduced its imports of grain and fertilizer—the latter contributing to a rapid decline in domestic food production. Between 1991 and 1994, the state cut commercial grain imports by more than half.²²

16 UN COI, *supra* note 9, ¶ 644.

17 *Id.* ¶ 644.

18 *Id.* ¶ 645.

19 Tech. Sgt. Pat McKenna, “A Real MiG Deal,” *Airman Magazine*, May 1998, <https://fas.org/nuke/guide/russia/airdcf/980500-mig-airman.htm>; John Sotham, “The Truth About the MiG-29,” *Air & Space Magazine*, September 2014, <https://www.airspacemag.com/military-aviation/truth-about-mig-29-180952403/>; James Dunnigan, “Whar Is Worse Than Cheap Russian Crap,” *Strategy Page*, March 27, 2012, <https://www.strategypage.com/dls/articles/What-Is-Worse-Than-Cheap-Russian-Crap-3-27-2012.asp>.

20 “N.Korea Spent at Least \$30 Million on Missile Development,” *Chosun Ilbo*, March 16, 2009, <http://english.chosun.com/w21data/html/news/200903/200903160004.html>.

21 Phil Reeves, “Kazakhstan investigates sale of MiGs to N Korea,” *The Independent*, August 13, 1999, <http://www.independent.co.uk/news/world/kazakhstan-investigates-sale-of-migs-to-n-korea-1112390.html>.

22 Stephan Haggard and Marcus Noland, *Famine in North Korea: Markets, Aid, and Reform* (New York: Columbia University Press, 2007).

Money, Rice, Crime & Law in North Korea

Once aid began to arrive, Pyongyang reduced its commercial food purchases and diverted its cash to other priorities,²³ including Kim Jong-il's sybaritic lifestyle. One report claims he spent \$720,000 a year on Hennessy cognac alone.²⁴ The logic that led the COI to find him culpable for the deaths of the famine's victims is inescapable.²⁵

B. Kim Jong-un & the Age of Red Privilege

The famine ameliorated after 1999, but the food crisis would grind on without end. Harvests improved, aid continued to arrive, and a resourceful core of survivors learned to grow food and live through trade. There were also fewer mouths left to feed. As one North Korean grimly put it, "Those who could not trade are long dead."²⁶ In the decades that followed, most North Koreans outside of Pyongyang lived in a state of constant, if uneven, hunger. Pyongyang still appeals for about \$100 million in international food aid each year, although donations seldom fulfill those appeals today.²⁷ As famine yielded to widespread malnutrition and food insecurity, a yawning disparity between the poverty of the masses and the opulence of the oligarchy persisted, then widened. Pyongyang continued to spend about one-third of its national income on its military and perhaps \$500 million to \$700 million each year on nuclear weapons.²⁸

These conditions persisted as the state took in vast sums from mineral exports and—paradoxically—the export of food, including fish, seafood, and even rice, before the UN Security Council finally embargoed North Korea's food exports in 2017.²⁹ Pyongyang still runs a lucrative trade

23 Stephan Haggard and Marcus Noland, *Hunger & Human Rights: The Politics of Famine in North Korea* (Washington, D.C.: Committee for Human Rights in North Korea, 2005), https://www.hrnk.org/uploads/pdfs/Hunger_and_Human_Rights.pdf.

24 Adam Clark Estes, "The Lifestyle of the Dear Leader," *The Atlantic*, December 19, 2011, <http://www.theatlanticwire.com/global/2011/12/lifestyle-dear-leader/46375/>.

25 A/HRC/25/63, summary 76.

26 Tom Plate, "North Korea's evolution," *Seattle Times*, August 10, 2006, https://web.archive.org/web/20150416162459/http://old.seattletimes.com/html/opinion/2003187284_plate10.html.

27 Daniel Boffey, "UN calls for food aid for starving North Koreans despite sanctions," *The Guardian*, April 3, 2019, <https://www.theguardian.com/world/2019/apr/03/un-calls-on-white-house-to-aid-north-korea-despite-standoff>; Jonathan Cheng, "U.N. North Korea Food Program in Danger," *The Wall Street Journal*, September 25, 2014, <https://www.wsj.com/articles/u-n-north-korea-food-program-in-danger-1411626874>.

28 "North Korea spends about a third of income on military: group," *Reuters*, January 18, 2011, <https://ca.reuters.com/article/topNews/idCATRE70H1BW20110118>; Bruce G. Blair and Matthew A. Brown, *Global Zero Technical Report: Nuclear Weapons Cost Study*, June 2011, <https://www.globazer.org/wp-content/uploads/2020/01/GZ-Weapons-Cost-Global-Study.pdf>.

29 Rebecca Davis, "Why is North Korea exporting food to China?," *The Guardian*, October 14, 2014, <https://www.theguardian.com/world/2014/oct/14/why-north-korea-exporting-food-china>. At least one press report claims that Pyongyang uses donated grain to produce processed foods for export. Jieun Kim, "North Korean Exports of Processed Food to China Raise Questions About Use of Aid," *Radio Free Asia*, August 19, 2019, <https://www.rfa.org/english/news/korea/north-korean-exports-of-processed-food-08192019162817.html>. For the resolutions banning mineral and food exports, see UNSC resolution

THE ROOT OF ALL **EVIL**

Joshua Stanton

in conventional weapons and WMD proliferation, despite a UN arms embargo that was first imposed in 2006.³⁰ In 2003, U.S. military sources in South Korea told the *Wall Street Journal* that Pyongyang earned between \$500 million and \$1 billion annually from the sale of illicit drugs to Europe and Japan, and up to \$560 million from missile exports to the Middle East.³¹

Examples of Pyongyang's egregious kleptocracy continued to accrue. The UN Security Council first prohibited luxury goods exports to North Korea in 2006.³² In practice, UN member states could neither agree on a consistent definition of "luxury goods" nor prioritize enforcement of the ban. China and Russia ignored it, and European states enforced it unevenly. In 2007, buyers at Pyongyang's embassy in Vienna tried to ship three Steinway grand pianos, worth 162,500 euros, to North Korea; Austrian authorities seized the pianos at the airport.³³ In 2008, Japan reported to the UN Panel of Experts that two trading companies had exported thirty-four pianos, four Mercedes-Benz automobiles, and an unknown quantity of cosmetics to North Korea.³⁴

In 2010, Kim Jong-il purchased two baby elephants from Robert Mugabe for \$10,000 each.³⁵ That same year, he distributed 160 Mercedes-Benz sedans to his top officials,³⁶ and an Austrian court convicted serial sanctions violator Josef Schwartz of trying to export two yachts worth at least \$4.4 million to North Korea.³⁷ During a visit to China that year, Kim Jong-il rode in a

2371, *Non-proliferation/Democratic People's Republic of Korea*, S/RES/2371 (2017); UNSC resolution 2375, *Non-proliferation/Democratic People's Republic of Korea*, S/RES/2375 (2017); and UNSC resolution 2397, *Non-proliferation/Democratic People's Republic of Korea*, S/RES/2397 (2017).

30 UN Security Council Resolution 1718 ¶¶ 8-9 (2006).

31 Jay Solomon and Jason Dean, "Heroin Busts Point to Source Of Funds for North Koreans," *Wall Street Journal*, April 23, 2003, <https://www.wsj.com/articles/SB105106006946882000>; see also David E. Kaplan, "The wiseguy regime: North Korea has embarked on a global crime spree," *U.S. News & World Report*, February 15, 199, http://scaryreality.com/all/The_wiseguy_regime.html.

32 UNSC resolution 1718, *Non-proliferation/Democratic People's Republic of Korea*, S/RES/1718 (2006) ¶ 8(a)(iii).

33 UN POE, *Report of the Panel of Experts established pursuant to resolution 1874 (2009)*, S/2010/571 (2010) ¶ 68.

34 *Id.* ¶ 69.

35 "Zimbabwe: Officials Defend Sale of Animals to North Korea," *AP*, May 19, 2010, <https://www.nytimes.com/2010/05/20/world/africa/20briefs-Zimbabwe.html>.

36 "N.Korean Leader Gives 160 Luxury Cars to Top Officials," *Arirang News*, August 2, 2010, http://english.chosun.com/site/data/html_dir/2010/08/02/2010080200980.html.

37 UN POE S/2012/422 (2012) ¶ 84-85; UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2207 (2015)*, S/2016/157 (2016) ¶ 198; see S/2010/571 ¶ 67; Sylvia Westall, "Austrian convicted for yacht sale to North Korean leader," *Reuters*, December 7 2010, <https://www.reuters.com/article/us-austria-northkorea/austrian-convicted-for-yacht-sale-to-north-korean-leader-idUSTRE6B62LN20101207>; "Italy Halts Yacht Sale Bound for Kim Jong Il," *Wall Street Journal*, July 24, 2009, <https://www.wsj.com/articles/SB124839615293477775>.

Money, Rice, Crime & Law in North Korea

\$400,000 Maybach.³⁸ A year later, he rode to his mausoleum in a 1976 Lincoln hearse.³⁹ The mausoleum had been rebuilt for Kim Il-sung in 1994, as the country descended into famine, at a cost of \$790 million—enough to fulfill almost four years of UN food aid appeals by itself.⁴⁰

A third generation of the Kim Dynasty now perpetuates this kleptocracy. In 2010, unconfirmed reports claimed that Kim Jong-il had already begun to transfer his slush funds from his Swiss bank accounts to Kim Jong-un.⁴¹ In 2011, Pyongyang's agents in Japan purchased ten thousand rolls of tobacco, sake, computers, and cosmetics.⁴² In 2012, Kim's wife carried a Christian Dior handbag that—if genuine—would have cost \$1,600.⁴³ Kim wore a Swiss watch worth \$78,000.⁴⁴ As he consolidated his reign, UN aid agencies found that 70 percent of North Koreans were food insecure,⁴⁵ and 80 percent of North Korean households had “poor or borderline” food consumption.⁴⁶

A widening gap between the Pyongyang elite and the poor everywhere else—enabled by kleptocracy and money laundering—soon became a hallmark of Kim Jong-un's rule. In 2013, as UN aid agencies appealed for aid to address widespread malnutrition, a South Korean lawmaker, citing Chinese customs data and studies of North Korean trade patterns, estimated that Pyongyang spent \$644 million on luxury goods,⁴⁷ including luxury cars, perfume, televisions, computers, liquor, fur coats, and watches.⁴⁸ In 2015, Pyongyang purchased \$346,726 worth of gold from Israel, \$1.9 million in precious

38 Joohee Cho and Chiro Romana, “Kim Jong Il Heads to Beijing on Unusually Public Trip for North Korean Leader,” *ABC News*, May 4, 2010, <https://abcnews.go.com/International/north-korean-leader-kim-jong-il-arrives-beijing/story?id=10549640>.

39 David J. Goodman, “Good old American wheels carry Kim Jong Il in funeral,” *Seattle Times*, December 28, 2011, <http://www.autonews.com/apps/pbcsi.dll/storyimage/CA/20111228/BLOG06/111229925/AR/0/AR-111229925.jpg>.

40 UN COI, *supra* note 9, ¶ 659; see also Kongdan Oh and Ralph C. Hassig, *North Korea through the Looking Glass* (Washington, D.C.: Brookings Institution, 2000). The cost is estimated to have been as high as \$900 million.

41 “N. Korean leader transfers secret fund to son: report,” *Agence France-Presse*, July 31, 2010 <https://web.archive.org/web/20100731133434/https://www.google.com/hostednews/afp/article/ALeqM5jwh6EEx6mRAMtII5nem8eRf8g>.

42 UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2050 (2012)*, S/2013/337 (2013), annex XVIII.

43 Erica Ho, “North Korea's First Lady Sports Dior Purse Despite Nationwide Food Shortages,” *Time*, August 9, 2012, <http://newsfeed.time.com/2012/08/09/what-famine-north-koreas-first-lady-sports-dior-purse-despite-nationwide-food-shortages/>.

44 “North Korea: Kim Watches Given To Top Brass,” *Sky News*, February 16, 2013, <https://web.archive.org/web/20130216165930/https://news.sky.com/story/1053011/north-korea-kim-watches-given-to-top-brass>.

45 United Nations Office for the Coordination of Humanitarian Affairs, *DPR Korea 2015 Needs and Priorities* (2015), http://reliefweb.int/sites/reliefweb.int/files/resources/20150401%20DPR_Korea_NP_FINAL.pdf.

46 United Nations Food & Agriculture Organization and World Food Programme, *Crop & Food Security Assessment, Mission to the Democratic People's Republic of Korea* (2013), <http://www.fao.org/docrep/019/aq118e/aq118e.pdf>.

47 “N. Korea imports US\$644 mln worth of luxury goods in 2013: lawmaker,” *Yonhap News*, October 7, 2014, <https://cn.yna.co.kr/view/AEN20141007002300315>.

48 “N. Korea jacks up imports of luxury goods under new leader,” *Dong-A Ilbo*, October 4, 2012, <http://english.donga.com/srv/service.php3?biid=2012100422928>; Jae-soon Chang, “Report: N Korea's Kim using gifts to win support,” *AP*, June 24, 2009, https://web.archive.org/web/20090627042623/http://news.yahoo.com/s/ap/20090624/ap_on_re_as/as_nkorea_kim_jong_il_s_successor.

THE ROOT OF ALL EVIL

Joshua Stanton

metals and stones from India, more gold from Ghana, and jewelry from Brazil and Thailand.⁴⁹

The South Korean government estimated that in 2013, Kim Jong-un spent an additional \$300 million on leisure facilities for the elites in Pyongyang, including an amusement park, a dolphin aquarium, a 3-D cinema, and a massive ski resort in the mountains east of Pyongyang.⁵⁰ Construction of the ski resort was briefly delayed when the Swiss government blocked North Korea from importing \$7.24 million worth of ski lifts, plus “golf, horseback riding and water sports” gear. Pyongyang responded by accusing the Swiss government of violating the UN Charter.⁵¹ It turned to a Chinese supplier, ENFI Engineering Corporation, which sold it the ski lifts. Photographs published by news media also showed cable cars, snowmobiles, snow blowers, and snow grooming equipment from Europe and Canada at the resort.⁵² During the same period, Pyongyang spent approximately 25 percent of its national income on its military, including \$1.3 billion per year on its missile programs alone.⁵³

In the year after June 2016, Pyongyang imported nearly half a million dollars’ worth of wine, vermouth, and other spirits from Germany, Italy, Bulgaria, and Chile; and more than \$250,000 in perfumes and cosmetics from Bulgaria and Germany.⁵⁴ In 2017, India sold North Korea \$578,994 in diamonds, other precious stones, and precious metals.⁵⁵ By then, Pyongyang’s one percent could buy luxury-branded cosmetics, handbags, watches, leather goods, and shoes at a shop called Bugsae.⁵⁶ In 2019, a Singaporean court sentenced two men and a company, T Specialist, for supplying the store with more than \$6 million in luxury goods in violation of local laws implementing the UN ban.⁵⁷ A second, related Singaporean company, OCN, was also identified as a supplier to Bugsae.⁵⁸

⁴⁹ S/2016/157 ¶¶ 123-24.

⁵⁰ “N. Korean leader orders officials to quickly open ski resort,” *Yonhap News*, December 31, 2012, <http://english.yonhapnews.co.kr/northkorea/2013/12/31/77/0401000000AEN20131231002900315F.html>.

⁵¹ “North Korea objects to sanctions ban on ski resort equipment,” *Reuters*, August 24, 2013, <http://www.reuters.com/article/2013/08/24/us-korea-north-idUSBRE97N02X20130824>.

⁵² UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2094 (2013)*, S/2014/147 (2014) ¶¶ 116-19; UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2141 (2014)*, S/2015/131 (2015) ¶¶ 99-101; UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2276 (2016)*, S/2017/150 (2017) ¶ 124, fig. 30.

⁵³ Ramy Inocencio, “North Korea’s rocket launches cost \$1.3 billion,” *CNN*, December 12, 2012, <http://www.cnn.com/2012/12/12/business/north-korea-rocket-cost/>.

⁵⁴ UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2345 (2017)*, S/2018/171 (2018) ¶¶ 152-53.

⁵⁵ *Id.* ¶ 149.

⁵⁶ *Id.* Annex 64, ¶ 147, & fig. XXIV.

⁵⁷ UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2464 (2019)*, S/2020/151 (2020) ¶ 161; Chad O’Carroll, “Singaporean resident fined for shipping luxury goods to North Korea,” *NK News*, July 29, 2020, https://www.nknews.org/2020/07/singaporean-woman-fined-nearly-7300-for-shipping-luxury-goods-to-north-korea/?utm_source=dlvr.it&utm_medium=twitter.

⁵⁸ S/2018/171 ¶ 146, 178-88, fig. XXIV; Chad O’Carroll, “Singaporean man admits to selling \$580K of illegal luxury goods to North Korea,” *NK News*, September 17, 2020, https://www.nknews.org/2020/09/singaporean-man-admits-to-selling-580k-of-illegal-luxury-goods-to-north-korea/?utm_source=dlvr.it&utm_medium=twitter.

Money, Rice, Crime & Law in North Korea

Luxury limousines and yachts are two of the most ostentatious objects of Kim's kleptocracy. In 2013, he imported a yacht with an estimated value of between \$4 million and \$6 million from the United Kingdom.⁵⁹ In 2016, the Wonsan Air Show featured a nine-passenger turboprop civil aviation aircraft, likely for the use of senior state officials—if not of Kim himself—with a reported value of \$2.6 million.⁶⁰ The 2012 parade to mark Kim Il-sung's birthday featured two Mercedes-Benz limousine conversions, reportedly modified in the United States by a company that denied knowing their final destination. The importer then transferred the limousines through multiple countries before shipping them to North Korea.⁶¹ Estimates of their value ranged from "upwards of \$1 million"⁶² to "up to \$2 million each."⁶³ The 2013 and 2014 parades also featured different Mercedes-Benz limousine conversions.⁶⁴ The UN Panel of Experts later learned that one of the intermediaries for the shipment of the limousines to North Korea was a Chinese businessman, who was an overseas agent of North Korea's national airline, Air Koryo, and who was also suspected of involvement in Pyongyang's arms trade.⁶⁵

59 S/2014/147 ¶ 120; S/2015/131 ¶ 102, fig. XXI.

60 S/2017/150 ¶ 126-28; Anna Fifield, "How did North Korea get its hands on a New Zealand plane made with American parts," *Washington Post*, October 3, 2016, https://www.washingtonpost.com/world/how-did-north-korea-get-its-hands-on-a-new-zealand-plane-made-with-american-parts/2016/10/03/105591d2-892e-11e6-8a68-b4ce96c78e04_story.html; Thomas Manch, "Pacific Aerospace guilty of unlawful exports to North Korea," *Stuff*, October 11, 2017, <https://www.stuff.co.nz/business/96724372/pacific-aerospace-guilty-of-unlawful-exports-to-north-korea>.

61 S/2015/131 ¶ 96; S/2016/157 ¶ 118-21.

62 Joshua Berlinger, "Kim Jong Un appears to have a new Rolls-Royce," *CNN*, October 9, 2018, <https://www.cnn.com/2018/10/09/asia/kim-jong-un-rolls-royce-intl/index.html>.

63 Leo Byrne, "On parade: luxury Mercedes limos spotted in North Korea," *NK News*, August 5, 2014, <https://www.nknews.org/2014/08/on-parade-luxury-mercedes-limos-spotted-in-north-korea/>.

64 S/2015/131 ¶ 98.

65 S/2016/157 ¶ 118-21, fig. 27.

THE ROOT OF ALL **EVIL**

Joshua Stanton



Customs Intelligence, Bangladesh কাস্টমস গোয়েন্দা, বাংলা
about 4 years ago

ব্রেকিং:

রাজধানীতে এবার কুটনীতিকের রোলস রয়েস গাড়ি আটক ...

শুধু গোয়েন্দা আজ আইসিডি কমলাপুর বন্দরে মিথ্যা ঘোষণায় আনা উত্তর কোরিয় কুটনীতিকের দামি রোলস রয়েস ঘোষ্ট মডেলের গাড়ি আটক করেছে। ... [See More](#)



Rolls-Royce Ghost seized by Bangladeshi Customs from North Korean diplomat Han Son in 2017.⁶⁶

⁶⁶ "Luxurious Rolls-Royce seized in Dhaka," *Dhaka Tribune*, January 9, 2017, <https://www.dhakatribune.com/bangladesh/crime/2017/01/09/rolls-royce-seized-dhaka>.

Money, Rice, Crime & Law in North Korea

In 2017, Bangladeshi Customs authorities seized a Rolls-Royce Ghost worth more than \$3.5 million inside a shipping container.⁶⁷ The importer was a North Korean diplomat who had been expelled from the country for smuggling five months before.⁶⁸ In early 2018, Kim Jong-un arrived for a meeting with Secretary of State Mike Pompeo in a Rolls-Royce Phantom worth \$500,000.⁶⁹ He arrived at Panmunjom for his meeting with South Korean President Moon Jae-in in a Lexus LX 570.⁷⁰ At another summit with Moon, Kim rode in a Mercedes-Maybach Pullman Guard limousine worth “upwards of \$1 million.”⁷¹

At his June 2018 Singapore summit with President Trump, Kim Jong-un and his entourage rode in at least two of the Mercedes-Benz limousines that the UN Panel of Experts had observed at previous parades in Pyongyang, each worth \$500,000.⁷² That same month, Pyongyang imported two more Mercedes-Benz limousines from Germany, shipped them to Italy to be armored, and in August, transshipped them through Japan and South Korea to North Korea.⁷³ Kim and his entourage rode in these limousines when they arrived at the 2019 Hanoi summit.⁷⁴

67 “Expelled N Korean diplomat’s Rolls-Royce seized in Dhaka,” *Daily Star*, January 9, 2017, <https://www.thedailystar.net/city/expelled-n-korean-diplomats-rolls-royce-seized-dhaka-1342690>; “Bangladesh Confiscates Rolls-Royce Smuggled by Ex-N. Korean Diplomat,” *KBS*, January 11, 2017, http://world.kbs.co.kr/service/news_view.htm?lang=e&Seq_Code=124523.

68 S/2017/150 ¶ 125, fig. 31; UN POE, *Final report of the Panel of Experts submitted pursuant to resolution 2407 (2018)*, S/2019/171 (2019) ¶ 101.

69 S/2019/171 ¶ 100, fig. XX.; Hollie McKay, “Kim Jong Un under fire for flagrantly violating sanctions with his mysterious, growing fleet of luxurious vehicles,” *Fox News*, March 21, 2019, <https://www.foxnews.com/world/kim-jong-un-under-fire-for-flagrantly-violating-sanctions-with-his-mysterious-growing-fleet-of-luxurious-vehicles>.

70 S/2019/171 ¶ 104, fig. XXIII.

71 Berlinger, “Kim Jong Un appears to have a new Rolls-Royce.”

72 S/2019/171 ¶ 102, fig. XXI.

73 S/2020/151 ¶ 155.

74 UN POE, *Midterm report of the Panel of Experts submitted pursuant to resolution 2464 (2019)*, S/2019/691 (2019) ¶¶ 45-46.

THE ROOT OF ALL **EVIL**

Joshua Stanton



Kim Jong-un emerges from a Mercedes-Benz limousine in 2019.⁷⁵

Kim also squandered North Korea's resources on transportation of the more animate variety in the form of nearly \$100,000 in white horses from Russia. Kim Jong-un used some of these horses in widely circulated photo ops on Mount Paektu.⁷⁶

Pyongyang's luxury goods trade relies on the same logistical and financial networks as its WMD procurement and proliferation networks.⁷⁷ The North Korean partner of OCN and T Specialist, the suppliers of the Bugsae Store, was the Ryugyong Commercial Bank, which the U.S. Treasury Department designated in 2017 as part of its new sectoral sanctions against the North Korean

⁷⁵ Joseph Trevithick, "Here's How North Korea Got Kim Jong Un His New Armored \$600 Mercedes Maybach Limos," *The Drive*, July 16, 2019, <https://www.thedrive.com/the-war-zone/28999/heres-how-north-korea-got-kim-jong-un-his-new-armored-s600-mercedes-maybach-limos>.

⁷⁶ Jacob Fromer, "North Korea imported a dozen purebred horses from Russia last year, data shows," *NK News*, February 16, 2020, <https://www.nknews.org/2020/02/north-korea-imported-a-dozen-purebred-horses-from-russia-last-year-data-shows/?t=1596160551369>; Piotr Sauer, "How North Korea's Leader Buys Purebred White Horses From Russia's Stud Farms," *The Moscow Times*, February 20, 2020 <https://www.themoscowtimes.com/2020/02/19/how-north-korea-leader-buys-purebred-white-horses-from-russias-stud-farms-a69317>; Colin Zwirko & Min Chao Choy, "North Korea imported more Russian horses amid new work on elite equestrian parks," *NK Pro*, July 8, 2020, <https://www.nknews.org/pro/north-korea-imported-more-russian-horses-amid-new-work-on-elite-equestrian-parks/?t=1594212356741>.

⁷⁷ Lucas Kuo and Jason Arterburn, *Lux & Loaded: Exposing North Korea's Strategic Procurement Networks* (Washington, D.C.: Center for Advanced Defense Studies, 2019).

Money, Rice, Crime & Law in North Korea

financial industry. Ryugyong Commercial Bank has long been involved in money laundering and proliferation financing.⁷⁸

In 2020, the UN Panel of Experts published photographs of luxury watches and imported alcohol for sale at Pyongyang's Taesong Department Store.⁷⁹ This store belongs to the Taesong Group, which also includes Korea Daesong Trading Company and Korea Daesong Bank. Both of these entities had already been designated for proliferation financing.⁸⁰ All Taesong Group companies are under the control of a state criminal enterprise, Bureau 39, which is notorious for counterfeiting and money laundering.⁸¹ North Korea's Rungrado Trading Company has also been implicated in Pyongyang's trade in luxury goods, as well as exports of missile parts and slave labor.⁸²

In 2019, UN aid agencies estimated that half of North Korea's population was still in need. It appealed to international donors for \$120 million to feed 3.8 million of the most vulnerable people—young children, pregnant women, and lactating mothers.⁸³ That same year, the International Campaign to Abolish Nuclear Weapons estimated that Pyongyang spent \$620 million on its nuclear weapons program alone.⁸⁴ It has continued to divert resources from the needs of its people to accelerate its production of nuclear weapons and ballistic missiles.⁸⁵

78 U.S. Dep't of Treasury, "Treasury Sanctions Banks and Representatives Linked to North Korean Financial Networks," September 26, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0165.aspx>; see U.S. Dep't of Treasury, "Imposition of Special Measure Against North Korea as a Jurisdiction of Primary Money Laundering Concern," 81 Fed. Reg. 78715 (December 9, 2016), <https://www.federalregister.gov/documents/2016/11/09/2016-27049/imposition-of-special-measure-against-north-korea-as-a-jurisdiction-of-primary-money-laundering>.

79 S/2020/151 ¶¶ 153, 157, figs. 26, 34.

80 S/2019/691 ¶ 48.

81 *Id.*; U.S. Dep't of Treasury Press Release, "Treasury Designates Key Nodes of the Illicit Financing Network of North Korea's Office 39," November 18, 2010, <https://www.treasury.gov/press-center/press-releases/pages/tg962.aspx>.

82 S/2016/157 ¶¶ 71-77; S/2017/150 ¶¶ 88-95, annexes 9-2 to 9-4; S/2018/171, annex 30; Christian Vonscheidt and Miriam Wells, "Cash for Kim: How North Koreans Are Working Themselves to Death in Europe," *Vice News*, May 23, 2016, https://www.vice.com/en_us/article/xw33bj/cash-for-kim-how-north-koreans-are-working-themselves-to-death-in-europe.

83 United Nations Humanitarian Country Team, Democratic People's Republic of Korea, *DPR Korea Need & Priorities* (March 2019), <https://reliefweb.int/sites/reliefweb.int/files/resources/DPRK%20NP%202019%20Final.pdf>.

84 "N. Korea spends estimated \$620 mln on nuclear weapons in 2019," *Yonhap News*, May 14, 2020, <https://en.yna.co.kr/view/AEN20200514003400325?input=tw>.

85 Elizabeth Lederer, "UN experts: North Korea flouts sanctions on nukes, missiles," *Associated Press*, August 4, 2020, <https://federalnewsnetwork.com/world-news/2020/08/un-experts-north-korea-flouts-sanctions-on-nukes-missiles/>

THE ROOT OF ALL EVIL

Joshua Stanton

In 2020, despite the rising immiseration of its rural population and the worsening economic effects of the COVID-19 pandemic, Pyongyang imported \$30 million worth of wine, whisky, vodka, beer, and other alcoholic beverages from China.⁸⁶ That year, the World Food Programme (WFP) asked donor nations to contribute \$161 million to pay for a three-year aid program to feed the poor, who were still hungry a quarter-century after humanitarian aid first arrived in North Korea.⁸⁷ But early that year, Kim Jong-un imposed a strict blockade on his own country and ejected all foreign aid workers.

Inexplicably, Pyongyang refused to accept offers of protective equipment and vaccines by Presidents Trump and Biden, the United Nations, the governments of Russia and China, and the industry alliance COVAX via UNICEF, to assist North Korea in coping with the COVID-19 pandemic.⁸⁸ The UN Panel of Experts reports that Pyongyang continues to use scarce resources to purchase and import luxury goods to this day—including Mercedes-Benz limousines and imported alcoholic beverages—instead of using those resources to import food and medicine, which are exempt from international sanctions.⁸⁹ Between 2020 and 2021, as North Korea's food situation continued to

86 Jacob Fromer, "North Korea spent \$30 million on alcohol from China last year, data reveals," *NK News*, February 13, 2020, https://www.nknews.org/2020/02/north-korea-spent-30-million-on-alcohol-from-china-last-year-data-reveals/?utm_source=dlvr.it&utm_medium=twitter.

87 United Nations World Food Programme, *Democratic People's Republic of Korea interim country strategic plan (2019–2021)*, WFP/EB.1/2019/8-B/1 (2019), https://docs.wfp.org/api/documents/WFP-0000101974/download/?_ga=2.115939714.503039636.1581644977-299558176.1580867706

88 John Sifton, "Unprecedented Glimpse of Crisis in North Korea," *Human Rights Watch*, August 21, 2020, <https://www.hrw.org/news/2020/08/21/unprecedented-glimpse-crisis-north-korea>; Jeongmin Kim, "North Korea may be closing a key sea route for humanitarian aid deliveries," *NK News*, August 19, 2020, <https://www.nknews.org/2020/08/unicef-says-north-korea-decided-to-temporarily-close-nampho-port-late-july/?t=1597886048048>; "Why 2020 is Kim Jong Un's most challenging year yet," *NK News*, August 31, 2020, <https://www.nknews.org/pro/why-2020-is-kim-jong-uns-most-challenging-year-yet/>; Jeongmin Kim, "North Korea's economy plagued by 'absurdities,' serious challenges: state media," *NK News*, May 12, 2020, <https://www.nknews.org/2020/05/dprk-admits-absurdity-in-economic-sector-discredits-foreign-aid-state-media/?t=1598497629298>; Jeongmin Kim, "North Korea experiencing economic hardship, 'lagging behind': state media," *NK News*, April 22, 2020, <https://www.nknews.org/2020/04/north-korea-going-through-hardships-and-lagging-behind-admits-state-media/?t=1598497675134>; Jacob Fromer, "North Korea says Trump wrote to Kim Jong Un, offered help on coronavirus," *NK News*, March 21, 2020, <https://www.nknews.org/2020/03/north-korea-says-trump-wrote-to-kim-jong-un-offered-help-on-coronavirus/?t=1587535677701>; Kylie Atwood, "Biden administration is open to sharing coronavirus vaccines with North Korea," *CNN.com*, May 11, 2021, <https://www.cnn.com/2021/05/11/politics/us-coronavirus-vaccines-north-korea/index.html>; Zoe Strozewski, "North Korea Declines 3 Million COVID Vaccines, Says They Should Go to Other Nations," *Newsweek*, September 3, 2021, <https://www.newsweek.com/north-korea-declines-3-million-covid-vaccines-says-they-should-go-other-nations-1625837>; "North Korea rejects offer of almost three million Covid-19 jabs," <https://www.bbc.com/news/world-asia-58408913>; Jeongmin Kim, "COVAX offers 4.7 million more COVID-19 vaccine doses to North Korea," *NK News*, November 30, 2021, <https://www.nknews.org/2021/11/covax-offers-4-7-million-more-covid-19-vaccine-doses-to-north-korea/>. It bears repetition, given the frequent mischaracterization of sanctions by Pyongyang's apologists, that UN Security Council sanctions do not limit exports of food and consumer goods to North Korea. See *The Human Costs and Gendered Impact of Sanctions on North Korea* (Korea Peace Now, 2019), <https://koreapeacenow.org/wp-content/uploads/2019/10/human-costs-and-gendered-impact-of-sanctions-on-north-korea.pdf>.

89 UN POE, *Midterm report of the Panel of Experts submitted pursuant to resolution 2515 (2020)*, S/2020/840 (2020), ¶ 88.

Money, Rice, Crime & Law in North Korea

deteriorate, Kim Jong-un built himself a floating amusement park off the coast of Wonsan and a series of mansions near Lake Yonphung in the northeast, and in Pyongyang, adding to the dozens of palaces built by his father and grandfather.⁹⁰

In a centrally planned economy, where much of the population is malnourished or food insecure, kleptocracy is not merely the tolerance of gross inequity. It is the state's deliberate segregation of the meat-eaters from the corn-eaters, or—at its worst—of the living from the dead. It is a system that places a lower value on the lives of the poor than on the limousines of its oligarchs. Kim Jong-un's kleptocracy is not a quirky, amusing-yet-harmless hypocrisy, or the story of a plucky David defying Goliath. It is a crime against humanity that relies on the active or passive collaboration of corrupt foreign enablers and profiteers—vendors, shippers, bankers, customs inspectors, and regulators.

Indeed, as this paper argues, every crisis emanating from North Korea—its crimes against humanity, its WMD programs, its global arms trade and proliferation, its hacking and financial crimes—is inextricably intertwined with its kleptocracy and corruption. In North Korea, money is the root of *all* evil. Consequently, each of these crises points to a common set of legal and diplomatic strategies that targets all of them at their common source—our willful or negligent choices to facilitate Pyongyang's access to our financial system, our commerce, our technology, and our economy.

90 Colin Zwirko, "Kim Jong-un Builds New Mansions Across the Country as North Korean Public Suffers," NK News, November 24, 2021, <https://www.nknews.org/pro/kim-jong-un-builds-new-mansions-across-country-as-north-korean-public-suffers/?t=1645545666939>; Colin Zwirko, "Kim Jong Un's private 'floating amusement park' appears headed for Wonsan villa," NK Pro, May 25, 2021, <https://www.nknews.org/pro/kim-jong-uns-private-floating-amusement-park-appears-headed-for-wonsan-villa/>.

THE ROOT OF ALL EVIL

Joshua Stanton

C. Corruption in North Korea: The State as Perpetrator, Exporter, & Victim

Corruption impedes economic growth by diverting public resources from important priorities such as health, education, and infrastructure. It undermines democratic values and public accountability and weakens the rule of law. And it threatens stability and security by facilitating criminal activity within and across borders, such as the illegal trafficking of people, weapons, and drugs.⁹¹

North Korea consistently ranks as one of the world's most corrupt countries in indices compiled by the NGOs Transparency International and Trace International.⁹² In North Korea, corruption may be either obedient or contrary to the direction of the state. The state directs its officials to commit insurance fraud,⁹³ bank fraud,⁹⁴ computer hacking,⁹⁵ drug trafficking,⁹⁶ counterfeiting,⁹⁷ gambling,⁹⁸ and money laundering.⁹⁹

91 U.S. Dep't of Justice & U.S. Securities & Exchange Comm'n, *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, November 14, 2012), <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>.

92 "Corruption Perceptions Index, North Korea," *Transparency International*, accessed December 21, 2021, <https://www.transparency.org/country/PRK> (ranking North Korea at 172nd and 172th out of 180 countries in 2019 and 2020, respectively); Trace Int'l Bribery Risk Matrix, North Korea (last accessed December 21, 2021, <https://traceinternational.blob.core.windows.net/uploads/MatrixFiles/2021/Reports/North%20Korea%20-%20TRACE%20Matrix%202021.pdf?sv=2018-03-28&sr=b&sig=Uw6DH040O8D0zDx4svspL%2BG%2F6DLo2g1oIfuUSqYB%2FQA%3D&sc=2021-12-22T04%3A03%3A28Z&se=2021-12-22T04%3A09%3A28Z&sp=r>); Ethan Jewell, "North Korea far and away the world's most corrupt country: Report," *NK News*, November 19, 2021, <https://www.nknews.org/2021/11/north-korea-far-and-away-the-worlds-most-corrupt-country-report/>.

93 Blaine Harden, "Global Insurance Fraud By North Korea Outlined," *Washington Post*, June 18, 2009, <https://www.washingtonpost.com/wp-dyn/content/article/2009/06/17/AR2009061703852.html>.

94 Krishna Das, "SWIFT says helping Bangladesh Bank rebuild network after cyber heist," <https://www.reuters.com/article/us-cyber-heist-bangladesh-swift/swift-says-helping-bangladesh-bank-rebuild-network-after-cyber-heist-idUSKCN1PR0LE>.

95 U.S. Dep't of Homeland Security, Cybersecurity & Infrastructure Security Agency, "North Korean Malicious Cyber Activity," <https://us-cert.cisa.gov/northkorea>.

96 Sheena Chestnut, *Illicit: North Korea's Evolving Operations to Earn Hard Currency* (Washington, D.C.: Committee for Human Rights in North Korea, 2014), <https://www.hmrk.org/uploads/pdfs/SCG-FINAL-FINAL.pdf>; Max Fisher, "Report: North Korea ordered its foreign diplomats to become drug dealers," *Washington Post*, March 22, 2013, <http://www.washingtonpost.com/blogs/worldviews/wp/2013/03/22/report-north-korea-ordered-its-foreign-diplomats-to-become-drug-dealers/>.

97 David Rose, "North Korea's Dollar Store," *Vanity Fair*, August 5, 2009, <https://www.vanityfair.com/style/2009/09/office-39-200909>; Steven Mithm, "No Ordinary Counterfeit," *NY Times Magazine*, July 23, 2006, https://www.nytimes.com/2006/07/23/magazine/23counterfeit.html?pagewanted=all&_r=0.

98 Oliver Hotham, "Cambodia, citing visa irregularities, expels 16 North Korean programmers," *NK News*, January 6, 2020, <https://www.nknews.org/2020/01/cambodia-citing-visa-irregularities-expels-16-north-korean-programmers/>; Elizabeth Shim, "North Korea now has 6,000 hackers, runs lucrative gambling site," *UPI*, July 7, 2016, https://www.upi.com/Top_News/World-News/2016/07/07/North-Korea-now-has-6000-hackers-runs-lucrative-gambling-site/8971467898350/.

99 U.S. Dep't of Treasury, Financial Crimes Enforcement Network, "Imposition of Special Measure Against North Korea as a Jurisdiction of Primary Money Laundering Concern," 81 Fed. Reg. 78715.

Money, Rice, Crime & Law in North Korea

The same officials also cheat the state. Trading company officials embezzle profits,¹⁰⁰ and security officers extort merchants¹⁰¹ or the relatives of émigrés to South Korea for remittances.¹⁰² Officials pilfer food and fertilizer from collective farms and processing plants.¹⁰³ Soldiers steal from the homes of civilians,¹⁰⁴ and officers and soldiers embezzle fuel and rations from military commissaries.¹⁰⁵ Factory managers rent out government land and pocket the proceeds.¹⁰⁶ The leaders of work units steal materials from factories or construction sites.¹⁰⁷ Border guards demand bribes from traders and smugglers.¹⁰⁸ Civil servants take bribes from their subordinates.¹⁰⁹ In all of these cases, the North Korean people are the ultimate victims.

100 "Party cadres fail to pay bribes, sent to labor camp on false charges," *Daily NK*, June 9, 2015, <https://www.dailynk.com/english/party-cadres-fail-to-pay-bribes-se/>.

101 "North Korea: Private Commerce Brings Arbitrary Arrests, Abuse," *Human Rights Watch*, June 7, 2015, <https://www.hrw.org/news/2015/06/07/north-korea-private-commerce-brings-arbitrary-arrests-abuse>.

102 Kim Yoo-jin, "DPRK police officer punished for embezzlement," *Daily NK*, November 11, 2018, <https://www.dailynk.com/english/dprk-police-officer-punished-for-embezzlement/>.

103 Jeong Tae-joo, "N. Korea tackles corruption involving 'experimental fields,'" *Daily NK*, January 16, 2020, <https://www.dailynk.com/english/north-korea-tackles-corruption-involving-experimental-fields/>; "Corruption blamed for poor quality of snacks distributed to children for leader's birthday," *Daily NK*, February 13, 2018, <https://www.dailynk.com/english/corruption-blamed-for-poor-quality/>.

104 Jong So-yong, "Soldiers in Unpa County are stealing and looting from locals," *Daily NK*, August 31, 2020, <https://www.dailynk.com/english/soldiers-unpa-county-stealing-looting-locals/>.

105 Dasl Yoon and Andrew Jeong, "A North Korean Defector's Tale Shows Rotting Military," *Wall Street Journal*, July 4, 2020, <https://www.wsj.com/articles/a-north-korean-defectors-tale-shows-rotting-military-11593867607>; "What is really in those fuel tanks?" *New Focus Int'l*, April 6, 2015, <https://web.archive.org/web/20150414092959/http://newfocusintl.com/what-is-really-in-those-fuel-tanks/>; "Corruption Rampant in N.Korean Army," *Chosun Ilbo*, November 1, 2013, http://english.chosun.com/site/data/html_dit/2013/11/01/2013110100525.html; Jeong Jae-sung, "Corruption in the North Korean Army Out of Kim Jong Il's Control," *Daily NK*, November 25, 2005, <https://www.dailynk.com/english/corruption-in-the-north-korean-arm/>.

106 Sewon Kim and Hyemin Son, "North Korean Officials Arrested for Real Estate Corruption in Crackdown," *Radio Free Asia*, August 11, 2020, <https://www.rfa.org/english/news/korea/corruption-08112020193649.html>.

107 Kim Yoo-jin, "Elite N. Korean military construction unit probed for corruption," *Daily NK*, November 5, 2019, <https://www.dailynk.com/english/elite-north-korean-military-construction-unit-probed-corruption/>; "Bungled high-rise reveals reality," *Daily NK*, June 2, 2015, <https://www.dailynk.com/english/bungled-highrise-reveals-reality/>; Choi, Song-min, "Defense of Steel Destroying Enterprises," *Daily NK*, March 27, 2015, <https://www.dailynk.com/english/defense-of-steel-destroying-enterp/>.

108 "Political police prey on public for personal gain," *Daily NK*, April 4, 2018, <https://www.dailynk.com/english/political-police-prey-on-public-fo/>; Kang Min Jin, "Remittance fees increase as North Korean police demand bribes," *Daily NK*, April 17, 2018, <https://www.dailynk.com/english/remittance-fees-increase-as-north/>.

109 "Party cadres fail to pay bribes, sent to labor camp on false charges," *Daily NK*, June 9, 2015, <https://www.dailynk.com/english/party-cadres-fail-to-pay-bribes-se/>; Kim Yoo-jin, "DPRK police officer punished for embezzlement," *Daily NK*, November 6, 2018, <https://www.dailynk.com/english/dprk-police-officer-punished-for-embezzlement/>.

THE ROOT OF ALL EVIL

Joshua Stanton

In a 2019 report, the UN Office of the High Commissioner for Human Rights recognized corruption as a serious human rights problem in North Korea. It analyzed the state's kleptocracy as a form of corruption.¹¹⁰ Pyongyang's corruption taxes the livelihoods of the poor below subsistence levels to pay for its military expenditures, its cult of personality, and luxuries for its political elites. Its grossly unequal redistribution of the nation's resources favors Pyongyang over the northeast city dwellers over rural people, and "loyal" families over "hostile" ones. Wages and rations seldom reach subsistence levels, so families must grow food or trade to survive. In doing so, they must skirt or flout the state's myriad petty despotisms. These rules often double-tax the poor in application. Enforced as rigidly as they are interpreted ambiguously, they create opportunities for lower-level officials and police to demand bribes arbitrarily. Those who cannot pay are denied fair trials and humane treatment while detained or after they are sentenced.¹¹¹

In North Korea, corrupt officials monetize their political power through bribes and extortion, or coerce vulnerable women and girls for sex.¹¹² North Korea's *nouveau riche*, who have prospered in its nascent gray-market economy, can buy with dollars the indulgences that the *songbun* caste system had once rationed out only to privileged elites.¹¹³ They benefit from corruption by bribing officials to evade punishments, work assignments,¹¹⁴ and forced labor mobilizations.¹¹⁵ They get the first pick of goods smuggled in by merchants who bribe officials.¹¹⁶ Parents bribe military officers to secure favorable assignments for their sons.¹¹⁷ Different security forces compete to "inspect" and extort military units for corruption, or for the possession of foreign media.¹¹⁸ Corruption

110 UN Office of the High Commissioner for Human Rights, *The Price Is Rights: The Violation of the Right to an Adequate Standard of Living in the Democratic People's Republic of Korea* (May 2019), https://www.ohchr.org/Documents/Countries/KP/ThePriceIsRights_EN.pdf.

111 *Ibid.*

112 "You Cry at Night but Don't Know Why: Sexual Violence against Women in North Korea," *Human Rights Watch*, November 1, 2018, <https://www.hrw.org/report/2018/11/02/you-cry-night-dont-know-why/sexual-violence-against-women-north-korea>.

113 Jonathan Corrado, "The Other Side of Corruption in North Korea," *The Diplomat*, February 10, 2016, <https://thediplomat.com/2016/02/the-other-side-of-corruption-in-north-korea/>.

114 Jong So-yong, "Military couple faces corruption charges for illegal taxi business in Pyongyang," *Daily NK*, September 2, 2019, <https://www.dailynk.com/english/military-couple-investigated-illegal-taxi-business-pyongyang/>.

115 "Impractical measures make for catch-22," *Daily NK*, May 28, 2015, <https://www.dailynk.com/english/impractical-measures-make-for-carc/>.

116 Kim Yoo-jin, "N. Korea cracks down on corruption in border patrol," *Daily NK*, January 27, 2020, <https://www.dailynk.com/english/north-korea-cracks-down-corruption-border-patrol/>; "Bribery Begets Bribery," *Daily NK*, April 21, 2015, <https://www.dailynk.com/english/bribery-begets-bribery/>.

117 Lee Sang-yong, "North Korean official fired for accepting bribes for favorable soldier dispatches," *Daily NK*, March 3, 2019, <https://www.dailynk.com/english/north-korean-official-fired-for-accepting-bribes-for-favorable-soldier-dispatches/>.

118 Jeong Tae-woo, "N. Korean military agencies trip over each other to extract bribes," *Daily NK*, September 2, 2020, <https://www.dailynk.com/english/north-korean-military-agencies-trip-over-each-other-extract-bribes/>.

Money, Rice, Crime & Law in North Korea

allows fortunate prisoners to receive food parcels, family visitors, or shorter sentences.¹¹⁹ A few can buy their way out of prosecution entirely.¹²⁰ Corruption is a solvent of regime decay, but it is not transforming North Korea into a fair society that provides for its people. It merely alters the class of beneficiaries of its gross inequalities.

The state has acknowledged the ubiquity of corruption, if only implicitly, through an escalating series of crackdowns, purges, and executions. In doing so, it accepts the political price it pays in citizens' loyalty by acknowledging the corruption of its officials, and the perception by the people that the state is corrupt.¹²¹ Does the state assume that citizens do not also project this perception upon the state itself?

The state's profiteering from corruption abroad reflects the same corrupt ethic that also pervades every level of North Korean society. Pyongyang perpetrates its kleptocracy through agents it selects and trains for their aptitude at breaking laws, and for their indifference to the rights of other states and individuals. It then dispatches them abroad with the specific intent of carrying out criminal enterprises, defrauding banks to obtain financial services,¹²² and defrauding foreign governments that seek to protect their own sovereignty and security by regulating their own

119 Kim Yoo-jin, "Food donations from relatives sought for correctional labor camps," *Daily NK*, July 7, 2018, <https://www.dailynk.com/english/food-donations-from-relatives-sought-for-correctional-labor-camps/>; Kim Yoo-jin, "Son reduces mom's jail time by contributing to loyalty fund," *Daily NK*, December 4, 2019, <https://www.dailynk.com/english/son-reduces-moms-jail-time-by-contributing-to-loyalty-fund/>.

120 Lee Sung-jin, "A Safety Agent Was Executed for Covering up a Drug Case," *Daily NK*, February 26, 2008, <https://www.dailynk.com/english/a-safety-agent-was-executed-for-co/>.

121 Sewon Kim, "North Korea Publicly Executes Six for Sex Trafficking, Including Four Officials," *Radio Free Asia*, August 6, 2020, <https://www.rfa.org/english/news/korea/execution-080620202000.html>; Colin Zwirko, "North Korean state media pushes anti-corruption line following Politburo meeting," *Daily NK*, March 2, 2020, <https://www.nknews.org/2020/03/north-korean-state-media-pushes-anti-corruption-line-following-politburo-meeting/>; Colin Zwirko, "Kim Jong Un sacks top officials for 'corruption' in meeting on coronavirus," *NK News*, February 28, 2020, <https://www.nknews.org/2020/02/kim-jong-un-sacks-top-officials-for-corruption-in-meeting-on-coronavirus/>; Ha Yoon-ah, "North Korean officials punished for corruption," *Daily NK*, July 7, 2019, <https://www.dailynk.com/english/north-korean-officials-punished-for-corruption/>; Mun Dong-hui, "Elite inspection team to crack down on corruption in North Korea," *Daily NK*, February 25, 2019, <https://www.dailynk.com/english/clite-inspection-team-to-crack-down-on-corruption-in-north-korea/>; Ji Da-gyum, "N.Korea urges officials to thoroughly eradicate corruption: Rodong," *NK News*, December 19, 2018, <https://www.nknews.org/2018/12/n-ko-rea-urges-officials-to-thoroughly-eradicate-corruption-rodong/>; Andrew Jeong and Timothy W. Martin, "Kim Jong Un Purges Wealthy Elite and Opponents of Outreach to U.S.," *Wall Street Journal*, February 19, 2019, <https://www.wsj.com/articles/kim-jong-un-purges-north-korean-elite-in-violent-crackdown-11550593810>; "Kim Jong Un is enraged by military corruptions," *Dong-A Ilbo*, December 25, 2018, <https://www.donga.com/en/List/article/all/20181225/1589115/1/Kim-Jong-Un-is-enraged-by-military-corruptions-Thae-says>; "N. Korea declares war on corruption," *Yonhap News*, December 10, 2018, <https://en.yna.co.kr/view/AEN20181210006600325?section=nk/nk>; "North Korea launching massive anti-corruption drive," *Yonhap News*, February 9, 2008, <https://en.yna.co.kr/view/AEN20080209000800320>.

122 18 U.S.C. § 1344 (prohibiting fraud to obtain financial services).

THE ROOT OF ALL EVIL

Joshua Stanton

economies.¹²³ It induces bankers and shippers to turn a blind eye to its money laundering and smuggling.¹²⁴ Pyongyang is also an exporter and proliferator of corruption and kleptocracy that induces other poor states to spend their scarce hard currency on weapons and political monuments.¹²⁵

Thus, Kim Jong-un is both the perpetrator and victim of corruption. The corruption he directs is essential to the state's cohesion and his survival; the corruption he cannot extirpate degrades its cohesion and ultimately threatens his survival. The former pits Kim against the world; the latter pits Kim against its own officials. Both forms prey on North Korea's poor, who have been consigned to the lowest levels of the *songbun* system. The poorest cheat the state because they must. Corruption is just another survival strategy to those whose wages seldom reach the barest subsistence level.¹²⁶

This report, however, focuses on the state as the apex predator in North Korea's ecosystem of corruption, and how the world has addressed that corruption—or more often, has failed to. Because Pyongyang's kleptocracy relies on its access to international trade and finance, it is also vulnerable to the risk that other states will coalesce around common interests, values, obligations, authorities, and responsibilities to prevent and alter its behavior. Pyongyang's corruption lends itself to unified, coherent, nonviolent, and humane policy responses—diplomatic, legal, and ethical—by other states, all of which must eventually choose between being its enablers, its victims, or its antagonists.

123 18 U.S.C. § 371 (prohibiting conspiracies to evade the exercise of a lawful government function by the United States).

124 Aaron Arnold, "How North Korea takes advantage of global corruption to evade sanctions," *NK News*, December 24, 2021, <https://www.nknews.org/2021/12/how-north-korea-takes-advantage-of-global-corruption-to-evade-sanctions/>.

125 Min Chao Choy, "North Korean statues are showing up in Africa — and they could be illegal," *NK News*, September 4, 2020, <https://www.nknews.org/2020/09/north-korean-statues-are-showing-up-in-africa-and-they-could-be-illegal/>.

126 "KPA Corruption: A Necessary Evil?" *Daily NK*, April 6, 2015, <https://www.dailynk.com/english/kpa-corruption-a-necessary-evil/>; "In sanctioned North Korea, bribery problem worsens," *Daily NK*, January 9, 2018, <https://www.dailynk.com/english/in-sanctioned-north-korea-bribery/>; Kang Mi-jin, "MPS officers extract bribes to fund their day of honor," *Daily NK*, November 18, 2019, <https://www.dailynk.com/english/mps-officers-extract-bribes-fund-their-day-honor/>; Kim Yoo-jin, "Police official in North Korea faces jail time for taking bribes," *Daily NK*, April 30, 2019, <https://www.dailynk.com/english/police-official-in-north-korea-faces-jail-time-for-taking-bribes/>; Kang Mi-jin, "North Korean law enforcement officials criticized for using fines to earn money," *Daily NK*, April 4, 2019, <https://www.dailynk.com/english/north-korean-law-enforcement-officials-criticized-for-using-fines-to-earn-money/>; Lee Sung-jin, "Director of Hoiryeong People's Safety Agency on Trial for Drug Charges," *Daily NK*, February 6, 2008, <https://www.dailynk.com/english/director-of-hoiryeong-peoples-safe/>.

Money, Rice, Crime & Law in North Korea

D. The Hungry as Human Shields

When foreign states limit or deny Pyongyang's access to their economies, some interpret this as a choice between combating proliferation and financial crime (on one hand) and showing mercy toward poor North Koreans (on the other) who are guilty of no crime. This reframing shifts the choice away from the agency of those who have the most responsibility and capability for framing it.

A state's willful choice to spend the nation's resources on weapons and luxury goods while the people go hungry is a violation of the right to food.¹²⁷ That is especially so in a centrally planned economy. In 2008, Václav Havel, Kjell Magne Bondevik, and Elie Wiesel invoked the doctrine of "Responsibility to Protect," in one of the Committee for Human Rights in North Korea's first reports. Under this doctrine, a state has a legal obligation to protect the most fundamental human rights of its people. If a state denies its people these rights, the UN Security Council and General Assembly are obligated to act on behalf of those whose rights are denied.¹²⁸ Havel, Bondevik, and Wiesel called for engagement with Pyongyang, but Pyongyang ignored their call—and, but for cynical gestures and incredible denials, every other similar call.¹²⁹

In 2014, the UN COI called on the Security Council to refer the evidence of Kim Jong-un's crimes against humanity to the International Criminal Court. China and Russia blocked that referral.¹³⁰ But the failure of moral suasion, and the institutional failure of the United Nations, do not relieve other states of their obligation to develop and enforce a strategy to compel Pyongyang to cease its kleptocracy, end its crimes against humanity, and provide its people sufficient food and medical care to live, grow, and prosper. No state has a sovereign right to commit kleptocracy. Under the UN Convention Against Corruption and related authorities, every state has a duty to safeguard against enabling it, and to take all reasonable steps to prevent it.¹³¹

127 A/HRC/25/63 ¶¶ 682-92. Specifically, the Commission found as follows:

The Commission finds what occurred during the 1990s a most serious indictment of the DPRK and its officials. In the highly centralized system of the Democratic People's Republic of Korea, decisions related to food, including production and distribution, state budget allocation, decisions related to humanitarian assistance and the use of international aid, are ultimately determined by a small group of officials, who are effectively not accountable to those affected by their decisions. In this context, the Commission considers crimes against humanity of starvation in section V of the present report.*Id.* ¶ 691.

128 Václav Havel, Kjell Magne Bondevik, and Elie Wiesel, *Failure to Protect: The Ongoing Challenge of North Korea* (Washington, D.C.: Committee for Human Rights in North Korea, 2008), https://www.hrnk.org/uploads/pdfs/F2P_North_Korea_9-19-08_English.pdf.

129 Madison Park, "Under pressure, North Korea proposes human rights visit," *CNN*, October 29, 2014, <https://www.cnn.com/2014/10/28/world/asia/north-korea-human-rights/index.html>.

130 A/HRC/25/63 ¶¶ 1201 & 1218.

131 United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, GA res. 58/4, A/58/422, S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf; United Nations General Assembly, *United Nations Convention against Transnational Organized Crime and its Protocols*, S. Exec. Rep. No. 109-4, 40 I.L.M. 335 (2001); United Nations General Assembly, *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime*, A/55/383 (2000), <https://www.unodc.org/pdf/>

THE ROOT OF ALL **EVIL**

Joshua Stanton

Yet since the Great Famine of the 1990s, Pyongyang has used its poorest people as human shields, thus presenting the world with a false choice between mercy and security. But allowing state access to international finance does not feed the hungry if the state chooses to deprive them of their basic needs anyway. And of course, if UN member states enforce sanctions, the money that Pyongyang has stolen from North Korea's poorest and hungriest people draws interest in foreign bank accounts or treasuries.¹³² This, too, fails to reach the root of all evil.

Neither aid nor sanctions, as currently configured, is attacking this evil at its root. A world that is a necessary participant in Kim Jong-un's kleptocracy bears ethical and legal duties to protect the people of North Korea from it. This report presents a non-violent, multilateral strategy to use the combined authorities of UN Security Council resolutions, international conventions, and U.S. domestic law to advance both security and mercy, and reconcile the illusory conflict between them. Understanding the potential of that strategy begins with an understanding of the legal authorities on which it would be based, how they have evolved and developed, and what we can learn from their past uses.

crime/final_instruments/383e.pdf; United Nations General Assembly, *United Nations Convention against Transnational Organized Crime*, A/RES/55/25 (2001); United Nations General Assembly, *United Nations Declaration Against Corruption and Bribery in International Commercial Transactions*, A/RES/ 51/191 (1996) https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/51/191.

132 U.S. Dep't of Treasury, "Terrorist Assets Report: Calendar Year 2018 Twenty-Seventh Annual Report to the Congress on Assets in the United States Relating to Terrorist Countries and Organizations Engaged in International Terrorism," 2018, TABLE 1 <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/tar2018.pdf>. This indicates that by the end of the 2018 reporting period, OFAC was holding more than \$74 million in blocked North Korean funds, an increase of just \$11 million over the previous year; U.S. Dep't of Treasury, "Terrorist Assets Report: Calendar Year 2017 Twenty-sixth Annual Report to the Congress on Assets in the United States Relating to Terrorist Countries and International Terrorism Program Designees," 2017, <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/tar2017.pdf>.

Money, Rice, Crime & Law in North Korea

Part II—Legal Authorities Against North Korean Kleptocracy

A. A Pre-History of North Korea Sanctions

The Chosun Dynasty had little external trade before 1876, when the Japanese empire forced a self-isolated Korean kingdom into progressively more exploitative trade relations, and eventually colonized it. In 1940, the Roosevelt administration imposed a trade embargo on the Japanese empire, including its Korean colony.¹³³ Thus, the United States was not a significant trading partner of Korea before Japan's surrender in 1945.

When Kim Il-sung invaded South Korea in 1950, President Truman invoked the Trading With the Enemy Act of 1917 (TWEA),¹³⁴ which barred most bilateral trade between the U.S. and North Korea until 1995.¹³⁵ But the TWEA was of little consequence during the Cold War, when Pyongyang's principal trading partners were the U.S.S.R., which offered it trade on favorable terms, and the People's Republic of China.¹³⁶ Pyongyang regarded trade with other states with suspicion.¹³⁷ When it needed hard currency, its agents abroad found other ways to acquire it. As early as the 1960s, North Korean diplomats were arrested for drug trafficking, and for the smuggling of liquor and cigarettes.¹³⁸

Meanwhile, the global economy was becoming increasingly dollarized, and an efficient financial system had risen in Manhattan to facilitate global commerce. Most international transactions—and many intra-national ones—were now denominated in dollars and were cleared through correspondent banks in New York. Even non-U.S. banks must clear most dollar transactions through their

133 U.S. Fed. Reserve Bank of New York, Exec. Order 8832, "Freezing Japanese and Chinese Assets in the United States," Cir. 2249 (1941), https://fraser.stlouisfed.org/files/docs/historical/ny%20circulars/1941_02249.pdf (amending a previous executive order freezing assets in Nazi-occupied Norway and Denmark to require a license for any transaction in "property subject to the jurisdiction of the United States . . . in which . . . China or Japan or a national thereof had any interest of any nature whatsoever, direct or indirect"); Myung-Soo Cha, "The Economic History of Korea," *Economic History*, accessed September 23, 2020, <https://eh.net/encyclopedia/the-economic-history-of-korea/>; Daniel Wertz and Chelsea Gannon, "A History of U.S.-DPRK Relations," *National Committee for North Korea Issue Brief*, November 2015, https://www.ncnk.org/sites/default/files/US_DPRK_Relations_November2015.pdf.

134 Dianne E. Rennack, "North Korea: Legislative Basis for U.S. Economic Sanctions," *U.S. Congressional Research Service*, March 9, 2020, 15, <https://fas.org/spp/crs/row/R41438.pdf>.

135 Exec. Order 13466, "Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals," Presidential Proclamation 8271 (2008), <https://www.govinfo.gov/content/pkg/CFR-2009-title3-vol1/pdf/CFR-2009-title3-vol1-co13466.pdf>; see *infra* notes 144–45.

136 Eberstadt, *The North Korean Economy: Between Crisis & Catastrophe*, 61–90.

137 *Id.* at 145–49; Marcus Noland, "NORTH KOREA'S EXTERNAL ECONOMIC RELATIONS," (WASHINGTON, D.C.: PETERSON INST. FOR INTL. ECONOMICS, 2001), <https://www.piie.com/commentary/speeches-papers/north-korea-external-economic-relations-paper>.

138 Sheena Chestnut Greitens, *Illicit: North Korea's Evolving Operations to Earn Hard Currency*, Committee for Human Rights in North Korea (2014).

THE ROOT OF ALL EVIL

Joshua Stanton

correspondent accounts in U.S. banks.¹³⁹ Thus, a wire transfer from a Hong Kong bank to a Taiwanese bank is routed indirectly, from the Hong Kong bank's U.S. correspondent account to the Taiwanese bank's U.S. correspondent account.¹⁴⁰ Because these transactions pass through U.S. jurisdiction, they fall under the regulatory jurisdiction of the U.S. Department of the Treasury. Because America is the hub of this financial system, the Treasury Department is its steward, and the cooperation of correspondent banks is essential to that stewardship.¹⁴¹

Since 1970, Congress has increased its regulation of the financial system to protect it from misuse for money laundering and tax evasion. That year, it passed the Bank Secrecy Act (BSA), which required banks to conduct due diligence inquiries into who their customers are and where their money comes from.¹⁴² In 1977, it passed the International Emergency Economic Powers Act (IEEPA), which authorizes the Treasury Department to freeze the assets of criminals, terrorists, and money launderers within U.S. jurisdiction.¹⁴³ While the BSA is primarily a law enforcement tool, the IEEPA has become central to enforcing both U.S. national sanctions and UN sanctions.

The IEEPA gives the Office of Foreign Assets Control the power to freeze assets as they transit through U.S. jurisdiction (known as blocking). The authority to block funds is generally by regulation or executive order that either blocks "all property and interests in property" of a specific person, group, or entity; or provides for the blocking of funds involved in specific conduct prohibited by regulation or executive order. Blocking does not change the ownership of property. Blocked funds remain the property of their owner, but no person may legally deal in them within the United States—including through correspondent accounts in the United States—and no U.S. person may deal in them anywhere. The money sits in a blocked property account and draws interest until the Treasury Department unblocks it or the Justice Department

139 Federal Reserve Bank of New York, "Central Bank & International Account Services," accessed February 7, 2021, <https://www.newyorkfed.org/markets/central-bank-and-international-account-services>; Frances Coppola, "Fedwire: The US Dollar in International Payments," *American Express*, accessed October 18, 2020, <https://www.americanexpress.com/us/foreign-exchange/articles/fedwire-us-dollar-in-international-payments/>; In one recent case, however, transactions involving a North Korean company's construction of statues in Africa, in violation of UN Security Council Resolution 2321, paragraph 29, were cleared through a French bank that had been licensed by the Federal Reserve to conduct dollar-clearing transactions. The Sentry, *Overt Affairs: How North Korean Businessmen Busted Sanctions in the Democratic Republic of Congo*, August 2020, <https://cdn.thesentry.org/wp-content/uploads/2020/08/OvertAffairs-TheSentry-August2020.pdf>.

140 See, e.g., *United States v. \$148,500 of Blocked Funds in the Name of Trans Multi Mechanics, Co., Ltd., et al.*, No. 16-cv-01029 (2019), <https://freekorea.us/wp-content/uploads/2019/05/US-v-148500-Opinion-Granting-Forfeiture.pdf>

141 Money laundering means the transfer of funds to facilitate crime, or to spend, conceal, or obscure the illicit origins of the proceeds of crime. See 18 U.S.C. § 1956 (2016).

142 Bank Secrecy Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114 (1970); see U.S. Dep't of Treasury, Financial Crimes Enforcement Network, "History of Anti-Money Laundering Laws," accessed July 7, 2019, <https://www.fincen.gov/history-anti-money-laundering-laws>.

143 International Emergency Economic Powers Act of 1977, Pub. L. No. 95-223, 91 Stat. 1626 (1977) (codified at 50 U.S.C. §§ 1701-1708);

Money, Rice, Crime & Law in North Korea

forfeits it.¹⁴⁴ Although the U.S. government has no legal authority to spend blocked funds, the owner's judgment creditors may seek to collect against them.

Both the BSA and the IEEPA were delegations to the President of Congress's enumerated constitutional power to regulate commerce with foreign nations, but Congress does not have the staff to carry out the extensive regulatory responsibilities these new laws required.¹⁴⁵ Instead, the Treasury Department built that bureaucracy. Generally, the Financial Crimes Enforcement Network (FinCEN) regulates and enforces the BSA, and OFAC regulates and enforces the IEEPA. Banks that process wire transfers must share information about the parties to and purposes of transactions with their correspondent banks, which are required to share some of that information with the Treasury Department.

All financial institutions—banks, credit unions, casinos, and payday lenders—must maintain Anti-Money Laundering (AML) programs. The industry standard for AML compliance for banks uses specialized software to identify suspicious activities, patterns, or associations that may be red flags for money laundering.¹⁴⁶ Compliance software runs customer and counterparty data through a game of “Six Degrees of Separation” to find suspicious transactions that banks must report to the Treasury Department.¹⁴⁷ AML regulations, though imprecisely described as sanctions when applied to state actors, are merely the implementation of internationally agreed principles to protect the global economy from financial crimes. Recently, however, they have become important tools against the financing of terrorism and proliferation.¹⁴⁸

Just as AML regulation requires the cooperation of the financial industry, it also requires the

144 31 C.F.R. § 510.203.

145 Under the non-delegation doctrine, with some exceptions, Congress may not delegate an enumerated power to the executive, *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935). However, every court to have considered the constitutionality of sanctions laws, including the IEEPA, has held that they do not violate the non-delegation doctrine because Congress retains significant discretion over how the executive enforces and implements them, *United States v. Mirza*, 454 Fed. Appx. 249 (5th Cir. 2011); *United States v. Dhafir*, 461 F.3d 211 (2d Cir. 2006); *United States v. Arch Trading Co.*, 987 F.2d 1087 (4th Cir. 1993). The courts also permit a wider breadth in Congress's delegation of powers to the executive in the field of foreign affairs, where the President's power has traditionally been the most expansive, *Dhafir*, 461 F.3d 210-11.

146 “Global Anti-money Laundering Software Market 2019: Key Vendors, Trends, Analysis, Segmentation, Forecast to 2024,” *Market Watch*, May 6, 2019, <https://www.marketwatch.com/press-release/global-anti-money-laundering-software-market-2019-key-vendors-trends-analysis-segmentation-forecast-to-2024-2019-05-06>.

147 U.S. Dep't of Treasury, Financial Crimes Enforcement Network, *FinCEN's 314(a) Fact Sheet*, June 18, 2019, <https://www.fincen.gov/sites/default/files/shared/314factsheet.pdf>; U.S. Fed. Deposit Ins. Corp., *Federal Financial Institutions Examination Council, Bank Secrecy Act / Anti-Money Laundering Examination Manual, Customer Identification Program—Overview*, August 24, 2007, https://www.fdic.gov/regulations/examinations/bsa/ffiec_cip.pdf.

148 Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, June 2019, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

THE ROOT OF ALL EVIL

Joshua Stanton

cooperation of regulators from states—the state of New York is a formidable regulator in its own right—and foreign regulators who oversee financial systems based on the Euro, the Pound, the Yen, and the Canadian, Australian, and New Zealand dollars. The sharing of financial intelligence with other jurisdictions closes enforcement gaps and increases the likelihood that illicit funds will be frozen by banks—not only amounts that are denominated in dollars, but also in other convertible currencies.¹⁴⁹

Banks that clear transactions for parties that launder money or break sanctions—even if inadvertently—because of insufficient AML due diligence can face stiff civil and criminal penalties.¹⁵⁰ Banks that do so willfully face much higher penalties or criminal prosecution. The Treasury Department's greatest leverage over banks that launder money is to restrict or deny their access to the financial system, using the anti-money laundering authorities of Section 311 of the Patriot Act. This authority includes a range of special measures requiring enhanced due diligence, additional reporting requirements, and beneficial ownership disclosure requirements for designated parties, banks, or jurisdictions.¹⁵¹ Treasury would later invoke this measure against three foreign banks that facilitated Pyongyang's money laundering through U.S. jurisdiction, and then, invoke it against the jurisdiction of North Korea itself. But Kim Jong-il would enjoy a long grace period before the Treasury Department would expect him to obey our laws.

B. Kim Jong-il's Road Not Taken

Kim Il-sung did not devise a new economic strategy between the loss of his Soviet patron in 1991 and his death in 1994. His failure to reform and open North Korea's economy contributed to the famine that had already begun. His diplomats may have seen crime as a coping strategy. Around this time, incidents of drug trafficking and counterfeit currency linked to North Korea increased ten-fold.¹⁵²

It was left to Kim Jong-il to gain access to the financial system through the 1994 Agreed Framework. In exchange for Kim's promises to dismantle his nuclear programs, President Clinton offered him humanitarian and energy aid.¹⁵³ In 1995, Clinton also granted exceptions to TWEA sanctions¹⁵⁴

149 See 31 C.F.R. Pt. 1010.

150 31 U.S.C. § 5322; 31 C.F.R. Part 501 App. A (containing the penalty guidelines for banks, escalating the penalties of banks whose violations are willful or reckless).

151 31 U.S.C. § 5318A (providing for a series of five special measures applicable to entities of primary money laundering concern, including enhanced due diligence, record-keeping, reporting of beneficial ownership information, and a prohibition on the provision of correspondent account services).

152 Greitens, *supra* note 165, fig. 1.

153 U.S. Congressional Research Service, "Foreign Assistance to North Korea," April 2, 2014, <https://www.everycrsreport.com/reports/R40095.html>.

154 31 C.F.R. Pt. 500 (2007); U.S. Dep't of Treasury, "Foreign Assets Control Regulations; North Korean Travel and Financial Transactions; Information and Informational Materials," 60 Fed. Reg. 8935 (February 16, 1995), <https://www.govinfo.gov>.

Money, Rice, Crime & Law in North Korea

for transactions for travel,¹⁵⁵ telecommunications,¹⁵⁶ humanitarian aid,¹⁵⁷ overflight payments,¹⁵⁸ energy sector projects such as light-water reactors and the shipment of fuel oil,¹⁵⁹ the operation of diplomatic missions¹⁶⁰ and news bureaus,¹⁶¹ and imports of magnesite and magnesite.¹⁶² The most significant sanctions relief, however, was a regulation that authorized dollar-clearing transactions on behalf of North Korean buyers and sellers though U.S. jurisdiction. It may be a coincidence that the Treasury Department published this regulation on February 16, 1995—Kim Jong-il's birthday—as the people of Hamheung, Heungnam, and Wonsan began to fill the hills above their cities with the graves of grandparents, then their parents, and then their children.¹⁶³

Thus, Kim Jong-il entered the peak of the famine with broad access to the U.S. financial system, humanitarian aid, and a conditional opening to bilateral and international trade.¹⁶⁴ All he had to do was to accept peaceful coexistence with his neighbors, abide by his denuclearization and nonproliferation commitments, and make the choice to use his economic access for lawful purposes. We now know that he did not make that choice.

In retrospect, Washington was extraordinarily patient with Kim's financial crimes. In 1995, he strode under the harsh light of Treasury Department regulators, who granted him a lengthy grace period to reform his ways. In 2000, after he carried out a ballistic missile test, Clinton negotiated a test freeze and expanded his access to the U.S. economy again, authorizing more exports of U.S. goods and technology to North Korea,¹⁶⁵ and more transactions for trade and investments.¹⁶⁶

Although the exercise of this discretion undoubtedly changed with Pyongyang's 2002 admission that it was pursuing a uranium enrichment program and the collapse of the Agreed Framework, these permissive regulations remained on the books well into the George W. Bush

gov/content/pkg/FR-1995-02-16/pdf/95-3984.pdf.

155 31 C.F.R. §§ 500.563 & 500.566 (1997), <https://www.govinfo.gov/content/pkg/CFR-1997-title31-vol2/pdf/CFR-1997-title31-vol2-part500.pdf>.

156 *Id.* § 500.571.

157 *Id.* § 500.573.

158 *Id.* § 500.585.

159 *Id.* § 500.584.

160 *Id.* § 500.581.

161 *Id.* § 500.583.

162 *Id.* § 500.582.

163 *Id.* § 500.580.

164 Natsios, *The Great North Korean Famine: Famine, Politics & Foreign Policy*, 127, 140.

165 U.S. Dep't of Treasury, "Office of Foreign Assets Control, Foreign Assets Control Regulations," 65 Fed. Reg. 38165 (June 19, 2000), <https://www.govinfo.gov/content/pkg/FR-2000-06-19/pdf/FR-2000-06-19.pdf>; 31 C.F.R. § 500.533 (2000); <https://www.govinfo.gov/content/pkg/CFR-2004-title31-vol2/pdf/CFR-2004-title31-vol2-part500.pdf>.

166 31 C.F.R. § 500.586 (2000).

THE ROOT OF ALL EVIL

Joshua Stanton

administration.¹⁶⁷ OFAC did not replace them with new regulations under the IEEPA until 2011,¹⁶⁸ and these would still lack the comprehensive licensing requirements that applied to Iran, Cuba, and Sudan for another five years.

In 2005, the Treasury Department barred Macau-based Banco Delta Asia from the financial system for laundering the proceeds of illicit activity, including dollar counterfeiting and drug trafficking, for Pyongyang's agents and partners.¹⁶⁹ Almost immediately, depositors lined up to withdraw their savings from Banco Delta Asia. Macanese authorities had to take control of the bank to prevent its collapse and avert a ripple effect in the local banking industry.¹⁷⁰

When other banks around the world saw the damage done to Banco Delta Asia, they also began freezing North Korean accounts. According to some reports, this caused a financial panic in Pyongyang and may have forced Kim Jong-il to sign a second disarmament agreement in 2007, to win another lengthy reprieve in U.S. anti-money laundering enforcement. That year, as part of this agreement, the Federal Reserve Bank of New York returned \$25 million in tainted funds from the bank to Kim Jong-il.¹⁷¹

The action against Banco Delta Asia caused both Washington and Pyongyang to realize just how reliant Pyongyang had become on access to the dollar system. Pyongyang tried to break its dependency on the dollar, with mixed success. According to a 2016 civil forfeiture complaint filed by the Justice Department in the District of New Jersey, prosecutors explained that Pyongyang "needs access to U.S. dollars ... [t]o obtain goods and services in the international marketplace" because "international vendors require purchases to be made in U.S. dollars." "North Korea's trading needs" could not "be met using only Chinese currency."¹⁷²

But in a legal environment in which banks—particularly those in China—only enforced sanctions when faced with serious legal risks, the deterrent effect of the action against Banco Delta Asia would

167 *Id.* §§ 500.580 & .586 (2004), <https://www.govinfo.gov/content/pkg/CFR-2004-title31-vol2/pdf/CFR-2004-title31-vol2-part500.pdf>.

168 31 C.F.R. § 510.201 (2011), <https://www.govinfo.gov/content/pkg/CFR-2011-title31-vol3/pdf/CFR-2011-title31-vol3-part510.pdf>.

169 U.S. Dep't of Treasury, Financial Crimes Enforcement Network, "Imposition of Special Measure Against Banco Delta Asia, Including Its Subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a Financial Institution of Primary Money Laundering Concern," 72 Fed. Reg. 12730 (March 19, 2007), https://www.fincen.gov/sites/default/files/special_measure/bda_final_rule.pdf.

170 Jay Solomon & Neil King, Jr., "How U.S. Used a Bank To Punish North Korea", *Wall Street Journal*, April 12, 2007, <https://www.wsj.com/articles/SB117627790709466173>.

171 David Lague and Donald Greenlees, "Squeeze on Banco Delta Asia hit North Korea where it hurt," *International Herald Tribune*, January 18, 2007, https://www.nytimes.com/2007/01/18/world/asia/18iht-north.4255039.html?pagewanted=1&%2360;!--Un..&_r=0; Josh Meyer, "Squeeze on North Korea's Money Supply Yields Results," *L.A. Times*, November 2, 2006, <https://www.latimes.com/world/la-fi-macao2nov02-story.html>; Solomon & King, *supra* note 218.

172 *United States v. All Funds in the Accounts of Blue Sea Business Co., Ltd.*, No. 16-cv-1954 (D.N.J. 2016) (Verified Complaint for Forfeiture In Rem), <https://www.justice.gov/opa/file/897041/download>.

Money, Rice, Crime & Law in North Korea

not last. For the next several years, Pyongyang enjoyed *de facto* leniency to clear its licit and illicit activities through the financial system discreetly, with the former often serving to commingle with and conceal the illicit origins of the latter.¹⁷³

C. UN Authority to “Seize and Dispose of” North Korean State Property

Starting in 2006, the UN Security Council began to approve a series of North Korea-specific Chapter VII resolutions in response to Pyongyang’s nuclear and ballistic missile tests. Broadly, these resolutions (1) required states to freeze funds and property associated with Pyongyang’s proliferation and other violations, (2) prohibited financial services if the funds provided could contribute to proliferation and other violations, and (3) authorized states to seize and dispose of frozen funds and contraband.

These provisions also authorize the designation of non-North Korean enablers of sanctions evasion, but the Security Council has only designated one person and 11 entities (out of 159 total) that are not North Korean. Most of the non-North Korean entities are small shipping companies. All but three of these are Chinese nationals, companies controlled by Chinese nationals, or companies based in China.¹⁷⁴

The mandates—such as the requirement to freeze assets “in accordance with their respective legal processes”—underline that the Security Council’s resolutions are not self-executing. Member states must enforce them using their own financial intelligence units, prosecutors, and courts. For states whose institutions face challenges in meeting these obligations, the World Bank has offered its support to help states build their capacities.¹⁷⁵

Asset Freeze. Paragraph 8(d) of Resolution 1718, approved in October 2006, first “decided” that member states must freeze all property owned or controlled by entities designated by the Security Council or its sanctions committee (the “1718 Committee”) for WMD or missile proliferation. It also required member states to “ensure that any funds, financial assets or economic resources

173 De Luce and Lehren, “Secret documents show how North Korea launders money through U.S. banks,” “Global banks defy U.S. crackdowns by serving oligarchs, criminals and terrorists,” *Int’l Consortium of Investigative Journalists*, September 20, 2020, https://www.icij.org/investigations/fincon-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists/?fbclid=IwAR0aEj6fdX1A_4ZU7gT7PuUYbw6URuzlo-DZCoxV0nVJDotD_1HUHX2yAA0.

174 United Nations Security Council, Consolidated Sanctions List, last accessed December 29, 2021, <https://scsanctions.un.org/6junjen-all.html>. Of the 80 natural persons listed, 79 appear to be North Korean and one appears to be Chinese. Of the 75 entities listed, 64 are North Korean, 8 are based in China or controlled by Chinese nationals, one is a North Korean front company based in Iran, one is based in Panama, and one is based Singapore.

175 World Bank, “Risk Assessment Support for Money Laundering/Terrorist Financing,” February 29, 2016, <https://www.worldbank.org/en/topic/financialsector/brief/antimoney-laundering-and-combating-the-financing-of-terrorism-risk-assessment-support>.

THE ROOT OF ALL EVIL

Joshua Stanton

are prevented from being made available . . . to or for the benefit of such persons or entities.”¹⁷⁶ The word “ensure” shifts the burden to member states to exercise due diligence to ensure that the funds they provide to North Korean entities are not provided to designated entities.

The Security Council later expanded the asset freeze to cover not only property of designated persons, but all property owned or controlled by Pyongyang or its ruling party that a state determines to be “associated with the DPRK’s nuclear or ballistic missile programs or other activities prohibited by” the resolutions.¹⁷⁷ This language includes a significant loophole, in that a state is only required to freeze assets that the state itself determines to be associated with sanctions violations.

“Economic resources” means “assets of every kind [that] potentially may be used to obtain funds, goods, or services.” It includes the ships that Pyongyang uses to smuggle its coal, oil, weapons, and luxury goods;¹⁷⁸ and “financial or other assets or resources” of entities designated by the Security Council for other violations, such as money laundering, arms trafficking, and luxury goods imports.¹⁷⁹

The broad definition of “economic resources” became controversial when former South Korean Unification Minister Lee In-young asserted—incorrectly—that barter trade was not prohibited by UN sanctions. Lee’s inaugural policy initiative was a scheme to barter South Korean sugar for North Korean liquor. It later emerged that his proposed North Korean partner was a probable front for Bureau 39 of the KWP, which is designated by both the Security Council and the U.S. Treasury Department for proliferation financing and a wide range of illicit activities.¹⁸⁰

Transactions that Could Contribute to Sanctions Violations. In 2009, the Security Council first called on member states, in implementing the asset freeze, “to prevent the provision of financial services or the transfer to, through, or from their territory,” including by their nationals or financial institutions, of “any financial or other assets or resources that could contribute to the DPRK’s nuclear-related, ballistic missile-related, or other [WMD]-related programs or activities” within their jurisdictions.¹⁸¹

176 S/RES/1718 ¶ 8(d). The word “decides” indicates that the provision is mandatory, while “calls on” indicates that the language is non-binding. For information about the 1718 Committee, see United Nations Security Council, “Security Council Committee established pursuant to resolution 1718 (2006), Work and mandate of the Committee,” accessed August 9, 2020, <https://www.un.org/securitycouncil/sanctions/1718#work%20and%20mandate>.

177 S/RES/2270 ¶ 32. An exception applies to funds needed for humanitarian or diplomatic purposes.

178 *Id.* ¶¶ 12.

179 *Id.* ¶ 32.

180 Song Sang-ho, “(News Focus) Push to barter S. Korean sugar for N.K. liquor raises both hopes, concerns,” *Yonhap News*, August 12, 2020, <https://en.yna.co.kr/view/AEN20200811005900325>; “S. Korea reviewing private entity’s ‘barter’ trade request with N. Korea,” *Yonhap News*, August 5, 2020, <https://en.yna.co.kr/view/AEN20200805010100325>; “북한, 예년 갑절 규모로 베트남 최대 엑스포 참가해 외화벌이,” *Yonhap News*, April 19, 2017, <https://www.yna.co.kr/view/AKR20170419137700084> (in Korean).

181 S/RES/1874 ¶ 18.

Money, Rice, Crime & Law in North Korea

The language (“calls upon”) was not mandatory, but it was important in several regards. First, in an acknowledgement of Pyongyang’s opacity and the problems of proving its ultimate use for the funds, it placed a due diligence burden on states that might transfer funds to Pyongyang, in the same spirit as Resolution 1718’s obligation to “ensure” that persons were not providing economic resources to designated persons, or for prohibited activities. It also decoupled the authority to freeze Pyongyang’s assets from the designation of the owner. Thus, Pyongyang might nimbly set up, collapse, and rename any number of agents, shell companies, and front companies,¹⁸² but states with the political will to do so could make reasonable inferences based on a company’s secrecy, the associations of its officers or customers, or its patterns of suspicious transactions.¹⁸³

Resolution 2094, approved in 2013, finally made these obligations mandatory, requiring member states to “prevent the provision of financial services” that “could contribute” to Pyongyang’s WMD programs and “other activities prohibited” by the Security Council, such as the trade in luxury goods.¹⁸⁴ After Pyongyang’s sixth nuclear test in 2016 the Security Council approved Resolution 2270, which banned correspondent banking services that linked North Korea’s banks to the financial system.¹⁸⁵

Given Pyongyang’s financial secrecy, its defiance of the Security Council, and its prioritization of its WMD programs and luxury goods trade, was a ban on transactions that “could contribute” to those priorities practically different from a freeze of all of its assets? How could any investor in North Korea “ensure” that the investment could not contribute to prohibited conduct? In practice, however, Chinese banks disregarded risk factors for money laundering and sanctions violations.¹⁸⁶ Despite a requirement to expel North Korean financial representatives

182 Joshua Berlinger, “Hiding in plain sight: Why Hong Kong is a preferred spot for North Korea’s money launderers,” *CNN*, December 3, 2017, <https://www.cnn.com/2017/10/16/asia/hong-kong-north-korea/index.html>.

183 S/RES/2094 ¶ 11; “FATF Public Statement - 25 February 2011,” *Financial Action Task Force*, <http://www.fatf-gafi.org/countries/d-i/iran/documents/fatfpublicstatement-25february2011.html> (first calling on FATF member jurisdictions to apply countermeasures to protect the financial system against money laundering and terrorist financing risks emanating from North Korea).

184 S/RES/2094 ¶ 11.

185 S/RES/2270 ¶ 33.

186 See *In re Grand Jury Investigation of Possible Violations of 18 U.S.C. § 1956 and 50 U.S.C. § 1705*, Nos. 18-mj-175, 18-mj-176 & 18-mj-177 (D.D.C. 2019), https://freekorea.us/wp-content/uploads/2019/04/FINAL_18mc175_176_177_Mar_18_2019_Mem_Op_redacted.pdf. The Chief District Judge held the banks in contempt of court for failure to comply with the subpoenas and fined each of them \$50,000 a day. A panel of the Court of Appeals later affirmed the District Court’s order. *In re Sealed Case*, No. 19-5068 (D.C. Cir. 2019), <https://freekorea.us/wp-content/uploads/2019/08/Sealed-case-DC-Cir-affirms.pdf>. See Christian Berthelsen and Tom Schoenberg, “Chinese Banks Probed Over North Korea’s Nuclear Arms,” *Bloomberg News*, August 6, 2019, <https://www.bloomberg.com/news/articles/2019-08-06/u-s-is-investigating-how-north-korea-finance-nuclear-program>. See also U.S. Dep’t of Treasury, “Treasury Targets Russian Bank and Other Facilitators of North Korean United Nations Security Council Violations,” August 3, 2018, <https://home.treasury.gov/news/press-releases/sm454>.

THE ROOT OF ALL **EVIL**

Joshua Stanton

and shut down joint ventures with North Korean banks,¹⁸⁷ China remained a safe haven for North Koreans engaged in money laundering, computer hacking, human trafficking, and the smuggling of UN-embargoed goods.¹⁸⁸

Seizure, Confiscation, & Disposal of Property. In 2009, the Security Council authorized states to “seize and dispose ... of items the supply, sale, transfer, or export of which is prohibited by” the resolutions.¹⁸⁹ Three years later, it clarified that “dispose of” means “through destruction, rendering inoperable or unusable, storage, or transferring to a State other than the originating or destination States for disposal.”¹⁹⁰

Initially, the resolutions defined contraband according to UN lists of items, materials, equipment, goods, and technology related to WMD programs; luxury goods; and arms and related materiel. Over time, they also prohibited Pyongyang from exporting minerals (coal, iron, iron ore, gold, silver, titanium ore, vanadium ore, rare earth minerals, copper, nickel, lead, lead ore, zinc),¹⁹¹ textiles, agricultural products,¹⁹² statues,¹⁹³ and seafood.¹⁹⁴ They banned its imports of ships,¹⁹⁵ aircraft, vehicles, metals, and machinery;¹⁹⁶ and capped its imports of gasoline, diesel, and jet fuel at 500,000 barrels a year.¹⁹⁷

Different states have interpreted “seize and dispose of” very differently in practice. In 2013, Panama seized fighter aircraft, surface-to-air missiles, and other weapons aboard the merchant vessel (M/V) *Chong Chon Gang*, which were being shipped in violation of the UN arms embargo. It released the vessel after Pyongyang paid the Panamanian government a \$666,000 fine.¹⁹⁸ The following year,

187 S/RES/2321 ¶ 32.

188 See, e.g., S/2021/777 ¶¶ 161- (citing evidence of that China hosts banned North Korean joint ventures, overseas financial representatives, and the financing of maritime sanctions evasion); S/2021/211 ¶¶ 140-161 (hosting of North Korean financial representatives, joint ventures, and the laundering of stolen cryptocurrencies); S/2020/151 ¶¶ 167-170 (hosting of North Korean financial representatives); S/2019/691 ¶¶ 50-54, 69-71 (hosting of North Korean financial representatives and contractual arrangements for prohibited coal imports, cryptocurrency-enabled profiting from the smuggling of embargoed goods); S/2019/171 ¶¶ 111-113 (hosting of North Korean hackers and financial agents); S/2018/171 ¶¶ 162 & 178-180 (same); S/2017/142 ¶¶ 51-56 (same); S/2017/150 ¶¶ 216, 219-235 (same).

189 S/RES/1874 ¶ 14; see also UNSC resolution 2321, *Non-proliferation/Democratic People's Republic of Korea*, S/RES/2321 (2016) ¶ 40; S/RES/2371 ¶ 22; S/RES/2375 ¶ 22.

190 S/RES/2087 ¶ 8; S/RES/1874 ¶ 14; S/RES/2321 ¶ 40; S/RES/2371 ¶ 22; S/RES/2375 ¶ 22.

191 S/RES/2371 ¶ 10; S/RES/2321 ¶¶ 26 & 28; S/RES/2270 ¶ 30.

192 S/RES/2397 ¶ 6.

193 S/RES/2321 ¶ 9.

194 S/RES/2371 ¶ 9.

195 S/RES/2321 ¶ 30; S/RES/2397 ¶ 14.

196 S/RES/2397 ¶ 7.

197 *Id.* ¶ 5.

198 Leo Byrne, “North Koreans ready to pay for arms smuggling ship and crew” *NK News*, January 17, 2014, <https://www.nknews.org/2014/01/north-koreans-ready-to-pay-for-arms-smuggling-ship-and-crew/>.

Money, Rice, Crime & Law in North Korea

Mexico seized and scrapped the M/V *Mu Du Bong* after it ran aground in a Mexican port and determined that it was controlled by the same front company—since designated—that controlled the *Chong Chon Gang*.¹⁹⁹

In 2019, by contrast, prosecutors in the Office of the U.S. Attorney for the Southern District of New York filed a civil forfeiture suit against the North Korean coal smuggling ship M/V *Wise Honest*, presumably with the cooperation of Indonesian authorities that first seized the ship.²⁰⁰ The court later entered an order of forfeiture and directed the U.S. Marshals Service to sell the ship at auction.²⁰¹

Conversely, Russian and Chinese ports and waters are safe havens for North Korean smuggling of coal, fuel, and weapons,²⁰² despite a requirement by member states to inspect all cargo coming from or going to North Korea.²⁰³ U.S. law now authorizes U.S. Customs and Border Protection to impose additional inspection requirements on cargo coming from those ports,²⁰⁴ but the U.S. government has not invoked this authority.

North Korea-Specific Resolutions & Kleptocracy. The United Nations has not specifically invoked its Chapter VII authority to authorize the seizure of proceeds of kleptocracy by Pyongyang, except to the extent that the trade in weapons and luxury goods falls within the categories of commerce subject to seizure and disposal. The Security Council has, however, expressed regret for Pyongyang's "massive diversion of its scarce resources toward its development of" weapons while its people "suffer from major insecurities in food and medical care." It has also noted the "very large number of pregnant and lactating women and under-five children who are at risk of malnutrition and [the] 41 [percent] of its total population who are undernourished."²⁰⁵

The Security Council has emphasized that the sanctions "are not intended to have adverse humanitarian consequences for the civilian population" and pointed to Pyongyang's "primary responsibility and need to fully provide for the livelihood needs" of its people.²⁰⁶ To deconflict the tension between sanctions against the state and unintended humanitarian consequences for North Korea's poor, the 1718 Committee may grant case-by-case humanitarian exemptions to

199 Leo Byrne, "Mexico declares N. Korean ship abandoned, will sell for scrap," *NK News*, March 9, 2016, <https://www.nknews.org/2016/04/mexico-declares-n-korean-ship-abandoned-will-sell-for-scrap/>.

200 *United States v. The Bulk Cargo Carrier Known as the "Wise Honest," Bearing International Maritime Organization Number 8905490*, No. 19-cv-4210 (S.D.N.Y. 2019).

201 *Id.* (Stipulation and Order of Interlocutory Sale of Property).

202 *See, e.g.,* S/2017/150 (documenting numerous examples before and during the 2016 reporting period of smuggling of sanctioned goods through ports in China and Russia, violations of the arms embargo by China and Russia, and of North Korean financial agents operating on Chinese and Russian territory).

203 S/RES/2270 ¶ 18.

204 22 U.S.C. § 9225.

205 S/RES/2397 ¶ 24.

206 *Id.* ¶ 25.

THE ROOT OF ALL EVIL

Joshua Stanton

the sanctions.²⁰⁷ So far, however, the Security Council has not taken the step of calling on states to make confiscated North Korean state property available for humanitarian use.

D. UN Anti-Corruption Conventions

The UN Security Council's denunciations of Pyongyang's misappropriation of the nation's wealth have all, to this point, been non-binding. But these non-binding expressions and their mandatory asset-freezing provisions could be a basis to invoke several existing UN conventions that authorize member states to freeze and recover assets of sanctioned states and corrupt state officials for public use.

In 1988, the UN General Assembly adopted the UN Convention Against Transnational Organized Crime, which entered into force in 2003.²⁰⁸ That convention—

- requires state parties to criminalize laundering the proceeds of predicate offenses for money laundering, including corruption;
- requires states to maintain adequate regulatory controls to detect money laundering, including requirements that banks keep records of certain transactions, verify the identities of their customers, report suspicious activities to state regulators, and give regulators the power to subpoena financial records;
- requires states to enact laws permitting the tracing, seizure, freezing, confiscation, and disposal of the proceeds of predicate offenses, up to the total commingled sum of legally and illegally derived property that is subject to confiscation; and
- calls on state parties to cooperate in the enforcement of the Convention, including by sharing the confiscated proceeds of joint investigations.

In 2003, the General Assembly adopted the UN Convention against Corruption. That convention—

- defines the crimes that constitute public corruption, including bribery, embezzlement, misappropriation, influence peddling, abuse of power, and laundering the proceeds of corruption;
- sets standards of integrity and transparency in the conduct of government officials;
- establishes the importance of protecting the integrity and independence of a jurisdiction's prosecution and judiciary;
- urges states to enact laws and regulations to prohibit public corruption and prevent money laundering;

²⁰⁷ United Nations Security Council, 1718 Sanctions Committee (DPRK), "Humanitarian Exemption Requests," accessed August 23, 2020, <https://www.un.org/securitycouncil/sanctions/1718/exemptions-measures/humanitarian-exemption-requests>.

²⁰⁸ *UN Convention Against Transnational Organized Crime*, 2225 U.N.T.S. 209 (2003), https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280050d3e&clang=_en.

Money, Rice, Crime & Law in North Korea

- calls on states to confiscate the proceeds of public corruption, including property that is commingled with property derived from legitimate sources, and to cooperate with other states' confiscation of the proceeds of public corruption;
- calls for cooperation among law enforcement and prosecutorial authorities in different states, including through the extradition of suspects, the service of legal documents, and the sharing of evidence;
- mandates the return of the proceeds of corruption to the countries of origin; and
- calls on states to help build capacity in other member states to combat corruption, and proposes a process for member states to donate to a UN-administered fund to help developing states build the capacity to detect and act against corruption.²⁰⁹

The use of these anti-corruption authorities is well-established in law and practice,²¹⁰ although a wide gap persists between states with well-developed legal systems and other states—including some OECD states—that either have not prioritized anti-corruption efforts or lack the capacity to do so.²¹¹

The latter criticism could have been made about the United States until very recently. In 2011, a World Bank study cited the failure of the U.S. government to require record-keeping on the beneficial owners of property as a key weakness in global efforts to combat money laundering and kleptocracy.²¹² Only in January of 2020 did Congress pass the Corporate Transparency Act, which requires businesses to report information about their beneficial owners to FinCEN, and bans anonymous shell companies.²¹³ FinCEN did not publish its proposed regulations implementing the new law until December 2021.²¹⁴ Both loopholes have also impeded the enforcement of North

209 *UN Convention Against Corruption*, 2349 U.N.T.S. 41 (2005), https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

210 See Gerry Ferguson, *Global Corruption: Law, Theory & Practice*, 3d ed. (Victoria, British Columbia: University of Victoria, 2018), <https://icclt.org/publications/global-corruption-law-theory-and-practice/>.

211 Larissa Gray et al., *Few and Far: The Hard Facts on Stolen Asset Recovery, Stolen Asset Recovery Initiative* (Washington DC: World Bank Stolen Asset Recovery Initiative, 2014), <https://www.oecd.org/dac/accountable-effective-institutions/Hard%20Facts%20Stolen%20Asset%20Recovery.pdf>.

212 Emily Van der Does de Willebois et al., *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (Washington DC: World Bank Stolen Asset Recovery Initiative, 2011), <https://statworldbank.org/sites/stat/files/puppetmastersv1.pdf>.

213 Corporate Transparency Act of 2020, Pub. L. No. 116-92, div. F, tit. LXIV, § 6403 (enacted within the National Defense Authorization Act for Fiscal Year 2021).

214 U.S. Dept of Treasury, Financial Crimes Enforcement Network, Notice of Proposed Rulemaking, "Beneficial Ownership Information Reporting Requirements," 86 Fed. Reg. 69920, December 8, 2021, <https://www.federalregister.gov/documents/2021/12/08/2021-26548/beneficial-ownership-information-reporting-requirements>. The new regulation will protect the confidentiality of beneficial ownership information from public disclosure. Its reporting requirements will not come into full effect for a still undetermined period that is still several years away. Elizabeth G. Silver and Catherine A. Johnson, "Anti-Corruption Hot Topic: Corporate Transparency Emerges as Cornerstone of Financial Integrity Regulatory Reforms," *Nat'l Law Review*, Vol. XI, No. 301, October 28, 2021, <https://www.natlawreview.com/article/anti-corruption-hot-topic-corporate-transparency-emerges-cornerstone-financial>. It will be available to financial institutions to conduct due diligence checks, and to law enforcement agencies.

THE ROOT OF ALL EVIL

Joshua Stanton

Korea sanctions.²¹⁵

The uneven enforcement of anti-corruption conventions is not for lack of guidance. The UN Office on Drugs and Crime (UNODC) has published a detailed, 300-page legislative guide for implementing the Convention.²¹⁶ The Stolen Asset Recovery Initiative, a partnership between the UNODC and the World Bank, has also published a 270-page guide to the investigation of corruption and the tracing, seizure, confiscation, and recovery of assets.²¹⁷ In 2004, the UN Security Council approved a resolution creating a committee to help developing states build the capacity to enforce its counterproliferation sanctions. These institutions could help developing states combat Pyongyang's illicit activities, such as arms trafficking, money laundering, and human trafficking.²¹⁸

FinCEN has also faced personnel and technology challenges in analyzing data from the financial industry and enforcing its customer due diligence rules, and Pyongyang has been a beneficiary of these challenges.²¹⁹ These revelations in press reports would spur Congress to pass legislation requiring

215 Joshua Stanton, "Why Treasury should require banks to keep records about N. Korean beneficial ownership," *One Free Korea* blog, August 2, 2016, <https://freekorea.us/2016/08/treasury-should-require-banks-to-collect-information-about-n-korean-beneficial-owners/> (reproducing in full a 2016 joint comment on a FinCEN regulatory action by the author and William Newcomb, former U.S. Representative to the United Nations Panel of Experts Authorized by United Nations Security Council Resolution 1874, citing evidence from the Panama Papers and other sources about Pyongyang's use of anonymous front and shell companies to disguise its beneficial ownership interests in property involved in sanctions violations).

216 UN Office on Drugs & Crime, *Legislative Guide for the Implementation of the United Nations Convention Against Corruption* (2006), https://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf.

217 Jean-Pierre Brun et al., *Asset Recovery Handbook: A Guide for Practitioners* (Washington DC: World Bank Stolen Asset Recovery Initiative, 2011), https://www.unodc.org/documents/congress/background-information/Corruption/StAR_Publication_-_Asset_Recovery_Handbook.pdf.

218 United Nations Security Council, *Security Council unanimous adoption of resolution 1540 on the threat of proliferation of nuclear, chemical and biological weapons*, S/RES/1540 (2004); United Nations Security Council, "1540 Committee, Security Council Committee Established Pursuant to Resolution 1540 (2004), General Information," accessed September 13, 2004, <https://www.un.org/en/sc/1540/about-1540-committee/general-information.shtml>.

219 Dan De Luce and Andrew Lehren, "Secret documents show how North Korea launders money through U.S. banks," *NBC News*, September 20, 2020, <https://www.nbcnews.com/news/world/secret-documents-show-how-north-korea-launders-money-through-u-n-1240329>; "Global banks defy U.S. crackdowns by serving oligarchs, criminals and terrorists," *Int'l Consortium of Investigative Journalists*, September 20, 2020, https://www.icij.org/investigations/fincen-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists/?fbclid=IwAR0aEJ6fdX1A_4ZUzgT7PuUY-bw6URuzlo-DZCoxV0nVJD0tD_1HUHX2yAA0; Ian Talley and Dylan Tokar, "Leaked Treasury Documents Prompt Fresh Calls for Updated Anti-Money-Laundering Regulations," *Wall Street Journal*, September 21, 2020, <https://www.wsj.com/articles/treasury-plugs-gap-in-anti-money-laundering-regulations-11600680611>.

Money, Rice, Crime & Law in North Korea

FinCEN to modernize its technology, improve its anti-money laundering information sharing and enforcement, and strengthen its financial transparency regulations.

E. U.S. Judicial Remedies Against Corruption

A U.S. government action to recover the proceeds of kleptocracy often begins with an investigation by the FBI, sometimes in partnership with the Treasury Department or a foreign financial intelligence unit. The FBI's International Corruption Unit, or ICU, specializes in tracing the proceeds of kleptocracy. It routinely works with Interpol, and with law enforcement agencies in Australia, Canada, New Zealand, the United Kingdom, and other nations.²²⁰ The ordinary means by which U.S. authorities coordinate with their foreign counterparts is a Mutual Legal Assistance Agreement, although U.S. authorities may also make informal requests for assistance.²²¹

Evidence derived from the investigation may be a basis for prosecutors to subpoena a bank's records. The returns from a subpoena may expose a bank and its customers to civil penalties, criminal prosecution, and reputational harm.²²² Prosecutors may seek a magistrate's authorization to seize the proceeds of crime. Seizure is a limited and temporary action to preserve evidence for trial, or to deny an accused the fruits or proceeds of a crime pending the completion of forfeiture proceedings. It does not change the ownership of the property; it temporarily denies the owner certain rights to spend or transfer that property.²²³ U.S. courts will also enforce foreign court orders to restrain assets, if the orders meet certain legal thresholds.²²⁴

The Justice Department may prosecute corrupt foreign officials criminally if they can extradite and arraign a suspect. Prosecutors may present evidence for an indictment or a subpoena to a grand jury, which may remain under seal for months or years until ordered unsealed by the

220 U.S. Fed. Bur. of Investigation, "Public Corruption," *What We Investigate*, accessed February 2, 2020, <https://www.fbi.gov/investigate/public-corruption>. The State Department also maintains an anti-corruption team in its Bureau of International Narcotics and Law Enforcement Affairs. U.S. Dep't of State, Bur. of Int'l Narcotics & Law Enforcement Affairs, *Combating Corruption and Promoting Good Governance*, accessed February 2, 2020, <https://www.state.gov/combating-corruption-and-promoting-good-governance/>; Kellen McClure, "No Safe Haven for Corruption: Asset Recovery in Action," *DipNote blog* December 8, 2017, <https://blogs.state.gov/stories/2017/12/08/en/no-safe-haven-corruption-asset-recovery-action>.

221 U.S. Dep't of Justice and U.S. Dep't of State, *U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation*, 4-7.

222 A requirement that a bank produce records in response to a federal subpoena, even if the bank may incriminate itself by doing so, falls within a recognized exception to the Fifth Amendment privilege against self-incrimination for records that are required to be kept pursuant to a valid regulatory scheme. *In re Grand Jury Proceedings*, 707 F.3d 1262, 1268-71 (11th Cir. 2013) (citing *Shapiro v. United States*, 335 U.S. 1, 32-33 (1948)).

223 Fed. R. Crim. P. 41.

224 U.S. Dep't of Justice and U.S. Dep't of State, *U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation*, 11.

THE ROOT OF ALL EVIL

Joshua Stanton

court.²²⁵ But asserting criminal jurisdiction over foreign nationals requires their extradition, which is challenging for North Korean suspects.²²⁶

When a defendant is beyond the Justice Department's criminal jurisdiction, prosecutors may also sue *in rem* for civil forfeiture of property under the long-standing principle that the government does not recognize a criminal's interest in the proceeds of crime. Unlike freezing (also known as blocking), forfeiture (known as confiscation in other jurisdictions) extinguishes a claimant's ownership of property. To be subject to forfeiture, property must be traceable to the proceeds of, or have been "involved in," crimes that are listed as predicate offenses in the money laundering statute.²²⁷

There are three types of forfeitures—*administrative forfeitures* (such as for customs violations, for up to \$500,000);²²⁸ *civil forfeitures* (*in rem* proceedings against property, in which a court must find that the property is subject to forfeiture by a preponderance of the evidence);²²⁹ and *criminal forfeitures* (which are decided in a post-trial remission proceeding if the defendant is convicted of a predicate offense, and the government proves that there is a substantial connection between the property and the crime).²³⁰

The government may use forfeited property for any purpose Congress legislates. Ordinarily, forfeited funds must be deposited into the Justice Department Forfeiture Fund or the Treasury Department Forfeiture Fund to pay for law enforcement expenses.²³¹ They may also be divided between the two funds or shared with states and foreign governments that helped with the investigation and legal proceedings.²³²

225 Fed. R. Crim. P. 6(c).

226 *But see* U.S. Dep't of Justice, "First North Korean National Brought to the United States to Stand Trial for Money Laundering Offenses," March 22, 2021, <https://www.justice.gov/opa/pr/first-north-korean-national-brought-united-states-stand-trial-money-laundering-offenses>.

227 18 U.S.C. § 1956.

228 19 U.S.C. § 1595a.

229 18 U.S.C. § 981. In an *in rem* action, the government sues the property itself, not the owner or possessor. The defendant may be real property, bulk cash, bank accounts, or goods as defendants. The case names are unusual, even amusing. *See, e.g., United States v. 280 Virtual Currency Accounts*, No. 20-cv-2396 (D.D.C. filed Aug. 27, 2020) (complaint to forfeit cryptocurrency stolen by North Korean hackers); *In re 650 Fifth Ave. & Related Props.*, 934 F.3d 147 (2d Cir. 2019) (forfeiture suit for proceeds of Iran sanctions violations); *United States v. One 1980 Red Ferrari, Vin Zffaa02a6a0032333, Iowa License No. Uay914*, 875 F.2d 186 (8th Cir. 1989); *United States v. One Package of Japanese Pesaries*, 86 F.2d 737 (2d Cir. 1936); *United States v. Bank Account No. 0000107310*, No. 12-cv-0106 (N.D. Fla. Sep. 17, 2012); *United States v. 11 1/4 Dozen Packages of Articles Labeled in Part Mrs. Moffat's Shoo-Fly Powders for Drunkenness*, 40 F. Supp. 208 (W.D.N.Y. 1941) (enforcement of food and drug laws).

230 18 U.S.C. §§ 982 & 983(c)(3).

231 18 U.S.C. § 524(c); 31 U.S.C. § 9705.

232 18 U.S.C. § 981(i).

Money, Rice, Crime & Law in North Korea

Table 1: Administrative & Judicial Enforcement Authorities & Standards of Proof

Seizure (DOJ)	Fed. R. Crim. P. 41	Probable cause to believe that the property to be seized is evidence of a crime, contraband, fruits of a crime, property designed or intended for use in a crime, or property used in a crime.
Blocking (OFAC)	50 U.S.C. § 1701 et seq. 31 C.F.R. subtit. B, Ch. V. (OFAC regulations)	Substantial evidence that the property is owned or controlled by a designated person, or is being used to evade a sanctions regulation.
Civil Penalty (OFAC)	5 U.S.C. § 702(2)(E); 31 C.F.R. Part 501	Substantial evidence of a transaction that violates a regulation. Penalty amounts are determined by a multi-factor schedule according to the number of transactions, their value, their egregiousness, and whether the respondent disclosed the violations voluntarily.
Special Measures (FinCEN)	31 U.S.C. § 5318A; 31 C.F.R. Part 1010 (FinCEN regulations).	Substantial evidence that— <ul style="list-style-type: none"> • a jurisdiction outside of the U.S., • one or more financial institutions operating outside the U.S., • one or more classes of transactions within or involving a jurisdiction outside of the U.S., or • one or more types of accounts, • is of primary money laundering concern. For 31 U.S.C. § 5318A(b)(5), which blocks the target from the financial system, the Treasury Department must publish a regulation explaining the substantial evidence supporting its finding.
Civil Forfeiture (DOJ)	18 U.S.C. § 981	Proof by a preponderance of the evidence that the property is involved in, or is traceable to the proceeds of, a specified unlawful activity, or a conspiracy to commit a specified unlawful activity.
Criminal Forfeiture (DOJ)	18 U.S.C. § 982	Proof beyond a reasonable doubt that the defendant committed a predicate offense for forfeiture, and proof by a preponderance of the evidence of a substantial connection between the property and the predicate offense

THE ROOT OF ALL EVIL

Joshua Stanton

Financial crimes cases against banks and corporations are more likely to settle before trial than to be contested. The target of an investigation may agree to pay a fine or penalty as part of a settlement. How the government may deposit and spend fines and penalties also depends on the statutes that control their disposition. For example, the Justice Department must deposit criminal fines into a fund to assist crime victims.²³³ A settlement agreement may allow a defendant to deny any admission of wrongdoing; it may also require the defendant's cooperation against other targets or monitoring of the defendant's future compliance as a term of a deferred prosecution agreement.²³⁴

1. Domestic Anti-Kleptocracy Authorities

Since the 1970s, Congress has passed a series of statutes prohibiting foreign corruption within U.S. jurisdiction and giving prosecutors and regulators escalating authority to combat it. In 1977, it passed the **Foreign Corrupt Practices Act**, which is jointly enforced by the Justice Department, the Securities and Exchange Commission, the Treasury Department, and the FBI. The FCPA provides for criminal penalties for U.S. persons and corporations, persons acting within U.S. jurisdiction (including correspondent banks), and issuers of securities that engage in bribery and other corrupt transactions to gain a business advantage, or deceptive accounting practices to conceal corrupt transactions such as embezzlement.²³⁵

In December 2016, Congress passed the **Global Magnitsky Human Rights Accountability Act**, which gave the President discretionary authority to freeze the assets of any government official responsible for "acts of significant corruption," including bribery, expropriation for personal gain, corruption related to government contracts or natural resources, or transferring proceeds of corruption abroad.²³⁶ The Magnitsky Act may be applied to the perpetrators of either corruption or human rights abuses.²³⁷ The Trump administration used an executive order implementing it to freeze the assets of Chinese entities involved in the genocide of the Uyghur people,²³⁸ and the

²³³ 34 U.S.C. §§ 20101-20111.

²³⁴ U.S. Dep't of Justice, U.S. Attorneys' Manual, Ch. 9, 9-28.000, Principles of Federal Prosecution of Business Organizations, last visited December 30, 2021, <https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.1000>.

²³⁵ U.S. Dep't of Justice, *A Resource Guide to the FCPA U.S. Foreign Corrupt Practices Act*, November 2012, <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf> at 11; see 18 U.S.C. § 981(k), authorizing the forfeiture of funds involved in, or traceable to the proceeds of, money laundering—a term whose legal definition includes transactions in proceeds of violation of the Foreign Corrupt Practices Act. *Id.* § 1956(c)(7)(D).

²³⁶ Global Magnitsky Human Rights Accountability Act, Pub. L. No. 114-328, § 1263(a)(3), 130 Stat. 2534 (2016) (codified at 22 U.S.C. § 2656 note).

²³⁷ See U.S. Dep't of Treasury, "Treasury Targets Support to Designated Corrupt Actors," September 15, 2020, <https://home.treasury.gov/news/press-releases/sm1122> (freezing the assets of the former First Lady of The Gambia, including a Maryland residence that is the *in rem* defendant in a civil forfeiture proceeding).

²³⁸ U.S. Dep't of Treasury, "Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Executive Order," July 31, 2020, <https://home.treasury.gov/news/press-releases/sm1073>; see Exec.

Money, Rice, Crime & Law in North Korea

Biden administration applied it to an Eritrean general for human rights abuses.²³⁹ The Magnitsky Act lacks an independent asset recovery provision. Instead, prosecutors may file separate civil forfeiture actions against the stolen property as proceeds of a predicate offense, such as bribery, wire fraud, or the Foreign Corrupt Practices Act.

2. Anti-Kleptocracy & Enforcement Capacity in the U.S. Government

Corruption threatens United States national security, economic equity, global anti-poverty and development efforts, and democracy itself. But by effectively preventing and countering corruption and demonstrating the advantages of transparent and accountable governance, we can secure a critical advantage for the United States and other democracies.

– President Joe Biden, June 3, 2021²⁴⁰

The United States came late to the realization that its financial system had given it both global power and global responsibilities. It could choose to regulate that system as a force for prosperity, or let it become a slush fund for criminals and kleptocrats, and a catalyst for poverty, inequality, crime, terrorism, repression, and proliferation.

In 2010, the Justice Department created the Kleptocracy Asset Recovery Initiative “to seize and forfeit the ill-gotten gains of foreign leaders and their cronies,” working in partnership with the State Department, foreign governments, and the World Bank. The Justice Department’s Money Laundering and Asset Recovery Section already guides a global anti-kleptocracy campaign through the offices of the 93 U.S. Attorneys, who are experienced in the prosecution of public corruption cases and in the use of the forfeiture laws to recover the proceeds of corruption.²⁴¹

This initiative has already seized and recovered billions of dollars in assets linked to foreign corruption.²⁴² Between 2016 and 2019, the Justice Department’s attorneys, in partnership with the governments of Malaysia, Singapore, Switzerland, and Luxembourg, recovered more than \$2.2

Order 13818, “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,” 82 Fed. Reg. 60839 (December 20, 2017), <https://www.federalregister.gov/documents/2017/12/26/2017-27925/blocking-the-property-of-persons-involved-in-serious-human-rights-abuse-or-corruption>.

239 U.S. Dep’t of Treasury, “Treasury Sanctions Eritrean Military Leader in Connection with Serious Human Rights Abuse in Tigray,” August 23, 2021, <https://home.treasury.gov/news/press-releases/jy0329>.

240 U.S. Executive Office of the President, White House Briefing Room, “Fact Sheet: U.S. Strategy on Countering Corruption,” December 6, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/06/fact-sheet-u-s-strategy-on-countering-corruption/>.

241 Pamela Stanek, *Asset Forfeiture in Public Corruption Cases: Practitioner Guide* (New York, NY: Columbia Law School, 2016), https://www.law.columbia.edu/sites/default/files/microsites/public-integrity/files/asset_forfeiture_in_public_corruption_cases_-_capi_practitioner_toolkit_-_august_2016.pdf, for a good primer on the civil and criminal forfeiture statutes, the theories of forfeiture Justice Department uses to forfeit property linked to corruption.

242 *Ibid.*, 1.

THE ROOT OF ALL EVIL

Joshua Stanton

billion that had been misappropriated from Malaysia's Sovereign Wealth Fund.²⁴³ The FBI ICU developed the evidence for the case in partnership with FBI Special Agents in New York and Los Angeles.

In 2019, OFAC ordered the freezing of all funds of a South African corruption network with close ties to that government's former President. The U.S. and Nigerian governments recently agreed to repatriate \$300 million in funds stolen by that country's former dictator.²⁴⁴ The Treasury Department also worked with the World Bank's Stolen Assets Recovery Fund to trace Moammar Qaddafi's hidden assets and return them to Libya's transitional government.²⁴⁵

In 2021, the Biden administration acknowledged both the past successes and shortcomings, importance, and interdependence of these authorities in its new United States Strategy on Countering Corruption, whose subtitle describes "the fight against corruption as a core United States national security interest." The White House fact sheet described the five pillars of the strategy as follows:

1. **Modernizing, coordinating, and resourcing U.S. Government efforts to fight corruption** to address gaps in enforcement, and to build capacity and interoperability among U.S. law enforcement agencies;
2. **Curbing Illicit finance** by regulating toward international financial transparency, and by building capacity and interoperability with partner governments abroad;
3. **Holding Corrupt Actors Accountable** by supporting whistleblowers, partnering with the financial industry, and by "[e]stablishing a kleptocracy asset recovery rewards program that will enhance the U.S. Government's ability to identify and recover stolen assets linked to foreign government corruption that are held at U.S. financial institutions;"
4. **Preserving and strengthening the multilateral anti-corruption architecture** by joining with, and by building and expanding international institutions in partnership with, G7 and G20 governments; and

243 U.S. Dep't of Justice, "United States Reaches Settlement to Recover More Than \$700 Million in Assets Allegedly Traceable to Corruption Involving Malaysian Sovereign Wealth Fund," October 30, 2019, <https://www.justice.gov/opa/pr/united-states-reaches-settlement-recover-more-700-million-assets-allegedly-traceable>; U.S. Dep't of Justice, "U.S. Seeks to Recover Approximately \$540 Million Obtained From Corruption Involving Malaysian Sovereign Wealth Fund," June 5, 2017, <https://www.justice.gov/opa/pr/us-seeks-recover-approximately-540-million-obtained-corruption-involving-malaysian-sovereign>; U.S. Dep't of Justice, "United States Seeks to Recover More Than \$1 Billion Obtained from Corruption Involving Malaysian Sovereign Wealth Fund," July 20, 2016, <https://www.justice.gov/opa/pr/united-states-seeks-recover-more-1-billion-obtained-corruption-involving-malaysian-sovereign>.

244 U.S. Dep't of Justice, "U.S. Enters into Trilateral Agreement with Nigeria and Jersey to Repatriate Over \$300 Million to Nigeria in Assets Stolen by Former Nigerian Dictator General Sani Abacha," February 3, 2020, <https://www.justice.gov/opa/pr/us-enters-trilateral-agreement-nigeria-and-jersey-repatriate-over-300-million-nigeria-assets>.

245 UN Security Council, *Final Report of the Panel of Experts on Libya Established Pursuant to Resolution 1973 (2011)*, S/2017/466 (2017), <https://reliefweb.int/report/libya/final-report-panel-experts-libya-established-pursuant-resolution-1973-2011-s2017466>.

Money, Rice, Crime & Law in North Korea

5. *Improving diplomatic engagement and leveraging foreign assistance resources to achieve anti-corruption policy goals* by prioritizing anti-corruption efforts in U.S. diplomacy and as a condition of U.S. foreign assistance.²⁴⁶

In theory, the ideal target of a concerted international anti-corruption effort would be a state whose egregious corruption and financial crime threatened the economic and physical security of G7 and G20 states; posed significant humanitarian concerns shared by most G7 and G20 states; and were the subject of multiple Chapter VII UN Security Council resolutions. Although the White House fact sheet did not emphasize which legal tools it would use to implement the new strategy, the full strategy paper and the case studies it cited clarified that greater financial transparency, expanded subpoena powers, asset blocking, and forfeiture would be important tools against “fraud, money laundering, terrorist financing, and proliferation financing.”²⁴⁷

²⁴⁶ U.S. Executive Office of the President, “Fact Sheet: U.S. Strategy on Countering Corruption,” December 6, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/06/fact-sheet-u-s-strategy-on-countering-corruption/>.

²⁴⁷ U.S. Executive Office of the President, United States Strategy on Countering Corruption 19, 22-25, December 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

THE ROOT OF ALL EVIL

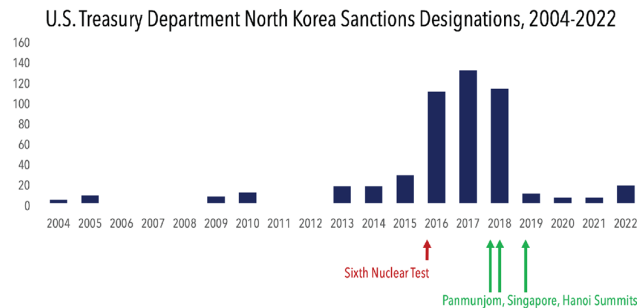
Joshua Stanton

Part III—U.S. National Enforcement of North Korea Sanctions

Part I of this study explained how, in the three decades since the collapse of the U.S.S.R., Pyongyang became an egregious kleptocracy, and how it also became dependent on access to global finance. Part II explained the authorities and capacities for U.S. and multinational efforts to trace, freeze, forfeit, and recover the proceeds of kleptocracy.

This part will explain that, despite some tactical successes proving the potential of sanctions enforcement, the U.S. has not led any such campaign against North Korea's kleptocracy. It also explains how Pyongyang's diplomacy has defeated Washington's unity of effort and alliances once that disruption posed a threat to its cohesion and survival.

Sanctions have not achieved their least attainable goal—coercing the abandonment of Pyongyang's nuclear drive, global proliferation, and strategic objectives—and the United States has struggled to translate its economic power into lasting diplomatic gains, probably because Pyongyang has always extracted the relaxation of U.S. economic leverage as the price of its concessions. Pyongyang did so by dividing ally against ally, interest against interest, agency against agency, and diplomacy against the pressure that has historically coincided with Pyongyang's renewed interest in diplomacy. But as the concluding pages of this paper will explain, those are not the only purposes for sanctions.



A close examination of this history yields lessons for a more coherent global policy that uses the authorities available to the U.S. and its allies to reach enough of Pyongyang's funds to deny it the means to pursue its destructive behaviors.

Money, Rice, Crime & Law in North Korea

A. 2005-2016: Minimum Pressure

[L]ong before North Korean vessels conduct ship-to-ship transfers under the cover of night, on-shore operatives go to extraordinary lengths to establish anonymous shell companies, falsify financial and ownership records and bribe customs officials, U.N. Panel of Experts reports have shown. Behind each of these transactions is a registered agent that ignores false documentation, a banker willing to turn a blind eye, an accountant that fails to ask questions or a lawyer whose attempts at due diligence are in name only. Cases like this, among others, increasingly highlight how – and why – sanctions fail when states lack effective legal, regulatory and enforcement mechanisms to combat corruption.

– Aaron Arnold, former U.S. Representative to the U.N. Panel of Experts
Established by UNSCR 1874²⁴⁸

Starting in 2010, the reports of a UN Panel of Experts investigating compliance with UN Security Council sanctions confirmed what many analysts already knew—that Pyongyang’s money laundering networks, while finite and discoverable, were extensive, adaptable, and reliant on corruption.²⁴⁹ The misconception that North Korea was “the most isolated, the most sanctioned, the most cut-off nation on Earth” circulated widely among scholars and reached all the way to the Oval Office.²⁵⁰ A former Obama administration official (and current Biden administration official) conceded that he, too, “thought North Korea was the most sanctioned country in the world,” until he learned on closer examination that Burma was “sanctioned about 10 times (more than) North Korea.”²⁵¹

Financial regulators were also slow to respond to Pyongyang’s money laundering through the financial system. In the six years after the Federal Reserve returned \$25 million in tainted funds from Banco Delta Asia to Kim Jong-un’s accounts, Pyongyang became adept at accessing the financial system surreptitiously, by hiding behind layers of front companies, shell companies, fictitious names, and third-country enablers. In doing so, it had the active or tacit cooperation of foreign banks—most of them based in China. Despite official U.S. policy to seek the denuclearization of North Korea and oppose its human rights abuses, Pyongyang continued to support its proliferation, crimes against humanity, and kleptocracy using money laundered through U.S. jurisdiction.²⁵²

248 Aaron Arnold, “How North Korea takes advantage of global corruption to evade sanctions,” *NK News*, December 24, 2021, https://www.nknews.org/2021/12/how-north-korea-takes-advantage-of-global-corruption-to-evade-sanctions/?utm_source=dlvr.it&utm_medium=twitter.

249 S/2020/151 ¶¶ 167-188.

250 “Obama, on YouTube, says North Korea likely to collapse and Net may play a role,” *Japan Times*, January 24, 2015, <https://www.japantimes.co.jp/news/2015/01/24/world/obama-youtube-says-north-korea-likely-collapse-net-may-play-role/#.XVBHn5NKjOQ> (quoting President Obama).

251 Kurt Campbell, “Remarks at the Center for Strategic and International Studies,” September 5, 2014, quoted in Joshua Stanton, “North Korea: The Myth of Maxed-Out Sanctions,” *Fletcher Security Review*, vol. 2, no. 1 (Winter 2015), https://docs.wixstatic.com/ugd/c28a64_82a6a04a9f314a67bd434ad7b3dc5490.pdf.

252 *Id.*; *Restricting North Korea’s Access to Finance: Testimony Before the House Committee on Financial Services, Monetary*

THE ROOT OF ALL EVIL

Joshua Stanton

In 2011, the Treasury Department and the Financial Action Task Force, an influential global industry alliance, began to warn banks to safeguard the financial system from money laundering and terrorism financing risks emanating from North Korea.²⁵³ Yet until 2016, “[c]ontrary to commonly expressed views, the United States [did] not maintain a comprehensive embargo against North Korea.”²⁵⁴

That is why the major French bank, BNP Paribas, agreed to pay U.S. and New York authorities nearly \$9 billion in fines, penalties, and forfeitures after it was caught clearing transactions for sanctioned parties in Iran, Sudan, Cuba, and Burma—but not North Korea.²⁵⁵ OFAC’s North Korea sanctions regulations, which had been relaxed in 1995, still did not include a comprehensive transaction licensing requirement when BNP Paribas engaged in its longstanding pattern of violations. Here was just one example of the gap between the common perception of strong North Korea sanctions, and the reality of weak regulation and lax enforcement.

In 2014, OFAC’s North Korea sanctions regulations and enforcement were qualitatively and quantitatively much weaker than those against Iran, Cuba, Sudan, or Syria, and arguably weaker than those against Belarus and Zimbabwe.²⁵⁶ North Korean banks still had indirect access to the U.S.

Policy & Trade Subcommittee, 144th Cong. (2017), 7 (statement by Anthony Ruggiero, senior fellow at the Foundation of Defense for Democracies). https://financialservices.house.gov/uploadedfiles/07.19.2017_anthony_ruggiero_testimony.pdf; North Korea Sanctions Enforcement Act of 2015, H.R. 757, 114th Cong., 2d Sess. (2016). <https://www.congress.gov/congressional-report/114th-congress/house-report/392>; U.S. Dep’t of Treasury, “Treasury Sanctions Bank and Official Linked to North Korean Weapons of Mass Destruction Programs,” March 11, 2013, <https://www.treasury.gov/press-center/press-releases/Pages/jl1876.aspx>; U.S. Dep’t of Treasury, “Treasury Sanctions Supporters Of North Korea’s Weapons Of Mass Destruction And Illicit Finance Networks,” November 13, 2015, <https://www.treasury.gov/press-center/press-releases/Pages/jl0269.aspx>; U.S. Dep’t of Treasury, “Treasury Imposes Sanctions on Supporters of North Korea’s Weapons of Mass Destruction Proliferation,” September 26, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl5059.aspx>; U.S. Dep’t of Treasury, “Treasury Sanctions Agents Linked to North Korea’s Weapons of Mass Destruction Proliferation and Financial Networks,” March 31, 2017, <https://home.treasury.gov/news/press-releases/sm0039>; U.S. Dep’t of Treasury, “Treasury Sanctions Senior North Korean Officials Involved in Weapons Development,” December 26, 2017, <https://home.treasury.gov/news/press-releases/sm0245>.

253 U.S. Dep’t of Treasury, Advisory on the Financial Action Task Force-Identified Jurisdictions with Anti-Money Laundering and Combatting the Financing of Terrorism Deficiencies, FIN-2018-A007, October 31, 2008, https://www.fincen.gov/sites/default/files/advisory/2018-10-31/FATF%20Advisory%20Oct_FINAL%20508.pdf.

254 Dianne E. Rennack, “North Korea: Legislative Basis for U.S. Economic Sanctions,” *Congressional Research Service*, September 29, 2011, https://digital.library.unt.edu/ark:/67531/metadc29611/m1/1/high_res_d/R41438_2010Sep29.pdf.

255 Nate Raymond, “BNP Paribas sentenced in \$8.9 billion accord over sanctions violations,” *Reuters*, May 1, 2015, <https://www.reuters.com/article/us-bnp-paribas-settlement-sentencing/bnp-paribas-sentenced-in-8-9-billion-accord-over-sanctions-violations-idUSKBN0NM41K20150501>; U.S. Dep’t of Treasury, *Settlement Agreement Between the Office of Foreign Assets Control and BNP Paribas*, June 30, 2014, https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20140630_bnp_settlement.pdf.

256 Joshua Stanton, “You’d be surprised how much tougher our Zimbabwe and Belarus sanctions are than our North Korea sanctions,” *One Free Korea blog*, July 15, 2014, <https://freekorea.us/2014/07/>

Money, Rice, Crime & Law in North Korea

financial system through front companies using “U-turn” transactions, in which front companies’ foreign banks concealed the transactions’ links to North Korea to clear them through U.S. correspondent banks surreptitiously.²⁵⁷ A total of 43 entities, and just one senior North Korean official, were designated by OFAC for breaking North Korea sanctions, compared to more than 800 for violations of Iran sanctions, and hundreds each for Cuba, Syria, and the Balkans.²⁵⁸ Its most significant designation, of North Korea’s Foreign Trade Bank, for “facilitat[ing] transactions on behalf of actors linked to its proliferation network,” followed Kim Jong-un’s third nuclear test, when the administration also learned that Congress was writing legislation to mandate stricter enforcement.²⁵⁹

The Obama administration increased the pace of sanctions designations modestly after the Sony cyberattack and terror threats of late 2014, and as pressure from Congress rose. In its first seven years, it designated 89 entities for violating North Korea sanctions. In its last eleven months, after Congress acted to mandate more designations, it designated 77 more.²⁶⁰ But it did not attempt to replicate the successful enforcement strategy it had employed against Iran’s financial enablers, which was instrumental in compelling Iran to negotiate the Joint Comprehensive Plan of Action.²⁶¹ No president had ever implemented a comparable enforcement strategy against Pyongyang’s financial enablers. According to David Cohen, who managed the Treasury Department’s sanctions programs and later became Deputy CIA Director, “North Korea is not, by any stretch, ‘sanctioned

you-d-be-surprised-how-much-tougher-our-zimbabwe-and-belarus-sanctions-are-than-our-north-korea-sanctions/ (counting the number of OFAC designations against various governments and comparing the qualitative significance of those designations).

257 Jay Solomon, “U.S. Moves to Cut Off North Korea From Banking System,” *Wall St. Journal*, June 2, 2016, <https://www.wsj.com/articles/u-s-moves-to-cut-off-north-korea-from-banking-system-1464797927>; see, e.g., S/2016/157 ¶¶ 190-192 (finding that the Bank of China, Singapore branch, assisted the North Korean front company Chinpo Shipping to broker a shipment of weapons from Cuba to North Korea by helping it conceal information about the shipper and the cargo from a U.S. correspondent bank).

258 Joshua Stanton, “Sanctions Worked Against North Korea, And They Can Work Again,” *Weekly Standard*, January 16, 2016, <https://www.washingtonexaminer.com/weekly-standard/sanctions-worked-against-north-korea-and-they-can-work-again> (analyzing and comparing the law and designation patterns of North Korea sanctions to sanctions against Iran, Cuba, and other states).

259 U.S. Dep’t of Treasury, “Treasury Sanctions Bank and Official Linked to North Korean Weapons of Mass Destruction Programs,” March 11, 2013, <https://www.treasury.gov/press-center/press-releases/pages/j11876.aspx>.

260 Anthony Ruggiero, “Maximum Pressure 2.0: How to Improve Sanctions on North Korea,” *Foundation For the Defense of Democracies*, June 4, 2018, https://s3.us-east-2.amazonaws.com/defenddemocracy/uploads/documents/MEMO_Ruggiero_June2018.pdf.

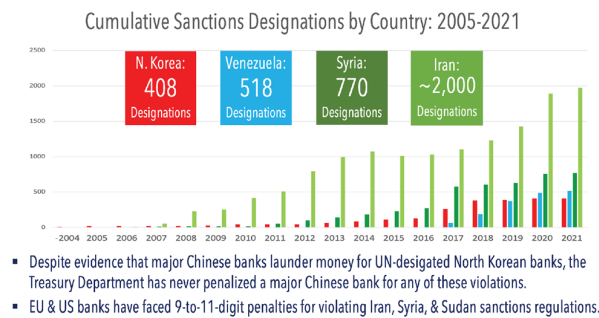
261 Thomas Erdbrink, “Iran Stagers as Sanctions Hit Economy,” *New York Times*, October 1, 2013, <https://www.nytimes.com/2013/10/01/world/middleeast/iran-stagers-as-sanctions-hit-economy.html>. A search of OFAC’s civil penalties between 2010—when Congress passed the Comprehensive Iran Sanctions And Disarmament Act—and 2015 shows multiple nine- and ten-digit penalties against banks for violating Iran sanctions. U.S. Dep’t of Treasury, “Civil Penalties and Enforcement Information,” accessed October 13, 2020, <https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information>.

THE ROOT OF ALL EVIL

Joshua Stanton

out,” and had “gotten off relatively easy, especially as compared with Iran.”²⁶²

Only in September 2016, during President Obama’s last months in office, did OFAC freeze the assets of one of Pyongyang’s major China-based money laundering fronts, Dandong Hongxiang Industrial Development Company.²⁶³ The Obama administration ended without either a diplomatic breakthrough or a sanctions program that put significant financial pressure on Pyongyang.²⁶⁴ Yet in early 2017, a former Treasury Department official testified before Congress that North Korea was still the eighth-most sanctioned government—behind Iran, Iraq, the Balkans, Syria, Sudan, and Zimbabwe.²⁶⁵ Even then, “sanctions against North Korea were not strong or well-enforced.”²⁶⁶



262 David S. Cohen, “One powerful weapon to use against North Korea,” *Washington Post*, April 21, 2017, https://www.washingtonpost.com/opinions/one-powerful-weapon-to-use-against-north-korea/2017/04/21/ddbb9702-26c2-11e7-bb9d-8cd6118e1409_story.html?utm_term=.f4a89212dbec (quoted in Ruggiero HFSC at 6 n.7.)

263 U.S. Dep’t of Treasury, “Treasury Imposes Sanctions on Supporters of North Korea’s Weapons of Mass Destruction Proliferation,” September 26, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl5059.aspx>.

264 “North Korean Nuclear Negotiations, 1985-2019,” *Council on Foreign Relations*, accessed August 7, 2019, <https://www.cfr.org/timeline/north-korean-nuclear-negotiations>; Andrew Quinn, “Insight: Obama’s North Korean leap of faith falls short,” *Reuters*, March 30, 2012, <https://www.reuters.com/article/us-korea-north-usa-leap/insight-obamas-north-korean-leap-of-faith-falls-short-idUSBRE82T06T20120330>.

265 *Restricting North Korea’s Access to Finance: Hearing before the U.S. House Committee on Financial Services, Subcommittee on Monetary Policy & Trade* at 3-4, 115th Cong., 1st Sess. (2017) (statement of Anthony Ruggiero), <https://www.govinfo.gov/content/pkg/CHRG-115hhrg29452/pdf/CHRG-115hhrg29452.pdf>; *Empty Threat or Serious Danger: Assessing North Korea’s Risk to Homeland: Testimony Before the House Homeland Security Committee*, 114th Cong. (2017) (statement of Anthony Ruggiero, senior fellow at the Foundation of Defense for Democracies), <https://docs.house.gov/meetings/HM/HM09/20171012/106467/HHRG-115-HM09-Wstate-RuggieroA-20171012.pdf>.

266 *Ibid.*

Money, Rice, Crime & Law in North Korea

A former U.S. Representative to the UN Panel of Experts testified similarly, as follows:

Regrettably, the success the U.S. and like-minded countries have achieved in getting tougher sanctions adopted has been blunted by inadequate action by most member states, squandering the political capital Washington has spent to obtain agreement from Beijing and Moscow. Over the past decade, the record of implementation is poor. There were some years when even members of the Security Council had not implemented the measures.²⁶⁷

B. 2016-2021: Medium Pressure

A week after North Korea's January 2016 nuclear test, the House of Representatives asserted its constitutional authority to regulate commerce with foreign nations and passed the **North Korea Sanctions and Policy Enhancement Act (NKSPEA)** by a vote of 418 to 2.²⁶⁸ After some amendments and a full day of debate, the Senate also passed it by 96 to 0. On February 18, 2016, President Obama signed the first comprehensive North Korea sanctions legislation into law.²⁶⁹

The NKSPEA mandated the designation and blocking of persons who engaged in proliferation, arms trafficking, computer hacking, money laundering, human rights abuses, or censorship on behalf of the Government of North Korea.²⁷⁰ It also created a blocking authority—which Congress would also make mandatory in 2019²⁷¹—to freeze the assets of persons who knowingly contributed to—

- (i) the bribery of an official of the Government of North Korea or any person acting for or on behalf of that official;
- (ii) the misappropriation, theft, or embezzlement of public funds by, or for the benefit of, an official of the Government of North Korea or any person acting for or on behalf of that official; or

²⁶⁷ Restricting North Korea's Access to Finance at 7 (statement of William J. Newcomb, chair of the North Korea Economic Forum at the Center for Advanced Defense Studies), <https://www.govinfo.gov/content/pkg/CHRG-115hhrg29452/pdf/CHRG-115hhrg29452.pdf>.

²⁶⁸ U.S. Const. art. I, § 8, cl. 3.

²⁶⁹ Pub. L. No. 114-122, 130 Stat. 94 (2016) (codified at 22 U.S.C. Ch. 99); see North Korea Sanctions and Policy Enhancement Act of 2016: Major Actions, H.R.757, 114th Cong. (2020), <https://www.congress.gov/bills/114th-congress/house-bill/757/actions>.

²⁷⁰ 22 U.S.C. § 9214(a).

²⁷¹ Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act of 2019, Pub. L. No. 116-92, div. F, tit. LXXII, subtit. A, § 7121 (codified at 22 U.S.C. §§ 9221B & 9221C); 22 U.S.C. § 9214(g)(1)(F); see 31 C.F.R. § 510.201(a)(3)(ix) (F). The Warmbier Act also included non-binding "sense of Congress" language that "that the President should . . . prioritize multilateral efforts to identify and block . . . any property owned or controlled by a North Korean official; and . . . any significant proceeds of kleptocracy by the Government of North Korea or a North Korean official."

THE ROOT OF ALL EVIL

Joshua Stanton

(iii) the use of any proceeds of any activity described in clause (i) or (ii).²⁷²

The NKSPEA employed three existing enforcement tools to deny Pyongyang the means to launder its money through the U.S. financial system: (1) mandates for OFAC to designate more North Korean targets and enablers for prohibited conduct; (2) extended civil forfeiture authority for property involved in or derived from prohibited conduct; and (3) a requirement for FinCEN to crack down on Pyongyang's money laundering, by excluding it from the financial system entirely. Two weeks after President Obama signed the NKSPEA, the UN Security Council approved Resolution 2270.²⁷³

Some scholars had long argued that sanctions enforcement would have little effect, because Pyongyang's funds were so well concealed.²⁷⁴ But starting in 2016, the Treasury Department, the FBI, and Justice Department prosecutors would demonstrate their ability to trace, freeze, and forfeit illicit North Korean funds. The new authorities substantially restricted Pyongyang's access to the global financial system and were a watershed in the legal potency of sanctions against Pyongyang. The Treasury and Justice Departments would soon disprove the hypothesis that Pyongyang was too isolated to be vulnerable to sanctions.²⁷⁵ However, during the Obama and Trump administrations, the enforcement of both authorities—and additional U.S. statutes and UN resolutions that would follow in the coming years—would fall far short of their potential.

Blocking Designations. During the first months of his presidency, President Trump threatened Kim Jong-un with “fire and fury”²⁷⁶ and said that he would use sanctions to create “maximum pressure.”²⁷⁷ OFAC accelerated the pace of its North Korea sanctions designations dramatically. According to one analyst, it issued more of them in the first sixteen months of Trump's presidency (182) than it had during Obama's entire eight-year presidency (154).²⁷⁸ The new designations included most of North Korea's banks and several trading companies affiliated with its

272 22 U.S.C. § 9214(b)(1)(B).

273 S/RES/2270.

274 John Park and Jim Walsh, “Stopping North Korea, Inc.: Sanctions Effectiveness and Unintended Consequences,” (Cambridge, MA: MIT Security Studies Program, 2016), <https://www.belfercenter.org/sites/default/files/legacy/files/Stopping%20North%20Korea%20Inc%20Park%20and%20Walsh%20.pdf>; Andrei Lankov, “Why stiffer sanctions on North Korea won't work,” *Bloomberg View*, January 9, 2016, <https://www.sunherald.com/opinion/other-voices/article53974690.html>.

275 *Countering the North Korean Threat: New Steps in U.S. Policy, Testimony before the House Foreign Affairs Committee*, 115th Cong. (2017), <https://docs.house.gov/meetings/FA/FA00/20170207/105527/HHRG-115-FA00-Wstate-RuggieroA-20170207.pdf> (statement of Anthony Ruggiero, senior fellow at the Foundation for Defense of Democracies).

276 W.J. Hennigan, David S. Cloud, and Noah Bierman, “President Trump threatens North Korea with ‘fire and fury like the world has never seen,’” *L.A. Times*, August 8, 2017, <https://www.latimes.com/politics/la-fi-pol-norkor-nuclear-20170808-story.html>.

277 Matthew Pennington, “Trump strategy on NKorea: ‘Maximum pressure and engagement,’” *AP*, April 14, 2017, <https://apnews.com/86626d21ca2b45c79457a873a747c452/Trump-strategy-on-NKorea:-Maximum-pressure-and-engagement>

278 Mathew Ha, “Let's face it, North Korea won't yield without more pressure,” *The Hill*, March 21, 2019, <https://thehill.com/opinion/international/435056-lets-face-it-north-korea-wont-yield-without-more-pressure>; see also Ruggiero, “Maximum Pressure 2.0: How to Improve Sanctions on North Korea.”

Money, Rice, Crime & Law in North Korea

military-industrial complex. OFAC also blocked the assets of two small Russian banks—the Agrosyuz Commercial Bank²⁷⁹ and the Russian Financial Society, for laundering Pyongyang’s money.²⁸⁰

Yet even in July 2017, when the number of North Korea designations had more than doubled since early 2016, the same former Treasury Department official testified that North Korea was only the fifth-most-sanctioned nation, behind Iran, Syria, Ukraine, and Russia. Of course, North Korea’s economy is smaller and less diverse than Iran’s. Even then, however, the new designations mostly targeted individual North Korean ships and low-to-mid-level diplomats and trading company officials. They still did not meaningfully target North Korea’s principal vulnerability—the third-country banks and enablers with exposure to the international financial system.²⁸¹

In August 2017, Congress strengthened the NKSPEA’s authorities in title III of the **Countering America’s Adversaries Through Sanctions Act (CAATSA)** by a similarly overwhelming vote—419 to 3 in the House, and 98 to 2 in the Senate.²⁸² The table in Appendix A summarizes the complex web of eleven UN resolutions, U.S. statutes, and regulations that limited Pyongyang’s access to the financial system. It does not summarize the national sanctions of the European Union, the United Kingdom, Japan, South Korea, Singapore, or other states that have since implemented UN sanctions. Not all of these authorities are sanctions *per se*, but generally applicable laws against money laundering.

Anti-Money Laundering Enforcement. In December 2016, in accordance with one of the mandates of the NKSPEA,²⁸³ FinCEN issued a final rule designating North Korea as a jurisdiction of “primary money laundering concern,” finding that Pyongyang uses its access to the financial system to advance its proliferation “through a system of front companies, business arrangements, and representatives that obfuscate the true originator, beneficiary, and purpose of transactions,” and that “these deceptive practices have allowed millions of U.S. dollars of [North Korean] illicit activity to flow” from “foreign-based banks . . . through correspondent bank accounts in the United States and Europe.”²⁸⁴ FinCEN ordered financial institutions to bar

279 U.S. Dep’t of Treasury, “Treasury Targets Russian Bank and Other Facilitators of North Korean United Nations Security Council Violations,” August 3, 2018, <https://home.treasury.gov/news/press-releases/sm454>.

280 U.S. Dep’t of Treasury, “Treasury Designates Russian Financial Institution Supporting North Korean Sanctions Evasion,” June 19, 2019, <https://home.treasury.gov/news/press-releases/sm712>.

281 *Restricting North Korea’s Access to Finance, Testimony Before the House Committee on Financial Services, Monetary Policy & Trade Subcommittee*, 3-4, (statement of Anthony Ruggiero, senior fellow at the Foundation for Defense of Democracies)

282 Countering America’s Adversaries Through Sanctions Act of 2017 (CAATSA), Pub. L. No. 115-44, tit. III, 131 Stat. 886 (2017) (amending the NKSPEA). Unlike the NKSPEA, which was a stand-alone North Korea sanctions bill, the CAATSA was also bundled with sanctions against Russia and Iran.

283 22 U.S.C. § 9221.

284 U.S. Dep’t of Treasury, Financial Crimes Enforcement Network, Imposition of Special Measures Against North Korea as a Jurisdiction of Primary Money Laundering Concern, 81 Fed. Reg. 78715 (December 9, 2016), <https://www.federalregister.gov/documents/2016/11/09/2016-27049/>

THE ROOT OF ALL EVIL

Joshua Stanton

Pyongyang's direct and indirect access to correspondent accounts.

FinCEN also began to enforce its anti-money laundering regulations against foreign banks that helped Pyongyang launder its money—at least the small ones. In November 2017, it designated the Bank of Dandong in China as an institution of primary money laundering concern and cut off its access to the dollar system—the same measure it had imposed on Banco Delta Asia in 2005.²⁸⁵ In February 2018, it imposed the same measure on Latvia's ABLV Bank for turning a blind eye to suspicious transactions, neglecting AML compliance, and consequently laundering money for North Korea.²⁸⁶ Eleven days later, the European Central Bank stated that ABLV was “failing or likely to fail” and announced plans to shut it down.²⁸⁷

But enforcement of these authorities continued to be uneven. In its 2020 mid-term report, the UN Panel of Experts monitoring compliance with sanctions against Pyongyang found that it “continues to access the international financial system” “through joint ventures, offshore accounts, shell companies and the use of virtual assets (for example, cryptocurrencies),” using “small and medium-sized banks in East and South-East Asia.”²⁸⁸ The Panel found that Pyongyang made extensive use of “aliases, agents, foreign individuals in multiple jurisdictions, and a long-standing network of front companies and embassy personnel.”²⁸⁹ Justice Department documents also showed that large Chinese banks were helping Pyongyang to launder its money—without facing prohibitive consequences for conduct that may violate U.S. law.²⁹⁰

imposition-of-special-measure-against-north-korea-as-a-jurisdiction-of-primary-money-laundering.

285 U.S. Dep't of Treasury, “Imposition of Special Measure Against Bank of Dandong as a Financial Institution of Primary Money Laundering Concern,” 82 Fed. Reg. 51758, (November 8, 2017), https://www.fincen.gov/sites/default/files/federal_register_notices/2017-11-08/Dandong%20Final%202017-24238.pdf; U.S. Dep't of Treasury, Imposition of Special Measure Against ABLV Bank, AS as a Financial Institution of Primary Money Laundering Concern, 83 Fed. Reg. 6986 (February 16, 2018), https://www.fincen.gov/sites/default/files/federal_register_notices/2018-02-16/2018-03214.pdf.

286 U.S. Dep't of Treasury, *Proposal of Special Measure Against ABLV Bank, AS as a Financial Institution of Primary Money Laundering Concern*, 83 Fed. Reg. 6986 (February 16, 2019); see U.S. Dep't of Treasury, “FinCEN Names ABLV Bank of Latvia an Institution of Primary Money Laundering Concern and Proposes Section 311 Special Measure,” February 13, 2018, <https://www.fincen.gov/news/news-releases/fincen-names-ablv-bank-latvia-institution-primary-money-laundering-concern-and>.

287 Allen Cone, “Latvian bank linked to N. Korea money laundering ordered closes,” *UPI*, February 24, 2018, https://www.upi.com/Top_News/World-News/2018/02/24/Latvian-bank-linked-to-N-Korea-money-laundering-ordered-closed/3631519496638/; Drew Hinsha, Patricia Kowsmann, and Ian Talley, “How a Tiny Latvian Bank Became a Haven for the World's Dirty Money,” *Wall Street Journal*, March 26, 2018, <https://www.wsj.com/articles/how-a-tiny-latvian-bank-became-a-haven-for-the-worlds-dirty-money-1522083261>.

288 S/2020/840 ¶ 143; S/2017/150, ¶ 210.

289 S/2016/157 ¶ 179.

290 *In re Sealed Case*, No. 19-5068.

Money, Rice, Crime & Law in North Korea

In late 2019, Congress passed the *Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act* as part of the National Defense Authorization Act for Fiscal Year 2020.²⁹¹ The law authorized new sanctions against financial institutions that knowingly deal, directly or indirectly, with entities sanctioned under U.S. law or UN resolutions for prohibited dealings with North Korea. Banks that violate this prohibition may be subject to civil and criminal penalties, or limits on their access to the U.S. financial system, including their use of correspondent accounts in the United States.²⁹²

Civil Forfeiture. An NKSPEA success story was its extension of the Justice Department's civil forfeiture authorities. Before 2016, North Korean money launderers successfully evaded U.S. law enforcement from their safe havens in Russia and China. Starting in 2016, FBI Special Agents in Chicago, Minneapolis, and Phoenix, and intelligence analysts in Washington, D.C., traced tens of millions of dollars in proceeds of North Korean financial crime.²⁹³ Prosecutors in New York, New Jersey, and Washington, D.C. forfeited funds of sanctioned North Korean banks,²⁹⁴ and of the

291 Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act of 2019, Pub. L. No. 116-92, div. F, tit. LXXII, subtit. A, § 7121 (2019) (enacted within the National Defense Authorization Act for Fiscal Year 2020) (hereinafter Warmbier Act), https://home.treasury.gov/system/files/126/c116s1790_northkorea_otto_warmbier_act.pdf (codified at 22 U.S.C. §§ 9221B & 9221C).

292 *Id.* § 7211. The restrictions on foreign banks' access to correspondent accounts in the United States will probably mirror those in section 311(b) of the Patriot Act, except that the statute does not require a designation or rulemaking similar to the requirements in section 311(b). See 31 U.S.C. § 5318A(b). The Treasury Department regulations may attempt to impose a requirement for a designation.

293 See Part III.B.3 *infra*.

294 *United States of America v. All Funds In The Accounts Of Blue Sea Business Co., Ltd., et al.*, No. 16-05903. Prosecutors sought the forfeiture of up to \$247 million in twenty-five bank accounts, in twenty-three Chinese banks, controlled by a network of front companies controlled by Ma Xiaohong, a prominent businesswoman and Communist Party member in Dandong, and laundered on behalf of a North Korean bank sanctioned for financing WMD proliferation. The Obama administration denied prosecutors permission to block and seize the funds using domestic U.S. legal authorities. This required prosecutors to seek the assistance of the government of China under the two countries' Mutual Legal Assistance Agreement (MLAA) to seize the funds and recognize the judgment of forfeiture, if granted. This strategy was not fruitful. In October 2018, the court in an unrelated case asked prosecutors to update it on the status of the litigation. In a letter to the court, prosecutors cited their efforts to apply the MLAA and asked the court to keep the case open. A subsequent decision by the U.S. Court of Appeals for the District of Columbia indicates that Beijing was uncooperative and implies that the funds escaped to other nodes in Pyongyang's money laundering network. See *In re Sealed Case*, Nos. 19-5100, -5101, 5103 (2019). See also *United States v. \$1,071,251.44 of Funds Associated with Mingzheng International Trading Ltd., et al.*, No. 17-cv-001166. Prosecutors sued to forfeit \$1.9 million transferred by a network of China-based front companies through banks in the United States, on behalf of a North Korean bank whose assets had been frozen for WMD proliferation financing. The complaint cites two confidential sources and notes that some of the payments to Mingzheng went through the same front companies that transferred funds to Dandong Hongxiang, showing the interconnected nature of North Korea's money laundering networks in China. It names three Chinese banks—China Merchants Bank, Shanghai Pudong Development Bank, and Bank of Communications of China—as holding accounts for Mingzheng, and also implicated ZTE Corporation as using Mingzheng as an intermediary for its business with North Korea.

THE ROOT OF ALL EVIL

Joshua Stanton

infamous Bureau 39 of the KWP,²⁹⁵ as they were laundered through trading companies in China, and through correspondent banks in New York. They forfeited payments for oil smuggled into North Korea, and one of the tankers used to smuggle it.²⁹⁶ They forfeited a ship owned by the North Korean army that smuggled coal to Southeast Asia.²⁹⁷ They recouped nearly \$700,000 in fines and forfeitures from a British Virgin Islands company that laundered Pyongyang's money and smuggled alcohol and tobacco products to North Korea.²⁹⁸ They recouped over \$600,000 from

The court granted the government's motion for default judgment on August 15, 2018. A third such case was *United States v. \$599,930 of Funds Associated with Cooperating Company 1*, No. 18-cv-02746 (D.D.C. 2018), in which the Justice Department sued to forfeit \$3 million in assets of three North Korean front companies, two of them based in China and a third based in Singapore and cooperating with the FBI, that laundered funds through the U.S. on behalf of a North Korean bank that had been blocked in 2013 for financing WMD proliferation in violation of the NKSPEA and the IEEPA. The author of this report assisted the Justice Department as a consultant in this matter. As of January 2020, this case was still pending.

²⁹⁵ *United States v. \$4,083,935.00 of Funds Associated with Dandong Chengtai Trading Ltd., et al.*, No. 17-01706 (D.D.C. 2017). Prosecutors alleged that a Chinese national and a front company laundered the Defendant Currency through correspondent banks in the United States on behalf of Bureau 39 of the KWP, Pyongyang's state money-laundering agency, and were thus subject to forfeiture under the IEEPA and the NKSPEA. The funds were proceeds of North Korean coal exports, in violation of UN Security Council resolutions, and according to the complaint, Dandong Chengtai's revenues "may have benefitted the nuclear or ballistic missile programs." Bureau 39 is designated by the U.S. Treasury Department and the UN Security Council. It is alleged to have been involved in currency counterfeiting, proliferation financing, and importing luxury goods. The complaint cites the statements of two defectors to the FBI and two confidential FBI informants. On September 17, 2018, the court entered default judgment for the United States.

²⁹⁶ *United States v. Approximately One Million Two Hundred Fifty-Eight Thousand Six Hundred Eighty-Eight Dollars, More or Less*, No. 18-cv-5216 (E.D.N.Y. 2018). Prosecutors alleged that the Defendant Currency was "involved in" payments for petroleum wired from China to Taiwan, on behalf of a blocked North Korean petroleum company, in violation of the NKSPEA and the IEEPA. U.S. Dep't of Justice, "United States Seizes Oil Tanker Used to Violate Sanctions Against North Korea," July 30, 2021, <https://www.justice.gov/opa/pr/united-states-seizes-oil-tanker-used-violate-sanctions-against-north-korea>.

²⁹⁷ *United States v. the Bulk Cargo Carrier known as the "Wise Honest," bearing International Maritime Organization Number 8905490*, No. 19-cv-04210. In their first suit against tangible North Korean government property, prosecutors sued to forfeit North Korea's second-largest bulk cargo carrier for smuggling coal in violation of UN Security Council resolutions, the IEEPA, and the NKSPEA. The owner of the vessel was a front company for the North Korean army. The complaint alleged that the shipments of coal from North Korea, through Russia, to Indonesia were facilitated by dollar-denominated wire transfers that the ship's owner attempted to clear through banks in the Southern District of New York. The court subsequently entered a default judgment of forfeiture on behalf of the United States. North Korean government missed its deadline to file a claim of interest in the ship, but the families of Otto Warmbier and the Rev. Kim Dong-shik, both of whom had won multi-million-dollar wrongful death judgments against the government of North Korea. U.S. Dep't of Justice, "Department of Justice Announces Forfeiture of North Korean Cargo Vessel," October 21, 2019, <https://www.justice.gov/opa/pr/departments-justice-announces-forfeiture-north-korean-cargo-vessel>; Christy Lee, "US Marshals to Sell Seized North Korean Cargo Ship," *Voice of America*, July 27, 2019, <https://www.voanews.com/usa/us-marshals-sell-seized-north-korean-cargo-ship>. The ship is subject to forfeiture under the NKSPEA. 22 U.S.C. § 9225(d).

²⁹⁸ *United States v. Yang Ban*, No. 20-cr-00173 (2020).

Money, Rice, Crime & Law in North Korea

a UAE company that exported cigarette filters to North Korea for use in the counterfeit cigarette trade.²⁹⁹ They indicted Chinese nationals for laundering cryptocurrency stolen by Pyongyang's agents,³⁰⁰ and sued to forfeit the accounts that held the cash proceeds.³⁰¹ They indicted dozens of overseas agents of North Korea's Foreign Trade Bank—five of them Chinese nationals—who consequently became toxic to compliance officers of banks throughout the financial system.³⁰² They sued to forfeit \$1 million laundered through Hong Kong front companies from trade between Chinese telecommunications giant ZTE and sanctioned North Korean banks.³⁰³

Unfortunately, the Justice Department never had enough prosecutors in the districts where venue was proper.³⁰⁴ In 2019, I also helped the U.S. Attorney's Office for the District of Columbia forfeit the modest sum of \$148,500, wired by a previously designated Taiwanese proliferator from one of his accounts in Hong Kong to another of his accounts in Taiwan. According to the affidavit of an FBI Special Agent, the funds were derived from the sale of scientific instruments and machine

299 *United States v. Essentra FZE Co. Ltd.*, No. 20-cr-0012 (D.D.C. 2020), <https://www.justice.gov/opa/press-release/file/1294801/download>. See Andrew Salmon, "North Korean counterfeit cigarette trade faces squeeze," *Nikkei Asia Review*, March 18, 2016, <https://web.archive.org/web/20160318060613/https://asia.nikkei.com/Politics-Economy/International-Relations/North-Korean-counterfeit-cigarette-trade-faces-squeeze>; Gordon Fairclough, "Tobacco Firms Trace Fakes to North Korea," *Wall Street Journal*, January 27, 2006, <https://www.wsj.com/articles/SB113830654895857392>; *North Korea: Illicit Activity Funding the Regime: Hearing Before the Subcommittee on Federal Financial Management, Committee on Homeland Security & Governmental Affairs*, 109th Cong., 2d Sess. (2006), https://books.google.com/books?id=hjgFm_c1LE8C&pg=PA41&dq=north%20korea%20counterfeit%20cigarettes&pg=PA1#v=onepage&q&f=false.

300 *United States v. Tian Yinyin*, No. 20-cr-00052. This is the first Justice Department indictment for laundering the proceeds of North Korea's illicit activities—in this case, cryptocurrency theft. Pyongyang's agents laundered the money through multiple accounts, media of exchange, and enablers, allegedly including the Chinese nationals Tian Yinyin and Li Jiadong, who used a sophisticated algorithm called a "peel chain" to split the cryptocurrency into much smaller amounts and transfer it to multiple accounts, presumably for a commission. See also *United States v. Griffith*, No. 20-cr-0015. In this case, a federal grand jury returned an indictment against U.S. citizen Virgil Griffith, seeking the criminal forfeiture of proceeds of his transfer of cryptocurrency technology to the Government of North Korea. The indictment alleges that Griffith "personally obtained" "a sum of money in United States currency" that was traceable to his conspiracy to violate the sanctions.

301 *United States v. 113 Virtual Currency Accounts*, No. 20-cv-00606; *United States v. 280 Virtual Currency Accounts*, No. 20-cv-02396. This was related to the *Tian Yinyin* indictment. In August 2020, the Justice Department filed a second, related forfeiture case against another series of cryptocurrency accounts involved in the scheme. *Id.*

302 *United States v. Ko Chol Man*, No. 20-cr-00032 (D.D.C. 2020), https://freekorea.us/wp-content/uploads/2020/05/show_temp-76-1.pdf.

303 *United States v. \$429,000.00 of Blocked Funds Associated with Ryer Int'l Trading, Ltd.*, No. 20-cv-2546 (2020), <https://www.justice.gov/usao-dc/press-release/file/1316241/download>. In 2017, ZTE entered into a plea agreement with the Justice Department, in which it agreed to pay a \$400 million penalty and cooperate with federal investigations of sanctions violations, mostly relating to Iran, but also relating to North Korea. *United States v. ZTE Corp.*, No. 17-cr-0120 (N.D. Tex. 2017), <https://www.justice.gov/opa/press-release/file/946276/download>.

304 The Assistant United States Attorney in Washington D.C., who prosecuted the majority of these cases, routinely communicated with the author on late nights and weekends.

THE ROOT OF ALL EVIL

Joshua Stanton

tools, including vacuum drying furnaces, to a buyer in Damascus, Syria that a UN Panel of Experts believes to be a front for Syria's Scientific Studies and Research Center (SSRC).³⁰⁵ The SSRC is designated by OFAC for WMD proliferation; the vacuum drying furnaces may have been meant for use in Syria's chemical weapons program.³⁰⁶ Two North Korean agents of the Korea Mining and International Development Corporation (KOMID) based in Rangoon, Burma brokered the shipment. KOMID is also sanctioned by both the UN and OFAC for WMD proliferation. Fortunately, the U.S. correspondent bank took its enhanced due diligence obligations seriously, saw through the seller's use of aliases to conceal his ownership of the funds, and blocked the payment.³⁰⁷

Non-governmental organizations made their own contributions. They learned to mine foreign-language public records abroad; use powerful computer algorithms to identify links of ownership and control between different corporate officers, agents, partners, and beneficial owners; and use this evidence to map out illicit financial networks.

In 2016, the Center for Advanced Defense Studies (C4ADS) exposed a large Chinese trading company as a major facilitator of illicit North Korean trade. One month later, federal prosecutors indicted the trading company and its corporate officers for money laundering on behalf of a U.S.- and UN-designated North Korean bank through correspondent banks in New Jersey, and filed a civil forfeiture complaint against the trading company's accounts in twenty-three Chinese banks, including the largest banks in China.³⁰⁸ In 2017, C4ADS mapped what it described as a "centralized, limited, and vulnerable" network of 5,233 North Korean front companies operating openly in China, which it believed to comprise the bulk of Pyongyang's financial infrastructure in China.³⁰⁹ Federal authorities have not yet acted against most other nodes of this network.

305 *United States v. \$148,500 of Blocked Funds in the Name of Trans Multi Mechanics, Co., Ltd., et al.*, No. 16-cv-01029 (ordering the forfeiture of funds wired by a blocked Taiwanese proliferator from a bank in Hong Kong to a bank in Taiwan, which were derived from the sale of proliferation-sensitive machinery to a Syrian front company for another blocked entity). The author served as a consultant to the Department of Justice in this case. For evidence linking Mechanical Systems to Syria's Scientific Studies and Research Center and its acquisition of materiel for its weapons of mass destruction programs, see S/2016/157 ¶ 64, <https://undocs.org/S/2016/157>, and S/2018/171 ¶ 132, https://www.securitycouncilreport.org/atf/cf/%7B65BECF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2018_171.pdf.

306 "N. Korea 'Exporting Chemical Weapons Parts to Syria,'" *Chosun Ilbo*, June 17, 2013, http://english.chosun.com/site/data/html_dir/2013/06/17/2013061700887.html; Kelsey Davenport, "An Uncertain Future for North Korean Talks," *Arms Control Today* 49, April 2019, <https://www.armscontrol.org/act/2019-04/news/uncertain-future-north-korean-talks>.

307 *United States v. \$148,500 of Blocked Funds in the Name of Trans Multi Mechanics, Co., Ltd., et al.*, No. 16-cv-01029; 31 C.E.R. § 544.201 (prohibiting transactions with persons blocked for the proliferation of weapons of mass destruction).

308 Compare Center for Advanced Defense Studies, *In China's Shadow: Exposing North Korean Overseas Networks* (Seoul, South Korea: The Asan Institute for Policy Studies, 2016), <http://static1.squarespace.com/static/566ef8b4d8af107232d5358a/c/57dfc74acd0f68d629357306/1474291539480/In+China%27s+Shadow.pdf>, to *United States v. All Funds in the Accounts of Blue Sea Business Co., Ltd.*, No. 16-cv-1954.

309 David Thompson, "Risky Business A System-Level Analysis of the North Korean Proliferation Financing System"

Money, Rice, Crime & Law in North Korea

In 2017, Sayari Analytics, another NGO that mines and analyzes open-source data, exposed a joint venture between a Chinese company and a North Korean company sanctioned by both the U.S. and the UN for the proliferation of WMDs. Prosecutors in the District of Columbia subsequently unsealed an indictment and filed a civil forfeiture action against the same network.³¹⁰ In 2020, the nonprofit group The Sentry exposed a North Korean network building political monuments in the Democratic Republic of Congo (DRC) in violation of a UN ban on Pyongyang's statue exports, and to launder the proceeds through a DRC bank, Afriland First Bank, and a French Bank, BMCE Bank International.³¹¹

Congress has given governments the authority to reward NGOs that provide them with valuable open-source intelligence. In 2017, it amended the State Department's "Rewards for Justice" program to authorize a North Korea-specific reward program.³¹² Rewards are available for "the identification or location of any person who aids or abets a violation of" state-sponsored computer hacking, or for "the disruption of financial mechanisms of any person who has engaged in the conduct described in sections 104(a) or 104(b)(1) of the North Korea Sanctions and Policy Enhancement Act of 2016," including the proceeds of Pyongyang's kleptocracy and other forms of corruption.³¹³

(Washington, D.C.: Center for Advanced Defense Studies, 2017), <https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/59413c8bebbd1ac3194eafb1/1497447588968/Risky+Business-C4ADS.pdf>. Since 2020, Beijing has moved to conceal publicly available data about business logistics and finances, a move that might also discourage more careful investors. Liza Lin & Chin Han Wong, "China Increasingly Obscures True State of Its Economy to Outsiders," *Wall St. Journal*, December 6, 2021, <https://www.wsj.com/articles/china-data-security-law-ships-ports-court-cases-universities-11638803230>.

310 Jeremy Page and Jay Solomon, "Chinese-North Korean Venture Shows How Much Sanctions Can Miss," *Wall Street Journal*, May 7, 2017, <https://www.wsj.com/articles/chinese-north-korean-venture-shows-how-much-sanctions-can-miss-1494191212>.

311 The Sentry, *Overt Affairs: How North Korean Businessmen Busted Sanctions in the Democratic Republic of Congo*. BMCE is a foreign bank that has been designated as a correspondent bank to clear transactions through the U.S. financial system.

312 Countering America's Adversaries Through Sanctions Act, Pub. L. No. 115-44, 131 Stat. 886, § 323 (2017) (codified at 22 U.S.C. § 2914), <https://www.congress.gov/bills/115th-congress/house-bill/3364/text?q=%7B%22search%22%3A%5B%22sanctions%22%5D%7D&cr=2>.

313 U.S. Dep't of State, "Rewards for Justice: North Korea," accessed September 13, 2020, https://rewardsforjustice.net/english/about-rfj/north_korea.html; see also The Kleptocracy Asset Recovery Rewards Act, Pub. L. No. 116-283, §§ 9701-9703 (2021), <https://www.govtrack.us/congress/bills/116/hr6395/text>. This legislation, which became law as part of the National Defense Authorization Act for Fiscal Year 2021, authorizes appropriations to pay rewards to individuals and nonprofit humanitarian organizations providing information leading to the seizure or forfeiture of stolen assets from an account in a U.S. financial institution. See also National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 6112 & 6214 (2021), <https://www.govtrack.us/congress/bills/116/hr6395/text>; Russia & Moldova Jackson-Vanik Repeal & Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. No. 112-208, 126 Stat. 1496 (2012). The Helsinki Commission has published guidance for non-governmental organizations and informers who provide information to the Treasury Department to support the credibility of their evidence for Magnitsky sanctions. U.S. Helsinki Comm'n, *How-To Guide: Sanctioning Human Rights Abusers and Kleptocrats under the Global Magnitsky Act*, May 24, 2018, <https://www.csc.gov/sites/helsinkicommission.house>.

THE ROOT OF ALL **EVIL**

Joshua Stanton

Then, in 2019, the Chief District Judge of the U.S. District Court for the District of Columbia unsealed a series of rulings enforcing subpoenas against three major Chinese banks in connection with a criminal investigation of money laundering and sanctions violations involving North Korea, holding the banks in contempt of court when they failed to comply with the subpoenas, and fining them each \$50,000 a day.³¹⁴

As the Chief District Judge's rulings were unsealed in Washington, traders in China reported difficulties accessing banking services,³¹⁵ and that Pyongyang's agents had hoarded dollars and renminbi.³¹⁶ The banks appealed, but the Court of Appeals affirmed the District Court's decision. The appellants did not seek further review at the U.S. Supreme Court before their appeal deadlines passed. The dockets in the cases have since been unsealed, with the names of the two of the banks redacted.³¹⁷

The litigation over these subpoenas may overshadow every other enforcement action in its significance.³¹⁸ Prosecutors allege that in one three-year period, just one of the Chinese banks whose records were subpoenaed facilitated at least \$105 million in payments for Mingzheng International Trading, a China-based North Korean front company that operated as a bank and used major Chinese banks to access the U.S. financial system illegally.³¹⁹ Returns from those subpoenas not only have the potential to identify other accounts that contain Pyongyang's hard

gov/files/Global%20Magnitsky%20How-To%20Designed%20Final%20Updated%20with%20Info.pdf.

314 *In re Grand Jury Investigation of Possible Violations of 18 U.S.C. § 1956 and 50 U.S.C. § 1705*, Nos. 18-mj-175, 18-mj-176 & 18-mj-177 (D.D.C. 2019), https://freekorea.us/wp-content/uploads/2019/04/FINAL_18mc175_176_177_Mar_18_2019_Mem_Op_redacted.pdf. The Chief District Judge held the banks in contempt of court for failure to comply with the subpoenas and fined each of them \$50,000 a day. A panel of the Court of Appeals later affirmed the District Court's order. *In re Sealed Case*, No. 19-5068 (D.C. Cir. 2019), <https://freekorea.us/wp-content/uploads/2019/08/Sealed-case-DC-Cir-affirms.pdf>. See Berthelsen and Schoenberg, "Chinese Banks Probed Over North Korea's Nuclear Arms." Two of the subpoenas were issued by a grand jury charged with investigating money laundering and sanctions violations involving North Korea, and two others were issued by the Justice Department under the authority of the Patriot Act. See 18 U.S.C. § 3332; 31 C.F.R. § 1010.670.

315 U.S. Fed. Reserve Bank of New York, Exec. Order 8832, "Freezing Japanese and Chinese Assets in the United States," Cir. 2249.

316 Ha Yoon-ah, "North Koreans turn to local currency due to foreign currency shortages," *Daily NK*, August 6, 2019, <https://www.dailynk.com/english/north-koreans-turn-to-local-currency-due-to-foreign-currency-shortages/>.

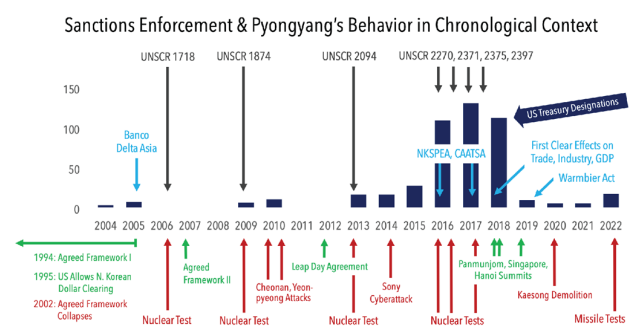
317 U.S. District Court, District of Columbia, Unsealed Orders, Opinions, Documents and Docket Reports, 2020, <https://www.dcd.uscourts.gov/unsealed-orders-opinions-documents/Miscellaneous/2020>; Zia M. Faruqui, Jessie K. Liu, Noha K. Moustafa, "The Long Arm of U.S. Law: The Patriot Act, the Anti-Money Laundering Act of 2020 and Foreign Banks," *Laufare Blog*, February 23, 2021, <https://www.laufareblog.com/long-arm-us-law-patriot-act-anti-money-laundering-act-2020-and-foreign-banks>.

318 See *In re Grand Jury Investigation of Possible Violations of 18 U.S.C. § 1956 and 50 U.S.C. § 1705*, Nos. 18-mc-00175, -176, -177 (D.D.C. 2019), *affirmed*, *In re Sealed Case*, Nos. 19-5100, -5101, 5103 (2019). The author acted as an uncompensated consultant to the U.S. Attorney's office in this case, primarily by providing research assistance to the FBI and the prosecution, but did not have access to any grand jury material.

319 *In re Grand Jury Investigation*, No. 18-mc-00176.

Money, Rice, Crime & Law in North Korea

currency reserves, but subsequent enforcement actions could also deter other major Chinese banks from servicing North Korean customers and encourage them to report and freeze North Korean accounts. The cases also spurred Congress to pass the Anti-Money Laundering Act of 2020, which expanded the Justice Department's subpoena authority to records held by foreign banks overseas.³²⁰



1. Effects of Medium Pressure on the North Korean Economy, 2017-2021

By late 2017, there was observable evidence that these sanctions had serious effects on the North Korean regime's finances. In 2017 and 2018, North Korea's GDP fell by 3.5 percent and 4.1 percent, respectively, although these numbers rely on reported trade data and should be viewed with some skepticism.³²¹

³²⁰ Anti-Money Laundering Act of 2020, Pub. L. No. 116-92, div. F, tit. LXXIII, subtit. A, § 6308 (2019) (enacted within the National Defense Authorization Act for Fiscal Year 2020) (hereinafter AMLA Act).

³²¹ Choonsik Yoo, "North Korea's economy tanks as sanctions, drought bite: South Korea," *Reuters*, July 25, 2019, <https://www.reuters.com/article/us-northkorea-economy-gdp/north-koreas-economy-tanks-as-sanctions-drought-bite-south-korea-idUSKCN1UL08G>.

THE ROOT OF ALL EVIL

Joshua Stanton

A 2017 UN embargo on North Korea's coal exports initially deprived the state of its largest source of hard currency. Initially, OFAC also showed a willingness to sanction Chinese and Russian buyers of North Korean coal.³²² The mining industry, on which Pyongyang had long relied for hard currency, was hit particularly hard.³²³ So were the state-affiliated trading companies that grew rich on the North's exports.³²⁴

In 2018, the prices of apartments in some privileged neighborhoods of Pyongyang fell sharply—according to some accounts, from \$250,000 to \$50,000, a decline of 80 percent.³²⁵ Factories in

322 U.S. Dep't of Treasury, "Announcement of Sanctions against North Korean Transportation, Mining, Energy, and Financial Services Industries and North Korean Government Officials and Organizations," March 16, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0385.aspx>; U.S. Dep't of Treasury, "Treasury Sanctions Individuals and Entities Supporting the North Korean Government and its Nuclear and Weapons Proliferation Efforts," December 2, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0677.aspx>; U.S. Dep't of Treasury, "Treasury Sanctions Suppliers of North Korea's Nuclear and Weapons Proliferation Programs," June 1, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0099.aspx>; U.S. Dep't of Treasury, "Treasury Designates Two Shipping Companies for Attempted Evasion of North Korea Sanctions," March 21, 2019, <https://home.treasury.gov/news/press-releases/sm632>; Sangmin Lee and Jieun Kim, "Russian Port City Exits Lucrative Sanctions-Dodging North Korean Coal Trade," *Radio Free Asia*, December 12, 2018, <https://www.rfa.org/english/news/korea/north-korean-coal-russia-12122018144209.html>.

323 Ha Yoon-ah, "Musan mine on the verge of total shutdown, sources say," *Daily NK*, November 11, 2018, <https://www.dailynk.com/english/musan-mine-on-the-verge-of-total-shutdown-sources-say/>; Elizabeth Shim, "Report: North Korea coal miners struggle to find work after sanctions," *UPI*, June 12, 2017, https://www.upi.com/Top_News/World-News/2017/06/12/Report-North-Korea-coal-miners-struggle-to-find-work-after-sanctions/8591497286800/?ur3=1; Dexter Roberts, "A Trump-Kim Summit Could Unfreeze Mining Riches on the Korean Border," *Bloomberg News*, March 14, 2018, <https://www.bloomberg.com/news/articles/2018-03-14/trump-kim-summit-could-unfreeze-china-mining-riches-at-border> ("[B]ecause of United Nations sanctions imposed in 2016 targeting North Korean minerals, all production at the [Hyesan Youth Copper Mine] has stoppeded.").

324 "Reacting to sanctions, N. Korean merchant in China: 'We have no work,'" *Daily NK*, September 18, 2017, <https://www.dailynk.com/english/reacting-to-sanctions-n-korean-mer/>; "North Korean merchant says trade and smuggling slashed by sanctions," *Daily NK*, February 7, 2018, <https://www.dailynk.com/english/north-korean-merchant-says-trade-a/>; Ha Yoon-ah, "North Korean trader in China expresses concerns about his own precarious situation," *Daily NK*, May 7, 2019, <https://www.dailynk.com/english/north-korean-trader-in-china-expresses-concerns-about-his-own-precarious-situation/>.

325 Mun Dong-hui, "Apartment construction remains steady despite fall in real estate prices," *Daily NK*, October 30, 2018, <https://www.dailynk.com/english/apartment-construction-remains-steady-despite-fall-in-real-estate-prices/>; Jang Seul-gi, "Government conducts survey on housing prices in North Korea," *Daily NK*, August 5, 2019, <https://www.dailynk.com/english/government-conducts-survey-on-housing-prices/>; "N. Korean Trade Interview> Pyongyang Faces Great Depression as Apartment Prices Plummer and Markets Slump," *Rimjin-gang*, January 21, 2020, <http://www.asiapress.org/rimjin-gang/2020/01/recommendations/pyongyang-interview/3/>; Mun Dong-hui, "Deal disappearance due to plunging apartment prices in North Korea, real estate paralysis," *Daily NK*, October 8, 2019, <https://tinyurl.com/yydgfq27> (in Korean); "<Inside N. Korea> Price Plunge: Pyongyang Properties Depreciate Severely as Sanctions Knock Housing Market Nationwide," *Rimjin-gang*, August 13, 2019, <http://www.asiapress.org/rimjin-gang/2019/08/society-economy/pyongyang-properties/2/>. But see Jieun Kim, "Desperate North Koreans sell homes to raise money for food," *Radio Free Asia*, November 29, 2021, <https://www.rfa.org>.

Money, Rice, Crime & Law in North Korea

Pyongyang and nearby Pyongsong, and munitions factories in Jagang, were idled or ran at reduced capacity.³²⁶ In cities on both sides of the Sino-North Korean border, the decline in commerce was evident.³²⁷ The state, which had previously tried to deny or conceal the effects of sanctions,³²⁸ admitted that they were causing “a colossal amount of damage.”³²⁹

org/english/news/korea/homes-11292021203549.html (“quoting a source’s observation that [p]oor residents, who are suffering from hardship, are selling their houses to buy food, while rich people are taking advantage of this opportunity to buy houses at low prices.”) This may reflect that elite North Koreans of means are profiteering, shifting resources from banned foreign currency stores to real estate, or continuing to downsize their residences from urban apartments to rural single-family homes.

326 Ha Yoon-ah, “Local factories in South Pyongan Province face closure amidst theft epidemic,” *Daily NK*, April 30, 2019, <https://www.dailynk.com/english/local-factories-in-north-korea-face-closure-amidst-theft-epidemic/>; Mun Dong-hui, “Majority of Pyongyang state-run factories close after US-DPRK summit fails to bear fruit,” *Daily NK*, April 30, 2019, <https://www.dailynk.com/english/majority-of-pyongyang-state-run-factories-close-after-us-dprk-summit-fails-to-bear-fruit/>; Jang Seul-gi, “North Korea ceases operation of some munitions factories,” *Daily NK*, July 25, 2019, <https://www.dailynk.com/english/north-korea-ceases-operation-of-some-munitions-factories/>; Mun Dong-hui, “North Korea’s Sunghori Cement Factory facing shutdown,” *Daily NK*, July 9, 2019, <https://www.dailynk.com/english/north-korea-sunghori-cement-factory-facing-shutdown/>; Ha Yoon-ah, “State-run factories in Pyongsong languish as private investors cash in,” *Daily NK*, February 6, 2019, <https://www.dailynk.com/english/state-run-factories-in-pyongsong-languish-as-private-investors-cash-in/>; Mun Dong-hui, “Pyongyang factories encourage workplace exemption program,” *Daily NK*, September 9, 2019, <https://www.dailynk.com/english/factories-encourage-workplace-exemption-program/>.

327 Keith Bradsher, “North Korea’s Trade Troubles Could Point to a Need for Cash,” *New York Times*, September 8, 2017, <https://www.nytimes.com/2017/09/08/business/north-korea-china-trade.html>; “Sharp fall in China’s trade with North Korea as U.N. sanctions bite,” *AFP*, January 14, 2019, <https://www.scmp.com/news/china/diplomacy/article/2181965/china-trade-north-korea-sees-sharp-fall-un-sanctions-bite>; Matt Rivers and Steven Jiang, “North Korea sanctions are strangling this Chinese city,” *CNN Money*, January 25, 2018, <https://money.cnn.com/2018/01/25/news/economy/dandong-china-north-korea-sanctions/index.html>; Elizabeth Shim, “Chinese firm in Dandong insolvent after North Korea sanctions,” *UPI*, April 10, 2019, https://www.upi.com/Top_News/World-News/2019/04/10/Chinese-firm-in-Dandong-insolvent-after-North-Korea-sanctions/4631554906755/; Ha Yoon-ah, “North Korean trade officials in China grapple with sanctions,” *Daily NK*, May 16, 2019, <https://www.dailynk.com/english/north-korean-trade-officials-in-china-grapple-with-sanctions/>; “Once flourishing Rason hard hit by sanctions, exiting Chinese,” *Daily NK*, October 5, 2017, <https://www.dailynk.com/english/once-flourishing-rason-hard-hit-by/>; Choi Kyong-ae, “N. Korea’s trade halved in 2018 on prolonged sanctions: report,” *Yonhap News*, July 19, 2019, <https://en.yna.co.kr/view/AEN20190719002100320?input=tw>.

328 Sung-hui Moon, “North Korea Orders New Roofs For All Buildings to Suggest Sanctions Lack Teeth,” *Radio Free Asia*, October 27, 2017, <https://www.rfa.org/english/news/korea/roofs-10262017170335.html>; “Kim Jong-un Regime Works Hard to Conceal Sanctions,” *Rimjin-gang*, February 11, 2017, <http://www.asiapress.org/rimjin-gang/report/20171102-conceal-sanction/>.

329 Phil Helsel and Stella Kim, “North Korea Says Sanctions Cause ‘Colossal’ Damage But Won’t Work,” *NBC News*, September 29, 2017, <https://www.nbcnews.com/news/north-korea/north-korea-says-sanctions-cause-colossal-damage-won-t-work-n806146>.

THE ROOT OF ALL EVIL

Joshua Stanton

UN sanctions required “all DPRK nationals earning income in that Member State’s jurisdiction” to return to North Korea by December 2019.³³⁰ Initially, traders and overseas laborers began returning to North Korea ahead of the UN deadline.³³¹ The converging pressures may have given Kim Jong-un reason to fear for the solvency of the state. By late 2017, he needed a strategy to buy time.

2. May 2018: President Trump Preempts Maximum Pressure

From the time of his father’s death in 2011 until 2018, Kim Jong-un never went abroad or met the leader of a foreign country. Then, in his 2018 New Year Speech, Kim Jong-un offered to send an Olympic team to South Korea. It would be a year in which both sanctions and diplomacy would peak, and then ebb. In April 2018, when President Trump agreed to meet Kim Jong-un for their first summit, the Treasury Department still had not acted against most of the networks, agents, and front companies exposed by the UN Panel of Experts and C4ADS. Some of Pyongyang’s largest money laundering networks, such as Glocom, Malaysia-Korea Partners, and Shinheung Trading,³³² were still operating. Major Chinese banks continued to launder Pyongyang’s money.³³³

President Trump’s personal intervention before the June 2018 Singapore summit signaled an extended enforcement pause by the Treasury Department. In May, he canceled at least two rounds of sanctions designations on Twitter—decisions that appear to have caught the Treasury Department and the National Security Council staff off-guard.³³⁴ At the time, OFAC was prepared

330 S/RES/2397 ¶ 8.

331 Ha Yoon-ah, “North Korean trade officials in China grapple with sanctions,” *Daily NK*, May 16, 2019, <https://www.dailynk.com/english/north-korean-trade-officials-in-china-grapple-with-sanctions/>; Ha Yoon-ah, “North Korean trader in China expresses concerns about his own precarious situation,” *Daily NK*, May 7, 2019, <https://www.dailynk.com/english/north-korean-trader-in-china-expresses-concerns-about-his-own-precarious-situation/>; Jieun Kim, “Hundreds of North Korean Workers Return Home From Vladivostok Airport,” *Radio Free Asia*, September 5, 2019, <https://www.rfa.org/english/news/korea/nk-vladivostok-workers-return-09052019143859.html>.

332 For example, Glocom, a large and sophisticated arms dealing and money laundering enterprise, still operates openly from Malaysia, Singapore, and China. Malaysia-Korea Partners operates openly in Southeast Asia and Africa. Joseph Cox, “North Korea Advertises Military Hardware on Twitter, YouTube, Defying Sanctions,” *Vice News*, March 13, 2019, https://www.vice.com/en_us/article/nexmzz/north-korea-advertises-military-hardware-youtube-twitter-facebook-linkedin-instagram-glocom; Mathew Ha, “Treasury Sanctions North Korean for Sanctions Evasion,” *Foundation for the Defense of Democracies Policy Brief*, July 31, 2019, <https://www.fdd.org/analysis/2019/07/31/treasury-sanctions-north-korean-for-sanctions-evasion/>. Another undesignated company, Sinheung Trading, is a front for North Korea’s Ministry of Social Security, which operates the country’s political prison camps. “Meet the North Korean firm that reinvents itself to beat sanctions,” *Agence France-Presse*, December 1, 2017, <https://www.scmp.com/news/china/diplomacy-defence/article/2122438/meet-north-korean-firm-which-reinvents-itself-beat>.

333 See *United States v. All Funds in the Accounts of Blue Sea Business Co., Ltd.*, No. 16-cv-1954; *United States v. \$1,071,251.44 of Funds Associated with Mingheng Int’l Trading Ltd.*, No. 17-cv-1166 (D.D.C. 2017), <https://www.justice.gov/usao-dc/pr/united-states-files-complaint-forfeit-more-19-million-china-based-company-accused-acting>; S/2017/150 ¶¶ 224-34.

334 Vivian Salama and Ian Talley, “U.S. Holds Off on New North Korea Sanctions as Summit Talks Progress,” *Wall*

Money, Rice, Crime & Law in North Korea

to designate “nearly three-dozen sanction targets, including Russian and Chinese entities.” As an administration official conceded, “The goal here is to achieve maximum pressure,” but “[w]e’re still short of that.”³³⁵ Pyongyang used the delay to set up new front and shell companies. Treasury would fail to extend the sanctions’ half-life by maintaining its deterrence against breaking them.

Whether by design, willful blindness, or the careless exercise of the “enhanced due diligence” they had been required to exercise since late 2016,³³⁶ some foreign banks still facilitated Pyongyang’s money laundering through their U.S. correspondent accounts. In other cases, foreign companies set up joint ventures with North Korean companies and used them to evade sanctions.³³⁷

The U.S. government still did not penalize or prosecute any major Chinese banks for laundering Pyongyang’s money.³³⁸ This was not for lack of reasons to believe that they were doing so.³³⁹ Appeals from Washington to Beijing through the two nations’ Mutual Legal Assistance Agreement (MLAA) had been unavailing for years. Federal prosecutors would later assert in court filings that “in the past 10 years, previous MLAA requests for production of similar records to China remain unanswered.”³⁴⁰ Representatives and senators of both parties called on the Trump administration

Street Journal, May 28, 2019, <https://www.wsj.com/articles/u-s-prepares-sanctions-while-pursuing-revived-north-korea-talks-1527526255>; Brian Bennett and W.J. Hennigan, “Trump Again Bucked His Own Government’s Actions on North Korea,” *Time*, March 22, 2019, <https://time.com/5557165/trump-north-korea-sanctions/>; Claudia Koerner, “Trump Canceled New North Korean Sanctions Because He ‘Likes’ Kim Jong-Un, The White House Said. Seriously,” *Buzzfeed*, March 22, 2019, <https://www.buzzfeednews.com/article/claudiakoerner/trump-rolled-back-north-korean-sanctions-a-day-after-they>.

335 Ian Talley, “U.S. Sanctions Target North Korea’s Vast International Finance Network,” *Wall Street Journal*, May 28, 2018, https://www.wsj.com/articles/u-s-sanctions-target-north-korea-s-vast-international-finance-network-1527548907?mod=article_inline.

336 31 C.F.R. § 1010.659.

337 S/2017/150 ¶ 210.

338 The Treasury Department issued its first North Korea-related civil penalty to a financial institution—U.S.-based TD Bank—in December 2021, for processing 1,479 transactions for North Korea’s U.N. Mission in New York without obtaining the requisite licenses. In imposing a modest penalty of \$105,238.65, the Treasury Department credited TD Bank with voluntarily self-disclosing the violations and stated that “all of the transactions would likely have been licensable under existing licensing policy.” U.S. Dep’t of Treasury Enforcement Release, “OFAC Settles with TD Bank, N.A. for \$115,005.04 Related to Apparent Violations of the North Korea Sanctions Regulations and the Foreign Narcotics Kingpin Sanctions Regulations,” December 23, 2021, https://home.treasury.gov/system/files/126/20211223_TDBNA.pdf.

339 Zia M. Faruqi *et al.*, “The Long Arm of U.S. Law: The Patriot Act, the Anti-Money Laundering Act of 2020 and Foreign Banks,” *supra* note 600; U.S. Dep’t of Justice, “Four Chinese Nationals and China-Based Company Charged with Using Front Companies to Evade U.S. Sanctions Targeting North Korea’s Nuclear Weapons and Ballistic Missile Programs,” September 26, 2016, <https://www.justice.gov/opa/pr/four-chinese-nationals-and-china-based-company-charged-using-front-companies-evade-us>.

340 *In re Grand Jury Investigation*, No. 18-mc-00176 (D.D.C. 2020) (United States’ Motion to Compel Production of Documents Requested Via Administrative Subpoena Issued Pursuant to 31 U.S.C. § 5318)(3), filed August 12, 2020), <https://www.dcd.uscourts.gov/sites/dcd/files/18mc177%20%20Document%2064-7.pdf>; see *In re Sealed Case*, No. 19-5068; *United States v. All Funds in the Accounts of Blue Sea Business Co., Ltd.*, No. 16-cv-1954; Berthelsen and Schoenberg, “Chinese Banks

THE ROOT OF ALL EVIL

Joshua Stanton

to penalize Chinese banks, as they had called on the Obama administration to do so before, but the appeals were not effective.

One explanation for FinCEN's inaction may have been the personnel and technology challenges it faced in collecting and analyzing financial intelligence. But there was also evidence that Treasury Secretary Steven Mnuchin made a willful decision not to sanction major Chinese banks for laundering Pyongyang's money.³⁴¹ The public reporting of Mnuchin's decision came less than a week before President Trump met with South Korea's National Security Advisor and agreed to his first summit with Kim Jong-un.³⁴²

Mnuchin's decision was contrary to the spirit, if not the mandates, of the NKSPEA, and its public announcement could only have been read as a grant of *de facto* immunity in the Chinese financial industry. If secondary sanctions on major European banks had been the measure of U.S. determination to force Iran to halt its nuclear drive, Mnuchin's open refusal to do so to Chinese banks deprived Trump of the leverage he would need to have any chance of negotiating Kim Jong-un's disarmament at Singapore. The term "maximum pressure" should have been retired before Singapore.

What Treasury had achieved by May 2018 might be characterized as "medium pressure." It was certainly higher than what the Obama administration had done against North Korean money laundering, but it was not remotely comparable to the Obama administration's enforcement of sanctions against Iran in the years before the Joint Comprehensive Plan of Action, or to the levels of enforcement the Trump Administration applied to Cuba, Syria, or Venezuela. It was certainly far below the existential level of pressure necessary to force Kim Jong-un to choose between his nuclear weapons program and his survival. By mid-2018, the era of Medium Pressure was over.³⁴³ Despite Pyongyang's refusal to disarm or reform, annual North Korea designations regressed to the single-digit mean of the early Obama years. Whether this pause reflected an undisclosed agreement at Singapore³⁴⁴ or simply the policy prerogatives of the Washington bureaucracy is left to conjecture.

Probed Over North Korea's Nuclear Arms."

341 Christian Berthelsen, "U.S. Considered Blacklisting Two Chinese Banks Over North Korea Ties," *Bloomberg News*, April 13, 2018, <https://www.bloomberg.com/news/articles/2018-04-13/china-banks-aiding-north-korea-are-said-too-big-to-punish>; Peter Whoriskey, "Trump Administration Weighed Sanctions Against Major Chinese Banks Tied to North Korea," *Wash. Post*, March 2, 2018, https://www.washingtonpost.com/business/economy/trump-administration-considered-but-refrained-from-tougher-north-korea-sanctions/2018/03/02/7eafdc84-1c15-11e8-ae5a-16e60e4605f3_story.html.

342 Jeremy Diamond and Euan McKirdy, "Trump accepts offer to meet Kim Jong Un," *CNN.com*, March 9, 2018, <https://edition.cnn.com/2018/03/08/politics/donald-trump-kim-jong-un/index.html>.

343 Go Myong-hyun, "Not Under Pressure- How Pressure Leaked Out of North Korea Sanctions," *Asan Inst. For Policy Studies*, June 18, 2020, <http://en.asaninst.org/contents/not-under-pressure-how-pressure-fizzled-out-of-north-korea-sanctions/>.

344 Such an agreement would have been directly contrary to section 104(a) of the NKSPEA, mandating sanctions for sanctionable conduct involving North Korea.

Money, Rice, Crime & Law in North Korea

Treasury Department North Korea Designations, 2014-2021³⁴⁵

2014	20	2018	131
2015	18	2019	40
2016	92	2020	16
2017	135	2021	9

Meanwhile, Pyongyang stepped up its maritime smuggling and arms trafficking.³⁴⁶ Pyongyang's coal exports began to recover, rising 191 percent in the second quarter of 2019 relative to the previous quarter.³⁴⁷ Russia,³⁴⁸ China,³⁴⁹ South Korea,³⁵⁰ and Southeast Asian states³⁵¹ imported North Korean coal, also in violation of UN sanctions.³⁵² Coal exports leaked through ship-to-ship transfers and smuggling through Russia and China.³⁵³ Banks in both countries laundered

345 U.S. Dep't of Treasury, "OFAC Recent Actions," accessed September 13, 2020, <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions>. OFAC designated sixteen new persons, entities, and vessels in 2020, but it also removed seven other designations.

346 S/2020/151 ¶ 2; Jeremy Page, "North Korea Turns Coal Into Gas to Weather Sanctions," *Wall Street Journal*, December 17, 2018, <https://www.wsj.com/articles/north-korea-squeezes-its-coal-to-outlast-sanctions-11545067376>.

347 S/2020/151 ¶ 55, fig. 9.

348 *Id.* ¶¶ 79, 82; Clyde Russell, "COLUMN-Russia takes advantage of China's North Korea coal ban: Russell," *Reuters*, October 3, 2017, <https://www.reuters.com/article/column-russell-coal-china/column-russia-takes-advantage-of-chinas-north-korea-coal-ban-russell-idUSL4N1ME0HJ>; Hyemin Son, "North Korea Exports Coal as 'Russian' in Bid to Beat Sanctions," *Radio Free Asia*, August 8, 2018, <https://www.rfa.org/english/news/korea/coal-08072018145244.html>.

349 S/2020/151 ¶ 57, 61-77, figs. 10-18, <https://undocs.org/S/2020/151>; Jang Seul-gi, "North Korea's coal smuggling continues full speed ahead," *Daily NK*, October 22, 2019, <https://www.dailynk.com/english/north-koreas-coal-smuggling-continues-full-speed-ahead/>.

350 S/2020/151 ¶ 82; Andrew Jeong, "Sanctions Busters Smuggled North Korean Coal, Iron to the South via Russia," *Wall Street Journal*, August 10, 2018, <https://www.wsj.com/articles/sanctions-busters-smuggled-north-korean-coal-iron-to-the-south-via-russia-1533895310>; Joyce Lee, "South Korean prosecutors indict four for importing North Korean coal," *Reuters*, December 10, 2018, <https://www.reuters.com/article/us-northkorea-southkorea-coal/south-korean-prosecutors-indict-four-for-importing-north-korean-coal-idUSKBN1O90TP>.

351 S/2020/151 ¶¶ 78-81; "Ex-judge accused of shipping coal from N Korea to Vietnam," *Taipei Times*, January 31, 2018, <http://www.taipeitimes.com/News/front/archives/2018/01/31/2003686741>.

352 S/RES/2371 ¶ 8.

353 U.S. Dep't of Treasury, "Treasury Sanctions Shipping Companies Transporting North Korean Coal," December 8, 2020, <https://home.treasury.gov/news/press-releases/sm1204>; James Byrne, *Project Sandstone Report 6: The Phantom Fleet: North Korea's Smugglers in Chinese Waters* (London: Royal United Services Institute, 2020), <https://rusi.org/publication/other-publications/project-sandstone-report-6-phantom-fleet-north-korea%E2%80%99s-smugglers>; Project Sandstone, "Anatomy of a North Korean Coal Smuggling Operation," *The Diplomat*, April 16, 2020, <https://thediplomat.com/2020/04/anatomy-of-a-north-korean-coal-smuggling-operation/>; Christina Zhao, "Chinese Ships Spotted Illegally Selling Oil to North Korea by U.S. Spy Satellite," *Newsweek*, December 27, 2017, <https://www.newsweek.com/chinese-ships-illegally-selling-oil-north-korea-760146>;

THE ROOT OF ALL EVIL

Joshua Stanton

Pyongyang's profits from this illicit trade.³⁵⁴ Cross-border trade with China, which had included both non-sanctioned trade (food, fertilizer, consumer goods) and sanctioned trade (minerals, seafood) also showed signs of recovery.³⁵⁵ North Korean workers in Russia, China, Africa, and the Middle East overstayed the labor export ban after relocating to less visible worksites.³⁵⁶

Pyongyang had also learned to launder cryptocurrencies.³⁵⁷ Few vendors accept cryptocurrencies as payment for goods or services, which creates a vulnerability when Pyongyang converts cryptocurrency into fiat currency.³⁵⁸ The Justice Department recently sued to forfeit cryptocurrencies that Pyongyang stole from exchanges.³⁵⁹ The Treasury Department has also increased its regula-

Ethan Jewell, "Bump in DPRK coal exports to China continues, outlasting energy crisis: Imagery," *NK Pro*, December 15, 2021, <https://www.nknews.org/pro/bump-in-dprk-coal-exports-to-china-continues-outlasting-energy-crisis-imagery/>; Andrew Jeong, "Sanctions Busters Smuggled North Korean Coal, Iron to the South via Russia," *Wall Street Journal*, August 10, 2018, <https://www.wsj.com/articles/sanctions-busters-smuggled-north-korean-coal-iron-to-the-south-via-russia-1533895310>; Guy Faulconbridge, Jonathan Saul, and Polina Nikolskaya, "Exclusive: Russian tankers fueled North Korea via transfers at sea – sources," *Reuters*, December 29, 2017, <https://www.reuters.com/article/us-northkorea-missiles-russia-oil-exclus/exclusive-russian-tankers-fueled-north-korea-via-transfers-at-sea-sources-idUSKBN1EN1OJ>.

354 Go Myong-hyun, "Not Under Pressure- How Pressure Leaked Out of North Korea Sanctions," *Asan Inst. For Policy Studies*, June 18, 2020, <http://en.asaninst.org/contents/not-under-pressure-how-pressure-fizzled-out-of-north-korea-sanctions/>.

355 Daisuke Harashima, "China-North Korea border trade thrives again, despite sanctions," *Nikkei Asia Review*, December 6, 2018, <https://asia.nikkei.com/Spotlight/N-Korea-at-crossroads/China-North-Korea-border-trade-thrives-again-despite-sanctions>

356 Jang Seul-gi, "North Korean workers avoiding international sanctions while working in China," *Daily NK*, July 8, 2019, <https://www.dailynk.com/english/north-korean-workers-avoiding-international-sanctions-while-working-in-china/>; Mun Dong-hui, "N. Korean workers in China turn to home-based work to eke by," *Daily NK*, July 16, 2020, <https://www.dailynk.com/english/north-korean-workers-china-turn-home-based-work-ek-by/>; The Sentry, *Overt Affairs: How North Korean Businessmen Busted Sanctions in the Democratic Republic of Congo*.

357 Carlisle and Izenman, "Closing the Crypto Gap: Guidance for Countering North Korean Cryptocurrency Activity in Southeast Asia." The Treasury Department continues to supplement its guidance on the prevention of sanctions evasion using cryptocurrencies. U.S. Dep't of Treasury, Office of Foreign Assets Control, "Sanctions Compliance Guidance for the Virtual Currency Industry," October 2021, https://home.treasury.gov/system/files/126/virtual_currency_guidance_brochure.pdf. In 2021, a U.S. citizen was prosecuted and pled guilty to helping Pyongyang use cryptocurrency to evade sanctions. U.S. Dep't of Justice, "United States Citizen Pleads Guilty To Conspiring To Assist North Korea In Evading Sanctions," September 27, 2021, <https://www.justice.gov/usao-sdny/pr/united-states-citizen-pleads-guilty-conspiring-assist-north-korea-evading-sanctions>.

358 David Carlisle & Kayla Izenman, "Closing the Crypto Gap: Guidance for Countering North Korean Cryptocurrency Activity in Southeast Asia," *Royal United Services Institute*, April 14, 2009, <https://rusi.org/publication/occasional-papers/closing-crypto-gap-guidance-countering-north-korean-cryptocurrency>.

359 *United States v. 113 Virtual Currency Accounts*, No. 20-cv-00606 (D.D.C. 2020); *United States v. 280 Virtual Currency Accounts*, No. 20-cv-02396 (D.D.C. 2020) <https://www.justice.gov/usao-dc/press-release/file/1310411/download>. This was related to the *Tian Yingjin* indictment. In August 2020, the Justice Department filed a second, related forfeiture case against another series of cryptocurrency accounts involved in the scheme. *United States v. 280 Virtual Currency Accounts*, No. 20-cv-2396

Money, Rice, Crime & Law in North Korea

tory oversight over cryptocurrency transactions,³⁶⁰ but the efforts were too little and too late.

Again, the Trump administration failed to act. It had the authority to increase inspections of imports from ports that failed to inspect cargo to and from North Korea, as required by UN resolutions, but it did not.³⁶¹ It had the authority to bar ships from U.S. waters that flew the flags of states that registered North Korean smuggling ships, but it did not use that authority, either.³⁶² It could have required maritime insurers to drop ships that turned off their Automatic Identification Systems, but it did not.³⁶³ It could have asked friendly flag states to allow the Coast Guard to board North Korean smuggling ships, or asked friendly nations to seize North Korean ships in their ports and hold them until U.S. authorities could take possession of the ships and forfeit them. It did this only twice.³⁶⁴ It could have asked Congress for the authority to ground Air Koryo flights and end its arms smuggling business, but it did not.³⁶⁵ It should have denied aid to states that broke the UN arms embargo to purchase North Korean weapons, but it did not.³⁶⁶

After 2018, OFAC's North Korea sanctions designations mostly blocked low-level operatives who were easily replaced with other low-level operatives. Between 2017 and 2020, Treasury imposed just four small civil penalties against violators of North Korea sanctions—none of them banks, and none over \$1 million—compared to eighteen Iran sanctions penalties and twelve Cuba sanctions penalties, several of them in the hundreds of millions of dollars.³⁶⁷ None of OFAC's designations or penalties since May of 2018 is likely to have imposed a significant financial cost on Pyongyang, as it outpaced OFAC's designations, adapted its front companies to evade scrutiny, and moved its assets through other channels that the Trump administration left unguarded.

360 U.S. Dep't of Treasury, Office of Foreign Assets Control, "Sanctions Compliance Guidance for the Virtual Currency Industry," October 2021, https://home.treasury.gov/system/files/126/virtual_currency_guidance_brochure.pdf. OFAC's guidance mentions North Korea sanctions compliance as a risk for the industry, and includes a brief case study of virtual currency laundering by Chinese nationals on Pyongyang's behalf.

361 22 U.S.C. § 9225; S/RES/2270 ¶ 18.

362 33 U.S.C. § 1232c.

363 Consistent with North Korea's exclusion from the financial system, the Financial Crimes Enforcement Network promulgated an enhanced due diligence regulation for financial at 31 C.F.R. § 1010.659. It could have promulgated a similar regulation for insurers in Part 1020.

364 U.S. Dep't of Justice, "United States Seizes Oil Tanker Used to Violate Sanctions Against North Korea," July 30, 2021, <https://www.justice.gov/opa/pr/united-states-seizes-oil-tanker-used-violate-sanctions-against-north-korea>; U.S. Dep't of Justice, "Department of Justice Announces Forfeiture of North Korean Cargo Vessel," October 21, 2019, <https://www.justice.gov/opa/pr/department-justice-announces-forfeiture-north-korean-cargo-vessel>.

365 A legislative amendment would have been necessary to override a statutory limitation on the application of sanctions to transactions incident to travel. 50 U.S.C. § 1702(b)(4).

366 22 U.S.C. § 9223.

367 U.S. Dep't of Treasury, "Civil Penalties and Enforcement Information, Civil Penalties Enforcement Chart," accessed August 30, 2020, <https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information>.

THE ROOT OF ALL EVIL

Joshua Stanton

Treasury Department Civil Penalties by Country, 2017-2020³⁶⁸

	N. Korea	Burma	Syria	Sudan	Cuba	Iran
2017				148,698 372,465	204,277 516,105 10,000 87,255 148,698	17,500 515,400 100,871,266 148,698 259,200 12,027,066 518,063 415,350 1,220,400 115,992,943
				521,163	966,335	
2018				53,966,916* 145,893 54,112,809	53,966,916* 5,263,171 59,230,087	53,966,916* 2,774,972 5,263,171 62,005,059
2019	996,080	639,023,750* 611,000,000*	639,023,750* 611,000,000*	639,023,750* 611,000,000* 190,700,000 210,600	5,512,564 639,023,750* 227,500 611,000,000* 325,406 2,718,581 170,535	13,381 506,250 1,869,144 639,023,750* 213,866 611,000,000* 871,837 1,709,325 1,255,207,553
		1,250,023,750	1,250,023,750	1,440,934,350	1,258,978,336	

368 U.S. Dep't of Treasury, "OFAC Recent Actions," accessed September 13, 2020, <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions>. Because many of the civil penalties against banks involved violations of sanctions against multiple countries, and because penalties against banks were almost always several orders of magnitude larger than penalties against non-bank respondents, several of these columns double-count the same penalties.

Money, Rice, Crime & Law in North Korea

2020	665,112	1,125,000	134,523	894,111	257,862	473,157
	134,523					824,314
	799,635					134,523
						1,431,994

Still, the effects were slow to dissipate, and Kim's diplomatic positions revealed the degree to which they concerned him. In early 2019, he made sanctions relief his principal demand at his meeting with President Trump at Hanoi. Revealingly, he demanded "only" the lifting of the post-2016 sanctions, in an implicit concession that only NKSPEA and CAATSA sanctions had affected the state's finances.³⁶⁹ Clandestine reporting from inside North Korea suggested that his failure to secure sanctions relief fueled some latent discontent after Kim raised, and then failed to meet, expectations for sanctions relief.³⁷⁰

Congress did not force the Trump administration to enforce sanctions, but it did act to rebuild and modernize the Treasury Department's Anti-Money Laundering capacity. In the 2020 National Defense Authorization Act, it required FinCEN to create a registry of beneficial ownership information,³⁷¹ strengthen international anti-money laundering cooperation,³⁷² help build anti-money laundering compliance abroad,³⁷³ tighten suspicious activity reporting rules for banks,³⁷⁴ improve

369 Stephanie Nebehay, "North Korea seeks sanctions relief," *Reuters*, March 19, 2019, <https://in.reuters.com/article/northkorea-usa-nuclear-sanctions-idINKCN1R01EH>; "U.N. expert says Kim Jong Un demand shows sanctions work," *AP*, March 13, 2019, <http://www.asahi.com/ajw/articles/AJ201903130021.html>; Stephan Haggard and Marcus Noland, "Here's why Kim Jong un put sanctions first—and why North Korea is not Vietnam," *Washington Post*, February 28, 2019, <https://www.washingtonpost.com/politics/2019/02/28/heres-why-kim-jong-un-put-sanctions-first-why-north-korea-is-not-vietnam/>.

370 Kang Mi-jin, "North Koreans hope summit to bring sanctions relief," *Daily NK*, February 28, 2019, <https://www.dailynk.com/english/north-koreans-hope-summit-to-bring-sanctions-relief/>; Myungchul Lee, "North Korea Issues Directives to Prevent Unrest Over Uncertainty About US Summit," *Radio Free Asia*, May 30, 2018, <https://www.rfa.org/english/news/korea/north-korea-issues-directives-to-prevent-unrest-over-uncertainty-about-us-summit-05302018144405.html>; Kang Mi-jin, "Views on Hanoi Summit continue to be mixed among North Koreans," *Daily NK*, April 15, 2019, <https://www.dailynk.com/english/views-on-hanoi-summit-continue-to-be-mixed-among-north-koreans/>; Tae-jun Kang, "North Korea's Internal Struggles Hint That Sanctions Are Working," *The Diplomat*, April 8, 2019, <https://thediplomat.com/2019/04/north-koreas-internal-struggles-hint-that-sanctions-are-working/>; Jang Seul-gi, "N. Koreans criticize government calls for 'self-reliance,'" *Daily NK*, January 14, 2020, <https://www.dailynk.com/english/n-koreans-criticize-government-calls-for-self-reliance/>.

371 National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3388 (2021), <https://www.govtrack.us/congress/bills/116/hr6395/text>.

372 *Id.* § 6403.

373 *Id.* §§ 6106, 6108, 6111-6112.

374 *Id.* §§ 6201-6206.

THE ROOT OF ALL EVIL

Joshua Stanton

whistleblower reward programs,³⁷⁵ and strengthen the subpoena powers of the Treasury and Justice Departments for records of foreign banks that maintain U.S. correspondent accounts.³⁷⁶ It also ordered a study of money laundering by the Chinese financial industry and “the efforts of authoritarian regimes to exploit the financial system of the United States.”³⁷⁷

3. 2018 to 2021: Strategic Patience 2.0

In 2021, some journalists still wrote about “maximum pressure,”³⁷⁸ but did the Treasury Department’s public enforcement data support the assumption behind that description? OFAC issued 40 North Korea designations in 2019 (compared to 183 Venezuela designations); 16 in 2020 (and 7 designation removals, for a net of 9, compared to 16 Nicaragua designations); and 9 in 2021 (compared to 27 Venezuela designations and 14 Nicaragua designations).³⁷⁹ OFAC’s 2021 designations were also qualitatively modest—a senior North Korean official and a government office without direct exposure to the financial system, and a group of animation studios that constituted one tentacle within a global money laundering network. OFAC announced them in December, after the first one-year period with no North Korea sanctions designations since 2012.³⁸⁰

In 2022, the Biden Administration froze the assets of 21 entities, including six North Koreans procuring WMD materials and technology from Russia, five North Korean trading companies, two small Russian banks, four Russian trading companies, and two Russian nationals. It also froze two cryptocurrency mixing services, one of which had reported links to the Russian FSB, and which are probably the only significant designations of 2022.

Treasury also issued small civil penalties against an Australian shipper and an American gift card company for unlicensed dealings with North Korea. It did not announce any indictments or major penalties against the three major Chinese banks that defied a Washington, D.C. grand jury investigation into laundering money for North Korea, and that the Chief District Judge had held in contempt of court. It did not announce a conviction or sentence against Huawei, which is under

³⁷⁵ *Id.* § 6314.

³⁷⁶ *Id.* § 6308.

³⁷⁷ *Id.* §§ 6507-6508.

³⁷⁸ Edward White, “North Korea: the failure of ‘maximum pressure’ on Kim’s isolated regime,” *Financial Times*, August 9, 2021, <https://www.ft.com/content/53eed94f-6cd5-4ed9-97a9-56de6ecctf53c>.

³⁷⁹ See generally U.S. Dep’t of Treasury, Office of Foreign Assets Control, OFAC Recent Actions, last accessed December 26, 2021, <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions>.

³⁸⁰ U.S. Dep’t of Treasury, “Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day,” December 10, 2021, <https://home.treasury.gov/news/press-releases/jy0526>.

Money, Rice, Crime & Law in North Korea

indictment in the Eastern District of New York for violating North Korea sanctions. It has not sanctioned the Russian or Chinese ports or shippers that are smuggling North Korean coal, which provides most of Kim Jong-un's income.

In 2021, OFAC finally issued its first North Korea-related civil penalty to a financial institution, against U.S.-based TD Bank. The penalty did not target Pyongyang's overseas money laundering infrastructure, but North Korea's UN Mission in New York. TD Bank staff, perhaps not understanding the difference between North and South Korea, had processed 1,479 transactions for the UN Mission without obtaining the requisite OFAC licenses, which OFAC's penalty notice suggested that it would likely have granted. The penalty of \$105,238.65 was small when compared to other civil penalties against banks, which often reach nine-digit levels.³⁸¹ Still, the threat of penalties, prosecution, or adverse publicity probably encouraged large correspondent banks to scour wire transfer data for North Korean connections, and this likely would have had residual, if hidden, effects on the complexity and risk premiums of Pyongyang's money laundering.³⁸²

381 U.S. Dep't of Treasury Enforcement Release, "OFAC Settles with TD Bank, N.A. for \$115,005.04 Related to Apparent Violations of the North Korea Sanctions Regulations and the Foreign Narcotics Kingpin Sanctions Regulations," December 23, 2021, https://home.treasury.gov/system/files/126/20211223_TDBNA.pdf.

382 See, e.g., Gibson Dunn, "2020 Year-End Sanctions and Export Controls Update," February 5, 2021, <https://www.gibsondunn.com/2020-year-end-sanctions-and-export-controls-update/>. Careful observers of OFAC's civil penalties will note a typical lag of several years between the publication of a transaction licensing requirement or designation and the announcement of a penalty against a bank for violating the requirement. The recency of OFAC's updated North Korea sanctions regulations may explain, in part, the lack of significant penalties against any foreign banks to date. The effects of industry compliance on Pyongyang's finances is unquantifiable, at least in an open source, because most of Treasury's relevant data are classified.

THE ROOT OF ALL EVIL

Joshua Stanton

If the pressure created by sanctions had begun to dissipate since 2018—as Pyongyang adapted, set up new front companies, and deployed new agents faster than OFAC designated them,³⁸³ and as the Biden administration was unwilling to sanction Chinese and Russian companies for their violations³⁸⁴—it was also difficult to measure sanctions’ peak effects or half-life due to Kim Jong-un’s own decisions.

By late 2022, North Korea had been under a self-imposed blockade for nearly three years—ostensibly as a precaution against COVID-19, but probably to reassert Kim’s control over an increasingly marketized economy and conserve hard currency for weapons programs and other state priorities.³⁸⁵ Kim enforced the blockade by posting soldiers along the border and issuing shoot-on-sight orders.³⁸⁶ Bleak economic conditions are the norm in North Korea, but by early 2021, the North Korean economy was probably at its lowest point since the post-famine years. The Bank of Korea estimated that in 2020, North Korea’s economy contracted by 4.5 percent, its largest contraction in 23

383 Go Myong-hyun, “Not Under Pressure—How Pressure Leaked Out of North Korea Sanctions,” *Asan Inst. for Policy Studies*, June 18, 2020, <http://en.asaninst.org/contents/not-under-pressure-how-pressure-fizzled-out-of-north-korea-sanctions/>.

384 Chaewon Chung, “Washington to Beijing: ‘Put some bite’ into sanctions against North Korea,” *NK News*, November 9, 2021, https://www.nknews.org/2021/11/washington-to-beijing-put-some-bite-into-sanctions-against-north-korea/?utm_source=dlvr.it&utm_medium=twitter.

385 Harry Clinch, “How COVID-19 is giving a boost to North Korea’s central bank,” *NK News*, December 17, 2021, <https://www.nknews.org/2021/12/how-covid-19-is-giving-a-boost-to-north-koreas-central-bank/>; Andrew Yeo, Brookings Inst., Order From Chaos blog, “North Korea is addressing the pandemic in its ‘style.’ That means leaving a lot of people hungry,” <https://www.brookings.edu/blog/order-from-chaos/2021/11/22/north-korea-is-addressing-the-pandemic-in-its-style-that-means-leaving-a-lot-of-people-hungry/>; Jeong Yong-seo and Shim Kyu-seok, “North’s trade volume with China plummets amid closed borders, flooding,” *JoongAng Daily*, August 25, 2020, <https://koreajoongangdaily.joins.com/2020/08/25/national/north-korea/trade-North-Korea-construction/20200825175000347.html>; William Brown, “Is Tight Money and Sanctions Driving North Korea into Depression?,” Korea Economic Institute, *The Peninsula* blog, July 5, 2019, <https://keia.org/the-peninsula/is-tight-money-and-sanctions-driving-north-korea-into-depression/>.

386 Andrei Lankov, “Enhanced border controls hurdle North Korea into a new information dark age,” *NK News*, December 16, 2021, https://www.nknews.org/2021/12/enhanced-border-controls-hurdle-north-korea-into-a-new-information-dark-age/?utm_source=dlvr.it&utm_medium=twitter; “Why did they kill him?” How residents feel about the recent shooting of residents escaping into China, *Rimjin-Gang*, Dec. 14, 2021, <https://www.asiapress.org/rimjin-gang/2021/12/military/jyugeki/>; “3 People Shot Trying to Cross the Border into China, 1 Dead,” *Rimjin-Gang*, December 9, 2021, <https://www.asiapress.org/rimjin-gang/2021/12/military/shooting/>; “East Coast Ports Closed Again, Fishing Banned for 40 Days Due to Fishermen’s Violation of Coronavirus Rules,” *Rimjin-Gang*, December 6, 2021, <https://www.asiapress.org/rimjin-gang/2021/12/society-economy/kinryou/>; “North Korea’s border with China is under martial law,” *Rimjin-Gang*, December 5, 2021, <https://www.asiapress.org/rimjin-gang/2021/12/society-economy/human/>.

Money, Rice, Crime & Law in North Korea

years.³⁸⁷ Major industries were idled for lack of spare parts and materials,³⁸⁸ and the state could not shield even the security forces and the elites from the effects of this economic distress.³⁸⁹

There was no evidence of famine, but the food situation was strained in both the capital and the provinces, and the state also expelled almost all humanitarian aid workers.³⁹⁰ Most diplomats

387 "N. Korea's economy tanks 4.5 pct in 2020 on sanctions, pandemic," *Yonhap News*, December 23, 2021, <https://en.yna.co.kr/view/AEN20211223002600320?input=tw>; "North Korea's economy sees biggest contraction in 23 years, South Korea's central bank says," *Reuters*, July 30, 2021, <https://www.cnbc.com/2021/07/30/north-korea-s-economy-shrank-most-in-23-years-says-south-korea-central-bank.html>.

388 "Hyesan Youth Copper Mine Suspends Rations to Workers Amid North Korea's Wider Economic Troubles," *Daily NK*, December 22, 2021, <https://dailynk.com/english/hyesan-copper-mine-suspends-rations-to-workers-amid-north-korea-s-wider-economic-troubles/>; "Major Factory Shuts Down as Workers Leave Following 6 Months of Unpaid Labor," *Rimjin-Gang*, October 11, 2021, <https://www.asiapress.org/rimjin-gang/2021/10/society-economy/factories/>; Simon Denyer, "North Korea's Economy Is Ravaged By Sanctions and Pandemic Isolation. Kim Is Lashing Out," *Wash. Post*, February 21, 2021, https://www.washingtonpost.com/world/asia_pacific/north-korea-kim-economy-crisis/2021/02/19/16d108d8-706b-11eb-8651-6d3091cac63f_story.html; Yosuke Onichi, "Key North Korea factory shuts down from COVID-19 parts shortage," *Nikkei Asia*, February 8, 2021, <https://asia.nikkei.com/Spotlight/N-Korea-at-crossroads/Key-North-Korea-factory-shuts-down-from-COVID-19-parts-shortage> (reporting the closure of the Namhung Youth Chemical Complex near Pyongyang).

389 Jeongmin Kim, "Fishing for legitimacy? Kim Jong Un sends blocks of seafood to Pyongyang elites," *NK News*, December 21, 2021, <https://www.nknews.org/2021/12/fishing-for-legitimacy-kim-jong-un-sends-blocks-of-seafood-to-pyongyang-elites/?t=1647878246849>; Chang Gyu Ahn, "Promised new homes don't materialize for retired North Korean soldiers," *Radio Free Asia*, December 20, 2021, <https://www.rfa.org/english/news/korea/housing-12202021184147.html>; "Serious Shortage of Military Rations Leaves Officers' Families Facing Hunger," *Rimjin-Gang*, November 29, 2021, <https://www.asiapress.org/rimjin-gang/2021/11/military/konkyu/>; "North Korea Ministry of State Security Agents Complain of Inadequate Low-Quality Rations," *Daily NK*, November 9, 2021, <https://dailynk.com/english/north-korea-ministry-state-security-agents-complain-inadequate-low-quality-rations/>; Eugene Whong, "North Korea sends delegation to China for emergency supplies," *Radio Free Asia*, November 12, 2021, <https://www.rfa.org/english/news/korea/by-jieun-kim-1112202102042.html>; Jeong Yon Park, "Hungry North Korean Construction Workers in Pyongyang Rob and Murder Citizens to Buy Food," *Radio Free Asia*, May 12, 2021, <https://www.rfa.org/english/news/korea/construction-05122021190109.html>.

390 Michelle Ye Hee Lee, "North Korea heads into 'tense' winter: Closed borders and food supplies in question," *Wash. Post*, December 5, 2021, https://www.washingtonpost.com/world/asia_pacific/north-korea-food-winter-kim/2021/12/04/a89dc828-4248-11ec-9404-50a28a88b9cd_story.html?utm_campaign=wp_main&utm_medium=social&utm_source=twitter; Jeong Won Park, "North Korea tells hungry citizens to 'tighten belts' until 2025," *Radio Free Asia*, October 16, 2021, <https://www.rfa.org/english/news/korea/shortage-10262021174250.html>; Hyemin Son and Jeong Yon Park, "Citizens Anxious as Food Prices Fluctuate in North Korea," *Radio Free Asia*, June 14, 2021, <https://www.rfa.org/english/news/korea/food-06142021163437.html>; Jeongmin Kim, "North Korea may be closing a key sea route for humanitarian aid deliveries," *NK News*, August 19, 2020, <https://www.nknews.org/2020/08/unicef-says-north-korea-decided-to-temporarily-close-nampho-port-late-july/?t=1597886048048>; Elizabeth Shim, "UNICEF: North Korea closed shipping route with China," *UPI*, August 19, 2020, https://www.upi.com/Top_News/World-News/2020/08/19/UNICEF-North-Korea-closed-shipping-route-with-China/6061597840040/; Kelly Kasulis, "Nearly 60% of North Koreans now food

THE ROOT OF ALL EVIL

Joshua Stanton

also left the country after Kim locked them down and prevented them from sending diplomatic mail.³⁹¹ By 2021, there was no reliable or precise way to learn, disaggregate, or compare the effects of sanctions to those of the blockade, but the blockade was indiscriminate and recognized no humanitarian exemptions.³⁹²

In the fifth year of Treasury's enforcement pause, Pyongyang was able to maintain the stability of its currency, aside from a few exchange rate surges and falls. A counterintuitive appreciation in the North Korean won's value in 2021 was likely the result of state manipulation, such as the threat to confiscate foreign currency,³⁹³ but most economists agreed that the manipulation was not sustainable.³⁹⁴ The state's issuance of coupons as a currency substitute fueled more speculation about the long-term stability of the North Korean won.³⁹⁵

insecure, worsened estimates after COVID-19," *NK News*, August 12, 2020, <https://www.nknews.org/2020/08/nearly-60-of-north-koreans-now-food-insecure-worsened-estimates-after-covid-19/>.

391 Chad O'Carroll, "Dozens of Russians leave from Pyongyang amid ongoing exodus of embassy staff," *NK News*, November 24, 2021, <https://www.nknews.org/2021/11/dozens-of-russians-leave-from-pyongyang-amid-on-going-exodus-of-embassy-staff/>; Kathryn Botto, Carnegie Endowment for Int'l Peace, "North Korea Has Adopted Severe Measures to Stave Off the Coronavirus," December 17, 2020, <https://carnegieendowment.org/2020/12/17/north-korea-has-adopted-severe-measures-to-stave-off-coronavirus-pub-83471>.

392 Lina Yoon, "North Korea in Crisis: Food Shortages and Information Lockdown," Human Rights Watch, March 16, 2021, <https://www.hrw.org/news/2021/03/16/north-korea-crisis-food-shortages-and-information-lockdown#>; Choe Sang-hun, "In North Korea, Coronavirus Hurts More than Any Sanctions Could," *NY Times*, October 7, 2021, <https://www.nytimes.com/2020/07/04/world/asia/north-korea-sanctions-coronavirus.html>.

393 "Capital Punishment: Foreign Cash Crackdown Feared After Kim Criticizes Citizens' Neglect for National Currency," *Rimjin-gang*, December 12, 2019, <http://www.asiapress.org/rimjin-gang/2019/12/society-economy/foreign-cash/>; Kang Mi-jin, "North Koreans express frustration over new government foreign-currency collections," *Daily NK*, November 12, 2017, <https://www.dailynk.com/english/north-koreans-express-frustration/>; "<Inside N. Korea> Won Plunges After Regime Attempts to Confiscate Foreign Cash off Merchants and Force Companies to Trade in Local Currency," *Rimjin-gang*, February 12, 2020, <http://www.asiapress.org/rimjin-gang/2020/02/recommendations/foreign-currency-prohibition/>.

394 Hooyeon Kim, "Something Strange Is Happening With North Korea's Currency," *Bloomberg News*, October 14, 2021, <https://www.bloomberg.com/news/articles/2021-10-14/north-korean-currency-s-mysterious-surge-fuels-a-guessing-game>; "Investigating the Cause of the Suspiciously Rapid Appreciation of the N. Korean Won," *Rimjin-Gang*, November 25, 2020, <https://www.asiapress.org/rimjin-gang/2020/11/recommendations/rapid-appreciation/2/>; Edward White and Kang Buseong, "North Korea pummeled by swings in currency and food prices," *Financial Times*, June 24, 2021, <https://www.ft.com/content/b88149dd-2206-44ac-821e-16549ce7da2e>; William Brown, "Something Is Odd in North Korea's Foreign Exchange Markets," December 21, 2020, <https://www.38north.org/2020/12/wbrown122120/>; William Brown, "Volatility in North Korea's Currency Trading: Does a Rising Won Mean Trouble Ahead, or Progress?," *38North*, November 20, 2020, <https://www.38north.org/2020/11/wbrown112020/>.

395 "North Korea cracks down on people making illicit profits undervaluing money vouchers," *Daily NK*, December 21, 2021, <https://dailynk.com/english/north-korea-cracks-down-people-making-illicit-profits-undervaluing-money-vouchers/>.

Money, Rice, Crime & Law in North Korea

Some observers suggested that North Korea's economic decline was taxing the cohesion and legitimacy of the state—or threatened to.³⁹⁶ Kim Jong-un was forced to accept the political cost of acknowledging this. In mid-2020, for example, Pyongyang had to scrap the country's five-year economic plan. State media admitted that the economy was still under significant pressure and had failed to meet the state's goals.³⁹⁷ Later that year, Kim conceded the severe economic effects of sanctions—and those of the quarantine, floods, and other causes—in a tearful speech to Party members.³⁹⁸ Kim himself could still buy limousines and build mansions,³⁹⁹ but his appearance

Jiro Ishimaru, "Top Secret Documents on North Korea's 'Tongpyo': Regime Admits to Suspending the Issuance of Banknotes Due to Financial Woes," *Rimjin-Gang*, November 13, 2020, <https://www.asiapress.org/rimjin-gang/2021/11/society-economy/absolute-secrecy/-Chad-O'Carroll>; "North Koreans using cash coupons as country struggles to print new bills," *NK News*, October 25, 2021, <https://www.nknews.org/2021/10/north-koreans-using-cash-coupons-as-country-unable-to-print-new-bills/>.

396 Kim Tong-hyun, "North Korea's Kim at critical crossroads decade into rule," *Associated Press*, December 13, 2021, <https://apnews.com/article/north-korea-kim-jong-un-96537a68bbcc440bd5e63bc409542a>; Benjamin R. Young, "Revival of 'Three Revolutions' a sign Kim Jong Un is losing ideological control," *NK News*, November 22, 2021, https://www.nknews.org/2021/11/revival-of-three-revolutions-a-sign-kim-jong-un-is-losing-ideological-control/?utm_source=dlyr.it&utm_medium=twitter; Hyung-jin Kim, "NKorea calls for unity on anniversary of Kim Jong Il's death," *Associated Press*, December 17, 2021, <https://apnews.com/article/coronavirus-pandemic-health-business-seoul-united-states-9ccad2791848baf02e6b6c49ec895577>; Harry Clinch, "Interview: Why COVID-19 shut the door on Kim Jong Un's Singapore vision," *NK News*, November 16, 2021, <https://www.nknews.org/2021/11/interview-why-covid-19-shut-the-door-on-kim-jong-uns-singapore-vision/>; Colin Zwirko, "North Korean ideological movement 'losing steam,' better rewards needed: Kim," *NK News*, November 19, 2021, <https://www.nknews.org/2021/11/north-korean-ideological-movement-losing-steam-better-rewards-needed-kim/>.

397 Joshua Berlinger, "October 10 was supposed to be a major celebration for Kim Jong Un. Instead he faces his most daunting challenges to date," *CNN.com*, October 8, 2020, <https://www.cnn.com/2020/10/08/asia/north-korea-workers-party-75-years-intl-hnk/index.html>; Chad O'Carroll, "Why 2020 is Kim Jong Un's most challenging year yet," *NK News*, August 31, 2020, <https://www.nknews.org/pro/why-2020-is-kim-jong-uns-most-challenging-year-yet/>; Colin Zwirko and Jeongmin Kim, "North Korea's long-term economic goals 'seriously delayed,' ruling party says," *NK News*, August 19, 2020, <https://www.nknews.org/2020/08/north-korean-longterm-economic-goals-seriously-delayed-kim-jong-un-says/?t=1598497531741>; Colin Zwirko, "Scrapping of five-year economic plan signaled in latest North Korean TV blurring," *NK News*, May 27, 2020, <https://www.nknews.org/2020/05/scrapping-of-five-year-economic-plan-signaled-in-latest-north-korean-tv-blurring/?t=1598497615138>; Jeongmin Kim, "North Korea's economy plagued by 'absurdities,' serious challenges: state media," *NK News*, May 12, 2020, <https://www.nknews.org/2020/05/dprk-admits-absurdity-in-economic-sector-discredits-foreign-aid-state-media/?t=1598497629298>; Jeongmin Kim, "North Korea experiencing economic hardship, 'lagging behind': state media," *NK News*, April 22, 2020, <https://www.nknews.org/2020/04/north-korea-going-through-hardships-and-lagging-behind-admits-state-media/?t=1598497675134>; "Political Bureau Meeting of CC, WPK held," *Voice of Korea*, August 13, 2020, <https://kcnawatch.org/newsstream/1597374060-706384499/political-bureau-meeting-of-cc-wpk-held/?t=1597927773099>.

398 Josh Smith, "Analysis: 'I have failed' - Kim Jong Un shows tearful side in confronting North Korea's hardships," *Reuters*, October 12, 2020, <https://www.reuters.com/article/us-northkorea-missiles-kim-speech-analysis-idUSKBN26X258>.

399 Colin Zwirko, "Kim Jong-un Builds New Mansions Across the Country as North Korean Public Suffers," *NK News*, November 24, 2021, <https://www.nknews.org/pro/kim-jong-un-builds-new-mansions-across-country-as-north-korean-pub>.

THE ROOT OF ALL EVIL

Joshua Stanton

deteriorated noticeably in 2021, leading to speculation about his health.⁴⁰⁰ But by late 2021, Kim must have calculated that he could accept the political risk of public discontent, or presumably, he would have eased the blockade or accepted foreign aid. After all, evidence from inside North Korea suggested that the pandemic had entered North Korea despite his blockade.⁴⁰¹

C. Disposition of Blocked and Forfeited Proceeds of North Korean Kleptocracy

Today, the proceeds of Kim Jong-un's kleptocracy draw interest in government accounts as they await disbursement to his American judgment creditors. Changes in the law since 2005, when the Federal Reserve returned the assets frozen in Banco Delta Asia to Pyongyang as part of a disarmament agreement, mean that most of the North Korean state funds frozen since 2016 will be disbursed to the judgment creditors of the four listed state sponsors of terrorism—Iran, Syria, Cuba, and North Korea. Under the new U.S. Victims of State Sponsors of Terrorism Act, 75 percent of the proceeds of civil fines, penalties, and forfeitures, and all proceeds of criminal fines, penalties, and forfeitures collected for North Korea-related violations of the IEEPA—and of any related offense arising from doing business with or on behalf of North Korea—must be deposited into the United States Victims of State Sponsored Terrorism (USVSST) Fund.⁴⁰²

lic-suffers/?t=1645545666939; "North Korean leader Kim Jong Un's limousine rolls into Vietnam's capital, Hanoi, ahead of summit with Trump," *Associated Press*, February 25, 2019, <https://apnews.com/article/a07a21c1d1b4c1bb326365097b9d37d>. A comparison of Kim's image at his father's funeral in 2011 and his appearance at a December 2021 memorial service for his father shows him looking gaunt and unhealthy, with most of the deterioration apparently occurring in late 2021. Cf. "Missile tests, horse rides and executions: Kim Jong-un's leadership in pictures," *The Guardian*, December 17, 2021, <https://www.theguardian.com/world/gallery/2021/dec/17/misile-tests-horse-rides-and-executions-kim-jong-uns-leadership-in-pictures>, and Jack Dutton, "Kim Jong-Un Looks Noticeably Thinner in North Korea TV Appearance," *Newsweek*, December 17, 2021, <https://www.newsweek.com/kim-jong-un-looks-noticeably-thinner-north-korea-tv-appearance-1660509>; see also Laura Bicker, *Twitter*, December 17, 2021, <https://twitter.com/BBCLBicker/status/1471767903846694917>.

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402 34 U.S.C. § 20144(e).

Money, Rice, Crime & Law in North Korea

Using an exemption to the Foreign Sovereign Immunities Act, scores of U.S. persons have sued Pyongyang for damages caused by its terrorism and torture.⁴⁰³ Pyongyang has never entered an appearance in court to contest those suits. Consequently, the courts have entered over \$2 billion in default judgments against the Government of North Korea,⁴⁰⁴ including a February 2021 judgment awarding \$1.2 billion to dozens of former crew members of the U.S.S. *Pueblo*, their estates, and their surviving family members.⁴⁰⁵

Since North Korea's designation as a state sponsor of terrorism in 2017, its judgment creditors may make claims from the USVSST Fund. Although each claim against the Fund is capped at \$20 million, the large number of plaintiffs with judgments against Pyongyang results in only a modest reduction in the amount that could be recovered from the Fund.⁴⁰⁶ In 2017, 2019, and 2020, the Special Master disbursed three rounds of payments of over \$1 billion for claims against Iran, Libya, and other current or former state sponsors of terrorism. More than \$27 billion in claims remains outstanding.⁴⁰⁷

One possible indication of these judgment collections is that in 2018, the Treasury Department held \$74 million in funds blocked for violations of sanctions against North Korea. Only some of these funds were property of the North Korean government. About half of that amount was fro-

403 28 U.S.C. § 1605A.

404 See *Warmbier v. Democratic People's Republic of Korea*, No. 18-00977 (D.D.C. 2018) (awarding \$501 million to family of an American student the court found to have been tortured to death in North Korean custody); *Kim v. Democratic People's Republic of Korea*, No. 09-cv-00648 (D.D.C. 2015) (awarding \$330 million to family of U.S. resident abducted by North Korean agents in China, carried into North Korea, and starved and tortured to death); *Calderon-Cardona v. Democratic People's Republic of Korea*, No. 08-cv-1367 (D.P.R. 2010) (awarding \$378 million to survivors and family members of victims of 1970 attack at Lod Airport, Israel, carried out by North Korean-trained and armed Japanese Red Army terrorists); *Kaplan v. Hezbollah*, No. 09-00646 (D.D.C. 2016) (awarding \$169 million to family of man killed by Hezbollah rocket attack from North Korean-designated bunker complex); *Masie v. Government of the Democratic Peoples' Republic of Korea*, No. 06-00749 (D.D.C. 2018) (awarding \$69 million to tortured survivors of U.S.S. *Pueblo*).

405 *John Doe A-1, et al., v. Democratic People's Republic of Korea*, No. 18-cv-00252 (2021).

406 34 U.S.C. § 20144(d)(3)(A)(ii).

407 Jennifer K. Elsea, "Justice for United States Victims of State Sponsored Terrorism Act: Eligibility and Funding," *Congressional Research Service*, February 9, 2021, <http://crsreports.congress.gov/product/pdf/IF/IF10341>.

THE ROOT OF ALL EVIL

Joshua Stanton

zen between 2005 and 2008.⁴⁰⁸ By 2020, that amount declined to less than \$32 million,⁴⁰⁹ probably reflecting the collection of civil judgments against blocked funds and deposits into the USVSST Fund.

Unless Congress amends the USVSST Act, it would require years of determined enforcement to satisfy these judgments and create a surplus that may be used for other purposes, including humanitarian ones that benefit the people of North Korea. The fact that the fines, penalties, and forfeitures related to violations of Iran, Syria, and Sudan sanctions are also available to pay these judgments might abbreviate this timeline, but the opposite is also true. North Korea-related fines, penalties, and forfeitures would also be available to pay the victims of terrorism sponsored by Iran, Syria, and Sudan.

Thus, building a surplus of funds for escrow in the near future would require an amendment of the USVSST Act. The model legislation at Appendix B would share fines, penalties, and forfeitures collected from the enforcement of North Korea sanctions between the USVSST fund and the escrow fund created by the model legislation. The escrow fund would pay for enforcement, administration, and enforcement capacity-building; food, agricultural, medical, and disaster aid, refugee assistance, and infrastructure rehabilitation; and finally, the promotion of human rights and freedom of information programs inside North Korea. If Pyongyang refuses to accept monitored humanitarian aid, the result would be to raise the proportion of funds used for freedom of information and human rights promotion programs. After the total collections of North Korea-related fines, penalties, and forfeitures into the USVSST Fund exceed the sum of civil judgments against Pyongyang, further collections would be deposited into the escrow fund. Given the large amounts historically collected from foreign banks for evading Iran, Syria, and Cuba sanctions, an escrow fund could plausibly fund an annual World Food Program appeal for North Korea within a year of the enactment of the model legislation.

408 U.S. Dep't of Treasury, "Terrorist Assets Report: Calendar Year 2018 Twenty-Seventh Annual Report to the Congress on Assets in the United States Relating to Terrorist Countries and Organizations Engaged in International Terrorism," (2018), table 1, <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/tar2018.pdf>; U.S. Dep't of Treasury, "Terrorist Assets Report: Calendar Year 2007 Sixteenth Annual Report to the Congress on Assets in the United States on Assets in the United States of Terrorist Countries and International Terrorism Program Designees," (2007) table 1, <https://home.treasury.gov/system/files/126/tar2007.pdf>.

409 U.S. Dep't of Treasury, "Terrorist Assets Report: Calendar Year 2020 Twenty-Ninth Annual Report to the Congress on Assets in the United States Relating to Terrorist Countries and Organizations Engaged in International Terrorism," (2020), Table 1, <https://home.treasury.gov/system/files/126/tar2020.pdf>.

Money, Rice, Crime & Law in North Korea

In the medium term, building a surplus of funds for escrow will require the dedication of enough resources to enforce the laws that form the basis for those collections.⁴¹⁰ In the interests of equity for the judgment creditors wronged by Pyongyang's acts of terrorism and torture, the model legislation also returns a portion of any unexpended funds collected—but unexpended—to the USVSST.

In the long term, a sufficiently resourced, politically empowered, whole-of-government sanctions enforcement campaign could collect enough proceeds of kleptocracy to fully fund the WFP's annual appeals—money that would otherwise be used or earmarked to buy weapons, yachts, and ski lifts.⁴¹¹

So it tends to be with Pyongyang: it dazzles our consciences with such a wide spectrum of evils that we are forced into agonizing choices, selecting which evils to address, and which evils to overlook and passively perpetuate, as allowing it access to our financial system assuredly does. Do we feed a few of the hungry or demand access to all of them, or do we try to stop its nuclear proliferation and prevent a devastating war? Do we compensate American victims of torture or help North Korean victims of kleptocracy? In the end, the people of a nation hold the highest claim to its wealth. But no one speaks for the people of North Korea, least of all their government. A state without ethical or political legitimacy holds no claim to stolen economic sovereignty, either.

410 Accordingly, the model legislation appended to this report would allow the first \$45 million collected from North Korea-related fines, penalties, and forfeitures collected each year to be used to augment personnel to enforce the NKSPEA. Upon the satisfaction of all North Korea-related judgments eligible for claims against the Victims of Terrorism Fund, any further revenues from North Korea-related fines, penalties, and forfeitures would be deposited into the escrow fund proposed here.

411 S/RES/1718 ¶ 8.

THE ROOT OF ALL EVIL

Joshua Stanton

Part IV— Escrow: Toward a Durable Peace Through Justice

A. How Not to Give Sanctions Relief: Lessons from History

The challenge Kim Jong-un presents to the world today is whether our laws and our principles are more powerful than our greed, our vanity, and our false sense of futility. Three decades of disarmament agreements between presidents of both parties and Pyongyang have disappointed human rights advocates who hoped that American diplomats would use their economic, legal, diplomatic, and moral leverage to extract the transparency and reform essential to a lasting peace.

The Clinton administration's Agreed Framework of 1994 made no mention of human rights or political reforms, unless one chooses to interpret a vague reference to "issues of concern to each side" as such.⁴¹² The February 2007 Joint Statement at the Six-Party Talks made no mention of human rights, unless one chooses to interpret a vague reference to "pending bilateral issues and moving toward full diplomatic relations" as such. Even this vague conversation was only to be sidelined to working groups, and only after the lifting of most U.S. sanctions forfeited Washington's then-considerable economic leverage.⁴¹³ The 2012 Leap Day Agreement was a limited freeze-for-freeze agreement that promised Pyongyang some food aid, but did not explain how to deliver it to North Korea's hungriest people, and did not mention human rights.⁴¹⁴ And after President Trump's 2017 speech before the National Assembly in Seoul focused heavily on human rights,⁴¹⁵ the Joint Statement at the 2018 Singapore summit omitted any mention of them.⁴¹⁶

These agreements also disappointed those who longed for peace, or for the less ambitious goal of calm. The 1994 agreement broke down when the Bush administration accused Pyongyang—accurate-

412 *Agreed Framework of Between the United States of America and the Democratic People's Republic of Korea*, October 21, 1994, INFCIRC/457, <https://www.iaea.org/sites/default/files/publications/documents/infircs/1994/infirc457.pdf>.

413 U.S. Dept' of State, *Initial Actions for the Implementation of the Joint Statement Between the United States, the Democratic People's Republic of Korea, the Republic of Korea, Japan, the Russian Federation, & the People's Republic of China*, February 13, 2007, <https://2001-2009.state.gov/t/pa/prs/ps/2007/february/80479.htm>.

414 Steven Lee Myers and Choe Sang-hun, "North Koreans Agree to Freeze Nuclear Work; U.S. to Give Aid," February 29, 2012, <https://www.nytimes.com/2012/03/01/world/asia/us-says-north-korea-agrees-to-curb-nuclear-work.html>.

415 "Remarks by President Trump to the National Assembly of the Republic of Korea, Seoul, Republic of Korea," *The White House*, November 7, 2017, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-national-assembly-republic-korea-seoul-republic-korea/>.

416 "Joint Statement of President Donald J. Trump of the United States of America and Chairman Kim Jong Un of the Democratic People's Republic of Korea at the Singapore Summit," June 18, 2018, <https://www.whitehouse.gov/briefings-statements/joint-statement-president-donald-j-trump-united-states-america-chairman-kim-jong-un-democratic-peoples-republic-korea-singapore-summit/>.

Money, Rice, Crime & Law in North Korea

ly, we now know⁴¹⁷—of developing a parallel uranium enrichment program and stopped the delivery of fuel oil and the construction of two light-water reactors. Pyongyang then expelled IAEA inspectors and withdrew from the agreement.⁴¹⁸

Bush's 2007 agreement broke down when Pyongyang refused to deliver a complete declaration of its nuclear programs and provided samples of aluminum tubing smeared with traces of highly enriched uranium.⁴¹⁹ President Obama's limited 2012 test freeze agreement broke down two weeks later when Pyongyang announced a "satellite" test.⁴²⁰

If one accepts that President Trump and Kim Jong-un reached a binding agreement in Singapore at all, it has—to date—coincided with a halt in nuclear tests and long-range missile tests, but also with a series of short-range missile tests,⁴²¹ continued production of fissile material and ballistic missiles,⁴²² and the development of a submarine capable of launching them.⁴²³ After three face-to-face meetings between Trump and Kim, Pyongyang continues "striving to build a credible regional nuclear warfighting capability that might evade regional ballistic missile defenses."⁴²⁴ Most ominous is the recent display of an intercontinental ballistic missile in Pyongyang.⁴²⁵

417 "Weapons of Mass Destruction: Trade Between North Korea and Pakistan," *Congressional Research Service*, November 28, 2006, https://www.everycrsreport.com/files/20061128_RL31900_71d9666b1740a6042268a106363451c248c09579.pdf.

418 "US-DPRK Agreed Framework," *Nuclear Threat Inst.*, October 26, 2011, <https://www.nti.org/learn/treaties-and-regimes/us-dprk-agreed-framework/>.

419 Arshad Mohammed and Susan Cornwell, "US Looks for N. Korean declaration 'in near future,'" *Reuters*, June 20, 2008, [https://www.reuters.com/article/idUSN20478345;GlennKessler,"UraniumTracesFoundonN.KoreanTubes,"WashingtonPost,December21,2007,https://www.washingtonpost.com/wp-dyn/content/article/2007/12/20/AR2007122002196_p.html](https://www.reuters.com/article/idUSN20478345;GlennKessler,).

420 Andrew Quinn, "Insight: Obama's North Korean leap of faith falls short," *Reuters*, March 30, 2012, <https://www.reuters.com/article/us-korea-north-usa-leap/insight-obamas-north-korean-leap-of-faith-falls-short-idUSBRE82T06T20120330>.

421 Julia Masterson, "North Korea Tests First Missiles of 2020," *Arms Control Assn.*, April 2020, <https://www.armscontrol.org/act/2020-04/news/north-korea-tests-first-missiles-2020>.

422 Mary Beth Nikitin and Samuel Ryder, "North Korea's Nuclear Weapons and Missile Programs," *U.S. Congressional Research Service*, July 14, 2020, <https://fas.org/spp/crs/nuke/IF10472.pdf>; Julia Masterson, "North Korea Continues Uranium Enrichment," *Arms Control Today*, October 2020, <https://www.armscontrol.org/act/2020-10/news/north-korea-continues-uranium-enrichment#.X3swrjySKNk.twitter>; Joby Warrick and Simon Denyer, "As Kim wooed 'Trump with 'love letters,' he kept building his nuclear capability, intelligence shows," *Washington Post*, September 30, 2020, https://www.washingtonpost.com/national-security/trump-kim-north-korea-nuclear/2020/09/30/2b7305c8-032b-11eb-b7ed-141dd88560ea_story.html.

423 Dan De Luce, "Photos indicate North Korea may be building submarine capable of launching nuclear missiles," *NBC News*, August 28, 2019, <https://www.nbcnews.com/news/all/photos-indicate-north-korea-may-be-building-submarine-capable-launching-n1047066>.

424 Mary Beth D Nikitin, "North Korea's Nuclear and Ballistic Missile Programs," *Congressional Research Service In Focus*, June 6, 2019, <https://fas.org/spp/crs/nuke/IF10472.pdf>.

425 Hyonhee Shin and Josh Smith, "North Korea unveils 'monster' new intercontinental ballistic missile at parade,"

THE ROOT OF ALL EVIL

Joshua Stanton

One could argue that the great failing of America's presidents was the diplomacy of instant gratification. Each, in turn, traded the leverage of sanctions—often painstakingly built through years of investigation and diplomacy—for signatures and commitments that Pyongyang inevitably failed to keep. Our government became moderately adept at imposing financial pressure, but it never learned to use that pressure to secure a peace worthy of the name. We pursue what the Reverend Martin Luther King once called “peace that had been purchased at the price of capitulating to the forces of darkness.”

*This is the type of peace that all men of goodwill hate. It is the type of peace that is obnoxious. It is the type of peace that stinks in the nostrils of the almighty God.*⁴²⁶

We remember his admonition: “True peace is not merely the absence of tension: it is the presence of justice.”⁴²⁷

This not to deny our paramount interest in negotiating a durable end to Pyongyang's WMD proliferation—if that was ever possible. America's paradox in this project has always been devising a formula for meeting Pyongyang's diplomatic demands for sanctions relief without surrendering the leverage necessary to ensure that it keeps the agreements exchanged for those same demands.

Historically, Pyongyang has offered concessions just as sanctions created significant economic pressure. Then, the U.S. would give “limited” sanctions relief in exchange, foreign investment would refill the state's empty coffers, Pyongyang would renege, and the U.S. would be left with neither its gains nor its leverage. One nuclear test later, a new generation of criminal investigators, intelligence analysts, sanctions examiners, and prosecutors would begin the Sisyphean work of rebuilding that leverage. Pyongyang has used this strategy with success for decades, and probably meant to repeat it at Hanoi.⁴²⁸ Recently, it has become popular to refer to “snap-back” sanctions. Kim Jong-un may have sought snap-back sanctions relief at the Hanoi summit.⁴²⁹ The U.S. may also have floated its own snap-back

October 9, 2020, <https://www.reuters.com/article/us-northkorea-missiles/north-korea-unveils-monster-new-intercontinental-ballistic-missile-at-parade-idUSKBN26V01K>.

426 Rev. Martin Luther King, Jr., Remarks at the Dexter Avenue Baptist Church, Montgomery, Alabama, March 18, 1956, <https://kinginstitute.stanford.edu/king-papers/documents/when-peace-becomes-obnoxious>.

427 Rev. Martin Luther King, Jr., A Martin Luther King Treasury 30 (1964), Educational Heritage, Yonkers, New York, <https://quoteinvestigator.com/2020/11/26/true-peace/#note-438619-1>.

428 Lee Sang-yong, “Kim Jong Un explained US-DPRK summit strategy to party officials prior to Hanoi,” *Daily NK*, March 22, 2019, <https://www.dailynk.com/english/kim-jong-un-explained-us-dprk-summit-strategy-to-party-officials-prior-to-hanoi/>; “N.K. leader says negotiations with U.S. are first step to recognition as nuclear power: report,” *Yonhap News*, June 17, 2019, <https://en.yna.co.kr/view/AEN20190617006700325?section=nk/nk>.

429 Joyce Lee, “North Korea says Trump was open to easing sanctions with ‘snapback’ clause:

Money, Rice, Crime & Law in North Korea

proposal at the UN Security Council in response to Russian and Chinese demands for sanctions relief.⁴³⁰ But the hard work of sanctions enforcement may require years of painstaking investigation, including the cultivation of informants who risk their lives and those of their families;⁴³¹ years of intelligence collection and analysis; the drafting of affidavits for wiretaps and seizures; the negotiation of proffers and plea agreements with cooperating witnesses; the presentation of evidence to grand juries; the drafting of designation packages for the president's signature; the drafting and litigation of motions, indictments, and complaints; and finally, revealing the government's evidence at trial.

The unsealing of an indictment, the designation of a front company, or the filing of a complaint may expose investigative methods and sources to a ruthless, adaptable, and sophisticated adversary.⁴³² Once a sanction is relaxed, the target learns and adapts, and Washington's leverage cannot be rebuilt without more years of painstaking work. This is not work that "snaps" back.

1. UN Limits on Sanctions Relief

The Biden administration will inevitably come under strong pressure to offer Pyongyang some form of sanctions relief to give it an incentive for a freeze or partial nuclear disablement.⁴³³ If the President sought to provide Pyongyang with sanctions relief, his first step would be to seek the consensus of

South Korean media," *Reuters*, March 25, 2019, <https://www.reuters.com/article/us-northkorea-usa/north-korea-says-trump-was-open-to-easing-sanctions-with-snapback-clause-south-korean-media-idUSKCN1R700D>.

430 Lee Yu-jung and Sarah Kim, "U.S. tried flexibility on North Korea Sanctions," *JoongAng Daily*, January 4, 2020, <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3072214>.

431 One example is the unsealed docket in *In re Grand Jury Investigation of Possible Violations of 18 USC 1956 and 50 USC 1705*, 18-mc-175 (D.D.C. 2018), which reveals years of risky, painstaking, costly, and exhausting investigation and litigation, and whose extensive record can be seen at <https://www.dcd.uscourts.gov/unsealed-orders-opinions-documents/Miscellaneous/2020>. See also *United States v. \$6,999,925.00 of Funds Associated with Velmar Mgmt., Ltd.*, No. 17-cv-01705 (D.D.C. 2017) (citing the statements of two confidential informants in suing to forfeit the proceeds of a conspiracy to commit money laundering and smuggle oil from Russia to Singapore to North Korea). The action against Banco Delta Asia's North Korean customers, which President Bush reversed in 2007, resulted from years of patient intelligence collection, investigation, diplomacy, and law enforcement. U.S. Dep't of Treasury, Financial Crimes Enforcement Network, "Imposition of Special Measure Against Banco Delta Asia, Including Its Subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a Financial Institution of Primary Money Laundering Concern," 72 Fed. Reg. 12730; David Lague and Donald Greenlees, "Squeeze on Banco Delta Asia hit North Korea where it hurt," *N.Y. Times*, January 18, 2007, <https://www.nytimes.com/2007/01/18/world/asia/18iht-north.4255039.html>.

432 *Banco Delta Asia, S.A.R.L., et al., v. Financial Crimes Enforcement Network, et al.*, No. 12-cv-0333 (D.D.C. 2020) (moving to disclose classified evidence to attorneys representing Banco Delta Asia).

433 Harry Kazianis, "Surprise meeting between Trump and Kim Jong Un could make progress on North Korea nuke dispute," *Fox News Opinion*, June 28, 2019, <https://www.foxnews.com/opinion/harry-kazianis-surprise-meeting-between-trump-and-kim-jong-un-could-make-progress-on-north-korea-nuke-dispute>.

THE ROOT OF ALL EVIL

Joshua Stanton

the UN Security Council. Although any permanent member of the Security Council could veto the alteration or removal of a sanction, neither Russia nor China would oppose sanctions relief.⁴³⁴ That would leave it to the administration to persuade the representatives of France, the United Kingdom, and the non-permanent members to support the negotiated terms.

Removing the designation of a specific person or entity, or granting a sanctions exemption to a specific activity, requires the unanimous approval of the 1718 Committee, whose members are appointed by members of the Security Council.⁴³⁵ For example, this procedure would apply to an exemption for the Kaesong Industrial Complex, which would otherwise violate a UN ban on joint ventures and the obligation to “ensure” that Pyongyang does not use its proceeds for WMD or luxury goods.⁴³⁶

None of these obstacles would stand in the way of sanctions relief in the form of food, medicine, and appropriately monitored humanitarian aid through UN aid agencies, including the WFP, UNICEF, or the UN Development Program. Russia and China complain about the impact of sanctions on aid-related transactions, but the NKSPEA has explicitly authorized the Treasury Department to grant licenses to financial institutions for that very purpose since 2016.⁴³⁷ Instead, China and Russia propose to lift sanctions on dual-use machinery exports and technology transfers to North Korea; Pyongyang’s exports of statues, textiles, and the forced labor that makes them in Chinese sweatshops;⁴³⁸ and its exports of food, which China and Russia would rather sell in their own markets than let North Koreans buy in theirs.⁴³⁹

2. U.S. Statutory Limits on Sanctions Relief

The Constitution grants Congress the power to regulate commerce with foreign nations,⁴⁴⁰ Congress exercises that authority through legislation enforced by the executive branch—the International

434 Michelle Nichols, “China, Russia revive push to lift U.N. sanctions on North Korea,” *Reuters*, November 2, 2021, <https://www.reuters.com/world/asia-pacific/china-russia-revive-push-lift-un-sanctions-north-korea-2021-11-01/>.

435 United Nations Security Council, “Security Council Committee established pursuant to resolution 1718 (2006),” accessed August 6, 2019, <https://www.un.org/securitycouncil/sanctions/1718#work%20and%20mandate>.

436 S/RES/2375 ¶ 18; S/RES/1718 ¶ 8(d).

437 22 U.S.C. § 9228(d).

438 U.S. Customs & Border Protection, H317249: “Application for Further Review; 22 U.S.C. § 9241a; 19 U.S.C. § 1307; Protest No. 4601-21-125334; Poof Apparel; Dandong Huayang Textiles and Garments Co., Ltd.; Forced Labor,” March 5, 2021, <https://rulings.cbp.gov/ruling/H317249>.

439 “In full: China and Russia’s Dec. 2019 pitch for North Korea sanctions relief at the UN,” NK Pro, October 30, 2021, <https://www.nknews.org/pro/in-full-china-and-russias-pitch-for-north-korea-sanctions-relief-at-the-un/?t=1648350300257>.

440 U.S. Const. art. I, § 8, cl. 3; see Benjamin Alter, “Sanctions are Congress’s Path Back to Foreign Policy Relevance,” *Lawfare* blog, March 27, 2018, <https://www.lawfareblog.com/sanctions-are-congress-path-back-foreign-policy-relevance>.

Money, Rice, Crime & Law in North Korea

Emergency Economic Powers Act of 1979 (IEEPA),⁴⁴¹ the Patriot Act,⁴⁴² the Export Administration Act,⁴⁴³ and the Criminal Code.⁴⁴⁴ These laws regulate Pyongyang's access to the U.S. financial system, markets, and technology. There are also limitations in most annual appropriations acts against providing assistance to the government of North Korea.⁴⁴⁵ In recent years, Congress has steadily restricted the President's power to give sanctions relief without Pyongyang's substantial performance on disarmament and reform.

3. NKSPEA Limits on Sanctions Relief

In enacting the NKSPEA, Congress gave the President powerful new legal tools. It also put strict limits on presidential discretion to refrain from imposing them, to suspend them, or to lift them. Although Pyongyang has offered few disarmament concessions since Kim Jong-un first met President Trump in June 2018,⁴⁴⁶ some scholars in Washington, D.C. have already asked "whether and how to roll back the complex regime of U.S. and multilateral sanctions."⁴⁴⁷ Scholars who have studied this thicket of UN resolutions, U.S. statutes, and regulations agree that they will be legally, practically, and politically difficult to clear until Pyongyang makes significant progress toward disarmament, reform,

441 50 U.S.C. §§ 1701-1705 (2018).

442 USA Patriot Act of 2001, Pub. L. No. 107-56, 115 Stat. 271 (2001).

443 Export Administration Act, Pub. L. No. 96-72, 93 Stat. 503 (1979) (codified at 50 U.S.C. app. § 2405).

444 See 18 U.S.C. § 981 (authorizing the forfeiture of property involved in certain specified unlawful activities); *id.* § 1956(c)(7) (defining specified unlawful activities); *id.* § 2333d (prohibiting unlicensed transactions with governments that have been designated as state sponsors of terrorism under section 6(j) of the Export Administration Act).

445 See H.J. Res. 31, Consolidated Appropriations Act of 2019, § 7007, Pub. L. No. 116-6 (2019), <https://www.congress.gov/bills/116/congress/house-joint-resolution/31/text?overview=closed&tr=2> ("None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance or reparations for the governments of Cuba, North Korea, Iran, or Syria . . ."); *id.* § 7403(d)(4)(C) ("None of the funds made available by this Act under the heading 'Economic Support Fund' may be made available for assistance for the Government of North Korea.").

446 Pyongyang has observed an informal freeze in the testing of nuclear weapons and intercontinental ballistic missile (ICBM) systems but has continued to develop both. Although the U.S. and North Korean accounts of the Hanoi summit differ, both accounts broadly agree that Kim offered to dismantle one nuclear site at Yongbyon and offered to make the test freeze permanent, but did not offer any broader disclosure, inspection, verification, disablement, or dismantlement of his weapons of mass destruction programs, as required by multiple UN Security Council resolutions. The accounts differed on Pyongyang's demands for sanctions relief, with President Trump saying that Kim had demanded that all sanctions be lifted, and Pyongyang demanding that the U.S. merely lift all sanctions except nonproliferation sanctions. Deb Reichmann, Hyung-jin Kim, and Catherine Lucey, "US, North Korea offer dueling accounts of talks breakdown," *AP*, February 28, 2019, <https://apnews.com/article/3152b3e5854849829eaabb23d98403d3>.

447 "The North Korea Sanctions Regime a Year After Singapore," *U.S. Inst. of Peace*, July 8, 2019, <https://www.usip.org/events/north-korea-sanctions-regime-year-after-singapore>.

THE ROOT OF ALL EVIL

Joshua Stanton

and transparency.⁴⁴⁸ Sanctions relief still does not guarantee that the financial industry would accept North Korean customers, given their history of financial crime, or that investors would risk exposure to Pyongyang's history of non-repayment, or the risk of boycotts due to its crimes against humanity.

In the NKSPEA, Congress exercised its authority to prevent Pyongyang from using its access to U.S. financial system to support its proliferation, threaten the security or economy of the United States, or facilitate censorship or other human rights abuses. It also mandated the designation of persons and entities supporting Pyongyang's proliferation, arms trafficking, computer hacking, and human rights abuses, and limited the President's ability to rescind designations without substantial progress by Pyongyang.

Thus, Section 104 of the NKSPEA provided three "on-ramps" to designation—one mandatory in section 104(a), one discretionary in section 104(b), and one that mandates the freezing of all of the North Korean government's assets in section 104(c). A designation under section 104(a) freezes the designated person's assets, debars the designated person from receiving government contracts, and denies a designated corporation's officers entry into the United States.

If section 104 is the NKSPEA's on-ramp, then section 208—which contains its diplomatic, humanitarian, and national security exemptions and waivers—is its U-turn. Section 208(a) exempts diplomatic, intelligence, and prisoner of war recovery activities from section 104. Section 208(b) provides for humanitarian waivers, for up to one year, subject to accountability and monitoring controls.⁴⁴⁹ Section 208(c) provides that "[t]he President may waive" an NKSPEA sanction "on a case-by-case basis," for up to a year, if the President certifies "that the waiver . . . is important to the national security interests of the United States; or . . . will further the enforcement of" the sanctions, such as "for an important law enforcement purpose."⁴⁵⁰ This subsection gives the President a narrow authority to waive a designation that might have unintended consequences, such as by causing the failure of a major bank that might be willing to cooperate with U.S. authorities instead.⁴⁵¹ And as stated above,

448 Troy Stangorone, "Removing Sanctions on North Korea: Challenges and Potential Pathways," U.S. Inst. of Peace, December 10, 2021, <https://www.usip.org/publications/2021/12/removing-sanctions-north-korea-challenges-and-potential-pathways>; Daniel Wertz, "Special Report: Understanding U.S. and International Sanctions on North Korea," Nat'l Committee for North Korea, November 20, 2020, <https://www.ncnk.org/news/special-report-understanding-u.s.-and-international-sanctions-north-korea>.

449 The NKSPEA contain broader general licenses. 31 C.F.R. § 510.512.

450 22 U.S.C. § 9228(c).

451 An unnamed scholar, presumably raising a question posed by other unknown persons, privately asked the author of the whether Section 208 gives the President plenary authority to part the thicket of laws and regulations described in Table I. It does not. Had Congress intended to create such a broad waiver authority, it would not have limited it to "a case-by-case basis" or enacted the specific conditions in sections 401 and 402 for broader sanctions relief. To read section 208(c) as a bypass around these conditions would effectively render sections 401 and 402 redundant, contrary to long-standing canons of statutory

Money, Rice, Crime & Law in North Korea

Section 208(d) also authorizes the establishment of reputable banking channels for humanitarian aid.

The metaphor for the structure of the NKSPEA extends to section 401 (the “rest area”) and section 402 (the “off-ramp”). These conditions for sanctions relief set performance-based benchmarks for denuclearization, human rights and political reforms, and the cessation of criminal activities. These conditions not only reflect Congress’s distrust of Pyongyang, but also its concern that past presidents have not always spent their leverage wisely. They deliberately make sanctions easier for the President to suspend than to lift. They offer the President the flexibility to negotiate, but not to trade away, leverage for transitory promises. Under section 401, the President may offer Pyongyang a one-year suspension of NKSPEA sanctions, renewable in 180-day increments, as long as Pyongyang continues to make progress toward disarmament and reform.⁴⁵²

construction that one provision of law should not be read as rendering another provision to be surplusage. *Ratzlaf v. United States*, 510 U.S. 135, 140–41 (1994); *Kungys v. United States*, 485 U.S. 759, 778 (1988).
 452 22 U.S.C. §§ 9251 & 9252.

THE ROOT OF ALL **EVIL**

Joshua Stanton

Table 3. Statutory Conditions for Sanctions Relief

To receive <i>temporary</i> sanctions relief, Pyongyang must meet all of the following conditions—	To receive <i>permanent</i> sanctions relief, Pyongyang must meet the conditions for temporary sanctions relief, <i>and</i> meet all of the following conditions—
verifiably cease its counterfeiting of U.S. currency and surrender or destroy the materials and equipment used for counterfeiting;	meet the condition for temporary sanctions relief;
take steps toward financial transparency to comply with generally accepted anti-money laundering protocols;	meet the condition for temporary sanctions relief;
take steps toward verifying its compliance with applicable UN Security Council resolutions;	make significant progress toward completely, verifiably, and irreversibly dismantling all of its nuclear, chemical, biological, and radiological weapons programs, including delivery systems;
take steps toward accounting for and repatriating the citizens of other countries it has either abducted or unlawfully held captive, or detained in violation of the Korean War Armistice Agreement;	make significant progress toward fully accounting for and repatriating Americans (including their remains) whom it either abducted, held captive, or detained in violation of the Korean War Armistice Agreement;
accept and begin to abide by internationally recognized standards for the distribution and monitoring of humanitarian aid; <i>and</i>	meet the condition for temporary sanctions relief;
take verified steps to improve living conditions in its political prison camps.	make significant progress toward releasing all political prisoners, including North Koreans held in its political prison camps;
—	make significant progress toward ceasing its censorship of peaceful political activity; and establishing an open, transparent, and representative society.

Money, Rice, Crime & Law in North Korea

These conditions will complicate the short-term prospects for a “small deal.” Pyongyang can only blame its own history and conduct for Congress’s skepticism.⁴⁵³ These conditions will test Pyongyang’s good faith by testing its acceptance of transparency and reform.

For example, the evidence of Pyongyang’s counterfeiting of U.S. dollars is compelling. The Bureau of Engraving and Printing has redesigned the hundred-dollar bill to protect the integrity of the world’s reserve currency from North Korean counterfeits.⁴⁵⁴ Congress made a verified cessation of Pyongyang’s counterfeiting a condition of temporary sanctions relief.

Similarly, Pyongyang must “tak[e] steps toward financial transparency to comply with generally accepted protocols to cease and prevent” money laundering to earn temporary sanctions relief.⁴⁵⁵ Recently, Pyongyang has laundered funds used to finance proliferation,⁴⁵⁶ stolen from banks in Bangladesh and other states,⁴⁵⁷ stolen from cryptocurrency exchanges⁴⁵⁸ and ATMs,⁴⁵⁹ and carried out ransomware attacks.⁴⁶⁰ Congress is unlikely to restore Pyongyang’s access to an economy and

⁴⁵³ David Lague and Donald Greenlees, “Squeeze on Banco Delta Asia hit North Korea where it hurt,” *International Herald Tribune*, January 18, 2007, https://www.nytimes.com/2007/01/18/world/asia/18iht-north.4255039.html?pagewanted=1&%2360:t-Un.&_r=0; Josh Meyer, “Squeeze on North Korea’s Money Supply Yields Results,” *L.A. Times*, November 2, 2006, <https://www.latimes.com/world/la-fi-macao2nov02-story.html>; Jay Solomon and Neil King Jr., “How U.S. Used a Bank to Punish North Korea,” *Wall Street Journal*, April 12, 2007, <https://www.wsj.com/articles/SB117627790709466173>.

⁴⁵⁴ Julian Ryall, “Quality of fake ‘supernotes’ found in Seoul fan suspicions that North Korea is forging \$100 bills,” *The Telegraph*, December 11, 2017, <https://www.telegraph.co.uk/news/2017/12/11/quality-fake-supernotes-found-seoul-fan-suspicions-north-korea/>; David Rose, “North Korea’s Dollar Store,” *Vanity Fair*, September 2009, <https://www.vanityfair.com/style/2009/09/office-39-200909>; Stephen Mihm, “No Ordinary Counterfeit,” *New York Times Magazine*, July 23, 2006, <https://www.nytimes.com/2006/07/23/magazine/23counterfeit.html>.

⁴⁵⁵ In the Asia Reassurance Initiative Act of 2019, the President also reaffirmed that “[i]t is the policy of the United States to continue to impose sanctions with respect to activities of the Government of [North] Korea” until it “is no longer engaged in the illicit activities described” in the authorities cited in Table 1. Pub. L. No. 115-409, § 210(b)(1).

⁴⁵⁶ U.S. Dep’t of Treasury, Financial Crimes Enforcement Network, “Advisory on the Financial Action Task Force-Identified Jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism Deficiencies,” FIN-2019-A001, March 8, 2019, https://www.fincen.gov/sites/default/files/advisory/2019-03-08/FAFT_Advisory_March_final_508.pdf.

⁴⁵⁷ *United States v. Park Jin Hyuk*, No. 18-cr-1479 (C.D. Cal. 2018), <https://www.justice.gov/usao-cdca/press-release/file/1091951/download>.

⁴⁵⁸ U.S. Dep’t of Justice, “United States Files Complaint to Forfeit 280 Cryptocurrency Accounts Tied to Hacks of Two Exchanges by North Korean Actors,” August 27, 2020, <https://www.justice.gov/usao-de/pr/united-states-files-complaint-forfeit-280-cryptocurrency-accounts-tied-hacks-two>; Pamela Falk, “North Korea skirted U.N. sanctions and earned \$2 billion using cyber attacks, new U.N. report says,” *CBS News*, August 6, 2019, <https://www.cbsnews.com/news/north-korea-skirted-un-sanctions-and-earned-2-billion-using-cyber-attacks-new-u-n-report-says/>.

⁴⁵⁹ Dustin Volz and Ian Talley, “U.S. Warns of Global Bank Heist Campaign by North Korean Hackers,” *Wall Street Journal*, August 26, 2020, <https://www.wsj.com/articles/u-s-warns-of-global-bank-heist-campaign-by-north-korean-hackers-11598470267>.

⁴⁶⁰ U.S. Dep’t of Treasury, Office of Foreign Assets Control, “Advisory on Potential Sanctions Risks for Facilitating Ransomware Payments,” October 1, 2020, https://home.treasury.gov/system/files/126/ofac_ransomware_advisory_10012020_1.pdf; U.S. Dep’t of Treasury, Financial Crimes Enforcement Network, “Advisory on Ransomware and the

THE ROOT OF ALL EVIL

Joshua Stanton

financial system whose integrity it threatens, or to exempt it from the laws that apply to every other nation, until it accepts the financial transparency necessary to ensure its compliance with U.S. laws and financial regulations to combat money laundering and proliferation financing. Pyongyang's corruption brings it into conflict with Congress's new emphasis on anti-corruption legislation and enforcement. And even if Congress were willing to overlook this condition, the financial industry would not be obligated to accept the legal and boycott risks of facilitating financial crime, kleptocracy, or other human rights abuses.

Congress expects denuclearization talks to be about denuclearization. Therefore, Pyongyang must "tak[e] steps toward verification of its compliance with applicable United Nations Security Council resolutions" to earn temporary sanctions relief.⁴⁶¹ Russian diplomats and some American pundits urge us to accept that Pyongyang will never relinquish its nuclear programs,⁴⁶² but Congress will hesitate to relax sanctions as long as Pyongyang threatens a global metastasis of proliferation. Indeed, Congress recently reaffirmed the lifting conditions of section 402 of the NKSPEA in the Warmbier Act.⁴⁶³ Pyongyang has proliferated ballistic missile technology to Iran and Syria;⁴⁶⁴ supplied man-portable surface-to-air missiles to Iran, allegedly for use by terrorists;⁴⁶⁵ built a nuclear

Use of the Financial System to Facilitate Ransom Payments," FIN-2020-A006, October 1, 2020, <https://www.fincen.gov/sites/default/files/advisory/2020-10-01/Advisory%20Ransomware%20FINAL%20508.pdf>.

461 22 U.S.C. § 9251(a)(3); see Pub. L. No. 115-409, § 201(c) (reaffirming that "[i]t is the policy of the United States that the objective of negotiations with respect to the nuclear and ballistic missile programs of [North] Korea be the complete, verifiable, and irreversible dismantlement of such programs."); see Letter from Sens. Gardner, Graham, Rubio, and Sullivan to President Trump, August 2, 2018, [https://www.gardner.senate.gov/imo/media/doc/NK Letter 08.02.18 \(signed\).pdf](https://www.gardner.senate.gov/imo/media/doc/NK%20Letter%2008.02.18%20(signed).pdf) (reaffirming that the NKSPEA and applicable U.N. Security Council resolutions require the "complete, verifiable, and irreversible denuclearization" of North Korea); Letter from Sens. Mendez, Schumer, Durbin, Feinstein, Warner, Leahy, and Brown to President Trump, June 4, 2018, <https://www.foreign.senate.gov/imo/media/doc/06-04-18%20Mendez%20joint%20letter%20to%20Trump%20on%20NK%20Summit.pdf> ("[A]ny agreement with North Korea must . . . ultimately include the dismantlement and removal of all nuclear, chemical and biological weapons from North Korea").

462 Georgy Toloraya, "From CVID to CRID: A Russian Perspective," 38 *North*, December 26, 2018, <https://www.38north.org/2018/12/groloraya122618/>; Doug Bandow, "Accept Reality: North Korea Will Remain a Nuclear State," *The National Interest*, August 10, 2019, <https://nationalinterest.org/feature/accept-reality-north-korea-will-remain-nuclear-state-72296>.

463 Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act, Pub. L. No. 116-92, div. F, tit. LXXII, subtit. A, § 7143(c).

464 Paul K. Kerr, Steven A. Hildreth, and Mary Beth D. Nikitin, "Iran-North Korea-Syria Ballistic Missile and Nuclear Cooperation," *Congressional Research Service*, February 26, 2016, <https://fas.org/sgp/crs/nuke/R43480.pdf>.

465 *Report of the U.N. POE established pursuant to resolution 1874, S/2013/337* (2013) ¶¶ 64-75, fig. XVIII, [http://www.un.org/ga/search/view_doc.asp?symbol=UN POE, S/2013/337](http://www.un.org/ga/search/view_doc.asp?symbol=UN%20POE%20S/2013/337); "Israel says seized North Korean arms were for Hamas, Hezbollah," *Reuters*, May 12, 2010.

Money, Rice, Crime & Law in North Korea

reactor in Syria;⁴⁶⁶ assisted Syria with its chemical weapons programs;⁴⁶⁷ used VX nerve agent in a crowded airport terminal in Malaysia;⁴⁶⁸ carried out a cyberterrorist attack against the U.S. mainland;⁴⁶⁹ and launched unprovoked attacks against South Korea. These are not the actions of a state that would be a responsible nuclear power.

Pyongyang must “tak[e] steps toward accounting for and repatriating the citizens of other countries” that it abducted or held after the Korean War Armistice.⁴⁷⁰ This condition reflects Congress’s support for the families of Americans still missing from the Korean war, and for our Japanese ally’s legitimate demand to bring its abducted citizens home.

Pyongyang must “accept[] and begin[] to abide by internationally recognized standards for the distribution and monitoring of humanitarian aid.”⁴⁷¹ If Pyongyang impedes the monitoring of aid distribution, can we have confidence that it would allow weapons inspectors enough access to verify its disarmament? The fair and open distribution of humanitarian aid can be another test of Pyongyang’s acceptance of transparency.

Lastly, Pyongyang must also take “verified steps to improve living conditions in its political prison camps.”⁴⁷² The UN COI has documented Pyongyang’s culpability for “crimes against humanity, arising from ‘policies established at the highest level of State,’” including “extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of populations, the enforced disappearance of persons and the inhumane act of knowingly causing prolonged

466 “Al-Kibar,” *Nuclear Threat Initiative*, March 1, 2011, <https://www.nti.org/learn/facilities/461/> (“U.S. officials expressed high confidence . . . that the facility had been a nuclear reactor under construction. They also alleged that Syria and North Korea had cooperated for more than a decade in the nuclear field, and had medium confidence that North Korea was involved in the construction of the facility at Al-Kibar”).

467 Michael Schwirz, “U.N. Links North Korea to Syria’s Chemical Weapons Program,” *New York Times*, February 27, 2018, <https://www.nytimes.com/2018/02/27/world/asia/north-korea-syria-chemical-weapons-sanctions.html>.

468 U.S. Dep’t of State, “Statement by Heather Nauert, Spokesperson,” March 6, 2018, https://twitter.com/statedeptspox/status/971186360399880192?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwccombed%7Ctwterm%5E971186417014624256&ref_url=https%3A%2F%2Fwww.cbsnews.com%2Fnews%2Fstate-department-north-korea-chemical-weapons-assassination-kim-jong-nam%2F (“On February 22, 2018, the United States determined . . . that the Government of North Korea used the chemical warfare agent VX to assassinate Kim Jong Nam, in the Kuala Lumpur Airport”).

469 U.S. Fed. Bureau of Investigation, “Update on Sony Investigation,” December 14, 2014, <https://www.fbi.gov/news/pressrel/press-releases/update-on-sony-investigation>.

470 22 U.S.C. § 9252.

471 *Id.*

472 *Id.*

THE ROOT OF ALL EVIL

Joshua Stanton

starvation.”⁴⁷³ As long as Pyongyang holds its people in mute horror, none would dare disclose nuclear secrets to a UN inspector.⁴⁷⁴ The camps are vast enough to conceal an unlimited number of warheads, machine tools, and centrifuges. A state that holds human life in contempt also shows contempt for the ethical foundation of a just and lasting peace.

These conditions also give human rights advocates legally enforceable benchmarks—through allies in Congress—to prevent Pyongyang’s crimes against humanity from being sidelined again at the negotiating table.⁴⁷⁵

If political gratification is the objective of our diplomacy, these conditions will complicate the prospects to offer an agreement that Pyongyang would easily accept. But no enduring peace will be possible if Pyongyang continues to threaten the core national interests of the U.S. and its allies, and investors and banks will bar North Korea from their wire transfers and supply chains while its conduct continues to embarrass humanity. The pace at which Pyongyang meets these conditions is negotiable, but if Pyongyang seeks free and secure access to the U.S. economy, its compliance with them must not be. Pyongyang’s acceptance of transparency, the laws of other nations, and the most basic standards of human civilization are prerequisites to any lasting peace.

4. Political Limits on U.S. Sanctions Relief

Unfreezing the assets of certain sanctions targets will also raise political objections from Congress. For example, Congress would likely object to unfreezing the assets of persons that had been frozen for proliferation, particularly as part of a nonproliferation agreement, without credible assurances that the unfrozen funds would not be used for proliferation again. Congress is also unlikely to support the relaxation of sanctions against Pyongyang’s cyber-attacks, which are a growing threat to the global economy.

⁴⁷³ A/HRC/25/63.

⁴⁷⁴ John Sifton, “Why Trump Needs to Raise Human Rights with North Korea’s Kim,” *Just Security*, February 20, 2019, <https://www.justsecurity.org/62647/trump-raise-human-rights-kim/>; Olivia Enos, “Leveraging U.S. Law to Advocate for Human Rights in Talks with North Korea,” *The Heritage Foundation*, February 22, 2019, <https://www.heritage.org/asia/report/leveraging-us-law-advocate-human-rights-talks-north-korea>; Victor Cha, “Human Rights Are the Key to a North Korea Deal,” *Bloomberg Opinion*, February 20, 2019, <https://www.bloomberg.com/opinion/articles/2019-02-20/trump-should-press-north-korea-s-kim-on-human-rights-at-summit> (“[I]n order to verify any nuclear deal, inspectors have to be able to move around the country to different sites. That will require a much more open North Korean society than exists today, for which the U.S. should be pressing simultaneously with denuclearization”).

⁴⁷⁵ Cha, “Human Rights Are the Key to a North Korea Deal” (“Even at Trump’s behest, no general counsel of any U.S. company would recommend investing in North Korea if human-rights abuses in the supply chain might put them in violation of U.S. law”).

Money, Rice, Crime & Law in North Korea

Congress would likely oppose the relaxation of sanctions against Pyongyang's arms trafficking, given that some of Pyongyang's traditional arms clients are themselves engaged in severe human rights abuses (Syria) and support for terrorism (Iran), are plagued by corruption (Angola), or should be prioritizing human development over weapons (Mozambique, Zimbabwe).

Some members of Congress would strongly oppose the relaxation of sanctions for severe human rights abuses (for which Kim Jong-un is personally designated by OFAC), censorship (for which Kim Yo-jong is designated), and luxury goods imports without a durable solution to North Korea's decades-long food crisis. The U.S. and the UN may also hesitate to lift sanctions on North Korea's exports of food for cash.⁴⁷⁶

Seoul has long lobbied Washington to reopen the Kaesong Industrial Complex, but Treasury has long had questions about how Pyongyang spent its Kaesong revenues,⁴⁷⁷ and Seoul probably never knew the answer.⁴⁷⁸ Any relaxation of the ban on Pyongyang's textile exports would raise questions about proliferation financing or forced labor.⁴⁷⁹

North Korea's largest exports are its coal and other mineral products. The Treasury Department has alleged that several North Korean mineral export companies fund its missile programs, its nuclear program, and the military.⁴⁸⁰ North Korea's mineral industry is also linked to human rights

476 S/RES/2397 ¶ 6; 22 U.S.C. § 9214(b)(1)(K) (discretionary sanctions for North Korea's export of food or agriculture products); *Id.* § 9214(g)(1)(A)(i)(I) (mandatory sanctions for seafood exports); 31 C.F.R. § 510.201(a)(3)(ix)(A)(1) (implementing the prohibition in the Treasury's North Korea Sanctions Regulations).

477 "US Targeting Secret Funds of North Korea's Kim," *VOA News*, April 15, 2013, <https://www.voanews.com/east-asia/us-targeting-secret-funds-north-korea-kim> (quoting Undersecretary of the Treasury David Cohen as saying, "Precisely what North Koreans do with earnings from Kaesong, I think, is something that we are concerned about.")

478 "Unification Minister reverses claim over N.K. Kaesong revenue use," *Yonhap News*, February 15, 2016, <https://en.yonhap.com/view/AEN20160215005152315>. UNSCR 1718 ¶ 8(d) requires member states to "ensure" that revenues are paid to Pyongyang are *not* used for purposes that violate the resolutions.

479 S/RES/2397 ("Acknowledging that the proceeds of the DPRK's trade in sectoral goods, including but not limited to coal, iron, iron ore, lead, lead ore, textiles, seafood, gold, silver, rare earth minerals, and other prohibited metals, as well as the revenue generated from DPRK workers overseas, among others, contribute to the DPRK's nuclear weapons and ballistic missile programs").

480 U.S. Dept of Treasury, "Treasury Sanctions Agents Linked to North Korea's Weapons of Mass Destruction Proliferation and Financial Networks," March 31, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0039.aspx> (designating Paeksol Trading Company for exporting iron ore to raise money for Bureau 39 of the Workers' Party, the military, and the Munitions Industry Department, which funds Pyongyang's ballistic missile program); U.S. Dept of Treasury, "Treasury Sanctions Individuals and Entities Supporting the North Korean Government and its Nuclear and Weapons Proliferation Efforts," December 2, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0677.aspx> (designating Daewon Industries and Kangbong Trading Corporation for exporting coal and metals to raise funds for the military and the Munitions Industry Department).

THE ROOT OF ALL EVIL

Joshua Stanton

abuses. Two of its political prison camps, Camp 14 and Camp 18, contain coal mines, and there are recent reports of the state mobilizing prisoners to mine coal in this region.⁴⁸¹ Camp 15 also contains a gold mine,⁴⁸² and Camp 12 contains a copper mine.⁴⁸³ Shinheung Trading Company, which is under the control of the Ministry of State Security (MSS)—the agency that operates the political prison camps—earns revenue by selling iron ore, quack cancer cures, and seafood.⁴⁸⁴

Relaxing the seafood export ban not only raises the humanitarian objection to a state with a malnourished population exporting food, but also questions about the state agencies that control the seafood trade. The military, Bureau 39, the Ministry of State Security, and the Reconnaissance General Bureau (the spy agency that sends assassins abroad, sank the ROKS *Cheonan*, and may have carried out the Sony cyberattack) all have stakes in the seafood export industry.⁴⁸⁵ Congress would hesitate to relax any of these sanctions without strong assurances that Pyongyang would spend these revenues responsibly, and as long as the people of North Korea have a protein-deficient diet.

Relaxing other UN and U.S. sanctions that restrict Pyongyang's imports of dual-use metals, machinery, and petroleum products may be politically acceptable if Pyongyang makes verifiable assurances to use its imports for civilian use, but this form of sanctions relief is unlikely to be enough to induce Pyongyang to agree to disarm and reform.

A more plausible option for short-term sanctions relief may be the four million-barrel cap on Pyongyang's crude oil imports and the 500,000-barrel cap on imports of refined petroleum prod-

481 Joseph S. Bermudez Jr., Andy Dinville, and Mike Eley, "North Korea: Imagery Analysis of Camp 14" (Washington, D.C.: Committee for Human Rights in North Korea, 2015), https://www.hrnk.org/uploads/pdfs/ASA_HRNK_Camp14_v7_highrezFINAL_11_30_15.pdf; "Working and Living Conditions in Bukchang Prison Camp Extremely Poor," Daily NK, April 16, 2021, <https://dailynk.com/english/working-living-conditions-bukchang-prison-camp-extremely-poor/>

482 Joseph S. Bermudez Jr., Andy Dinville, and Mike Eley, "North Korea: Imagery Analysis of Camp 15" (Washington, D.C.: Committee for Human Rights in North Korea, 2015), https://www.hrnk.org/uploads/pdfs/ASA_AnalysisReport_HRNK_Camp15_Final.pdf

483 Joseph S. Bermudez et al., "North Korea's Long-term Prison-Labor Facility Kyo-hwa-so No. 12, Jŏngŏ-yi - Update 3" (Washington, D.C.: Committee for Human Rights in North Korea, 2020), https://www.hrnk.org/uploads/pdfs/KHS12_FINALFINAL.pdf

484 "Squeezed by sanctions, North Korea firm hawks cancer cures," *AFP*, December 1, 2017, <https://www.straitstimes.com/asia/east-asia/squeezed-by-sanctions-north-korea-firm-hawks-cancer-cures>

485 Choi Song-min, "Ban on fisheries exports sees domestic supply climb," *Daily NK*, October 28, 2015, <https://web.archive.org/web/20151029141007/http://www1.dailynk.com/english/read.php?catald=nk01500&num=13543>; Choi Song-min, "Sanctions include RGB for the first time, but can they be enforced?," *Daily NK*, March 14, 2016, <https://web.archive.org/web/20160314061820/http://www.dailynk.com/english/read.php?num=13797&catald=nk02900>

Money, Rice, Crime & Law in North Korea

ucts.⁴⁸⁶ These sanctions have proven difficult to enforce in practice.⁴⁸⁷ Despite the Security Council's setting of caps at levels calculated to allow for "livelihood" purposes, they may also be adversely affecting the market economy. This unintended consequence does not serve U.S. interests or those of the North Korean people.⁴⁸⁸

Thus, any new "agreed framework" in which the President agrees to lift sanctions outright would be fraught with questions about how Pyongyang would use the windfall of that relief, and whether the relief would ultimately set back the objectives of nonproliferation, reform, and peace. And when—not if—Pyongyang begins to renege on an agreement or is caught cheating, Congress has an array of options to reimpose sanctions. Pyongyang's potential investors and business partners are certain to weigh this risk carefully before exposing themselves to renewed sanctions and boycotts at some future date.

5. Congressional Power to Limit Sanctions Relief

When former President Trump signed the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA), he issued a signing statement that "[b]y limiting the executive's flexibility, this bill makes it harder for the United States to strike good deals for the American people and will drive China, Russia, and North Korea much closer together," and that "[a]s President, I can make far better deals with foreign countries than Congress."⁴⁸⁹

Whatever one believes about the merits of this statement, and notwithstanding the end of Trump's presidency, it points to a longstanding conflict between different branches of government over the power to impose, amend, and lift sanctions. But if Article I, Section 8 of the Constitution explicitly grants Congress the power to regulate commerce with foreign nations, it follows that Congress also retains the constitutional power to review, limit, or reject a President's agreement to lift sanctions, including human rights sanctions, that do not conform to Congress's limits and intent.⁴⁹⁰

486 S/RES/2397 ¶¶ 4-5.

487 Gordon Lubold and Ian Talley, "Seven Countries Join to Hunt Ships Smuggling Fuel to North Korea," *Wall Street Journal*, September 14, 2018, https://www.wsj.com/articles/new-u-s-led-coalition-to-track-illicit-fuel-shipments-to-north-korea-1536922923?mod=article_inline.

488 Kang Mi-jin, "Optimism rising as fuel prices dip in North Korea," *Daily NK*, January 28, 2019, <https://www.dailynk.com/english/optimism-rising-as-fuel-prices-dip-in-north-korea/>.

489 Statement on Signing the Countering America's Adversaries Through Sanctions Act, DCPD-201700558, U.S. Government Publishing Office, August 2, 2017, <https://www.govinfo.gov/content/pkg/DCPD-201700558/html/DCPD-201700558.htm>.

490 Benjamin Alter, "Sanctions Are Congress's Path Back to Foreign Policy Relevance," *Lawfare Blog*, March 27, 2018, <https://www.lawfareblog.com/sanctions-are-congress-path-back-foreign-policy-relevance>. One possible limitation on

THE ROOT OF ALL EVIL

Joshua Stanton

The most obvious means for Congress to block premature sanctions relief would be to reimpose the sanctions legislatively. Both the NKSPEA and the CAATSA passed Congress by overwhelming, veto-proof margins. Just as a previous Congress overrode President Reagan's veto to pass the Comprehensive Anti-Apartheid Act of 1986,⁴⁹¹ Congress could legislate sanctions that the President attempted to lift over its protests, possibly in expanded form with increased oversight and reporting requirements.⁴⁹²

In doing so, Congress could also amend the NKSPEA to empower the Justice Department to enforce it judicially through civil forfeiture laws, regardless of whether the Treasury Department designates the alleged violator. It could also require the Secretary of the Treasury to make findings about whether specific Chinese banks tolerated North Korean money laundering, whether those banks were compliant with their enhanced due diligence obligations to prevent North Korean money laundering,⁴⁹³ and whether it will impose Patriot Act special measures on them.⁴⁹⁴

The Treaty Clause of the Constitution gives Congress powers to review an agreement with Pyongyang. Before the Singapore Summit, both the Senate Majority Leader and the Chairman of the Senate Foreign Relations Committee called on the White House to submit any agreement with Kim Jong-un to the Senate for ratification.⁴⁹⁵ This would have required two-thirds of the Senate to vote to ratify it.⁴⁹⁶ Before the Hanoi summit, senators from both parties again asked to review the

Congress's power is the constitutional prohibition against the legislative veto—an Act of Congress that delegates a power to the President but retains a conditional power to disapprove the President's exercise of power without enacting new legislation. See *INS v. Chadha*, 462 U.S. 919 (1983); "Legislative Vetoes After Chadha," *U.S. Congressional Research Service*, May 2, 2005, https://www.everycrsreport.com/files/20050502_RS22132_f3f5994c75ce9c1c1ac4aac4c3b019cfc61f2f38.pdf.

491 Pub. L. No. 99-440, 100 Stat. 1086 (1986).

492 Leverage to Enhance Effective Diplomacy Act of 2019, S. 2050, 116th Cong., § 402 (2019), <https://www.congress.gov/bills/116/congress/senate/bills/2050/text?q=%7B%22search%22%3A%5B%22LEED+act+north+korea%22%5D%7D&rs=1&sm=1>.

493 See 31 C.F.R. § 1010.659.

494 See 31 U.S.C. § 5318A.

495 Jordain Carney, "McConnell: Any North Korea deal should be submitted to Congress," *The Hill*, June 12, 2018, <https://thehill.com/homenews/senate/391902-mcconnell-submit-north-korea-deal-to-congress>; Rebeca Kheel, "Lawmakers push for role in North Korea talks as Iran scars linger," *The Hill*, June 7, 2018, <https://thehill.com/policy/defense/391078-lawmakers-push-for-role-in-north-korea-talks-as-iran-scars-linger>; see U.S. Const. art. II § 2. For a discussion of the factors that may distinguish a treaty from an international agreement that does not require Senate ratification, see U.S. Dep't of State, "Treaties and Other International Agreements" and "Considerations for Selecting Among Constitutionally Authorized Procedures" in *Foreign Affairs Manual* (1955); "Treaties and Other International Agreements: The Role of the United States Senate," S. Rept. 106-71, 106th Congress, 2d Sess. *U.S. Congressional Research Service*, January 2001.

496 U.S. CONST. ART. II.

Money, Rice, Crime & Law in North Korea

terms of any agreement with Pyongyang.⁴⁹⁷

Alternatively, if the President reaches an agreement with Pyongyang but lacks the votes for Senate ratification, Congress could pass new legislation to modify the sanctions or the conditions for lifting them, as it did when President Obama lacked the votes for ratification of the Joint Comprehensive Plan of Action.⁴⁹⁸ Congress could also withhold funds for fuel, aid, the normalization of diplomatic relations, or the construction of consular facilities.⁴⁹⁹ Finally, any senator could place a hold on the confirmation of an administration official to delay or modify the implementation of an agreement.⁵⁰⁰

B. How to Give Sanctions Relief The Objectives of Escrow

Part I of this report established that Pyongyang's diversion of North Korea's national resources to its military-industrial complex and oligarchy is a manifestation of its kleptocracy—its most serious human rights abuse when measured by its death toll or the breadth of its impact on human development.

Part II established that existing authorities obligate states generally, and the United States in particular, to freeze and confiscate the proceeds of kleptocracy.

Part III established that U.S. law enforcement authorities are legally and operationally capable of exerting substantial economic pressure on Pyongyang, recouping stolen North Korean assets from the financial system, and deterring banks from laundering the proceeds of Kim Jong-un's kleptocracy—if the President has the political will to let them.

497 Elana Shor, "Congress looks to horn in on Trump's North Korea deal," *Politico*, June 4, 2018, <https://www.politico.com/story/2018/06/04/democrats-north-korea-agenda-621819>.

498 Iran Nuclear Review Act of 2015, Pub. L. No. 114-17, 129 Stat. 201 (2015).

499 See Dep't of Defense Appropriations Act of 2019, § 8041, S. 3159, 115th Cong., 2d Sess. (2018) ("None of the funds appropriated or otherwise made available in this Act may be obligated or expended for assistance to the Democratic People's Republic of Korea unless specifically appropriated for that purpose"); Dep't of State, Foreign Operations, & Related Programs Appropriations Act, 2019, § 7007, H.R. 6385, 115th Cong., 2d Sess. (2018) ("None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance or reparations for the governments of Cuba, North Korea, Iran, or Syria . . ."); *Id.* § 7043 ("None of the funds made available by this Act under the heading 'Economic Support Fund' may be made available for assistance for the Government of North Korea").

500 Elizabeth Rybicki, Senate Consideration of Presidential Nominations: Committee and Floor Procedure 10, *U.S. Congressional Research Service*, April 4, 2019, <https://www.senate.gov/CRSPubs/74919ab6-b407-451c-b429-702e9ac8dcb1.pdf>.

THE ROOT OF ALL EVIL

Joshua Stanton

Part IV established that agreements to trade limited sanctions relief for a limited freeze, without extracting broad and durable commitments to transparency and fundamental reforms, have historically exacerbated Pyongyang's threats to human security both within and beyond North Korea's borders. Congress has been increasingly assertive in legislating North Korea sanctions policy, and it has the constitutional and legislative means to review or block an agreement that gives premature sanctions relief.

If America and its allies are to move beyond a diplomacy of instant gratification and the paralysis of Russian and Chinese obstructionism, they require a long-term, bipartisan, multilateral strategy to unite them around common objectives, offering Pyongyang positive and negative incentives to disarm, reform, and live in peace with the world. They also require a strategy that maintains that peace by maintaining their leverage.

The U.S. can use its financial and diplomatic influence to unite the issuers of convertible currencies into a coalition to freeze and confiscate the proceeds of Pyongyang's crime, proliferation, and kleptocracy; to place those funds under the control of a coalition Receiver; and to disburse the funds in limited amounts, for purposes that serve the humanitarian needs of the North Korean people. If Pyongyang makes progress toward disarmament, transparency, and reform, recovered funds can also rehabilitate its infrastructure, public health facilities, and civilian economy.

This form of sanctions relief, which confiscates the proceeds of kleptocracy with one hand and offers the proceeds back to the people of North Korea with the other, would not require the relaxation of any sanctions. It is compatible with both the UN Security Council's resolutions and U.S. domestic law. It would not require Congress to accept Pyongyang's threats to U.S. interests, U.S. allies, global nonproliferation, or the people of North Korea. It would not expect the financial industry to become a safe haven for crime and corruption, and it could leverage existing law to create reputable banking channels for humanitarian aid. If Pyongyang makes good-faith commitments to disarmament and reform, an escrow model of sanctions enforcement and relief could fund limited incentives for a "small deal" while withholding the long-term leverage to enforce an agreement.

Until Pyongyang complies with UN Security Council resolutions and accepts fundamental humanitarian reforms, the coalition states must keep the pressure firmly on. They must enforce their sanctions and anti-corruption laws, holding the proceeds of corruption in escrow, and disburse them as limited and carefully monitored relief for the benefit of the people whose needs are greatest. They must not cede the leverage necessary to make progress before they extract progress. Pyongyang, Beijing, and Moscow will not cooperate with this strategy voluntarily; consequently, it may be necessary for a coalition of allied nations to enforce it using UN authorities, but outside

Money, Rice, Crime & Law in North Korea

the UN framework. Escrow, like sanctions, is a coercive strategy, to be implemented by a coalition of issuers of convertible currencies, based on agreed goals and principles.

If the narrow objective of coercing Pyongyang to negotiate its own disarmament seems unlikely to succeed, and if Pyongyang's history tells us that coexistence with a nuclear North Korea will continue to threaten core U.S. and allied interests, it follows that our strategy must broaden to cut the deeper political and ideological roots from which all of its destructive behaviors arise. Pyongyang must not only be denied the means to continue them. It must conclude that their continuation threatens the integrity of the state. At the same time, it must be offered a path to survival, prosperity, and peace in exchange for disarmament and a steady evolution toward reform.

The coalition's greatest coercive power is not the threat of war, but to empower change from within North Korea. It can target the trading companies that maintain Pyongyang's control over the civilian population and weaken the forces of the state that repress change from within. It can wage a war of ideas by broadcasting detailed and credible facts about the state's kleptocracy, corruption, international illegitimacy, refusal of foreign assistance, and disregard for the welfare of the people.

Money, as we have seen, is the root of all evils that stalk the people of North Korea, and ultimately, the United States and its allies. Their common purpose must be to seize and freeze Pyongyang's misspent wealth and to put the world—including the people of North Korea—on notice that this wealth may only be used for the peaceful and humane benefit of the people to whom it rightfully belongs. All prospective members of the coalition share common interests in global nonproliferation, the preservation of peace, the integrity of the global economy, funding and promoting humanitarian aid for the people of North Korea, and opposing crimes against humanity through legal accountability.

The coalition must agree on principles of sound financial management. The failure of the Iraq Oil-for-Food program has taught us that any escrow fund to benefit the victims of a kleptocracy must be administered with integrity and transparency.

THE ROOT OF ALL EVIL

Joshua Stanton

1. Building a Global Coalition for a Lasting Peace

In late 2021, naval vessels from the United Kingdom, Germany, France, Australia, and Canada, and naval patrol aircraft from Canada and New Zealand, joined the U.S. Coast Guard and the Japanese Naval Self-Defense Force in patrolling waters near North Korea to monitor smuggling and sanctions violations. The formation of this coalition is welcome news, but there are also limits to a naval interdiction strategy. Military deployments are expensive. They carry an inherent risk of conflict if they involve boarding a vessel, even with the consent of the flag state. A naval coalition cannot effectively regulate maritime trade between North Korea and its two largest trading partners, China and Russia.⁵⁰¹

Nonetheless, the composition of this coalition suggests that the issuers of the world's convertible currencies—the U.S. Dollar; the Euro; the Yen; the Pound; and the Canadian, Australian,

501 See German Federal Foreign Office, "German contribution to monitoring North Korea sanctions," December 11, 2021, <https://www.auswaertiges-amt.de/en/aussenpolitik/regionaleschwerpunkte/asien/sanktionen-nordkorea/2495750> ; "How the French navy enforces UN sanctions on North Korea," *Deutsche Welle*, November 24, 2021, <https://www.dw.com/en/how-the-french-navy-enforces-un-sanctions-on-north-korea/av-59921167>; Colin Zwirko, "German warship arrives in Japan to join DPRK sanctions mission for first time," *NK News*, November 8, 2021, https://www.nknews.org/2021/11/german-warship-arrives-in-japan-to-join-dprk-sanctions-mission-for-first-time/?utm_source=dlvr.it&utm_medium=twitter; "International partners increase patrols to uphold North Korea sanctions," *Indo-Pacific Defense Forum*, November 5, 2021, <https://ipdefense-forum.com/2021/11/international-partners-increase-patrols-to-uphold-north-korea-sanctions/>; Japan Ministry of Foreign Affairs, "Monitoring and surveillance activities by New Zealand against illicit maritime activities including ship-to-ship transfers," November 4, 2021, https://www.mofa.go.jp/press/release/press3e_000265.html; Chaewon Chung, "Australia deploys warship to enforce UN sanctions against North Korea," *NK News*, October 29, 2021, https://www.nknews.org/2021/10/australia-deploys-warship-to-enforce-un-sanctions-against-north-korea/?utm_source=dlvr.it&utm_medium=twitter; Japan Ministry of Foreign Affairs, "Monitoring and surveillance activities by Canada against illicit maritime activities including ship-to-ship transfers," October 13, 2021, https://www.mofa.go.jp/press/release/press3e_000255.html; Ridzwan Rahmat, "HMS Richmond captures evidence of North Korean sanctions violations," *Janes*, September 27, 2021, <https://www.janes.com/defence-news/news-detail/hms-richmond-captures-evidence-of-north-korean-sanctions-violations>; Japan Ministry of Foreign Affairs, "Monitoring and surveillance activities by Canada against illicit maritime activities including ship-to-ship transfers," September 9, 2021, https://www.mofa.go.jp/press/release/press3e_000243.html; Dzirhan Mahadzir, "U.S. Coast Guard Continues to Expand Presence in the Western Pacific," *USNI News*, September 3, 2021, <https://news.usni.org/2021/09/03/u-s-coast-guard-continues-to-expand-presence-in-the-western-pacific>; Artem Sherbinin, "Enforcing Sanctions on North Korea Is an Opportunity for Cooperation at Sea, War on the Rocks," March 16, 2021, <https://warontherocks.com/2021/03/enforcing-sanctions-on-north-korea-presents-an-opportunity-for-cooperation-at-sea/>; Christian Lopez, "Coast Guard Cutter Keeps Eye on North Korea During Patrol of East China Sea," *Stars and Stripes*, March 20, 2019, <https://www.military.com/daily-news/2019/03/20/coast-guard-cutter-keeps-eye-north-korea-during-patrol-east-china-sea.html>; U.S. Coast Guard, "Coast Guard Cutter Conducts Sanctions Patrol Against North Korea," October 24, 2019, <https://www.defensemedianetwork.com/stories/coast-guard-cutter-conducts-sanctions-patrol-against-north-korea/>.

Money, Rice, Crime & Law in North Korea

and New Zealand dollars—recognize their common interests in the enforcement of UN sanctions. Forming this naval coalition into a financial coalition could achieve a far greater impact at a lower cost and risk. And in the cases of the M/V *Wise Honest* and the M/T *Courageous*, finance and law offer peaceful and effective outcomes to the work of maritime patrols. Other international institutions, including the World Bank, the Financial Action Task Force, and the Proliferation Security Initiative, could be invited to advise and support a financial coalition.

As Pyongyang resists cooperation, coalition member states can escalate the coercive character of their uses of confiscated state funds. Not every member of the coalition would necessarily agree to all of the following purposes for escrow expenditures. Member states should be free to join or abstain from supporting the following objectives with the assets they seize and contribute to the fund:

To Retard Pyongyang's Proliferation. Slowing, and eventually reversing, Pyongyang's proliferation is the most obvious reason for sanctions enforcement. Other UN member states with a shared interest in halting Pyongyang's proliferation have recently sought ways to expand their cooperation and intelligence-sharing.⁵⁰² The pooling of financial intelligence, law enforcement, and humanitarian aid policy to advance nonproliferation and political reforms benefiting the North Korean people would be a logical confluence of those shared interests. Pyongyang's human rights abuses are also linked to its proliferation and arms dealing abroad. An MSS official, Ri Won-ho, has worked in both Egypt and Syria as an arms dealer.⁵⁰³ Another MSS official, Jo Yong-chol, operates as an arms dealer for KOMID in Syria, where the UN has implicated North Korea in helping Damascus make and use the chemical weapons to kill civilians.⁵⁰⁴

To Obstruct the Military-Industrial Complex. Effective enforcement can damage Pyongyang's military-industrial complex by targeting the trading companies that support it for blocking and forfeitures. It can disrupt the payrolls and logistics of elite military units. By depressing morale and readiness, it can convince Pyongyang that any war would be unwinnable, deter war, and

502 Ankit Panda, "Five Eyes' Countries Eye Expanded Cooperation Amid North Korea Challenges," *The Diplomat*, January 28, 2020, <https://thediplomat.com/2020/01/five-eyes-countries-eye-expanded-cooperation-amid-north-korea-challenges/>.

503 *United Nations Security Council Consolidated List*, September 8, 2020 <https://scsanctions.un.org/fop/fop?xml=htdocs/resources/xml/en/consolidated.xml&xslt=htdocs/resources/xsl/en/consolidated.xsl>; Hamish Macdonald, "Egypt denies North Korean ambassador deportation claims," *NK News*, May 5, 2016, <https://www.nknews.org/2016/05/egypt-denies-north-korean-ambassador-deportation-claims/>.

504 U.S. Dep't of Treasury, "Announcement of Sanctions against North Korean Transportation, Mining, Energy, and Financial Services Industries and North Korean Government Officials and Organizations," March 16, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0385.aspx>; Michael Schwartz, "U.N. Links N. Korea to Syria's Chemical Weapons Program," *New York Times*, February 27, 2018, <https://www.nytimes.com/2018/02/27/world/asia/north-korea-syria-chemical-weapons-sanctions.html>.

THE ROOT OF ALL EVIL

Joshua Stanton

dissuade it from diverting such a high percentage of North Korea's national resources away from human development to military spending.

To Deter Nuclear and Missile Testing. The five-year period since September 2017 marks the longest period without a significant nuclear test since North Korea's first nuclear test in October 2006. Most of this period coincided with a freeze in military exercises that would, over the long term, degrade the interoperability, integrity, and deterrence of the U.S.-South Korean military alliance. An exercise freeze will not be sustainable in perpetuity.

This five-year period also coincides with the time since Pyongyang began to feel the effects of the new sanctions on state finance and industry. Whether this prolonged testing pause suggests the utility of sanctions as a deterrent is unknowable without more evidence, but Kim Jong-un's destruction of the Kaesong Liaison Office in 2020, and his prolonged refusal to answer an inter-Korean military hotline, would seem to rule out improved inter-Korean relations as an alternative explanation. A credible threat that continued testing and proliferation will result in intensified enforcement, and the undermining of the state's finances, legitimacy, and cohesion, could offer coalition states more options to deter Pyongyang's threats to international and regional peace.

To Enforce the Law, Prevent Crime, Fight Corruption, & Defend Our Economic Sovereignty. Every nation has the sovereign right to use its domestic laws to protect its financial and commercial systems against money laundering, bank fraud, computer hacking, drug trafficking, and other crimes. These crimes are serious infringements on the interests of the nations through which Pyongyang chooses to commit them. Enforcing national laws against financial crimes is essential to maintaining the integrity of our financial system. Pyongyang's status as a state actor does not exempt it from those laws. The enforcement of national Anti-Money Laundering and sanctions laws is a responsibility the U.S. has undertaken to implement UN Security Council resolutions.⁵⁰⁵

505 Financial Action Task Force, "High Risk Jurisdictions subject to a Call for Action," February 21, 2020, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html> ("The FATF remains concerned by the DPRK's failure to address the significant deficiencies in its anti-money laundering and combating the financing of terrorism (AML/CFT) regime and the serious threats they pose to the integrity of the international financial system. The FATF urges the DPRK to immediately and meaningfully address its AML/CFT deficiencies. Further, the FATF has serious concerns with the threat posed by the DPRK's illicit activities related to the proliferation of weapons of mass destruction (WMDs) and its financing"); U.S. Dep't of Treasury, Financial Action Task Force, "Advisory on the Financial Action Task Force-Identified Jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism Deficiencies," FIN-2020-A001, March 6, 2020, https://www.fincen.gov/sites/default/files/advisory/2020-03-25/FATF%20February%202020%20Advisory%20FINAL%20508_0.pdf.

Money, Rice, Crime & Law in North Korea

To Fund Enforcement, Both Domestically and Abroad. We have seen in Part II that UN conventions support the limited use of confiscated proceeds of crime to support law enforcement, and in Part III that Congress may redirect the proceeds of fines, penalties, and forfeitures to fund law enforcement, compensate the victims of crime or state-sponsored terrorism, or any other purpose it legislates. Congress has long expressed its displeasure with the insufficiency of resources devoted to North Korea sanctions or financial crime enforcement. By limiting the purposes for which these funds are available, Congress can constitutionally force the President to fully resource an enforcement campaign and make additional funds available to build enforcement capacity abroad. Potential vehicles for capacity-building include revenue sharing of forfeited revenue and grants to non-governmental or multilateral organizations—the World Bank, the Financial Action Task Force, or organs established under UN Security Council Resolution 1540.⁵⁰⁶

To Hold Perpetrators Accountable for Crimes Against Humanity. The 2014 report of the UN COI recommended multiple alternatives for accountability for crimes against humanity in North Korea, including a referral to the International Criminal Court and the imposition of targeted sanctions against perpetrators.⁵⁰⁷ The European Union recently joined the United States in imposing sanctions on senior North Korean officials responsible for human rights abuses.⁵⁰⁸ These national sanctions follow years of attempts by the United States and the European Union to pursue accountability at the UN Security Council, and years of obstruction of those efforts by Beijing and Moscow.⁵⁰⁹ That obstructionism leaves targeted national sanctions as the only available form of accountability. Pyongyang's strong reaction to the UN COI's report⁵¹⁰ and its demoralizing

506 See 18 U.S.C. § 981(i).

507 UN COI ¶ 1196, 1225(a).

508 Council of the European Union, "EU imposes further sanctions over serious violations of human rights around the world," March 22, 2021, <https://www.consilium.europa.eu/en/press/press-releases/2021/03/22/eu-imposes-further-sanctions-over-serious-violations-of-human-rights-around-the-world/>; U.S. Dep't of State, "Report on Human Rights Abuses or Censorship in North Korea," January 11, 2017, <https://web.archive.org/web/20170114033956/https://www.state.gov/j/drl/rls/266853.htm>; U.S. Dep't of Treasury, "Treasury Sanctions North Korean Senior Officials and Entities Associated with Human Rights Abuses," July 6, 2016, <https://www.treasury.gov/press-center/press-releases/pages/jl0506.aspx>.

509 "Joint Open Letter on Human Rights in North Korea," October 10, 2021, <https://www.hrw.org/news/2021/10/10/joint-open-letter-human-rights-north-korea>; Robert R. King, Korea Economic Institute of America, "UN Security Council Discusses Human Rights in North Korea for the First Time in Three Years," The Peninsula blog, December 15, 2020, <https://keia.org/the-peninsula/un-security-council-discusses-human-rights-in-north-korea-for-the-first-time-in-three-years/>; Robert R. King, "Fifth Anniversary of the Landmark Report of the UN Commission of Inquiry on North Korean Human Rights," Center for Strategic and International Studies, February 21, 2019, <https://www.csis.org/analysis/fifth-anniversary-landmark-report-un-commission-inquiry-north-korean-human-rights>.

510 David Hawk, "North Korea Responds to the UN Commission of Inquiry," October 16, 2014, <https://www.38north.org>.

THE ROOT OF ALL EVIL

Joshua Stanton

effect on North Korean diplomats⁵¹¹ suggest that human rights sanctions the assets they seize and contribute to the fund its legitimacy by accepting monitored food and medical assistance, and more meaningful humanitarian engagement.

To Defund the Police State. In addition to the important symbolic step of targeting senior North Korean officials, despite their lack of direct exposure to the financial system, coalition members should adopt the more practical strategy of targeting the financial infrastructure that pays and equips the specific agencies that perpetrate crimes against humanity. North Korean government agencies fund their salaries and expenses through their own foreign trade networks, which sanctions can target selectively. For example:

- As noted, the Ministry of State Security controls Shinheung Trading Company, which exports iron ore and seafood. OFAC has not designated Shinheung Trading.
- The army, whose border guards keep people in and information out, sells seafood⁵¹² and coal through a front called Songi Trading Company. Songi is the former operator of North Korea's second-largest bulk cargo carrier, the M/V *Wise Honest*, which a federal court in New York forfeited in 2019.⁵¹³
- The internal security forces have also funded themselves through their own cross-border trading companies.⁵¹⁴

org/2014/10/dhawk101614/.

511 Boram Park, "High-profile defector sheds light on everyday life of N. Korean diplomats," *Yonhap News*, February 1, 2017, <https://web.archive.org/web/20170201145741/http://english.yonhapnews.co.kr/northkorea/2016/12/29/0401000000AEN20161229003100315.html> (quoting Thae Yong-ho's recollection that "I, myself, had to cry hooray for Kim Jong-un ... but I had a very difficult time defending the North Korean state during meetings with people in Britain in which most people denounced the North's system and challenged my vindication of it."); Jee-hye Yoo and Sarah Kim, "North Korean embassies defend Kim's reputation," *JoongAng Daily*, January 4, 2017, <https://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3028268>; Brian Padden, "Defector: Criticism of Nuclear Program Only Strengthens Kim," *Voice of America*, January 6, 2017, <https://www.voanews.com/a/defector-north-korea-nuclear-program-strengthens-kim/3665504.html>.

512 Choi Song-min, "Fragile habitats devastated by fisheries push," *Daily NK*, February 3, 2016, <https://web.archive.org/web/20160211152014/http://www1.dailynk.com/english/read.php?catId=nk01500&num=13734>.

513 U.S. Dep't of Treasury, "Treasury Sanctions Individuals and Entities Supporting the North Korean Government and its Nuclear and Weapons Proliferation Efforts," December 2, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0677.aspx>.

514 Joon-ho Kim, "New State Security Organization Earning Foreign Cash For North Korean Regime," *Radio Free Asia*, October 7, 2015, <https://www.rfa.org/english/news/korea/currency-10072015130531.html>; U.S. Dep't of Treasury, "Treasury Sanctions Additional North Korean Officials and Entities In Response To The North Korean Regime's Serious Human Rights Abuses and Censorship Activities," January 11, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/jl0699.aspx>; U.S. Dep't of Treasury Press Release, "Treasury Sanctions Additional North Korean Officials and Entities in Response to the

Money, Rice, Crime & Law in North Korea

- The Reconnaissance General Bureau (RGB) dispatches assassins to abduct refugees and murder human rights activists abroad, is responsible for the Cheonan and Yeonpyeong-do attacks in South Korea, and carried out the 2014 Sony Pictures cyberattack.⁵¹⁵ It funds itself in part through coal and iron ore exports through the Paeksol Trading Company.⁵¹⁶
- The RGB-controlled network known as Glocom sells military radios and seafood through UN- and OFAC-designated banks, such as Korea Kwangson Banking Corporation.⁵¹⁷ OFAC has never designated Glocom or its neighboring network, Malaysia-Korea Partners.
- The Propaganda and Agitation Department, which is designated by both the United States and the UN Security Council, controls the heavily censored state media. It earns money by collecting royalties from foreign news organizations.⁵¹⁸

These companies and support networks would become primary targets of a counter-repression sanctions strategy. Defunding the police state could disrupt the state's capacity to seal the borders, hunt down cell phone users, censor non-state media, and confiscate private remittances intended for the poor and hungry. It could deny the state the means to operate political prison

Regime's Serious Human Rights Abuses and Censorship Activities," October 26, 2017, <https://home.treasury.gov/news/press-releases/sm0191>.

515 U.S. Dep't of Treasury, "Treasury Sanctions Suppliers of North Korea's Nuclear and Weapons Proliferation Programs," June 1, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0099.aspx>.

516 U.S. Dep't of Treasury, "Treasury Sanctions Agents Linked to North Korea's Weapons of Mass Destruction Proliferation and Financial Networks," March 31, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0039.aspx>; U.S. Dep't of Treasury, "Treasury Designates Two Shipping Companies for Attempted Evasion of North Korea Sanctions," March 21, 2019, <https://home.treasury.gov/news/press-releases/sm632>.

517 S/2018/171 ¶¶ 169-77; U.S. Dep't of Treasury, "Treasury Sanctions Agents Linked to North Korea's Weapons of Mass Destruction Proliferation and Financial Networks," March 31, 2017, <https://home.treasury.gov/news/press-releases/sm0039>; U.S. Dep't of Treasury, "Treasury Imposes Sanctions Against the Government of The Democratic People's Republic Of Korea," January 2, 2015, <https://www.treasury.gov/press-center/press-releases/Pages/j19733.aspx>; Choi Song-min, "Sanctions include RGB for the first time, but can they be enforced?," *Daily NK*, March 14, 2016, <https://www.dailynk.com/english/sanctions-include-rgb-for-the-first/>. For information on protein deficiencies in the diets of North Korean children and how this affects their growth and development, see Soo-kyung Lee, "North Korean Children: Nutrition and Growth," *Annals of Pediatric Endocrinology & Metabolism*, December 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5769832/>; Anthony Kuhn, "Why South Korea Is Sending \$8 Million In Food Aid To North Korea," *NPR*, June 9, 2019, <https://www.npr.org/sections/goatsandsoda/2019/06/09/730441007/why-aid-wont-fix-north-koreas-recurring-food-shortages>.

518 U.S. Dep't of Treasury, "Announcement of Sanctions against North Korean Transportation, Mining, Energy, and Financial Services Industries and North Korean Government Officials and Organizations," *NK News*, March 16, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/j10385.aspx>; Chad O'Carroll, "Foreign media asked to pay North Korea copyright by South Korean organization," *NK News*, September 6, 2019, <https://www.nknews.org/2019/09/foreign-media-asked-to-pay-north-korea-copyright-by-south-korean-organization/>.

THE ROOT OF ALL EVIL

Joshua Stanton

camps, and to suppress the rise of a market economy and private agriculture. It could thus indirectly improve the production and distribution of food, and shift North Korea's internal balance of power from the state to non-state networks. Eventually, a counter-repression strategy could create space for the emergence of independent journalists, clinics, trade schools, churches, and labor organizations.

To Fund Humanitarian Aid Programs. By forfeiting Pyongyang's misappropriated funds and the proceeds of its financial crimes, the U.S. and its allies can accumulate an escrow fund to pay for underfunded humanitarian aid programs through the same UN agencies and distribution channels from which Pyongyang has historically accepted aid. If initial efforts to distribute aid fairly and transparently succeed, and if Pyongyang makes progress toward disarmament and reform, escrow funds can also rehabilitate North Korea's civilian infrastructure and empower enduring, market-based solutions to the food crisis, such as land reform, sustainable agriculture, and more efficient food processing and transportation. If Pyongyang continues to refuse offers of aid, broadcasts to the North Korean people should publicize that refusal, raising internal political pressure on Pyongyang to accept aid and prioritize the needs of its people.

To Support Peaceful Development Abroad. Pyongyang induces less developed states, chiefly in the Middle East and Africa, to divert their scarce resources toward weapons and political monuments. In doing so, it exports kleptocracy and militarization, and fuels conflict in nations far from its own borders, such as in Syria.

To Recruit Human Intelligence Sources and Compromise Pyongyang's Financial Networks. Miscalculations cause wars. The disruption of Pyongyang's finances can encourage defections by regime agents abroad who cannot meet their remittance quotas and fear returning to Pyongyang. This can provide opportunities for foreign intelligence agencies to recruit informants within the regime's financial infrastructure, and to sow mistrust within those networks. Subsequent enforcement actions based on intelligence provided by informants would cause other regime agents to risk failing to meet their quotas and instigate a "death spiral" of the state's financial lifelines, raising the pressure on Pyongyang for a diplomatic agreement.

To Subvert the State's Propaganda. Achieving the highest coercive pressure for a disarmament agreement would require a sustained and well-resourced information program directed toward North Korea's elites, military, rural population, and market classes. A message to the military could sow dissension within command systems and discourage soldiers from obeying orders to fire on civilian targets during domestic unrest or war. A message to the elites would reassure them of their place in within a more open, reformed, and reunified Korea. A message to the rural poor would help them organize independent networks to grow and distribute food, and to aid the hungriest among them. An escrow program could eventually fund small-scale human-

Money, Rice, Crime & Law in North Korea

itarian operations by these independent networks. The threat to fund subversive broadcasts could create strong incentives for Pyongyang to accept a peace agreement and humanitarian aid to preempt information operations that accelerate regime decay.

2. Targeting Sanctions for Justice and Peace

Because we care more about the people of North Korea than Kim Jong-il or Kim Jong-un cares about them, our sanctions targeting must be precise and humane. We should avoid blockades against the economy as a whole and target vulnerabilities in the state's capacity to sustain itself through corruption, feed its military-industrial complex, and repress its people. War economies collapse when chokepoints close. In the case of Nazi Germany, the fuel shortages of 1944 and 1945 denied it the means to train pilots, defend its airspace, and fight a war of maneuver on two fronts.⁵¹⁹ Non-violent conflicts must also be waged strategically. It stands to reason that a narrowly focused, well-enforced sanctions campaign against a few of the state's critical vulnerabilities will be more effective, legitimate, and humane than a broadly focused, poorly enforced campaign against the North Korean economy as a whole. Therefore, sanctions and engagement strategies should discriminate between three broad categories of potential targets:

“Red” entities are persons and entities within the networks that support the regime's proliferation, and its immune system against liberalism and reform—the military-industrial complex and the security forces. They are under direct state control and either engage in, finance, or facilitate proliferation, terrorism, arms trade, cyberattacks, censorship, slave labor, and human rights abuses—the conduct subject to mandatory sanctions under section 104(a) of the NKSPEA. Some of these entities are designated by the U.S. Treasury Department, the UN Security Council, or the European Union. Others are undesignated but have common directors, personnel, locations, email addresses, and clients. Even when these targets trade in non-sanctioned goods, their profits sustain the destructive and repressive work of their parent organizations. The coalition of like-minded states should seize every favorable opportunity to impede or defund them, or to use their diplomatic influence to have their operatives expelled. This, in turn, will increase the state's dependence on “yellow” entities.

“Yellow” entities may include state-owned enterprises like Samhwa, a textile producer that was recently ordered to import corn, beans, and flour to make up for a failed harvest.⁵²⁰ Textile exports

519 U.S. Strategic Bombing Survey, *Summary Report, European War*, September 30, 1945, <https://www.anesi.com/ussbs02.htm>.

520 Ha Yoon-ah, “North Korean foreign trade businesses ordered to import corn,” *Daily NK*, November 13, 2018, <https://www.dailynk.com/english/north-korean-foreign-trade-businesses-ordered-to-import-corn/>.

THE ROOT OF ALL **EVIL**

Joshua Stanton

were banned by UN Security Council Resolution 2375, but the coalition has neither a legal basis for—nor an interest in—blocking Samhwa’s transactions to buy and ship food. In other cases, yellow targets may be quasi-private traders (*donju*) who trade on their political connections and graft to gain access to international trade and finance, usually with China. They will do whatever is profitable, including sanctions violations, illicit activity, or sourcing and transporting food that supplies the markets that feed the hungry. They are often under suspicion by the regime, which tolerates them because they provide goods more efficiently than the state can. The coalition should address each line of commerce these entities engage in on its own merits. It should block transactions involving illicit commerce and allow transactions that benefit the poor. Its objective should be to compel them to shift from sanctioned to non-sanctioned trade, such as food imports. Some evidence suggests that a few state trading companies have already adapted to sanctions in this manner.⁵²¹

“**Green**” entities are non-state traders, who may pay bribes and protection money to the security forces, but who are otherwise independent of state control. They include illegal cross-border smugglers, private-plot (*sotoji*) farmers, and market traders and businesspeople who pay bribes to officials. Most of these entities have minimal access to international finance or export markets, access to which is largely monopolized by Pyongyang. Our objective should not only be to avoid harming green entities, but also to support their proliferation and growth as much as possible—particularly those that support the private agriculture and trade that sustain most North Koreans. As sanctions damage the military-industrial complex and trading companies under its control, the security forces will increasingly rely on bribes from, and extortion of, green entities.⁵²² The people will also increasingly depend on their produce to survive.

Carefully targeted sanctions can shift the balance of economic and political power from the state

521 Sung-hui Moon and Kyung-ha Rhee, “North Korean State Trading Firms Raise Cash on Food Imports From China,” *Radio Free Asia*, November 15, 2017, <https://www.rfa.org/english/news/korea/imports-11152017100152.html>.

522 “In sanctioned North Korea, bribery problem worsens,” *Daily NK*, January 9, 2018, <https://www.dailynk.com/english/in-sanctioned-north-korea-bribery/>; Ha Yoon-ah, “North Korea’s Group 109 ratchets up crackdowns in Ryanggang Province,” *Daily NK*, June 18, 2019, <https://www.dailynk.com/english/north-korea-group-109-ratchets-up-crackdowns-in-ryanggang-province/>; In-hua Kim, “Ask a North Korean: is anyone genuinely loyal to the ruling Kims anymore?,” *Daily NK*, August 12, 2019, https://www.nknews.org/2019/08/ask-a-north-korean-is-anyone-genuinely-loyal-to-the-ruling-kims-anymore/?c=1565597505727&utm_content=bufferae553&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer; Kang Mi-jin, “Markets provide relief for ordinary people hurting from sanctions,” January 2, 2018, <https://www.dailynk.com/english/markets-provide-relief-for-ordinary/>. In 2008, the state tried to ban remittances. *North Korea Today*, 112th ed., February 2008, [https://web.archive.org/web/20080315172452/http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/MMAH-7C73D6-full_report.pdf/\\$File/full_report.pdf](https://web.archive.org/web/20080315172452/http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/MMAH-7C73D6-full_report.pdf/$File/full_report.pdf). The lure of corruption has caused the security forces to extort those who receive remittances rather than punish them.

Money, Rice, Crime & Law in North Korea

toward the “wavering” and “hostile” classes. By empowering the poor, the coalition can help them resist the state’s efforts to squeeze and tax them to make up for revenue lost to sanctions. It can help independent actors earn money to bribe their way out of state control, and to buy indulgences from crackdowns on commerce, information, and dissent. It is in the humanitarian and security interests of the coalition to empower the poor, not to impoverish them. It is in our shared interest to catalyze North Korea’s evolution toward a more humane, equal, and open society. The coalition should pursue these interests through diplomacy, information operations, and the careful targeting of security forces that torment green entities, supporting appropriate humanitarian licenses and exemptions, and using the proceeds of Kim Jong-un’s kleptocracy to support them with alternative payment systems as soon as our evolving technology allows it.

When the necessary communications technology becomes available, coalition nations should open free communications between North Korea’s poor and the wider world, including their relatives in South Korea.⁵²³ They should seek to bypass the state and directly engage the people, providing broadcasts to enhance freedom of information and setting up guerrilla banking channels that enable better access to remittances and cross-border trade. These, in turn, can build up an independent domestic economy and civil society organizations to feed the hungry and heal the sick. An informed population will eventually demand that the resources of their nation be used for their own welfare.

3. Escrow and Diplomacy

An escrow model of sanctions enforcement and relief would test the sincerity of Pyongyang’s amenability to transparency, opening, and reform. By forfeiting misspent funds and disbursing them for humanitarian purposes, a coalition can compel Kim Jong-un to make better decisions with the wealth that rightfully belongs to the North Korean people. If Kim Jong-un can still be persuaded to disarm, reform, and accept peaceful coexistence, escrow disbursements can help him make those changes. But he will only choose that path if all other alternatives are closed to him.

⁵²³ See Michael Schuille and Scott Fisher, “Satellite Internet Services—Fostering the Dictator’s Dilemma?,” *The Rand Blog*, April 12, 2021, <https://www.rand.org/blog/2021/04/satellite-internet-services-fostering-the-dictators.html>.

THE ROOT OF ALL EVIL

Joshua Stanton

Sanctions must do more than slow Pyongyang's proliferation or pressure it to return to talks. Until sanctions catalyze either the disarmament of North Korea or the fundamental alteration of its form of government, their most humane use is to defund the police state and build a framework of financial controls such that Pyongyang cannot write a check until an international Receiver endorses it as necessary for the humanitarian needs of the people. Escrow disbursements should always be available for emergency humanitarian aid, without regard to Pyongyang's conduct or negotiating position. That aid must prioritize children, nursing mothers, prisoners, the disfavored classes, and regions and recipients affected by sanctions. It must be closely monitored and distributed transparently and fairly through UN agencies.

Revenue-sharing provisions in the forfeiture laws can encourage allies to join a growing coalition to find and confiscate misspent funds.⁵²⁴ If enough of Pyongyang's funds come under the Receiver's control, its financial inability to pay and equip its military and security forces, or to provide for its elites, will raise internal pressure to reach a diplomatic resolution. If Pyongyang offers a full declaration of its WMD programs, lets IAEA inspectors in, freezes its nuclear and missile programs, and agrees to begin dismantling them, it will expect sanctions relief to maintain the essential functions of the state as it performs on its obligations. Any such relief must be limited, monitored, and focused on maintaining essential government services. If sanctions demonstrate the potential to threaten the stability of Kim Jong-un's rule, and if the processes of disarmament and verification take years to complete, those may be years the state's leaders would not have without some tailored and limited disbursement from an escrow fund.

As Pyongyang makes progress toward disarmament and reform, the coalition could authorize the Receiver to disburse funds to rehabilitate North Korea's agricultural self-sufficiency, public health, and infrastructure. The Treasury Department could use Section 208(d) of the NKSPEA to license a responsible foreign bank to clear transactions to fund aid and reconstruction.⁵²⁵ Even so, North Korea's deep history of corruption will require rigorous monitoring of each disbursement.⁵²⁶ Only when the coalition agrees that Pyongyang has met a set of rigorous conditions similar to those in section 402 of the NKSPEA would the Receiver transfer any balances remaining under the Receiver's control to the North Korean government.

⁵²⁴ 18 U.S.C. § 981(i).

⁵²⁵ 22 U.S.C. § 9228(d) (setting strict conditions on monitoring of humanitarian aid provided inside North Korea).

⁵²⁶ United Nations Office of the High Commissioner for Human Rights, *The price is rights: The violation of the right to an adequate standard of living in the Democratic People's Republic of Korea 19* (2019) ("[C]orruption appears to be endemic in the Democratic People's Republic of Korea. The 2018 Corruption Perceptions Index ranks the country in the bottom 3 per cent of countries worldwide, with its score (14) worse than the previous year (17)").

Money, Rice, Crime & Law in North Korea

True “maximum” pressure for Pyongyang to accept the conditions for a just and lasting peace is not a function of sanctions alone. A whole-of-government strategy must include diplomacy, law enforcement, information operations, intelligence, and the principled declaration assertion of shared values to the world—the people of North Korea most of all. Such a strategy will require time, patience, bipartisan continuity, and multilateral unity that must endure from one administration to the next. Congress’s expression of that bipartisan continuity is now codified in law. That law gives human rights defenders a seat at the tables of policymakers, to counsel them toward a policy that cuts the root of all evil, and that returns the fruit of a nation to its rightful owners.

THE ROOT OF ALL **EVIL**

Joshua Stanton

Appendix A:

UN, U.S. Statutory, and U.S. Regulatory Sanctions in Effect Against North Korea,
as of August 2019

	UN Security Council Resolutions (Security Council must agree to suspend). ⁵²⁷	U.S. Statute (Lifting requires Senate ratification as a treaty or authorizing legislation)	U.S. Executive Order (POTUS may either amend the regulation or grant a specific or general license) ⁵²⁸
Proliferation	<ul style="list-style-type: none"> North Korea must abandon all nuclear, ballistic missile, and other WMD programs in a complete, verifiable, and irreversible manner.⁵²⁹ 	<ul style="list-style-type: none"> POTUS shall designate any person who knowingly facilitates the export to or import from North Korea any goods, services, or technology that contributes to WMD use or development by any person.⁵³⁰ 	<ul style="list-style-type: none"> Previously prohibited by separate regulations and executive orders.⁵³¹ OFAC's North Korea Sanctions Regulations (NKSRS) authorize the blocking of all property of any person who knowingly engages in a transaction that funds or facilitates North Korea's WMD programs.⁵³²

⁵²⁷ To the extent that multiple UN resolutions sanction the same conduct, this table summarizes the most recent and authoritative provisions.

⁵²⁸ Most OFAC regulations block all property and interests of property of a person designated by the Secretary of State, in coordination with the Secretary of the Treasury. 31 C.F.R. Ch. V. The requirement for an executive designation under the NKSRS arguably conflicts with Congress's intent in enacting mandatory sanctions in section 104(a) and 104(c) of the NKSPEA.

⁵²⁹ S/RES/1718 ¶¶ 6-8; S/RES/2087 ¶ 3; S/RES/2094 ¶¶ 5 & 6; S/RES/2270 ¶¶ 3 & 4; S/RES/2321 ¶ 2; UNSC resolution 2356, Non-proliferation/Democratic People's Republic of Korea, S/RES/2356 (2017) ¶ 2; S/RES/2371 ¶ 2; S/RES/2375 ¶¶ 2 & 31; S/RES/2397 ¶ 2.

⁵³⁰ 22 U.S.C. § 9214(a)(1) & (a)(2).

⁵³¹ Exec. Order 13382, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," (2005); 31 C.F.R. Part 544.

⁵³² 31 C.F.R. § 510.201(a)(3).

Money, Rice, Crime & Law in North Korea

Arms Trafficking	<ul style="list-style-type: none"> Transactions in arms and related materiel to or from North Korea, or by its representatives, are prohibited.⁵³³ 	<ul style="list-style-type: none"> POTUS shall designate any person who knowingly facilitates import from or export to North Korea any weapons, or any services relating to their use or maintenance.⁵³⁴ 	<ul style="list-style-type: none"> Similar in NKSR, but subject to State/Treasury designation.⁵³⁵
Luxury Imports & Kleptocracy	<ul style="list-style-type: none"> Member states may not provide luxury goods to North Korea.⁵³⁶ 	<ul style="list-style-type: none"> POTUS shall designate any person who knowingly imports, exports, or re-exports luxury goods to or into North Korea.⁵³⁷ POTUS shall designate any person who knowingly contributes to the North Korean government's (or a North Korean official's) bribery, theft, misappropriation, or embezzlement of public funds.⁵³⁸ 	<ul style="list-style-type: none"> Similar in NKSR, but subject to State/Treasury designation.⁵³⁹ Most exports to North Korea require a license from the Commerce Department. Listed luxury items are subject to a presumption of denial.⁵⁴⁰
Food Exports	<ul style="list-style-type: none"> North Korea may not export food or agricultural products,⁵⁴¹ including fishing rights.⁵⁴² 	<ul style="list-style-type: none"> POTUS may designate any person who knowingly acquires significant types or amounts of food or agricultural products from North Korea.⁵⁴³ 	<ul style="list-style-type: none"> POTUS may designate a person who imports goods, services, or technology from North Korea to the U.S., whether directly or indirectly.⁵⁴⁴

533 S/RES/1718 ¶ 8(a)(i); S/RES/1874 ¶¶ 9, 10; S/RES/2270 ¶ 6.

534 22 U.S.C. § 9214(a)(9).

535 31 C.F.R. § 510.201(a)(3)(iv)(B).

536 S/RES/1718 ¶ 8(a)(iii).

537 22 U.S.C. § 9214(a)(3).

538 22 U.S.C. § 9214(g)(1)(F); 31 C.F.R. § 510.201(a)(3)(ix)(F).

539 31 C.F.R. § 510.201(a)(3)(ii)(C).

540 15 C.F.R. subpt. 746.1.

541 S/RES2397 ¶ 6.

542 Id. ¶ 6; see S/RES/2371 ¶ 10.

543 22 U.S.C. § 9214(b)(1)(K).

544 31 C.F.R. § 510.205; see also Exec. Order 13,570 (2011).

THE ROOT OF ALL **EVIL**

Joshua Stanton

Censorship	<ul style="list-style-type: none"> Although there are no UN sanctions against censorship per se, the Security Council has designated the Propaganda and Agitation Department, which is responsible for censorship.⁵⁴⁵ 	<ul style="list-style-type: none"> POTUS shall designate any person who knowingly engages in, is responsible for, or facilitates censorship by the Government of North Korea.⁵⁴⁶ 	<ul style="list-style-type: none"> Similar in NKSR, but subject to State/Treasury designation. Persons and entities designated include the Propaganda and Agitation Department and its head, Kim Yo-jong, the sister of Kim Jong-un.⁵⁴⁷
Labor Exports	<ul style="list-style-type: none"> Member states must expel North Korean workers by December 22, 2019.⁵⁴⁸ 	<ul style="list-style-type: none"> POTUS shall designate any person who knowingly engages in or facilitates the exportation of workers by North Korea, or the employment of such workers.⁵⁴⁹ POTUS shall designate persons employing North Korean laborers, unless it can be certified that the workers receive their own wages and are subject to working conditions consistent with international standards.⁵⁵⁰ 	<ul style="list-style-type: none"> The property of any person that has engaged in, facilitated, or been responsible for the exportation of workers by the government of North Korea is blocked, if designated by State/Treasury.⁵⁵¹ Individuals may file petitions requiring Customs to seize North Korean-made goods as products of forced labor.⁵⁵² The importation of goods, services, or technology from North Korea, whether directly or indirectly, is prohibited.⁵⁵³

⁵⁴⁵ S/RES/2397, Annex II.3.

⁵⁴⁶ 22 U.S.C. § 9214(a)(4).

⁵⁴⁷ 31 C.F.R. § 510.201(a)(3)(iv)(B).

⁵⁴⁸ S/RES/2397 ¶ 8.

⁵⁴⁹ 22 U.S.C. § 9214(g)(1)(C); 31 C.F.R. § 510.201(a)(3)(ix)(C).

⁵⁵⁰ *Id.* § 9241b(c)(1).

⁵⁵¹ 31 C.F.R. § 510.201(a)(3)(iv)(D).

⁵⁵² 19 C.F.R. § 12.42.

⁵⁵³ 31 C.F.R. § 510.205; see also Exec. Order 13,570 (2011).

Money, Rice, Crime & Law in North Korea

Labor Exports (Continued)		<ul style="list-style-type: none"> • Goods made with North Korean labor are presumed to be made with forced labor and are banned from U.S. commerce, but this presumption may be rebutted by clear and convincing evidence.⁵⁵⁴ • A country's use of North Korean laborers shall be a consideration in its tier ranking under the Trafficking Victims Protection Act.⁵⁵⁵ 	
Intellectual Property		<ul style="list-style-type: none"> • POTUS shall designate any person who knowingly engages in the counterfeiting of goods that supports North Korea or its officials.⁵⁵⁶ 	<ul style="list-style-type: none"> • Similar in NKSR, but subject to State/Treasury designation.⁵⁵⁷
Human Rights Abuses		<ul style="list-style-type: none"> • POTUS shall designate any person who knowingly engages in, is responsible for, or facilitates serious human rights abuses by the Government of North Korea.⁵⁵⁸ 	<ul style="list-style-type: none"> • Similar in NKSR, but subject to State/Treasury designation.⁵⁵⁹ Persons and entities designated include Kim Jongun, the Ministry of State Security, the Ministry of People's Security, and their senior officials.⁵⁶⁰

⁵⁵⁴ *Id.* § 9241a; *see* 19 U.S.C. § 1307.

⁵⁵⁵ 22 U.S.C. § 7108 (as amended by Pub. L. 115-44, § 321).

⁵⁵⁶ *Id.* § 9214(a)(6).

⁵⁵⁷ 31 C.F.R. § 510.201(a)(3)(iv)(E).

⁵⁵⁸ 22 U.S.C. § 9214(a)(5).

⁵⁵⁹ 31 C.F.R. § 510.201(a)(3)(iv)(B).

⁵⁶⁰ U.S. Dep't of Treasury, "Treasury Sanctions North Korean Senior Officials and Entities Associated with Human Rights Abuses," January 11, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/jl0506.aspx>; U.S. Dep't of Treasury, "Treasury Sanctions Additional North Korean Officials and Entities In Response To The North Korean Regime's Serious Human Rights Abuses and Censorship Activities," January 11, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/jl0507.aspx>.

THE ROOT OF ALL EVIL
Joshua Stanton

Cyber Crime	<ul style="list-style-type: none">Although no UN sanctions specifically target North Korea's cybercrimes, the UN Panel of Experts has repeatedly reported on cybercrimes as violations of the sanctions' financial provisions. Several of the responsible parties, including the Reconnaissance General Bureau, are designated.⁵⁶¹	<ul style="list-style-type: none">POTUS shall designate any person who knowingly engages in significant activities undermining cyber-security on behalf of North Korea.⁵⁶²	<ul style="list-style-type: none">Similar in NKSIR, but subject to State/Treasury designation.⁵⁶³
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treasury.gov/press-center/press-releases/Pages/j10699.aspx.

561 S/2019/171 ¶¶ 109-15.

562 22 U.S.C. § 9214(a)(7).

563 31 C.F.R. § 510.201(a)(3)(ii)(D).

Money, Rice, Crime & Law in North Korea

Mineral and Metals Trade	<ul style="list-style-type: none"> North Korea may not export iron or iron ore,⁵⁶⁴ gold, titanium ore, vanadium ore, rare earth minerals,⁵⁶⁵ copper, nickel, silver, zinc,⁵⁶⁶ lead, lead ore,⁵⁶⁷ or coal.⁵⁶⁸ Member states may not provide industrial machinery, iron, steel, or other metals to North Korea, except spare parts for Air Koryo civilian passenger aircraft.⁵⁶⁹ 	<ul style="list-style-type: none"> POTUS shall designate any person who knowingly transfers to or from North Korea precious metal, graphite, raw or semi-finished metals or aluminum, steel, coal, or software, related to North Korea's WMD programs, ruling party, military, intelligence services, security forces, or prison camps.⁵⁷⁰ POTUS shall designate any person who knowingly engages in the importation or exportation to North Korea of coal, textiles, seafood, iron, iron ore, crude oil or petroleum products (in excess of UN limits).⁵⁷¹ 	<ul style="list-style-type: none"> Similar in NKSR, but subject to State/Treasury designation.⁵⁷² POTUS may block the property of any person who operates in North Korea's mining industry.⁵⁷³
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564 S/RES/2270 ¶ 29.

565 *Id.* ¶ 30.

566 S/RES/2321 ¶ 28.

567 S/RES/2371 ¶ 11.

568 *Id.* ¶ 9. An exception allows for the export of Russian coal through Rason.

569 S/RES/2397 ¶ 7. Note the omission of Air Koryo's dual-use Il-76 cargo aircraft from this exemption.

570 22 U.S.C. § 9214(a)(8).

571 22 U.S.C. § 9214(g)(1)(A); 31 C.F.R. § 510.201(a)(3)(ix)(A).

572 31 C.F.R. § 510.201(a)(3)(iv)(B).

573 *Id.* § 510.201(a)(3)(iv)(A).

THE ROOT OF ALL **EVIL**

Joshua Stanton

Mineral and Metals Trade (Continued)		<ul style="list-style-type: none"> POTUS may designate any person who knowingly acquires significant quantities of coal, iron, or iron ore from North Korea, in excess of UNSC limits (zero since 2017).⁵⁷⁴ 	<ul style="list-style-type: none"> POTUS may designate a person who imports goods, services, or technology from North Korea to the U.S.⁵⁷⁵
Fuel Imports	<ul style="list-style-type: none"> Member states may not, collectively, provide North Korea more than 2 million barrels of crude oil, or ⁵⁷⁶ more than 500,000 barrels of refined petroleum products per year, except for humanitarian purposes after advance notice to the UNSC.⁵⁷⁷ 	<ul style="list-style-type: none"> POTUS may designate any person who knowingly exports refined petroleum products to North Korea, other than for humanitarian use.⁵⁷⁸ 	<ul style="list-style-type: none"> POTUS may designate and block the property of a person who operates in North Korea's energy industry.⁵⁷⁹

⁵⁷⁴ *Id.* § 9214(b)(1)(D).

⁵⁷⁵ *Id.* § 510.205; see also Exec. Order 13,570 (2011).

⁵⁷⁶ S/RES/2397 ¶ 4.

⁵⁷⁷ *Id.* ¶ 5.

⁵⁷⁸ 22 U.S.C. § 9214(b)(1)(H).

⁵⁷⁹ 31 C.F.R. § 510.201(a)(3)(iv)(A).

Money, Rice, Crime & Law in North Korea

Shipping	<ul style="list-style-type: none"> • Member states must inspect cargo going to or coming from North Korea, or brokered by its nationals.⁵⁸⁰ • States must prohibit insurance to vessels they have reasonable grounds to believe are involved in violating the resolutions.⁵⁸¹ • Member States shall seize, inspect, and freeze any vessel in their ports, and may seize, inspect, and freeze any vessel subject to its jurisdiction in its territorial waters, if they have reasonable grounds to believe that the vessel was involved in violating the resolutions.⁵⁸² 	<ul style="list-style-type: none"> • POTUS must designate any person who knowingly facilitates the registration of a North Korean vessel or maintains insurance for a vessel owned or controlled by North Korea.⁵⁸³ • POTUS must designate any person who knowingly sells a significant number of vessels to North Korea.⁵⁸⁴ • U.S. Customs may impose enhanced inspection requirements on cargo coming from ports that fail to inspect cargo to or from North Korea, or brokered by North Korean nationals.⁵⁸⁵ 	<ul style="list-style-type: none"> • POTUS may designate and block the property of any person who operates in North Korea's transportation industry.⁵⁸⁶ • Transactions related to the flagging or registration of North Korean vessels are prohibited.⁵⁸⁷ • Vessels that have landed in North Korea in the last 180 days may not land in the United States.⁵⁸⁸
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⁵⁸⁰ S/RES/2270 ¶ 18.

⁵⁸¹ S/RES/2321 ¶ 22.

⁵⁸² S/RES/2397 ¶ 9.

⁵⁸³ 22 U.S.C. § 9214(a)(13).

⁵⁸⁴ 22 U.S.C. § 9214(g)(1)(D); 31 C.F.R. § 510.201(a)(3)(ix)(D).

⁵⁸⁵ Id. § 9225.

⁵⁸⁶ 31 C.F.R. § 510.201(a)(3)(iv)(B).

⁵⁸⁷ Id. § 510.207.

⁵⁸⁸ Id. § 510.208.

THE ROOT OF ALL **EVIL**

Joshua Stanton

Shipping (Continued)	<ul style="list-style-type: none"> • Calls on flag states to consent to inspection on the high seas of any vessels they have reasonable ground to believe are violating the resolutions.⁵⁸⁹ • A flag state may ask the 1718 Committee to release the ship six months later after the state makes adequate arrangements to prevent the vessel from contributing to future violations.⁵⁹⁰ 	<ul style="list-style-type: none"> • Any vessel used to facilitate any activity prohibited under section 104(a) of the NKSPEA is subject to seizure and forfeiture.⁵⁹¹ • Any vessel used to facilitate any activity prohibited under section 104(a) of the NKSPEA is subject to seizure and forfeiture.⁵⁹² • The Coast Guard may ban ships from U.S. waters that are flagged by states that fail to abide by UN sanctions against North Korea.⁵⁹³ 	<ul style="list-style-type: none"> • Property of persons determined to own, control, or operate any seaport, airport, or land port of entry in North Korea is blocked.⁵⁹⁴
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589 S/RES/2375 ¶¶ 7-8.

590 S/RES/2397 ¶ 9.

591 Id. § 9225.

592 Id. § 9225(d); see, e.g., *infra* note 131.

593 Countering America's Adversaries Through Sanctions Act, Pub. L. No. 115-44, § 315 (2017) (amending 33 U.S.C. § 1221).

594 Id. § 510.201(a)(3)(v)(B).

Money, Rice, Crime & Law in North Korea

Financial	<ul style="list-style-type: none"> • Member states must require enhanced monitoring of transactions with North Korea to prevent UNSCR violations.⁵⁹⁵ • Member states must ensure that funds sent to North Korea do not facilitate conduct that violates the resolutions.⁵⁹⁶ • Member states must prohibit correspondent relationships with North Korean banks.⁵⁹⁷ 	<ul style="list-style-type: none"> • POTUS must block all property of the government of North Korea.⁵⁹⁸ • Transactions with the Government of North Korea require a license.⁵⁹⁹ • POTUS must designate any person who knowingly engages in money laundering, the counterfeiting of currency, or bulk cash smuggling that supports North Korea or its officials.⁶⁰⁰ 	<ul style="list-style-type: none"> • Transactions with the Government of North Korea require an OFAC license.⁶⁰¹ • POTUS may block the property of any person who operates in North Korea's financial services industry.⁶⁰² • North Korea is designated as a jurisdiction of primary money laundering concern and is subject to two special measures.⁶⁰³ • Direct and indirect correspondent relationships with North Korean banks are prohibited.
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⁵⁹⁵ S/RES/2094 ¶ 11.

⁵⁹⁶ S/RES/1718 ¶ 8(d).

⁵⁹⁷ S/RES/2270 ¶ 33.

⁵⁹⁸ 22 U.S.C. § 9214(c).

⁵⁹⁹ 22 U.S.C. § 9214(c).

⁶⁰⁰ 18 U.S.C. § 2332d. This is a consequence of President Trump's October 2017 designation of North Korea as a state sponsor of terrorism.

⁶⁰¹ 31 C.F.R. § 596.201. This is a consequence of North Korea's designation as a state sponsor of terrorism.

⁶⁰² Id. § 510.201(a)(3)(iv)(A).

⁶⁰³ 31 U.S.C. § 5318A(b)(1)&(5). The imposition of these special measures was pursuant to a NKSPEA mandate that Treasury make specific findings as to money laundering risks emanating from North Korea. See 22 U.S.C. § 9221.

THE ROOT OF ALL **EVIL**

Joshua Stanton

Financial (Continued)	<ul style="list-style-type: none"> • Member states must expel North Korean bank representatives.⁶⁰⁴ • Member state banks may not maintain branches in North Korea,⁶⁰⁵ or permit North Korean banks to maintain branches in their jurisdictions.⁶⁰⁶ 	<ul style="list-style-type: none"> • The direct or indirect provision of correspondent banking services to North Korea is prohibited, and POTUS must designate any person who knowingly maintains a correspondent account, whether directly or indirectly, for North Korea.⁶⁰⁷ • The categories of conduct prohibited by section 104(a) of the NKSPEA are specified unlawful activities under the criminal statute that prohibits money laundering.⁶⁰⁸ 	<ul style="list-style-type: none"> • Financial institutions must exercise enhanced due diligence to prevent North Korea from accessing the financial system through U.S. correspondent banks.⁶⁰⁹ • OFAC had designated nearly all North Korean banks by late 2017.⁶¹⁰ • POTUS may block the property of any financial institution that facilitates a significant financial transaction— <ul style="list-style-type: none"> • for a person blocked under a recent North Korea-related executive order, or • in connection with trade with North Korea.⁶¹¹
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604 S/RES/2321 ¶ 33.

605 S/RES/2270 ¶ 34.

606 Id. ¶ 33; S/RES/2321 ¶ 33; S/RES/2371 ¶ 15.

607 Id. § 9214(a)(14); see id. § 9221a-9221c.

608 18 U.S.C. § 1956(c)(7). Any property that constitutes proceeds of a specified unlawful activity, or that is involved in a specified unlawful activity, is subject to forfeiture to the United States. Id. § 981.

609 31 C.F.R. § 1010.659; id. § 510.210 & .211.

610 U.S. Dept of Treasury, "Treasury Sanctions Banks and Representatives Linked to North Korean Financial Networks," September 26, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0165.aspx>.

611 31 C.F.R. § 510.201(a)(3)(vi).

Money, Rice, Crime & Law in North Korea

Trade and Investments	<ul style="list-style-type: none"> Joint ventures with North Korea are prohibited.⁶¹² Public and private support for trade with North Korea is prohibited.⁶¹³ 	<ul style="list-style-type: none"> POTUS may designate any person who conducts a significant transaction in North Korea's mining, transportation, energy, or financial services industries.⁶¹⁴ 	<ul style="list-style-type: none"> The importation or exportation of goods, services, and technology from or to North Korea without an OFAC license is prohibited.⁶¹⁵ Property of persons determined— <ul style="list-style-type: none"> to operate in the construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles, or transportation industries; to have engaged in at least one significant importation from or exportation to North Korea of goods, services, or technology; to be a North Korean person, including a person that has engaged in commercial activity that generates revenue for North Korea's government or ruling party; New investment in North Korea is prohibited.⁶¹⁷
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⁶¹² S/RES/2375 ¶ 18; see S/RES/2371 ¶ 13; S/RES/2270 ¶¶ 15 & 33; S/RES/2094 ¶ 12.

⁶¹³ S/RES/2321 ¶ 32.

⁶¹⁴ 22 U.S.C. § 9214(b)(1)(M).

⁶¹⁵ 31 C.F.R. §§ 501.205–.206; Exec. Order 13570 (2011).

⁶¹⁶ 31 C.F.R. § 510.208.

⁶¹⁷ Pub. L. No. 114–57, div. O, § 203 (amending 8 U.S.C. § 1187(a)(12)(A)(i)(II)). This is a consequence of President Trump's designation of North Korea as a state sponsor of terrorism.

THE ROOT OF ALL **EVIL**

Joshua Stanton

Travel Sanctions	<ul style="list-style-type: none"> • Member states shall deny entry to and expel persons responsible or violations of the resolutions, or acting on behalf of designated entities⁶¹⁸ 	<ul style="list-style-type: none"> • POTUS shall deny visas to designated persons, and to corporate officers of designated persons ⁶¹⁹ • POTUS shall issue regular travel advisories about the risk of arbitrary detention in North Korea, and about the regime's human rights abuses. ⁶²⁰ 	<ul style="list-style-type: none"> • Air Koryo is designated by OFAC, but the effect of the designation is limited by statute. ⁶²¹ • U.S. passport holders require special State Department validation to travel to North Korea. ⁶²² • An aircraft that has landed in North Korea in the previous 180 days may not land in the U.S. ⁶²³ • Aliens who traveled to North Korea after March 1, 2011 are ineligible for visa-free travel to the United States. ⁶²⁴
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⁶¹⁸ S/RES/1718 ¶ 8(d).

⁶¹⁹ 22 U.S.C. § 9214(g)(1)(B); 31 C.F.R. § 510.201(a)(3)(ix)(B).

⁶²⁰ 22 U.S.C. § 9214(c).

⁶²¹ A carve-out in the IEEPA withholds from the President the authority to block transactions ordinarily incident to travel. 50 U.S.C. § 1702(b)(4).

⁶²² 22 C.F.R. § 51.64.

⁶²³ 31 C.F.R. § 510.208.

⁶²⁴ Pub. L. No. 114-57, div. O, § 203 (amending 8 U.S.C. § 1187(a)(12)(A)(i)(II)). This is a consequence of President Trump's designation of North Korea as a state sponsor of terrorism.

Money, Rice, Crime & Law in North Korea

Other Enforcement Provisions	<ul style="list-style-type: none"> • Member states must — • freeze all assets of designated persons and prevent persons subject to their jurisdiction from providing economic resources to them.⁶²⁵ • expel persons, including diplomats, who are representatives of designated persons or who are assisting in the evasion of sanctions.⁶²⁶ 	<ul style="list-style-type: none"> • POTUS must designate any person who knowingly facilitates a transfer of property that facilitates a violation of applicable UNSCRs.⁶²⁷ • POTUS shall freeze all assets of the North Korean government.⁶²⁸ • All property that constitutes proceeds of, or is involved in, conduct prohibited under 22 U.S.C. § 9214(a), is subject to forfeiture to the United States.⁶²⁹ • Knowingly engaging in, facilitating, or conspiring to engage in or facilitate a transaction prohibited under 22 U.S.C. § 9214(a) is prohibited and punishable under several criminal statutes.⁶³⁰ • POTUS may designate any person who facilitates a violation of an applicable UN Security Council resolution.⁶³¹ 	<ul style="list-style-type: none"> • Facilitation of sanctions violations is punishable by 20 years in prison, a \$1 million fine, and a \$250,000 civil penalty.⁶³²
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⁶²⁵ S/RES/1718 ¶ 8(d).

⁶²⁶ S/RES/2094 ¶ 10; S/RES/2270 ¶¶ 13 & 14.

⁶²⁷ 22 U.S.C. § 9214(g)(1)(B); 31 C.F.R. § 510.201(a)(3)(ix)(B).

⁶²⁸ 22 U.S.C. § 9214(c).

⁶²⁹ 18 U.S.C. § 981(a); Id. § 1956(a)(7).

⁶³⁰ Id. § 1956 (money laundering); 50 U.S.C. § 1705 (the International Emergency Economic Powers Act); 18 U.S.C. § 371 (conspiracy); 31 U.S.C. § 5321 (civil penalties for violating Patriot Act special measures); id. § 5322 (criminal penalties for same).

⁶³¹ 22 U.S.C. § 9214(b)(1).

⁶³² 31 C.F.R. § 510.212; see 50 U.S.C. § 1705 (providing for criminal and civil penalties).

THE ROOT OF ALL **EVIL**

Joshua Stanton

Appendix B:

Model Legislation to Create an Escrow Fund for the Proceeds of North Korean Kleptocracy

118TH CONGRESS

1ST SESSION H.R. ____

A BILL

To strengthen sanctions against the Government of North Korea, and to authorize the escrow and disbursement of blocked and forfeited proceeds of kleptocracy of the Government of North Korea to fund the enforcement of sanctions, programs to promote freedom of information in North Korea, and monitored humanitarian aid for the North Korean people, and for other purposes.

SECTION 1. SHORT TITLE.

This Act may be cited as the “In North Korea, Money Is the Root of All Evil Act” or “North Korea MIRAE Act.”

SEC. 2. ORGANIZATION OF ACT INTO TITLES; TABLE OF CONTENTS.—

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Organization of Act into divisions; table of contents.

Sec. 3. Definitions.

TITLE I - IDENTIFICATION OF PROCEEDS OF MONEY LAUNDERING AND KLEPTOCRACY BY SENIOR OFFICIALS OF THE GOVERNMENT OF NORTH KOREA

Sec. 101. Grants to conduct research on financial networks and financial methods of the government of North Korea.

Sec. 102. Sharing of financial information with qualifying international organizations.

Money, Rice, Crime & Law in North Korea

TITLE II – FORFEITURE OF PROCEEDS OF KLEPTOCRACY BY THE GOVERNMENT OF NORTH KOREA

Sec. 201. Amendments to North Korea sanctions authorities.

Sec. 202. Forfeiture of property involved in the evasion of sanctions against the government of North Korea and special measures against money laundering by the government of North Korea.

TITLE III – USE OF PROCEEDS OF KLEPTOCRACY BY THE GOVERNMENT OF NORTH KOREA TO FUND FOOD, MEDICINE, HUMANITARIAN ASSISTANCE, AND THE ENFORCEMENT OF SANCTIONS

Sec. 301. Escrow authority for blocked proceeds of kleptocracy.

Sec. 302. Escrow authority for fines, penalties, and forfeitures of proceeds of kleptocracy.

Sec. 303. Administration of funds.

SEC. 3. DEFINITIONS.

[Text omitted.]

TITLE I - IDENTIFICATION OF PROCEEDS OF MONEY LAUNDERING AND KLEPTOCRACY BY SENIOR OFFICIALS OF THE GOVERNMENT OF NORTH KOREA

SEC. 101. AMENDMENT AUTHORIZING GRANTS FOR RESEARCH INTO FINANCIAL NETWORKS OF THE GOVERNMENT OF NORTH KOREA.

Title I of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. Ch. 99, subch. I), as amended, is further amended by inserting the following section 106 after section 105:

SEC. 106. GRANTS TO CONDUCT RESEARCH ON FINANCIAL NETWORKS AND FINANCIAL NETWORKS OF THE GOVERNMENT OF NORTH KOREA.

(a) In general.—The President, acting through the Attorney General, the Secretary of State, or the Secretary of the Treasury, may provide grants to, and enter into cooperative agreements with, states, units of local government, nongovernmental organizations, and qualifying international organizations, to conduct research and investigation to further

THE ROOT OF ALL **EVIL**

Joshua Stanton

the enforcement of —

- (1) this Act;
 - (2) any applicable executive order or applicable regulation; or
 - (3) any applicable United Nations Security Council resolution.
- (b) Research grants and cooperative agreements funded pursuant to this section shall include research or investigation of the following subject areas:
- (1) The methods used by the Government of North Korea to deal in, transact in, or conceal the ownership, control, or origin of, property owned or controlled by the Government of North Korea;
 - (2) The export by any person to any country of any goods, services, or technology from North Korea, or that are made in whole or in part with materials from North Korea or labor provided by the Government of North Korea;
 - (3) The human trafficking of citizens or nationals of North Korea;
 - (4) The provision by any financial institution of direct or indirect correspondent account services, or other financial services, to the Government of North Korea or any North Korean financial institution;
 - (5) The failure of any financial institution to comply with regulations promulgated by the Secretary of the Treasury requiring enhanced due diligence to prevent the Government of North Korea from accessing the financial system;
 - (6) The failure of any financial institution to fully implement an applicable United Nations Security Council resolution;
 - (7) The failure of any United Nations member state or national government to fully implement an applicable United Nations Security Council resolution;
 - (8) The identification of any property in which the Government of North Korea, a Senior North Korean Official, or a designated person maintains a substantial beneficial ownership interest;
 - (9) The identification of any property that is subject to blocking or forfeiture under an applicable executive order or section 104 of this Act, as amended;
 - (10) The export of any goods, services, or technology that facilitates censorship or severe human rights abuses by the Government of North Korea; and
 - (11) The effectiveness of law enforcement and diplomatic initiatives of federal, state, and foreign governments to comply with the provisions of applicable United Nations Security Council resolutions.
- (c) Interagency Coordination.—The President shall ensure that any information collected pursuant to subsection (a) is shared among the agencies described in section 102(b) of this Act.

Money, Rice, Crime & Law in North Korea

(d) Qualifying international organization defined.—The term “qualifying international organization” shall have the meaning given such term in Section 314(b) of the USA PATRIOT Act, Pub. L. 107-56, (31 U.S.C. 5311(b) note), as amended by this Act.

SEC. 102. SHARING OF FINANCIAL INFORMATION WITH QUALIFYING INTERNATIONAL ORGANIZATIONS.

(a) Section 314(b) of the USA PATRIOT Act, Pub. L. 107-56, (31 U.S.C. 5311(b) note) is amended by—

- (1) striking the words “2 or more financial institutions and any association of financial institutions;”
- (2) substituting therefor the words “2 or more financial institutions, any association of financial institutions, and any qualifying international organization;”
- (3) inserting the following new subsection (e) after subsection (d):

(e) Qualifying international organization defined.—As used in this section, the term “qualifying international organization” means—

- (1) a Panel of Experts acting under the authority of the United Nations Security Council;
- (2) the Financial Action Task Force;
- (3) the Stolen Assets Recovery Initiative of the World Bank;
- (4) the International Monetary Fund; and
- (5) any other international organization as the Secretary of the Treasury may certify, that assists financial institutions to safeguard international financial or commercial systems against money laundering, kleptocracy, the financing of terrorism, the trafficking in arms or related material, human trafficking, or the proliferation of weapons of mass destruction, including the financing of any such activity.

TITLE II — FORFEITURE OF PROCEEDS OF KLEPTOCRACY BY THE GOVERNMENT OF NORTH KOREA

SEC. 201. AMENDMENTS TO NORTH KOREA SANCTIONS AUTHORITIES.

(a) Penalties for Prohibited Conduct.—Section 104 of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9214(f)), as amended, is further amended by inserting the following subsection (g) after subsection (f), and by renumbering the subsequent subsections:

THE ROOT OF ALL **EVIL**

Joshua Stanton

(g) Prohibited Conduct.—The conduct described in paragraphs (1) through (15) of subsection (a) is prohibited.

(1) It shall be unlawful for any person to engage in, conspire or attempt to engage in, or cause any of the conduct described in subsection (a) and prohibited by this subsection, or to knowingly evade or avoid such a prohibition, or any regulation promulgated to enforce such a prohibition.

(2) Penalties.—A person who violates this subsection shall be punished as provided in section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705), without regard to whether the President has designated the person under such Act or under this section.

[subsections (b) through (e) omitted.]

SEC. 202. FORFEITURE OF PROPERTY INVOLVED IN THE EVASION OF SANCTIONS AGAINST THE GOVERNMENT OF NORTH KOREA AND SPECIAL MEASURES AGAINST MONEY LAUNDERING BY THE GOVERNMENT OF NORTH KOREA.

(a) Section 981(a)(1) of title 18, United States Code, is amended by striking the existing subparagraph (I) and by inserting therefor the following text:

“(I) Any property, real or personal, foreign or domestic, that is involved in conduct prohibited under section 104(a) or 104(g) of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9214(g)), Pub. L. 114-122, as amended, or which constitutes or is derived from proceeds traceable to such conduct.

(b) Section 981(e) of title 18, United States Code, is amended—

(1) by striking the word “or” at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting a semicolon and the word “or” therefor; and

(3) by inserting after paragraph (7) the following new paragraph:

“(8) in the case of property referred to in subsection (a)(1)(I), in accordance with section 306(b) of the North Korea Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended.

(c) AMENDMENT TO DEFINITION OF “CIVIL FORFEITURE STATUTE.” Section

Money, Rice, Crime & Law in North Korea

983(i)(2)(D) of Title 18, United States Code, is amended—

(1) by striking the words “or the North Korea Sanctions Enforcement Act of 2016;” and

(2) by substituting therefor the words “the North Korea Sanctions and Policy Enhancement Act of 2016”.

(d) AMENDMENT TO DEFINITION OF SPECIFIED UNLAWFUL ACTIVITY.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by striking the words “or section 104(a) of the North Korea Sanctions Enforcement Act of 2016;”

(2) by substituting therefor the words “or section 104(a) or 104(g) of the North Korea Sanctions and Policy Enhancement Act of 2016”.

TITLE III — USE OF PROCEEDS OF KLEPTOCRACY BY THE GOVERNMENT OF NORTH KOREA TO FUND FOOD, MEDICINE, HUMANITARIAN ASSISTANCE, AND THE ENFORCEMENT OF SANCTIONS

SEC. 301. ESCROW AUTHORITY FOR BLOCKED PROCEEDS OF KLEPTOCRACY.

The North Korea Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended, is further amended by inserting the following new section after section 304 of such Act:

SEC. 305. ESCROW AUTHORITY FOR USE OF BLOCKED PROPERTY OF THE GOVERNMENT OF NORTH KOREA AND SENIOR NORTH KOREAN OFFICIALS FOR HUMANITARIAN PURPOSES.

(a) RELEASE OF FUNDS AUTHORIZED.—The President may promulgate regulations, rules, and policies to block, receive, transfer, deal in, and the release property of the Government of North Korea that is blocked under section 104 of this Act, or the International Emergency Economic Powers Act, Pub. L. 95-223, as amended, to international humanitarian organizations to purchase, import, and distribute to the North Korean people food, medicine, and humanitarian supplies.

(b) ESCROW AGREEMENTS AUTHORIZED.—In carrying out the authorities described in this section, the Secretary of the Treasury may—

(1) enter into, license, authorize, direct, and compel any appropriate official, or the Federal Reserve Bank of New York, as fiscal agent of the United States, to enter into escrow or related agreements with a foreign financial institution with respect to blocked property of the Government of North Korea or any Senior North Korean Official, for use by the people of North Korea for the humanitarian purposes described in subsection (a);

THE ROOT OF ALL **EVIL**

Joshua Stanton

(2) license, authorize, direct, and compel the Special Envoy, as authorized in section 306, to receive certain money and other assets in which the Government of North Korea or a Senior North Korean official has an interest and to hold or transfer such money and other assets, and any interest earned thereon, in such a manner as he deems necessary to fulfill the purposes described in subsection (a).

(c) any property held pursuant to subsection (b) may be held in interest-bearing form and where possible shall be invested with or through the entity holding the money or asset on the date of enactment of this Act.

(d) **LIMITATION ON USE OF FUNDS.**—The release of property pursuant to this section shall be subject to the certification described in section 208(b)(2) of this Act, that the food, medicine, and humanitarian assistance purchased with funds released pursuant to this section will be distributed in a non-discriminatory manner, and solely on the basis of humanitarian need.

(e) **RULE OF CONSTRUCTION.**—Nothing in this section shall be interpreted as providing independent authority for the confiscation of property of the Government of North Korea or any Senior North Korean Official.

SEC. 302. ESCROW AUTHORITY FOR FINES, PENALTIES, AND FORFEITURES OF PROCEEDS OF KLEPTOCRACY.

(a) The North Korea Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended, is further amended by inserting the following new section after section 305 of such Act:

SEC. 306. REVEREND KIM DONG SHIK FUND FOR FOOD, PEACE, AND FREEDOM.

(a) **ESTABLISHMENT.**—

(1) **Findings.**—The Reverend Kim Dong Shik, a permanent resident of the United States, was assisting North Korean child famine refugees in China until 2000, when North Korean government agents kidnapped him, abducted him to North Korea, and murdered him.

(2) **Establishment.**—There is established in the Treasury of the United States a fund to be known as the Reverend Kim Dong Shik Fund for Food, Peace, and Freedom (in this section referred to as the “Fund”), to commemorate the sacrifices of Rev. Kim and advance the causes for which he gave his life.

(b) **DEPOSITS.**—Upon the satisfaction of all judgments described in subsection 404(c) (2) of Pub. L. 114-113, div. O, title IV (Dec. 18, 2015), as amended (24 U.S.C. 20144(c) (2)), and as provided in subparagraph (e)(2)(C) of such section, in which the foreign gov-

Money, Rice, Crime & Law in North Korea

ernment described in such section is the Government of North Korea, the President shall deposit into the Fund, and shall transfer and consolidate on the books of the Treasury in a special account for the purposes described in subsection (c), all revenues derived from—

(1) fines, penalties, and forfeitures of property constituting proceeds of, derived from, or involved in any conduct—

(A) for which a person may be designated under section 104 of this Act or any amendment enacted under such Act;

(B) any applicable Executive Order or Applicable Regulation; or

(C) any conspiracy or attempt to violate the authorities described in subparagraphs (A) or (B), or to engage in any conduct for which a person may be designated under such subparagraphs.

(2) all amounts paid in lieu of the commencement of, or paid in settlement of, criminal, civil, or administrative proceedings by the President—

(A) to enforce the authorities described in subparagraphs (A) and (B) of paragraph (1).

(B) to forfeit any property that is alleged—

(i) to have been involved in any of the conduct described in subsection (b)(1), or to be property traceable to such property; or

(ii) to constitute, or to be derived from proceeds traceable to, any of the conduct described in subsection (b)(1).

(3) Exception for transfers of forfeited property to foreign governments.—

(A) The Special Envoy is authorized to transfer funds to foreign governments in accordance with the procedures, and under the criteria, described in section 981(i) of title 18, United States Code.

(B) Funds transferred in accordance with subparagraph (A) of this subsection shall not be treated as deposits into the Fund for purposes of the authorizations described in subsection (c).

(c) PURPOSES AUTHORIZED FOR DISBURSEMENTS.—There are authorized to be appropriated from the Fund each fiscal year, in such amounts as may be specified in an Act making appropriations for the administration of the Fund, amounts not exceeding—

(1) For the salaries and benefits of the personnel described in section 102(b) of this Act, \$10,000,000, including for the reimbursement of details of personnel among federal agencies and departments;

(2) For other necessary expenses of investigations, intelligence collection, and law enforcement to carry out the authorities described in subsection (b)(1)(A) through (b)(1)(D), \$20,000,000;

(3) to provide grants to, and enter into cooperative agreements with, states, units of lo-

THE ROOT OF ALL **EVIL**

Joshua Stanton

cal government, nongovernmental organizations, and relevant international organizations to carry out the purposes of the authorities described in subsection (b)(1)(A) through (b)(1)(D); \$10,000,000;

(4) to provide grants to persons and organizations for the purposes described in section 106 of this Act, \$5,000,000;

(5) to assist foreign governments and agencies of foreign governments to improve their capacity to enforce any Applicable United Nations Security Council Resolution, or any of the authorities described in paragraph (b)(1), \$20,000,000;

(6) to provide grants to facilitate and support the expansion of radio, television, and other broadcasting to the people of North Korea by nongovernmental organizations, \$20,000,000;

(7) to provide grants to support organizations or persons that support or promote independent journalism inside North Korea, whether for North Korean or international audiences, \$10,000,000;

(8) to provide grants or to take such other actions as may be necessary to increase the availability of information inside North Korea, including by procuring and distributing radios, USB drives, micro SD cards, audio players, video players, electronically readable devices, cell phones, wireless communications, web pages, internet, and other electronic media that share information, \$20,000,000;

(9) to provide grants to support organizations or persons that produce art, literature, music, film, and other artistic and cultural content for the people of North Korea to promote human rights, political and humanitarian reforms, and the development of a more peaceful, open, tolerant, humane, and prosperous society in North Korea, \$20,000,000;

(10) to provide grants to support organizations or persons that support or promote human rights, democracy, the rule of law, private agriculture, and the development of a market economy inside North Korea, \$10,000,000;

(11) to provide grants to support organizations or persons that provide humanitarian assistance to North Korean refugees, defectors, migrants, victims of human trafficking, and other persons who are outside of North Korea without the permission of the Government of North Korea, including by providing support for refugee housing and resettlement outside of the United States, \$10,000,000;

(12) to provide support to international and non-governmental organizations providing food, medicine, medical care, and other forms of humanitarian assistance inside North Korea, \$25,000,000, provided that any such disbursements—

(A) shall be subject to the certification described in section 208(b)(2) of this Act, that the food, medicine, and humanitarian assistance purchased with funds released

Money, Rice, Crime & Law in North Korea

pursuant to this section will be distributed in a non-discriminatory manner, and solely on the basis of humanitarian need;

(B) shall be available only for the purchase of food, medicine, humanitarian supplies, and for the shipment of food, medicine, and humanitarian supplies to the custody of a United Nations humanitarian organization at the most convenient port of entry into North Korea; and

(C) shall not be available to provide any cash, funds, payment, or financial assistance to the Government of North Korea, or to procure any goods, services, or technology from the Government of North Korea, whether directly or indirectly.

(13) to carry out the purposes described in Section 491 of the Foreign Assistance Act of 1961 (22 U.S.C. 2292), \$200,000,000 provide that such funds shall only be available to the extent the President determines that the recipient organization is in compliance with the accountability controls described in section 208(b) of this Act, as amended;

(14) upon certification by the President of the conditions described in section 401 of this Act, as amended—

(A) to carry out projects to support private agriculture, fisheries, food processing, and transportation to produce and distribute food for the exclusive consumption of the people of North Korea, \$10,000,000;

(B) to provide medical training, facilities, and equipment to provide medical care for the people of North Korea, \$10,000,000; and

(C) upon the second consecutive certification by the President of the conditions described in section 401 of this Act, as amended, for the repair and rehabilitation of civilian infrastructure inside North Korea, \$25,000,000; and

(15) for salaries and other necessary expenses for the administration of the Fund pursuant to section 307 of this Act, including for the reimbursement of details of personnel among departments and agencies of the federal government, \$5,000,000.

(d) Amendment to United States Victims of State Sponsored Terrorism Fund Clarification Act.—Section 1701 of the United States Victims of State Sponsored Terrorism Fund Clarification Act, Pub. Law 116-69 (34 U.S.C. 20144) is amended by inserting the following new subparagraph (C) below subparagraph (e)(2)(B):

(C) Transfer into the Fund of certain funds and property involving North Korea.—If the state sponsor of terrorism for purposes of subparagraph (e)(2)(A) is the Government of North Korea, the Special Master shall, with respect to any funds or net proceeds described in such subsection received by the United States

THE ROOT OF ALL **EVIL**

Joshua Stanton

for deposit into the Fund—

(i) notwithstanding paragraph (e)(2)(A) of this section, transfer to the fund described in section 306 of the North Sanctions and Policy Enhancement Act, Pub. Law 114-122, as amended—

(I) if the amount of such funds and net proceeds received by the United States for deposit into the Fund in that fiscal year is less than \$30 million, seventy-five percent of such funds and net proceeds, which shall be available for the purposes described in paragraphs (c)(1) and (c)(2) of such section;

(II) if the amount of such funds and net proceeds received by the United States for deposit into the Fund in that fiscal year is greater than \$30 million, fifty percent of such funds and net proceeds, which shall be available for any of the purposes described in subsection (c) of such section; and

(III) twenty-five percent of the funds and net proceeds described in clause (e)(2)(A)(ii), which shall be available for any of the purposes described in subsection (c) of such section.

(ii) with respect to payments by the Fund to claimants awarded compensatory damages against the Government of North Korea, upon paying each such claimant an amount equal to the limitation described in subparagraph (d)(3)(A)(ii) of this section, transfer any additional funds and property received by the United States for deposit into the Fund, as described in paragraph (e)(2)(A) of this section, into the fund described in section 306 of the North Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended.

(iii) Voluntary Donations to the Reverend Kim Dong Shik Fund for Food, Peace & Freedom.—

(I) A claimant against the Fund for compensatory damages awarded against the Government of North Korea may direct the Special Master to donate any portion of a payment to that claimant to the fund described in section 306 of the North Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended, to be used for any of the purposes described in subsection (c) of such section.

(II) A donation described in subclause (I) of this clause shall be considered a payment from the Fund to the claimant from the Fund for purposes of subsection (d).

(iv) If the state sponsors of terrorism described in subparagraph (e)(2)(A) include the Government of North Korea and at least one other state sponsor of terrorism, the Special Master shall, in consultation with the Secretary of the Treasury and the Attorney General, allocate a proportion of the funds to be disbursed

Money, Rice, Crime & Law in North Korea

or transferred under this subparagraph in proportion to the amount of such criminal and civil fines, penalties, and forfeitures arising from conduct that involves the Government of North Korea.

(c) REPORT REQUIRED.—

(1) Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the President shall provide a report to the appropriate congressional committees describing amounts available in the Fund, amounts obligated and expended for each purpose described in subsection (c), and any amounts transferred out of the Fund.

(2) FORM.—The report required under this subsection shall be submitted in unclassified form but may include a classified annex.

(f) TRANSFER.—To prevent the accumulation of excessive surpluses in the Fund, in any fiscal year an amount specified in an annual appropriation law that is available after the obligation of amounts authorized to be appropriated in this section may be transferred out of the Fund and deposited, in such proportions as the President may determine, into the funds established under—

(A) section 1701 of the United States Victims of State Sponsored Terrorism Fund Clarification Act, Pub. Law 116-69 (34 U.S.C. 20144);

(B) section 524(c) of title 28, United States Code; and

(C) section 9703 of title 31, United States Code.

(f) RULES OF CONSTRUCTION.—

(1) Nothing in this section shall be construed to restrict or limit the authority of the President under section 9703 of title 31, United States Code, or under section 524(c) of title 28, United States Code, or to limit the availability of other appropriations for the purposes described in subsection (c).

(2) Any appropriation under this section shall be without prejudice to, and in addition to, any other funds Congress may appropriate for such purpose.

(3) The funds authorized and appropriated in accordance with this section shall remain available until consolidated in accordance with subsection (e), or until expended, without fiscal year limitation.

SEC. 303. ADMINISTRATION OF FUNDS.

The North Korea Sanctions and Policy Enhancement Act, Pub. L. 114-122, as amended, is further amended by inserting the following new section after section 306 of such Act:

SEC. 307. ADMINISTRATION, AUDIT, AND DISBURSEMENT OF BLOCKED

THE ROOT OF ALL **EVIL**

Joshua Stanton

AND FORFEITED PROCEEDS OF KLEPTOCRACY OF THE GOVERNMENT OF NORTH KOREA.

(a) The Special Envoy appointed pursuant to section 107 of the North Korean Human Rights Act of 2004, Pub. L. 108-333 (22 U.S.C. 7817), shall administer the collection, administration, audit, and disbursement of—

(1) any blocked property of the Government of North Korea, or of a Senior North Korean Official, as described in section 305; and

(2) any property deposited into the fund described in section 306.

(b) The Attorney General shall appoint a Deputy Special Envoy for Anti-Kleptocracy Assistance, who shall —

(1) advise and assist the Special Envoy with the administration of programs authorized under paragraphs (2) through (5) of section 306(c).

(2) seek the cooperation of a coalition of United Nations member states and jurisdiction with the enforcement of this Act, and of applicable United Nations Security Council resolutions, including by making the greatest appropriate use of the authority in section 981(i) of title 18, United States Code.

(c) The Administrator of the United States Agency for International Development shall appoint a Deputy Special Envoy for Humanitarian Operations, who shall—

(1) advise and assist the Special Envoy with respect to any programs funded by the funds described in paragraphs (1) and (2) of subsection (a) for the purposes described in section 301(a) or paragraphs (6) through (14) of section 302(c); and

(2) advise and assist the Special Envoy in ensuring that programs and operations inside North Korea that are funded, in whole or in part, by the funds described in paragraphs (1) and (2) of subsection (a) are administered in a transparent, fair, and non-discriminatory manner, solely on the basis of assessed humanitarian needs, and without the exclusion of any persons from the benefits of such programs for political reasons, to include persons incarcerated by the Government of North Korea; and

(3) inspect and audit of any programs and operations described in paragraph (1) of this subsection, as necessary.

(d) The Federal Reserve Bank of New York shall appoint a Deputy Special Envoy for Finance and Accounting, who shall serve as the fiscal agent of the United States as necessary for the collection, administration, and disbursement of the funds described in paragraphs (1) and (2) of subsection (a).

(e) International Coordination.—

(1) The Administration shall, in coordination with the United States Ambassador to the United Nations, seek the authorization of the United Nations Security Council before disbursing funds for any purpose or project that requires such authorization pur-

Money, Rice, Crime & Law in North Korea

suant to applicable United Nations Security Council resolutions.

(2) It is the sense of Congress that the Special Envoy should coordinate the priorities, expenditures, and disbursements from the Fund, and from the funds described in section 301(a), with allies of the United States, to include—

(A) Australia,

(B) Canada,

(C) Japan,

(D) the European Union,

(E) the United Kingdom,

(F) New Zealand,

(G) the Republic of Korea, and

(H) any other United Nations member state or jurisdiction that President certifies to be in full, good-faith compliance with applicable United Nations Security Council resolutions.

