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### Human rights situations that require the Council's attention

## Situation of human rights in the Democratic People's Republic of Korea

### Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Elizabeth Salmón\*

#### *Summary*

The present report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Elizabeth Salmón, is submitted pursuant to Human Rights Council resolution 52/28. In the report, the Special Rapporteur provides a comprehensive analysis of accountability efforts made in the 10 years since the commission of inquiry on human rights in the Democratic People's Republic of Korea issued its report. She also examines the measures needed to further advance accountability for human rights violations committed by the Democratic People's Republic of Korea.

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\* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information.



## I. Introduction

1. February 2024 marks the tenth anniversary of the issuance of the report of the commission of inquiry on human rights in the Democratic People's Republic of Korea. The commission of inquiry concluded that "systematic, widespread and gross human rights violations have been and are being committed by the Democratic People's Republic of Korea, its institutions and officials" and that such violations "constitute crimes against humanity".<sup>1</sup> The commission recommended that the country "undertake profound political and institutional reforms" and that the international community take several actions, including referral to the International Criminal Court.<sup>2</sup> In follow-up to the commission's recommendations, in 2017, the group of independent experts on accountability explored appropriate approaches to seek accountability for human rights violations, in particular those amounting to crimes against humanity, and recommended practical mechanisms of accountability to secure truth and justice for the victims.<sup>3</sup>

2. In the present report, the Special Rapporteur takes stock of the initiatives to advance accountability for human rights violations, including crimes against humanity, in the Democratic People's Republic of Korea in the past 10 years, and discusses what can be done to strengthen those efforts. To inform the report, in December 2023 the Special Rapporteur made a public call for inputs on the progress on accountability from Member States, victims and civil society organizations. The Special Rapporteur expresses her sincere appreciation to those who responded to her request for input.<sup>4</sup>

## II. The current human rights and political situation

3. In January 2024, the leadership of the Democratic People's Republic of Korea announced that the country would no longer pursue Korean unification.<sup>5</sup> At an event to mark the seventy-sixth anniversary of the founding of the Korean People's Army, the President of the Democratic People's Republic of Korea, Kim Jong Un, characterized the Republic of Korea as a primary enemy and purportedly asserted a legal basis for defensive actions in the event of provocation.<sup>6</sup> The Special Rapporteur expresses concern that these developments will contribute to escalating tensions on the Korean Peninsula. She wishes to reaffirm that peace on the Korean Peninsula cannot be achieved without addressing the long-standing human rights issues in the country.

4. In 2023, the Security Council held 10 formal meetings to discuss missile launches by the Democratic People's Republic of Korea and their implications for international peace and security.<sup>7</sup> The Secretary-General has repeatedly urged the Democratic People's Republic of Korea to fully comply with its international obligations under all relevant Security Council resolutions and to resume dialogue without preconditions to achieve sustainable peace. In August 2023, the Security Council held an open briefing on the situation of human rights in the Democratic People's Republic of Korea for the first time since 22 December 2017.<sup>8</sup> Member States expressed deep concern over the humanitarian situation facing the people and took note of the concerns raised by the Special Rapporteur with regard to the detrimental

<sup>1</sup> A/HRC/25/63, para. 80.

<sup>2</sup> Ibid., paras. 89 (a) and 94 (a).

<sup>3</sup> A/HRC/34/66/Add.1.

<sup>4</sup> Four Member States and the Citizens' Alliance for North Korean Human Rights, the Committee for Human Rights in North Korea, the Database Center for North Korean Human Rights, Human Rights Watch, Korea Future, Mulmangcho, the National Democratic Institute, Roberta Cohen and the Transitional Justice Working Group provided inputs.

<sup>5</sup> See KCNA Watch, "Respected Comrade Kim Jong Un makes policy speech at 10th session of 14th SPA", 16 January 2024.

<sup>6</sup> See NK News, "Anti-South Korea policy change secures 'lawful' basis to attack: Kim Jong Un", 9 February 2024.

<sup>7</sup> Security Council meetings held on 20 February, 20 March, 23 March, 17 April, 2 June, 13 July, 17 August, 25 August, 27 November and 19 December.

<sup>8</sup> See <https://www.securitycouncilreport.org/whatsinblue/2023/08/dprk-north-korea-open-briefing-on-the-human-rights-situation.php>.

impact of the ongoing security and human rights situation on the most vulnerable populations, including women and girls.<sup>9</sup>

5. While the Democratic People's Republic of Korea partially reopened its international borders in August 2023, international staff of the United Nations and humanitarian agencies still have not been able to return to the country. The Special Rapporteur urges the Democratic People's Republic of Korea to allow international staff of the United Nations and humanitarian agencies back into the country to support the humanitarian needs of the vulnerable people in the country. The number of escapees arriving in the Republic of Korea is still significantly lower than the level prior to the border shutdown in early 2020. Stricter control of the borders has made escape and transfer of information nearly impossible. In 2023, 196 escapees (164 women and 32 men) from the Democratic People's Republic of Korea arrived in the Republic of Korea, of which only a few are estimated to have left the country in 2023.<sup>10</sup> The reduction in the number of arrivals and the near isolation of the country made it harder to obtain information on recent human rights developments. The Special Rapporteur reiterates her call on the Government to engage with her mandate to allow for frank discussions on improving human rights.

6. In addition to the lack of up-to-date information on the human rights situation, the intense focus on security and regular security-related information from the Government in the media have diverted global attention from the worsening human rights conditions. Restrictions on freedom of expression and other fundamental rights have been tightened through the implementation of new laws, including the act on the elimination of reactionary thought and culture, the Pyongyang Cultural Language Protection Act and the Emergency Quarantine Act, as well as heavy punishments and public trials.

7. The Special Rapporteur reiterates her concerns that escapees were forcibly repatriated to the Democratic People's Republic of Korea from China, despite repeated appeals by multiple international human rights bodies for a halt to such repatriations.<sup>11</sup> There are long-standing and credible reports that indicate that a number of escapees that have been forcefully returned to the Democratic People's Republic of Korea were subjected to torture, cruel, inhuman or degrading treatment and punishment, as well as other grave human rights violations. The principle of non-refoulement guarantees that no one should be returned to a country where they are at risk of torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle must be applied to all people at all times, regardless of migration status. The prohibition of refoulement is customary international law and is explicitly included, among others, in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which China is a State party. The Special Rapporteur also calls on the Democratic People's Republic of Korea to comply with its international legal obligations in respect of all citizens returning to the country, including the absolute prohibition of torture and enforced disappearance, the prohibition of arbitrary detention and fair trial guarantees.

<sup>9</sup> See <https://press.un.org/en/2023/sc15387.doc.htm>.

<sup>10</sup> In 2021 and 2022, 63 and 67 escapees arrived in the Republic of Korea, respectively. Around 1,000 escapees arrived per year before 2020. See Republic of Korea, Ministry of Unification, "Policy on North Korean Defectors", available at [https://www.unikorea.go.kr/eng\\_unikorea/relations/statistics/defectors/](https://www.unikorea.go.kr/eng_unikorea/relations/statistics/defectors/).

<sup>11</sup> This includes a letter sent by special procedures mandate holders to China in July 2023. See communication CHN 9/2023, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28210>. A reply from China, sent in September 2023, is available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37710>.

### III. The concept of accountability

#### A. Accountability for human rights violations

8. International human rights law obliges States, as primary duty bearers, to respect, protect and fulfil the rights of all within their jurisdiction. Accountability makes this legal framework tangible, going beyond aspirational goals. It allows individuals and communities to take ownership of their rights and ensures that States comply with their international and national obligations. Accountability for human rights violations has three dimensions: (a) responsibility – authorities should take responsibility for their actions; (b) answerability – authorities should provide reasoned justifications to those affected by their decisions; and (c) enforceability – authorities should put mechanisms in place to monitor compliance with established standards and provide corrections and remedies.<sup>12</sup>

9. As the group of independent experts on accountability noted, accountability for human rights violations “goes beyond establishing individual criminal responsibility”.<sup>13</sup> Accountability is also not limited to judicial means. The Special Rapporteur is of the view that accountability should be envisioned as a sustained and multifaceted endeavour. While accountability should embrace a long-term approach, it should also deliver prompt and visible results. Effective accountability efforts must be tailored to specific country contexts and apply a holistic strategy that engages in individual prosecutions, reparations, truth-seeking and institutional reform. Drawing on the extensive experience of human rights monitoring bodies, the Special Rapporteur underscores the necessity for States to dismantle barriers to accountability. This includes overcoming the lack of political will among State and non-State actors to pursue accountability, avoiding deliberate denial of responsibility and resisting attempts to evade or obstruct accountability to prevent accusations or legal action.<sup>14</sup> The Special Rapporteur shares the view of the group of independent experts on accountability that long-term peace and stability on the Korean Peninsula must be achieved “through a genuine, joint and comprehensive accountability exercise involving all regional actors”.<sup>15</sup>

#### B. Responsibility of States to investigate and prosecute

10. States have a duty to investigate and prosecute human rights violations that amount to crimes under national or international law.<sup>16</sup> This obligation derives from the right to remedy for any person whose rights or freedoms are violated under article 2 (3) of the International Covenant on Civil and Political Rights, to which the Democratic People’s Republic of Korea has been a party since 1981.<sup>17</sup> States parties are required to ensure accessible and effective remedies<sup>18</sup> for individuals whose rights are violated and to bring those responsible to justice.<sup>19</sup>

11. With regard to international crimes – genocide, war crimes and crimes against humanity – States’ obligation to investigate and prosecute is clearly stipulated in several treaties: the four Geneva Conventions of 12 August 1949; the Convention on the Prevention

<sup>12</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR) and Center for Economic and Social Rights, “Who will be accountable: human rights and the post-2015 development agenda – summary” (New York and Geneva, 2013), p. 5.

<sup>13</sup> [A/HRC/34/66/Add.1](#), para. 14.

<sup>14</sup> [A/HRC/53/38](#), paras. 14–52.

<sup>15</sup> [A/HRC/34/66/Add.1](#), para. 30.

<sup>16</sup> [A/HRC/27/56](#), para. 27.

<sup>17</sup> On 25 August 1997, the Democratic People’s Republic of Korea notified the Secretary-General of its withdrawal from the International Covenant on Civil and Political Rights. Since the Covenant does not contain provisions for withdrawal or denunciation, the Secretary-General issued a statement affirming that withdrawal from the Covenant was not possible unless all States parties agreed to such a withdrawal. The Democratic People’s Republic of Korea therefore continues to be a State party to the Covenant.

<sup>18</sup> Human Rights Committee, general comment No. 31 (2004), para. 15.

<sup>19</sup> *Ibid.*, para. 18. The General Assembly also adopted Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law in 2005 (resolution 60/147).

and Punishment of the Crime of Genocide; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention against Torture obliges each States party to establish jurisdiction, including universal jurisdiction, over offences prohibited under the Convention when the alleged offender is present in its territory and it does not extradite the alleged offender. The International Convention for the Protection of All Persons from Enforced Disappearance, which recognizes that the widespread or systematic practice of enforced disappearance is a crime against humanity, requires States to extradite or prosecute. The Democratic People's Republic of Korea ratified the Geneva Conventions in 1957 but has not acceded to the Convention against Torture or the International Convention for the Protection of All Persons from Enforced Disappearance. This does not exempt the country from its responsibility to investigate and prosecute such crimes, since those duties are enshrined in customary law and *jus cogens* norms.<sup>20</sup>

12. Crimes against humanity have not yet been codified in a dedicated treaty of international law. However, there are ongoing efforts to do so, and any States have provisions for such crimes in their domestic law. Despite the absence of a treaty, the prohibition of crimes against humanity has been considered a peremptory norm of international law, which is applicable to all States.<sup>21</sup> The International Law Commission has worked on defining crimes against humanity under customary international law, and a draft treaty is currently being considered by the Sixth Committee of the General Assembly. Four key elements a new convention would contain are: (a) a definition tracking article 7 of the Rome Statute of the International Criminal Court; (b) an obligation to criminalize crimes against humanity in national legislation;<sup>22</sup> (c) robust inter-State cooperation procedures; and (d) a clear obligation to prosecute or extradite offenders. The adoption of the treaty would impose clear legal obligations on States to prevent and punish such crimes, including sexual and gender-based violence, in their domestic laws, and protect victims and witnesses.

13. The Democratic People's Republic of Korea is not a party to the Rome Statute. But it acceded to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity in 1984. In that Convention, both crimes are recognized under international law and the importance of punishing the perpetrators is emphasized. The inability of the Democratic People's Republic of Korea to effectively investigate and prosecute crimes against humanity, prohibited under *jus cogens*, would trigger the obligation of other States to take action.

#### **IV. Accountability measures for human rights violations in the Democratic People's Republic of Korea**

14. The present section outlines ongoing endeavours to pursue various forms of accountability and potential steps for further action.

##### **A. In the Democratic People's Republic of Korea**

15. The Democratic People's Republic of Korea bears the primary responsibility to investigate, prosecute and sanction those responsible for serious crimes, including crimes against humanity. However, the Government still has not addressed the entrenched culture

<sup>20</sup> In the case of the crime of torture, as recognized by the International Court of Justice, "the prohibition of torture is part of customary international law and it has become a peremptory norm (*jus cogens*)" (*Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, *Judgments, I.C.J. Reports 2012*, p. 422, para. 99). See also article 7 of the International Covenant on Civil and Political Rights. In the case of enforced disappearance, as noted by the Special Rapporteur of the International Law Commission in his third report on peremptory norms of general international law (*jus cogens*), the Inter-American Court of Human Rights has found that the prohibition of forced disappearance of persons is a *jus cogens* obligation (A/CN.4/714 and A/CN.4/714/Corr.1, para. 88).

<sup>21</sup> European Court of Human Rights, *Boban Šimšić v. Bosnia and Herzegovina*, Application No. 51552/10, Decision, 10 April 2012, para. 23.

<sup>22</sup> *Yearbook of the International Law Commission 2013*, vol. II (Part Two), annex II, para. 8.

of impunity for perpetrators responsible for human rights violations, including its highest authorities,<sup>23</sup> and has taken no significant steps to ensure accountability.<sup>24</sup> In its 2019 universal periodic review report, the Government indicated that it had amended its criminal law to increase penalties for law enforcement officials that committed violations of law.<sup>25</sup> While those amendments, if effectively enforced, could present some domestic avenues for accountability, it is imperative to recognize that punitive measures alone are insufficient to end the culture of impunity. The group of independent experts on accountability observed the limited prospects for domestic accountability, noting that these would require a major overhaul of the justice system.<sup>26</sup> More recently, a research institute noted that, even though the law of the Democratic People's Republic of Korea law guarantees judicial independence, the judicial institutions are only delegated bodies with limited power that are managed and supervised by higher authorities, such as the Supreme People's Assembly and the Workers' Party of Korea".<sup>27</sup>

16. Beyond criminal accountability, civil claims and petitions inside the Democratic People's Republic of Korea should also be supported. The country has in place a Complaints and Petitions Act (2010), which provides for claims against unjust actions of government officers. Its law also provides for compensation for victims of crime,<sup>28</sup> which in principle should include some human rights violations. Finally, the Damage Compensation Act (2020) provides for claims by persons who have suffered harm due to the acts of the State. These laws, if properly implemented and combined with institutional reform, could offer some measure of accountability for victims of human rights violations inside the country.

17. For any credible domestic accountability mechanisms to succeed, laws and judicial systems would have to be completely revised to guarantee independence, impartiality and competency and laws and procedures that comply with international human rights standards. Such mechanisms would require full authority and the resources necessary to carry out their functions, such as making arrests, gathering evidence and enforcing their decisions. Moreover, a comprehensive education programme would be needed to inform the people about their human rights and the structures in place to claim them.<sup>29</sup> The fourth cycle of the universal periodic review of the Democratic Republic of Korea, scheduled for 2024, and the currently overdue reports to treaty bodies, offer opportunities for the Government to provide information about the human rights situation inside the country, including possible improvements, to engage with the international community and to seek international cooperation on the human rights issues it wishes to address.<sup>30</sup> This could include assistance for legal reforms and an overhaul of the judicial system in line with international human rights principles. The United Nations High Commissioner for Human Rights has continuously encouraged the Government to respond to the offer of his Office for technical assistance.<sup>31</sup>

## B. Other domestic jurisdictions

18. The commission of inquiry on human rights in the Democratic People's Republic of Korea noted that, in the absence of steps towards accountability inside the Democratic

<sup>23</sup> A/HRC/46/51, para. 16.

<sup>24</sup> A/HRC/25/CRP.1, para. 1216.

<sup>25</sup> A/HRC/WG.6/33/PRK/1, para. 9.

<sup>26</sup> A/HRC/34/66/Add.1, para. 72.

<sup>27</sup> Korea Institute for National Unification, *White Paper on Human Rights in North Korea 2022* (Seoul, 2023), p. 206.

<sup>28</sup> Criminal Procedure Act (2021), art. 120.

<sup>29</sup> See, for instance, the submission of the Database Center for North Korean Human Rights, in which it states that "many who have escaped the oppressive regime might be unaware of the available legal avenues in South Korea". Available at <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-progress-accountability-human-rights-violations-democratic-peoples>.

<sup>30</sup> A/HRC/52/64, para. 10.

<sup>31</sup> OHCHR, "In DPRK, steps to advance human rights and justice are vital to building sustainable peace, Türk says", 17 August 2023.

People's Republic of Korea, the international community was obliged to act.<sup>32</sup> As a first step, neighbouring States and others with significant numbers of people from the Democratic People's Republic of Korea should pursue avenues for accountability, including criminal prosecutions and civil litigation, within their jurisdictions.<sup>33</sup>

## 1. Criminal prosecution

19. Criminal prosecutions outside the Democratic People's Republic of Korea face legal and practical challenges, including limited access to evidence and suspects (partially because possible perpetrators are limited to travel outside the country), the application of statutes of limitations and the existence of immunities and a narrower range of modes of liability in domestic law, in particular with respect to command and superior responsibility.<sup>34</sup> Nevertheless, all States should take the steps necessary to be ready to pursue prosecutions if they become feasible in the future. In particular, neighbouring States with significant populations from the Democratic People's Republic of Korea should consider preparing comprehensive strategies regarding the possible prosecution of perpetrators in the future, for example if perpetrators are found within their territories.<sup>35</sup>

20. The Republic of Korea is well placed to pursue domestic prosecutions owing to the high number of victims and witnesses residing in the country. The Republic of Korea has a documentation system based on the North Korean Human Rights Act (2016) (Act No. 14070). The Ministry of Unification Center for North Korean Human Rights Records conducts interviews with escapees from the Democratic Republic of Korea who migrate to the Republic of Korea. The Ministry of Justice North Korean Human Rights Documentation Office records evidence and information relating to human rights violations and possible crimes. The domestic law of the Republic of Korea implementing the Rome Statute, the Act on Punishment of Crimes under Jurisdiction of the International Criminal Court (2007) (Act. No. 8719), gives its courts jurisdiction over all crimes against humanity listed in the treaty if committed against its citizen on the territory of the Democratic People's Republic of Korea. In this respect, the Republic of Korea could exercise jurisdiction over crimes committed since the adoption of the Act in 2007; this would include, for example, cases against its citizens held in detention camps in the Democratic People's Republic of Korea. However, there have been no known prosecutions for human rights violations or crimes against humanity committed in the Democratic People's Republic of Korea.

21. Some civil society organizations have increasingly focused on pursuing criminal accountability, particularly in the Republic of Korea.<sup>36</sup> According to their submissions, they provide knowledge and technical skills to legal practitioners to bring cases in the national jurisdiction. Civil society organizations highlighted the need for awareness-raising among themselves, as well as among victims, on their right to seek justice. They also pointed out that collaborative efforts among legal experts, human rights organizations and international bodies and governmental support were crucial to pursue criminal accountability in the national jurisdiction.

22. Japan also has a significant number of victims and witnesses in the country, and some international crimes allegedly committed by the Democratic People's Republic of Korea, such as abductions, have taken place on its territory. According to the principle of complementarity of the International Criminal Court,<sup>37</sup> the primary responsibility for investigating and prosecuting crimes listed in the Rome Statute lies with the States parties. As the group of independent experts on accountability noted, Japan has taken the position that its Penal Code already covered them under its common criminal law provisions.<sup>38</sup>

<sup>32</sup> A/HRC/25/CRP.1, para. 1217.

<sup>33</sup> A/HRC/34/66/Add.1, para. 40.

<sup>34</sup> Ibid., paras. 44 and 45.

<sup>35</sup> A/HRC/52/64, para. 46.

<sup>36</sup> Submission of the Citizens' Alliance for North Korean Human Rights and the Database Center for North Korean Human Rights, available at <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-progress-accountability-human-rights-violations-democratic-peoples>.

<sup>37</sup> Rome Statute, art. 1.

<sup>38</sup> A/HRC/34/66/Add.1, para. 41.

However, this approach may not always adequately cover the extent or specificity of the facts, in particular where these crimes amount to crimes against humanity.<sup>39</sup> The Japanese police obtained domestic arrest warrants for 11 suspects, including agents of the Democratic People's Republic of Korea, and placed them on the International Criminal Police Organization (INTERPOL) wanted list for abductions. No known prosecutions have taken place in Japan for human rights violations or crimes against humanity committed in the Democratic People's Republic of Korea. While China also has numerous victims and witnesses, and possibly perpetrators from the Democratic People's Republic of Korea, on its territory, it has not ratified the Rome Statute, nor does its Criminal Code cover genocide, crimes against humanity and the full range of war crimes. No known prosecutions have taken place in China for human rights violations or crimes against humanity committed in the Democratic People's Republic of Korea.

23. Prosecutions outside the Democratic People's Republic of Korea could, if necessary, be based on principles of extraterritorial and/or universal jurisdiction. While this has not yet taken place with respect to crimes committed in the Democratic People's Republic of Korea, some States have pursued this pathway. For example, in Argentina, universal jurisdiction has been applied in a case, which is currently in the investigative stage, alleging human rights violations in Myanmar. Its jurisdiction law has allowed the case to proceed, although neither the victims nor the alleged perpetrators are present in Argentina. Germany has also successfully prosecuted nationals of the Syrian Arab Republic for torture and other crimes committed in the Syrian Arab Republic against other Syrian nationals.<sup>40</sup>

24. Readiness to apply universal or extraterritorial jurisdiction requires the adoption of an appropriate legal framework and the dedication of sufficient resources to prepare prosecutors and courts to act, both of which require political will.<sup>41</sup> In this respect, the Special Rapporteur encourages States to consider adopting legislation enabling the exercise of universal and/or extraterritorial jurisdiction, in full regard of relevant human rights standards, including fair trial guarantees. States should also ensure that human rights violations and international crimes (including those in the Rome Statute) are comprehensively addressed in their legal frameworks. States that retain the death penalty should also consider repealing it to further facilitate international cooperation on the most serious cases, including cooperation with accountability mechanisms supported by the United Nations.

## 2. Civil litigation

25. Another route to pursue accountability in domestic jurisdictions is through civil claims against the Government of the Democratic People's Republic of Korea and/or individuals or entities.<sup>42</sup> In the Republic of Korea, in a lawsuit brought by former prisoners of war, victims of abduction during the Korean War and the families of its nationals killed by agents of the Democratic People's Republic of Korea, a court ruled that President Kim Jong Un must pay monetary compensation to the victims. The first case in which the court ruled that monetary compensation should be paid concerned two prisoners of war held in the Democratic People's Republic of Korea for 47 years and forced to work in a coal mine. After the court ruling in 2020, five additional prisoners filed a lawsuit. One of the two initial plaintiffs in the first prisoner of war case and four of the five plaintiffs in the second case have passed away without hearing the final decision or receiving their compensation. This highlights the urgency of resolving these cases.

26. In Japan in 2018, five victims of the Paradise on Earth<sup>43</sup> campaign brought claims against the Democratic People's Republic of Korea seeking monetary damages for illegal

<sup>39</sup> Ibid.

<sup>40</sup> See, for example, Higher Regional Court of Koblenz, Case No. 1 StE 3/21, Judgment, 24 February 2021.

<sup>41</sup> A/HRC/46/52, paras. 38 and 74 (c); and A/HRC/52/64, paras. 17, 46, 47 and 57.

<sup>42</sup> OHCHR, "*These Wounds Do Not Heal*": *Enforced Disappearance and Abductions by the Democratic People's Republic of Korea* (2023), para. 89; A/HRC/46/52, para. 36; and A/HRC/52/64, para. 19.

<sup>43</sup> Paradise on Earth was a programme launched by the Government of the Democratic People's Republic of Korea to promote the "return" of ethnic Koreans on false promises. It lasted from 1959 to 1984 and resulted in the migration of 93,340 people to the Democratic People's Republic of Korea, mostly from Japan.



solicitation and detention. In March 2022, the Tokyo District Court acknowledged jurisdiction over acts of solicitation but denied the claim due to the expiry of the disqualification period. The Court found that it did not have jurisdiction over the claim.<sup>44</sup> In October 2023, however, the Tokyo High Court found that Japan had jurisdiction over the claim as the “place of result...of continuing tort”. The Tokyo High Court therefore ordered the District Court to re-examine the case, including illegal acts committed in the Democratic People’s Republic of Korea.<sup>45</sup> Two of the original plaintiffs have died during the course of litigation, again highlighting the urgency of resolving such cases.

27. In the United States of America, the Torture Victim Protection Act of 1991<sup>46</sup> allows civil claims by citizens and non-citizens of the United States against individuals “who, under actual or apparent authority, or colour of law, of any foreign nation” subject an individual to torture or extrajudicial killing. Nevertheless, there are obstacles to initiating civil proceedings against the Democratic People’s Republic of Korea within this framework, such as immunities granted to Heads of State, among other things. Another pathway for bringing a claim is the Foreign Sovereign Immunities Act of 1976.<sup>47</sup> Although the Act provides for the immunity of foreign Governments under most circumstances, lawsuits against the Democratic People’s Republic of Korea have been able to proceed because the country has been designated by the United States Government as a “state sponsor of terrorism”. Civil claims have been brought against the Democratic People’s Republic of Korea under the Act for kidnappings, imprisonment, torture and extrajudicial killings, but only with respect to nationals of the United States.

28. Despite winning civil claims against the Democratic People’s Republic of Korea, successful plaintiffs have faced significant challenges to having them effectively enforced, owing to immunities and the lack of assets held abroad that can be seized for payment. Courts and plaintiffs have had to search for creative ways to collect awards. In the Republic of Korea, litigation is ongoing as to whether the prisoners of war awarded damages in 2020 could be covered by a fund of undelivered royalty payments for the Democratic People’s Republic of Korea. In order to facilitate avenues for civil claims to pursue accountability States must review and revise their legal frameworks to clarify circumstances under which nationals and non-nationals may bring claims against the Democratic People’s Republic of Korea to compensate for damage to citizens whose rights have been violated. This can also be done by identifying innovative ways to enforce successful claims, for instance, by establishing trust funds from which awards can be paid.

### C. International Criminal Court

29. The Democratic People’s Republic of Korea is not a party to the Rome Statute and has not accepted the International Criminal Court’s jurisdiction on an ad hoc basis. It is for that reason that the commission of inquiry recommended that the Security Council refer the situation in the Democratic People’s Republic of Korea to the International Criminal Court or that the United Nations set up an ad hoc international tribunal.<sup>48</sup> However, there are important limitations for a case before the International Criminal Court to proceed.

30. Some organizations have sought to engage the jurisdiction of the International Criminal Court. Pursuant to article 15 of the Rome Statute,<sup>49</sup> since 2013, communications have been submitted to the Prosecutor on behalf of victims. The cases are mainly related to Korean War abductions, prisoners of war, the Paradise on Earth campaign and citizens of the Democratic People’s Republic of Korea. The Office of the Prosecutor has declined to open investigations in any of these cases, given the lack of jurisdiction of the Court. The Prosecutor has argued that some of the events in question took place prior to the entry into force of the

<sup>44</sup> A/HRC/52/64, para. 19.

<sup>45</sup> Tokyo High Court, Decision, 30 October 2023, (2022 (ne) No. 1972).

<sup>46</sup> United States, Public Law 102-256, 106 Stat. 73 (12 March 1992).

<sup>47</sup> United States, Public Law 94-583, 90 Stat. 2891 (21 October 1976).

<sup>48</sup> A/HRC/25/CRP.1, paras. 1201, 1218 and 1225.

<sup>49</sup> Article 15 of the Rome Statute provides that the Prosecutor may initiate investigations *proprio motu*, based on reliable information received from various stakeholders, including civil society.

Rome Statute in 2002 (or, in the case of conduct which allegedly took place on the territory of Japan, before the entry into force of the Rome Statute for Japan in 2007), the alleged crimes did not take place on the territory of a State party or the alleged perpetrators were not nationals of a State party.

31. With regard to the communications on enforced disappearances as crimes against humanity against nationals from the Republic of Korea and Japan, victim's groups and other stakeholders contend that the International Criminal Court possesses temporal jurisdiction, arguing that the crime persists until the missing person is located or accounted for.<sup>50</sup> The Elements of Crimes, which were adopted to assist in the interpretation of the Rome Statute, clarify, nonetheless, that the crime of enforced disappearance only falls under the jurisdiction of the Court if the attack occurs after the entry into force of the Rome Statute.<sup>51</sup> This interpretation remains subject to ongoing discussion. Of particular note is the Court's decision to initiate a preliminary examination into the situation in Burundi, focusing on crimes allegedly committed both before the Rome Statute's entry into force and after the withdrawal of Burundi. That decision, based on the "continuous nature of certain crimes", allows for further exploration of this legal avenue.<sup>52</sup>

32. Given the challenges involved in meeting the criteria for asserting territorial or personal jurisdiction over the alleged crimes against humanity in the Democratic People's Republic of Korea, as outlined in article 12 (2) of the Rome Statute,<sup>53</sup> the primary call has been for a referral of the situation in the Democratic People's Republic of Korea by the Security Council to the International Criminal Court. The commission of inquiry and the group of independent experts on accountability,<sup>54</sup> as well as the General Assembly,<sup>55</sup> the Human Rights Council,<sup>56</sup> and the United Nations High Commissioner for Human Rights<sup>57</sup> have recommended this avenue, acting under Chapter VII of the Charter of the United Nations and pursuant to article 13 of the Rome Statute. Such a decision would require an affirmative vote of nine members of the Security Council, including those of the permanent members.<sup>58</sup> Despite the differences in the Security Council on handling this issue, it is critical for the Council to keep this option open.<sup>59</sup> Another potential avenue involves States parties to the Rome Statute, in their role as members of the Court, exploring innovative ways to refer cases to the International Criminal Court that amount to crimes against humanity that might pertain to incidents within the territory of a State party.

33. It should be noted that, even if the International Criminal Court were able, in the future, to exercise jurisdiction over crimes against humanity committed by the Democratic People's Republic of Korea, the Court would only be able to hear a very small number of cases, possibly concerning crimes which took place after the entry into force of the Rome Statute in 2002. Thus, while accountability at the highest level remains a top priority, and investigations and prosecutions at the Court are an important goal for justice, various other accountability measures must be taken in parallel to address the commission of these atrocity crimes and to hear as many victims as possible.

<sup>50</sup> International Convention for the Protection of All Persons from Enforced Disappearance, arts. 8 (1) (b) and 24 (6).

<sup>51</sup> International Criminal Court, Elements of Crimes, (The Hague, 2013), p. 7, footnote 24.

<sup>52</sup> International Criminal Court, *Decision pursuant to article 15 of the Rome Statute on the authorization of an investigation into the situation in the Republic of Burundi*, ICC-01/17-X-9-US-Exp, 25 October 2017, paras. 191 and 192.

<sup>53</sup> Article 12 (2) of the Rome Statute reads as follows:

"In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3: (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft; (b) The State of which the person accused of the crime is a national."

<sup>54</sup> A/HRC/34/66/Add.1, para. 84 (a).

<sup>55</sup> Most recently, General Assembly resolution 78/218, para. 12.

<sup>56</sup> Most recently, Human Rights Council resolution 52/28, para. 9.

<sup>57</sup> Most recently, A/HRC/52/64, para. 57 (a).

<sup>58</sup> Charter of the United Nations, Article 27.

<sup>59</sup> A/HRC/46/52, paras. 69, 70 and 74 (a); and A/HRC/52/64, para. 57 (a).

## D. Hybrid or ad hoc mechanisms

34. In the absence of progress towards a referral to the International Criminal Court by the Security Council, the commission of inquiry and the group of independent experts on accountability have both examined the possibility of hybrid or ad hoc mechanisms.<sup>60</sup> On the suitability of hybrid mechanisms such as hybrid courts, a special prosecutor's office or a truth commission, the group of independent experts considered that such "cannot currently be envisaged given the lack of impartiality and independence of the judiciary and its alleged implication in the commission of human rights violations."<sup>61</sup> The commission of inquiry found those options unsuitable because each of them would require the participation of the Government of the Democratic People's Republic of Korea.<sup>62</sup> The Special Rapporteur shares the view that such mechanisms would first require a comprehensive reform of the system in the country.

35. With regard to the creation of an ad hoc mechanism, the commission of inquiry noted that this would "require substantial resource commitments and institutional planning, leading to a further delay in bringing perpetrators to justice."<sup>63</sup> The commission of inquiry nevertheless advanced the idea that the General Assembly may have the power to create an ad hoc tribunal if the Security Council fails to refer the situation to the International Criminal Court.<sup>64</sup> Any ad hoc or hybrid mechanism would be expensive and slow, particularly if the Democratic People's Republic of Korea did not cooperate. It would have to address difficult questions regarding, for example, trials in absentia and the application of the death penalty (retained by the Democratic People's Republic of Korea, the Republic of Korea and Japan, but not applicable in United Nations-assisted mechanisms).

## E. International Court of Justice

36. An additional avenue for legal accountability, which might not have appeared possible at the time of the investigations of the commission of inquiry, is a proceeding against the Democratic People's Republic of Korea before the International Court of Justice. In 2019, the Gambia brought a case against Myanmar under the Convention on the Prevention and Punishment of the Crime of Genocide relating to treatment by Myanmar of its Rohingya Muslim minority.<sup>65</sup> Although the Gambia was not directly affected by the treatment by Myanmar of the Rohingya, the Court found that the Gambia had standing to bring the case based on the common interest of all States parties to the Genocide Convention to "ensure the prevention, suppression and punishment of genocide".<sup>66</sup> States parties have obligations *erga omnes partes*, meaning obligations to all the other States parties to comply with the Convention. The 2024 case brought by South Africa against Israel alleging breaches of the Genocide Convention in Gaza relies on similar jurisdictional grounds.<sup>67</sup>

37. Based on its Statute, the International Court of Justice could have jurisdiction over disputes relating to any human rights treaty which specifies the Court as the arbiter of disputes relating to that treaty. There may be a possibility for a State Member of the United Nations to bring a case before the International Court of Justice regarding certain human

<sup>60</sup> A/HRC/25/CRP.1, paras. 1218 and 1225.

<sup>61</sup> A/HRC/34/66/Add.1, para. 73.

<sup>62</sup> A/HRC/25/CRP.1, para. 1202.

<sup>63</sup> Ibid., para. 1201.

<sup>64</sup> Ibid. Other ad hoc mechanisms which were established without reference to the Chapter VII authority of the Security Council, such as the Extraordinary Chambers in the Courts of Cambodia and the Special Court for Sierra Leone, were international in nature, as they involved agreements between national authorities and the United Nations.

<sup>65</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 3.

<sup>66</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 477, para. 107.

<sup>67</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Application instituting proceedings and request for the indication of provisional measures, 29 December 2023, para. 13.

rights violations in the Democratic People's Republic of Korea under human rights treaties to which it is a party, such as the Convention on the Elimination of All Forms of Discrimination against Women.<sup>68</sup> The International Court of Justice has previously appeared to suggest<sup>69</sup> that obligations under international human rights treaties could potentially be interpreted as obligations *erga omnes*, giving any State standing to bring a claim for breaches.<sup>70</sup> However, to date, this has only been tested with respect to the Genocide Convention. It appears that, as article 29 of the Convention on the Elimination of All Forms of Discrimination against Women specifies the Court as arbiter of disputes, the Court could have jurisdiction over suits relating to the treaty. However, the Democratic People's Republic of Korea has entered a reservation stating that it "does not consider itself bound by the provisions of article 29".<sup>71</sup> It is unclear how this reservation might affect the question of the Court's jurisdiction over disputes under the Convention on the Elimination of All Forms of Discrimination against Women. It is also unclear whether the Court may exercise jurisdiction relating to other human rights treaties which do not specify an arbiter in case of disputes. Further developments before the International Court of Justice in the cases against Myanmar and Israel may illuminate the path for States to bring suit against the Democratic People's Republic of Korea regarding alleged breaches of human rights treaties to which it is a State party. Such an approach would require significant political will and resources on the part of the State bringing suit.

## F. International human rights mechanisms

38. The group of independent experts on accountability noted that United Nations human rights mechanisms, such as the Human Rights Council and its special procedures, the universal periodic review and treaty bodies, could all contribute to accountability for human rights violations in the Democratic People's Republic of Korea.<sup>72</sup> The group of independent experts noted that observations of treaty bodies included practical advice on steps to implement the rights addressed, and that special procedures mandate holders could intervene directly with the Democratic People's Republic of Korea on allegations of human rights violations through letters.<sup>73</sup> The Democratic People's Republic of Korea has been engaging with the international human rights mechanisms. Most recently, in December 2023, it submitted written replies to the list of issues forwarded by Committee on the Rights of Persons with Disabilities on its initial report.<sup>74</sup> In 2017, it was reviewed by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child.<sup>75</sup> Both Committees raised accountability-related issues. For example, the Committee on the Elimination of Discrimination against Women recommended that the Democratic People's Republic of Korea "ensure that victims/survivors of gender-based violence against women have access to justice and to an effective remedy".<sup>76</sup> The Democratic People's Republic of Korea participated in its third cycle of the universal periodic review, in May 2019. Other States made various recommendations including on the prohibition of torture and enforced disappearances, and on the improvement of the judicial system. The country accepted some of the resulting recommendations, in such areas as the independence

<sup>68</sup> Art. 29.

<sup>69</sup> In earlier jurisprudence on *erga omnes* obligations, the International Court of Justice held that "such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination" (Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970, p. 3, para. 34).

<sup>70</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgments, I.C.J. Reports 2012, p. 422, para. 69.

<sup>71</sup> See [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=\\_en#19](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en#19).

<sup>72</sup> A/HRC/34/66/Add.1, para. 62; see also A/HRC/52/64, para. 10.

<sup>73</sup> A/HRC/34/66/Add.1, para. 63.

<sup>74</sup> CRPD/C/KEN/RQ/1.

<sup>75</sup> CEDAW/C/PRK/CO/2-4 and CRC/C/PRK/CO/5.

<sup>76</sup> CEDAW/C/PRK/CO/2-4, para. 14 (b).

of the judiciary, the right to a fair trial and due process guarantees, and impunity for human rights violations.<sup>77</sup> The country's fourth cycle review is scheduled for November 2024.

39. Victims and civil society organizations have increasingly submitted petitions on the human rights violations in the Democratic People's Republic of Korea to the special procedures of the Human Rights Council, including the Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention. As at 3 August 2023, the Working Group on Enforced or Involuntary Disappearances had transmitted 404 cases to the Democratic People's Republic of Korea.<sup>78</sup> No cases have been clarified, either by the Government or the source. The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and other mandate holders and mechanisms offer victims the chance to be heard, to document human rights violations and possible crimes, and to provide recommendations to the Democratic People's Republic of Korea on how they can address these concerns. These mechanisms provide a transparent, accessible and flexible way for victims and survivors to be heard, to develop a historical record and to raise human rights issues directly with the Government. The Special Rapporteur encourages the Democratic People's Republic of Korea to be open to further engagement with the United Nations human rights mechanisms, including accepting a country visit of the special procedures, as a confidence-building measure. Victims, civil society and other stakeholders should make full use of the special procedures by gathering information and submitting petitions.

40. The mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea has consistently stressed the importance of accountability for human rights violations. The Special Rapporteur continues to report on the human rights violations in the country, including through engagement with victims and stakeholders, and has made concrete recommendations on achieving accountability. The Special Rapporteur has sent communications to the Democratic People's Republic of Korea on specific issues such as new legislation and disappearance cases.<sup>79</sup>

## G. Sanction regimes

41. The commission of inquiry recommended that the Security Council adopt targeted sanctions against those most responsible for crimes against humanity, but not against the population or the economy as a whole.<sup>80</sup> The General Assembly has repeatedly recommended that the Security Council consider such targeted sanctions.<sup>81</sup> The group of independent experts on accountability recalled the recommendations of the commission of inquiry, but cautioned "against any unilateral measure not in accordance with international law or that impedes the full realization of human rights in the Democratic People's Republic of Korea."<sup>82</sup>

42. Several Member States have developed sanctions programmes targeting individuals who are allegedly responsible for serious human rights violations.<sup>83</sup> Those sanctions are implemented through legislation that enables a Government or multilateral institution to freeze or block the assets of individuals, or deny or revoke visas of individuals that are

<sup>77</sup> See <https://www.ohchr.org/en/hr-bodies/upr/kp-index>.

<sup>78</sup> See [A/HRC/54/22](#).

<sup>79</sup> All communications are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>80</sup> [A/HRC/25/CRP.1](#), para. 1225 (a); and [A/HRC/34/66/Add.1](#), paras. 65 and 79.

<sup>81</sup> Most recently, General Assembly resolution 78/218, para. 12. See also Human Rights Council resolution 52/28, para. 9.

<sup>82</sup> [A/HRC/34/66/Add.1](#), para. 79.

<sup>83</sup> Australia, Autonomous Sanctions Regulations 2011, as amended by the Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021; Canada, Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) and Special Economic Measures Act; United Kingdom of Great Britain and Northern Ireland, Global Human Rights Sanctions Regulations 2020; United States, Global Magnitsky Human Rights Accountability Act of 2016, Executive Order 13818 of 20 December 2017, Department of State, Foreign Operations, and Related Programs Appropriations Act, sect. 7031 (c), North Korea Sanctions and Policy Enhancement Act of 2016 and Executive Order 13722 of 15 March 2016; and European Union, European Union global human rights sanctions regime, based on Council Regulation (EU) 2020/1998 of 7 December (2020).

responsible for serious human rights violations. Such measures are legislated in over 30 States and in at least 12 jurisdictions, including Australia, Canada, the United Kingdom of Great Britain and Northern Ireland, the United States and the European Union.<sup>84</sup> Some of the programmes allow victims and other stakeholders to provide information for investigations, which represents an opportunity for victims to be heard.<sup>85</sup> Like other international measures, a unilateral human rights sanctions regime would require careful planning, implementation and monitoring to ensure respect for due process and the human rights of accused persons and others who may be affected. While the participation of victims in sanctions programmes presents an opportunity for victims to be heard, they must be provided with full information about the ramifications of their participation to enable them to decide whether it is in their best interests, as well as protection from possible retaliation.<sup>86</sup>

## H. Office of the United Nations High Commissioner for Human Rights

43. At the request of the Human Rights Council,<sup>87</sup> the Office of the United Nations High Commissioner for Human Rights (OHCHR) established its Seoul office in 2015 to strengthen monitoring and documentation of the situation of human rights in the Democratic People's Republic of Korea, "to ensure accountability, to enhance engagement and capacity-building with the Governments of all States concerned, civil society and other stakeholders, and to maintain visibility of the situation of human rights in the Democratic People's Republic of Korea". In response to a 2017 recommendation of the group of independent experts on accountability, the Human Rights Council strengthened, for a period of two years, the capacity of OHCHR, including its field-based structure in Seoul, "to allow the implementation of relevant recommendations made by the group of independent experts on accountability in its report aimed at strengthening current monitoring and documentation efforts, establishing a central information and evidence repository, and having experts in legal accountability assess all information and testimonies with a view to developing possible strategies to be used in any future accountability process".<sup>88</sup> In April 2022, the Human Rights Council requested OHCHR to "organize a series of consultations and outreach activities with victims, affected communities and other relevant stakeholders with a view to including their views into avenues for accountability."<sup>89</sup>

44. The work of OHCHR remains critical. By interviewing more than 700 escapees, consulting with victims and other stakeholders, maintaining and populating its central repository of evidence and information, having legal experts review the information gathered for evidence of crimes against humanity, providing capacity-building for stakeholders and raising awareness about human rights in the Democratic People's Republic of Korea, it helps to lay the foundation for future accountability mechanisms, including judicial accountability, while providing avenues for non-judicial accountability. The Special Rapporteur believes that a comprehensive report of ongoing human rights violations and progress made in implementing the recommendations of the commission of inquiry could be helpful, considering the deterioration of the human rights situation in recent years, with the impacts triggered by the coronavirus disease (COVID-19) restrictions, lack of access to food and the continued development of weapons. Civil society groups, Governments and other stakeholders are encouraged to use the expertise of OHCHR and to collaborate with it, particularly by contributing evidence and information for storage in the repository of evidence.

<sup>84</sup> Human Rights First, Open Society Foundations, Raoul Wallenberg Centre for Human Rights and REDRESS, *Multilateral Magnitsky Sanctions at Five Years* (2022), p. 4.

<sup>85</sup> A/HRC/52/64, para. 18.

<sup>86</sup> *Ibid.*

<sup>87</sup> Human Rights Council resolution 25/25, para. 10.

<sup>88</sup> Human Rights Council resolution 34/24, para. 12.

<sup>89</sup> Human Rights Council resolution 49/22, para. 18.

## I. Civil society and public interest groups

45. Civil society organizations have carried out activities focused on crimes against humanity in the Democratic People's Republic of Korea, in particular analysis regarding perpetrators and the structure of command, which are critical for establishing criminal accountability. The Citizens' Alliance for North Korean Human Rights, for instance, has examined the interconnectivity between the involvement of institutions, such as the military and security forces, as well as the high-level leadership of the Government, in crimes against humanity and "the related supply chains, business practices and exports which fund these crimes".<sup>90</sup> In March 2022, the Committee for Human Rights in North Korea held an accountability hearing in Washington, D.C., on the culpability of perpetrators for crimes against humanity at short-term detention facilities in the Democratic People's Republic of Korea based on the Rome Statute. The hearing found that some identified individuals may be subject to prosecution for crimes against humanity.<sup>91</sup>

## J. Truth-seeking initiatives

46. Truth-seeking addresses a victim's right to the truth. In its resolution 68/165, the General Assembly recognized the importance of respecting and ensuring the right to truth so as to contribute to "ending impunity and to promote and protect human rights". It is therefore a form of reparation and is complimentary to criminal accountability. There is a significant demand from escapees from the Democratic People's Republic of Korea for truth-seeking initiatives.<sup>92</sup> The Special Rapporteur has received information that civil society organizations are actively considering and working on truth-seeking.<sup>93</sup> Some of the strategies proposed can be implemented immediately, and others will serve long-term purposes. They include the establishment of truth and historical commissions, the recording of truth-telling and history-telling initiatives, the publications and educational programmes for the public, and the inclusion of the "North Korean case in ongoing international research and memorialization efforts consistent with other post-communist societies".<sup>94</sup> Civil society organizations in the Republic of Korea have been engaged in exploring memorialization efforts, including operating an online museum.<sup>95</sup>

47. In accordance with the North Korean Human Rights Act of 2016, the Government of the Republic of Korea has been conducting surveys and in-depth interviews on the human rights situation in the Democratic People's Republic of Korea with escapees arriving in the Republic of Korea after 2017. According to the Center for North Korean Human Rights Records, established in September 2016 in the Ministry of Unification, from 2017 to 2023, the human rights situation of 3,553 escapees was investigated and 2,177 completed questionnaires were delivered to the North Korean Human Rights Documentation Office in the Ministry of Justice.<sup>96</sup> In March 2023, the Government issued a report entitled "2023 report

<sup>90</sup> Submission of the Citizens' Alliance for North Korean Human Rights. See also Citizens' Alliance for North Korean Human Rights, *Blood Coal Export from North Korea: Pyramid Scheme of Earnings Maintaining Structures of Power* (2021); and written statement provided by the Deputy Director General of Citizens' Alliance for North Korean Human Rights to the United States Congressional-Executive Commission on China for the hearing on the forced repatriation of North Korean refugees from China, 9 June 2023, available at <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Joanna%20Hosaniak.%20Citizens%20Alliance%20NKHR.pdf>.

<sup>91</sup> Submission of the Committee for Human Rights in North Korea, available at <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-progress-accountability-human-rights-violations-democratic-peoples>.

<sup>92</sup> Transitional Justice Working Group, *Exploring grassroots transitional justice: North Korean escapee views on accountability for human rights abuses* (Seoul, 2019), p. 34.

<sup>93</sup> Submission of the Citizens' Alliance for North Korean Human Rights, p. 1.

<sup>94</sup> *Ibid.*, p. 2.

<sup>95</sup> Submission of the Database Center for North Korean Human Rights, p. 3.

<sup>96</sup> Submission of the Government of the Republic of Korea, available at <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-progress-accountability-human-rights-violations-democratic-peoples>.

on North Korean human rights” based on the testimonies of 508 escapees who had entered the country since 2017.

48. Civil society organizations based in the Republic of Korea have been interviewing escapees from the Democratic People’s Republic of Korea and documenting human rights violations for both judicial and non-judicial accountability efforts. The Database Center for North Korean Human Rights has documented 89,958 cases of violations and information on 55,608 individuals related to those cases in its database.<sup>97</sup> The documentation work of the Government and civil society organizations will be indispensable in the future for criminal accountability initiatives and for truth-seeking purposes. Such efforts also provide a measure of accountability in the present by allowing victims to be heard and to record their experiences.

## K. Reparations and victim support

49. Victims of gross violations of human rights are entitled to be provided with full and effective reparation, which includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence. Compensation involves the provision of economically assessable damage, including costs required for legal or expert assistance, medicine and medical services, and psychological and social services.<sup>98</sup> Rehabilitation focuses on similar care services. Satisfaction includes both judicial and non-judicial approaches to accountability and symbolic reparative measures, such as public apology, commemorations and tributes to the victims, and inclusion of an accurate account of the human rights violations in training and educational material at all levels. The overall aim of guarantees of non-recurrence is to break the structural causes of societal violence and systemic human rights violations, ensuring that victims do not have to endure again the violations of their rights.<sup>99</sup>

50. For some victims, reparations – especially economic reparations – may represent the “most tangible manifestation of the efforts of the State to remedy the harms they have suffered.”<sup>100</sup> In order for States to fulfil their duty of offering prompt and effective reparation to victims of severe human rights violations,<sup>101</sup> there must first be an acknowledgment of such violations. There has been no acknowledgement by the Democratic People’s Republic of Korea of human rights violations,<sup>102</sup> hence no measure of reparation has taken place to address the multiple harms suffered by victims. In the Republic of Korea, compensation to victims of civilian massacres during the Korean War has been afforded to some individuals through lawsuits; however, there is no legal framework that foresees the payment of reparations to all Korean war victims.<sup>103</sup> In 2002, Japan enacted the Act on Aid to Persons Abducted by North Korean Authorities and Other Relevant Persons, which stipulates the provision of support, including financial support, to abductees once they are returned to Japan. However, such financial support does not apply to families of abductees who are searching for the abductees.

<sup>97</sup> Submission of the Database Center for North Korean Human Rights, p. 1.

<sup>98</sup> See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

<sup>99</sup> A/HRC/54/24, para. 70.

<sup>100</sup> Pablo De Greiff, “Introduction repairing the past: compensation for victims of human rights violations”, in *The Handbook of Reparations*, Pablo de Greiff, ed. (Oxford and New York, Oxford University Press, 2006), p. 2.

<sup>101</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 11.

<sup>102</sup> Except for the acknowledgement of and apology for the abductions of a limited number of Japanese citizens by then leader Kim Jong Il in 2002. See Ministry of Foreign Affairs of Japan, “Talks between Japan and North Korea on the abductions issue”, 6 August 2021, available at [https://www.mofa.go.jp/a\\_o/na/kp/page1we\\_000069.html](https://www.mofa.go.jp/a_o/na/kp/page1we_000069.html).

<sup>103</sup> A/HRC/54/24/Add.1, paras. 32 and 38.



51. Victims of severe human rights violations often endure significant trauma because of their violent experiences.<sup>104</sup> Rehabilitation plays a crucial role in addressing both their mental and physical harm, offering victims the opportunity to rebuild their lives and restore their dignity. It is therefore imperative for States to provide victims with psychosocial rehabilitation services. This facilitates their recovery process and contributes to ensuring their stability and safety, particularly if they engage in truth-seeking endeavours that involve sharing their personal experiences. Security measures should also be implemented to protect victims and witnesses who come forward to report the violations they have suffered, shielding them from potential reprisals.

52. Satisfaction measures are symbolic reparations that carry meaning and help victims and society understand the painful events of the past.<sup>105</sup> This can include a State's issuance of official apologies for human rights atrocities, the creation of museums, parks and sites of memory, the establishment of days of commemoration, history rectification initiatives (i.e., history textbook changes), and even changes of names of public spaces.<sup>106</sup> Such initiatives provide a symbolic recognition for victims as rights holders that their rights were violated by the State. Civil society organizations suggest creating memorial spaces to understand the totalitarian structures of oppression.<sup>107</sup>

## V. Conclusions

53. Accountability is fundamental to the human rights framework. States have a duty to investigate and prosecute human rights violations that amount to crimes under national or international law, derived from the right to remedy for any person whose rights or freedoms are violated, as enshrined in the International Covenant on Civil and Political Rights, to which the Democratic People's Republic of Korea is a State party. States, including the Democratic People's Republic of Korea, have a duty to investigate and prosecute crimes against humanity under customary law and *jus cogens* norms. The unwillingness or inability of the Democratic People's Republic of Korea to investigate and prosecute such crimes should trigger the obligation of other States to take action.

54. In the past decade, efforts have been made by victims, civil society organizations, States, the United Nations and the international community as a whole to ensure accountability. Some brought civil litigation to domestic courts. Many victims have shared their stories with the United Nations, Governments and civil society organizations so that human rights violations can be documented. Some are pursuing memorialization in different forms. The Special Rapporteur particularly commends the courageous efforts that have been made by victims and their families. Ongoing multifaceted efforts to pursue accountability are positive steps and should be encouraged and supported.

55. There are, however, some areas that could be further explored. For instance, the international community should strengthen engagement with the Democratic People's Republic of Korea, including through the United Nations human rights mechanisms, to make concrete small steps to improve the human rights situation and accountability for violations. The relevant States parties to the Rome Statute could explore strategies to engage the jurisdiction of the International Criminal Court. The international community should also increase diplomatic efforts to secure the referral of the situation to the Court by the Security Council. Actors who are holding relevant information and documents on human rights violations, including crimes against humanity committed by the Democratic People's Republic of Korea, are encouraged to contribute it to the OHCHR repository. States in which victims live, including families of forcibly disappeared persons, could set up a mechanism to provide reparations, including compensation and mental health-care to the victims. Even if

<sup>104</sup> [A/HRC/54/24](#), para. 50.

<sup>105</sup> *Ibid.*, para. 51.

<sup>106</sup> Ñusta Carranza Ko, *Truth, Justice, and Reparations in Peru, Uruguay, and South Korea: The Clash of Advocacy and Politics* (Singapore, Palgrave Macmillan, 2021), p. 20; and Pablo De Greiff, "Justice and reparations", in *The Handbook of Reparations*, Pablo de Greiff, ed. (Oxford and New York, Oxford University Press, 2006), p. 453.

<sup>107</sup> Submission of the Citizens' Alliance for North Korean Human Rights, p. 18.

violations were not caused by them, the States are strongly encouraged to ensure the victims' right to reparations based on international law.<sup>108</sup>

56. All such efforts, however, must include comprehensive victim participation. Accountability should be envisioned as a sustained and multifaceted endeavour prioritizing victims' rights and perspectives. A space and mechanism should be created for escapees from the Democratic People's Republic of Korea living in the Republic of Korea and other countries to actively participate in accountability efforts. They also need to be informed of their rights and the forms that accountability could take. In the view of the Special Rapporteur, accountability should ultimately aim to answer victims and to secure truth and justice for them. The Special Rapporteur therefore believes that all relevant actors should place victims at the centre of accountability efforts.

## VI. Recommendations

57. **The Special Rapporteur recommends that the Democratic People's Republic of Korea:**

- (a) **Resume diplomatic engagement and grant access to United Nations agencies and other humanitarian agencies to return to the country;**
- (b) **Recognize the fundamental right to leave and enter the country, both in law and in practice, and ensure that those who are repatriated are not subjected to punishment such as torture, enforced disappearance and imprisonment upon repatriation;**
- (c) **Ease restrictions on access to information and communications and freedom of movement;**
- (d) **Acknowledge the recurring patterns of human rights violations and take steps to reform the criminal justice system in compliance with human rights standards;**
- (e) **Continue to cooperate with United Nations human rights mechanisms by regularly reporting on the state of implementation of recommendations issued by treaty bodies, participating in the universal periodic review and inviting thematic special procedures and the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea for a country visit;**
- (f) **Strengthen engagement with OHCHR, in particular for technical cooperation and capacity-building initiatives;**
- (g) **Ratify the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.**

58. **The Special Rapporteur recommends that the Republic of Korea:**

- (a) **Consider a mechanism to provide reparations, including compensation and psychological support, to victims of human rights violations caused by the Democratic People's Republic of Korea living in its territory;**
- (b) **Consider developing a comprehensive strategy for ensuring accountability measures, including using its domestic judiciary;**
- (c) **Support civil society organizations, victims and families in their efforts to pursue accountability.**

<sup>108</sup> International Convention for the Protection of All Persons from Enforced Disappearance, art. 24 (5); International Covenant on Civil and Political Rights, arts. 9 (5) and 14 (6); Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, art. 14 (1); and Rome Statute. See also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

59. **The Special Rapporteur recommends that China and other States in which people from the Democratic People's Republic of Korea reside:**

(a) **Respect, regardless of migration status, the principle of non-refoulement at all times for people from the Democratic People's Republic of Korea who are at risk of torture, cruel, inhuman or degrading treatment or other irreparable harm upon repatriation;**

(b) **Provide the people from the Democratic People's Republic of Korea with immediate protection and access to services.**

60. **The Special Rapporteur recommends that Member States:**

(a) **Support accountability initiatives by victims and civil society organizations;**

(b) **Adopt legislation enabling the exercise of universal and/or extraterritorial jurisdiction, with full regard to human rights standards, including fair trial guarantees;**

(c) **Review their legal frameworks to clarify circumstances under which nationals and non-nationals may bring civil claims against the Democratic People's Republic of Korea to compensate for damages for citizens whose rights have been violated;**

(d) **Take further steps to pursue the referral of the situation in the Democratic People's Republic of Korea by the Security Council to the International Criminal Court;**

(e) **Explore innovative ways for referring to the International Criminal Court cases that amount to crimes against humanity and that might pertain to incidents within the territory of a State party;**

(f) **Take advantage of the fourth cycle of the universal periodic review of the Democratic People's Republic of Korea and follow up on the recommendations made during previous cycles.**

61. **The Special Rapporteur makes the following recommendations pertaining to the United Nations Secretariat:**

(a) **The Secretariat should sustain engagement with the Democratic People's Republic of Korea to find feasible means of cooperation towards accountability for human rights violations;**

(b) **The High Commissioner for Human Rights should continue to prioritize the human rights situation in the Democratic People's Republic of Korea and explore creative approaches to build momentum to engage with the Democratic People's Republic of Korea;**

(c) **The Secretary-General and OHCHR should continue to explore and support technical cooperation activities on human rights with the Democratic People's Republic of Korea.**

62. **The Special Rapporteur recommends that civil society organizations continue to raise awareness, document human rights violations taking place in the Democratic People's Republic of Korea and advocate for the inclusion of victims' voices in decision-making processes regarding justice demands.**