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**Human Rights Council**

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Agenda item 4

**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[[1]](#footnote-1)\*

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|  *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 A/HRC/52/28. In this report, the Special Rapporteur will provide a comprehensive analysis of accountability efforts made in the last decade since the report of the Commission of Inquiry on the Human Rights in the Democratic People’s Republic of Korea. The report will also examine what measures need to be taken to further advance accountability for human rights violations committed by the Democratic People’s Republic of Korea. |
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 I. Introduction

1. February 2024 marks the 10th anniversary of the report released by the Commission of Inquiry on human rights in the Democratic People’s Republic of Korea. The Commission of Inquiry concluded that “systemic, 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 such violations “constitute crimes against humanity”.[[2]](#footnote-2) The Commission recommended the country to “undertake profound political and institutional reforms” and the international community to take several actions including referral to the International Criminal Court. Following up to the Commission’s recommendations, in 2017, a 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.[[3]](#footnote-3)

2. In this report, the Special Rapporteur will take 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 last 10 years, and will discuss what more can be done to strengthen these efforts. To inform this 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 have contributed to her request for input.[[4]](#footnote-4)

 II. The current human rights and political situation

3. In January 2024, the Democratic People’s Republic of Korea’s leadership announced that the country would no longer pursue Korean unification.[[5]](#footnote-5) During the 76th founding anniversary of the Korean People’s Army, President 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.[[6]](#footnote-6) The Special Rapporteur expresses concern that these developments will contribute to escalating tensions on the Peninsula. She wishes to remind that peace on the Korean Peninsula cannot be achieved without addressing the long-standing human rights issues in the country.

4. In 2023, the United Nations Security Council held nine formal meetings to discuss the Democratic People’s Republic of Korea’s missile launches and their implications for international peace and security.[[7]](#footnote-7) The United Nations 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.[[8]](#footnote-8) Member States expressed deep concern over the humanitarian situation facing the people and took note of the concerns raised by the Special Rapporteur over the detrimental impact of the ongoing security and human rights situation on the most vulnerable populations, including women and girls.[[9]](#footnote-9)

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 UN and humanitarian agencies back to 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[[10]](#footnote-10) of which only a few are estimated to have left the country in 2023.[[11]](#footnote-11) The reduction in the arrivals of escapees and the near isolation of the country made it harder to receive information on the recent human rights development. The Special Rapporteur reiterates her call to 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 extensive focus on the security and regular security-related information from the Government in the media has diverted global attention from the worsening of human rights conditions. Restrictions on freedom of expression and other fundamental rights have been tightened by implementing new laws including the law on the elimination of reactionary thought and culture, Pyongyang Cultural Language Protection Law, and the Emergency Quarantine Law through heavy punishments and public trials.

7. The Special Rapporteur reiterates her concerns that escapees from the Democratic People’s Republic of Korea were forcibly repatriated from China despite repeated appeals made by multiple international human rights bodies to refrain from such repatriations.[[12]](#footnote-12) There are long-standing and credible reports to believe that a number of escapees that are forcefully returned to the Democratic People's Republic of Korea are 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 explicitly included, among others, in the 1951 Convention on 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 to all citizens returning to the country, including the absolute prohibition on torture and enforced disappearance, the prohibition of arbitrary detention, and fair trial guarantees.

 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 fulfill the rights of all within their jurisdiction. Accountability allows this legal framework to be ensured beyond aspirational goals. It allows individuals and communities to take ownership of their rights and ensure States comply to their international and national obligations. Accountability for human rights violations has three dimensions: 1) responsibility – authorities should take responsibility for their actions; 2) answerability –authorities should provide reasoned justifications to those affected; and 3) enforceability – authorities should put mechanisms in place to monitor and provide corrections and remedies.[[13]](#footnote-13)

9. As the Group of Independent Expert stated, accountability for human rights violations “goes beyond establishing individual criminal responsibility.”[[14]](#footnote-14) 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 endeavor. While embracing 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 complementing each approaches. 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[[15]](#footnote-15). The Special Rapporteur shares the view 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”.[[16]](#footnote-16)

 B. State’s responsibility 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.[[17]](#footnote-17) This obligation derives from the right to remedy to any person whose rights or freedoms are violated under Article 2 (3) of the International Covenant on Civil and Political Rights, which the Democratic People’s Republic of Korea is a Party to since 1981.[[18]](#footnote-18) State Parties are required to ensure “accessible and effective remedies”[[19]](#footnote-19) for these individuals and to bring those responsible to justice.[[20]](#footnote-20)

11. Regarding international crimes – genocide, war crimes and crimes against humanity -, the States’ obligation to investigate and prosecute is clearly provided by several treaties: the four Geneva Conventions of 12 August 1949, Convention on the Prevention 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 states to establish jurisdiction -including universal jurisdiction- over offences prohibited under the Convention whenever the offender is present in their territory and does not extradite him. The Convention for the Protection of All Persons from Enforced Disappearances, which recognizes that 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 on Torture or the Convention on Enforced Disappearance. This does not exempt the country from its responsibility to investigate and prosecute such crimes, since these duties are enshrined in customary law and *ius cogens* norms.[[21]](#footnote-21)

12. Regarding crimes against humanity, these 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.[[22]](#footnote-22) The International Law Commission has worked on defining crimes against humanity under customary international law and the draft treaty is currently being considered by the UN General Assembly’s Sixth Committee. Four key elements a new convention would contain are: 1) A definition tracking Article 7 of the Rome Statute; 2) An obligation to criminalize crimes against humanity with national legislation;[[23]](#footnote-23) 3) Robust interstate cooperation procedures and 4) Clear obligation to prosecute or extradite offenders. The adoption of this treaty would impose clear legal obligations on states to prevent and punish these 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 has acceded to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity in 1984, which recognizes both crimes under international law and emphasizes the importance of punishing the perpetrators. The lack of ability 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. This section outlines ongoing endeavours undertaken to pursue varied 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 has still not addressed the entrenched culture of impunity for perpetrators responsible for human rights violations, including its highest authorities[[24]](#footnote-24) and has taken no significant steps to ensure accountability.[[25]](#footnote-25) In its 2019 Universal Periodic Review national report, the Government informed they had increased penalties for law enforcement officials that would commit violations of law.[[26]](#footnote-26) While these amendments, if effectively enforced, may present some forms of 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 observed the limited prospects for domestic accountability, noting that these would require a major overhaul to the justice system.[[27]](#footnote-27) 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”.[[28]](#footnote-28)

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 Law on Complaints and Petitions (2010) which provides for claims against unjust actions of government officers. Its law also provides for compensation for victims of crime,[[29]](#footnote-29) which in principle should include some human rights violations. Finally, the Compensation for Damage Law (2020) provides for claims by persons who have suffered harm due to the acts of the State. These laws, if properly implemented 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 the independence, impartiality and competency and laws and procedures should comply with international human rights standards. Such structures would require full authority and necessary resources to carry out their functions, such as making arrests, gathering evidence, and enforcing their decisions. Moreover, a comprehensive education program would be needed to inform the people about their human rights and the structures in place to claim them.[[30]](#footnote-30) The Democratic People’s Republic of Korea’s fourth cycle of Universal Periodic Review, scheduled in 2024, and the currently overdue reports to treaty bodies, offer opportunities for the Government to provide information about human rights situation inside the country, including possible improvements, to engage with the international community, and to seek international cooperation on human rights issues it wishes to address.[[31]](#footnote-31) This could include assistance for legal reforms and an overhaul of the judicial system in line with international human rights principles. The High Commissioner for Human Rights has continuously encouraged the Government to respond to his office’s offer of technical assistance.[[32]](#footnote-32)

 B. Other domestic jurisdictions

18. The Commission of Inquiry noted that, in the absence of steps towards accountability inside the Democratic People’s Republic of Korea, the international community is obliged to act.[[33]](#footnote-33) As a first step, neighboring 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.[[34]](#footnote-34)

 1. Criminal Prosecution

19. Criminal prosecutions outside the Democratic People’s Republic of Korea face legal and practical challenges. This include 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.”[[35]](#footnote-35) Nevertheless, all States should take the necessary steps to be ready to pursue prosecutions if they become feasible in the future. In particular, neighboring 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 territory.[[36]](#footnote-36)

20. The Republic of Korea is well placed to pursue domestic prosecutions due to the high number of victims and witnesses. The Republic of Korea has a documentation system based on the North Korean Human Rights Act (March 2016).[[37]](#footnote-37) The Ministry of Unification Center for North Korean Human Rights Records conducts interviews with North Korean escapees who migrate to the Republic of Korea. The Ministry of Justice North Korean Human Rights Documentation center records a body of evidence and information relating to human rights violations and possible crimes. The Republic of Korea’s domestic law implementing the Rome Statute, Act on Punishment, Etc. of Crimes under Jurisdiction of the International Criminal Court, Act No. 8719 (2007) gives its courts jurisdiction over all crimes against humanity listed in this 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 on Punishment in 2007; this includes, 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.[[38]](#footnote-38) According to their submissions, they provide knowledge and technical skills to legal practitioners to bring cases in the national jurisdiction. Civil society highlighted the need for awareness-raising among themselves, as well as victims on their right to seek justice. They also point out that “collaborative efforts among legal experts, human rights organizations, international bodies, and governmental support” is crucial to pursue criminal accountability at 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[[39]](#footnote-39), the primary responsibility to investigate and prosecute crimes listed in the Rome Statute lies upon its State Parties. Japan has taken the position that its penal code “already covered them under its common criminal law provisions.”[[40]](#footnote-40) 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.”[[41]](#footnote-41) The Japanese Police obtained domestic arrest warrants for 11 suspects, including agents of the Democratic People’s Republic of Korea, and placed them on INTERPOL’s 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, which may be indicative. For example, Argentina’s universal jurisdiction has been applied in a case alleging human rights violations in Myanmar, currently in the investigative stage. Its jurisdiction law has allowed the case to proceed even though neither the victims nor alleged perpetrators are present in Argentina. Germany has also successfully prosecuted nationals of Syria for torture and other crimes committed in Syria, against other Syrian nationals.[[42]](#footnote-42)

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.[[43]](#footnote-43) 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 UN.

 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.[[44]](#footnote-44) 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 where the court ruled to pay monetary compensation concerns two prisoners of war held in the Democratic People’s Republic of Korea for 47 years and forced to work in a coal mine.[[45]](#footnote-45) After the court ruling in 2020, five additional prisoners filed a law suit the same year.[[46]](#footnote-46) One of the two initial plaintiffs in the first prisoners 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,[[47]](#footnote-47) five victims of the “Paradise on Earth”[[48]](#footnote-48) campaign brought claims against the Democratic People’s Republic of Korea seeking money damages for illegal 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 dismissed the claim as having non jurisdiction over the act of detention.[[49]](#footnote-49) In October 2023, however, the Tokyo High Court found that Japan has jurisdiction over the claim as “place of result” “of continuous tort”. The Tokyo High Court therefore ordered the District Court to reexamine the case, including illegal acts committed in the Democratic People’s Republic of Kore.[[50]](#footnote-50) Notably, 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, the Torture Victim Protection Act (1991)[[51]](#footnote-51) allows civil claims by US citizens and non-citizens against individuals “who, under actual or apparent authority, or color of law, of any foreign nation” subject individuals to torture or extrajudicial killing committed outside US territory. Initiating civil proceedings against the Democratic People’s Republic of Korea within this framework, nevertheless, faces obstacles, such as immunities granted to heads of state, among others. Another pathway to bring a claim is under the Foreign Sovereign Immunities Act (FSIA).[[52]](#footnote-52) Although the FSIA 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 this country has been designated by the US government as a “state sponsor of terrorism.” Civil claims have been brought against the Democratic People’s Republic of Korea under the FSIA 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 be effectively enforced, due to immunities and the lack of the government’s 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 Democratic People’s Republic of Korea.[[53]](#footnote-53) Facilitating avenues for civil claims to pursue accountability requires States to 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 damage for 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. That is why 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.[[54]](#footnote-54) 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,[[55]](#footnote-55) since 2013 communications have been submitted to the Prosecutor on behalf of victims. Cases are mainly related to Korean War abductions, prisoners of war, “Paradise on Earth” campaign and citizens of the Democratic People’s Republic of Korea. The Office of the Prosecutor has declined opening an investigation on 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 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. Regarding the communications on enforced disappearances as crimes against humanity against nationals from 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.[[56]](#footnote-56) The Elements of Crimes,[[57]](#footnote-57) 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.[[58]](#footnote-58) 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 Burundi’s withdrawal. This decision, based on the “continuous nature of certain crimes”, allows for further exploration of this legal avenue.[[59]](#footnote-59)

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,[[60]](#footnote-60) the primary call has been for a referral of the situation in the Democratic People’s Republic of Korea by the Security Council. The Commission of Inquiry and the Group of Independent Experts,[[61]](#footnote-61) as well as the General Assembly,[[62]](#footnote-62) the Human Rights Council,[[63]](#footnote-63) and the High Commissioner for Human Rights[[64]](#footnote-64) 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.[[65]](#footnote-65) Despite the differences in the Security Council on handling this issue, it is critical for the Security Council to keep this option open.[[66]](#footnote-66) Another potential avenue involves States Parties to the Rome Statute, in their role as members of the Court, exploring innovative ways for referring cases that amount to crimes against humanity to the International Criminal Court that might pertain to incidents within the territory of a state party.

33. It should be noted that, even if the International Criminal Court is 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, and 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 mechanisms must be taken in parallel to address the commission of these atrocity crimes, and to hear as many victims, as possible.

 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 Group of Independent Experts have both examined the possibility of a hybrid or ad hoc mechanisms.[[67]](#footnote-67) 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.”.[[68]](#footnote-68) This has been found unsuitable because each of the alternatives would require the participation of the Government of the Democratic People’s Republic of Korea.[[69]](#footnote-69) The Special Rapporteur shares the view that considering this option would first require a comprehensive reform of the system in this country.

35. Regarding 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.”[[70]](#footnote-70) The Commission 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.[[71]](#footnote-71) Any ad hoc or hybrid mechanism would be expensive and slow particularly if the Democratic People’s Republic of Korea does 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 UN-assisted mechanisms).

 E. International Court of Justice

36. An additional avenue for legal accountability which may not have appeared possible at the time 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 (the “Genocide Convention”) relating to Myanmar’s treatment of its Rohingya Muslim minority.[[72]](#footnote-72) Although The Gambia was not directly affected by Myanmar’s treatment of the Rohingya, the Court found 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.”[[73]](#footnote-73) 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.[[74]](#footnote-74)

37. Based on its Statue, 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 UN Member State to bring a case before the International Court of Justice regarding certain human rights violations in the Democratic People’s Republic of Korea under human rights treaties to which it is a party, such as CEDAW (Committee on the Elimination of Discrimination Against Women).[[75]](#footnote-75) The International Court of Justice has previously appeared to suggest[[76]](#footnote-76) 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.[[77]](#footnote-77) However, to date, this has only been tested with respect to the Genocide Convention. It appears that, as CEDAW specifies in article 29 the Court as arbiter of disputes, the Court could have jurisdiction over suits relating this 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.[[78]](#footnote-78) It is unclear how this reservation might affect the question of the Court’s jurisdiction over disputes under CEDAW. 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 noted that UN human rights mechanisms, such as the Human Rights Council and its special procedures, universal periodic review, and treaty bodies could all contribute to accountability for human rights violations in the Democratic People’s Republic of Korea.[[79]](#footnote-79) The group noted that observations of treaty bodies include practical advice on steps to implement the rights addressed, and special procedures mandate holders can intervene directly with the Democratic People’s Republic of Korea on allegations of human rights violations through letters.[[80]](#footnote-80) 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 Committee on the Rights of Persons with Disabilities on the initial State’s report.[[81]](#footnote-81) In 2017, it was reviewed by the Committee on the Elimination of All Forms of Discrimination against Women and the Committee on the Rights of the Child.[[82]](#footnote-82) Both Committees raised accountability related issues. For example, the CEDAW 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”.[[83]](#footnote-83) 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 such as the independence of the judiciary, the right to fair trial and due process guarantees and impunity for human rights violations.[[84]](#footnote-84) The country’s Fourth Cycle 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.[[85]](#footnote-85) As of 3 August 2023, the Working Group has transmitted 404 cases to the Democratic People’s Republic of Korea.[[86]](#footnote-86) 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 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 victim-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 UN 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 had made concrete recommendations on achieving accountability. The Special Rapporteur has been sending communications to the Democratic People’s Republic of Korea on specific issues such as new legislation and disappearance cases.[[87]](#footnote-87)

 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.[[88]](#footnote-88) The General Assembly has repeatedly recommended that the Security Council consider such targeted sanctions.[[89]](#footnote-89) The Group of Independent Experts recalled these recommendations, 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.”[[90]](#footnote-90)

42. Several Member States have developed sanctions programs targeting individuals who are allegedly responsible for serious human rights violations.[[91]](#footnote-91) These 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 responsible for serious human rights violations. Such measures are legislated in over 30 states and in at least 12 jurisdictions, including, the United States, the European Union, the United Kingdom, Canada and Australia.[[92]](#footnote-92) Some of these programs allow victims and other stakeholders to provide information for investigations, which represents an opportunity for victims to be heard.[[93]](#footnote-93) Like other international measures, 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 participation of victims in sanctions programs presents an opportunity for victims to be heard, they must be provided with full information about the ramifications of their participation to decide whether it is in their best interests, as well as protection from possible retaliation.[[94]](#footnote-94)

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

43. At the request of the Human Rights Council,[[95]](#footnote-95) the UN Human Rights Office 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 response to a 2017 recommendation of the Group of Independent Experts, the Human Rights Council strengthened, for a period of two years, the capacity of the office, 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”.[[96]](#footnote-96) In April 2022, the Human Rights Council requested the office 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.”[[97]](#footnote-97)

44. The work of the office 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, the office 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 by the Commission of Inquiry could be helpful considering the deterioration of the human rights situation in recent years with the impacts of the Covid-19 triggered restrictions, lack of access to food, and the continued development of weapons. Civil society groups, governments, and other stakeholders are encouraged to use the office’s expertise and to collaborate with the office, particularly by contributing evidence and information for storage in the repository.

 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, particularly, analysis on perpetrators and 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 the 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”.[[98]](#footnote-98) 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 DPRK based on the Rome Statute”. The findings included that some identified individuals “may be subject to prosecution for some or all of the above referenced crimes”.[[99]](#footnote-99)

 J. Truth-Seeking initiatives

46. Truth-seeking represents a victim’s right to the truth. According to the UN General Assembly, this right contributes to “ending impunity and to promote and protect human rights”.[[100]](#footnote-100) 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.[[101]](#footnote-101) The Special Rapporteur has received information that civil society organizations are actively considering and working on truth seeking.[[102]](#footnote-102) On truth-seeking, some of the strategies proposed can be implemented immediately, and others will serve long-term purposes. These include the establishment of truth and historical commissions, the recording of truth-telling and history telling initiatives, the publications and education programs for the public, and the inclusion of “North Korean case in ongoing international research and memorialization efforts consistent with other post-communist societies”,[[103]](#footnote-103) Civil society organizations in the Republic of Korea have been engaged in exploring memorialization efforts including operating an “online” museum.”[[104]](#footnote-104)

47. In accordance with the North Korean Human Rights Act enacted in 2016, the Government of the Republic of Korea has been conducting surveys and in-dept interviews and questionnaires on the human rights situation in the Democratic People’s Republic of Korea with escapees arriving to the Republic of Korea after 2017. According to the Center for North Korean Human Rights Records established in September 2016 under the Ministry of Unification, from 2017–2023, human rights situation of 3,553 escapees were investigated, and 2,177 question-and-answer sheets were delivered to the North Korean Human Rights Documentation Office under the Ministry of Justice.[[105]](#footnote-105) In March 2023, the Government issued its first report “2023 Report on North Korean Human Rights” based on the testimonies of 508 escapees who 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 these cases” in its database.[[106]](#footnote-106) 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 victims 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.”[[107]](#footnote-107) Relatedly, 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.Guarantees of non-recurrence ensures victims do not have to endure again the violations of their rights, breaking the structural causes of societal violence and systemic human rights violations.[[108]](#footnote-108)

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.”[[109]](#footnote-109) In order for States to fulfill their duty of offering prompt and effective reparation to victims of severe human rights violations,[[110]](#footnote-110) there must first be an acknowledgment of such violations. Regarding the Democratic People’s Republic of Korea, there has been no acknowledgement of human rights violations,[[111]](#footnote-111) 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.[[112]](#footnote-112) In 2002, Japan enacted Act on Aid to Persons Abducted by North Korean Authorities and Other Relevant Persons, which stipulates support including financial support to abductees once returned to Japan. However, such financial support does not apply to families of abductees who are searching for their families.

51. Victims of severe human rights violations often endure significant trauma because of their violent experiences.[[113]](#footnote-113) 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. Hence, it is imperative for States to provide victims with psychosocial rehabilitation services. This facilitates both their recovery process and contributes to ensuring their stability and safety, particularly if they engage in truth-seeking endeavors 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.[[114]](#footnote-114) This can include “a state’s issuance of official apologies for human rights atrocities, creation of museums, parks, and sites of memory, establishment of days of commemoration, history rectification initiatives (i.e., history textbook changes), and even changes of names of public spaces.”[[115]](#footnote-115) Such initiatives provide a symbolic recognition for victims as right holders that their rights were violated by the state. Civil society organizations suggest creating memorial spaces to understand the totalitarian structures of oppression.[[116]](#footnote-116)

 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 to any person whose rights or freedoms are violated enshrined in the International Convention on Civil and Political Rights, which the Democratic People’s Republic of Korea is a State Party to. States, including the Democratic People's Republic of Korea, have a duty to investigate and prosecute crimes against humanity, under customary law and *ius 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 last 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 ligation to domestic courts. Many victims have shared their stories with the UN, 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 courageous efforts that have been made by victims and their families. Ongoing multifaceted efforts are positive steps and should be encouraged and supported to pursue accountability.

55. There are, however, some areas that could be further explored. For instance, the international community should restrengthen engagement with the Democratic People’s Republic of Korea including through the UN human rights mechanisms to make concrete small steps to improve the human rights situation and accountability for violations. The relevant State Parties to the Rome Statue 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 repository of the UN Human Rights Office. States where 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 violations are not caused by them, the States are strongly encouraged to ensure the victims’ right to reparations based on international law.[[117]](#footnote-117)

56. All such efforts, however, need to be guided through comprehensive victims’ participation. Accountability should be envisioned as a sustained and multifaceted endeavor 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 what forms 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. Therefore, the Special Rapporteur believes that all relevant actors should place victims at the center 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 the 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 communication and freedom of movement;**

(d) **Acknowledge the recurring patterns of human rights violations, and take steps in the reform of the criminal justice system in compliance with human rights standards;**

(e) **Continue to cooperate with UN human rights mechanisms, by regularly reporting on the state of implementation of recommendations issued by treaty bodies, participating in the Universal Periodic Review, 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 the UN Human Rights Office 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.**

59. **The Special Rapporteur recommends that China and other States where 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; and**

(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, in full regard of 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 damages for citizens whose rights have been violated;**

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

(e) **Explore innovative ways for referring cases that amount to crimes against humanity to the International Criminal Court 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 the previous cycles.**

61. **The Special Rapporteur recommends that the United Nations Secretariat:**

(a) **Sustain the 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 prioritise 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 United Nations Secretary-General and the Office of the High Commissioner for Human Rights 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.**

1. \* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information. [↑](#footnote-ref-1)
2. A/HRC/25/63. [↑](#footnote-ref-2)
3. A/HRC/34/66/Add.1. [↑](#footnote-ref-3)
4. Four Member States and Center for North Korean Human Rights, Citizens Alliance for North Korean Human Rights, Committee for Human Rights in North Korea, Database Center for North Korean Human Rights, Human Rights Watch, Korea Future, Mulmangcho, the National Democratic Institute, Roberta Cohen, Transitional Justice Working Group provided inputs. [↑](#footnote-ref-4)
5. [Respected Comrade Kim Jong Un Makes Policy Speech at 10th Session of 14th SPA | KCNA Watch](https://kcnawatch.xyz/newstream/1705452413-202411626/respected-comrade-kim-jong-un-makes-policy-speech-at-10th-session-of-14th-spa/). [↑](#footnote-ref-5)
6. <https://www.nknews.org/2024/02/anti-south-korea-policy-change-secures-legitimate-basis-to-attack-kim-jong-un/>. [↑](#footnote-ref-6)
7. UN Security Council Meetings: [20 February](https://press.un.org/en/2023/sc15204.doc.htm), [20 March](https://press.un.org/2023/sc15234.doc.htm), [23 March](https://press.un.org/2023/sc15240.doc.htm) , [17 April](https://press.un.org/2023/sc15260.doc.htm), [2 June](https://press.un.org/2023/sc15304.doc.htm), [13 July](https://press.un.org/2023/sc15355.doc.htm), [17 August](https://press.un.org/2023/sc15387.doc.htm), [25 August](https://press.un.org/2023/sc15397.doc.htm), [27 November](https://press.un.org/2023/sc15504.doc.htm), [19 December](https://press.un.org/2023/sc15540.doc.htm). [↑](#footnote-ref-7)
8. <https://www.securitycouncilreport.org/whatsinblue/2023/08/dprk-north-korea-open-briefing-on-the-human-rights-situation.php>. [↑](#footnote-ref-8)
9. https://press.un.org/en/2023/sc15387.doc.htm. [↑](#footnote-ref-9)
10. 63 and 67 escapees arrived in the Republic of Korea in 2021 and 2022 respectively. Around 1000 escapees arrived per year before 2020. [↑](#footnote-ref-10)
11. [Policy on North Korean Defectors< Data & Statistics< South-North Relations< 통일부\_영문 (unikorea.go.kr)](https://www.unikorea.go.kr/eng_unikorea/relations/statistics/defectors/). [↑](#footnote-ref-11)
12. This includes a letter sent by the mandate holders of the Special Procedures to China in July 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>. [↑](#footnote-ref-12)
13. [Abridged\_vers\_WWBA\_EN.indd (ohchr.org)](https://www.ohchr.org/sites/default/files/Documents/Publications/WhoWillBeAccountable_summary_en.pdf), p.5. [↑](#footnote-ref-13)
14. A/HRC/34/66/Add.1. [↑](#footnote-ref-14)
15. A/HRC/53/38, at 4–11 (May 19, 2023). [↑](#footnote-ref-15)
16. A/HRC/34/66/Add.1. Parr.30. [↑](#footnote-ref-16)
17. A/HRC/27/56, para. 27. [↑](#footnote-ref-17)
18. 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 a 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. [↑](#footnote-ref-18)
19. CCPR/C/21/Rev.1/Add.13., para.15. [↑](#footnote-ref-19)
20. 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 2015. [↑](#footnote-ref-20)
21. In the case of the crime of torture, as recognized by the International Court of Justice in its judgement ‘Belgium v. Senegal’, “the prohibition of torture is part of customary international law and it has become a peremptory norm (jus cogens)” [paragraph 99]. *See* also article 7 of the International Convention on Civil and Political Rights. In the case of enforced disappearance, as recognized by the Special Rapporteur in its 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 [parr.88]. [↑](#footnote-ref-21)
22. ECHR. Šimšić case (par 23). [↑](#footnote-ref-22)
23. International Law Commission, 2013 report. [↑](#footnote-ref-23)
24. A/HRC/46/51. Para.16. [↑](#footnote-ref-24)
25. A/HRC/25/CPR, para 1216 [↑](#footnote-ref-25)
26. A/HRC/WG.6/33/PRK/1, para 9. [↑](#footnote-ref-26)
27. A/HRC/34/66/Add.1., para 72. [↑](#footnote-ref-27)
28. Korea Institute for National Unification, White Paper on Human Rights in North Korea 2022, p.206. [↑](#footnote-ref-28)
29. Criminal Procedure Law, 2021, Art, 120. [↑](#footnote-ref-29)
30. For instance, Submission made by the Database Center for North Korean Human Rights states “Many who have escaped the oppressive regime might be unaware of the available legal avenues in South Korea”. [↑](#footnote-ref-30)
31. A/HRC/52/64, para 10. [↑](#footnote-ref-31)
32. [In DPRK, steps to advance human rights and justice are vital to building sustainable peace, Türk says OHCHR](https://www.ohchr.org/en/statements/2023/08/dprk-steps-advance-human-rights-and-justice-are-vital-building-sustainable-peace). [↑](#footnote-ref-32)
33. A/HRC/25/CRP.1, para 1217. [↑](#footnote-ref-33)
34. A/HRC/34/66/Add.1, para 40. [↑](#footnote-ref-34)
35. Ibid., paras 44 and 45. [↑](#footnote-ref-35)
36. A/HRC/52/64, para 46. [↑](#footnote-ref-36)
37. Republic of Korea, North Korean Human Rights Act, 3 March 2016, Act No. 14070. [↑](#footnote-ref-37)
38. Submission made by the Citizens Alliance for North Korean Human Rights and Database Center for North Korean Human Rights. [↑](#footnote-ref-38)
39. Article 1 of the Rome Statute. [↑](#footnote-ref-39)
40. A/HRC/34/66/Add.1, para 41. [↑](#footnote-ref-40)
41. Ibid., para 41. [↑](#footnote-ref-41)
42. See, for example, case of Higher Regional Court of Koblenz, Case number 1 StE 3/21, 3 BJs 9/19-4. [↑](#footnote-ref-42)
43. A/HRC/52/64, paras 17, 46, 47, 57, A/HRC/46/52, paras 38, 74(c). [↑](#footnote-ref-43)
44. ["These wounds do not heal" - Enforced disappearance and abductions by the Democratic People's Republic of Korea | OHCHR Seoul](https://seoul.ohchr.org/en/node/511), para 89; A/HRC/52/64, para 19; A/HRC/46/52, para 36. [↑](#footnote-ref-44)
45. Han and Noh (Case number: 2016 Ga-Dan 5235506, Seoul Central District Court; 2020 Ta-Chae 118186, Seoul Central District Court; 2020 Ga-Dan 154367, Seoul Eastern District Court). [↑](#footnote-ref-45)
46. Mr. Kim et al. (Case number: 2020 Ga-Dan 5229294, Seoul Central District Court). [↑](#footnote-ref-46)
47. Kawasaki et al. (Case number: 2018 (wa) No. 26750, 2022 (ne) No. 1972); ["These wounds do not heal" - Enforced disappearance and abductions by the Democratic People's Republic of Korea | OHCHR Seoul](https://seoul.ohchr.org/en/node/511), para 90. [↑](#footnote-ref-47)
48. “Paradise on Earth” was a program 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. [↑](#footnote-ref-48)
49. A/HRC/52/64., para 19. [↑](#footnote-ref-49)
50. Tokyo High Court decision of 30 October 2023, (2022 (ne) No. 1972). [↑](#footnote-ref-50)
51. Pub. L. 102-256, 106 Stat. 73. [↑](#footnote-ref-51)
52. Pub. L. 94-583. [↑](#footnote-ref-52)
53. Han and Noh, Case Number 2020 Ga-Dan 154367, Seoul Eastern District. [↑](#footnote-ref-53)
54. A/HRC/25/CRP.1, paras 120,1218, 1225. [↑](#footnote-ref-54)
55. Article 15 (2) of the Rome Statute provides that the Prosecutor may initiate investigations *propio motu,* based on reliable information received from various stakeholders, including civil society. [↑](#footnote-ref-55)
56. International Convention for the Protection of All Persons from Enforced Disappearance, Arts. 8(1)(b), 24(6). [↑](#footnote-ref-56)
57. International Criminal Court, Elements of Crimes. [↑](#footnote-ref-57)
58. Elements of Crimes, FN 24. [↑](#footnote-ref-58)
59. Pre-Trial Chamber III. Situation in the Republic of Burundi. No. ICC-01/17-x. 25 October 2017. Paragraphs 191-192. [↑](#footnote-ref-59)
60. Article 12. Preconditions to the exercise of jurisdiction (…)

2. 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. [↑](#footnote-ref-60)
61. A/HRC/34/66/Add.1, para 84 (a). [↑](#footnote-ref-61)
62. Most recently, A/RES/78/218, para 12. [↑](#footnote-ref-62)
63. Most recently, A/HRC/RES/52/28, para 9. [↑](#footnote-ref-63)
64. Most recently, A/HRC/52/64, para 57. [↑](#footnote-ref-64)
65. UN Charter Article 27. [↑](#footnote-ref-65)
66. A/HRC/52/64, para 57(a); A/HRC/46/52, paras 69, 70, 74(a). [↑](#footnote-ref-66)
67. A/HRC/25/CRP.1, paras 1218, 1225. [↑](#footnote-ref-67)
68. A/HRC/34/66/Add.1, para 73. [↑](#footnote-ref-68)
69. A/HRC/25/CRP.1, para 1202. [↑](#footnote-ref-69)
70. Ibid., para 1201. [↑](#footnote-ref-70)
71. Other ad hoc mechanisms which were established without reference to the Chapter VII authority of the Security Council, such as the ECCC and SCSL, were international in nature in light of an agreement between national authorities and the UN. [↑](#footnote-ref-71)
72. 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. 14. [↑](#footnote-ref-72)
73. 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 (Myanmar judgment), para 107. [↑](#footnote-ref-73)
74. 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, para 13. [↑](#footnote-ref-74)
75. Convention on the Elimination of All Forms of Discrimination Against Women, Art. 29. [↑](#footnote-ref-75)
76. In earlier jurisprudence on erga omnes obligations, the ICJ held that “[s]uch 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 Co. (Belgium v. Spain), Judgment, 1970 I.C.J 3, para 34, emphasis added. [↑](#footnote-ref-76)
77. Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012, p. 422, para 69. [↑](#footnote-ref-77)
78. [UNTC](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en#19) [↑](#footnote-ref-78)
79. A/HRC/34/66/Add.1, para 62; see also A/HRC/52/64, para 10. [↑](#footnote-ref-79)
80. A/HRC/34/66/Add.1, para 63. [↑](#footnote-ref-80)
81. CRPD/C/KEN/RQ/1. [↑](#footnote-ref-81)
82. CEDAW/C/PRK/CO/2-4, CRC/C/PRK/CO/5. [↑](#footnote-ref-82)
83. CEDAW/C/PRK/CO/2-4, para. 14(b). [↑](#footnote-ref-83)
84. [UPR19\_DPRK\_Recomendations.docx (live.com)](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2Flib-docs%2FHRBodies%2FUPR%2FDocuments%2FSession19%2FKP%2FUPR19_DPRK_Recomendations.docx&wdOrigin=BROWSELINK). [↑](#footnote-ref-84)
85. Call for Submissions, Korea Future, p.18. [↑](#footnote-ref-85)
86. A/HRC/54/22. [↑](#footnote-ref-86)
87. [Communication search (ohchr.org)](https://spcommreports.ohchr.org/Tmsearch/TMDocuments). [↑](#footnote-ref-87)
88. A/HRC/25/CRP.1, para 1225(a); A/HRC/34/6//Add.1, paras 65, 79. [↑](#footnote-ref-88)
89. Most recently, A/RES/78/218, para 12. See also A/HRC/RES/52/28, para 9. [↑](#footnote-ref-89)
90. A/HRC/34/66/Add.1, para 79. [↑](#footnote-ref-90)
91. Australia: Autonomous Sanctions Regulations 2011, as amended by the Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021; Canada: 1) Justice for Victims of Corrupt Foreign Officials Act (JVCFOA), 2) Special Economic Measures Act (SEMA) and 1; European Union: European Union Global Human Rights Sanctions Regime (2020); United Kingdom: Global Human Rights Sanctions Regulations (2020); and United States: Global Magnitsky Act (GLOMAG) & E.O. 13818; Section 7031(c) of the Annual Department of State Appropriations Act, North Korea Sanctions and Policy Enhancement Act (NKSPEA), • E.O. 13722; 1 [↑](#footnote-ref-91)
92. Redress. (2022). Multilateral Magnitsky Sanctions at Five Years, p. 4. [Available at: [https://redress.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years\_ November-2022.pdf]](https://redress.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years_%20November-2022.pdf%5D). [↑](#footnote-ref-92)
93. A/HRC/52/64, para 18. [↑](#footnote-ref-93)
94. Ibid. [↑](#footnote-ref-94)
95. A/HRC/RES/25/25. [↑](#footnote-ref-95)
96. A/HRC/RES/34/24. [↑](#footnote-ref-96)
97. A/HRC/RES/49/22, para 18. [↑](#footnote-ref-97)
98. See [Blood Coal Export from North Korea. Pyramid Scheme of Earnings Maintaining Structures of Power](https://nkhr.cafe24.com/wp-content/uploads/2021/04/Blood-Coal-Export-from-North-Korea.-Pyramid-scheme-of-earnings-maintaining-structures-of-power.pdf); [Written Statement to the U.S. Congressional Executive Commission on China. Hearing on the forced repatriation of North Korean Refugees](https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Joanna%20Hosaniak.%20Citizens%20Alliance%20NKHR.pdf). [↑](#footnote-ref-98)
99. Submission from the Committee for Human Rights in North Korea. [↑](#footnote-ref-99)
100. A/RES/68/165, para. 1-2. [↑](#footnote-ref-100)
101. Transitional Justice Working Group (2019), p. 34. [↑](#footnote-ref-101)
102. Submissions made by Citizens’ Alliance for North Korean Human Rights , p. 1. [↑](#footnote-ref-102)
103. Ibid., p. 2. [↑](#footnote-ref-103)
104. Submissions made by Database Center for North Korean Human Rights, p. 3. [↑](#footnote-ref-104)
105. Submission by the Government of the Republic of Korea. [↑](#footnote-ref-105)
106. Submissions made by, Database Center for North Korean Human Rights (NKDB), p. 1. [↑](#footnote-ref-106)
107. UN 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. https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation. [↑](#footnote-ref-107)
108. A/HRC/54/24. Par.70. [↑](#footnote-ref-108)
109. De Greiff, P. Repairing the Past: Compensation for Victims of Human Rights Violations, In *The Handbook of Reparations*, edited by Pablo de Greiff. Oxford University Press, p. 2. [↑](#footnote-ref-109)
110. Basic Principles and Guidelines, para. 11. [↑](#footnote-ref-110)
111. Except for the acknowledgement and apology of the abductions of a limited number of Japanese citizens by then leader Kim Jong Il in 2002. *See* [Talks between Japan and North Korea on the Abductions Issue | Ministry of Foreign Affairs of Japan (mofa.go.jp)](https://www.mofa.go.jp/a_o/na/kp/page1we_000069.html). [↑](#footnote-ref-111)
112. A/HRC/54/24/Add.1. Para 32, 38. [↑](#footnote-ref-112)
113. A/HRC/54/24. Para.50. [↑](#footnote-ref-113)
114. Ibid. Para 51. [↑](#footnote-ref-114)
115. Carranza Ko, Ñ (2021) *Truth, Justice, and Reparations in Peru, Uruguay, and South Korea: The Clash of Advocacy and Politics*. Palgrave Macmillan*,* p. 20*;* De Greiff, P.(2006) Justice and Reparations, In *The Handbook of Reparations*, edited by Pablo de Greiff. Oxford University Press, p.  453. [↑](#footnote-ref-115)
116. Submission made by Citizens Alliance for North Korean Human Rights, p.18. [↑](#footnote-ref-116)
117. International Convention on Enforced Disappearances, Art. 24(5); International Covenant on Civil and Political Rights, art. 9(5) and 14(6); Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, art. 14(1); Rome Statute. See also the Basic Principle. [↑](#footnote-ref-117)