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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, Tomás Ojea Quintana*

Summary

In the present report, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea discusses accountability for crimes against humanity committed in the Democratic People's Republic of Korea, with the aim of drawing the attention of the Human Rights Council and the international community to the urgent need to take decisive action to bring justice for such crimes. The Special Rapporteur also presents an overview of the impact of the coronavirus disease (COVID-19) pandemic on human rights in the country. The Special Rapporteur stresses that a peaceful and principled end to the conflict on the Korean Peninsula will generate the space and the conditions necessary to further discuss denuclearization, improvement of the human rights situation, and access on the ground.

* The present report was submitted after the deadline so as to reflect the most recent information.



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I. Introduction

1. In the present report, submitted pursuant to Human Rights Council resolution 43/25, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea seeks to highlight the importance of ensuring accountability for human rights violations in the Democratic People's Republic of Korea. The report incorporates the views submitted to the Special Rapporteur by civil society organizations and by the former members of the commission of inquiry on human rights in the Democratic People's Republic of Korea. In conjunction with the report of the United Nations High Commissioner for Human Rights to the Human Rights Council on promoting accountability in the Democratic People's Republic of Korea,¹ the present report is aimed at bringing to the attention of the Human Rights Council the urgent need for the United Nations and the international community to take decisive action to bring justice and accountability for serious human rights violations, including crimes against humanity, committed in the Democratic People's Republic of Korea. As a former Special Rapporteur on the situation of human rights in Myanmar,² the Special Rapporteur has witnessed the consequences when the most serious human rights abuses are forgotten and not properly addressed, despite noble intentions. The Special Rapporteur recognizes the difficulty in finding solutions to entrenched human rights problems in complex circumstances. However, human rights are a matter of values: not only victims but also perpetrators are entitled to human rights, and "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".³

2. The coronavirus disease (COVID-19) pandemic has compromised the exercise of all human rights and has reminded the human race of its fragile nature. In the present report, the Special Rapporteur assesses the implications of the COVID-19 pandemic in the Democratic People's Republic of Korea. To date, no cases have been confirmed according to the authorities, in part owing to the Government's proactive efforts on prevention. However, drastic containment measures have resulted in a number of concerning consequences that further isolate the people of the Democratic People's Republic of Korea from the outside world. The country has been isolating itself from social, political, economic and diplomatic engagements, including with the United Nations. The authorities have reinforced the doctrine of the *juche* idea, a political aim that the Democratic People's Republic of Korea seeks based on the principle of sovereignty; however, adjustments and corrections are required when related measures affect sensitive aspects of the universal human rights system upheld in the Charter of the United Nations, including the need to cooperate and engage on human rights issues.

3. The Special Rapporteur regrets that the Government of the Democratic People's Republic of Korea continues to oppose his mandate and does not respond to his requests to visit the country. Owing to travel restrictions, he has been unable to undertake any official missions to the Republic of Korea or neighbouring countries since his visits to Thailand from 28 to 29 November 2019 and to Japan from 2 to 4 December 2019. The Special Rapporteur has instead held a series of online meetings with victims of human rights violations, their family members, civil society organizations, United Nations agencies, Governments and the media. Whereas accountability will satisfy the right to justice and help to deter further abuses, cooperation and engagement will create the conditions necessary for a substantive and meaningful improvement of the human rights situation. There will thus be fertile ground to cultivate peace on the Korean Peninsula that not only the people of the Democratic People's Republic of Korea and the Republic of Korea, but also neighbouring countries and the whole world, deserve and demand. For these reasons, the Special Rapporteur continues to take a two-track approach, of engagement and accountability, in his mandate.

¹ A/HRC/46/52.

² Tomás Ojea Quintana was the Special Rapporteur on the situation of human rights in Myanmar from 2008 to 2014.

³ Universal Declaration of Human Rights, preamble.

II. Political and security situation

4. The inter-Korea joint liaison office in Kaesong Industrial Zone was demolished by the Democratic People's Republic of Korea in June 2020.⁴ The office had been opened in 2018 to enhance communication and engagement between the Democratic People's Republic of Korea and the Republic of Korea, and its demolition marked the fragile nature of negotiations for peace and denuclearization on the Korean Peninsula. The summit meetings between the two countries and between the Democratic People's Republic of Korea and the United States of America in 2018 and 2019 had generated high expectations for the peaceful resolution of the conflict, but these measures have not yet yielded concrete outcomes. Measures to contain the COVID-19 pandemic globally have further reduced the space for negotiations. Working with the Republic of Korea, the new Administration in the United States should explore practical approaches to pursue denuclearization, peace and human rights on the Korean Peninsula.

5. The Democratic People's Republic of Korea has continued to refrain from nuclear and intercontinental ballistic missile tests since November 2017, but at the same time the Government has regularly exhibited progress in nuclear and missile technologies. The Special Rapporteur continues to support all efforts to negotiate on the security agenda with the Democratic People's Republic of Korea. The Special Rapporteur, in his bilateral discussions with the United States and the Republic of Korea, has persistently stressed the need to apply a principled approach to negotiations and not to shy away from raising concerns about the human rights situation in the Democratic People's Republic of Korea, including regarding the lack of cooperation with United Nations mechanisms, in particular with his mandate and the Office of the United Nations High Commissioner for Human Rights (OHCHR). Negotiations should also include a commitment from the Government of the Democratic People's Republic of Korea to meaningful progress and engagement on human rights. The denuclearization agenda, the urgent need for peace on the Korean Peninsula and the grave human rights situation in the Democratic People's Republic of Korea are interconnected and mutually reinforcing. The latest informal discussion by the Security Council on the human rights situation in the Democratic People's Republic of Korea, in December 2020, is a step in the right direction.

6. There is no doubt that the Security Council has an important obligation with respect to a country that perpetuates serious and pervasive human rights abuses and that has illegally acquired nuclear weapons and ballistic missile technology capable of flying nuclear warheads across borders, thereby posing a threat to international peace and security. The Security Council has been called upon by other relevant United Nations bodies, namely the General Assembly and the Human Rights Council, to take action with regard to the human rights situation in the Democratic People's Republic of Korea, and specifically to refer the situation to the International Criminal Court. Such decisive action has yet to be realized. In the view of the Special Rapporteur, the Security Council must also not lose sight of the adverse consequences of the severe sanctions regime aimed at curtailing the resources needed by the Democratic People's Republic of Korea to develop nuclear and missile technologies. According to limited but repeated information, the sanctions regime has affected both humanitarian assistance and the basic economic and social rights of the people in the country. For as long as the Democratic People's Republic of Korea appears to make progress in developing its weapon capabilities, the people bear much of the burden of sanctions, and addressing this reality should not be a taboo.

7. The Special Rapporteur calls on the countries in the region, particularly those neighbouring the Democratic People's Republic of Korea – China and the Russian Federation – to actively engage on human rights issues in the Democratic People's Republic of Korea, as they have engaged in the denuclearization and security agendas. As stressed repeatedly, the two matters are interlinked and could provoke political and social instability if not properly addressed. Given the geographical proximity, historical diplomatic engagement and economic reliance between their countries, the Special Rapporteur encourages the authorities of China to exercise their influence and leverage to encourage the Government of the

⁴ NK News, "North Korea demolishes inter-Korean liaison office at Kaesong", 16 June 2020.

Democratic People's Republic of Korea to initiate dialogue with him with a view to improving human rights on the ground.

8. Owing to the restrictions on travel as COVID-19 preventative measures, the number of escapees from the Democratic People's Republic of Korea arriving in the Republic of Korea has declined significantly. In 2020, only 229 escapees arrived in the Republic of Korea, a significant drop from 1,047 in 2019.⁵ Escapees reportedly continue to be repatriated to the Democratic People's Republic of Korea from China, which may compromise the principle of non-refoulement. With the limited international presence in the Democratic People's Republic of Korea and the reduction in escapee arrivals in the Republic of Korea, who provide first-hand information, the paucity of information on the human rights situation in the country is worse than ever.

9. The Democratic People's Republic of Korea convened the eighth Congress of the Workers' Party of Korea, the only political party existing in the country, from 5 to 12 January 2021 amid the deteriorating economic situation, further aggravated by COVID-19 and seasonal cycles of natural disasters. The centralization of the leadership continued with Kim Jong Un elected as the General Secretary of the Workers' Party of Korea. Mr. Kim referred to the COVID-19 pandemic in his opening speech, stating that 2020 had been a difficult year in the context of the "world public health crisis", which had been unprecedented in its length.⁶ The discussions at the Congress appeared to focus on strengthening of military and strategic capabilities, a new five-year economic plan and the eradication of the anti-socialist phenomenon. The leadership admitted the failure of the previous five-year economic plan. While no details were disclosed about the new programme, there were some indications that the State would exert greater control over the economy against private market initiatives. The agenda also included solutions to improve living standards by achieving planned and continuous growth of production in agriculture, light industry and the fishing industry and by developing cities and counties.⁷ Mr. Kim recently stressed that the country was facing its worst ever difficulties, and criticized officials in control of overseeing the implementation of economic policies.⁸

10. Regarding the peace process, Mr. Kim criticized the Republic of Korea for failing to adhere to its commitments, but remained open to engagement on the condition that the Republic of Korea authorities strictly control and root out any abnormal and anti-reunification conduct and that United States withdraw policies that the Democratic People's Republic of Korea considered hostile. Leading up to the Congress, the Government implemented an 80-day loyalty campaign wherein every citizen was required to contribute long hours of labour to fulfil or exceed newly assigned quotas in all areas in order to finish State projects, including post-typhoon reconstruction efforts and COVID-19 prevention campaigns, and boost national productivity in agriculture, coal mining and other areas.⁹ On 18 January 2021, new members were appointed to the Cabinet, in which there are currently no women. On a positive note, it was reported in the media in November 2020 that the Government had ordered a nationwide survey to measure illiteracy in the country, with the aim of eradicating it.¹⁰

⁵ Republic of Korea, Ministry of Unification, "Policy on North Korean defectors". Available at www.unikorea.go.kr/eng_unikorea/relations/statistics/defectors.

⁶ KCNA Watch, "Supreme Leader Kim Jong Un makes opening speech at 8th WPK Congress", 6 January 2021.

⁷ KCNA Watch, "Supreme Leader Kim Jong Un continues report on work of 7th Central Committee of WPK", 7 January 2021. Available at <https://kcnawatch.jp/newstream/1609970752-674090795/supreme-leader-kim-jong-un-continues-report-on-work-of-7th-central-committee-of-wpk/>.

⁸ Yonhap News Agency, "N. Korea convenes parliamentary meeting after party congress", 18 January 2021.

⁹ NK News, "North Korean Politburo starts '80-day battle' ahead of January Party Congress", 5 October 2020.

¹⁰ Radio Free Asia, "North Korea surveys population for illiterates, orders reading classes", 25 November 2020.

III. Accountability for crimes against humanity

A. Background

11. The human rights situation in the Democratic People's Republic of Korea was formally addressed by the United Nations for the first time in 2003. After advocacy by civil society organizations and academia, the Commission on Human Rights adopted its resolution 2003/10, in which it expressed its deep concern about reports of systemic, widespread and grave violations of human rights, including the use of torture, public executions, prison camps and restrictions on the freedom of expression.

12. In 2004, the Commission on Human Rights adopted its resolution 2004/13, in which it established the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, and requested the Special Rapporteur to establish direct contact with the Government and people and to investigate and report on the situation of human rights in the country. This mandate has been renewed annually since its establishment. In 2005, the General Assembly adopted its resolution 60/173, in which it expressed its serious concern at continuing reports of systemic, widespread and grave violations of human rights in the Democratic People's Republic of Korea and the refusal of the Government to recognize the mandate of the Special Rapporteur or to extend cooperation to him. Since then, the General Assembly has adopted a resolution annually on the human rights situation in the Democratic People's Republic of Korea.

13. Concerned about the continuing serious human rights violations in the Democratic People's Republic of Korea, the Human Rights Council in 2013 established a commission of inquiry with a mandate to investigate the systematic, widespread and grave violations of human rights in the country, with a view to ensuring full accountability, in particular where those violations could amount to crimes against humanity.¹¹ In its landmark report of 2014, the commission of inquiry documented serious human rights violations, some of which amounting to crimes against humanity.¹² The commission of inquiry made several recommendations to pursue justice and accountability, including a Security Council referral of the situation to the International Criminal Court or the establishment of an ad hoc international tribunal,¹³ by the Security Council acting under Chapter VII of the Charter of the United Nations or by the General Assembly using its residual powers and universal jurisdiction. It also recommended that the High Commissioner for Human Rights establish a field-based structure that should build on the collection of evidence and documentation work of the commission of inquiry, and further expand its database, to help ensure accountability for human rights violations in the Democratic People's Republic of Korea, in particular where such violations amounted to crimes against humanity.¹⁴ In 2016, the Human Rights Council requested the High Commissioner to appoint a group of independent experts to explore appropriate approaches to seek accountability for human rights violations in the Democratic People's Republic of Korea.¹⁵

14. In 2014, the Security Council held its first Arria-formula meeting on the situation of human rights in the Democratic People's Republic of Korea. From 2015 to 2017, the Security Council held annual discussions on the situation. After an impasse of two years, in December 2020, following an informal consultation, eight members of the Security Council issued a joint statement on the situation, re-emphasizing the importance of a discussion of the topic in the Security Council and noting that human rights violations in the Democratic People's Republic of Korea posed an imminent threat to international peace and security.¹⁶

¹¹ See Human Rights Council resolution 22/13.

¹² A/HRC/25/63.

¹³ *Ibid.*, para. 87.

¹⁴ *Ibid.*, para. 94 (c).

¹⁵ See Council resolution 31/18 and A/HRC/34/66/Add.1.

¹⁶ Permanent Mission of Germany to the United Nations, "Statement by Germany, Belgium, the Dominican Republic, Estonia, France, the UK, the USA and Japan on the human rights situation in DPRK", 11 December 2020. Available at <https://new-york-un.diplo.de/un-en/news-corner/-/2426506>.

B. Crimes against humanity

15. In its 2014 report, the commission of inquiry concluded that there were reasonable grounds to believe that crimes against humanity had been committed and continued to be committed in the Democratic People's Republic of Korea. It highlighted that the gravity, scale and nature of those violations revealed a State that did not have any parallel in the contemporary world. The crimes against humanity listed by the commission of inquiry entailed extermination, murder, enslavement, torture, imprisonment, rape, forced abortion and other sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of populations, enforced disappearance and the inhumane act of knowingly causing prolonged starvation.¹⁷ The High Commissioner for Human Rights, in her recent report to the Human Rights Council on promoting accountability in the Democratic People's Republic of Korea, submitted pursuant to Council resolution 40/20, stated that analysis of available information continued to confirm that there were reasonable grounds to believe that crimes against humanity had been committed and could be ongoing in the Democratic People's Republic of Korea.¹⁸ Since the beginning of his mandate in June 2016, the Special Rapporteur has received verifiable and credible information that confirms the conclusions of both the commission of inquiry and the High Commissioner.

16. The Government of the Democratic People's Republic of Korea bears the primary responsibility to investigate and hold accountable those responsible for crimes against humanity. The Government continues to reject outright all allegations of serious human rights violations in the country despite ample evidence from the United Nations and other organizations. There are still no signs that the Democratic People's Republic of Korea has overcome the entrenched culture of impunity to hold accountable individuals who are responsible for human rights violations. The Special Rapporteur is of the view that the crimes against humanity committed in the Democratic People's Republic of Korea may entail the criminal liability of the highest authorities of the country. Given the centralized structure and decision-making processes within the State, there are reasonable grounds to believe that existing State policies that violate human rights are decided at the highest levels.

C. International obligation to prosecute

17. The Democratic People's Republic of Korea has obligations to investigate, prosecute and punish serious human rights violations under various provisions of international law. The duty to prosecute arises firstly from the right of victims to an effective remedy for human rights violations. While the Universal Declaration of Human Rights is not a legally binding instrument, many of its provisions are now considered customary international law. Building on the Universal Declaration of Human Rights, article 2 (3) of the International Covenant on Civil and Political Rights, to which the Democratic People's Republic of Korea remains a party,¹⁹ obliges States parties to ensure an effective remedy for violations of human rights. In interpreting this article, the Human Rights Committee has clarified the obligations of States parties to take effective steps to investigate violations of human rights promptly, thoroughly and effectively through independent and impartial bodies and to ensure that those responsible are brought to justice, stressing that failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.²⁰ With respect

¹⁷ A/HRC/25/63, paras. 75–76 and 80.

¹⁸ A/HRC/46/52, para. 68.

¹⁹ The Democratic People's Republic of Korea acceded to the International Covenant on Civil and Political Rights in 1981. In 1997, the State sought to withdraw from the Covenant. However, the Secretary-General communicated the opinion that, as the Covenant did not contain withdrawal provisions, a withdrawal would not appear possible unless all States parties agreed to it. As a response, the Human Rights Committee issued general comment No. 26 (1997) on the continuity of obligations. Subsequently, the Democratic People's Republic of Korea acknowledged its obligations under the Covenant by submitting its second periodic report to the Committee.

²⁰ General comment No. 31 (2004), paras. 15 and 18.

to genocide and violations of international humanitarian law, the relevant legal instruments clearly provide for an obligation to prosecute such violations.²¹

18. While the primary obligation rests with the Democratic People's Republic of Korea to address systematic human rights violations through its national laws and judicial processes, in the Special Rapporteur's view, other States should prosecute perpetrators where the Democratic People's Republic of Korea is unable or unwilling to do so. While the Democratic People's Republic of Korea is not a party to the Rome Statute of the International Criminal Court, the Rome Statute reflects customary international law. The International Criminal Court's principle of complementarity has institutionalized the primary responsibility for prosecuting international crimes to national criminal jurisdictions.²² However, the Rome Statute reinforces the obligation to prosecute when there is lack of political will or ability to carry out the investigation or prosecution.²³ In its 2014 report, the commission of inquiry found that the State institutions of the Democratic People's Republic of Korea were neither willing nor able to effectively investigate and prosecute crimes against humanity, prohibited under *jus cogens*, and that the perpetrators enjoyed impunity.²⁴ This finding, which in the Special Rapporteur's assessment has not changed, would appear to trigger the obligation of other States to take action.

19. The four Geneva Conventions, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obligate States parties to extradite or prosecute (*aut dedere aut judicare*) perpetrators of violations, regardless of the nationality of the perpetrator or the victim and regardless of where the crime was committed. Notably, the Convention against Torture (art. 5) requires States parties to take such measures as may be necessary to establish their jurisdiction over such offences whenever the offender is present in their territory. This requirement may be considered as obligating States to apply the principle of universal jurisdiction in respect of torture. More recently, the International Convention for the Protection of All Persons from Enforced Disappearance (arts. 9 (2) and 11 (1)) also obligates States parties to extradite or prosecute.

20. In addition to prosecuting offenders, States also have the duty to assist each other to ensure accountability for serious violations of human rights and international humanitarian law.²⁵ The concept of the "responsibility to protect" represents an agreement to take collective action, including under Chapters VI and VIII of the Charter of the United Nations, where States manifestly fail to protect their populations from gross human rights violations.²⁶ The Rome Statute – again, taken as a distillation of customary law – affirms that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured both at the national level and through international cooperation.²⁷ The Human Rights Committee has reiterated the duty of the international community to cooperate, maintaining that States parties should also assist each

²¹ The provisions of the relevant legal instruments are the following: the Convention on the Prevention and Punishment of the Crime of Genocide, art. 4; the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 49; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 50; the Geneva Convention relative to the Treatment of Prisoners of War, art. 129; and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 146. The Democratic People's Republic of Korea acceded to the Convention on the Prevention and Punishment of the Crime of Genocide in 1989, and to the four Geneva Conventions in 1957 (entered into force in 1958).

²² Rome Statute, tenth preambular para. and art. 1.

²³ *Ibid.*, art. 17.

²⁴ "Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea", paras. 1199 and 1216. Available from www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx.

²⁵ A/HRC/27/56, para. 30.

²⁶ At the 2005 World Summit, Member States committed to the principle of the responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. See General Assembly resolution 60/1.

²⁷ Rome Statute, fourth preambular para.

other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international law.²⁸

D. Responsibility of the Security Council in pursuing accountability

21. The international obligation of States to prosecute connects directly with the responsibility of the Security Council to pursue accountability for the most serious human rights abuses in the Democratic People's Republic of Korea under the provisions of Chapter VII of the Charter of the United Nations and/or based on the principle of universal jurisdiction, and, where necessary, through referral to the International Criminal Court pursuant to article 13 (b) of the Rome Statute.²⁹

22. Following up on the recommendations of 2014 report of the commission of inquiry, both the Human Rights Council and the General Assembly have repeatedly encouraged the Security Council to take appropriate action to ensure accountability, including through consideration of referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court and consideration of further sanctions in order to target effectively those who appear to be most responsible for human rights violations that the commission has said may constitute crimes against humanity.³⁰ In the meantime, the people in the Democratic People's Republic of Korea have continued for decades to suffer or fear grave abuses by State institutions that are supposed to protect them. In the view of the Special Rapporteur, the Security Council should bear responsibility for its inaction against the continuation of crimes against humanity in the Democratic People's Republic of Korea. A rationale based on human rights demands that the fight against abuses of such a scale, gravity and nature cannot take a back seat to national or geopolitical interests. Failure to take action may be legal, but it is not justifiable under the Charter of the United Nations.³¹

23. In contrast to the human rights situation, the measures taken by the Security Council against the development of nuclear weapons by the Democratic People's Republic of Korea entail the most comprehensive and prohibitive regime of sanctions ever put in place. Maintenance of international peace and security is critical in the case of the Democratic People's Republic of Korea, and consensus in the Security Council has had positive effects to this end. However, the Special Rapporteur has argued repeatedly in previous reports that these comprehensive sanctions have affected the economic and social rights of the people in the Democratic People's Republic of Korea. Grave violations of human rights also threaten peace and security, as do nuclear weapons. The Security Council should therefore take a holistic approach to addressing peace and security concerns, including through referral of the situation to the International Criminal Court, rather than simply repeating sanctions concerning denuclearization.

24. In addressing the role of the Security Council in relation to the human rights situation in the Democratic People's Republic of Korea, the power of veto held by the permanent members of the Security Council cannot be overlooked. A rationale that embraces universal human rights emanating from the Charter of the United Nations should guide the exercise of the veto power, in particular in respect of a possible referral to the International Criminal Court. The deteriorating human rights situation in the Democratic People's Republic of Korea over decades urgently requires the permanent members of the Security Council to reach a consensus in order to refer the situation to the International Criminal Court. The

²⁸ General comment No. 31 (2004), para. 18.

²⁹ There are disputes among experts as to whether the International Criminal Court's jurisdiction over situations involving non-party States triggered under art. 13 (b) is based on universal jurisdiction or on the power of the Security Council under Chapter VII.

³⁰ See General Assembly resolution 75/190 and Human Rights Council resolution 43/25.

³¹ In connection with this responsibility, it is worth recalling the remarks of the Deputy Secretary-General, on behalf of the Secretary-General, to the Security Council in May 2014 in relation to the Syrian Arab Republic: "The Security Council has an inescapable responsibility in this regard. States that are members of both the Security Council and the Human Rights Council have a particular duty to end the bloodshed and to ensure justice for the victims of unspeakable crimes." See www.un.org/sg/en/content/dsg/statement/2014-05-22/deputy-secretary-generals-remarks-behalf-secretary-general-security.

Special Rapporteur believes that it is imperative that all permanent members of the Security Council maintain a transparent and open position on this issue, rather than exercising their dual prerogative to veto and not to reveal their position.

E. Stakeholders' contributions on options for accountability

Views of the former members of the commission of inquiry

25. In December 2020, the Special Rapporteur wrote to the former members of the commission of inquiry on human rights in the Democratic People's Republic of Korea to seek their views on progress and challenges in promoting the accountability agenda for human rights violations in the country. In their reply,³² the former members of the commission recommended: (a) the dissemination of the report of the commission in accessible hard copy format and preferably also translated into Korean, including in the Democratic People's Republic of Korea; (b) increased resources for OHCHR, including its field-based structure in Seoul; (c) the revival and continuation of regular meetings of the Security Council on denuclearization and accountability for human rights; and (d) the appointment of an independent expert or panel to bring up to date the recommendations made by the commission in its report. The former members of the commission noted the recent confirmation by the High Commissioner for Human Rights that there remained reasonable grounds to believe that human rights violations and crimes against humanity continued in the Democratic People's Republic of Korea.³³ That finding, they asserted, should be met with a renewed demand for accountability seven years after the initial findings. To fulfil the rights of victims to truth, justice, reparation and guarantees of non-recurrence, the prosecution of alleged international crimes remained a high priority, preferably through referral of the situation to the International Criminal Court or through the establishment of an ad hoc tribunal.

Views of civil society organizations

26. Civil society organizations and activists have long worked to promote the human rights of the people of the Democratic People's Republic of Korea, end impunity and ensure justice. In December 2020, to honour their efforts and to benefit from their expertise, the Special Rapporteur issued a call for submissions from civil society organizations and other stakeholders to share their views for the purposes of informing the present report. They were asked: (a) what progress and limitations they saw on accountability issues in the Democratic People's Republic of Korea seven years after the commission of inquiry had issued its report, and how they envisaged the way forward; and (b) what their views were on the approach that should be taken to ensure that the obligation to respect human rights in the Democratic People's Republic of Korea, including on accountability measures and ending impunity, and the need for the establishment of peace on the Korean Peninsula were fulfilled. Nine stakeholders submitted their views, which are summarized below.³⁴

27. The Citizens' Alliance for North Korean Human Rights highlighted the issue of slavery in the supply chain, particularly in coal production, and a pyramid system of quotas that relied on the extortion of goods and forced labour in a vast network of detention and political prison camps. It recommended that the United Nations examine the intricate connections between the senior leadership's reliance on serious human rights crimes to remain in power, and the profits that the State derived from international trade and investments in strengthening its military and nuclear capabilities.

28. The Committee for Human Rights in North Korea, while stressing that the Security Council, General Assembly and Human Rights Council must address crimes against

³² For the full submission from the former members of the commission of inquiry, see www.ohchr.org/EN/HRBodies/SP/CountriesMandates/KP/Pages/Submissions-accountability-agenda.aspx.

³³ See A/HRC/46/52.

³⁴ For the full submissions from the nine civil society organizations, see www.ohchr.org/EN/HRBodies/SP/CountriesMandates/KP/Pages/Submissions-accountability-agenda.aspx.

humanity and emphasizing the need for accountability, including referral to the International Criminal Court, suggested that Member States could consider alternative accountability mechanisms, with the support of civil society organizations worldwide. It also noted that the severe restrictions on humanitarian aid as a result of the COVID-19 pandemic could provide an opportunity to reset efforts and implement a “Human Rights Up Front” approach to aid.

29. Human Rights Watch recommended that the Human Rights Council, in its upcoming resolution, should align the mandate of the OHCHR office in Seoul with the mandates of other independent investigative mechanisms, such as those for Myanmar and the Syrian Arab Republic, and provide for an expert on financial forensics and a Korean-speaking outreach officer. It also recommended that the OHCHR office in Seoul analyse the criminal law of the Republic of Korea to identify opportunities and limitations with respect to future accountability processes. It further recommended that the United Nations and Governments integrate human rights into any negotiations with the Democratic People’s Republic of Korea to reach a lasting, sustainable peace on the Korean Peninsula.

30. Jubilee Campaign observed that there had been little improvement, if any, particularly in regard to women’s rights and protection mechanisms. Concerns included the subjection of repatriated women to ill-treatment, forced abortion and hard labour; domestic and sexual violence in the Democratic People’s Republic of Korea; forced marriage and sexual exploitation of trafficked women and girls in China; and hardships faced by defector women after resettlement in the Republic of Korea, such as stigma, economic disadvantage and exploitation.

31. Justice for North Korea stated that the work of the United Nations on accountability was a cause for hope for the human rights movement of the Democratic People’s Republic of Korea, as it promoted trust among witnesses to share their information and brought media attention to the issue. It expressed concern regarding the approach of the Government of the Republic of Korea on human rights issues and stressed the continued importance of international awareness-raising and advocacy.

32. Korea Future Initiative outlined its work documenting the experiences of victims and identifying numerous perpetrators – including State officials – of violations of freedom of religion committed in the Democratic People’s Republic of Korea. It called for capacity-building among civil society actors and for targeted individual sanctions against perpetrators, taking the view that referral to the International Criminal Court or the creation of an ad hoc mechanism seemed unlikely.

33. Open North Korea noted a lack of progress on accountability, but observed that the presence of the OHCHR office in Seoul had raised awareness, helped develop the capacity of civil society and allowed the collection of additional information not covered by the commission of inquiry. It observed that there were different approaches to human rights in the Democratic People’s Republic of Korea across the political spectrum within the Republic of Korea, and called for a less partisan and more human rights-based approach to the issue.

34. Park Jihyun, an escapee and human rights activist with citizenship of the United Kingdom of Great Britain and Northern Ireland and the Democratic People’s Republic of Korea, recommended that the international community strongly request the Democratic People’s Republic of Korea to allow visits by special rapporteurs and to share information regarding prison camps and the lives of its people, and punish non-compliance with that request. The people of the Democratic People’s Republic of Korea should also be allowed access to information. She noted that the attention paid by the international community to the issue of the rights of the people of the Democratic People’s Republic of Korea depended on political climate, and that it was important that the international community engage with victims, who could describe their experiences in their own voices. She also noted the importance of accepting escapees from the Democratic People’s Republic of Korea as refugees.

35. People for Successful Corean Reunification highlighted concerns and recommendations in the areas of children’s rights, women’s rights, digital rights and abductions. It recommended that the Democratic People’s Republic of Korea allow third-party experts, specifically United Nations experts, to enter the country to evaluate and report

on human rights. It also recommended democratic and rights-based reforms inside the country and called on the international community to protect escapees as refugees.

F. Way forward on accountability

36. The work of civil society organizations and victims' groups remains important for accountability and ending impunity for human rights violations in the Democratic People's Republic of Korea. People from the Democratic People's Republic of Korea living in the Republic of Korea, Japan, the United Kingdom, the United States and other countries have been actively advocating justice and accountability for human rights violations in the Democratic People's Republic of Korea, by publishing reports, running awareness-raising programmes, speaking at public events and addressing Governments and the United Nations. Civil society organizations are active in documentation efforts for future accountability and memorialization. In addition, civil society organizations are increasingly contributing information that they have gathered to the central repository for evidence and information established and maintained by OHCHR.

37. In recent years, a small number of victims and their families in Japan, the Republic of Korea and the United States have sought justice in their national courts. In the Republic of Korea, two men, who were former prisoners of war held by the Democratic People's Republic of Korea in the early 1950s, filed a civil lawsuit in 2019 against the Government of the Democratic People's Republic of Korea and the General Secretary, Mr. Kim. In July 2020, a judgment was issued against the defendants (without their participation), awarding damages equivalent to \$17,600 to each former prisoner of war. In August 2018, five victims of the "Paradise on Earth" campaign,³⁵ four women and one man, who had escaped from the Democratic People's Republic of Korea between 2001 and 2003, filed a civil lawsuit in Japan against the Government of the Democratic People's Republic of Korea, seeking compensation equivalent to approximately \$964,000 for each plaintiff for the infringement of their human rights. In a civil lawsuit brought in the United States by the family of Otto Warmbier, the court issued a default judgment finding the Democratic People's Republic of Korea liable for the hostage-taking, torture and extrajudicial killing of Mr. Warmbier and awarding damages in excess of \$501 million to his family. In May 2020 the court ordered three banks to disclose information on accounts holding frozen assets of the Democratic People's Republic of Korea, to examine potential means of securing the satisfaction of the judgment. The lack of cooperation of the Democratic People's Republic of Korea remains an obstacle in these cases. Universal jurisdiction cases in countries open to application should be regarded as potential avenues of accountability.

38. Victims and civil society organizations are increasingly active in submitting petitions on the human rights violations in the Democratic People's Republic of Korea to the special procedures of the Human Rights Council. Numerous petitions have been submitted to the Working Group on Enforced or Involuntary Disappearances. Some of these petitions related to individuals from the Republic of Korea who had been abducted during and after the Korean War and during the hijacking of Korean Air Lines flight YS-11 on 11 December 1969, as well as to Japanese and other foreign nationals abducted in the 1970s and 1980s. The Working Group transmitted 12 newly reported cases to the Democratic People's Republic of Korea in September 2020.³⁶ In Japan and the Republic of Korea, victims' groups, civil society organizations and research institutes have organized programmes to raise awareness and demand action with regard to human rights violations, in particular abductions. Family groups in Japan and the Republic of Korea support each other by exchanging views among themselves and with families of abductees and detainees from other countries.

39. In this respect, the Special Rapporteur notes that the temporal jurisdiction of the International Criminal Court appears limited with respect to these cases of enforced

³⁵ Paradise on Earth was a campaign by the Government of the Democratic People's Republic of Korea to promote the "return" of ethnic Koreans. It lasted officially from 1959 to 1984, and resulted in the migration of 93,340 people to the Democratic People's Republic of Korea, mostly from Japan.

³⁶ See A/HRC/WGEID/122/1.

disappearance and abduction.³⁷ However, he believes that the continuing nature of these crimes may justify fresh consideration of the possible jurisdiction of international tribunals. Additionally, the Special Rapporteur recalls that the commission of inquiry noted that no such limit to temporal jurisdiction applied to the crime of imprisonment and other serious deprivation of liberty, often committed in connection with enforced disappearance. On this basis, the Special Rapporteur is also of the view that these crimes against humanity related to the international abductions could potentially be subject to the jurisdiction of the International Criminal Court.

40. The Special Rapporteur is convinced that in the absence of immediate action on accountability, the international community should respect, protect and maintain civic space that enables victims, families, escapees and civil society organizations to continue their efforts in monitoring, documentation and advocacy, which is essential for the fight against impunity in the Democratic People's Republic of Korea. In the Republic of Korea, civil society organizations do not have access to Hanawon resettlement support centres for refugees from the Democratic People's Republic of Korea to interview escapees. It is important that civil society, and not just States or the United Nations, have access to Hanawon centres to interview recently arrived people from the Democratic People's Republic of Korea. In addition, civil society organizations' applications for consultative status with the Economic and Social Council should be positively considered, as this status is a requirement to be accredited as an observer to the Human Rights Council.

41. The Special Rapporteur engaged with the Government of the Republic of Korea on its decision to conduct business inspections of civil society organizations and the revision of the Development of Inter-Korean Relations Act. The revised Act prohibited the flying of balloons and leaflets, broadcasting through loudspeakers and the installation of visual materials along the military demarcation line, punishable with possible imprisonment of up to three years. The Special Rapporteur expressed concern that the revised act limited many activities of escapees and civil society organizations, and that such limits could be in breach of international human rights law, and recommended a review of the legislation. In January 2021, the Ministry of Unification issued guidelines on the interpretation of the act, clarifying that it was not applicable to third-country activities.

42. The United Nations has a responsibility to support and facilitate the work of civil society organizations, lawyers and victims' groups in their fight against impunity. The Special Rapporteur supports the work of OHCHR, particularly its field-based office in Seoul, in coordinating efforts by civil society organizations and lawyers, building their capacity and amplifying the voices of victims – including escapees from the Democratic People's Republic of Korea and their families – and activists.

43. The process of fighting against impunity will also help build sustainable peace on the Korean Peninsula. As one escapee from the Democratic People's Republic of Korea told OHCHR, "people matter whenever we discuss reconciliation and peace".³⁸ The significance of peace for all on the Korean Peninsula can be properly understood only by its people, and the people's search for truth and justice should be supported as an integral part of the peace process. The United Nations must therefore be coherent in emphasizing human rights while pursuing peace, development and denuclearization in the Democratic People's Republic of Korea.

IV. Impact of the COVID-19 pandemic on the situation of human rights in the Democratic People's Republic of Korea

44. According to the World Health Organization (WHO), the Democratic People's Republic of Korea had tested 13,259 people for COVID-19 as at 31 December 2020. All the results were negative. The Government of the Democratic People's Republic of Korea applied to join the COVID-19 Vaccine Global Access (COVAX) Facility, an initiative for

³⁷ Rome Statute, article 7 (1).

³⁸ OHCHR, "Laying the human rights foundations for peace: supporting an inclusive and human rights-centred peace process in the Democratic People's Republic of Korea", September 2020, p. 30.

equitable global access to COVID-19 vaccines, in a welcome approach to international cooperation. The country is expected to receive 1,992,000 doses of the Oxford-AstraZeneca vaccine in the first half of 2021 under this initiative. The Special Rapporteur urges the Government to take this opportunity to grant full and unimpeded access not only to medical and related staff involved in COVID-19 vaccinations but also to humanitarian actors providing critical support.

45. The Democratic People's Republic of Korea continues to strictly implement its anti-epidemic measures. The authorities have occasionally locked down several cities as a measure to control possible COVID-19 transmission, and residents exhibiting a fever for more than three days are reportedly required to self-isolate. A recently enacted emergency law reportedly requires both citizens and foreigners to comply unconditionally with anti-epidemic measures.³⁹ Unconfirmed reports indicate that a buffer zone 1–2 km wide has been set up along the borders and that officials have authorized law enforcement agencies to “shoot on sight” anyone attempting to cross the country's borders.⁴⁰ On 22 September, a 47-year-old official of the Ministry of Oceans and Fisheries of the Republic of Korea was shot dead by the security forces of the Democratic People's Republic of Korea. The Special Rapporteur sent an official letter to the Democratic People's Republic of Korea and to the Republic of Korea requesting further information about the case. The Special Rapporteur has received a response from the Republic of Korea only. The Democratic People's Republic of Korea must hold those responsible to account, compensate the official's family and review State policy on dealing with alleged trespassers. The Republic of Korea should also provide all available information on the incident and urge the Democratic People's Republic of Korea to comply with its international obligations.

46. Several cases of severe punishment against those breaking anti-epidemic prevention measures have been reported by the media. In December 2020, a man in his fifties allegedly involved in illicit trade with China was reportedly publicly executed. In November 2020, two border guard officers and two rank-and-file soldiers allegedly involved in smuggling were reportedly executed. The same month, a high-profile money changer was allegedly executed in Pyongyang. A new detention facility for those violating COVID-19 quarantine measures has reportedly been built in North Hwanghae Province. The situation of prisons in the Democratic People's Republic of Korea, including political prison camps, remains of the utmost concern, as reflected in the latest OHCHR reports.⁴¹ The COVID-19 situation has increased the vulnerability of people in detention. Detainees in the country rely on family visits for access to decent food and medical care.⁴² but families are currently unable to visit owing to the pandemic. On the occasion of the seventy-fifth anniversary of the foundation of the Workers' Party of Korea, on 10 October 2020, the Government reportedly released 7,000 prisoners under a general amnesty.⁴³

47. The Special Rapporteur recommends that the Government follow the guidelines set out in the joint statement on COVID-19 in prisons and other closed settings made by WHO, OHCHR, the United Nations Office on Drugs and Crime (UNODC), and the Joint United Nations Programme on HIV/AIDS (UNAIDS),⁴⁴ and abide by the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Special Rapporteur also recommends that OHCHR organize an international conference on prisons in the Democratic People's Republic of Korea to develop comprehensive programmes to improve the situation by opening access for monitoring and building national capacity. Such discussions should be as broad-based as possible, involving United Nations agencies working inside the Democratic People's Republic of Korea, civil society organizations, relevant

³⁹ Yonhap News Agency, “N. Korea's anti-virus law imposes requirements on foreigners”, 1 November 2020.

⁴⁰ John Sifton, “North Korea's unlawful ‘shoot on sight’ orders”, Human Rights Watch, 28 October 2020.

⁴¹ See A/HRC/46/52; and OHCHR, “*I Still Feel the Pain...*”: Human Rights Violations against Women Detained in the Democratic People's Republic of Korea, July 2020.

⁴² OHCHR, “*I Still Feel the Pain...*”, pp. 45–47 and 67.

⁴³ Radio Free Asia, “North Korea releases 7,000 prisoners, orders people to provide for them”, 20 November 2020.

⁴⁴ See www.ohchr.org/Documents/Events/COVID-19/20200513_PS_COVID_and_Prisons_EN.pdf.

United Nations human rights mechanisms (including treaty bodies and special procedures), member States, international organizations and detainees and their families.

48. Prolonged measures for the prevention of COVID-19 have resulted in a drastic decline in trade and commercial activities and severe economic hardship among the general population, causing increased food insecurity. According to the Food and Agriculture Organization of the United Nations (FAO), the prevalence of undernourishment in the Democratic People's Republic of Korea was more than 45 per cent prior to the pandemic, between 2017 and 2019.⁴⁵ Concerns remain that restrictions on trade with China, limited market activities, lack of humanitarian support to the affected population, ongoing implementation of sanctions and damage to agriculture caused by typhoons and floods in August and September 2020 could lead to a serious food crisis. Deaths by starvation have been reported, as has an increase in the number of children and older persons who have resorted to begging as families are unable to support them.

49. Humanitarian operations inside the country have nearly come to a halt, and only three international humanitarian workers (two from the United Nations and one from a non-governmental organization) currently remain inside the country. International organizations such as the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies have no international personnel in the country. Humanitarian agencies are unable to carry out on-site assessment missions to monitor and implement crucial life-saving projects. While the Security Council Committee established pursuant to Security Council resolution 1718 (2006) has expedited exemptions for humanitarian assistance and has simplified the exemptions procedures,⁴⁶ humanitarian goods bound for the Democratic People's Republic of Korea have remained at the border with China for months owing to restrictions on imports of goods. Such extended storage has incurred additional costs for humanitarian organizations.

50. The Korea International Trade Association has reported that trade between the Democratic People's Republic of Korea and China decreased by 80 per cent in 2020 compared to 2019. The reduction in trade with China has resulted in a significant decrease in market activities, reducing earnings for many families who relied on small-scale market activities. There have been shortages of essential goods, medicines, agricultural input for farming and raw materials for State-owned factories. The authorities continue to emphasize self-reliance by producing essential goods domestically. Concerns remain that the Government's crackdown on market activity to prevent the spread of COVID-19 could stymie efforts to institutionalize and legalize market processes.⁴⁷ The General Secretary, in his speech to the eighth Congress of the Workers' Party of Korea in January 2021, highlighted the need to restore the State's leading role in commerce activities, signalling a tightening of government control over market activity.

51. The Special Rapporteur urges the authorities of the Democratic People's Republic of Korea to explore alternative measures, in order to strike a balance between necessary disease prevention measures and the basic economic and social rights of the people. In the light of expenditure on the military and the security sector, the Government should also realign priorities and dedicate its resources to ensuring freedom from hunger and other essential minimum living standards for citizens. Lastly, the Government should increase cooperation with the international community and allow humanitarian agencies to reach out to the people in need while following safety protocols. It is time that the Government acted prudently to make sure that the negative consequences of prevention measures do not become disproportionately greater than the impact of the pandemic itself.

⁴⁵ FAO, United Nations Children's Fund, World Food Programme and WHO, *Asia and the Pacific Regional Overview of Food Security and Nutrition 2020: Maternal and Child Diets at the Heart of Improving Nutrition* (Bangkok, FAO, 2021).

⁴⁶ On 30 November 2020, the Committee approved updates to its implementation assistance notice No. 7, entitled "Guidelines for obtaining exemptions to deliver humanitarian assistance to the Democratic People's Republic of Korea". See www.un.org/press/en/2020/sc14375.doc.htm.

⁴⁷ OHCHR, "The price is rights: the violation of the right to an adequate standard of living in the Democratic People's Republic of Korea", May 2019, pp. 15–17.

V. Engagement

52. The COVID-19 pandemic has demonstrated that cooperation and engagement are the only way to overcome human and social crises. The isolation of the Democratic People's Republic of Korea means the isolation of ordinary people who have already been subjected to patterns of serious human rights abuses. Providing entry points for the authorities to gradually open up dialogue and grant access to the country is critical, especially when the Government is exceptionally suspicious and reluctant to discuss human rights. It is worth mentioning that in the recent years the Government has made substantive decisions to allow further cooperation on human rights. It ratified the Convention on the Rights of Persons with Disabilities in 2016 and invited the Special Rapporteur on the rights of persons with disabilities to the country in May 2017.⁴⁸ The Government participated in the reviews by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child in 2017. It also submitted its initial report to the Committee on the Rights of Persons with Disabilities in 2018. The strategic framework for cooperation between the United Nations and the Government of the Democratic People's Republic of Korea for the period 2017–2021 explicitly states that two of the cross-cutting programming principles to be applied in its implementation are a human rights-based approach and gender equality. The Democratic People's Republic of Korea actively participated in the third cycle of the universal periodic review in May 2019, and accepted some, but not all, of the resulting recommendations. Members of the State delegation that attended that review participated in a human rights workshop organized by OHCHR and the Department of Political and Peacebuilding Affairs and held in Geneva. The Government continued to show interest in technical assistance activities in 2020, but progress was not possible owing to the pandemic. Even though these initiatives have not resulted in any proven impact on the rights of the people in the Democratic People's Republic of Korea, the Special Rapporteur believes that such engagement deserves attention, support and continuing development.

53. The fact that reunions of separated families have been at a standstill since August 2018 is lamentable, especially for ageing family members. The Special Rapporteur urges both the Democratic People's Republic of Korea and the Republic of Korea to fulfil their commitments made in the Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula of 27 April 2018, namely to endeavour “to swiftly resolve the humanitarian issues that resulted from the division of the nation, and to convene the Inter-Korean Red Cross Meeting to discuss and solve various issues including the reunion of separated families and relatives”.⁴⁹ According to the Republic of Korea, the equipment necessary for virtual communication has already been set up. The Special Rapporteur does not see any reason to further postpone virtual reunions.

54. The Special Rapporteur also wishes to highlight once more the efforts of civil society organizations that continue to campaign for peace on the Korean Peninsula, especially Women Cross DMZ, a global coalition of women's peace organizations calling for an end to the conflict on the Korean Peninsula, for the signature of a peace agreement and for the inclusion of women in peace processes. The Special Rapporteur sent four letters to the Government during the reporting period in which he commended it for its efforts to prevent a major outbreak of COVID-19 and encouraged the authorities to allow medical and scientific experts and humanitarian actors full and unimpeded access. He also requested a visit to the country to discuss human rights issues, including the impact of sanctions on people's rights. He noted his support for peace initiatives and expressed condolences and solidarity to all the people who had been affected by a series of recent natural disasters. Although the Special Rapporteur has not received any response, he will continue to reach out to the Government of the Democratic People's Republic of Korea.

⁴⁸ The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea has encouraged other thematic mandate holders to engage with the Government with a view to visiting the country, and meetings have been held with the permanent missions of the relevant States to the United Nations Office and other international organizations in Geneva. He continues to foster these contacts.

⁴⁹ A/72/109-S/2018/820, annex, para. 1 (5).

VI. Conclusions

55. Holding accountable those most responsible for human rights violations in the Democratic People's Republic of Korea that may amount to crimes against humanity is imperative in terms of pursuing justice, upholding the rights of victims and deterring future violations of human rights in the country. To this end, both the Human Rights Council and the General Assembly have repeatedly encouraged the Security Council to take appropriate action to ensure accountability, including through consideration of referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court and consideration of further sanctions in order to target effectively those who appear to be most responsible for human rights violations,⁵⁰ but to no avail. For decades, people in the Democratic People's Republic of Korea have continued to suffer or fear grave abuses by State institutions that are supposed to protect them. The Security Council should also bear responsibility for its inaction against the continuation of crimes against humanity in the Democratic People's Republic of Korea. A rationale based on human rights demands that the fight against abuses of such a scale, gravity and nature cannot take a back seat to national or geopolitical interests. Failure to take action may be legal, but it is not justifiable under the Charter of the United Nations.

56. Referral to the International Criminal Court or the creation of an ad hoc tribunal or other comparable mechanism would be complementary to initiatives by victims who have sought justice in national courts, which are limited in scope and hampered by the lack of cooperation from the Democratic People's Republic of Korea. Such approaches at the international level would stand to benefit from the groundwork being carried out by OHCHR, in particular with respect to information-gathering, documentation and awareness-raising.

57. The further isolation of the Democratic People's Republic of Korea from the outside world during the COVID-19 pandemic appears to have exacerbated entrenched human rights violations. The negative impact on the people is particularly worrying, especially given that information received from within the country has been limited further owing to the decreased presence of the international community and the decreased number of escapees arriving in the Republic of Korea.

58. In this respect, the spirit of unity and cooperation emerging worldwide to address the challenge of COVID-19 should reinvigorate the search for a peaceful end to the conflict on the Korean Peninsula. The United Nations should be coherent in pursuing peace, human rights, development and denuclearization in the Democratic People's Republic of Korea. The Special Rapporteur notes that prioritizing only the denuclearization agenda may negatively affect other equally important agendas. On the contrary, a search for a peaceful and principled end to the conflict will generate the space and the conditions necessary to further discuss denuclearization, improvement of the human rights situation, and access on the ground.

VII. Recommendations

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

- (a) Establish accountability mechanisms for human rights violations in the country in accordance with international human rights standards;
- (b) Acknowledge the existence of human rights violations, including those raised by OHCHR, the commission of inquiry and the Special Rapporteur, and provide human rights monitors and international humanitarian organizations with access to the country, including detention facilities;

⁵⁰ See General Assembly resolution 75/190 and Human Rights Council resolution 43/25.

(c) Address allegations of enforced disappearance, including in the form of abductions, and provide accurate information to the families of the victims on the fate and whereabouts of their missing relatives;

(d) Initiate a process of dialogue with the Special Rapporteur and invite him to visit the country;

(e) Urgently invest the maximum available resources, including through international cooperation, to ensure that the basic needs for food, water, sanitation and housing are met, prioritizing the most marginalized communities;

(f) Assess the impact of measures to prevent the spread of COVID-19 on the exercise of human rights, including economic and social rights, and revise any measures that violate these rights;

(g) Grant medical experts and humanitarian actors full and unimpeded access, relax restrictions on access to information, and provide timely and relevant data to the United Nations and humanitarian organizations to enable them to assist the most vulnerable communities;

(h) Comply with the COVID-19 guidance issued by the United Nations High Commissioner for Human Rights, which calls for solidarity and cooperation to tackle the virus and to mitigate the negative effects of measures designed to halt its spread;

(i) Follow the guidelines set out in the joint statement on COVID-19 in prisons and other closed settings made by UNODC, WHO, UNAIDS and OHCHR, abide by the Nelson Mandela Rules and consider the release of prisoners, particularly those in vulnerable situations;

(j) Carry out research and release statistics and other data to enable an assessment of the impact of international sanctions on the economic and social rights of the people;

(k) 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 upon repatriation;

(l) Engage with the Republic of Korea to resume reunions of separated families.

60. The Special Rapporteur recommends that the Republic of Korea:

(a) Integrate human rights into negotiations with the Democratic People's Republic of Korea;

(b) Engage with the Democratic People's Republic of Korea to resume reunions of separated families;

(c) Engage with civil society organizations with a view to enabling victims, families, escapees and civil society organizations to continue their fight against impunity;

(d) Engage with civil society organizations to ensure access to Hanawon resettlement support centres for refugees from the Democratic People's Republic of Korea in order to interview escapees;

(e) Continue its efforts to provide protection to people escaping from the Democratic People's Republic of Korea to third countries;

(f) Implement the North Korean Human Rights Act passed by the National Assembly of the Republic of Korea in 2016, including establishing the North Korean Human Rights Foundation;

(g) Ensure that a human rights-based framework is integrated into possible economic and humanitarian cooperation with the Democratic People's Republic of Korea;

(h) Facilitate people-to-people exchanges with the Democratic People's Republic of Korea by lowering limitations on freedom of communication.

61. The Special Rapporteur recommends that China:

(a) Apply the principle of non-refoulement to individuals from the Democratic People's Republic of Korea who are at risk of serious human rights violations upon repatriation;

(b) Actively engage in human rights issues in the Democratic People's Republic of Korea, including by continuing to engage with the Special Rapporteur and OHCHR.

62. The Special Rapporteur recommends that China, the Democratic People's Republic of Korea, the Republic of Korea and the United States, with the participation of other Member States of the United Nations as necessary, reach an agreement on peace and prosperity, including provisions to promote human rights and address human rights violations.

63. The Special Rapporteur recommends that the international community:

(a) Provide support to the people of the Democratic People's Republic of Korea in combating the COVID-19 pandemic;

(b) Provide increased financial and other support to humanitarian actors, including the United Nations, to enable them to respond to the most urgent humanitarian needs in the country and to support development initiatives;

(c) Use any available opportunity for dialogue with the Democratic People's Republic of Korea to create an environment to advance a peace agreement and seek progress with respect to the situation of human rights in the country;

(d) Continue to provide support to the efforts of civil society actors to address the situation of human rights in the Democratic People's Republic of Korea;

(e) Support efforts to promote accountability in the Democratic People's Republic of Korea, including the work on accountability by OHCHR.

64. The Special Rapporteur makes following recommendations to the United Nations:

(a) The Security Council should refer the situation in the Democratic People's Republic of Korea to the International Criminal Court or establish an ad hoc tribunal or other comparable mechanism;

(b) The General Assembly should also discuss the establishment of an ad hoc international tribunal on crimes against humanity committed in the Democratic People's Republic of Korea;

(c) The Security Council should adopt sanctions targeting those who are most responsible for crimes against humanity;

(d) The Security Council should consider lifting sanctions that negatively affect human rights;

(e) The Secretary-General and OHCHR should conduct a comprehensive study of the detrimental impact of sanctions on the human rights of the people of the Democratic People's Republic of Korea and on the humanitarian situation in the context of the current COVID-19 preventative measures;

(f) The Secretary-General and OHCHR should continue to explore and support technical cooperation projects on human rights with the Democratic People's Republic of Korea;

(g) OHCHR should organize an international conference on prisons in the Democratic People's Republic of Korea to develop comprehensive programmes to improve the situation by opening access for monitoring and building national capacity.

65. **The Special Rapporteur recommends that civil society organizations:**
- (a) **Continue their efforts to promote accountability and their fight against impunity;**
 - (b) **Continue to monitor and document human rights violations in the Democratic People's Republic of Korea to support accountability efforts and to advocate changes in the country's laws and policies;**
 - (c) **Engage with the Members States of the United Nations to advocate the advancement of a peace agreement and the integration of human rights into negotiations.**
-