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Human rights situations that require the Council's attention

Promoting accountability in the Democratic People's Republic of Korea

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted to the Human Rights Council pursuant to its resolutions 49/22 and 46/17, describes the activities of the Office of the United Nations High Commissioner for Human Rights in promoting accountability for human rights violations in the Democratic People's Republic of Korea, highlighting the progress made and the challenges encountered. It also examines information the Office of the High Commissioner has gathered on human rights violations committed in the Democratic People's Republic of Korea in the light of relevant international legal standards. It concludes with recommendations addressed to the Government of the Democratic People's Republic of Korea, other Member States and the Council.



I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to its resolutions 46/17 and 49/22 on the situation of human rights in the Democratic People's Republic of Korea. It provides an update to the report of the United Nations High Commissioner for Human Rights (A/HRC/46/52) and oral update given to the Council at its forty-ninth session, in March 2022. In its resolution 46/17, the Council requested the High Commissioner to submit to the Council, at its fifty-second session, a full report on the implementation of the recommendations made by the group of independent experts on accountability aimed at strengthening current monitoring and documentation efforts, establishing a central information and evidence repository, 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. The Council also requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to organize a series of consultations and outreach activities with victims, affected communities and other relevant stakeholders with a view to including their views into avenues for accountability. The present report describes the activities of OHCHR in the past two years to implement Council resolutions 34/24, 40/20, 46/17 and 49/22, highlighting the progress made and the challenges encountered. The report examines, in the light of relevant international legal standards, information gathered by OHCHR on human rights violations committed in the Democratic People's Republic of Korea. OHCHR sought the views of the Government of the Democratic People's Republic of Korea on the implementation of resolution 46/17. In its reply, the Government repeated its position that it did not recognize Council resolutions, which it saw as a product of the policy of "hostile" Member States. OHCHR shared the present report with the Government of the Democratic People's Republic of Korea for comments. The Government responded that it rejected the report. OHCHR stands ready to cooperate and engage with the Government on improving the situation of human rights in the Democratic People's Republic of Korea.

II. Context

2. The year 2023 marks the tenth anniversary of the establishment by the Human Rights Council, in its resolution 22/13, of the commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea. In its report (A/HRC/25/63), the commission 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. The Council, in its resolution 25/25, requested OHCHR to establish a field-based structure 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, and to maintain visibility of the situation of human rights. In June 2015, OHCHR established a field-based structure in Seoul.

3. In 2016, the Human Rights Council, in its resolution 31/18, 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. In its report to the Council (A/HRC/34/66/Add.1), the group of independent experts recommended the adoption of a multi-pronged and comprehensive approach to accountability and to strengthen the capacity of OHCHR, including its field-based structure. In its resolution 34/24, the Human Rights Council decided to strengthen, for a period of two years, the capacity of OHCHR, including its field-based structure in Seoul, to allow the implementation of relevant recommendations made by the group of independent experts in its report relating to accountability. The Council extended that mandate in March 2019 in its resolution 40/20, and again in March 2021, in its resolution 46/17, for a two-year period.

III. Implementation of Human Rights Council resolutions 34/24 and 40/20

4. As stated by the Secretary-General in his report on the situation of human rights in the Democratic People's Republic of Korea (A/77/247), OHCHR remains gravely concerned about the impact of the coronavirus disease (COVID-19) pandemic on the situation of human rights in the country. OHCHR expressed concerns that the prolonged closure of the borders coupled with limited access to food, medicines and health care would have a dire impact on the people who were already struggling to meet their basic needs,¹ in particular on older persons, persons with disabilities and persons in detention. It has not, however, been able to independently verify the disparate consequences of the COVID-19 pandemic and response. In addition to the impact of the pandemic on the fulfilment of basic needs, OHCHR has also expressed concern about increased restrictions on civil and political rights.² In May 2022, the High Commissioner addressed a letter to the Government of the Democratic People's Republic of Korea offering support to help it to ensure that COVID-19 response measures respect and protect the human rights of the people in the country (A/77/247, para. 36). At the time of writing, no response had been received. OHCHR has also repeatedly urged the Government to facilitate the return of United Nations and other international staff to the country to provide life-saving and essential humanitarian support.

A. Strengthening monitoring and documentation efforts

5. It is crucial for OHCHR to have maximum access to individuals who can provide accurate and up-to-date first-hand accounts of the situation of human rights in the Democratic People's Republic of Korea. During the period under review, OHCHR conducted 110 in-person and remote interviews (52 women and 58 men), with escapees from the Democratic People's Republic of Korea and other stakeholders in the Republic of Korea and Japan.³

6. The OHCHR interview programme continues to be affected by the COVID-19 pandemic.⁴ Increased restrictions on movement related to the COVID-19 pandemic continue to reduce significantly the number of escapees leaving the Democratic People's Republic of Korea and arriving in the Republic of Korea.⁵ It is not known how many people may have left the Democratic People's Republic of Korea to other countries during the pandemic. Today, most new arrivals in the Republic of Korea are persons who left the Democratic People's Republic of Korea several years before the beginning of the pandemic and remained in other countries for extended periods. Such persons therefore may not have up-to-date information on the current situation in the country. Given the lower number of new arrivals in the Republic of Korea, OHCHR has explored other means to gather information, including by increasing the number of interviews conducted outside resettlement centres, gathering information from a wider range of sources (including through the use of new technologies) and focusing on thematic areas, such as abductions and enforced disappearances, overseas forced labour and sexual and gender-based violence.

7. Interviews with recent arrivals from the Democratic People's Republic of Korea are important for OHCHR to collect fresh information about the situation on the ground and to implement its mandate effectively. OHCHR has increased its capacity to interview escapees and is in regular dialogue with the Ministry of Unification of the Republic of Korea, which operates the resettlement centres, to ensure access to individuals in the centres and adequate time with interviewees to conduct confidential, informed, gender-responsive and victim-centred interviews and to gather relevant documentation.

¹ See <https://seoul.ohchr.org/en/node/486>.

² *Ibid.*

³ The number does not include interviews and focus group discussions held in connection with the consultations mandated by Human Rights Council resolution 49/22, discussed below.

⁴ Since 2015, the OHCHR Office in Seoul has conducted approximately 500 interviews.

⁵ The Government of the Republic of Korea reports provisionally that only 19 persons arrived in the first half of 2022, and 63 in 2021, compared to 229 in 2020 and 1,047 in 2019.

8. OHCHR continued to identify potential interviewees living outside of the resettlement centres in the Republic of Korea. These interviews also provide OHCHR with an opportunity to explain to victims their rights and to provide information on international human rights mechanisms. Many escapees face challenges in establishing their new lives, and are focused on securing access to jobs and education; this leaves them with little time or incentive to make themselves available for interviews that focus on past traumatic experiences. Some interviewees expressed serious concerns about their safety, and the safety of their family members, friends and associates who remain in the Democratic People's Republic of Korea.⁶

9. Collecting information from previously high-ranking government officials from the Democratic People's Republic of Korea remains a challenge. Persons who may be able to provide critical information on State policies and decision-making processes are reluctant to be identified or to give interviews for safety and privacy reasons, as well as owing to their right not to give self-incriminating information in relation to possible human rights violations, including possible international crimes. OHCHR raised these issues with relevant partners who conduct interviews, and supported capacity-building activities on related topics, and stands ready to assist in developing guidelines in this regard should such partners request it.

10. Reporting by the Democratic People's Republic of Korea under the United Nations human rights treaties to which it is a party, as well as for universal periodic review, remains limited. Increased engagement with these mechanisms is, potentially, one means to alleviate the lack of information on the situation of human rights in the country and to highlight any initiatives undertaken by the Government to improve it.⁷ OHCHR stands ready to cooperate and engage with the Government in meeting its reporting obligations.

B. Consolidation of a central information and evidence repository

11. OHCHR continued to expand its central information and evidence repository established pursuant to Human Rights Council resolution 34/24, and to analyse the information collected. Currently, the repository contains records of 517 interviews with victims, witnesses and others. The majority of these interviews are with women. Items stored in the repository include original information from civil society organizations (including some led by women), reports, maps, court documents, videos, audio recordings and communications to United Nations human rights bodies, among other items. The repository also contains an information archive of the work conducted by the commission of inquiry and the group of independent experts.

12. The repository is intended to be a central and comprehensive database of information on human rights violations in the Democratic People's Republic of Korea, some of which may amount to international crimes. Its purpose is to support future accountability initiatives by providing access to as much high-quality and well-organized information as possible. The repository also serves to develop and preserve an accurate historical record, which will be crucial for victims in their pursuit of non-judicial accountability measures. OHCHR preserves the information collected in a secure and confidential manner and in compliance with United Nations regulations, policies and practices. The repository includes advanced analytical tools that can identify trends and patterns, locate key interviews and visualize data, and will also be useful for future accountability measures in assessing the strength of available information and identifying gaps.

⁶ See Korea Institute for National Unification, White Paper on Human Rights in North Korea 2021, pp. 566–69.

⁷ The Democratic People's Republic of Korea has submitted: for the Human Rights Committee, the third periodic report was previously due in 2004 but has been overdue since 22 April 2022; for the Committee on Economic, Social and Cultural Rights, the third periodic report has been overdue since 30 June 2008; for the Committee on the Elimination of Discrimination against Women, the combined second to fourth periodic reports were considered in November 2017; for the Committee on the Rights of Persons with Disabilities, the periodic report for the first review cycle was submitted in December 2018; and for the Committee on the Rights of the Child, the sixth and seventh periodic reports were due in October 2022. The Democratic People's Republic of Korea is due to be reviewed during the fourth cycle of the universal periodic review, in 2024.

13. The lack of access to the Democratic People's Republic of Korea poses unique constraints to pursuing accountability for human rights violations and international crimes, especially in collecting information and populating the repository. There is currently no prospect of conducting independent investigations inside the country. Gathering documentary or physical evidence outside the country remains difficult owing to the Government's near-total control of information within the country, the repression of independent non-governmental activity, and a comprehensive system of State surveillance and harsh punishments for accessing or distributing information not endorsed by the Government. In addition, secrecy (including on the identity and functions of high-level leaders and changes in senior leadership) and the limited number of high-ranking individuals who have left the country make it challenging to link human rights violations and possible crimes to individuals who may be responsible for them.

14. In the Republic of Korea, the Center for North Korean Human Rights Records within the Ministry of Unification interviews most of the newly arrived people from the Democratic People's Republic of Korea.⁸ The North Korea Human Rights Documentation Office within the Ministry of Justice maintains the archives of these interviews as well as other documentation.⁹ Given the Center's access to recent arrivals, the Documentation Office archive is probably the most comprehensive in documenting the situation of human rights in the Democratic People's Republic of Korea. OHCHR continues to engage with both entities to seek ways to include this important information in the OHCHR central repository, in line with the applicable legal framework established by the Government of the Republic of Korea. In addition, several civil society organizations have also developed repositories containing their own interviews, research and analysis. OHCHR is engaging with all the stakeholders to support their documentation initiatives and to encourage the said organizations to contribute to the central repository maintained by OHCHR, which would allow more comprehensive evaluation and analysis of the information collected in terms of elements of international crimes and the responsibility of perpetrators.

15. Several civil society organizations contributed to the repository during the period under review. In gathering these resources, OHCHR works with contributors to protect the privacy of victims and witnesses and to ensure their informed consent to the use of their information. The preservation of the information in a secure and consolidated manner in one place would contribute significantly to the groundwork necessary to advance accountability strategies and initiatives.

C. Developing strategies to promote accountability in the Democratic People's Republic of Korea

16. Owing to the lack of accountability at the domestic level, the commission of inquiry recommended, *inter alia*, the referral by the Security Council of the situation in the Democratic People's Republic of Korea to the International Criminal Court or the establishment of an ad hoc tribunal (A/HRC/25/63, para. 87). At the time of writing, however, no referral had been made. Civil society organizations in the Republic of Korea and Japan have submitted communications to the International Criminal Court on behalf of victims, including Korean War abductees, prisoners of war, citizens of the Democratic People's Republic of Korea, Japanese abductees, and victims of the "Paradise on Earth" campaign.¹⁰ Given this and other challenges, victims' groups and civil society organizations continue to pursue other avenues for legal accountability.

17. Another option to ensure criminal accountability in the Democratic People's Republic of Korea would be for Member States to pursue investigations and prosecutions based on

⁸ North Korean Human Rights Act, art. 13 (5).

⁹ *Ibid.*, art. 13 (1).

¹⁰ A campaign by the Government of the Democratic People's Republic of Korea to promote the "return" of ethnic Koreans, which officially 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. Many of the ethnic Korean "returnees" were originally from below the 38th parallel and lived in Japan at the time of the division of the Korean Peninsula, but that number includes 6,730 Japanese nationals who were spouses or children of Korean residents in Japan.

principles of extraterritorial and/or universal jurisdiction in legal proceedings observing fair trial and due process guarantees. Practical and legal challenges limit the prospect of prosecutions under the principle of universal jurisdiction. Not all States where significant numbers of people from the Democratic People's Republic of Korea reside have established universal jurisdiction in their national legal systems. Some States that do exercise universal jurisdiction in their national legal systems require a nexus between the alleged crime and their jurisdiction – mostly through the presence or residence of a victim or accused in the territory of the prosecuting State concerned. Other challenges include the difficulty involved in collecting documentary and physical evidence and the low probability that possible perpetrators will travel abroad.¹¹ Despite the challenges, however, the presence of a number of potential victims in the Republic of Korea has highlighted the possibility of prosecutions there. The Republic of Korea has a comprehensive legal framework that could potentially permit the investigation and prosecution of international crimes committed in the Democratic People Republic of Korea.¹² In its next phase of work, OHCHR will facilitate exchanges among Member States, including those that have successfully implemented universal jurisdiction, to share information and best practices on the possibility of initiating criminal prosecutions under the principles of universal jurisdiction and addressing any legal constraints encountered.

18. Some Member States have, either individually or collectively, applied targeted sanctions against individuals and entities for their alleged role in human rights violations. Initiatives include the Global Magnitsky Sanctions programme in the United States of America, the global human rights sanctions regime of the European Union, and the Global Human Rights Sanctions of the United Kingdom of Great Britain and Northern Ireland.¹³ Some of these sanctions programmes allow victims and other stakeholders to present information for the relevant Government to investigate individuals and entities. In Member States where victim participation in unilateral sanctions is possible, victims and other stakeholders should be provided with information and support to make informed decisions about their possible participation. Measures should be carefully crafted to ensure they do not negatively affect the enjoyment of rights – including economic, social and cultural rights – by a State's population, and minimize any possible negative impact on the human rights of persons who may be sanctioned, including their rights to a fair trial, to property and to privacy.¹⁴

19. Another avenue of accountability is the pursuit of civil claims against the Government of the Democratic People's Republic of Korea. In the Republic of Korea, civil claims have been filed by former prisoners of war and victims of abduction during the Korean War, some of which resulted in monetary damages being awarded.¹⁵ In Japan, five victims (four women and one man) of the "Paradise on Earth" campaign (see para. 16 above) filed a civil lawsuit in 2018 against the Democratic People's Republic of Korea. In March 2022, the Tokyo District Court found that it did not have jurisdiction over the claim owing to the statute of limitations. In its decision, however, the Court acknowledged some of the plaintiffs' claims as fact, and the case provided a valuable opportunity for plaintiffs to gain public recognition

¹¹ In successful prosecutions, perpetrators had found refuge in the territory of the State exercising universal jurisdiction. For an overview of universal jurisdictions cases, see *Universal Jurisdiction Annual Review 2022*, <https://trialinternational.org/latest-post/2021-highlights-in-the-universal-jurisdiction-annual-review-ujar-released-today/>.

¹² See Republic of Korea, Act on Punishment of Crimes Under Jurisdiction of the International Criminal Court, act No. 8719, 21 December 2007), amended by act No. 10577, 12 April 2011.

¹³ The sanctions programme in the United States is based on the Global Magnitsky Human Rights Accountability Act of 2016 and other authorities. The United Kingdom programme relies on the Global Human Rights Sanctions Regulations 2020 and the Sanctions and Anti-Money Laundering Act 2018, and the European Union programme is based on Council Regulation (EU) 2020/1998 of 7 December 2020.

¹⁴ For a discussion on the impact of unilateral sanctions on human rights, see A/HRC/45/7, paras. 27 and 38.

¹⁵ See Seoul Central District Court, cases No. 2016 Ga-Dan 5235506, No. 2020 Ga-Dan 5306603 and No. 2020 Ga-Hap 2804.

of their experiences.¹⁶ Courts in the United States of America have also awarded damages in civil litigation against the Democratic People's Republic of Korea. Serving notice of proceedings against the Government of the Democratic People's Republic of Korea, gathering evidence and collecting compensation from the Democratic People's Republic of Korea present serious challenges to the success of such claims.¹⁷

20. Civil society organizations and relatives of disappeared persons continue to submit cases to the Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention. As at May 2022, the Working Group on Enforced or Involuntary Disappearances had transmitted 362 cases (concerning 309 men and 53 women) since 1980 to the Government of the Democratic People's Republic of Korea. None of these cases has been resolved.¹⁸

IV. Patterns of violations

21. OHCHR continues to collect and analyse information relating to serious human rights violations committed in the Democratic People's Republic of Korea, some of which may amount to international crimes. In March 2021, the High Commissioner concluded that there are reasonable grounds to believe that crimes against humanity have been committed and may be ongoing in the Democratic People's Republic of Korea (A/HRC/46/52, para. 68). OHCHR continues to develop its analysis, aiming to document the State policies of the Democratic People's Republic of Korea, map decision-making processes and identify the government entities involved in implementing such policies. OHCHR continues to prepare thematic reports and discussion papers on the situation of human rights in the Democratic People's Republic of Korea.¹⁹

A. Enforced disappearances and abductions

22. Between 2016 and 2022, OHCHR conducted 80 interviews (38 male and 42 female) in the Republic of Korea and Japan relating to cases of enforced disappearance and abduction in and by the Democratic People's Republic of Korea. The practices of enforced disappearance and abductions in and by the Democratic People's Republic of Korea has two distinct patterns: the first comprises enforced disappearances reportedly committed through the continued practice of arbitrary detention inside the Democratic People's Republic of Korea of its nationals; the second comprises the enforced disappearance of foreign nationals, mainly between 1950 and the mid-1980s. The latter include abductions of nationals of the Republic of Korea during and after the Korean War, the non-repatriation of prisoners of war, and abductions of foreign nationals from China, France, Japan, Lebanon, Malaysia, Romania, Singapore and Thailand. The interviews also included victims of the "Paradise on Earth" campaign.

23. Enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life and a continuing violation of various human rights, such as those recognized in the International Covenant on Civil and Political Rights.²⁰ The systematic practice of enforced disappearance is of the nature of a crime against humanity.²¹ United Nations human rights bodies have pointed out that the pain and suffering

¹⁶ As attested by victims' groups and civil society organizations in their answers to the OHCHR questionnaire, and by participants during the OHCHR Workshop on the theme "Navigating Avenues for Accountability in the DPRK", 8 December 2021.

¹⁷ See Jiha Ham and Christy Lee, "Suing North Korea Presents Legal, Logistical Hurdles", VOA News, 27 March 2021.

¹⁸ See A/HRC/51/31, paras. 52–54.

¹⁹ See <https://seoul.ohchr.org/en/thematic-reports>.

²⁰ Human Rights Committee, general comment No. 36 (2019), para. 58; CCPR/C/113/D/2000/2010, para. 11.3.

²¹ Preamble of the Declaration on the Protection of All Persons from Enforced Disappearance (General Assembly resolution 47/133). See also the Rome Statute of the International Criminal Court, arts. 7 (1)(i) and 7 (2)(i), and the International Convention for the Protection of All Persons from Enforced

experienced by the relatives and families of disappeared persons can amount to torture or inhuman treatment,²² and that this torture is continuous upon those relatives and families.²³ In this sense, the crime of enforced disappearance continues until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the disappeared person.²⁴ The victims interviewed by OHCHR, including relatives of forcibly disappeared persons, described long-lasting suffering that affected their well-being and resulted in conditions that need psychological or medical treatment. A number of the elderly parents of the disappeared have died without knowing the fate or whereabouts of their children.

24. Enforced disappearances also have a negative impact on the enjoyment of economic, social and cultural rights of the families of the forcibly disappeared.²⁵ The interviews highlighted the disparate impact of these hardships on women and on the children of disappeared persons. In most cases of enforced disappearance, the person forcibly disappeared was a man, and the main breadwinner of the family; as a consequence, women had to shoulder the entire burden of family care. Families of disappeared persons faced poverty. Children, especially elder daughters, were pressured to give up education and work to support the family. Interviewees also reported being subjected to social stigmatization and discrimination. International human rights instruments have recognized that victims of human rights violations have a right to remedy and redress. Most of the interviewees, however, described feeling neglected for many years without adequate support and protection, information about their loved ones, or efforts to locate the missing.

25. In 2022, OHCHR carried out a series of consultations with victims' groups and civil society organizations, including some led by women. OHCHR also sent a written questionnaire to 17 victims' groups and civil society organizations in Japan, the Republic of Korea and Thailand, and to the Governments of Japan and the Republic of Korea. The consultations and questionnaire were aimed at gathering information about the ongoing suffering of victims of enforced disappearance and abduction and their families, and to seek the victims' perspectives on truth-seeking, justice mechanisms and reparations.

26. Victims, including families of forcibly disappeared persons, informed OHCHR about their views and expectations with regard to the realization of their right to truth, justice (including accountability) and reparations. Families emphasized the importance of the disclosure of the truth about the fate and whereabouts of forcibly disappeared persons and their immediate and safe return. Many families hoped to resume family reunions and to restore contacts with relatives in the Democratic People's Republic of Korea. Many seek the return of the remains of victims who have died. Victims emphasized that many of the forcibly disappeared persons and their families are of advanced age, and there is no time to wait to resolve these cases. Interviewees expressed their wish for the Democratic People's Republic of Korea to sincerely apologize for its role in enforced disappearances and to take steps towards accountability. Families emphasized the need for criminal prosecutions to hold to account those responsible for enforced disappearances, as well as comprehensive reparation programmes, including compensation, rehabilitation, restitution, satisfaction, and guarantees of non-recurrence.

B. Overseas forced labour

27. During the period under review, OHCHR interviewed 18 men who were allegedly sent to work overseas by the Democratic People's Republic of Korea to generate income for

Disappearance. Japan and the Republic of Korea are parties to the Rome Statute; the Democratic People's Republic of Korea is not. Japan is a party to the International Convention for the Protection of All Persons from Enforced Disappearance; the Parliament of the Republic of Korea ratified the Convention on 8 December 2022.

²² See for example CCPR/C/113/D/2000/2010, para. 11.7; CCPR/C/119/D/2259/2013, para. 7.8; and A/HRC/16/48, para. 39, general comment on the right to the truth in relation to enforced disappearances, para. 4.

²³ A/HRC/16/48, para. 39, general comment on the right to the truth in relation to enforced disappearances, para. 4.

²⁴ *Ibid.*, general comment on enforced disappearance as a continuous crime, para. 1.

²⁵ A/HRC/30/38/Add.5.

the State.²⁶ Interviewees described the tight system of government control, in particular that exerted by the Ministry of State Security, in coordinating and sending its nationals overseas as labourers. Interviewees reported that overseas work was very much sought-after, with *songbun*²⁷ and bribes determining who had access to such opportunities.

28. The former overseas workers interviewed had mostly worked in labour intensive sectors, such as construction and logging. They described physically arduous and sometimes dangerous work, and long working hours without adequate breaks or holidays, or adequate health and safety measures in place. Long working hours were reportedly further extended if strict work quotas were not met.

29. Interviewees reported having to pay between 80 and 90 per cent of their salary to the Government of the Democratic People's Republic of Korea. They were able to keep a small amount for daily necessities, including food and medicine, and sent the remainder back to family members in the Democratic People's Republic of Korea as remittances. Some reported being misled about their level of pay and being vulnerable to further extortion by officials of the Democratic People's Republic of Korea present at the workplace. Some reported that they received only small amounts for daily necessities, while others reported that they were paid in vouchers that could supposedly be redeemed for goods upon their return home, but that later proved worthless. Interviewees reported that they would endure the conditions because they could make more money abroad than at home. Moreover, any attempt to organize or complain about pay, or working or living conditions, exposed workers to the risk of being sent back to the Democratic People's Republic of Korea.

30. Men sent overseas as labourers described having virtually no freedom of movement, with restrictions on leaving their work sites and having to reside in cramped living quarters imposed by the Ministry of State Security officials stationed at the overseas workplaces. Restrictions were also placed on access to mobile phones for communicating with family. Letters sent home were read and censored by Ministry of State Security officials. Interviewees also reported strict restrictions on access to information, including newspapers, the Internet and television while in workers compounds.

31. Former overseas workers told OHCHR that, after working three to five years abroad, they had more freedom to leave their compounds and seek freelance work. This often consisted of building and maintenance work for private homes in the local community. A sum would still have to be paid to the State, but money made beyond that amount could be kept by the worker.

32. Some overseas workers escaped from their places of employment and subsisted by doing freelance work; however, this put them at risk of arrest by the host State and forced repatriation to the Democratic People's Republic of Korea, which would likely include imprisonment. The COVID-19 pandemic exacerbated their vulnerability, leading many men who had been subsisting abroad for extended periods to migrate to the Republic of Korea for safety. In analysing the conditions and treatment reported by overseas workers, OHCHR is concerned that such conditions may amount to forced labour.

C. Female victims of trafficking

33. OHCHR documented 14 accounts of female victims of trafficking during the period under review. It interviewed women who had been trafficked into neighbouring States, often for marriage or for work. Some of the interviewees had been arrested in the neighbouring State, forcibly returned by the neighbouring State's authorities, and imprisoned for having left the Democratic People's Republic of Korea, usually without a trial. These women left the Democratic People's Republic of Korea again after completing their punishment, and eventually made their way to the Republic of Korea.

²⁶ While OHCHR is aware that women are also sent overseas, there were not sufficient interviews on this topic during the period under review to draw reliable conclusions.

²⁷ A system by which the State categorizes citizens into classes ("core", "wavering" and "hostile") on the basis of their perceived political allegiance to the regime, as ascertained by reference to family background and particular actions taken by family members. See A/HRC/25/63, para. 33.

34. Interviewees who had been trafficked into neighbouring countries reported living in fear that if their origins were discovered, they would be repatriated and imprisoned. Some women reported having children in the countries where they were trafficked, and some were forced to leave behind children of mixed parentage if they were repatriated.

35. OHCHR has consistently expressed concern that the continued forced return to the Democratic People's Republic of Korea exposes people to arbitrary detention, and to the personal and real risk of irreparable harm, such as torture, gender-based violence, including sexual violence, and other serious human rights violations, in breach of the principle of non-refoulement, as set forth in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, entailing an obligation under article 2 of the International Covenant on Civil and Political Rights²⁸ to which States neighbouring the Democratic People's Republic of Korea are a party. There is also a need to alleviate the conditions that make people vulnerable to trafficking, and to take action to discourage the demand for trafficked persons.²⁹

V. Implementation of Human Rights Council resolutions 46/17 and 49/22

A. Consultations

36. OHCHR continues to organize consultations and outreach activities with victims, affected communities and other stakeholders in order to include their views in avenues for ensuring accountability. Consultation is a crucial element of the human rights-based and victim-centred approach to accountability for human rights violations. Victims and affected communities must be able to express their views freely during the consultation process so that their experiences, needs and entitlements can be identified and taken into account in the design and implementation of future accountability processes. OHCHR has used these consultations as an opportunity to inform victims and affected communities about their rights, for example by providing "one-pagers" of basic information about international human rights law and accountability. By building on stakeholders' knowledge, these interactions also provide an opportunity to manage expectations about the feasibility of different approaches to accountability.

37. In April 2022, OHCHR organized a workshop to inform stakeholders about the consultation process and to discuss the way forward. Participants included representatives of civil society organizations (including some led by women) in the Republic of Korea, Japan and Thailand, government officials, United Nations human rights experts and diplomatic missions in the Republic of Korea.

38. OHCHR conducted a series of consultations with victims, civil society organizations (including some led by women), academia, domestic and international legal practitioners, and other stakeholders. Stakeholders are encouraged to provide input through surveys and written questionnaires, focus groups, in-depth interviews and roundtables. In particular, focus group discussions have been conducted with specific groups, including victims of enforced disappearance, relatives of abductees and prisoners of war and female escapees. In addition to victims' groups, future consultations will be held with members of the judiciary, prosecutors, legal practitioners, academia and government representatives. Key findings from the consultations on stakeholders' views on avenues for accountability, including judicial and non-judicial measures, will be published in 2023.

39. The lack of access to the Democratic People's Republic of Korea limits consultations to a small pool of victims and families outside the country. These consultations do not, indeed

²⁸ See Human Rights Committee general comment No. 31 (2004), para. 12. On the application of the principle of non-refoulement in cases of human trafficking, see also communication No. 2288/2013 (CCPR/C/114/D/2288/2013), paras. 7.2–7.5.

²⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 9, paras. 4 and 5.

cannot, engage the full range of victims and affected communities. OHCHR will continue to seek opportunities to broaden the pool of victims and their families in these consultations.

B. Capacity-building

40. During the period under review, OHCHR continued to provide capacity-building activities to victims' groups, civil society organizations (including some led by women), government officials of the Republic of Korea, and students. The aim of such activities is to support stakeholders in gathering and documenting information relating to human rights violations and possible crimes against humanity in the Democratic People's Republic of Korea, and to maximize the usefulness of such information for any future accountability processes.

41. Capacity-building activities for civil society organizations included workshops on possible pathways to accountability before national and international jurisdictions; rights of victims and the need for consultations with them; and information about unilateral sanctions regimes linked to human rights violations. OHCHR facilitated discussions on the role of civil society organizations in promoting accountability for human rights violations. OHCHR also organized a workshop on victims' rights under international law, and provided examples of victims' consultations in accountability measures in other States. It also delivered training sessions on basic standards and evidence preservation for judicial accountability processes, and demonstrated the functionality of the OHCHR central repository so that partners may better understand the benefits of contributing to it.

42. OHCHR contributed to capacity-building programmes organized by partners, including presentations on the work of OHCHR, engagement with United Nations human rights mechanisms, and victims' rights under international law for female escapees from the Democratic People's Republic of Korea now living in the Republic of Korea. Presentations were given on the situation of human rights in the Democratic People's Republic of Korea and the role of the United Nations human rights system to law students and youths.

43. OHCHR delivered training sessions for Government officials of the Republic of Korea who engage with people from the Democratic People's Republic of Korea and document the situation of human rights there. Topics included international criminal law, methodologies of verification and analysis in human rights monitoring, international standards on fair trial rights and due process guarantees, global practices for documenting human rights violations at the international and domestic levels, and supporting and promoting human rights, including gender perspectives. OHCHR also held regular roundtables throughout the period under review with civil society organizations and other stakeholders to provide updates on the work of the Office and to facilitate the sharing of information. These programmes have stimulated discussions on important matters of law and policy and enhanced the capacity of stakeholders to gather and analyse high-quality human rights information and increase its possible utility in future accountability processes.

44. Outreach activities will be central to consolidating existing relationships by engaging with a broader range of stakeholders. OHCHR will continue its capacity-building activities and develop communities of practice among experts in the field of accountability who can provide substantive and technical training on relevant topics. OHCHR will continue its awareness-raising initiatives to sensitize victims' groups on international norms and standards pertaining to accountability for human rights violations.

VI. Conclusions

45. **Despite the challenges it faces, OHCHR continues to gather information that is consistent with the findings of the commission of inquiry that serious human rights violations and possible international crimes continue in the Democratic People's Republic of Korea. OHCHR continues to analyse the information available on these violations and possible crimes, including their disparate impact on men, women, boys and girls. This work includes analysis of the structure and organization of the**

Government of the Democratic People's Republic of Korea and its lack of respect for its human rights obligations.

46. For the reasons given above, the prospects for criminal accountability for human rights violations and possible international crimes in the Democratic People's Republic of Korea remain modest. Fresh, creative strategies are needed to address this matter. Possible avenues for criminal accountability, including universal jurisdiction in the Republic of Korea, where a large number of potential victims reside, have been described in the present report.

47. Member States, including the Republic of Korea, should consider fundamental questions regarding the role of different government institutions in information-gathering, the purpose and objectives of their information-gathering activities, and strategies required to prosecute high- or low-ranking perpetrators. Under international law, States have a clear obligation to prosecute those responsible for international crimes, such as crimes against humanity, in legal proceedings with fair trial and due process guarantees. While gathering information, States must respect the due process and fair trial rights of perpetrators, including the right against self-incrimination, and the rights of victims to redress. This balance, and the fact that amnesties for crimes against humanity are impermissible, should be taken into consideration when developing comprehensive policies.

48. Given the nature and gravity of the alleged crimes, it remains crucial for OHCHR to continue to independently gather and preserve information for future use according to established methodologies. As statutes of limitations do not apply to crimes against humanity, the information collected and preserved could be used in prosecutions at any point in the near or distant future. Interviews have indicated that that monitoring and reporting may even have a deterrent effect on potential violations.

49. Victims have the right to justice and to full and adequate reparations. Moreover, efforts should continue to consult victims themselves about what accountability means to them and what meaningful redress would look like. The consultations currently being conducted by OHCHR are an important means to allow victims and other stakeholders to participate in the process of finding pathways for accountability. Its work in interviewing victims and other stakeholders and in gathering information about the situation of human rights in the Democratic People's Republic of Korea is also part of a broader, victim-centred and gender-sensitive approach to accountability. By recording victims' accounts, information is preserved for collective memory and can provide some measure of redress by offering victims the opportunity to tell their stories.

50. The commission of inquiry documented patterns of human rights violations going back decades. Many victims of human rights violations and possible international crimes in the Democratic People's Republic of Korea are of an advanced age. It is essential that the full range of available options for redress that could bring some satisfaction to victims during their lifetime is explored. In accordance with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,³⁰ victims not only have the right to equal and effective access to justice but also to adequate, effective and prompt reparation for harm suffered. In particular, OHCHR proposes some possible ways forward with respect to reparation.

51. Compensation may be pursued through civil litigation and administrative procedures wherever victims live. OHCHR seeks to facilitate the identification of best practices and challenges and the sharing of information and strategies among victims, civil society organizations and legal experts. Trust funds for victims of human rights violations and possible international crimes are also potential means of providing compensation.

52. Satisfaction can include truth processes, the recovery and return of remains to victims' families, and apologies from relevant authorities, among other measures. Truth

³⁰ General Assembly resolution 60/147, annex.

processes can take the form of public hearings of victims, and memorialization initiatives. Without prejudice to the obligation of the State responsible for the violations to provide victims with reparation, other States can act to protect the rights of victims; for example, the Truth and Reconciliation Commission of the Republic of Korea has examined human rights violations by the Democratic People's Republic of Korea on behalf of victims now living in the Republic of Korea.³¹ Other positive developments include online databases to visualize sites of human rights violations using satellite imagery, "online museums", efforts to establish physical museums (such as the National Memorial for Abductees during the Korean War, in the Republic of Korea), and efforts such as those in Niigata Prefecture (Japan) to cultivate a grove of trees in memory of persons who departed under the "Paradise on Earth" campaign.

53. The Democratic People's Republic of Korea should firstly provide guarantees of non-repetition, including through reforms to its security and justice apparatus. The harm caused by human rights violations in the Democratic People's Republic of Korea may, however, be prolonged in countries where people from the Democratic People's Republic of Korea resettle, through discrimination, stigmatization and lack of support. Relevant guarantees of non-repetition could include action to ensure access to education, employment and participation in public and political life for persons from the Democratic People's Republic of Korea wherever they live.

54. Rehabilitation includes the provision of necessary medical, psychological, social and legal support to victims.

55. The work of OHCHR in pursuing accountability for human rights violations and possible international crimes in the Democratic People's Republic of Korea remains crucial. In this respect, the commitment of the Human Rights Council to providing long-term sustainable support, including through the allocation of adequate resources, for that work, including that of the OHCHR field-based structure in Seoul, is vital.

VII. Recommendations

56. The High Commissioner recommends that the Government of the Democratic People's Republic of Korea:

(a) Acknowledge the existence of serious human rights violations, which may amount to crimes against humanity or other international crimes, and take immediate steps to end such violations, including by demonstrating its willingness and capacity to undertake independent and impartial investigations into allegations of such violations and to hold those responsible to account;

(b) Grant international humanitarian organizations and human rights monitors immediate access to the country, including to all detention facilities;

(c) Initiate reform of criminal justice legislation and rule of law institutions, including the judiciary and law enforcement and corrections systems, in accordance with international human rights norms and standards;

(d) Ensure that victims of serious human rights violations, including those amounting to international crimes, and their families are provided with adequate, prompt, effective and gender-sensitive reparation and remedies, including public acknowledgment of the truth of the violations suffered;

(e) Ratify all relevant international treaties and human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading

³¹ On 24 November 2022, the Truth and Reconciliation Commission (<https://jinsil.go.kr/en>) released its conclusion that the Democratic People's Republic of Korea was the principal agent of committing the crime of abduction during the Korean War. The Commission officially recognized 68 victims of abduction, and recommended that the Government of the Republic of Korea urge the Democratic People's Republic of Korea to make an official apology, to confirm the fate of the abduction victims, to return surviving victims home and to designate a date to commemorate the abduction victims.

Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance.

57. The High Commissioner recommends that Member States:

(a) Take further steps to ensure accountability for those responsible for serious human rights violations in the Democratic People's Republic of Korea at the international level, including through the referral by the Security Council of the situation to the International Criminal Court or the creation of an ad hoc international tribunal or other comparable mechanism;

(b) Take steps to ensure that efforts aimed at securing a lasting peace on the Korean Peninsula give due priority to the human rights of the people of the Democratic People's Republic of Korea, restoring the dignity of victims by respecting and upholding their rights to truth, justice, reparation and guarantees of non-recurrence;

(c) Undertake, where possible, investigations into and the prosecution of persons suspected of committing international crimes in the Democratic People's Republic of Korea, including on the basis of the principle of extraterritorial and/or universal jurisdiction;

(d) Continue to facilitate the work conducted by OHCHR pursuant to Human Rights Council resolutions 46/17 and 49/22, including with regard to access to individuals who have fled the Democratic People's Republic of Korea, and to the collection and analysis of relevant testimony, documentation and information;

(e) Take all steps necessary to maintain civic space, in particular with respect to victims' groups and other civil society organizations engaged in gathering information about the situation of human rights in the Democratic People's Republic of Korea and advocating for the rights of victims of human rights violations;

(f) Consider means by which further relevant information under Human Rights Council resolutions 46/17 and 49/22 could be conveyed by States to OHCHR, subject to appropriate conditions.

58. The High Commissioner recommends that the Human Rights Council consider extending the mandate of the dedicated OHCHR accountability team for an additional period of two years to further pursue the implementation of Council resolutions 34/24, 40/20, 46/17 and 49/22, namely by strengthening monitoring and documentation efforts by OHCHR, further developing the information and evidence repository, and broadening the pursuit of efforts toward accountability for the crimes identified by the commission of inquiry.
