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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Human rights situations that require the Council's attention

Promoting accountability in the Democratic People's Republic of Korea

Report of the United Nations High Commissioner for Human Rights

Summary

Submitted pursuant to Human Rights Council resolution 40/20, the present report 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 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, Member States, the Human Rights Council and the General Assembly and all stakeholders.



I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 40/20 on the situation of human rights in the Democratic People's Republic of Korea. In that resolution, the Council requested the High Commissioner to submit to the Council at its forty-sixth session a full written 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, and having experts in legal accountability assess all information and testimonies with a view to developing possible strategies to be used in any future accountability process.
2. The present report describes the activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) to implement Human Rights Council resolutions 34/24 and 40/20, highlighting the progress made and the challenges encountered. The report also 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. Consistent information continues to confirm that there are reasonable grounds to believe that numerous crimes against humanity have been committed in the Democratic People's Republic of Korea and may be ongoing.
3. The High Commissioner recommends that the Human Rights Council consider extending the mandate granted in its resolution 34/24 and extended in its resolution 40/20, and that it allocate the resources necessary for OHCHR to implement the mandate.

II. Background

4. In its 2014 report (A/HRC/25/63), the commission of inquiry on human rights in the Democratic People's Republic of Korea 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 commission of inquiry called for action by the entire international community to address the human rights situation in the country, including referral to the International Criminal Court. The crimes against humanity listed by the commission of inquiry entailed extermination, murder, enslavement, torture, imprisonment, rape, forced abortion and other forms of 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.
5. Pursuant to the recommendations of the commission of inquiry, the Human Rights 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, ensure accountability, enhance engagement and capacity-building, and maintain visibility of the situation of human rights. In 2016, the 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 particular where such violations amounted to crimes against humanity, and to recommend practical mechanisms of accountability to secure truth and justice for victims.
6. In its report to the Human Rights Council (A/HRC/34/66/Add.1), the group of independent experts recommended the adoption of a multi-pronged and comprehensive approach to accountability, including measures towards the realization of victims' rights to truth, justice, reparations and guarantees of non-recurrence. Its recommendations included referral of the situation to the International Criminal Court, creation of an ad hoc tribunal for the Democratic People's Republic of Korea, and prosecution of crimes by Member States through the principle of universal jurisdiction.
7. The group of independent experts also recommended that the international community enhance its efforts to lay the groundwork for future criminal trials for human rights violations in the Democratic People's Republic of Korea. That included strengthening OHCHR through

additional resources to enable it to increase its contribution towards accountability for human rights violations in the Democratic People's Republic of Korea.

8. 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 aimed at strengthening current monitoring and documentation efforts, establishing a central information and evidence repository, and having experts in legal accountability assess all information and testimonies with a view to developing possible strategies to be used in any future accountability process.

9. In March 2019, the High Commissioner presented a report to the Human Rights Council (A/HRC/40/36) describing the progress made in the implementation of the recommendations made in resolution 34/24, in particular the establishment of a dedicated accountability team within the OHCHR field-based structure in Seoul. In its resolution 40/20, the Council extended for two years that strengthened capacity.

10. In March 2020, the High Commissioner presented an oral update to the Human Rights Council, pursuant to resolution 40/20.¹ She noted that monitoring by OHCHR indicated what appeared to be ongoing systematic human rights violations in detention centres in the Democratic People's Republic of Korea, including sexual violence against women and girls. She called on the Council and Member States to engage with OHCHR in supporting possible strategies for accountability, and to provide the necessary support for OHCHR to continue that work.

11. United Nations human rights mechanisms, including the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, have continued to make recommendations on accountability for human rights violations committed in the country. In his most recent report to the General Assembly (A/75/388), the Special Rapporteur expressed concern that there had been no signs of improvement or progress in advancing justice and accountability for human rights violations. He highlighted the need to explore the full range of possibilities to secure accountability, alongside constructive engagement with the Government to find solutions to human rights issues. The Secretary-General, in his most recent report to the General Assembly (A/75/271), welcomed the continued efforts by Member States and other stakeholders to follow up on the findings of the commission of inquiry, including to hold accountable individuals for conduct that may amount to crimes against humanity.

12. Despite those continued calls for accountability, other political priorities with respect to the Korean Peninsula over the course of the reporting period have decreased emphasis by the international community on pursuing accountability for human rights violations in the Democratic People's Republic of Korea. The last time OHCHR was invited to brief the Security Council on the situation of human rights in the Democratic People's Republic of Korea was in 2017. Accountability for human rights violations in the Democratic People's Republic of Korea and ending the cycle of impunity are imperative, not only to pursue justice and deter future violations, but also to achieve sustainable peace and stability on the Korean Peninsula.

13. On 28 September 2020, OHCHR sent a note verbale to the Government of the Democratic People's Republic of Korea under the auspices of resolutions 34/24 and 40/20, inviting it to submit information on the measures it had taken to implement the recommendations made in the High Commissioner's first written report to the Human Rights Council in 2019, and welcoming the opportunity to discuss avenues for cooperation and exchange of information, including in the area of rule of law reform and related best practices. OHCHR also shared the present report with the Government for comments. The Government of the Democratic People's Republic of Korea responded that it rejected the report.

¹ See www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25697&LangID=E.

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

14. While OHCHR has faced significant constraints, primarily due to the lack of cooperation from, and access to, the Democratic People's Republic of Korea, it nevertheless made significant progress towards fulfilling its mandate.

15. During the period under review, OHCHR consolidated its core team of dedicated experts on legal accountability, which enhanced its ability to identify, collect and preserve information and evidence from various sources about human rights violations; to analyse information collected, notably in the light of international criminal law standards; and to strengthen its electronic repository for the secure storage and management of such information. OHCHR also strengthened its cooperation with representatives of Governments, victims and their families, civil society organizations and legal experts, including for the purposes of information-sharing, capacity-building and exploring accountability strategies. Those activities are important investments in future accountability efforts, whether international, domestic or a combination of both.

16. The coronavirus disease (COVID-19) pandemic also presented numerous challenges. Interviews with people who have recently arrived in the Republic of Korea from the Democratic People's Republic of Korea are a key source of information about possible human rights violations committed there. The number of people arriving in the Republic of Korea has however significantly decreased, in all probability due to travel restrictions relating to the pandemic. The Government of the Republic of Korea provisionally reported that 195 people had arrived in the first nine months of 2020, compared to 1,047 in all of 2019. Moreover, from March to May 2020, due to the COVID-19 pandemic, interviews with people who had recently arrived in resettlement centres run by the Government of the Republic of Korea were suspended.

17. Travel restrictions due to COVID-19 significantly delayed the deployment of new staff, while the United Nations regular budget financial situation affected the renewal of contracts for national staff members. Interactions with key stakeholders and planned capacity-building and networking activities were moved online, to the extent practicable; others had to be cancelled or postponed.

A. Strengthening monitoring and documentation efforts

18. OHCHR continued to interview victims and witnesses of human rights violations to collect information on acts that may give rise to individual or State responsibility, and to conduct research on command structures of State entities which may be responsible for such acts. Since the opening of the field-based structure in Seoul in 2015, OHCHR has conducted over 400 interviews, mostly in-person, with escapees from the Democratic People's Republic of Korea who had recently arrived in the Republic of Korea. OHCHR conducted all interviews in a confidential setting, with the free and informed consent of the interviewees.

19. OHCHR evaluated the veracity, reliability and credibility of each account provided, including for internal consistency and coherence, as well as consistency with other accounts received with respect to similar facts and patterns. Its assessment took into account potential bias and the scarcity of available information. Publicly available information and analysis from civil society organizations was used to further analyse the consistency of the findings. OHCHR analysed the information in the light of relevant international criminal law standards, notably the elements constitutive of specific international crimes.

20. OHCHR engaged with the Government of the Republic of Korea, both through meetings with officials and formal correspondence, with a view to increasing access to newly-arrived escapees at Government-run resettlement centres. Until February 2020, OHCHR did not have access to newly arrived male escapees at the resettlement centres. While access to male escapees was granted in February, the number of interviews allowed with female escapees was simultaneously reduced by 30 per cent. Due to the pandemic, the time allowed for each interview was shortened from two hours to one hour and thirty minutes.

OHCHR will continue its dialogue with the Government of the Republic of Korea to facilitate increased, meaningful access to interviewees at the resettlement centres in order to best fulfil its mandate.

21. In 2019, OHCHR also conducted missions to Japan to gather information about accountability efforts relating to the Democratic People's Republic of Korea, including regarding abductions of Japanese nationals and others and persecution and enforced disappearances of ethnic Koreans and Japanese nationals who migrated to the Democratic People's Republic of Korea as a result of the "Paradise on Earth" campaign.² OHCHR met with government officials and victims and their families, and supported events organized by civil society organizations. Those missions expanded and strengthened collaboration by OHCHR with Japan-based civil society, lawyers and other partners.

22. OHCHR continued its efforts to identify escapees living in the Republic of Korea who had held positions of responsibility in the Democratic People's Republic of Korea and may have direct knowledge of chains of command and decision-making processes. OHCHR continues to engage with different interlocutors to locate and interview such persons in order to facilitate the establishment of linkages between alleged crimes and command structures and of individual responsibility for such crimes.

23. OHCHR also continued to closely analyse publicly available information from Governments, civil society, the media and academia on human rights violations and possible crimes against humanity. In that respect, it worked to maintain and build relationships with victims' groups and other civil society organizations that have gathered large amounts of credible information about the human rights situation in the Democratic People's Republic of Korea and which advocate for the rights of victims. OHCHR organized regular meetings with those organizations to share experiences, exchange information and coordinate accountability efforts. Systematic interviewing of escapees, review of information available in the public domain and outreach to civil society have further increased the amount, quality and diversity of information gathered.

B. Consolidation of a central information and evidence repository

24. The central information and evidence repository will be a key resource for any future national or international truth and justice processes. Besides functioning as a central archive for information and evidence, it facilitates the identification of elements of crimes, modes of liability and possible perpetrators, thus assisting future accountability mechanisms.

25. In 2020, the repository information and evidence preservation, storage, management and processing capabilities were enhanced through a major technological upgrade. The repository now has a flexible and advanced tool allowing data to be migrated into various formats compatible with different electronic repositories or databases. The repository performs complex search and correlation functions to analyse trends and patterns, thus facilitating data-driven analysis and assessment. It has a higher level of data protection to ensure confidentiality and data security to protect witnesses and victims.

26. As at 31 December 2020, over 4,000 files had been preserved in the repository, including interviews, reports, satellite imagery, maps, court documents, videos, audio recordings and petition letters. That includes all existing OHCHR records, along with the complete archives of the commission of inquiry. Other relevant materials, including from Governments, academia and open sources, were also uploaded. All information in the repository is tagged and categorized according to parameters including locations, relevant government entities and potential crimes, in order to make future analysis more efficient.

² 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. 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.

27. OHCHR continued its outreach to civil society organizations that document human rights violations, including possible international crimes, to encourage them to contribute material to the repository. Their contributions included testimonies and reports, video and audio recordings produced inside the Democratic People's Republic of Korea, and information on various legal proceedings. In 2020, one organization transferred to OHCHR 768 petitions it had filed on behalf of victims to the Working Group on Enforced or Involuntary Disappearances, the Working Group on Arbitrary Detention and other special procedures. Technical advice on investigation standards for international crimes was provided to some civil society organizations to facilitate safe collection of relevant information in a manner that optimizes its potential to constitute probative and admissible evidence in future accountability processes.

28. OHCHR continues to work with Member States and with other United Nations entities to raise the visibility of its work on accountability for human rights violations committed in the Democratic People's Republic of Korea and to promote coordinated action by the international community. It regularly briefed members of the diplomatic community in the Republic of Korea and in Geneva on its work. In Japan and the Republic of Korea, OHCHR met with governmental institutions dedicated to the documentation and investigation of human rights violations relating to the Democratic People's Republic of Korea and invited them to contribute information for the repository. OHCHR also continued to engage with United Nations human rights mechanisms, including the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and the Working Group on Enforced or Involuntary Disappearances.

29. The repository is a long-term investment in the quest for truth, justice, reparation and accountability in the Democratic People's Republic of Korea. By consolidating large amounts of information from diverse sources in an efficient, user-friendly, secure and stable location managed by the United Nations, the repository can help to build cases for accountability purposes.

30. OHCHR recommends that the Human Rights Council continue to provide adequate resources for the maintenance and further population of the repository in the future, ensuring that information is gathered and stored according to best international practices. Significant work remains to be done, given the large amount of material on human rights violations and possible crimes against humanity in the Democratic People's Republic of Korea that needs to be acquired, assessed and preserved in the repository.

31. While not all the information gathered by OHCHR meets specific evidentiary standards for use in criminal proceedings, the analysis of the whole body of information serves to provide a holistic picture of the situation in the Democratic People's Republic of Korea and the context in which human rights violations take place, indicating where the strongest information and availability of evidence may lie, and contributing to the identification of individuals who may bear criminal responsibility. Prosecutors in international, hybrid or domestic courts, including those applying extraterritorial or universal jurisdiction, could potentially rely on such information to assist in investigations and as background information to guide the collection of new evidence that meets the requisite evidentiary standards. Prosecutorial and judicial authorities may be granted access to information in the repository subject to established procedures of the United Nations. As the repository is an independent and impartial source of information, it also includes information which may potentially be exculpatory in nature with respect to certain individuals.

32. Credible and comprehensive accountability measures for human rights violations and possible crimes against humanity committed in the Democratic People's Republic of Korea remain necessary for any sustainable peace process on the Korean Peninsula. In addition to judicial accountability mechanisms, information in the repository can be crucial for complementary non-judicial steps towards the realization of the wider rights of victims, including measures towards the development of an accurate historical record, memorialization, reparation and truth telling.

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

33. Working to fulfil its mandate, as set out by the Human Rights Council, OHCHR focused on creating forums for cooperation on accountability issues relating to the Democratic People's Republic of Korea, and provided support and technical advice to partners seeking to pursue legal accountability. OHCHR organized awareness-raising activities among stakeholders in the international legal community and civil society on identifying strategies for use by future accountability processes.

34. To that end, in April 2019, OHCHR organized, with government representatives, lawyers, academics and civil society organizations, a seminar entitled "Human rights documentation and monitoring for the promotion of human rights in the Democratic People's Republic of Korea", to take stock of progress made and assess how efforts to achieve accountability could be advanced.

35. In October 2020, OHCHR hosted an online discussion forum with the Special Rapporteur on the human rights situation in the Democratic People's Republic of Korea and experts in the fields of criminal accountability, universal jurisdiction, corporate accountability, asset tracing, financial crime investigations and victim-centred justice, to share lessons learned and examine possible avenues for accountability. Possible strategies were explored in the areas of criminal, civil and corporate accountability. Participants expressed interest in working together on advancing accountability, in conjunction with civil society, including victims and their representatives, and the United Nations. They stressed that advocacy and awareness-raising were important complements to judicial accountability processes and highlighted the independence and impartiality of OHCHR in coordinating those initiatives. Due to the COVID-19 pandemic, OHCHR was required to postpone until 2021 a follow-up event it had planned to hold in Seoul.

36. During the period under review, OHCHR monitored judicial processes, including criminal and civil cases in the Republic of Korea and civil processes in Japan. In the Republic of Korea, two men, 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 Chairman Kim Jong Un. In July 2020, a default judgment was issued against the defendants, awarding damages equivalent to \$17,600 to each former prisoner of war.³ In August 2018, five victims of the Paradise on Earth campaign, 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.⁴ While such cases are positive steps towards a form of accountability, claimants face difficulty in securing information and evidence, the service and participation of defendants in the judicial process and identification of assets which may be seized to satisfy judgments, due principally to the lack of cooperation by the Democratic People's Republic of Korea in those cases. OHCHR continues to monitor those efforts and maintains contact with civil society organizations and international lawyers specializing in accountability initiatives, including in extraterritorial settings, along with domestic lawyers and victims' groups in Japan, the Republic of Korea and elsewhere.

37. OHCHR closely monitored civil proceedings brought in the United States of America by the family of Otto Warmbier and met with his family in January 2019.⁵ In 2018, a court in the United States of America 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

³ OHCHR is monitoring efforts by the plaintiffs' legal team to obtain the damages from a frozen bank account held in the Republic of Korea.

⁴ OHCHR is monitoring developments, as the first public hearing in the case was delayed due to COVID-19.

⁵ Otto Warmbier died in the United States of America in 2017 shortly after being released from prison in the Democratic People's Republic of Korea.

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 satisfaction of the judgment.

38. Currently, the principal avenue for victims and their families to hold individuals criminally responsible for crimes committed in the Democratic People's Republic of Korea remains domestic judicial proceedings. That will remain the case for the foreseeable future unless the situation is referred to the International Criminal Court or an ad hoc tribunal or other comparable mechanism is established. OHCHR notes that the principles of extraterritorial jurisdiction allow Member States to prosecute domestically some human rights violations amounting to crimes which took place outside their territory, such as where the victim is a national of the Member State exercising jurisdiction. Gross human rights violations may be prosecuted in the domestic courts of some Member States under principles of universal jurisdiction, but in practice, an appropriate nexus to the Member State exercising jurisdiction is often required as a legal precondition. OHCHR therefore encourages prosecutorial bodies and Member States to examine all available legal approaches within their domestic legal frameworks which may allow the exercise of respective jurisdiction to initiate investigations into possible international crimes, to achieve justice and realize victims' rights to redress and remedy.

39. OHCHR also continued to explore and promote strategies for accountability relating to enforced disappearances and abductions. OHCHR analysed evidence of abductions dating back to the Korean War and later abductions of foreign nationals, including from Japan and the Republic of Korea, in the 1970s and 1980s. OHCHR also examined the continued refusal of the Democratic People's Republic of Korea to provide information on the location and fate of many of the missing, and the impact that continues to have on families residing primarily in Japan and the Republic of Korea. Consideration is also being given to whether those crimes, which may be of a continuous nature in relation to a number of victims, might fall within the jurisdiction of international criminal tribunals by virtue of that ongoing character. OHCHR also introduced civil society organizations in Japan and the Republic of Korea, including victims' groups, to experts in international criminal law, who expressed an interest in possible approaches to international criminal tribunals on those issues.

40. Numerous groups representing the families of victims of abductions during and after the Korean War, the Korean Airlines hijacking⁶ and the Paradise on Earth campaign have stressed the urgent need to establish the truth and ensure accountability for perpetrators, as many of the victims and their families are reaching advanced ages. OHCHR notes the cases of Arimoto Kayoko and Yokota Shigeru of Japan, who died in 2020 still unaware of the fate of their children, believed to have been abducted by the Democratic People's Republic of Korea over 40 years before. Their cases illustrate the lifetime suffering of families of victims of such enforced disappearances and abductions. OHCHR encourages Member States to consider possible approaches within their domestic judicial systems to examine such cases, particularly where their nationals are victims or there are other relevant connections to the crimes in question.

41. OHCHR engaged with experts on options for the promotion of financial accountability, through the tracing and seizure or confiscation of illegal assets of individuals or entities responsible for human rights violations in the Democratic People's Republic of Korea. OHCHR noted that significant documentation has been collected by various organizations on that State's acquisition of foreign capital, including through cyberattacks against financial and other institutions, and the exportation of raw materials and labour. The role of such activities in enabling human rights violations, including possible crimes against humanity, and the possibilities of asset identification and seizure for appropriate purposes of redress, require further consideration by specialized financial investigative experts, among others.

⁶ On 11 December 1969, a Korean Airlines aircraft on a domestic flight was hijacked by an agent from the Democratic People's Republic of Korea and flown to the Democratic People's Republic of Korea. Thirty-nine passengers were eventually returned to the Republic of Korea, but four crew members and seven passengers were never returned. Families of the victims who were not returned have faced difficulties in obtaining information about their family members.

IV. Key findings

42. OHCHR continues to collect and analyse information relating to all possible crimes against humanity identified by the commission of inquiry, including in political prison camps (*kwanliso*) run by the Ministry of State Security⁷ and in the ordinary prison system run by the Ministry of State Security and the Ministry of People's Security. The ordinary prison system includes short-term labour camps (*rodongdanryonda*), pretrial detention centres (*kuryujang*), holding centres (*jipkyulso*) and ordinary prisons (*kyohwaso*). Recent first-hand accounts regarding political prisons remain scarce, in all probability because political prisoners are rarely released; if they are released, they are closely monitored. OHCHR therefore continues to collect and analyse secondary and open source information on political prison camps, which will be of value in future accountability processes.

43. Given the scarcity of recent information on the political prison system, OHCHR has prioritized analysis of crimes for which it has recently received the most first-hand information, namely imprisonment, torture and enslavement within the ordinary prison system. Most of the escapees interviewed by OHCHR were women, many of whom experienced repatriation from China.⁸ Many of the people who cross the northern frontier in order to trade are married women, since they are not assigned full-time work by the State, but increasingly bear the burden of generating income for their families. Women are also more at risk than men of being trafficked into neighbouring States for the purposes of forced marriage and sexual or labour exploitation. In addition, most interviewees both originate from and were imprisoned in locations in two provinces along the northern border. That is, in all probability, due to travel restrictions within the Democratic People's Republic of Korea, which make it difficult for people living in other regions to travel to border areas.

44. OHCHR has received information which may suggest some improvement in the treatment of detainees in the ordinary prison system in recent years. However, its analysis has not revealed any significant shift from the finding of the commission of inquiry that the Government is engaged in a systematic and widespread attack against people considered a threat to the country's political system and leadership, including people who practise religion, introduce influences considered to be subversive, such as foreign films or music, or leave the country. In furtherance of that policy, it appears that members of the population are systematically imprisoned without due process and are subjected to harsh treatment for exercising basic human rights. While in detention, escapees are intentionally subjected to physical and mental suffering as part of the policy to deter and punish those deemed to pose a political threat.

45. The main State organs responsible for administering the ordinary prison system are the Ministry of State Security and the Ministry of People's Security. However, given that decision-making is highly centralized and that there are overlapping lines of authority within the Government of the Democratic People's Republic of Korea, there remain reasonable grounds to believe that officials in superior positions at local, regional and national levels of the Government are aware, or have reason to be aware, that subordinates down to the lowest rank of prison guard or similar personnel continue to commit human rights violations which may amount to crimes against humanity. If those violations are found to be perpetrated pursuant to a policy to inflict such treatment on detainees, such officials may be criminally liable either as direct participants, under doctrines of command or superior responsibility, or as part of a joint criminal enterprise. In that regard, OHCHR notes that understanding decision-making processes that lead to the commission of crimes remains crucial to identifying responsible individuals. Cooperation and sharing of accurate information, including by Member States, is therefore essential to OHCHR analysis and to any future accountability processes.

⁷ In June 2020, the name of the Ministry of People's Security was reportedly changed to the Ministry of Social Security.

⁸ See OHCHR, "I still feel the pain..." *Human rights violations against women detained in the Democratic People's Republic of Korea*, 28 July 2020.

A. Imprisonment

46. The interviews that OHCHR conducts with people who have escaped from the Democratic People's Republic of Korea continue to provide reasonable grounds to believe that the crime against humanity of imprisonment is ongoing within the ordinary prison system.

47. Interviewees whose alleged crimes were considered relatively minor, such as those who crossed into China for short periods, consistently described being held in harsh conditions, interrogated by officials of the Ministry of State Security and sent directly to *rodongdanryondaes* for up to six months on the basis of an administrative decision without trial.

48. Interviewees whose alleged crimes were considered to be more serious or to have a political element described being transferred from the custody of the Ministry of State Security to that of the Ministry of People's Security. They were then subjected to judicial processes that violated the most basic rights to a fair and public trial. Many were convicted of crimes that constitute the exercise of fundamental human rights, such as the right to leave one's country, practise a religion or receive and share information through telephone calls or by accessing media from other countries. Many interviewees told OHCHR that they never saw a lawyer, and most of those who were provided with defence counsel said that their counsel failed to adequately represent them, sometimes appearing only to lecture them before the court hearing or to reconfirm the content of written "confessions".

49. Available information suggests that persons who have left the Democratic People's Republic of Korea and returned, been repatriated or have attempted to leave are systematically subjected to intentional and severe deprivation of fundamental rights within the ordinary prison system, especially if the authorities believe that they were trying to reach the Republic of Korea. Interviewees who were detained for that and other political crimes described being treated more harshly than those detained for short stays outside the country or for non-political crimes.

50. Information gathered by OHCHR provides reasonable grounds to believe that State officials of the Democratic People's Republic of Korea continue to imprison individuals or otherwise severely deprive them of their liberty in violation of fundamental rules of international law, criminalizing the exercise of basic human rights and failing to provide the most basic assurances of a fair trial. Those acts may amount to the crime against humanity of imprisonment, if found by a competent court to take place in the context of a widespread and/or systematic attack against a civilian population, as indicated by the commission of inquiry.

B. Torture

51. OHCHR continued to receive consistent and credible accounts of the systematic infliction of severe physical and mental pain or suffering upon detainees, through the infliction of beatings, stress positions and starvation in places of detention. Such information reconfirms the findings of the commission of inquiry and indicates that the crime against humanity of torture continues to take place in the ordinary prison system.

52. Nearly all of the persons interviewed by OHCHR who had experienced detention by the Ministry of State Security and/or the Ministry of People's Security described having been beaten during interrogations and as punishment for minor infractions. One interviewee saw a woman kicked across a room and severely beaten by officers for hiding "a few peppers" because the prison food tasted bad.

53. One interviewee who served a sentence in a *kyohwaso* from 2014 to 2016 was told by guards that they were "doing prisoners a favour" by beating them, as the alternative would have been an extended sentence. One guard told the interviewee that he did not want to beat prisoners, but had to follow orders and would be demoted if prisoners tried to run away, so he agreed to be less harsh if they did not try to flee.

54. Several interviewees confirmed the continued use of the “sitting tight” tactic of torture in pretrial detention. They said that if they moved, spoke or even made unacceptable eye contact with guards while sitting tight, guards would beat them or force other detainees to beat them. Guards would also punish all the detainees in an entire cell by making them all perform difficult physical activity, such as a large number of squats. One particularly egregious punishment was to require a detainee to bang his or her own head against the cell bars. An interviewee who experienced that was told by the guard that the sound of her banging her head should fill the cell, and she was forced to bang her head until she fainted. The frequency of breaks to stand up and stretch, or to use the toilet, depended entirely on the goodwill and mood of the guards. Some interviewees mentioned that detainees sometimes soiled themselves while sitting tight because they were not allowed to use the toilet. Those conditions add a psychological element to the physical pain of stress positions, demonstrating absolute control over the detainee’s physical and mental being. More recent escapees said that they were monitored by closed-circuit television while sitting tight so that they could be even more efficiently terrorized.

55. Also consistent with the findings of the commission of inquiry, almost all recent interviewees confirmed to OHCHR that detainees are provided with an inadequate quantity of poor-quality food. The quantity may be further reduced as punishment for any perceived infraction or for failing to work well or hard enough. Former detainees described receiving, for example, 200 kernels of corn or a handful of boiled cornmeal three times a day, with little else. Interviewees described their own malnutrition and severe weight loss, and women said that they stopped menstruating. Some detainees had reportedly died of malnutrition.

56. After initial investigation by the Ministry of State Security, detainees who are transferred to the custody of the Ministry of People’s Security are apparently allowed to receive additional food from their families. However, interviewees reported that guards sometimes took the food for themselves, withheld it from the detainee as punishment, or demanded additional bribes to allow the detainee to receive the food. One interviewee said that she was denied any food brought from the outside as punishment for wanting to appeal her sentence. Moreover, detainees who were isolated from their families or whose families did not have the financial means to provide food suffered without supplemental nutrition.

57. Several interviewees mentioned the denial of medical care to detainees, except where families provided all supplies and bribed doctors. Some interviewees witnessed other detainees die as a result of the lack of medical care. Interviewees described severe cold and appalling hygiene conditions, including the denial of menstrual hygiene products for women.

58. Information provided by a small number of interviewees suggests that since 2014, there may have been some improvement in the physical treatment of detainees in at least some detention facilities. Some interviewees were aware of guards or other officials being disciplined for misconduct, including for beating prisoners. One interviewee told OHCHR that a Ministry of State Security prosecutor came once a month to inspect the facility where he was held in 2019, and on that day, detainees were given soap and haircuts, which they did not otherwise receive, and the heating was turned up until the inspector left. In 2019, a former prison guard who had worked in a *kyohwaso* told OHCHR that beatings had decreased, that the Ministry of People’s Security had issued guidelines not to beat prisoners and that he had been instructed not to do so. He knew of two guards who had been demoted in 2015 and their salary reduced for beating a detainee.

59. Those examples suggest that there have been some efforts to reduce beatings and ill-treatment in at least some locations. However, any such measures are marginal improvements, considering the widespread and systematic nature of imprisonment and torture.

60. Beatings, stress positions, psychological abuse, forced labour, denial of medical care and sanitation and hygiene products, and starvation all combine to create an atmosphere of severe mental and physical suffering in detention, exacerbated by extremely poor living conditions. Multiple credible accounts of such abuse provide reasonable grounds to believe that officials of the Democratic People’s Republic of Korea have inflicted and continue to intentionally inflict severe physical and/or mental pain upon detainees in their custody. Those acts may amount to the crime against humanity of torture, if found by a competent court to

have taken place in the context of a widespread and/or systematic attack against a civilian population, as indicated by the commission of inquiry.

C. Enslavement and/or “other inhumane acts”

61. OHCHR is gravely concerned by credible accounts of forced labour under exceptionally harsh conditions within the ordinary prison system, which may amount to the crime against humanity of enslavement.

62. While international law can allow for hard labour as punishment for crimes when issued by a competent court in a fair trial, as long as its implementation is consistent with other human rights, the commission of inquiry noted that “the extraction of forced labour can amount to enslavement if it is accompanied by aggravating circumstances that effectively destroy the juridical personhood of the victim”.⁹ Relevant circumstances to a finding of enslavement include the degree of control exercised over victims, measures to prevent or punish escape, violence and cruel treatment, conditions and intensity of labour and other factors.

63. Many interviewees described being subjected to hard labour in *rodongdanryondae* by an administrative process without trial. Others were subjected to forced labour in *kyohwaso* after patently unfair trials. Many were sentenced for “crimes” that consisted of exercising fundamental human rights, such as leaving one’s own country or receiving information from other countries.¹⁰

64. Interviewees described forced labour including construction work, farming, logging, mining and similar forms of heavy manual labour. One interviewee served a sentence in a *kyohwaso* in 2014 and was forced to work in agriculture. She described how human beings were used as beasts of burden: “There was no machine, so seven or eight of us dragged the cart that cows normally pull.” Forced labour also included manufacturing such as knitting, metal fabrication and making false eyelashes and clasps for necklaces. Interviewees were also outsourced to work at State-run enterprises in charge of earning foreign currency and at private homes, including those of Ministry of State Security and Ministry of People’s Security officials.

65. The forced labour described by interviewees took place under exceptionally harsh conditions, including extremely long working hours, starvation rations, overall poor living and hygiene conditions, denial of medical care and frequent beatings for minor infractions and failing to meet work quotas. Detainees were also subjected to psychological abuse such as extensive self-criticism sessions; having to walk bent over at all times and having to bow to guards whenever they passed, or be beaten; study sessions on how not to resist beatings; and being forced to dig graves for detainees who had died. There were severe repercussions for anyone trying to escape, including beatings by other detainees at the order of the guards. Many interviewees paid bribes for better conditions, less demanding work or to be released, pointing to rampant corruption and the arbitrary nature of the forced labour system.

66. In analysing the conditions of forced labour described by interviewees in the light of relevant legal standards, OHCHR notes the degree of control exercised over detainees; their total lack of freedom of movement; measures taken to deter them from or punish them for escaping; inhumane conditions and the use of physical violence and psychological terror; and the possible profiting by State organs and/or individuals from labour performed by detainees. Those acts may amount to the crime against humanity of enslavement or “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”,¹¹ if found by a competent court to have taken place in the

⁹ “Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea”, para. 1048. Available from www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx.

¹⁰ OHCHR also received reports of individuals who had been subjected to forced labour in pretrial detention.

¹¹ Rome Statute of the International Criminal Court, art. 7 (1) (k). See also International Criminal Court, Elements of Crimes, art. 7 (1) (k) (1).

context of a widespread and/or systematic attack against a civilian population as indicated by the commission of inquiry.

67. In the light of the conditions of forced labour described by interviewees, OHCHR intends to continue to examine information on its use in the Democratic People's Republic of Korea in the next phase of its work.

V. Conclusions

68. Analysis of available information continues to confirm 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. OHCHR reiterates that there is no statute of limitations for crimes against humanity, and that those responsible for past and ongoing crimes should be held accountable. A lasting peace on the Korean Peninsula can be achieved only if such violations end and the rights of victims to truth, justice, reparations and guarantees of non-recurrence are fulfilled.

69. To achieve those aims, prosecution of the alleged international crimes committed in the Democratic People's Republic of Korea must remain a priority, whether through referral of the situation to the International Criminal Court or the establishment of an ad hoc tribunal or other comparable mechanism. At the same time, it is imperative to ensure that information continues to be collected and preserved to support accountability strategies at all levels. That includes domestic processes that may be based on extraterritorial or universal jurisdiction, as well as possible future international accountability processes. Collecting, analysing and preserving information will also continue to be useful in support of complementary, non-judicial measures towards the realization of the rights of victims, such as developing a historical record, memorialization, reparation and truth-telling exercises.

70. While a small number of victims and their families in Japan, the Republic of Korea and the United States of America have sought justice in national courts, those initiatives are, to date, limited in scope and hampered by the lack of cooperation from the Democratic People's Republic of Korea. A referral to the International Criminal Court or the creation of an ad hoc tribunal or other comparable mechanism would provide a complementary avenue for accountability, ensuring that those most responsible for human rights violations that may amount to crimes against humanity can be held to account at the international level. Any such approach would stand to benefit from the groundwork being carried out by OHCHR, in particular with respect to information-gathering, documentation and awareness-raising.

71. The decision of the Human Rights Council to strengthen the capacity of OHCHR, including its field-based structure in Seoul, by providing resources for a dedicated accountability team allows the Office to undertake significant preparatory work toward accountability for serious human rights violations perpetrated in the Democratic People's Republic of Korea, including where they amount to crimes under international law. The accountability team comprises experts in international criminal law and information and evidence management, and requires modest resources. The additional resources have allowed OHCHR to make significant progress in documenting and storing information about suspected crimes against humanity and other serious violations of human rights, in establishing and populating the information and evidence repository, and in analysing the information that has been gathered from international criminal law perspectives.

72. The Human Rights Council should continue to strengthen its support for the accountability work of OHCHR. In addition to present staffing levels in Seoul and in Geneva, additional dedicated experts in international criminal law, legal interpretation and information management would enable fuller delivery on the mandate to strengthen monitoring, documentation and analysis in relation to relevant criminal law perspectives.

VI. Recommendations

73. On the basis of the activities it has conducted to date pursuant to resolutions 34/24 and 40/20, 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, 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 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 crimes against humanity, 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 Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance.

74. On the basis of the activities it has conducted to date pursuant to resolutions 34/24 and 40/20, 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, the investigation and prosecution of persons suspected of committing international crimes in the Democratic People's Republic of Korea, including based on principles of extraterritorial and/or universal jurisdiction;
- (d) Continue to facilitate the work conducted by OHCHR pursuant to Human Rights Council resolutions 34/24 and 40/20, 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 necessary steps to maintain civic space, in particular with respect to victims' groups and other civil society organizations engaged in gathering information about the human rights situation 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 34/24 and 40/20 could be conveyed by States to OHCHR, subject to appropriate conditions.

75. On the basis of the activities it has conducted to date pursuant to resolutions 34/24 and 40/20, the High Commissioner recommends that the Human Rights Council and the General Assembly, acknowledging that a referral to the International Criminal Court or the creation of an ad hoc tribunal or other mechanism may be unlikely in the

near future, consider extending the mandate of the dedicated OHCHR accountability team for an additional period of two years to further pursue implementation of resolutions 34/24 and 40/20, namely 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.

76. On the basis of the activities it has conducted to date pursuant to resolutions 34/24 and 40/20, the High Commissioner recommends that all stakeholders continue to cooperate with OHCHR in the collection, documentation and preservation of information relating to alleged human rights violations and crimes against humanity committed in the Democratic People's Republic of Korea.
