

Human Rights and the Criminal Justice Issues of Accountability in North Korea

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Chapter 1

Human Rights and the Criminal Justice Issues of
Accountability in North Korea

Introduction

Chapter 1

Introduction

Section 1 | Aims of the research

The aims of this research is to review South Korean government policy of North Korean human rights, focused on the criminal justice issue of accountability in the North Korea, which is one of the critical issues of international human rights regime.

1. Accountability and Human Rights

Accountability is a 'cornerstone of the human rights framework'.¹⁾ From a human rights perspective, accountability in general refers to the relationship of Government policymakers and the rights holders affected by their decisions and actions. In the context of criminal justice, accountability is the ability to hold individual human rights violators responsible for their actions.

1) UN Office of the High Commissioner for Human Rights, *WHO WILL BE ACCOUNTABLE? Human Rights and the Post-2015 Development Agenda*, 2013, p.10.

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The process of criminal accountability can provide victims with a sense of justice and a public forum for the judicial confirmation of the facts of mass abuse of human rights in the past. This also can establish a new dynamic in society, as people understand that human rights violators will be held accountable.²⁾

This process can be backed up by some process of historical accountability, such as 'truth commission³⁾'. It provides the mandate and authority for an official investigation of past abuses, a forum for victims to witness their stories to be made part of official record and establishes a formal basis for compensation of victims and punishment of perpetrators. But such process cannot substitute for prosecutions and affords the due process protections in judicial proceedings.⁴⁾

2. Accountability in the North Korea

Since the UN Human Rights Council has established a Commission of Inquiry (COI)⁵⁾ in the year of 2013⁶⁾, to investigate systematic,

2) Kritz, Neil J. *Coming to terms with atrocities: A review of accountability mechanisms for mass violations of human rights*, Law and Contemporary Problems, vol.59, no.4. 1996, p.128.

3) For accountability and truth commissions see Onur Bakiner, *Truth commission impact: An assessment of how commissions influence politics and society*, International Journal of Transitional Justice 8.1 (2014): 6-30; Juan E. Méndez, *Accountability for past abuses*, Human Rights Quarterly 19 (1997): 255.; Yasmin Sooka, *Dealing with the past and transitional justice: building peace through accountability*, International Review of the Red Cross 88.862 (2006): 311-325.

4) Kritz, Neil J. *Coming to terms with atrocities: A review of accountability mechanisms for mass violations of human rights*, p.141.

5) Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea (<https://www.ohchr.org/en/hrbodies/hrc/coiidprk/pages/commissioninquiryonhrindprk.aspx>)

6) UN Human Rights Council, Resolution adopted by the Human Rights Council on 21 March 2013, A/HRC/RES/22/13. The Commission of Inquiry is mandated to

widespread and grave violations of human rights in the Democratic People's Republic of Korea on 21 March 2013, it stresses that full accountability, in particular for violations which may amount to crimes against humanity should be ensured.

Stresses that the authorities of the Democratic People's Republic of Korea have failed to prosecute those responsible for crimes against humanity and other human rights violations, and encourages all States, the United Nations system, including relevant specialized agencies, regional intergovernmental organizations and forums, civil society organizations, foundations and other stakeholders to cooperate with accountability efforts and to ensure that these crimes do not remain unpunished.⁷⁾

On March 23, 2016, the UN General Assembly adopted a resolution without a vote condemning human rights in the North Korea. Again, on March 22, 2019, the UN Human Rights Council (HRC) adopted without a vote a resolution emphasizing the advancement of accountability mechanisms to ensure eventual prosecution of North Korean officials responsible for crimes against humanity.

As recommended by the COI⁸⁾ and mandated by subsequent UN

look into "systematic, widespread and grave violations of human rights" in the Democratic People's Republic of Korea, in particular: Violations of the right to food, Violations associated with prison camps, Torture and inhuman treatment, Arbitrary detention, Discrimination, Violations of freedom of expression, Violations of the right to life, Violations of freedom of movement, and Enforced disappearances, including in the form of abductions of nationals of other States.

7) UN Human Rights Council, Resolution adopted by the Human Rights Council on 23 March 2016, A/HRC/RES/31/18, para. 5

8) Report of the Commission of Inquiry on human rights in the Democratic People's Republic of Korea, A/HRC/25/63

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General Assembly and HRC resolutions⁹⁾, the UN High Commissioner for Human Rights (UNHCHR) continues to gather evidence of human rights abuses and crimes against humanity committed by the government.

However, international society witnesses the human rights situation in North Korea remains extremely serious.

The political prison camps, in which a large number of political prisoners are detained in the worst conditions, remain in operation under complete secrecy. There is no freedom of expression and citizens are subject to a system of control, surveillance and punishment that violates their human rights. At the same time, there are serious failures in the State structures, wherein the population, especially those residing in the interior of the provinces, do not have access to basic food. Children, pregnant women and those who breastfeed their children are the ones who suffer most from this structural failure, for which the Government is primarily responsible.¹⁰⁾

3. Korean government and its policy of North Korean human rights

The Republic of Korea government recognizes that improving the human rights situation of the North Korean people is a way to uphold

9) Resolution adopted by the Human Rights Council on 23 March 2016 - Situation of human rights in the Democratic People's Republic of Korea, 08/04/2016 A/HRC/RES/31/18; Situation of human rights in the Democratic People's Republic of Korea, 26/01/2017, A/RES/71/202; Situation of human rights in the Democratic People's Republic of Korea, 03/04/2017, A/HRC/RES/34/24; Situation of human rights in the Democratic People's Republic of Korea, 09/04/2018, A/HRC/RES/37/28; Situation of human rights in the Democratic People's Republic of Korea, 03/04/2019, A/HRC/RES/40/20

10) Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (A/74/275/Rev.1), para.64.

a universal value of mankind and an important task in achieving unification on the Korean Peninsula.¹¹⁾

Since the enactment of the North Korean Human Rights Act in 2016, the Ministry of Unification established the Center for North Korean Human Rights Records to collect and record information on North Korean human rights, and the Ministry of Justice established the North Korean Human Rights Documentation Office.¹²⁾ The Ministry of Foreign Affairs appointed the Ambassador-at-large on North Korean Human Rights. The Ambassador-at-large pursuant to the ROK's North Korean human rights act will ask the international community to pay continued attention to this issue of human rights in North Korea. ¹³⁾

The Ministry of Unification runs the Council on North Korean Human Rights, and the North Korean Human Rights Advisory Council to work closely together with other agencies, and to gathers opinions from the experts on North Korean human rights issues. ¹⁴⁾

11) Ministry of Unification. North Korean Human Rights. (https://www.unikorea.go.kr/eng_unikorea/whatwedo/NorthKoreanHumanRights/humanrights/)

12) The Center for North Korean Human Rights Records was launched to collect and record information with the aim of improving human rights situation of the North Korean people based on Article 13 of the North Korean Human Rights Act(https://www.unikorea.go.kr/eng_unikorea/whatwedo/NorthKoreanHumanRights/records/)

13) "Ambassador-at-large on North Korean Human Rights to Participate in an Interactive Dialogue with the Special Rapporteur on the Situation of Human Rights in the DPRK" (https://www.mofa.go.kr/eng/brd/m_5650/view.do?seq=317649&srchFr=&srchTo=&srchWord=&srchTp=&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=2&titleNm=)

14) Ministry of Unification. North Korean Human Rights. (https://www.unikorea.go.kr/eng_unikorea/whatwedo/NorthKoreanHumanRights/humanrights/)

Section 2 | The theme of the research

1. International human rights regime on the issue of North Korean human rights

International human rights institutions and norms have played role more in shaping and affecting national accountability process. UN related bodies, such as the UN Commission on Human Rights have called for accountability and reparations.¹⁵⁾

In the most recent report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea submitted in accordance with Assembly resolution¹⁶⁾, it is reported that “the Government of the North Korea, the primary duty bearer relating to human rights obligations, continues to oppress its people's fundamental freedoms and violate their human rights. In the present report, the Special Rapporteur focuses on key human rights concerns stemming from the information he has received from escapees, the family members of victims of human rights violations and other contacts.”¹⁷⁾

On 22 March 2019, in its resolution 40/20, the Human Rights Council extended the OHCHR mandate with regard to the accountability agenda for two years. OHCHR continues to collect and review individual testimonies and consolidate information from different stakeholders

15) Barahona de Brito, Alexandra et al, eds. *The Politics of Memory – Transitional Justice in Democratizing Societies*, OUP, 2001, pp.40-42.

16) Resolution adopted by the General Assembly on 17 December 2018, A/RES/73/180

17) UN General Assembly, Situation of human rights in the Democratic People's Republic of Korea Note by the Secretary-General, A/74/275/Rev.1, para.2.

in a database. The Special Rapporteur continues to support these efforts to preserve information for future peace and justice processes and to improve the human rights of the citizens of the Democratic People's Republic of Korea.¹⁸⁾

The report has recommended that North Korea undertake consultations with wider stakeholders engaged in issues of relevance to the situation of human rights in the North Korea, including civil society organizations working on the accountability agenda.¹⁹⁾

2. Transitional justice and accountability in North Korea

Accountability mechanism, in the context of transitional justice, includes criminal procedures, civil lawsuits, national human rights commissions, truth commissions and international body procedures.²⁰⁾

South Korea has developed its legal mechanism on the issue of accountability, including 'Act On Punishment, etc. Of Crimes Under Jurisdiction Of The International Criminal Court of 2011'²¹⁾, "Act On Special Cases Concerning The Prescription For Public Prosecution, etc. Against Crimes Disrupting Constitutional Order of the 2010(amended in 2016)"²²⁾ and 'Special Act On Investigating The Truth Of The May 18 Democratization Movement of 2018'.²³⁾

18) A/74/275/Rev.1, para.62.

19) A/74/275/Rev.1, para.68.

20) UN Office of the High Commissioner for Human Rights, *WHO WILL BE ACCOUNTABLE?* p.11.

21) Act No.10577, 12. Apr, 2011., Partial Amendment

22) Act No.13722, 06. Jan, 2016., Amendment by Other Act

23) Act No.15434, 13. Mar, 2018., New Enactment

According to article 8(Crime of Genocide) of the 2011 Act, any person who kills a member of a national, racial, ethnical or religious group with intent to fully or partially destroy the group shall be punished by the death penalty or imprisonment for life or for not less than seven years and according to article 9 (Crimes against Humanity) any person who has killed another person by making an extensive or systematic attack directed against any civilian population in connection with the policies of the State, organizations or institutions to commit such attack shall be punished by the death penalty or imprisonment for life or for not less than seven years.

The 2010(2016) Act is enacted to prescribe matters regarding non-application, etc. of the prescription for public prosecution against crimes disrupting constitutional order²⁴⁾ committed with intent to endanger the continued existence of the Constitution of the Republic of Korea or to disrupt constitutional order, so as to protect the basic free and democratic order of the Constitution. (Article 1)

Articles 4 and 6 of the 2018 Act establishes Commission to Investigate Truth of May 18 Democratization Movement to select the objects of investigation, as well as making a decision to commence an investigation following the selection; proceed with an investigation; make a decision of the ascertained truth or decision of the unascertainable truth upon investigations; prepare a report on truth investigation after completion thereof and to conduct research activities to ascertain the truth.

24) The term 'crimes disrupting constitutional order' used in this Act means crimes involving insurrection and crimes involving foreign aggression listed in Chapters I and II of Part II of the Criminal Act, and crimes of rebellion and crimes of benefiting an enemy listed in Chapters I and II of Part II of the Military Criminal Act. (Article 2)

In 2014, when the COI reported its findings to the UN Human Rights Council calling for urgent action to bring an end to the ongoing abuses of human rights in North Korea, and the Council issued a resolution which acknowledged for the first time the conduct of “crimes against humanity” and called for a Security Council referral of the situation to an “international criminal justice mechanism”. This means that international society finally begin to consider the concrete measures that should be taken to ensure accountability for those crimes and to set up a broader process of transitional justice. The UN COI’s recommendations from accountability in the International Criminal Court to greater people-to-people engagement brings diverse debate on North Korean human rights issue in South Korean civil society.²⁵⁾

3. Human rights dialogue on the issue of human rights in North Korea

‘Human rights dialogue’ or discussions are made based on regional or bilateral treaties, agreements or conventions or strategic partnerships dealing systematically with the issue of human rights. It focuses exclusively on human rights.²⁶⁾

25) Sarah A. Son, *Planning for transitional justice on the Korean Peninsula*, 2016 (<https://www.justiceinfo.net/en/26691-planning-for-justice-on-the-korean-peninsula.html>)

26) EU Guidelines on human rights dialogues with third countries, 2008, PESC 1591/COHOM147, paras. 2.1-2.2. The objectives of such dialogues are defined on a case-by-case basis. The objectives may include discussing and cooperating on human rights issues in multinational organisations, such as the United Nations, or gathering information on and registering concern for human rights issues. The priority issues to be discussed in human rights dialogues are: the implementation of international human rights instruments; combating the death penalty, torture and other cruel treatment, and all forms of discrimination; children’s rights (particularly in armed conflict); women’s rights; freedom of

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North Korea has ratified International Covenant on Civil and Political Rights in 1981, Convention on the Elimination of All Forms of Discrimination against Women in 2001, International Covenant on Economic, Social and Cultural Rights in 1981, Convention on the Rights of the Child in 1990 and Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography in 2014.²⁷⁾

The issues of accountability in North Korea may have further dimension, which is not limited to the issue of historical, political and judicial accountability. Ratification status of North Korea can be a basis of human rights dialog in the international human rights mechanism. Human rights dialogue between the North and South, and between North Korea and international society may pave the way to bring a fundamental solution to the mass human rights violation in North Korea and its accountability problems.

expression; the role of civil society and the protection of human rights defenders; international cooperation in the field of international justice (especially with the International Criminal Court); the promotion of democratisation and good governance; and conflict prevention and the rule of law.

27) Ratification Status for Democratic People's Republic of Korea (https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=47&Lang=EN)

Chapter 2

Human Rights and the Criminal Justice Issues of
Accountability in North Korea

Legal Framework on the issues of accountability in North Korea

Chapter 2

Legal Framework on the issues of accountability in North Korea

Section 1 | Policies on the Issues of North Korean Human Rights in South Korea

The South Korean government enacted the North Korean Human Rights Act in March 2016, laying the legal and institutional foundation for protection of human rights in North Korea. As follow-up measures, the Ministry of Unification set up the North Korean Human Rights Division to manage policies and established the Center for North Korean Human Rights Records to collect and record information on North Korean human rights. The government will strive to comprehensively protect the civil liberties and social rights of the North Korean people based on the North Korean Human Rights Act.²⁸⁾

1. The most recent progress of government policies on inter-Korean relations

The incumbent government policy on inter-Korean relations is ‘a

28) Ministry of Unification. North Korean Human Rights. (https://www.unikorea.go.kr/eng_unikorea/whatwedo/NorthKoreanHumanRights/humanrights/)

long-term and comprehensive policy led by Korea to realize ‘peace’ and ‘prosperity’ on the Korean Peninsula as well as Northeast Asia together with North Korea, regional neighbors, and the international society.’²⁹⁾

The three goals of the policy, so-called the *Moon* policy, are resolution of the North Korean nuclear issue and establishment of permanent peace, development of sustainable inter-Korean relations and realization of a new economic community on the Korean Peninsula. The Government aims to substitute the past sixty years of an unstable armistice with a permanent peace regime, to ensure peace in a practical and institutional manner.³⁰⁾ As for the development of inter-Korean relations, it will inherit and further foster existing inter-Korean agreements, including *the July 4th South-North Joint Communiqué*³¹⁾, *Inter-Korean Basic Agreement*³²⁾, *June 15th South-North Joint Declaration*³³⁾, and *October*

29) Ministry of Unification, Moon Jae-in’s Policy on the Korean Peninsula (https://www.unikorea.go.kr/eng_unikorea/policyissues/koreanpeninsula/goals/)

30) Ministry of Unification, Moon Jae-in’s Policy on the Korean Peninsula (https://www.unikorea.go.kr/eng_unikorea/policyissues/koreanpeninsula/goals/)

31) 7· 4 South and North Korea Joint Statement was signed on July 4, 1972, by South Korea and North Korea governments for the first time since the division of the Korean Peninsula. It establishes three principles of unification: independence, peace and nation-wide unity. It was enacted to promote international détente, declaration of the withdrawal of the United States Forces Korea and reduction of military arms competition.

32) In December 1991, the North and South Korea signed the Agreement on Reconciliation, Nonaggression, and Exchanges and Cooperation between the South and the North (Inter-Korean Basic Agreement). The agreement focused on mutual respect between the two Korea, the renunciation of armed aggression, exchange and cooperation in many sectors, and the guarantee of free exchange of people between the two countries.

33) The June 15th North-South Joint Declaration was adopted between leaders of North and South Korea in June 2000. It declared as follows: The South and the North have agreed to resolve the question of reunification independently and through the joint efforts of the Korean people, who are the masters of the country.; For the achievement of reunification, we have agreed that there is a common element in the South’s concept of a confederation and the North’s formula for a loose form of federation. The South and the North agreed to

*4th Declaration.*³⁴⁾

The *Moon* policy is based upon five principles. The first principle of Korea-led Initiative means that as the party directly concerned, the Government will take the lead in promoting inter-Korean reconciliation and cooperation, as well as in establishing peace and co-prosperity on the Korean Peninsula.

The second principle of strong defense means the Government will deter North Korea's provocation and maintain peace on the Korean Peninsula by maintaining a strong security posture based on the solid ROK-US alliance and national defense. At the same time, the third principle of mutual respect will realize a Korean community of co-prosperity by promoting mutually beneficial dialogue, exchange, and cooperation based on the spirit of mutual respect. The fourth principle of interaction with the people will institutionalize participation of – and interaction with – the National Assembly, local government bodies, civil organizations, and experts to draw a national consensus and agreement on unification issues and our North Korea policy. The fifth principle

promote reunification in that direction.:The South and the North have agreed to promptly resolve humanitarian issues such as exchange visits by separated family members and relatives on the occasion of the August 15 National Liberation Day and the question of unswerving Communists serving prison sentences in the South.:The South and the North have agreed to consolidate mutual trust by promoting balanced development of the national economy through economic cooperation and by stimulating cooperation and exchanges in civic, cultural, sports, health, environmental and all other fields.: The South and the North have agreed to hold a dialogue between relevant authorities in the near future to implement the above agreements expeditiously.

34) The declaration signed in 2007 by President Roh Moo-hyun of South Korea and Chairman Kim Jong Il of North Korea following the second inter-Korean summit held since the division of the peninsula. The two leaders pledged to promote and expand joint economic, military and family reunion projects. The declaration also expresses their willingness to replace the existing armistice agreement with a permanent peace regime.

of international cooperation means that South Korea will elicit international cooperation through 'openness'.³⁵⁾

Further, the *Moon* policy has four strategies which are ①Step-by-Step and Comprehensive Approach; ②Tackling the Issues of Inter-Korean Relations and the North Korean Nuclear Threat Simultaneously; ③ Ensuring Sustainability through Institutionalization; ④Laying the Foundation for Peaceful Unification through Mutually Beneficial Cooperation.³⁶⁾

Firstly, the policy takes a step-by-step and comprehensive approach. The South Korean Government peacefully resolves the North Korean nuclear issue, using a step-by-step, two-track approach of sanctions or pressure and dialogue. While solving the nuclear issue, the Government seeks to fundamentally eliminate the security threats by establishing a peace regime on the Korean Peninsula and facilitating improvement in relations between North Korea and the international community.

Secondly, the policy tackles the issues of inter-Korean relations and the North Korean nuclear threat simultaneously. Resolution of the North Korean nuclear issue and improvement of inter-Korean relations are not two separate matters that require a choice or prioritization. Both can see progress simultaneously by complementing each other in a virtuous circle.

If South Korean Government reestablishes channels for inter-Korean dialogue and cooperation, we will be able to facilitate multilateral talks for the resolution of the nuclear issue.

35) Ministry of Unification, Moon Jae-in's Policy on the Korean Peninsula (https://www.unikorea.go.kr/eng_unikorea/policyissues/koreanpeninsula/goals/)

36) Ministry of Unification, Moon Jae-in's Policy on the Korean Peninsula (https://www.unikorea.go.kr/eng_unikorea/policyissues/koreanpeninsula/goals/)

Thirdly, the policy ensures sustainability through institutionalization. South Korea is to push ahead with a 'National Unification Contract' based on a national consensus to ensure consistency its North Korea policy, and will enact inter-Korean agreements into positive law and conclude a 'New Inter-Korean Basic Agreement' to establish sustainable inter-Korean relations.

Lastly, the policy is for laying the foundation for peaceful unification through mutually beneficial cooperation, through restoring national homogeneity and build an inter-Korean community by expanding various inter-Korean exchanges. South Korean Government aims for unification that naturally occurs as part of the process of promoting the coexistence and co-prosperity of the two Koreas and recovering the Korean national community.

2. National Human Rights Commission on the Issues of Human Rights In North Korea

National Human Rights Commission of South Korea has expanded its activities to improve human rights in North Korea since expressing its official stance on North Korean human rights on December 11, 2006. The Commission established North Korean human rights as part of the ten important points to promote in 2007 and included the "strengthening of policy activities for the improvement of North Korean human rights" as part of the six important tasks to address in 2008. The Commission seeks to expand upon the activities it has promoted, widening the range of activities and investigating the actual situations according to the need, ultimately recommending related policies to the government in order

to realize the improvement of human rights in North Korea.

In its response to the recommendation issued by the UN Special Rapporteur on the Situation of Human Rights in North Korea, the Commission acknowledged that North Korea had refused cooperation on the North Korean human rights issue being discussed in the international community, which is a responsibility of the Special Rapporteur. As both a member of the United Nations and international community however, North Korea should allow the UN Special Rapporteur to visit North Korea in addition to adhering to its responsibilities according to the international human rights treaties that it has signed. It should also cooperate on other matters and initiate dialogue on human rights with the United Nations and international community. In order to resolve the international issue of North Korean defectors, the Commission hoped that the nations neighboring the Korean peninsula attentively listen to the Special Rapporteur's recommendations, which requests an end to forced repatriations as North Korean defectors are recognized as refugees.³⁷⁾

In 2012, National Human Rights Commission devised the Second National Action Plans for the Promotion and Protection of Human Rights Proposal (2012~2016) in order to recommend the Government to establish and execute a comprehensive human rights policy accordingly. The second part of the proposal illustrates fifteen issues in high priority for the next five years, including people with disabilities, temporary

37) The National Human Rights Commission of Korea's Perspectives on the Recommendation Issued by the United Nations Special Rapporteur on the Situation of Human Rights in North Korea at the UN Commission on Human Rights (March 13, 2008)

workers, migrants, refugees, women, children/adolescents, the elderly, the sick, soldiers/combat police, conscripted policemen, people in care facilities, sexual minorities, overseas Koreans, victims of crime, and North Koreans.³⁸⁾

In its resolution made in 2012, the Commission recommended that the Minister of Foreign Affairs and Trade should make multilateral efforts to ensure that the government of the Republic of China stops repatriating the North Korean defectors in its territory forcibly and unconditionally in respect for the international law including the Convention Relating to the Status of Refugees and out of humanitarian considerations and takes proper actions to protect their human rights.³⁹⁾

3. North Korean Human Rights Act of the US

Human rights in North Korea have become an issue in recent year partly due to increasing attention paid to North Korean nuclear development issue. The tradition of US policy impel the US to take steps to address human rights violations in North Korea.⁴⁰⁾

The North Korean Human Rights Act of 2004 has found that the Government of North Korea is “a dictatorship under the absolute rule of *Kim Jong Il* that continues to commit numerous, serious human rights abuses”.

38) National Human Rights Commission, The Second National Action Plans for the Promotion and Protection of Human Rights (NAP) Proposal Formulated (Press Releases, 2012.2.29)

39) National Human Rights Commission, Recommendation concerning forced repatriation of North Korean defectors in China (2012.3.14)

40) Christopher Sigur, *US Policy and Human Rights in North Korea.*, in *Sung-Chul Choi(eds). International Community and Human Rights in North Korea.* Center for the Advancement of North Korean Human Rights. 1996, p.275.

It attempts to control all information, expression and media activity inside North Korea and strictly curtails freedom of speech and access to foreign broadcasts. The Government of North Korea subjects all its citizens to systematic, intensive political and ideological indoctrination in support of the cult of personality glorifying *Kim Jong Il* and the late *Kim Il Sung* that approaches the level of a state religion. The Government divides its population into categories, based on perceived loyalty to the leadership, which determines access to food, employment, higher education, place of residence, medical facilities, and other resources. The North Korean Penal Code is draconian, stipulating capital punishment and confiscation of assets for a wide variety of crimes against the revolution, including defection, attempted defection, slander of the policies of the Party or State, listening to foreign broadcasts, writing reactionary letters, and possessing reactionary printed matter. The Government of North Korea executes political prisoners, opponents of the regime, some repatriated defectors, some members of underground churches, and others, sometimes at public meetings attended by workers, students, and schoolchildren. It holds an estimated 200,000 political prisoners in camps that its State Security Agency manages through the use of forced labor, beatings, torture, and executions, and in which many prisoners also die from disease, starvation, and exposure. (Section 3)

The 2004 Act provides the U.S. with new tools to address the deplorable human rights situation in North Korea by focusing U.S. efforts to help both those who flee the regime and those who are trapped inside the country.⁴¹⁾

Section 102 of the Act supports human rights and democracy programs, and Section 105 on the United Nations Commission on Human Rights, Section 107 on special envoy on human rights in North Korea, and Section 202(a) on humanitarian assistance through nongovernmental and international organizations are provisions assisting North Koreans in need, and protecting North Korean Refugees.

Section 302(a) (Eligibility for refugee or asylum consideration) states that the purpose of the Act is not intended in any way to prejudice whatever rights to citizenship North Koreans may enjoy under the Constitution of the Republic of Korea. However, Section 302(b) states that a national of the Democratic People's Republic of Korea shall not be considered a national of the Republic of Korea. Previously, North Koreans had been treated as citizens of South Korea.

It is acknowledged that the new Act encourages discussion of North Korean human rights within a regional framework. The U.S. approach on behalf of the North Korean people will be made more effective when it is done in concert with South Korean and European Union allies, as well as with other regional players such as China and Russia. It asks the president to appoint a special envoy on North Korean human rights, thereby ensuring that discussions of human rights and security can each proceed along separate tracks when such dialogue is impossible on a single track. Unfortunately, enactment of the 2014 Act cannot guarantee improved humanitarian conditions for North Koreans. The publicity jeopardized the underground railroads that had brought those refugees thousands of miles from Northeast China. One hundred refugees in

41) *The North Korean Human Rights Act and other Congressional Agendas*
(https://nautilus.org/napsnet/napsnet-policy-forum/0439a_lee-html/)

transit were returned to China.⁴²⁾

In July 2018, President Trump was presented with the final approved text of H.R. 2061 to reauthorize The North Korea Human Rights Act. The legislation reauthorizes or extends for four years the Act first enacted by Congress in 2004 and reauthorized again in 2008 and 2012. The bill also includes modifications to update the law and to harmonize it with other human rights legislation that has been adopted.⁴³⁾

Section 2 | North Korean Human Rights Act of South Korea

1. Background of the North Korean Human Rights Act

The Republic of Korea government recognizes that improving the human rights situation of the North Korean people is a way to uphold a universal value of mankind and an important task in achieving unification on the Korean Peninsula. Accordingly the government has made efforts to improve human rights in North Korea together with the international community by joining the UN in adopting resolutions on North Korean human rights.⁴⁴⁾

The government enacted the North Korean Human Rights Act in

42) The North Korean Human Rights Act and other Congressional Agendas (https://nautilus.org/napsnet/napsnet-policy-forum/0439a_lee-html/)

43) *Congress Affirms Concern for North Korea Human Rights: Extends Human Rights Act* (<https://www.csis.org/analysis/congress-affirms-concern-north-korea-human-rights-extends-human-rights-act>)

44) Ministry of Unification, North Korean Human Rights (https://www.unikorea.go.kr/eng_unikorea/whatwedo/NorthKoreanHumanRights/humanrights/)

March 2016, laying the legal and institutional foundation for protection of human rights in North Korea. Under the Act, the Government aims to comprehensively protect the civil liberties and social rights of the North Korean people based on the North Korean Human Rights Act. South Korean National Assembly passed the North Korea Human Rights Act in a landslide vote.

Conservative lawmakers in the National Assembly first introduced a human rights bill in 2005, a year after the US Congress passed the US North Korea Human Rights Act of 2004. While in the United States North Korean human rights is a bipartisan issue, inter-Korean relations has made things complicated in South Korean politics. During the era of *Sunshine* Policy era, overt criticism of human rights in North Korea issues may be regarded as some obstacles to the development of inter-Korean relations. Then South Korean government initially sought to wed a firm stance on human rights together with unconditional humanitarian assistance. However, because of North Korean nuclear and missile tests in 2013 the Government has been unable to carry out its vision.⁴⁵⁾

Many of the activities mandated in the 2016 Act deal with records collecting, research, and devising policies for the government to promote North Korea human rights. However, the Act does not mention democracy promotion, information penetration, supporting the development of a North Korean market economy, or aiding refugees living outside of North Korea.⁴⁶⁾

45) *The ROK North Korea Human Rights Act*
(<https://www.piee.com/blogs/north-korea-witness-transformation/rok-north-korea-human-rights-act>)

2. The legal system of the North Korean Human Rights Act of 2016

The purpose of the 2016 Act is to contribute to the protection and advancement of human rights of North Koreans by pursuing the right to liberty and right to life prescribed in the Universal Declaration of Human Rights and other international conventions on human rights, in order to protect and promote the human rights of North Koreans. (Article 1)

The North Korea Human Rights Act establishes a human rights foundation tasked with researching North Korea human rights promotion strategy, documenting human rights abuses, and providing assistance to groups conducting these tasks.

Firstly, the Act creates an archive of North Korean human rights abuses. The collected records are then transferred to the Ministry of Justice, which could allow for eventual prosecution under a unified Korea.

Secondly, the Act calls upon the South Korean government to cooperate with international institutions and to make efforts to increase global interest in North Korean human rights issues. It also establishes an Ambassador-level envoy for international cooperation on North Korean human rights.

Thirdly, the Act requires the government to promote inter-Korean human rights dialogue, including discussing issues related to POWs,

46) *The ROK North Korea Human Rights Act*
(<https://www.piiie.com/blogs/north-korea-witness-transformation/rok-north-korea-human-rights-act>)

kidnapped South Koreans living in North Korea, and separated families.

Fourthly, the Act requires that humanitarian assistance be provided according to internationally accepted transparency standards.

Lastly, the Act creates additional bureaucratic responsibilities, primarily for the Ministry of Unification, to report on and submit strategies for human rights promotion.

A. North Korean Human Rights Advisory Committee

In order to provide advice on policies related to the advancement of human rights in North Korea, there is hereby established a North Korean Human Rights Advisory Committee in the Ministry of Unification. (Article 5)

B. Master Plans and Action Plans to Advance Human Rights in North Korea

Every three years, the Minister of Unification shall formulate a master plan to advance human rights in North Korea including the following matters after obtaining advice from the Committee, in consultation with the heads of relevant central administrative agencies: Investigating the status of human rights in North Korea; Plans for protecting and promoting human rights in North Korea, including North-South human rights dialogue and humanitarian assistance; Other matters prescribed by Presidential Decree relating to the protection and advancement of human rights in North Korea. (Article 6)

C. Promotion of North-South Dialogue on Human Rights

The Government shall promote North-South human rights dialogue on important matters for the advancement of human rights in North Korea. Article 15 of the Development of Inter-Korean Relations Act⁴⁷⁾ shall apply *mutatis mutandis* to the matters necessary to appoint the representatives for North-South dialogue on human rights. (Article 7)

D. Humanitarian Assistance

In providing North Korean authorities or agencies with any humanitarian assistance for North Koreans to promote human rights in North Korea, the State shall endeavor to ensure that the following matters are complied with : Assistance shall be delivered transparently in accordance with internationally recognized delivery standards, and shall be provided preferentially for vulnerable social groups, such as pregnant women and infants. (Article 8)

47) Article 15 (Appointment, etc. of Representatives of South-North Korean Summit)

- (1) The representatives of the South-North Korean summit, who participate in negotiations or summits with North Korea concerning important matters or who have the authority to sign or initial important South-North Korean agreements, shall be recommended by the Minister of Unification, in consultation with the heads of the relevant agencies, and shall be appointed by the President via the Prime Minister.
- (2) The Minister of Unification shall be the representative of the South-North Korean summit, in attending negotiations or summits with North Korea and signing or initialing South-North Korean agreements.
- (3) The representatives of South-North Korean summits shall be appointed by the Minister of Unification, excluding cases falling under paragraphs (1) and (2).
- (4) Special envoys to North Korea shall be appointed by the President.

E. International Cooperation for Advancement of Human Rights in North Korea

The State shall cooperate with international organizations, international bodies, foreign governments, etc. in implementing human interchange, information exchange, etc. for the advancement of human rights in North Korea; and shall also endeavor to raise concern of the global community for the advancement of human rights in North Korea. In order to facilitate international cooperation for the advancement of human rights in North Korea under paragraph (1), the Ministry of Foreign affairs may appoint an Ambassador for Human Rights in North Korea to the Ministry of Foreign Affairs. (Article 9)

F. Establishment of North Korean Human Rights Foundation

In order to investigate the actual status of human rights in North Korea and to engage in research, policy development, etc. related to the advancement of human rights in North Korea, including North-South dialogue on human rights and humanitarian assistance, the Government shall establish a North Korean Human Rights Foundation. (Article 10(1))

The Foundation shall perform the following functions for the improvement of human rights in North Korea, including inter-Korean dialogue on human rights: Investigation and research into the status of human rights in North Korea; Development of alternative policies and provision of recommendations to the Government for inter-Korean human rights dialogue, etc.; Other functions deliberated on by the Committee

and designated by the Minister of Unification; Provision of assistance to civil groups necessary to implement any program. And for the improvement of human rights in North Korea, including humanitarian assistance: Investigation and research into demand for humanitarian assistance in North Korea; Development of alternative policies and provision of recommendations to the Government for humanitarian assistance to North Korea; Other functions deliberated on by the Committee and designated by the Minister of Unification; Provision of assistance to civil groups necessary to implement any program.(Article 10(3))

G. Center for North Korean Human Rights Records

In order to collect and record information on the status of North Korean human rights and information for the improvement of human rights in North Korea, there is hereby established a Center for North Korean Human Rights Records in the Ministry of Unification. (Article 13 (1))

The Center shall perform the following functions, and shall be assigned to collect, research, preserve, publish, or otherwise deal with various kinds of materials and information: Investigation and research into human rights in North Korea; Functions relating to the Korean War prisoners detained in North Korea, abductees in North Korea, and separated families; Other functions deliberated on by the Committee and acknowledged by the Minister of Unification as necessary.(Article 13 (2))

Materials collected and recorded by the Center for North Korean Human Rights Records shall be transferred to the Ministry of Justice every three months, and the Ministry of Justice shall establish an organ

assigned to preserve and manage the materials related to records on North Korean human rights. (Article 13 (5))

F. Reports to National Assembly

Each year, in addition to a master plan and an action plan, the Minister of Unification shall report the following matters, on the improvement of human rights in North Korea, to the National Assembly, prior to the opening of its regular session: Status of human rights in North Korea; Results and progress of improving human rights in North Korea; Status of formulation and implementation of plans for repatriation of Korean War prisoners detained in North Korea and abductees in North Korea, reunion of separated families, etc.; Results of projects implemented respectively by the State, local governments, and public institutions in connection with the affairs prescribed in subparagraphs 1 through 3, and the assessment thereof; Other matters acknowledged by the Minister of Unification as necessary to improve human rights in Korea. (Article 15)

3. The human rights mechanism under the North Korean Human Rights Act of 2016

As follow-up measures of the enactment of the 2016 Act, the Ministry of Unification set up the North Korean Human Rights Division to manage policies and established the Center for North Korean Human Rights Records to collect and record information on North Korean human rights. The Center is expected to act as an archive of North Korean human rights violations for possible use in future prosecutions.⁴⁸⁾

48) <https://www.hrw.org/world-report/2019/country-chapters/south-korea#>

The Ministry of Unification runs the Council on North Korean Human Rights and works closely together with other agencies. The Ministry gathers opinions from the private sector through the North Korean Human Rights Advisory Council consisting of experts on North Korean human rights. It will establish the basic plan for the promotion of human rights in North Korea, and its implementation plan, and carry out relevant policies systematically.⁴⁹⁾

The Ministry of Justice established the North Korean Human Rights Documentation Office and the Ministry of Foreign Affairs appointed the Ambassador-at-large on North Korean Human Rights.⁵⁰⁾

The enactment of North Korea Human Rights Act underscores a shift politically in South Korea and establishes North Korean human rights promotion as a legal requirement. It's noteworthy that a key part of this Act deals with the nexus between humanitarian aid and human rights promotion, specifically requiring internationally accepted transparency standards. Despite the limits of the 2016 Act, it represents a shift in the conversation in South Korean politics commensurate with a growing international focus on North Korea's human rights issues and South Korean government approach to establishing human rights engagement as a pillar of inter-Korean relationship.⁵¹⁾

49) *Advisory committee for North Korean human rights policy launched* (<https://www.dailynk.com/english/advisory-committee-for-north-korea/>)

50) *Ambassador-at-large on North Korean Human Rights to Participate in an Interactive Dialogue with the Special Rapporteur on the Situation of Human Rights in the DPRK* (https://www.mofa.go.kr/eng/brd/m_5650/view.do?seq=317649&srchFr=&srchTo=&srchWord=&srchTp=&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=2&titleNm=)

51) *The ROK North Korea Human Rights Act* (<https://www.pii.com/blogs/north-korea-witness-transformation/rok-north-korea-human-rights-act>)

Chapter 3

Human Rights and the Criminal Justice Issues of
Accountability in North Korea

UN Human Rights Mechanism and the issues of accountability in North Korea

Chapter 3

UN Human Rights Mechanism and the issues of accountability in North Korea

Section 1 | UN Mechanism Regarding Human Rights Situation in North Korea

1. UN High Commissioner for Human Rights

OHCHR has been seeking to engage with the Government of the Democratic People's Republic of Korea to discuss human rights. In late 2015, the Government gave signs that it was making efforts in that regard. In December 2015, the Security Council held a debate on the situation of human rights in North Korea. The High Commissioner emphasized that accountability must go hand in hand with an open dialogue to encourage the Government to undertake reforms. However, North Korean government issued a statement in which it strongly denounced the convocation of the debate.⁵²⁾

Following UN General Assembly adopted resolution 70/172⁵³⁾, the

52) Report of the Office of the United Nations High Commissioner for Human Rights, Role and achievements of the Office of the United Nations High Commissioner for Human Rights with regard to the situation of human rights in the Democratic People's Republic of Korea (A/HRC/31/38), paras.12-13.

53) Resolution 70/172 (DPRK) 17 Dec 2015, A/RES/70/172

Assembly encouraged the Security Council to continue its consideration of the relevant conclusions and recommendations of the commission of inquiry and take appropriate action to ensure accountability, including through consideration of referral of the situation in North Korea to the International Criminal Court and consideration of the scope for targeted sanctions against those who appear to be most responsible for acts that the commission has said may constitute crimes against humanity.⁵⁴⁾

In 2014, UN Human Rights Council adopted resolution⁵⁵⁾, in which it requested OHCHR to follow up urgently on the recommendations made by the commission of inquiry on human rights in North Korea in its report, and to provide the Special Rapporteur on the situation of human rights in North Korea with increased support, including through the establishment of a field-based structure. The Council mandated the field-based structure to strengthen monitoring and documentation of the situation of human rights in North Korea, to ensure accountability, to enhance engagement and capacity-building with the Governments of all States concerned, civil society and other stakeholders, and to maintain visibility of the situation of human rights in North Korea, including through sustained communications, advocacy and outreach initiatives.⁵⁶⁾

54) A/HRC/31/38, para.14.

55) A/HRC/RES/25/25

56) A/HRC/31/38, paras.44-45.

2. Special Rapporteur on the situation of human rights in North Korea

The special procedures of the Human Rights Council are for independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They are non-paid and elected for 3-year mandates that can be reconducted for another three years.⁵⁷⁾ With the support of the OHCHR, special procedures undertake country visits, act on individual cases of reported violations and concerns of a broader nature by sending communications to States and others, conduct annual thematic studies, seek information from calls for input and convene expert consultations, contribute to the development of international human rights standards, and engage in advocacy, raise public awareness, and provide advice for technical cooperation.⁵⁸⁾

The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea was established by the UN Commission on Human Rights in 2004, and has been renewed on an annual basis by the Human Rights Council. The Special Rapporteur investigates and reports on the situation of human rights in the country and on the government's compliance with its obligations under international human rights law.⁵⁹⁾ He submits reports to the Human Rights Council

57) As of September 2020, there are 44 thematic and 11 country mandates. (<https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>)

58) <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

59) The current Special Rapporteur, Tomás Ojea Quintana (Argentina), was appointed by the Human Rights Council in 2016, succeeding Marzuki Darusman (Indonesia) who had served as the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea since 2010. (<https://www.ohchr.org/en/hrbodies/sp/countriesmandates/kp/pages/srdprkorea.aspx>)

and General Assembly annually.⁶⁰⁾

According to the most recent report, North Korea “is still at a critical junction. On 30 June 2019, the first-ever trilateral discussions between the leader of the Democratic People’s Republic of Korea, Kim Jong Un, the President of the Republic of Korea, Moon Jae-in, and the President of the United States of America has been realized. Regrettably, the Government of the Democratic People’s Republic of Korea, the primary duty bearer relating to human rights obligations, continues to oppress its people’s fundamental freedoms and violate their human rights. The Special Rapporteur hopes that such issues will inform the ongoing peace negotiations.”⁶¹⁾

In the 2019 report, the Special Rapporteur points out that more than 15 years have passed since the mandate of the Special Rapporteur was established by the Human Rights Commission in its resolution 2004/13, and the North Korean Government has yet to initiate any communication with the mandate holders. He also reminds that engagement on human rights issues by all the parties, including with regard to economic and social areas, will be beneficial for the advancement of a substantive peace process in Korean peninsula. He urges North Korean Government to follow the lead of the South Korea and allow him to visit the country to engage with relevant counterparts in a constructive and objective manner.⁶²⁾

60) Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea (A/74/275/Rev.1): HRC/40/66; A/73/386; A/HRC/37/69; A/HRC/37/56/Add.1; A/HRC/34/66; A/HRC/31/70; A/HRC/28/71; A/69/548; A/68/319; A/HRC/22/57.

61) A/74/275/Rev.1, paras.1-2.

62) A/74/275/Rev.1, para.9.

However, North Korea continues to take a firm position that it “categorically rejects” and “will in the future too neither accept nor recognize” the Human Rights Council resolution and the Special Rapporteur on the situation of human rights in North Korea. During the universal periodic review in May 2019, the delegation stated that “the Special Rapporteur is used as a political tool of the hostile forces”.⁶³⁾

So the Special Rapporteur recommends that the international community use any available opportunity for dialogue with North Korea to create an environment that integrates human rights into ongoing peace and denuclearization talks and seeks progress in the human rights situation, in particular by calling for the prevention of violations and the effective protection of human rights in an accountable manner and advocating for the participation of North Korean people in determining the path towards peace and prosperity and support efforts to promote accountability in North Korea, including the work of the OHCHR accountability team.⁶⁴⁾

3. OHCHR (Seoul)

On 22 May 2015, the Government of the Republic of Korea and OHCHR concluded an interim host country agreement for the establishment of the field-based structure in Seoul. In accordance with Council resolution 25/25, OHCHR (Seoul) has carried out monitoring and documentation of the situation of human rights in the Democratic People’s Republic of Korea. It has been engaging with Governments,

63) A/74/275/Rev.1, para.59.

64) A/74/275/Rev.1, para.71.

civil society and people who have left the Democratic People's Republic of Korea, as well as with United Nations entities and humanitarian workers operating inside the Democratic People's Republic of Korea, and other stakeholders. The work of OHCHR (Seoul) builds on the work of the commission of inquiry. The field office has been gathering individual testimonies to contribute to possible future accountability processes and other transitional justice mechanisms. As of December 2015, it had interviewed 35 individuals who have left the Democratic People's Republic of Korea. During a mission to Japan, from 9 to 13 November 2015, staff from OHCHR (Seoul) met in Tokyo and Osaka with representatives of the Government and civil society, including researchers. They also met individuals who had left the Democratic People's Republic of Korea, and relatives of victims and of possible victims of abductions. In addition, they interviewed individuals who had left Japan for the Democratic People's Republic of Korea during the "Paradise on Earth" campaign, from 1958 to 1984, and had suffered serious human rights violations in that context.⁶⁵⁾

OHCHR (Seoul) worked closely with Governments, the diplomatic community in Seoul, civil society and others to raise awareness of the human rights situation in the Democratic People's Republic of Korea. Office staff made presentations at civil society seminars, including a Korean Bar Association seminar on human rights in the Democratic People's Republic of Korea, on 30 June; the Asia Human Rights Forum on regional cooperation for transitional justice in Asia and human rights in North Korea, on 18 September; the North Korea Human Rights and

65) A/HRC/31/38, para.46.50-52.

Peace Forum at Seoul National University, on 1 October; the Seoul Dialogue for Human Rights, on 11 November; the United Nations human rights monitoring mechanisms and the Democratic People's Republic of Korea, organized by Human Asia, on 12 November; the Korean War Abductees Family Union Conference on Transitional Justice, on 30 November; and the tenth anniversary of the Radio Broadcasting for North Korea Initiative, on 10 December. Staff from the office also addressed the fourth North Korean Human Rights Forum in Europe, organized on 19 October in Spain by the Korea Institute for National Unification;

and the International symposium on international cooperation towards resolution of the abduction issue, organized by the Government of Japan in Tokyo, on 12 December. On 27 November 2015, the Representative of OHCHR (Seoul) addressed the third North Korean human rights symposium at the National Assembly of the Republic of Korea, organized by the Ministry of Justice, the National Assembly Human Rights Forum and the International Parliamentarians' Coalition for Asian Human Rights. The OHCHR representative provided an overview of the work of the office and of its cooperation with the Government of the Republic of Korea. On 10 December 2015, OHCHR (Seoul) organized an event in Seoul on human rights and separated families, gathering members of such families who spoke about the painful experience of separation, as elderly family members' health deteriorates and chances to be reunited with their loved ones decrease. Individuals whose relatives were abducted to the Democratic People's Republic of Korea described the challenges they faced

after the abduction. Other speakers included representatives of the Ministry of Unification, university researchers and members of NGOs working with separated families, as well as the current and former ambassadors for human rights of the Republic of Korea. Those affected by the issue called for increased action at the national and multilateral levels to help resolve the problem. On 14 December 2015, the Judicial Policy Research Institute of Korea and OHCHR (Seoul) co-hosted a seminar on human rights and legal assistance for individuals from the Democratic People's Republic of Korea. The event examined possibilities to move forward in legal approaches to addressing human rights violations in the Democratic People's Republic of Korea. Participants included representatives of the Government of the Republic of Korea, the diplomatic community and civil society.⁶⁶⁾

Section 2 | Universal Periodic Review

1. The Process of the Universal Periodic Review

The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of all 193 UN Member States. The UPR is a significant innovation of the Human Rights Council which is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome

⁶⁶⁾ A/HRC/31/38, para.53-56.

challenges to the enjoyment of human rights.⁶⁷⁾

The ultimate goal of UPR is the improvement of the human rights situation in every country with significant consequences for people around the globe. The UPR is designed to prompt, support, and expand the promotion and protection of human rights on the ground. To achieve this, the UPR involves assessing States' human rights records and addressing human rights violations wherever they occur. The UPR also aims to provide technical assistance to States and enhance their capacity to deal effectively with human rights challenges and to share best practices in the field of human rights among States and other stakeholders. The reviews are conducted by the UPR Working Group which consists of the 47 members of the Council; however any UN Member State can take part in the discussion/dialogue with the reviewed States. Each State review is assisted by groups of three States(troikas), who serve as rapporteurs. The selection of the troikas for each State is done through a drawing of lots following elections for the Council membership in the General Assembly.⁶⁸⁾

The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a "national report"; 2) information contained in the reports of independent human rights experts and groups, known as the Special Procedures, human rights treaty bodies, and other UN entities; 3) information from other stakeholders including national human rights institutions and non-governmental organizations. Reviews take place through an interactive discussion between the State under review and other UN Member States.

67) <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

68) <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

This takes place during a meeting of the UPR Working Group. During this discussion any UN Member State can pose questions, comments and/or make recommendations to the States under review. The troikas may group issues or questions to be shared with the State under review to ensure that the interactive dialogue takes place in a smooth and orderly manner. The duration of the review was three hours for each country in the Working Group during the first cycle. From the second cycle onwards the time has been extended to three hours and thirty minutes.⁶⁹⁾

Following the review by the Working Group, a report is prepared by the troika with the involvement of the State under review and assistance from the OHCHR. This report, referred to as the “outcome report”, provides a summary of the actual discussion. It therefore consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State. During the Working Group session half an hour is allocated to adopt each of the “outcome reports” for the States reviewed that session. These take place no sooner than 48 hours after the country review. The reviewed State has the opportunity to make preliminary comments on the recommendations choosing to either accept or note them. Both accepted and noted recommendations are included in the report. After the report has been adopted, editorial modifications can be made to the report by States on their own statements within the following two weeks. The report then has to be adopted at a plenary session of the Human Rights Council. During the plenary session, the State under

69) <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

review can reply to questions and issues that were not sufficiently addressed during the Working Group and respond to recommendations that were raised by States during the review. Time is also allotted to member and observer States who may wish to express their opinion on the outcome of the review and for NHRIs, NGOs and other stakeholders to make general comments.⁷⁰⁾

The State has the primary responsibility to implement the recommendations contained in the final outcome. The UPR ensures that all countries are accountable for progress or failure in implementing these recommendations. During the second review the State is expected to provide information on what they have been doing to implement the recommendations made during the first review as well as on any developments in the field of human rights. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with the country concerned. If necessary, the Council will address cases where States are not co-operating.⁷¹⁾

2. Universal Periodic Review on North Korea in 2019

On 9 May 2019, the human rights record of the North Korea was reviewed for the third time by the Working Group on the Universal Periodic Review of the Human Rights Council. The country received 262 recommendations from 87 delegations; it agreed to review 199 recommendations. The Government stressed its efforts to improve the

70) <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

71) <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

social rights of the people and the protection of people in vulnerable situations, and cited a stronger cooperation with the international human rights mechanisms. The 63 recommendations initially rejected by the Government were related to political prison camps, arbitrary detention, torture and ill-treatment, abductees, the songbun class system and cooperation with the Special Rapporteur on the situation of human rights in North Korea. While those 63 recommendations concerning the fundamental rights of citizens were initially rejected by the North Korean Government, talking openly about these controversial issues is an important first step to address these human rights concerns. North Korean Government stated that they “highly value the dialogue and cooperation for the promotion and protection of human rights, in particular the universal periodic review mechanism” and that they had “implemented all the recommendations provided in the previous cycles”.⁷²⁾

A. Human rights situation in North Korea

The human rights situation in the Democratic People’s Republic of Korea remains extremely serious. The political prison camps, in which a large number of political prisoners are detained in the worst conditions, remain in operation under complete secrecy. There is no freedom of expression and citizens are subject to a system of control, surveillance and punishment that violates their human rights. At the same time, there are serious failures in the State structures, wherein the population, especially those residing in the interior of the provinces, do not have

72) Situation of human rights in the Democratic People’s Republic of Korea Note by the Secretary-General/A/74/275/Rev.1, para.60.

access to basic food. Children, pregnant women and those who breastfeed their children are the ones who suffer most from this structural failure, for which the Government is primarily responsible⁷³⁾

B. Presentation by the State under review

The North Korean delegation expressed the hope that the third cycle review of the Democratic People's Republic of Korea would promote a correct understanding of the human rights situation in the country, enabling the international community to adopt a proper viewpoint and attitude towards the country that were free from any bias and discrimination.⁷⁴⁾

The State was the embodiment of the *juche* idea, requiring that people be placed at the centre of all considerations. Significant achievements had been made in the field of the promotion and protection of human rights.⁷⁵⁾

Treaty-specific national coordinating committees had been integrated into a National Committee for the Implementation of the International Human Rights Treaties. The Institute of Human Rights had been established to raise public awareness about human rights.⁷⁶⁾

In its efforts to promote human rights, the country had faced obstacles, particularly the resolutions adopted by the Human Rights Council and the General Assembly. Those resolutions were politically

73) A/74/275/Rev.1, para.64.

74) Report of the Working Group on the Universal Periodic Review- Democratic People's Republic of Korea (A/HRC/42/10) para.5.

75) A/HRC/42/10 para.6.

76) A/HRC/42/10 para.7.

motivated and a manifestation of selectivity and double standards. They were based on fabricated information whose sources were the false testimonies of “defectors”.⁷⁷⁾

Sanctions imposed by the Security Council hampered state efforts to protect and promote human rights. They obstructed trade and blocked the delivery of medicines and medical appliances for children, women and persons with disabilities, and made it difficult for the United Nations agencies and humanitarian actors operating in the country to carry out their missions.⁷⁸⁾

C. Peace and security, Development and Human rights

The steps that the authorities of the North Korea and other countries involved in the situation on the Korean Peninsula have taken in search of peace and against the proliferation of nuclear weapons are extremely important. The rest of the world looks forward to auspicious positive results. But that peace, if achieved, will be significant for North Korean citizens only if it guarantees them an improvement in the exercise of their most fundamental rights. In this regard, the United Nations will and should continue working on the noble and indispensable task that is the promotion of its three pillars: peace and security, development and human rights.⁷⁹⁾

77) A/HRC/42/10 para.12.

78) A/HRC/42/10 para. 13.

79) A/74/275/Rev.1, paras.66-67.

D. Key recommendations on North Korea

Firstly, North Korea should take steps to progressively achieve the realization of the right to an adequate standard of living, including the right to food and the rights to water and sanitation, using the maximum of the State's available resources and prioritizing the most marginalized communities.

Second, North Korea should provide greater and unhindered access as well as timely and relevant data to the United Nations and humanitarian organizations to enable them to reach out to the most vulnerable communities that require assistance.

Third, North Korea should create an environment where people can freely and safely enjoy their right to earn a living through work by reviewing the criminal code and other relevant legislation and by countering widespread corruption.

Fourth, North Korea should review the criminal code and other laws to redefine the acts that constitute "threats to national security" and review the necessity and proportionality of restrictions on freedom of information.

Fifth, North Korea should relax the surveillance and monitoring of people's private lives by the authorities in order to respect the right to freedom of expression and opinion and the right to privacy.

Sixth, North Korea should release detailed information about kwanliso (political prison camps) and invite independent international monitoring bodies to monitor them.

Seventh, North Korea should make available the internal regulations, decrees and procedures on the arrest, interrogation, prosecution and

detention of people accused of committing “anti-State” and “anti-people” crimes carried out by the Ministry of State Security.

Eighth, North Korea should consider the further granting of amnesty to political prisoners, particularly those imprisoned for guilt by association, as part of a long-term ongoing process, while ensuring transparency in the process.

Ninth, North Korea should address allegations of enforced disappearance and provide accurate information to the families of the victims on the fates and whereabouts of their missing relatives.

Tenth, North Korea should recognize the fundamental right to leave and enter the country both in law and practice, and ensure that those who are repatriated are not subjected to punishment upon repatriation.

Eleventh, North Korea should initiate a process of dialogues with the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea.⁸⁰⁾

E. Key recommendations on South Korea

First, South Korea should integrate human rights into the ongoing peace and denuclearization talks.

Second, South Korea should undertake consultations with wider stakeholders engaged in issues of relevance to the situation of human rights in the Democratic People’s Republic of Korea, including civil society organizations working on the accountability agenda.

Third, South Korea should reinforce its efforts to prevent the repatriation of citizens of the Democratic People’s Republic of Korea.

80) A/74/275/Rev.1, para.68.

Fourth, South Korea should establish the North Korean Human Rights Foundation in accordance with the 2016 North Korean Human Rights Act.

Fifth, South Korea should ensure that a human rights-based framework is integrated into economic and humanitarian cooperation with the Democratic People's Republic of Korea and openly discuss the rights to work and to an adequate standard of living of workers, including by inviting the International Labour Organization to provide advice.

Sixth, South Korea should adopt a rights-based and victim-centric approach to family reunions, allowing for unhindered contact between all relatives, and accept the proposal of the Special Rapporteur to participate in this event as an observer.⁸¹⁾

F. Outcome of the universal periodic review

The Human Rights Council conducted the review of the Democratic People's Republic of Korea on 9 May 2019 in conformity with all relevant provisions contained in the annex to Council resolution 5/1, adopted the outcome of the review of the Democratic People's Republic of Korea, comprising the report thereon of the Working Group on the Universal Periodic Review.⁸²⁾

During the interactive dialogue, 88 delegations made statements. The recommendations formulated during the interactive dialogue have been examined by the Democratic People's Republic of Korea and have been noted by the Democratic People's Republic of Korea.⁸³⁾

81) A/74/275/Rev.1, para.69.

82) UN Human Rights Council, Decision adopted by the Human Rights Council on 20 September 2019 (A/HRC/DEC/42/108)

83) A/HRC/42/10, paras.14, 127.

The delegation of the Democratic People's Republic of Korea stressed that the State had put in place an elaborate and well-developed health-care system. All services were provided free of charge. The State had prioritized enhancement of the quality of medical services, including through the Midterm Strategy for the Development of the Health Sector (2016–2020). Significant resources had been devoted to upgrading health facilities, including at the county level. The State was making efforts to ensure an adequate supply of medicines. To address the issue of malnutrition, the State had extended the period of maternity leave and standard food had been provided to women and children. The Strategy and Action Plan to Control Child and Maternal Malnutrition and the Education Strategy for Reproductive Health had been implemented.⁸⁴⁾

The biggest obstacle in the State's efforts for the promotion and protection of human rights were the sanctions of the Security Council and the unilateral sanctions imposed by several countries. The real victims of the sanctions were children, women, older persons and persons with disabilities. The sanctions should be lifted immediately. The State was conducting wide-ranging consultations with all stakeholders on the issue of accession to international conventions that it had not yet ratified. The State was not opposed to the objectives and requirements of those conventions and reflected them in domestic laws and implemented them to suit its reality. It would also continue to maintain close cooperation with treaty bodies and implement their recommendations, as appropriate.⁸⁵⁾

84) A/HRC/42/10, paras. 119–120.

85) A/HRC/42/10, paras. 122–123.

North Korea “highly valued dialogue and cooperation for the promotion and protection of human rights, in particular through the universal periodic review mechanism.”⁸⁶⁾

⁸⁶⁾ A/HRC/42/10, para. 125.

Chapter 4

Human Rights and the Criminal Justice Issues of
Accountability in North Korea

International Society on the issues of accountability in North Korea

Chapter 4

International Society on the issues of accountability in North Korea

Human rights in North Korea had been a neglected issue, when the International Human Rights League of Korea ensured that the situation in North Korea received attention at the second UN World Conference on Human Rights in 1993. North Korea was a country that made very few of the formal commitments to the international community to protect and sustain human rights. North Korea systematically violated all provisions of the international human rights norms and its deliberate violation of human rights is the policy of the state power.⁸⁷⁾

Recently human rights in North Korea has attracted international concern. Such interest has increased dramatically ever since the North's nuclear ambition have been revealed and the reality of North Korean totalitarian regime has been exposed to the public. The number of North Korea refugees and defectors have increased. This has in turn reflected the seriousness of human rights conditions in the North Korea.⁸⁸⁾ However,

87) Robert Chambers, *North Korean Human Rights: A View form the International Community*. in Sung-Chul Choi(eds). *International Community and Human Rights in North Korea*. Center for the Advancement of North Korean Human Rights. 1996, pp.10-12.

88) Kim, Hak-Joon, *Policy Directions towards North Korea for the Improvement of Human Rights in North Korea*. in Sung-Chul Choi(eds). *International Community and Human Rights in North Korea*. Center for the Advancement of North Korean Human Rights. 1996, p.295.

due to the tense security situation between neighboring countries and North Korea, contact usually centered upon security and military issues, not human rights issues. The confrontation on nuclear developments in North Korea barely reached any dialogues on those issues.⁸⁹⁾

This does not deny the necessity of the role of international society to improve North Korean human rights. So far, many international organizations and concerned groups are searching for ways to bring North Korean human rights situation to the attention of the international community.⁹⁰⁾

Section 1 | International Bodies

1. Office of the UN High Commissioner for Human Rights and its dedicated accountability team

The Office of the United Nations High Commissioner for Human Rights (OHCHR) submits to the Human Rights Council pursuant to its resolution 34/24 on the situation of human rights in the Democratic People's Republic of Korea. The High Commissioner recommends that the Human Rights Council consider extending the mandate granted in resolution 34/24 and allocate the resources necessary for OHCHR to

89) Robert Chambers, *North Korean Human Rights: A View from the International Community*, pp.16-17.

90) J. Edwin Feulner, *The Role of International Society to Improve North Korean Human Rights*, in Choi, Sung-Chul(eds). *International Community and Human Rights in North Korea*. Center for the Advancement of North Korean Human Rights. 1996, p.40.

comprehensively implement its mandate.⁹¹⁾

In its resolution 34/24, the Human Rights Council decided to strengthen the capacity of OHCHR for two years, including its field-based structure in Seoul, to implement the recommendations of the group of independent experts pertaining to criminal accountability. Specifically, the Human Rights Council mandated OHCHR to strengthen its monitoring and documentation efforts; establish a central information and evidence repository; and have experts in legal accountability assess all information and testimonies with a view to developing possible strategies to be used in any future accountability process.⁹²⁾

As for the establishment of a dedicated accountability team, in implementing the mandate given by the Human Rights Council, the high-level consultant led and managed the legal aspects of criminal accountability activities, the implementation of which was overseen in Seoul by the international legal officer, with the assistance of a national counterpart. The team also conducted interviews with alleged victims and other witnesses, analysed information, created an electronic database, organized and conducted training sessions for civil society organizations, and identified key areas where cooperation with other stakeholders should be strengthened. The team also identified several areas where, with the appropriate resources, work on accountability could be materially advanced in the future.⁹³⁾

91) Human Rights Council, *Promoting accountability in the Democratic People's Republic of Korea - Report of the United Nations High Commissioner for Human Rights* (A/HRC/40/36) paras.1-2.

92) A/HRC/40/36, paras.9-10.

93) A/HRC/40/36, para.18.

Given the difficulties in collecting information from within North Korea, OHCHR has been pursuing alternative avenues of documentation. It has, in particular, sought to establish linkages between alleged crimes and the identification of the individuals responsible, both those who carried out the acts in question and commanders and superiors responsible for formulating relevant policies, issuing orders or failing to exercise proper control over their subordinates. OHCHR reviewed open source and other materials in order to identify those holding positions of responsibility in North Korea who may have had direct knowledge of the chain of command and the decision-making processes involved. In the Republic of Korea, both the Ministry of Unification and the Ministry of Justice have human rights documentation centres focusing on the situation in North Korea with a view to future prosecutions.⁹⁴⁾

It is noteworthy that the OHCHR pursues the establishment of a central information and evidence repository. While in the immediate term there may be little prospect that those responsible for gross human rights violations and crimes under international law in North Korea will be held to account, a critical function of the accountability team is to establish a central electronic repository of all information and evidence collected for future national and international justice mechanisms.⁹⁵⁾ The establishment of a repository would also facilitate the analysis of information and evidence collected, the identification of gaps, strengths and weaknesses from an accountability standpoint, and strengthen documentation efforts.⁹⁶⁾

94) A/HRC/40/36, paras.23-25.

95) A/HRC/25/63, para. 94 (c)

96) A/HRC/34/66/Add.1, para. 86

Setting up a central information and evidence repository is a complex task. As a first step, OHCHR has created an electronic database in which it is in the process of storing information that OHCHR and the commission of inquiry have gathered, and information published and/or made otherwise available by other stakeholders. In entering such data, the accountability team carries out, where possible, a preliminary reliability and credibility assessment and triangulates such information with other assessed sources. Besides functioning as a central archive for information and evidence, the electronic database will facilitate the identification of elements of crimes, modes of liability and possible perpetrators, thus paving the way to the opening of specific case files and the building of criminal cases.⁹⁷⁾ The database has been specifically designed to ensure that information is handled in accordance with the consent of the provider and to protect confidentiality and the security of witnesses and victims. The server is physically located in Geneva so as to guarantee the highest level of cybersecurity and the protection of sources and information contained in it. Access to the database will be provided only to future accountability mechanisms with the consent of the provider, and after any protection and operational concerns are duly considered and addressed.⁹⁸⁾

As more information is collected and additional analysis performed, the architecture of the database will require updates and adjustments in order to ensure that it remains an effective tool for any future accountability efforts and/or mechanisms.⁹⁹⁾

97) A/HRC/40/36, paras.31-32.

98) A/HRC/25/63, para. 94 (c)

99) A/HRC/40/36, para.34.

The analysis by OHCHR of information currently available confirms 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. As recommended by the commission of inquiry and the group of independent experts, the prosecution of crimes committed in the Democratic People's Republic of Korea through the creation of an ad hoc tribunal or referral to the International Criminal Court should remain a priority in the long term. While the conditions may not yet be in place for either option to materialize, it is imperative to ensure that information is collected and stored for criminal accountability purposes.¹⁰⁰⁾

2. European Union and the issues of human rights in North Korea

The European community placed emphasis on its relationship with Asian countries in 1995, and the European Parliament adopted the report, which stressed the need for partnership with Asian countries. However, North Korea is simply excluded from the report.¹⁰¹⁾

Nowadays, EU is uniquely placed for such engagement given that in East Asia it is increasingly seen as a reliable partner, a political and economic power without military presence and an honest broker whose foreign policy is not based on geostrategic considerations as in the case of the United States (US) or Russia. Therefore, EU needs to ponder what to do if the DPRK remains intransigent, as well as policy options in case they become more willing to engage. EU is at the forefront of efforts

100) A/HRC/40/36, para.46.

101) Robert Chambers, *North Korean Human Rights: A View from the International Community*, pp.13-15.

to keep the issue of human rights in North Korea high on the international agenda.¹⁰²⁾

Firstly, if North Korea does not change its behavior, the EU can still use its humanitarian assistance instruments, which have had the effect of avoiding the famines seen in the 1990's, and engage on non-political issues such as development of the tourism industry, which is a concern for the government. The EU can find many receptive, accessible interlocutors on non-political issues among scientists and members of the middle class and mid-ranking officials. It can build in this respect on its record of being engaged with North Korea for a long time without interruption (unlike the US and Japan). The latter countries have an equal if not bigger stake on the non-proliferation issue but the EU is better placed than them to engage with the regime. If the DPRK maintains a non-cooperative stance over a longer time horizon, the EU should adopt a step-by-step, action-by-action approach, similar to that used during the Clinton and Bush administrations years.

Secondly, If the North Korea does change its behavior, responding positively also to US signals of willingness to engage like in the cases of Cuba or Iran, the EU can engage by financing development projects linked to a gradual reduction of the weapons of mass destruction programme, through an action-for-action process. The EU can provide valuable training and capacity-building assistance, as it already did in the past. Human rights dialogue could start from issues such as workplace safety, and then move slowly into different issues. It could also engage workers overseas when implementing European programmes.¹⁰³⁾

102) European Parliament's Subcommittee on Human Rights, *Human rights in North Korea: accountability vs. engagement*, 2016, p.6.

Section 2 | Non-Governmental Organizations

By the 1990s, North Korean human rights issues was not an urgent part of the agenda of the Non-governmental organizations activities about human rights violation. It was noted that sufficiently planned and coordinated effort should be made to ensure the attention to the seriousness of the North Korean human rights issues. And some plans needed to be well-informed about the nature of the regime and specific human rights violations, and should link all concerned individuals and organization in an international and regional network.¹⁰⁴⁾

1. Amnesty International

According to Amnesty International Report 2017/18, although the government took some positive steps to engage with international human rights mechanisms, the situation on the ground failed to show real progress. Up to 120,000 people continued to be arbitrarily detained in political prison camps, where conditions fell far short of international standards. Restrictions on the rights to freedom of expression and freedom of movement remained severe. Workers sent abroad suffered harsh working conditions.¹⁰⁵⁾

103) European Parliament's Subcommittee on Human Rights, *Human rights in North Korea: accountability vs. engagement*, p.9

104) Robert Chambers, *North Korean Human Rights: A View form the International Community*, pp.22-23.

105) Amnesty International - North Korea
(<https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/north-korea/#research>)

In Amnesty International Submission for the UN Universal Periodic Review in May 2019, Amnesty International evaluates the implementation of recommendations made to the DPRK in its previous UPR, including in relation its engagement and cooperation with the UN human rights mechanisms and other international human rights-related organizations.

Systematic, widespread and gross human rights violations continue, and up to 120,000 people remain in detention in four known political prison camps and at risk of forced labour, as well as torture and other ill-treatment. Many of those living in the camps have not been convicted of any internationally recognized criminal offence, but remain detained arbitrarily merely for being related to individuals deemed to be a threat to the state or for “guilt-by-association”.¹⁰⁶⁾

North Korea continues the secrecy surrounding its use of the death penalty, with no official statistics released to Amnesty International’s knowledge. Death sentences are believed to be imposed and carried out extensively, often after unfair trials and without the possibility of appeal. The lack of transparency surrounding the death penalty makes it impossible to determine the frequency of its use. Interviews with individuals from North Korea have revealed cases of public executions, including for crimes that are not punishable by death under domestic law, such as use of pornography. Some informants, however, also told Amnesty International that public executions had recently been discontinued.¹⁰⁷⁾

106) Amnesty International, *Submission for the UN Universal Periodic Review, 33rd Session of the UPR Working Group*, May 2019 (ASA 24/9712/2019) p.6.

107) Amnesty International, *Submission for the UN Universal Periodic Review, 33rd Session of the UPR Working Group*, p.9.

The report recommended on national human rights framework that it should continue to engage with UN human rights treaty bodies, and to strengthen coordination at the national level to ensure implementation of the treaties to which the DPRK is a State Party, and grant immediate and unrestricted access to all UN Special Procedures who request to visit North Korea, including the Special Rapporteur on the human rights situation in the Democratic People's Republic of Korea.¹⁰⁸⁾

2. Human Rights Watch

Human Rights Watch investigates and reports on abuses happening in all corners of the world. It directs its advocacy towards governments, armed groups and businesses, pushing them to change or enforce their laws, policies and practices. It partners with various organizations across the globe to protect embattled activists and to help hold abusers to account and bring justice to victims.¹⁰⁹⁾

North Korea remains one of the world's most repressive states. In his seventh year in power, Kim Jong-un—who serves as chairman of the States Affairs Commission and head of the ruling Workers' Party of Korea—continues to exercise almost total political control. The government restricts all civil and political liberties, including freedom of expression, assembly, association, and religion. It also prohibits all organized political opposition, independent media, civil society, and trade unions.¹¹⁰⁾

108) Amnesty International, *Submission for the UN Universal Periodic Review, 33rd Session of the UPR Working Group*, p.9.

109) <https://www.hrw.org/about/about-us>

110) Human Rights Watch, *World Report 2019*, p.437.

According to its 2019 report, North Korean government routinely uses arbitrary arrest and punishment of crimes, torture in custody, and executions to maintain fear and control over the population. The government and security agencies systematically extract forced, unpaid labor from its citizens to build infrastructure, implement projects, and carry out activities and events extolling the ruling Kim family and the Workers' Party of Korea.¹¹¹⁾

In its statement in March, 2019, the Human Rights Watch pointed out that accountability for international crimes is essential. The Special Rapporteur has rightly stressed that “the establishment by OHCHR of the repository and database will be useful for any national or international accountability mechanisms to be established in future.” We join the Special Rapporteur’s call that the Human Rights Council “extend the mandate of the accountability project and allocate appropriate funding to OHCHR to meaningfully implement its mandate.”¹¹²⁾

3. The Committee for Human Rights in North Korea

The Committee for Human Rights in North Korea (HRNK), founded in 2001 and based in Washington DC, is a non-partisan human rights organization whose principal objective is to raise international awareness of North Korea's human rights situation through the publication of well documented reports and by undertaking outreach activities in support of the recommendations in those reports. The Committee’s research and

111) Human Rights Watch, *World Report 2019*, p.442.

112) Human Rights Watch, *Strong Measures Needed to Advance Accountability in North Korea* (<https://www.hrw.org/news/2019/03/12/strong-measures-needed-advance-accountability-north-korea>)

publication activities focus on how the North Korean totalitarian regime abuses the rights of its citizens, its vast system of political prisons and labor camps, the regime's denial of equal access to food and goods, and the plight of refugees fleeing to China.¹¹³⁾

HRNK has proposed '10 practical and specific measures for advancing human rights in US policy toward North Korea', and two of them are regarding broaden US policy on North Korea to include bilateral and multilateral approaches to human rights issues, and prepare for political transition and a humanitarian crisis in North Korea.

HRNK points that in dealing with North Korea, concerns about peace and nuclear disarmament have taken precedence over the defense of human rights. However, precedents exist for integrating human rights concerns into policies toward countries where nuclear weapons occupy a central point of discussion. Broader discussions about political, economic, energy, human rights and humanitarian concerns have the potential to create a more solid foundation for talks about nuclear issues.

US could raise human rights concerns and seek North Korean agreement on specific steps, such as: 1) Accelerated and expanded family reunifications; 2) International monitoring of food distribution to ensure it reaches the intended recipients; 3) Decriminalization of movement within North Korea and across the border, and an end to the persecution of those who return voluntarily or are forced back into North Korea; 4) The release of innocent children and family members of those convicted of political crimes; 5) Access to prisoners by the International Committee of the Red Cross (ICRC), the World Food Program (WFP) and other international agencies; 6) Reviews of

113) <https://www.hrnk.org/about/about-hrnk.php>

the cases of prisoners of conscience with the ICRC or Amnesty International with a view to their release; and 7) Identification and provision of a full accounting of prisoners of war from the Korean War and abductees missing from South Korea, Japan, and other nations.¹¹⁴⁾

These steps represent human rights issues that can be raised in negotiations with the regime. US multilateral initiatives and discussions should also give prominence to North Korean human rights issues. US should recognize and build on the obligations that the North Korean government has undertaken in international agreements. Further, it could explore the application of the *responsibility to protect* (R2P) doctrine to the human rights situation in North Korea, since the prison system and other practices can be shown to constitute crimes against humanity.¹¹⁵⁾

In the event of political change in North Korea, it may be more receptive to addressing some human rights concerns as a means of signaling to the rest of the world that its intentions are friendly. International access to the prison camps will need to be given the highest priority. Prisoners constitute a vulnerable group to whom food, medicine and shelter should be provided immediately. The International Labor Organization (ILO) will need to be brought in to review standards of work at the camps where reports of forced and slave labor and below-subsistence food rations have been producing large numbers of deaths. Also, international economic assistance should be envisioned

114) <https://www.hrnk.org/publications/policy-recommendations.php>

115) <https://www.hrnk.org/publications/policy-recommendations.php>

if new leadership demonstrates a willingness to pursue improvements in North Korea's human rights practices. Therefore, international aid for states in transition should be made available to North Korea to help with the establishment of the rule of law, respect for human rights, political parties, an independent media and the other essential features of a democratic society.¹¹⁶⁾

4. Database Center for North Korean Human Rights

Database Center for North Korean Human Rights(NKDB) is a non-profit civil society organization that seeks to document North Korean human rights violations, pursue transitional justice, and provide relief to victims. NKDB has established the first North Korea human rights archive in South Korea.¹¹⁷⁾

North Korean Human Rights Archives, an affiliate organization of NKDB, was created in 2007. Ever since, the North Korean Human Rights Archives has been conducting North Korean human rights analyses with professionalism, concrete record keeping of said analyses, and systematic record preservation. Thus far, NKDB's North Korean Human Rights Archives has been able to amass data on over 120,000 cases relating to North Korean human rights, supported by in-depth interviews, and over 20,000 surveys of resettled North Korean defectors. To obtain fair and objective accounts of North Korean defectors' voices, NKDB's North Korean Human Rights Archives records the accumulated accounts through the independently created Unified Human Rights Database.

116) <https://www.hrnk.org/publications/policy-recommendations.php>

117) <https://en.nkdb.org/NKDB>

NKDB conducts investigations and research with a founding principle of protection for the witnesses and victims, as well as avoiding secondary harm for those currently in North Korea.¹¹⁸⁾

Serious human rights violations and crimes against humanity occur within North Korea can partly be revealed by collected testimonies, which demand fairness and objectivity. The data NKDB has secured the utmost important source for countering the matter of criminal accountability of North Korea in the long term.

5. 38North

The main objective of the 38North is to bring the best possible analysis to both seasoned North Korea watchers and general audiences alike. 38 North is an American-based project which draws on experts from around the world to provide international perspectives as well. To accomplish these objectives, 38 North harnesses the experience of long-time observers of North Korea and others who have dealt directly with North Koreans.¹¹⁹⁾

To promote the human rights of the North Korea's people, dialogue should be pursued. Firstly, holding a dialogue should not be a point of barter. Dialogue must be viewed as a legitimate part of diplomatic discourse and not a vehicle to trade away other human rights goals. Governments should be expected to participate in discussions on human rights and not be rewarded for them. Secondly, the UN High Commissioner for Human Rights Office should be the focal point for dialogue with

118) <https://en.nkdb.org/record>

119) <https://www.38north.org/about/>

North Korea in line with UN resolutions calling for dialogue adopted by consensus in the General Assembly. A dialogue should seek to establish technical assistance programs to help North Korea bring its laws into line with international standards, set up a national human rights commission, and identify the steps needed to carry out the recommendations of the UPR and the UN treaty bodies. Thirdly, the “human rights contact group,” recommended by the COI, should be formed to promote a regionally focused longer-term dialogue. It could become the basis for the creation of a multilateral framework for peace and security in Northeast Asia. Regional security and economic as well as human rights and humanitarian issues could be discussed under its auspices. A broader framework for negotiations might lead to more sustainable results in the long term. Lastly, North Korea’s acknowledgement of reform through labor centers incarcerating political and non-political detainees for short terms, should be used to open a door to access these centers, followed by discussion of the political prison labor camps where brutally treated men, women and children are held.¹²⁰⁾

120) Roberta Cohen, A Human Rights Dialogue with North Korea: Real or Illusory? (<https://www.38north.org/2014/10/rcohen101614/>)

Chapter 5

Human Rights and the Criminal Justice Issues of
Accountability in North Korea

Criminal Justice and the issues of accountability in North Korea

Chapter 5

Criminal Justice and the issues of accountability in North Korea

Section 1 | Records of North Korean Human Rights Violations

Before the unification of the West and East Germany, West Germany collected and recorded approximately 41,390 cases of human rights abuses committed in East Germany until the unification by establishing 'Salzgitter Central Archive'¹²¹⁾ under the Salzgitter-Bad District Court in 1961. This let the world know about human rights status in East Germany, and it is providing materials for human rights policy and education after unification.¹²²⁾ This becomes the model of North Korean Human Rights Archives in South Korea which will provides materials for human rights policy, including that of criminal accountability.

121) Group Archive | Salzgitter AG Geschichte
(<https://geschichte.salzgitter-ag.com/group-archive>)

122) The First National Body to Have Human Rights Archive, Expecting to Address Human Rights Violations in N. Korea
(<https://www.humanrights.go.kr/site/program/board/basicboard/view?currentpage=15&menuid=002002005&pagesize=10&boardtypeid=7013&boardid=7001427>)

1. Center for North Korean Human Rights Records

In 2016, the Center for North Korean Human Rights Records was established at the Ministry of Unification to collect and record information with the aim of improving human rights situation of the North Korean people based on Article 13 of the North Korean Human Rights Act.

Its main function is to conduct investigation and research on human rights in North Korea and to work on matters concerning the human rights of Korean War prisoners, detained abductees in North Korea, and separated families. As for keeping records, which has possibilities of criminal evidence, the Center collects, studies, records and publishes data and information on North Korean human rights, especially, cases of human rights violations in North Korea.¹²³⁾

The Center conducts investigation on human rights in North Korea, and researches the overall human rights situation and specific cases of human rights violations in North Korea through questionnaire surveys of and in-depth interviews with North Korean defectors at *Hanawon*.¹²⁴⁾

Systematic surveys are conducted in cooperation with other agencies and through an advisory group of experts from the private sector. The Center gathers written sources and information related to North Korean human rights at home and abroad, as well as first-hand investigation. One of the main tasks of the Center is to publish and distribute a report

123) Ministry of Unification

(https://www.unikorea.go.kr/eng_unikorea/whatwedo/NorthKoreanHumanRights/records/)

124) Hanawon has been described as part halfway house, part trade school and part reeducation center. Established in 1999, Hanawon is a South Korean government resettlement facility that all North Korean defectors must “graduate” from before entering into society. Hanawon is funded by Korea’s Ministry of Unification. (<https://www.crossingbordersnk.org/hanawon>)

on human rights violations to make the human rights situation in North Korea widely known. It also holds a briefing session on the human rights situation in North Korea at the time of publication of an annual report in order to help people grasp the situation more accurately.¹²⁵⁾

2. North Korean Human Rights Documentation Office

Records involving cases of human rights violations collected by the Center for North Korean Human Rights Records are transferred to the North Korean Human Rights Documentation Office of the Ministry of Justice.

Before the establishment of the Office, National Human Rights Commission of South Korea had established 'North Korean Human Rights Documentation Center and Archive' in 2011, and held the opening ceremony on March 15. Through this initiative, the Commission tried to make efforts to improve North Korean human rights by systematically collecting, recording, and preserving the cases of the violation of human rights in North Korea and using the data for establishing policies for improving human rights in North Korea. This was the first time the governmental agency systematically manages related materials. With this Center and Archive the Commission planned to manage the cases of the violation of human rights in accordance with related legal instruments protecting human rights, including the constitutional law, international human rights treaties, and Rome Statute of the International Criminal

125) Ministry of Unification
(https://www.unikorea.go.kr/eng_unikorea/whatwedo/NorthKoreanHumanRights/records/)

Court.¹²⁶⁾

When the North Korean Human Rights Bill proposed, the Bill said that the North Korean human rights document archive be established under the Ministry of Justice, of which main purpose is to impose punishment on perpetrators of human rights infringements in North Korea. Accordingly, the National Human Rights Commission pointed out that such archives under the management of the Ministry of Justice would be difficult to collect documents on various types of human rights infringements which are not subject to punishment. In addition, it might be difficult for the documents to be utilized for improvement of North Korean human rights. So the Commission argued that the bill on North Korean human rights has to consider all these circumstances to be able to achieve the original purpose of its achievements, and expressed an opinion that the Commission has to be a main agency in charge of North Korean Human Rights Act.¹²⁷⁾

However, the North Korea Human Rights Documentation Office established as an affiliated organization of the Ministry of Justice in accordance with the North Korean Human Rights Act enforced at September 4, 2016.

The Office preserves and manages materials collected and recorded by the North Korea Human Rights Record Center. Including records of North Korea Human Rights surveys and research, materials related to

126) The First National Body to Have Human Rights Archive, Expecting to Address Human Rights Violations in N. Korea
(<https://www.humanrights.go.kr/site/program/board/basicboard/view?currentpage=15&menuid=002002005&pagesize=10&boardtypeid=7013&boardid=7001427>)

127) National Human Rights Commission, NHRCK expressed opinion to the Speaker of the National Assembly to adopt its recommendation on North Korean Human Rights Act (Press Release, 2014.12.12)

prisoners, abductees and separated families will be transferred every three months. The materials transferred from the North Korean Human Rights Record Center will be thoroughly and safely preserved and will serve as the basis for protecting and promoting the human rights of North Koreans. The Ministry of Justice sets a record preservation and analysis system that will enable the North Korea Human Rights Documentation Office to play a major role in improving the human rights situation of North Koreans.¹²⁸⁾

Section 2 | Possible Criminal Accountability of North Korea

1. Human Rights Violations in North Korea to be Criminally Accountable

In its report of 2019, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea regretted that the the Government of North Korea, the primary duty bearer relating to human rights obligations, continues to oppress its people's fundamental freedoms and violate their human rights.¹²⁹⁾

Thus, the Special Rapporteur recommends that the UN and international community should continue to promote accountability in North Korea.

128) Ministry of Justice, North Korea Human Rights Documentation Office (Press Release, 2017.3.16)

129) Situation of human rights in the Democratic People's Republic of Korea (A/74/275/Rev.1) para.2.

So international society should use any available opportunity for dialogue with North Korea to create an environment that integrates human rights into ongoing peace and denuclearization talks and seeks progress in the human rights situation, in particular by calling for the prevention of violations, and Support efforts to promote accountability in North Korea, including the work of the OHCHR accountability team.¹³⁰⁾

A. Freedom of information and communication

The surveillance and close monitoring of citizens and other severe restrictions on basic freedoms continue to be widespread in North Korea. An escapee from the north-east area described her life there as “no freedom, no rations, no commercial activities, and no happiness for anyone in farming areas”. Newspapers, radio, television and the Internet are completely controlled by the Government, in particular by the Propaganda and Agitation Department of the Workers’ Party of Korea. North Korea is ranked the worst out of 180 countries in the 2019 World Press Freedom Index, as evaluated by Reporters Without Borders, based on the level of freedom available to journalists.¹³¹⁾

The heavily controlled system in the Democratic People’s Republic of Korea is a complete denial of this fundamental freedom. The Government justifies restrictions imposed on freedom of expression by stating that the restrictions are necessary to protect national security. The Human Rights Committee expressed its concern in the review of the second periodic report of North Korea in 2001 that “the notion

130) A/74/275/Rev.1. paras.71-72.

131) A/74/275/Rev.1. paras.21-22.

of 'threat to the State security' may be used in such ways as to restrict freedom of expression". That situation remains unchanged, for instance, the Criminal Law provides that "a person who, without any purpose to oppose the State, listens to the enemy's broadcasts systematically, gathers, keeps or disseminates materials or goods sent in or spread by the enemy shall be committed to disciplining through labour of less than one year ", and that "a person who commits the above-mentioned acts repeatedly or in large numbers shall be committed to reform through labour of less than five years". A citizen's life is closely monitored by the government authorities but also by peers. Every citizen is supposed to belong to a group, whether a youth league, a worker's union or a women's league, and is required to participate in self-criticism sessions every Saturday. This practice violates the right to hold opinions without interference and the right to privacy. ¹³²⁾

B. Rights of persons deprived of liberty

The Ministry of State Security is the agency that deals with serious political crimes, "anti-State" and "anti-people" crimes. Article 2 of the 2012 Criminal Procedure Law emphasizes that the State should distinguish allies and enemies in combat against anti-State and anti-national crimes. However, the law itself does not define what constitutes crimes of a political nature. Suspects of anti-State and anti-national crimes are arbitrarily arrested by Ministry of State Security agents without any warrant or notification of reasons, and without judicial guarantees. After the arrest, the Ministry interrogates the suspects at interrogation detention

132) A/74/275/Rev.1. paras.27-29.

centres, which exist at the county, provincial and national level. In addition, according to information received, the Ministry of State Security has a number of secret underground interrogation detention facilities, including a large one in Pyongyang. The decision to send the suspect to a *kwanliso*¹³³⁾ seems to be made exclusively by the Ministry of State Security, who can either use the normal legal procedures or simply issue an administrative order.¹³⁴⁾

C. Torture and ill-treatment in detention facilities

In the pretrial detention facilities run by the Ministry of State Security and the Ministry of People's Security, detainees are forced to sit in a still position all day with short or no breaks. If they move slightly, they are either beaten, kicked or forced to kneel down on the bare floor and stay still for a period of time as punishment. Such violence is commonly used to compel suspects to confess to a crime, or to provide information in a short amount of time. The food provided is inadequate in quantity and quality. Access to sanitation is limited to a small toilet and washing facility inside the cell and the detainees have to wash themselves quickly with cold water during breaks.¹³⁵⁾

133) North Korean detention camp for political prisoners. It is a detention facility for those who have committed political crimes against the Leader or regime, and is managed by The Ministry of State Security. (National Human Rights Commission of Korea, Korean-English Glossary of North Korean Human Rights Terms, 2016, p.101)

134) A/74/275/Rev.1. paras.32-33.

135) A/74/275/Rev.1. paras.38-39.

D. Enforced disappearance

People who have been accused of committing crimes against the State are being sent to such camps, without any legal or procedural guarantees, in a manner that amounts to enforced disappearance. Those who believed that their family members had been sent to a kwanliso still did not know what had happened to their family members even after many years.¹³⁶⁾

2. Transitional Justice and Accountability in North Korea

In the aftermath of large-scale violence, conflict or political upheaval, societies must be enabled to address grievances and human rights abuses. Nationally led transitional justice processes contribute to atonement for human rights violations and can facilitate state accountability. These practices help to establish trust and set the conditions for a peaceful democratic governance, and at the same time prevent societies from relapsing into systematic discrimination or violence.¹³⁷⁾

To actualize transitional justice, both the administration of justice to persecutors of injustice, and social integration and rehabilitation should be taken into account. The need for peace and social stability in a given transitional society is often at odds with the calls for justice. In a transitional society, there is a virtual danger that the cause of justice can be compromised. Likewise, in the Korean context, some may argue

¹³⁶⁾ A/74/275/Rev.1. para.40.

¹³⁷⁾ <https://www.undp.org/publications/complementarity-and-transitional-justice>

blanket amnesty for all the breaches of human rights norms in North Korea is required to alleviate the anxiety of prosecution on the part of the North Korean regime elites. If the integration of the two Koreas would eventually come true from an internal collapse inside NK, South Korea may not face much difficulty in the administration of transitional justice in the post-integration with North Korea.¹³⁸⁾

If defines ‘accountability’ as criminal prosecution, accountability would be likely to involve the compilation of information and testimony on human rights abuses. Criminal convictions could be expected to provide at least some comfort for victims, whether in the form of reparations and punishments. In addition to deterring crimes in North Korea, the international community may be incrementally acting to deter crimes by abusive regimes elsewhere in the world by strengthening a global accountability norm. However, the focus on accountability could also have a detrimental effect on North Korean power elites, who might be discouraged from peacefully giving up power due to fear that they would be held accountable. On the other hand, domestic prosecution within North Korea is utterly implausible, and prosecution in other countries using universal jurisdiction seems impractical as well. Of course, accountability can be furthered through the collection of data and evidence for post-transitional prosecutions.¹³⁹⁾

138) Seong-Phil Hong, *Transitional Justice in North Korea: Accountability for Human Rights Atrocities*, 2010
 (https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/110124_Transitional_Justice_North_Korea.pdf)

139) Andrew Wolman, *Accountability for North Korean Human Rights Abuses: Five Questions*, 2017
 (<https://blogs.lse.ac.uk/humanrights/2017/07/04/accountability-for-north-korean-human-rights-abuses-five-questions/>)

Chapter 6

Human Rights and the Criminal Justice Issues of
Accountability in North Korea

Conclusion

Section 1 | Promoting Human Rights and Advancing Accountability in North Korea

What is to be done to the issue of accountability in North Korea in the name of human rights and under relevant existing mechanism? The conclusion of this report is to stress the importance of human rights dialogues based on international human rights standards, both to promote human rights in North Korea and to advance accountability in North Korea.

Undoubtedly, the steps that the authorities of North Korea and other countries involved in the situation on the Korean Peninsula have taken in search of peace and against the proliferation of nuclear weapons are extremely important. The rest of the world looks forward to auspicious positive results. But that peace will be significant for North Korean citizens only if it guarantees them an improvement in the exercise of their most fundamental rights.¹⁴⁰⁾

¹⁴⁰⁾ A/HRC/31/38, para.66.

Establishing foundations for peaceful unification is one of the keynotes of South Korean government. Peace and reconciliation must be a continuous project for preparing unification which will not be affected by any political situations.¹⁴¹⁾ Furthermore, it should be noted that in the long run, the human rights issues of North Korea will have a direct bearing on its democratization. South Korea needs to persuade the North to open itself and reform, in order to promote human rights situation in North Korea. Again, the human rights problem in North Korea can only be solved through democratization. Reform and open door policy will eventually brings democratization¹⁴²⁾

What does making issue of accountability in North Korea mean, then?

Human rights discourse on the accountability in North Korea suggests that the issue is not, shall not be any domestic or national issue, but international or universal issue. In South Korea, North Korean Human Rights Act has been introduced in 2016 after long debates on the issue of human rights violation in North Korean or human rights promotion for the North.

The problems commonly raised in the process of unification and the following social integration process of the long-divided two Korea are some judicial or criminal justice matters to solve the past of state crimes and political crime in relation to the truth, reconciliation, and recovery. So, it is necessary to develop a 'Korean model' for transitional justice

141) Kim, Han-Kyun et al, *Study on the Criminal Justice Policy and Integration for Korean Re-Unification (II)*, pp.59-61.

142) Kim, Hak-Joon, *Policy Directions towards North Korea for the Improvement of Human Rights in North Korea*, p.308.

which take the unification and reintegration of the North and South Korean peoples into account.¹⁴³⁾

The 2016 North Korean Human Rights Act itself may not be a legal basis on the matter of accountability, but it may build the foundation for the accountability of the North Korea's government and social integration under the idea of human rights. In particular, the 2016 Act sets up some human rights mechanism to manage not only North Korean refugees but also data of North Korea's infringement on human rights. Internationally, the UN Security Council, the UN General Assembly, and UN Human Rights Council are consistently working on human rights violations in North Korea at the international level. International human rights norm, United Nations system for human rights and the international and regional mechanism have become crucial in the discussion for criminal policy in the era of peaceful unification with the accountability in North Korea.¹⁴⁴⁾

In the 2019 report, the Special Rapporteur stress that his engagement with the North Korea would be beneficial for North Korean Government to invite independent monitoring of the human rights dialogue. The peace process requires transparency and openness with regard to the human rights situation in the North Korea in order to gain trust and confidence from the relevant parties and from the international community. At the same time, sustainable peace requires the realization of the human rights of ordinary citizens, because peace should be for

143) Kim, Han-Kyun et al, *Study on the Criminal Justice Policy and Integration for Korean Re-Unification (II)*

144) Kim, Han-Kyun et al, *Study on the Criminal Justice Policy and Integration for Korean Re-Unification (II) : Transitional Justice and Social Integration in the Era of Korean Re-Unification*, Korean Institute of Criminology, 2016, pp.61-64.

the people and the sustainment of peace needs to be supported by the population. The dialogue on denuclearization and peace must place the improvement of ordinary citizens' lives at the heart of discussions.¹⁴⁵⁾

North Korean government is both the party directly involved in making an effort for the peaceful unification together and the party involved as the object of transitional justice. It is difficult to prospect the future or continue on the effort for social integration and criminal policy in unification era by means of inter-Korean talks about human rights. However, the efforts to research and prepare the social integration plan and criminal justice policy of unification era should be go on in spite of such difficulties. In addition, unification is not just a problem going on between South and North Korea but a task that needs to be dealt both within international and regional level. Thus, international, regional principles as well as the established states should all be considered in the integration of the criminal justice system and the criminal justice policy.¹⁴⁶⁾

Section 2 | Human Rights Dialogue with North Korea

The Special Rapporteur reiterates that the best way to address the concerns of the Democratic People's Republic of Korea regarding the United Nations human rights agenda is by engaging with it in dialogue and cooperation.¹⁴⁷⁾

145) A/74/275/Rev.1, para.59.

146) Kim, Han-Kyun et al, *Study on the Criminal Justice Policy and Integration for Korean Re-Unification (II)*, pp.621-622.

1. International and regional dialogues

Support and assistance should be given by the international community to promote human rights situation in North Korea. Let alone the UN, European Union and other regional bodies, such as ASEAN could be involved in international and regional dialogue on the issues of human rights with North Korean government itself. Such dialogue and sufficient international interest must be sought by all concerned parties.¹⁴⁸⁾

2. EU and North Korea

According to the 'EU guidelines on human rights dialogues with non-EU countries' of 2008, which establishes the EU's approach for launching and conducting human rights dialogues with non-EU countries aims to mainstream human rights issues into all areas of EU external policy. EU conducts human rights dialogues with more than 40 non-EU countries. There are also ad hoc dialogues that extend to topics related to the common foreign and security policy, and dialogues in the context of special relation shared on broadly converging views. During the dialogue, the EU may refer individual cases to the non-EU country together with requests for a response and for the release of persons held. All human rights dialogues with non-EU countries must be assessed every other year, taking account of how well the objectives have been met. The progress made on the priority areas of the dialogue and how far the EU's activities have contributed to that progress must also be

147) A/74/275/Rev.1, para. 10.

148) Robert Chambers, *North Korean Human Rights: A View from the International Community*. p.28.

examined. Depending on the assessment, the dialogue will either be continued or terminated.¹⁴⁹⁾

EU has had a positive role in moving forward the UN agenda on human rights regarding North Korea. EU and Japan's co-sponsoring of a resolution in the UN Human Rights Council in March 2013 has led to the establishment of a Commission of Inquiry (CoI) with mandates to investigate human rights abuses in North Korea. This was a first concrete step in challenging North Korea on its human rights record and providing evidence of the inhumane human rights situation on the ground. The EU and Japan followed up on the CoI's demand by drafting and introducing the November 2014 General Assembly resolution endorsing the CoI report, explicitly referring to "crimes against humanity", and calling for the UN Security Council to refer North Korea to the ICC. EU-Japan cooperation has contributed to raising awareness both within the UN and among the general public. It has also increased UN pressure on the North Korea.

While the Security Council referring North Korea to the ICC is still unlikely due to Chinese and Russian opposition, the process that started with the establishment of the CoI opens a practical path for documenting and preserving evidence of crimes in the perspective of a possible future prosecution. Backed by a policy of critical engagement with North Korea, which relies on regular political dialogue and development assistance programmes on the one hand, and diplomatic pressure and sanctions on the other, EU led efforts on human rights are making a difference and providing a way for the EU to effectively engage with Pyongyang. In this respect, there may indeed be a continued role for

149) EU guidelines on human rights dialogues with non-EU countries
(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ar10115>)

the EU as a constructive soft security player in North East Asia. These initiatives have had a cost in terms of engagement with the North Korea, with a halt of EU-North Korean discussions at the end of 2014.¹⁵⁰⁾

3. ASEAN and North Korea

North Korea has established diplomatic relations with every ASEAN country, and has been a member of the ASEAN Regional Forum since 2000. It has sent 95 high-level diplomatic delegations to Southeast Asia over the past two decades, accounting for over a quarter of the known travel of top North Korean officials. North Korea's ties to Southeast Asia became strained, they were never completely broken. North Korea has reportedly continued to use its business ties in the region to evade sanctions and launder money through the international financial system, confounding attempts to put maximum pressure on the regime.¹⁵¹⁾

Even when ASEAN Regional Forum meeting of 2017 rebuked North Korea's long-range missile tests, ASEAN leaders denied a U.S. proposal to suspend Pyongyang from the Forum fell flat. As inter-Korean dialogue and talks between *Washington* and *Pyongyang* on denuclearization and the normalization of relations move forward, the nations of Southeast Asia could be helpful in many ways. They provided neutral ground for dialogue, and encouraged North Korea to take some reformative actions.¹⁵²⁾

150) Agatha Kratz, *North Korea: a role for the EU on human rights*, 2016 (https://ecfr.eu/article/commentary_north_korea_a_role_for_the_eu_on_human_right)

151) Daniel Wertz, *North Korea and ASEAN: Friends again, But it's complicated*, *Asia Pacific Bulletin*, No. 462, 2019, p.1.

152) Daniel Wertz, *North Korea and ASEAN: Friends again, But it's complicated*, p.2.

Section 3 | Inter-Korean Human Rights Dialogue for Peace Process

The issue of human rights in North Korea becomes a pending problem that needs to be dealt through both existing scheme of UN human rights mechanism and North Korean Human Rights Acts.

Respect for human dignity and personal liberties should be the basic principles in promoting North Korean human rights and in preparing transitional justice process. Both human rights efforts and some preparation of transitional justice should be made in a way that it contributes to the improvement in Inter-Korean relationship and to the peace of the Korean peninsula. If any accountability discourse leads to condemnation of the North Korean government under the ideal of human rights or any pursuit of persecuting through international criminal court system, that will cause political conflicts or a tension between two Koreas and in Northeast Asia. This would not provide any practical help in improving the human rights situation of North Koreans or to promote the peace in Korean peninsula.¹⁵³⁾

So-called ‘unification criminal justice policy’ may contribute to the basic plans for enhancing North Korean human rights. Such criminal justice policy can be specified into the collection and preservation of North Korea’s violation of human rights and the proceeding international criminal court procedure in the aspect of surveilling and restraining the infringement of the government, and the application of international

153) Kim, Han-Kyun et al, *Study on the Criminal Justice Policy and Integration for Korean Re-Unification (II)*, p.623.

human rights norms in promoting pro-human rights policies within the North Korean society. In particular, the preservation of records of North Korean human rights and the inter-Korean dialogues on human rights will become the foundation for enacting unification criminal law and policy. In order to promote inter-Korean and international dialogues on human rights in a way to draw consistent attention, while not to create a tension or a black-lash from North Korea, it needs to be based on the international norm of human rights shared between South Korea and North Korea.

Above all, the most realistic approach is to induce North Korea to abide by the International Covenants on Civil and Political Rights through improvement plans in criminal policy and criminal law as a member of the international society. The agenda appropriate for inter-Korean conversation on human rights are the international human rights norm that both South and North Korea have ratified, in other words, the international regulation about civil and political rights, agreements for rights of the children, Convention on the Elimination of All Forms of Discrimination against Women, and the optional protocol for child prostitution and child pornography. Efforts should be made for the faithful discharge of each international norm of human rights with regard to the current criminal laws. The overall amendment in criminal law is hard to be made unless of a crucial political change. Unification itself is the chance of a lifetime. That is, the unification criminal law is not just an extension of South Korean criminal law but should be a process of innovation as an advanced unification criminal law with regard to guaranteeing human rights based on the gender

equality and the international norms of human rights while overcoming the limits of criminal law in both South and North Korea.¹⁵⁴⁾

Among the international human rights norms that South Korea has ratified, North Korea has not ratified are Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, International Convention on the Elimination of All Forms of Racial Discrimination, Optional Protocol for Rights of the Children in relation to Armed Conflicts. Also, the Optional Protocol of the Convention against Torture, Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty, International Convention on the Protection of All Migrant Workers And their Families are the international treaties both South and North Korea have not ratified or signed for, yet. If North Korea volunteers to join in the International Covenants on Civil and Political Rights and the South and North Korea together expand the embracement of International Covenants on Civil and Political Rights, the principles for protecting the weak and the minority would be clearly established for the future unification criminal law. Both South and North Korea will be able to become countries to have abolished death penalty by ratifying the Second Optional Protocol the International Convention on Civil and Political Rights. It is related to the hope that the society could be unified to a place where no life should be taken away by the government power anywhere in both South and North Korea. In the future when enacting constitutional and criminal law, death penalty and the establishment of an alternative would be the main agenda in reforming the fundamental

154) Kim, Han-Kyun et al, *Study on the Criminal Justice Policy and Integration for Korean Re-Unification (II)*, p.623.

system of punishment according to the principles of guaranteeing human rights.¹⁵⁵⁾

Under the current going state of inter-Korean relationship and the regional situation around Korean peninsula, human rights dialogue in the dimension of international society and between the North and South may be delayed or may make little progress for the time being. However, such difficulties and some negative prospect must not stop the continuous process of peaceful co-existence and social integration of the two Korea. All efforts in promoting human rights in North Korea and advancing accountability in North Korea is both for all the people in the two Korea, and for peace and security in international society at the same time. Such laborious task demands human rights dialogues, not mutual accusation in the name of human rights. The dialogue must be based on the international human rights mechanism, and be supported by North Korean Human Rights Act system.

155) Kim, Han-Kyun et al, *Study on the Criminal Justice Policy and Integration for Korean Re-Unification (II)*, p.624.

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국문요약

본 보고서는 북한에 대한 일방적 제재를 넘어 인권피해자에 대한 국제사회 차원의 accountability 문제를 새롭게 정립하고, 한국의 인권선도국가로서의 책임성과 지속가능한 남북평화교류협력 틀 안에서 북한인권문제의 효과적 논의방안을 제시하며, UPR 제도와 북한인권법 체계 하에서 남북 인권 대화를 통한 국제인권규범에 부합한 형사사법개혁 협력의제 설정을 제안해 보고자 한다.

2019년 3월 유엔 인권최고대표사무소(OHCHR) 보고서 「Promoting accountability in the North Korea」는 북한내 구금시설 등 인권침해 조사와 가해책임자 제재 필요성과 함께 국제인권규범 및 기준에 따라 사법, 입법, 형벌집행 제도를 포함한 형사 사법 제도 개혁을 실시할 것을 촉구하였다. 또한 2019년 3월 제40차 유엔인권이사회 위원회에서 북한인권특별보고관의 북한인권문제에 대한 보고가 있었으며, 유엔인권최고대표는 국제사회의 북한인권 논의와 북한과의 인권대화가 평화와 안전 목표에 기여함을 강조하였다. 이어서 2019년 5월 6일부터 15일까지 유엔인권이사회에서 북한 대상 제3차 보편적 정례인권검토(Universal Periodic Review) 회의가 4년 만에 개최되어, 북한인권문제가 유엔과 유럽연합 등 국제사회 주요현안으로 더욱 부각되었다.

북한내 인권침해 문제는 인권침해에 대한 공적 책임성(accountability for human rights violations)과 관련된 국제사회 과제다. 2014년 북한인권보고서가 확인한 북한내 체계적이고, 광범위하며 심각한 인권침해에 대한 공적 책임성의 구체적 문제는 북한내 인권침해 가해자에게 책임을 부과하는 문제, 피해 북한 주민(또는 이탈주민)을 보호지원하는 문제, 북한의 인권상황

전반을 개선하는 문제, 세 가지 차원으로 이루어진다.

2017년 북한인권특별보고관은 북한인권문제가 인권이사회와 유엔총회에서 지속적으로 다루어지면서 북한측에서도 국제인권기제와 협력하는 등 일부 성과가 있기에 공적 책임규명과 대화를 병행하는 방식(two-track approach)을 지속하겠다는 입장을 밝혔다. 북한인권 공적책임 전문가 그룹은 북한내 중대한 인권침해 범죄에 대한 공적 책임규명은 법적 필요조치로서 뿐만 아니라 피해자의 권리를 회복하고 법치와 인간존엄성이 존중받는 사회로의 변화, 장기적 평화와 안정을 가져올 것이라는 점을 강조하면서, 인권원칙에 기반한 공적 책임규명 절차, 그리고 북한내 인권침해의 심각성을 고려한 포괄적, 다각적 접근방식을 제안하였다. 한국 정부대표 또한 북한인권문제에 대한 모든 인권체제의 관여 필요성, 북한 지도부를 포함한 책임자에 대한 공적 책임 규명 조치 필요성에 대해 강조하였다.

유엔과 국제사회는 인권을 보호하고 증진하는 데 있어 공적 책임규명과 과거청산사법 내지 전환기 정의의 중요성을 강조해왔는데, 이는 북한 인권 문제에 대해서도 적용된다. 이를 아직 유엔의 인권 메커니즘내에서 북한의 협력 하에 진행하기는 어려운 상황이다. 다만 현실적 한계들에도 불구하고, 단기 또 장기적인 인권 정책과 전략을 세워가고 북한 및 관계국들과 지속적인 대화를 유지하고 발전시켜나갈 필요는 있다.

따라서 북한인권문제와 관련하여 유엔의 다양한 인권메커니즘의 가능성과 축적된 경험을 전략적으로 활용하는 방안이 유엔 차원과, 지역 차원, 그리고 남북한 관계속에서 더욱 논의되어야 할 것이다.

물론 북한내 인권침해 문제에 관한 국제사회 노력을 이끌어가는 데 있어서 핵심 개념인 공적 책임성은 논쟁적 개념이다. 북한 인권침해 불법청산의 국내적·국제적 노력은 남북관계 발전과 한반도 평화에 이바지하는 방식으로 진행되어야 한다. 인권을 명분으로 북한정권을 일방적으로 비난한다면 정치적 갈등이나 동북아시아 긴장을 초래할 뿐 북한주민 인권상황 개선이나

한반도 평화체제 구축에 도움이 되기 어려울 것이다.

따라서 남북인권대화의 현실적 의제로는 남북한 형사법을 각각 국제인권 규약을 이행하는 방향으로 정비하는 방안, 남북한이 미가입한 형사사법 분야 국제인권규약에 가입하는 방안을 검토할 수 있을 것이다.

물론 북한내 인권상황 개선을 위해서는 공적 책임성의 규명과 부과도, 상호대화와 관여도 모두 필요하다. 북한인권과 공적 책임성 문제에서 국제 사회의 보편적 인권원칙과 남북한 평화협력 틀 내에서 남북인권대화 노력필 요성을 함께 강조해야 할 것이다.



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