

– The 46th Session of the United Nations Human Rights Council –
Summary Report of the United Nations High Commissioner for Human Rights

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Event recording: <https://bit.ly/3bWusqU>

This document has been prepared solely for the delegates participating in Model United Nations for Successful Reunification 2021.

Promoting Accountability in the Democratic People’s Republic of Korea

Introduction

Submitted in accordance with Human Rights Council resolution 40/20, the report describes the activities of the Office of the United Nations High Commissioner for Human Rights in promoting accountability for human rights violations in the Democratic People’s Republic of Korea (DPRK). The report highlights the progress made and discusses the challenges encountered. In addition, it examines information the Office has gathered on human rights violations committed in the DPRK, in the light of relevant international legal standards. The report concludes with recommendations addressed to the Government of the DPRK, Member States, the Human Rights Council and the General Assembly and other stakeholders.

Background

In its 2014 report (A/HRC/25/63), the commission of inquiry on human rights in the DPRK deduced that crimes against humanity had been committed and continued to be committed in North Korea. The commission of inquiry called for action by the international community to tackle the human rights situation in the country, referring to the International Criminal Court (ICC).

A report to the Human Rights Council (A/HRC/34/66/Add.1) by a group of independent experts included recommendations for the referral of the issue to the ICC, the establishment of an ad hoc tribunal for the DPRK, as well as the prosecution of crimes by Member States through the principle of universal jurisdiction. Moreover, the group of independent experts suggested for the international community to further improve its efforts to create a foundation for future criminal trials regarding human rights violations in North Korea.

In its resolution 34/24, the Human Rights Council decided to foster the capacity of OHCHR to allow the implementation of relevant recommendations suggested by the group of independent experts. In March 2019, the High Commissioner tabled a report to the Human Rights Council (A/HRC/40/36) defining the progress in implementing these recommendations provided in resolution 34/24. In its resolution 40/20, the Council extended that strengthened capacity for two additional years.

In March 2020, the High Commissioner tabled an oral update to the Human Rights Council, in accordance with resolution 40/20. United Nations human rights mechanisms, including the Special Rapporteur on the situation of human rights in the DPRK, have continued to make recommendations on the accountability for human rights violations committed in North Korea. In its most recent report to the General Assembly (A/75/388), the Special Rapporteur expressed concern about the visible lack of improvement or progress in advancing justice and accountability for human rights violations. Despite those continued calls for accountability, other political priorities related to the Korean Peninsula have lost emphasis by the international community on pursuing accountability for human rights violations in the DPRK.

On 28 September 2020, OHCHR presented a note verbale to the Government of the DPRK, under the auspices of resolutions 34/24 and 40/20. In this note verbale, the Government of the DPRK was requested to provide information on its measures to ensure the implementation of the recommendations provided in the High Commissioner’s first written report to the Human Rights Council in 2019. The

OHCHR stated that it accepted the possibility to explore paths for collaboration and exchange of information, and shared the present report with the North Korean Government. The Government of North Korea responded that it rejected the report.

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

Despite challenges presented by the COVID-19 pandemic the reporting period commenced.

Strengthening monitoring and documentation efforts

OHCHR continued to interview victims and witnesses of human rights violations, with the aim of collecting information on acts that may give rise to individual or State responsibility and to research structures of State entities that are responsible for such acts. OHCHR engaged with the Government of the Republic of Korea, both through meetings with officials and formal correspondence, in order to increase access to defectors at Government-administered resettlement centers. In 2019, OHCHR conducted missions to Japan to collect information about accountability efforts in relation to the DPRK, particularly in respect of abductions of Japanese national. In addition, OHCHR continued its efforts to identify defectors residing in the Republic of Korea (ROK), who had held positions of responsibility in the DPRK and may understand decision-making processes.

Consolidation of a central information and evidence repository

The central information and evidence repository will be a main resource for future national or international truth and justice processes. In 2020, the repository information and evidence preservation, storage, management and processing capacities were amplified due to a technological upgrade. The repository performs complex search and correlation functions to analyze trends and patterns, thus facilitating data-driven analysis and assessment. Essentially, the updated repository has a more profound level of data protection to ensure confidentiality and data security, in order to protect witnesses and victims. OHCHR continued its outreach to civil society organizations that document human rights violations, with the aim of stimulating those organization to provide material for the repository.

OHCHR continues to work with Member States and other United Nations mechanisms to increase the visibility of its work on accountability for human rights violations committed in the DPRK, as well as to foster coordinated action by the international community. Credible and comprehensive accountability measures for human rights violations and possible crimes against humanity committed in North Korea are crucial for a sustainable peace process on the Korean Peninsula.

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

Working to fulfil its mandate, as set out by the Human Rights Council, OHCHR focused on creating forums for cooperation on accountability issues relating to the DPRK and provided support and technical advice to partners seeking to pursue legal accountability. OHCHR analyzed evidence of abductions dating back to the Korean War and later abductions of foreign nationals, including from Japan and the Republic of Korea, in the 1970s and 1980s. OHCHR engaged with experts on options for the promotion of financial accountability, through the tracing and seizure or confiscation of illegal assets of individuals or entities responsible for human rights violations in the DPRK. OHCHR noted that significant documentation has been collected by various organizations on that State's acquisition of foreign capital, including through cyberattacks against financial and other institutions, and the exportation of raw materials and labor. The role of such activities in enabling human rights violations, including possible crimes against humanity, and the possibilities of asset identification and seizure for appropriate purposes of redress, require further consideration by specialized financial investigative experts, among others.

Key findings

Due to the absence of recent information on the political prison system, OHCHR has prioritized the examination of acts of violence for which it has recently received direct information: imprisonment, torture and enslavement within the ordinary prison system. The main State organs responsible for administering the prison system in North Korea are the Ministry of State Security and the Ministry of People's Security. However, since decision-making is largely centralized and the lines of authority within the Government of the DPRK are overlapping, it is likely that officials in superior positions at

local, regional and national levels of the Government are aware that subordinates down to the lowest rank of prison guard - or similar personnel - continue to commit human rights violations, potentially amounting to crimes against humanity.

OHCHR identifies that understanding decision-making processes that cause the commission of crimes remains essential to indicating responsible individuals. Collaboration and sharing of accurate information, including by Member States, is thus important to OHCHR analysis, as well as to future accountability processes.

Imprisonment

The available information indicates that persons who have defected the DPRK and have returned, been repatriated or have attempted to leave are systematically subjected to intentional deprivation of fundamental rights, in specific if the authorities assume that the individuals aimed to defect to the ROK.

Torture

OHCHR continued to receive accounts of the systematic infliction of severe physical and mental suffering upon detainees, through beatings, stress positions and starvation at detention facilities. This information reconfirms the findings of the commission of inquiry and suggests that the crime against humanity of torture perseveres in North Korea's ordinary prison system. The information provided by interviewees indicates that since 2014, there may have been slight improvement in the physical treatment of detainees in several detention facilities.

Enslavement and/or 'other inhumane acts'

OHCHR is concerned by the accounts of forced labor under severe conditions within the ordinary prison system, which may amount to the crime against humanity of enslavement. Although international law can allow for hard labor as punishment for crimes when issued by a competent court in a fair trial, the commission of inquiry indicated that "the extraction of forced labor can amount to enslavement if it is accompanied by aggravating circumstances that effectively destroy the juridical personhood of the victim".

By examining the conditions of forced labor reported by interviewees, OHCHR notes the degree of control exercised over detainees, their absence of freedom of movement, the measures taken to punish them for escaping, inhumane conditions and the use of physical violence and psychological terror. Moreover, OHCHR notes the potential profiting by State organs and/or individuals from labor performed by detainees. With reference to the conditions of forced labor reported by interviewees, OHCHR aims to continue to analyze information on its use in the DPRK in the next phase of its work.

Conclusions

Analysis of available information continues to confirm that crimes against humanity have been committed and may be ongoing in the DPRK. OHCHR reiterates that those responsible for past and ongoing crimes should be held accountable. A lasting peace on the Korean Peninsula can only be achieved if such acts cease and the rights of victims to truth, justice, reparations and guarantees of non-recurrence are achieved.

To achieve those aims, the prosecution of the alleged international crimes committed in the DPRK must remain a priority, whether through referral the ICC or the creation of an ad hoc tribunal. Simultaneously, it is essential to ensure that information continues to be collected to assist accountability strategies. This includes domestic processes and potential future international accountability processes. A referral to the ICC or the creation of an ad hoc tribunal or other comparable mechanism would provide a pathway to accountability, ensuring that those most responsible for human rights violations that may amount to crimes against humanity can be held to account at the international level. Such an approach would benefit from the foundations laid by OHCHR, specifically in relation to information-collection, documentation and awareness-raising. The Human Rights Council should continue to foster its support for the accountability work of OHCHR.

Recommendations

On the basis of the activities it has conducted to date pursuant to resolutions 34/24 and 40/20, the High Commissioner recommends that the Government of the DPRK:

1. Acknowledges the existence of serious human rights violations, which may amount to crimes against humanity, and take immediate steps to end such violations, including by demonstrating its willingness and capacity to undertake independent and impartial investigations into allegations of such violations and hold those responsible to account;
2. Grants international humanitarian organizations and human rights monitors immediate access to the country, including to all detention facilities;
3. Initiates reform of criminal justice legislation and rule of law institutions, including the judiciary and law enforcement and corrections systems, in accordance with international human rights norms and standards;
4. Ensures that victims of serious human rights violations, including those amounting to crimes against humanity, and their families are provided with adequate, prompt, effective and gender-sensitive reparation and remedies, including public acknowledgment of the truth of the violations suffered;
5. Ratifies all relevant international treaties and human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance.

On the basis of the activities it has conducted to date pursuant to resolutions 34/24 and 40/20, the High Commissioner recommends that Member States:

1. Take further steps to ensure accountability for those responsible for serious human rights violations in the DPRK at the international level, including through the referral by the Security Council of the situation to the ICC or the creation of an ad hoc international tribunal or other comparable mechanism;
2. Take steps to ensure that efforts aimed at securing a lasting peace on the Korean Peninsula give due priority to the human rights of the people of the DPRK, restoring the dignity of victims by respecting and upholding their rights to truth, justice, reparation and guarantees of non-recurrence;
3. Undertake, where possible, the investigation and prosecution of persons suspected of committing international crimes in the DPRK, including based on principles of extraterritorial and/or universal jurisdiction;
4. Continue to facilitate the work conducted by OHCHR pursuant to Human Rights Council resolutions 34/24 and 40/20, including with regard to access to individuals who have fled the DPRK, and to the collection and analysis of relevant testimony, documentation and information;
5. Take all necessary steps to maintain civic space, in particular with respect to victims' groups and other civil society organizations engaged in gathering information about the human rights situation in the DPRK and advocating for the rights of victims of human rights violations;
6. Consider means by which further relevant information under Human Rights Council resolutions 34/24 and 40/20 could be conveyed by States to OHCHR, subject to appropriate conditions.

On the basis of the activities it has conducted to date pursuant to resolutions 34/24 and 40/20, the High Commissioner recommends that the Human Rights Council and the General Assembly, acknowledging that a referral to the ICC for the creation of an ad hoc tribunal or other mechanism may be unlikely in the near future, consider extending the mandate of the dedicated OHCHR accountability team for an additional period of two years to further pursue implementation of resolutions 34/24 and 40/20, namely strengthening monitoring and documentation efforts by OHCHR, further developing the information and evidence repository and broadening the pursuit of efforts toward accountability for the crimes identified by the commission of inquiry.

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