Report on Accountability Strategy for Human Rights Violations in the DPRK

Authors:

Joanna Hosaniak

Daye Gang

International Legal Consultation:

Maxine Marcus

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NKHR

Citizens' Alliance for North Korean Human Rights (NKHR)

Introduction

The independent group of experts on accountability in the DPRK was mandated to explore appropriate approaches on accountability and recommend practical mechanisms of accountability to secure truth and justice for victims of possible crimes against humanity in the DPRK. This mandate is in direct relation to the recommendations of the Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea ("COI report"), which in its report makes a key recommendation for accountability, truth-telling, and victim-responsive policies:

> "Prosecute and bring to justice those persons most responsible for alleged crimes against humanity. Appoint a special prosecutor to supervise this process. Ensure that victims and their families are provided with adequate, prompt and effective reparation and remedies, including by knowing the truth about the violations that have been suffered. Launch a people-driven process to establish the truth about the violations. Provide adults and children with comprehensive education on national and international law and practice on human rights and democratic governance. Seek international advice and support for transitional justice measures."[1]

Various actors - the state, civil society and international community – play complementary roles at different stages in establishing proper mechanisms to deal with mass human rights violations. In terms of DPRK, we can envision that certain initiatives for accountability, truth-telling and victims policies can be undertaken immediately, and some will follow the long-term approach.

This report was prepared based on consultations with several experts and practitioners, who took part in the Strategy Meeting on Accountability organized by the Citizens' Alliance for North Korean Human Rights (NKHR) between November 18 and 23 in Seoul.

In line with the meeting structure, we are using four broad categories in this report:

- **documentation, evidence, investigation and analysis**
- **accountability in the form of criminal justice options**
- **truth and memorialization**
- **social and reparatory policies for the victims**

These broad categories also reflect most successful and comprehensive processes of seeking truth and justice and should be viewed in the broader context and as inter-connected.

Even if some of these initiatives may start at different stages, they should not be recommended as stand-alone, separate initiatives, but rather as parallel and complementary stages in the ongoing processes of seeking truth and justice.

In terms of the DPRK where reform of the state institutions most responsible for oppression and societal control, state apologies, truth and reparations remains elusive, approaches for accountability, seeking truth and justice should focus on both existing documentation and evidence in the possession of various actors in the international community and the relevant states, as well as the methods to strengthen these processes.

[1] "Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea," Paragraph 2020 (p).

The documentation of atrocities can serve both short-term and long-term purposes. It may be used for documentation of evidence, investigation and building cases for criminal prosecutions, but in the mid and long term it should be an ongoing process to map the mechanisms and structures of repression and understanding the chain of command and to establish the historical truth that serves the broader purpose of memorialization in society of what happened to whom and who was responsible. As a long-term policy, truth-seeking processes and the documentation of victims' accounts give recognition to the victims for their suffering and are also crucial in creating a basis for reparatory policies to the victims. In addition, documentation is a key element playing a role in vetting of personnel tainted by their involvement in the previous institutions of oppressions and the reform of judiciary and security apparatus. This option, however requires that the country first undergoes reform.

Criminal prosecutions can be very few for a variety of reasons – lack of evidence, passage of time, unfamiliarity with international law, lack of political will – many victims and perpetrators may have died and therefore inclusion of other processes is crucial to supplement the accountability strategy.

The COI report which came before the United Nations Human Rights Council on 7 February 2014 made a key recommendation for accountability, truth-telling, and victim-responsive policies:

> "The international community can necessarily only ensure accountability for a limited number of main perpetrators. **Once a process to carry out profound political and institutional reforms within the DPRK is underway, a parallel Korean-led transitional justice process becomes an urgent necessity.** At this stage, a domestic special prosecutor's office, relying on international assistance to the extent necessary, should be established to lead prosecutions of perpetrators of humanity. The process needs to encompass extensive, nationally owned truth seeking and vetting measures to expose and disempower perpetrators at the mid- and lower-levels. This process needs to be coupled with comprehensive human rights education campaigns to change the mind-sets of an entire generation of ordinary citizens who have been kept in the dark about what human rights they are entitled to enjoy and in how many ways their own state has violated them."[2]

The strategy toward accountability must take into account the long-term strategy of a broader transitional and transformative justice framework. This means in practice that any accountability process will have a short-term focus as well as a longer term impact.

[2] "Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea," paragraph 1203.

Table 1: STRATEGIES FOR ACCOUNTABILITY

	Documentation, Evidence, Investigations	**Accountability, Disqualification, Retributive Justice**	**Truth, Memorialization**	**Policies for the victims**
Strategies to be implemented immediately and in parallel and carried out long-term **Later stage implementation**	-Evaluation of the existing documentation by international criminal law personnel (UN office in Seoul, NGOs) -Building cases -Mapping of the institutions, individuals and patterns of criminality with supportive evidence from relevant countries, Central and Eastern European Archives -Investigation of evidence linking top chain of command with the institutions of oppression -Investigation into international financial channels of the totalitarian state, its usage and linkage with perpetrators and crimes -Training legal, forensic, medical, civil society personnel, historians, and journalists to assist the accountability processes in North Korea	-Maintaining calls for referral to ICC to maintain visibility of the North Korean case including through briefings at the UN SC - Domestic jurisdictions -Extraterritorial jurisdiction -Targeted sanctions against personnel involved in chain of command and institutions of oppression -Investigation into possible perpetrators travelling and resettling in communities - Imposing financial penalties on perpetrators (in criminal and civil trials)	-Truth and historical commissions -Inclusion of North Korean case in ongoing international research and memorialization efforts consistent with other post-communist societies -Recording of truth-telling and history telling initiatives - Establishment of a team of historians and experts with knowledge on similar security and oppression systems and North Korean experts to prepare contextual research - Publications and education programs for the public - Mapping of terrorscapes, mass graves	- Policies of resettlement, paying attention to particular needs of victims of political crime - DNA gathering for North Korean victims of human rights violations, relatives of victims in North Korea - special educational and vocational programs for victims to minimalize inequality resulting from political crime - psychosocial support for victims and relatives, especially victims of torture or sexual crimes - Preparation of directory and certificates for compensation and restitution of property
Additional strategies in case of reform in the country	- Establishment of archives of documentation amassed by North Korean agencies of oppression - Opening of the archives to victims, researchers and journalist	- ICC trials - Limited domestic trials - Publication of lists of perpetrators -Vetting of personnel in top posts of governmental and national institutions (former members of party, security, police, judiciary, academia) - Abolishment of institutions of oppression and reform of key institutions	- Exhumations, archaeological projects related to terroscapes - Memorialization of terrorscape sites - Research, publications based on the North Korean archives and victims' testimonies, national education projects, textbooks -State apologies	- Efforts to establish connections with relatives (alive and diseased persons) - Identification and burials for victims of crimes against humanity, informing relatives of the truth - Rehabilitation of victims of wrongful trials and punishment - Compensation, restitution of property

Part 1. Evidence, documentation, investigation and analysis

Any accountability or indeed any transitional justice process will rest upon the documentation of the alleged violations. There has already been much documentation carried out by the COI, by NGOs, and by the ROK government. This material has been supplemented by the work of the OHCHR Field office as well, pursuant to their mandate to support the Special Rapporteur and the implementation of the recommendations from the COI Report.

Outside of the DPRK, the bulk of the historical documentary materials on DPRK individuals and its security apparatus, governmental institutions and specific institutions of repression (such as political prison camps) exists in the archives of the post-communist countries in Central and Eastern Europe. Many of these countries established types of National Memory Institutes where the documents are archived. Some of the archives of former communist security agencies, such as those existing in Poland (National Remembrance Institute, IPN) and Germany (Federal Commissioner for the Records of State Security Service for the Former German Democratic Republic, BStU) are open to the public inquiries and can be requested to release the documentation pertaining to the DPRK.

In particular, very important documentation on the origins of the DPRK security system, Korean War and post-Korean War system in the DPRK exists in the former KGB files in Russia. After the democratization in Soviet Union, some of these archives were made available to the researchers for a brief period of time, copied and transferred to the libraries at American Universities.

The central institution in all communist governments was the secret political police, whose methods of surveillance, persecutions, operations of camps, and murders enabled maintenance of full control over the State by the Party. Security apparatus was an institution that enabled communists to gain and maintain control in many countries. The system was based on the Soviet system of repression, which served as a matrix transplanted to many countries. Russian 'VCheka' or 'Cheka' (The All-Russian Extraordinary Commission for Combating Counter-revolution and Sabotage was established in December 1917. Under Soviet Union it became OGPU – secret police responsible for creation of Gulags and persecutions of religious churches, elimination of political enemies and included in NKVD until 1943 and in 1946 became KGB. The North Korean leader, Kim Il Sung was re-trained by Red Army as communist guerrilla and became major in the Soviet Army. It is being reported that Lavrenti Beria himself, who was the head of Soviet secret police, met with Kim Il Sung several times before recommending him to Stalin to become the new Russian-backed Korean leader. Kim Il Sung landed with Russian Army in Pyongyang in 1945 and as was the case in other countries for example in Poland, or Germany, the Soviet secret police apparatus followed to establish a Soviet-based system. This system quickly eliminated opposition and resulted in the creation of the local secret police and party. Even though each country may have used different names and had various reforms, it is important to note that the structure and the methods of operation were similar across countries which were based on the same Soviet system. The same is true for the DPRK.

Thus, it is very important to link the North Korean system and its operations with those that existed in the former European Soviet Bloc, where the research about the structures, methods of operation and collaboration with North Korean security is much more advanced thanks to opening of these archives.

In matters of future prosecution and possible vetting, in addition to gleaning lessons learned from international criminal tribunals and courts, it is also important to look at the European post-communist examples of dealing with such specific evidence as security apparatus archives and its dependence with the communist party structures.

In general, the secret apparatus was created to enable taking over and maintaining of the control of the communist parties (in case of North Korea, the Worker's Party of Korea) – and it was a major system of Party's protection. As such, the security apparatus was in subordinate position to the Party, however, the linkage evidence is much more limited and may create challenges in the prosecution of crimes. At present, the evidence linking the major institutions responsible for crimes against humanity in North Korea with members of the Korea's Workers Party and the North Korean top leadership is very limited. Thus, it is important to analyse existing evidence in post-communist countries in Europe and use the knowledge and practice of the researchers and prosecutors of the Archives in Poland, Germany or Czech Republic, where challenges have been similar. This initiative would also benefit from working with *The European Network of Official Authorities in Charge of Secret Police Files* – a collaboration network of Archives includes institutions in Germany, Bulgaria, Czech Republic, Hungary, Poland, Romania and Slovakia.

The foundation for any prosecution and for any later broader documentation/memorialisation process is the evidentiary material gathered. It is therefore critical to conduct an assessment of the evidence and material thus far gathered, and develop a clear strategic plan for the ongoing documentation efforts that will be undertaken. The plan for the way forward in documentation will thereby aim to fill in gaps in information already gathered, and to further support and corroborate the evidence previously gathered. Furthermore, the information collection process will strengthen the overall pattern of atrocities and linkage between the crimes and the alleged perpetrators.

Documentation for prosecution purposes should be analysed by comparing it against three categories of evidence described in Figure 1:

Table 2: Documentation process for prosecution by Maxine Marcus[3]

Acts: what happened? This kind of evidence establishes that a crime occurred
Context: in what context did the acts happen? This kind of evidence establishes that the crime was an international crime
Linkage: how were the acts carried out? This kind of evidence establishes the manner of commission of the crime

Any documentation process should also keep in mind that different kinds of documents are suitable for different kinds of initiatives. Firsthand witness evidence is the most useful and efficient form of gathering evidence for the purposes of short-term criminal accountability before a judicial mechanism. Witnesses who played different roles can provide specific evidence which corresponds to the different boxes in Table 2. Exiled members of the political elite, medical practitioners, guards for prison and detention facilities, and personal security officers for the political elite have been known to provide valuable Context and Linkage pattern evidence in particular. Testimonies from these categories of

[3] *See* I. Maxine Marcus, **Prosecuting Sexual Violence as International Crime: Interdisciplinary Approaches,** *Series on Transitional Justice (Intersentia), Chapter on Investigation of Crimes of Sexual Violence Under International Criminal Law, January 2013.*

witnesses can show consistency between widespread practices, compliance with official but undocumented orders, and connections in the security apparatus. Such evidence will be crucial for proving the link between any human rights violation and the person or structure responsible.

This evidence can be corroborated by documentary and forensic evidence, where possible and where accessible. Evidence such as DNA identification and satellite imagery for mapping mass graves and identifying individual deceased victims is a critical component of post-conflict transitional justice. This evidence is crucial to a complete mapping and historical record of the atrocities, but may not be of such evidentiary importance to a criminal trial as to warrant the time and resources required for forensic collection of evidence of this kind. Scientific or physical evidence is only as strong from an evidentiary point of view as the evidence connecting that scientific evidence to the acts of a particular accused. Such evidence may be valuable for establishing a historical narrative which includes both individual victims and patterns of systemic abuse, as well as ensuring that surviving families of missing persons learn the fate of their loved ones and are able to proceed with customary death ceremonies.

Part 2. Accountability

There are several options for accountability for crimes and violations committed in the DPRK. This report will consider criminal remedies as well as civil remedies which may exist in the shorter term.

For criminal accountability for violations of international criminal law, the options set out in this report include:

- **prosecution by the international community before the ICC;**
- **prosecution by domestic jurisdictions which are States Parties to the Convention against Torture;**
- **prosecution under domestic criminal legislation codifying international criminal law, and/or prosecution under domestic criminal proceedings pursuant to customary international law.**

1. Prosecution before the ICC

The COI report suggested that the Security Council could refer the situation in the DPRK to the ICC under article 13 (b) of the Rome Statute and Chapter VII of the Charter of the United Nations as a possible option for criminal accountability[4]. The strength of this approach is that it does not depend on the consent of the DPRK, but there appears to be little political willingness to address the situation in the DPRK in this manner. The referral option appears to be an aspirational goal at the time of writing.

Moreover, the ICC's jurisdiction would be limited to crimes committed after February 2003[5], the date on which the Rome Statute entered into force, including continuous crimes which commence before February 2003 and continue beyond February 2003. To take one example, the Elements of Crimes of the Rome Statute requires that in the case of enforced disappearances, the initial abduction or deprivation of liberty must be committed after February 2003 for the disappearance to be a continuous crime. However, crimes against humanity are not subject to the same limitation so they can be prosecuted as a continuous crime even if the initial attack on civilians took place before February 2003. This would include the crime against humanity of imprisonment and deprivation of liberty which often accompany enforced disappearances.

2. Prosecution in domestic jurisdictions

There are several options for prosecution and civil claims against perpetrators of human rights violations in domestic jurisdictions using international treaties, domestic legislation, and customary international law. Several states are discussed as possible venues for legal action. Considerations included proximity, presence of resettled North Koreans, geopolitical interests and demonstrated commitment to international justice, but this brief list is, not intended to limit the scope of possible jurisdictional venues in any way. This submission discusses several jurisdictional bases using the ROK laws and context as an example, but the same analysis could be undertaken for other states.

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[4] "Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea", UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, paragraph 1201(1)

[5] International Criminal Court, The Office of the Prosecutor, "Situation in the Republic of Korea: Article 5 Report" <https://www.icc-cpi.int/iccdocs/otp/SAS-KOR-Article-5-Public-Report-ENG-05Jun2014.pdf>, page 5

Domestic prosecutions require strong relationships within the jurisdiction, especially with legal practitioners and judicial actors, the Ministry of Justice, other civil and governmental actors which safeguard the rule of law, and the Office of the Public Prosecutor. This may include investment in capacity building and practicums for trials involving international crimes.

It is of course the case that for any extraterritorial jurisdiction, a criminal prosecution for crimes against humanity would depend upon the ability to arrest and prosecute alleged perpetrators. Any country therefore would need to proceed against alleged perpetrators who are within their territorial jurisdiction.

- ## The Republic of Korea

A. Implementing legislation to the Rome Statute

A number of States Parties with dualist systems have domesticated through legislation the international crimes codified in the Rome Statute. These domesticated international crimes can be prosecuted in domestic courts using domestic criminal procedure and rules of evidence.

South Korea has the largest population of resettled North Koreans, and in 2007 it enacted the *Act on Punishment, Etc. of Crimes under Jurisdiction of the International Criminal Court* which punishes crimes "within the jurisdiction of the International Criminal Court"[6]. Article 3(4) creates some measure of jurisdiction over crimes committed in the DPRK which may amount to international crimes: the Act applies to "any foreigner who commits a crime provided for in this Act against the Republic of Korea or its people outside the territory of the Republic of Korea"[7]. Any crime provided for in Articles 8 to 14 of the Act, including crimes against humanity and war crimes, which is committed against a citizen of the Republic of Korea on the territory of the DPRK can therefore give rise to a prosecution under this act in the courts of South Korea.

This could include cases where South Koreans are held in detention camps in the DPRK for a period after the Act is promulgated after 2007, where that detention amounts to a crime under the Act. Although this provision will apply to a relatively limited number of cases, the prosecution of one case can encourage other cases to be built and litigated. Accompanied by effective outreach, communication, and public information campaigns, the impact of one case can be felt very widely, giving hope to a larger population of survivors and those affected by the atrocities.

B. UN Convention against Torture

States parties to the Convention against Torture have an obligation to extradite or prosecute alleged perpetrators of torture who are on their territory. This obligation was confirmed in July 2012, when the International Court of Justice unanimously held that Senegal must submit the case of Hissène Habré to its authorities for prosecution or otherwise extradite him without delay[8].

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[6] Parliament of the Republic of Korea, *Act on Punishment, Etc. of Crimes under Jurisdiction of the International Criminal Court,* <https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/xsp/.ibmmodres/domino/OpenAttachment/applic/ihl/ihl-nat.nsf/CF89D0B92BCB9C5EC12573D2002B7558/TEXT/35212281.pdf>Article 1

[7] Both the Constitutions of the ROK and the DPRK consider the entire Korean peninsula to be within their jurisdiction. However, the United Nations recognises ROK and DPRK as two separate states and they ratify international treaties on a separate legal basis. Therefore it causes practical difficulties under international law to treat the DPRK as if it were inside the territory of the Republic of Korea and the *Act on Punishment, Etc. of Crimes under Jurisdiction of the International Criminal Court* can be applied to DPRK territory.

[8] International Court of Justice, "Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal): Summary of the Judgment of 20 July 2012" <http://www.icj-cij.org/docket/files/144/17086.pdf>

The Republic of Korea acceded to the CAT on 9 January 1995 and it entered into force thirty dates later[9]. It requires States Parties to create the offence of torture in its domestic law under Article 4. While the ROK *Criminal Code* does not contain torture, the Constitution of the ROK at Article 12(2) states that "no citizen shall be tortured".

Whilst the ROK was obliged by virtue of its ratification of the CAT from 8 February 1995 to extradite or prosecute such allegations, and to enact domestic legislation explicitly criminalising torture in the national criminal law, the ROK did not criminalise torture prior to its codification of the ICC Act in 2007. Therefore, the legislative provisions criminalising torture date from the date of codification of the ICC Act. However, the ROK could argue that the crime of torture under the ICC Act is de facto applicable to any acts of torture committed from the date of ratification of the CAT, and thereby use the ICC Act as the tool of criminal accountability for crimes of torture as crimes against humanity. The combined use of the CAT and the ICC Act therefore provides a broader temporal applicability for torture.

The *Act on Punishment, Etc. of Crimes under Jurisdiction of the International Criminal Court* also creates domestic crimes based on crimes codified in the Rome Statute in the following terms:

> **Article 9(2) (Crimes against Humanity)**
>
> Any person who commits any of the following acts 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 imprisonment for life or for not less than five years:
>
> ...
>
> 5. Torturing a person in the custody or under the control of the accused by inflicting grievous pain or suffering, whether physical or mental, upon such person without any justifiable ground;...
>
> **Article 10(2) (War Crimes against Persons)**
>
> Any person who commits any of the following acts in relation to international or non-international armed conflict shall be punished by imprisonment for life or for not less than five years:
>
> ...
>
> 2. Causing grievous suffering or serious injury to body or health by torturing or mutilating any person protected pursuant to international laws on humanity;...

These international crimes have been domesticated by this Act, which has been in effect since 2007.

Article 8 establishes the requirement to extradite alleged perpetrators of torture. Article 5 establishes universal jurisdiction over the crime of torture which requires the ROK to prosecute perpetrators of torture which took place, for the purposes of this report, in the DPRK. Given that the Constitution of the ROK at Article 6(1) provides that:

> Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.

[9] United Nations Convention against Torture, Article 27(2)

This means that treaties creating criminal offences can be treated in the same manner as legislation creating criminal offences. Therefore, while the domestic crime of torture was created in 2007, South Korea can exercise universal jurisdiction for the international crime of torture under the Convention against Torture for torture committed from 1995 onwards.

C. Customary International Law

The provision Article 3(4) of the ROK ICC Act provides a statutory basis upon which ROK could prosecute someone for crimes committed in DPRK.

That said, however, the ROK Constitution Article 6(1) states:

(1) Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.

Pursuant to this Constitutional provision, "generally recognized rules of international law" have the same effect as the domestic laws of the ROK. Reliance upon this provision could provide ROK with a Constitutional basis for prosecuting the crimes within the ICC Act which do not fall strictly into the jurisdictional categories set out in Article 3 of the Act. This Constitutional provision could also provide a basis for the ROK to prosecute crimes committed before the domestication of the Rome Statute in 2007, and in fact, could also provide a basis for the prosecution of violations of international law which pre-date the ICC.

Customary International Law can provide an additional legal basis for prosecution of crimes against humanity. While States are often reluctant to rest a case solely on international custom, South Korea would not need to rely exclusively on customary international law. In support of its exercise of jurisdiction, it could rely upon the Constitutional provision Article 6, as well as the First Protocol Additional to the Geneva Conventions, ratified by South Korea in 1977, Article 1(2), which states: "In cases not covered by this Protocol or by other international agreements, **civilians and combatants remain under the protection and authority of the principles of international law derived from established custom**, from the **principles of humanity and from the dictates of public conscience**."

- The following section sets out some additional legal bases for national jurisdictions to litigate crimes against humanity in their domestic courts, where there is no explicit statutory provision in national legislation[10] .
  "Crimes against humanity have been repeatedly held to have been criminalised by the law of nations from at least as far back as World War II. Crimes against humanity were codified in Article 6(c) of the Nuremberg Charter of 8 August 1945, Article II(1)(c) of Law No. 10 of the Control Council for Germany of 20 December 1945 and Article 5(c) of the Tokyo Charter of 26 April 1946, three major documents promulgated in the aftermath of World War II.[11] The ECHR held in the Šimšić case[12] and later in the Maktouf case that crimes against humanity were firmly part of customary international law and that individual criminal responsibility for crimes against humanity is not therefore in violation of the principle of legality.

- [10] Extract of draft article pending publication, written by Maxine Marcus, International Crimes Prosecutor and Investigator and Expert in Transformative Justice For Conflict-Related Sexual Violence. It is included in this report with permission of the author.

[11] Tadić Jurisdiction Decision, http://www.icty.org/x/cases/tadic/tdec/en/100895.htm, 10 August 1995, para 76.
[12] European Court of Human Rights, Boban Šimšić against Bosnia and Herzegovina, Application Number 51552/10, 10 April 2012.

The "Martens clause," within the Preamble to the Second Hague Convention of 1899, stated "Until a more complete code of the laws of the war is issued, the High Contracting Parties think that it is right to declare that, in case not included in the Regulations adopted by them, **populations** and the belligerents **remain under the protection and the empire of the principles of international law, such as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.**" The 1949 Geneva Conventions on protection of civilians during the war draws upon the text of the Martens Clause in Convention I (article 63), Convention II (article 62), Convention III (article 142), and Convention IV (article 158). This reference also appears in Article 1 of Optional Protocol I of 1977 and in the preamble to Optional Protocol II.

Article 6 of the Charter of the International Military Tribunal (1945), states "The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

> The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:
>
> ...
> (c) 'Crimes against humanity': namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.
>
> Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."[13]

In 1950 the International Law Commission adopted the following seven Nuremberg Principles, establishing that:

> "Principle I: Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.
>
> Principle II: The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.
> …..
> Principle VI: The crimes hereinafter set out are punishable as crimes under international law:
> ...
> (c) Crimes against humanity: Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

[13] European Court of Human Rights, Boban Šimšić against Bosnia and Herzegovina, Application Number 51552/10, 10 April 2012, para 8.

Principle VII: Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law."

In November 1968, the UN General Assembly adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity[14], which provides that:

a. "The States Parties to the present Convention….
    i. Considering that war crimes and crimes against humanity are among the gravest crimes in international law,
    ii. Convinced that the effective punishment of war crimes and crimes against humanity is an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of co-operation among peoples and the promotion of international peace and security,
    iii. Noting that the application to war crimes and crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crimes is a matter of serious concern to world public opinion, since it prevents the prosecution and punishment of persons responsible for those crimes,
    iv. Recognizing that it is necessary and timely to affirm in international law, through this Convention, the principle that there is no period of limitation for war crimes and crimes against humanity, and to secure its universal application,
b. Have agreed as follows:
    i. Article 1
        1. No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:
            ...
        2. (b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nuremberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, ... even if such acts do not constitute a violation of the domestic law of the country in which they were committed.
    ii. Article 2
        1. If any of the crimes mentioned in article I is committed, the provisions of this Convention shall apply to representatives of the State authority and private individuals who, as principals or accomplices, participate in or who directly incite others to the commission of any of those crimes, or who conspire to commit them, irrespective of the degree of completion, and to representatives of the State authority who tolerate their commission.
    iii. Article 3
        1. The States Parties to the present Convention undertake to adopt all necessary domestic measures, legislative or otherwise, with a view to making possible the extradition, in accordance with international law, of the persons referred to in article II of this Convention."

In addition to the firmly established international law principle that crimes against humanity were in fact criminalised as per the arguments proposed above, and in addition to creative arguments based

[14] UN, A / RES / 2391 (XXIII), for full text see https://ihl-databases.icrc.org/ihl/INTRO/435?OpenDocument. For a list of States Parties, see https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=435

upon interpretive readings of applicable domestic codes, a customary international law argument can be strengthened by reference to, *inter alia*, the following:

a. The statutes of the ICTY, ICTR, ICC, Special Court for Sierra Leone, East Timor, ECCC, and the jurisprudence emerging from these courts on jurisdiction over crimes committed prior to the codification of the very statutes under which individuals were being prosecuted.[15]
b. The practice of other states who are adjudicating cases involving international crimes committed prior to the respective codification of international crimes under national law.
c. Jurisprudence of the ECHR and the IACHR holding that prosecution of crimes against humanity does not violate the principle of legality, *nullem crimen sin lege.*"[16]

- **Neighbouring jurisdictions**

Many states are increasingly exercising their jurisdiction over alleged perpetrators of international crimes on the basis of universal jurisdiction, or some similar jurisdictional ground. Some examples include[17]:

- South Africa has recently opened investigations into cases of Zimbabwean officials for allegations of international crimes, specifically torture as a crime against humanity, committed during the 2007 elections. The investigation process was enabled under the *Implementation of the Rome Statute of the International Criminal Court Act*, according to which the Constitutional Court ruled that the South African Police Service was required to investigate crimes against humanity committed in Zimbabwe in 2007.
- France's prosecution of Pascal Simbikangwa was its first exercise of universal jurisdiction for accountability in the 1994 Rwandan genocide. Simbikangwa allegedly supplied weapons and other material to Hutu officers or militia, was responsible for roadblocks in Kigali, and instructed and encouraged militiamen to actively participate in crimes. The Paris Criminal Court heard evidence of eyewitnesses and expert witnesses, and he was sentenced to 25 years' imprisonment for participating in genocide and for aiding and abetting crimes against humanity. Private parties were key to the criminal prosecution as they first filed the criminal complaint when Simbikangwa was arrested. Simbikangwa's appeal is underway as at the date of this report.
- In Canada, Désiré Munyaneza was found to have been a militia commander responsible for ordering and carrying out killings in the 1994 Rwandan genocide, especially in the surveillance of roadblocks across Butare. The Royal Canadian Mounted Police conducted an investigation with witnesses in Canada, Europe and Rwanda, leading to the Quebec Superior Court declaring Munyaneza guilty of all charges. He received a sentence of life imprisonment with a non-parole period of 25 years and his request for appeal was refused.

The Panel of Experts should recommend such accountability mechanisms be explored in states who have demonstrated a strong commitment to engaging in accountability for DPRK crimes. States who are host to a large population of refugees from DPRK may have a communal interest in providing a

[15] See in particular the ICTY Tadić Jurisdiction Decision, http://www.icty.org/x/cases/tadic/tdec/en/100895.htm, 10 August 1995.

[16] The end of the extract of draft article pending publication, written by Maxine Marcus, International Crimes Prosecutor and Investigator and Expert in Transformative Justice For Conflict-Related Sexual Violence. It is included in this report with permission of the author.

[17] TRIAL, European Center for Constitutional and Human Rights, International Federation for Human Rights, "Universal Jurisdiction Annual Review 2015" <https://www.fidh.org/IMG/pdf/trial-ecchr-fidh_uj_annual_review_2014-2.pdf>

forum for accountability for these refugees. Other states may have other geopolitical considerations which may pave the way toward a willingness to exercise jurisdiction. For these states, the Panel of Experts should encourage a network of information sharing, possibly through INTERPOL, to facilitate the communication regarding alleged perpetrators who may travel to these countries or to their respective embassies in other countries.

3. Domestic civil actions

• United Kingdom

In the United Kingdom, civil claims for grave human rights violations can be brought as common law tort actions even for acts outside of United Kingdom jurisdiction, and there is no requirement for a plaintiff to this action to be resident in the United Kingdom or be a British national. However, civil claims in the United Kingdom are subject to procedural requirements, including a limitation period of six years for intentional trespass against the person and proper service of documents. The defendant must not be protected by functional or diplomatic immunity, and finally the doctrine of *forum non conveniens* may apply. According to this doctrine, the Court may permanently stay the proceedings where it determines that there is a more suitable jurisdiction for the claim[18].

• United States

Under the *Alien Tort Statute,* United States federal courts have jurisdiction to hear civil claims filed by non-US citizens for torts committed in violation of civil law. This legislation has been used by victims of grave human rights violations such as torture, state-sponsored sexual violence, crimes against humanity, war crimes and arbitrary detention. This legislation was affirmed to be applicable in respect of claims based on specifically defined, universally accepted and obligatory norms of international law as recently as 2004[19]. The *Torture Victim Protection Act 1991* similarly allows citizens and non-citizens to bring civil claims for torture and extrajudicial killings committed outside United States territory.

[18] Wolfgang Kaleck, Michael Ratner, Tobias Singelnstein, Peter Weiss, "International Prosecution of Human Rights Crimes", pages 155-156

[19] *Sosa v Alvarez-Machain* 542 U.S. 692 (2004)

Part 3. Truth and Memorialisation

In the context of grave human rights violations and collective grief, memorialisation can be used to help reconcile citizens by demonstrating acknowledgement of the past and reconstructing historical narratives which put citizens' experiences into context. In terms of crimes against humanity, the need to document and retell is enormous and contributes to the feeling of justice that cannot be satisfied with the trials alone. While trials focus on retributive justice for past human rights violations, they are limited in reprocessing trauma and guilt by individuals and society and in offering space for forgiveness or rehabilitation.

While most popular form of such narratives are truth commissions, they should be used carefully – there is little hard evidence that suggest that these initiatives can provide reconciliation in the society.

As neuropsychiatrists point out, the victims do not need to necessary reconcile – each individual process is different and insisting on political reconciliation through the public truth telling can bring more harm than good to the victims and the society, especially in the long term. This in particular is the case when many perpetrators do not feel remorse, but are offered amnesty in exchange of truth; their typical explanation usually is that they only followed the orders and were unaware of the scale of atrocities under their command. Such lack of acknowledgment is disempowering for the victims. In that sense, trials, not truth-telling are able to create an environment where victims can stand on equal footing with their perpetrators. A truth commission which holds public hearings can also be useful for identifying individual perpetrators, so that the work does not only focus on abstract institutions.

1. Truth-telling, historical documentation, access to archives

In the short-term, the immediate effect of truth-telling can be brought by official truth telling commissions. Memorialisation could take place under the umbrella of a Historical Commission established following institutional reform, or it could be a mixed collective of state and civil society bodies which perform different roles and coordinate using an agreed strategic plan. It can also (or additionally) happen through projects carried out by various actors, such as storytelling, video recording or theatrical performances.

Case study 1: Historical Commission in Germany

Two official Parliamentary Commissions of Inquiry have worked in Germany between 1992 and 1998 to assess the History and Consequences of the SED Dictatorship and released detailed historical material. The second commission focused specifically on daily life and human rights violations under communist regime. Based on their work, special state *Foundation for the Reappraisal of the SED Dictatorship* was established to educate the public. Its work also contributed largely to adoption of special reparation laws for political prisoners and other victims.

While these official efforts require political will to be established, there are also other initiatives that can be taken by private actors in the absence of other initiatives. The Monsanto People's Tribunal is an example of such an initiative. It was set up by civil society which is not legally binding but follows all the legal procedures of the International Court of Justice. Also, the International Crimes Evidence Project (ICEP) of the Australian Public Interest Advocacy Centre was established to conduct independent investigations into breaches of international law in the Asia-Pacific region. A recent focus of the project has been the latest stage of the Sri Lankan civil war and allegations of war crimes in particular.

Case study 2: Documentary theatre in the Balkans

Theatre projects in the Balkans address the issue of transgenerational trauma and help communities to collectively witness and discuss issues that are often unacknowledged in the public discourse. *The Presence of Absence* is based on authentic testimonies of women around the world and includes literary works that consider issue of disappearance while *Crossing the Line* addresses the issue of massacres and was based on collective group story-telling of women in the villages where it happened.

Similar approaches are conducted at group workshops in South Africa run by civil society organizations.

Coming to terms with the past may take generations and both judicial and non-judicial approaches are necessary. An important part of what happened is education of the public. These collective memories are not shared by all of the groups in the society, however the suffering has to be openly acknowledged. It is particularly true in the case of post-communist societies and will be important in the case of North Korea. In such societies, there is a generalization of guilt, often presented in the form that 'everyone was guilty' because everyone participated in the society. The communist totalitarian states incorporate large portions of the society through coercion, bribery and other means into various spheres of the society. As such, they are different from for example authoritarian military juntas where there are usually clear distinctions of groups and division between "we" and "them". This generalization of guilt presents a challenge in acknowledgment of what happened and prevents often those that were really victimized to speak out.

The Republic of Korea, where the largest number of victims and witnesses live outside of the DPRK, has adopted the North Korean Human Rights Act No. 14070 in March 2016 and mandated the establishment of the North Korean Archives and the North Korean Human Rights Foundation. Such institutions have a capacity to conduct the documentation and should be encouraged to conduct research, education and memorialization efforts in collaboration with the European Archives-Memory Institutes.

Case study 3: Institute of National Remembrance in Poland

This is an institution that combines truth-telling and memorialization with vetting and prosecution powers, as well as search and identification. It houses extensive archives of the documentation of war and communist period (files of security apparatus), prosecutors can investigate and prosecute German and communist crimes, war crimes and crimes against humanity. It examines candidates for the most important public posts (vetting) and conducts search and excavation of mass graves.

Based on the archives open to victims, researchers and journalists, it conducts research and disseminates knowledge about the crimes. Education programs are targeting public and youth at schools – it conducts special classes and workshops for teachers, provide educational materials for schools including historical textbooks. It also conducts events at the memorial sites. Based on the documentation, they issue certificates to victims and relatives, which may be basis for compensations.

Similar institutions have been created in other European countries of Soviet Bloc, however their prerogatives differ in each country.

Seven of such institutions in Germany, Czech Republic, Slovakia, Poland, Hungary, Bulgaria, Romania form European Network in Charge of Secret Police Files sharing information.

2. Identification and Mapping

A long-term strategy to provide social redress for human rights violations should recognise the importance of memorialisation – this may involve the following options: mapping graves, creating genetic database, memorialization of the spaces of terror.

While mapping of the graves may be important for the contextualization of the patterns of attack on the population, such projects require large resources and its work does not necessarily contribute to the prosecution of crimes. However, projects of these kind may contribute to the contextual research and are necessary for the victims and their relatives, in particular for identification of victims in mass graves. A genetic database of individuals suspected of committing international crimes could be kept from forensic investigations, but these records should have a time limit in the interests of procedural justice. A separate database should be kept for victims and their families where records can be kept indefinitely. For many Korean victims of the totalitarian regime, it will be necessary to obtain genetic information of older Koreans who were separated from their closest relatives – siblings, parents, cousins, aunts and uncles. Younger Koreans on both sides of the border will be more genetically distant, so even if a death occurred recently, their DNA would be less useful for identifying the familial relationships of this recent victim compared to the value of tracing through parentage on both sides of the border. At present ROK Ministry of Unification creates database for families separated during the Korean War and advanced in

age. This project should be extended to include the North Korean population, especially those that have relatives in political prison camps in North Korea.

3. Creation and analysis of memorial spaces

Creating memorial spaces is one of the last stages of the ongoing memorialization when terror sites and graves have been discovered and exhumed. It often requires reform in the country for such initiatives to take place, but modern science and archaeology can enter at an earlier stage and create a linkage with material evidence, especially in cases where perpetrators have destroyed much of the evidence. It can provide additional assistance in providing a contextual framework of what happened.

New geophysical methods, radars, and laser scans are capable of revealing structures without touching the ground. Such new projects are starting with Russia and Zimbabwe where new digital forms of processing satellite images and other aviation data will be used and put in databases. Program designers also propose to use game theory to process the data in the absence of being able to go to the crime scenes. This could be employed to the North Korean research project. At this stage, such research is limited in providing evidence for prosecution, and it might be limited even with an access to the sites, but such projects can contribute to provide historical context to victims' testimonies in an ongoing effort to learn the truth.

The majority of such initiatives are taking place in Europe, and it is important to point out that these scientists have experience on working on sites of terror – Nazi and communist concentration camps, comparison of aerial evidence for campsites that were buried to cover the evidence and mass graves. They have historians and researchers who understand well the communist totalitarian structures of oppressions and their operations – tapping into such existing international community network could provide invaluable analysis to the information and evidence of the community specializing in North Korea.

Case study 4: Terrorscapes

Terrorscapes is a network of experts across Europe which analyses the way places and times of mass violence and terror in Europe are presented and understood across policy, culture, and space. The network has several themed group projects which include increasing access to sites of mass atrocities and understanding the dissonance in heritages for visitors to these 'campscapes'. This themed project also aims to implement innovative methods of presenting campscapes for investigation and representation.

A second project is "Terrorscapes. Transnational Memory of Totalitarian Terror and Genocide in Postwar Europe". This project looks at the way that terror and repression in Europe is understood and memorialised as a function of the position of the European country – for Western European countries, the major event signifying terror is the Shoah; for European countries in the East and South, competing histories of World War II, communism and other totalitarian regimes, and ethnic conflict often produces a much more nuanced and conflicted understanding of terror and victimhood at both the national and individual level.

A memorial or museum to North Korean history may assist in bringing to public awareness the daily life of people living in a totalitarian regime. This museum does not have to be encyclopaedic – it is quite possible that memorialisation is better achieved through a collection of individual and societal stories donated by people and communities who choose to give. The example of such memorialization can be the National Museum of African American History and Culture which the founders collected exhibits from donations that show African American contributions to history through the lens of both daily life and historic moments.

Moreover, Korean understanding of the totalitarian regime in the future is likely to differ between North and South Koreans. It is worth considering whether a partnership across North and South Korean academics (if not North Korean academics, then at least special advisors as an advisory council) should critically examine the way that the government and civil society remembers and forgets sites of conflict and notions of victimhood.

Part 4. Policies for victims

Memorialisation efforts can take on social significance as a form of reparations aimed at addressing past human rights violations on the state level, particularly where victims identified through memorialisation processes receive entitlements to reparations policies and vocational programs. Memorialisation serves the important social purpose of validating victims' narratives and educating the public about repressed history, whereas policies for victims of grave human rights violations provide individualised redress. It is important to diversify the ongoing educational, vocational and psychosocial support programs offered by the Republic of Korea, to offer special assistance to the victims of severe human rights abuses. The perpetrators presently receive the same assistance in resettlement as their victims, perpetuating inequalities. The unjust political caste system that existed in North Korea is reflected among North Korean resettlers in the South Korean society. Such policies do not redress inequalities caused by political crimes and do not lead to social reconstruction.

1. Reparations for victims of human rights violations

A Korean compensation scheme for victims and families of the totalitarian regime could apply the 'standard of plausibility' test to applications of compensation in recognition of the difficulty victims will face in making the application itself. The scheme could centre around the multiple *kwanliso* located in North Korea and declare all detainees and their families eligible for a lump sum compensation payment. Such reparations can rely on the evidence in the Archive. Some countries in Europe, such as Germany, Czech Republic and Poland provide certificates which allow the victims to receive compensations. The reparations can be related to non-monetary means, such as restitution of someone's good name if the person was wrongly accused and his honor and the family situation suffered as a result.

Case study 5: Australian Defence Abuse Reparation Scheme

The Defence Abuse Reparation Scheme (DARS) was established in response to a number of complaints brought by current and former members of the Australian Defence Force (ADF) who were subjected to two victimisations – sexual abuse by another member of the ADF and the failure of the ADF organisational hierarchy and justice processes to address the injustice of this sexual abuse. The DARS was established as part of a suite of processes to provide redress to sexual abuse survivors and applies the 'standard of plausibility' to determine whether to provide compensation without admitting the liability of any particular person or body. It is a very low standard which acknowledges the high barriers to applying for a payment of this kind. The payment is also exempt from income calculations for the purposes of social security payments.

2. Psychosocial and vocational support

Any Korean policy of vocational rehabilitation should include an education and employment component, in order to boost the capability of North Koreans as a whole. Victims could receive a

certificate or card which makes them eligible for this service, and there should be several different ways of receiving this certification – they may have already been identified in existing documentation, or give evidence in future criminal prosecutions, or contribute their experience of victimisation to a future truth-telling process.

A suite of victim-centred policies such as this would benefit from administration by several different organisations acting with strong coordination mechanisms, because they require specialist expertise in very distinct areas.

Case study 6: Rehabilitation programs in Germany

Following the reunification of East and West Germany in 1990, the new Parliament passed in 1994 two acts aimed at social rehabilitation of victims of the East German political regime: the Act on Rehabilitation of Victims of Administrative System (*Verwaltungsrechtliches Rehabilitierungsgesetz*) and the Act on Vocational Rehabilitation (*Berufliches Rehabilitierungsgesetz*).

The Act on Rehabilitation of Victims of Administrative System establishes compensation where East Germans suffered because of the political regime, including where they were forcibly resettled away from the Berlin Wall. The Act on Vocational Rehabilitation allows East Germans to pursue their career or education where they were prevented from working or studying because of political reasons. The law also creates compensation for their retirement pensions or for loss of wages if they were fired.

Information regarding the victimisation of East Germans for political reasons is obtained through collaboration with the Stasi Records, which keeps the Stasi records and makes them available to citizens, academics and journalists.

3. Restitution of property

Private property was confiscated on a large scale in all European countries where the communists were implementing their rules. Some property was also taken from withdrawing Nazi German forces which had belonged earlier to Jewish victims. North Korean communists used the same tactics toward private landowners, farmers, and businessmen. Some of the property was abandoned by families because of military activity during the Korean War and the owners have never received compensation for what they left behind.

The question of eligibility criteria for property restitution in the North Korean context is complex, particularly where families have been forcibly displaced and multiple generations have been detained. What is clear is that there should be no citizenship requirement for property restitution, given that many South Koreans have migrated abroad and may be the closest living relatives to a North Korean family where all the members have been killed.

A Korean judicial apparatus for land restitution should have binding legal power to order restitution or compensation, or even allocation of land to victims where necessary and appropriate. It would significantly benefit in resources from collaboration on research with a factfinding commission or similar memory institute which can provide documentary or archaeological evidence of property ownership to a particular family or community. Such solution was used with Land Reform in South Africa. It is generally accepted that land reform in South Africa is slow, due in part to the volume of claims and forensic investigation required, and also due to the poverty of most claimants[20]. However, the Land Claims Court has the status of a South African High Court and it is undeniable that binding legal authority is an attractive feature of any land reform scheme, unlike non-binding decisions which only have the power of recommendation to an administrative body.

Case study 7: Restitution of confiscated property in Czech Republic

Restitution of property commenced based on three acts adopted in 1990 and 1991. Law covered all property confiscated between 1948 and 1990. It offered restitution in kind; compensation on a mixed cash/state security financial instruments basis; largely declaratory invalidations of non-property infringements like imprisonment, expulsion and job termination without further compensation or damages.

The Czech legislation was criticised on several fronts for having restrictive eligibility criteria, particularly for having a citizenship requirement where many Czech nationals had adopted other nationalities and were no longer permanent residents in the Czech Republic, or belonged to expelled ethnic minorities.

Compensation was given, where restitution is excluded in accordance with one of the following four groups of cases: 1. Restitution is physically impossible; 2. The claimant elects compensation because: (a) the property has undergone substantial alteration; or (b) the property is largely destroyed; or (c) the claimant has already received partial compensation, i.e. does not wish restitution in exchange for repayment of compensation earlier received; 3. The current holder of the property is exempt from restitution because: (a) he is a natural person who had acquired the property legally and in good faith; or (b) the holder is a foreign element company; or (c) the current holder is a foreign state; 4. The property now serves public purposes. In 2001, the Government and the Federation of Jewish Communities established a Foundation for Holocaust Victims. The Czech government contributed $11.7 mln Czech Crowns to support compensation claims. One-third of the fund was dedicated to help pay for properties that could not be restituted.

[20] Liesle Theron "Healing the Past : A Comparative Analysis of the Waitangi Tribunal and the South African Land Claims System" [1998] VUWLawRw 15; (1999) 28(2) Victoria University of Wellington Law Review 311 <http://www.nzlii.org/nz/journals/VUWLawRw/1998/15.html>

Part 5. Recommendations

Evidence, documentation, investigation and analysis

1. All the documentation efforts should be conducted in accordance with best practices in international criminal investigations. To the extent that OHCHR methodology is inconsistent with best practices in international criminal investigations, in light of the mandate on accountability for crimes against humanity which attach to the UN Seoul office, the panel of experts and the Special Rapporteur, the methodology used for the documentation should be brought in line with international standards on international criminal investigations.
2. The ongoing documentation should focus primarily on documentary evidence and witness testimony from defectors, victims and eyewitnesses, and should be conducted simultaneously to an analysis of the evidence thus far gathered by different groups as set out in the report. The analysis should form the basis of the ongoing documentation.
3. Increased encouragement of the ROK authorities to share information, documents and testimonies for the purposes of supporting accountability.
4. An assessment of the evidence and material thus far gathered is necessary by international crimes experts. The plan for the way forward in documentation will thereby aim to fill in gaps in information already gathered, and to further support and corroborate the evidence previously gathered. Furthermore, the information collection process will strengthen the overall pattern of atrocities and linkage between the crimes and the alleged perpetrators. The UN Human Rights Office in Seoul may be equipped with additional financial and specialist resources as needed, to devise a documentation/investigation strategy to map patterns of criminality in DPRK, with the cooperation of relevant states. This tasking is done with the view to assist in eventual prosecutions.

Accountability

5. The panel should use its authority to press for a variety of options on accountability, including ICC referral and extraterritorial jurisdiction for criminal prosecutions and civil claims.
6. Any accountability mechanism should be handled in consideration of the potential preventative impact of accountability in light of ongoing violations, as well as foreseeing aspirational future transitional processes and institutional reform.
7. All accountability strategies should have a long-term perspective in their planning within the broader framework for truth-seeking, reparations and memorialisation.
8. Accountability strategies should commence by building relationships with legal practitioners in South Korea, the Ministry of Justice, local actors in rule of law, judicial actors, and prosecutor's office, with a focus on capacity building through practicums for trials involving international crimes.

Memorialisation

9. To the extent that there are already existing international projects involving specialists with knowledge of the communist totalitarian system of oppression, mapping terrorscapes, exhumations and genetic identification, the panel should encourage including North Korean projects for research, dissemination of information and

inclusion of North Korean victimhood in the ongoing international memorial projects, especially in Europe.

10. State institutions which possess archives of State Security Apparatus, including documentation on institutions and individuals related to North Korea should be encouraged to share and provide analysis of such information to the UN and other actors.
11. The panel could point to ROK initiatives in creation of the North Korean Archives and Human Rights Foundation and encourage expanding these institutions to incorporate over time projects similar to those in Memory Institutions in post-communist European countries. Such projects could involve training programs for researchers, prosecutors, forensic medicine personnel, and archaeologists to build capacity of these institutions so they are able to assist in the North Korean accountability efforts in the future when necessary.
12. The panel should encourage creation of a team of historians, experts on communist Security Apparatus and the system of oppression to work with the North Korean experts to work on the contextual research that could serve as pre-stage for historical commission.

Policies for victims

13. Policies including state assistance to the North Korean victims should be diverse, paying special attention to victims of political crimes and sexual crimes.
14. Creation of Korean compensation scheme for victims and families of the totalitarian regime should be encouraged. That scheme could include financial resources obtained by dismantling institutions of oppression and in the course of civil and criminal trials of perpetrators who unjustly appropriated large properties.
15. Special educational and vocational programs are necessary for the victims and their families who were deprived of education, earnings etc.
16. A scheme should be prepared to provide restitution for seized property or allocating of compensation where property or records have been destroyed or cannot be returned.

Appendix A: List of contributors to the discussion on the report

- Justice Michael Kirby – former Chair of the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, Australia
- Mr Marzuki Darusman – former UN Special Rapporteur for DPRK, Indonesia
- Ms Maxine Marcus – International Crimes Prosecutor and Investigator and Expert in Transformative Justice For Conflict-Related Sexual Violence, (Special Court for Sierra Leone, International Criminal Tribunal for the former Yugoslavia, Commission of Inquiry for Guinea, OHCHR Investigation on Sri Lanka, etc.)
- Professor Marek Jasíński – Institute of Historical Studies, Norwegian University of Science and Technology
- Professor Lavinia Stan – Xavier University, Canada
- Doctor Andrzej Ossowski M.D. – Coordinator, Genetic Database for Victims of Totalitarian Regimes, Poland
- Mr Rafał Leśkiewicz Ph.D – Director, National Remembrance Institute, Poland
- Professor Deborah Spitz M.D. –University of Chicago, USA
- Ms Nina Bang-Jensen – Senior Peace Fellow, Public International Law and Policy Group, USA
- Ms Param-Preet Singh – Associate Director, Justice Program, Human Rights Watch, USA
- Ms Lina Bragado, Human Rights Watch, Seoul Office, ROK
- Mr Suk-Woo Kim – Board Member, NKHR; President, National Development Institute, ROK
- Professor Jae-Chun Won – Board Member, NKHR, Handong Law School, ROK
- Professor Man-Ho Heo – Board Member, NKHR, Kyungpook National University, ROK
- Ms Daye Gang, Ph.D candidate, Michael Kirby Centre for Public Health and Human Rights, Monash University, Australia
- Ms Joanna Hosaniak, Ph.D – Deputy Director, Citizens' Alliance for North Korean Human Rights, ROK

Citizens' Alliance for North Korean Human Rights (NKHR)

(Established in 1996)
10F, gonghwa bldg, 131 Tongilro, Seodaemun-gu, Seoul 120-012, Korea
Tel: +82-2-723-1672, 2671 Fax: +82-2-723-1671
http://www.nkhumanrights.or.kr e-mail: citizens.nkhr@gmail.com