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[일반논문]

Applying Judicial and Non-Judicial Approaches for Human Rights Accountability in North Korea

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Abstract

On the 10th anniversary of the 2014 UN Commission of Inquiry report on the situation of human rights in the DPRK, the advocacy community for North Korean human rights continues to grapple with the complex challenge of achieving accountability for grave human rights violations committed by the DPRK. Criminal prosecution remains constrained, leading advocates to pursue non-judicial strategies for accountability in tandem, such as truth-seeking, documentation, commemoration, and reparative initiatives to address the needs of victims of North Korean human rights abuses. This article (1) reviews the current status and challenges of litigation efforts against the DPRK leadership; (2) examines non-judicial accountability in terms of remedies and reparations under international human rights law; and (3) analyzes how reparative measures are applied by various stakeholders to support victims of North Korean human rights crimes.

Keywords: DPRK, North Korea, human rights, accountability, remedies, reparations

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I. Introduction

As the pivotal 2014 Commission of Inquiry (COI) report on the situation of human rights in the Democratic People’s Republic of Korea (DPRK, or North Korea) reached its 10-year anniversary, the advocacy community for North Korean human rights continues to grapple with the complex challenge of achieving accountability for gross human rights violations committed by the DPRK Government.¹⁾ The COI report found that DPRK officials and institutions have committed numerous grave human rights violations, including crimes against humanity, warranting criminal investigation of its leadership.²⁾

1) While international law does not formally define “gross violations” or “serious violations,” it has been understood to concentrate on the international crimes of genocide, war crimes, and crimes against humanity (such as torture and cruel, inhuman or degrading treatment or punishment; enforced disappearances; forcible deportation; arbitrary detention; and systematic discrimination). Theo van Boven, ‘Victims’ Rights to Remedy and Reparation’ in *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*, eds. Carla Fertsman and Mariana Goetz (Leiden: Brill 2020), at 33.

Yet, judicial accountability for human rights crimes has proven difficult, prompting the UN Office of the High Commissioner for Human Rights (OHCHR) to seek “fresh, creative strategies.”³⁾ The Office of the High Commissioner for Human Rights in Seoul (“UN OHCHR-Seoul” or “UN Human Rights Office in Seoul”), established in response to the findings of the COI report, takes a “multi-pronged” strategy to accountability, including both judicial and non-judicial approaches.⁴⁾ In line with this objective and to commemorate the COI’s anniversary, the UN Human Rights Office in Seoul held a conference in February 2024 on how to move forward on accountability measures, covering domestic legal initiatives, victims’ perspectives, non-judicial approaches, Member States’ views, and international trends.⁵⁾ Findings from the conference emphasized the importance of non-judicial, victim-centered strategies as immediate response to address human rights abuses in the DPRK.

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- 2) UN Human Rights Council, Comm. of Inquiry on Human Rights in the DPRK, Rep. of the Detailed Findings of the Comm. of Inquiry on Human Rights in the DPRK, A/HRC/25/CRP.1 (Feb. 7, 2014) (“COI Report”).
 - 3) UN OHCHR-Seoul, ‘DPRK: UN Human Rights Office calls for “fresh, creative strategies” to ensure accountability for serious violations and international crimes (16 February 2023),’ <https://seoul.ohchr.org/index.php/en/node/504>.
 - 4) UN OHCHR, ‘Promoting Accountability in the Democratic People’s Republic of Korea: Report of the Office of the United Nations High Commissioner for Human Rights,’ Human Rights Council, A/HRC/52/64 (18 January 2023).
 - 5) UN OHCHR-Seoul, ‘Moving forward on the COI+10: Accountability avenues for international crimes,’ Hanguk University of Foreign Studies, Seoul, Korea, 20-21 February 2024 (“UN OHCHR-Seoul, COI+10 Conference”).

Efforts to hold DPRK leader Kim Jong Un accountable have spanned both national and international legal frameworks. However, the slow pace of litigation, whether in criminal or civil courts, has led activists and scholars to explore transitional justice, a framework typically applied to post-conflict or newly democratizing states to address past atrocities and foster reconciliation, with the understanding that formal avenues of criminal justice are otherwise postponed.⁶⁾ Although the authoritarian regime of North Korea does not fit this conventional model, the absence of domestic recourse for victims of gross human rights violations warrants a transitional justice approach, because it encompasses both judicial and non-judicial measures such as criminal prosecution, truth-seeking, documentation, and reparations.

Transitional justice relies on four pillars to seek justice for victims: (1) truth-seeking (also truth-telling), (2) justice (prosecutions), (3) reparations, and (4) non-recurrence (also institutional reform).⁷⁾ As former UN Human Rights Commissioner Navanethem Pillay states: “At the core of any effort to establish accountability are three

6) Hanna Song, ‘From Violation to Reparation: Unveiling the International Human Rights Framework for Implementing Reparations to Victims of North Korean Human Rights Violations,’ MSc Dissertation, Oxford University (2023); Baek Buhm-suk, Lisa Collins, and Yuri Kim, ‘Transitional Justice in Post-Unification Korea’ in *Transitional Justice in a Unified Korea*, eds. Baek Buhm-suk and Ruti Teitel (Seoul: Palgrave Macmillan, 2015): 11-34; Transitional Justice Working Group, *Exploring Grassroots Transitional Justice: North Korean escapee views on accountability for human rights abuses* (Seoul: Transitional Justice Working Group, 2019); Zadeh-Cummings, Sarah A. Son and Danielle Chubb, ‘Preparing for Transitional Justice in North Korea,’ *Australian Journal of International Affairs* 76(2) (2022): 121-129.

7) United Nations, *Guidance Note of the UN Secretary-General: United Nations Approach to Transitional Justice* (March 2010): 3-4.

indispensable and interlinked rights: the right to truth, the right to justice, and the right to an effective remedy and reparation.”⁸⁾ This perspective speaks to the spectrum of accountability measures and aligns with transitional justice principles.

In the context of criminal law and human rights violations, accountability typically involves prosecuting individuals in a court of law to subject perpetrators of human rights violations to legal sanctions. Legal scholars have termed this global trend towards accountability via legal mechanisms as “the justice cascade,” reflecting a growing commitment to holding individuals accountable for serious human rights offenses.⁹⁾ Historically, under international human rights law and international humanitarian law, only states have been held accountable for their violations. The paradigm shifted after World War II towards holding individuals criminally liable for grave offenses such as genocide, war crimes, and crimes against humanity, marked by the establishment of international criminal tribunals for specific conflicts, including the Nuremberg and Tokyo Military Tribunals.¹⁰⁾ Yet criticisms abound as to the efficacy and efficiency of international

⁸⁾ Navanethem Pillay, ‘Establishing Effective Accountability Mechanisms for Human Rights Violations,’ UN Chronicle *Delivering Justice*, Vol. XLIX, No. 4 (December 2012).

⁹⁾ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W.W. Norton Publishing, 2011).

¹⁰⁾ These tribunals set precedents for subsequent ones in the early 1990s, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), soon followed by others: the Special Court for Kosovo (SCK), the Special Court for Sierra Leone (SCSL), and the Extraordinary Chambers in the Courts of Cambodia (ECCC), among others.

criminal courts and special tribunals--for their limited jurisdictional scope, lengthy proceedings, relatively low successful prosecution rates, high costs, and inadequate remedies for victims.¹¹⁾

Moving beyond the traditional “naming and shaming” role of transnational advocacy networks,¹²⁾ human rights advocates sought to leverage International Criminal Court (ICC) for prosecuting Kim Jong Un and North Korean officials. However, this has proven challenging due to DPRK’s non-membership in the Rome Statute, making International Criminal Court a persistently difficult forum, as discussed in Part II. Consequently, civil society actors have adopted a range of strategies, employing both judicial and non-judicial accountability measures, ranging from protest and documentation to political pressure and memorialization. Given the difficulties of pursuing judicial accountability in both international and national legal forums, advocates must often resort to a repertoire of accountability measures. Different stakeholders, including the UN Human Rights Office in Seoul, South Korean government agencies, civil society organizations (CSOs), and victims themselves, undertake these measures with varying degree of success, often influenced by the South Korean administration in power.

¹¹⁾ On victims’ remedies, see, for example, Luke Moffett, ‘Reparations for Victims at the International Criminal Court: A New Way Forward?’ *The International Journal of Human Rights* 21(9) (2017): 1204-1222; Charles P. Trumbull IV, ‘The Victims of Victim Participation in International Criminal Proceedings,’ *Michigan Journal of International Law* 29(4) (2008); Cécile Aptel, ‘Prosecutorial Discretion at the ICC and Victims’ Right to Remedy: Narrowing the Impunity Gap,’ *Journal of International Criminal Justice* 10(5) (December 2012): 1357-1375

¹²⁾ Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca: Cornell Univ. Press, 1998).

This article examines ongoing challenges and evolving strategies in the pursuit of accountability for North Korea's transgressions. Grounded in the frameworks of transitional justice, international human rights accountability, and victim-centered reparative justice, this analysis explores how both judicial and non-judicial frameworks can support victims of DPRK abuses as part of a holistic approach. Recognizing the limited access to formal judicial recourse, the article considers non-judicial pathways—truth-seeking, documentation, and reparations—as essential components of accountability within an authoritarian context. Methodologically, this study synthesizes primary sources, including UN and civil society reports, and insights from the 2024 UN OHCHR COI+10 Conference. The findings underscore the potential of non-judicial mechanisms to address victims' needs where judicial options are restricted, setting a foundation for the following discussion of DPRK-specific efforts and broader accountability trends.

This article proceeds as follows. First, it begins by briefly reviewing the status and challenges associated with litigation against the DPRK leadership. Second, it discusses how international human rights law conceptualizes non-judicial accountability in terms of remedies and reparations in order to understand how they apply in the North Korean human rights context. The article then analyzes how various stakeholders implement reparative measures to support North Korean survivors and other victims in South Korea. This article contends that non-judicial approaches in the form of victim reparations play a valuable role in achieving accountability for DPRK's human rights violations, by complementing judicial efforts and prioritizing a victim-centered approach.

II. Applying Judicial Accountability to North Korean Human Rights

Achieving judicial accountability for North Korean human rights crimes presents significant challenges. Pursuit of justice for victims spans multiple legal venues, including the ICC, domestic litigation in South Korea and Japan, and principles of universal jurisdiction. Each of these judicial pathways illustrates both distinctive and common obstacles, ranging from jurisdictional limitations and political dynamics to logistical difficulties and evidentiary hurdles.¹³⁾ Despite these challenges, stakeholders continue to push for viable litigation options to hold perpetrators accountable.

A. The International Criminal Court

The International Criminal Court has not yet been an effective tribunal due to numerous factors, notably because the DPRK is not a state party to the Rome Statute.¹⁴⁾ While the UN Security Council may refer non-members to be subject to ICC jurisdiction, veto power by the DPRK's allies, permanent Council member People's Republic of China and Russia, renders this pathway nearly impossible. ICC prosecutorial discretion is also stringent. Despite numerous communications made on behalf of victims, the ICC Prosecutor has rejected opening investigations based on jurisdictional bases, such as

¹³⁾ Stephan Sonnenberg and Patricia Goedde, *Accountability for Human Rights Crimes in North Korea: Jurisdictional Dilemmas in South Korea, Asian Perspective* 47:3 (2023).

¹⁴⁾ Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, entered into force July 1, 2002.

the timing of the alleged offenses, that they did not occur on the territory of a State party, or that the alleged offenders were not nationals of a State party.¹⁵⁾

Temporal jurisdiction precludes crimes that occurred before July 1, 2002, when the Rome Statute entered into force. This is problematic for the alleged crimes of now deceased former leaders Kim Il Sung and Kim Jong Il before that date. It also complicates charging the current Leader Kim Jong Un for offenses committed before he assumed power (though some legal advocates argue about “the continuous nature of certain crimes,”¹⁶⁾ such as enforced disappearances).¹⁷⁾ Securing the presence of North Korean officials before the ICC in The Hague would also pose considerable political and logistical challenges.

While the COI has also proposed creating ad hoc or hybrid courts, such forums are especially challenging because they necessitate North Korea’s judicial participation. Given that judicial independence and impartiality are unlikely to change in North Korea without significant legal reform, the Group of Independent Experts and the UN Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, Elizabeth Salmón, find these channels difficult to pursue when considering other obstacles such as substantial cost and the slow establishment process.¹⁸⁾

¹⁵⁾ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, A/HRC/55/63 (5 March 2024): 9.

¹⁶⁾ *Ibid.*; Pre-Trial Chamber III, Situation of the Republic of Burundi, No. ICC-01/17-x (25 Oct. 2017), paras. 191-192.

¹⁷⁾ Yohei Suda, Attorney, Panel on ‘Domestic legal initiatives and options for accountability for international crimes,’ UN OHCHR-Seoul, COI+10 Conference, *supra* n 5.

B. Domestic Civil Litigation

Judicial accountability can extend beyond criminal prosecution to civil litigation where compensation can be sought for damages to injured parties. While international tribunals may have jurisdiction over crimes of genocide, war crimes, and crimes against humanity, national courts likewise can adjudicate both criminal and civil matters under their respective legislation. National courts in the Republic of Korea (ROK, or South Korea) and Japan have provided limited opportunities for victims and survivors to pursue litigation for financial compensation for North Korean human rights and humanitarian violations.

In South Korea, former prisoners of war (POW) and their families sued DPRK Leader Kim Jong Un for forced labor and abuse while captive during and after the Korean War in violation of international humanitarian law. Despite favorable rulings from the Seoul Central District Court that resulted in financial awards beginning in 2020, enforcing these judgments has been problematic.¹⁹⁾ Plaintiffs subsequently attempted, but failed, to claim copyright royalties that South Korea owed the DPRK in 2022.²⁰⁾ They appealed but lost the second instance in February 2024, under the Court's rationale that the

¹⁸⁾ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, A/HRC/55/63 (5 March 2024), p. 11.

¹⁹⁾ Seoul Central District Court, 2016Gadan5235506 (decided July 7, 2020), 2020Gadan5306603 (decided March 25, 2021), and 2020Gahab2804 (decided May 20, 2022).

²⁰⁾ Um Taesob, Attorney, Ohkims Law, Panel on 'Domestic legal initiatives and options for accountability for international crimes,' UN OHCHR-Seoul, COI+10 Conference, *supra* n 5.

DPRK holds ambiguous legal capacity. The case has been appealed to the ROK Supreme Court.²¹⁾

In Japan, the Tokyo High Court ruled in October 2023 that Japanese courts have jurisdiction over claims for compensation by former ethnic Koreans (Zainichi) who had been enticed to relocate from Japan to North Korea under a “Paradise on Earth” campaign that repatriated over 93,000 ethnic Koreans between 1959 and 1984. Several survivors who managed to return to Japan filed a lawsuit in 2018 to seek claims against the DPRK Government for human rights abuses, including deception and deprivation of freedom.²²⁾ The Tokyo District Court initially dismissed their claims based on the statute of limitations and the location of the alleged human rights violations. However, the Tokyo High Court reversed this decision, recognizing that part of the alleged wrongdoing occurred in Japan and constituted a continuing offense, meaning that the statute of limitations does not apply.²³⁾ The High Court remanded the case back to the Tokyo District Court for further proceedings.

Since the lawsuits in Japan, the ROK Truth and Justice Commission²⁴⁾ has decided to investigate the “Paradise on Earth” campaign in South Korea.²⁵⁾ More recently in March 2024, the

21) Ibid.

22) Suda, *supra* n 17.

23) Ibid.

24) This is an independent body, established in 2020, to “investigate and uncover the truth about the anti-Japanese independence movement, overseas Koreans, mass atrocities during the Korean War, various human rights violations that occurred during Korea’s authoritarian rule and killings by hostile forces.” See, for example, <https://www.jinsil.go.kr/en/bbm/bbs/selectBoardArticleView.do?ntId=23429> (accessed Nov. 13, 2024)

Database Center for North Korean Human Rights (NKDB), an NGO, filed the first lawsuit in South Korea against the DPRK on behalf of five victims of the “Paradise on Earth” campaign.²⁶⁾ The lawsuit intends to “secure overdue compensation for atrocities suffered as part of the North Korean government’s deceitful repatriation scheme,” seeking 100 million won per plaintiff.²⁷⁾ This lawsuit and the above-mentioned Korean and Japanese court victories are important symbolic step in attributing legal responsibility to North Korea, although actual enforcement of financial compensation remains difficult due to limited access to the DPRK assets.²⁸⁾

C. Universal Jurisdiction

The OHCHR recommends that “Member States [should] pursue investigations and prosecutions based on principles of extraterritorial and/or universal jurisdiction in legal proceedings observing fair trial and due process guarantees.”²⁹⁾ The concept of universal jurisdiction theoretically permits any state to prosecute individuals for serious international crimes, such as war crimes, genocide, and crimes against humanity, regardless of where the crime occurred, who the victims

25) Jung Min-ho, ‘Truth commission launches probe into N. Korea’s “paradise on Earth” lies,’ *The Korea Times* (16 November 2023).

26) NKDB, Press Release: ‘Landmark Case: South Korean Court Sees First-Ever Lawsuit Filed Against North Korean Government for “Paradise on Earth” Atrocities,’ Press Release (13 March 2024).

27) Ibid.

28) Um, *supra* n 20.

29) UN OHCHR, ‘Promoting Accountability in the Democratic People’s Republic of Korea: Report of the Office of the United Nations High Commissioner for Human Rights,’ A/HRC/52/64 (18 January 2023): 5-6.

were, or even the nationality or current location of the perpetrator. In a recent example, Germany successfully prosecuted a Syrian official for crimes against humanity, specifically torture in detention centers in 2022.³⁰⁾ The case of military clearance operations against the Rohingya in Myanmar has been brought before the courts of Argentina under universal jurisdiction and has been referred to the Federal Prosecutor for investigation.³¹⁾

South Korea's *Act on Punishment, Etc. of Crimes Under Jurisdiction of the International Criminal Court* operates on the principle of universal jurisdiction but remains unused to date.³²⁾ While this Act could potentially permit South Korea to prosecute perpetrators for crimes stipulated in the Rome Statute, such as crimes against humanity committed on South Korea citizens, specific thresholds must be met: the defendant's presence in South Korea, the crime's occurrence after the enactment date in 2007, and proof that the crime was part of an "extensive and systematic attack against any civilian population in connection with the policies of the State, organizations, or institutions."³³⁾ Prosecuting under this Act would be

³⁰⁾ Human Rights Watch, 'Germany: Conviction for State Torture in Syria' (Jan. 13, 2022), <https://www.hrw.org/news/2022/01/13/germany-conviction-state-torture-syria>.

³¹⁾ Tomás Ojea Quintana, Lawyer, former Special Rapporteur on the situation of human rights in the DPRK & former Special Rapporteur on the situation of human rights in Myanmar, Panel on 'Domestic legal initiatives and options for accountability for international crimes,' UN OHCHR-Seoul, COI+10 Conference, *supra* n 5.

³²⁾ ROK, *Act on Punishment, Etc. of Crimes Under Jurisdiction of the International Criminal Court*, Act No. 8719 (21 December 2007), amended by Act No. 10577 (12 April 2011).

³³⁾ *Ibid.*, art. 9.

very difficult due to these evidentiary requirements and general political dynamics.³⁴⁾ Nonetheless, the North Korean Human Rights Documentation Center of the ROK Ministry of Justice (MOJ) has compiled evidence as required under the 2016 North Korean Human Rights Act of South Korea,³⁵⁾ alongside the many testimonies already gathered by the UN Human Rights Office in Seoul, the ROK Ministry of Unification, and numerous civil society organizations. An MOJ prosecutor explained that they currently have 2,177 cases covering the period of April 2017 to December 2023, divided into “cards” of “suspect, victim, and testifier” for purposes such as criminal accountability and social integration.³⁶⁾ The Center also collects other relevant accountability data such as activities and events that might amount to a widespread and systematic attack by the DPRK against its citizens.³⁷⁾ Despite these efforts, questions remain about the sufficiency of evidence and political will to prosecute under this Act, especially if the targeted perpetrators are not within South Korean jurisdictional boundary.

The high hurdles for judicial accountability outlined above often mean that victims are essentially left without remedies. Pursuing judicial accountability through either criminal prosecution or civil litigation can be fraught with challenges. Criminal prosecutions are often hindered by procedural barriers, such as burden of proof,

³⁴⁾ Sonnenberg and Goedde, *supra* n 13, 521-522.

³⁵⁾ North Korean Human Rights Act, Act No. 14070 (3 March 2016).

³⁶⁾ Choi Yong-bo, Chief Prosecutor, North Korean Human Rights Documentation Office, Ministry of Justice, ROK, Panel on ‘Domestic legal initiatives and options for accountability for international crimes,’ UN OHCHR-Seoul, COI+10 Conference, *supra* n 5.

³⁷⁾ *Ibid.*

evidentiary requirements, statutes of limitations, and witness protection.³⁸⁾ Similarly, civil litigation is costly and faces evidentiary and enforcement obstacles, including reluctance of some witnesses to testify. Moreover, the prospect of holding individuals financially liable raises complex questions about their legal status, immunity, and enforcement feasibility. Nonetheless, advocates continue to forge ahead with litigation strategies. Meanwhile, victims and their advocates continue to explore non-judicial remedies and reparations as alternative to courtroom verdicts.

III. Applying Non-Judicial Accountability in the Case of North Korea

International human rights law recognizes both judicial and non-judicial accountability. Non-judicial accountability refers to remedies and reparations for victims beyond the criminal prosecution of perpetrators. The right to remedies for victims has been enshrined in international human rights declarations, treaties, basic principles, and regional conventions.³⁹⁾ The 1948 *Universal Declaration of*

³⁸⁾ Sonnenberg and Goedde, *supra* n 13, 530-533.

³⁹⁾ While the Fourth Geneva Convention states that the Party to a conflict is responsible for the treatment of protected persons under its control and its agents (Article 29), debate exists as to whether the right to remedy is as clearly justiciable in international humanitarian law. See, for example, Liesbeth Zegveld, 'Remedies for victims of violations of international humanitarian law,' *International Review of the Red Cross*, No. 851 (2003); Vessela Terzieva, 'Human Rights Remedies for Violations of the Law of Armed Conflict: Reflections on the Right to Reparation in Light of Recent Domestic Court Decisions in the Netherlands and Denmark,' *International Crimes Database Brief* 26 (September 2019).

Human Rights states that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁴⁰⁾ This right is echoed in other international human rights treaties, such as the *International Covenant on Civil and Political Rights* (ICCPR) (Article 2(3)), the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) (Article 6), the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) (Article 14), the *Convention on the Rights of the Child* (CRC) (Article 39), and the *Convention for the Protection of All Persons from Enforced Disappearance* (Article 24).⁴¹⁾

The 1985 *Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power* outlined the foundational standards for victims’ access to justice and redress.⁴²⁾ Building on this, the UN General Assembly adopted in 2005, the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* explicitly affirmed victims’ right to “(a) equal and effective access to justice; (b) adequate, effective, and prompt reparation for harm suffered; and (c) access to relevant information concerning violations and reparation mechanisms.”⁴³⁾ The 2005 UN *Basic Principles and Guidelines* clarify

⁴⁰⁾ UN General Assembly, *Universal Declaration of Human Rights* (1948), Art. 8.

⁴¹⁾ *The Convention on the Elimination of Discrimination Against Women* also includes this in its preceding 2007 Declaration.

⁴²⁾ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34 (adopted 29 November 1985).

the forms of reparation as restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition (Table 1).⁴⁴⁾

Table 1

Restitution	Restoring the victim to the original position before the harm occurred, including restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment, and return of property
Compensation	Financial compensation proportional to the gravity of the violation, e.g., physical or mental harm, lost opportunities (employment, education and social benefits), material damages and loss of earning potential, moral damage, and costs for legal, medical, social services.
Rehabilitation	Medical and psychological care, legal and social services
Satisfaction	Verification and disclosure of facts, search for the disappeared, official declarations restoring victim's dignity, public apology, commemoration, sanctions against perpetrators, and education
Guarantee of non-recurrence	Institutional reform such as civilian control of military and security forces, due process, judicial independence, protecting legal and healthcare professions and human rights defenders, human rights training, codes of conduct, and legal reform

While the *UN Basic Guidelines and Principles* list reparation categories sequentially, they are not necessarily prioritized in that

⁴³⁾ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, General Assembly resolution 60/147 (adopted 15 December 2005), Art. VII.

⁴⁴⁾ *Ibid.*, Art. IX (18-23).

order nor remain rigid. Some categories may overlap. For example, restitution is a legal concept for which the other categories could apply to achieve the objective of placing the victim in the original position before the violation(s) occurred. Rehabilitation and compensation can go hand-in-hand when trying to provide medical, legal, and psycho-social support for victims, since funding is required to make these services available. Guarantees of non-recurrence may be difficult to demand from a perpetrating State like the DPRK; thus other States, UN mechanisms, or civil society may take action through satisfaction category measures, specifically truth-telling or documentation, along with political pressure. The category of “satisfaction” itself expands to a subset of reparative measures, each important in their own right, such as fact-finding, the search for and the identification of the disappeared, official acknowledgment, public apology, sanctions, memorialization, and education.

While the definition of reparation is broad under the *UN Basic Principles and Guidelines*, it is consistent with UN General Comments per relevant treaty articles of the ICCPR and CAT that mention the right to remedy. Drafted around the same time as the *UN Basic Principles and Guidelines*, the Human Rights Committee (the treaty body of the ICCPR) included “bringing to justice the perpetrators of human rights violations” in the reparation framework⁴⁵⁾, underscoring that non-judicial remedies can complement judicial approaches.

Similarly, the Committee against Torture published General Comment No. 3 in 2012 to address States parties’ implementation of the right to remedy for torture victims, their immediate family,

⁴⁵⁾ Human Rights Committee, General Comment No. 31 ‘The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,’ adopted on 29 March 2004 (2187th meeting), CCPR/C/21/Rev.1/Add. 13.

dependents, and intervenors who suffered harm in assisting the victims, stating that States parties must “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”⁴⁶⁾ The word “reparation” is not used in the treaty language, but the General Comment explains that “redress” includes both the concepts of “effective remedy” and “reparation,” thus alluding to both judicial and non-judicial measures.⁴⁷⁾ It then states that the “comprehensive reparative concept” includes the forms of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁴⁸⁾

A consistent theme across these legal instruments is that States are the ones obligated to implement the treaty provisions and to install mechanisms to remedy any violations and thus harm suffered by victims. Not doing so would constitute a violation of the State’s obligations. Thus, each treaty underscores the necessity of a national tribunal or competent bodies to provide remedies for the affected victims, placing States as responsible for institutional redress. However, when national or ICC mechanisms fail to hold a State or its leaders accountable, especially in regard to genocide, war crimes, and crimes against humanity, non-judicial measures become crucial for achieving justice and reparations, as the Rome Statute authorizes the ICC to establish principles for victim reparations.⁴⁹⁾ Despite this, the

46) UN Committee against Torture, “General Comment No. 3 of the Committee against Torture, Implementation of article 14 by States parties” (2012).

47) *Ibid.*, para. 2.

48) *Ibid.*

49) *Rome Statute of the International Criminal Court*, Done at Rome on 17

ICC is not a catch-all solution given the opt-in requirement for State Parties and other jurisdictional constraints.

UN Special Rapporteur Elizabeth Salmón emphasizes that reparations under international human rights law extend beyond criminal prosecution, recognizing non-judicial measures as essential to justice and redress for victims.⁵⁰⁾ Reflecting the 2005 UN Basic Principles and Guidelines, the Special Rapporteur identifies restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition as critical components of reparation. This victim-centered approach aligns with transitional justice frameworks, ensuring that mechanisms address the full spectrum of harm, even where judicial accountability may not be feasible in the North Korean context.

IV. Reparations for Victims of North Korean Violations

Recognizing the challenges inherent in judicial avenues, attention has shifted to non-judicial reparative measures such as truth-seeking, documentation, and memorialization, aiming to provide redress for North Korean victims and survivors.⁵¹⁾ Various actors pursue non-judicial measures toward accountability for victims and survivors of North Korean human rights crimes, underscoring two priorities: (1) centering victims' agency in judicial accountability measures, and (2)

July 1998, in force on 1 July 2002, United Nations, Treaty Series, vol. 2187, No. 38544, Article 75.

⁵⁰⁾ UN Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, Report to the Human Rights Council, U.N. Doc. A/HRC/55/63 (2024).

⁵¹⁾ UN OHCHR-Seoul, COI+10 Conference, *supra* n 5.

the role of institutions, networks, and processes outside the DPRK in advancing reparations for victims.

A. Centering Victims' Agency

The UN Secretary-General upholds victim-centeredness as a core principle in successful transitional justice programs,⁵²⁾ and yet the extent to which victims achieve meaningful reparations in both international and local contexts remains debatable.⁵³⁾ Centering the voices and agency of victims in reparative mechanisms is important to learn what victims need in order to be satisfactorily healed from the harm suffered. Doing so entails defining who the victims are and what they want. The *UN Basic Guidelines and Principles* defines victims as:

persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering,

⁵²⁾ UN Secretary General, 'Transitional Justice: A Strategic Tool for People, Prevention, and Peace,' *Guidance Note of the UN Secretary General* (June 2023): 9, https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf.

⁵³⁾ Cheryl Lawther, 'Transitional justice and constructing victims and victimhood' in *The Research Handbook on Transitional Justice*, eds. Cheryl Lawther and Luke Moffett (Cheltenham: Elgar 2023): 174-190; Luke Moffett, 'Reparations for Victims at the International Criminal Court: A New Way Forward?', *The International Journal of Human Rights* 21(9) (2017): 1204-22; Simon Robins, 'Failing Victims? The Limitations of Transitional Justice in Addressing the Needs of Victims of Violence,' *Human Rights and International Legal Discourse*, Issue 2 (2017): 41-58.

economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.⁵⁴⁾

They may also include immediate family, dependents, and those who suffered harmed when intervening to help the victims.⁵⁵⁾ Persons who suffered such harms “shall be considered a victim regardless of whether the perpetrator...is identified, apprehended, prosecuted, or convicted... .”⁵⁶⁾

Over recent years, civil society organizations and Special Rapporteur Salmón have advocated the importance of a victim-centered approach in addressing the country's extensive human rights abuses.⁵⁷⁾ This advocacy underscores the need to prioritize the experiences, needs, and voices of those most affected by North Korea's repressive system. However, implementing this approach presents significant challenges for North Koreans still residing within

⁵⁴⁾ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims*, Art. V(8). This definition is found in other soft law instruments such as the General Comment to CAT.

⁵⁵⁾ *Ibid.*

⁵⁶⁾ *Ibid.* Art. V(9).

⁵⁷⁾ Joint open letter to Special Rapporteur DPRK Elizabeth Salmón urging measures to ensure Accountability for North Korean crimes against humanity (29 Aug. 2022), at <https://en.tjwg.org/2022/08/29/joint-open-letter-to-special-rapporteur-dprk-elizabeth-salmon-urging-measures-to-ensure-accountability-for-north-korean-crimes-against-humanity/>; Media Statement by the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (2 Sep. 2022), at <https://www.ohchr.org/en/statements/2022/09/media-statement-un-special-rapporteur-situation-human-rights-democratic-peoples>.

the country, who are often inaccessible and face severe risks if they speak out. Nonetheless, the voices of North Korean escapees—who have endured and witnessed these violations firsthand—offer a critical, representative perspective that must be central to any advocacy or policy formulation aimed at advancing human rights in North Korea.

As to how North Korean escapees perceive themselves as victims, a 2019 survey of over 450 escapees revealed that 84.6 percent identified themselves victims of the DPRK State, while 15.4 percent did not.⁵⁸⁾ Reasons cited for victimhood range from physical violence at prison camps to restrictions on freedom of movement and discriminatory treatment based on social class (*songbun*) classification.⁵⁹⁾ Although many of the victims realize the difficulty of criminal prosecution⁶⁰⁾, 75.8 percent cited the importance of prosecuting perpetrators as “very important” (22.6 percent as “quite important”), though some wanted leniency on some lower-level officials who had no choice. On non-judicial accountability measures, 82.9 percent considered truth-telling “very important” (15.5 percent “quite important”), with lower percentages for official apology by perpetrators (76.9 “very,” 20.2 “quite”) and financial compensation (70.1, 28.3, respectively).⁶¹⁾ Similarly, the UN Human Rights Office in Seoul interviewed families of the forcibly disappeared in North Korea, finding also that victims wanted criminal prosecution as a top priority.⁶²⁾ However, reparations

⁵⁸⁾ TJWG, *Exploring Grassroots Transitional Justice: Survey Report* (February 2019): 25.

⁵⁹⁾ *Ibid.*

⁶⁰⁾ *Ibid.*, 33.

⁶¹⁾ *Ibid.*, 31-35.

⁶²⁾ Imsuk Ha and Eleonor Fernandez, Human Rights Officers, UN Human Rights Office-Seoul, Session on ‘UN Human Rights Office in Seoul in

are also important, such as disclosing the whereabouts and status of the disappeared; immediate reunion with living family members; return of the remains of the dead; and apology, recognition, and memorialization, including from other States that had neglected their duties to protect the forcibly disappeared during and afterwards.⁶³⁾

The experiences and goals of North Korean escapees reflect a nuanced spectrum, underscoring the complexities of victimhood. Among them are victims of enforced disappearances, family separation, torture, sexual violence, and other egregious violations perpetrated by the regime. This range speaks to the diversity of victimhood—that victims may have suffered varying harms to different degrees, thus necessitating remedies appropriate to their injuries. Given the diversity of their backgrounds and experiences, victims may thus prioritize reparations differently. The diversity of victims was evident at the UN Seoul COI+10 conference where different victims voiced their specific needs according to their particular experiences.⁶⁴⁾

following up to the COI and consultations findings,’ UN OHCHR-Seoul, COI+10 Conference (citing their report “‘These wounds do not heal’ - Enforced disappearance and abductions by the Democratic People’s Republic of Korea” (May 23, 2023)) supra n 5.

63) Ibid.

64) For example, Kim Hyuk, a North Korean escapee and witness for the COI, believes that the whole chain of command must be held accountable for deterrence, but recognizes the impracticability of doing so, necessitating the greater role of the UN and South Korea. He advocates for reparative measures, such as documentation, memorialization by experts, and compensation both materially and mentally (psychological support), underscoring the need for support from outside the DPRK. ‘Panel: Initiatives and Victims’ Perspectives on Accountability,’ UN OHCHR-Seoul, COI+10 Conference, supra n 5. Also present were torture victims and families of enforced disappearances and separations who

Some victims may have been perpetrators or perpetrator-victims at some point, such as North Korean prison guards who defected to South Korea. Also, the North Korean escapee community is diverse. Some may choose to remain silent to avoid endangering loved ones still living in North Korea, to assimilate fully in South Korea without calling attention to themselves, or to protect themselves from re-traumatization. Therefore, it can be challenging for some victims to participate actively or to be represented adequately when pursuing reparative measures. It is also important not to conflate escapee with victim, nor all victims as escapees (such as the families of those who were disappeared). Understanding the diversity in victimhood and the accompanying challenges of participating fully is essential to tailor the most appropriate reparative measures for victims with different needs.

B. Reparative Measures

Achieving accountability in North Korea for human rights violations poses significant challenges under its current leadership and governance structure. The DPRK's consistent refusal to hold its leadership accountable for human rights abuses leaves victims without redress for enforced disappearances, family separation, arbitrary detention, torture, sexual violence, and other forms of atrocities. This lack of accountability has highlighted the limitations of international human rights law mechanisms, including UN processes and the procedural constraints of international tribunals, prompting the

shared their experiences and needs to UN representatives and ambassadorial representatives from South Korea and the United States, as well as NGO representatives inquiring about further judicial accountability approaches.

international human rights community to explore potential reparative measures for victims. This section explores the implementation of reparation measures such as truth-telling, memorialization, rehabilitation, compensation, and guarantees of non-recurrence, emphasizing the comprehensive approach taken by various stakeholders.

1. Truth-telling

Truth-telling serves as a critical reparative measure that extends beyond its role in judicial accountability. For North Korean victims, recounting and documenting human rights violations is not only a step toward establishing liability but also a means of reclaiming their narratives, validating their experiences, and fostering a collective memory. This process is essential for promoting public awareness and societal healing, as it allows communities to acknowledge and understand the depth of harm suffered by victims. By far, the search for and relaying of factual accounts is one of the main reparative mechanisms currently underway by various stakeholders, including victims, the ROK Government, civil society organizations, and the UN, encompassing methods such as fact-finding, data collection, and documentation. Truth-telling can also take place in both official and unofficial capacities.⁶⁵⁾

In judicial context, truth-telling is important because facts, evidence, and witness testimonies are critical toward determining criminal or civil liability. This is an instance of a non-judicial approach having value in its own right in uncovering the truth and reclaiming victims' narratives while also being a means to aid judicial processes.

⁶⁵⁾ Louis Bickford, "Unofficial Truth Projects," *Human Rights Quarterly* 29(4) (Nov. 2007): 994-1035.

However, standards of proof, fact-finding methodology, and evidentiary requirements vary depending on the accountability mechanism pursued, whether it be international criminal prosecution, domestic civil litigation, or a truth commission. Thus, understanding the most appropriate accountability mechanism, corresponding evidentiary requirements, and proper fact-finding methodology is imperative. Due process is especially important in terms of whether the information was collected according to the evidentiary requirements for the trial procedure (e.g., whether the victim gave consent for the information to be used for court purposes, and whether their testimony was firsthand nature, instead of hearsay). Evidence can be deemed inadmissible if it does not meet the due process standards. Given the extensive data from North Korean escapees collected by multiple institutions, systemizing the data to meet legal standards is crucial for its use as admissible evidence in courts or commissions.

Victims play the most crucial part as it is their grievances and testimonies that drive truth-seeking, truth-telling, and the substance of data collection and documentation. In the 2019 TJWG survey that asked escapees their “preferred methods of leading and designing a future process for seeking justice for human rights abuses in North Korea,” the top two vote-receiving activities were (1) “Give information to civil society and government about their experiences,” and (2) “Encourage other victims to share stories.”⁶⁶⁾ Thus, victims perceive their role in imparting their experiences to the government, CSOs, and the public to be especially pertinent to the accountability process.

The ROK Government has had a long history in collecting

⁶⁶⁾ TJWG, *supra* n 58, 39.

information from North Korean escapees, initially through the National Intelligence Agency's mandatory screening for spies and ethnic Korean-Chinese migrants, where escapees were required to give information. Other entities, such as Ministry of Justice prosecutors, the Korea Institute for National Unification, and the National Human Rights Commission of Korea also interviewed escapees. Following this initial screening, escapees enter the Hanawon facility for acculturation programs, where they had also provided interviews to NKDB (under contract with the Ministry of Unification) and later to the UN Human Rights Office in Seoul, contributing to extensive databases on human rights violations. This data collection opportunities decreased in the early 2020s due to changes in administration and COVID-19. Nonetheless, as the escapees integrate into South Korean society and volunteer more information, many CSOs have been able to document specific human rights violations, resulting in annual reports, white papers, and thematic reports.⁶⁷⁾ In parallel, UN bodies have also collected information via its human rights mechanisms, such as the treaty body report process, the Universal Periodic Review, the Commission of Inquiry, and the UN Human Rights Office in Seoul.

With the passage of the North Korean Human Rights Act in 2016, the South Korean government adopted a more direct role in documentation efforts and analysis of human rights abuses. The Act mandates the Ministry of Unification to develop a triennial human rights plan, maintain a comprehensive database, and provide annual reports to the National Assembly.⁶⁸⁾ This information is then

⁶⁷⁾ For example, these CSOs include NKDB, Citizens' Alliance, Korean Bar Association, TJWG, Human Rights Watch, Amnesty International.

⁶⁸⁾ North Korean Human Rights Act 2016, Law No. 14070 (enacted 3 March

forwarded to the Ministry of Justice's Human Rights Documentation Center. Across administrations, the Ministry of Justice has processed significant data, including 2,177 cases from 2017 to 2023, categorizing details by perpetrator, victim, and witness.⁶⁹⁾ This documentation extends to monitoring DPRK laws and policies that infringe on human rights,⁷⁰⁾ thus supporting broader accountability initiatives under South Korean law.⁷¹⁾

2. Memorialization

Memorialization is integral in transitional justice, especially to remember the legacy and sacrifices of the victims of mass atrocities.⁷²⁾ Often overlooked in relation to other institutional processes such as

2016, entry into force 4 September 2016). The Act institutionally mandates (1) a North Korean human rights advisory committee under the Ministry of Unification, (2) a North Korean Human Rights Foundation, and (3) the appointment of a North Korean human rights ambassador by the Ministry of Foreign Affairs.

⁶⁹⁾ Choi, *supra* n 36.

⁷⁰⁾ *Ibid.* These include the 2020 *Law on Rejecting Reactionary Ideology and Culture*; the Ministry of Social Security Order of 2020 that allows border guards to shoot anyone crossing the border without permission, widespread application of the death penalty.

⁷¹⁾ *Ibid.* For example, acts that might constitute a state-organized widespread, systematic attack to qualify for the South Korean universal jurisdiction law are also being examined (e.g., border guard shootings, public executions, forced abortion, and body cavity searches and other physical violations for border crossings).

⁷²⁾ See, for example, Sebastian Brett et al, *Memorialization and Democracy: State Policy and Civic Action: State Policy and Civic Action* (2007), at https://www.ictj.org/sites/default/files/ICTJ-Global-Memorialization-Democracy-2007-English_0.pdf.

prosecutions and truth commissions, memorialization helps to preserve stories, heal wounds, and prevent recurrence, thus overlapping with other reparative measures.⁷³⁾ Memorialization can take many forms, such as monuments, memorials, museums, exhibitions, and other commemorative or dedicated ceremonies.⁷⁴⁾ Globally, prominent memorials for victims of war crimes and genocide have been established, such as for the Holocaust, atrocities in Rwanda, the Khmer Rouge, the Yazidi genocide, and the “comfort women” victimized under Japanese colonial rule.

National monuments, memorials, and commemorations also exist for victims of North Korean human rights crimes, such as the National Memorial for Abductees during the Korean War, “Paradise on Earth” remembrance projects in Japan,⁷⁵⁾ and the newly opened museum exhibit at NKDB. As part of its holistic efforts to pursue the range of accountability measures, NKDB commemorates the voices of North

73) See, for example, Duncan Light and Craig Young, ‘Public Memory, Commemoration, and Transitional Justice: Reconfiguring the Past in Public Space’ in *Post-Communist Transitional Justice*, eds. Lavinia Stan and Nadya Nedelsky (Cambridge: Cambridge Univ. Press 2015): 233-251; Fabián Salvioli, ‘International legal standards underpinning the pillars of transitional justice,’ *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, UN General Assembly A/HRC/54/24 (10 July 2023): 14-16.

74) “Commemoration” should be distinguished from “memorialization” which can imply lives lost. The term “commemoration” remembers and honors those who may still be alive despite abduction, disappearance, or separation.

75) Eric Olsen, ‘Victims of North Korean Repatriation Project Remembered at Ceremony and Forum in Japanese Port City of Niigata,’ Global Peace Foundation (28 January 2020), <https://globalpeace.org/victims-of-north-korean-repatriation-project-remembered-at-ceremony-and-forum-in-japanese-port-city-of-niigata/>.

Koreans as well as the North Korean human rights movement itself, creating an interactive online museum “Larchiveum,” a hybrid of library, archive, and museum that also features letters and artwork by North Korean escapees.⁷⁶⁾ Emphasizing authentic storytelling, NKDB has taken careful consideration in engaging with escapees to share their voices and experiences. NKDB opened its on-site exhibition with the inaugural theme centered on the right to freedom of speech. The exhibit displays video testimonials, quotations, memorabilia, and poignant art installations such as the national flowers of North Korea and South Korea intertwined on barbed-wire branches.⁷⁷⁾

The South Korean Ministry of Unification also plans to build a 2600 square-meters memorial space for North Korean human rights victims, funded through bipartisan support totalling 4.6 billion won (approximately four million US dollars), with an expected completion date in 2026.⁷⁸⁾ Modelled after the Holocaust Museum, the space is envisioned for “artistic expression of freedom,” including mock programs for empathy, online events, and pop-up exhibits.⁷⁹⁾ However, questions regarding victims’ participation in the memorial-making process and the museum’s location outside central Seoul (Mago, Gangseo District) raise concerns about whether the

⁷⁶⁾ NKDB, ‘NKHR Larchiveum,’ <https://en.nkdb.org/2022survey3> (accessed April 28, 2024).

⁷⁷⁾ The author visited on two formal occasions during March-April 2024, once for an NKDB monthly briefing and a second time with international law students.

⁷⁸⁾ Kim Sangyoung, Head of Team, ROK Ministry of Unification, National Center for North Korean Human Rights Taskforce, Panel on ‘Initiatives and Victim’s Perspectives on Accountability,’ UN OHCHR-Seoul, COI+10 Conference, *supra* n 5.

⁷⁹⁾ *Ibid.*

Ministry has sufficiently prioritized victim-centeredness and accessibility, both of which are State responsibilities when making memorials.⁸⁰⁾ These are significant issues to address so that the memorial fully honors the experiences it seeks to represent and can be easily accessed by the general public.

3. Rehabilitation

Beyond sharing information, victims need support to recover from the physical, mental, and social harms resulting from the human rights abuses inflicted upon them. Rehabilitation includes medical care, psychological counseling, legal assistance, and social reintegration programs. In the case of victims from North Korea, rehabilitation often involves addressing complex trauma resulting from prolonged detention, torture and other cruel or degrading treatment, sexual violence, family separation, poverty, and integrating into a new society. Organizations such as Hanawon, foundations, churches, bar associations, and CSOs have long offered a variety of programs to include medical care, counseling, legal aid, job training, and education.⁸¹⁾ NKDB has taken a notable role in this area, especially in providing professional counseling for North Korean escapees and also

⁸⁰⁾ See Fabián Salvioli, “International legal standards underpinning the pillars of transitional justice,” *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, UN General Assembly, A/HRC/54/24 (10 July 2023): 15-16.

⁸¹⁾ For example, these include Citizens’ Alliance, NAUH, Unification Media, and other aid organizations led by former North Koreans. Korea Future, *Documenting Sexual and Gender-based Violence in the Democratic People’s Republic of Korea: Reflections on Survivor-centred Documentation Best Practices* (Sept. 2023): 51-52 (Annex VII ‘Available psychosocial support providers’), <https://www.koreafuture.org/reports>.

running educational and training academies.⁸²⁾ Victims need not only immediate relief from physical and psychological trauma, but also ongoing support to restore their dignity, sense of justice, and quality of life. These programs need continuous investment and dialogue with the escapee community, which stakeholders can help support through funding, networking, and advocacy to ensure that rehabilitation resources remain accessible and effective.

4. Compensation

Compensation typically involves financial remuneration for harms suffered, including court-awarded damages for material and moral damage, lost opportunities, loss of earnings, potential earnings, and the costs associated with legal, medical, psychological, and social services. It is understood to be financial, extending not just to victims but also their family members.⁸³⁾ Importantly, if it is not available from the offender, “States should endeavor to provide financial compensation” including in the form of national or other funds.⁸⁴⁾ Victims should also receive other forms of material, social, and medical assistance through both governmental and non-governmental means.⁸⁵⁾

Compensation from the DPRK is currently unlikely. Indeed, South Korean POWs or their families did not view South Korean compensation as reparations but rather as solatium—more symbolic

⁸²⁾ NKDB, ‘Memorialization and Advocacy on North Korean Human Rights in 2024,’ *Monthly Briefing* (16 February 2024), Seoul, Korea.

⁸³⁾ 1985 *Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power*, Article A(12).

⁸⁴⁾ *Ibid.*, Article A(13).

⁸⁵⁾ *Ibid.*, Article A(14).

consolation than actual redress.⁸⁶⁾ This raises questions about alternative sources of funding and how to earmark them for victims, especially in (1) accurately assessing the extent of the injury and (2) determining appropriate allocation, whether to individuals or to programs supporting victims. Some global funds do exist to support victims of human rights violations when direct compensation from perpetrators is unattainable. For instance, the ICC has a victims' fund specifically for cases it handles, providing relief in the all-too-common scenario where alleged perpetrators cannot compensate all victims. Although this fund does not extend to victims of North Korean violations due to jurisdictional limits, other funds exist to provide support, such as the UN Voluntary Fund for Victims of Torture (UNVFVT) and potentially the UN Trust Fund to End Violence against Women.⁸⁷⁾ NKDB has regularly been awarded grants from UNVFVT to fund its rehabilitation programs, especially psycho-social support for escapees.⁸⁸⁾ While UN member states have paid into these funds, the involvement of third-party states in providing direct compensation deserves further exploration. Seeking reparations from third-party states or external actors raises complex questions about the political and moral implications of not holding the

⁸⁶⁾ UN OHCHR-Seoul, *These Wounds Do Not Heal: Enforced Disappearances and Abductions by the Democratic People's Republic of Korea* (28 March 2023).

⁸⁷⁾ UN OHCHR, 'The United Nations Voluntary Fund for Victims of Torture,' <https://www.ohchr.org/en/about-us/funding-and-budget/trust-funds/united-nations-voluntary-fund-victims-torture>; UN Women, 'UN Trust Fund to End Violence against Women,' <https://www.unwomen.org/en/trust-funds/un-trust-fund-to-end-violence-against-women> (accessed 28 April 2024).

⁸⁸⁾ NKDB, 'NKDB has been awarded another grant from the UNVFVT' (5 April 2024), <https://en.nkdb.org/activitynews/?idx=19318831&bmode=view>.

individual or state perpetrator accountable.⁸⁹⁾ Relying on other states or donors to compensate for harms committed by the perpetrator state may appear to evade the latter's responsibility, but it can be a tangible and practical method to secure reparations for some victims sooner rather than later.

5. Restitution

In legal terminology, restitution is to restore one to their original position before they suffered loss or injury inflicted by another. The purpose of restitution is to undo the damage caused, for example by returning lost finances or property or reinstating one's job. However, for many victims of North Korean human rights violations, restoration to one's original position would be unachievable, especially for irreversible harms such as in cases of deaths, disappeared, or long-lasting physical injuries or mental trauma from torture or cruel, inhuman, or degrading treatment or punishment. Instead, restitution may be most likely pursued through court decisions to provide monetary compensation to victims or their families. In many cases such as the lawsuits mentioned above, it may not be enough or even attainable. Meaningful restitution is highly challenging. Therefore, stakeholders must continue to coordinate and leverage other means of reparation toward this end.

6. Guarantee of non-recurrence

Guaranteeing non-recurrence involves significant institutional

⁸⁹⁾ Fabián Salvioli, 'Financing of reparation for victims of serious violations of human rights and humanitarian law,' *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, UN General Assembly A/78/181 (14 July 2023): 17.

reforms within the offending state to prevent future human rights violations. North Korea has seldom made official commitments to end human rights abuses, one rare exception being the 2002 admission to abducting Japanese nationals.⁹⁰⁾ Rather, pressure has had to come from outside, traditionally through UN human rights mechanisms, such as treaty body processes, the Universal Periodic Review, Special Procedures (i.e., Special Rapporteurs, Working Groups), and the Commission of Inquiry. For example, repeated calls to improve detention conditions, especially for women and children, led to reports of changes in North Korea to reduce abusive treatment by prison guards.⁹¹⁾ In addition to leveraging UN-led processes, stakeholders exert pressure for systemic reform by implementing other measures, including sanctions and the appointment of dedicated North Korean Human Rights Ambassadors such as Shinhwa Lee of South Korea and Julie Turner of the United States. Despite North Korea's resistance to such pressure, international efforts must continue with a concerted strategy of diplomacy, legal tactics, and reparative measures to prevent gross human rights violations by North Korea.

V. Conclusion: Moving Forward on Accountability

Achieving meaningful accountability for North Korean human rights abuses requires a balanced approach that incorporates both judicial and non-judicial remedies. The limitations of judicial mechanisms

⁹⁰⁾ For a detailed account, see Robert S. Boynton, 'North Korea's Abduction Project,' *The New Yorker* (Dec. 21, 2015).

⁹¹⁾ A North Korean escapee gave this account at the UN OHCHR-Seoul, COI+10 Conference, *supra* n 5.

highlight the necessity of non-judicial approaches as complementary measures to provide reparations for victims. Though underexplored in the context of North Korea, reparative measures can offer essential remedies for victims where litigation falls short. Non-judicial accountability measures, such as truth-seeking, documentation, memorialization, rehabilitation, and compensation, play a vital role to address the needs of victims of North Korean human rights violations. These victim-centered measures ensure that victims' voices and experiences remain central to the accountability process. Different stakeholders, including South Korean government agencies, civil society organizations, and victims themselves, undertake these measures with varying methods and degrees of success. Truth-seeking and documentation efforts are vital for establishing an essential historical record, while commemoration fosters healing and preserves the memory of victims. Rehabilitation programs provide critical psycho-social and social support to victims, aiding their recovery and integration into society. Compensation, although challenging to secure from the DPRK, remains a critical component of reparations, offering financial redress for the harms suffered by victims. Additionally, guarantees of non-recurrence, though difficult to enforce on the North Korean regime, are pursued through international pressure and advocacy, aiming to prevent future human rights violations.

Advocates continue to seek new tactics to hold the DPRK accountable for human rights crimes. As demonstrated at the recent UN OHCHR COI+10 Conference, these include proactive, collaborative efforts by UN Special Procedure bodies whereby Special Rapporteurs and Working Groups have combined their thematic areas to target pressing issues together, such as writing joint letters to the People's Republic of China to address the forced repatriation of North

Korean escapees.⁹²⁾ Treaty bodies like the Committee on the Elimination of Discrimination Against Women (CEDAW) have recently started issuing “exceptional requests” for delinquent state reports and also addressed urgent issues such as the repatriation of North Korean women and children by China.⁹³⁾

Meanwhile, independent investigative mechanisms have also emerged as quasi-legal institutions. An International Court of Justice (ICJ) Advisory Opinion can mobilize a UN General Assembly investigative mechanism, such as the International, Impartial, and Independent Mechanism (IIIM) for Syria or the Independent Investigative Mechanism for Myanmar.⁹⁴⁾ These mechanisms have been instrumental in compiling and unifying documented information to create searchable databases, especially useful for prosecutors who request this information as evidence for their cases.⁹⁵⁾ Similarly, the Independent Institution on Missing Persons in Syria under OHCHR was also recently established at the behest of families to create a unified registry of over 100,000 missing persons.⁹⁶⁾ Given the

92) UN Press Release, ‘China must not forcibly repatriate North Korean escapees: UN Experts’ (17 October, 2023), <https://www.ohchr.org/en/press-releases/2023/10/china-must-not-forcibly-repatriate-north-korean-escapees-un-experts> (including the Joint Letter and China’s response).

93) Dalia Leinarte, Member of the Committee on the Elimination of Discrimination against Women, ‘How UN human rights mechanisms contribute to accountability,’ UN OHCHR-Seoul, COI+10 Conference, supra n 5.

94) UN OHCHR-Seoul, Session on ‘Current international trends to advance accountability for international crimes,’ COI+10 Conference, supra n 5.

95) Catherine Marchi-Uhel, Head of the IIIM-Syria, and Nicholas Koumjian, Head of the IIM-Myanmar, Panel on ‘Current international trends to advance accountability for international crimes,’ COI+10 Conference, supra n 5.

capacity of investigative mechanisms to integrate judicial and non-judicial measures, civil society representatives are keen to explore this growing trend.⁹⁷⁾

In conclusion, a holistic approach that integrates both judicial and non-judicial accountability measures is essential to address North Korean human rights abuses. Collaboration among international organizations, civil society groups, and initiatives led by victims can significantly improve the effectiveness of these accountability efforts. As this article has shown, a comprehensive range of non-judicial measures is already underway or being explored, often complementing ongoing litigation. Going forward, the efficacy of intergovernmental procedures, governmental programs, and civil society actions should be assessed for their effectiveness in providing reparations while centering on victims' agency. Important to consider per accountability mechanism are the purpose, effectiveness, resource requirements, victims' roles, and potential outcomes associated with each accountability mechanism. Recognizing the diversity of victims' experiences and needs is crucial to tailoring reparative efforts. Empowering victims, educating stakeholders on the broader context of remedies and reparations, and prioritizing victims' healing are all vital steps in advancing accountability for North Korean human rights violations.

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⁹⁶⁾ Ugo Cedrangolo, Start-Up Team of the Independent Institution on Missing Persons in Syria, OHCHR, Panel on 'Current international trends to advance accountability for international crimes', COI+10 Conference, *supra* n 5.

⁹⁷⁾ UN OHCHR-Seoul, *supra* n 94.

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<국문요약>

북한의 인권 책임성을 위한 사법적 및 비사법적 접근법 적용

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2014년 유엔 북한 인권 조사위원회 보고서 발표 10주년을 맞이하여, 북한 인권을 옹호하는 국제사회는 북한이 자행한 중대한 인권 침해에 대한 책임을 묻는 복잡한 과제를 해결하고자 계속 힘겨운 노력을 하고 있다. 형사 기소는 여전히 제한적이기 때문에, 인권 옹호자들은 진실 규명, 문서화, 기념과 추모, 피해자 지원을 위한 회복적 조치와 같은 비사법적 전략을 동시에 추구하고 있다. 이 글에서는 (1) 북한 지도부에 대한 소송의 현재 상태와 도전 과제를 검토하고, (2) 국제 인권법에 따른 비사법적 책임의 개념을 구제와 배상 관점에서 살펴보고, (3) 다양한 이해관계자가 북한 인권 범죄의 피해자를 지원하기 위해 회복적 조치를 어떻게 적용하고 있는지를 분석한다.

주제어: 북한, 북한인권, 인권, 책임, 구제, 배상

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