

TRANSITION FROM TRADITIONAL TO NON-
TRADITIONAL ACCOUNTABILITY FRAMEWORK IN
THE CONTEXT OF HUMAN RIGHTS IN THE
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

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INTRODUCTION

The historic foundational moment in the fight against human rights violations in the Democratic People's Republic of Korea ("DPRK") begins with the 2014 Report of the Commission of Inquiry on Human Rights by the United Nations Commission of Inquiry ("COI"). The commission declared that "systematic, widespread and gross human rights violations"

are being committed by DPRK, and that many of them “constitute crimes against humanity.”¹ They also raised questions about the “inadequacy of the response of the international community” for allowing DPRK to pursue policies of crime for decades, and the responsibility of the international community to protect the people of DPRK due to the failure of their own government to do so.² The commission also called for “urgent accountability measures” with dialogue with DPRK to promote changes and to ensure accountability to those responsible for the crimes against humanity including referral to the International Criminal Court (“ICC”) or establishment of an ad hoc tribunal.³ Yet ten years since the 2014 report by COI, very limited progress has been seen in holding those accountable for the human rights violations and crimes against humanity in DPRK. The significance and the impact of the report are not undermined in any way as it is one of the most powerful tools of human rights, shifting the paradigm from just “monitoring to accountability” by putting human rights issues on the “global agenda.”⁴ However, despite the comprehensive report of the COI and efforts by many, grave human rights violations and crimes against humanity continue to persist today in DPRK, perhaps have worsened, and much of the international community’s responses have been “a state of inaction.”⁵

This paper aims to analyze the concept of accountability, examine its limits and barriers in the human rights context of DPRK, and explore the shift from traditional legal accountability to non-traditional accountability to advance the progress of human rights issues in DPRK as a response to the lack of progress in the last decade. It first discusses accountability as a mechanism to ensure those who are responsible for human rights violations and crimes against humanity are held accountable as well as to deter future violations and atrocities. Then it addresses the growing call for non-traditional approaches that prioritize the needs of victims, emphasizing the importance of reparation, truth-telling, and memorialization. By examining both the traditional and non-traditional framework of accountability, this paper aims to contribute to a deeper understanding of the necessity of accountability in pursuit of meaningful change and justice for the victims of human rights violations in the DPRK.

¹ U.N. Hum. Rts. Couns., *Report of the Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea*, ¶ 24, U.N. Doc. A/HRC/25/63 (Feb. 7, 2014) [hereinafter Human Rights Council 2014 Report].

² *Id.* ¶ 86.

³ *Id.* ¶ 87.

⁴ Nina Seungju Lee, *N. Korean Human Rights and the COI Report: 10 Years On, Inaction Persists*, DAILY NK (Aug. 14, 2024), <https://www.dailynk.com/english/n-korean-human-rights-coi-report-10-years-on-inaction-persists/>.

⁵ *Id.*

I. ACCOUNTABILITY IN HUMAN RIGHTS FRAMEWORK

The concept of accountability includes various definitions and has a wide range of applications across many disciplines.⁶ Yet the essential idea of accountability is that the “actors . . . in positions of power and authority, bear the consequences of their actions and omissions.”⁷ In the context of human rights, accountability governs relationships, laying down the “cornerstone of the human rights framework.”⁸ Between states and their people, accountability focuses on public accountability where states, as primary duty bearers in international human rights law, “have a responsibility to respect, protect, and fulfil the rights of those within their jurisdiction.” U.N. identifies accountability for human rights violations in three dimensions: “it refers to the obligation of those in authority to take *responsibility* for their actions, to *answer* for them to those affected, and to be subject to some form of *enforceable* sanctions if their conduct or explanation is found wanting.”⁹ This means that the states “cannot arbitrarily exercise power” but should 1) have “clearly defined duties and performance standards” that allow assessment of their behaviors “transparently and objectively,” 2) provide “reasoned justification to those affected by their decisions,” and 3) have “mechanisms . . . to monitor compliance with established standards and provide corrections and remedies.”¹⁰ In this framework, accountability becomes a “prerequisite for holding any law-making mandate” because it acts as a mechanism to install trust between the mandate and its people.¹¹

Accountability as defined above, governs the “relationship between ‘duty bearers’ in authority and ‘rights holders’ affected by their action.”¹² It not only has a “corrective function” to address the wrongs and sanction the responsible but also has a “preventive function” to identify successes and failures of policies or services provided to build on or to correct, making actors more effective and responsive to those they are responsible to.¹³ It can go beyond the strict legal concept of liability and responsibility to encompass “non-justiciable matters” such as political and financial,

⁶ Carolyn Moser, *The Concept of Accountability and Human Rights Violations*, in MPIL Research Paper Series No. 2023–26, at 1, 1 (Max Planck Inst. for Compar. Pub. L. & Int’l L. (MPIL), 2023).

⁷ *Id.*

⁸ OHCHR & CESR, *Who Will Be Accountable?: Human Rights and the Post-2015 Development Agenda – Summary*, at 4, U.N. Doc. HR/PUB/13/1/Add.1 (2013).

⁹ *Id.*

¹⁰ *Id.*; Moser, *supra* note 6, at 12.; Elizabeth Salmón (Special Rapporteur), *Situation on Human Rights in the Democratic People’s Republic of Korea*, ¶ 8, U.N. Doc. A/HRC/55/63 (Mar. 26, 2024).

¹¹ Moser, *supra* note 6, at 3.

¹² OHCHR & CESR, *supra* note 8.

¹³ *Id.* at 5.

which in turn becomes a useful tool for accountability even to international and non-state actors such as the United Nations or transnational companies.¹⁴ Limiting accountability only to the traditional notion of legal liability or judicial means of hold individuals criminally responsible severely restricts the available accountability spectrum.¹⁵ An author defining accountability in a human rights context posed several critical questions to broaden the scope of accountability beyond the traditional legal liability of the duty bearers in the current world today which also addresses several issues pertinent to DPRK.

What if the plaintiff has no standing? What if statutes of limitation bar claims irrespective of their merit? What if the alleged perpetrator is not bound by human rights obligations, for example because of extraterritoriality or simply because there are gaps in legal protection? What if the human right at stake is not justiciable, because it does not entail (concrete) duties and rights? What if the court does not have jurisdiction?¹⁶

As noted above, focusing exclusively on legal means to achieve accountability may be challenging and unrealistic in a contemporary global context, given the involvement of many non-state actors in the limited actions of the states and the DPRK's strong emphasis on sovereignty and non-intervention. DPRK insists on its own interpretation and application of international laws—including human rights standards—which makes accountability efforts difficult to enforce.¹⁷ If the victims of the human rights violation in the DPRK have to rely on a domestic third party, such as a judicial institution within the DPRK for redress, it would be impracticable, even potentially perilous given that the judicial institution is an integral part of the very system that is responsible for the violations. Even if the victim relies on international third parties outside DPRK, such as activists, organizations, other states, or even the ICC, still it would take more than just the existing legal systems. In fact, all possible ways—political, social, economic, and others—must be mobilized to redress the wrongs and to enforce accountability to DPRK, enabling immediate actions.

The 2013 report by the Office of the High Commissioner for Human Rights stated that accountability is “primarily ensured at the national level” where various mechanisms—such as political tools like parliament or codes of conduct, independent oversight bodies like human rights

¹⁴ Moser, *supra* note 6, at 3–4.

¹⁵ See Salmón, *supra* note 10, ¶ 9.

¹⁶ Moser, *supra* note 6, at 13–14.

¹⁷ *Id.* at 6; Michael Kirby, *Human Rights in North Korea: A Special Challenge for Asia's Lawyers*, 2014 LAWASIA J. 131, 140.

commissions, and social accountability mechanisms like community-based auditing—work together to reinforce each other as an “ecosystem of accountability.”¹⁸ It also stated that international accountability only supervises and strengthens the existing national mechanisms rather than enforcement.¹⁹ However, in the 2014 report by the COI, the commission stated that because the DPRK not only failed but pursued policies of human rights violation, the responsibility to protect the people of DPRK must be accepted by the international community, especially the great powers who had a role in the division of the peninsula and the unended Korean War.²⁰ Because of the historical and political system in DPRK, an “ecosystem of accountability” by various mechanisms and entities does not seem to be possible as the political, social, or independent mechanisms in other democratic states are not available. Accountability that is both complied with and monitored by the same entity or authority cannot amount to actual accountability; it requires involvement of a third, independent entity.²¹ Therefore, the relationship between the duty bearer, the right holder, and the third party to ensure accountability must be examined in the context of DPRK, its people, and the international community, which can act as the third party.

II. DPRK AND HUMAN RIGHTS

A. *Historical Background of DPRK*

The human rights situation in the DPRK is deeply rooted in the nation’s historical background, making it essential to understand this context to fully grasp the development and application of its human rights situation and to find future solutions. The division of the Korean Peninsula into DPRK in the North and the Republic of Korea (“ROK”) in the South occurred as an outcome of World War II and the 1953 armistice to halt the Korean War. The DPRK aligned under the Soviet Union’s socialist influence and the ROK under the democratic influence of the United States. Under the leadership of Kim Il-Sung (1948–1994), DPRK developed into a “Soviet-style” government with a powerful military and elite group in power with hereditary leadership passing down the family line of Kim Il-Sung.²² His son, Kim Jong-Il succeeded in leadership (1994–2011) and utilized his position as second in command in the military to

¹⁸ OHCHR & CESR, *supra* note 8, at 10–11.

¹⁹ *Id.* at 11.

²⁰ Human Rights Council 2014 Report, *supra* note 1, ¶¶ 86–87.

²¹ Moser, *supra* note 6, at 7.

²² Kirby, *supra* note 17, at 131–32.

transform DPRK from “a party dictatorship to a military dictatorship.”²³ Kim Jong-Un, the son of Kim Jong-Il, has been the head of DPRK from 2011 to the present.

B. *Juche Ideology and Policies*

The ideology of *Juche*, self-reliance, introduced by Kim Il-Sung became the guiding principle of the country, regulating both domestic and international policies.²⁴ The *Juche* ideology emphasized “national self-reliance, independence, and worship of the supreme leader.”²⁵ In alignment with *Juche* ideology, the DPRK economic and military policies emphasize the establishment of a strong self-reliant national economy and prioritization of resources to support such independent stature in the international arena. Beginning in 1995, the *Songun* policy prioritized the Korean People’s Army in state affairs and the allocation of national resources, amid a chronic food crisis and collapse of the economy.²⁶ In 1998, the constitution was revised to give state ownership over all facilities, corporate enterprises, and their productions, as well as strict guidance for collective farm production.²⁷ The *Songun* policy continues to govern DPRK today, with reports indicating that approximately 20–30% of its GDP is allocated to military expenditures, estimated to range from \$7 billion to \$11 billion annually.²⁸ Such military-first policies, including the nuclear weapons and missile programs, not only consolidated the absolute power of the leader but reflected the strategic efforts and desire of the DPRK to assert its position on the global stage amid economic crisis and shifts in global political dynamics—especially after the fall of Soviet Union—at the cost of other members of the society.²⁹

C. *Economic and Food Crisis*

Multiple factors contributed to the economic hardship and significant food crisis in the 1990s. Following the Korean War, DPRK instituted a “Soviet-styled, centrally planned command economy” where the state exercised comprehensive control over industrial development, production,

²³ DLA PIPER U.S., LLP & U.S. COMM. HUM. RTS. N. KOR., FAILURE TO PROTECT: A CALL FOR THE U.N. SECURITY COUNCIL TO ACT IN NORTH KOREA, 5–6 (2006) [hereinafter FAILURE TO PROTECT]; Suk Hi Kim, *North Korea: Yesterday, Today, and Tomorrow*, in THE SURVIVAL OF NORTH KOREA: ESSAYS ON STRATEGY, ECONOMICS, AND INTERNATIONAL RELATIONS 1, 12–13 (Suk Hi Kim et al. eds., 2011); Kirby, *supra* note 17, at 132.

²⁴ Kim, *supra* note 23, at 16.

²⁵ *Id.*

²⁶ *Id.* at 18–19; FAILURE TO PROTECT, *supra* note 23, at 8.

²⁷ Kim, *supra* note 23, at 16–17.

²⁸ *Military Expenditures*, CIA: THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/field/military-expenditures/> (last visited Apr. 21, 2025).

²⁹ Kim, *supra* note 23, at 19.

and the distribution of goods, including agricultural outputs and their quantities.³⁰ The 1991 collapse of the Soviet Union severed critical economic ties, cutting aid and subsidies of food, crude oil, coal, and equipment—supplies upon which DPRK heavily depended on the Soviet Union and other socialist countries.³¹ The inefficiency of DPRK's domestic markets exacerbated these economic hardships. China's normalization of relations with the ROK also contributed to the crisis.³² Moreover, severe natural disasters, including devastating floods in 1995 and 1996 and the worst drought in decades (repeating in 2000 and 2001), compounded food shortages.³³ Despite improved harvests in 2002 and 2003, food deficits persisted, and the domestic food production was not enough for the whole population of DPRK.³⁴ Outside food assistance is a must but DPRK limits the distribution and access of its provinces to the U.N. agencies and international organizations of aid, willing to sacrifice the lives of their citizens in pursuit of their military priorities, weapons of mass destruction programs, and maintaining strict control over the citizens while preserving isolation from the outside world³⁵

D. Human Rights Violations in North Korea

Being a “closed society”, away from the outside world for decades, verifying conditions within the DPRK had been challenging.³⁶ Nevertheless, many reports indicated shocking human rights violations following the economic crisis including systematic discrimination in food access based on social status, the detention camps for political prisoners, restrictions on movement, suppression of freedoms of expression and association, forced labor, public executions for famine-related crimes, and heightened vulnerability of women and children.³⁷ The ongoing food shortages and economic insecurity in the DPRK have perpetuated issues of malnutrition and starvation, resulting in persistent violations of the fundamental right to food, giving rise to a continuous chain of human rights abuses.³⁸

The 2014 COI report categorized human rights violations in DPRK into nine specific areas: the rights to food, prison camps, torture and

³⁰ FAILURE TO PROTECT, *supra* note 23, at 7.

³¹ Amnesty Int'l, *Starved on Rights: Human Rights and the Food Crisis in the Democratic People's Republic of Korea (North Korea)*, AI Index ASA 24/003/2004, at 6–7 (Jan. 2004).

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 8.

³⁵ FAILURE TO PROTECT, *supra* note 23, at 12–13.

³⁶ Kirby, *supra* note 17, at 133.

³⁷ See Amnesty Int'l, *supra* note 31, at 21–22.

³⁸ FAILURE TO PROTECT, *supra* note 23, at 13, 26–28.

inhuman treatment, arbitrary arrest and detention, discrimination—particularly in denial of basic human rights and freedom—freedom of expression, right to life, freedom of movement, and enforced disappearances, including abduction of foreign nationals.³⁹ In 2004, the U.N. Commission on Human Rights passed a resolution to appoint Special Rapporteurs to the DPRK, and the mandate has been continued by the U.N. Human Rights Council to this day.⁴⁰ The Special Rapporteurs monitored, documented, and provided objective assessments of the human rights situation in the DPRK to the international community.⁴¹ Their work includes issuing recommendations, raising awareness of the obligations of other member states, advocating actions such as referrals to the International Criminal Court (“ICC”), and making efforts to mitigate the humanitarian impact of sanctions on the people of the DPRK.⁴² Their reports during the past decade added to the list of violations including limited access to health services, restriction on freedom of religion, chronic food shortage, political prison camps (*kwanliso*), forcible repatriation of escapees, discrimination based on *Songbun*, trafficking and sexual exploitation of women, and child labor.⁴³

III. HUMAN RIGHTS RESPONSIBILITIES

A. *Responsibility of DPRK Under Domestic Law*

Holding individuals or entities accountable, as previously defined, requires a clear delineation of the duties of those in authority, along with enforcement mechanisms to enforce compliance with the duties, sanctions to provide corrections and to prevent further wrongful conduct, and provision of remedies for those who suffered. DPRK as a state has its duties to its people under domestic law and international law.

The DPRK constitution and policies on their face protect various economic, social, and cultural rights as well as political. For example, DPRK’s constitution includes equality of citizens, freedom of speech, freedom of press, freedom of travel, free medical care, freedom to express religious beliefs, and others.⁴⁴ It also contains provisions stating that the State will provide food, clothing, and housing for the people.⁴⁵ The Penal

³⁹ Human Rights Council 2014 Report, *supra* note 1, ¶ 3.

⁴⁰ U.N. Secretary-General, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People’s Republic of Korea*, ¶ 14, U.N. Doc. A/77/522 (Oct. 13, 2022) [hereinafter U.N. Secretary-General 2022 Report].

⁴¹ *Id.*

⁴² *Id.* ¶¶ 14–15.

⁴³ Human Rights Council 2014 Report, *supra* note 1, ¶¶ 3, 32–33, 39; U.N. Secretary-General 2022 Report, *supra* note 40, ¶¶ 16, 19; *see also* Salmón, *supra* note 10, ¶¶ 1, 2, 6–7.

⁴⁴ Morse H. Tan, *Finding a Forum for North Korea*, 65 SMU L. REV. 765, 775 (2012).

⁴⁵ *Id.*

Code also prohibits and criminalizes many human rights violations including forced child labor, torture, as well as kidnapping, and trafficking which are punishable by execution under the 2007 addendum.⁴⁶

However, law in practice is a different reality for the citizens of the DPRK. For instance, although the national laws of DPRK recognize individual freedom to choose jobs, receive remuneration, and security of safe working conditions, interviews with DPRK escapees often describe having jobs assigned by the government based on one's *Songbun*, with little or no payment, and having to work as forced laborers in poor working conditions for the State.⁴⁷ An escapee described her experience working on railroad repairs when she was eighteen:

[F]rom early morning to late at night, after dark. ... We were given corn to eat. We did not receive a large amount, but we did receive corn three times per day. We were not free to leave. We were not locked up, but it was impossible to leave because we were too far from anything. Those who ran were caught, brought back and beaten up.⁴⁸

The constitution of DPRK allows its supreme leader, the National Defense Commission Chairman to revoke any decisions made by state organs that are contrary to his orders.⁴⁹ The same power of revocation is given to The Supreme People's Authority and the Cabinet who act as the legislature and executive branch of DPRK.⁵⁰ In the absence of a political mechanism such as a balance of powers to ensure an "ecosystem of accountability," accountability enforced solely by the same entity required to comply falls short, creating a need for an independent third party to ensure sincere accountability.⁵¹

B. Responsibility of DPRK Under International Law

Although DPRK receives global attention mainly for its human rights violations, they are nonetheless a party to five key international human rights instruments.⁵² They ratified International Covenant on Civil and Political Rights ("ICCPR") and International Covenant on Economic,

⁴⁶ *Id.* at 776.

⁴⁷ Rep. of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, ¶ 20, U.N. Doc. A/HCR/40/66 (May 30, 2019) [hereinafter UNHRC 2019 Report].

⁴⁸ *Id.* (ellipses preserved from original quotation).

⁴⁹ Tan, *supra* note 44, at 775–76.

⁵⁰ *Id.*

⁵¹ See OHCHR & CESR, *supra* note 8; Moser, *supra* note 6, at 1–2.

⁵² U.N. Secretary-General 2022 Report, *supra* note 40, ¶ 23; FAILURE TO PROTECT, *supra* note 23, at 11.

Social, and Cultural Rights (“ICESCR”) in 1981, Convention on the Rights of the Child (“CRC”) in 1990 including the optional Protocol regarding sales of children, child prostitution and child pornography in 2014, Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) in 2001, and the Convention on the Rights of Persons with Disabilities (“CRPD”) in 2016.⁵³

In parallel to its enforcement of domestic laws, DPRK exercises its own interpretation of international laws in practice throughout the country. As a party to ICCPR, “torture or cruel, inhuman or degrading treatment” is prohibited “at all times in all circumstances,” even during war and other public emergencies.⁵⁴ In conjunction with the treaty, Article 6 and 37 of the Criminal Procedure Law of DPRK allow for guarantees of human rights and fair trial for detainees.⁵⁵ However, in reality, torture and ill-treatment are practiced as a way to “secure confessions and punish detainees.”⁵⁶ Instances of torture and ill-treatment by officers of the Ministry of State Security and the Ministry of People’s Security have been reported by former female detainees of DPRK.⁵⁷ They were beaten during interrogation to extract information or to make a confession that they sought to leave the DPRK or had made contact with ROK citizens.⁵⁸

The attitude of DPRK regarding international laws and human rights standards is best captured in DPRK’s published report as a response to the 2014 COI report.

The US and Western countries misuse universality of human rights standards established in the international human rights instruments and they are going to endless lengths in their [maneuvers] to force their ‘human rights standards’ upon other countries as they did before. These countries make the rumour afloat that their ‘human rights standards’ are the ‘fair standards’ and ‘the best standards’ which can be decided... [However they are] reactionary ones applied in the imperialist way of thinking, with the view of value and way of life which look down, oppress and dominate others... It was proved vividly that ‘COI’ attempted to bring down the DPRK by collecting the prejudiced ‘data’ without any scientific accuracy and objectivity in the

⁵³ U.N. Secretary-General 2022 Report, *supra* note 40, ¶ 23; FAILURE TO PROTECT, *supra* note 23, at 11.

⁵⁴ UNHRC 2019 Report, *supra* note 47, ¶ 29.

⁵⁵ *Id.* ¶ 29 n.36.

⁵⁶ *Id.* ¶ 29.

⁵⁷ “*I still feel the pain*”: Human Rights Violations Against Women Detained in the Democratic People’s Republic of Korea, OFF. U.N. HIGH COMM’R HUM. RTS. (July 28, 2020), https://www.ohchr.org/sites/default/files/Documents/Countries/KP/HR_Violations_against_Women_DPRK_EN.pdf.

⁵⁸ *Id.*

content and raising the publication of 'report' of intervention which is extreme in the selectivity and double-dealing standards.⁵⁹

DPRK's argument in protest of the COI report emphasizes the sovereignty of a state and that "DPRK is not answerable to demands and pressures of the international human rights system or international law."⁶⁰ They do not deny the important role of international human rights law as basic principles of human dignity and value but consider them "junior international law," distinguished from other international laws.⁶¹ DPRK claims that the provisions of human rights conventions should be applied according to the various standards and conditions of each country, taking into account the "will and requirement" of the state.⁶²

At first glance, the DPRK appears to just occupy an extreme position on the cultural relativism end of the human rights spectrum, in contrast to the universalism approach. Despite taking into fair consideration the stronger Western influence in drafting of the Universal Declaration of Human Rights ("UDHR"), the foundational motivation was to prevent situations where individual rights are subordinate to collective interest—an approach that can pave the way for totalitarianism—thereby laying out the foundation for establishing a world based on "freedom, justice and peace."⁶³ The "Asian Values," which prioritize attributes such as hard work, self-reliance, and personal achievement—distinct from Western emphases on freedom of speech, individual rights, personal autonomy, and public accountability—has been invoked by some Asian governments to challenge certain interpretations of human rights principles.⁶⁴ However, no differences in culture, as well as any major ethical, religious, or philosophical tradition can be interpreted "in extreme terms as it could lead to 'moral paralysis:' violations of individual rights by some and preclusion of criticism of such situations by others."⁶⁵ Nor can any economic conditions validly justify the violation of fundamental individual rights.⁶⁶ Essential rights—such as the right to life, liberty, security, freedom from slavery, prohibition of torture, racial discrimination, and

⁵⁹ Kirby, *supra* note 17, at 138 (quoting KOR. CENT. NEWS AGENCY, REPORT OF THE DPRK ASSOCIATION FOR HUMAN RIGHTS STUDIES 15 (2014)) (brackets and ellipses preserved from Kirby quotation).

⁶⁰ Kirby, *supra* note 17, at 138–139.

⁶¹ KOR. CENT. NEWS AGENCY, REPORT OF THE DPRK ASSOCIATION FOR HUMAN RIGHTS STUDIES 104 (2014).

⁶² *Id.* at 107–08.

⁶³ Agnieszka Bienczyk-Missala, *Human Rights in Foreign Policy*, 12 POL. Q. INT'L AFF. 86, 105–06 (2003).

⁶⁴ *Id.* at 104–06.

⁶⁵ *Id.* at 106–07.

⁶⁶ *Id.* at 107.

arbitrary detention—demand universal adherence.⁶⁷ Certain practices rooted in regional traditions, such as polygamy or limited curtailment on speech may be admissible as culturally specific implementations given that there is no coercion.⁶⁸ Nonetheless, the universality of core human rights remains imperative in establishing a baseline of protection across all cultures.

C. Efforts of Accountability by the United Nations

The United Nations has undertaken series of continuous efforts to address the human rights issue in DPRK including the establishment of a field office in Seoul, Republic of Korea, the appointment of Special rapporteurs, General Assembly Resolutions, Security Council discussions, Human Rights Council resolutions, and calls for referral to ICC. After the COI report in 2014, the General Assembly for the first time “forwarded a country-specific report” of the DPRK to the Security Council for action.⁶⁹ Because it was a procedural decision, China and Russia could not veto it, drawing out a “charm offensive” strategy from the DPRK to act upon the human rights concerns and responding to the Universal Periodic Review (“UPR”).⁷⁰

During the third and the latest UPR process of the Human Rights Council in May 2019, DPRK accepted 132 recommendations out of the 262 made by the U.N. members.⁷¹ The accepted recommendations were related to social rights such as “acceptance of international norms, fair trial, freedom of movement, thought, religion and expression, rights to food, health, education, and an adequate standard of living, equality and non-discrimination, and the rights of women, children, and persons with disabilities.”⁷² Many of the recommendations accepted were overlaps from the previous review cycle that did not show noticeable improvements.⁷³ On the other hand, they rejected the 63 recommendations related to civic and political rights threatening the regime or regarding the powers of the state or military including “abolition

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Jung-Hoon Lee & Joe Phillips, *Drawing the Line: Combating Atrocities in North Korea*, 39 WASH. Q. 61, 62–63 (Summer 2016).

⁷⁰ *Id.* at 63.

⁷¹ U.N. Secretary-General 2022 Report, *supra* note 40, at ¶ 24.

⁷² *Joint Submission to the Universal Periodic Review of the Democratic People's Republic of Korea: 47th Session of the UN Universal Periodic Review*, HUM. RTS. WATCH (Apr. 9, 2024, 1:30 PM), <https://www.hrw.org/news/2024/04/09/joint-submission-universal-periodic-review-democratic-peoples-republic-korea>.

⁷³ Sookyoung Kim, *Assessment of the 3rd Universal Periodic Review (UPR) of the DPRK and the Ways to Improve Human Rights in North Korea*, KOR. INST. FOR NAT'L UNIFICATION, at 5 (May 22, 2019) [hereinafter Kim, *Assessment of the 3rd UPR of the DPRK*], <https://repo.kinu.or.kr/bitstream/2015.oak/10262/1/co19-09.pdf>.

of repressive systems, arbitrary executions, arbitrary detention, enforced disappearances, slavery, and trafficking, the promotion of press freedom, and improved detainee treatment.”⁷⁴ However, due to the interdependence of political and social rights in securing fundamental rights of individuals, exclusion in improvements of political rights will be unlikely to improve the overall human rights situation in DPRK, though addressing the social rights first may be a starting point for initial engagement.⁷⁵

Although the “charm offensive” responses by the DPRK—the participation in the UPR, the appearance at the 69th General Assembly by the Foreign Minister of DPRK to give a speech followed by the release of three U.S. detainees—turned out to be diplomatic initiatives to block referrals of DPRK officials to ICC or other tribunals, it has its merits in examining what DPRK responds to.⁷⁶ Comparatively, DPRK has shown more openness toward recognizing economic, social, and cultural rights, yet remains unresponsive to civic and political rights.⁷⁷ They plainly rejected the existence of political prison camps, argued misunderstanding of the socialist system for the criticism of *Songbun*, and asserted full protection of freedom of religion no matter the evidence from various reports and witnesses.⁷⁸

In the 2022 report by the Special Rapporteur, it was noted that although there have been periods of increased engagement between DPRK and the United Nations regarding human rights, there has been a lack of meaningful, sustained progress in implementing the recommendations by the treaty bodies.⁷⁹ The effectiveness of the Security Council can likely be limited by the veto powers of China and Russia. Engagement in the General Assembly may be undermined by the loss of will or low prioritization of human rights issues by the member states. It is essential to recognize that human rights violations in the DPRK are not merely the result of individual misconduct but are “essential components of a political system” that is unwilling to prosecute perpetrators acting in accordance with state policy, making the human rights violations very much a political issue both domestically and internationally.⁸⁰ Consequently, meaningful political and institutional reforms are required, including the introduction of genuine checks and balances on the supreme leader and

⁷⁴ *Id.*; *Joint Submission to the Universal Periodic Review of the Democratic People's Republic of Korea: 47th Session of the UN Universal Periodic Review*, *supra* note 72; Kirby, *supra* note 17, at 136.

⁷⁵ Kim, *Assessment of the 3rd UPR of the DPRK*, *supra* note 73, at 9.

⁷⁶ Lee & Phillips, *supra* note 69, at 63.

⁷⁷ Kim, *Assessment of the 3rd UPR of the DPRK*, *supra* note 73, at 8–9.

⁷⁸ *Id.* at 8.

⁷⁹ U.N. Secretary-General 2022 Report, *supra* note 40, at ¶ 27.

⁸⁰ Human Rights Council 2014 Report, *supra* note 1, at ¶¶ 80, 85–86.

the ruling party, as well as the establishment of an independent and impartial judiciary.⁸¹ These reforms were highlighted in the 2014 Commission of Inquiry Report and remain crucial yet unaddressed to this day.

IV. ACCOUNTABILITY ENFORCEMENTS

A. *Prioritization of Human Rights in Foreign Policy*

In response to the minimum progress from the past decade, the Special Rapporteur emphasized the necessity of exploring new avenues for engagement with the DPRK to facilitate the implementation of U.N. human rights recommendations and to secure accountability for victims of human rights violations, including those pertaining to crimes against humanity.⁸² She identifies three layers of work 1) opening channels of dialogue with the government of DPRK, 2) prioritization of accountability agenda, and 3) raising awareness of the ongoing grave human rights violations in DPRK.⁸³ Much of the first two items involve states as the main actors, and there are prevalent barriers that have stopped the progress of human rights accountability for decades. Many escapees from DPRK to China face forced repatriation by the Chinese government in violation of the international obligations of the non-refoulement principle.⁸⁴ Different views on the DPRK within ROK also contribute to the lack of progress. The conservative groups, especially Christian-based churches actively support rescue efforts for DPRK escapees, but the progressive groups often prioritize normalization of relations with DPRK over addressing human rights, which strains diplomatic efforts.⁸⁵ Such conflicting views by the two majority groups in the ROK cause its foreign policy to shift significantly with the change of the governing party, each prioritizing its own interest regarding relations with the DPRK and human rights.

Efforts to open channels of dialogue with the DPRK and prioritize an accountability agenda have been met with either inaction or one-time deals driven by the interests of states, rather than a genuine response to human rights violations actually occurring. Due to the “internationalization” of human rights, states have made human rights a part of their foreign policy agenda and have taken stands on the issues of

⁸¹ *Id.* at ¶¶ 87, 89.

⁸² U.N. Secretary-General 2022 Report, *supra* note 40, at ¶¶ 27, 31–33.

⁸³ *Id.* at ¶¶ 31–33.

⁸⁴ Eric Ryu, *Human Rights Situation in North Korea: Lack of Significant Progress from the United Nations Human Rights Mechanisms and What Can Be Done*, 27 MINN. J. INT'L L. 555, 560–61, 560 n.32, 572–73, 575 (2018).

⁸⁵ *Id.* at 572–73.

its violations, especially with the influence of Western democracy's idea of individual rights and their protection.⁸⁶ However, a realistic perspective of human rights in foreign policy is the self-interest of the state.⁸⁷ The linkage of security, economic, and other interests to human rights may result in double standards, such as privileged treatment of states like China and Russia where serious violations of human rights by their government are tolerated.⁸⁸

Human rights are used as a tool to achieve the objectives of the states, making it difficult to pursue accountability if they conflict with other more important goals or interests.⁸⁹ “[An] analysis of international practice proves that states seldom sacrifice their security or economic interests to human rights” with exceptions of grave violations such as the sanctions Western countries imposed on China after the Tiananmen Square massacre in 1989 despite possible sacrifices to their state's interest.⁹⁰ This unwillingness to sacrifice security or economic interest for human rights applies consistently to both DPRK, if not more, and also to other member states. There is usually a big gap between the “political declaration” of the necessity to pursue human rights in the world and the resources allocated for the implementation of such action.⁹¹ However, if human rights serve as an important national interest and do not hinder the advancement of other interests of the state, then states will likely exercise their influence, which will be much more effective than those of international organizations and NGOs.⁹² This is why continually raising awareness of human rights violations in the DPRK is essential, as it pressures states to prioritize these issues in their foreign policies and take meaningful actions. “Establish[ing] a hierarch of [essential] human rights” would also render intervention less controversial and more efficient, as not all violations justify actions against another state, especially in the light of the principle of non-intervention.⁹³

B. Legal Accountability – Traditional Approach

Selecting an appropriate forum to pursue legal accountability requires careful consideration of various factors including the potential to “create the strongest deterrence and impact on future leaders who would likely commit atrocities,” to provide the “strongest sense of justice” to the local people, and to facilitate national reconciliation and healing within

⁸⁶ Biencyk-Missala, *supra* note 63, at 87.

⁸⁷ *Id.* at 90.

⁸⁸ *Id.*

⁸⁹ *Id.* at 109.

⁹⁰ *Id.* at 111.

⁹¹ *Id.* at 86.

⁹² Biencyk-Missala, *supra* note 63, at 111.

⁹³ *Id.*

the country.⁹⁴ The COI report recommendation in 2014, recommendations made in the Special Rapporteur reports as well as many other groups and people have called to push forward referrals of the situation in DPRK by the Security Council to the ICC for accountability. Although DPRK is not a party to the Rome Statute, ICC still is a possible option for prosecution as it has case precedents of referral for such situations.⁹⁵ Finding an ad hoc tribunal or comparable mechanism is another option to consider as it can be set up to have jurisdiction predating 2002—beyond the temporal jurisdiction of the ICC.⁹⁶

The ICC prosecution has its advantages in that it carries an international deterrent effect, sending a strong message that the international community will not tolerate such conduct or violations.⁹⁷ At the same time, however, considerable limits exist, including the remote possibility of the Security Council's referral of DPRK's situation to ICC, lack of legitimacy given the far distance of the forum away from the location of the violations, and practical issues such as the extradition of the supreme leader in DPRK, as well as difficulty in developing local legal facilities.⁹⁸ Additionally, ICC's temporal jurisdiction restricting violations prior to 2002 poses a challenge for the numerous victims of grave crimes against humanity and human rights that occurred during the nineties.⁹⁹

Referral of DPRK's situation to ICC, creation of an ad hoc International Tribunal, and imposition of targeted sanctions against the perpetrators most responsible for crimes against humanity are listed as recommendations that have not been successfully implemented in the last ten years.¹⁰⁰ Rather than relying solely on the state actors or the Security Council to take action, there are significant roles the non-governmental persons and organizations can play to address urgent human rights issues. For achieving more useful legal and judicial accountability, there are "practical challenges as to personnel, methodology and resources."¹⁰¹

⁹⁴ Tan, *supra* note 44, at 768.

⁹⁵ *Id.* at 782–83 ("Omar al-Bashir, the President of Sudan, has been indicted by the ICC despite Sudan's refusal to ratify the Rome Treaty."). See Michael Kirby, *North Korea on the Brink of the Biden Administration: Human Rights, Peace, and Security*, 31 IND. INT'L & COMPAR. L. REV. 309, 319–20 (2021) (noting that the ICC assumed jurisdiction in cases of Libya and Darfur by referrals of the Security Council).

⁹⁶ U.N. Secretary-General 2022 Report, *supra* note 40, at ¶ 19; Tan, *supra* note 44, at 783.

⁹⁷ Tan, *supra* note 43, at 783.

⁹⁸ *Id.* at 785.

⁹⁹ *Id.*; see, *supra* Sections II.C, II.D.

¹⁰⁰ KOR. FUTURE, PROGRESS MADE ON ACCOUNTABILITY FOR SERIOUS HUMAN RIGHTS VIOLATIONS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA AND THE STEPS REQUIRED TO FURTHER ADVANCE ACCOUNTABILITY ¶ 24 (Dec. 2023).

¹⁰¹ Stephen J. Rapp, *Achieving Accountability for Atrocity Crimes in an Era of Resistance to International Justice and Human Rights*, 21 WASH. U. GLOB. STUD. L. REV. 137, 144 (2022).

Many of the personnel investigators, particularly from the Office of the High Commissioner for Human Rights (“OHCHR”), have greater experience in human rights monitoring than in criminal justice processes. Methodology in criminal justice often prefers information obtained from primary sources such as testimony of the survivors or escapees, which while valuable, frequently lacks detailed information on those directly responsible for their sufferings and abuses, complicating the efforts to substantiate accountability.¹⁰² “[E]mpowering the gatherers of the most probative evidence” is essential to construct a basis and framework of justice for the victims,¹⁰³ which is a role that can be played by non-governmental actors in preparation for future possible legal accountability.

C. *Victim-Centered Approach of Accountability*

The Special Rapporteur, in her 2022 Report, endorsed a “two-track approach,” advocating both criminal prosecution mechanisms for accountability and expanded avenues for cooperation with the DPRK and the international community.¹⁰⁴ She emphasized that “giving up on either of these tracks is the equivalent of abandoning the population from international support.”¹⁰⁵ Crucially, however, she pointed out her prioritization of the “victim-centered approach” providing voice and visibility to the victims and being responsive to their concerns and aspirations.¹⁰⁶ Experience has shown that both tracks are essential to address human rights issues in the DPRK: engagement is needed to initiate reforms, while criminal prosecution ensures justice, redress, and deterrence. Yet, humanitarian actions have often been overshadowed by state and organizational efforts focused on denuclearization of DPRK in foreign diplomacy agenda. As human rights abuses escalate alongside the DPRK regime’s intensified control, the plight of individual victims remains the foundation of accountability efforts. To achieve justice and sustained progress, a renewed commitment to victims—particularly in the absence of an ICC referral and limited DPRK responsiveness—is essential to affect change.

In the panel discussion on the U.N.’s role in accountability for DPRK’s human rights violations, Ambassador Joon Oh, former South Korean Ambassador to the United Nations, noted that a primary goal of human rights advocacy is to pressure the DPRK regime to change their

¹⁰² *Id.*

¹⁰³ *Id.* at 153.

¹⁰⁴ U.N. Secretary-General 2022 Report, *supra* note 40, at ¶ 34.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 38.

behaviors.¹⁰⁷ He highlighted the importance of such naming and shaming in the international arena, stating that the number one people on the execution list the DPRK announces are the defectors and escapees, which shows how much the DPRK cares about information being taken out of the country and vice versa as well as pressure they face.¹⁰⁸ Ambassador Oh also remarked on sanctions targeting the nuclear program in DPRK. While sanctions aim to curtail the regime's access to resources and reduce trade with the outside world, they unavoidably impact the daily lives and survival of the people, who face worsening economic hardship compounded by the COVID-19 pandemic, which has led to prolonged border closures and restricted access to humanitarian aid, amplifying food insecurity and poverty.¹⁰⁹ However, the negative impact of sanctions can be mitigated by increasing humanitarian assistance which has significantly decreased during the COVID-19 period. Despite the difficulties, sanctions continue to serve as an important leverage, where the persistence of strong sanctions signals a consistent, unwavering stance to the DPRK regarding its international obligations. A balanced approach that integrates considerations of both human rights and nuclear disarmament is crucial to addressing the humanitarian needs of North Koreans while advancing global security objectives.¹¹⁰

An example of a strong victim-centered approach was proposed by Kongdan (Katy) Oh, Chair of the Board of Directors of the Free Korean Association (USA) and a former policy analyst and North Korean expert in the 2024 International Dialogue on North Korean Human Rights conference. “[O]nly one way you can change North Korea... and achieve beautiful unification by [democracy]. That’s an information campaign.”¹¹¹ She emphasized that an information campaign, delivering information from the outside world to the people of DPRK, while also receiving information from them, is the only viable path towards bringing out change in DPRK, leading eventually to peaceful democratic unification of the Korean Peninsula.¹¹² So far, no substantial progress has been made because political considerations—both domestic and international—have consistently been prioritized over accountability. As a result, her focus shifted to activism, helping to establish a memorial park in Washington

¹⁰⁷ Stanford APARC, *The UN's Role in Accountability for North Korea Human Rights Violations | Panel Discussion*, YOUTUBE, 47:45 (Apr. 12, 2021), https://youtu.be/oH-icKR_xqQ?t=2865.

¹⁰⁸ *See id.* at 46:45.

¹⁰⁹ *Id.* at 49:05.

¹¹⁰ *Id.* at 51:26 (discussing the importance of a balanced approach to North Korea's nuclear issue and its human rights violations).

¹¹¹ Center for Strategic & Int'l Studies, *Session 2 | Beyond COI: Efforts for Accountability*, YOUTUBE 1:02:33 (July 23, 2024), <https://www.youtube.com/live/pCDyRKc7xQk?t=3753>.

¹¹² *Id.* at 1:03:13.

D.C., dedicated to the victims and defectors of DPRK. This physical space, featuring digitalized records of those executed, killed, tortured, starved, etc. can serve as a both powerful reminder and a tool for accountability, keeping an unfading record of DPRK's human rights violations and serving justice and healing to those affected.

In September 2024, the U.N. Secretary-General called for “non-traditional justice pathways such as reparations, truth-telling, and memorialization” to hold DPRK accountable for human rights violations and to overcome their “inaction” on human rights.¹¹³ The deputy head of the human rights office also noted the importance of non-judicial accountability in moving forward in the midst of ongoing serious violations and noncompliance of DPRK.¹¹⁴ In response, OHCHR allocated extra resources last year to raise awareness of the human rights situation in DPRK. In April 2023, they published a landmark report on enforced disappearances and abductions and called for the protection of escapees and victims of rights abuses from repatriation. These individuals are not only critical sources of information regarding DPRK's internal situations and accountability efforts but are at grave risk of “torture, arbitrary detention, or other serious human rights violations” if repatriated.¹¹⁵

CONCLUSION

Ten years have passed since the 2014 COI report identified grave human rights abuses and crimes against humanity in the DPRK, and no meaningful accountability enforcement to the perpetrators has occurred while human rights violations and crimes against humanity continue.¹¹⁶ Accountability in the human rights context requires authorities to fulfill their defined duties, provide “reasoned justification” to those affected by their decision, and implement mechanisms for remedy and correction, often requiring compliance monitoring through checks and balances or independent oversight by a third party. Under both domestic law and as a party to five core human rights conventions, the DPRK has duties to protect its citizens' basic human rights, enact reforms, and provide justice to victims by prosecuting those responsible for the violations and crimes against humanity.

However, the foreign policies of many states often leverage human rights selectively, prioritizing these concerns only when they align with

¹¹³ Shreyas Reddy, *UN Chief Demands Accountability for North Korean Human Rights Abuses*, NK NEWS (Sep. 3, 2024), <https://www.nknews.org/2024/09/un-chief-demands-accountability-for-north-korean-human-rights-abuses/>.

¹¹⁴ U.N. News Glob. Perspective Human Stories, *Accountability Essential to Counter Human Rights Abuse in DPR Korea*, U.N. NEWS (Mar. 20, 2024) <https://news.un.org/en/story/2024/03/1147791>.

¹¹⁵ *Id.*

¹¹⁶ Reddy, *supra* note 113.

national interests. In the case of the DPRK, guided by the *Juche* principle of self-reliance and the *Songun*, or “military-first” policy, the regime emphasizes military and weapons programs—even amid severe economic and food crises. This prioritization has led to chronic food shortages and various human rights abuses, including discriminatory food distribution and restrictions on freedom of movement and access to information. For the DPRK, nuclear weapons development remains central to its ideology and governance model, as relinquishing such programs could destabilize the military’s dominance and threaten the regime’s security.¹¹⁷ It is highly unlikely that the DPRK will compromise any of its military or civic and political policies for human rights.

The traditional mechanisms for legal accountability, such as referrals to the ICC or other tribunals, have proven ineffective due to the dynamics of the Security Council and the political prioritization of interest among the states. In light of these challenges, there is a growing call for non-traditional approaches that prioritize the needs of victims, emphasizing the importance of reparation, truth-telling, and memorialization. At its core, human rights advocacy begins with the protection of individual rights; thus, centering efforts on the victims of violations is essential for achieving justice and fostering meaningful change.

Information campaigns that deliver outside knowledge to the citizens of the DPRK, while simultaneously collecting inside information from them, represent a vital strategy for instigating reform in a nation that remains tightly isolated. Given the ineffectiveness of traditional accountability methods over the past decade, there is an urgent need to adopt innovative approaches that not only highlight the experiences of victims but also raise awareness among both DPRK citizens and the global community.

The Korean Peninsula continues to be a battleground of power dynamics, with ROK, Japan, and the United States on one side, and the DPRK, China, and Russia on the other.¹¹⁸ To effect meaningful change in human rights, it is crucial to cultivate awareness and memorialization efforts that encourage multilateral participation from diverse stakeholders all around the world. Like-minded countries must consistently prioritize human rights and advocate for freedom, democracy, and human rights at the center of their foreign policy.¹¹⁹ Human rights should not merely be utilized as a political tool for the denuclearization of DPRK; rather, they must be embraced as a fundamental goal aimed at

¹¹⁷ Tan, *supra* note 44 at 772.

¹¹⁸ Jeffrey Robertson, *Korea’s Strategic Futures Between Continental and Maritime Powers*, KEI (Oct. 18, 2024), <https://keia.org/the-peninsula/koreas-strategic-futures-between-continental-and-maritime-powers/>.

¹¹⁹ See Ryu, *supra* note 84, 576–78.

improving the lives of the DPRK people, ultimately leading to greater peace and security in the region.

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