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## THE HUMAN RIGHTS DIMENSION OF THE INVOLUNTARY SEPARATION OF KOREAN FAMILIES

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

This report has not been formally edited.

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# I. INTRODUCTION

1. The present report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) examines the issue of involuntary separation of Korean families from a human rights perspective. It is based on the High Commissioner's mandate, as provided by General Assembly resolution 48/141, and on Human Rights Council resolution 25/25, which mandated OHCHR to establish a field-based structure to monitor the situation of human rights in the Democratic People's Republic of Korea to promote accountability; conduct capacity-building activities for relevant stakeholders; and maintain public awareness of the situation through outreach initiatives. As a contribution to this mandate, the report provides a human rights analysis of involuntary separation, based on testimonies collected by the OHCHR Office in Seoul. It also provides concrete recommendations to all actors concerned to address this long-standing issue and its numerous human rights ramifications.

2. The United Nations Human Rights Committee has established that the term "family" must be defined so as to include all those comprising a family as understood in a given society.[1] In the Korean context where traditional family ties are highly valued and celebrated, separation has had a devastating effect on family relations since the Korean War. It is estimated that over one million and up to five million Koreans moved north or south during the war, leaving their families behind, and up to 100,000 were forcibly disappeared. Of these, less than 2,000 were able to receive information on their lost relatives or to see them in person, as of October 2015. The continuing legacy of war division and the advanced age of most victims call for urgent attention for a prompt resolution of this problem. The issue has received renewed attention in recent months, with victims' groups in the Republic of Korea calling for the international community's support to help them to restore contact with their relatives in the Democratic People's Republic of Korea.

3. "Involuntary separation" refers to situations in which an individual has been either forcibly removed from his or her family, for example through an enforced disappearance, or otherwise unable to restore contact or maintain the unity of their family. Indeed, even for individuals who choose to leave the Democratic People's Republic of Korea and their families to seek safety, long-term separation becomes involuntary as it is inflicted through policies of the Government of the Democratic People's Republic of Korea that deny freedom of information and movement. Thus, the report examines the multiple manifestations of separation, its historic patterns, and the experiences of different groups of victims.

4. The report offers a new perspective on involuntary separation that is informed by international human rights law. First, it proposes a victim-centred, human rights-focussed approach to identify the core violations lying at the heart of this issue. Thus, besides examining the most direct and visible manifestations of separation, it looks into broader causes and effects, such as underlying inequalities, prejudices and exclusionary practices.

[1] CCPR/C/81/D/1179/2003 (2004) https://www1.umn.edu/humanrts/undocs/html/1179-2003.html

It highlights the situation of women, whose specific experiences of separation are not always well understood or acknowledged. Second, the report attempts to identify the responsibilities of duty-bearers, including the governments of the two Koreas and other stakeholders in the international community at-large, with a view to addressing the issue. Finally, the report offers a conceptual and practical framework for civil society organizations and victims' groups to open up new avenues of redress and enhance the quality of their advocacy at the international level, including with United Nations protection mechanisms.

5. The report considers different forms of involuntary separation thereby bringing together groups of victims with unique life trajectories. Each story is a reminder that patterns of human rights violations cannot only be captured through statistics and general historical narratives, but are more vividly illustrated by the personal accounts of victims and their relatives. As the child of an abductee put it: "Generalization made us lose touch with the concrete aspects [of separation]. If the United Nations wants to help us resolve this issue, I feel they need to understand our individual cases in their own right."[2] The report attempts to lay the basis for this approach to involuntary separation.

[2] Transcript of interview with Mr. Hwang In-chul, on 1 April 2016.

# II. METHODOLOGY

6. The report is based on various sources of information, including: a seminar on the separation of Korean families as a violation of human rights, organized by OHCHR in Seoul on 10 December 2015; interviews with 24 victims of involuntary separation, which OHCHR conducted between 15 January and 15 April 2016; input from the Government of the Republic of Korea and civil society organizations, as well as publicly available information by human rights organizations that have researched the Korean context. Although the report recognises that the notion of family in Korean culture includes various types of kinship, the collection of testimonies has focussed on people who have lost trace of first-degree relatives, including parents, children, siblings and spouses.

7. The vast majority of victims interviewed by OHCHR chose to disclose their identities and the details of their stories. However, some names and locations are not revealed so as to mitigate the risk of harassment or reprisals against relatives who reside outside the Republic of Korea and to protect victims from potential acts of intimidation.

8. All interviews were conducted in the Republic of Korea using a semi-structured format that allowed victims to talk through their experiences and express their views on separation in their own terms. Due to the advanced age and frail condition of many victims, most interviews did not exceed two hours. Interview transcripts have been stored in a secure database as part of the regular monitoring work of the OHCHR office in Seoul. A qualitative analysis of the transcripts helped to identify a set of themes that are common among respondents and establish connections between these themes, namely: human rights violations leading to separation, the consequences of separation on human rights, and its specific impact on gender relations. Free and informed consent for the use of information has been sought from all victims quoted in this report.

9. OHCHR's lack of access to the Democratic People's Republic of Korea has prevented outreach to members of separated families who live there and the possibility to seek clarifications from the authorities. The report was shared with the Governments of the Democratic People's Republic of Korea and the Republic of Korea for factual comments prior to publication.

# III. BACKGROUND

10. This report examines the situation of three groups of victims of involuntary separation and the hardships they experience: those separated through displacement during the Korean War; victims of enforced disappearance during and after the War; and people who have escaped from the Democratic People's Republic of Korea in the past ten years. The variety of groups and time frames considered reflects the multiple ways in which division among Korean families has been experienced. In particular, the emergence of new categories of victims highlights the need for an in-depth understanding of historic patterns of human rights violations that continue to tear Korean families apart.

11. The involuntary separation of families is an enduring legacy of the 1950-1953 Korean War and an open wound for many people, both in the Democratic People's Republic of Korea and in the Republic of Korea. The psychological toll of separation has been immense, and since the Armistice Agreement was signed in 1953, members of affected families have continued to demand that they be reunited with their loved ones. In a meeting with the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea in November 2015, a man stated that his determination to be reunited with a son he had only seen once in six decades of separation had never waned.[3] He is one of over 60,000 surviving victims of separation who continue to live in the hope of finding the whereabouts of relatives whom they left behind while fleeing the North in the late 1940s and early 1950s, as fighting was raging in the Korean peninsula.

12. In the aftermath of the war, up to 100,000 people in the Republic of Korea also lost trace of relatives who were allegedly abducted by the authorities of the Democratic People's Republic of Korea.[4] For these relatives of victims of enforced disappearances, the Armistice ushered in a decades-long struggle for truth and justice. The practice of enforced disappearances by the Democratic People's Republic of Korea continued up until the early 2000s and also targeted victims of other nationalities, including Japanese. Despite the serious character of these allegations, no investigations have ever been carried out and no perpetrator has been identified.

13. In the past decade, individuals who escaped from the Democratic People's Republic of Korea also have had to go through the painful experience of losing contact with their families back home. They experienced traumatic events at different stages of their journey out of the Democratic People's Republic of Korea, and many were forced to rely on smugglers due to tightened border controls. Such experiences further diminish the escapees' sense of liberty and security, make them vulnerable to discrimination in the countries they cross, and trigger fear for their relatives left behind.

[3] This story informed a March 2016 United Nations documentary: "North Koreans Long Struggle for Freedom", https://www.youtube.com/watch?v=UMDPnPJSwVE

[4] The Government of the Democratic People's Republic of Korea contests the above estimate, which is based on the lists established by the Government of the Republic of Korea after the war. The estimate of the main victims group, the Korean War Abductees Families Union, is 82,000 and up to 100,000.

# IV. ADDED VALUE OF THE HUMAN RIGHTS PERSPECTIVE

14. The application of international human rights norms and principles has the potential to empower the response to the issue of family separation, which is often treated as a humanitarian question by the two governments concerned. Their approach is rooted in the Korean War Armistice Agreement, which stipulates that "joint Red Cross teams" should be set up to "assist in … the repatriation of all the prisoners of war" and calls upon "the appropriate civil authorities to give necessary guidance and assistance to all … civilians who desire to return home".[5] The application of these provisions has taken different forms over the past six decades.

15. In the 1950s, a variety of strategies were put in place by government and civil society organisations in both Koreas to meet the humanitarian needs of civilians during and after the Korean War. They were grounded in the principles of neutrality and impartiality, which entitle all non-combatants to assistance and protection. In the Republic of Korea, operations of mass information gathering were carried out by government agencies and the national Red Cross society to support relief planning and action. In this context, up to nine lists of missing civilians and military personnel were compiled by the end of the 1950s,[6] with estimates ranging between 2,527 and 82,959.[7] The substantial gap in these estimates made it impossible to clearly specify victims of enforced disappearance and those who were displaced as a result of mass movements. The lack of adequate disaggregation in information originally compiled for humanitarian purposes has made it difficult to develop a clear understanding of all forms of separation and later pursue truth-seeking efforts.

16. As relations between the two Koreas gradually improved at the turn of the twenty-first century, initiatives have been taken to re-establish family links between the two countries, based on humanitarian considerations. Since 2000, this has included the occasional family reunions for persons who were displaced during the war, during which 100 families from each side were allowed to briefly meet their relatives, at highly publicized ceremonies. Whereas these encounters have helped restore some ties, only a fraction of eligible candidates have been given the opportunity to partake in them. Even for this minority, the meetings often seem to bring about more distress than peace of mind. One victim who took part in the latest reunion event, in October 2015, described the pain of renewed-separation in these terms: "On the way back to Seoul, I sat on the bus and I felt so sad that I could not speak a word. I had to be taken to hospital for three days. The sadness of that moment of second separation is not imaginable to those who have not experienced it."[8] In the absence of policies that durably restore family relations, punctual interventions only provide partial and fleeting relief to the victims.

[5] Paragraphs 57 and 59 of the Armistice Agreement: http://koreanwar-educator.org/topics/armistice/armistice.pdf
[6] Interview with a representative of the Ministry of Unification of the Republic of Korea, 22 April 2016.
[7] Statistics obtained through the Korean War Abductees Family Union organization. The significant difference in estimates reflects the difficulty to collect accurate information in the context of the Korean War.
[8] Interview transcript with Ms. Ji Eungyeong, on 25 March 2016.

17. The Republic of Korea is often the final destination of many people who flee the Democratic People's Republic of Korea, and the Government of the Republic of Korea has taken various measures to help them to adjust to their host country. The transition from a tightly controlled society to an open society is challenging. The Government and civil society organizations of the Republic of Korea have been active in developing educational and financial support programmes to help escapees reconstruct their lives through access to housing, employment, opportunities to pursue further education, and leisure. Yet the loss of family ties remains an enduring source of anxiety and despair for many, which is aggravated by the difficulty to establish contacts with the Democratic People's Republic of Korea through official and safe channels, as neither country permits people-to-people contact with the other.

18. The humanitarian approach that has been adopted so far has been necessary, including in bringing attention to the economic, social and psychological needs of the victims of separation. However, it has not provided sustainable solutions for victims as essential questions about human rights remain unanswered. What specific rights does involuntary separation violate? Which individuals are most vulnerable to human rights violations in the context of separation and why? How could the provisions of international human rights law be used to seek remedy for the victims and hold duty- bearers accountable? What policies should be put in place to stop the violations and prevent their recurrence? These questions, while potentially relevant for the purposes of humanitarian assistance, do not constitute its main focus. They also imply a different type of response to the problem, one that is formulated on the basis of entitlement rather than according to need. This approach could help establish a new ground of action in the resolution of this issue and create effective mechanisms of enforcement in the long run.

# V. EXPERIENCES OF INVOLUNTARY SEPARATION

19. Despite longstanding interest in and media coverage of the issue of involuntary separation, little has been done to understand victims' experiences. Much commentary seems to focus on collective memory rather than individual narratives and fails to relate present suffering to past violence, discrimination and human rights violations. As the following accounts show, involuntary separation in the Koreas is not only an inevitable consequence of a war situation, but also the result of structural forms of exclusion, impunity and disempowerment that the conflict has brought to the fore.

## A. Separation through displacement during the Korean War

> ***"We could barely talk in the hall. There were journalists on this side and minders on the other. Then we had two hours of private time. Only then was my daughter able to cry."***
> ***Ms. Ji Eungyeong, participant in the October 2015 family reunion event***

20. The emergence of a collectivist political system in the northern part of the Korean peninsula in the late 1940s, following the retreat of Japanese troops, led to hundreds of thousands of Koreans fleeing to the south. A second wave of displacement occurred in the early 1950s, as North Korean forces, backed up by China and the Soviet Union, confronted South Korean troops who were aided by forces under the UN command consisting of 16 countries. It is estimated that up to five million people were forcibly displaced during these events.[9] The Armistice Agreement of 1953 sealed the border between the two Koreas along the current ceasefire line, leaving relatives trapped on each side of the border.

21. Since 1953, it is estimated that 129,616 individuals in the Republic of Korea have registered for reunion with their families in the Democratic People's Republic of Korea.[10] Whereas 2,325 families were able to meet their missing relatives at least once since the June 2000 Inter-Korean Summit, more than half of these applicants passed away without being given a chance to restore contact. At the end of February 2016, the list of candidates for reunion in the Republic of Korea contained 64,916 names of living victims.[11] Around 55.3 percent of survivors are above the age of 80.

22. When a reunion event is planned, longs lists of around 500 applicants are initially shared between the two States through the national Red Cross societies, and a shortlist of 100 families from each country is subsequently drawn. The process and criteria applied by the

[9] "A desperate story of millions of those who cannot afford to wait any longer", Korean Assembly for the Reunification of Ten Million Families, 2016.
[10] Korea Institute for National Unification white paper on Human Rights in North Korea, 2015: http://www.kinu.or.kr/eng/pub/pub_04_01.jsp
[11] Yonhap News article « More dead than a live among separated families », accessed 20 March 2016: http://english.yonhapnews.co.kr/news/2016/03/20/0200000000AEN20160320002100315.html

Democratic People's Republic of Korea to draw final lists are not known. In the Republic of Korea, the shortlisting process is carried out on the basis of criteria such as age, degree of kinship, and consent to the meeting. It combines a computer lottery and a quota system giving priority to the oldest candidates. For instance, a quota of 50 percent is allocated to participants who are above 90, even if they represent 20 percent of applicants.[12]

23. The decision to organize these encounters often depends on the prevailing political climate between the Governments of the two Koreas. For example, the last reunion event, the twentieth since 2000, took place in October 2015 following lengthy negotiations. Talks for subsequent reunions came to a halt after the Democratic People's Republic of Korea reportedly resumed nuclear tests and ballistic missile launches in early 2016. The constant shift in the balance of political powers has made it difficult to develop a clear, principled roadmap based on the human rights of victims rather than political considerations only.

24. Several provisions of customary international humanitarian law protect the right of displaced persons in a conflict to restore contact with their families. Article 26 of the Fourth Geneva Convention of 1949 provides that "each party to the conflict shall facilitate enquiries made by members of families dispersed owing to war". Article 25 guarantees the right to forward correspondence among dispersed family members "speedily and without delay". Article 49 forbids separating members of the same family during transfers or evacuations. Article 74 of Additional Protocol I stipulates that "the Parties to the conflict shall facilitate in every possible way the reunion of families separated". Despite these provisions, most individuals who were displaced during the Korean War have not been able to regain contact with their relatives or receive information about what has happened to them through an exchange of letters and visits.[13]

### (a) Impact of displacement on economic, social and cultural rights

25. As part of the post-World War II military campaign to acquire territorial control in the northern part of the Korean peninsula, large swathes of agricultural land were confiscated by the newly established North Korean People's Committee in order to nationalize the economic production system. The land reform programme, which started in 1946, forced many landowners out of their property. Mr. Eun-bum Choi was 12 that year and remembers how his family was dispossessed of their property and forcibly evicted:

> ***"All of my father's property was confiscated, including farmland and forest, houses, cattle, and farming equipment. He was ordered to remove his family within three days and leave our hometown. I tailed after the cart like I was going for a family picnic, but the adults around me were in a state of big depression and sorrow."***

[12] Information obtained from officials of the Republic of Korea's Ministry of Unification.
[13] The whereabouts of many individuals remains unknown despite efforts to locate them through intergovernmental talks. According to the Government of the Republic of Korea more than 17,000 exchange activities such as reunion events, confirmation of the fate of a family member, and exchange of letters have been arranged through bilateral talks with the Democratic People's Republic of Korea.

Mr. Lee In-bum, 82, went through a similar experience in 1948. His family owned a large farm of 15,000 pyong (about 50,000 square metres) in the North Pyongan province, which was confiscated by the authorities. He said that his family was perceived as "rebellious" because of their wealth, and because his brothers had been educated at a Japanese school under Japanese colonial rule. As a child, Mr. Lee fled to the south with an older brother and expected the rest of his family to join them within a month, but they never saw them again. He later heard through a North Korean escapee that his father was arrested and the remaining family members, including his mother and brother, were forced to work as coal miners in Aoji. To date he has not been able to get confirmation of this story, and he continues to experience extreme emotional distress as a result of this uncertainty.

26. The land reform policy had a particularly devastating impact on women and girls who were already marginalized due to an inheritance tradition based on patrilineal primogeniture, giving precedence to the oldest son in the management and inheritance of the father's property. Ms. Kim Keum-ok, 84-years-old, fled her hometown of Kaesong in North Korea on 20 December 1950, after hearing a rumour that Chinese troops were on their way to North Korea and "would take away all the women" to use them as military nurses. Her parents and brother did not travel with her, as they had to look after a large and highly productive apple plantation that the authorities were planning to confiscate. Despite losing hope in finding out what happened to her family, Ms. Kim has decided to document the story of her exodus for her children, including details about her family's property in North Korea. She says:

> ***"The only record I have for my son and three daughters is a section in the family history book that includes a description of what is inherited. I recall the exact location of our farm and I believe there is an address book of North Korea at the Seoul National Library that could be used to cross-check it; that is all I could do."***

27. The story of Ms. Park Dong-yeol, 85 years old, provides another illustration of the exacerbation of discrimination faced by women in the enjoyment of economic and social rights as a result of involuntary separation. Ms. Park fled her hometown in North Korea's North Hamgyong province in December 1950. She was a second-year medical student at that time and wanted to pursue her studies in South Korea as her medical institute closed during the war. She was not allowed to board a boat for Busan where about 100 men from her extended family embarked because "it was commonly accepted that the presence of a woman on a boat would curse it". Thus, she made her own way to South Korea by foot and joined the men in Busan as she had no other relatives to rely on. She was unable to continue her studies due to her deteriorating economic situation and was instead employed as a domestic worker and newspaper vendor. Her status as a single woman in a community of men – most of whom married in the Republic of Korea after the Armistice Agreement was signed – forced her to leave the community in Busan and seek employment in Seoul. There, being a single woman with no family ties raised the suspicion of the authorities that she could be a North Korean spy. In 1956, she was detained by police and intelligence officers and tortured, then released and kept under close police scrutiny. In her words: "I worried that I would be arrested again if I did not marry, so I married at the age of 27 after I had lost hope of returning to my family in North Korea". It

was only when she married that social and political pressure on her decreased a little, but she remained economically marginalized and estranged from her extended family for decades because of her North Korean origins.

28. Under international humanitarian law, "the property rights of displaced persons must be respected."[14] Forced evictions from home and land are also prohibited under international human rights law, including article 11 of the International Covenant on Economic, Social and Cultural Rights, article 27 of the Convention on the Rights of the Child and article 14 of the Convention on the Elimination of All Forms of Discrimination against Women. Both the Republic of Korea and the Democratic People's Republic of Korea have ratified these treaties, which should be instrumental in the conception of redress mechanisms. Yet the absence of a legal system whereby victims and their descendants can seek, record or access titles and other evidence of their ownership of property left in the Democratic People's Republic of Korea will pose a challenge for future claims of property restitution on the basis of these obligations.

29. Factors that prevented victims from accessing economic and social opportunities in the Republic of Korea, including gender stereotyping and discrimination, must also be taken into account in dealing with the legacy of separation to improve public understanding of these abuses and preserve the memory of women victims. Most of these women are well above the age of the 80, with limited possibilities to reach out to groups outside their local communities or the victims' associations to which they belong. As a result, their experiences risk being neglected or forgotten. The recognition of the adverse effects of discrimination on women will not just keep their memory alive and uphold their dignity, but also promote awareness of their experiences among younger generations to prevent repetition.

### (b) Impact of displacement on civil and political rights

30. In the build-up of military tension, political and religious leaders in the northern part of the Korean peninsula were the target of arbitrary arrests and acts of intimidation. By the late 1940s and early 1950s, thousands of preachers and activists were arrested as part of an organized campaign to suppress political dissent and freedom of religion. Mr. Kim Gu-hyun recounts his experience of persecution as a religious and political leader:

> ***"There were three main parties at that time: a communist party, a Christian party, and a party based on a locally grown religion called Donghak. I was born to a family that believed in that religion, and thus I was an active party campaigner and we were persecuted by the communists. There was also a policy that consisted in dispersing villages where members of the same extended family lived. There were more than 100 households in my hometown with the family name Kim, and they were all dispersed. I had to leave."***

[14] Rule 133 of the ICRC Customary International Humanitarian Law.

Government control over religious and political practice has been institutionalized in the Criminal Code of the Democratic People's Republic of Korea since the end of the war, through provisions that impose stringent limitations on the rights to freedoms of expression, thought, conscience and religion. An apparatus for mass surveillance was also established and continues to be used to ensure citizens' loyalty to the dominant ideology. Whereas the system was initially conceived to monitor members of the opposition, it now permeates every aspect of life.

31. The impact of surveillance on separated families is perceptible in the story of 88-year-old Ms. Ji Eungyeong, who took part in the latest family reunion event in October 2015. She was selected to meet a daughter whom she had left behind as a baby in 1951, and a granddaughter. Despite the impeccable organization, the family's right to privacy was not respected due to the presence of North Korean monitors on one side and South Korean journalists on the other. Ms. Ji said that her daughter was only able to cry and speak to her without fear during the two hours they were allowed to meet in a private room.[15] Although Ms. Ji hoped her daughter and granddaughter could stay in touch with her after the event and inform her of developments regarding the fate of other relatives in the North, she has not been able to converse with them since the reunion.

32. In the Republic of Korea, the freedoms of expression and association have been guaranteed by law since the advent of democracy in the late 1980s. However, the National Security Law severely constrains communications with the Democratic People's Republic of Korea.[16] As observed by the Human Rights Committee in 2015, the broadly phrased article 7 of the law disproportionately interferes with freedom of opinion and expression.[17] This has had the effect of limiting contact or access to information on the Democratic People's Republic of Korea, among other topics. In addition, citizens of the Republic of Korea have had to seek prior clearance from their country's authorities before engaging in any communication with a citizen of the Democratic People's Republic of Korea, including written correspondence and face-to-face meetings abroad. Although there have been 11,476 exchanges of letters since 1990 through the exchange mechanism that the two governments run from time to time through national Red Cross societies,[18] families have been unable to channel written messages via third party organizations such as the International Committee of the Red Cross (ICRC).[19]

33. These obstacles have resulted in the creation of an informal system of brokerage, where ethnic Korean dealers who are often based in China receive large sums of money to facilitate telephone and written correspondence between families in the two Koreas, using Chinese mobile telephone networks. Mr. Hwang Daeuk used this channel in 2009 to

[15] Transcript of interview with Ms. Ji Eungyeong, held on 25 March 2016. The original statement can be found on page 8 of this report.
[16] Individuals generally refrain from communicating with the Democratic People's Republic of Korea as they risk being punished under article 7 of the National Security Act for "prais[ing], incit[ing] or propagate[ing] the activities of an anti-government organization".
[17] Concluding observations on the fourth periodic report of the Republic of Korea, 2 December 2015: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKOR%2fCO%2f4&Lang
[18] There has been a significant decrease in recent years in the number of letters exchanged annually through inter-governmental talks. For example, the number dropped from 228 in 2008 to only 11 in 2014 according to the Korean Institute for National Unification (http://www.kinu.or.kr/eng/pub/pub_04_01.jsp)
[19] Whereas nothing in principle prevents family members from using the ICRC channel, they have not been able to use it due to a tacit agreement between the governments of the two Koreas that issues related to separated families must be handled bilaterally.

communicate with his sister in the Democratic People's Republic of Korea. The exchange allowed him to confirm her location and the fate of other siblings he had not seen since he fled in 1947. In order to communicate with his sister, Mr. Hwang was instructed to send 4,000 US dollars to a Chinese bank account, with the promise that these funds would be used to improve the living conditions of his siblings and their children in the North. He believes that these transactions, which are reportedly common among people from separated families in the Republic of Korea, occur with the knowledge and possibly the logistical involvement of the Government of the Democratic People's Republic of Korea, as they constitute a valuable source of hard currency for the country.

34. The International Covenant on Civil and Political Rights (ICCPR), which both Koreas have ratified, protects individuals' rights to freedom of expression and to privacy against arbitrary or unlawful interference and prohibits persecution against persons seeking to exercise these rights.[20] The human rights of Korean families affected by separation have been excessively curtailed due to the security objectives of the State. In the Democratic People's Republic of Korea, the absence of avenues for participation in public life and a history of state surveillance of written and telephone communications prevent people from tracing and engaging with their relatives in the Republic of Korea. In the Republic of Korea, national security concerns have forced victims to use informal tracing and communication channels at high financial costs, also exposing them to the risk of criminal prosecution. These limitations inhibit the ability of relatives in each country to communicate with each other, and considerably affect their financial situation as they resort to unofficial communication channels at a high cost.

35. Whereas ICCPR recognizes that some restrictions may be placed on the exercise of some rights in the interest of national security, there must be safeguards against the discriminatory enforcement of these restrictions that may affect victims in a disproportionate manner.[21]

## B. Separation through enforced disappearances

> ***"I am sure many of the forcibly disappeared started their own families in the North. By calling for their return I do not want to cause another separation. That is not what I have worked for. What I want is to know the truth and to ensure this tragedy never happens again".***
> ***Ms. Lee Mi-il, daughter of a war abductee***

36. International abductions are a well-documented practice of the Democratic People's Republic of Korea. In its 2014 report, the commission of inquiry on the human rights situation in the Democratic People's Republic of Korea found that "from 1950 and until the present", the Democratic People's Republic of Korea "engaged in the systematic

[20] Articles 17, 18 and 19 of ICCPR.
[21] Articles 12, 19, 21 and 22 of the ICCPR. For example Article 12.3 guarantees that "the above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant".

abduction, denial of repatriation and subsequent enforced disappearance of persons from other countries on a large scale and as a matter of State policy."[22]

37. These abductions have targeted nationals of different countries, primarily Japan and the Republic of Korea. In 2002, the Government of the Democratic People's Republic of Korea acknowledged that it had abducted 13 Japanese nationals. Five were allowed to be returned to Japan, while the Government of the Democratic People's Republic of Korea claimed that eight were deceased.[23] The Government of Japan has demanded an investigation into 12 cases and although the Democratic People's Republic of Korea reportedly launched an inquiry in 2014, it had not communicated any results as at the end of November 2016.

38. According to the Korean War Abductees Family Union, estimates of wartime South Korean abductees range between 82,000 and 100,000 individuals.[24] Initial lists of missing persons that were compiled by the Government and the national Red Cross society of the Republic of Korea in the 1950s did not distinguish between cases of alleged abductions from South Korea, displaced individuals, and people who had voluntarily relocated to North Korea during the war.

39. According to the Government of the Republic of Korea, no dialogue was held on the issue until 1992, when the inter-Korean dialogue included an agenda item on cooperation to determine the fate of missing persons. However, the Government of the Democratic People's Republic of Korea considered that "missing persons" only referred to individuals who were displaced within the North and to the South in the context of the Korean War. Thus, family reunion events that occurred following the 2000 Inter-Korean summit rarely included relatives of abductees.

40. In order to circumvent this challenge, the Government of the Republic of Korea has often included families of abductees in the lists of eligible candidates for reunion that are shared with the Democratic People's Republic of Korea. However, legislation passed in 2000 requires the Government of the Republic of Korea to clearly differentiate between displaced persons and abductees, and to set up a database of individuals who were allegedly abducted during and after the war. The Ministry of Unification of the Government of the Republic of Korea published a list of 516 people abducted between the Armistice to the present day, which it considers as definitive. However, the Government has not finalized the list of individuals who were allegedly abducted during the war, primarily due to the difficulty to collect accurate information with the passage of time.

41. Enforced disappearances are prohibited under international humanitarian law and international human rights law. They are defined by the International Convention for the Protection of All Persons from Enforced Disappearance (CED) as the "arrest, detention, abduction or any other form of deprivation of liberty by agents of the State … followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or

[22] Report of the Commission of Inquiry A/HRC/25/CRP.1, para 1011, p.317.
23 The five abductees were initially permitted to visit Japan on the condition that they would return to the Democratic People's Republic of Korea. Five children of the returned abductees were allowed to join their parents in Japan in 2004.
[24] Interview transcript with Ms. Lee Mi-il, held on 1 April 2016.

whereabouts of the disappeared person, which place such a person outside the protection of the law."[25]

42. In addition, CED considers enforced disappearance as a continuous violation and guarantees the rights of victims and their families to an effective remedy.[26] This includes, inter alia, the right for relatives "to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person."[27] Although neither the Democratic People's Republic of Korea nor the Republic of Korea has ratified CED, the issue of abductions in the Korean peninsula has been on the agenda of the special procedures of the Human Rights Council for the past few years. For example, the Working Group on Enforced or Involuntary Disappearances (WGEID) has documented 53 cases since 2012 and transmitted them to the Government of the Democratic People's Republic of Korea.[28] In 2014, given the strong possibility that crimes against humanity were committed in these cases of abduction, WGEID requested that the international community adopts appropriate action, including a possible referral to the International Criminal Court.[29] As a State Party to the Rome Statute of the International Criminal Court, the Republic of Korea also has responsibility to investigate these crimes.[30]

### (a) Accounts of abductions during and after the Korean War

43. According to testimonies of relatives of abductees heard by OHCHR, abductions were employed as a tactic of warfare, targeting representatives of South Korean authorities, members of the South Korean security forces, anti-communist political activists, as well as figures of the intellectual elite.

44. Mr. Lee Kyung-chan's father was the chief prosecutor at the prosecutor's office in Seoul. He disappeared in July 1950 after North Korean forces took control of Seoul. Members of Mr. Lee's extended family were dispersed and hid in different locations. His father's younger brother also went missing during the same period. Mr. Lee's mother reported her husband's case to the authorities of the Republic of Korea and to the national Red Cross society in 1956, but did not get any information about his whereabouts. It was only 50 years later that the Ministry of Unification of the Republic of Korea informed Mr. Lee that his uncle had lived and married in the Democratic People's Republic of Korea before he deceased, and that his wife and son were willing to meet him. He took part in a family reunion event at Mount Kumgang, in the Democratic People's Republic of Korea, in March 2006. While he had hoped this would allow him to determine what happened to his father, his relatives declined to give any information that would help him in his search, including on the way his uncle relocated to North Korea during the war. Mr. Lee believes the meeting was closely monitored as South Korean journalists were prevented by North

[25] Article 2 of CED.
[26] Article 8 of the CED
[27] Article 24(2) of the CED
[28] http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_38_ENG.docx.
[29] http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-49_en.doc.
[30] Preamble of the Rome Statute of the International Criminal Court: "Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes". Also Article 7(2)(i)

Korean minders from approaching his table. He also raised a lack of awareness of State responsibilities and compliance, particularly on the part of the Democratic People's Republic of Korea authorities, which have not released any records or evidence that could be cross-checked with available lists of individuals unaccounted for. According to him, there should be a clear distinction in the Republic of Korea between families of abductees and families applying for reunion: "We need to be recognized for who we are; families of persons who must be repatriated, not just families who wish to be reunited."[31]

45. Mr. Jeong Sun-ui's father also forcibly disappeared in 1950. He was a student of Korean nationalist leader Mr. Kim Koo and volunteered to join the South Korean security forces in his village of Songdong, as there was a shortage of police officers in the area. He was taken away from his home by North Korean security forces a few days into the conflict, along with hundreds of others members of Mr. Kim Koo's movement. In addition to uncertainty about his father's fate, Mr. Jeong's family faced along with other relatives of abductees severe restrictions on free movement and discrimination in access to education and employment opportunities in the Republic of Korea throughout the 1970s and 1980s:

> ***"Families of abductees were treated with suspicion because it was believed the abductees could be used as spies and contact their families back in South Korea to ask them for information. So compared to other citizens we were not able to go abroad or work for the Government without extensive background checks. We were not able to apply to military schools. There was always a sense of guilt by association."***

This testimony emphasizes the stigma affecting relatives of victims of enforced disappearance, which marginalized them from society and triggered violations of their human rights. Whereas these people are rarely viewed with suspicion today in the Republic of Korea, the legacy of discrimination continues to affect them due to decades of isolation, with very limited possibilities of seeking justice. Whereas an effort to rehabilitate the reputation and status of families of abductees may no longer be relevant to them, any redress should fully acknowledge and commemorate their history and identify the underlying causes of the stigma they suffered.

46. In addition to civilians, around 82,000 soldiers of the Republic of Korea were taken in combat by the Democratic People's Republic of Korea as Prisoners of War (POW)[32] but were never afforded that status and the protection which they were entitled to according to the Fourth Geneva Convention of 1949. They were reportedly subjected to torture, degrading treatment and slavery.

47. Mr. Han Junhyeok was 20 years old when he was captured by North Korean forces in 1952. He was initially detained for four months, along with some 1,500 other POWs, in a

[31] Interview transcript with Mr Lee Kyung-chan, held on 31 March 2016.
[32] Broad estimate of the Korean Institute for National Unification. Of these 8,343 were returned in prisoner exchanges in 1953 and 80 in the post-war period: http://www.kinu.or.kr/eng/pub/pub_04_01.jsp

military facility in Hoeryeong city, where he witnessed hundreds of other inmates starving and dying from infectious diseases. He was then sentenced to 13 years of forced labour at a re-education camp (kyohwaso) in conditions that he described as inhumane, including denial of food and absence of hygiene. Following his release in 1966, he was able to receive news from his family in the Republic of Korea in the 1960s and 1970s through ethnic Koreans who travelled from China to purchase North Korean products. From the 1980s, with the gradual economic decline of the Democratic People's Republic of Korea, he was no longer able to use these informal networks. It is only when he escaped to China in 2001 that he was able to reconnect with his relatives and be repatriated to the Republic of Korea. There, he has continued to support his daughter, who lives in the Democratic People's Republic of Korea by sending her remittances through brokers he met in China.[33]

48. Although the Armistice Agreement ended armed hostilities, it failed to prevent further abductions. In post-war times, these continued to affect civilians whom the Democratic People's Republic of Korea authorities allegedly captured to get information on the Republic of Korea or use their skills.

49. The story of Mr. Hwang In-chul, whose father was abducted in 1969, along with 50 other passengers and crew members of a Korean Air flight, remains among the best-known cases of proven post-war abductions by the authorities of the Democratic People's Republic of Korea. Whereas 39 victims were returned to the Republic of Korea in 1970, all others remained disappeared, including Mr. Hwang's father, a medical doctor, media technicians and four crew members. According to witnesses, Mr. Hwang's father, a journalist, had strongly resisted his abductors while being "re-educated" to embrace North Korean ideology, which may explain why he was not returned. A sequence of worldwide plane hijackings in the following months motivated a resolution by the Security Council "appeal[ing] to all parties concerned for the immediate release of all passengers and crews without exception."[34] Mr. Hwang stated that the incident was particularly traumatic for his family and his upbringing because "even if you are a victim, society looks down on you and you are considered a spy."[35] As inter-Korean dialogue resumed in the early 2000s, the family registered with the national Red Cross society to participate in the Government lottery along with the families of the 11 other abductees. After intense lobbying, Mr. Hwang received two responses from the Democratic People's Republic of Korea through the Republic of Korea Red Cross society, in 2006 and in 2010. In both messages, the authorities stated they were unable to confirm the fate and whereabouts of his father. After he submitted the case to Working Group on Enforced on Involuntary Disappearances, the Democratic People's Republic of Korea authorities responded in May 2012 that there was "no person in [their] country who ha[d] been enforcedly or involuntarily disappeared or detained against his or her will."[36] In February 2016, Mr. Hwang received information through an informal source that his father was alive, residing in the vicinity of Pyongyang. He has been unable to confirm this information.

[33] Transcript of interview with Mr Kim Song-tae, held on 21 March 2016.
[34] Security Council Resolution 286 of 9 September 1970. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/286(1970).
[35] Transcript of interview with Mr Hwang In-chul, held on 1 April 2016.
[36] A copy of the communication from the Government of the Democratic People's Republic of Korea with WGEID was shared by the victim.

## (b) Impact of abductions on women relatives

50. Whereas the vast majority of abductees have been men, many women suffered the distressing impact and the economic and social consequences of their relatives' disappearance. The first form of activism on the issue was a 1954 demonstration by the mothers and wives of Korean War abductees asking for the return of their sons and husbands in accordance with the Armistice Agreement. In 1965, a petition signed by more than a million citizens of the Republic of Korea was submitted by President Park Chung Hee to the United Nations Human Rights Committee.

51. It is only after the Inter-Korean summit of 2000 and the creation of the Korean War Abductees Family Union in the same year that advocacy for the return of abductees has become organized. According to the head of the organization, whose father was abducted during the war, the decision to create the organization was partly in reaction to the explicit focus on post-war abductees in the Government's discourse, while ignoring those who were abducted during the war: "After the summit, President Kim Dae-jung talked about 480 abductees[37] and I could clearly see that those abducted during the war were going to be forgotten. It was important for me that people know about war abductees."[38]

52. The active role that women relatives of abductees have played as advocates for truth and accountability highlights the specific challenges and human rights abuses that women faced as a result of the enforced disappearance of a male relative. Many abductees were their household's sole breadwinner, and the abduction pushed their wives and daughters into poverty or forced them to take low-paid jobs to survive.

53. An example is provided by Mr. Kwon Oh-geon's account, whose father was a police officer in the South Korean town of Songdo, and was removed from his home by North Korean soldiers in 1951. Mr. Kwon stressed the impact of the abduction on the family, particularly the hardship experienced by his mother and sisters:

> ***"My mother had to work as a street vendor but there was no way she could support the five of us. My sisters could not finish elementary school and they had to live in other people's homes and serve them as maids. My brothers and I went up to middle and high school but eventually we had to look for a place where we could sleep, work and eat. We dispersed and lost contact with each other for years. We did not have enough resources to continue to search for our father so we gave up."***

[37] The number corresponds to the estimates by the Government of the Republic of Korea of post-war abductees at that time.
[38] Transcript of the interview with Ms. Lee Mi-il, on 1 April 2016.

Mr. Kwon deplored the lack of financial help from the South Korean authorities despite his father's service in the security forces.[39] While noting that a memorial tower was built by the Government of the Republic of Korea to honour the memory of war abductees, he considered that his family deserved monetary compensation for the loss of educational and employment opportunities that they could have otherwise enjoyed. This is especially the case for his sisters, who were disproportionately affected due to social attitudes that prioritized education for boys.

54. 88-year-old Ms. Kim Hang-tae had just been married and was pregnant with her daughter when her husband, a bank employee and member of a resistance movement called "Korea's Youth", was abducted by North Korean soldiers, in 1950. Her standard of living subsequently deteriorated and she was not able to inherit her husband's share in the family house because "[her] nephews sold it without consulting [her]".[40] This forced her to become a cook for a unit of American soldiers who were stationed in her village of Kyodong, in Ganghwa Island. It was difficult for her to search for her husband on her own as she had to take care of her daughter and because "a newly married woman was not supposed to exchange words with strangers". It was only in 2005 that she was able to access the institutional support she needed to pursue her search through the Korean War Abductees Family Union organization. Like Mr. Kwon, she feels that the lack of benefits and social security support for her and her daughter has greatly added to her pain, particularly as her husband was a member of what was known as a "South Korean patriotic movement". She also feels that there was a lack of awareness of the issue among the general population in Republic of Korea.

55. Despite their advanced age, many victims have not given up their quest for the truth about the circumstances of their relatives' abduction. As WGEID has commented, victims have "the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, the circumstances of the disappearances, and the identity of the perpetrator(s)".[41] Moreover, WGEID recognized the specific effect of enforced disappearances on women and girls, "due to gender roles which are deeply embedded in history, tradition, religion and culture.[42]

56. The testimonies show that policy changes are required to uphold the victims' right to know the truth whilst recognizing the adverse impact of abduction on women relatives. Whereas part of this action requires the full cooperation of the Democratic People's Republic of Korea to disclose information and verify facts, the Republic of Korea has a duty to reinforce national laws and policies protecting the rights of relatives of war abductees, particularly women.

57. As time passes, archival evidence of the experiences of first generation women victims and the harm they suffered may be lost or not given the prominence it deserves. As the Government of the Republic of Korea is consolidating lists of wartime abductees, there is

[39] The 2007 "Law on Compensation and Assistance for Victims Abducted to North Korea since the conclusion of the Armistice Agreement" does not include persons who were abducted during the war.
[40] Transcript of interview with Ms. Kim Hang-tae, held on 30 March 2016.
[41] General Comment on the Right to the Truth in Relation to Enforced Disappearances: http://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf
[42] General comment on women affected by enforced disappearances: http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WGEID/98/2&Lang=E

an opportunity to give more visibility to these accounts and experiences. Whereas some non-governmental organisations are endeavouring to assemble a representative narrative, the lack of State proposals for reparative measures for this specific group, including pensions and other practical benefits, may be perceived by relatives of war abductees as evidence that their demands are ignored. Testimonies of women victims also reveal that the absence of reparations programmes for families of abductees may not have encouraged them to register their relatives' names on the Government list. A commitment to compensation could help to ensure that more women come forward and a clearer picture is drawn of the circumstances of these abductions.

## C. Separation following escape from the Democratic People's Republic of Korea

***"I did not tell my parents that I was planning to escape. They would have never let me do it because they would know that they would never see me again. I am their only child".***
***Woman who escaped in 2013***

58. In 2015, 1,275 escapees from the Democratic People's Republic of Korea - 80 per cent of whom are women - arrived in the Republic of Korea. Whereas the overall number of escapees has reportedly consistently decreased since 2008 due to stringent border patrols in the Democratic People's Republic of Korea,43 women continue to form the majority of escapees. This may be explained by the fact that women have more access to informal trading and smuggling routes with China than men, who are assigned to government work. Families are in many cases forced to split up during the escape journey as people usually cross the border individually rather than in groups to avoid being noticed by the authorities.

59. Despite the wealth of research on the human rights situation of escapees, little is known about the specific conditions under which this separation occurs. Yet for this group of victims, entrenched forms of violence, exclusionary practices and violations of human rights appear to motivate the escape. However, such violations tend to continue throughout the journey out of the country. Furthermore, as for civilians displaced during the war and victims of enforced disappearances, escapees may suffer the consequences of policies and legislation that do not protect them, particularly in the Democratic People's Republic of Korea. Unlike the other two groups, they rarely organize themselves into civil society groups, partly for fear that their relatives would face persecution at home.

60. North Korean escapees who arrive in the Republic of Korea are systematically granted citizenship and acquire some rights that they did not enjoy in their home country. Despite this, programmes that are designed to promote the social and economic self-sufficiency of escapees do not necessarily take into account the principle of protection and respect for the unity of the family. For example, many women escapees who were granted citizenship of the Republic of Korea are still separated from children to whom they gave birth in China. They

[43] Korea Institute for National Unification 2015 white paper on human rights in North Korea : http://www.kinu.or.kr/eng/pub/pub_04_01.jsp

are unable to bring them to the Republic of Korea as these children, unlike their mothers, do not hold identity documents of the Democratic People's Republic of Korea.

61. The absence of legal communication channels between the two countries nurtures a feeling of preoccupation for the fate of relatives left in the Democratic People's Republic of Korea. In the face of these challenges, some escapees adopt alternative strategies using costly unofficial channels in order to interact with their families, send them remittances and, sometimes, help them organize their escape from the Democratic People's Republic of Korea. Awareness about the impact of separation on escapees and a stronger recognition of the way it affects their full range of human rights should help to put in place adequate types of protection and redress.

## (a) Structural conditions leading to family separation

62. The decision to leave the Democratic People's Republic of Korea is not trivial. Individuals risk their lives and expose themselves to harsh treatment, including hard labour sentences, if they are caught escaping.[44] Those who manage to circumvent border controls and cross into neighbouring countries expose their relatives left behind to acts of retaliation and harassment by the authorities. According to victims who spoke to OHCHR, while different factors motivate the escape, they are all closely tied to laws and policies that deny human rights.

63. 23-year-old Mr. Han Seunggu grew up in the village of Hongam, Taehongdan County, on the border with China in the Ryanggang Province of the Democratic People's Republic of Korea45. In January 2015, the Supreme Leader of the Democratic People's Republic of Korea reportedly ordered the forcible removal of all residents from his village and from the nearby villages of Isong and Changphyong. According to Mr. Han, the forced eviction was based on the Government's suspicions that Chinese and South Korean cameras were filming communities in the border areas to use the footage against the Democratic People's Republic of Korea. Mr. Han stated that police forces destroyed all houses and forced around 80 people from 20 families, including his, out of the area. Residents were reportedly "only allowed to take essential items that fit in a single truck". They were transferred to an area further inland and ordered to stay in a warehouse structure for several days, with the promise that they would be provided with State housing. However this never happened and people were eventually asked to "disperse and find a place to live". Mr. Han remained with his mother while his father, brother and sister-in-law went elsewhere. He escaped to China with his mother in September 2015.

64. 23-year-old Ms. Choi Jiyeong fled the Democratic People's Republic of Korea in 2014 due to human rights abuses suffered by her family46. Before leaving, she was living with her mother, a farmer, in Hoeryon, North Hamgyong province. She was not able to access higher

[44] According to Article 221 of the Criminal Code of the Democratic People's Republic of Korea of 2012, "those who engage in unlawful border entry and exit shall be subject to one year or less of labour training punishment. Those with serious charges of such behaviours shall be subject to five years or less of correctional labour punishment".
[45] Transcript of interview with Mr. Han Seunggu, held on 24 March 2016.
[46] Transcript of interview with Ms. Choi Jiyeong, held on 20 January 2016.

education because her social origin placed her low in the Songbun system,[47] and she was assigned to work in a collective farm as soon as she finished high school. Her family struggled financially as State planners collected all of their annual crop production. To survive, they sold home-made liquor and food products in the informal market. In addition, the family was placed for years under police watch following the escape of Ms. Choi's older sister and an aunt, in 2005. In September 2013, officers from the Ministry of People's Security reportedly broke into her home while she was listening to a South Korean music DVD. Selling or possessing unauthorized audio-visual material is considered as a criminal offence under the penal law of the Democratic People's Republic of Korea. Ms. Choi was made to sign a confession of her "crime" and sent home pending a decision on her sentence by the local office of the Ministry of People's Security. During her temporary release, she escaped to China, then to the Republic of Korea.

65. The story of Ms. Jang Mijeong, 27, is another illustration of the human rights violations that compel people to separate from their families.[48] Also from Hoeryong, she escaped in 2013, feeling she had become a financial burden on her impoverished family. She stated this was a difficult decision as she is her parents' only child and they were not aware of her plan. The family had been subjected to a blackmail campaign by a member of the authorities following a failed attempt by Ms. Jang's mother to escape in 2005. When she was caught, a preliminary investigation officer ordered her to pay 500,000 North Korean won (the equivalent of 560 US dollars) to drop the charges against her, which put a severe financial strain on this family of farmers. Having paid that sum, the family was persistently harassed by the same officer and asked for more money. They were gradually trapped with excessive debt, which eventually pushed Ms. Jang to escape. She now hopes that she will be able to help her parents organize their own exit.

66. These experiences show that even though family separation has taken new forms since the Korean War, its root causes remain connected. The structural forms of violence, discrimination and impunity that are at play weaken the fabric of the family, diminish people's sense of personal security, and push them to split from their next-of-kin and seek safety outside the Democratic People's Republic of Korea. It is noticeable that young people, who constitute the vast majority of escapees today, were also the main victims of forced displacement 65 years ago. In both cases young people were pushed to flee because they found themselves in a situation of structural vulnerability limiting the enjoyment of their rights, such as the right liberty and security of person, freedom of movement, freedom of thought and conscience, the right to education, and the right to an adequate standard of living.

[47] The Songbun state-sanctioned ranking system is described in detail in the Report of the Commission of Inquiry on human rights in the Democratic People's Republic of Korea. It classifies citizens according to criteria such as social class, place of birth, political support for the government, and religious beliefs. This classification determines people's access to public services, food rations, housing, education and work opportunities.
http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIDPRK/Report/A.HRC.25.63.doc
[48] Transcript of interview with Ms. Jang Mijeong, held on 15 April 2016

### (b) Hardship experienced following the escape

67. Most escapes lead to a disruption of family ties. As soon as they arrive in China and other countries of South-east Asia, victims become extremely vulnerable to abuse as they leave their close-knit communities to an environment in which they cannot benefit from any social or institutional support. Their insecurity is exacerbated by the fear of forced repatriation, including by Chinese authorities, which forces them to take dangerous routes at night along the Tumen River to avoid being noticed by border guards.

68. In most cases, people who leave the Democratic People's Republic of Korea do so with the assistance of Chinese and Korean brokers who coordinate their movements on both sides of the border. While these brokers are often the victims' only access to the outside world, they also coerce them into exploitation and abuse in the informal sector. The situation is worse for women, and many are forced into marriages and prostitution. Human trafficking is so commonplace at the border between the Democratic People's Republic of Korea and China that victims leave the Democratic People's Republic of Korea fully aware of the risks and usually know that they will have to "negotiate" the type of work or exploitation to which they will be subjected with brokers in China.

69. Marriage to a Chinese man is often the only option for women escapees to achieve a certain degree of personal security. There are also many cases of children born out of such unions who are not registered by their mothers for fear of arrest and refoulement back to the Democratic People's Republic of Korea. Although it is difficult to establish the exact number of children born to women escapees in China, the 2015 estimate has been 30,000.[49]

70. Some mothers end up separating from their children to continue their journey to the Republic of Korea. Ms. Shin Seonmi was 18 years old when she and her two sisters arrived in China, in 2007. She reported that they were soon "sold to Chinese men" through a broker who had promised to help them reach the Republic of Korea. Ms. Shin had a son with her Chinese husband. By 2012, she had collected enough money to fund her travel to the Republic of Korea. With her son, she joined a group of unrelated women and children. They were caught by Chinese police in Shenyang and detained for three months before being forcibly repatriated to the Democratic People's Republic of Korea. However, her son was returned to his father.

71. Once repatriated, Ms. Shin was held in a detention facility (kuryujang) where she was interrogated and beaten to reveal the whereabouts of her sisters and the identity of the brokers who helped her leave the country. She was subsequently tried and made to confess to her attempted escape. In March 2013, she was sentenced to two years and two months of hard labour at the Kyohwaso re-education camp and placed in a special unit for women who had been forcibly repatriated. The 90 inmates of her unit were reportedly put to work on a textile production line from 5.00 a.m. to 10.00 p.m. every day and were only allowed to be outdoors for 20 minutes per day.

[49] Korea Institute for National Unification white paper on Human Rights in North Korea 2015: http://www.kinu.or.kr/eng/pub/pub_04_01.jsp

72. Ms Shin escaped from the Democratic People's Republic of Korea in 2015, with the help of a former inmate. She stated: "when I arrived in China, I agreed to be sold again [to a Chinese family] because I had no money and I needed to see my husband and child". She was employed as a cleaner for the family for a few months but she was not able to re-establish contact with her husband and son. Her sisters, who had managed to reach the Republic of Korea while she was detained, helped her to fund her trip, and she arrived in Seoul in September 2015. Since, none of the three sisters has been able to see their children who are all in China.[50]

73. These women seldom have appropriate legal documentation for their children in China, including for birth and citizenship, making the child vulnerable to exploitation. The forced separation from the child that results from decisions to forcibly repatriate these women back to the Democratic People's Republic of Korea are not only traumatic to the mother but they also pose serious risks to the safety and security of the child. For women who end up in the Republic of Korea, there are no formal tracing mechanisms that may help them locate their children in China or advocate for reunion. They therefore resort again to informal networks to receive news about their children or organize their travel to the Republic of Korea, often putting the child's life at risk.

74. The two Koreas have ratified treaties that protect victims of human trafficking and prevent family separation. For example, article 23 of ICCPR ensures that "no marriage shall be entered into without the free and full consent of the intending spouses". The two countries have also ratified treaties that prohibit slavery and protect victims of trafficking, including the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. For example, Article 9 of the Convention on the Rights of the Child protects the right of children not to be separated from their parents against their will, and Article 10 urges State parties to ensure reunification between parents and children in a humane and expeditious manner. Furthermore, as a State Party to the 1951 Refugee Convention, China has the obligation to respect the right not to refoule to a territory where one's life or freedom would be threatened (Article 33/1). The protection of escapees and their children while in China would strengthen the physical and emotional security of these individuals and minimize risks of violence, exploitation and abuse

75. Many North Koreans who resettle in the Republic of Korea are able to occasionally communicate with their families in the Democratic People's Republic of Korea and send them remittances despite severe restrictions on the right to seek and receive information without interference in their home country. According to the Database Centre for North Korean Human Rights (NKDB), in 2015, 47.4 per cent of escapees were in contact with their families and 64.3 per cent could send them money in 2015, with amounts generally ranging between the equivalents of 400 US dollars and 1,800 US dollars.[51] People usually communicate by telephone using Chinese service networks (96.3 per cent of cases), while the absence of postal services between the two countries and heavy internet censorship in the Democratic People's Republic of Korea limits written communications (0.5 per cent).

[50] Transcript of interview with Ms. Shin Seonmi, held on 22 February 2016.
[51] Results of a 2015 survey presented at the 28th NKDB monthly briefing, March 2016.

76. Escapees living in the Republic of Korea also rely on a network of China-based brokers, Chinese mobile phone services and proxy bank accounts to carry out these transactions. In a report on restrictions on mobile phone usage in the Democratic People's Republic of Korea, Amnesty International highlighted the financial burden that the broker system imposes on escapees and their families. It found out that the system typically involves three middlemen, who request cash remittance of at least 900 US dollars, and a 30 per cent commission. Amnesty International argues that brokers live off of the separation of families, noting that "although [they] act as conveyers of information, they often do not want to see families reunite [because] they lose business as a result."[52]

[52] Amnesty International, « Connection Denied: Restrictions on Mobile Phones and Outside Information in North Korea », March 2016.

# VI. TOWARDS A HUMAN RIGHTS-BASED APPROACH TO FAMILY REUNIFICATION

77. By considering involuntary separation from a human rights perspective, it is possible to envisage a framework of action that provides a common, mandatory standard with which the two Koreas must comply. This framework reinforces human rights obligations stemming from international treaties to which the governments concerned have adhered. It should clarify their duties, place victims at the heart of decision-making processes as active participants rather than passive beneficiaries, and pave the way for future accountability mechanisms. In addition, this approach needs to address discriminatory practices and power relations that cause and characterize involuntary separation, rather than be limited to its most direct impact. Four general principles should be taken into account to underpin this framework:

### Principle 1: Human rights norms and principles should inform all political strategies, legal initiatives and practical measures to resolve the issue of involuntary separation

Notwithstanding the politically charged context of the Korean peninsula, all strategic responses to involuntary separation in its past and present forms must be based on international human rights law. Indeed, while political negotiation on this issue and others has been on the agenda of bilateral talks between the governments concerned since 2000, it is essential that they fulfil their human rights obligations in this context.

### Principle 2: Efforts to restore family ties should not be limited to humanitarian support to victims but also aim at the realisation of their human rights without discrimination

Whereas the restoration of family ties through occasional reunions may bring some comfort to the victims, such fleeting encounters do not provide justice and do not take into account the civil, political, economic and social impact of separation. Nor do they necessarily account for groups who have been marginalized or unable to benefit from institutional support, such as women, older persons, and individuals ranking low in the Songbun system.[53] All efforts to restore family unity should recognize the diverse experiences and needs of victims, and protect groups who are more at risk of denial of their rights because of their gender, age, social origin, political ideas, or other attributes.

### Principle 3: Measures should be adopted to enable victims to claim their rights through formal, transparent and adequate institutional mechanisms

Victims in the two Koreas must be consulted and their informed consent must be obtained prior to engaging in any truth-seeking and redress processes, to facilitate better understanding of the tracing and data collection techniques, and to reassure them as to

[53] Although it has not been possible to interview members of separated families within the Democratic People's Republic of Korea, a history of systematic discrimination based on their ranking in the Songbun system makes it likely that the lower-ranked individuals are the most vulnerable to discrimination in access to institutional support for the restoration of family links.

the fairness of the process. Where information does not infringe on the private lives of individuals, it should also be made available for public scrutiny. Additional efforts should also be made to help victims make use of the United Nations human rights machinery.

### Principle 4: The restoration of family ties should be complemented by a vision for transitional justice and accountability

Historic violations such as the ones underlying the involuntary separation of Korean families have widespread and long-lasting effects beyond the first generation of victims and witnesses. An assessment of the legacy of these violations will be important in the context of broader discussions on transitional justice that would examine options for judicial investigations, truth-telling processes and reparation programmes, including gender-sensitive reparations. Such measures must not be postponed until a final political settlement has been achieved between the two countries, but rather used as prelude and driver of a settlement.

78. The Democratic People's Republic of Korea has stated that it has initiated some legal changes that may help fulfil some of the above-mentioned principles, at least with respect to economic and social rights and women's rights. In its latest submission to the United Nations Committee on the Elimination of Discrimination Against Women, the Government reported that a Law on Compensation for Damages, adopted in 2005, protects the right of every citizen to receive "compensation for bodily injuries and property damage". This right could be recognized for women victims of sexual exploitation, which the submission views as "a serious crime". In addition, efforts to combat trafficking should also be stepped up in application of article 40 of the Criminal Law of the Democratic People's Republic of Korea, which punishes anyone who "arranges for, forces or lures a woman into committing [prostitution]".[54] Due to lack of access to the country, OHCHR has not been able to confirm these measures or assess their practical application.

79. In the Republic of Korea, three legal acts that have been adopted since 2000 require that investigations be carried out by the Government to determine the fate of persons gone missing during the Korean War, update current lists, and set up a DNA database to facilitate the identification of deceased victims. In order to implement these acts, a large data collection campaign has been underway for the past three years to create DNA profiles for victims and finalize the list of war abductees. In addition, over 14,000 video letters by members of separated families in the Republic of Korea have been recorded since 2005, according the Ministry of Unification. The Government is to publish a report in 2017 on the status of investigations regarding the fate of war abductees. These measures are important steps in the quest for truth that can benefit victims' groups and society as a whole.

80. The responsibility to protect human rights primarily rests with the Governments of the Democratic People's Republic of Korea and of the Republic of Korea. More efforts are required to determine responsibilities for cases of involuntary separation and to place them

[54] Paras 23 and 70 of the Periodic Report of the Democratic People's republic of Korea to the Committee on the Elimination of Discrimination Against Women, submitted on 11 April 2016.
http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PRK/CEDAW_C_PRK_2-4_5933_E.pdf

more clearly on the agenda of future bilateral talks. The legacy of systematic human rights violations of the Korean War must be addressed and perpetrators identified in order to end impunity and promote sustainable peace and reconciliation. This effort should seek to realise the rights of victims to reparations and to know the truth about violations, as well as to provide guarantees of non-recurrence of human rights violations in accordance with international law.

81. The recent rise in political and military tensions on the Korean peninsula continues to impede progress in the dialogue regarding family reunions. In 2016 two nuclear tests were reportedly conducted and several missiles reportedly launched by the Democratic People's Republic of the Korea. According to the Democratic People's Republic of Korea the organisation of joint military exercises by the United States and the Republic of Korea has led to the suspension of family reunion events. As rising tensions reduce the chance of addressing the problem of family separation proactively as a common priority, victims risk being further marginalised.

# VII. CONCLUSIONS AND RECOMMENDATIONS

82. The report lays the foundations of a human rights-based approach to the unification of Korean families and OHCHR invites all stakeholders, primarily the two governments concerned, to use it as a tool for discussion for the resolution of this problem. The four principles proposed in this report could be the basis for a reflection on the institutional arrangements which could be established to allow a fairer, more inclusive and more transparent treatment of applications for reunion. They could also inform future discussions about the conditions and modalities of family reunions, investigations into abductions, protection of people who flee the Democratic People's Republic of Korea during their journey, as well as the formulation of a long-term vision of transitional justice. These principles should be a starting point to pursue judicial accountability in cases of enforced disappearance and forced eviction, and to remove all obstacles inhibiting contact between members of separated families in the two countries. Recent cases of separation highlight the continuous nature of this challenge and the emergence of new categories of victims.

83. The report does not provide an exhaustive analysis of the full spectrum of violations that separation entails, nor do the interview excerpts reflect the voices of all victims. The lack of physical access to, and absence of an organized civil society in the Democratic People's Republic of Korea, make it impossible to reach out to members of separated families who live there.

84. Based on these observations, the following recommendations are proposed:

### (a) To the Government of the Democratic People's Republic of Korea

- Compile and publish substantiated statistical information about all individuals who have been unaccounted for since the Korean War;
- Adopt a gender-sensitive approach to data collection and statistical analysis which illustrates the specific impact of separation on women;
- Promptly adopt measures to investigate alleged cases of enforced disappearance to determine the fate of all missing persons, including those missing from the time of the Korean War;
- Return the remains of deceased persons reported as missing and facilitate DNA matching procedures;
- Produce and publish clear, non-discriminatory criteria for the listing and selection of individuals who take part in family reunion events;
- Stop the practice of forced evictions, forced dispersion of communities, forced labour, imprisonment and other forms of reprisals against repatriated escapees;
- Ensure that relatives of escapees are not subjected to any acts of intimidation, and sanction any acts of reprisal against them;
- Take effective measures to facilitate unhindered people-to-people contact with the Republic of Korea, including by abolishing surveillance on written and oral communications and any other interventions that limit interactions;

- Allow the development of civil society organizations where members of separated families in the Democratic People's Republic of Korea can engage in advocacy and outreach activities;
- Protect women escapees from traffickers by allowing them to leave the country using safe and legal routes;
- Facilitate country access to the Office of the High Commissioner for Human Rights and accept technical assistance to improve the protection of human rights.

### (b) To the Government of the Republic of Korea

- Publish data and finalize lists of all individuals who went missing in the context of wartime population movements, with a clear distinction between displaced civilians and persons who were forcibly disappeared;
- Adopt a gender-sensitive approach to data collection, tracing procedures, memorialisation and remedies, which recognizes the structural disadvantages suffered by women as a result of involuntary separation;
- Consult with the families of all abductees regarding appropriate truth-seeking, redress and reparation measures that may help them find closure;
- Establish a legal mechanism to allow victims in the Republic of Korea and their descendants to register and access information concerning property titles and inheritance lost in the Democratic People's Republic of Korea as a result of involuntary separation, that may allow for future recovery of such assets;
- Protect specific groups, such as relatives of abductees and women who were displaced during the war, from the impact of historic forms of stigmatisation and marginalisation by officially recognizing the discrimination that they suffered;
- Engage with the Government of the Democratic People's Republic of Korea with a view to lifting restrictions on people-to-people contact between the two countries.

### (c) To the Government of the Democratic People's Republic of Korea and the Government of the Republic of Korea

- Establish a joint mechanism to cross-check lists of persons missing since the Korean War;
- Ensure family reunion events are held more regularly and more frequently, that they concern many more people, and allow participants to remain in touch after the meeting;
- Allow members of separated families to talk during reunion events without any privacy intrusion from media and state monitors of the Democratic People's Republic of Korea;
- Establish postal and telephone services to allow separated relatives to make international telephone calls to each country and use mailing services at affordable costs;
- Allow other forms of communication and remembrance to take place, including visits to hometowns;
- Cooperate at the regional level to prevent and fight against human trafficking, and to protect its victims, particularly women escapees and their stateless children.

### (d) To the international community and the United Nations

- Support a human right-based approach to political dialogue between the two Koreas.
- Promote regional dialogue on the protection of North Korean escapees, particularly women, from human trafficking and other forms of exploitation with relevant governments in the Asia region;
- Support the implementation of recommendations by the Secretary-General of the United Nations, the Human Rights Council and its special procedures, the commission of inquiry on the Democratic People's Republic of Korea, the Security Council and the General Assembly regarding the human rights situation in the Democratic People's Republic of Korea, including enforced disappearances;
- Promote trusted third party mediation, including through the International Committee of the Red Cross, in channelling correspondence between the two Koreas and confirming the fate of abductees;
- Monitor progress on the issue of family reunions in human rights reporting mechanisms, including reports by the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea;

### (e) To civil society organizations, including victims' groups

- Integrate human rights discourse, norms and standards into outreach initiatives calling for the reunion of Korean families;
- Carry out advocacy to support and enhance separated relatives' advocacy efforts;
- Strengthen truth-telling and memorialisation processes by documenting the testimonies of elderly victims, particularly women, including with audio-visual equipment;
- Raise awareness amongst victims, particularly women, about their entitlements and ensure they are well equipped to demand justice in the future;
- Actively engage with the United Nations Human Rights Mechanisms and the governments concerned to press the case for investigations into enforced disappearances and the lifting of restrictions on contacts between relatives across the two Koreas;
- Develop synergies with successful civil society initiatives in other countries and regions of the world to advocate for the restoration of family links.


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