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Strengthening Legal Capacity to Pursue Accountability in the Democratic People's Republic of Korea

An Accountability Strategy Report
(edited short-version)

September 2022



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ACCOUNTABILITY STRATEGY REPORT (EDITED SHORT-VERSION)

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¹ GRC is in the process of producing a longer (confidential) version of this report, assessing the merits of pursuing some of the below accountability options, based on a sample of information the partnering CSOs have shared with GRC. The report will be shared with GRC's partner CSOs, in September 2022.

A. Introduction

The aim of the Project ‘Strengthening Legal Capacity to Pursue Accountability in the Democratic People’s Republic of Korea (DPRK)’ is to support truth, justice, and accountability for the victims of the DPRK. This will be realized through various programmatic activities one of which is the production and dissemination of the Accountability Strategy Report (edited short version). This authoritative report will complement the North Korean civil society organizations (CSOs’) knowledge around the complex international accountability system, thereby strengthening their accountability strategy and efforts. This report will explore six accountability pathways (hard and soft), and the feasible remedies available to the victims of the DPRK regime. It will offer a preliminary assessment of the North Korean Human rights organizations’ (NKHR) legal accountability efforts to date, including submissions to the International Criminal Court, Sanctions Regimes, or cases before domestic accountability fora and identify any missed and/or unsuccessful initiatives. It aims to provide information to the NKHR CSOs, on the merits, mechanics and viability of justice and accountability options through a combination of in-depth expert analysis and research.

GRC in the context of this Project, has also prepared a long-version of the Accountability Strategy Report, where it considers the nine accountability options listed in tables 1.1. and 1.2. below. The long version of the Accountability Strategy Report will be released on or before September and will only be shared with the Project’s participating CSOs, as it includes an analysis of a sample of confidential information shared by the participating CSOs. The edited short version of the report focuses on three key pathways identified, which pursuant to GRC’s assessment, are the most viable, namely Sanctions, International Court of Justice (‘ICJ’), through the prism of the Convention on the Elimination of Discrimination against Women (CEDAW),² and International Criminal Court (ICC).

This short version of the report identifies for the first time an innovative exploration of a submission/request for an advisory opinion filed by the United Nations General Assembly (UNGA) to the ICJ, through the prism of CEDAW, which has not been publicly considered as an avenue before in the DPRK literature. The actions undertaken by civil society or other interested stakeholders, will be dependent on practical, political as well as legal and other considerations, that should be evaluated before designing and implementing a well-structured accountability strategy.

The CSOs participating in this project, have expressed their interest in pursuing accountability through specific judicial fora, or other mechanisms, such as submitting an Article 15 Communication to the Office of the Prosecutor of the ICC or, filing a submission to one of the human rights sanctions regimes. Others indicated that they prefer to assess all options outlined in the report first and make an informed decision at a later stage, following internal discussions as well as advice given by Global Rights Compliance (GRC).

² [Convention on the Elimination of All Forms of Discrimination against Women](#), (signed 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (‘CEDAW’).

Potential Accountability Pathways as identified in the Accountability Strategy Report (long version):

Table 1.1. – Hard Law options:

Pathway	Assessment
International Court of Justice	<ul style="list-style-type: none"> • Significant advocacy benefits • Long-term accountability option with short-term measurable successes • Strategic pursuit • Viable but comes with challenges • Novel pathway (has not been explored before) • Engagement with various UN bodies and mandate-holders throughout • Elevated credibility of NKHR CSOs in the eyes of international community
International Criminal Court	<ul style="list-style-type: none"> • Long-term accountability option • Viable but comes with challenges • Temporal and jurisdictional limitations • Significant advocacy benefits if successful • OTP might still refuse to open an investigation (Past A15 Communications were unsuccessful)
Domestic Civil / Criminal Cases	<ul style="list-style-type: none"> • Short-term accountability option • Solid - viable pathway (successful civil cases) <i>cf.</i> more difficult to pursue criminal cases (only 1 successful to date) • Difficulty enforcing judgments • Significant advocacy benefits • Partnership with ROK lawyer/law firm essential
Universal Jurisdiction	<ul style="list-style-type: none"> • Long-term accountability option • Practical limitations (requires travel of DPRK Officials) • Inherently political process (States might be unwilling) • Low prospects concretizing (soon)
Ad-hoc Criminal Tribunal	<ul style="list-style-type: none"> • Would require UNSC or DPRK approval (unlikely) • Limited prospects - not viable (for the time being)

Table 1.2. - Soft Law options:

Pathway	Assessment
Sanctions	<ul style="list-style-type: none"> • Short-term quasi accountability option • Strategic & Viable (EU, UK, US already introduced human rights related sanctions against DPRK officials/institutions) • Gaining wide acceptance and recognition amongst States • Significant advocacy benefits
Human Rights Bodies e.g., working groups, UN-mandate holders, Treaty Committees, Universal Periodic Review	<ul style="list-style-type: none"> • Short-term option • Significant advocacy benefits • Not hard-accountability (more advocacy-focused) • Strategic & Viable (increased engagement with UN Bodies very important)
People's Tribunal	<ul style="list-style-type: none"> • Short-term option • Not hard accountability; truth-seeking / reconciliation process • Unclear if this is what NK Community seeks • Public hearings organised in the past • Viable but less strategic • Lower-level impact

B. Available Accountability Pathways

GRC in its scoping study has identified two preferred accountability pathways, one short and one long-term that subject to further research and engagement with relevant stakeholders, could result in tangible success by raising awareness of the human rights abuses taking place in the DPRK, increasing the credibility of the NKHR CSOs' work in the eyes of the international community, and steadily and consistently building momentum towards accountability.

The first option is: via the Global Human Rights Sanctions regimes (also known as Magnitsky Sanctions), a tool which has been recently introduced by States, and international organisations (i.e., the EU) and it is gaining wide support. The process of this pathway is relatively straightforward with the prospects of accountability outcomes (e.g., sanctions being issued) assessed as medium. The prospects of using sanctions as an advocacy tool are medium to good. This is viewed as a more short-term option.

The second option is: pursuing accountability via CEDAW. This novel pathway has yet to be fully explored by NKHR CSOs. This is a multi-pronged initiative, which has as a long-term goal to build momentum and galvanize action by the international community and UNGA Members to support the filing of a request for an advisory opinion to the ICJ under the prism of CEDAW, seeking some form of accountability and justice for the victims whose rights have been violated by the DPRK regime. The process of this pathway is more complex and the prospects of hard accountability low to medium. Notwithstanding that, it warrants consideration as it has medium to good prospects of being a viable advocacy tool.

I. **Sanctions**

UN and Global Human Rights Sanction Regimes

1. Sanctions are a tool, capable of imposing a form of accountability against perpetrators, by setting an important precedent that those responsible for breaches of international law and human rights abuses in the DPRK, will not be tolerated. It is a way to exert pressure upon the DPRK regime to comply with its international human rights obligations; while it can also contribute to the cementing of international norms and strengthening of international organisations and structures.³
2. States such as the U.S., UK, Canada, Australia as well as international organizations such as European Union, have introduced human rights-related sanctions regimes to punish individuals as well as entities linked to human rights violations.⁴ These sanctions regimes make it easier for States to impose targeted measures against those responsible for human rights abuses, without punishing the general population. In addition, sanctions can prove to be a useful deterrent instrument, countering serious authoritarian trends. They may also contribute to the development of a more progressive understanding of the States' obligations to prevent and punish gross human rights violations.

³ High Level Panel of Legal Experts on Media Freedom, [Report on the Use of Targeted Sanctions to Protect Journalists: International Bar Association Human Rights Institute Report](#) (13 February 2020), para 24.

⁴ In addition, in 2020, the Parliamentary Assembly of the Council of Europe, called upon member states to 'consider enacting legal instruments enabling their government to impose targeted sanctions on individuals reasonably believed to be personally responsible for serious human rights violations for which they enjoy impunity on political or corrupt grounds' (Parliamentary Assembly of the Council of Europe, '[Sergei Magnitsky and beyond – fighting impunity by targeted sanctions](#)', Resolution 2252 (2019)).



3. Nonetheless, sanctions in isolation are not an adequate response to the crimes and serious human rights abuses being committed, given that sanctions regimes stand alongside a range of other State policy objectives which may well result in inconsistent or fragmented implementation. For example, if a state's policy focus in relation to the DPRK, is the denuclearization of the Korean peninsula, this creates a risk that the issue of human rights abuses is side-lined, and no or no-immediate action is taken to sanction those most responsible for human rights abuses and international crimes. Furthermore, despite the potential overlap between the sanction's regimes mandate and international criminal law, the sanctions' regimes are usually viewed as complementary to accountability efforts.⁵
4. To date, the U.S., U.K. and the EU have issued sanctions to punish individuals and/or entities linked to human rights violations in the DPRK including (a) the Ministers of State Security and Social Security; (b) Directors of the Worker's Party of Korea; (c) the Central Public Prosecutors Office; and (d) the Ministries of State and Peoples Security.⁶ These DPRK Sanctioned entities and individuals have been linked to the human rights violations and abuses taking place in political prison camps; short-term labour detention centers; interrogation detention centers; and in criminal/court proceedings.
5. CSOs can through concerted advocacy campaigns support such actions as well as strengthen their accountability efforts by capitalizing on sanctions that have already been issued against DPRK-affiliated individuals. Notwithstanding this advantage, and dependent upon the engagement with the relevant sanctioning body, CSOs may be advised to conduct this work in a non-public facing manner. If there are prospects of sanctions being issued, or of assets being moved, or a person of interest travelling, it may be advisable to avoid advocacy efforts which may jeopardise concrete action. Advice should be sought on this. Sanctions are an alternative way to condemn the practices of the DPRK regime and keep the issue in focus.
6. CSOs wishing to consider making a submission to one of the aforementioned Sanctions regimes should be aware that each regime has specific submission guidelines and will often prefer early engagement prior to a submission. GRC can support CSOs in this initiative if requested by sharing a submissions template identifying the necessary requirements; as well as supporting CSOs in the process of preparing a sanctions submission.
7. In addition to State-sanctions related to human rights violations, the UN Security Council (UNSC) through the UN Sanctions Committee 1718,⁷ imposes and oversees sanctions against the DPRK, in relation to its missile and nuclear weapons development programs, however it cannot impose sanctions against individuals and/or entities involved in human rights abuses. Although this framework constitutes a means to limit the financial sources the regime uses to increase its nuclear capabilities, it may in some circumstances be used to raise awareness of human rights abuses committed against its citizens.⁸

⁵ European Parliament, [Resolution of 14 March 2019 on a European human rights violations sanctions regime \(2019/2580\(RSP\)\)](#), para. 12

⁶ U.S. Department of the Treasury, [Treasury Sanctions North Korean Officials and Entities in Response to the Regime's Serious Human Rights Abuses and Censorship](#), 10 December 2018; U.S., Department of Treasury, [Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day](#), 10 December 2021; UK Government, [The UK Sanctions List](#), 30 September 2021; European Council, [EU imposes further sanctions over serious violations of human rights around the world](#), 22 March 2021.

⁷ [UNSC Resolution 1718](#), 14 October 2006 (5551st meeting).

⁸ Recent information suggests that an effective implementation of the denuclearization-related sanctions could result in minimising to some extent the slavery and forced labour conditions reportedly existing in coal and other lucrative minerals mining sites. See the report prepared by Citizens' Alliance for North Korean Human Rights, [Blood Coal Export from North Korea. Pyramid scheme of earnings maintaining structures of power](#), January 2020, which argues that a full and thorough investigation into the

8. Reports produced by the panel of experts of the 1718 Sanctions Committee, show that sanctions are being poorly implemented as commercial and other sanctioned activities are still taking place.⁹ As such a viable avenue to consider for CSOs and other stakeholders could be to scale up their investigations and track (i) activities conducted in violation of the UN Sanctions; or (ii) other North Korean business ventures operating illegally around the world. CSOs, are advised to share their prospective findings with Member States or media and advocate for a stricter implementation of the Sanctions regime. This type of monitoring – a sanctions watch, could yield positive advocacy benefits.

POSITIVE	NEGATIVE
<ul style="list-style-type: none"> - Tool capable of imposing a form of accountability against perpetrators; - Various States have introduced human rights-related sanctions against DPRK bodies / officials - This policy/accountability measure is gaining wide support - Way to condemn practices of DPRK regime and keep issue in focus - Short-term option 	<ul style="list-style-type: none"> - Sanctions' regimes are complementary to accountability efforts (not substitute) - Sanctions regimes stand alongside a range of other State policy objectives which may well result in inconsistent or fragmented implementation
PRECEDENT	
<p>Yes, the following DPRK individuals / bodies have been sanctioned by different sanction regimes:</p> <ul style="list-style-type: none"> (a) the Ministers of State Security and Social Security; (b) Two Directors of the Worker's Party of Korea; (c) the Central Public Prosecutors Office; and (d) the Ministries of State and People's Security 	
GRC ADVICE / ASSESSMENT	
<ul style="list-style-type: none"> • Short-term quasi accountability option • Strategic & Viable • Policy/Accountability measure is gaining wide support from the international community • Significant advocacy benefits • GRC can support CSOs by sharing templates/practical tips on preparing a sanction submission; facilitate engagement with different sanction bodies 	

II. International Court of Justice and CEDAW

9. The International Court of Justice (ICJ), which is the principal judicial organ of the UN and was established in 1945 by the UN Charter,¹⁰ can hear a case when it receives a referral by a State against another State or when one of the authorized UN organs files a request for an advisory opinion. GRC has identified two pathways, through which the UNGA could submit a request for an advisory opinion to the ICJ. The UNGA could justify such a referral either under Article 10 or 11 of the UN Charter. GRC's assessment shows that such a pursuit would have better prospects if undertaken under Article 10.

DPRK's export supply chain would reveal how the DPRK benefits financially from illegal mineral exports which are dependent on forms of forced labour and slavery.

⁹ See for example, UNSC, [Final Report of the Panel of Experts submitted pursuant to resolution 2515/2020](#), 4 March 2021, UN Doc S/2021/2111, p.4; UNSC, [Final Report of the Panel of Experts pursuant to resolution 2464 /2019](#), 2 March 2020, UN Doc S/2020/151, pp.4-5. See also Deutsche Welle, [Berlin hostel over N. Korea link will be closed](#), 15 May 2017; Deutsche Welle, [Berlin Court rules hostel at North Korean Embassy must close](#), 28 January 2020.

¹⁰ [UN Charter](#), (signed 26 June 1945, entered into force 24 October 1945) 892 UNTS 119 ('UN Charter').

How is this applicable to the DPRK context?

10. As the DPRK, has acceded to only a handful of international treaties, the options under which a State or other body may refer the acts of the DPRK to the ICJ are limited. Two options appear available, (i) the Genocide Convention;¹¹ and (ii) CEDAW,¹² to which the DPRK is a State Party. Both conventions provide that any dispute relating to the interpretation, application, and fulfilment of their provisions, should be resolved by the ICJ, recognizing the Court's exclusive jurisdiction. The requirements under the Genocide Convention are discussed in more detail in the unedited long version of this report. GRC's assessment is that the limited information currently available to prove that the crime of genocide is taking or has taken place, along with other procedural hurdles, renders this pathway via the Genocide Convention not currently viable.
11. GRC has identified a route which may be available to initiate proceedings against the DPRK, namely a filing by UNGA pursuant to Article 96 of the UN Charter of a request for an advisory opinion to the ICJ, in relation to the practices of the DPRK regime which may violate international law with a focus on CEDAW.
12. GRC's preliminary findings, indicate that using CEDAW to address some of the human rights practices and violations committed by the DPRK regime might be viable and strategic, taking into consideration the DPRK's engagement with the Committee; the quantity of documentation on human rights abuses committed against women; the attention drawn to this issue by international actors as well as the interest of some of the NKHR CSOs to pursue a women-focused initiative.
13. GRC also welcomes the Human Rights Council resolution of March 2021, which requests from the High Commissioner for human rights to '*include additional options for strengthening, institutionalizing, and further advancing work on accountability in DPRK*' in its annual report.¹³ This is the first time such a recommendation is included in a Human Rights Council resolution, indicating that an ICJ-initiative may be welcomed by the latter. However, for the OHCHR and the Human Rights Council to include in their annual reports and resolutions, such a recommendation, strong legal arguments and credible evidence to demonstrate that the DPRK is not fulfilling its obligations codified in the CEDAW should be collated and presented.

Violence Against Women in DPRK

14. CEDAW, has issued a number of concluding observations on the periodic reports submitted by the DPRK to date.¹⁴ In its most recent report, the Committee welcomes the steps the DPRK has taken to comply with the CEDAW and its engagement with the mechanism,¹⁵ it raises however its concerns, with regard to the treatment of women in detention and repatriated women.¹⁶ Numerous credible reports highlight how women in

¹¹ Convention on the Prevention and Punishment of the Crime of Genocide (signed 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 (['Genocide Convention'](#)), Article IX.

¹² CEDAW, Article 29.

¹³ UNGA, [Resolution adopted by the Human Rights Council on 23 March 2021: Situation of human rights in the Democratic People's Republic of Korea](#), UN Doc. A/HRC/RES/46/17, 30 March 2021.

¹⁴ UN Committee on the Elimination of Discrimination against Women, [Concluding comments: Democratic People's Republic of Korea](#), CEDAW/C/PRK/CO/1, 22 July 2005; UN Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined second to fourth period reports of the Democratic People's Republic of Korea](#), CEDAW/C/PRK/CO/2-4, 22 November 2017 ('CEDAW Concluding observations 2017').

¹⁵ CEDAW, [Concluding observations 2017](#), paras.4-7.

¹⁶ CEDAW, [Concluding observations 2017](#), paras. 27, 45-46.

detention and repatriated women routinely suffer from discriminatory practices.¹⁷ Specifically, various reports found that women in detention suffered from malnutrition and starvation,¹⁸ sexual violence and other humiliating acts,¹⁹ forced labor,²⁰ forced abortions, and infanticide of their children.²¹ A report produced by OHCHR describes a nearly complete absence of any health care in the prisons, while it notes that its presence, appears to be dependent on the visits of family members or the detainee's access to money.²² Finally, witness accounts suggest that women in detention are deprived of their right to a fair trial and due process rights, as some women detainees receive sentencing without a trial, while others have limited access to a lawyer and no right of appeal.²³ Both the Committee as well as OHCHR, and other international NGOs, are concerned about the inertia of the DPRK regime, or the lack of preventative or protective measures against women in detention.

15. The OHCHR in its report included a recommendation calling all Member States of the United Nations to continue to support efforts to investigate whether international crimes, have been or are being committed in the DPRK, and bring those responsible to justice in domestic or international courts.²⁴ This appeal towards Member States, could be used as an advocacy tool by CSOs, seeking to establish the interest of a State which might be willing to pursue and support such initiative.
16. Given the findings of these reports, CSOs, documenting human rights violations, could intensify their investigations on violations being committed against a specific group of victims, namely women. As the 72% of the North Korean escapees entering the ROK, are women,²⁵ the body of available information might be sufficient to substantiate allegations of human rights violations and international crimes taking place in the DPRK against them.

Referral by the UN General Assembly:

17. A filing of a request for an advisory opinion by the UNGA to the ICJ pursuant to Article 96 of the UN Charter,²⁶ is a long-term option, that nevertheless may feasibly offer some short-term benefits as discussed below. The UNGA can submit a request on (i) 'any questions or any matters' within the scope of the UN Charter, or (ii) any issues relating to the maintenance of international peace and security.²⁷ Each option will be discussed in turn below:

¹⁷ UN Committee on the Elimination of Discrimination against Women, [Concluding comments: Democratic People's Republic of Korea](#), CEDAW/C/PRK/CO/1, 22 July 2005; CEDAW, [Concluding observations 2017](#); [COI Report](#), para. 491; UN OHCHR, [Human rights violations against women detained in the Democratic People's Republic of Korea: I still feel the pain](#), July 2020 (UN OHCHR, Human rights violations report against women in detention); ¹⁷ [COI Report](#), paras. 415-434.

¹⁸ UN OHCHR, [Human rights violations report against women in detention](#), Section 4.2.

¹⁹ [COI Report](#), paras. 415-422; UN OHCHR, [Human rights violations report against women in detention](#), Sections 4.3, 4.5..

²⁰ UN OHCHR, [Human rights violations report against women in detention](#), section 4.4.

²¹ [COI Report](#), paras. 424-434; UN OHCHR, [Human rights violations report against women in detention](#), Section 4.5.3.

²² UN OHCHR, [Human rights violations report against women in detention](#), Section 4.6.

²³ UN OHCHR, [Human rights violations report against women in detention](#), Section 4.7.

²⁴ UN OHCHR, [Human rights violations report against women in detention](#), Section 6.

²⁵ Ministry of Unification, [Policy on North Korean Defectors](#), 2022.

²⁶ The UN Security Council (UNSC) also has the power to request an advisory opinion by the ICJ, pursuant to Article 96 of the UN Charter. To do so, this would require the positive votes of nine out of its 15 members, including the concurrent positive votes of all the permanent members (Russia and China included). Given the procedural voting requirements and dynamics amongst the permanent members of the UNSC, we only consider UNGA as a viable pathway and not the UNSC. The UNSC, can request an advisory opinion on any questions or any matters within the scope of the UN Charter, or any issues relating to the maintenance of international peace and security as per Article 24 of the UN Charter.

²⁷ [UN Charter](#), Articles 10-11.

(I) Advisory opinion on any questions or any matters within the scope of the UN Charter (Article 10)(Pathway No. I):

18. Pursuant to the *chapeaux* of the UN Charter, its scope includes 'establishing conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained'.²⁸ Using this as a justification, the UNGA, could submit a request for an advisory opinion in relation to the (non)-implementation by the DPRK of the CEDAW, considering such a step, as a method to establish conditions under which respect for the obligations arising from CEDAW are maintained by the DPRK regime.
19. GRC explored this CEDAW pathway given the rich information and credible documentation collected by the participating CSOs, on women's violations as reviewed by GRC; the increased international attention around this issue;²⁹ and given that the DPRK regime has engaged with the Committee monitoring the implementation of CEDAW and has shown some openness to consider the recommendations made by the latter. This innovative pathway is put forward by GRC for the first time as it has not been publicly considered before.
20. Pursuant to Article 96 of the UN Charter, the ICJ can give an advisory opinion on any legal issue. Therefore, the subject-matter of such a request could be for example for the ICJ to advise on what are the legal consequences arising from the human rights practices followed by the DPRK regime particularly against women, including repatriated women detainees, considering the rules of international law, and specifically CEDAW.³⁰ An UNGA resolution would require a simple majority, namely 97 or more Member-States present and voting, to cast a positive vote, and would not require an authorization by the UNSC.³¹

(II) Advisory opinion on any issues relating to the maintenance of international peace and security (Article 11(2)) ('Pathway No. II'):

21. Alternatively, UNGA could submit a request for an advisory opinion on an issue relating to the human rights violations in the DPRK, and the threat these pose to the maintenance of international peace and security. UNGA could only exercise this power in the event that the UNSC does not deal with the matter by exercising its functions at that moment (namely considering the same thing at the same time).³²
22. Instances of UNGA taking a proactive role in situations of emergency when the UNSC fails to act have occurred previously.³³ Moreover, UNGA have taken a robust approach recently in relation to the war in Ukraine. As a result of the UNSC's paralysis, the UNGA held an Emergency Special Session, in line with the long-established but rarely used 'Uniting for

²⁸ UN Charter, Chapeaux, para (1).

²⁹ UN Committee on the Elimination of Discrimination against Women, [Concluding comments: Democratic People's Republic of Korea](#), CEDAW/C/PRK/CO/1, 22 July 2005; UN Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined second to fourth period reports of the Democratic People's Republic of Korea](#); CEDAW/C/PRK/CO/2-4, 22 November 2017 ('CEDAW Concluding observations 2017'); UN OHCHR, [Human rights violations against women detained in the Democratic People's Republic of Korea: I still feel the pain](#), July 2020 (UN OHCHR, Human rights violations report against women in detention); [COI Report](#), paras. 415-434.

³⁰ UN Charter, Article 96.

³¹ UN Charter, Article 18; UNGA, [Rules of Procedure](#), Rules 82, 83, 85.

³² UN Charter, Articles 11(2), 12(1), 14, 24; [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory \(Advisory Opinion\)](#) (2004) ICJ Rep 136 ('[Wall Advisory Opinion](#)') paras. 26-28.

³³ See for example ICJ, [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory \(Request for an Advisory Opinion\): Summary of the Advisory Opinion](#), 9 July 2004, where the UNSC had been unable to take a decision on the matter, and as a result the UNGA convened two Emergency Special Sessions, and declared the violations by Israel a threat to international peace and security and decided to refer the issue to the ICJ.

Peace’ resolution, created in the 1950s, during the Korean War,³⁴ demanding Russia to ‘immediately, completely, and unconditionally withdraw all its military forces from the territory of Ukraine within its internationally recognized borders’.³⁵

Legal and procedural requirements relevant to the UNGA Pathway No. II:

23. In a prospective request for an advisory opinion filed by the UNGA, the ICJ, must be satisfied that all requirements as set out in the UN Charter are met. The Court will only exercise its jurisdiction if it is satisfied that the UNSC, as the organ which has the ‘primary responsibility for the maintenance of international peace and security’,³⁶ was:

- (i) not exercising its functions at the time when the General Assembly took that decision (i.e., not considering the same matter at the same time);
- (ii) it failed to exercise its primary responsibility to maintain international peace and security because of lack of unanimity amongst the permanent members;³⁷ and
- (iii) there appears to be a threat to or breach of the peace which requires immediate consideration from the General Assembly.³⁸

Recent developments in the DPRK context relevant to the UNGA pathway No. II:

24. The second requirement, namely a failure on UNSC’s side to exercise its responsibilities and consider if the DPRK’s gross violations of human rights, constitute a threat to international peace and security because of lack of unanimity across the UNSC member states, may not be as challenging to satisfy in the current climate. The example of the war in Ukraine, is a manifestation of the UNSC’s inability to adopt collective responses to security crises, and the UNGA’s ability to proactively respond and act as and when needed.

25. However, to this date, despite some discussions taking place under the ‘any other business’ fora of the UNSC, no concrete action has yet to be taken.³⁹ As no draft resolution has been introduced in the UNSC’s agenda to date, its Members have not had the opportunity to vote in favour, or veto a resolution declaring the human rights situation in the DPRK, a threat to international peace and security. Accordingly, the Court might reject a prospective request by the UNGA, on the basis that it lacks jurisdiction to provide an advisory opinion. The ICJ may conclude that the UNSC’s lack of action should not be equated with a failure ‘to exercise its primary responsibility for the maintenance of international peace and security’ as it was never seized of draft resolution on the matter.⁴⁰ As such this avenue may be deemed at present premature. Nonetheless, GRC provides a detailed assessment of Pathway No. II in the long version of this report.

Table 1.3.: Checklist of procedural requirements for an UNGA referral to the ICJ (Pathway No.I):

³⁴ International Crisis Group, [What the UN General Assembly can do for Ukraine](#), 28 February 2022.

³⁵ United Nations News, [General Assembly resolution demands end to Russian offensive in Ukraine](#), 2 March 2022.

³⁶ [UN Charter](#), Article 24; see also [Wall Advisory Opinion](#), paras. 18-32.

³⁷ This requirement will highly likely not be a stumbling block, as to this date the UN Security Council lacked unanimity on how to deal with the human rights situation in the DPRK, given that two of its permanent members (China and the Russia Federation), do not consider it to be a threat to or breach to international peace and security.

³⁸ UNGA, [Rules of Procedure](#), Rule 8(b); UNGA, [Resolution 377\(V\):Uniting for peace](#), 3 November 1950, para. 1.

³⁹ UNSC, [The situation in the Democratic People’s Republic of Korea, \(8130th meeting\)](#), 11 December 2017, UN Doc S/PV.8130; UNSC, [The situation in the Democratic People’s Republic of Korea \(7830th meeting\)](#), 9 December 2016, UN Doc S/PV.7739; UNSC, [The situation in the Democratic People’s Republic of Korea, \(7575th meeting\)](#), 10 December 2015, UN Doc S/PV.7575; UNSC, [The situation in the Democratic People’s Republic of Korea \(7353th meeting\)](#), 22 December 2014, UN Doc. S/PV.7353.

⁴⁰ UNGA, [Resolution 377\(V\): Uniting for peace](#), 3 November 1950, para. 1; Security Council Report, [What’s In Blue: Democratic People’s Republic of Korea \(DPRK\): Meeting on the Human Rights Situation Under ‘Any Other Business’](#), 14 December 2021.

UNGA Pathway No.I:	1) No consideration by UNSC required
UNGA files a request for an advisory opinion on the basis of its competences recognised by Article 10 of UN Charter.	2) UNGA must explain in its request to the ICJ, why such a request falls within the scope of the UN Charter. A justification can be given by referring to the chapeaux of the UN Charter.
	3) UNGA's request: 'What are the legal consequences arising from the human rights practices followed by the DPRK regime particularly against women, including repatriated women detainees, considering the rules of international law, and specifically CEDAW?'

Additional Considerations:

26. Although GRC is cognizant of the significant challenges present, it sees as a positive development the fact that the UNGA, especially since the publication of the COI report, has issued a number of resolutions, expressing its deep concern about the grave human rights situation and the lack of accountability for the human rights violations in the DPRK,⁴¹ noting inter alia the regime's obligations under CEDAW.⁴² Although these resolutions do not declare the human rights situation a threat to international peace and security, they illustrate the international community's uneasiness to the human rights practices of the DPRK regime.
27. The practices followed by UNGA, show that with the requisite political will and support, the latter can act and by-pass a stalled UNSC, by passing a resolution within its mandate as recognized by the UN Charter.⁴³ As such, GRC considers this novel pathway of engaging UNGA in pursuits aimed at achieving truth, justice, accountability for the victims of the DPRK regime, particularly through the prism of CEDAW, as a long-term viable pathway, worthy of further exploration.
28. GRC has identified in an outline, the steps appearing to be necessary at this stage to work towards part of this multi-pronged strategy, building momentum, and galvanizing action by the international community to support an UNGA filing to the ICJ either through Pathway No. I or II. The following are indicative and supplement the aforementioned procedural steps required for the UNGA to file a request to the ICJ:
- a. Engagement with CEDAW; UN Women; Working Group on discrimination against women and girls; Special Rapporteur on Violence against Women;
 - b. Engagement with Special Rapporteur on the situation of human rights in the DPRK;
 - c. Engagement with OHCHR (Seoul office)
 - d. Engagement with UNSC or UNGA Members, to try and lobby for a draft resolution on whether the human rights situation in the DPRK, constitutes a threat to international peace and security;

⁴¹ UNGA, [Situation of human rights in the Democratic People's Republic of Korea \(70th Session\)](#), UN Doc. A/C.3/70/L.35, 30 October 2015; UNGA, [Situation of human rights in the Democratic People's Republic of Korea \(71st Session\)](#), UN Doc. A/C.3/71/L.23, 31 October 2016; UNGA, [Situation of human rights in the Democratic People's Republic of Korea \(76th Session\)](#), UN Doc. A/RES/76/177, 10 January 2022;

⁴² UNGA, [Situation of human rights in the Democratic People's Republic of Korea \(70th Session\)](#), UN Doc. A/C.3/70/L.35, 30 October 2015, pp. 2, 9.

⁴³ UN Charter, Article 96.

- e. Research and advocacy on why human rights violations in the DPRK are a threat to international peace and security;
 - f. Research and advocacy on the human rights violations against women in the DPRK;
 - g. Production and dissemination of reports, position statements, articles.
29. In light of the above, CSOs are advised to continue their advocacy efforts with relevant international actors, in order to galvanize action by UN Members, who might be willing to introduce to the UNGA's agenda or Council's agenda, a draft resolution (a) requesting an advisory opinion by the ICJ with a focus on CEDAW; or (b) declaring the human rights situation in the DPRK a threat to international peace and security. A lack of unanimity of the permanent members, would constitute a failure of the Council to take action, enabling the General Assembly to exercise its competences.⁴⁴ and convene an Emergency Special Session with the aim of passing a resolution dealing with the matter.
30. Accordingly, CSOs who are interested in building case-files, might have a better chance at doing so, by collecting information on the situation of human rights abuses particularly against women. Their findings could then be shared with UN bodies such as the OHCHR or the Committee monitoring CEDAW, or with States, or other law enforcement authorities, to make a convincing, fact-based case on the DPRK's failure to implement CEDAW's provisions.
31. Notwithstanding this, these pathways would be resource intensive for a State to take, as well as for CSOs to support. It would require significant resource and likely financial investment by a State to pursue. Participating CSOs could prepare some of the preliminary materials that would be submitted to the State willing to initiate such a procedure and work towards a credible and persuasive legal dossier.

State Party referral under CEDAW:

32. The DPRK, as a UN Member State, is a party to the ICJ, however to date, it has not filed an optional declaration recognising the jurisdiction of the Court,⁴⁵ and has not entered into a special agreement to resolve an existing dispute with a state-party to the ICJ either, meaning that both options are not viable.
33. With respect to the CEDAW route, a further option is for a State Party to refer the DPRK to the ICJ, if a dispute arises in relation to the interpretation or application of CEDAW. However, the DPRK has filed a reservation, stating that it does not consider itself bound by this dispute mechanism, provided in article 29(1) of the Convention.⁴⁶ Although some State Parties objected to other reservations filed by the DPRK, none has objected its reservation in relation to article 29(1) of the Convention and thus it has been silently accepted.⁴⁷ Accordingly if a dispute arises between State Parties concerning the interpretation or application of the Convention, the DPRK would insist resolving this by means of negotiation.⁴⁸

⁴⁴ See [UN Charter](#), Article 11(2).

⁴⁵ [Statute of the International Court of Justice](#), Article 36(2); International Court of Justice, [Declarations recognizing the jurisdiction of the Court as compulsory](#), 2021.

⁴⁶ UN CEDAW, [Meeting of States Parties to the CEDAW: Declarations, reservations, objections and notifications of withdrawal of reservations relating to CEDAW](#), UN Doc. CEDAW/SP/2006/2, 10 April 2006, p. 11.

⁴⁷ UN CEDAW, [Meeting of State Parties to the CEDAW: Declarations, reservations, objections and notifications of withdrawal of reservations relating to the CEDAW](#), UN Doc. CEDAW/SP/2008/2, 19 May 2008, pp.59-60.

⁴⁸ UN CEDAW, Committee on the Elimination of Discrimination against Women, [Consideration of reports submitted by States Parties under article 18 of the CEDAW: Democratic People's Republic of Korea](#), UN Doc. CEDAW/C/PRK/1, 11 September 2002, p.36.

34. Prima facie, it appears that no State Party can challenge before the ICJ, the reservation filed by the DPRK under article 29(1) of CEDAW, limiting the ICJ's jurisdiction.
35. Notwithstanding that, there remains in our view, ways in which this pathway could still be utilized. First, relevant international jurisprudence, and specifically a decision issued by the European Court of Human Rights (ECtHR), declared as invalid a reservation made by a State Party limiting the Court's jurisdiction. In that case it *inter alia* considered that had such a reservation been valid, it would fundamentally weaken the role of the Court in the discharge of its functions, and it would also diminish the effectiveness of the Convention as an instrument of European order, which would be contrary to the object and purpose of the Convention.⁴⁹ This decision was issued by the ECtHR and does not bind the ICJ, however, it offers some guidance on how a regional Court interpreted a State reservation limiting its jurisdiction to hear cases.
36. The ICJ has yet to deliver a ruling comparable to that of ECtHR, and therefore any conclusions on whether a case could be brought against the DPRK under CEDAW, challenging its reservation under article 29(1) as contrary to the object and purpose of the CEDAW,⁵⁰ cannot yet be drawn. A State could in principle refer the DPRK to the ICJ, claiming that such a reservation is contrary to the object and purpose of the CEDAW, but such a claim would be unprecedented, and potentially challenging to support with legal arguments, as article 29(2) of CEDAW allows for such a reservation to be filed, thus connoting that it does not negate the purpose and object of the Convention.
37. A change or shift in DPRK's practices and policies might not be immediate. Nonetheless, a State Party to CEDAW may still be willing to enter into bilateral negotiations with the DPRK,⁵¹ in relation to the application and non-implementation of CEDAW. This step could have significant advocacy benefits, elevating the human rights situation in the DPRK, on the international community's agenda, and potentially laying the groundwork for engaging in principled discussions with the regime.
38. This can be done if a state sympathetic to initiating such a procedure, invites the DPRK via a diplomatic note, to enter negotiations. For example, if the ROK or the U.S. invoked DPRK's responsibility for failing to eliminate discrimination against women pursuant to CEDAW, they could try to enter negotiations with the DPRK regime, to discuss if the latter has applied the CEDAW uniformly and consistently.⁵²
39. The likelihood of this option being realised, is in GRC's view low, given that this is a confrontational approach, which requires direct engagement with the regime and appetite from both sides to engage in principled discussions. This element would potentially be missing from the DPRK-side given that to date the regime has not shown any *bona fide* signs of substantive and meaningful cooperation with the international community and appears unwilling to enter in principled discussions regarding its human rights record.

⁴⁹ European Court of Human Rights, [Case of Loizidou v. Turkey \(Preliminary Objections\) App. No. 15318/89](#), 23 March 1995, para. 75. In this case Turkey, made a reservation stating that the Court shall only have jurisdiction to receive claims from individuals who suffered harm in the national territory of the Republic of Turkey and not elsewhere.

⁵⁰ See Vienna Convention on the Law of the Treaties (adopted 22 May 1969, entered into force 27 January 1980), Article 19.

⁵¹ Potentially, interested States could be the U.S., the Republic of Korea, Japan.

⁵² Although GRC found no public statements by States invoking the DPRK's responsibility, for failing to eliminate discrimination against women pursuant to CEDAW, in 2020, the state-established National Human Rights Commission of Korea, welcomed the findings of the Special Rapporteur's report, and invited the DPRK to implement the Committee's on the Elimination of Discrimination against women recommendations, see National Human Rights Commission of Korea, Press Releases: [NHRCK Chairperson's Opinion on the Oral Statement by the UN Special Rapporteur for Human Rights in the DPRK at the 43rd Session of the UN Human Rights Council](#), 17 March 2020.

Despite the low prospects of materializing, GRC views this as a soft-accountability option that if pursued, could increase compliance.

Conclusion

40. To conclude, pursuing justice through UNGA, is a novel approach, and a long-term accountability option which can only form part of a multi-pronged strategy. The process has the potential to bring short-term measurable benefits and successes to the CSOs willing to pursue this, such as engagement with UN-mandate holders, States, submission of authoritative reports etc. It is important however, that the NKHR CSOs take into consideration when mapping out a prospective strategy, the challenges and risks involved, such as procedural and legal requirements, conducting thorough and legally compliant and robust investigations and documentation, and significant resource and financial investments.

UNGA Referral No. I and II:

POSITIVE	NEGATIVE
<ul style="list-style-type: none"> - Significant advocacy benefits - Short-term measurable successes (engagement with various UN bodies and mandate holders) - Strategic pursuit - Viable but comes with challenges - Novel pathway - Elevated credibility of NKHR CSOs in the eyes of the international community 	<ul style="list-style-type: none"> - Long-term accountability option - Legal and procedural hurdles (e.g., consideration by UNSC) - Significant resource and financial investments - Not criminal procedure (e.g., victims not awarded damages)
PRECEDENT	
There's no relevant precedent in the DPRK context.	
GRC ADVICE / ASSESSMENT	
<ul style="list-style-type: none"> • Strategic / viable option but NKHR CSOs should be aware of the challenges / risks. • On a preliminary basis, there might be the political appetite to support this pursuit. • GRC can support CSOs in their engagement with States willing to receive information/evidence and submitting reports, files, position statements. 	

C. Other International Justice Pathways

III. International Criminal Court

41. The International Criminal Court ('ICC') is an international body which can hold perpetrators to account for committing gross human rights violations and statute-defined international crimes. In principle, the Court has jurisdiction to investigate crimes which were committed after the Rome Statute entered into force namely 1 July 2002.⁵³

42. The Court has jurisdiction only in specific situations, for example if the crime was committed in the territory of or by a national of a State Party.⁵⁴ If the Court is satisfied that it has jurisdiction, then a State which has ratified the Rome Statute or the UNSC may

⁵³ UN General Assembly, Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 17 July 1998 ([The Rome Statute](#)); The Rome Statute, Article 11.

⁵⁴ [The Rome Statute](#), Article 12(1).

refer the situation to the Office of the Prosecutor (OTP), or alternatively the OTP may initiate an investigation, on its own initiative.

43. The ICC will only exercise its jurisdiction, when the domestic judicial system of a state, where the international crime has been committed, has been '*unwilling or unable genuinely to carry out the investigation or prosecution*' of the said crime.⁵⁵
44. As the DPRK is not a State-Party to the Rome Statute, it cannot submit a referral to the OTP. However, other State-Parties to the Rome Statute, could refer the situation to the OTP for any crimes committed by the DPRK in their territories, for example the ROK or Japan.
45. Given that the ROK or Japan, have recently re-focused their efforts on the denuclearization of the peninsula, and have not featured the issue of human rights violations or international crimes, during their diplomatic engagements with the regime, likely fearing that such move would undermine or jeopardize their efforts,⁵⁶ it is unlikely that they will in the immediate future, refer the situation to the OTP.
46. Similarly, there are very low prospects of a referral being filed by the UNSC, as this would require the positive votes of all permanent members, including China and the Russian Federation.⁵⁷ The current political situation,⁵⁸ demonstrates that China's or Russia's foreign policy towards the DPRK, makes this not a realistic short- or medium-term viable option.
47. Accordingly, the third and only option currently available, is if the OTP initiates an investigation, on its own initiative, having assessed all the information available to them. This is a viable option that comes however with challenges. Although there is merit for CSOs to explore this accountability pathway, the prospects of an immediate, short-term successful outcome are more limited. Thereby, CSOs minded engaging in a longer-term strategy with the ICC, are advised to devote their time and resources accordingly. The CSOs are also advised to take into consideration, the benefits, and skills they will develop throughout this process, which can be transferrable to other avenues and accountability pursuits.

Submitting an Article 15 Communication to the ICC based on the Objective Territoriality Principle (Cross-Border Crimes)

How is this applicable to the DPRK context?

48. Pursuant to the decision of the ICC, concerning '*the situation in Bangladesh/Myanmar*'⁵⁹, the Court may accept jurisdiction over a non-State party territory in situations where cross-border crimes have been committed.⁶⁰ This situation will arise when the crimes have been

⁵⁵ [The Rome Statute](#), Article 17.

⁵⁶ HRW, [World Report: North Korea](#) (2019).

⁵⁷ Brookings, [Debating North Korea: US and Chinese perspectives](#), 27 August 2021.

⁵⁸ DW, [North Korea, China vow cooperation in the face of 'hostile forces'](#), 11 July 2021.

⁵⁹ Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Decision pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-27, 14 November 2019 ('[Situation in the Bangladesh/Myanmar, Decision pursuant to Article 15 of the Rome Statute](#)')

⁶⁰ GRC represented 400 Rohingya women and girls before the ICC, contributing to the landmark decision for the ICC to extend its jurisdiction into Myanmar. GRC filed submissions to the ICC, asking the Court to investigate and prosecute crimes of genocide, apartheid, deportation and persecution perpetrated against the Rohingya. The Chamber accepted arguments put forward by GRC on the possibility of the Court's jurisdiction extending to other crimes committed against the Rohingya, such as persecution and deportation.

perpetrated over the territory of both a State-party which has ratified the Rome Statute and a non-State party. To satisfy this jurisdictional cross-border element, a part of the physical act of the crime, must have taken place on the territory of a State-Party.⁶¹ Drawing guidance from the factual circumstances of the situation in Bangladesh/Myanmar and the Court's decision, the objective territoriality principle is applicable when the *physical act* of a crime begins in non-State party territory and continues over the territory of a State-Party to the Rome Statute. In principle, this rule could be applied in the reverse, namely in a situation where the wrongful conduct (i.e., *physical act* of the crime) begins in a State-party territory and continues across the border into the territory of a non-State Party, although this rationale has yet to be confirmed by the Court.

49. To give a DPRK-relevant example, this principle, will be satisfied if the DPRK commits the crime of enforced disappearance (as part of its widespread and systematic attack) by abducting a citizen located in the ROK (State party) and taking them to DPRK territory (non-State party) without their consent. In this example, part of the wrongful conduct occurs in the ROK and continues across the border of the DPRK. Another example that potentially satisfies the objective territoriality principle, is if the DPRK (non-State party), persecutes in its territory North Korean citizens, and those individuals eventually flee the DPRK, and re-settle in ROK territory (State-party) while the persecutory conduct continues. In this scenario, the persecution of the North Korean citizens commenced in DPRK territory, which is not a State party to the Rome Statute, but continued over the territory of the ROK, which is a State-party.⁶²
50. Whilst there have been a number of Article 15 Communications submitted to the OTP,⁶³ which included the objective territoriality principle in their legal arguments, to this date, the OTP has declined to open investigations in relation to these different situations where the principle appears to be in operation.
51. Assessing the open-source information and evidence collected to date by the CSOs, there is a reasonable basis to conclude/suspect that cross-border crimes have been committed by North Korean agents in State party territories, namely the crimes of enforced disappearances,⁶⁴ persecution, and other inhumane acts. Some of these crimes initiated in State Party territories such as the ROK and Japan and continued over in the DPRK territory; or vice versa, commenced in DPRK and continued over into the territory of ROK. There are potentially two groups of persons which could file an Article 15 Communication in such a case: (i) DPRK citizens, who escaped DPRK and re-settled in the ROK, and were and continue to be persecuted and targeted on political and religious grounds⁶⁵ and are deprived of their right to return;⁶⁶ or whose family members were abducted by the DPRK regime, and their whereabouts remain unknown to date,⁶⁷ and/or (i) families of Japanese and ROK nationals who were abducted from Japanese and ROK territory. However, for the

⁶¹ [Situation in the Bangladesh/Myanmar, Decision pursuant to Article 15 of the Rome Statute](#), para. 124.

⁶² The deprivation of a person's right to return to their country, has been considered by the court a fundamental right, therefore any conduct depriving victims of it, would be similar to persecution, see Myanmar/Bangladesh Article 19(3) Decision, para. 77. This argument however, has not yet been fully developed and could potentially be explored in an Article 15 Communication.

⁶³ ICC, [Report on Preliminary Examination Activities](#), 2020, paras. 70-76.

⁶⁴ The UN COI report found that, the abductions and denials of repatriation of ROK or Japanese citizens, amount to the crime against humanity of inhumane acts (see rather than the crime of enforced disappearance as there is some disagreement amongst international law publicists on whether the crime of enforced disappearance was recognised under customary international law at the 1950s when these crimes began).

⁶⁵ [COI Report](#), paras. 390, 391, 393-394, 1058-1059, 1094.

⁶⁶ Deprivation of the right to return could be considered as an inhumane act as pursuant to ICC jurisprudence, "preventing a person from returning to his or her own country may cause great suffering or serious injury to mental health since it deepens the anguish of persons uprooted from their own homes and forced to leave their country and renders the victims' future even more uncertain and compels them to continue living in deplorable conditions." (see Myanmar/Bangladesh Article 19(3) Decision, para. 77.)

⁶⁷ [COI Report](#), para. 66.

second category of victims there might be a temporal jurisdiction hurdle, as analysed below.⁶⁸

52. In a scenario where an Article 15 Communication⁶⁹ is submitted, arguing that the crime of enforced disappearance was committed against ROK and Japanese citizens; it is questionable if the ICC will have temporal jurisdiction to assess a potential violation of Article 7(1)(i). This is because according to the Elements of Crimes, the Court can only exercise its jurisdiction when the wrongful conduct occurred after the Statute entered into force.⁷⁰ The law is not fully settled, as it is unclear if the Court would have jurisdiction only over crimes, where the arrest or detention occurred **after** the Rome Statute entered into force, or if it would also have jurisdiction over cases where the initial deprivation of liberty took place **before** entry into force of the Rome Statute, when such acts were part of an 'attack' which continued after the enforcement of the Rome Statute. This is a complex and contentious issue which has been the subject of academic discussion. Some argue that the wording of the Elements of Crimes does not explicitly exclude from the Court's jurisdiction, cases of enforced disappearances that began prior to the date the Rome Statute entered into force. Therefore, this is an issue that must be resolved by the Court.⁷¹
53. Although, the COI report, compared the numerous cases of enforced disappearances and concluded that 'common elements unite them, making it appropriate to consider them as a single large-scale attack' despite being carried out over the span of several decades,⁷² it is not clear whether the Court would accept jurisdiction to investigate these cases, as the last known and reported disappearance of non-DPRK nationals occurred in 2000⁷³ and the Rome Statute entered into force in 2002. The situation might be different for DPRK nationals who have been abducted more recently, and whose family members now live in ROK, however investigations on this issue should be conducted first.
54. It is noteworthy that the OTP refused in the past to open an investigation on cases of enforced disappearance committed by the DPRK following the receipt of Article 15

⁶⁸ [COI Report](#), paras. 848, 862-863, 895, 916-917, 919-922, 931, 924, 959, 997; See also KINU, [White Paper on Human Rights in North Korea](#) (2012), p.488; KINU, [White Paper of Human Rights in North Korea](#) (2020), pp. 613, 626; KINU, [White Paper of Human Rights in North Korea](#) (2013), p. 541; Citizens' Alliance for North Korea Human Rights, [What happened to Ethnic Koreans Displaced from Japan to North Korea?](#) (2020) pp.11-12. If the families of the victims, are still alive, they themselves can also be considered as secondary victims of enforced disappearances pursuant to international and national jurisprudence see for example: HR Committee, [Quinteros v. Uruguay](#), No.107/1981, 15 October 1982, para. 14; HR Committee, [Edriss El Hassy and Abu Bakar El Hassy v. Libya](#), No. 1422/2005, 24 October 2007, para.7; ECtHR, [Varnava and Others v. Turkey](#) Application. No.: 16064/90, 18 September 2009, paras 100, 200-202; [Cyprus v. Turkey](#) (2001) Application. No.: 25781/94, 10 May 2001, paras.155-158; [Report of Working Group on Enforced and Involuntary Disappearance](#), UN Doc. E/CN.4/1492 31 December 1981, para 165; see also [Report of the Working Group on Enforced and Involuntary Disappearance](#), UN Doc. E/CN.4/1990/13, 24 January 1990, para. 339; UN War Crimes Commission, [Law Reports of Trials of War Criminals \(Vol.VI\)](#) (1948), p.65; IACtHR, [Rivera v. Peru](#), paras.227-228; Colombia Constitutional Court ([Judgment C-370/06](#)) and C-620/11 (18 August 2011).

⁶⁹ An Article 15 Communication is a written submission to the Prosecutor with information about the commission of crimes under the jurisdiction of the ICC. A Communication may persuade the Office of the Prosecutor to initiate a preliminary examination of a situation or provide information to further an ongoing preliminary examination and proceed to formal investigation into a particular situation. The Article 15 Communication should offer grounds to the Prosecutor, upon which to reasonably believe that a crime within the jurisdiction of the Court has been perpetrated. The details contained in the Communication may subsequently guide the Prosecutor in the investigation and prosecution of alleged perpetrators. The Communication should include information indicating that a crime has been committed and that the crime in question falls within the jurisdiction of the ICC; that the potential cases arising from the commission of the crime would be admissible; and that initiating an investigation would not be against the interests of justice.

⁷⁰ [ICC Elements of Crimes](#), Article 7(1)(i), fn.24.

⁷¹ C K Hall, *The First Five Sessions of the UN Preparatory Commission for the International Criminal Court*, (200) 94(4) *The American Journal of International Law* p.781; C Hall and L Van Herik, Crimes against Humanity in Triffterer (ed), *The Rome Statute of the International Criminal Court: A Commentary* (3rd ed, 2015) p. 291, fn.955.

⁷² [COI Report](#), para. 1149; see also C Hall and K Ambos, 'Crimes against Humanity' in Triffterer (ed), *The Rome Statute of the International Criminal Court: A Commentary* (3rd ed, 2015) p.167, para.17; [Prosecutor v. Bemba](#), [Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#), Case No. ICC-01/05-01/08-424, 15 June 2009, para. 86

⁷³KINU, [White Paper on Human Rights in North Korea](#) (2012), p.488.

Communications by CSOs representing the families of direct victims. Although the applicants interpreted the Elements of Crimes, expansively, arguing that the crimes fall within the jurisdiction of the Court as the ‘attack’ continues to this date, the OTP rejected their argument.⁷⁴ The OTP’s conclusion is not legally binding and can be overturned if plausible legal arguments together with evidence of sufficiently probative value are presented in a future Article 15 Communication.

55. In GRC’s view, the arguments in the past Article 15 Communications, were not backed by relevant international criminal law jurisprudence or writings of highly qualified publicists in the field of international law, the lack of which may have weakened the legal arguments presented.⁷⁵ In addition, since 2018, when the OTP’s conclusion was communicated to the applicants, the critical new precedent in the Bangladesh/Myanmar case was handed down by the ICC Pre-Trial Chamber.⁷⁶ The 2019 ruling of the Pre-Trial Chamber partially overrides the OTP’s conclusions, opening potentially to the CSOs an opportunity to resubmit a legally compliant Article 15 Communication, provided that the information available, is sufficient to substantiate the elements of the crime.
56. Finally, there might be a fourth crime over which the Court might have jurisdiction and that is the crime against humanity of deportation and denial of the right to return. Pursuant to information provided by the participating CSOs, there are approximately 100 cases of people who escaped/defected and entered ROK directly (without fleeing first to some other third country), providing a territorial link necessary for the Court to exercise jurisdiction. To support this argument, CSOs could provide information showing that the North Korean escapees have been forced by the conduct of the DPRK authorities to flee to the territory of a State Party to the Statute, thus satisfying the objective territoriality principle, citing the Myanmar/Bangladesh as relevant judicial precedent.⁷⁷
57. GRC can support CSOs interested in submitting an Article 15 Communication, through legal consultations and mentorship and using GRC’s tried and tested Article 15 Communication Guide. CSOs should also be cognizant of the challenges in convincing the OTP to exercise its discretion and open an investigation, as making such decision should also be in alignment with the Office’s current policies and strategy.⁷⁸ In a prospective Article 15 Communication, CSOs should justify why immediate action by the OTP would be imperative for seeking justice for the victims of the DPRK regime.

⁷⁴ This information is not publicly available. CSOs and the OHCHR shared all related material with GRC, in the context of its gap-analysis activity. GRC judged that including CSOs’ past-actions in the report was pivotal if a comprehensive and targeted accountability strategy is going to be adopted by the latter.

⁷⁵ For example, an Article 15 Communication was submitted before the OTP in 2017, arguing that the objective territoriality principle is satisfied in relation to crimes the DPRK commits against its overseas labourers who are on the territory of States Parties in Europe, Africa, South America and Asia. The OTP, concluded that the information available does not prove such allegations. Therefore, the OTP rejected the arguments not on legal but on evidentiary grounds as the evidence put forward was insufficient to prove the veracity of the allegations. Consequently, the decision of the OTP does not prevent interested parties from submitting an Article 15 Communication in the future, yet, it illustrates that to convince the OTP into considering this line of argument, a prospective Communication should be based on a distilled, verified set of facts supported by strong and probative evidence.

⁷⁶ [Situation in the Bangladesh/Myanmar, Decision pursuant to Article 15 of the Rome Statute.](#)

⁷⁷ [Myanmar/Bangladesh Article 15 Decision](#), para. 62; [Myanmar/Bangladesh Jurisdiction Decision](#), para. 73.

⁷⁸ For example, in 2014, a coalition of Cypriots, filed an Article 15 Communication, inviting the Prosecutor to initiate an investigation concerning the settlement activity of Turkey within the territory of Cyprus (see CyprusMail, [Cyprus at the disposal of International Criminal Court over Turkish illegal settlers](#), 29 July 2014). In 2020, the OTP, was still finalizing its response to the communication (see ICC, [Report on Preliminary Examination Activities](#), 2020, para. 35) which was to be shared with the senders of the communication in 2021. There may be various reasons as to why it took the OTP, seven years to respond to the request of the Cypriot coalition, one of which may be that it did not want to issue a decision that could potentially derail the ongoing negotiations taking place at the time, between the Republic of Cyprus, the Turkish-Cypriot community, Turkey, Greece and the United Kingdom for solving the Cyprus problem.

POSITIVE	NEGATIVE
<ul style="list-style-type: none"> - Viable (but comes with challenges) - Significant advocacy benefits if successful - Hard-law accountability against those most responsible for international crimes - Long-term strategy (build momentum) - Not all legal arguments have been fully explored 	<ul style="list-style-type: none"> - Challenges: Temporal and territorial jurisdiction limitations - Likelihood of evidence/suspects being available and within reach of Prosecutor's investigative efforts - No immediate, short-term results
PRECEDENT	
Past Article 15 Communications submitted – OTP rejected their arguments (on legal and evidentiary grounds). However, recent precedent in Myanmar/Bangladesh case, partially overrides OTP's conclusions.	
GRC ADVICE / ASSESSMENT	
<ul style="list-style-type: none"> • If CSOs are minded engaging in longer-term strategy with ICC/OTP, then there is merit in doing so. CSOs are advised to devote their resources / time accordingly taking into consideration that the skills and knowledge they will acquire throughout this process can be transferrable to other pursuits and actions. • GRC can support CSOs in their engagement with OTP and prospective submission of an Article 15 Communication 	

D. Domestic Avenues

IV. Domestic Civil and Criminal Cases

58. The domestic criminal and civil justice system in various countries such as the Republic of Korea (ROK), Japan and the United States (U.S.)⁷⁹ are explored in the report.
59. Overall, and considering a number of factors, including costs, time, language barriers, and jurisdictional considerations, GRC's assessment is that of all the domestic justice systems available, the justice system of the ROK constitutes the most viable option as it allows for prosecutions and/or civil claims to be brought against individuals who either committed domestic or international crimes in the territory of the ROK or against ROK nationals,⁸⁰ or caused actionable harm to the victims or their families.
60. As at 07 June 2022, only two prosecutions have been brought against two Chinese nationals of Korean ethnicity, linked to the DPRK regime, for committing criminal acts against a ROK national.⁸¹ Although this case set an important precedent, opening up the way for future prosecutions for crimes committed in the territories of the ROK or against DPRK nationals, there are still various challenges with regard to the investigation and prosecution of crimes pertaining to the human rights violations in the DPRK, before South Korean Courts, including compromised access to evidence and suspects.⁸²
61. By contrast, a number of civil claims have been brought in ROK as well as in Japan, against the DPRK regime claiming compensation for the damage and injuries they or their family members have suffered by the regime. Some cases are ongoing while others have

⁷⁹ The legal frameworks governing such proceedings, are the Alien Tort Claims Act ('ATCA')⁷⁹, the Torture Victim Protection Act ('TVPA')⁷⁹ and the Foreign Sovereign Immunity Act ('FSIA').⁷⁹ The unedited, detailed version of this report, provides an outline of these routes, as a comprehensive analysis is outside the scope of this report. On a preliminary analysis, these legal frameworks appear to be a viable route for non-US nationals and victims of the DPRK regime, wishing to bring a case against the regime. However, interested parties should be advised that such proceedings can be quite lengthy and consequently expensive, unless the lawyers representing the claimants agree to do so on a *pro bono* basis.

⁸⁰ Republic of Korea, Criminal Act No. 293 of 1953, and all subsequent amendments ('[ROK Criminal Act](#)'); Republic of Korea, Act on the Punishment of Crimes within the Jurisdiction of the International Criminal Court No.8719 of 2007 and all subsequent amendments ('[Crimes within the Jurisdiction of the ICC Act](#)')

⁸¹ [ROK Criminal Act](#), Ch. XXXI, Article 288.

⁸² See for example Seoul Central District Court, case No. 2016 IN3, Judgment of 24 October 2016.

been concluded in favour of the claimants.⁸³ However, the principal challenge in these cases lies in how the claimants can enforce the judgments, namely receive any monetary damages awarded by the Court. Claimants can only enforce the judgment if they identify and assert their claims against North Korean assets present in the ROK. Some claimants have sought to collect damages in an innovative way,⁸⁴ including taking guidance from U.S. practice, by tracking down assets and funds the government has seized under sanctions regimes.

62. Suing and seeking damages from North Korea through civil action, is a realistic option. However, prospective claimants should be aware that it also presents legal and practical hurdles, namely funding a possibly lengthy litigation and finding ways to enforce the judgment. Should potential litigants request assistance from the CSOs, the latter could help by conducting for example investigations and gathering information on the whereabouts of DPRK confiscated assets. Notwithstanding the challenges in enforcing a judgment issued by the ROK, there are significant advocacy opportunities with such claims. If CSOs are better supported to maximize the significance of a judgment being issued against the DPRK by the ROK courts, this could potentially lead to increased international attention, which would in turn create pressure on third states to cooperate in collecting any damages owed.

POSITIVE	NEGATIVE
<ul style="list-style-type: none"> - Short-term accountability option (actionable) - Solid – viable pathway (especially civil cases – less success in criminal cases) - Significant advocacy benefits (mostly domestically but if strong campaign can also be internationally) - More than one domestic justice system available (e.g., U.S.) 	<ul style="list-style-type: none"> - Difficulty enforcing judgment (identifying DPRK assets) - Criminal cases: compromised access of prosecutorial authorities to evidence and suspects - Funding constraints
PRECEDENT	
Successful civil and criminal cases in ROK and in U.S.	
GRC ADVICE / ASSESSMENT	
<ul style="list-style-type: none"> - Viable and strategic short-term pathway which can bring measurable success and result in significant advocacy benefits - CSOs are advised to maximize significance of a judgment being issued (report such cases in media outlets, events, reports). - There have been successful civil and criminal cases from which CSOs could draw guidance - For GRC to provide bespoke support for this pathway, a partnership with a local ROK lawyer / law firm would be essential. 	

⁸³Report on Promoting Accountability in the DPRK, para. 36; The Wall Street Journal, [Former South Korean POWs Awarded Damages in Case Against North's Kim Jong Un](#), 7 July 2020; Yonhap News Agency, [Former POWs win damage suit against N. Korea and its leader](#), 07 July 2020; Korean JoongAng Daily, [Court awards damages from North, Kim Jong-un](#), 25 March 2021; Korean JoongAng Daily, [Lawyers' group sue North, Kim Jon-un for abductions](#), 25 June 2020; Human Rights Watch, [Victims of North Korea's 'Paradise on Earth' Campaign Demand Justice](#), 8 October 2021.

⁸⁴ NK News, [Foreign media asked to pay North Korea copyright by South Korean organization](#), 6 September 2019; Kim Kyong-yoon, “[北저작권료로 국군포로 손배금 줘야... 경문협 항고 기각](#) [North Korean Copyright Fees Should be Paid to South Korean POWs; Foundation for Inter-Korean Cooperation's Appeal Dismissed], *Yonhap News*, 19 April 2021. During phase 2 of the report writing, GRC will research whether there has been any follow-up since then, or if there remains an outstanding collection order.

V. Universal Jurisdiction

63. The principle of universal jurisdiction (UJ) allows for the prosecution of international crimes by a State irrespective of the nationality of the perpetrators or the location where the alleged crime was committed. International crimes which invoke UJ are the following: (i) piracy; (ii) slavery; (iii) war crimes; (iv) crimes against peace; (v) crimes against humanity; (vi) genocide; and (vii) torture.⁸⁵
64. The principle of UJ however, is not automatically operative in domestic jurisdictions. Each State has its own jurisdictional or procedural requirements to enable the investigation and prosecution of an individual under UJ.⁸⁶ In addition, because of the challenges triggered by the inherently political nature of such a decision, many states may be unwilling to prosecute sitting high-level State officials or due to their immunity under international law to be subjected to criminal proceedings by foreign states.⁸⁷ Finally, launching investigations against foreign suspects, can be a costly and time-consuming process which might prevent a sympathetic prosecutorial authority to bring a case and present it before a competent court. This is a critical issue facing the DPRK community at present given the saturation of UJ cases in relation to Syria and likely Ukraine. The likely prospects of further resource being devoted to more UJs in the coming 12 months or more appears low. The barriers to a UJ claim against the DPRK are thus not only legal and political but also financial and practical.
65. Consultations with the Participating CSOs, as well as GRC's independent research have revealed that no such proceedings have been initiated to date. CSOs working on pursuing accountability, supported by relevant stakeholders, are encouraged to initiate or further their structural investigations which would allow them to build case files and perpetrators dossiers. CSOs are advised to monitor visits of DPRK officials to countries who might be willing to initiate proceedings on the basis of UJ principles and investigate whether such individuals can be linked to the atrocities committed by the DPRK regime. This would require that the casefiles and dossiers proving the commission of international crimes and the perpetrators' connection to the said crimes, are shared with interested prosecutorial authorities or international agencies such as Interpol/Europol.⁸⁸ Sharing files with criminal justice authorities and law enforcement agencies may also decrease the associated costs and time that would otherwise be borne by the latter, thereby addressing some of the financial and practical obstacles underlined above.⁸⁹

⁸⁵ Program in Law and Public Affairs, Princeton University, *The Princeton Principles on Universal Jurisdiction*, (2001) principle 2(1). It is further specified in paragraph 2 that "The application of universal jurisdiction to the crimes listed in paragraph 1 is without prejudice to the application of universal jurisdiction to the crimes under international law."; Human Rights Watch, *Basic Facts on Universal Jurisdiction*, 19 October 2009.

⁸⁶ See generally FIDH, *Extraterritorial Jurisdiction in the European Union: A Study of the Laws and Practice in the 27 Member States of the European Union*, December 2010. However, there is an emerging trend in some European countries where structural investigations can be initiated notwithstanding the absence of certain jurisdictional or procedural requirements, such as the presence of a suspect in the territory see European Parliament, Directorate-General for External Policies of the Union, *Workshop: Universal jurisdiction and international crimes – Constraints and best practices*, September 2018, for more information.

⁸⁷ See for example, Reuters, *Australia AG rejects lawyers' bid to prosecute Myanmar's Suu Kyi*, 17 March 2018.

⁸⁸ For example, Europol's Analysis Project for Core International Crimes (AP CIC), gathers, analyses, and stores information on individuals, networks and groups involved in the commission of international crimes. It also connects with specialised EU as well as non-EU international crimes units (i.e., war crimes units) investigating similar incidents. AP CIC places however an important limitation, in that it will only accept, and store material provided by NGOS, if the information shared is already of use to participating law enforcement authorities. To overcome this limitation, NGOs may submit such material indirectly through a specialised international crimes unit.

⁸⁹ For example, GRC has in the context of other projects, supported CSOs from various geographic regions (i.e., The Gambia, Iraq, Yemen) with their efforts to pursue accountability, through capacity-building activities focussing on improving their structural investigations, case-building techniques, and production/management of perpetrators dossiers. For more information on GRC's relevant project activities, see [here](#).

POSITIVE	NEGATIVE
<ul style="list-style-type: none"> - CSOs can submit casefiles & perpetrators' dossiers to prosecutorial authorities and international agencies that can be used in the future. - Significant advocacy benefits - Hard-law accountability against those most responsible for international crimes 	<ul style="list-style-type: none"> - Long-term accountability option - Practical limitations (travel of DPRK Officials to States willing to investigate & immunity of state officials) - Inherently political act - Low prospects of concretizing in the immediate future (saturation of UJ cases in relation to Syria/Ukraine).
PRECEDENT	
No proceedings based on UJ principles have been initiated in relation to the DPRK.	
GRC ADVICE / ASSESSMENT	
<ul style="list-style-type: none"> • If CSOs are minded engaging in longer-term strategy with States & domestic prosecutorial authorities, then there is merit pursuing this option. • Investigations/work undertaken for an ICC-related claim, could also be transferrable to/used in a UJ submission. • GRC can support CSOs in their engagement with States willing to receive information/evidence and submitting reports, files, position statements. 	

E. Conclusion:

66. Undoubtedly, the DPRK is a unique and complex environment, posing challenges for the CSOs working on this space, as well as for international organizations or States willing to feature in their negotiations and engagement with the regime, the human rights abuses occurring in the country. To keep the issue in focus, and galvanize action by the international community, it is important to identify a strategy that has the potential to trigger the DPRK's response to these allegations.
67. This report has identified six options that CSOs could consider pursuing, focussing on the international accountability pathways which are realistically and feasibly available to the North Korean CSOs' community to pursue, based upon GRC's expertise in this space. Our preliminary conclusion/advice is that there may be additional merit in pursuing accountability through the following two options: (i) ICJ/CEDAW and (ii) sanctions.
68. A third option as explored above is an ICC-case through an Article 15. Similar to the ICJ route, this would require following a multipronged and long-term strategy as they both come with their challenges and may take years to concretize given that the ICC and ICJ procedures are lengthy. Whilst the prospects of a preliminary examination being opened at the ICC are low, this pathway also offers the two-fold advantage of it being used as an advocacy tool to raise awareness; and, as a matter of preservation of information and legal analysis. In the event there is a policy change or any procedural changes which reduce the barriers to pursuing a case at the ICC, this option, would be able to be utilized more effectively. Accountability prospects in the DPRK, similar to a multitude of other contexts and conflicts, do not lend themselves to short-term results, nonetheless there remains merit in laying the foundation for future claims and in order to preserve the information available now.
69. The ICC pathway being a hard law accountability option, could eventually bring to justice perpetrators of international crimes, as well as award reparations to the victims of such atrocities; whereas a request for an advisory opinion by the ICJ would not result in reparations being awarded to the victims of the DPRK regime, but rather could have



significant advocacy benefits as well as lead to principled engagement with the DPRK regime, in relation to its human rights record.

70. CSOs interested in pursuing either of these options, are advised to design and conduct their investigations and documentation in a structured way, that would enable them to admit the collected information in an ICC-case or in a submission to a State, law enforcement authorities as well as UN bodies, inviting them to consider initiating a procedure through the ICJ. Undeniably, achieving democratic reform and policy shift in the DPRK can only be considered a long-term goal. However, a more successful approach to accountability avenues has been shown to be influential even in the most intractable regimes.