

The price is rights:

The violation of the right to an adequate standard of living in the Democratic People's Republic of Korea





Table of contents

I. Executive summary	02
II. Introduction	04
III. Methodology	05
IV. The State provision of an adequate standard of living	06
IV.I The international and national legal framework	06
IV.II The collapse of the public distribution system in the Democratic People's Republic of Korea	08
V. Striving for the realization of the right to an adequate standard of living through rudimentary market activity	15
V.I Legal grey area	16
VI. The “price” of fundamental rights	19
VI.I The “price” of the right to work	20
VI.II The “price” of the right to freedom of movement	22
VI.III The “price” of the right to liberty	25
VII. Conclusion	27
VIII. Recommendations	28
IX. Annex: additional witness accounts	31
IX.I Witness accounts: the “price” of the right to work	31
IX.II Witness accounts: the “price” of the right to freedom of movement	32
IX.III Witness accounts: the “price” of the right to liberty	34

I. Executive Summary

This report considers the right to an adequate standard of living in the Democratic People's Republic of Korea, and the widespread existence of corruption as people struggle to enjoy this right. It is based on 214 individual interviews conducted in 2017 and 2018 by OHCHR with North Koreans, primarily from the country's northeastern provinces, together with consideration of relevant open source materials.

The first part of the report examines direct State provision of an adequate standard of living, with a focus on the right to food. This includes consideration of the State's obligations under international human rights law to take steps to the "maximum of its available resources" to progressively realize the right to an adequate standard of living. It looks at how the State assumed the role of providing food, clothing and other basic necessities through a public distribution system established after World War II, which collapsed in the mid-1990s. The report considers the Government's response to this collapse and the ensuing famine, with reference to the resources directed towards military spending during this period.

The report then shifts to the current, ongoing situation of food insecurity, undernutrition and access to safe water. It highlights the significant disparities that prevail between urban and rural areas and the dire situation in the northeastern provinces, concluding that the State is violating its obligations under international human rights law to ensure protection for vulnerable members of society and to guarantee the right to an adequate standard of living without discrimination.

The report next considers the role of the State in ensuring a safe and secure environment for people to pursue their right to an adequate standard of living outside of direct State provision. It describes the rise of market activity in the informal sector since the 1990s to fill the vacuum left by a collapsed public distribution system, and considers the international human rights obligations of the Government in failing to support this activity. The report highlights the insecure legal environment within which this market activity currently takes place, due to the broad formulation of the criminal code and the absence of the rule of law and an independent judiciary that upholds international human rights norms.

The final section examines the issue of corruption as a consequence of the collapsed public distribution system and an insecure informal sector. Through witness accounts documented by OHCHR, the report highlights that rights which international law regards as universal and inalienable – the rights to work, freedom of movement and liberty – have instead become contingent on the ability of individuals to pay bribes to State officials. It considers the predicament that people find themselves in: as they seek to realize their right to an adequate standard of living outside of a failed public distribution system in the informal sector, they are vulnerable to arrest, detention and prosecution. This is then the source of further human rights violations, due to the conditions and treatment experienced in the country's prisons and the denial of due process and fair trial rights. Faced with this prospect, people have little choice but to pay bribes to State officials to enable them to continue operating in the informal sector. Furthermore, women are particularly vulnerable

to abuse at the hands of third-party actors, including traffickers, as they seek to cross the national border to escape economic destitution.

The report ends with a series of recommendations addressed to the Government of the Democratic People's Republic of Korea, the Government of the People's Republic of China, and the international community at large to help ensure the realization of the right to an adequate standard of living.

II. Introduction

This report examines a cycle of human rights violations in the Democratic People's Republic of Korea (North Korea) that stem from the State's failure to uphold the right to an adequate standard of living for all its citizens.

The publication of this report is based on the mandate of the United Nations High Commissioner for Human Rights, as provided by General Assembly resolution 48/141, and on resolution 25/25 of the Human Rights Council, which mandated the Office of the United Nations High Commissioner for Human Rights (OHCHR) to establish a field-based structure to monitor the situation of human rights in the Democratic People's Republic of Korea; promote accountability; conduct capacity-building activities for relevant stakeholders; and maintain public awareness of the situation through outreach initiatives.

Since the collapse of the public distribution system and the ensuing famine in the mid-1990s, people have relied on rudimentary market activity to access life's basic necessities. This report highlights the shortcomings of the Government in creating a secure environment for this market activity in the informal sector, instead prioritizing political and ideological concerns. As a result, people with little or no alternative to make ends meet outside of a failed public distribution system are vulnerable to arrest, detention, and prosecution. This then becomes the source of further human rights violations, as people are denied due process rights and a fair trial, and subjected to the threat of torture and inhumane treatment during interrogation in prison conditions that fall below international standards.

Through the inclusion of witness accounts, the report goes on to highlight how the threat of prosecution provides State officials with a powerful means to extort money and other favours from a population seeking subsistence in the informal sector.¹ Furthermore, conditions are created in which people, particularly women, are driven into the hands of abusive third parties including brokers and traffickers, as they seek to escape economic destitution.

The report concludes that the Government has legally binding obligations under international human rights law to introduce legal, institutional and policy reforms to ensure people can enjoy their fundamental rights, including the right to an adequate standard of living. Such reforms are also necessary to set the country on the path towards achieving the 2030 Sustainable Development Goals and realizing the right to development.²

¹ The focus of the report is on corruption by State officials in relation to persons engaging in rudimentary market activity, and does not go into allegations of high-level State corruption.

² See the Declaration on the Right to Development, adopted by General Assembly resolution 41/128, 4 December 1986, <https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx> accessed on 18.3.19.

III. Methodology

The report is based on the analysis of 214 interviews conducted by OHCHR in 2017 and 2018 with North Koreans who have fled the Democratic People's Republic of Korea and currently live in the Republic of Korea (South Korea). The vast majority of persons interviewed by OHCHR were women who escaped the country via the land border with China, particularly from Ryanggang and North Hamgyong provinces.³ The accounts quoted in this report are from women escapees, unless otherwise stated. Many had experienced repatriation following an earlier failed attempt to leave.

In addition, OHCHR made use of relevant published data and analysis by United Nations entities and other international organizations operating in the Democratic People's Republic of Korea, as well as other open source material from academia and non-governmental organizations (NGOs).

The major challenge faced by OHCHR in implementing its mandate is the lack of access to the Democratic People's Republic of Korea to directly assess the human rights situation, and to verify allegations received during interviews. The Office evaluates the reliability and credibility of each account provided, including its consistency and coherence, as well as consistency with other accounts received on similar facts and patterns. It also takes into account the potential bias of the escapees it interviews and the scarcity of independent and credible data.

All interviews were conducted in a confidential setting, using a format that allowed victims to talk through their experiences. OHCHR has secured the free and informed consent of all interviewees quoted in this report.

OHCHR transmitted the report to the Government of the Democratic People's Republic of Korea for factual comments prior to publication.

³ According to the Ministry of Unification of the Republic of Korea by 2019, out of 32,467 escapees from the Democratic People's Republic of Korea who now reside in the Republic of Korea, 19,291 are from North Hamgyong and 5,297 from Ryanggang Province. In 2017 and 2018, 83 and 85 per cent of escapees arriving in the Republic of Korea were women (939 out of 1,127 escapees in 2017, and 969 out of 1,137 in 2018); https://www.unikorea.go.kr/eng_unikorea/relations/statistics/defectors/ accessed on 15.3.19.

IV. The State provision of an adequate standard of living

IV.1 The international and national legal framework

Economic, social and cultural rights are those human rights relating to the workplace, social security, family life, participation in cultural life, housing, food, water, health care and education. International law does not require that these rights be directly “provided” by the State,⁴ though the Government of the Democratic People’s Republic of Korea has sought to assume this role with an economy based on State ownership of the means of production, central planning and the *Juche* philosophy of economic self-sufficiency. According to article 25 (3) of the Socialist Constitution of the Democratic People’s Republic of Korea: “The State provides all the working people with every condition for obtaining food, clothing and housing.”

The right to an adequate standard of living sits within the broad set of economic and social rights, and includes the rights to adequate and nutritious food, to water and sanitation, and to clothing. The State’s obligations under international human rights law to realize the right to an adequate standard of living can be divided into three elements:

- i) To respect - refrain from interfering with the enjoyment of the right;
- ii) To protect - prevent others from interfering with the enjoyment of the right;
- iii) To fulfil - adopt appropriate measures towards the full realization of the right.⁵

The Socialist Constitution of the Democratic People’s Republic of Korea duly commits the State to “respect and protect human rights”⁶ and to “the steady improvement of the material and cultural standards of the people”, and refers to “rights recognized by international law”.⁷ The Constitution lays down a range of rights guaranteed by the State, including “the material and cultural well-being of all its citizens”,⁸ “the right to work” with the guarantee that “all able-bodied citizens may choose occupations in accordance with their wishes and skills”,⁹ and the “freedom of residence and travel”.¹⁰

⁴ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 12, paras. 15 and 19.

⁵ For a further explanation of these elements, see <https://www.ohchr.org/EN/Issues/ESCR/Pages/WhatarethetheobligationsofStatesonESCR.aspx> accessed on 19.2.19.

⁶ Socialist Constitution of the Democratic People’s Republic of Korea, last amended on 13 April 2012 at the 5th Session of the 12th Supreme People’s Assembly Constitution, Article 8.

⁷ Ibid, article 15.

⁸ Ibid, article 64.

⁹ Ibid, article 70.

¹⁰ Ibid, article 75.

In his 2019 New Year's Address, the leader of the Democratic People's Republic of Korea, Kim Jong Un, stressed that "Improving the people's standard of living radically is a matter of greatest importance for our Party and State."¹¹

International human rights law sets the framework through which to pursue this goal. In acceding to the International Covenant on Economic, Social and Cultural Rights in September 1981, the Democratic People's Republic of Korea voluntarily assumed legally binding obligations to respect, protect and fulfil the right to an adequate standard of living. Each State Party to the Covenant commits "to take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."¹²

Reference in the International Covenant on Economic, Social and Cultural Rights to "available resources" acknowledges that the realization of economic and social rights can be hampered by a lack of resources. Nevertheless, the State has immediate core obligations to "ensure the satisfaction of, at the very least, minimum essential levels of each of the rights." On this basis, the United Nations Committee on Economic, Social and Cultural Rights - which is responsible for overseeing the implementation of the Covenant - has assessed that "a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant."¹³

With respect to core obligations, the Committee still takes into account the specific circumstances of the State: "By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned."¹⁴

Nevertheless, the onus is on the State to show that it has taken steps "to the maximum of its available resources" to fulfil its core obligations under the Covenant: "In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."¹⁵

The Committee has highlighted the distinction between "the inability from the unwillingness" of a State Party to comply with its obligations under the treaty: "Should a State party argue that resource constraints make it impossible to provide access to food for those who are unable by themselves

¹¹ New Year Address of Kim Jong Un, 1 January 2019, available at: <https://www.herald.co.zw/full-text-of-dprk-supreme-leader-kim-jong-un-new-year-address/> accessed on 6.2.19.

¹² Covenant on Economic, Social and Cultural Rights, article 2. "Progressive realization" clauses are also found in article 4 of the Convention on the Rights of the Child and article 4 (2) of the Convention on the Rights of Persons with Disabilities, to which the Democratic People's Republic of Korea is a State Party.

¹³ Committee on Economic, Social and Cultural Rights, General Comment No. 3 on "The Nature of States Parties' Obligations" (Article 2, Para. 1, of the Covenant), para. 10. See also Committee on Economic, Social and Cultural Rights, General Comment No. 14 on "The Right to the Highest Attainable Standard of Health" (Article 12), paras. 43 to 49.

¹⁴ Ibid (General Comment No. 3).

¹⁵ Ibid. Following the review of the Democratic People's Republic of Korea in November 2003, the Committee on Economic, Social and Cultural Rights recommended that the Government "set up a mechanism for the effective monitoring of the progressive implementation of the Covenant." E/C.12/1/Add.95, para. 26.

to secure such access, the State has to demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations... A State claiming that it is unable to carry out its obligation for reasons beyond its control therefore has the burden of proving that this is the case...”¹⁶

This framework of legally binding obligations can also guide states towards the attainment of the 17 Sustainable Development Goals by 2030.¹⁷ These goals include commitments to “end hunger, achieve food security and improved nutrition, and promote sustainable agriculture” (SDG 2); “ensure availability and sustainable management of water and sanitation for all” (SDG 6); “reduce inequalities within and between countries” (SDG 10); “achieve gender equality and empower all women and girls” (SDG 5); and “ensure healthy lives and promote well-being for all, at all ages” (SDG 3). The Government has duly prioritized the goals in the 2017–2021 “Strategic framework for cooperation between the United Nations and the Democratic People’s Republic of Korea”,¹⁸ and has agreed to take part, in July 2020, in a voluntary national review aimed at assessing progress towards its achievements of the SDGs.¹⁹

IV.II The collapse of the public distribution system in the Democratic People’s Republic of Korea

The manifestation of the State-led model of attempting to ensure an adequate standard of living was the public distribution system, through which the Government of the Democratic People’s Republic of Korea distributed basic necessities. Enacted first by the Soviet administration in northern Korea in 1946 and extended under Kim Il Sung in 1957, the public distribution system was divided into three categories: the first covered the distribution of grain, such as rice, barley or corn; the second covered all other food items, as well as clothes and house appliances; and the third provided farmers with seeds and sprouts to plant in their collective farms.²⁰

¹⁶ Committee on Economic, Social and Cultural Rights, General Comment No.12 on “The Right to Adequate Food” (Article 11), 12 May 1999, E/C.12/1999/5, para. 17.

¹⁷ The Sustainable Development Goals were adopted by the General Assembly in 2015. For more information, visit <https://sustainabledevelopment.un.org/#> accessed on 18.3.19.

¹⁸ United Nations Strategic Framework for Cooperation between the United Nations and the Democratic People’s Republic of Korea, 2017–2021, available at <http://kp.one.un.org/content/unct/dprk/en/home/publications/joint-pub/UNSF-2017.html> accessed on 29.3.19

¹⁹ See letter to the President of the Economic and Social Council from the Permanent Representative of the Democratic People’s Republic of Korea to the United Nations, 17 December 2018, accessible at https://sustainabledevelopment.un.org/content/documents/21259dprk_letter_to_ECOSOC_on_VNRs_at_HLPF_2020.pdf accessed on 18.3.19.

²⁰ For further details, see <https://www.nknews.org/2015/10/let-them-eat-rice-north-koreas-public-distribution-system/> accessed on 25.3.19



A North Korean worker at the food distribution carefully measures the amount of cooking oil each person is entitled to.

©WFP/Colin Kampschoer

According to some reports, in the 1960s, 1970s, and into the 1980s, the public distribution system was relatively successful in providing citizens with adequate food, clothing and other necessities.²¹ However, in the 1990s, the shortcomings in this system and the Government's broader approach to economic management led to the devastating 1995-98 famine which, according to some estimates, resulted in the death of up to one million people.²²

The 2014 Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, mandated by the United Nations Human Rights Council,²³ found that during the famine years the allocation of resources by the Government "grossly failed to prioritize the objective of freeing people from hunger and chronic malnutrition, in particular in times of mass starvation."²⁴ While acknowledging the impact of the collapse of the Soviet Union, resulting in the loss of loans, cheap oil, subsidized technology and bilateral aid; cuts in Chinese aid; climatic and land conditions;²⁵ and natural disasters (floods in 1995 and 1996);²⁶ the Commission found that in the midst of the famine, the Government had allocated "disproportional amounts of resources on its military, on the personality cult of the Supreme Leader, related glorification events and the purchase of luxury

²¹ Stephen Linton and John Feffer quoted in Christine Hong, "Reframing North Korean Human Rights", *Critical Asian Studies*, 45:4 (2013), 511-532, Routledge, p.515.

²² Stephan Haggard and Marcus Noland, *Famine in North Korea: Markets, Aid, and Reform* (New York: Columbia University Press, 2007), pp. 73-76. See also Hazel Smith, *North Korea – Markets and Military Rule*, (CUP 2015) p.148.

²³ Human Rights Council Resolution A/HRC/RES/22/13, adopted without a vote on 21 March 2013.

²⁴ "Report of the detailed findings of the Commission of Inquiry on human rights in the Democratic People's Republic of Korea", report to the Human Rights Council, 7 February 2014, A/HRC/25/CRP.1, p. 195.

²⁵ *Ibid*, pp. 146-7.

²⁶ *Ibid*, p. 150.

goods for the elites.”²⁷

In the face of the collapse of the public distribution system,²⁸ the State appears to have pursued a “Military First” (*songun*) policy, which prioritized the strengthening of the military. Official figures reveal that the percentage of the national budget allocated to the military rose from 11.4 per cent in 1994 to 14.6 per cent in 1998 and has remained between 14-16 per cent of Government expenditure from the 2000s onwards.²⁹ Non-Government sources reported a figure nearer 50 per cent.³⁰ The *songun* policy also involved the removal from the workforce and absorption into the military of around one million potentially economically productive young men and women, further aggravating the effects of the famine.³¹



A scene in Wonsan City, Kangwon Province.

©UN/David Ohana

While noting that factors beyond the State’s control had an impact on the food situation at the time, the Commission of Inquiry found that the Government, in attributing the famine solely to these factors, “grossly ignored the responsibility of its leadership”. The Commission concluded that, despite its “manifest insufficiencies”, the Government chose to maintain a highly collective

²⁷ Ibid, p. 195.

²⁸ For further analysis of the collapse of the public distribution system, see Hazel Smith, *North Korea – Markets and Military Rule*, (CUP, 2015) pp. 186 to 208; Bruce Cumings, *Korea’s Place in the Sun*, (W.W. Norton & Company, 2005), p. 445; Stephan Haggard and Marcus Noland, *Hard Target: Sanctions, Inducements, and the Case of North Korea*, (Stanford, 2017), p. 2; *supra* note 24, Commission of Inquiry, p. 39.

²⁹ Chung-in Moon and Sangkeun Lee, “Military Spending and the Arms Race on the Korean Peninsula”, *Asian Perspective*, Vol. 33, No. 4, 2009, pp. 80-1.

³⁰ Ibid.

³¹ Kim, Chol U, *Songun Politics of Kim Jong Il* (Pyongyang: Foreign Languages Publishing House, 2008), p. 10; cited from Hazel Smith, *North Korea – Markets and Military Rule*, (CUP, 2015), p. 246.

agricultural system which failed to create incentives for farmers to produce more; maintained an agricultural policy which exacerbated vulnerabilities to natural disasters (flooding and typhoons) by destroying forests and transforming mountains into terraced fields; and continued with the heavy industrialization of its agriculture, thereby increasing dependencies on external industrial inputs and fuel from the socialist bloc.³²



Children eating at Hasong Kindergarten in Sinwon County in South Hwanghae Province.

©WFP/Silke Buhr

Food insecurity remains a major issue in the Democratic People's Republic of Korea. According to United Nations entities operating in the country, in 2019 around 10.9 million people (over 43 per cent of the total population) are undernourished and suffer from food insecurity,³³ and also have unmet health, water, sanitation and hygiene needs.³⁴ Almost 10 million people do not have access to safe drinking water and 16 per cent of people do not have access to basic sanitation facilities, increasing the risk of disease and malnutrition.³⁵

A joint survey conducted in 2017 by the Government and the United Nations Children's Fund (UNICEF) (Multiple Indicator Cluster Survey (MICS)) revealed that one out of five children under-

³² *Supra* note 24, Commission of Inquiry, pp. 178-80.

³³ World Food Programme DPRK Country Brief, January 2019, available at https://docs.wfp.org/api/documents/WFP-0000102744/download/?_ga=2.64340524.2082854071.1551230874-98904259.1545207118 accessed 27.2.19.

³⁴ DPRK Mid-Year Humanitarian Situation Report, UNICEF, 1 January to 30 June 2018; available at <https://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20DPR%20Korea%20Humanitarian%20Situation%20Report%20-%20Mid-Year%202018.pdf>. See also World Food Programme, Country Brief, October 2018; and Nicholas Eberstadt, *The End of North Korea*, (The AEI Press, 1999), pp. 9 and 10.

³⁵ "2019 DPR Korea Needs and Priorities", DPRK Humanitarian Country Team (HCT), (March 2019), p. 3, available at <https://reliefweb.int/report/democratic-peoples-republic-korea/2019-dpr-korea-needs-and-priorities>; accessed 14.03.19.

five were stunted and faced an impaired physical and cognitive growth,³⁶ with a higher stunting rate among girls (19.9 per cent) compared to boys (18.4 per cent).³⁷ An estimated three per cent of under-five children (approximately 140,000) suffered from wasting or acute malnutrition.³⁸ Furthermore, the 2018 Global Hunger Index classified the level of hunger as “serious” and “bordering on alarming”, ranking the Democratic People’s Republic of Korea 109 out of 119 ranked countries. The report cited the “troubling trend” of worsening hunger and undernutrition,³⁹ with the score of 34 in 2018 - an increase from 28.2 in 2017, and the highest since 2000.

It thus appears that the Government continues to fail to take steps to the “maximum of its available resources” to progressively realize the right to an adequate standard of living or fulfil its core obligations with immediate effect.⁴⁰ In its most recent human rights report, the Korean Institute for National Unification (KINU), a think tank funded by the Government of the Republic of Korea, stated that ongoing food shortages for farmers were being caused by excessive Government collection of produce, discriminatory food rationing based on class, and prioritization of military rationing.⁴¹ The Democratic People’s Republic of Korea maintains one of the world’s largest standing armies, comprising over 1.2 million people, representing the world’s highest ratio of military personnel to the general population.⁴² The most recent estimates suggest that the Government continues to spend up to 23.8 per cent of its GDP on the military, though the United States of America Department of State highlights “the quality of military expenditure data is so poor [...] estimates of its GDP and military expenditures might be assigned an ‘n/a’”.⁴³

The Committee on Economic, Social and Cultural Rights has also specified that “Even where a State faces severe resource constraints, whether caused by a process of economic adjustment, economic

³⁶ The 2017 Multiple Indicator Cluster Survey (MICS) conducted by the Central Bureau of Statistics with support from UNICEF, as reported in the DPRK Mid-Year Humanitarian Situation Report, UNICEF, 1 January to 30 June 2018; available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20DPR%20Korea%20Humanitarian%20Situation%20Report%20-%20Mid-Year%202018.pdf> accessed on 29.1.19.

³⁷ *Supra* note 35, HCT, p. 6.

³⁸ Multiple Indicator Cluster Survey (MICS) 2017, Survey Findings Report, Central Bureau of Statistics/Unicef; available at https://reliefweb.int/sites/reliefweb.int/files/resources/Korea%20DPR%202017%20MICS_English%20small.pdf p.10; accessed 29.1.19. “Stunting is a reflection of chronic malnutrition as a result of failure to receive adequate nutrition over a long period and recurrent or chronic illness” and results in impaired physical and cognitive development that cannot be reversed later in life. “Wasting is usually the result of a recent nutritional deficiency”, *ibid*, p. 99. Alternatively described, “Stunting is a sign of chronic malnutrition, where children have enough to survive, but insufficient quality and quantity of food to lead a healthy life” whereas “wasting is a sign of severe malnutrition and can be a sign of famine-like conditions in a population”, Smith in *Critical Asian Studies* 46:1 (2014), p. 136.

³⁹ 2018 Global Hunger Index: Forced Migration and Hunger; Welthungerhilfe, Concern Worldwide; pp. 13 and 14.

⁴⁰ The latest resolution of the General Assembly on the situation of human rights in the Democratic People’s Republic of Korea, adopted on 17 December 2018, A/RES/73/180, p.3/10 (23 January 2019), “... condemn[s] the Democratic People’s Republic of Korea for diverting its resources into pursuing nuclear weapons and ballistic missiles over the welfare of its people...”

⁴¹ See the *White Paper on Human Rights in North Korea 2018*, (Korea Institute for National Unification, July 2018), pp. 254-270.

⁴² https://www.globalfirepower.com/country-military-strength-detail.asp?country_id=north-korea accessed 25.3.19; *supra* note 24, Commission of Inquiry, p. 194.

⁴³ “Sources, data and methods of WMEAT 2018”, p. 19, available at <https://www.state.gov/documents/organization/288974.pdf>, accessed on 14.3.19. For the quoted figure, see “WMEAT 2018 Table I - Military Expenditures and Armed Forces Personnel, 2006-2016”, Excel spreadsheet workbook accessible at <https://www.state.gov/t/avc/rls/rpt/wmeat/c81153.htm> accessed on 14.3.19.

recession, climatic conditions or other factors, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals.”⁴⁴

Due to geographic, topographic and climatic conditions, people residing in the northeastern provinces are particularly vulnerable to food insecurity. However, the Government appears not to have taken steps to ensure their right to adequate food but, on the contrary, to have pursued discriminatory practices. The Commission of Inquiry found that the *songbun* system of social classification resulted in active discrimination in food distribution to the northeastern regions, where people of a lower *songbun* are concentrated.⁴⁵ For instance, in 1994, the northeastern provinces of North and South Hamgyong, Ryanggang and Kangwon were the first to be cut from the public distribution system. The Commission of Inquiry found that this was done on the basis that the elites of society were not concentrated in these provinces where, traditionally, “people were banished, including prisoners of war and groups purged in the 1950s and 1960s”.⁴⁶

The most recent data suggests that the Government continues to violate its human rights obligations in relation to vulnerable populations. Major disparities between provinces as well as between rural and urban areas continue, with stunting in rural Ryanggang at 32 per cent, compared to 10 per cent in Pyongyang.⁴⁷ Only 28.6 per cent of children aged 6 to 23 months receive the minimum acceptable diet, again with significant geographical variations: in North Pyongan, only 14.8 per cent receive the minimum acceptable diet compared with 54.3 per cent in Pyongyang.⁴⁸ With a nationwide figure of 19.1 per cent of children stunted, in rural areas 24.4 per cent of children are stunted compared to 15.6 per cent in urban areas.⁴⁹

The 2017 MICS survey also revealed that 39 per cent of people (around 9.75 million) did not have access to a safely managed drinking water source. The figure rose to 56 per cent in rural areas compared to 29 per cent in urban areas.⁵⁰ While 88 per cent of people in urban settings have access to basic sanitation, this drops to 71.5 per cent in rural areas (81.5 per cent nationwide).⁵¹ In Pyongyang, 97 per cent of people have access to basic sanitation, compared to 69 per cent in South Hwanghae.⁵² This situation has a serious impact on other rights, notably the right to health.⁵³ For instance, poor sanitation conditions are a major cause of the more than one in ten children suffering from diarrhoea.⁵⁴

⁴⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 12, para. 28.

⁴⁵ The *songbun* system reportedly consists of three broad categories - loyal, wavering and hostile - under which there are 51 subcategories. Those labelled “hostile” include descendants of former landowners, persons believed to have collaborated with the Japanese during the 1910-1945 period of colonization, those with relatives in South Korea, and Christians.

⁴⁶ *Supra* note 24, Commission of Inquiry, p. 173.

⁴⁷ DPRK Mid-Year Humanitarian Situation Report, UNICEF, 1 January to 30 June 2018; available at <https://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20DPR%20Korea%20Humanitarian%20Situation%20Report%20-%20Mid-Year%202018.pdf>.

⁴⁸ *Supra* note 38, MICS, p. 97.

⁴⁹ *Supra* note 38, MICS, p. 100.

⁵⁰ *Supra* note 38, MICS, p. 149.

⁵¹ *Supra* note 38, MICS, p. 152.

⁵² *Supra* note 35, HCT, p. 10.

⁵³ Article 12 of the International Covenant on Economic, Social and Cultural Rights.

⁵⁴ *Supra* note 38, MICS, p. 74.

However, the full picture of the standard of living in the Democratic People's Republic of Korea is far from clear due to the paucity of data and other evidence. As previously noted, the onus is on the State to demonstrate it is fulfilling its legally binding commitments under the International Covenant on Economic, Social and Cultural Rights. Concerns over the absence of publicly and regularly available data have been highlighted in the recommendations of United Nations treaty monitoring bodies following the review of national reports, and by the United Nations Special Rapporteur on the rights of persons with disabilities following her visit to the country in May 2017.⁵⁵

The lack of access to the country also prevents the collection and verification of data. Only one special procedure – on the rights of persons with disabilities – has ever been authorized to conduct a country visit. The Government has refused to cooperate with the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Mr. Tomás Ojea Quintana, along with all his predecessors since the establishment of the mandate in 2004. Furthermore, OHCHR has had no access to the country to independently assess the human rights situation. Even for United Nations entities such as the World Food Programme, who have been based in the Democratic People's Republic of Korea for over 20 years, "access to valid and accurate data continues to be a challenge."⁵⁶ This is compounded by the oppressive domestic environment, in which there is no space for independent civil society organizations to operate and generate data, or for journalists to report freely on the situation.⁵⁷

This hinders the ability of the international community to assess the performance of the Government in relation to its human rights obligations, including with regard to the right to an adequate standard of living. It also hampers the ability of the international community to provide adequate and targeted humanitarian and development assistance.⁵⁸ Furthermore, it inhibits the people's own coping mechanisms by keeping them uninformed about worsening food and other shortages and providing a false impression over the security of food rations.⁵⁹

⁵⁵ Recommendations of the Committee on the Elimination of Discrimination Against Women, 154th and 155th session, 8 November 2017, CEDAW/C/PRR/2-4, para. 49; Recommendations of the Committee on the Rights of the Child, 76th session, 29 September 2017, 5th periodic report of the DPRK, CRC/C/PRK/5, paras. 5, 9, 10, 42. See also recommendations from the report of the Special Rapporteur on the rights of persons with disabilities, 37th session of the Human Rights Council, A/HRC/37/56, 8 December 2017, para. 91. The State's third periodic report to the Committee on Economic, Social and Cultural Rights is over ten years overdue (due on 30 June 2008).

⁵⁶ World Food Programme, Country Brief, October 2018. See also United Nations Humanitarian Country Team for the Democratic People's Republic of Korea's "2019 Needs and Priorities" report, *supra* note 35, p. 22; Nicholas Eberstadt, *The End of North Korea*, (The AEI Press, 1999), p. 5; and Commission of Inquiry report, *supra* note 24, p. 177.

⁵⁷ The absence of independent civil society has been highlighted by the Committee on the Elimination of Discrimination against Women (68th session) during its consideration of the second to fourth periodic reports of the Democratic People's Republic of Korea, (8 November 2017), CEDAW/C/PRK/CO/2-4, paras. 19 and 20; and by the Committee on the Rights of the Child (76th session), during consideration of the fifth periodic report of the Democratic People's Republic of Korea, (29 September 2017), CRC/C/PRK/CO/5, para. 13. Regarding the restrictions on freedom of expression for journalists, see the Human Rights Committee (72nd session) consideration of second period report of the Democratic People's Republic of Korea (26 July 2001), CCPR/CO/72/PRK, para. 23.

⁵⁸ *Supra* note 35, HCT, p. 20. Strategic priority 4 (p. 22) of the "United Nations Strategic Framework for Cooperation between the United Nations and the Democratic People's Republic of Korea, 2017-2021" focuses on the improvement of data collection and analysis; see <http://kp.one.un.org/content/unct/dprk/en/home/publications/joint-pub/UNSF-2017.html> accessed on 17.3.19.

⁵⁹ *Supra* note 24, Commission of Inquiry, p. 175.

V. Striving for the realization of the right to an adequate standard of living through rudimentary market activity

To fill the vacuum left by a collapsed public distribution system in the mid-1990s, small-scale market activity emerged across the country as the only viable means for people to survive and attempt to secure an adequate standard of living.⁶⁰ The 2014 Commission of Inquiry noted that, by 2008, informal economic activities accounted for 78 per cent of the total income of households.⁶¹ Other sources estimate that around three-quarters of the population now depend partly or solely on private market activity to survive.⁶² Escapees interviewed by OHCHR explained that there was simply no alternative: “People had to engage in commercial activities to make money to buy food.”⁶³ One woman from Ryanggang Province reasoned, “If you just follow instructions coming from the State you starve to death.”⁶⁴

International human rights law does not prescribe to States any particular system of economic production, management or distribution.⁶⁵ However, it does incur an obligation to put in place laws, policies and programmes, without discrimination and with the maximum of available resources, for the protection and promotion of the rights to food, water, sanitation, clothing and adequate housing, all of which are essential to the right to life and a life of dignity.

As alluded to in the previous section, under international law everyone has the right to food as an essential part of the right to an adequate standard of living.⁶⁶ These obligations extend to respecting people’s access to the means of achieving this right, including through market activity.

⁶⁰ Hazel Smith, *North Korea – Markets and Military Rule*, (CUP, 2015), pp. 187, 211, 234.

⁶¹ *Supra* note 24, Commission of Inquiry, p. 154.

⁶² <https://www.foreignaffairs.com/articles/north-korea/2016-11-28/opening-north-korean-mind> accessed 28.3.19

⁶³ KOR/18/0049. Throughout the report, these codes are references to confidential interviews conducted by OHCHR.

⁶⁴ KOR/17/0046. The lack of alternative courses of action but to resort to private market activity was also expressed by interviewees KOR/18/0048, KOR/18/0034, KOR/18/0023, KOR/18/0013, KOR/18/0012, KOR/18/0003, KOR/17/0135, KOR/17/0131, KOR/17/0116, KOR/17/0103, KOR/17/0099, KOR/17/0092, KOR/17/0088, KOR/17/0082, KOR/17/0061, KOR/17/0041.

⁶⁵ See Committee on Economic, Social and Cultural Rights, General Comment No. 3 on “The Nature of States Parties’ Obligations” (Article 2, Para. 1 of the Covenant), para. 8. Article 19 of the Constitution of the Democratic People’s Republic of Korea states that the country “relies on socialist relations of production and on the foundation of an independent national economy”.

⁶⁶ International Covenant on Economic, Social and Cultural Rights, article 11; International Convention on the Elimination of All Forms of Racial Discrimination, article 5(e); Convention on the Elimination of All Forms of Discrimination Against Women, article 12(2); Convention on the Rights of the Child, articles 24(2)(c) and (e), 27(1)-(3); and the Convention on the Rights of Persons with Disabilities, articles 25(f), 28(1). The Democratic People’s Republic of Korea is State party to all these treaties. See also Universal Declaration of Human Rights, article 25; Food and Agriculture Organization (FAO) of the United Nations, voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security (right to food guidelines); Human Rights Council resolution 22/9 on the right to food.

To ensure food is available where it is needed, States must facilitate functioning food production, processing, distribution and market systems.⁶⁷ International law places an obligation on States not to interfere directly or indirectly with a person's access to adequate food, including through market activity.⁶⁸ Moreover, when food is produced, processed and distributed by private actors or entities, the State has a positive obligation to facilitate "people's access to and utilization of resources and means to ensure their livelihood, including food security".⁶⁹ The obligation of States extends to those who are unable to access their economic rights through private initiative, as clarified by the Committee on Economic, Social and Cultural Rights: "[W]henever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly."⁷⁰

However, in the Democratic People's Republic of Korea, people face both a failed public distribution system and an insecure informal sector where they are exposed to prosecution and corruption.

V.I Legal grey area

In the Democratic People's Republic of Korea, citizens engaging in rudimentary market activity often find themselves operating in an insecure legal grey area,⁷¹ which inhibits their pursuit of an adequate standard of living and is a source of further human rights violations.

Following the collapse of the public distribution system, the Government initiated reforms to accommodate, to a limited degree, the new reality in which people sought to exercise their right to an adequate standard of living through rudimentary markets, known as *jangmadang*. This included the legalization of some markets and profit-sharing arrangements between labourers, as well as steps toward regulating these markets, such as charging rent for stalls, controlling prices and monitoring what goods were for sale.⁷² Today, *jangmadang* refers to the myriad of legal, illegal and semi-legal markets providing all sorts of goods in the Democratic People's Republic of Korea. There are now believed to be more than 400 sanctioned markets in the country, involving around 600,000 vendors.⁷³

⁶⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 12, para. 12; FAO, Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, guidelines 2.3 to 2.6. See also Report of the Special Rapporteur on the Right to Food, Mission to Niger, E/CN.4/2002/58/Add.1, para. 58.

⁶⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 12, paras. 15 and 19.

⁶⁹ Ibid, para. 15.

⁷⁰ Ibid.

⁷¹ Escapees described to OHCHR this precarious existence (KOR/17/0084, KOR/17/0019). The 2019 Index of Economic Freedom, which includes analysis of the legal framework within which market activity and private entrepreneurship take place, ranked the Democratic People's Republic of Korea last of the 180 economies measured: <https://www.heritage.org/index/country/northkorea>; accessed 28.1.19. The Index is published by The Heritage Foundation, a think tank based in Washington, D.C.

⁷² See Haeyoung Kim, "Stifled Growth and Added Suffering", *Critical Asian Studies*, 46:1 (2014), Routledge, p. 104.

⁷³ See <https://www.nytimes.com/2019/02/14/magazine/north-korea-black-market-economy.html> accessed on 26.3.19; and <https://en.yna.co.kr/view/AEN20190103004500320?section=nk/nk> accessed on 12.4.19.

However, the legal and economic reforms to accommodate this rudimentary market activity have not been deep-rooted.⁷⁴ The Commission of Inquiry found that the Government had been unwilling to introduce required reforms because it “prioritized calculations of political power and ideology over the reality of the suffering of people”.⁷⁵ It found that in response to food shortages, “the authorities prohibited the population from resorting to the most efficient coping mechanisms, such as movement in search of food, trade and other similar activities, in order to preserve their control over the population.”⁷⁶

The lack of adequate reform has produced an uncertain legal environment for the increasing number of people operating in these markets. While the 1998 revision of the Constitution recognized income earned through legal economic activities as private property (Article 24), this was accompanied by reforms to the Criminal Code which broadened the scope of the State to criminalize commercial activity. In the 1999 Criminal Code, the chapter on “Offences against the management of the Socialist Economy” comprised eight articles; by 2015 the chapter renamed “Crimes of Violation of the Order of Economic Management” contained 63 articles. Some analysts have observed that this expanded code can be used to criminalize a wide range of standard commercial activities, including commerce, financing, labour hiring, foreign trade and foreign exchange acquisition.⁷⁷

Yet, what is more decisive in exposing people to the threat of prosecution is the wider context within which the Criminal Code sits, with the absence of the rule of law and due process guarantees, where an independent and impartial judiciary develops jurisprudence in accordance with constitutionally guaranteed human rights. The Constitution of the Democratic People’s Republic of Korea enshrines the right to “freedom of residence and travel”,⁷⁸ and the “right to work” chosen in accordance with citizen’s “wishes and skills”⁷⁹ as well as freedom of speech and assembly.⁸⁰ If such rights were upheld, this would help to protect persons engaged in market activity in the informal sector. However, in the Democratic People’s Republic of Korea, the Commission of Inquiry describes the existence of the rule “by” law as opposed to the rule of law upheld by an independent and impartial judiciary. It found that the justice system served to legitimize human rights violations, and that even where relevant checks have been incorporated into statutes, these could be disregarded with impunity.⁸¹ The human rights treaty bodies that have considered the country’s periodic reports have also highlighted concerns over the lack of independence and impartiality of the judiciary, and the

⁷⁴ *Supra* note 60, Smith, p. 247.

⁷⁵ *Supra* note 24, Commission of Inquiry, p. 179. The report refers to a 1995 treatise, published while mass starvation was already underway, in which Kim Jong-il underscored the primacy of ideology: “If the ideological bulwark falls down, socialism will be unable to defend itself no matter how great its economic and military power may be.”

⁷⁶ *Ibid*, p. 184.

⁷⁷ See Stephan Haggard and Marcus Noland, *Hard Target: Sanctions, Inducements, and the Case of North Korea*, (Stanford, 2017), pp. 42-44.

⁷⁸ *Supra* note 6, Constitution, article 75.

⁷⁹ *Ibid*, article 70.

⁸⁰ *Ibid*, article 67.

⁸¹ *Supra* note 24, Commission of Inquiry, p. 31.



impact this has on the protection of human rights.⁸² Consequently, in practice the broadly worded Criminal Code can be used by State officials to threaten persons engaged in rudimentary market activity with prosecution, which also acts as an effective means to extort money and other favours from a vulnerable population.

⁸² Recommendations of the Committee on Economic, Social and Cultural Rights (31st session), consideration of 2nd periodic report of the Democratic People's Republic of Korea, E/C.12/1/Add.95, (28 November 2003), para. 28; Recommendations of the Human Rights Committee (72nd session) consideration of 2nd period report of the Democratic People's Republic of Korea, (26 July 2001), para. 8.

VI. The “price” of fundamental rights

A further consequence of the absence of the rule of law in the Democratic People’s Republic of Korea is that laws designed to protect people from corrupt officials are not enforced. According to Article 230 of the Criminal Code, “A person takes a bribe [*sic*] of a large amount shall be committed to disciplining through labour of less than one year. In case where he or she takes a bribe of an extremely large amount, reform through labour of less than five years shall be applicable. In case of grave offence reform through labour of more than five years but less than ten years shall be applicable.” Despite these provisions, corruption appears to be endemic in the Democratic People’s Republic of Korea. The 2018 Corruption Perceptions Index ranks the country in the bottom 3 per cent of countries worldwide, with its score (14) worse than the previous year (17). The World Bank’s “Worldwide Governance Indicators” in relation to the control of corruption also maps the estimated worsening levels of corruption between 1996 and 2017.⁸³ These findings are supported by accounts documented by OHCHR, which show bribery to be an everyday feature of people’s struggle to make ends meet.⁸⁴

Part of the reason for the pervasiveness of corruption appears to be that the State relies on it as a source of funds to make up for its shortcomings. As highlighted by the Commission of Inquiry, “[State O]fficials are increasingly engaging in corruption in order to support their low or non-existent salaries”.⁸⁵

In this scenario, it serves the State’s interests to maintain a degree of legal uncertainty and precariousness for those engaged in the informal sector. As the following accounts illustrate, activities associated with individual coping behaviours to secure an adequate standard of living – travelling within the country and across borders, seeking employment across the border, communicating across borders, attaining goods from outside of the country, engaging in commercial work inside the country – are all effectively criminalized and thereby susceptible to extortion by State officials.

Consequently, what international law regards as universal and inalienable rights – the right to liberty, freedom of movement, and work – have instead become contingent on the ability to pay off State officials and brokers.⁸⁶ As one escapee interviewed by OHCHR describes, “In North Korea, it is common that a person experiences unfair treatment. It depends on whether one has money or not.

⁸³ See <https://www.transparency.org/cpi2018> accessed 30.1.19, and <http://info.worldbank.org/governance/wgi/index.aspx#home> accessed on 16.3.19.

⁸⁴ As mentioned in the introduction, this report focuses on corruption by State officials in relation to persons engaged in rudimentary market activity. It does not address allegations of high-level State corruption. For definitions of the various forms of corruption, see the UN Convention Against Corruption, (GA Resolution 58/4, 31 October 2003), available at <https://www.unodc.org/unodc/en/treaties/CAC/> accessed on 16.3.19.

⁸⁵ *Supra* note 24, Commission of Inquiry, p. 90. On the economic struggles of State engineers and accountants, see Smith, *supra* note 60, p. 287.

⁸⁶ For a broader examination of the impact of corruption on human rights, see Angela Barkhouse, Hugo Hoyland and Marc Limon, “Corruption: a human rights impact assessment”, Universal Rights Group (2018); accessible at <https://www.universal-rights.org/fr/urg-policy-reports/corruption-human-rights-impact-assessment/> accessed on 16.3.19.

Money causes discrimination. Not paying a bribe is a disadvantage for all matters.”⁸⁷

VI.I The “price” of the right to work

Enjoyment of the right to work generates income that should allow the worker and her or his dependent(s) to live in dignity and enjoy the right to an adequate standard of living.⁸⁸

Article 4 of the Labour Law of the Democratic People’s Republic of Korea states that “Under socialism, every citizen is in duty bound to participate in labour. All able-bodied citizens... take part in social labour according to their abilities.” Article 10 adds that, “In accordance with the policy of unified and detailed planning, the State organizes social labour in a planned and efficient way in all areas of the national economy.”⁸⁹



Working in cabbage and corn fields near Pyongyang.

©UN/James Bu

In reality, since the economic collapse of the 1990s, the State has been unable to adequately remunerate its workers in this system of the centralized provision of jobs. Consequently, work outside of the State system, in the informal sector, has become a fundamental means to survival. However, access to work in the informal sector has become contingent on the payment of bribes to

⁸⁷ KOR/18/0035.

⁸⁸ See “Realization of the right to work”, report of the United Nations High Commissioner for Human Rights to the Human Rights Council (20 December 2019), A/HRC/40/31. Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights provides that, “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.” See also article 23 (1) of the Universal Declaration of Human Rights.

⁸⁹ The Socialist Labour Law of the Democratic People’s Republic of Korea, adopted at the Second Session of the Sixth Supreme People’s Assembly on 18 April 1978, amended on 20 February 1986 and on 16 June 1999.

State officials, adding to the financial burden of an already struggling population.

Recent studies claim that around 23 per cent of employees at State-run enterprises are engaged in some form of unofficial business. At least 58 per cent of all companies are believed to employ workers who pay a bribe to enable them to be absent from work and engage in the informal sector. From 1996 to 2007, spending on bribes is estimated to have made up between 5.2 and 10.7 per cent of total household expenditures.⁹⁰

Accounts from interviews conducted by OHCHR support the picture of a population bribing officials to free themselves from State-assigned workplaces to find adequately remunerated work in the informal sector:

“I had an official job at a shoe factory in [redacted] but I paid not to go to work. I used to pay the guidance officer in charge of management of factory workers 30 yuan a month to stay registered at the factory without going to work. Most people do this because commercial activities help you make money. You don’t get a salary when you work at the factory.”⁹¹ [See annex IX.I for further witness accounts]

Paradoxically, working in the informal sector may involve working with State enterprises, which are not only struggling to remunerate their employees but also to operate. As one escapee who worked as a wholesaler for shoes noted:

“The State is no longer able to supply the materials to factories or to distribute the manufactured goods, so they rely on people like myself to perform these functions.”⁹²

These problems extend to the State-owned agriculture sector, with the World Food Programme recently highlighting low mechanization, limited arable land, and the lack of quality inputs and fertilizers as hampering productivity.⁹³ The United Nations reported that overall food production in 2018 was more than 9 per cent lower than in 2017, and the lowest production in more than a decade. For rice and wheat crops, production was 12-14 per cent lower than in 2017, while potato and soybean were 34 and 39 per cent lower.⁹⁴

Further bribes to State officials then appear to be part of everyday life for people working in the informal sector:

“On average, let’s say I earned 1,000 yuan; about 200-250 yuan would be spent on bribes. But let’s say there are upper-level law enforcement officers involved (e.g. city-level Ministry of People’s Security or Prosecutor’s office), larger payments are required. In most cases it is about cash because law enforcement officers have to make a living. If they are lower level, in-

⁹⁰ Byung-Yeon Kim, *Unveiling the North Korean Economy: Collapse and Transition*, CUP 2017, pp. 123-73.

⁹¹ KOR/18/0002. This should also be considered as forced labour, in violation of the State’s obligation under the International Covenant on Civil and Political Rights, article 8.

⁹² KOR/18/0049.

⁹³ World Food Programme, Democratic People’s Republic of Korea Country Brief, February 2019; accessible at <https://reliefweb.int/report/democratic-peoples-republic-korea/wfp-dpr-korea-country-brief-february-2019> accessed on 9.4.19.

⁹⁴ *Supra* note 35, HCT, pp. 3 and 5.

kind bribe sometimes worked. ‘In-kind’ means cigarettes.”⁹⁵ [See annex IX.I for further witness accounts]

A system of unpaid mandatory mobilized labour also exists, typically involving construction or agricultural work. This is organized at the national, regional or local level, and ranges from a few hours of work per day to a few months per year.⁹⁶ Another obstacle is thereby erected for people struggling to make ends meet, with people required to bribe local State officials to escape this unpaid work. This was attested by one woman interviewed by OHCHR who was 58 years old when assigned to work on a construction site:

“Before leaving my home town of [redacted] Village, [redacted] County, [redacted] Province to escape North Korea, residents were being mobilized by the State from 5 a.m. to 8 a.m. to provide their labour to build 6 units of 9 storey apartment buildings in [redacted] District. One person from each household was required to provide this labour for 350 days of the year. Because I was living alone, I had no choice but to work, or otherwise make a monthly payment of 30 Chinese yuan... to the Village Officer. I had to hand-carry construction materials up to the ninth floor... The Village Officer decides the level of payment and, together with the Neighbourhood Watch Unit, decides who can be exempted. I believe this authority is given by the State. If someone refuses to participate or pay the fee, they are sent to a labour training camp for one to six months.”⁹⁷

VI.II The “price” of the right to freedom of movement

As people resort to market activity to earn a living, the need to travel both within the country and across national borders becomes paramount. For others, the economic hardships and lack of opportunities are such that travelling across the border is the only option left to escape economic destitution. However, such movement again exposes people to the risk of arrest and prosecution, forcing them to pay bribes to avoid such sanction. Furthermore, women seeking to cross national borders are exposed to the additional risk of abuse and exploitation at the hands of third-party actors.⁹⁸

Article 13 (1) of the Universal Declaration of Human Rights states that “Everyone has the right to freedom of movement and residence within the borders of each state.” The Democratic People’s Republic of Korea is a State Party to the International Covenant on Civil and Political Rights, which provides that: “Everyone lawfully within the territory of a State shall, within that territory, have the

⁹⁵ KOR/18/0043.

⁹⁶ For more information, see report “Persuasive, Punitive and Predetermined: Understanding Modern Slavery in North Korea”, Walk Free Foundation (2017); <https://cdn.walkfreefoundation.org/content/uploads/2018/11/30153221/North-Korea-Report.pdf> accessed 27.2.19.

⁹⁷ KOR/18/0049.

⁹⁸ See also Stephen Haggard and Marcus Noland, “Gender in Transition”, Working Paper Series, June 2012, p. 51, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2082234 accessed on 29.3.19; and Citizen’s Alliance for North Korean Human Rights, “Status of Women’s Rights in the Context of Socio-Economic Changes in the DPRK”, May 2013, p. 29.

right to liberty of movement and freedom to choose his residence.”⁹⁹ Article 75 of the Constitution of the Democratic People’s Republic of Korea recognizes that “Citizens shall have freedom of residence and travel.” Yet, in practice, any travel within the country requires a permit issued by the local authorities, which is then checked at numerous checkpoints within and between provinces.¹⁰⁰

According to escapees interviewed by OHCHR, the exercise of the right to freedom of movement within the country depends on the ability to pay off officials issuing permits and those located at various checkpoints along the route:

“On the road, there are so many checkpoints that are under Ministry of State Security (MSS) authority. The checkpoints are manned by officers in uniform, who can run surveillance on anyone. They are supposed to identify spies. In this capacity, they essentially have the power to control and check cars and luggage, and only by paying money is it possible to pass.”¹⁰¹ [See annex IX.II for further witness accounts]

The right to freedom of movement also includes the right to leave one’s country. Article 13 (2) of the Universal Declaration of Human Rights provides that “Everyone has the right to leave any country, including his own, and to return to his country.” Article 12(2) of the International Covenant on Civil and Political Rights guarantees that “Everyone shall be free to leave any country, including his own.”

For many, crossing the national border is the only option left to escape the human rights violations experienced at home, including violations of economic and social rights.¹⁰² For others, travelling across the border is necessary for business or trade purposes.

However, leaving the Democratic People’s Republic of Korea is criminalized by articles 221 and 63 of the Criminal Code, while going to the Republic of Korea may be regarded as a “defection”:

“A person who illegally crosses the border shall be committed to disciplining through labour of less than one year. In case the above-mentioned act constitutes a grave offence, he or she shall be committed to reform through labour of less than five years.”¹⁰³

“A citizen who defects to a foreign country in betrayal of the country, or commits such a traitorous act as betraying secret [*sic*] shall be committed to more than five years of reform through labour. In the case of an extremely grave crime, he or she shall be given the penalty of reform through labour for an indefinite period or the death penalty and the penalty of

⁹⁹ Article 12(1) of the International Covenant on Civil and Political Rights. The Democratic People’s Republic of Korea acceded to the Covenant on 14 September 1981. On 25 August 1997, the Government notified the Secretary-General of the United Nations that it was withdrawing from the Covenant. However, the Secretary-General still considers the Democratic People’s Republic of Korea a State party to the Covenant, because the Covenant does not allow for withdrawal. Withdrawal would only be possible if all other States parties agree to it, which has not occurred.

¹⁰⁰ *Supra* note 24, Commission of Inquiry, p. 185.

¹⁰¹ KOR/18/0029.

¹⁰² As expressed by escapees KOR/17/0126, KOR/17/0125, KOR/17/0117, KOR/17/0103, KOR/17/0098, KOR/17/0078, KOR/17/0019.

¹⁰³ Criminal Code, last amended on 22 July 2015 by Decree No. 578 of the Presidium of the Supreme People’s Assembly, Article 221.

confiscation of property.”¹⁰⁴

Accounts documented by OHCHR reveal that avoidance of this sanction and the possibility to safely leave one’s country and return is largely contingent on the ability to pay off individual officials:

“I could leave any time I wanted, even before 2016, because I had money. Those Ministry of State Security (MSS) and Ministry of People’s Security (MPS) officers I used to bribe were low-ranked officers, but I also bribed regularly the head of the intelligence department and the head of the MPS office in [REDACTED] ... Working as a broker for remittances is okay; you are not sent to prison camps.”¹⁰⁵ *[See annex IX.II for further witness accounts]*

The cost of hiring a broker to “ensure” safe passage further limits the right to leave one’s country to those with the means and inclination to pay:

“Now it is so expensive to buy a broker. It costs 15 million South Korean won per person, and that is only to cross the border.”¹⁰⁶

Moreover, engaging with such third party actors exposes them to the risk of further abuse. Women are particularly vulnerable to this, including in the form of trafficking into forced marriages or the sex trade:

“There was strict border control, barbed wires everywhere, and no one was willing to risk their lives to arrange such trips. The only way to get out of North Korea was to be trafficked. I was trafficked to China in 2016. There was a human trafficker/broker and I went to his house in China. He called my mother and asked her to pay 40,000 yuan for me. I refused that she pay for me. As a result, I was married off to a man in China.”¹⁰⁷ *[See annex IX.II for further witness accounts]*

These accounts highlight the second element of a State’s human rights obligation referred to at the beginning of this report: the obligation to protect against abuse by third parties.¹⁰⁸ States may breach their obligations under international human rights law when they fail to take appropriate steps to prevent, investigate, punish and redress private actors’ abuse.¹⁰⁹

It appears that not only are State officials in the Democratic People’s Republic of Korea aware of the

¹⁰⁴ Ibid, Article 63.

¹⁰⁵ KOR/17/0095.

¹⁰⁶ KOR/18/0007.

¹⁰⁷ KOR/17/0023.

¹⁰⁸ See Human Rights Committee General Comment 31, paras. 3, 8 and Communication No. 195/1985, *Delgado Paez v. Colombia*, Views adopted on 12 July 1990; Convention on the Elimination of All Forms of Discrimination against Women General Recommendations 19 and 28. The European Court of Human Rights has established that claims may arise against the State when the police fail to protect individuals from violations of their rights by other individuals (*Osman v. United Kingdom* (Appl. No. 87/1997/871/1083), judgment of 28 October 1998).

¹⁰⁹ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (annex of A/HRC/17/31), endorsed by Human Rights Council resolution 17/4.

operations of abusive third parties and failing to take measures “within the scope of their powers”¹¹⁰ to prevent them, but may also be complicit in enabling them to operate:

“Brokers who have continued their business even now either pay hefty money as a bribe, or are relatives of law enforcement officers, such as the MPS, MSS or prosecutors’ offices.”¹¹¹

Furthermore, the State may be failing in its obligation to provide for an appropriate legal framework to protect people against third party abuse.¹¹² By virtue of the fact that people have to operate in a legal grey area to access their economic rights, the conditions are created whereby abusive third party activity can thrive.

VI.III The “price” of the right to liberty

The above accounts concerning the right to work and freedom of movement all allude to the spectre of prosecution for people engaged in the informal sector if bribes are not paid. The threat of arrest, detention and prosecution provide State officials with a powerful means of extorting money from a population struggling to survive. The cycle of violations is thereby complete: as people strive to realize an adequate standard of living outside of a failed public distribution system, they are subject to the threat of prosecution and further human rights violations.

To be detained and prosecuted in the Democratic People’s Republic of Korea leads to a range of serious human rights violations. Suspects are not afforded due process guarantees and do not receive a fair trial by an independent and impartial judiciary.¹¹³ Once convicted, persons face the harsh reality of the prison system, with serious and systematic violations occurring in severe conditions, at the hands of abusive prison officials and through abusive practices such as forced

¹¹⁰ Human traffickers are prosecuted under articles 61, 277 and 278 of the Criminal Code (which uses the term “kidnapping”). The judgment by the European Court of Human Rights in *Osman v. UK* (although not legally binding outside the Council of Europe) has helped to explain what the obligation to protect people from third party abuse involves for States, limiting it to “measures within the scope of their powers”, and that the obligation “must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities”; See *Osman v. UK*, ECtHR (Judgment), (28 Oct 1998), no. 23452/94, paras. 115-116. See also United Nations Human Rights Committee, General Comment No. 6 (Article 6, Right to Life), (30 April 1982), para. 5; *Baldeon Garcia v. Peru*, IACtHR (Judgment), (6 April 2006), para. 84; *The Ituango Massacres v. Colombia*, IACtHR (Judgment), (1 July 2006), para. 130; Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, to the Commission on Human Rights, (22 December 2004) E/CN.4/2005/7, paras. 65-76. For more on the principle of reasonableness, see *The Pueblo Bello Massacre v. Colombia*, IACtHR, (31 Jan 2006), para. 123; and *Mahmut Kaya v. Turkey*, ECtHR (Judgment), (28 Mar 2000), no. 22535/93, paras. 115-116.

¹¹¹ KOR/18/0010.

¹¹² See Committee on Economic, Social and Cultural Rights, General Comment No. 12, para. 19.

¹¹³ *Supra* note 41, White Paper, pp. 77-88, 136-156; Report of the Commission of Inquiry on human rights in the Democratic People’s Republic of Korea, 7 February 2014, A/HRC/25/63, para. 62.

labour.¹¹⁴ Faced with this prospect, people resort to any means at their disposal to protect their human dignity and fundamental rights.¹¹⁵

Article 9 of the International Covenant on Civil and Political Rights provides that:

“Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”

In reality, as people struggle to attain their basic economic rights, they face the prospect of arbitrary detention. Interviews conducted by OHCHR with escapees reveal that movement within the country and across borders, accessing information, communicating across borders, possessing goods from abroad – all acts that can be associated with individual endeavour to enjoy an adequate standard of living – can lead to detention and imprisonment, with release depending not on the rule of law but on the ability to pay bribes:

“I felt it unfair that one could bribe one’s way out [of detention] when another suffers much more as a result of being unable to bribe. Bribery is effective in North Korea. One cannot lead a life in North Korea if he or she does not bribe his or her way.”¹¹⁶

“In reality, the Officials knew that my daughter and son-in-law were already in South Korea, and that I was likely headed there to join them. However, I had the means to pay a 3,000 Chinese yuan bribe to the MSS preliminary investigation officer... and so was transferred to another city-level detention facility. If I hadn’t had the means to pay, I would no doubt have been sent to a political prison camp on account of me attempting to go to South Korea. The bribe was paid when the officer visited my family during my detention... I was then sentenced to one month in a labour training camp, but paid another bribe to an MPS Officer from the Inspection Department and was able to return home.”¹¹⁷ [See annex IX.III for further witness accounts]

Furthermore, it appears that the conditions and treatment in detention can be influenced by the payment of bribes, where “200 Chinese yuan would buy you a family visit.”¹¹⁸ One woman whose husband was detained in a county facility said: “I sold all the property of our family to pay a visit to my husband. I was unable to meet him in person; rather I bribed prison guards so that the meals I brought were handed over to my husband.”¹¹⁹ [See annex IX.III for further witness accounts]

¹¹⁴ OHCHR interviews with escapees: KOR/18/0056, KOR/18/0053, KOR/18/0050, KOR/18/0049, KOR/18/0048, KOR/18/0008, KOR/18/0001, KOR/17/0135, KOR/17/0134, KOR/17/0132, KOR/17/0128, KOR/17/0123, KOR/17/0117, KOR/17/0116, KOR/17/0101, KOR/17/0085, KOR/17/0081, KOR/17/0062, KOR/17/0049, KOR/17/0047, KOR/17/0043, KOR/17/0027, KOR/17/0023, KOR/17/0019. See also “Promoting accountability in the Democratic People’s Republic of Korea”, Report of the United Nations High Commissioner for Human Rights, 7 March 2019, A/HRC/40/36, p. 7; “Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea”, 8 March 2019, A/HRC/40/66, para 27; *supra* note 41, White Paper, pp. 89-118; *supra* note 24, Commission of Inquiry, pp. 210-269.

¹¹⁵ One escapee interviewed by OHCHR stated, “When I crossed the border, I carried poison. I planned to eat it if I was arrested... This is what many people do”, KOR/18/0007.

¹¹⁶ KOR/17/0076.

¹¹⁷ KOR/18/0050.

¹¹⁸ KOR/18/0040; also, KOR/18/0035: “Visits were allowed, but only when a bribe was paid.”

¹¹⁹ KOR/18/0016.

VII. Conclusion

The data, analysis and witness accounts used for this report provide reasonable grounds to believe that the Democratic People's Republic of Korea is violating people's right to an adequate standard of living. The failed public distribution system means that the State cannot provide for life's basic necessities, including food, with evidence of failure towards progressive realization, the fulfilment of core obligations, non-discrimination and the protection of vulnerable populations.

Furthermore, the Government has failed to introduce legislative, policy and institutional reforms to facilitate people's efforts to attain an adequate standard of living outside of the public distribution system. By engaging in rudimentary market activity, people operate in a legal grey area without human rights protection, leaving them vulnerable to arrest and detention. This invariably leads to a series of further human rights violations, as they are denied due process and fair trial rights and subjected to inhumane and degrading treatment in detention, including sometimes torture during interrogation and disciplinary procedures.

The threat of arrest and prosecution thereby provides State officials with a powerful means to extort money and other favours from a population eager to avoid such a fate, as well as creates an environment where abuse at the hands of third parties can thrive. Consequently, only those willing and able to pay off corrupt State officials and brokers' fees are able to strive towards an adequate standard of living outside of the system of State provision.

In this cycle of economic rights violations, arbitrary arrest and detention, extortion, abuse at the hands of third parties, and further economic hardship, the social contract between the State and the people is thereby broken and inversed. To break this cycle and ensure the fulfilment of the State's obligations under international human rights law, it is critical and urgent for the Government of the Democratic People's Republic of Korea to undertake profound legal and institutional reforms.

VIII. Recommendations

To the Government of the Democratic People's Republic of Korea:

- Take steps to the maximum of the State's available resources to achieve progressively the full realization of the right to an adequate standard of living, and ensure the immediate fulfilment of the State's core obligations in this regard;
- Ensure that the right to an adequate standard of living is implemented without discrimination of any kind, including in relation to the *songbun* system;
- Take measures to ensure that the right to an adequate standard of living is fulfilled for vulnerable population groups and individuals, including in rural areas and the northeastern provinces of Ryanggang, North Hamgyong, South Hamgyong and Jagang;
- Review the Criminal Code and other relevant legislation to bring them into line with international human rights standards and ensure that:
 - i) People cannot be prosecuted for engaging in legitimate market activity in pursuit of their right to an adequate standard of living;
 - ii) People's right to gain a living by work which is freely chosen or accepted is upheld;
 - iii) People's right to freedom of movement within the country and across its borders is respected.
- Initiate steps to establish the rule of law and an independent and impartial judiciary to ensure that due process and fair trial rights are fully upheld;
- Establish an independent national anti-corruption mechanism with the mandate, funding and staffing necessary to counter corruption and ensure the protection of whistle-blowers;
- Ratify the United Nations Convention against Corruption;
- Develop data collection and analysis capacity, including through implementation of strategic priority 4 of the United Nations Strategic Framework (2017-2021);
- Provide sufficient and credible data and other evidence to the United Nations human rights mechanisms on the extent to which the State is fulfilling its international human rights obligations under treaty and customary law;
- Increase engagement with the United Nations human rights mechanisms, including the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and the Office of the United Nations High Commissioner for Human Rights, including providing access to the country;

- Expand cooperation with the international community to support the implementation of recommendations issued by United Nations human rights mechanisms, including from treaty bodies, special procedures and those accepted by the Government pursuant to the Universal Periodic Review;
- Continue engagement with the United Nations country team towards the implementation of the United Nations Strategic Framework (2017-2021) and the 2030 Agenda, applying a human rights based approach;
- Authorize international human rights and humanitarian organizations to visit all places of detention in the country with a view to assisting the improvement of detention conditions and the treatment of all detainees;
- Accept United Nations support to provide human rights training for law enforcement personnel, including prison guards;
- Engage in dialogue with relevant United Nations entities on the situation of persons repatriated to the Democratic People's Republic of Korea, including from the People's Republic of China, to ensure their human rights are upheld in accordance with international standards;
- Become a member of the International Labour Organization;
- Ratify the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children;
- Ratify the Convention against Torture and its Optional Protocol.

To the Government of the People's Republic of China:

- In line with efforts by the Government of China to counter trafficking in persons, extend protection to citizens from the Democratic People's Republic of Korea who have crossed into China irregularly (many of whom are female victims of trafficking), and take steps to ensure they are not repatriated;
- Engage with the authorities of the Democratic People's Republic of Korea to open some cross-border trade routes whereby citizens of the Democratic People's Republic of Korea can travel safely and securely as they pursue their right to an adequate standard of living.

To other members of the international community:

- Take further steps to ensure that unilateral and multilateral sanctions do not have a detrimental impact on the economic and social rights of the people of the Democratic People's Republic of Korea or on the ability of United Nations humanitarian organizations to conduct their work;¹²⁰
- Increase contributions to the humanitarian appeal by the United Nations and NGOs to help meet the critical life-saving needs of the most vulnerable populations in the Democratic People's Republic of Korea.¹²¹

¹²⁰ On Member States' obligations in relation to sanctions, see Committee on Economic, Social and Cultural Rights', General Comment No. 8 on "The relationship between economic sanctions and respect for economic, social and cultural rights". See also General Comment No. 14 on "The right to the highest attainable standard of health", para. 41. Concerning the detrimental impact of sanctions on international humanitarian operations, see United Nations Humanitarian Country Team for the Democratic People's Republic of Korea "2019 Needs and Priorities" report, *supra* note 35, pp. 9-10. See also the Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea to the Human Rights Council, 8 March 2019, A/HRC/40/66, paras. 11-18; and the Report of the United Nations Secretary-General to the General Assembly on the "Situation of human rights in the Democratic People's Republic of Korea", 6 August 2018, A/73/308, para. 77. For a broader historical critical analysis, see Haeyoung Kim, "Stifled Growth and Added Suffering: Tensions Inherent in Sanctions Policies against North Korea", *Critical Asian Studies*, 46:1 (2014), Routledge, pp. 91-112.

¹²¹ The 2019 Needs and Priorities highlights the need of USD 120 million to provide assistance to 3.8 million people; *supra* note 35, p. 3.

IX. Annex: additional witness accounts

IX.I Witness accounts: the “price” of the right to work

Payments to State officials to escape from statutory work to engage in market activities

“After I finished the military service I was assigned to a State company in charge of managing trees. I was a registered worker in that company but didn’t go to work. I paid 15,000 won per month to maintain my registration at the company without working there. I paid to avoid going to work because everyone is required to work in a certain place assigned by the State, and if you’re unemployed you are legally punished. Even if you do work you don’t get a salary anyway, so people avoid going to work by paying.”¹²²

“I went to the workplace while I engaged in smuggling at night. I barely made a living that way. It was physically challenging to work for construction during the daytime, and to engage in commercial activities at night. I once paid the manager of Construction State Station 30,000 won per month to excuse myself from going to work, and to engage fully in commercial activities.”¹²³

“I bribed a State-run factory not to go to work and to stay at home. My older sister also bribed her way so that she did not have to go to work. She also stayed at home. One can excuse oneself from going to work by paying 300 to 500 won per year to the head of workplace. I helped my mother in engaging in commercial activities and running house chores.”¹²⁴

“Upon graduation, she [the interviewee’s sister] started working at a factory in [redacted] for six months in charge of accounting... [N]o food ration was provided. She therefore engaged in commercial activities by only putting her name in the registry of the factory. One could get registered to a workplace, but then not go to work by paying 50 Chinese yuan each month to a manager of the workplace.”¹²⁵

“I paid to be excused from the required work. Instead, I engaged in commercial work with my mother.”¹²⁶

“Places of work used to provide the employees with rations in return for their labour. This doesn’t happen anymore. It also used to be illegal to farm for yourself, but this has also changed. However, the State now asks us to provide them with food and military provisions. If we don’t provide what they ask for, then we get sent to a political or labour camp... In fact, neither my father nor mother received any salary. Instead, they had to provide for their employers with contributions from the farming they did when not at their workplace. And they had to work, otherwise they would have been sent to a labour camp for not having a job.”¹²⁷

“After graduating high school in 2008, I was assigned to work at [redacted] Farm. I had worked there until 2012. I worked on fields. I worked from 7:30 in the morning throughout the day, but was provided with nothing. I received 100 kg of corn only in the first year. I could not receive any public distribution, except for the first year. Both of my siblings were also farmers. They could not receive any distribution either. My brother provided 50 kg of honey every year as a bribe to excuse himself from going to the farm. Instead he travelled between China and North Korea to smuggle and engage in commercial activities to make a living.”¹²⁸

¹²² KOR/17/0086.

¹²³ KOR/18/0014.

¹²⁴ KOR/17/0075.

¹²⁵ KOR/18/0011.

¹²⁶ KOR/17/0125.

¹²⁷ KOR/18/0056.

¹²⁸ KOR/17/0019.

The same was for this escapee's father:

"[H]e paid money to excuse himself from going to work. Instead he cultivated agricultural fields at home to make a living."¹²⁹

Payments to State officials to engage in market activity

"After the Arduous March,¹³⁰ there was no functioning public distribution system... From 1998 to 2009, I worked as a wholesaler for shoes, at which point I was cracked down upon by the authorities. The policy department of the provincial-level Prosecutor's Office claimed I had violated socialist policy. I was reported to the authorities by a jealous neighbour who thought I was becoming too successful. A State prosecutor came and confiscated 7,000 units of shoes. Before this, I had worked for 11 years without any problem, making enough to live off, though I had to pay bribes to officials once or twice a year, which was usually 10 packs of tobacco."¹³¹

"My family was engaged in smuggling between North Korea and China. If caught, we have to pay a bribe... This can be by law enforcement officers, including officers from local MPS or from the Prosecutor's office. I paid cash in Chinese currency. It happened almost every time... I was engaged in this activity since I was young because my mother did it also. Everyone in the village was engaged in smuggling to make a living."¹³²

"My brother called to his Chinese counterparts. He dealt in medicinal herbs and pine nuts and collected these items with the daughter of the local MPS head... He was making about 1,000 Chinese yuan a month, though 300 yuan had to be spent for the bribes. He also paid bribes so that he did not have to work on the farm."¹³³

IX.II Witness accounts: the "price" of the right to freedom of movement

Payments to State officials to secure freedom of movement within the Democratic People's Republic of Korea

"In order to travel, we have to get multiple approvals from *Inminban* (neighbourhood watch), then from the committee at a higher level (city level people's committee), then a last approval from the MPS. I used to travel illegally to the city to conduct my commercial activities. You have to bribe your way through, so I gave tobacco to MPS officers."¹³⁴

"I was trading, first sweets, then shoes and later on paper. I was able to travel because I paid for a travel permit, at first on a monthly basis. Later I simply paid a bribe to an MPS officer or the person in charge of transportation. The latter was in charge of each compartment of a train. Then I called them so that they would know when I was on board the train."¹³⁵

"My mother used to travel with three to five vendors from [redacted] city, and sell products in other cities, including food and industrial products. It wasn't easy for her because of all the checkpoints

¹²⁹ KOR/17/0019.

¹³⁰ The "Arduous March" is the Government's official name for the famine of the mid-1990s.

¹³¹ KOR/18/0049.

¹³² KOR/18/0043.

¹³³ KOR/17/0019.

¹³⁴ KOR/17/0124.

¹³⁵ KOR/18/0041.

operated by MSS and MPS. They check all cargo trucks and I heard there is even a set price for bribery.”¹³⁶

“Ryanggang province people are used to travelling back and forth using bribes.”¹³⁷

Payments to State officials to secure freedom of movement across the border of the Democratic People’s Republic of Korea

“[M]y husband managed to bribe the North Korean border guard who was waiting for us at the border. That’s how we left North Korea.”¹³⁸

“I called my aunt in South Korea and told her I wanted to leave and needed money for that. She provided me with one million South Korea won, so I bribed a military officer to get out.”¹³⁹

“I observed the area for two months before escaping and I bribed border guards. If you have a close relationship with a border guard, you can go to South Korea for 10,000 Chinese yuan. It’s 7,000 if you just want to exit North Korea.”¹⁴⁰

“[P]eople have to pay more and more money to cross to border security guards. In 2006 you needed to pay 200 Chinese yuan (USD 25) to cross, or 500 to 1000 yuan to smuggle things in and out. Now [2017] it costs USD 200 to cross the border...”¹⁴¹

“I bribed officials quite a lot. I had relations with the members of the Korean People’s Army as well. Thanks to all that, I could easily cross the border to China.”¹⁴²

“I was familiar with the border area, so I observed the movements of security guards. Nowadays they are ordered to report on anyone, though the authorities allow them to accept bribes.”¹⁴³

This escapee simply expressed her frustration over the criminalization of border crossing:

“The most difficult part of life in North Korea was that I was always hungry... I also find it evil that the Government does not acknowledge its fault of not providing food distribution but, instead, treats North Koreans who go to China to make a living because of the poor situation in North Korea as criminals by punishing and beating them. I do not think it is fair to treat repatriated North Koreans as if they are criminals.”¹⁴⁴

Exposure to third-party abuse when attempted to leave the country

“While my father was in detention, financial circumstances of our family got worse. I went to China alone in September 2016 to make money. I got into contact with a broker in China and was sent to [REDACTED], [REDACTED] Province. I got married to a Han Chinese there.”¹⁴⁵

“The broker that she arranged sold me to a Chinese man.”¹⁴⁶

¹³⁵ KOR/18/0041.

¹³⁶ KOR/17/0098.

¹³⁷ KOR/17/0085.

¹³⁸ KOR/17/0117.

¹³⁹ KOR/17/0103.

¹⁴⁰ KOR/17/0097.

¹⁴¹ KOR/17/0086.

¹⁴² KOR/17/0073.

¹⁴³ KOR/17/0088.

¹⁴⁴ KOR/17/0019.

¹⁴⁵ KOR/18/0006; also KOR/18/0005, KOR/17/0058, KOR/17/0021 noted that the only means of escape was to expose oneself to human trafficking networks.

¹⁴⁶ KOR/18/0003.

“As soon as I arrived in China, I was sexually abused by a North Korean broker who accompanied us to China. I do not know his name. He and I were same age. He sexually abused many women he accompanied to China. No women could get help for the incidents.”¹⁴⁷

“I agreed to be sold again because I had no money and was not able to pay to see my first husband and child. My friend continued to South Korea because her brother was already there. I was sold as a cleaning lady this time to a Chinese family who treated me well.”¹⁴⁸

“The traffickers do not care who you are sent to, they only care about money.”¹⁴⁹

“I paid 5 million South Korean won to brokers in China in order to cross the border and I still have 3 million to pay to the South Korean brokers.”¹⁵⁰

“I was too old to be trafficked; people of my age are usually valued at 5,000 yuan for traffickers, while a younger woman is valued at 20,000 to 30,000 yuan. The two MSS informants were traffickers and they reported on me because I was too cheap to be trafficked; it does not make economic sense to sell me. Traffickers only sell people if they bring profit.”¹⁵¹

IX.III Witness accounts: the “price” of the right to liberty

The payment of bribes to secure the right to liberty

“[M]y mother went to China in 2005 and was arrested and sent back to North Korea. She bribed her way out; we paid a lot of money to release her. Another woman who was with my mother in China was also arrested and sent to a *kyohwaso*.¹⁵² She mentioned my mother’s name during the investigation, so the preliminary investigation officer came to our house and said that we had to pay or she would be arrested. She had to pay 500,000 North Korean won in order not to be arrested.”¹⁵³

“Selling scrap metal was the reason I was detained by the Ministry of People’s Security (MPS)... I asked the Ministry of State Security (MSS) officer in charge to turn a blind eye, and he asked me to submit a confession note with some money.”¹⁵⁴

“She [the escapee’s mother] used to travel around by train from her hometown in [redacted] to South Hamgyong province. Trains are not often available between the two provinces, but it makes economic sense to do business between them. She used to sell medicine on her way out and seaweed on the way back. It was not a legal activity. She was arrested by MPS officers several times, I cannot recall exactly when. She usually bribed her way out.”¹⁵⁵

“During my first attempted escape, I crossed the border into China with a broker and, while we were resting in Chinese territory, North Korean border guards came up and arrested us... The officer who arrested me said he would let me go if I could pay him 2,000 Chinese yuan, but I didn’t have any money left on me to pay after the 20,000 Chinese yuan I’d had to pay to the broker.”¹⁵⁶

¹⁴⁵ KOR/18/0006; also KOR/18/0005, KOR/17/0058, KOR/17/0021 noted that the only means of escape was to expose oneself to human trafficking networks.

¹⁴⁶ KOR/18/0003.

¹⁴⁷ KOR/17/0128.

¹⁴⁸ KOR/17/0123.

¹⁴⁹ KOR/17/0096.

¹⁵⁰ KOR/17/0048.

¹⁵¹ KOR/18/0004.

¹⁵² A standard prison for non-political crimes.

¹⁵³ KOR/17/0103.

¹⁵⁴ KOR/18/0048.

¹⁵⁵ KOR/17/0089.

¹⁵⁶ KOR/18/0049.

"I was arrested and repatriated [from China] to North Korea in November 2002... Everyone is interrogated but if you paid 100 yuan to the interrogator, they could write a report that helps the person be released."¹⁵⁷

"I was arrested on [redacted] June 2013 in [redacted], Ryanggang Province, because I did not have a travel permit... I was taken to [redacted] MPS *jipkyulso*.¹⁵⁸ I was held there for two days, and was released after paying 50 Chinese yuan."¹⁵⁹

"In 2015, I left North Korea. Smuggling activities put me on the risk to be detained. My plan was to make money in China to make living. I was told that I could make living by washing dishes... I was there for one year. I did not know that I would have a husband there. I realized that only when I got there. I was repatriated in 2016... I was transferred again to the village-level Ministry of People's Security of [redacted]. After the first two days, my brother bribed to have me released. I ran away... Without the bribe, I presume I would have been sentenced to three years in a *kyohwaso*."¹⁶⁰

"I was arrested [in China] on 1 June 2011... and returned to North Korea on 10 June 2011... [T]he entire trial took around one hour. I was sentenced to five years' imprisonment. However, my uncle paid a bribe, either to the preliminary investigation officer or the judge, and my sentence was lowered to three years' imprisonment."¹⁶¹

"I travelled between North Korea and China without permission, and because of that I was detained... On 10 August 2014, officers of the Ministry of State Security (MSS) arrested me... In the *jipkyulso*, those who paid a bribe were released within two or three days, and those without money were mobilized for work. These days in North Korea, only money matters. If you have money you can get away with anything, including murder."¹⁶²

"I was caught while being engaged in smuggling. Three times I was sentenced to serve at a labour training camp (*rodongdanryondae*)... I bribed to come out, and never served the term at the labour training camp... I bribed to get sentenced to a year at a prison camp. Otherwise, I would have been sentenced to six or seven years in the prison camp."¹⁶³

"After ten days, the owner of the mobile phone, who I had been detained with, paid a bribe to be released. I was also released with her because we were part of the same case."¹⁶⁴

"In 2011 a friend told me that I could make money in China so I decided to leave. This friend was close and I wasn't aware that I would be married in China; I thought I was just going to work in a restaurant... [I was] repatriated to North Korea in May 2011... After I stayed at a *jipkyulso* for a year, the [redacted] MPS considered that because I was a minor and also because my mother bribed I could be released, so I went home."¹⁶⁵

"I decided to leave because the regime is not fair to people. My parents made regular phone calls with my aunt in South Korea. Making phone calls abroad is not legal in North Korea so the MPS office requested our family to pay money multiple times to keep doing this, which was financially challenging for us, but if we didn't pay we were threatened with arrest."¹⁶⁶

"I was caught with a Chinese phone and arrested by the MSS in February 2014. I was making a phone call at home... I was asked if I had a plan to escape to South Korea and I was beaten with

¹⁵⁷ KOR/17/0070.

¹⁵⁸ A *jipkyulso* is a pre-trial detention "holding" centre run by the Ministry of People's Security (some close to the border are run by the Ministry of State Security). People are usually held here while awaiting transfer to the province where they are registered residents, which can take up to several months. Persons detained here usually have to partake in forced labour.

¹⁵⁹ KOR/18/0041.

¹⁶⁰ KOR/17/0019.

¹⁶¹ KOR/18/0032.

¹⁶² KOR/18/0029.

¹⁶³ KOR/17/0073.

¹⁶⁴ KOR/18/0028.

¹⁶⁵ KOR/17/0020.

¹⁶⁶ KOR/17/0103.

wooden sticks... I was released after bribing the MSS officers 5000 Chinese yuan.”¹⁶⁷

“My father distributed South Korean movies bought from China... He was caught by the MPS... My father was eventually released from detention. He was tried and was sentenced to serve 12 years in a *kyohwaso*, but my family paid a bribe and secured his release.”¹⁶⁸

“I was 17 years old when I first went to China. There was a woman who introduced me to life in China... She told me I could live a better life there... I was arrested by the Chinese police and repatriated in 2011... [I] was sentenced to serve three years in a *kyohwaso*. I bribed to be detained for only one year.”¹⁶⁹

“I did engage in commercial activities in [redacted] to make ends meet... Sometimes I was caught by the authorities for selling scrap steel. I provided a pack of cigarettes or some money when that happened and that helped me avoid detention.”¹⁷⁰

“We used to go to the mountain together and sell whatever we could find there in the market, like herbal medicine, wood... We had to hide because if we were caught we would be sentenced to hard labour. We had to avoid the police, or bribe them with cigarettes.”¹⁷¹

“To make a living, all of us - my mother and brother and I - were assigned to a rural village, [redacted] village, [redacted] to work at a farm... In 2012 or 2013, my mother was unable to go to work at the farm because of a joint disease. She was sent to a short-term labour training camp (*rodongdanryondae*) in [redacted] for three months. Officers of the MPS in charge submitted a document [on my mother’s case]... My mother got ill at the short-term labour training camp and collapsed. When it happened, my mother’s siblings chipped in to pay to the MPS officer-in-charge. My mother was released a month and a half later as a result.”¹⁷²

“[2014] All the other women in the cell had been forcibly returned from China... One person had been held there [in a *kuryujang*]¹⁷³ for 60 days, and she eventually paid a bribe of one million North Korean won to be released. But most others did not pay a bribe and were punished under the law.”¹⁷⁴

“I knew about the outside because I watched South Korean dramas. I first heard that dramas were being smuggled in on CDs. Some friends who watched the dramas shared them with me. They were caught later, in 2014, and were released after they paid a USD 1,000 bribe. To be able to pay the bribe, they borrowed money from others.”¹⁷⁵

“I was once arrested by the MSS for making a phone call in the summer of 2014... I was interrogated for a month at the detention facility (*kuryujang*) of the city-level MPS. My father paid a bribe to an official in charge of interrogating me to get me released due to medical conditions.”¹⁷⁶

“I was detained because of my illegal border crossing and smuggling activities in 2008. I was arrested in June 2009, and detained in a *kuryujang* from June to November 2009. My family bribed me out on sick leave.”¹⁷⁷

¹⁶⁷ KOR/17/0097.

¹⁶⁸ KOR/17/0067.

¹⁶⁹ KOR/17/0067.

¹⁷⁰ KOR/18/0023.

¹⁷¹ KOR/17/0116.

¹⁷² KOR/18/0036.

¹⁷³ A *kuryujang* is a pre-trial detention centre run by the Ministry of People’s Security, and the Ministry of State Security. Searches and interrogations often occur here. Persons detained here are forced to sit on the floor without moving throughout the day.

¹⁷⁴ KOR/18/0018.

¹⁷⁵ KOR/18/0017.

¹⁷⁶ KOR/18/0010.

¹⁷⁷ KOR/17/0086.

In 2014, this escapee had been arrested for making a phone call to China:

“He [the escapee’s husband] bribed prison guards for a month and... as a result [I] was released on sick leave.”¹⁷⁸

“[In 2010] I only smuggled rice, and I was punished... I offered a bribe to avoid the labour training camp and the officer forged a medical paper saying I was infected with TB. In this way I did not have to serve the term.”¹⁷⁹

One of the few male escapees the Office has interviewed described his experience after being repatriated from China in 2013:

“[M]y ex-wife said that if we worked hard we could be better off in China... I was... transferred to [redacted] labour training camp... [T]he MPS concluded the preliminary investigation and decided to sentence me to six months of short-term labour... I was able to decrease this to three months by paying a bribe. I paid an MPS officer at [redacted]... Recently, it has become more common for MPS and MSS officers to accept bribes in Chinese yuan. But those who cannot pay must serve their term.”¹⁸⁰

“I was sold as a bride, but I could not speak Chinese and I did not know the man I had been sold to. At the beginning I refused, but I understood that if I refused I would be reported to the authorities and repatriated... I delivered a child in China; she was one year old when I was forcibly repatriated [in 2009]... My mother often visited the *jipkyulso* because she lived in that town. Thanks to her bribing the MPS officers, I was moved after a month.”¹⁸¹

“I worked as a housemaid in China... I was repatriated on 29 September 2017... [B]ecause my uncle was an MPS officer, he came and talked to the head of the facility and he gave some cigarettes, and then my friend and I were released.”¹⁸²

Bribes are also paid by military personnel:

“I know of another instance which occurred in 2014 or 2015. A friend of mine, who was a soldier heading a platoon, was arrested for having a phone conversation with someone in South Korea. He underwent a preliminary investigation at the MSS in charge of specifically dealing with military matters and was told that if he paid 20,000 yuan, he could be discharged rather than sent to prison camp. His wife... received the money, but instead of paying the bribe, she spent the money on herself. As a result, my friend ended up in the prison camp.”¹⁸³

“My job was in physiognomy and fortune-telling, and I was arrested by the prosecutor because of that occupation. Any superstitious activity is considered religious as it could undermine the ideology of residents of North Korea, and you could be sent to a prison camp (*kyohwaso*) or a labour training camp (*rodongdanryondae*) for doing it. However money helped me avoid this punishment.”¹⁸⁴

“The trial itself was only a formality. There were two of us on trial, and the whole trial took less than one hour. I was charged with illegal border crossing [into China], but I cannot recall the article which was read out. The trial took place in a courthouse, with a prosecutor, a head judge, another judge and a lawyer... I was supposed to be sentenced to one year in a *kyohwaso*, but since my mother bribed the MPS, I was given a three-year suspended sentence instead.”¹⁸⁵

¹⁷⁸ KOR/17/0058.

¹⁷⁹ KOR/17/0046.

¹⁸⁰ KOR/17/0127.

¹⁸¹ KOR/17/0062.

¹⁸² KOR/18/0053.

¹⁸³ KOR/17/0127.

¹⁸⁴ KOR/18/0004.

¹⁸⁵ KOR/17/0125.

The below accounts indicate that the various amounts paid is well established, pointing to the systemic nature of corruption:

“[F]or people caught trying to escape, it’s a common practice to pay 5,000 to 10,000 yuan to get released. A person who is caught using a mobile phone pays on average 3,000 yuan.”¹⁸⁶

“MSS arrested me on 9 May 2015... They presented me with a booklet saying that the MSS had overheard me having a phone conversation with my younger sister in South Korea... I was sentenced to one year of imprisonment, and was supposed to be sent to [redacted] prison camp (*kyohwaso*). My father paid a bribe so that I could be released on sick bail for being affected by tuberculosis. I was on sick bail from 30 October 2015 until I left North Korea in 2017. I don’t know how much the initial bail my father paid was, but it was significant. Anything that has to do with South Korea takes a very large amount of money to bribe one’s way out. I had to continue paying after I had been released. Until I left North Korea, I had to bribe the hospital every quarter when I was required to be checked as I was on sick bail. I paid 500 Chinese yuan to the hospital every quarter. I also had to pay the village level MPS office between 100 and 200 Chinese yuan monthly.”¹⁸⁷

Of course, there is no guarantee that the officials taking bribes will fulfil their side of the bargain, as described by this individual interviewed by OHCHR:

“A woman had a daughter in South Korea who called my uncle to arrange the trip for her mother out of North Korea. He arranged a trip for the mother to China and he was caught and charged for trying to send people to South Korea... [T]here are party cadres who exploit North Koreans to get money. My uncle was sent to a prison camp (*kyohwaso*) in 2009. A director/officer of the MSS said to my family that he could get him out and he requested a lot of money that we paid, but it was a lie and my uncle stayed in detention. We paid over one million North Korean won. We don’t know where my uncle is detained but it’s a place people don’t get out of for sure.”¹⁸⁸

The payment of bribes to improve conditions and treatment in detention

“It was not possible to visit him during the investigation/interrogation. It cost 7,000 to 8,000 North Korean won in bribes to pay a family visit. It is not possible to visit if one cannot afford the bribe.”¹⁸⁹

The harshness of treatment also seems to be influenced by the money that a prisoner or their family can pay:

“At the *kuryujang*, we had to sit tight from 6 a.m. onwards. Guards beat anyone who moved. But because this *kuryujang* was close to my home, I was able to build personal relations with the guards. This meant that I could bribe them with cash and tobacco, and in exchange they would not beat me. It was my mother who paid this bribe.”¹⁹⁰

“At the MPS, my mother liquidated the housing to prepare a bribe. The bribe helped ensure I was not beaten at the MPS and I stayed rather well. People who could not bribe were beaten badly. I realized there that the law enforcement system of North Korea was in favour of those with money.”¹⁹¹

“I heard that others were beaten at the detention facility. It was not the case for me. Thanks to my sister-in-law who bribed quite a lot to help me, I was treated better.”¹⁹²

¹⁸⁶ KOR/18/0004.

¹⁸⁷ KOR/17/0135.

¹⁸⁸ KOR/18/0013.

¹⁸⁹ KOR/18/0006.

¹⁹⁰ KOR/17/0125.

¹⁹¹ KOR/17/0058.

¹⁹² KOR/17/0073.

“I bribed to help my mother’s life at the short-term labour training camp be less tough.”¹⁹³

It seems that some prisoners also pay bribes to get other inmates punished:

“I was... placed in solitary confinement for five days after I had a fight with another detainee who bribed guards and asked them to punish me. I was put in a cold cell, 1 metre by 1.2 metre, and 1.5 metre high. So I could neither stand up, as I’m 1.55 metres tall, nor lie down. There was a small lid in the ground which I had to use as a toilet.”¹⁹⁴

For those that can pay, it appears that the harshness of forced labour can also be ameliorated:

“My mother sold a house and borrowed money from the neighbourhood to bribe the cadres of the prison camp. Thanks to my mother, I was assigned to a less physically challenging job.”¹⁹⁵

“I ran away from the MPS labour training camp in early July 2016. There are patrollers among detainees who pay camp officials USD 250 or USD 300 per month to patrol and be exempted from physical jobs. They could even use cell phones unlike the rest of us. They pay that money to the head of the labour camp, who also consults with MPS and MSS officers to select candidates. A portion of the money goes to these officials too.”¹⁹⁶

The following account suggests that access to drugs can be secured through bribes:

“There are many people in North Korea who use drugs. At the MPS, there was a person who had a methamphetamine addiction. He was rich and he was arrested because of drugs. He was able to have good food smuggled into the cell because he bribed the officers. He also bribed them to not check the food, and was able to smuggle in meth in the food.”¹⁹⁷

Exploitation can go beyond the extortion of money and involve sexual violence and rape:

“All the guards were men. There were younger women in the cells, perhaps as young as 14 years old. If they were good looking and young, a prison guard would take them out from the cell. In return for what happened, a woman could be provided with more food. Food could then be shared. The men were bastards because they took advantage of the situation for their sexual purpose. This didn’t happen to me.”¹⁹⁸

“Detainees were not treated as human beings, but more like animals. On one occasion, I was asked to run errands for a supervisor... [and] was sent with another woman to a supervisor’s house... The other woman left the room with the supervisor. After waiting around for some time, I went to have a look for them. I saw him having sexual relations with her... he was notorious for sexually abusing female prisoners.”¹⁹⁹

“There were cases when young and pretty prisoners were taken away for ‘independent work’. They were gone for some time and when they returned they were assigned less demanding jobs. But we did not know exactly what had happened.”²⁰⁰

¹⁹³ KOR/18/0036.

¹⁹⁴ KOR/17/0123.

¹⁹⁵ KOR/18/0014.

¹⁹⁶ KOR/17/0071.

¹⁹⁷ KOR/17/0127.

¹⁹⁸ KOR/18/0037.

¹⁹⁹ KOR/18/0032.

²⁰⁰ KOR/18/0001; see also Human Rights Watch report “*You Cry at Night but Don’t Know Why: Sexual Violence against Women in North Korea*”, November 2018; available at <https://www.hrw.org/report/2018/11/01/you-cry-night-dont-know-why/sexual-violence-against-women-north-korea#> accessed on 6.2.19.



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