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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Visita a la República de Corea

Informe del Relator Especial sobre la promoción de la verdad, la justicia, la reparación y las garantías de no repetición, Fabián Salvioli*

Resumen

El Relator Especial sobre la promoción de la verdad, la justicia, la reparación y las garantías de no repetición, Fabián Salvioli, presenta su informe sobre la visita que realizó a la República de Corea del 8 al 15 de junio de 2022, en la que examinó las medidas adoptadas por el Gobierno para hacer frente a las graves violaciones de los derechos humanos y del derecho humanitario cometidas durante los períodos de ocupación, guerra y regímenes dictatoriales.

En el informe, el Relator Especial reseña los progresos realizados en la aprobación de un marco jurídico que permita dar respuesta a las graves violaciones de los derechos humanos que se cometieron en el pasado y en el establecimiento de procesos de búsqueda de la verdad y preservación de la memoria histórica. Sin embargo, también señala los retos en materia de reparación y observa con preocupación que no se han exigido responsabilidades penales a los autores de las graves violaciones de los derechos humanos cometidas en el pasado ni se han realizado suficientes progresos en la reforma del marco normativo que posibilitó los abusos y en la mejora de las capacidades y los procedimientos de las instituciones implicadas en esas violaciones.

El informe concluye con unas recomendaciones dirigidas al Gobierno y a la comunidad internacional.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo, se distribuye únicamente en el idioma en que fue presentado.



Annex

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, on his visit to the Republic of Korea

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I. Introduction

1. The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence conducted an official visit to the Republic of Korea from 8 to 15 June 2022. He thanks the Government for extending the invitation to visit the country and for its cooperation during the visit.
2. The objective of the visit was to assess the measures adopted by the Government of the Republic of Korea in the areas of truth, justice, reparation, memorialization and guarantees of non-recurrence to address the serious violations of human rights and humanitarian law committed during the periods of occupation, war and authoritarian regimes that engulfed the country during most of the twentieth century.
3. During his stay, the Special Rapporteur visited Seoul, Sejong, Gwangju, Daejeon and Seongam-dong (Ansan). He also had the opportunity to make field visits to memorial sites, former detention camps and sites of mass graves and exhumations.
4. Over the course of the visit, the Special Rapporteur met with officials from the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of the Interior and Safety, the Ministry of Gender Equality and Family, the Ministry of National Defense, the Ministry of Education, the National Police Agency, the National Archives of Korea, the National Human Rights Commission, the Truth and Reconciliation Commission, the 18 May democracy movement truth commission and the commission for the honour restoration of and compensation for democracy movement activists and members of parliament and of the judiciary.
5. He also met with victims and their families, representatives of civil society organizations, human rights practitioners, academic experts and representatives of the international community.

II. General background

6. During the twentieth century, the Republic of Korea experienced imperial annexation, armed conflict, occupation and nearly 40 years of authoritarian rule, which ended in the late 1980s. During those years, serious violations of human rights and humanitarian law were committed, including killings, torture, disappearances, sexual violence and exploitation, trafficking in persons, forced labour and arbitrary detention.
7. At the turn of the nineteenth century, the Korean peninsula was disputed between the Chinese, Japanese and Russian empires. After the Sino-Japanese war of 1894–1895 and the Russo-Japanese war of 1904–1905, Korea was annexed and ruled by imperial Japan, from 1910 to 1945. Following the defeat of Japan in the Second World War, Korea regained independence but was subsequently divided into two occupation zones, with the United States of America occupying the southern part of the country and the Union of Soviet Socialist Republics occupying the area north of the 38th parallel. Two separate nations were established in 1948: the Republic of Korea, in the south, and the Democratic People's Republic of Korea, in the north. In 1950, a war erupted following the invasion of the Republic of Korea by the Democratic People's Republic of Korea, with several countries involved in backing the two parties to the conflict. An armistice agreed in 1953 but not signed by the Republic of Korea ended the war and established a demilitarized zone between the two countries. However, a peace treaty was never signed. A succession of autocratic and dictatorial regimes ruled the Republic of Korea until 1988, when the country initiated its democratic transition.
8. Throughout the succession of turbulent sociopolitical events that battered the country, Korean society was subjected to numerous and diverse forms of gross violations of human rights and humanitarian law at the hands of different actors and political entities. In many instances, the violations were committed on a massive scale or over an extensive period of time.
9. During the visit, the Special Rapporteur received reports of gross violations of human rights and humanitarian law endured in the following settings: (a) under Japanese imperial

rule, the Japanese military's sexual enslavement of women and girls, the forced mobilization of women and men into the workforce and the armed forces and the forced mobilization of Sakhalin Koreans into the work force; (b) the period following independence from Japan and of the occupation of the Korean peninsula by the United States and the Soviet Union, including massacres of Sakhalin Koreans, the Jeju 4.3 uprising and massacre and the Yeosu-Suncheon and Daegu massacres; (c) the Korean war, including massacres in the Golryeonggol area of Daejeon and in Jeju, numerous other killings and massacres and the abduction, displacement and continued enforced disappearance of nationals of the Republic of Korea by the Democratic People's Republic of Korea; (d) dictatorship and authoritarian regimes, including forced conscription, greening projects and purification operations imposed on young activists, the suspicious deaths of activists and forged spy cases against returning fishers from the Democratic People's Republic of Korea, the massacre of 18 May 1980 in Gwangju and the arbitrary arrest, prosecution and torture of pro-democracy activists under the emergency measures imposed by President Park Chung-hee; (e) the abuse suffered by homeless persons, street vendors, children and others in internment institutions or camps, such as Hyungje Bokjiwon (Brothers' Home), the Seosan Gaechokdan Camp (Pioneer Group), the Samcheong Concentration Camp and the Seongam Academy; and (f) the system of private intercountry adoptions and the concomitant lack of due diligence, which led to numerous human rights violations of adoptees.

10. In the 1990s, the Republic of Korea embarked upon a process of transition to democracy. A series of measures in the field of transitional justice, reviewed below, have been adopted since then to address the legacy of those violations. The present report reviews measures adopted by the authorities of the Republic of Korea only. It is focused on the situation observed during the visit, although some references are made to subsequent developments.

III. Legal framework in the field of transitional justice

11. Over the years, the Government of the Republic of Korea has adopted a series of norms to address, to varying extents, the array of gross violations of human rights and humanitarian law perpetrated during the twentieth century. These include the framework act on settling past incidents for truth and reconciliation (enacted in 2005, amended in 2020); the act on livelihood stability and memorial services for the "comfort women" victims of the imperial Japanese army (1993, amended in 2008 to the act on livelihood support and memorial projects for Korean victims of Japanese military sexual slavery); the special act on verification and support for the victims of forced mobilization under the Japanese occupation (2010, and the previous related laws of 2004 and 2007); the special act on discovering the truth on the Jeju 4.3 incident and the restoration of the honour of the victims (enacted in 2000, amended in 2022); the special act on discovering the truth of the Yeosu-Suncheon 10.19 incident and the restoration of the honour of the victims and its related ordinance (2022); the act on the recognition of military service and compensation for operational merit performers in the rear area during the 25 June war (2004); the act on finding the truth of the damage from the abductions by North Korea during the Korean war and restoring the honour of the victims (2010); the act on the excavation of the remains of soldiers killed in the Korean war (2021); the special act on the 18 May democracy movement (1995); the acts on the honour restoration of and compensation to persons relating to the 18 May democracy movements (1990 and 2000); the special act on investigating the truth of the 18 May democracy movement (2018); the special act on finding the truth on suspicious deaths (2000); the act on the honour restoration of and compensation to persons related to democracy movements (2000); the special act on finding the truth on suspicious deaths in the military (2006); the special act on ascertaining the truth of military accidents resulting in death (2018); the act on the honour restoration of and compensation to the victims of the Samcheong Concentration Camp (enacted in 2004); and the Special Adoption Act (amended in 2012).

IV. Truth

12. As the Republic of Korea initiated its democratic transition, a vast number of truth-seeking initiatives were adopted by the Government to uncover the facts related to past human rights violations. The Special Rapporteur reviews some of those initiatives below.

13. With regard to the violations committed against Koreans during Japanese imperial rule, a large interministerial task force was established in 1992 to investigate the sexual slavery system of the Japanese military. In addition, the Government established the committee for the investigation of forced mobilization under Japanese occupation (2004) and the commission on verification and support for victims of forced mobilization under Japanese occupation (2010–2015). The work of the latter commission is currently being followed up upon, albeit weakly, by the Ministry of the Interior and Safety, the Foundation for Victims of Forced Mobilization by Imperial Japan and the National Memorial Museum of Forced Mobilization under Japanese Occupation. The Research Institute of Japanese Military Sexual Slavery was established in 2018 to conduct research, publicize the information gathered and operate the “Archive 814” digital database.¹ A report recording historical facts about the Japanese military’s “comfort women” system was prepared and published by the Ministry of Gender Equality and Family in 2017. Since 2020, the Government has been constructing a record of oral statements from survivors, bereaved families and witnesses of forced mobilization under Japanese occupation, which are being used in exhibitions and awareness-raising campaigns. Civil society organizations have noted that, despite such efforts, the Government has not adopted measures, other than declaratory ones, to urge the Government of Japan to comprehensively investigate the violations following the investigation that Japan conducted in 1995, considered by some to be perfunctory.

14. Regarding the violations committed after independence from Japan and during the occupation of the Korean Peninsula, the Government established the committee on discovering the truth of the Jeju 4.3 incident and the restoration of the honour of the victims, which released an official report in 2003. It also established the Jeju 4.3 Peace Foundation, which undertakes related research, memorialization and education activities and carried out fact-finding investigations in 2012, 2016, 2017, 2018, 2019 and 2020. The committee on discovering the truth of the Yeosu-Suncheon 10.19 incident and the restoration of the honour of the victims was established in 2022, under the purview of the Office of the Prime Minister. The working committee on discovering the truth of the Yeosu-Suncheon 10.19 incident and the restoration of the honour of the victims was established with a two-year mandate in Jeonnam.

15. With regard to the Korean war, three legal acts require the Government of the Republic of Korea to carry out investigations to determine the fate of persons who went missing during the war, update current lists and set up a DNA database to facilitate the identification of deceased victims. The Government established the commission on finding the truth of abductions by North Korea during the Korean war (2010–2015). It also implemented a large data collection campaign to create DNA profiles for victims and finalize the list of war abductees, and has recorded over 14,000 video letters with members of separated families.² The Government of the Republic of Korea has reported that, since 2000, it has consistently demanded that the authorities of the Democratic People’s Republic of Korea, through ministerial meetings and talks facilitated by the Red Cross between the two countries, provide information about abductees and help them to reunite with their families. The Government has also called for the repatriation of abducted fishers under the auspices of international organizations.

16. Concerning the violations committed under authoritarian rule, the violations during the 18 May democracy movement in Gwangju were investigated by several government entities, including the special truth-finding committee of the 18 May Gwangju democracy movement, which did not adopt a report; two ad hoc committees established by the Ministry of Defense, which issued reports in 2017 and 2018, respectively; and a joint interministerial

¹ www.archive814.or.kr.

² <https://www.ohchr.org/en/documents/country-reports/torn-apart-human-rights-dimension-involuntary-separation-korean-0>, para. 79.

investigation team, which also investigated sexual assault incidents. The 18 May democracy movement truth commission was established in 2019 and is expected to submit its official report at the end of 2023.

17. Four commissions were established to investigate suspicious deaths that occurred during authoritarian rule: the first and second presidential truth commission on suspicious deaths (2000–2002 and 2003–2004), the presidential truth commission on suspicious deaths in the military (2006–2009) and the presidential truth commission on deaths in the military (2018–present). The work of the commissions has been hampered by the lack of cooperation of the agencies allegedly involved in the violations.

18. Regarding internment institutions, Busan Metropolitan City has established a reporting centre for the Brothers' Home victims and has commissioned relevant research. The Samcheong Concentration Camp case was investigated by the deliberation committee for the restoration of honour and compensation for victims of the Samcheong Concentration Camp and the committee to identify the truth of the past of the Ministry of National Defense. Gyeonggi Province established the Seongnam Academy victims' reporting centre in 2020 and has commissioned a research study on the case.

19. Besides these initiatives focused on individual incidents, the Government has established truth commissions with a more comprehensive mandate to investigate past abuses. The first Truth and Reconciliation Commission (2005–2010) was established pursuant to the framework act on settling past incidents for truth and reconciliation to investigate and uncover the truth about past occurrences of State violence. It received 10,860 claims from victims, initiated 15 cases ex officio and issued about 8,450 decisions. The second Truth and Reconciliation Commission opened in 2020 for a four-year period, pursuant to an amendment of the framework act. As of May 2022, it has received 14,773 claims. The application period for victims' claims to the first and second commissions were one and two years, respectively. The short application period and insufficient awareness-raising has led to the receipt of a limited number of claims in proportion to the estimated number of victims. Overall, the commissions have conducted investigations regarding the Korean war (including the civilian massacre in Golryeonggol), the situation of overseas Koreans, killings by hostile forces, violations during dictatorial rule (forced conscription, greening projects and purification operations and forged spy cases against returned fishers from the Democratic People's Republic of Korea); the emergency measures instituted under President Park Chung-hee; and the abuses in internment institutions.

20. Several government entities accused of involvement in the commission of human rights violations have also set up internal fact-finding commissions, such as the National Intelligence Service's development committee for clarifying the past (2004–2007), the National Police Agency's fact-finding committee on past State violence (2004–2007), the committee to identify the truth of past State violence by the Ministry of National Defense (2005–2007), the fact-finding investigation task force of the Office of the Supreme Prosecutor and the special committee on cases of past human rights violations by the prosecution (2017–2019). The scope of their investigations and findings were, nonetheless, limited and their recommendations were not adequately implemented.

21. Over the years, the Government has established an institutional infrastructure to seek the truth about numerous human rights violations committed in the past. The truth and reconciliation commissions represent the most comprehensive and serious effort in this regard. Despite such efforts, insufficient material and human resources, limited investigative mandates or restrictive procedures have limited the capacities and accomplishments of such institutions. Moreover, the lack of access to the documentation and archives of the government entities accused of involvement in the commission of human rights violations, such as the National Intelligence Service, the National Police Agency and the Ministry of the Interior and Safety, has severely hampered the work of the truth-seeking entities. There is no legislation that stipulates the obligation of the State to disclose records of serious human rights violations and, therefore, a significant number of records remain classified as confidential.

22. The Special Rapporteur was informed that victims' access to their own records is also often restricted by the prosecution or the National Archives, which cite national security

requirements or a restriction on disclosing private information. In addition, victims are reportedly requested to pay fees to view and copy their own records.

23. The Special Rapporteur welcomes the processes adopted so far in the area of truth-seeking and urges the Government to intensify them and to lift all remaining barriers to access to the truth. The vast number of violations that remain to be accounted for is in itself a challenge. Efforts must be sustained to ensure that all past incidents of human rights violations are duly considered, acknowledged and preserved for present and future generations.

V. Justice

24. The Republic of Korea has not adopted an accountability process or prosecutorial strategy to criminally investigate and prosecute the perpetrators of serious human rights violations. Accountability has not been achieved in most cases of State violence, including the suspicious death cases, the forged spy cases against returned fishers from the Democratic People's Republic of Korea, the cases of emergency measures under President Park, the forced conscription and greening projects and purification operations, the Seosan Gaechokdan Camp (Pioneer Group) case and the intercountry child adoption cases. In the Samcheong Concentration Camp case, prosecutors have acquitted the suspects or issued "no authority to institute prosecution" decisions. The prosecution's committee for past affairs in the Office of the Supreme Prosecutor has investigated violations committed in internment camps and institutions and established the unlawfulness of the associated public orders, including in relation to the Brothers' Home case. The Head of the Brothers' Home was indicted, but the Supreme Court dismissed an extraordinary appeal filed by the prosecutor's office concerning those orders. In the cases of the Geochang and Sancheong-Hamyang massacres, the perpetrators were sentenced to prison but the sentences were invalidated or shortened. Investigations by a Seoul District prosecutor's office and the special investigations divisions did not lead to indictments for the serious human rights violations committed. Due to insufficient accountability processes, the legal responsibility of the State or of the perpetrators has rarely been established for cases of State violence, leaving the grievances of most victims unaddressed. One exception was the conviction of officials involved in the torture and death of Park Jong-cheol in the 1980s, although the higher-ranking officials were granted stays of the execution of their prison sentences.

25. Judicial activity has been initiated for numerous cases through victims' tort claims against the State. However, over the years, many of the claims have been dismissed under statutes of limitations. In 2007, the National Assembly enacted the act on the punishment of crimes under the jurisdiction of the International Criminal Court, which excludes the application of statutes of limitations for the crime of genocide, crimes against humanity and war crimes. The Government also adopted legislation in 2011, 2015, 2020 and 2022 to exclude the application of statutes of limitations for crimes against humanity and killings and to sexual crimes in specific circumstances. Their application is not excluded for other serious human rights violations, such as torture. The Constitutional Court ruled against the application of long-term extinctive prescription for serious human rights violations in 2018 and the Supreme Court recognized and reflected the decision of the Constitutional Court in relevant trials. The Government reported that the Ministry of Justice had taken measures to ensure that the relevant government agencies involved in litigation for State compensation respected the decisions of those courts.

26. Due to the high number of victims wrongfully convicted in the past, numerous requests for retrial have been filed before the courts. Articles 420 and 422 of the Criminal Procedure Act and article 451 of the Civil Procedure Act define conditions for retrial. Both acts limit the reasons for reopening a trial and for a retrial and the latter sets the period for filing for a retrial, in principle, to 30 days from the date that the victim becomes aware of the grounds for a retrial. In criminal proceedings, the Supreme Court has narrowly interpreted the meaning of the discovery of new evidence as grounds for reopening. In cases in which recommendations for retrial were issued by the Truth and Reconciliation Commission, the victims still had to apply individually to the court for retrial. Article 424 of the Criminal Procedure Act stipulates that a public prosecutor may request the reopening of procedures ex

officio. The Government reported that authorities have actively filed ex officio for retrial in 1,520 past human rights violation cases. These involved the emergency measures cases (218 cases), the 18 May democracy movement, the Buma democratic uprising, the violation of the Martial Law Act, in 1972, the Jeju 4.3 massacre and the forged spy cases against fishers returned from the Democratic People's Republic of Korea. Victims were acquitted in 1,389 of the cases and resolution is pending in 125 cases.

27. The Government also informed the Special Rapporteur about the amendment, in 2021, of the special act on discovering the truth on the Jeju 4.3 incident and the restoration of the honour of the victims, which has simplified the retrial procedure for this category of victim and empowers the Jeju 4.3 committee to recommend ex officio retrial. The Government further informed the Special Rapporteur about the establishment of the joint execution group on the recommendation of the ex officio retrial of the 4.3 Jeju incident in the Office of the High Prosecutor in Gwangju. In August 2022, the Ministry of Justice and the Office of the Supreme Prosecutor expanded the scope of the inmates eligible to request ex officio retrial to persons convicted by general courts and initiated 20 such cases.

28. The Government reported that victims of human rights violations, including cases under retrial and cases involving State compensation, were eligible for legal aid under the Legal Aid Act if the case was recognized as litigation in the public interest according to existing guidelines and if the victims met certain criteria, such as regarding income. Civil society organizations have reported that the immediate families of victims are not exempt from litigation costs, as required under international standards, hindering their right to access justice.

29. Numerous interlocutors noted with concern that, when retrial or tort cases against the State have led courts to establish that the wrongful acts had been committed against the victims, no judicial or administrative sanctions have been imposed on the perpetrators of those crimes, such as security officials, soldiers, prosecutors and judges. The honours previously conferred upon some of the perpetrators have been revoked, but the identities of the perpetrators have not been revealed.

30. Reports indicate that there has been no criminal prosecution of perpetrators in foreign jurisdictions for human rights violations against Koreans committed by officials of third countries, including the sexual enslavement of women and girls and the forced mobilization of women and men into the workforce and the armed forces by Japan, the forced mobilization and massacre of Sakhalin Koreans (with the exception of perpetrators who were convicted by military courts in the former Soviet Union but later returned to Japan), the Jeju 4.3 massacre and violations committed during the Korean war by United States troops and by the Korean People's Army.

31. The Special Rapporteur is concerned about the lack of progress in the prosecution and sanctioning of perpetrators of serious human rights violations. He welcomes the legislative reforms adopted to exclude the application of statutes of limitations to genocide, war crimes and crimes against humanity, as well as to killings and sexual crimes in certain circumstances, but considers that the scope of the exclusions should be expanded to all serious human rights violations. The Special Rapporteur welcomes the measures adopted to facilitate the retrial of persons wrongly convicted and stresses the need to sustain and, where necessary, expand such efforts to assist all related victims.

VI. Reparation

32. Although the Republic of Korea has not adopted an all-encompassing legal and institutional framework to provide reparations to all categories of victims of serious human rights violations committed in the previous century, a series of norms have been adopted over the years to redress the harm perpetrated on specific groups of victims. The regulations provide compensation or the restoration of honour to victims of specific sets of violations, as described below. However, not all categories of victim are granted reparation under the current legal framework. In addition, even in cases in which legislation stipulates compensation for certain categories of victim, the amount granted in some cases is insufficient to compensate for the harm to the victim. Furthermore, some norms proscribe

litigation against the State if compensation is granted to victims. As a result of the system in place, most victims must go through individual litigation processes, which are often rejected by courts in application of a statute of limitations or due to the high standard of proof placed upon victims.

33. The Special Rapporteur reviews below some of the reparation measures adopted in the country.

34. The Government reported that the act on livelihood support and memorial projects for Korean victims of Japanese military sexual slavery provides compensation, rehabilitation and satisfaction to victims. The Ministry of Gender Equality and Family provides 4,833,000 won per month for each registered victim as a cash and medical benefit. Since the 1990s, victims of Japanese military sexual slavery have filed several lawsuits against Japan in its courts but those lawsuits were rejected on the basis of statutes of limitations and other arguments. In 2015, an agreement between Japan and the Republic of Korea declared the issue to be resolved finally and irreversibly and stipulated that Japan would provide 1 billion yen to the Government of the Republic of Korea as financial support for the victims, although not as reparation, and that the latter Government would establish the Reconciliation and Healing Foundation to distribute the funds among victims. United Nations human rights mechanisms raised concerns about the agreement's lack of compliance with international human rights standards and called for victims' views to be considered.³ The Committee against Torture expressed concern that the agreement failed to provide redress and reparation, including compensation and the means for as full a rehabilitation as possible, or to ensure the right to truth and assurances of non-repetition. Out of the 47 victims alive at the time of the agreement, 35 received money from the Foundation as did 65 out of 100 deceased victims' families.⁴ In 2016, victims and bereaved families filed two compensation lawsuits against Japan in courts of the Republic of Korea. The Constitutional Court of the Republic of Korea ruled in 2019 that the 2015 agreement was not a legally binding treaty but rather a political agreement, in view of its procedures, form and content. The Seoul Central District Court ruled in 2021 that the Government of Japan should provide reparations to the Japanese military "comfort women" victims. However, in a second related case, the same Court supported the 2015 Republic of Korea-Japan agreement and rejected the case, citing State immunity.

35. Reparation for victims of forced mobilization has been regulated by several norms, most recently by the special act on verification and support for the victims of forced mobilization under the Japanese occupation (2010). The Government of the Republic of Korea has paid 659.2 billion won⁵ in compensation to victims of forced mobilization during the Japanese occupation who reside abroad, including medical expenses. Support under the special act on assistance to Sakhalin Koreans is limited to first generation Sakhalin Koreans who permanently returned to and settled in the Republic of Korea and who are nationals of that country. The act stipulates that the State shall make every diplomatic effort for the remedy of damage suffered by Sakhalin Koreans. The Government has initiated projects to repatriate remains to the Republic of Korea, facilitate the return of victims, facilitate visits from relatives and restore the victims' honour. Victims of forced mobilization during Japanese imperial rule have filed multiple lawsuits against the Government of Japan and Japanese corporations since the 1990s. However, they have ended in the plaintiffs' defeat. In 2018, the Supreme Court of the Republic of Korea ruled in a case brought by victims of forced labour against the Nippon Steel Corporation and Mitsubishi Heavy Industries in Japan that the companies must pay compensation to each plaintiff. The verdict marked the first time that a court in the Republic of Korea had legally recognized the victims of forced labour. In July 2022, when the plaintiffs' compensation judgments were due to be paid, the Government

³ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=20326>; and <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=20262>. See also [CAT/C/KOR/CO/3-5](#), paras. 47 and 48; [CEDAW/C/KOR/CO/8](#), para 27; and [CEDAW/C/JPN/CO/7-8](#), paras. 28 and 29.

⁴ Information provided by the Government of the Republic of Korea.

⁵ *Ibid.*

of the Republic of Korea filed an amicus brief with the Supreme Court, which led to the non-enforcement of payment. On 6 March 2023, the Republic of Korea announced that it would instead pay the plaintiffs as a third-party reimbursement through a public foundation funded by donations from private-sector companies in the Republic of Korea that had benefited from the treaty between the Republic of Korea and Japan signed in 1965. Japanese companies would not be expected to make payments to the foundation but would not be prohibited from doing so. Some victims fervently criticized the initiative, noting that it did not include contributions from Japanese companies, including those ordered by courts in the Republic of Korea to pay reparations, that it afforded immunity from legal liability to Japanese firms, that it did not require an apology from Japan and that the measure lacked consent from some victims. The Chair of the National Human Rights Commission raised similar concerns. The Government informed the Special Rapporteur about the consultations between the representatives of civil society organizations, including victims, and the Government and reported that two-thirds of the victims had accepted the payment.

36. The evaluation commission for compensation and support for North Korean abduction victims was established under the act on compensation and support for post-war abductees after the conclusion of the Military Armistice Agreement, providing allowances to abductees who had been in the Democratic People's Republic of Korea for more than three years or compensation to their families. The act excludes those who were punished for violating the National Security Act; thus, most victims of the abducted and returned fishers cases were not paid compensation for damages under the law. However, in May 2023, the Office of the Supreme Prosecutor announced that it would initiate an ex officio retrial and related reparation procedures for 100 abducted and returned fishers convicted under the Anti-Communist Law and the Fisheries Act. Victims can and have received compensation pursuant to individual claims against the State, for which legal aid was not provided. The Government informed the Special Rapporteur that victims had received 1.773 million won in the form of a resettlement and housing fund and that, since 2012, it had endeavoured to assist victims to socially integrate by providing tailored life-care services.

37. With regard to the Jeju 4.3 massacre, compensation has been granted through individual lawsuits. Pursuant to the amendments to the special act on the investigation of the truth of the Jeju 4.3 incident and the restoration of the victims' honour, in 2022, 90 million won is now awarded for the deceased and the missing and 90 million won or less to sentenced inmates and to persons suffering from after-effects. Victims could apply to receive reparation starting in June 2022 and can apply until May 2025. The Government reported that 181 billion won had been devoted to this task in 2022. The amendment also foresees the provision of psychosocial support for victims and bereaved families and the correction of public records to restore the honour of the victims. However, bereaved families cannot benefit from the latter. The special act on the Yeosu-Suncheon incident established the grounds for providing support for medical and living expenses to victims.

38. The legal framework does not foresee the payment of reparations to Korean war victims. Compensation to numerous victims of civilian massacres has been afforded individually through State compensation lawsuits. Statutes of limitation and insufficient evidence have been the main grounds for rejected claims. The reparation sums granted to victims have ranged broadly, from 80 million to 200 million won. To address such shortcomings, the Truth and Reconciliation Commission has recommended the enactment of a special reparation law for the families of Korean war victims, the establishment of public memorial projects for victims of all civilian massacres and a foundation tasked with the rectification of the historical record and the exclusion of statutes of limitations for State reparation claims for victims of State violence.

39. The Government reported that victims of the Daejeon Golryeonggol civilian massacre during the Korean war had received 80 million won, spouses of victims had received 40 million won, parents and children had received 8 million won and siblings had received 4 million won. The families endured long and expensive legal procedures. Those who submitted claims later than three years after the Commission's decision were not compensated due to the application of the statute of limitations. The families who could not file lawsuits did not receive compensation.

40. The Government has provided cash compensation to victims of the Gwangju uprising and their families and has offered additional support, such as medical insurance, home loans and education and employment assistance. Between 1990 and 2015, 5,807 victims received 43.2 million won per person in compensation, for a total amount of 251,119 million won.

41. The legal framework does not provide for reparations to victims of intercountry adoptions. The National Center for the Rights of the Child provides social services, psychosocial care and support on searching for biological families to adoptees whose adoptions were dissolved or who were deported for lack of citizenship.

42. No special law has been enacted regarding compensation for victims of forced conscription, greening projects or purification operations. Some victims have received insufficient compensation on the basis of the act on the honour restoration of and compensation to persons relating to democracy movements. Thus, victims are currently compensated through individual State compensation lawsuits.

43. No specific law has been enacted to provide reparations to victims of internment camps and institutions, such as the Seosan Gaechokdan Camp (Pioneer Group). In 2019, the Busan Metropolitan Council enacted the ordinance on the restoration of honour and support for the victims of the Brothers' Home incident in Busan Metropolitan City. The Government reported that Gyeonggi Province had enacted the ordinance to support the victims of the Gyeonggi Seongam Academy incident, which provides for medical assistance to victims for a maximum of 5 million won annually and operates the outreach counselling room healing project for victims.

44. The deliberation committee for the restoration of honour and compensation of victims of the Samcheong Concentration Camp (2004–2015) awarded reparations. However, the scope of the victims was limited to those whose death or injuries were proven, the period for application was only 10 months, the amount of compensation was low and psychosocial support was not provided. Tort claims against the Government have been dismissed on the grounds of the expiration of the statute of limitations.

45. Victims of the emergency measures under President Park who were acquitted on retrial have filed compensation lawsuits against the State. However, the court had established a high standard of proof for victims to prove the perpetrators' misconduct and dismissed the lawsuits accordingly. It has also dismissed lawsuits on the basis of statutes of limitation and those in which it considered that the relevant emergency measures were not tortious governance acts and has dismissed State liability claims brought by victims who had received compensation, albeit insufficient, under the democracy movement legislation. It has also imposed monetary limits on the Government's liability for compensation. After the visit of the Special Rapporteur, the Supreme Court modified its precedent and ruled that the issuance of emergency measures and the related actions constituted illegal acts. It recognized State liability for compensation and considered the date of its judgment the starting point for the application of the statute of limitations.

46. Selective compensation through the commission for the restoration of honour and compensation to democracy movement activists or through tort claims against the State has been provided to victims of suspicious deaths.

47. As reviewed above, the application of statutes of limitations and the high standard of proof placed upon victims despite the time elapsed since the violations occurred have had a detrimental impact on the effectiveness of victims' claims before the courts. An amendment to the framework act on settling past incidents for truth and reconciliation has been proposed to the National Assembly to eliminate the statute of limitations for compensation claims against the State and facilitate compensation processes through a compensation deliberation committee. To resolve the inconsistencies in reparations granted through the courts and speed up the resolution of the cases, the Ministry of Justice, in 2018, established a range of compensation fees and a fast-track procedure for past State violence cases that forecloses State appeals when compensation granted by courts fits within that range. Regarding standards of proof, the Government informed the Special Rapporteur that reports of the Truth and Reconciliation Commission are generally considered to be strong evidence in civil compensation cases against the State.

48. The provision of rehabilitation and medical subsidies to victims is inconsistent and is provided only in some cases and on a limited scale. In December 2021, the Government enacted the act on the establishment and operation of the national State violence trauma healing centre. Although it is a much-welcomed initiative, it has serious shortcomings, as it leaves out victims who suffered harm before 1945. The construction of the centre is expected to be completed in December 2023. A trauma healing project has been active since 2017.

49. An act on persons of democratic merit, originally proposed by bereaved families and that includes reparation and memorialization measures for victims, has been pending approval for a long time before the Assembly.

50. The Special Rapporteur takes note of the legal measures adopted to provide reparation to some of the victims of the numerous serious human rights violations committed during the past century and the reparations received by others through legal claims against the State. However, he is concerned about the lack of a comprehensive legal framework and a concomitant administrative programme to provide full, prompt and effective reparation to all categories of victims of serious human rights violations, which should encompass measures of compensation, rehabilitation, restitution and satisfaction. He is also concerned about the application of statutes of limitations for reparation claims for such violations, the high standard of proof placed upon victims who file claims against the State, the collection of fees from victims whose claims have been unsuccessful and the insufficient access to psychosocial services for all victims.

51. A number of apologies have been issued by various bodies since 1998.

52. The President of the Republic of Korea issued a public apology at the fifty-eighth anniversary of the Jeju 4.3 massacre commemoration ceremony, in 2006, while the Minister of National Defense and the Commissioner General of the Korean National Police Agency apologized publicly at the seventy-third anniversary commemoration ceremony. The Prime Minister apologized to the victims and bereaved families of the Yeosu-Suncheon massacre in 2022.

53. The Minister of National Defense expressed condolences to Korean war victims and commanders read out his apology. In 2008, the President sent a video message to a memorial service for the victims of the Ulsan Bodo League massacre and officially apologized to all those who were killed or damaged by the wrongdoings of the past State power structures and to the bereaved families. In 2010, the Commissioner of the National Police Agency apologized at the memorial service and truth-finding rite for the Chungnam Bodo League massacre victims.

54. Four former Presidents of the Republic of Korea participated in the official anniversary ceremony of the Gwangju Uprising, consoled victims and issued an official apology to the bereaved. The military leaders responsible for the human rights violations did not apologize. The Minister of National Defense officially apologized to the victims three times, in 2018 and 2020.

55. In 2018, the Public Prosecutor General apologized to victims of the Brothers' Home but no official apology has been made at the national level. There is no record of a public apology from the Government to the victims of the Seosan Gaechokdan Camp (Pioneer Group), despite the recommendation of the second Truth and Reconciliation Commission.

56. In 1998, the President of the Republic invited intercountry adoptees to the Blue House, the former presidential palace, and apologized for the situation in which the State could not protect children subject to protection and had to send them overseas for adoption. The Minister of Health and Welfare expressed regret at a victims' gathering in 2004.

57. Apologies have been offered by the Heads of the Office of the Prosecutor and the National Intelligence Service for some incidents of human rights abuses. However, the apologies were limited in scope and content. Certain judges have also offered personal apologies in the context of retrial cases, but they did not constitute institutional apologies.

58. The Special Rapporteur takes note of the aforementioned instances of apologies from officials, but highlights that they were limited to certain categories of victims and that most did not fully comply with the requirements of content, scope, format, publicity, officiality

and victim consultation established under international standards,⁶ as some were presented privately, lacked publicity, were not officially recorded, were personal rather than institutional and did not entail meaningful consultation with victims.

VII. Memorialization

59. The Republic of Korea has not yet adopted comprehensive legislation or a policy to memorialize the serious human rights violations perpetrated during the twentieth century and the harm suffered by victims. However, several ad hoc initiatives have been adopted throughout the years.

60. In 2004, with regard to the victims of military sexual slavery under the imperial rule of Japan, the Ministry of Gender Equality and Family set up a database and a cyber museum on its website. The Government also established a national monument at the National Mang-Hyang Cemetery. In 2012, the War and Women's Human Rights Museum was established in Seoul. In 2018, the Ministry designated 14 August as a national memorial day for "comfort women" victims and has hosted yearly commemorative events since then.

61. With regard to forced mobilization during the imperial rule of Japan, the National Memorial Service for the Victims of Forced Mobilization has been held annually since 2016. The Foundation for Victims of Forced Mobilization by Imperial Japan runs the National Memorial Museum of Forced Mobilization under Japanese Occupation in Busan and is in charge of memorial ceremonies. Memorial towers and monuments have been built in Sakhalin and memorial ceremonies are held every year. Public remembrance and memorialization measures for Sakhalin Koreans are reportedly insufficient.

62. The Jeju 4.3 Peace Park and Peace Foundation were established in 2008. In 2014, 3 April was designated as a national day of remembrance and commemorative ceremonies are held yearly at the park. A joint commemoration ceremony for the victims of the Yeosu-Suncheon massacre is held every 19 October.

63. Regarding the violations and massacres committed during the Korean war, several local governments have enacted ordinances that allow them to build memorial facilities, collect data and testimonies, prepare publications and support memorial services in cooperation with bereaved families. The Government of the Republic of Korea informed the Special Rapporteur that it supports the budget for memorial services and sites. The joint memorial service for the Daejeon Golryeonggol civilian massacre victims is held annually on 27 June. Sannae Peace Park, a national commemoration and reconciliation site for Korean war victims, is under construction in Daejeon, at the Golryeonggol massacre site, and is expected to be completed in 2024. It is crucial that victims and civil society organizations be meaningfully consulted and actively participate in the planning, design and execution process. Civil society organizations jointly with government authorities excavated the site on which the memorial will stand and exhumed the remains of over 1,000 victims. The Geochang Massacre Memorial Park was completed in 2004, pursuant to the special law on the restoration of the honour of persons involved in the Geochang incident. A memorial park for the victims of the Sancheong-Hamyang massacre was established in Sancheong in 2008. The No Gun Ri Peace Park, commemorating the victims of the massacre in No Gun Ri, and a nearby cemetery for the victims opened in 2011.

64. In relation to the democracy movement, the Special Rapporteur took note of the establishment of the Democracy and Human Rights Memorial Hall in Seoul, the Korea Democracy Movement Memorial Park in Icheon, the Democracy Park in Busan, the Daegu 28 February Democratic Uprising Memorial Tower, the Daejeon 8 March Democratic Uprising Memorial Hall and the Changwon Democracy Memorial Hall. Concerning the Gwangju uprising, in particular, in 1997, the Government designated 18 May as a national day of remembrance and built the 18 May National Cemetery. An annual commemorative ceremony is held at the cemetery, attended by high-ranking officials. Gwangju Metropolitan City established the 18 May Archives in 2015 to preserve the records of the uprising, some of which had been listed in the Memory of the World Register of the United Nations

⁶ See A/74/147.

Educational, Scientific and Cultural Organization. The 18 May Memorial Park and the 18 May Freedom Park have also been erected in Gwangju. The Special Rapporteur visited several memorials in the city of Gwangju and sites that he considers should become memorial sites, such as the former Gwangju Prison. He commends the efforts of city authorities to memorialize the violations committed at the prison.

65. In 2005, the Government designated 11 May as National Adoption Day to promote a sound adoption culture and domestic adoptions and has hosted yearly events.

66. No national-level commemorative ceremony, memorials, archives or education activities exist for the victims of forced conscription, greening projects or purification operations. No national-level commemoration ceremony or facility exists for the returned fishers from the Democratic People's Republic of Korea who were victims of forged spy cases. Recent ordinances enacted by local governments, including in Gangwon Province and in Sokcho-si, promote projects to increase social awareness and education in relation to those violations. No public measures have been taken to memorialize the victims of the emergency measures enacted under President Park or the victims of suspicious death.

67. Public records are managed and preserved in accordance with the Public Records Management Act. There are no specific norms regulating the management of records of human rights violations, even considering their specific nature and sensitivity and the access-related needs of victims and the public.

68. The Special Rapporteur takes note of the numerous initiatives taken by the Government to commemorate the victims of human rights violations committed in the Republic of Korea in the twentieth century but considers that a comprehensive approach in this field is lacking and that it would be beneficial to ensure that all violations are officially and adequately memorialized in full consultation with the victims.

VIII. Guarantees of non-recurrence

69. Since the 1990s, the Republic of Korea has embarked upon a solid process of democratization. From a transitional justice perspective, the adoption of constitutional, legal and institutional reforms aimed at consolidating the rule of law, the establishment of a national human rights institution, the ratification of international human rights instruments and engagement with the international human rights framework are commendable achievements.

70. In sections III to VI of the present report, the Special Rapporteur reviewed the legal framework adopted since the country transitioned to democracy to address some of the human rights violations committed in previous years. Despite these commendable legislative efforts, some of the laws that caused serious human rights abuses in the past and continue to stifle civic action have not been adequately revised or repealed. After the Truth and Reconciliation Commission confirmed that punishment for violating the emergency measures constituted a serious human rights violation, the Supreme Court annulled measures No. 1, No. 4 and No. 9 as unconstitutional and the Constitutional Court ruled that measures No. 1, No. 2 and No. 9 were unconstitutional. Conversely, the National Security Act, which was adopted in 1948 and has been at the centre of many human rights abuses in the past, remains in force, despite the recommendations of numerous international human rights mechanisms. The vaguely worded clauses of the Act continue to be used against people and organizations who are peacefully exercising their rights to freedom of expression, opinion and association.⁷

71. At the international level, the country has ratified most of the international human rights instruments, except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Special Rapporteur welcomes the accession of the Republic of Korea to the International Convention for the Protection of All Persons from Enforced Disappearance, in January 2023. A proposal to ratify the latter is currently before the National Assembly. The Constitution recognizes that treaties duly

⁷ See <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa250062012en.pdf>.

concluded and promulgated and generally recognized rules of international law have the same effect as domestic laws. Nonetheless, domestic courts reportedly consider international human rights law as reference material rather than norms with substantive effect. The general comments and concluding observations of the United Nations treaty bodies are not considered as having legally binding effect in the procedures of the Constitutional Court and ordinary courts. The Republic of Korea has ratified the Rome Statute of the International Criminal Court and adopted harmonizing legislation.

72. Insufficient efforts have been devoted to reforming the military and security sector institutions (police and intelligence services) involved in past serious human rights violations, to vet the officials involved in past abuses and to guarantee civilian oversight of the sector with a view to effectively preventing the recurrence of past violations. The Human Rights Committee has noted the lack of an independent mechanism to investigate allegations of torture by the police, the large number of cases of abuse in the military and the small number of such cases that are recorded and lead to indictment.⁸ The Committee against Torture has noted cases of the excessive use of force by law enforcement officials, including against peaceful protestors, a high number of suicides and sudden deaths in custody and cases of abuse and death in the military without accountability.⁹ Penalties have been established under the National Security Act and the Assembly and Demonstration Act to sanction abuse of authority and interference with lawful assembly and demonstrations, respectively. A comprehensive review of the Assembly and Demonstration Act to bring it fully into line with international standards and the repeal of the National Security Act are pending. On a positive note, the Government informed the Special Rapporteur that the police had abolished the Information and Public Affairs Division and suspended activities that in the past had entailed illegal surveillance and torture practices. In December 2020, revisions were made to the National Intelligence Service Act to restrict the Service's authority to conduct criminal investigations into violations of the National Security Act. However, the Act still allows the National Intelligence Service to collect, compile and distribute information on those crimes.¹⁰

73. The special committee on cases of past human rights violations by the prosecution (2017–2019) conducted a fact-finding investigation on the subject and adopted a report with recommendations to prevent the recurrence of such violations.

74. The Special Rapporteur was informed that government officials from the security, judicial and other sectors, whose involvement in serious human rights violations had been confirmed, had remained in office and retained State awards. Since 2018, the State awards conferred on perpetrators of human rights violations in the forged spy cases and the Brothers' Home and 18 May democracy movement cases have been revoked, but their identities remain undisclosed. He was further informed of the insufficiency of the training and awareness-raising campaigns addressed to public officials in the legislative, judicial and administrative branches to educate them about the unlawful acts facilitated by State emergency powers in the past and the means to prevent their recurrence. Continuous training on human rights is provided within the justice sector.

75. Considering the abuses related to mandatory military service committed in the context of forced conscription, the greening projects and the purification operations, civil society organizations have recommended the restructuring of the Military Service Act to replace the mandatory conscription system with a recruitment system. The Special Rapporteur is not aware of official initiatives in this regard.

76. Civil society organizations have also demanded the reform or total abolition of military courts, as they have been accused of lacking independence and impartiality and of being unfit for purpose in peacetime. While the Military High Court has been abolished and some crimes under military court jurisdiction, including crimes of sexual violence, have been transferred to civil courts, military courts remain in force.

77. Since 2004, the bereaved families of suspicious death victims and other groups have demanded the enactment of an act on the qualification and duties of forensic officers for

⁸ See [CCPR/C/KOR/CO/4](#).

⁹ See [CAT/C/KOR/CO/3-5](#).

¹⁰ See <https://www.hrw.org/news/2020/12/22/south-korea-revise-intelligence-act-amendments>.

examination to improve forensic capacities and procedures relating to the investigation of suspicious death cases, but no legislation has yet been enacted.

78. The status of internment camps or institutions, such as the Brothers' Home, where serious human rights abuses were committed against persons labelled as "vagabonds", remains a challenge. Although the Social Protection Act, which allowed their illegal detention without a warrant, has been abolished, supplementary provisions remain in force. As a result, the institutions installed at that time are reportedly still operating and many of the victims are still interned in those and other newly created institutions. In 2021, the Government prepared a deinstitutionalization road map for residential institutions for persons with disabilities, but it does not include homeless shelters or psychosocial care institutions implicated in past State violence.

79. Certain measures have been adopted to strengthen State responsibility for preventing the adverse effects of private intercountry adoptions. The Government has implemented reforms to restrict the discretion of private companies in adoption processes, conducts biannual audits and imposes administrative sanctions on adoption agencies that have omitted to create or have destroyed adoption records. The Special Adoption Act was amended in 2012 to require court authorization for intercountry adoption. In 2012, the National Center for the Rights of the Child conducted a survey on transnational adoption to identify the approximate number of adoptees without citizenship.

IX. Conclusions

80. **The Republic of Korea saw numerous, varied and at times massive human rights violations during its turbulent twentieth century. Most of those violations were left unaddressed for decades while the country continued to struggle with conflict and authoritarianism. When democratic consolidation offered the opportunity to redress the longstanding grievances of victims and society's longing for healing and reconciliation, the new democratic Government was faced with numerous challenges and demands from a vast number of victims. Addressing these has been a colossal task that requires sustained effort and political will. The Government has adopted several measures to respond to the numerous transitional justice challenges it has faced. However, due to political ambivalence, the measures have not been embedded in a comprehensive approach that could adequately and sustainably redress those demands.**

81. **The Special Rapporteur commends the progress made in consolidating the rule of law and democratic governance, adopting a legal framework to address the serious human rights violations committed in the past and establishing truth-seeking and memorialization processes. However, such efforts must be strengthened to ensure that all violations and the suffering of all victims are comprehensively investigated, acknowledged, commemorated and redressed. While compensation has been offered to limited categories of victims, albeit mainly as a result of tort claims filed by the victims, and psychosocial rehabilitation services and measures to restore victims' honour are being scaled up, numerous challenges persist in the field of reparation, such as the application of statutes of limitations to victims' compensation claims and the lack of a comprehensive reparations process that ensures full reparation, including restitution, compensation, satisfaction and rehabilitation, to all categories of victims.**

82. **The Special Rapporteur is concerned about the absence of criminal accountability for the perpetrators of past serious human rights violations and the insufficient progress made to reform the normative framework that led to past State violence and to improve the capacities and procedures of the institutions involved in such violations. He remains at the full disposal of the Government to provide technical assistance to move forward on the path initiated to account for and prevent the recurrence of past abuses.**

83. **The Special Rapporteur commends the victims' associations, civil society organizations and public institutions that have worked to unveil the scale and scope of the violations suffered by Korean society and to provide acknowledgment to the victims, thus helping to restore their dignity. The sheer number of atrocities and of persons**

affected by them makes this work titanic, but also – and above all – vital for healing and reconciliation. The Special Rapporteur would like to urge the relevant authorities to continue unabated – or to embark on, where necessary – the urgent task of seeking comprehensive truth, establishing responsibilities and providing full reparation for past abuses. Not one tragedy nor one victim should continue to be unrecognized and unaddressed.

84. The situation of victims of serious violations of human rights and humanitarian law committed with the direct or indirect involvement of third countries requires urgent resolution and the joint efforts of all concerned parties. The authorities in the Republic of Korea must proactively engage with their counterparts in the relevant countries to ensure that progress is made to provide truth, redress and reparations to victims, placing them at the centre of all negotiations and decisions affecting them. Measures have been adopted by the Government of Korea to assist the victims of imperial Japan. However, the bilateral negotiations with Japan on the issues have lacked a human rights approach that effectively advances victims' rights to redress and reparation and, in some cases, such as the 2015 agreement and the implications of the 2013 amicus brief, have resulted in the curtailment of those rights. Unless the victims are prioritized in bilateral negotiations, redress will remain unattainable for them. Efforts to advance the rights of victims of enforced disappearance and displacement in the Democratic People's Republic of Korea through bilateral negotiations undoubtedly have been complex but also, according to victims, insufficiently prioritized. State commitment in this regard must be scaled up.

85. The Special Rapporteur would like to conclude by recalling the advanced age of most Korean victims and the need to provide them with effective responses that fulfil their demands and restore their honour. The Government should spare no effort to urgently accomplish this pressing task.

X. Recommendations

A. Recommendations addressed to the Government

86. The Special Rapporteur recommends that the State party:

(a) Harmonize national legislation and incorporate into national legislation all international human rights treaties ratified by the Republic of Korea, in particular by amending the Criminal Code to include a definition of torture that is fully compliant with international norms and codifying torture as an independent crime;

(b) Sustain and strengthen official initiatives aimed at establishing the truth and collecting data and testimonies on all past human rights violations, adopt a gender perspective and victim-centred approach to these processes, ensure that information about all violations are comprehensively and duly considered, acknowledged and recorded for present and future generations, guarantee the preservation of and public access to the information gathered and support the related efforts of civil society organizations;

(c) Extend the tenure of the second Truth Commission with an open-ended mandate to allow it to address the full scale of human rights violations under its purview;

(d) Adopt the measures necessary to ensure the disclosure of the classified records of past human right violations, including those contained in the archives of the National Intelligence Service, the National Police Agency, the Armed Forces, the Ministry of the Interior and Safety and the Ministry of Defense, and grant unrestricted access to those records to relevant truth-seeking entities without delay;

(e) Establish a repository of records of past serious human rights violations and consider enacting legislation for the management and use of records;

- (f) **Adopt the administrative and legislative measures necessary to guarantee victims access to records of human rights violations without restriction or associated fees, including the records of the National Archives of the Republic of Korea and prosecutorial offices;**
- (g) **Establish an accountability process or prosecutorial strategy to ensure the criminal investigation, prosecution and sanctioning of perpetrators of serious human rights violations;**
- (h) **Adopt the legislative measures necessary to ensure that no serious human rights violations are subject to statutes of limitations;**
- (i) **Adopt the measures necessary to ensure that tort claims against the State for past State violence are not subject to statutes of limitations, implement procedures to provide remedies to victims whose claims have been dismissed on such grounds and halt the collection of fees from victims whose claims have been unsuccessful;**
- (j) **Adopt legislative or other measures to implement a shift in policies regarding the burden of proof of damage in tort claims against the State in cases of past State violence, given the extended passage of time since the violations took place and the information made available by truth-seeking commissions;**
- (k) **Sustain and, where necessary, expand efforts to facilitate the retrial of persons wrongly convicted as a result of emergency measures, other repressive measures or the abuse of State power;**
- (l) **Ensure that all victims of past State violence and their direct families have access to legal aid to litigate their cases, including for retrials and tort claims against the State;**
- (m) **Ensure that individual laws relating to past State violence comprehensively define the full spectrum of victims affected by violations covered under those laws;**
- (n) **Adopt a comprehensive legal and administrative framework to provide full, prompt and effective reparation, including measures of compensation, rehabilitation, restitution and satisfaction, to all categories of victims of serious human rights violations, with clearly defined criteria for determining the status of victims and setting out the specific rights and entitlements guaranteed to them, and ensure that registration procedures are clearly communicated and accessible to all victims, have a low threshold for evidence of victimhood and are not time-bound;**
- (o) **Provide psychosocial services to victims of human rights violations and ensure that psychosocial services provided by the national State violence trauma treatment centre are available across the country and open to all victims, including those who suffered harm before 1945;**
- (p) **Present official public apologies to all categories of victims in full consultation with them regarding the content, scope and format of the apology and publicly record the apologies in order to restore the victims' honour;**
- (q) **Adopt the measures necessary to comprehensively memorialize past serious human rights violations in full consultation with and with the effective participation of victims in their design and implementation, ensure adequate signage for and the preservation of sites of mass human rights violations and support the memorialization efforts of victims and their families;**
- (r) **Adopt policies in the fields of education, culture and the media to provide society with pluralistic, comprehensive and accurate accounts of past violations and foster an enabling environment in which all members of society can freely and respectfully engage on these topics;**
- (s) **Adopt the measures necessary to ensure that the legal and procedural framework regulating the security and military institutions involved in past human rights violations are in full compliance with international standards, ensure**

independent civilian oversight of such institutions and conduct investigations into allegations of abuse and violence in them;

(t) Take specific steps to repeal the National Security Law or amend it to bring it into line with international standards and review the Assembly and Demonstration Act and the National Intelligence Service Act to bring them into line with international standards;

(u) Conduct a comprehensive vetting process of the human rights background of all officials serving in the military, security, judicial, prosecutorial and other public sectors;

(v) Ensure that adequate judicial or administrative sanctions are imposed on State officials who have been proven in court to have committed wrongful or illegal acts and disclose the relevant information to the public;

(w) Provide continuous training for all public officials on human rights and historical memory, including on the State's responsibility for the serious human rights violations of the past;

(x) Abolish the supplementary provisions of the Social Protection Act that are still in force, adopt a comprehensive deinstitutionalization policy that is in line with international standards and consider extending the deinstitutionalization road map of 2021 for residential institutions for persons with disabilities to psychosocial care facilities and facilities for homeless people;

(y) Ensure that victims and civil society organizations actively participate in the design and implementation of all aspects of transitional justice processes, including for truth, justice, reparation, memorialization and guarantees of non-recurrence;

(z) Revise the agreement of 28 December 2015 between Japan and the Republic of Korea to ensure that the surviving victims of military sexual slavery during the Second World War have access to truth, justice, reparation, including satisfaction, and guarantees of non-recurrence, in line with international standards;

(aa) Proactively engage the authorities of third countries involved in serious violations of human rights and humanitarian law against Korean victims to ensure that they adopt the measures necessary, within their respective responsibilities, to realize the victims' right to truth, justice and reparation and ensure that victims are meaningfully consulted in all negotiations and decisions that affect them.

B. Recommendations addressed to the international community

87. The Special Rapporteur recommends that the authorities of third countries involved in serious violations of human rights and humanitarian law against Korean victims, including the Democratic People's Republic of Korea, Japan, the Russian Federation and the United States, adopt the measures necessary, within their respective responsibilities, to provide truth, including full access to national records and archives, justice and reparation, including acknowledgement and apology, to victims and to place them at the centre of all negotiations and decisions affecting them.