

2912

THE KOREA TIMES QUESTIONNAIRE

JEJU FORUM

31 MAY 2017 - 2 JUNE 2017

Michael Kirby

# *THE KOREA TIMES QUESTIONNAIRE*

*JEJU FORUM  
31 MAY 2017 - 2 JUNE 2017*

Michael Kirby\*

1. *Kindly share what you are going to discuss at the Jeju Forum session on “Why they suffer; a reality report on North Korea’s human rights.”*

Between May 2013 – March 2014, I chaired the UN Commission of Inquiry (COI) on human rights in North Korea. The three member panel conducted its investigations transparently, carefully and impartially. I felt no hostility to North Korea. My background was as a judge of Australia’s highest court. My duty was to give an accurate, reasonable and readable account of the grave wrongs committed by officials of North Korea towards their own people and, in the policies of abduction, involving nationals of South Korea, Japan and other countries. Because about 30,000 refugees from North Korea have sought refuge in South Korea, we had an abundance of evidence. The COI was refused access to North Korea, in breach of that country’s duties as a member of the United Nations. It rejected the findings of the COI. But it refused to allow the COI or anyone else to enter the country and check our conclusions. The testimony of our witnesses was filmed, is online, available to people everywhere to reach their own conclusions.

---

\* Chair of the [UN](#) Human Rights Council’s Commission of Inquiry on Human Rights Violations in [the](#) Democratic People’s Republic of Korea (DPRK) (North Korea) (2013-14).

However, it is not available in North Korea where access to the internet is restricted to the elite.

The COI's mandate addressed nine areas of complaint. These included: Violations of the right to food; violations in prison and detention camps; torture and inhumane treatment; arbitrary arrest and detention; discrimination on the basis of gender, assigned social class and other grounds; severe restrictions on freedom of expression; proliferation of public executions and other violations of the right to life; severe restrictions on internal and overseas movement; and enforced disappearances and abductions.

On all of these grounds the COI found strong evidence of human rights abuses, many amounting to 'crimes against humanity' that demand an international response.

North Korea could not defeat the investigation by refusing to cooperate. One or two witnesses who came before us may have exaggerated particular aspects of their testimony. Yet overwhelmingly, the evidence was believable and often corroborated. If North Korea challenges the COI report, it has the solution in its own hands: to open its borders to inspection by UN or other investigators and by the international media. Its refusal to allow this amounts to an admission of shocking and virtually unparalleled human rights conditions within that country. Its self-imposed isolation is not only an acknowledgement of its terrible human rights record. It is also fatal to the achievement of real economic progress to improve the lives of its people, as has happened in South Korea. It tries to prohibit the entry of DVDs of soap operas from South Korea because, in the background of these dramas can be seen the

cars, electronic and other goods, clothing and services of a successful economy that contrast with the poverty and control in North Korea.

Overwhelmingly, the UN Human Rights Council (HRC), General Assembly (GA) and even the Security Council (SC) voted against the stance of North Korea. But in the Security Council the practical progress on the 'crimes against humanity', by referring North Korea and its leaders to the International Criminal Court, have been frustrated by a threat by a Chinese or Russian veto, available to those countries under the *UN Charter*.

I do not pretend to be an expert in military or security matters. But I am an expert in international law. Where a country fails to respond to strong evidence and findings of 'crimes against humanity', it is the duty of the other members of the United Nations to step in and provide for accountability by those responsible. North Korea will not be able indefinitely to frustrate its obligation to answer the findings in the UN COI report. Whatever else happens in relation to security concerns, which are very real and also affect human rights, the world must not turn away from its obligation to uphold the human rights of the people of North Korea. And other human rights of-in neighbouring countries which have suffered from its policies. That is the simple message of the COI report that I bring to the Jeju Forum.

*2. How do you think your experience as a former UN Commission of Inquiry on Human rights in North Korea will help raising awareness better towards human rights violations in the Kim Jong-un regime at the Jeju Forum?*

The current security concerns of the Korean Peninsula are real and grave. Potentially, they endanger both Korean nations, the region and the planet. They are therefore a legitimate focus for urgent attention. It is natural that the UN and its member states should be focused specifically on the security and military risks.

However, the state of human rights in North Korea is a major *cause* of potential security risks. These include the risks of accidents, mistakes and the breakdown of civil order in the absence of effective institutions, responsive to the people. If there are no human rights, there is no long-term security. My experience in receiving, analysing and then presenting the conclusions of the COI on the true state of conditions in North Korea equips, and compels, me to report these dangerous circumstances to South Korea and the world.

For a UN report, the COI analysis in North Korea's abuses of human rights is readable and simply expressed. It is available online: <http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx>. The report should be re-published in popular format so it might be ~~purchased~~ read worldwide. The people of the world have a right to know the dangers presented by a nuclear armed state that disrespects the rights of its own people. Especially as it is run by an absolute hereditary monarchy, claiming largely uncontrolled power shared with unelected elites gathered around the Kim dynasty.

3. *What is your thought on possible re-opening of the Gaeseong Industrial Complex and Mount Geumgang resort in North Korea?*

Re-opening these facilities is basically a matter of detail for the Government of South Korea. There ~~are~~were human rights abuses in these facilities in that (like the export of forced North Korean labour in the Gulf States and elsewhere) the rights of workers ~~are~~were not properly protected. Most of their income ~~is~~was channelled to the North Korean regime. It would seem sensible if such facilities were reopened to secure in return assurances that profits earned will not ploughed back into dangerous armaments that threaten the safety and fundamental human rights of the people of South Korea. I accept that some outreach and reopening of peaceful links ~~and~~, person to person between the two Koreas is desirable. It was recommended by the COI in its report. Just to reopen the facilities in North Korea without any benefit or assurance in return would amount to a football 'own goal'. Re-opening should be part of a wider accommodation that includes steps for accountability ~~towards~~for 'crimes against humanity' as established in the COI report.

4. *Do you think resuming social and cultural cooperation with North Korea on top of joining international pressure on Pyongyang with help improve human rights in the Kim Jong-un regime?*

Some guidance on this question may possibly be derived from the earlier case of the two German States. Like North and South Korea, they were a legacy of the Second World War entrenched by the cold war policies of the victorious Allied powers. The division of Korea was not decided by an exercise of the right of self-determination, guaranteed to the peoples of Korea under international law. There appear to be possible analogies to be studied between the initiatives of Chancellor Willy Brandt, the Social Democrat Chancellor of West Germany from 1969-1974. Until then, any country that had diplomatic relations with

East Germany (DDR) would not be recognised by West Germany. Willy Brandt changed that. He went to Poland. He reopened diplomatic relations and recognised the Oder-Neiße boundary agreed by East Germany as binding on West Germany. There followed reopening of links between German museums and some professional organisations. The COI in its report on North Korea urged immediate improvement of personal contacts between families; humanitarian outreach between the two Koreas; and links between sporting and other bodies. In Germany, the new *Ostpolitik* began the long process that, with many other developments finally led to German reunification in 1990. Whilst continuing to insist on accountability for ‘crimes against humanity’, the COI urged improving links between the people on both sides of the Korean DMZ. There is no reason why dentists, for example, in North and South Korea should not exchange professional links and expertise. Lawyers and politicians may follow some time later.

*5. Kindly share your thoughts on Seoul’s archive on Pyongyang’s human rights. What are possible ways for South Korea and the UN to jointly capitalise on the archive to raise awareness toward North Korean human rights?*

A positive development to come out of the COI report was the establishment by the United Nations of a new ‘field office’ in Seoul. This continues to gather evidence from those who have suffered human rights abuses and who escaped from North Korea. A similar archive was earlier built up in Cambodia. Not only is an archive part of the history of the Korean people (who will be eventually reunified). It is also essential to providing accountability for the time when, in due course, a prosecutor and a tribunal are established for that purpose, or Korean

courts become available to ensure that there is no impunity against such serious crimes. The testimony of witnesses should be prepared in the archive in a format suitable for subsequent use in appropriate prosecutions.

No one should assume that the losses of life, liberty and human happiness recorded in the COI report will go unanswered. This is what the Nazi leaders presumed during their days of power. But they ended up in the dock at Nuremburg. There were also countless prosecutions before national courts in Germany, Poland and also in the Pacific Islands. I am confident that, one day, prosecutions and truth commissions will demand a response to the findings recorded in the COI report on North Korea. Anyone who thinks this is unrealistic has failed to learn the lessons of recent history. People nowadays demand accountability for great wrongs. The COI report is full of findings about such wrongs, told in a restrained factual way by the evidence of brave Koreans who came forward demanding ~~on~~ a response.

To secure peace and remove existential nuclear dangers in Korea politicians may make compromises and 'deals'. But international law repeatedly demands that there must be no impunity for crimes against humanity. That is why the archive of complaints of such crimes (and also other human rights violations) must be built up, preserved, duly publicised and acted upon.

*6. Kindly share your future plans to help improving North Korean human rights.*



My mandate as chair of the UN COI on North Korea concluded in mid-2014. However, there is a deep worldwide concern and insistence that human rights in North Korea should be restored, with effective accountability for cases of serious wrongdoing. Whilst always respecting the ongoing mandate of the new UN Special Rapporteur on Human Rights Abuses by [North Korea], Tomas Quintana, I have remained engaged (as have the other members of the COI) in conferences, broadcasts, university events and media engagements in drawing the COI findings to notice.

Sitting in the COI and listening to the testimony of witnesses reminded me of the horrors recounted in the trials that happened after WWII. The bodies of emaciated detainees in detention camps, left out after their overnight deaths and later reduced to ashes and used as fertiliser. The forced drowning of new born babies arriving back in North Korea from China. The tears of parents in Japan whose school age daughter was abducted on her way home from badminton practice. The South Korean wife whose husband was seized in the last days of the Korean War and who begged only to have a chance to affirm her love for him, impossible in the chaos of his seizure, disappearance and restoration of the harsh divide imposed by the DMZ.

Human rights are about human stories. In the case of North Korea and the COI, the stories are without 'any parallel in the contemporary world'. These are the stories of Korean people. They must not be forgotten. There must be accountability. Be you ever so high, the law is still above you. A president of South Korea has recently learnt that lesson. In principle, why should it be any different in the case of North Korea?