

PROPOSALS FOR THE SPECIAL RAPPOREUR
ON THE SITUATION OF HUMAN RIGHTS IN THE
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

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Proposals for Action

(1) *Dissemination of COI report:* The COI report is a powerful and readable document. It needs to be more widely known and available. Its text is accessible on the internet.¹ However, the internet is not generally accessible in North Korea. The changes in the condition of human rights that have occurred in North Korea since the report was presented to the HRC in 2014 are minimal. The report still substantially states the human rights situation in that country as it is today. Unless the report is widely available for a general readership and reflection, the power of the findings and impact of the conclusions of the report are undesirably diminished.

The HRC should consider the republication of the report of the COI in accessible hard copy format. The Secretary-General and the High Commissioner for Human Rights might be willing to write a foreword and/or an introduction, including a brief update based on the reports of the SR and other reliable sources. Other events, concurrent with the

* The authors were the members of the UN Commission of Inquiry on Human Rights Violations in the Democratic People's Republic of Korea (2013-14).

¹ <https://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx>

2021 session of the HRC, should be considered to remind the international community, in and beyond the UN, of the findings, conclusions and recommendations of the COI.

The COI report is readable partly because of the inclusion on most of its pages of extracts from the testimony of witnesses addressing their experiences with the mandate topics. Renewed attempts should be made to secure publication of the report by the private sector; but if not, by the UN itself. Republication should include photographs, images and extend to cartoon drawings made by prisoners of their conditions and punishment in detention, reproduced in the COI report as delivered. Under the terms of the Universal Postal Union, pursuant to the *Bern Treaty* 1874, North Korea should be held to its obligations to distribute copies of the COI report widely in North Korea where sent by post – including to educational institutions and institutions of government. Desirably, reliable translations into the Korean language should be prepared and widely distributed. They should be offered for sale in South Korea and elsewhere.

Without altering the substance of the COI report, we would hold ourselves ready to cooperate with such a publishing project, if so desired. North Korea is a member of the Universal Postal Union and should be reminded of its obligations as such. The UNODC office in South Korea should provide opportunities to provide knowledge about the report and human rights education concerning the findings of the COI report.

(2) *Funding the Seoul office:* The upcoming March 2021 HRC session should also recommend the provision of enhanced resources to the OHCHR Seoul office and to the Office of the High Commissioner for Human Rights in Geneva. Only this will ensure that they continue creating the database/repository of evidence, the latter maintained on a secure and confidential server in Geneva. The Seoul office should also pursue closer cooperation with authorities in ROK and explore OHCHR's ability to build individual case files on cases involving suspected international crimes, including crimes against humanity. We emphasise the importance of South Korea's continuing to host, and cooperate with, the OHCHR Seoul office. In effect, the work of the UN Seoul office is the minimum that must be undertaken by the United Nations so that testimony of human rights offences and crimes against humanity is not lost or forgotten. And so that this dark chapter in the history of the Korean people is preserved and archived.

(3) *Security Council meetings:* We express our strong support for the revival and continuation of regular, Security Council meetings to review denuclearisation on the part of North Korea and accountability for human rights. North Korea has repeatedly expressed its assertion that the promotion of human rights is an "obstacle to peace". This is a self-fulfilling assertion by a totalitarian state that should not be accepted. There should be no trading away of accountability for human rights abuses as a supposed price to be paid for negotiations with North Korea about its expanding nuclear weapons and missile delivery systems. The interrelationship of international security and universal human rights is recognised in the preambular principles of the UN

Charter itself. It is really self-evident. Those who live in a bubble of arrogance and unaccountability are prone to fall victim to their own propaganda. This will not be said by those who are bound by the ordinary conventions of diplomacy. However, plain speaking is required by those who report on such serious human rights violations and crimes against humanity. It is important that the virus of arrogance should not infect the United Nations or its institutions and member countries. The promise by the UNGA to respond to human rights offences such as are identified in the COI report that rise to the level of 'crimes against humanity' is one that the United Nations must fulfil if the integrity of the *Charter* and UN and the obligations of treaty and other law are to be maintained and global safety secured.

(4) *Independent expert or panel*: The HRC Council should consider asking for the appointment of an independent expert or panel to bring up to date the recommendations made by the COI in its report. Such an expert or panel could work in cooperation with the SR on North Korea; but independently of him. It would be timely for a review of the COI's recommendations to be conducted precisely for the purpose of bringing the findings up to date. The HRC should, by resolution, require the cooperation of North Korea with such an expert or panel. The person(s) chosen should exhibit manifest independence and impartiality. They should monitor progress in North Korea, including in any areas of improvement and in all areas of backtracking and deterioration. The latter should extend to the examination of the impact of Government rules and regulations in North Korea for the control of, and response to, the COVID-19 pandemic in that country.

IMMEDIATE ROADMAP

In addition to the foregoing broader agenda for follow up the COI report, the following particular points should be included in the immediate agenda of those working on the challenges for human rights in North Korea:

(1) *Accountability and its meaning:* The High Commissioner for Human Rights may be expected shortly to present her second written report to the HRC on efforts to promote accountability in North Korea. The questions of ‘accountability’ and what the reaction of the international community to the findings of the COI and subsequent follow up should be, once again need to be addressed by the HRC.² The HRC should revive the sense of shock and deep concern that accompanied the publication of the COI report in 2014. An attitude of hopelessness or incapacity must be overcome. It must be replaced with the determination to protect the victims of human rights abuses in North Korea – particularly from the consequences of crimes against humanity.

(2) *Reasonable grounds for findings:* It may also be expected that, in the High Commissioner’s upcoming report, she will again highlight the analysis of the situation in North Korea conducted by her own office. We hope and expect that she will confirm, as the COI concluded, that reasonable grounds exist for the making of factual determinations on

² General Assembly, Human Rights Council, Report of the Group of Independent Experts on Accountability Pursuant to Council Resolution 31/18. A/HRC/14/66.Add1. (26 February 2017) esp at 15 ff [51]-[63].

individual cases, incidents and patterns of state conduct set out in the COI report. And that these will establish both human rights violations and crimes against humanity³. We have confidence that a proper analysis will renew the finding that crimes against humanity have been committed and are ongoing in North Korea. Such a conclusion would inevitably lead to a renewed demand, as made by the COI, that those responsible for past and ongoing human rights abuses and crimes against humanity should be held accountable. Nothing less would be acceptable given the strength of the recorded testimony and the failure of North Korea, although it has had plenty of opportunity nearly 7 years, to demonstrate the contrary or even to raise a reasonable doubt about the COI's detailed findings.

(3) *Means for institutional redress:* Although the COI report concluded, and illustrated, the gravity, scale and nature of North Korea's violations, without parallel, and called for urgent action by the international community, the truth is that very little action has actually been taken in the intervening 7 years. The international community must find its voice on this issue. It must speak with special clarity if the promise of the *Charter* and of the UDHR are to mean anything for the people of North Korea. They put their faith in the United Nations. Participants from their community, who had escaped, came forward and spoke to the COI, in the hope and belief that the international community would respond. A fair review of their testimony contained in the report and in the public hearings available online, confirms the

³ COI report, 16-17 [67]-[76].

reliability and justice of the COI's conclusions. The High Commissioner and the HRC should heed the voices of those who have spoken to the United Nations through the public hearings of the COI. This was not an inquiry that was carried out in secret, behind closed doors. The world is watching to see how the UN responds. It must not betray the people of North Korea.

(4) *Institutional accountability*: A lasting peace on the Korean Peninsula can be achieved only if the violations found in the COI report are acknowledged, addressed and terminated. The rights of victims to truth, justice, reparations and guarantees of non-recurrence must be fulfilled. To fulfil these aims, the prosecution of alleged international crimes remains a high priority. Primarily such redress should happen through referral of the situation of North Korea to a prosecutor of the ICC. If that cannot be done, a new ad hoc and specialised tribunal of the UN should be established by the General Assembly. Alternatively, another mechanism or other initiatives should be undertaken, as discussed in the COI report.⁴ Inaction and abject surrender to violence and ill-tempered tantrums of North Korea should not be an option.

(5) *Accountability beyond international institutions*: Absent any present prospect for a referral of the case of North Korea to a prosecutor of the ICC or for consideration of the setting up of an ad hoc UN tribunal or other institutional remedy, we would encourage legal practitioners, prosecutorial bodies, civil society organisations with expertise and UN

⁴ COI report, 359-363 [1195]-[1203]. See also Independent Experts on Accountability Report, A/HRC/14/66 Add 1 at 15-17 [51]-[63].

member states to work with OHCHR and with victims and their representatives, including escapees from North Korea, to examine any novel legal approaches that can be enlisted to achieve accountability. These might allow the exercise by victims of their rights of access to national courts, so that the victims' rights to redress and remedy can at last be realised, including by the possible invocation, where allowed by law, of universal jurisdiction. So far, the only substantial redress that the victims of North Korea's crimes have received has been that of giving testimony in public before the COI. It is time that their redress should go beyond words, formal reports and fine declarations. This is what crimes against humanity demand. If it is denied in one case, we are all diminished. None of us is then safe.

Other voices will be heard concerning the response of the global community to the indicated crimes of North Korea. When global institutions fail, necessity demands that universal jurisdiction and other means should be accepted so that the clear steady voice of universal human rights can again be heard and seen to secure a proportionate response.