

Committee for Human Rights in North Korea

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January 10, 2021

His Excellency Tomás Ojea Quintana
Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (DPRK)

Dear Mr. Quintana,

Thank you for your invitation to answer two questions on progress in accountability for human rights violations in the DPRK, aimed to inform your upcoming March 2021 report to the 46th Human Rights Council session.

The Committee for Human Rights in North Korea (HRNK) is the leading US-based bipartisan, non-governmental organization in the field of North Korean human rights research and advocacy. Since our inception in 2001, HRNK has published 47 reports, investigating the DPRK's vast system of imprisonment, including political prison camps as well as vulnerable groups, especially women, children, and people in detention. HRNK has held UN consultative status since April 2018. Ever since, we have been proactively representing civil society in the UN process. By participating in the Universal Periodic Review, by organizing online and in-person international conferences and seminars and meetings with Permanent Missions, UN agencies and offices in Geneva, New York City, and Seoul, HRNK has been disseminating the findings and recommendations put forth in our reports.

All HRNK reports and report summaries are available on our website:
<https://hrnk.org/publications/hrnk-publications.php>.

We are honored to share our views relating to the two questions you pose to stakeholders.

- 1. What progress and limitations do you see on accountability issues in the Democratic People's Republic of Korea seven years after the COI report, and how do you envisage the way forward?**

On Progress:

The establishment of the OHCHR Office in Seoul, in June 2015 was the direct result of a recommendation made by the COI. For five and a half years, the Seoul Office has played an important role in the documentation process aimed to inform future accountability processes. While executing its mission, the Seoul Office has extensively interacted with CSOs based in the Republic of Korea and other countries, including HRNK.

Since the February 2014 UN COI report, annual resolutions on the human rights situation in the DPRK of both HRC and UNGA have included language condemning the "long-standing

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and ongoing systematic, widespread and gross violations of human rights” committed in the DPRK, including those violations that, according to the COI, amount to crimes against humanity. UNGA resolutions have encouraged the UNSC to “continue its consideration of the relevant conclusions and recommendations of the commission of inquiry and take appropriate action to ensure accountability,” including referral of the human rights situation in the DPRK to the ICC. UNGA resolutions also recommended to the UNSC to consider targeted sanctions against those deemed most responsible for acts the COI found to amount to crimes against humanity.

The UNSC held an Arria Formula Meeting on human rights in the DPRK in April 2014. Subsequently, the UNSC took up the human rights situation in the DPRK as a formal agenda item in December 2014, 2015, 2016 and 2017. That outcome has not been replicated in 2018, 2019 or 2020.

Building on the COI report, HRC and UNGA resolutions on human rights in the DPRK and the UNSC taking up the issue as a formal agenda item have maintained pressure on the DPRK, kept the issue in focus and galvanized civil society worldwide.

On Limitations:

The perennial obstacle to efforts to address human rights and accountability in North Korea is that political, security, and military issues end up outcompeting and sidelining human rights.

UNSC referral of DPRK crimes against humanity to the ICC is unlikely, due to almost certain opposition by one, if not two P5 members.

On the Way Forward:

HRC and UNGA resolutions on the human rights situation in the DPRK must continue to include strong language on both DPRK crimes against humanity and the need for accountability, including ICC referral.

UNSC failure to take up DPRK human rights as a formal agenda item for three years in a row has given the impression of withdrawal from the high ground the UN and the international community once held on this issue. Moreover, this “withdrawal” roughly coincided with several rounds of US and ROK “summit diplomacy” with the DPRK, giving the impression that human rights was sidelined for the sake of addressing nuclear weapons and ballistic missiles. We would welcome it as a very positive development if the UNSC resumed taking up DPRK human rights as a formal agenda item.

UNSC resolutions establishing a DPRK sanctions regime have aimed to prevent the development and proliferation of nuclear weapons and ballistic missiles. UNSC resolutions have never comprised a human rights-based rationale.

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There is a need for UNSC resolutions to address DPRK crimes against humanity and other severe human rights violations, although that would be possible only while turning the DPRK human rights issue into a substantive, rather than procedural issue, subject to a potential P5 member veto.

Despite the seemingly insurmountable obstacle of a potential P5 veto, seeking UNSC referral of the DPRK to the ICC will continue to pressure the DPRK to consider addressing and improving its human rights situation.

Given the difficulty of the ICC referral route, UN member states could consider alternative accountability mechanisms, with the support of CSOs worldwide.

Although not necessarily within the mandate of the UN Special Rapporteur or within the scope of his reporting to the HRC, the role of CSOs, in particular CSOs holding consultative status with ECOSOC, could be emphasized. Under circumstances where the UN's accountability efforts appear to have somehow stagnated, CSOs can strive to maintain the COI's momentum.

One such example would be a documentation project HRNK is carrying out in collaboration with the International Bar Association (IBA). Once international travel is again possible, HRNK and IBA will conduct a hearing/mock trial in Seoul, based on the joint documentation project, and involving most respected international jurists and judges.

2. What are your views on the approach that should be taken to ensure that the obligation to respect human rights in the Democratic People's Republic of Korea, including on accountability measures and ending impunity, and the need for the establishment of peace on the Korean Peninsula are fulfilled?

Peace and human rights can never be mutually exclusive. "Saving succeeding generations from the scourge of war" and "reaffirming faith in fundamental human rights" are enshrined together in the Preamble to the UN Charter. The Korean Peninsula is no exception.

Nuclear weapons, ballistic missiles, and military tensions aside, human rights and human security are closely intertwined. Efforts must be undertaken to persuade the DPRK that neither humanitarian, nor development assistance can be divorced from human rights.

The COI recommended that "the United Nations Secretariat and agencies should urgently adopt and implement a common 'Rights up Front' strategy to ensure that all engagement with the Democratic People's Republic of Korea effectively takes into account, and addresses, human rights concerns," including those concerns collected in the COI report.

As emphasized by the COI, the adoption of a "Rights up Front" approach would help prevent "the recurrence or continuation of crimes against humanity" in the DPRK.

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A Human Rights up Front (HRuF) approach to disbursing humanitarian assistance to the DPRK continues to be imperative. There are certainly extraordinary difficulties facing UN humanitarian agencies involved in the DPRK, in particular pertaining to access. COVID-19-related restrictions in the DPRK have exacerbated such difficulties. With only a couple of UN international workers left in-country, conducting humanitarian operations is nearly impossible.

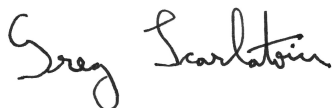
Nevertheless, the situation created by COVID restrictions in the DPRK may provide the opportunity of a reset in the disbursement of humanitarian assistance by UN agencies. Such a reset may include the fundamental building blocks of an actual HRuF strategy, beginning with requesting access to the most vulnerable groups affected by precarious health care, water and sanitation and hygiene as well as natural disasters, including women, children, and people in detention.

The path to peace on the Korean Peninsula would hit a dead end in the absence of measures to prevent the recurrence of crimes against humanity in the DPRK. UN agencies and UN member states must seek access to detention facilities in the DPRK, in particular to political prison camps, whose existence the DPRK denies, despite thorough documentation via satellite imagery and escapee testimony. Recognizing the UN Special Rapporteur and allowing Mr. Quintana unconditional and unfettered access inside the country would help initiate a human rights-centered trust-building process with the DPRK.

As emphasized by HRNK author David Hawk in an upcoming report, UN accountability mechanisms—applying international criminal law to the DPRK—have constituted the sole approach which has led the DPRK to make some changes to its human rights policies, however small or insignificant. For example, after the COI report, the DPRK responded with a shift in its UPR policy, “accepting” and “rejecting” recommendations for the first time. Naturally, such moves could be purely tactical, and their importance should not be exaggerated.

Ultimately, peace on the Korean Peninsula would be peace between Koreans living in the South and in the North, including both victims and perpetrators. In order to prepare for peace on the Korean peninsula, the documentation process by the Seoul Office must continue. To end impunity, while engagement aimed at peace process on the Korean peninsula may continue, efforts at the HRC, UNGA, and possibly the UNSC must not relent.

Respectfully submitted,



Greg Scarlatoiu
Executive Director

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