

 **Korea Future
Initiative**

7th January 2021

Dear Mr. Tomás Ojea Quintana,

We write in response to the progress and challenges of the accountability agenda for serious human rights violations in North Korea, including crimes against humanity, seven years after the release of the report of the United Nations Commission of Inquiry on human rights in North Korea.

Korea Future Initiative is a non-profit charitable organisation whose mission is to equip governments and international organisations, particularly those who actively seek justice and accountability, with authoritative human rights information that support strategies to effect tangible and positive change in North Korea.

To this end, in October 2020 we reported patterns of documented religious freedom violations perpetrated against North Korean citizens.¹ Based on 117 interviews conducted by our investigators with survivors, witnesses, and perpetrators, we identified 273 victims of religious freedom violations in North Korea. Of those documented victims, 215 had adhered to Christianity and 56 had adhered to shamanism. Their ages ranged from 3-years old to over 80-years old. Women and girls accounted for nearly 60-percent of documented victims.

¹ Korea Future Initiative, 2020. Persecuting Faith: Documenting religious freedom violations in North Korea. Available at: https://static1.squarespace.com/static/5dc1aed040fe330ac04da331/t/5fa21696f982403f01aa5f36/1604458198105/Persecuting_Faith_Eng.pdf

Victims were arrested simply for realising their inalienable, universal, and fundamental right to which they were inherently entitled, namely the right to freedom of religion or belief. Experiencing a multitude of human rights violations – including arbitrary arrest and detention; imprisonment; refoulement; torture and cruel, inhuman, and degrading treatment; sexual violence; arbitrary execution; and unfair trials – documented victims committed ‘crimes’ and ‘misconduct’ that included acts guaranteed under international law, such as religious manifestation; possessing religious items; contact with religious persons; attending places of worship; and sharing religious beliefs.

During our investigation, investigators documented 54 individual perpetrators of religious freedom violations. The names of 34 of those perpetrators were retained by investigators, alongside additional identifying information including ranks, geolocations, physical descriptions, and their associated organisations. Organisations were documented to include North Korea’s Ministry of State Security, Ministry of People’s Security, Border Security Command, Korean People’s Army, and the Workers’ Party of Korea. Persons and facilities governed by China’s Ministry of Public Security were also identified.

In total, 85 sites of documented religious freedom violations were located by interviewees. Facilities included government offices, penal facilities, sites of executions, and sites of public trials operated by the governments of North Korea and China. Based on received information, investigators documented 76 victims who are known or believed to remain in North Korea’s penal system.

Patterns of documented human rights violations spanned the years 1990-2019 and revealed that a significant number of victims had experienced similar forms of extreme violence. In each documented case, the religious adherence or religious association of the victim was not deemed incidental to the documented violations. It was considered by investigators to be fundamental.

Our findings suggest that repudiating violence in North Korea is not nearly enough to prevent further atrocities. If international human rights law is to be upheld and the fundamental rights of North Korean citizens are to be guaranteed for future generations, we must look to emerging tools of accountability and justice that have developed since the publication of the Commission of Inquiry.

Where does peace fit into this agenda? In his remarks to the 2014 High-Level Forum on the Culture of Peace, former United Nations Secretary General, Ban Ki-moon, told delegates, “We know that peace cannot be decreed solely through treaties – it must be nurtured through the dignity, rights, and capacities of every man and woman”.

This dignity and rights are predicated on equity and the common principle that every human is born free and equal. If a peaceful existence is to be enjoyed by North Korean citizens, then one means to that end must include accountability. No society may achieve reconciliation when persons guilty of mass crimes remain unaccountable (cases from Germany to Rwanda and the former Yugoslavia serve as important examples). And where legally binding international law has been violated, and where evidence exists to demonstrate that legal persons, including high-ranking public officials, were responsible through joint criminal enterprise or command responsibility, the international community remains duty-bound to uphold international law.

Though the realisation of accountability for alleged perpetrators who reside in North Korea remains challenging, a focus on what is possible and achievable today, rather on what is not possible or may become possible tomorrow, is a prudent approach.

The passing of landmark human rights legislation in the United States in 2012, namely the Magnitsky Act, serves as a functional example for how the international community can combat impunity for perpetrators of human

rights violations and promote accountability where reach may otherwise be limited. The passing of similar legislation in the United Kingdom and the European Union has signalled a growing commitment to disrupt and hold perpetrators of serious human rights violations to account.

Prior to the establishment of the Nuremberg Trials, Justice Robert Jackson, Chief of Counsel for Prosecution of Axis Criminality, was tasked with planning measures to hold known Nazi perpetrators of crimes to account. In his remarks, Justice Jackson considered accountability measures that could end impunity for persons who had committed severe crimes:

“What shall we do with them? We could, of course, set them at large without a hearing. But it has cost unmeasured thousands of American lives to beat and bind these men. To free them without a trial would mock the dead and make cynics of the living. On the other hand, we could execute or otherwise punish them without a hearing. But indiscriminating executions or punishments without definite findings of guilt, fairly arrived at, would violate pledges repeatedly given, and would not set easily on the American conscience or be remembered by our children with pride. The only other course is to determine the innocence or guilt of the accused after a hearing as dispassionate as the times and the horrors we deal with will permit, and upon a record that will leave our reasons and motives clear”.

From Justice Jackson’s work, the Nuremberg Trials came into being. Today, it is likely impractical to expect an ad-hoc tribunal for North Korea or a referral to the International Criminal Court at the Security Council to emerge in the short-term. Instead, it is likely that targeted human rights sanctions against persons who are documented to have presided over severe human rights violations may deliver justice for North Korean victims today.

Human rights sanctions target individual persons and organisations who are established to have perpetrated acts that violate international human rights law. These individual sanctions have no effect beyond the person or

organisation they target. They are not applied broadly to a population, and in that respect may command a higher moral authority among those who oppose broader sanctions regimes.

Three state-led sanctions regimes currently exist that may hold North Korea's human rights violators to account and point to successes in accountability and the realisation of good intentions. We expect that a renewed focus on targeted human rights sanctions for North Korea would enjoy similar widespread support in the international community and among international society.

Our recommendations are:

1. Institute training for civil society organisations in best practices for documentation of physical and digital evidence, including chain of evidence, as it relates to international human rights sanctions regimes. Increased capacities and knowledge among civil society organisations can enable higher standards of documentation and reporting that may lead directly to strong sanctions recommendations.
2. Explore means within the United Nations system, based on Article 41 of Chapter VII of the United Nations Charter, whereby future human rights sanctions could be imposed on individuals, organisations, or the North Korean state where responsibility for mass human rights violations is established.
3. Establish dialogue and create an informal working group between states who have passed or seek to pass human rights sanctions legislation and civil society organisations who possess the capacity to submit necessary information to those states.

Sincerely,

Suyeon Yoo, Director of Human Rights Investigations.

Hae Ju Kang, Director of Human Rights and Gender.