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Crisis in North Korea

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I. Background

The Democratic People’s Republic of Korea (DPRK), also known as North Korea, is unparalleled in its isolation from the outside world. The autocratic and (nominally) communist North Korean government is headed by Kim Jong-un, who took over the [dynastic](#) position of “Supreme Leader” from his late father Kim Jong-Il in December 2011. Much [in the fashion](#)

of his grandfather Kim Il-Sun, DPRK's deified founding father and 46-year leader, Kim Jong-un relies heavily on a [cult of personality](#) to consolidate his power.

Under the one-party system, life in DPRK is characterized by remarkably tight state control over the flow of people, information and goods inside the country. Citizens are systematically subject to state coercion and [propaganda](#). To maintain its rigid system of social control, the DPRK regime has one of the world's largest standing [armies](#), and [militarism](#) pervades everyday life. North Korean authorities are also equipped with the institutions and infrastructure to enforce allegiance and punish dissent. [Satellite images](#) from Amnesty International and recorded [testimony](#) from survivors who have escaped the country indicate that a significant percentage of the population lives inside large prison camps. Sometimes entire families are sent to these [gulag](#)-style camps on [charges](#) that a family member has escaped the country. Such principles of collective punishment and reward—enshrined in DPRK's [constitution](#)—are deeply entrenched in the country's social structure.

II. Human Rights and the DPRK Regime

Uncovering the human impact of DPRK state policies has been a challenging affair. Due to repressive and secretive North Korean state policy, accurate information on North Korea is limited and often acquired at [great risk](#). News about the internal North Korea situation emerges periodically in the form of testimony from people who have [defected](#). Such testimony formed the basis of a 2012 FIDH [report](#) on the death penalty in DPRK. In the report FIDH [laments](#) the finding that “in many cases, the distinction between capital punishment and extra-judicial, summary or arbitrary executions is extremely blurry.”

Still very much alive in the collective memory of North Koreans is the great famine of mid-1990s, referred to in DPRK as the “[Arduous March](#)” in which approximately [1 million](#) people are estimated to have perished. Not only was regime humanitarian assistance inadequately and inefficiently managed, then-Supreme Leader Kim Jong-il directly [obstructed](#) the delivery of humanitarian aid to many of the hungriest regions up until 1997. The regime also [punished](#) those who tried to earn, buy, steal or smuggle in enough food necessary for their survival, while continuing to divert large sums to [build up](#) its nuclear capacity even though much of its population was starving.

Violations of human rights and humanitarian law by the DPRK regime have extended beyond North Korean borders. DPRK is responsible for the decades-long practice of abducting and disappearing foreign nationals. South Korea alone [claims](#) that about 500 of its citizens—mostly fishermen—have been abducted by DPRK. There is also a long history of North Korean abductions of [Japanese](#) nationals. DPRK has [admitted](#) to the crime, saying that several of the abductions were performed as part of spy training efforts.

Over the years, troubling accounts of DPRK violations have resulted in repeated calls from UN members and institutions to examine and address the human rights situation in the country. The General Assembly of the United Nations has since 2003 annually [adopted a resolution](#) condemning the country's human rights record. By comparison, [until recently](#) the Security Council has been almost exclusively [focused](#) on North Korea's nuclear ambitions. On 9 November 2012, the UN's Third Committee [requested](#) that the Secretary-General submit a comprehensive report on the situation in DPRK. Then, in 2013, the UN Human Rights Council (HRC) did something unprecedented: it [created](#) a commission of inquiry (COI) to investigate human rights violation allegations in North Korea.

The UN High Commissioner for Human Rights at the time, Navi Pillay, played a very important role in bringing about the establishment of the Commission. Earlier that year, on 14 January 2013, she issued a [statement](#) in which she reminded the international community of the “rampant” human rights abuses in the country, warning that they may amount to crimes against humanity and calling for a full-fledged international investigation into those crimes. Human Rights Watch [notes](#) that the establishment of the Commission of Inquiry also marked an important shift in states’ attitudes, signaling that they would no longer tolerate the systematic human rights abuses in the DPRK. The commission released a [report](#) in March 2014, which remains unmatched in the scope of its investigation.

III. The Commission of Inquiry on Human Rights in the DPRK (Kirby Commission)

On 21 March 2013, at its 22nd session, the United Nations Human Rights Council (HRC) [established](#) a Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea. HRC [Resolution 22/13](#) mandated the body to investigate allegations of systematic, widespread and grave violations of human rights in the DPRK, “with a view to ensuring full accountability, in particular, for violations that may amount to crimes against humanity.” On 7 May 2013, [Michael Kirby](#) (Australia) and [Sonja Biserko](#) (Serbia) joined the Special Rapporteur on the situation of human rights in DPRK, [Marzuki Darusman](#) (Indonesia), to form the COI on human rights in DPRK.

The [language](#) of the COI mandate signals a different approach towards Human Rights violations in DPRK. The COI was to investigate systematic, widespread and grave violations of human rights in the DPRK, particularly vigilant to potential crimes against humanity. Violations to be investigated, among others, included violations associated with prison camps, torture and inhuman treatment, arbitrary detention; discrimination; violations of freedom of expression, violations of the right to life, violations of freedom of movement.

On 10 May 2013, the DPRK mission in Geneva [informed](#) the President of the Human Rights Council that it “totally and categorically rejects the commission of inquiry.”, signalling their non-cooperation in regard to any of the commission’s requests. North Korean authorities repeatedly ignored requests for access to the country and did not attend public hearings that

they were invited to.

COI methodology relied largely on the testimony of over 80 witnesses and survivors, provided through [public hearings](#) that the commission says were “transparent and observed due process.” [Excerpts](#) of some testimonies are available online. The COI and its secretariat conducted more than 240 confidential interviews with victims and other witnesses. In addition to the testimonies of individuals, the commission conducted official [visits](#) to the Republic of Korea, Japan, Thailand, the United Kingdom of Great Britain and Northern Ireland, and the United States. China, however, did not grant [access](#) to the COI. The commission engaged with a number of United Nations entities (particularly the Office of the United Nations High Commissioner for Human Rights) and other humanitarian actors, including “invaluable support” from a number of non-governmental organizations that document human rights violations in the DPRK.

A major investigative challenge for COI investigations was the [fear of reprisals](#) by witnesses. Many witnesses were afraid to testify, even confidentially, because they feared for the safety of family members and “assumed that their conduct was still being clandestinely monitored by the authorities.” North Korean state organizations sent out [threats](#) to those participating in the Human Rights investigation. “Anyone who challenges our dignity and social system and agrees to go ahead with the establishment of the office will be ruthlessly punished,” the North's Committee for the Peaceful Reunification of Korea said in a June 2014 statement [cited](#) by The Guardian.

The COI presented a 400-page [investigation](#) to the Human Rights Council in March 2014 and provided numerous oral updates on its work as it progressed.

IV. Findings of the Kirby Commission

The commission enumerates the DPRK human rights violations findings in its [main report](#) and a second more detailed [section](#)

provides extensive documentation of findings. The COI finds “systematic, widespread and gross human rights violations have been and are being committed by the Democratic People’s Republic of Korea.” Many of such violations qualify as crimes against humanity, some of which are:

extermination; murder; enslavement; torture; imprisonment; rape; forced abortions and other sexual violence; persecution on political, religious, racial and gender grounds

. The commission

finds that “crimes against humanity are ongoing in the Democratic People’s Republic of Korea because the policies, institutions and patterns of impunity that lie at their heart remain in place.” Furthermore, it outlines that “the gravity, scale and nature of these violations reveal a State that does not have any parallel in the contemporary world.”

“There is an almost complete denial of the right to freedom of thought, conscience and religion, as well as of the rights to freedom of opinion, expression, information and association,” the [COI report](#)

says, adding that “propaganda is used by the State to manufacture absolute obedience to the Supreme Leader and to incite nationalistic hatred towards some other States and their nationals.”

Individual victim testimonies documented in the [second section](#) of the report describe the treatment of political prisoners. Survivors

[describe](#)

horrific experiences of having to catch snakes and mice to feed malnourished babies, watching family members being murdered in prison camps, and seeing defenseless inmates being used for martial arts practice.

The report notes that there are many similarities between Stalin’s gulags and the camps in DPRK, even [saying](#) that “many features of the DPRK camps are even harsher than what could be found in the Gulag camps.” The report—as well as Michael Kirby in his public comments—finds

[parallels](#) between DPRK atrocities and atrocities committed during the Nazi era. Kirby estimates that between

[80,000 and 120,000](#)

North Koreans live in prison camps.

Supporting documents of the report include

[satellite images](#)

of suspected prison camps and

[illustrations](#)

of the torture practices drawn by a survivor.

V. International Failure to Protect and the Question of Accountability

Based on the extensive and shocking findings of the report, the commission concluded that DPRK atrocities are an indication of the failure of the international community to respond to the serious crimes committed in the country. “The fact that the Democratic People’s Republic of Korea...has for decades pursued policies involving crimes that shock the conscience of humanity raises questions about the inadequacy of the response of the international community,” the COI [report states](#) . Most notably, the report [acknowledged](#) the “responsibility to protect” principle by highlighting the DPRK’s failure to uphold its obligations under the norm and stating that the international community has a responsibility to protect the people of North Korea. “The international community must accept its responsibility to protect the people of the Democratic People’s Republic of Korea from crimes against humanity, because the Government of the DPRK has manifestly failed to do so.”

Given the numerous crimes against humanity documented in the investigation, the commission recommends the referral of the DPRK case to the International Criminal Court (ICC). The case for ICC referral is laid out in a separate media outreach [document](#) released by the commission. The issue of an ICC referral was echoed in a [May 2014 report](#) commissioned by the human rights group Human Liberty and compiled by law firm Hogan Lovells . The report supports the findings and recommendations of the Kirby Commission, and even adds that the nature of North Korean crimes “may amount to [genocide](#) .”

Along the same vein as the COI report, and appeals made by [Human Rights Watch](#) , Human Liberty recommends further action by the UN Security Council, including additional sanctions and ICC investigation. Human Liberty makes the case that an alternative to an ICC investigation is the prosecution of individual perpetrators by the international community for violations of international customary law. The report states that the prohibition of crimes against humanity has the status of *jus cogens* (a peremptory norm that applies to the entire international community), so perpetrators can be held accountable by the international community even though the DPRK has not included crimes against humanity in its domestic legal code and is not a party to the Rome Statute. Despite the findings of the commission of inquiry and international calls to end North Korean impunity, it seems [unlikely](#)

for now that the UN will be able to refer the situation in North Korea to the International Criminal Court. This is due to the fact that doing so would require a referral by the UN Security Council.

In order for the ICC to exercise jurisdiction over perpetrators of crimes against humanity in the DPRK, the UN Security Council must refer the case to the court because DPRK is not a State party to the Rome Statute

. China, an ally of North Korea, would likely veto the decision.

In a

[draft resolution](#)

from 9 October 2014, the EU and Japan urged the Security Council to refer the situation in the DPRK to the

[ICC](#)

, following the Commission of Inquiry's report. The resolution also pushes for targeted sanctions against those responsible for the crimes.

A welcome development for ensuring accountability for the crimes is the [announcement](#) in May 2013 that the OHCHR will establish an office in South Korea, tasked with further investigating human rights violations in the DPRK. The

[work](#)

of the office is supposed to build up on the COI report by gathering further evidence of human rights violations, which could be used against perpetrators of crimes, thus leading to increased accountability.

VI. Response to the Findings of the Commission of Inquiry

North Korean agencies and officials have responded to the UN report with vitriolic scorn. Public statements dismissed the commission's findings, and labeled the witnesses who testified as "[human scum](#)

". Attacks targeted the commissioners themselves, with a North Korean new agency issuing [homophobic insults](#)

at Michael Kirby. Kim Jong-un has not offered any public response to the commission or its findings, nor has he acknowledged the letters addressed to him by the commission.

The Chinese representative at the Human Rights Council supported the North Koreans in their

rejection of the UN report [saying](#) on 17 March 2014 that the UN report is “divorced from reality” and “highly politicized”. The Chinese official position has been that the commission’s inability to get cooperation from North Korea during the 11 month investigation period put the credibility of the report in question. China has been a [longtime supporter](#) and protector of North Korea’s government, both because they not want the DPRK territory occupied by South Korea and also because it does not want to face a North Korea refugee crisis in China. The COI report is also troublesome for China because it describes Chinese complicity in DPRK human rights abuses in the form of forced [repatriation](#) of North Korean defectors. This policy, also practiced by [Laos](#), can lead to the imprisonment or execution of the defectors once they are returned.

On 17 April 2014 the UNSC [convened](#) a special session to hear the panel’s views on what should be done in regard to the findings of the report. This marked the [first time](#) that the Security Council had taken up the question of human rights in North Korea. Although the meeting was closed to the media, the New York Times [reported](#) that diplomats and rights activists attending the meeting believed that “at least 10 of the 13 Council members who attended would be inclined to refer North Korean leaders to the International Criminal.” China and Russia abstained from the meeting.

Several countries have responded to the commission findings. The whole European Union [supported](#) the Commission of Inquiry's recommendation that the Security Council refer the case of North Korea to the ICC.

After the publication of the Commission of Inquiry's report, Botswana [broke diplomatic ties](#) with North Korea, declaring officially that it "does not want to be associated with a Government that continues to display such total disregard for the rights of its citizens."

After hearing the presentation of the report, Chile [stated](#) that the UN must ensure that those most responsible for crimes against humanity are held to account and that independent impartial investigations must be carried out to that effect.

The aforementioned Human Liberty report was [mentioned](#) at a United States House Committee on Foreign Affairs hearing on 17 June 2014. During this meeting, South Korea Human Rights Ambassador Lee Jong-hoon

[said](#)

to the committee that possible genocide applies to three groups: those designated “hostile class” within the North Korean caste system; religious people, particularly Christians; and those who are not ethnically North Korean. Lee

[says](#)

that the genocide in North Korea is carried out largely by attrition and starvation.

VII. Conclusion

As has been made abundantly clear from the Commission of Inquiry and other groups investigating the treatment of civilians in North Korea, there has seldom been a case in contemporary history in which a country, and the international community by extension, has failed so greatly in upholding its responsibility to protect civilians.

In recent developments however, the UN General Assembly [adopted](#) a non-binding resolution on the 18th December 2014, deciding to submit the report of the Commission of Inquiry to the Security Council. In this landmark measure, which was approved by a vote of 116 to 20 with 53 abstentions, the General Assembly encouraged the Council to consider relevant conclusions of the COI and to ensure accountability, requesting the Security Council consider

[referring](#)

the situation in the DPRK to the International Criminal Court as well as introduce targeted sanctions against those who are most responsible for what may constitute crimes against humanity. The resolution strongly condemns the “ongoing systematic, widespread and gross violations of human rights” and the failure to prosecute those found responsible, as well as the refusal of the DPRK to recognize the Special Rapporteur’s mandate and offer cooperation.

The resolution marks the first instance in which the General Assembly requested the Security Council to investigate a human rights situation in a country and proposed a referral to the ICC, possibly setting a precedent for future human rights abuses that amount to atrocity crimes to be closely investigated by the UN Security Council, regarding such abuses as threats to international security. Opponents argue that this creates a dangerous standard in which countries are [punished](#) instead of encouraged to cooperate. Nevertheless, the impact of the initial draft resolution, while still limited, was telling as North Korean officials

[suggested](#)

that they might consider offering an invitation to Special Rapporteur Kirby for the first time since the investigation began.

The Security Council met on the 22nd December 2014 to further [discuss](#) the matter, despite a Chinese bid to remove the briefing from the agenda—forcing the first procedural vote on an agenda item in eight years. Described by Australian Ambassador Gary Quinlan as a “[historic step](#)” for the Council, several members voiced support for the GA recommendation to the Council, which advocated the prosecution of Mr. Kim and other officials at the International Criminal Court. While such a referral remains highly unlikely, mainly due to China’s veto power, North Korea’s existence on the Council agenda implies that it can frequently reemerge for discussion. Executive director of Human Rights Watch Kenneth Roth [explains](#) that “by placing North Korea’s appalling human rights record on the agenda, the Council can now at any point take the next step of referring these crimes against humanity to the ICC”.

The human rights situation in the DPRK will be a crucial test for the Security Council. As Michael Kirby argued, if the commission report—with its findings that ten out of the eleven acts defined as crimes against humanity by the Rome Statute of the ICC have been committed—does not “trigger action by the international community, it is hard to say what will.”