

Democratic People's Republic of Korea - Very High Risk/Ongoing Atrocity Crimes

The people of the DPRK continue to suffer from abuses that, according to the report of the 2014 UN Commission of Inquiry, could amount to crimes against humanity. In his most recent report released in September 2018, the UN Special Rapporteur on the situation of human rights in DPRK, Tomás Ojea Quintana, reported that 'there have been no substantial changes in the serious human rights situation'.¹ Grave human rights violations are associated with the DPRK's extensive use of political prison camps and labour camps, as well as human trafficking, enforced disappearances and abductions, and severe restrictions on freedom of expression, movement, and access to information.

An estimated 200,000 people are held in political prison or labour camps in the DPRK without formal criminal charges or due process rights. There are credible reports that prisoners in these camps, as well as people who undergo interrogation by the Ministry of State Security, are routinely subject to torture and ill-treatment.² Recently published survivor testimonies also reveal patterns of sexual violence and abuse against women in detention, with perpetrators including high-ranking party officials, prison guards and interrogators, police officers, prosecutors, and soldiers.³ Sexual violence and abuse in detention reflects broader patterns of impunity for widespread sexual violence against women in society, which is reportedly "so common that it has come to be accepted as part of ordinary life" for DPRK women.⁴

Recent concern over widespread sexual violence against women held in detention echoes previous alarms over the treatment of women who are forcibly returned to the DPRK after crossing the border with China. As the Committee on the Elimination of Discrimination against Women observed in late 2017, women (many of whom are trafficked) who are returned to the DPRK from China face charges of 'illegal border crossing' and are reportedly sent to prisons or labour camps, where they face grave risk of further human rights violations including sexual violence.⁵ For this reason, forcible return of DPRK citizens, particularly women, should be considered as an act of refoulement.

China maintains that persons crossing into its territory are not refugees, but have entered China illegally for economic reasons.⁶ Earlier this year, China showed signs of greater flexibility on forced repatriation of DPRK citizens, and on an ad hoc basis released people from detention and allowed them to stay in China. China should be encouraged to continue such measures in the spirit of humanitarian protection. This, however, is not a sufficient or durable solution. There is an urgent need for China to adopt a formal protection policy and legal framework to protect the rights of DPRK citizens transiting through or living in China, and for China to grant the UNHCR access to areas and persons of concern.

¹ UN Document A/73/386, 'Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea', UN General Assembly, 19 September 2018, p.3, para. 2.

² Ibid., p.9, para. 25.

³ Human Rights Watch, "You Cry at Night but Don't Know Why": Sexual Violence against Women in North Korea', November 2018, available: https://www.hrw.org/sites/default/files/report_pdf/northkorea1118_web2.pdf

⁴ Human Rights Watch, 'North Korea: Sexual Violence Against Women by Officials: Impunity for Assault and Rape by Men in Power', 31 October 2018, available: <https://www.hrw.org/news/2018/10/31/north-korea-sexual-violence-against-women-officials>

⁵ CEDAW/C/PRK/CO/2-4, 'Concluding Observations on the Combined Second to Fourth Periodic Reports of the Democratic People's Republic of Korea', Committee on the Elimination of Discrimination Against Women, 17 November 2017, p.7, para. 27.

⁶ Op. Cit. UN Document A/73/386, p.12, footnote 22.

The UN continues to pursue accountability for alleged perpetrators of crimes against humanity. This year, the OHCHR field office in Seoul has established a new investigation team dedicated to monitoring and documenting human rights violations with the aim of creating a central repository of information for any future criminal proceedings. While this is a positive step in seeking truth and justice for victims, the UN's sustained attention to human rights accountability has not been matched by key world leaders. Indeed, the Special Rapporteur has continued to voice concern that US and ROK leaders have made no apparent effort to raise the dire human rights situation in their overtures to improve political relations with Pyongyang. Apart from not mentioning human rights in the statements emanating from recent high-level meetings with the DPRK, both the US and ROK have failed to fill key diplomatic posts intended to sustain a spotlight on the human rights situation. The post of Ambassador Robert King, who served in the US State Department as special envoy for North Korean human rights, has been left vacant under the Trump administration since January 2017. Similarly, Seoul has not appointed a replacement for Ambassador Lee Jung-hoon, who vacated the post of ROK's ambassador for North Korean human rights in September 2017.

Despite these trends, the recent political rapprochement between ROK and DPRK has opened some limited space to address human rights concerns outlined in the Commission of Inquiry. For the first time since 2015, in August ROK and DPRK authorities coordinated the reunion of separated families. While these reunions were limited in number, Ojea Quintana has welcomed the initiative and stressed that reuniting separated families, like resolving cases of international abductions and enforced disappearances, 'involve basic human rights and deserve our utmost solidarity'.⁷

Another potential inroad into improving the human rights situation relates to amnesty provisions for political prisoners. In June, Ojea Quintana urged Pyongyang to start releasing prisoners under a gradual general amnesty. That same month, the Korean Central News Agency reported that DPRK would "grant amnesty to those who had been convicted of the crimes against the country and people" to mark the occasion of the seventieth founding anniversary of DPRK.⁸ On 12 July, the Supreme People's Assembly issued a decree indicating that the program would commence 1 August. While this could be a positive sign, it is worth recalling that DPRK authorities have announced similar amnesties in 2015 and in 2012 (respectively, to mark the 70th anniversary of the founding of the Workers' Party, and to mark the centennial of the birth of Kim Il Sung and 70th birthday of Kim Jong Il). Pyongyang has offered very little information on how the current amnesty program has progressed, including the number of prisoners and location of their detention. If this year's amnesty program is to be considered a gesture of good faith on the part of DPRK, Pyongyang should grant the UN's request to share this information, and commit to eliminating the use of political prison and labour camps.

The dismal humanitarian situation in the DPRK is also a serious concern at present. The robust sanctions regime on the DPRK has effectively shut down the operations of many humanitarian aid agencies, despite that roughly 40% of the population is in dire need of life-sustaining assistance.⁹ Total funding for UN and NGO humanitarian aid activities in DPRK dropped from \$117.8 million in 2012 to

⁷ "Family Reunions between North and South Koreans Welcomed by UN Special Rapporteur", Press Release of UN Office of the High Commissioner for Human Rights, 20 August 2018, available:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23468&LangID=E>

⁸ Jesse Johnson, "North Korea Says it Will Grant Large-Scale Prisoner Amnesty Next Month", *Japan Times*, 16 July 2018, available: https://www.japantimes.co.jp/news/2018/07/16/asia-pacific/north-korea-says-will-grant-large-scale-prisoner-amnesty-next-month/#.W_JD6C9L3q0

⁹ Hyonhee Shin, "As Food Crisis Threatens, Humanitarian Aid for North Korea Grinds to a Halt", *Reuters*, 21 August 2018, available: <https://www.reuters.com/article/us-northkorea-usa-aid-insight/as-food-crisis-threatens-humanitarian-aid-for-north-korea-grinds-to-a-halt-idUSKCN1L529H>

\$31.6 million so far this year.¹⁰ The limited number of organisations that are still operating in the DPRK report delays for months or even more than a year for basic aid deliveries.¹¹

On 6 August, the UNSC committee monitoring sanctions on DPRK adopted the US-drafted ‘Guidelines for Obtaining Exemptions to Deliver Humanitarian Assistance to the Democratic People’s Republic of Korea’, which are intended to address some of the delays and barriers to delivering humanitarian assistance. However, since September, the US State Department has refused to grant special permission to humanitarian workers to travel to DPRK, which affects programs to tackle tuberculosis, offer medical training, and to provide farming assistance to address chronic food insecurity. Some aid organisations with activities in the DPRK have recently criticised the Trump administration for targeting humanitarian assistance as part of its ‘maximum pressure campaign’ for denuclearisation.¹² In early November, the US blocked a proposal by Russia to ease UN sanctions on the DPRK to deliver humanitarian aid, stating that Russia was using humanitarian concern as an excuse to lift banking restrictions and allow Russian entities to circumvent the sanctions regime more generally. China has supported Russia’s call for sanctions relief for humanitarian reasons, and in recognition of positive developments in Pyongyang’s political engagement.

Recalling that the 2014 UN Commission of Inquiry explicitly includes ‘the right to food and related aspects of the right to life’ as core aspect of DPRK human rights, there is a need to review the impact of the sanctions regime on the humanitarian situation, and to consider how upscaling humanitarian funding may contribute to the improvement of human rights in the DPRK. One practical way Russia and China could demonstrate their genuine commitment to the welfare of the DPRK population is for any proposal for sanctions relief to be conditioned on: (1) Pyongyang allowing the UN country team free and unimpeded access to all parts of the country in order to assist in meeting the needs of vulnerable persons, and (2) DPRK authorities engaging with the UN Office of the High Commissioner for Human Rights and accepting the UN Special Rapporteur’s request for a country visit. The latter could help open a parallel track for dialogue on human rights alongside denuclearization and peace talks. As Ojea Quintana has previously noted, human rights dialogue could first address economic and social rights of the people of DPRK, which is ‘a priority that all actors can agree on—the Government of the DPRK, as well as the international community’.¹³ The UNSC should also add a humanitarian expert to the Panel of Experts of the 1718 DPRK Sanctions Committee, who would be responsible for monitoring the impact of sanctions on well-being and rights of the civilian population.

Recommendations

The government of the DPRK should:

1. Immediately cease the perpetration of crimes against humanity.

¹⁰ DPRK Needs and Priorities 2018, UN Office for the Coordination of Humanitarian Affairs, Financial Tracking Service, available: <https://fts.unocha.org/appeals/659/summary>

¹¹ Op. cit. Hyonhee Shin.

¹² Edward Wong, ‘U.S. Bars American Aid Groups from Travelling to North Korea’, *The New York Times*, 17 October 2018, available: <https://www.nytimes.com/2018/10/17/world/asia/north-korea-trump-administration-ban.html>

¹³ ‘Statement by the United Nations Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, Tomas Ojea Quintana, mission to Seoul’, United Nations Office of the High Commissioner for Human Rights, 10 July 2018, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23352&LangID=E>

2. Investigate reports of widespread sexual violence against women in detention, and address the pervasive culture of impunity for sexual violence and abuse by holding perpetrators to account in accordance with due process and the rule of law.
3. Engage constructively with the UN Office of the High Commissioner for Human Rights (OHCHR), the Special Rapporteur and the OHCHR field office in Seoul to develop plans for technical assistance to faithfully implement human rights treaty obligations as well as the universal periodic review recommendations that were accepted by the DPRK in 2014. The DPRK should engage with the OHCHR prior to May 2019, when it will undergo its third cycle of the Universal Periodic Review.
4. Follow through on the September 2015 invitation from the DPRK's Minister of Foreign Affairs to the High Commissioner for Human Rights to visit the country and respond favourably to the outstanding requests for country visits from four special procedure mandate holders.
5. Ensure that the treatment of prisoners is in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners and other international instruments, and initiate discussions with the International Committee of the Red Cross concerning access to detention facilities.
6. Engage in bilateral and regional human rights dialogue.

The international community should:

1. Reaffirm that the DPRK has a Responsibility to Protect its population from atrocity crimes, and actively affirm that addressing widespread and systematic human rights violations in the DPRK is central to achieving stability on the Korean peninsula.
2. Welcome discussion of human rights accountability in the DPRK in regional dialogue platforms and support continued consultation and information gathering.
3. Support the ROK and DPRK in initiatives to build confidence between the two countries.
4. Use the upcoming third cycle of the universal periodic review, in May 2019, as an opportunity to urge the DPRK to implement the recommendations accepted during the first and second cycles.
5. Address grave human rights violations in the DPRK in a coordinated and unified manner. Specifically:
 - The Human Rights Council should continue to support the Special Rapporteur and implement the recommendations of the group of independent experts on accountability to secure truth and justice for victims of crimes against humanity in the DPRK.
 - The OHCHR, including the field office in Seoul, should closely monitor human rights in the DPRK; investigate unresolved human rights issues; prepare to provide technical assistance and deepen its support for the UN's engagement.
 - The General Assembly should continue to maintain visibility of the human rights situation and call for accountability in the DPRK.
 - The Security Council should request a report from the Secretary-General assessing the impact of sanctions on the human rights and humanitarian situation in the DPRK.
 - The Security Council should hold regular briefings on the issue with the participation of the UN High Commissioner for Human Rights, Special Rapporteur and other relevant experts.
 - Donor states should increase humanitarian funding for the DPRK as requested by the UN Emergency Relief Coordinator.
6. The US and ROK should place human rights high on the dialogue agenda with the DPRK, urgently fill vacant diplomatic posts that were established to improve the human rights

situation in the DPRK, and continue to provide funding to organisations working on the human rights situation in the DPRK.

7. The US should resume granting special permission for humanitarian workers to travel to the DPRK without undue delay.
8. As a condition for sanctions relief, the US, ROK, China and Russia should encourage DPRK authorities to: grant free and unimpeded access to the UN country team, cooperate with the OHCHR, to invite special procedure mandate holders for country visits, and to engage in parallel human rights dialogue alongside peace and denuclearisation talks.
9. China should respect the principle of non-refoulement, adopt measures to protect the rights of DPRK citizens residing in or transiting through China, and adopt measures to protect victims of trafficking in China.
10. Civil Society actors should continue to raise awareness and visibility of the human rights situation and advocate for accountability, including supporting efforts to map suspected perpetrators of serious crimes and the related chain of command structure in the DPRK.