

# North Korea and the Responsibility to Protect

## INTRODUCTION

The human rights and humanitarian situation in the Democratic People's Republic of Korea (DPRK) is dire. Crimes against humanity as well as other systematic and widespread abuses continue to be committed by the government under the current "Supreme Leader," Kim Jong-un.

Despite testimony from defectors and other credible evidence accumulated over the last decade, the government has never acknowledged the existence of abuses, nor amended its repressive policies. Extreme political isolation and governmental intransigence continue to hamper further investigation and accountability.

Amid mounting human rights concerns in DPRK, on 21 March 2013 the United Nations (UN) Human Rights Council adopted resolution 22/13, establishing a Commission of Inquiry (CoI) to investigate systematic, widespread and grave violations of human rights, particularly where "these violations may amount to crimes against humanity."<sup>1</sup>

The CoI published its findings on 7 February 2014, establishing responsibility at the highest level of government for ongoing crimes against humanity, including "extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of populations, the enforced disappearance of persons and the inhumane act of knowingly causing prolonged starvation." The report noted the government's failure to uphold its primary responsibility to protect its population.

For nearly a decade UN bodies, including the General Assembly, Human Rights Council and Secretariat, have expressed concern over grave human rights violations and called upon the government to improve the situation. While the UN Security Council (UNSC) has been engaged on DPRK in relation to nuclear weapons, it never directly addressed ongoing human rights abuses prior to December 2014 when its members voted to add the matter to its agenda. Regardless, DPRK's provocative nuclear policies, as well as security concerns over the ongoing division of the Korean Peninsula as a result of the 1950-1953 war, have continued to overshadow human rights issues.

The DPRK government bears the primary Responsibility to Protect (R2P) its population from genocide, ethnic cleansing, war crimes and crimes against humanity, but is manifestly failing to do so. This Policy Brief clarifies the application of R2P in the case of DPRK, outlining the responsibility of the international community in relation to the government's commission of crimes against humanity. While the situation in DPRK remains complex and dangerous, the international community, especially the UNSC, has not exhausted all options and can no longer continue to overlook ongoing mass atrocity crimes.

## HISTORICAL BACKGROUND

After Japan's defeat in World War II it surrendered control of the Korean Peninsula, which it had occupied for more than 30 years. The peninsula was subsequently divided at the 38<sup>th</sup> parallel, with the United States occupying the southern half and the Soviet Union controlling the northern half. Although the division of the peninsula was initially intended as a temporary measure, Cold War hostilities intensified as two rival states, one

\*An earlier version of this brief was published in August 2014.

<sup>1</sup> Resolution 22/13 was adopted without a vote, meaning that no states objected to the creation of the Commission.

communist and one capitalist, were consolidated on opposite sides of the 38<sup>th</sup> parallel. Tensions between DPRK and the Republic of Korea (ROK) came to a head in 1950, resulting in the Korean War.

A Korean Armistice Agreement was signed in 1953, formally ending the Korean War and establishing a Demilitarized Zone (DMZ) as a buffer between DPRK and ROK forces. However, while the agreement suspended open hostilities, it was not a peace treaty between the two states and they technically remain at war, while the DMZ remains heavily militarized.

In the aftermath of the Korean War, Kim Il-sung consolidated the North under the exclusive leadership of the Korean Workers' Party. Internally, the legacy of Kim Il-sung, declared "Eternal President of the Republic," endures despite his death in 1994. The cult of personality built around Kim Il-sung and his two familial successors has enabled them to exert unprecedented control over the country and its political culture. This includes the requirement that citizens continually participate in public displays of commitment to the Kim family, the Korean Workers' Party and the DPRK. Disloyalty to the government is punishable by death or by indefinite detention in a prison or forced labor camp.

According to DPRK, under the official *juche* ideology of self-reliance the government "defends and protects the interests of workers, peasants and intellectuals and all other working people who have become masters of state and society, free from exploitation and oppression."<sup>2</sup> Principles of independence, self-sustenance and self-defense serve to justify the hereditary Kim dictatorship and also determine DPRK's foreign relations.

The country's discriminatory *songbun* system classifies citizens by state-assigned social status, which determines the privileges and opportunities that individuals enjoy, including access to housing and social services. In addition, the country operates under *songun* politics, or a "military first" policy, whereby it prioritizes military spending and advanced weapons production, even during periods of severe economic contraction.

While a famine ravaged the country during the mid-1990's, killing an estimated one million people, the government's internal policies exacerbated the food crisis. The government denies this, claiming the famine was a result of a series of natural disasters, however, it

continues to implement discriminatory food policies today. In 2009 the UN Secretary-General concluded that DPRK was "failing to fulfil its obligations under international human rights law to protect the right to adequate food."<sup>3</sup>

DPRK has formally acceded to the Genocide Convention and other major international human rights treaties, including: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. Despite this, the DPRK government has previously violated each of these treaties and continues to do so today.

## DOCUMENTED ABUSES

Among the crimes the CoI was mandated to investigate were those perpetrated by the DPRK government in the context of prison camps, including torture, inhumane treatment, arbitrary detention and enforced disappearances. In addition, the CoI was charged with investigating violations of the right to food and life, as well as violations of freedom of expression and movement. Despite ten requests sent by the CoI to the DPRK government asking for permission to visit the country, it was never granted access. Instead, the CoI conducted public hearings and confidential interviews to secure first-hand testimony from defectors now living outside the country.

The CoI's report describes in harrowing detail abuses committed by the DPRK government, including violations against the population that "entailed crimes against humanity based on State policies." According to the CoI, the state systematically employs violence and punishment amounting to gross human rights violations, with persons accused of political crimes being subject to execution without trial. DPRK has also previously abducted and disappeared non-nationals.

Although the government denies the existence of political prison camps, they continue to be a major feature of the security apparatus, where inmates are subjected to "deliberate starvation, forced labour, executions, torture, rape and the denial of reproductive rights enforced through punishment, forced abortion and infanticide."

<sup>2</sup> Official website of the Democratic People's Republic of Korea, at <http://www.korea-dpr.com/political.html>.

<sup>3</sup> Report of the UN Secretary-General on the Situation of human rights in the Democratic People's Republic of Korea, UN General Assembly, A/64/319, 24 August 2009, 6.

The CoI estimated that hundreds of thousands of prisoners have died in political prison camps over the last five decades. Satellite images released by Amnesty International on 5 December 2013 demonstrate that some camps expanded in size between 2011 and 2013.<sup>4</sup> According to the CoI, between 80,000 and 120,000 prisoners remain detained within four identifiable camps.

The CoI also reported on the state's "absolute monopoly over information and total control of organized social life," including denying citizens the right to access any independent media, as well as strictly denying freedom of religious practice.

Today a large segment of DPRK's population continues to suffer from food shortages, chronic hunger and malnutrition. A March 2013 report by the UN Office of the Coordination of Humanitarian Affairs found that over one-quarter of all DPRK children are stunted from chronic malnutrition, while two-thirds of the population of 24 million people are food insecure. The UN World Food Programme reported in February 2014 that only 16 percent of households had acceptable food consumption.<sup>5</sup>

The CoI reported that the state has not only used food as a means of control over the population, but that deliberate starvation is used in detention facilities as a means of punishment, leading to the deaths of many prisoners. Altogether, hundreds of thousands of people have died as a result of "decisions, actions and omissions by the State and its leadership" in violating the right to food.

The CoI also implicated China with respect to its failure to protect North Korean refugees. The CoI reported that despite its legal obligation to respect the principle of non-refoulement under international law, China "pursues a rigorous policy of forcibly repatriating citizens of [DPRK] who cross the border illegally," rather than recognizing them as refugees fleeing persecution and offering protection.

Unless the DPRK government is held accountable for these policies, the violations documented by the CoI, including crimes against humanity, will continue.

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<sup>4</sup> Amnesty International, "North Korea: New Satellite Images Show Continued Investment in the Infrastructure of Repression," 4 December 2013.

## INTERNATIONAL RESPONSE

Several UN bodies have made attempts to draw attention to human rights violations committed by the DPRK government. The High Commissioner for Human Rights has requested a dialogue with DPRK every year since 2003 with no response. In 2004 the Human Rights Council's precursor, the Commission on Human Rights, established a mandate for a Special Rapporteur on the situation of human rights in DPRK, with whom the government has never cooperated. Since 2006, the Human Rights Council has adopted annual resolutions and published at least ten reports on the situation in DPRK. The Secretary-General has also released annual reports on the situation of human rights in DPRK since 2005.

The UN General Assembly has adopted an annual resolution condemning the "systematic, widespread and grave violations of human rights" in DPRK every year since 2005. The 2014 resolution also condemned crimes against humanity committed by government authorities and encouraged the UNSC to refer the situation to the International Criminal Court (ICC).

The UNSC has thus far engaged with DPRK almost exclusively in the context of nuclear non-proliferation. In response to DPRK's development of nuclear weapons, international sanctions have been placed on DPRK by the UN, European Union and many individual governments, including the United States, United Kingdom, Japan and Canada. UN nuclear-related sanctions include an arms embargo, bans on the import and export of goods and technology, asset freezes and travel restrictions.

On 22 December 2014 the UNSC voted to put the human rights situation in the DPRK on its formal agenda and held its first ever briefing on the situation.

Despite DPRK's insistence on economic independence and self-sufficiency, the country has relied heavily upon international aid. Efforts to deliver humanitarian assistance to DPRK's suffering population have been adversely affected by the government's strict management of resources, which are disproportionately diverted towards the military and political elite. Meanwhile, the government reportedly spent over \$1 billion (USD) between April and December 2012 on the

<sup>5</sup> World Food Programme, Food Security Overview, Democratic People's Republic of Korea, at: <http://www.wfp.org/countries/korea-democratic-peoples-republic-dprk/food-security>.

development and test firing of a long-range ballistic missile.

Given the regime's excessive military spending as civilians continue to go hungry, some donors have withdrawn aid. This has been further complicated by DPRK's insistence on food aid in exchange for denuclearization, which has worked against the country's starving population. In 2012, for example, the United States cancelled a planned food shipment after DPRK reneged on its pledge to end long-range missile launches, affecting 900,000 women, children and elderly people who were the intended aid recipients.<sup>6</sup>

## **APPLYING THE RESPONSIBILITY TO PROTECT**

The Responsibility to Protect, unanimously adopted at the UN World Summit in 2005, is a commitment by every state to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing. In pledging to uphold its R2P, the government of DPRK accepted its primary responsibility to safeguard its population from mass atrocity crimes.

R2P has helped to redefine sovereignty as responsibility, in which the legitimacy of a government is partly determined by its commitment to the safety and dignity of the population within its territory, including their protection from mass atrocity crimes. Where a state is unable to discharge this duty, it becomes the responsibility of the international community to assist the state through appropriate diplomatic and humanitarian means. Where a state is manifestly unwilling to uphold its protective responsibility, the international community is compelled to act, including through coercive measures authorized by the UNSC under Chapter VII of the UN Charter, if deemed necessary and as a matter of last resort.

Although R2P applies to all cases in which a state is perpetrating crimes against humanity against its population, the case of DPRK presents a unique challenge. Not only has the government demonstrated its refusal to meaningfully engage with the international community, but genuine concerns over DPRK's threat to deploy nuclear weapons have previously overshadowed human rights concerns. The highly sequestered nature of

the DPRK regime raises the question of how R2P can be effectively utilized to respond to such a case.

While DPRK is avowedly hostile to external criticism and has rejected dialogue, coercive action would likely do more harm than good and bring little positive change to the North Korean people. Previous attempts to offer incentives have had limited success in compelling the government to change its policies or act in accordance with international human rights and humanitarian law. In addition, the government's strict control and mismanagement of resources has historically left the majority of the population to absorb the cost of tying humanitarian aid to political agreements.

Nevertheless, R2P remains an essential lens through which to view and address the DPRK situation, given the systematic commission of crimes against humanity as a matter of state policy. While opportunities for the international community to engage the government are more limited than in other cases, it is imperative to keep international focus on the grave human rights situation.

Given that the government of DPRK has refused to address concerns raised by the Commission on Human Rights, Special Rapporteur on the situation of human rights in DPRK, Human Rights Council and General Assembly, the UNSC now has a responsibility to take action.

The CoI report offers strong evidence that mass atrocities will most likely continue in DPRK. In February 2014 then-High Commissioner for Human Rights Navi Pillay said that the report "sheds light on violations of a terrifying scale, the gravity and nature of which – in the report's own words – do not have any parallel in the contemporary world. There can no longer be any excuses for inaction." R2P stipulates that it is incumbent upon the international community to make every effort to halt these ongoing abuses.

## **BEYOND THE COMMISSION OF INQUIRY**

The work of the CoI formally ended with the publication of its report and the expiration of its mandate in February 2014, necessitating that UN member states follow-up on the Commission's work themselves.

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<sup>6</sup> Roberta Cohen, "World Food Day: The Challenge of North Korea," Brookings East Asia Commentary, 8 October 2013, available at:

<http://www.brookings.edu/research/opinions/2013/10/08-world-food-day-north-korea-cohen>.

While the DPRK government denies the grave and systematic abuses detailed by the CoI, there have been signs that the DPRK feels mounting pressure to address the contents of its report. During September 2014 the DPRK published its own report on its human rights record, claiming that North Koreans enjoy the best human rights protections of any country in the world. The government also revised its approach to the Human Rights Council's Universal Periodic Review, and for the first time accepted a number of the Council's recommendations. During November the DPRK also formally ratified the optional protocol on the Convention of the Rights of the Child.

The country's accession to international human rights treaties demonstrates its formal acceptance of international laws and standards by which all states must abide, regardless of ideology or political inclination. The government must be held to these commitments, and the UN, including the General Assembly and Human Rights Council, has an important political role to play in ensuring they are honored.

Integrating human rights issues into the UNSC's current work on the DPRK is an important first step. In keeping with the CoI's recommendation, the UNSC should now refer the situation in DPRK to the ICC for investigation and adopt targeted sanctions against those deemed responsible for mass atrocity crimes, separate from the non-proliferation sanctions regime.

Any effort to end atrocities in DPRK will require China's active involvement. Not only does China maintain the closest economic and political relationship with DPRK, but it also holds a permanent seat on the UNSC. China should use its influence to directly raise the grave human rights situation with DPRK authorities at the highest level. It should allow the UN High Commissioner for Refugees access to its border with DPRK and offer protection to DPRK refugees. In accordance with its commitments under international refugee and human rights law, it should cease forcibly repatriating North Korean asylum seekers.

It is imperative that the momentum generated by the CoI continues and that the international community actively works to end crimes against humanity in DPRK. Donor countries and governments that have diplomatic ties with DPRK should work together to craft and implement strategies to promote positive change with regard to upholding international human rights and humanitarian law in the country.

## CONCLUSION

As the CoI has noted, the systematic, widespread and gross human rights violations in DPRK, which constitute crimes against humanity, are "not mere excesses of the State; they are essential components of a political system that has moved far from the ideals on which it claims to be founded." Without any action by the international community, mass atrocity crimes will unquestionably continue to be perpetrated in DPRK.

In keeping with the Responsibility to Protect, the international community must focus attention not only on the ongoing nuclear threat posed by DPRK, but also on the threat the government poses to the universal rights of its own population. The government of DPRK has a responsibility to protect its people from crimes against humanity and other mass atrocities. The international community has a responsibility to ensure that it does so.