

**Following up on the UN Human Rights Council’s Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea:
Suggestions from a JBI Roundtable**

MEETING SUMMARY

I. Introduction and Summary of Key Points

This paper summarizes discussions at an expert roundtable on follow-up to the report of the United Nations Human Rights Council’s Commission of Inquiry (COI) on human rights in the Democratic People’s Republic of Korea (DPRK, North Korea) convened by the Jacob Blaustein Institute for the Advancement of Human Rights on 27 February 2014. The event brought together key specialists on the DPRK who contributed to the work of the COI, independent human rights experts, and diplomats from a number of United Nations Member States¹ to discuss the implications of the COI’s findings and recommendations for the UN, especially the inter-governmental bodies, agencies, programs and Secretariat based in New York.

The key points raised during the meeting included the following:

- To maintain the momentum generated by the COI report, and elevate its status, States can take some of the steps outlined below in their relations with other States, at the UN and with the broader public.
- While formulating a long-term response to the human rights situation in North Korea, States can take measures to signal that “business as usual” is no longer an option for governments or the UN following the publication of the COI report which found there were systematic, widespread and gross human rights violations amounting to crimes against humanity whose “gravity, scale and nature . . . reveal a State that does not have any parallel in the contemporary world.” The COI report provided unprecedented detail on a wide range of issues including the right to food.
- The Human Rights Council’s annual resolution on North Korea offers the first and key venue for explicitly endorsing the COI’s recommendations and findings, in particular that crimes against humanity are being committed. At a minimum, the Council’s resolution should offer a means of continuing fact-finding and analysis on human rights in North Korea in 2014 and beyond.
- Members of the Security Council should identify avenues in which to discuss the findings and recommendations of the COI. The Council previously has only discussed North Korea in the context of its development and testing of nuclear and ballistic weapons; any Council discussion of the human rights abuses perpetrated by the government would represent a significant step forward.
- The text of the General Assembly’s annual resolution on North Korea can be strengthened so that, at a minimum, it specifically endorses the COI’s findings.

¹ The meeting was held under the Chatham House Rule. In accordance with it, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

- While a consensus was considered important to maintain at the Human Rights Council and General Assembly, it might become necessary to take a vote on the resolutions so that the COI's new findings and the report itself will be clearly reflected in the resolutions.
- Member States should encourage discussions to reflect on the application of the Secretary-General's "Rights Up Front" action plan to the context of North Korea and how it should mesh with other concepts and priorities, including claims for humanitarian space and access, disarmament and security concerns, and geopolitical dynamics. This would ensure that the UN Secretariat and UN agencies take the COI report into account in their work.

This document is intended to serve as an aide-memoire to those who took part and to provide a general summary to those who did not.

II. The COI Report

The meeting began with an overview of the COI's work and report. The COI was created by a resolution adopted by consensus by the UN Human Rights Council in March 2013. Its three members, including its Chair, Justice Michael Kirby, were appointed in June 2013. The Commissioners and their team began their work in July. In February 2014, they completed and published an unprecedented 400-page report for review by the Member States of the Human Rights Council during their March 2014 meeting in Geneva. The COI's procedural methods were distinctive in that it convened public hearings as part of its information-gathering activities and then reported the preliminary findings from those eye-witness accounts at both the Third Committee in New York and the Human Rights Council in Geneva. These methods of work made the COI and the situation in the DPRK much more visible to the world.

The COI report provides a sweeping analysis of the depth and breadth of rights abuses being inflicted upon the North Korean people over decades. Its detailed descriptions and testimonies provide concrete corroborating evidence of longstanding crimes. Many rights abuses documented in the COI report had been the subject of reports published by non-governmental sources since 2003, but the COI's extensive findings, including on the right to food and policies that lead to starvation, were noteworthy. With the publication of this report, a speaker noted, a UN mechanism has officially recognized the severe and systematic crimes that have been ongoing in the DPRK for the past 60 years. In doing so, the report eliminates the possibility for any in the international community to claim ignorance of the situation there.

The COI's work is expected to end with the publication of this report, making the question of "next steps" a particularly pressing one. Significantly, the COI's report directs recommendations to New York-based entities and actors to a greater extent than any other commissions of inquiry previously created by the Human Rights Council. It references the UN Security Council, the UN General Assembly and the UN Secretariat and specialized agencies, among others.

Participants uniformly welcomed the publication of the COI's report, citing its high quality and importance. Several participants commented that its unique methodology enabled the COI to be perhaps the most successful of any investigative mechanism created by the Human Rights Council in that it has mobilized world public opinion and captured the attention of the media to a greater extent than any other.

Participants widely agreed on the need for governments and other actors to elevate the report within and outside the UN and to maintain the momentum it has generated, both among diplomats and in popular

discourse. Participants also agreed on the need to lay a foundation for a long-term response by the international community to the human rights situation in North Korea. While acknowledging the limits to the international community's leverage over DPRK, participants agreed that the COI's report signals that "business as usual" regarding North Korea is no longer an option for governments or the UN.

A participant stressed the great importance for the international community, acting through UN bodies, to recognize and condemn the atrocity crimes perpetrated by North Korean officials against their people and documented by the COI. The expert stressed that this would send an important message to the North Korean authorities that they will need to address these crimes in order to obtain trade, investment, and development in the future.

A participant stressed the need for States and other actors to make choices in the near future about the strategy for implementing and sequencing actions taken in response to the COI's report to ensure that complementary steps are taken by a variety of actors. Several participants added that the recommendations put forward by the COI do not exhaust the possible measures that could be taken to improve the lives of North Korean people.

III. Follow-up possibilities in Geneva

The COI is scheduled to present its report to the Human Rights Council in Geneva on March 17, 2014 and this will be a very important opportunity to build support for follow-up to the report in Geneva in New York. While the Council will likely adopt its annual resolution on human rights in North Korea at the end of its session in late March, the Council is not expected to renew the COI's mandate. The COI report recommends that the Human Rights Council create a "structure" to serve as a permanent repository for information on human rights in North Korea so that this information can be used in the service of prosecution of those responsible for the human rights violations identified in the report or for other purposes related to accountability.

Participants agreed that the Human Rights Council's annual resolution on human rights in North Korea is a particularly important opportunity to promote follow-up to the COI's conclusions in the near future. Several participants expressed the view that the resolution should explicitly endorse the COI's findings and recommendations.

A participant suggested that the Human Rights Council should assist in efforts to bring the COI report to the attention of New York-based UN entities by including language in its resolution on North Korea explicitly requesting the UN Secretary-General to bring the COI's report to the attention of the General Assembly and Security Council and directly requesting these bodies to endorse the COI's recommendations. However, several participants expressed concern that it could be difficult to transfer momentum around the COI's report from Geneva-based UN entities to New York-based UN entities as a result of the different political environment surrounding human rights in New York.

Participants expressed mixed opinions on the expected termination of the COI's mandate by the Human Rights Council at its March 2014 session. A participant noted that there would not likely be another chance to create a COI for North Korea in the near future and expressed the view that States should consider extending the mandate of the COI for an additional year if they did not view it as feasible to implement its recommendations directed to New York at this time. Several other participants indicated

that in their view it would not be prudent to extend the COI's mandate as Justice Kirby, the chair of the COI, had firmly stated that he would not be able to continue on the COI for an additional year. Another participant pointed out that the COI could be extended for an additional term and another chair could be appointed to head it.

There was wide agreement that at a minimum, the Human Rights Council's follow-up efforts to the COI report should provide the UN system with a means of continuing its fact-finding and analysis of information on human rights developments in North Korea in 2014 and beyond. Several participants agreed about the importance of the Human Rights Council's continuation of the mandate of the Special Rapporteur on North Korea in its annual resolution.

A participant expressed the view that adequate ongoing fact-finding on North Korea could be accomplished if the Human Rights Council were to (1) continue the mandate of the Special Rapporteur on North Korea, (2) continue to appoint mandate-holders of the quality of current special rapporteur Marzuki Darusman and his predecessor Vitit Muntarbhorn, and also (3) create the recommended "structure" for gathering and processing information on human rights in North Korea, consisting of a dedicated staff from the Office of the UN High Commissioner for Human Rights (OHCHR) with the ability to gain access to recently-arrived North Korean refugees in Seoul and others with relevant expertise or testimonies. Such a "structure" could be located in a country neighboring North Korea or even in Geneva.

A participant stressed that the "structure" should reflect best practices of OHCHR field presences or sub-offices, noting that while field presences such as the OHCHR Office in Cambodia have been successful, others have not. It would be important that any such "structure" be adequately resourced and staffed to continue effective follow-up on the COI report.

A participant recalled that another Geneva-based opportunity for follow-up to the COI's report is the Universal Periodic Review of North Korea, scheduled to take place on May 1, 2014.

IV. Follow-up possibilities at the Security Council

A key recommendation of the COI is that the UN Security Council take action in response to the commission of crimes against humanity by North Korean officials. The COI report recommends that the Security Council refer the situation in North Korea to the International Criminal Court (ICC). It also recommends that the Security Council impose targeted sanctions on individuals who bear the greatest responsibility for abuses.

(a) Possibilities for a discussion of human rights in North Korea by the Security Council

Many participants agreed that the Security Council should find some avenue in which to discuss the findings and recommendations of the COI. Participants noted that the Council previously has only discussed North Korea in the context of its development and testing of nuclear and ballistic weapons and that any discussion of the human rights abuses perpetrated by the government would represent a significant step forward.

Participants indicated that the most obvious way for the Council to convene a formal discussion of the COI's recommendations would be to place North Korea on its agenda. A participant noted that it is

debatable whether North Korea is already on the Council's agenda as a result of its explicit inclusion under the Council's "non-proliferation" agenda item. The participant noted that the Council could have a procedural debate as to whether a new agenda item would be necessary in order for it to consider human rights in North Korea.

A participant cautioned that it would be difficult for the Security Council to extend its consideration of North Korea to the COI report without first changing its position on the agenda, as certain members would not want to establish a precedent of discussing human rights issues in a state placed on its agenda only in the non-proliferation context.

A participant also noted that the Council could place North Korea unequivocally on its agenda for purposes of discussion of the COI report by means of a procedural vote, which would require only 9 affirmative votes to succeed and which permanent members could not veto. The participant noted that it should not be difficult to obtain 9 votes in support of such an action but that the Council's permanent members are generally reluctant to support procedural votes in principle, and as a result the last such vote held by the Council was in 2008. The participant suggested that such a procedural vote placing North Korea on the Council's agenda would be a significant and positive step for the Council to take.

Several participants recalled that the Security Council has engaged with situations not on its agenda in a variety of context and urged Member States to find creative ways to highlight the COI report's findings and recommendations in the Council's work. Among the techniques proposed were "Arria formula" meetings, informal meetings, "horizon scanning" briefings, and informal interactive dialogues between Council members and the members of the COI. One participant suggested that the Security Council seek to send a mission to North Korea to engage with the government.

A participant stressed the need for the Security Council to take stock of its approach to North Korea and to come to terms with the different aspects of the crisis there and to have an integrated conversation about the peace and security implications of the many challenges posed by North Korea in the human rights, non-proliferation, and political arenas. The participant expressed the view that if the Security Council did not have a more integrated conversation along these lines, this would increase the chances that its approaches to non-proliferation and human rights might collide in an unhelpful way in the future.

(b) Possibilities for the Security Council to refer the situation in North Korea to the ICC or pursue other avenues for international criminal accountability

Several participants expressed support for the COI's recommendation that the Security Council refer the situation in North Korea to the ICC and more broadly expressed support advancing the principle of ensuring accountability for the very serious abuses identified by the COI in its report. A participant expressed the view that it would be inconceivable for the Member States not to press for an ICC referral in any situation involving abuses of the scale and scope documented by the COI.

A participant noted that it should be possible for Security Council members to prepare a draft resolution that would make such a referral as 11 of the 15 Member States of the Security Council are States parties to the ICC and as the United States often aligns with them.

Several participants expressed the view that Security Council members should consider this option despite the significant risk that a draft resolution containing language referring the situation to the ICC would be vetoed by one or more of the Council's permanent members.

A participant suggested that Member States should make a serious attempt to accomplish such an outcome, and that individual countries should engage China and make a serious push to use leverage they have with it in an effort to dissuade it from vetoing such a draft resolution.

A participant noted that members of the African Group would likely welcome an effort by the Security Council to bring the situation in North Korea to the attention of the ICC, as this would address concerns related to the ICC's focus on situations in Africa and could help ease divisions within the Council that emerged following the recent request by the African Union for the Council to defer the ICC Prosecutor's investigation and prosecution of two Kenyan officials.

A participant noted that the ICC prosecutor is already carrying out a preliminary investigation into allegations that North Korea committed war crimes on the territory of South Korea, specifically the shelling of Yeonpyeong Island on November 23 2010 and the sinking of the South Korean warship Cheonan on March 26, 2010.

Several participants cautioned that it might not be feasible to obtain the Security Council's assent to refer the situation in North Korea to the ICC. Some cautioned that divisions on human rights issues had recently emerged among governments in New York, resulting in part from concerns about the Security Council's referral of situations to the ICC, and that these divisions had most recently manifested in the General Assembly's contentious vote on the resolution on the annual report of the Human Rights Council. The participant expressed concern that this poisonous climate would make it particularly difficult for the Security Council members to consider any recommendation that would refer North Korea to the ICC at this time. A participant questioned whether it was wise for States to place emphasis on the ICC referral recommendation in their public statements if they did not think such an outcome was likely, questioning whether this would create unrealistic expectations on the part of the public, media, and legislatures.

A participant warned even if the Security Council were to refer the situation to the ICC, this would be a largely symbolic gesture without access to North Korea itself, so the Council should pursue steps that would likely have a more practical impact on North Korea as well. Another participant noted that some in the humanitarian community have come to fear the failure of key member States to provide the support required when there is backlash to such referrals by the Council –as happened following the government of Sudan's expulsion of humanitarian organizations in reaction to the Security Council's referral of the situation in Darfur to the ICC. Another participant cautioned that some advocates' groups argue that an ICC referral would have a tangible positive effect in the area of deterrence, citing reports that lower-level officials might be less likely to inflict harm if there is a possibility that they could be punished by a court for their behavior in the future.

A participant cautioned that in the past two instances in which the Security Council has referred a situation to the ICC (Darfur and Libya) it has not taken any steps to follow up on those resolutions, rendering such actions ineffective and even counterproductive. The participant noted that the Security Council has even undermined the ICC in its past resolutions referring situations to it, for example by including language exempting certain Member States from the ICC's jurisdiction in a manner

incompatible with principles of international justice and by declining to provide UN funds to support the resulting investigations.

Some participants noted that the Security Council could consider creating a special tribunal for North Korea rather than referring it to the ICC, noting that the abuses documented by the COI have been perpetrated for a period of as long as 60 years, whereas the ICC's temporal jurisdiction extends only to 2002. However, a participant acknowledged that the Security Council would be unlikely to create such a tribunal given the prospective costs this would entail.

(c) Possibilities for the Security Council to impose targeted sanctions on North Korean individuals

Several participants expressed support for the COI's recommendation to the Security Council to impose targeted sanctions on North Korean officials most responsible for the abuses documented in its report.

A participant cautioned that any human rights-related sanctions imposed on North Koreans by the Security Council should be administered by an entity other than that responsible for the existing regime of non-proliferation-related sanctions. The participant noted that the non-proliferation sanctions committee is assisted by a panel of experts with a fixed membership always representing certain nationalities, making it unique and not appropriate for administration of human rights-related sanctions.

A participant cautioned that given the Council's past practice there was a significant risk that in the future it could prove willing to lift human rights-related sanction against North Korean individuals in exchange for concessions from North Korea related to its nuclear weapons program.

V. Follow-up possibilities at the General Assembly

Participants broadly agreed that the General Assembly had an important role to play in following up on the COI report and that it would not be acceptable to take a "business as usual" approach to North Korea given the report's findings. Participants particularly stressed the need to strengthen the text of the General Assembly's annual resolution on North Korea so that it continues to express serious concern about grave violations of human rights in North Korea but also endorses the COI's findings.

In this regard, a participant called on Member States to especially ensure that the resolution recognizes and condemns the crimes against humanity committed by North Korean authorities and documented by the COI. Another participant called on Members States to ensure that the General Assembly resolution prioritizes the COI's call for North Korea to provide human rights monitors and humanitarian groups with immediate access to its prison camps.

Several participants expressed support for strengthening the language of the General Assembly resolution on North Korea even if this led some States to call for a vote on the text rather than adopting the resolution by consensus, as has been the case in past years. A participant suggested that a contested vote on the North Korea resolution would lead to greater discussion among the General Assembly's Third Committee on the best approach to follow-up to the COI report which could be positive and generate greater public attention on the debate and any resulting vote. Enhanced discussion of human rights in North Korea by Member States could also have the effect of provoking more follow-up action by UN agencies and the Security Council as well.

Several participants recalled that the General Assembly recently adopted an exceptional resolution calling on the UN Security Council to meaningfully address grave human rights violations in Syria and questioned whether a similar approach might be possible in the context of North Korea. A participant suggested that if within six months the Security Council had not discussed the COI's report, the General Assembly should adopt a resolution outside the normal cycle on DPRK, noting that the situation in North Korea is unprecedented and thus the General Assembly should use all possible avenues to address it.

At the same time, several participants raised concerns about the challenging environment for discussion of human rights concerns currently existing in the General Assembly. A participant recalled that there is presently a North-South divide within the General Assembly's Third Committee following a contested vote on the annual report of the Human Rights Council. The participant questioned whether these dynamics could make it difficult to ensure adoption of a strengthened annual resolution on North Korea.

Several participants commented on the COI report's direct references to China, which it finds to be contributing to the crimes against humanity perpetrated by North Koreans in the context of its forced repatriation of North Korean asylum-seekers in China. A participant suggested that as States formulate the language of resolutions addressing the COI report's findings they consider engaging with China, using the COI's findings on this issue as leverage in order to promote policy steps such as a moratorium on forced returns to North Korea. It was noted that China did not provide access to its border areas for the COI to conduct interviews.

VI. Follow-up possibilities involving the UN Secretariat and agencies

The COI report contains a unique recommendation calling on the UN Secretariat and agencies to set up a system-wide "Rights Up Front strategy" to ensure that all UN engagement with North Korea takes human rights concerns into account. This is a reference to a new initiative launched by the UN Secretary-General in December 2013 in response to the findings of the Internal Review Panel on UN Action in Sri Lanka. The "Rights Up Front" Action Plan commits the UN, in part, to "ensuring coherent strategies of action on the ground and leveraging the UN System's capacities in a concerted manner" and to doing its utmost to provide protection in the course of its diverse work.

Participants agreed that the UN Secretariat should seek to apply the Secretary-General's "Rights Up Front" action plan to the context of North Korea to create more sensitivity within the UN Secretariat to the human rights concerns identified by the COI. A participant asserted that although Rights Up Front is a Secretariat-centered initiative, Member States have a role to play in provoking discussions about it and its application to North Korea with one another and with relevant UN officials. Another participant stressed that it is particularly appropriate for States to call on the Deputy Secretary General to articulate the implications of Rights Up Front for North Korea as the COI report explicitly invokes it.

A participant stressed the importance of this recommendation of the COI, noting that the reports of those UN agencies that engage with the North Korean government do not presently mention human rights issues and that UN agencies do not presently have access to the highly vulnerable population of North Koreans confined in prison camps. The participant provided several examples of areas in which UN agencies concerned with North Korea could reevaluate their operations and reporting in light of the COI's findings, concerning agencies ranging from the World Food Programme and Food and Agriculture Organization to UNICEF, UNHCR, UNESCO, and the ILO. UN Secretariat offices working on political

affairs (DPA), information (DPI), women, etc., should apply a rights-based approach for DPRK. This also applies to organizations outside the UN such as the International Committee of the Red Cross (ICRC).

The participant noted that while the Deputy Secretary-General has a responsibility to lead this effort within and among UN agencies, donor governments also should initiate such conversations and work with these agencies and offices to identify how to implement the approach to North Korea and support and encourage their doing so. The participant also stressed that Member States have a responsibility to stand behind UN agencies when they take steps to better reflect human rights concerns in their work, pointing as an example to the need for States to support UNHCR's request for access to all North Korean asylum-seekers in China, something the COI has also recommended.

Another participant suggested that one alternative approach to provoke better-coordinated action by UN agencies on North Korea would be for a group of States to call upon the UN Secretary-General to appoint a special humanitarian envoy for North Korea with responsibility for coordinating with relevant agencies.

A participant noted that it will be difficult to operationalize "Rights Up Front" as UN agencies often closely guard their access to countries and are reluctant to act in ways that could be construed as violating their neutrality, but emphasized that other subjects that were once considered too sensitive to discuss with UN agencies are now a regular feature of their work, and that the same could be true for this initiative.

VII. Other follow-up possibilities

Participants also raised other areas in which States could take actions to follow up on the COI's findings and recommendations. Several participants stressed the need to pair positive engagement and greater efforts at cooperation with North Korea along with efforts to pursue justice and accountability for the abuses identified by the COI.

A participant highlighted the need for governments to take multilateral and unilateral steps to show that human rights are a priority issue in their relations with North Korea. The participant noted and endorsed the COI's recommendation that governments form a "contact group" on North Korea and highlighted other examples of leaders making statements mentioning human rights when visiting DPRK to governments terminating relations with North Korea in response to the findings of the COI report to the "Group of 8"'s decision to mention human rights in their most recent communiqué on North Korea.

VIII. Conclusion

It was agreed that Member States must take meaningful steps to ensure that UN bodies and agencies in New York as well as Geneva take steps to endorse and act upon the findings and recommendations of the Commission of Inquiry on human rights in North Korea. The COI report finds that the North Korean government has committed and is committing systematic widespread and gross human rights violations amounting to crimes against humanity without parallel in the contemporary world. Recognizing the complex dynamics surrounding human rights issues in New York-based intergovernmental bodies and the need for States to address the multifaceted threats to international peace and security posed by the North Korean regime, the meeting participants nevertheless agreed that the North Korean people are entitled to a meaningful response to these findings by the Human Rights Council, the Security Council, the General Assembly, the UN Secretariat and agencies, and by governments acting unilaterally and in other multilateral contexts.