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Human rights situations that require the Council's attention

Written statement* submitted by the Korean Bar Association, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).



Infringements of Human Rights in the DPRK as a Threat to Peace

On January 6, 2016, the Democratic People's Republic of Korea demonstrated to the world that it has no intention of dismantling or halting the development of its nuclear weaponization program. This fourth round of nuclear tests was an aggressive action by Pyongyang that presents a serious threat to countries in Northeast Asia and beyond. Furthermore, the DPRK on Feb. 7, 2016 defied international warnings and launched a long-range rocket that the United Nations and others call a cover for a banned test of technology for a missile that can deliver a nuclear bomb. While such harmful actions by Kim Jong-un regime's should have already been curbed internally, the citizens of the DPRK have no ability to alter the wrongful course of their government's policy of nuclear development as they have no fundamental freedoms or basic rights including freedom of expression.

The DPRK has committed systematic, widespread and gross human rights violations that constitute crimes against humanity to control its citizens and their beliefs in the process of establishing a totalitarian dictatorship, stressing the supreme authority of the "Leader" (*Suryong*) in every domain including ideology, law, administration, and regulations. The regime carries out public executions, operates political prison camps as well as an elaborate system of public surveillance.

The DPRK's policing bureaucracy consists of the State Security Department(SSD; *Guk-ga An-jeon Bo-wi-bu*), the Ministry of People's Security(MPS; *In-min Bo-an-bu*) and the In-min-ban system (a people's neighborhood unit), which collectively observe and monitor the country's citizens. The DPRK government utilizes a registration and census system which classifies citizens into three strata and fifty-one categories based on a discriminative social class policy.

According to the UN Commission of Inquiry on Human Rights in the DPRK, the decision-making process in the DPRK is highly centralized, especially in the government agencies where the majority of human rights violations and crimes against humanity are committed. The leadership structure is dominated by the Supreme Leader and a small cadre who lead the central organs of the Workers' Party of Korea (WPK) and the National Defense Commission (NDC). Many of these individuals hold high military ranks and occupy key positions in the military and security apparatus. However, the predominant role of the Supreme Leader, Kim Jong-un who heads both the WPK and the NDC, remains a permanent fixture in the political system of the DPRK.

In terms of gross human rights violations in the DPRK that also constitute crimes against humanity, the SSD, currently led by Gen. Kim Won-hong, is almost always implicated, while the MPS, led by Gen. Choi Boo-il, is also invariably linked. The WPK has permeated all areas and levels of governance and society to ensure that its policies are followed. In particular, the WPK's elite were referenced at the expanded joint meeting of the WPK Central Committee and the Party Committee of the Korean People's Army(KPA) presided over by Kim Jong-un on February 2-3, 2016 as follows:

Hwang Pyong So: Director of the KPA General Political Department, Member of the Standing Committee of the Central Committee's Political Bureau

Kim Kyong Ok: Senior Deputy Director of the WPK Organization Guidance Department

Jo Yon Jun: Senior Deputy Director of the WPK Organization Guidance Department

Kim Ki Nam: WPK Secretary and Director of the Propaganda and Agitation Department

Choe Ryong Hae: WPK Secretary for Workers' and Social Organizations

Choe T'ae Bok: WPK Secretary for Science and Education, Chairman of the Supreme People's Assembly

Kim P'yong-hae: WPK Secretary and Director of the Cadres' Affairs Department

Kim Yong Chol: Secretary and Director of the United Front Department

O Su Yong: WPK Secretary for Light Industry

Gen. O Kuk Ryol: Vice Chairman of the National Defense Commission

Ri Yong Mu: Vice Chairman of the NDC

Kim Yo Jong (Kim Jong-un's sister): Deputy Director of the WPK Propaganda and Agitation Department

Propositions

The international community, acting through the United Nations and consistent with its responsibility to protect, should make provisions to ensure that those most responsible for crimes against humanity in the DPRK are prosecuted before an international court and brought to justice.

We are convinced that the Security Council should refer the situation in the DPRK to the International Criminal Court (ICC), as recommended by the Commission of Inquiry and subsequently encouraged by consecutive General Assembly resolutions.

In the event that the Security Council fails to refer the situation to the ICC, the General Assembly, as proposed by the Commission of Inquiry, could establish an ad hoc international tribunal for the DPRK. In this regard, the General Assembly could rely on its residual powers recognized *inter alia* in the “Uniting for Peace” resolution and the combined sovereign powers of all individual Member States to try these perpetrators of crimes against humanity on the basis of the principle of universal jurisdiction.

Furthermore, as suggested by the Commission of Inquiry, a special international prosecutor’s office for the DPRK could be established by the General Assembly as a stop-gap measure to secure witness testimony and other information until a court can exercise jurisdiction. Alternatively, following similar methods of work as the Commission of Inquiry, a non-prosecutorial documentation structure could be established by the High Commissioner for Human Rights, which would complement the work of the ICC or an ad hoc international tribunal.

In addition to a possible referral to the ICC, the Security Council, as encouraged by the General Assembly, should also adopt and consider the scope for effective targeted sanctions against those who appear to be most responsible for acts that the Commission of Inquiry deemed to constitute crimes against humanity.

The DPRK should immediately cease arbitrary death executions and infringements of people’s rights to life such as public executions, extrajudicial summary executions ignoring the lawful judicial procedures.

The DPRK should also immediately close the political prison camps and release all political prisoners unconditionally and without any delay. Notwithstanding, in the event of an unstable political situation, the DPRK may perpetrate a massacre in the camps to erase the evidence. Therefore, the international community needs to have a plan to rescue the camp survivors.

We, the Korean Bar Association, call upon Member States to undertake to ensure that the people of the DPRK can have the right to freedom of opinion and expression, as stipulated in Article 19 of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights to which the DPRK is a signatory. One of our main objectives is to “provide essential information directly to the people of the DPRK.” The ability to receive and impart information and learn about the outside world is a key determinant of freedom and an important way of helping to bring about internal change.

Member States should combat the practice of forced labour by the overseas DPRK workers. We call upon Member States to conduct thorough inspections at worksites on a regular basis and forcefully repatriate those responsible for violations. Furthermore, from now on we call upon Member States not to accept DPRK overseas workers.

We urge the Government of the DPRK to become a member of the International Labour Organization and abide by all the relevant conventions. The Government of the DPRK should protect its inhabitants, address the issue of impunity and ensure that those responsible for violations of human rights are brought to justice before an independent judiciary.

The People’s Republic of China (PRC) should protect the people of the DPRK who have sought refuge in, or are transiting through, its territory by abiding by the principle of *non-refoulement*. The PRC holds the key to this issue. Yet, despite the PRC’s contention that it has been dealing with North Korean defectors based on humanitarian principles, in our opinion the PRC has persistently approached this issue from the perspective of its national interest. The PRC still believes that a massive influx of North Koreans across the porous border will not only threaten the security of its traditional ally, but also goes against the PRC’s national interests. While we understand the PRC’s position on this

difficult issue, a country's individual interest cannot have a higher priority than universal human rights. Therefore, the international community should continuously spotlight the inappropriateness of forced repatriations of North Korean defectors from the PRC and urge the PRC's leadership to change its policy. The approach taken by the PRC on this issue will be a real litmus test of the PRC's status as a superpower.

Finally, we call upon the international community, including the civil society, to maintain a momentum in raising awareness of the human rights situation in the DPRK. Pressure should be aimed at compelling governments like the PRC and the Russian Federation to cease defending North Korea, and allowing the UN Security Council to refer Kim Jong-un and other top DPRK leaders to stand trial at the ICC for their crimes against humanity.
