

**Beyond the Findings of the UN COI Report:
Human Rights Violations in North Korea's Nuclear Program**

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My name is Chang-Hoon Shin, Director of the Center for Global Governance at the Asan Institute for Policy Studies, an independent and private think-tank based in Seoul, South Korea. First, I would like to thank the subcommittee for the opportunity to appear today and to give testimony on North Korea's human rights abuses and crimes against humanity. The views I express in this congressional hearing reflect my own personal observations and do not represent any official position of the Asan Institute or the government of the Republic of Korea. My observations are based upon personal interviews conducted with North Korean defectors who worked inside North Korea's nuclear facilities such as the reprocessing facility located at Yongbyon¹ and the uranium mine in Pyongsan.²

Key Findings and Recommendations of the United Nations Commission of Inquiry Report

1. The United Nations Commission of Inquiry on human rights in the Democratic People's Republic of Korea (DPRK) recently completed its mandate and submitted a final report to the UN Human Rights Council in March.³ The Commission findings have stated that the North Korean human rights abuses are exceptional and unprecedented and the situation "does not have any parallel in the contemporary world."⁴ This is due to the fact that human rights violations have occurred and are currently being perpetrated during peacetime, not in the course of an armed conflict.

2. Amongst the various findings of the Commission, the comprehensive and detailed report outlines the following three key points that embody the seriousness and extreme gravity of the human rights situation in North Korea.

(1) The Report characterizes North Korea as a totalitarian State, "a state that does not content itself with ensuring the authoritarian rule of a small group of people, but seeks to dominate every aspect of its citizens' lives and terrorizes them from within."⁵

(2) North Korea has committed "crimes against humanity" and other grave, widespread and systematic human rights violations as a matter of "State Policy". In accordance with international criminal law and the Rome Statute of the International Criminal Court, two elements must be present in order to constitute "crimes against humanity": (a) Individuals must commit inhumane acts with the

¹ The Radiochemical Laboratory (Reprocessing Plant) was one of the five facilities that the IAEA began to monitor during the freeze in November 1994. The other four facilities are the 5MW(e) Experimental Nuclear Power Plant, the Nuclear Fuel Rod Fabrication Plant, the 50 MW(e) Nuclear Power Plant and the 200 MW(e) Nuclear Power Plant. See IAEA, Application of Safeguards in the Democratic People's Republic of Korea, GOV/2011/53-GC(55)/24 (2 September 2011), p. 4, para. 16. When North Korea submitted its initial report to the IAEA in May 1992, it stated that the laboratory was for training nuclear specialists in separating plutonium and handling nuclear waste. However, during inspections later the same month, the IAEA concluded it to be a reprocessing facility. <http://www.nti.org/facilities/750/>.

² Pyongsan Uranium Mine was included in an appendix to North Korea's initial report submitted to the IAEA in May 1992. *Ibid.*, p. 7, para. 28.

³ UN Human Rights Council, Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea, A/HRC/25/CRP.1 (7 February 2014) (hereinafter UN COI Report).

⁴ *Ibid.*, p. 365, para. 1211.

⁵ *Ibid.*

requisite criminal intent; and (b) These inhumane acts must form part of a widespread or systematic attack directed against a civilian population. The Rome Statute also requires that the attack be pursuant to, or in furtherance of, a state or organizational policy.⁶ Various crimes against humanity committed by North Korea were documented in the report. However, North Korea has been unwilling to implement its domestic and international obligations to bring the perpetrators to justice, because those perpetrators have acted in accordance with State policy.⁷

(3) These crimes center around Kim Jong-un, the Supreme Leader of North Korea, because he has effective control and command of all organs and branches of the government. He receives direct and daily reports on the specific actions, policies, and decisions of all governmental bodies. This means that he has requisite knowledge of the ongoing human rights abuses. The Commission concluded from the evidence it gathered that officials from the State Security Department, the Ministry of People's Security, the Korean People's Army, the Office of the Public Prosecutor, the Special Military Court, as well as other courts and the Workers' Party of Korea have in the past committed and are presently committing crimes against humanity. The Commission further found that these officials are acting under the effective control of the central organs of the Workers' Party of Korea, the National Defence Commission and, ultimately, the Supreme Leader.⁸ The Commission made Supreme Leader Kim Jung-un aware of its findings in a formal written letter given to the North Korean government.

3. The UN COI makes comprehensive recommendations with regard to: 1) the North Korean Government, 2) China and other States, 3) the Korean People, 4) States and civil society organizations, 5) States, foundations, and engaged business enterprises, and 6) the international community and the United Nations. Amongst them, particular attention deserves to be paid to the recommendations on the responsibility to protect (R2P).

4. The three pillars of the R2P principle are:

(1) Each individual State has the primary responsibility to protect its populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement (Pillar one – The protection responsibilities of the State);

(2) The international community has a responsibility to encourage and assist States in fulfilling this responsibility (Pillar two – International assistance and capacity-building);

(3) If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations (Pillar three – Timely and decisive response).⁹

The recommendations of the UN Commission with regard to R2P include all aspects of these three pillars.

As for pillar one, the UN COI recommends to the North Korean government that it implement many changes including profound political and institutional reforms to introduce genuine checks and

⁶ UN COI Report, p. 320, para. 1027.

⁷ UN COI Report, p. 366, para. 1216.

⁸ UN COI Report, p. 360, para. 1198.

⁹ See Outcome Document of the 2005 United Nations World Summit (A/RES/60/1, paras. 138-140); and UN Secretary-General's 2009 Report (A/63/677) on Implementing the Responsibility to Protect.

balances upon the powers of the Supreme Leader and the Workers' Party of Korea.¹⁰

As for pillar two, the UN COI recommends that States and civil society organizations work together to foster greater opportunities for people-to-people exchanges such as dialogue and contact in order to provide North Korean citizens with opportunities to share information and be exposed to experiences outside their home country.¹¹ In addition, it recommends that States, foundations, and engaged business enterprises provide more support to civil society organizations that are working to improve the human rights situation in North Korea, including efforts to document human rights violations and to broadcast accessible information into each country.¹²

With regard to options for pillar three, the UN COI recommends that the United Nations Security Council refer the human rights situation in North Korea to the International Criminal Court (ICC) as well as enact and implement targeted sanctions against those who appear to be most responsible for carrying out crimes against humanity.¹³ Interestingly, the UN COI does not explain what would constitute these targeted sanctions. Instead it clearly states that it does not support wholesale unilateral or multilateral sanctions that are targeted against the population or the economy. However, the 2009 Report of the UN Secretary-General on "Implementing the Responsibility to Protect" categorizes targeted sanctions as those restrictions imposed on travel, financial transfers, luxury goods and arms transactions.¹⁴ This report urges member states to pay particular attention to restrictions on the flow of arms or police equipment, which could be misused by repressive regimes.¹⁵ In regards to individuals and entities that are engaged in the nuclear development program in North Korea, sanctions on travel, financial transfers, luxury goods and arms transactions have already been imposed.¹⁶ Additional sanctions must be imposed to block the sale or transfer of police equipment to those who are responsible for crimes against humanity.

Beyond the findings of the Report: Human Rights Aspects in North Korea's Nuclear Program

5. The UN COI report also contains information on the North Korean nuclear program, but does not explain what implications the nuclear program has for the human rights situation in North Korea. The High Commissioner for Human Rights, Navi Pillay's statement that concerns about North Korea's

¹⁰ UN COI Report, p. 366, para. 1226 (a).

¹¹ UN COI Report, p. 370, para. 1223.

¹² UN COI Report, p. 370, para. 1224.

¹³ UN COI Report, p. 370, para. 1225 (a).

¹⁴ UN Secretary-General's 2009 Report (A/63/677) on Implementing the Responsibility to Protect, p. 25, para. 57.

¹⁵ UN Secretary-General's 2009 Report (A/63/677) on Implementing the Responsibility to Protect, p. 25, para. 58.

¹⁶ See, for example, UNSC resolutions 1718 (2006), 1874 (2009), 2087 (2013) and 2094 (2013). The measures of these resolutions include arms embargos, WMD programs-related embargos, a ban on the export of luxury goods, individual targeted sanctions such as a travel ban and/or an assets freeze, and a ban on the provision of financial services or the transfer of financial or other assets. For the details, visit the 1718 Committee website. <http://www.un.org/sc/committees/1718/>.

nuclear weapons program should not overshadow the deplorable human rights situation in North Korea,¹⁷ well represents why the work conditions and environment in North Korea's nuclear facilities have not been investigated within the context of systematic, widespread and grave violations of human rights. Moreover, the mandate of the COI was confined to the nine substantive areas: 1) violations of the right to food, 2) the full range of violations associated with prison camps, 3) torture and inhuman treatment, 4) arbitrary arrest and detention, 5) discrimination, in particular in the systemic denial and violation of basic human rights and fundamental freedoms, 6) violations of the freedom of expression, 7) violations of the right to life, 8) violations of the freedom of individual movement, and 9) enforced disappearances, including in the form of abductions of nationals of other states. Therefore, the investigations of the COI could not focus on the work conditions and working environment of the laborers in North Korea's nuclear facilities.

6. Article 23 of the Universal Declaration of Human Rights (UDHR) stipulates:

(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 25 of the UDHR stipulates that everyone has the right to rest and leisure, including a reasonable limitation on working hours and periodic holidays with pay.

7. Articles 7 and 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which North Korea has ratified, contains similar guaranteed rights. In accordance with Article 7(b) of the ICESCR, the States Parties to the present Covenant must ensure, in particular, safe and healthy working conditions.

8. The International Labour Organization (ILO) has also played a significant role in galvanizing the protection of workers from ionizing radiation. The Convention concerning the Protection of Workers against Ionizing Radiation, known as ILO Convention No. 115, was adopted under the auspices of the ILO in June 1960 and entered into force in June 1962. The ILO has also cooperated with other international organizations on these issues. For instance, the International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources (BSS) was jointly developed by six international organizations such as the Food and Agriculture Organization (FAO), IAEA, ILO, the Nuclear Energy Agency of the Organization for Economic Co-operation and Development (OECD/NEA), the Pan American Health Organization (PAHO), the World Health Organization (WHO). The BSS establishes basic requirements to protect against the risks associated with exposure to ionizing radiation and ensure the safety of workers from in their working

¹⁷ UN COI Report, p. 6, para. 8.

environment.¹⁸ It supplements the object and purpose of the 1960 ILO Convention No. 115. The ILO has also maintained good relations with international scientific communities, for example, with the International Commission on Radiological Protection (ICRP), whose work has been the primary basis for the development of international standards on radiation.

Interviews conducted by the Asan Institute for Policy Studies

9. This year the Asan Institute for Policy Studies organized a task-force team in order to increase public awareness about the crimes against humanity and other gross human rights abuses occurring in North Korea, immediately after the release of the UN COI Report in February. The team has tried to identify laborers with work experience in North Korea's nuclear facilities and conducted interviews with them. The purpose of these interviews was not to gain further information on the development of its nuclear program, but to obtain findings on the working conditions, environment, and the situation of workers' safety and health in the North Korea's nuclear facilities. The team prepared questions based upon the international instruments described above and conducted interviews with those defectors who had worked in North Korea's nuclear facilities.

10. The international community has viewed the North Korea's nuclear program as one of the greatest challenges to the global non-proliferation regime. The North Korean problem has always been criticized and examined primarily through the lens of non-proliferation. It is only recently that the international community has become interested in the safety of North Korea's nuclear facilities as well as the security of nuclear materials contained in North Korea. However, no observations have been released with regard to the working conditions, environmental factors, and workers' safety and health concerns such as occupational illness that have a significant impact on human rights in the country. Therefore, these observations may provide the international community with additional evidence of the dangers of North Korea's nuclear program and make it possible to link the issue of North Korea's nuclear program with the issue of its severe human rights violations.

11. As noted above, the interviews were conducted with North Korean defectors who had worked inside North Korean nuclear facilities such as the reprocessing facility at Yongbyon and the uranium mine in Pyongsan. All of the interviews were conducted and recorded with the consent of the defectors.

Interview with a defector who had worked at the uranium mine in Pyongsan

12. The mining of uranium ores generates ore dust, which disperses into the air inside the mine and gives rise to an inhalation hazard.¹⁹ Recently, it has been known that the radiological hazards in uranium mines are mainly due to the airborne radionuclides which consist of radon and its related products. They occur in other types of mines as well and in some instances cause severe occupational illnesses, including lung cancer. However, considerable attention to these problems has only become a recent phenomenon, as the demand for nuclear fuel rapidly increases. External radiation hazards in

¹⁸ Shengli Niu, The role and activities of the ILO concerning the radiation protection of workers (Ionizing radiation), p. 3.

¹⁹ United Nations Scientific Committee on the Effects of Atomic Radiation, Sources and Effects of Ionizing Radiation (2010), p. 292, para. 520.

uranium mines are generally low and do not pose significant problems, but inside the mines where the ore grade is relatively high external radiation poses a significant hazard. Because of recent debates that have presented epidemiological evidence of lung cancer caused by inhalation of radon and its daughter products, safety measures such as mechanical dilution ventilation, confinement or suspension of radiation sources, and personal protection and job rotation have been implemented. These have developed into important precautionary measures that are now implemented for the purpose of maintaining a safe work environment in uranium mines and mills.²⁰ Bearing these radiological hazards and protective measures in mind, the research team at the Asan Institute was able to obtain some interesting observations by interviewing the defectors using the information checklist below.

- General description of the workplace
- Ventilation mechanism/effluent control system
- Work hours and rotation schedules
- Distribution of work suits and other protective equipment such as anti-dust masks, hat and boots
- Lunch time and location of food consumption
- Experience with and/or being a direct witness of illness
- Distribution of dosimeters (film badges) to the workers in mines for monitoring their dose limits
- Education on occupational safety hazards and work environment
- Health examination
- Distance of the civilian residences, farms, and schools from the mining facility
- Any witness of environmental pollution or accidents

13. The UN COI report refers to work conditions and the safety of laborers on two occasions. The first reference describes the inhumane conditions of detention in Ordinary prison camps (*kyohwaso*).²¹ The other refers to the testimony of a prisoner of war who had been forced to work in mines.²² The working conditions of North Korean laborers in conventional mines as illustrated in the report are

²⁰ For details on the radiological safety in uranium mines, see J.U. Ahmed, "Occupational radiological safety in uranium mines and mills", IAEA Bulletin, Vol. 23, No. 2, pp. 29-32.

²¹ "This finding is reinforced by the fact that work conditions are so inhumane that the work cannot be said to serve any legitimate, rehabilitative purpose. Surviving on starvation food rations, the prisoners are forced to work without pay for 9-12 hours every day of the week. Work that was normally be undertaken by machines or beasts of burden (e.g. ploughing or coal extraction) must be carried out manually in the DPRK's prisons, using rudimentary tools. If prisoners fail to fulfil their onerous daily work quotas or accidentally damage prison property, they are subject to torture and inhuman punishment, including beatings, solitary confinement and cuts to their already meagre food rations. Deadly work accidents are very frequent because little consideration is given to work safety." UN COI Report, pp. 250-1, para. 802.

²² "The conditions in the mines were treacherous, and work conditions severe. Many workers enslaved in the mines died from accidents or diseases contracted in the mines caused by the dust." UN COI Report, p. 277, para. 873.

extremely harsh and miserable. According to the testimony of the interviewed defectors, the working conditions in Pyongsan uranium mine are better in some regards and worse in other aspects than the conditions that exist in conventional mines. However, despite some differences it is evident that on the whole, the work and safety conditions in the uranium mine are just as miserable and inhumane as the conditions in conventional mines. One may conclude from the defectors' testimony that there have been systematic, widespread and grave human rights abuses in the mine. The following is a brief summary of the information gathered from defectors' testimony.

14. One defector interviewed entered the Korean People's Army in August 1995 when he was under the age of 18 and worked at an assigned mine location from August 1995 to June 1996. He maintained that he and his colleagues were recruited for work at a gold mine in Pyongyang, but they were dispatched to the Pyongsan uranium mine instead. They belonged to the 131st army unit (*Jidoguk*) controlled by the Atomic Department (*Wonjaryok Chong-guk*) in the Central Workers' Party. The mission of the unit was to build rails to allow access to the mine, to dig an underground mine, and to repair rails and mining structures. The mine site consists of underground mines, related mills, and the Pyongsan Chemical factory. The army units engaged only in the work of digging an underground mine. Civilian workers mined the uranium ore inside an underground mine dug by the army. Most of them were retired soldiers. Each underground mine had an air compressor that provided the underground mine with air ventilation and a rest area where the workers could have lunch. The civilian miners continued to use the air compressor and the rest area after the army unit left to dig another underground mine. However, the interviewee recalled that he never witnessed any ventilation system that diluted the concentration of Radon, an essential protective measure that is essential for ensuring more safe and healthy work conditions. To make matters worse, he stated that the quality of the anti-dust mask distributed to the workers was so bad that the workers working inside the underground mine did not carry the anti-dust mask with them. As a result, the workers regularly engaged in this work without taking adequate safety precautions or measures.

15. The interviewee worked for eight hours a day broken up into three different time shifts. Since he was novice laborer, he worked only from 8:00am to 4:00pm. The workers were permitted to have lunch from 12:00 to 1:00 pm, so this made a total of seven work hours in one day. Considering the fact that the prisoners in ordinary prison camps were forced to work for 9-12 hours every day of the week, the working conditions at the mine could be considered far better. Additionally, the interviewee stated that the workers were well-fed with special foods that were not distributed to ordinary citizens in North Korea. However, the workers were forced to labor almost every day of the week like prisoners in ordinary prison camps. The interviewee recalled that he had a rest day once a month. Accordingly, the workers in mines were not permitted an adequate right to rest and leisure, including a reasonable limitation on working hours and periodic holidays with pay as mentioned earlier in my statement.

16. The defector also related the fact that education on safety standards was conducted for a month as part of the initial work training. In the educational program, the workers were notified of the hazards of uranium ore. The work suits, boots and anti-dust masks were also distributed to the workers, but no dosimeter (film badge) was given out to the workers. The dosimeter is of the utmost importance for controlling the exposure of workers to external radiation, the related daughter products of radon, and ore dust. A regular health examination was conducted on all laborers, but the doctors had never informed the individual workers of the results of their health examinations.

17. The interviewed defector stated that working for seven hours a day was not so bad, but the work was extremely stressful and intense because of the increasing number of patients (sick workers) in his

unit. During certain periods of time, he witnessed that only half of the unit members were available for work. The lack of available workers created a heavier and more intense workload, because of the onerous allocation of daily work quotas.

18. The workers sometimes were also exposed to inhuman treatments when they worked inside an underground mine. They were beaten by superiors using the digging tools inside the mines. The chief supervisor intentionally did not come inside the mine in order to overlook or ignore the inhuman treatment that was occurring. If a bad relationship formed between the lower-ranked workers and the higher-ranked ones in the army barracks, the former retaliated by beating or abusing the latter inside a mine.

Interview with a defector who had worked at the reprocessing facility in Yongbyon

19. Another defector interviewed worked at the Radiochemical Laboratory in the Yongbyon nuclear facility as an analyst of radioactive chemicals from April 1988 to December 1994. He belonged to the so-called December Enterprise where about 1,000 scientists and laborers worked. The workplace was located about 4km distance from a village where the families of the workers from the Yongbyon nuclear facility resided. The population of the village was around 50,000.

20. The interviewee's work was to analyze the concentration of high levels of radioactive chemicals in an ample by using colorimeter. Since he dealt with high-level radioactive chemicals, the information checklist our team prepared for this interview was different from that of the defector who had worked at the Pyongsan uranium mine. The information checklist for this interview was as follows:

- General description of the workplace
- Providing appropriate information of security and safety, education and training
- Personal protective equipment and safety standards
- Witness of radiation injury and/or direct experience with illness
- Distribution of dosimeters (film badges) to the workers for monitoring their dose limits
- Education on occupational safety hazards and work environment
- Health examination
- Distance of civilian residences, farms, and schools from the nuclear facility
- Any witness of environmental pollution or accidents

21. The interviewee recalled that he was trained for about a year, but had never heard of or had no knowledge of what kind of chemicals he was required to analyze. No one in the factory gave him this information. He majored in mechanical engineering at the university undergraduate level, so he did not know the identity of the chemicals. His job only involved work to let the scientists know what colors showed up on the colorimeter. The ample that contained the chemicals was delivered through pipelines connected to his workplace. After their delivery, he placed the ample into a transparent box with 60cm thickness and manipulated the ample with the robot arms.

22. For the sake of preventing information leaks, even during his training period, he had not been informed of any security or safety matters in his workplace. However, personal protective equipment

of good quality such as a work suit, gloves and boots was distributed, but the washing of the equipment was done individually by the workers. The workers brought the suit, gloves and boots to their homes to wash them.

23. According to the defector's testimony, he had a group of colleagues whose work duties included helping other workers shake off their fatigue and sleepiness during working hours. He stated that the group was very effective. Most of his colleagues had suffered from severe fatigue during working hours.

24. All workers also carried film badges, but the badges were monitored only once every three months. The workers were never informed of the results of these monitoring tests, unless severe symptoms of radiation sickness were present and visibly apparent.

25. The interviewee stated that since food was well distributed to the workers in this nuclear facility, those from poorer families and those with less social status wanted to get married with the workers. However, the fertility of the women laborers was very low. In his department, 60% out of a total of fifty workers were women, but most of the women who got married could not conceive children while working at the factory. The interviewee witnessed many workers who suffered from nausea, vomiting, fatigue, and fevers at the workplace.

Findings and Recommendations: Human Rights approach to North Korea's nuclear program

26. North Korea is an extremely closed and rigid totalitarian regime which controls the flow of any sensitive information especially between the workers in its nuclear facilities. However, this harms the health of the workers and hampers the development of safety and security culture in the nuclear and uranium mining facilities.

27. There has been no provision of information on occupational safety standards to the workers. This deprives the workers of opportunities to develop their code of conducts with regard to occupational hazards and safety.

28. The fact that North Korean government distributed food of good quality to the workers at the nuclear facilities, but did not take any responsibility for enhancing work conditions, safety and health of the workers is evidence that supports the observation that North Korea is more interested in how to enhance workers' productivity than how to improve workers' human rights situation.

29. The workers' rights have been seriously violated as a matter of State policy particularly at nuclear facilities. This will not support the morality and legitimacy of North Korea's nuclear program in the long run.

30. North Korea's possession of nuclear weapons can be achieved with the sacrifice of North Korean populations as well as the violations of the workers' rights at the nuclear facilities.

31. The abandonment of nuclear program under these circumstances may create serious problems with redirection of workers in North Korea's nuclear facilities as well as with any costly cooperative threat reduction program.

32. If the level of safety culture and safety standards in the 1990s has sustained, even peaceful nuclear program under the "Dual Policy of Economic Construction and Nuclear Arsenal Expansion" announced in 2013 may result in a radiological accident, because of human failure. Therefore, the

improvement of the safety culture and compliance with international safety standards in order to prevent human failures are urgently in need.

32. Based upon these findings, the States concerned should devise how to apply human rights approach to the North Korea's nuclear program in the dialogues and negotiations with North Korea. The States concerned should make every effort to encourage direct and open dialogues between the workers of the States and those of North Korea to discuss how to improve the safety and security culture at North Korea's nuclear facilities. Methods to provide information on work conditions and occupational safety to the North Korean workers should be devised. In addition, there must be discussions on how to bring justice to the individuals who are responsible for the deprivation of workers' rights particularly in nuclear facilities. The North Korean government should allow the foreign experts on safety culture and safety standards to contact directly nuclear workers, paying attention to the fact that North Korea could not receive any technical assistance on safety from foreign experts since it withdrew the NPT and the IAEA statute.

33. In this context, we support H.R. 1771, the North Korea Sanctions Enforcement Act that includes promotion of human rights, but with some considerations of human rights situations particularly at the North Korea's nuclear facilities.