

Beyond non-proliferation: North Korea, UN sanctions and human rights



While the UN Security Council's North Korea sanctions regime is focused on the proliferation threat posed by Pyongyang, other issues go largely ignored. Here Dr Jelena Plamenac explores the factors that policymakers might consider in framing broader DPRK measures that take into account human rights issues including forced labour, gender violence and lack of freedom of expression and assembly – which the North Korean regime continues to flout with impunity.

The United Nations Security Council's sanctions against the North Korea ('DPRK') focus on countering the proliferation of weapons of mass destruction, but they do not explicitly address human rights issues directly linked to the proliferation projects. Indeed, the current sanctions regime also excludes serious human rights violations as a designation criterion, even though, in Resolution 2397 the Security Council emphasised the DPRK's obligation to respect and ensure 'the welfare, inherent dignity, and rights of people in the DPRK,' and condemned Pyongyang for 'pursuing nuclear weapons and ballistic missiles instead of the welfare of its people while people in the DPRK have great unmet needs.' This article sets out to provide greater clarity on the human rights dimension of the DPRK proliferation projects – and other factors that ought to be considered by sanctions policy-framers.

Starting points

As a member of the United Nations, North Korea, or the 'DPRK', is a State Party to the following international treaties, and thus must comply with their obligations:

- International Covenant on Political and Civil Rights ('ICCPR')
- International Covenant on Economic, Social and Cultural Rights ('ICESCR')
- Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW')
- Convention on the Rights of the Child ('CRC') and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
- Convention of the Rights of Persons with Disabilities.



A North Korean worker in a canned-fish factory in Russia.

The DPRK is also legally bound by human rights norms and principles that are part of customary international law, and general principles of law recognised by civilized nations, including most of the provisions of the Universal Declaration of Human Rights and the Slavery Convention.

And yet, UN bodies responsible for the oversight and monitoring of those treaties and conventions have repeatedly reported that DPRK authorities have grossly violated the rights to freedom of thought, expression, and religion; freedom of movement and residence; and freedom of peaceful assembly and association; the rights to life, liberty, and security of the person; the prohibition of discrimination and in particular on social origin, birth, gender and disability grounds; torture and other ill-treatment; and the full range of economic, social and cultural rights (see Table on the next 2 pages).

They have also found reasonable grounds to believe that such violations have been committed in a systematic and

widespread manner pursuant to a state policy, constituting crimes against humanity as defined under the Rome Statute of the International Criminal Court ('ICC').

The underlying acts of these crimes include murder, extermination, enslavement, torture, imprisonment, rape, forced abortions and other forms of sexual violence, persecution on political, religious, and gender grounds, forcible transfer of population, enforced disappearances, and the inhumane act of knowingly causing prolonged starvation.

Abuses that are a direct consequence of proliferation activities, such as the diversion of state resources and acquisition of overseas remittances from workers overseas, include grave violations of:

- *the right to food* under article 11 of the ICESCR, as a result of mass starvation, and, related, *the right to life* under article 6 of the ICCPR, in cases of starvation deaths; and
- *the right of overseas workers not to be subjected to forced*

or compulsory labour under article 8(3) of the ICCPR, and article 6 of the ICESCR.

The conditions under which the DPRK has employed overseas workers have also violated human rights including *the freedom of movement* under article 12 of the ICCPR, and *the right to work in decent working conditions* under article 7 of the ICESCR.

Serious violations of the right to food

The right to food is enshrined in article 11 of the ICESCR: 'States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food,' and states that governments bear the primary responsibility for taking the measures necessary to ensuring the fundamental right of freedom from hunger.

While the Covenant recognises that a state might be constrained by circumstance from ensuring the realisation of that ambition at a given time, it remains legally bound to at least take adequate measures to ensure that vulnerable groups have access to food. This obligation is closely inter-related with the right to life under article 6 of the ICCPR, and in this regard, states have the primary duty of protecting the right to life by adopting adequate measures to address the widespread hunger and malnutrition, and by ensuring without delay that persons in need have access to food.

Serious violations of that right may amount to the crime against humanity of 'inhumane acts... intentionally causing great suffering, or serious injury to body or to mental or physical

Table. Summary of key findings of the UN human rights mechanisms on serious violations of human rights in the DPRK

Human rights violation	International treaty	Crime against humanity	Victim's profile
Discrimination, including on political, social origin, birth, gender and disability grounds	<ul style="list-style-type: none"> • art. 2 ICCPR • art. 2 ICESCR • art. 1 CEDAW • art. 2 CRC • Convention on the Rights of Persons with Disabilities 	<ul style="list-style-type: none"> • Persecution on political, religious, gender or other grounds that are universally recognised as impermissible under international law 	<ul style="list-style-type: none"> • Political prisoners • Detainees in ordinary prisons • Religious persons • Persons considered to introduce 'subversive influences' • Population of low social class (<i>songbun</i>) • Women • Disabled persons
Right to life	<ul style="list-style-type: none"> • art. 6 ICCPR • • art. 6 CRC 	<ul style="list-style-type: none"> • Murder • Extermination 	<ul style="list-style-type: none"> • Political prisoners • Detainees in ordinary prisons • Religious persons • Persons considered to introduce 'subversive influences' • People who attempted to flee the DPRK • Population of low social class (<i>songbun</i>) • Women
Freedom from torture and cruel, inhuman or degrading treatment	<ul style="list-style-type: none"> • art. 7 ICCPR • • art. 37 CRC 	<ul style="list-style-type: none"> • Torture • Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity 	<ul style="list-style-type: none"> • Political prisoners • Detainees in ordinary prisons • Religious persons • Persons considered to introduce 'subversive influences' • People who attempted to flee the DPRK • Foreign nationals • Women
Right to liberty and security of the person	<ul style="list-style-type: none"> • art. 9 ICCPR 	<ul style="list-style-type: none"> • Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law • Enforced disappearance 	<ul style="list-style-type: none"> • Political prisoners • Detainees in ordinary prisons • Religious persons • Persons considered to introduce 'subversive influences' • People who attempted to flee the DPRK • Foreign nationals • Women
Right to freedom of movement and residence	<ul style="list-style-type: none"> • art. 12 ICCPR 	<ul style="list-style-type: none"> • Persecution on political, religious, gender or other grounds that are universally recognised as impermissible under international law • Deportation or forcible transfer of a population 	<ul style="list-style-type: none"> • People who attempted to flee the DPRK • Population of low social class (<i>songbun</i>) • Women
Fair trial rights	<ul style="list-style-type: none"> • art. 14 ICCPR 	<ul style="list-style-type: none"> • Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law 	<ul style="list-style-type: none"> • Political prisoners • Detainees in ordinary prisons • Religious persons • Persons considered to introduce 'subversive influences' • People who attempted to flee the DPRK • Women
Right to freedom of thought, conscience and religion	<ul style="list-style-type: none"> • art. 18 ICCPR • art. 14 CRC 	<ul style="list-style-type: none"> • Persecution on political, religious, gender or other grounds that are universally recognised as impermissible under international law 	<ul style="list-style-type: none"> • Political prisoners • Religious persons • Persons considered to introduce 'subversive influences' • Population of low social class (<i>songbun</i>) • Women
Right to freedom of opinion, expression, and information	<ul style="list-style-type: none"> • art. 19 ICCPR • art. 12, 13 & 17 CRC 	<ul style="list-style-type: none"> • Persecution on political, religious, gender or other grounds that are universally recognised as impermissible under international law 	<ul style="list-style-type: none"> • Political prisoners • Religious persons • Persons considered to introduce 'subversive influences' • DPRK nationals

health’ under article 7(1)(k) of the ICC Rome Statute.

Currently, the United Nations reports that ten million people (40% of the population) in North Korea are in urgent need of food assistance. According to the 2020 Global Hunger Index, the country has a score of 27.5, classified as ‘serious’.

Factors contributing to such a lack of food security include the collapse of the food distribution system in the 1990s, natural disasters and land infertility, and sanctions. However, the United Nations

attributes primary responsibility to the DPRK government, the leadership of which it says, has knowingly ignored, marginalised or intentionally disregarded the need to access basic food items, as a means of control and for the purpose of sustaining the current political system.

Its unlawful actions and omissions include adopting discriminatory and poor economic and agricultural policies in the public distribution system that exclude or gravely disfavour particular social, religious, and political groups; denying and politicising access to humanitarian food aid; and impeding the access to the food delivery to affected regions and the most vulnerable groups in favour of high-level state and military officials, and the capital Pyongyang.

Swords not ploughshares

While North Korea has neglected its obligation to feed its citizens, it has invested very many greater resources, including foreign

currency funds managed in parallel to the official budget and acquired through activities including cyber-attacks and overseas worker remittances, on

1. developing nuclear and ballistic missiles programmes and other weapons systems, prohibited under Security Council Resolution 1718 (2006);
2. Importing luxury goods for the benefits of the government

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- officials, prohibited under the same resolution; and
3. maintaining the stability of the political regime.

Unintended consequences

While UN sanctions are intended to limit the regime’s ability to use such resources for the development of weapons of mass destruction, they may have adverse effects on ordinary citizens’ economic and social rights as well as the humanitarian situation (despite the reiteration, in Resolution 2397, that they are not intended to.) By way of mitigation, the Security Council has incorporated a procedure for humanitarian exemptions in the sanctions regime which means

that providers of aid, such as multilateral donors and NGOs may apply for exemptions on a case-by-case basis.

Forced labour of North Korean overseas workers

Among extensive sanctions measures against the DPRK, the Security Council has explicitly prohibited the employment of North Korean nationals outside the DPRK.

State Parties to the ICESCR have an obligation under article 6(1) to recognise ‘the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.’ Pursuant to article 7 of the ICESCR, States Parties are further obliged to ensure that persons exercise the right to work in conditions that respect their fundamental human rights and freedoms. These include safe working conditions, fair remuneration, reasonable limitations to working hours, and physical and mental integrity of the worker. The definition of the right to work in article 6 implies that states are obliged to respect and protect the right to work by prohibiting forced labour, and any other coercion of persons within their jurisdiction to engage in a particular work.

International human rights law explicitly prohibits forced or compulsory labour under article 8(3)(a) of the ICCPR. Forced or compulsory labour could be defined as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has

not offered himself voluntarily’. The *involuntary nature* is central to the conduct. This unlawful form of labour is, however, distinct from permissible forms of labour under the ICCPR, such as hard labour of convicts under a court sentence, compulsory military service, or labour necessary during emergency situations.

Under specific conditions, acts of forced or compulsory labour could qualify as the crime against humanity of enslavement under article 7(1)(c) of the ICC Rome Statute. Potentially indicative factors may include the control of freedom of choice or freedom of movement; threat or use of coercion; absence of consent; duration and socio-economic conditions of forced labour, often without remuneration and with the accruing of some gain to the perpetrator; and psychological control.

The available information suggests that the government has complete control over the employment system in the DPRK. It assigns jobs to citizens often under conditions that are discriminatory and manifestly contrary to human rights standards of humane treatment and decent working conditions, including, paying minimum or no wages, assigning extensively long working hours, disregarding work safety, and demonstrating threats of severe punishment for non-compliance with imposed employment requirements. According to the UN Special Rapporteur on the Democratic Peoples’ Republic of Korea, this compulsory state-assigned employment system is

Table. Summary of key findings of the UN human rights mechanisms on serious violations of human rights in the DPRK (continued)

Human rights violation	International treaty	Crime against humanity	Victim’s profile
Right to freedom of peaceful assembly and association	<ul style="list-style-type: none"> • art. 22 ICCPR • art. 15 CRC 	<ul style="list-style-type: none"> • Persecution on political, religious, gender or other grounds that are universally recognised as impermissible under international law 	<ul style="list-style-type: none"> • Religious persons • DPRK nationals
Right to work	<ul style="list-style-type: none"> • art. 6 ICESCR 	-	<ul style="list-style-type: none"> • DPRK nationals
Right to food	<ul style="list-style-type: none"> • art. 11 ICESCR • art. 24 & 26 CRC 	<ul style="list-style-type: none"> • Murder • Extermination • Other inhumane acts 	<ul style="list-style-type: none"> • DPRK nationals
Right to health	<ul style="list-style-type: none"> • art. 12 ICESCR 	-	<ul style="list-style-type: none"> • DPRK nationals

based on coercive legislation and policies that violate the DPRK's obligations under international human rights law.

In this context, citizens are typically mobilised to exercise unpaid compulsory work for state-owned projects. This is the case of workers whom the DPRK authorities have employed through state-owned entities overseas to earn wages in foreign currency. Based on the information available, the form of their employment amounts to forced or compulsory labour in violation of article 8(3)(a) of the ICCPR and article 6 of the ICESCR. In addition, the coercive employment conditions that the DPRK has systematically imposed on overseas workers violate their right to freedom of movement under article 12 of the ICCPR, and the right to work in decent working conditions under article 7 of the ICESCR.

Non-compliance with state employment is liable to result in penalty. Meanwhile, workers are often forced to relocate overseas, while citizens wishing to travel abroad of their own volition are under the complete control of the DPRK authorities, with any attempt at leaving punishable by law.

Moreover, the DPRK authorities are reported to extend their complete control of workers' movements extraterritorially through surveillance and other measures of constant monitoring through assigned state agents, by arrangement with and the consent of their foreign employers, while working conditions abroad are typically harsh, and authorities use the threat of retribution against family members to exercise control.

Responsibility of third states towards North Korean overseas workers

Pursuant to paragraph 8 of the SCR 2397, the UN member states were obliged to have repatriated North Korean nationals who earn income in their respective jurisdictions, within two years of 22 December 2017. The same provision, however, envisaged exceptions to this measure in cases where the repatriation of DPRK nationals would violate obligations under national and international law. In particular,

states are legally bound to comply with the requirements of the non-refoulement principle under international refugee law and international human rights law. This international legal standard requires states to determine if there are substantial grounds to believe that persons to be repatriated are at real risk of serious human rights violations upon their return to the DPRK, including torture and other ill-treatment, and persecution. Should such grounds exist, a state must refrain from repatriation. This assessment should be made on a case-by-case basis.

Some states have entered into formal or informal bilateral agreements with the DPRK to legally regulate and otherwise facilitate the employment of North Korean nationals in their jurisdictions. In addition to violating the UN sanctions regime by these arrangements, states may be responsible for aiding and assisting the DPRK in committing human rights violations against the employed North Korean nationals.

Aid or assistance may include the issue of work permits, visas and other administrative documentation, the provision of infrastructure, resources and

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logistical assistance, financial and other support that would allow North Korean nationals to generate income on their territory and the DPRK to access the remittance of the wages that the workers earned within their jurisdiction. The requirement of the 'knowledge' entails the state having had actual knowledge, or being 'willfully blind' to the unlawful conduct as reported by reliable sources: e.g., the findings of a UN Commission of Inquiry.

Finally, the ICCPR and the ICESCR impose a positive duty to take protective measures to prevent human rights violations by private actors in their jurisdiction. Since private enterprises with whom the DPRK authorities have also concluded employment agreement are not subjects of international law, the illegality of their conduct falls within the State's legal obligation to exercise due diligence to

prevent the employments of North Koreans.

Third states may take preventive measures to avoid unwanted legal consequences of aiding and abetting international wrongful acts and violating other legal obligations under international human rights law in relation to the employment of North Korean workers by public or private entities in their jurisdictions. These measures include adopting appropriate legislative acts or amendments to the applicable domestic legislation, including in relation to sanctions for non-compliance by public and private employers and enterprises; enacting administrative restrictions related to increased borders control, visa issuance and similar law enforcement measures; and complying with the requirements of the UN Security Council resolutions.

COMMENT: SECURITY COUNCIL MUST IMPOSE SANCTIONS FOR DPRK LABOUR ABUSES

Former UN sanctions monitor Enrico Carisch argues that the Security Council should take stronger action to address North Korean human rights violations.

Tens of thousands of North Korean citizens are working abroad without any choice in the decision where, how long and under what working and employment conditions. Their expatriate life is ordered by Kim Jong-Un's government and serves its need to raise foreign currency income. Workers are typically kept under close surveillance and control by North Korean overseers, limiting their movement in the host country and their job sites as well as access to food and medical care. In short, the conditions reported by the UN Panel of Experts on North Korea and others indicates that the North Korean government instigated a racket of modern slavery to which many UN member states are party, unknowingly or not.

It is long overdue that the Security Council addresses these systematic human rights abuses by reminding the government of North Korea that it violates its obligations under international human rights conventions to which it is a party. It should also state in its resolutions that some situations involving forced North Korean workers that appear

to contravene the Rome Statutes could be referred to the International Criminal Court.

The Council should also require sanctions resolutions that North Korea immediately stops these abuses of human rights law, while requesting all member states to monitor human rights violations of North Korean expatriate workers and report to the sanctions committee all observed cases. The resolution should further explain to member states that the revocation of visas and expulsion of these individuals may represent a human rights violation and should be ordered only after a detailed assessment of the risks these persons will suffer when returning to North Korea.

The Security Council could further strengthen its attention to this issue by imposing targeted sanctions on North Korean government officials who facilitate this revenue-raising operation. Furthermore, a freeze on the assets of the public and private sector enterprises who engage forced North Korean workers should also be applied.