



Online Series

2017. 04. 05. | CO 17-08

Report of the Group of Independent Experts on Accountability for Human Rights Violations in the DPRK : Implications and Future Challenges

Do, Kyung-ok

(Director, Center for North Korean Human Rights Studies Division)

The Group of Independent Experts on Accountability for Human Rights Violations in the Democratic People's Republic of Korea (hereinafter referred to as "GIE") submitted a report to the United Nations Human Rights Council on March 13, 2017. This paper sets out to have a brief review on the report and provide an overall assessment and future challenges.

New Perspectives on Approach to Seeking Accountability

- Comprehensive and Multi-Pronged Approach

The GIE emphasizes that a comprehensive and multi-pronged approach is required in conformity with international norms and standards given the severity and complexity of human rights situation in North Korea. Ever since a report of Commission of Inquiry (COI) on human rights in the Democratic People's Republic of Korea (DPRK) was released in 2014, an issue of seeking accountability on human rights violations in North Korea has been under an intensive spotlight and the subsequent

related-discussions have mostly been centered around the punishment for perpetrators who committed human rights violations. While it is true that holding human rights violators accountable for criminal justice has been considered to be the most traditional and important option of seeking accountability, the concept of accountability today not only has a meaning of punishment but is also understood in the broader context encompassing reparation and compensation, seeking truth, and restoring reputation. The GIE seems to intend to highlight that such concept along those broader lines is applied in addressing North Korean human rights violation issues.

- Human Rights-Based Approach

The GIE views that the approach to and measures of accountability must be human rights-based, ensuring that the rights and needs of victims are at the center of their design and implementation and that such goals can only be achieved through a fully participatory process. In fact, as the accountability-seeking cases of the past suggest that victims' active participation in the process of seeking accountability ultimately determines the success of a trial, such argument made by the GIE merits a special attention.

Review for Accountability Options

- Seeking Accountability through Justice System in North Korea

The GIE notes that it has no information indicating that viable domestic options for seeking accountability for human rights violations currently exist or have been used in the DPRK. It also reported that it dismissed the option of establishing a hybrid court in cooperation with the international community as in its view the justice department of the DPRK itself is likely to get involved in human rights violations lacking the impartiality and independence necessary to carry out criminal trials. In

fact, seeking accountability through the North Korean justice system appears to be an unlikely scenario considering the current status of the North Korean justice system and the level of justice personnel revealed through various surveys and researches. And yet, the GIE still calls for the North Korean regime to reform its justice system to the extent that is in line with international human rights norms and standards. In the meantime, the international community should seek a way to support the reform of the North Korean legal system in a bilateral and multilateral manner.

- Seeking Accountability through Justice System of Other Countries

The GIE reviewed options of seeking accountability through the justice systems of Korea, Japan, and China given that: 1) nationals of these countries have been victims of human rights violations in the DPRK; 2) violations may have been partially committed on their territories; 3) and they host sizeable groups of people who have lived in the DPRK, including victims and perpetrators of and witnesses to human rights violations. Legal systems of three countries allow courts to exercise criminal jurisdiction in accordance with the principles of territoriality, active personality, and passive personality. According to the principle of territoriality, crimes committed on their territories could be prosecuted. The principle of active personality suggests that crimes committed by their nationals on the territory of the DRPK could be prosecuted. And in pursuant with the principle of passive personality, prosecution in their courts is also allowed when the victim of the crime is their national. In addition to that, the GIE mentioned the possibility of exercising criminal jurisdiction of countries that have adopted the principle of universal jurisdiction.

The report, however, found that seeking accountability on human rights violations in the DPRK through the justice systems of other countries has common challenges. The practical challenge is that there is the compromised access to evidence and suspects. The legal challenge indicates that immunities are given to the government

officials tried in foreign courts and the domestic criminal law does not acknowledge the superior responsibility. There may be other challenges aside from all those difficulties identified above. Even though Korea, Japan, and China may attempt to exercise criminal jurisdiction under the principles of territoriality and personality, it might be difficult to determine if the limited range of cases that exclude the human rights violations of North Korean residents committed in the North Korean territory constitute crimes against humanity. In the meantime, it could also be challenging to encourage other countries other than those three to bring the cases that are not relevant to their own interests to their domestic courts at the risk of creating the political and diplomatic conflicts in the midst of heated controversies over the principle of universal jurisdiction.

- Referral to ICC and Establishment of Ad Hoc International Tribunal

The GIE concurs that the international community needs to continuously seek the referral of North Korean human rights violation cases to the International Criminal Court (ICC) considering all the challenges that may arise with seeking accountability in the domestic judiciary. However, North Korea is neither a signatory to the Rome Statute nor is likely to accept the jurisdiction of the court. Therefore, as of now, the UN Security Council resolution is the only remaining option to refer the case of human rights violations in the DPRK to ICC. Nevertheless when gross human rights violations occur in the territories of Rome Statute signatories, including abductions and enforced disappearances of foreigners committed by North Korea, ICC may exercise jurisdiction following referral of a state party or at the initiative of the prosecutor. However, it will still be difficult to determine whether such case amounts to crimes against humanity given its limited range.

The GIE noted that regardless of how ICC acquires jurisdiction of the situation in the DPRK, trials at ICC will face resource constraints and only allow examining the limited number of cases. Moreover, since the court has jurisdiction only with respect

to crimes committed after the entry into force of the Rome Statute, on 1 July 2002, it cannot address a considerable number of crimes against humanity that occurred before 1 July 2002. To that end, the GIE presented an alternative way of having high-level perpetrators prosecuted through ICC and utilizing other criminal accountability processes, including the establishment of ad hoc international tribunal. According to the GIE, an ad hoc international tribunal would be appropriate to address North Korean situation given that it can flexibly set the temporal, territorial, personal and subject-matter jurisdiction. Establishing an ad hoc international tribunal would be as challenging as acquiring the ICC jurisdiction in a sense that it requires the willingness of the relevant country and the UN Security Council resolution and takes a lot of time and financial resources. However, the GIE viewed that reviewing the scope of the establishment of ad hoc international tribunal itself could send a message that by doing so it can prevent the occurrences of crimes in the future and that the victims' voices can be heard. ICC referral and the establishment of ad hoc international tribunal – a mutually complementary way of seeking accountability – are considered to be a practical and reasonable proposal reflecting the peculiarity of human rights situation in North Korea.

Assessment and Future Challenges

The report of the GIE mainly focuses on exploring currently-available options of seeking accountability on human rights violations in North Korea as opposed to considering the possibility of North Korean regime change and the situation that will unfold after unification on the Korean Peninsula. Therefore, the road to carrying out an investigation, prosecution, and punishment for crimes against humanity will be filled with many obstacles in spite of the necessity of implementing such measures. The report, however, has significant implications in a sense that it has expanded the scope of discussions on seeking accountability by raising the need for the comprehensive, multi-pronged, and human rights-based approach and provided an important opportunity for many involving actors to come up with various and practical

measures.

The relevant stake-holders should strengthen the efforts to put in practice a comprehensive, multi-pronged, and human rights-based approach in the future as highlighted by the GIE. In particular, an attention should be paid to the common recommendations made by the GIE that all the stake-holders should put forth the efforts to conduct awareness-raising initiatives for victims, followed by an appropriate support. So far, North Korean defectors residing in South Korea have largely been regarded as a subject for research – serving as a barometer to get a grasp of the human rights situation in North Korea. As emphasized by the report, one must recognize that helping victims have a proper understanding on their rights and status as rights holders is a part of accountability-seeking efforts. To that end, a measure for improving the consciousness on human rights and building the capacity should be implemented in an organized manner. In addition to that, a detailed measure should be sought for improving the consciousness on human rights and enhancing the human rights sensitivity for North Korean residents. In the meantime, important points emphasized by the GIE should be taken into account that methodologies in accordance with international standards and norms should be applied in collecting information and evidence on human rights violations in North Korea and that such information and evidence should be assessed from a criminal procedural prospective. There is also a need to develop an investigation manual pursuant to international standard and norms. Furthermore, the information and evidence deemed to be useful in the context of criminal law should primarily be collected and stored. ©KINU 2017

※ The views expressed in this paper are entirely those of the author and are not to be construed as representing those of the Korea Institute for National Unification (KINU).