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| 2805AHUMAN RIGHTS ABUSE AND FACT FINDING: EXPERIENCE OF THE UN INQUIRY ON NORTH KOREA |
| The Hon. Michael Kirby AC CMG  |

*HUMAN RIGHTS ABUSE AND FACT FINDING: EXPERIENCE OF THE UN INQUIRY ON NORTH KOREA*[[1]](#footnote-1)\*

The Hon. Michael Kirby AC CMG[[2]](#footnote-2)\*\*

In 2013, the United Nations Human Rights Council (HRC) established a Commission of Inquiry (COI) to investigate and report on human rights abuses in the Democratic People’s Republic of Korea (DPRK) (North Korea).[[3]](#footnote-3) The inquiry followed many years of disturbing reports out of North Korea. Although a Member State of the United Nations since 1993, DPRK had not cooperated with the United Nations human rights machinery. It had not permitted successive special rapporteurs, appointed by the HRC, to visit. It had not invited the High Commissioner for Human Rights (HCHR) to visit. Effectively, it had closed its borders, only allowing a trickle of tourists who were kept under close watch and restricted in their movements. It was commonly referred to as the “hermit kingdom”.

Getting up to date, accurate and representative evidence to respond to the nine point mandate for the COI inquiry, was bound to be extremely difficult. As expected, the government of DPRK, through its mission in Geneva, effectively ignored requests from the COI to permit its members and staff to visit the country. It maintained that stance throughout the inquiry. When, in the end, copy of the draft report was transmitted electronically through the Geneva embassy of North Korea to the Supreme Leader of DPRK (Kim Jong-un), with a warning that he might himself be personally accountable for crimes against humanity found in the report, this too was ignored. However, DPRK was aware of the inquiry. It regularly denounced it and its members. When it criticised the inquiry and its procedures, the members and the United Nations, offered to come to Pyongyang to explain their mandate and report and to answer questions. This offer was also ignored.

Faced with such intransigence, the COI was brought to realise the importance of the compulsory procedure of *subpoena* (lit. “under the power”), developed in national legal systems to ensure that parties, persons and records relevant to a proceeding are bought before those with the responsibility of decision. Whilst the HRC strongly and repeatedly urged DPRK to cooperate with the COI, its injunctions fell on deaf ears. Yet, obviously, this want of cooperation could not frustrate the COI in attempting to discharge its mandate. Any more than a national court or inquiry would simply surrender in the face of non-cooperation.

The three members of the COI came from differing cultural and legal traditions. Two (Marzuki Darusman, Indonesia and Sonja Biserko, Serbia) came from countries that follow the civil law traditions, ultimately traced back to France and Germany. My own experience had been in the common law tradition derived from England. Most UN are carried out by professors and public officials from civilian countries. The COI on DPRK gave a great deal of attention, at the threshold, to the methodology that it should adopt in order to overcome (so far as possible) the hostility and non-cooperation of the subject country.[[4]](#footnote-4)

The COI was not itself a court or tribunal. It was not authorised to prosecute, still less to arraign and to determine the guilt of, the DPRK or any named officials. The object of UN COIs in the area of human rights is to be “effective tools to draw out facts necessary for wider accountability efforts.”[[5]](#footnote-5) Self-evidently, all such inquiries must themselves conform with United Nations human rights law. This means that they must accord natural justice (due process) to those who are the subject of inquiry and protection to those who give or produce testimony and may for that reason be at risk. The COI on DPRK took these obligations seriously.

The methodology adopted included:

1. Advertising to invite witnesses to identify complaints and offer testimony;
2. Conduct of public hearings to receive such testimony as could be safely procured in public (with other evidence received in private);
3. Film recording of such public testimony and placing it online, accompanied by written transcripts in relevant languages;
4. Inviting national and international media to attend and cover the testimony and draw it to global attention;
5. Producing a report written in simple, accessible language;
6. Indicating clearly in the report the findings made by the COI and the evidence upon which such findings was based;
7. Providing a draft of the report to the nations and individuals most closely concerned, with an invitation to offer suggested corrections or comment on factual or legal conclusions;
8. Publishing with the report any such comments (comments were received and published from China); and
9. Engaging with media in all forms to promote knowledge of - and to secure support for the conclusions and recommendations.

The COI on DPRK was aware that false testimony by witnesses could potentially damage the credibility of its findings. Therefore, it took care to limit the witnesses to those who, on interview by the COI’s secretariat, appeared to be honest and trustworthy. It also secured agreement with the government of the Republic of Korea (ROK) (South Korea), exceptionally, to permit DPRK to send representatives, advocates, or to engage lawyers, who could make submissions and, with permission of the COI, ask questions of witnesses. This offer was communicated to DPRK but ignored. In giving testimony, the witnesses before the COI were examined in the manner of “examination in chief” i.e. by non-leading questions. This course permitted them to give their testimony, in a generally chronological way, in their own language, and in a fashion that was comfortable to them. The COI did not cross examine witnesses unless it considered this essential to clarify apparent inconsistencies or to address doubts about the witness raised in the minds of COI members by the evidence. The “non-leading” mode of examination allowed witnesses to speak for themselves.

The mass of testimony procured by the COI was substantially organised under the headings of the nine point mandate received by the COI from the HRC. In each case, analysis of the issues and the overall effect of the testimony was supplemented by short extracts from the transcripts. These passages add light and colour to the report which third person chronicles will commonly lack. Part of the power of the report of the COI on DPRK derives from the care devoted by the members and the secretariat to provide of a readable text. The object was to ensure that the conclusions and recommendations grew naturally out of the preceding passages of testimony, evidentiary extracts, recommendations and analysis.

To the criticism expressed by DPRK of the report and the alleged ‘self-selecting’ character of the witnesses, the COI repeatedly responded with appeals to permit COI members to visit the country to conduct a transparent investigation on the spot among a wider pool of witnesses. This was also ignored. Moreover, the testimony of more than 80 witnesses (taken and recorded in Seoul, Tokyo, London and Washington D.C.) was placed online and is still available there. This means that people everywhere throughout the world (except in the DPRK) can view the witnesses and their testimony for themselves and reach their own conclusions as to its truthfulness, balance and representativity.[[6]](#footnote-6)

The objections and alternating “charm offensive” and bullying tactics adopted by DPRK, following publication of the COI report, are all recorded online. Sharp (but respectful) exchanges by me with the DPRK Ambassador to the United Nations are also captured online (and available on the internet). These allow both the political actors and the general international public to evaluate the COI report. Certainly in the first instance, the political actors in the organs of the United Nations indicated their strong conclusions by overwhelming votes endorsing the report, recorded successively in the HRC, in the General Assembly and the Security Council of the United Nations. In the Council, by a procedural vote not subject to the veto[[7]](#footnote-7) the human rights situation in DPRK was added to the agenda of the Security Council by a two third majority (11 for; two abstentions; two against).

Two Permanent Members of the Security Council, China and the Russian Federation, on a show of hands, voted against the procedural resolution adding the COI report to the Council’s agenda. One substantive matter where the concurring decision of the Permanent Members would be essential concerns the COI’s recommendation that the case of North Korea should be referred to the International Criminal Court so that prosecutorial decisions might be considered, and if so decided, trials conducted to render those arguably guilty of grave crimes accountable before the people of Korea and the international community.[[8]](#footnote-8) That substantive resolution has not, so far, been proposed, still less voted on.

Under the Security Council’s procedural resolution of December 2014, the issues of human rights in DPRK remain on the agenda of the Council for three years at least. Hopefully, a time will arrive when a consensus has formed that at least the gravest findings on the part of the COI and its officials must be fully considered by a prosecutor with appropriate powers to initiate action. Under international law, where a nation state fails to ensure accountability for grave human rights crimes, the other members of the international community in the United Nations have a “responsibility to protect” those who are left unprotected by their own country.[[9]](#footnote-9)

In reaching its conclusions, the COI explained the origins of its mandate,[[10]](#footnote-10) its methodology[[11]](#footnote-11) and the interpretation that it took of its mandate as well as its methods of work.[[12]](#footnote-12) Specifically, the COI described the standard of proof that it required for accepting testimony of witnesses and deriving conclusions from that testimony so as to respond to its mandate.[[13]](#footnote-13) On the issue of differentiating probative from non-probative evidence, the COI said: [[14]](#footnote-14)

“Consistent with the practice of other United Nations fact-finding bodies, the Commission employed a ‘reasonable grounds’ standard of proof’ in making factual determinations on individual cases, incidents and patterns of state conduct. These factual determinations provided the basis for the legal qualification of incidents and patterns of conduct as human rights violations and, where appropriate, crimes against humanity. … There are ‘reasonable grounds’ establishing that an incident or pattern of conduct has occurred when the Commission is satisfied that it has obtained a reliable body of information, consistent with other material, based on which a reasonable and ordinary prudent person has reason to believe that such incident or pattern of conduct has occurred. The standard of proof is lower than the standard required in criminal proceedings to sustain an indictment, but it is sufficiently high to call for further investigation into the incident or pattern of conduct and, where available, initiation of the consideration of a possible prosecution. The findings of the Commission appearing in this report must be understood as being based on the ‘reasonable grounds’ standard of proof, even where the full explanation… is not necessarily expressed throughout the text of this report.”

After the publication of the COI report, and the actions of the three principal organs of the United Nations in considering it, an event occurred which the DPRK used to attempt to destroy the entire credibility of the COI report and its processes. In January 2015, DPRK released a video film concerning a witness who had given evidence before the COI and who had subsequently taken part in conferences and meetings recounting his alleged experiences in escaping DPRK. Shin Dong-hyuk (Shin) was an articulate, engaging young man whose escape story was unique, in that he claimed that he had fled from the highest security detention camp in DPRK, reserved for the most dangerous political detainees and their families.

Shin’s story was not only recorded in the transcript of the COI. It was the subject of a best-selling book co-written by him and Blaine Harden, a United States journalist. [[15]](#footnote-15) The video released by DPRK showed a person later confirmed as the father of Shin who stated that Shin’s testimony and account of his experiences were fake; that he was given to falsehood; and that he should return to DPRK and seek forgiveness. Shin subsequently acknowledged that parts of his story in the book (and hence of his testimony to like effect before the COI) were not factually correct, including in relation to his being detained in Camp 14 and the age at which he was tortured and the alleged circumstances by which he had claimed that he escaped. Three other witnesses have been identified by DPRK who are claimed to have made false claims against DPRK. However, Shin is the only one of these three who gave evidence to the COI in its public hearings.

The question becomes to what extent the entire report of the COI, its conclusions and recommendations, are damaged or undermined by the exaggerations acknowledged by Shin and the possibility that other witnesses, not yet identified or acknowledged may have similarly falsified or exaggerated their allegations? Naturally enough, DPRK has asserted that the entire COI report on human rights in their country collapses. It has called for the United Nations to make an apology to DPRK and to rescind its condemnatory resolutions.

Because Shin had been prominent in international media reports that preceded, and accompanied, the COI hearings, he was called first amongst the Korean witnesses who gave evidence to the COI in Seoul. Some support for the DPRK criticisms has been voiced by an assistant professor of political science in Singapore (Jiyoung Song) in an article “Unreliable Witnesses” published in August 2015. [[16]](#footnote-16) In her article, Ms Song referred to a practice of paying North Korean refugees for interviews on human rights experiences (fees up to $US200/hour were mentioned); receiving second hand accounts without adequately checking them for reliability; allowing witnesses to change their given names allegedly to protect their families from retaliation but making objective scrutiny more difficult; using “older white male interviewers” who are not native Korean speakers and who cannot detect nuances in witness evidence; receiving testimony through interpreters and paying insufficient attention to gender, age and social status considerations; and failing adequately to follow-up inconsistencies, possibly deriving from perceived self-advantage.

Ms Song concludes: [[17]](#footnote-17)

“In my 16 years of studying North Korean refugees, I have experienced numerous inconsistent stories, intentional omissions and lies. I have also witnessed some involving fraud and other illicit activities. In one case the breach of trust was so significant that I could not continue research. It affected my professional capacity to analyse and deliver credible stories in an ethical manner but also had a deep impact on personal trust I invested in the human subjects I sincerely cared about.”

Any person who has been involved over time in the gathering and examination of testimony, offered in connection with serious formal proceedings designed to illicit the truth about significant and potentially disturbing subjects, knows that the process is full of difficulty and far from perfect. Each of the members of the COI on DPRK had extensive experience, over many years, in receiving, scrutinising and evaluating evidence. I did, appearing as a lawyer and advocate in courts over 16 years and then as a judge and inquiry commissioner in Australia over 34 years. I had also held United Nations offices that involved similar gathering of testimony, evaluating it and expressing conclusions. [[18]](#footnote-18)

Of course, long experience is not a guarantee of infallibility. I have myself frequently been sceptical about the claimed capacity of judges to have an ability to differentiate truth from falsehood with unerring accuracy based on their impression of witnesses. Commissioner Marzuki Darusman has likewise had long experience in the law and the courts in Indonesia as Prosecutor-General and Attorney-General of that country. These posts, and daily legal practice, gave him experience similar to my own. Commissioner Sonja Biserko, also had long engagement with civil society organisations addressing the extremely upsetting evidence of communal hatred, violence and alleged genocide in countries of the former Yugoslavia, including her own country, Serbia.

Each of the commissioners in the COI on DPRK was aware that witnesses can sometimes be fraudulent and dishonest; occasionally irresponsible and exaggerated; and not uncommonly confused and forgetful. However, those with the responsibility of a mandate to reach conclusions (including from the United Nations) cannot allow the imperfections of human nature and capacity to paralyse them. Nor can they permit the possibility that they have sometimes been deceived by a witness to dominate their reaction to the testimony of witnesses generally, as Ms Song appears to have done. To permit disappointment with one or a number of witnesses to destroy one’s faith in the investigatory process, as such, is to allow one’s personal sense of pride and self-importance (or even outrage at deception) to overcome the duty to press on and provide reasoned conclusions in an inquiry that is objectively significant. Especially so, as Ms Song has acknowledged, because a general conclusion can be reached that “there is no doubt that the North Korean regime has violated serious human rights”.[[19]](#footnote-19) If this is so, members of a United Nations inquiry, established by the HRC, do not have the luxury to walk away from their duty. Nor to exaggerate the dangers, in a few instances. Nor to allow personal ego to overcome their professional obligations.

In the case of the COI on DPRK, each of the Commissioners, at the time of embarking on their duties, made a solemn undertaking before the UN High Commissioner for Human Rights (Ms Navi Pillay) that they would act with integrity, impartiality, independence and professionalism.[[20]](#footnote-20) Subsequently, this undertaking was reduced to writing, signed and deposited with the President of the HRC. As well, before any witness was asked questions by a member of the COI, each was requested to declare publicly that the evidence that they would provide to the COI would be the truth. Each witness so declared. Similar procedures were followed in respect of witnesses interviewed privately.

Additional considerations need to be noted in light of Ms Song’s article. It is important that scholars working in circumstances where free criticism of officials is possible should not lend credence to the strategy of DPRK to attack witnesses and independent investigators who record faithfully and carefully evidence of grave abuse. [[21]](#footnote-21)

* No monies were paid to witnesses as such, appearing before the COI in order to induce them to give their evidence. In the normal way, compensation or reimbursement was usually provided; generally by civil society organisations whom the witnesses had come to trust, to cover necessary transport and accommodation. Most such witnesses have faced difficulties in re-establishing their lives in new countries. Most would not otherwise have the funds to travel to and appear before a body such as the COI. There is nothing unusual or reprehensible in any of these arrangements;
* DPRK would not allow the COI access to its own territory despite repeated requests. The COI could not therefore go to places in North Korea where it might investigate matters for itself, on the ground. It was obliged to invite testimony, including from escapees, refugees and experts – all of them resident outside DPRK. There was no difficulty in securing testimony in response to the COI’s invitation. In the end, gathering evidence had to be terminated in order to ensure compliance with the short deadline for report given to the COI by the HRC;
* The reliability of most escapees and refugees can be considered against the fact that very few escapees or refugees have elected to return to DPRK;
* Several of the witnesses before the COI gave evidence that effectively corroborated the testimony of others. In particular, evidence concerning detention camps; general starvation and lack of food; restrictions on travel and movement; controls over access to media and the internet; harsh treatment for returnees from China and especially religious adherents; and totalitarian presentation of propaganda uniformly supporting the regime in DPRK, all came in similar terms from the mouths of several witnesses who did not know the other witnesses offering like testimony;
* Testimony was filmed, transcribed and (where it was received in public hearings) is available online. Exceptions were provided for witnesses whom the COI regarded as likely to be endangered if they gave evidence in public;
* Satellite images of DPRK, available to the COI, confirm what appear to be the buildings consistent with detention camps following the general lines of the oral testimony provided by witnesses. Moreover, by way of contrast with images of ROK, China and Japan, they demonstrate the bleak physical and economic situation in DPRK;
* Opportunities were given to DPRK, in respect of testimony gathered in ROK to appoint lawyers (or representatives) to advance their interests and, with leave, to ask questions of all witnesses. Their refusal to accept this possibility makes it unpersuasive now to allow DPRK to rely on alleged imperfections of some of the evidence to which it is the main contributor by its total lack of cooperation;
* The COI report did not simply accept and summarise the claims of witnesses. The commissioners were assisted by a skilled secretariat, which was itself independent of other UN organs. Members of the secretariat provided advice and analysis on witnesses and issues but accepted, as they were bound to do, that the commissioners had the right and duty of the last word on all matters in the COI report. Some parts of individual testimony of witnesses were not included in the COI report because the COI was unsure as to their reliability. For example, an account suggesting the performance of unconsensual medical experiments in DPRK was not included. Similarly, the COI ultimately rejected witness suggestions of genocide, because of the view it took as to the state of the evidence before it and the legal requirements for proving “genocide” under current international law.[[22]](#footnote-22) Although some witnesses on religious persecution argued for a finding of genocide, the COI did not accept their contention. It acknowledged the radical reduction of the population of religious adherents in DPRK. It expressed some sympathy for a larger definition of ‘genocide’ in current international circumstance. However, it postponed any finding to that effect because the relevant evidence was “difficult or impossible to [gather] without access to the relevant archives of DPRK”.[[23]](#footnote-23) Care was observed both in conducting confidential interviews and in undertaking the public hearings, to pose questions in such a way as to extract only first-hand information known to the speaker. It was not necessary to its conclusions for the COI to rely on second-hand or purely hearsay accounts;
* Whilst it is true that cultural considerations are relevant to testimony received through interpreters, this is an inescapable feature of collecting evidence in multicultural societies, including those from which each of the commissioners and members of the secretariat derived. There is nothing peculiar or special to the DPRK in this regard. Many of the conclusions reached by the COI are similar to those earlier and subsequently recorded by Korean civil society organisations in South Korea that have conducted their interviews in the Korean language, questioned by Korean native speakers. On the issue of gender, the COI adopted a practice of ensuring, so far as possible, that female witnesses were interviewed confidentially by female investigators. Many of the female witnesses in the public hearings of the COI were questioned primarily by Commissioner Sonja Biserko in the first instance; and
* Finally, so far as the evidence of Shin Dong-hyuk was concerned, adjustment can be readily made for his recantation and the withdrawal of his testimony that he had been detained in Camp 14 (as well as certain other evidence he had given about his parents). That still left evidence by Shin that appeared entirely reliable and corroborated by other witnesses. In any case, the quotations from Shin’s testimony actually contained in the COI report are relatively few and immaterial to the point of recantation. None of the other persons named as unreliable by Ms Song gave public evidence or were relied on by the COI or its secretariat.

In the big picture of human rights violations found to be “systematic, widespread and gross” extending over many years and affecting millions of people, the subtraction of part of the testimony of Shin Dong-hyuk has no consequence for the impact of the witness testimony to the COI report. It does not require withdrawal of a single conclusion or recommendation expressed by the COI. Any more than, in municipal jurisdiction, conclusions and recommendations of a large and significant inquiry would have to be withdrawn in their entirety because it was later found that parts of the testimony of one witness were false, careless or exaggerated in identified respects.

Reflecting on the recantation by Shin, Blaine Harden wrote in August 2015 in language that is convincing: [[24]](#footnote-24)

“If there’s one truth to be gleaned from… memoirs [of escapees from DPRK], it is about the centrality of lying. For me, it is a haunting issue. Shin Dong-hyuk, the subject of my 2012 book, “Escape from Camp 14”, misled me for 7 years about some details of his life in North Korea’s gulag. When I asked him why had done it, he said the complete truth was simply too painful. He chose to tell me (and human rights groups and UN investigators) an expurgated story, which he wore as body armor for life in the free world. It protected him from trauma he was unwilling to relive. It hid behaviour he was ashamed to disclose. He had no idea, he said, that the precise details of his life would ever be considered important. Shin’s experience in North Korea was particularly gruesome. His body is covered with scars from repeated torture. He is stunted from malnutrition. As a young teen, he betrayed his mother and brother, causing their execution. Psychologists agree that victims of such severe trauma almost always tell stories that are fragmented, self-protective and intermittently untrue. But Shin’s relationship to the truth is not completely foreign to other defectors now writing memoirs. … Some skepticism, then, is probably in order for readers coming fresh to memoirs about North Korea. But for what it’s worth, I believe these books. They are consistent with a recent UN investigation that found overwhelming evidence that crimes against humanity are being committed in North Korea. For journalists who have spent hundreds of hours interviewing defectors these memoirs ring true about North Korea’s culture of cruelty and lies.”

Scientists, mathematicians and statisticians often search for truthful and reliable data. To the extent that they can work with incontestable facts, objective observations and digital symbols and numbers, their lives are rendered easier. The uncomfortable features of human imperfections can then, to that extent at least, be subtracted and the remaining evidence reconstituted and re-evaluated.

In resolving disputes and contests over what has happened in the past, or is happening now, in individual countries and in the world, it is usually not so easy to delete the human element. Decision-makers work with imperfect materials. But these are the materials that make up our societies and our world. Where the issue presented for decision is straightforward, in a civil case, the question as to where truth lies can be pursued by the decision-maker, applying well-known rules to come to a conclusion that is probably objectively correct. The obligation to give reasons subjects the decision maker to discipline and the conclusion to analysis and review. High courts of law may have the last word for municipal legal purposes. But in a free society, that does not prevent other citizens from continuing to question the official decision and possibly to demand fresh analysis and further consideration.[[25]](#footnote-25)

Where a case involves criminal charges, and potential punishment with loss of liberty, reputation and other humiliations and burdens, the simplistic question “where does truth lie?” will be complicated because of other considerations. In such a case, the risk of error on the part of the decision-maker is more intolerable. Hence error must be guarded against more carefully.

In a multifaceted inquiry at an international level, it is true that there are serious dangers of fraudulent, false, exaggerated, confused and unreliable testimony, sometimes affected by the consequences of psychological trauma, political motivations and even idealistic aspirations. Yet in this case, as in national formal decision-making, the decision-maker does not have the luxury of walking away. He or she must do the best that is possible to unveil the truth. A measure of scepticism is about the sources of the evidence used is usually appropriate. Certainly, caution should be used in accepting the testimony of witnesses generally. Decision-makers need to be made aware of the neurobiology of decision-making and what it means to have a “feeling” of “actual persuasion” or a belief that a conclusion can be classified as “beyond reasonable doubt”. [[26]](#footnote-26)

Similarly, the decision-maker needs to be aware of cultural considerations that can influence the way evidence is given when it comes through the medium of a different language or culture.[[27]](#footnote-27) We now know how some evidence, given with conviction and certainty, can be erroneous, simply because of the operation on our fallible human recollection of unconscious psychological factors such as expectations, interests, hopes and desires. [[28]](#footnote-28)

Formal decision-making in a court, tribunal or a commission of inquiry involves a journey that has many uncertain and some missing guide posts. But the journey should be taken and completed. Those on that journey must have clear eyes and an honest objective to come to the right destination. Because of our human weaknesses, we will all sometimes fail in the journey. However, that risk does not release us from the obligation to pursue the place where truth lies.

“What is truth?” When Pilate was told by Jesus that he had come into the world to bear witness to the truth, the Roman Governor asked the question: “What is truth?”[[29]](#footnote-29) He did not stay for an answer; but he immediately declared to the angry crowd: “I find in him no fault at all”. Yet instead of sticking to his own conclusion, he attempted a dishonest compromise by offering up a murderer, only to find that the rabble was not appeased, so he felt forced to proceed to a gravely unjust decision.

In official decision-making, the discovery of truth is not scientific. But when it found, it can help correct an injustice in a civil case and bring to a temporary conclusion a criminal accusation. On the global stage, truth can shine the light of knowledge on a country of dreadful wrongs. Truth alone is not enough for justice to be done. Yet without truth injustice may go unnoticed and permanently unrepaired. That is why, with all the risks, humanity and its institutions stubbornly search for truth. And sometimes find and declare it.

1. \* Based on, and developed from, an address first given at Queen’s University of Ontario, Department of Statistics and Mathematics, 8 June 2015. [↑](#footnote-ref-1)
2. \*\* Justice of the High Court of Australia (1996-2009); Chair, United Nations Commission of Inquiry on the Democratic People’s Republic of Korea (2013-2014). [↑](#footnote-ref-2)
3. United Nations, Human Rights Council Resolution 19/13 (2014). The report is UN document A/HRC/25/63. [↑](#footnote-ref-3)
4. See P. Alston and S. Knuckey *The Transformation of Human Rights Fact-Finding*, OUP, Oxford, 2016, esp 25, 69, 89. [↑](#footnote-ref-4)
5. UNSC *Report of the Secretary-General on the Rule of Law in International Justice in Conflict and Post Conflict Societies* (2011) UN Doc S/2011/634 [24]; UNHRC, *Report of the Secretary-General on Impunity* (2006) E/CN.4/2006/89. See also G. Palmer, “Reform of UN Inquiries”, ch 36 in Festschrift for Roger Clark, Victoria University of Wellington, New Zealand, 2015 (Brill, Leiden, 2015), 595. [↑](#footnote-ref-5)
6. A paper on the methodology of the COI appears in NSW*Judicial Officers’ Bulletin* 2015 (November 2015). [↑](#footnote-ref-6)
7. United Nations, *Charter*, Art. 27.2. [↑](#footnote-ref-7)
8. COI Report (A/HRC/25/CRP.1) 370 [1225(a)]. [↑](#footnote-ref-8)
9. *Ibid*, 363-365 [1204]. See G.J. Evans *Responsibility to Protect,* Brookings Institution, Washington D.C., 2008*.* [↑](#footnote-ref-9)
10. *Ibid*, 5-6 [6]-[12]. [↑](#footnote-ref-10)
11. *Id*, 6-8 [12]-[20]. [↑](#footnote-ref-11)
12. *Id,* 10-13 [28]-46]. [↑](#footnote-ref-12)
13. *Id*, 15-18 [63]-[78]. [↑](#footnote-ref-13)
14. *Id,* 16 [67]-[68]. [↑](#footnote-ref-14)
15. B. Harden, *Escape from Camp 14*, Penguin, New York, 2013. [↑](#footnote-ref-15)
16. Jiyoung Song, “Unreliable Witnesses: The Challenge of Separating Truth from Fiction When it Comes to North Korea”, available http://www.policyforum.net/unreliablewitnesses/ [↑](#footnote-ref-16)
17. *Ibid,* 6. [↑](#footnote-ref-17)
18. For example as a member of the International Labour Organisation Fact-Finding and Conciliation Commission on Freedom of Association, Inquiry into South Africa (1991-92); as United Nations Special Representative of the Secretary-General for Human Rights in Cambodia (1993-6); and as a member of the United Nations Development Programme *Global Commission on HIV and the Law, Risks, Rights & Health,* New York, July 2012. [↑](#footnote-ref-18)
19. J. Song, above n.13, 2-3. [↑](#footnote-ref-19)
20. These are qualities identified in the *Bangalore Principles of Judicial Conduct*. See United Nations Office on Drugs and Crime, *Commentary on* *the* *Bangalore Principles of Judicial Conduct* (UNODC, Vienna, 2007). [↑](#footnote-ref-20)
21. Steven Borowiec, “North Korea’s New Tactic: Discredit Those Who Report Human Rights Abuses - Analysis” in *Eurasia Review* (March 2015). [↑](#footnote-ref-21)
22. COI report, 350-351 [1155]-[1159]. [↑](#footnote-ref-22)
23. *Id,* 365 [1211]. [↑](#footnote-ref-23)
24. B. Harden, “How can we know North Korea stories are true?” in *Washington Post*, August 9, 2015, B1 and B5. [↑](#footnote-ref-24)
25. This occurred in Australia following the death of an infant Azaria Chamberlain which was the subject of several cases and ultimately a Royal Commission that cleared her mother of a charge of murder. See *Chamberlain v The Queen* [No.1] (1983) 153 CLR 514; [No.2] (1984) 153 CLR 521. [↑](#footnote-ref-25)
26. Hayley Bennett and G.A. Broe, “The Neurobiology of Achieving a Comfortable Satisfaction” (2014) 26 NSW *Judicial Officers Bulletin,* no. 8 (September 2014), 65. [↑](#footnote-ref-26)
27. E. Kyrou, “Judging in a Multicultural Society”, *Law Society Journal* (NSW), April 2015, 20 at 22. Justice Kyrou raises a number of novel questions and offers suggestions. [↑](#footnote-ref-27)
28. For example observations on the dangers of identification evidence in *Domican v the Queen* (1992) 173 CLR 555. [↑](#footnote-ref-28)
29. *St. John’s Gospel,* Ch. 18, v.38. [↑](#footnote-ref-29)