

UPDATED QUESTIONS AND ANSWERS ON THE UN COMMISSION OF INQUIRY ON HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

NOTE: Prepared in advance of oral update and Palais des Nations press conference, 16-17 September 2013

1. How would you sum up your findings to date from hearings in South Korea, Japan and elsewhere?

From 19 to 31 August 2013, the Commission of Inquiry visited Seoul and Tokyo and held open hearings attended by the public, media and other observers. These hearings provided hour after hour of sobering testimony from dozens of victims as well as several expert witnesses. Witnesses appearing before us have provided information of great specificity and detail. We have been deeply moved by their testimonies, which have given a face and voice to great human suffering. We thank all witnesses for their courage in sharing their traumatic experiences, which deserve the attention of the international community in the United Nations. Video recordings of the Commission of Inquiry's public hearings are now available on the Commission's webpage. Members of the Human Rights Council and people throughout the world are invited to review it to gain a first-hand impressions for themselves of the evidence provided by victims and eyewitnesses of human rights violations in the Democratic People's Republic of Korea. The testimony also demonstrates the impartiality, fairness and care of the COI's approach to its mandate.

2. How many total witnesses have you interviewed to date – public and private – and how many more do you anticipate you'll interview? Why do you believe the total will give you an adequate basis for your findings and possible recommendations?

More than 100 victims, witnesses and experts have testified during the public hearings and as well as in confidential interviews held with people who could not speak publicly because of protection concerns for family members remaining in the DPRK.

We are not anticipating a quantitative ceiling on the testimony we will gather. We will continue receiving testimony and other evidence – including through written submissions -- until we are satisfied that the information that we have gathered is solid, properly cross-verified and reliable.

3. Many of the public witnesses gave accounts of experiences in the DPRK that date back several years. Why do you believe you've got a sufficient number of recent testimonies to reflect the actual human rights situation in North Korea today?

Obviously, without direct access to the country it is more difficult to obtain the latest, immediate information about the human rights situation in the DPRK. However, we have received testimony in private from witnesses who have recently left the DPRK. This evidence is consistent with the picture emerging from the public hearings and goes to show that the situation overall remains dismal and unchanged. Today there are plenty of new tools that allow for information to be gathered without accessing a specific location. Satellite technology is just one example. I wish also to stress that while obviously information about the most recent events is important for our

investigation, there are a number of unresolved and sometimes previously unaddressed issues that we are called to consider in our mandate. Responsibility for torture and other serious human rights violations is not time limited. A thorough inquiry into the human rights-related causes of the 1990s famine in the DPRK and the abduction of Japanese, ROK and other nationals are also part of our mandate.

4. Have you received any input or reaction at all from the DPRK? What conclusions can one draw from their lack of response and cooperation with the commission?

The Democratic People's Republic of Korea has so far not cooperated with the COI. In reaction to our appointment, it conveyed to the President of this Council in a letter dated 10 May 2013 that it “totally and categorically rejects the Commission of Inquiry.” This stance has remained unchanged, despite all our efforts to reach out to the authorities of the DPRK. In a letter dated 18 June, 2013, addressed to the Permanent Representative, we requested a meeting, followed by another letter sent on 5 July, where we requested the Democratic People's Republic of Korea to extend cooperation and support to the Commission and facilitate access to the country. We reiterated the request of the Commission to have access to the territory of the Democratic People's Republic of Korea in a letter sent on 16 July to His Excellency Mr Kim Jong-un, Supreme Leader and First Secretary of the Workers' Party of Democratic People's Republic of Korea. We also invited the authorities in the Democratic People's Republic of Korea to send a representative or representatives to scrutinise the evidence and to make submissions during public hearings held by the Commission of Inquiry. Apart from a formal reply to our letter of 18 June, all other letters have been unanswered. The Commission remains available to visit and engage in a dialogue with the Democratic People's Republic of Korea. At the same time, we continue to pursue alternative avenues to obtain direct and first-hand information in a transparent, independent and impartial manner. (*Also see Korea Central News Agency response in next item*). It cannot be left to a country where the human rights record has occasioned a unanimous resolution of the Human Rights Council to frustrate the enquiry mandated by the Human Rights Council by simply refusing to cooperate. We have secured apparently compelling evidence from outside the DPRK. We have afforded due process. The evidence is powerful. It is on the internet for the whole world to see and hear. It stands unanswered and unchallenged except by insults. The conclusions of the COI will be drawn from the final state of the evidence. At present, it points consistently in one direction.

5. How would you describe the results of your decision to hold public hearings? Did you achieve the desired results and do you think the public testimonies have had or will have any impact on the DPRK?

In addition to its non-public activities, the commission of inquiry decided to hold public hearings in Seoul and Tokyo to gather information relevant to its mandate and to draw international attention to the human rights situation in the DPRK. While North Korea often makes world headlines, much of that coverage has focused on crisis situations including famine and high-profile military, nuclear and geopolitical issues, or on colourful parades and mass displays, which evidence received by the COI show involve their own serious human rights concerns. The human rights situation in North Korea has generally been overshadowed by other, often dramatic, developments. The commission thus decided to try to raise the human rights profile by holding five days of public hearings in Seoul, followed by another two days of public testimony in Tokyo. The target audiences were to include both the general global population as well as the member states of the United Nations. The

public hearing process itself was guided by the principle of transparency, while providing a setting in which victims could comfortably speak about their experiences. These hearings provided many hours of sobering testimony from dozens of victims as well as several expert witnesses. They provided information of great specificity and detail and we have been deeply moved by their testimonies. The testimony was elicited by members of the COI in non-leading questions so as to allow the witnesses to tell their own stories in their own words. The public hearings were attended by many observers and covered by scores of journalists whose reports appeared in hundreds of media worldwide. An invitation to the DPRK to attend the hearings received no reply. However, the DPRK's official news agency (KCNA) did react after the hearings began in Seoul, describing them as a slander and labelling the hearing participants as "human scum." Some North Korea observers have noted that the DPRK government is actually more susceptible to public shame than is commonly thought. (*Financial Times column by Asia Editor David Pilling, August 28, 2013*) Unanswered and uncontradicted by other evidence, much of the testimony already gathered by the COI and now available freely on the internet through the COI website, is arguably a great shame to the DPRK as a member of the United Nations and signatory of many UN human rights treaties.

6. What is your reaction to allegations by the DPRK's official news agency (KCNA) that the commission is a tool of unfriendly governments and that the witnesses are not telling the truth?

The Commission of Inquiry honours the long history of Korean civilisation. That civilisation lives today in a world of universal human rights, as the Charter of the United Nations affirms. No country can shut itself off from the light that universal human rights bring to people everywhere. That light is now shining into dark spaces in the Democratic People's Republic of Korea. The public response from the DPRK, through its official news agency, attacked the testimony we heard as 'slander' put forward by 'human scum.' Truth is a defence against 'slander.' If any of the testimony the COI has heard on political prison camps, international abductions, torture, starvation, inter-generational punishment and so forth can be shown to be untrue, the Commission invites the Democratic People's Republic of Korea to produce evidence to that effect. An ounce of evidence is worth far more than many pounds of insults and baseless attacks. So far, however, the evidence that the COI has heard has largely pointed in one direction – and evidence to the contrary is lacking.

7. As you state in your oral update, the COI received testimony from several witnesses – men and women -- who exercised their human right to leave the DPRK and were forcibly repatriated to face torture, sexual violence, inhumane treatment and arbitrary detention. Based on the testimonies you heard, are North Koreans who flee their country entitled to international protection, and are those who send them back violating the 1951 Refugee Convention?

Many DPRK citizens flee to neighbouring countries to escape political and religious persecution. Others try to escape from chronic food shortages and socio-economic deprivation resulting from social and economic persecution based on their family's socio-political background.

Furthermore, DPRK citizens who are forcibly repatriated to North Korea are systematically subjected to torture, arbitrary imprisonment and other forms of persecution upon their return. The DPRK authorities appear generally to consider them to be "traitors" and criminals, regardless of why they left the DPRK -- even those who only left the DPRK escape hunger and abject poverty.

In accordance with the principle of non-refoulement, States Parties to the Convention against Torture, and the 1951 Refugee Convention must observe as a matter of customary international law or treaty provisions where they give temporary sanctuary to DPRK citizens fleeing conditions in that country, the duty to refrain from forcibly repatriating any DPRK citizens to North Korea.

8. Has the COI sought access to the Sino-DPRK border? What was the response?

We have explored with Chinese authorities the possibility of visiting China. The COI remains hopeful that such a visit may prove possible, so as to permit the COI to fulfil its mandate. It reminds states that the mandate, unusually, was adopted by the Human Rights Council in March 2013 unanimously and without the need for a vote.

9. Have you looked into the issue of comfort women? Why or why not?

The Human Rights Council has not mandated us to inquire into violations that took place before the Democratic People's Republic of Korea was founded. The Commission recognizes, however, that violations and the structures that sustain them are to a considerable extent also shaped by the historical experience of the Korean people, including during the period of Japanese colonization and occupation. The issues of wartime involuntary sex work, for instance, are continuing issues of human rights affecting the Korean people. However, the COI has not received submissions expressly dealing with this issue. Nor was it an issue enumerated in the otherwise detailed mandate that the COI received from the Human Rights Council.

10. There is considerable emphasis in Japan on the fate of a relatively few Japanese citizens abducted by suspected DPRK agents, yet the fate of nearly 100,000 people, including Japanese nationals who were spouses of Koreans who returned to the North, receives little attention. Why do you suppose that is the case?

It is understandable that state-sponsored abductions of Japanese nationals, in breach of Japan's territorial sovereignty, is a matter of particular concern and sensitivity to the Japanese government and people. However, the fate of the Japanese residents who moved to the DPRK in the 1950s-60s, and their descendants, is also a matter of serious and continuing concern. I asked several witnesses in our public hearings why they thought that their fate draws less attention. Apart from political factors, it is far more difficult for this population, when it can escape the DPRK, to publicly campaign and draw attention to the issue, because many of them still have family in the DPRK whom they fear may face reprisals if returnees are identified

11. You stated at the start of the public hearings that the commission is approaching the inquiry with independence and impartiality and no preconceptions. Near the end of the public hearings in Seoul and Tokyo, you told media that the specificity, detail and shocking character of the testimony you heard "would appear to call for a response from the international community." What did you mean by that and have you already formed an opinion that further international legal action is warranted?

What we have seen and heard so far points to widespread and serious violations in all areas that the Human Rights Council asked the commission to investigate. We heard from ordinary people who faced torture and imprisonment for doing nothing more than watching foreign soap operas on DVDs or holding religious beliefs. Former DPRK officials, previously involved in the propaganda apparatus, related how they had to systematically manipulate free access to information. Men and women who exercised their human right to leave the DPRK and were forcibly repatriated spoke about their experiences of torture, sexual violence, inhumane treatment and arbitrary detention. Family members of persons abducted from the Republic of Korea and Japan described the agony they endured ever since their loved ones' enforced disappearance' at the hands of agents of the Democratic People's Republic of Korea – a course of state conduct that astonishingly was partly admitted by the former rulers of the country. The commission listened to political prison camp survivors who suffered through childhoods of starvation and unspeakable atrocities, a product of "guilt by association" -- the practice of punishing other generations for a family member's perceived political views or affiliation. In addition to the violations in the political prison camps, the Commission of Inquiry heard of serious abuses being committed in other types of detention facilities and the suffering of an entire population recurrently facing malnutrition.

The individual testimonies emerging from the public hearings do not represent isolated cases. They are representative of large-scale patterns that may constitute systematic and gross human rights violations. The Commission of Inquiry collected similar testimony through many additional confidential interviews conducted with victims, who could not speak publicly out of fear of reprisals against family members who remain in the Democratic People's Republic of Korea. The testimony of victims who participated in the public hearings is also entirely consistent with the large body of written documents and expert testimony the commission has gathered.

Our mandate is to inquire and find facts which we shall present to the UN Human Rights Council in our final report in March 2014. What we have seen and heard so far – the specificity, detail and shocking character of the personal testimony – appears in its current state, without doubt to demand follow-up action by the world community and accountability on the part of the Democratic People's Republic of Korea. We have had no answer, or effective response, to this testimony. Unanswered, it points in the one direction. Still, we are hopeful that the government of DPRK, even at this late stage, will change its mind, provide us with access, engage with the commission and provide us with evidence. Against that possibility, we retain an open mind until all the testimony is concluded. But then, we will move quickly to reach, and state, our conclusions and to offer our recommendations to the world community.

PREVIOUS Q&As USED IN SEOUL AND TOKYO

12. What's the background on the UN commission of inquiry on human rights in the DPRK?

The establishment of the commission of inquiry (COI) in March 2013 by the UN Human Rights Council followed some important advocacy work in recent years by South Korean and international human rights NGOs as well by the UN Special Rapporteur on the situation of human rights in the DPRK, Mr. Marzuki Darusman. In mid-January of this year, UN High Commissioner for Human Rights Navi Pillay called for a full-fledged international inquiry into serious crimes that she said had been taking place in the Democratic People's Republic of Korea for decades. Noting that both the Human Rights Council and the General Assembly had previously adopted strong, unanimous

resolutions condemning the Government of the DPRK for systematic human rights abuses, the High Commissioner said it was now time to take stronger action, and that a very significant first step could be made by setting up an independent international inquiry. The commission of inquiry was approved by the UN Human Rights Council on March 22, 2013, at its 22nd session in Geneva. It was given a one-year mandate to investigate the systematic, widespread and grave violations of human rights in the Democratic People's Republic of Korea with a view to ensuring full accountability, in particular for violations which may amount to crimes against humanity. On May 7, the Council announced the three members of the commission: Mr. Michael Donald Kirby (Australia); Ms. Sonja Biserko (Serbia); and Mr. Marzuki Darusman (Indonesia). Mr. Kirby serves as chair of the commission, and Mr. Darusman remains as the Special Rapporteur on the situation of human rights in the DPRK throughout the life of the commission. The three members met for the first time on 1 July 2013 in Geneva. A separate biography of the three commissioners is available.

13. Is an inquiry focusing on human rights in the DPRK unprecedented for the UN?

United Nations human rights mechanisms – including the Human Rights Council -- have been closely monitoring the situation in the DPRK for many years. The DPRK is subject to the same level of scrutiny as any other UN member state through the treaty bodies and the committees of independent experts that monitor implementation of the core international human rights treaties. Each state party to a treaty has an obligation to take steps to ensure that all of its citizens can enjoy the rights set out in the treaty. The DPRK has been subject to the monitoring of these committees that advise and make observations and recommendations. In 2004, the UN Human Rights Council created the office of Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea. Since the creation of this mandate (there are only 12 other country mandates), the two successive rapporteurs have periodically reported about the human rights situation in DPRK, both to the Council and to the General Assembly. Both the Secretary-General of the United Nations and the UN High Commissioner for Human Rights have also reported on the human rights situation in the DPRK. In 2009, the DPRK was also examined at the Universal Periodic Review (UPR) -- a unique process which involves a review of the human rights records of all UN member states. While stating some generic commitments to human rights obligations, the DPRK failed to accept in terms the recommendations proposed by the other countries. The DPRK has also not cooperated with the Special Rapporteur on the DPRK or with other Special Rapporteurs who wished to visit the country. Against this background, the Human Rights Council has resolved to mandate a Commission of Inquiry. Credit for the establishment of this commission can also go to the many domestic and international NGOs that have continued to document alleged human rights violations, to the UN High Commissioner for Human Rights, Navi Pillay, and to the current Special Rapporteur and member of the commission, Mr. Marzuki Darusman, who has worked hard to draw international attention to the situation in the country.

14. What sorts of violations will be investigated by the commission?

According to Human Rights Council Resolution 22/13, the violations to be investigated include those pertaining to the right to food and those associated with prison camps, torture and inhuman treatment, arbitrary detention, discrimination, freedom of expression, the right to life, freedom of movement and enforced disappearances, including in the form of abductions of nationals of other states. In accordance with its mandate, the commission will also investigate to what extent any violations may amount to crimes against humanity.

15. Is the DPRK cooperating with the commission, and will the commission travel there?

In establishing the commission, the Human Rights Council also urged the Government of the Democratic People's Republic of Korea to ensure full, rapid and unimpeded access of humanitarian assistance and to cooperate fully with the Special Rapporteur and the commission of inquiry. The commission has requested to visit the DPRK. To date, however, the commission has received no positive reply.

16. How will the commission carry out its duties?

The commission is approaching the inquiry with independence and impartiality and with no preconceptions. It is taking steps to reach out to the Government of the DPRK in order to give it an opportunity to have its say and to respond to testimony, so far without a positive response. Lacking access to the DPRK, the commission has decided to hold public hearings in Seoul and Tokyo in the second half of August to gather information from a variety of witnesses. In addition to the public hearings, the commission will conduct a number of other interviews with witnesses and victims of alleged human rights violations. In addition, the program in each country will include meetings with senior government officials, NGOs and research institutions.

17. Why did the commission decide to make the hearings public?

The commission of inquiry decided to hold public hearings in Seoul and Tokyo to gather information relevant to its mandate and to draw international attention to the human rights situation in the DPRK. The public hearing process will be guided by the principle of transparency, while providing a setting in which victims can comfortably speak about their experiences. An invitation to the DPRK to attend the first set of hearings has received no reply.

18. How will greater public awareness improve the human rights situation in North Korea?

Despite the fact that many testimonies about the human rights situation in DPRK have been provided, including through televised programs in South Korea, much of the world remains largely unaware of the scale of the problem. By hearing testimonies in public, the Commission of Inquiry hopes to raise the profile of this issue -- not just with a general international audience, but also with members of the United Nations. A video recording of the hearings will also be made available to all members of the Human Rights Council. It is hoped that the testimony will eventually be added to appropriate websites and available online to the public and the international community.

19. What will the commission do with the information it gathers?

Resolution 22/13 establishing the commission requested that it present an oral update to the UN Human Rights Council at its 24th session in September 2013, and to the UN General Assembly at its 68th session in October. A full and final written report will be submitted to the Human Rights Council at its 25th session in March 2014. The Human Rights Council will consider the report and has already committed itself to refer the document to appropriate UN bodies for follow-up.

20. What happens after the final report is presented to the Council in March 2014?

The Commission of Inquiry will include in the final report its conclusions and recommendations to the Human Rights Council. The COI may also decide to make recommendations to the DPRK and other concerned countries, as well as to bodies of the United Nations system and other international institutions. The recipients of these recommendations will decide how to receive and implement them.

21. How is the commission's work supposed to help ensure "full accountability"?

The COI will pay special attention to the issue of accountability, including with regard to potential crimes against humanity. The commissioners are determined to shed light on the different aspects of various alleged human rights violations. To the extent that it establishes that such violations have occurred, it will also seek to determine the level of responsibility for such violations among different state institutions and officials. It is not possible at the moment to envisage the level of detail that the COI will be able to achieve in establishing lines of responsibility, if any.

22. UN High Commissioner for Human Rights Navi Pillay has described the establishment of a commission as a "very significant first step," implying further steps could follow. Does this mean further legal action can be envisaged, for example through the International Criminal Court?

The establishment of the COI itself signals the beginning of an articulated process. It will be very surprising and disappointing if no further action is taken by the international community. How such action will materialize is impossible to envisage at the moment. It will mostly depend on the findings of the COI investigation, the conclusions and the recommendations that will be reached and the decision of the competent organs of the UN and other international institutions in implementing -- or not -- the commission's recommendations. The Human Rights Council has already committed itself to forward the report of the commission to appropriate United Nations bodies for follow-up.

The commission is approaching the inquiry with independence and impartiality and no preconceptions. Thus, at this stage, it is not appropriate for the COI to comment on whether or how the ICC's jurisdiction over potential crimes against humanity could be established. In accordance with the Rome Statute, the ICC only has jurisdiction over crimes against humanity if the state concerned is a member to the Rome Statute or issues a declaration accepting the ICC's jurisdiction (neither is currently the case regarding the DPRK), or if the UN Security Council refers a situation to the ICC by way of a resolution adopted under Chapter VII.