

Questions and answers on the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea

1. 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 year 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.



7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

END

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