

Q & A on a United Nations COMMISSION of INQUIRY on North Korea

Why do we need a Commission of Inquiry on North Korea?

1. **The human rights situation in North Korea remains dire.** Abuses are so widespread, severe and systematic that the human rights situation of this country stands in a category of its own.

In North Korea human rights are denied as a matter of routine. The change in leadership has not prompted any signs of change on the human rights front. In his 2012 report to the UN General Assembly, Marzuki Darusman, the Special Rapporteur for Human Rights in North Korea, said he was disconcerted by Kim Jong Un's declaration that "his first, second and third priorities were to strengthen the military" against the backdrop of severe deprivation of economic, social and cultural rights.¹ For the first time, in 2012 the Human Rights Council stated that there has been a "persisting deterioration" of the human rights situation in the country.²

The North Korean government continues to systematically violate the rights of its citizens, including by depriving large sectors of its population of food, applying collective punishments and forced labor and interning more than 200,000 people in sub-human conditions in political prison camps where they are denied their basic humanity. In his final report in 2010, former Special Rapporteur Vitit Muntarbhorn called the human rights situation in North Korea "sui generis (in its own category)", characterized the violations taking place as "harrowing and horrific", and stated that that "the abuses against the general population for which the authorities should be responsible are both egregious and endemic."³

2. **North Korea has also violated the rights of thousands of foreigners who were abducted** by the government or its agents and disappeared. North Korea has denied the vast majority of these abductions and refused to cooperate with foreign governments to return all its victims. It has been estimated that approximately 85,000 South Korean nationals were abducted during the war between the two Koreas and remain disappeared. All of them were civilians and most were abducted between July and September 1950 when North Korea occupied South Korea. Since the

¹ UN General Assembly, Report of the Special Rapporteur on the situation of human rights in North Korea, Marzuki Darusman, A/67/370, 13 September 2012, para. 50.

² UN Human Rights Council, "The situation of human rights in the Democratic People's Republic of Korea", Resolution 19/13, A/HRC/RES/19/13.

³ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in North Korea, Vitit Muntarbhorn, A/HRC/13/47, 17 February 2010, para. 86 and para.8.

Korean War armistice was signed 3835 South Koreans were abducted. Around 86% of them were returned leaving around 517 still disappeared.⁴ The Japanese Government has officially documented 17 abductions of Japanese citizens by the North Korean government, but victims groups say the total number of Japanese abductees could total around a hundred and possibly much more. It has already been a decade since North Korea accepted responsibility for the abduction of 13 Japanese citizens, of whom only 5 were returned. Since then, North Korea has publicly stated that it considers the abduction issue closed and no further progress has been made in resolving the issue.

3. For almost a decade the North Korean government has defied repeated appeals of the United Nations and others to cooperate and improve the human rights situation in the country. The UN must react.

- The North Korean government has repeatedly failed to cooperate with the UN. It has categorically rejected all resolutions adopted by the UN Human Rights Council and the UN General Assembly on the situation of human rights in North Korea.
- Since the establishment in 2004 of the mandate of the Special Rapporteur on the situation of human rights in the DPRK, the government of North Korea has refused to acknowledge, meet or otherwise cooperate with the Special Rapporteur. The government has repeatedly stated its position that it rejects the UN Human Rights Council decision to establish the mandate. During the nineteenth session of the UN Human Rights Council in March 2012, the North Korean Ambassador rejected the Special Rapporteur's report, branding it a "useless interpretation" which was "fabricated by hostile elements."
- Since 2003, the North Korean government has rejected all offers for technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR).
- During its review through the UN Universal Periodic Review process, the North Korean government expressly denied all instances of reported abuses, claiming that allegations are based on "distorted facts or fabrication" or that negative assessments of the human rights situation in North Korea are "based on misinformation fabricated by those who betrayed their country."⁵

Why would a Commission of Inquiry make a difference?

A Commission of Inquiry is an in-depth investigation into violations of human rights. The investigation would be carried out by a group of independent eminent persons appointed by the UN and mandated to establish the facts and make recommendations on how to respond to the violations. The findings of UN Commissions of Inquiry are published and publicly presented to

⁴ Korean Institute for National Unification *White Paper on Human Rights in North Korea*, August 2012.

⁵ UN Human Rights Council, Report of the Working Group of the Universal Periodic Review, Democratic People's Republic of Korea, A/HRC/13/13, 4 January 2010, para.89.

the UN. Commissions of Inquiry help shed light on the truth, give voice to victims and help push for accountability for violations.

The UN already has a Special Rapporteur on North Korea, why does it need a Commission of Inquiry?

1. The voices of victims must be heard.

In 2004 the UN appointed a Special Rapporteur on Human Rights in North Korea to monitor the situation. Since then, regular reports by the UN Special Rapporteur have decried the violations committed by the government and the impunity with which the government has acted. **These reports have shed important light on the general situation in North Korea but the gravity of the situation requires an even more detailed examination be done. With additional resources and heightened political commitment backing a Commission of Inquiry, it would be possible to develop greater details on the specific nature of the abuses, the fate of victims, and the need for accountability.** The Commission would bring the additional attention and commitment that is commensurate with the seriousness of the situation, bolstering the efforts of **the Special Rapporteur who to date has had limited resources to carry out full investigations** into the violations of human rights in the country.

2. It is time for the UN to document the thousands of cases where North Korea has violated rights so that victims will gain some accounting for their suffering.

The UN should establish a Commission of Inquiry to carry out an in-depth investigation into the systematic violation of human rights by the North Korean government. The Commission should document in detail the abuses inflicted on the victims by the North Korean government, analyse patterns of violations and address the core issue of impunity. **The Commission of Inquiry would look into the failure of the North Korean government to account for decades of abuse and recommend new ways for the international community to respond to these violations.**

What would a Commission of Inquiry on North Korea do?

1. The Commission would carry out **an in-depth investigation** of egregious human rights violations committed by the North Korean government.
2. The Commission would help bring attention to decades of abuse and impunity. By **collecting the testimonies of victims**, their families, survivors and witnesses and gathering all other available information the Commission would produce the most **authoritative account** to date on the of the patterns of abuse in North Korea.
3. The Commission could provide a **detailed analysis of the legal implications** of the abuses committed by the North Korean government and **recommend concrete steps to address these abuses at national and international levels.** As stated by the Special Rapporteurs on North Korea

some of the violations committed by the North Korean government may amount to crimes against humanity.⁶

4. It is the responsibility, in the first instance, of an individual State to protect its population from crimes against humanity. However, victims of serious human rights crimes in North Korea have no internal avenue of complaint or redress, and those who do attempt to publicly complain face retaliation. As a result, impunity prevails. In 2010, the Special Rapporteur expressly noted that since the national authorities are “unable or unwilling to press for such accountability,”⁷ the international community should press for further accountability, whether in terms of State responsibility and/or individual criminal responsibility. **The Commission could examine ways in which the international community should respond to continued violations of human rights by the North Korean authorities.**
5. By heightening the visibility of ongoing human rights abuses, the Commission’s work will assist victims who seek justice, place those responsible for abuses on notice, and directly assist efforts to promote deterrence and reform.

How can the UN establish a Commission of Inquiry on North Korea?

1. **The UN Human Rights Council has the opportunity to establish a Commission of Inquiry during its February - March 2013 session in Geneva.** During this session the government of Japan, with the support of the EU, will present its annual resolution on North Korea.
2. As main sponsors of the resolution, **Japan and the EU must take the initiative and call for the establishment of the Commission of Inquiry in 2013.**
3. In order not to duplicate the work of the Special Rapporteur the resolution presented by Japan and the EU **should call for the creation of a Commission of Inquiry headed by the current Special Rapporteur, Marzuki Darusman,** to investigate systematic, grave and widespread violations committed by Government of North Korea. They should also ask for the Commission of Inquiry to be given adequate resources to investigate and report back to the Human Rights Council on these violations.

⁶ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in North Korea, Vitit Muntarbhorn, A/HRC/13/47, 17 February 2010, para. 60 and UN General Assembly, Report of the Special Rapporteur on the situation of human rights in North Korea, Marzuki Darusman, A/67/370, 13 September 2012, para. 38.

⁷ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in North Korea, Vitit Muntarbhorn, A/HRC/13/47, 17 February 2010, para. 58

Why now?

For the first time in the history of the UN there is **certainty that a UN resolution establishing a Commission of Inquiry on North Korea would pass.**

The UN Human Rights Council has 47 member states – they decide what resolutions get adopted at each session.⁸ A simple majority of the votes is required to pass a resolution.

Over the past few years there has been growing support for the UN Human Rights Council’s annual resolutions on North Korea:

Year of adoption	Resolution	Votes in favour	Votes Against	Abstentions
2008	Res 7/15	22	7	18
2009	Res 10/16	26	6	15
2010	Res 13/14	28	5	13
2011	Res 16/8	30	3	11
2012	Res	Adopted by consensus		

For a resolution to pass in the Council the number of yes votes must exceed the number of no votes. **Of the 47 states that will be members of the Human Rights Council in 2013, there are a total of 28 states that have consistently voted in favour of all resolutions on North Korea in the UN since 2010 and only 1 country (Venezuela) which has consistently voted against.** Other countries have either abstained or had a mixed voting record. The countries with a solid positive voting record are not likely to change their vote because the Council decides to strengthen the resolution by establishing a Commission of Inquiry

On this basis, **there is a strong likelihood that with effective advocacy a resolution mandating a Commission of Inquiry for North Korea would pass with a clear majority.** This is made even more probable by the fact that in 2012 the Human Rights Council resolution on North Korea was adopted by consensus⁹. Breaking with past practice Cuba did not ask for a vote, nor did Russia or China, traditionally the strongest supporters of the North Korean government in the Human Rights Council. Since China, Cuba and Russia will not be members of the Council in 2013 it is possible that the resolution will again be adopted by consensus, unless a country like Venezuela (the sole consistent supporter of North Korea left in the Human Rights Council) decides to call for a vote.

⁸ Angola, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, Congo, Costa Rica, Cote d’Ivoire, Czech Republic, Ecuador, Estonia, Ethiopia, Gabon, Germany, Guatemala, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Libya, Malaysia, Maldives, Mauritania, Montenegro, Pakistan, Peru, Philippines, Poland, Republic of Korea, Republic of Moldova, Romania, Qatar, Thailand, Sierra Leone, Spain, Switzerland, Uganda, United Arab Emirates, United States of America and Venezuela.

⁹ It is likely that the General Assembly will also adopt the 2012 resolution on North Korea by consensus, as its Third Committee of the General Assembly already did so in preparation for the General Assembly vote in December 2012.

What have eminent UN representatives said?

1. In 2010 the Special Rapporteur noted that the national authorities in North Korea are unable or unwilling to press for accountability and suggested that the international community take action. Among the options available to the international community the Special Rapporteur identified “establishing a Commission of Inquiry on crimes against humanity.”¹⁰
2. In his statement to the General Assembly on 2 November 2012, the Special Rapporteur said that egregious violations of human rights have been documented for several decades and called on the UN to “consider setting up a more detailed mechanism of inquiry for North Korea”.¹¹
3. The UN High Commissioner for Human Rights emphasized the need for more attention on North Korea. Speaking at a news conference in Geneva on the 18 October 2012, the **High Commissioner for Human Rights** committed “**to shine more of a spotlight**” on some of the world’s most **neglected** situations, including North Korea.

What happens if North Korea refuses to cooperate with the Commission of Inquiry?

Given its track record of defying the UN human rights mechanisms, the government of North Korea is not likely to cooperate with a UN commission of inquiry. Yet this will not prevent the Commission of Inquiry from carrying out its work. Today, many thousands of victims of abuse of the North Korean government live outside North Korea, particularly in South Korea. They will be in a position to testify to the Commission and tell their stories of surviving egregious and systematic human rights abuses. The Commission will also be able to gather evidence from other sources such as families of victims who have gathered and documented information about the violations their loved ones suffered. The Commission would also be able to use satellite imagery and other hard data available on the country. Since the Commission will also focus on the issue of abductions, the Commission will be able to interview families of nationals from South Korea, Japan, Thailand, and other countries who have been abducted by North Korean agents and then transported and held against their will in North Korea.

North Korea’s refusal to cooperate should not prevent the UN from investigating crimes against humanity in the country. In fact, Commissions of Inquiry or similar UN investigative mechanisms have been established, and been able to carry out thorough and effective investigations, despite refusal of the government of the country to cooperate. Recent examples where governments didn’t cooperate include the Commission of Inquiry on Syria, the Goldstone Fact Finding Mission on the 2008 Gaza Conflict and the UN Secretary-General’s Panel of Experts on Sri Lanka.

The UN must document the abuse and challenge the perpetrators. It must give voice to the victims.

¹⁰ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in North Korea, Vitit Muntarbhorn, A/HRC/13/47, 17 February 2010, para. 58.

¹¹ UN General Assembly, Report of the Special Rapporteur on the situation of human rights in North Korea, Marzuki Darusman, A/67/370, 13 September 2012, para. 13.

What can you do?

- ✓ Lobby Japan and EU countries to include a call for the establishment of a Commission of Inquiry on North Korea in the resolution that they will present to the UN Human Rights Council during the February – March 2013 session. The commission should be mandated to investigate systematic, grave and widespread violations committed by the North Korean government and given adequate resources.
- ✓ Lobby your government to support the establishment of a UN Commission of Inquiry at the February – March 2013 session of the UN Human Rights Council. Members and non-members of the Human Rights Council can support such an initiative.
- ✓ If your government is a member of the Human Rights Council¹² ask your government to vote in favour of this initiative in the Council.

¹² Angola, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, Congo, Costa Rica, Cote d'Ivoire, Czech Republic, Ecuador, Estonia, Ethiopia, Gabon, Germany, Guatemala, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Libya, Malaysia, Maldives, Mauritania, Montenegro, Pakistan, Peru, Philippines, Poland, Republic of Korea, Republic of Moldova, Romania, Qatar, Thailand, Sierra Leone, Spain, Switzerland, Uganda, United Arab Emirates, United States of America and Venezuela