

UN Human Rights Council Resolution on North Korea: A Focus on Accountability

1. Why is accountability necessary for victims of abuses in North Korea?

In 2014, the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea [found](#) that crimes against humanity, including extermination, murder, enslavement, torture, imprisonment, rape, forced abortions, persecution, deliberate starvation, and enforced disappearances, have been committed “pursuant to policies at the highest level of the state.” The gravity, scale, and nature of these violations – which have been perpetrated for decades – “reveal a state that does not have a parallel in the contemporary world.”

North Korea's countless victims deserve redress. Justice remains critical to end the pervasive impunity for the worst abuses in North Korea. The Commission of Inquiry noted the North Korean government's “unwilling[ness] to implement its international obligation to prosecute and bring the perpetrators to justice, because those perpetrators act in accordance with State Policy.” The commission further urged the UN Security Council to refer the situation in North Korea to the International Criminal Court (ICC).

2. What is the proposed panel of experts on accountability?

In his most recent [report](#) to the UN General Assembly, the special rapporteur on the situation of human rights in the Democratic People's Republic of Korea stressed that “the accountability track must be pursued urgently.” The special rapporteur expressed his view that “a group of experts should meet to discuss a future accountability mechanism for violations committed by the Democratic People's Republic of Korea.” In its own resolutions, the Human Rights Council has highlighted the need for accountability, a call that was echoed by the UN high commissioner and many states during the plenary panel discussion at the 30th session of the council.

To this end, at the UN Human Rights Council's upcoming session, we urge member states to create a panel of experts with the goal of developing a more far-reaching transitional justice strategy to address crimes committed in North Korea. The panel of experts' mandate should include the following:

- Outlining the international and domestic options to hold perpetrators to account;
- Identifying, as needed, the legal and institutional framework that should be in place to realize justice;
- Devising a prosecutorial strategy, taking into account the possibility of an ICC referral; and
- Advising on the available modes of liability under international law to hold those responsible to account.

In addition to seeking an analysis of the options to realize criminal accountability, the UN Human Rights Council should consider tasking the panel with exploring the available options to seek the truth and address the [needs](#) of victims and their families.

The panel should be tasked with reporting the results of its work to the UN Human Rights Council's 34th session.

3. The UN Commission of Inquiry on North Korea flagged the ICC as a key avenue to hold perpetrators of crimes against humanity to account. Why is the panel of experts necessary?

Since North Korea is not a state party to the ICC's founding treaty, only the UN Security Council can refer the situation in North Korea for further criminal investigation. Governments have called for consideration of ICC referral at both the UN Human Rights Council and the UN General Assembly. The UN Security Council has discussed North Korea's bleak human rights situation as a formal item on its agenda two years in a row.

Pressing the UN Security Council to refer the situation in North Korea to the ICC should remain a priority for the international community. However, given China and Russia's ongoing objection to such discussions, the landscape for achieving a referral remains challenging. Building political support for an ICC referral in the UN Security Council will take time, ongoing support, and strategic advocacy, to say the least.

Even with a UN Security Council referral, however, the ICC's broad jurisdiction and limited resources mean the court will likely only handle a handful of cases. A more comprehensive accountability strategy will be needed to address the decades of impunity in North Korea.

4. Why is it so important to create a panel of experts now?

The special rapporteur [stressed](#) that "issues around accountability should be addressed at an early stage, and with long-term strategies in mind," and "should not be done ... at the last minute of a change process."

Indeed, two years have passed since the Commission of Inquiry released its landmark report outlining the shocking abuses in North Korea. There has undoubtedly been progress on the international stage underscoring the importance of accountability and the need for an ICC referral. But more is needed. Since the process of devising a comprehensive accountability strategy in any context is complex, sensitive, and time-consuming, the panel of experts should be created as a priority to fill this gap. Such an analysis could also further reinforce UN member states' message to the North Korean government that its deplorable abuses should end and those responsible should be held to account.

5. How is the proposed panel of experts different from the Seoul-based Office of the High Commissioner for Human Rights?

In its March 2014 [resolution](#), the UN Human Rights Council requested that the Office of the High Commissioner for Human Rights (OHCHR) establish a field office to provide increased support to the special rapporteur on the situation of human rights in the Democratic People's Republic of Korea. Its [mandate](#) is to do the following:

- Strengthen monitoring and documentation of the situation of human rights as steps towards establishing accountability in the Democratic People's Republic of Korea;

- Enhance engagement and capacity-building with the governments of all states concerned, civil society and other stakeholders; and
- Maintain visibility of the situation of human rights in the Democratic People's Republic of Korea including through sustained communications, advocacy, and outreach initiatives.

The Seoul office's critical role in monitoring and documenting the human rights situation in North Korea is very different from the legal analysis that is at the heart of the proposed panel of experts. The work of the panel of experts will be complementary to, but not duplicative of, the work of the Seoul office, focusing on the legal framework and options for accountability, while the Seoul office continues to develop the evidentiary basis through its monitoring and documentation work.

Further, given the breadth of its mandate and the limited staff in the Seoul-based OHCHR, additional support is needed to explore the complex legal and practical questions around devising an accountability strategy. The proposed panel of experts would be better positioned to tackle these questions, seeking the expertise of criminal and transitional justice experts as needed.

6. Will the proposed panel of experts simply be another UN Commission of Inquiry on accountability? And will it require more resources?

The UN Commission of Inquiry produced a nearly-400 page [report](#) based on interviews with hundreds of witnesses around the world. By contrast, the mandate of the proposed panel of experts is much narrower. To do its work, the panel would likely seek to interview a much smaller group of individuals, and should aim to produce a significantly shorter report.

Such a panel need not be resource-intensive. It is likely that OHCHR will be able to draw upon significant in-house expertise.

For example, last year's [report](#) by the high commissioner to the UN Human Rights Council on Sri Lanka, which outlined accountability challenges facing the Sri Lankan government and made concrete recommendations to address impunity, offers one possible approach.

The council's [resolution](#) on Burundi adopted at the December 2015 Special Session requested the high commissioner to appoint a team of "existing independent experts," with a specific mandate that included ensuring accountability and working in "complementarity and coordination" with other international and regional and international entities.

Similarly, the resolution on North Korea need not be prescriptive, but could request the high commissioner to appoint a panel of experts, drawing upon already-existing resources within the OHCHR. For instance, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence could be an invaluable resource moving forward.

7. Will the focus on accountability detract from the UN Human Rights Council's vote count on the North Korea resolution?

Identifying options and recommendations to advance accountability is a crucial and necessary next step in light of the Commission of Inquiry's finding of crimes against humanity. The UN Human Rights

Council, General Assembly, and Security Council have all expressed grave concern about the abuses in North Korea. And the UN Human Rights Council and the General Assembly have urged the Security Council to consider ICC referral.

Last year, the Human Rights Council adopted the resolution on North Korea by 27 votes in favor and only 6 against. The states in favor have already embraced language on accountability, and the proposed panel of experts would simply serve to operationalize this existing commitment. While there has been some shift in the council's membership, the significant margin in favor of the resolution indicates that follow-up to identify accountability options would be a credible next step that would not seriously jeopardize the success of the resolution.

8. How does accountability relate to other potential areas of focus for the resolution?

Other proposed options have included another panel discussion or regular reporting by the OHCHR's Seoul office to the council. These describe procedural avenues for further discussion, rather than areas of substantive focus such as accountability. The options are not mutually exclusive: the resolution should have a substantive focus on accountability, and could also propose regular briefings based on the work of the Seoul office. Procedural avenues for discussion are no substitute, however, for the need to advance the council's commitment to accountability. The scale of the abuses, the needs of the victims, and the council's own credibility, require nothing less.