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COMMISSION OF INQUIRY ON HUMAN RIGHTS
IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

QUESTIONS AND ANSWERS ON THE
REPORT OF THE UNITED NATIONS COMMISSION OF INQUIRY ON
HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

17 February 2014

1. What is the United Nations Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea?

In March 2013, the United Nations Human Rights Council established a Commission of Inquiry with a mandate to investigate systematic, widespread and grave human rights violation in the Democratic People's Republic of Korea (DPRK). The Commission was requested to report back to the Human Rights Council in March 2014. The Commission is an independent temporary body of a non-judicial nature.

Human Rights Council resolution 22/13 establishing the Commission was adopted without a single Member State of the Human Rights Council opposing it. This was unprecedented and reflects longstanding universal concerns about the human rights situation in the DPRK.

The wide range of human rights issues that the Commission has been requested to investigate include violations of 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 also investigated to what extent violations may amount to crimes against humanity.

On 7 May 2013, the Human Rights Council appointed the three members of the Commission: Mr. Michael Kirby (Australia, chair of the Commission); Ms. Sonja Biserko (Serbia); and Mr. Marzuki Darusman (Indonesia). Mr. Darusman was already serving as the Special Rapporteur on the situation of human rights in the DPRK at the time of his appointment to the Commission, and continues to report in that capacity. Biographies of the Commissioners are available here: <http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/Biographies.aspx> .

The Commission is supported by a Secretariat composed of experienced investigators, a political advisor, a legal advisor and a gender advisor, who were selected by the United Nations High Commissioner for Human Rights and worked under the guidance of the Commissioners.

2. Where can the findings of the Commission be found?

The Commission's principal findings are summarized in the Commission's main report to the Human Rights Council (United Nations Document number: A/HRC/25/63). The report also provides recommendations to the DPRK, other States and the international community.

More detailed findings, including excerpts of witness testimony and illustrative individual cases, are provided in a comprehensive 372-page document (United Nations Document number: A/HRC/25/CRP.1).

Both documents can be downloaded from the Commission's webpage: www.ohchr.org/EN/HRBodies/HRC/CoIDPRK

3. How can the Commission's findings be summarized?

The Commission finds that systematic, widespread and gross human rights violations have been, and are being, committed by the Democratic People's Republic of Korea. These include:

- arbitrary detention, torture, executions and enforced disappearance to political prison camps;
- violations of the freedoms of thought, expression and religion;
- discrimination on the basis of State-assigned social class, gender, and disability;
- violations of the freedom of movement and residence, including the right to leave one's own country;
- violations of the right to food and related aspects of the right to life; and
- enforced disappearance of persons from other countries, including through international abductions.

In light of the gravity, scale and level of organization of these violations, the Commission concludes that crimes against humanity have been committed by officials of the Democratic People's Republic of Korea, pursuant to policies established at the highest level of the State. These crimes against humanity entail extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of populations, the enforced disappearance of persons and the inhumane act of knowingly causing prolonged starvation. The Commission also reports that crimes against humanity are ongoing in the Democratic People's Republic of Korea because the policies, institutions and patterns of impunity that lie at their heart remain in place.

The Commission concludes that the gravity, scale and nature of the violations committed by the Democratic People's Republic of Korea reveal a state that does not have any parallel in the contemporary world. The Democratic People's Republic of Korea can be characterized as a totalitarian state that does not content itself with ensuring the authoritarian rule of a small group of people, but seeks to dominate every aspect of its citizens' lives and terrorizes them from within.

4. Who are the victims of crimes against humanity?

The Commission finds that crimes against humanity target anyone considered to pose a threat to the political system and leadership of the Democratic People's Republic of Korea. The primary targets are:

- the estimated 80,000-120,000 inmates of the DPRK's political prison camps;
- inmates of other prisons, including political prisoners among them;
- persons who try to flee the DPRK, in particular persons forcibly repatriated by China;
- Christians and other religious believers; and
- other people considered to introduce subversive influences (e.g. importers of foreign movies or DPRK citizens who have contact with nationals of the Republic of Korea).

In addition, the Commission finds that crimes against humanity have been committed by starving populations, particularly during the 1990s. These crimes arose from decisions and policies violating the right to food and other human rights, which were adopted in full awareness that such decisions would exacerbate starvation and related deaths of much of the population. They were adopted for the purposes of preserving the current political system, in particular by prioritizing those believed to be crucial for the survival of the system over those deemed to be expendable. The Commission remains concerned that some of the policies that have led to the crimes against humanity of starvation are still in place.

The Commission also finds that crimes against humanity are being committed against a large number of persons from the Republic of Korea, Japan and other countries who were abducted or denied repatriation, in order to gain labour and other skills in what the DPRK considered a struggle for supremacy on the Korean peninsula. Almost all of these people continue to be victims of enforced disappearances. The DPRK has never disavowed the practice of international abductions. The Commission's findings detail recent abductions carried out by DPRK agents on Chinese territory, which have targeted nationals of China, the Republic of Korea, the DPRK, and, in at least one case, a former Japanese citizen.

5. Who is accountable, in particular, for crimes against humanity?

The Commission finds that the main perpetrators of human rights violations and crimes against humanity are officials of the State Security Department, the Ministry of People's Security, the Korean People's Army, the Office of the Public Prosecutor, the judiciary and the Workers' Party of Korea. These officials are acting under the effective control of the leadership organs of the Workers' Party of Korea, the National Defence Commission and the Supreme Leader of the Democratic People's Republic of Korea.

Former officials of the DPRK testified before the Commission about a number of instances and operations, in which gross human rights violations that formed part of patterns entailing crimes against humanity, were apparently directly ordered from the level of the Supreme Leader.

Where the Commission received information on particular individuals implicated in human rights violations, it has recorded their names in a confidential database. The Commission has authorized the United Nations High Commissioner for Human Rights to provide access to the materials contained in the database to competent authorities to carry out credible investigations for purposes of ensuring accountability for crimes and other violations committed, establishing the truth about violations committed or implementing United Nations-mandated targeted sanctions against particular individuals or institutions.

On 20 January 2013, the Commission sent a letter to the Supreme Leader of the Democratic People's Republic of Korea, Kim Jong-un (the letter is reproduced in the Commission's main report, United Nations Document number: A/HRC/25/63, Annex I). The Commission shared its detailed findings with Kim Jong-un and urged him to take steps to prevent further crimes against humanity from being committed in the DPRK. The letter draws Mr. Kim's attention to the principle of command and superior responsibility under international criminal law.

According to the command responsibility principle, Supreme Leader Kim Jong-un incurs personal criminal responsibility if he knows that officials under his effective control commit crimes against humanity and fails to prevent such crimes and to ensure that perpetrators are brought to justice. This command responsibility can lead to criminal liability even if it could not be proven that Kim Jong-un ordered crimes against humanity.

The letter informs Mr. Kim that the Commission will recommend that the United Nations refer the situation in the Democratic People's Republic of Korea to the International Criminal Court "to render accountable all those, including possibly yourself, who may be responsible for the crimes against humanity" that the Commission found to take place in the DPRK.

6. Has the Democratic People's Republic of Korea cooperated with the Commission?

Despite numerous efforts to reach out to the DPRK, the Commission received no cooperation from the Democratic People's Republic of Korea. The Commission's requests to visit the country were ignored by the DPRK. The DPRK has taken the position that it "categorically rejects" the Commission and the Human Rights Council resolution establishing it.

7. What evidence provides the basis for the findings of the Commission?

In the absence of access to the Democratic People's Republic of Korea, the Commission conducted public hearings in Seoul (20-24 August 2013), Tokyo (29-30 August 2013), London (23 October 2013) and Washington, D.C. (30-31 October 2013). These hearings provided many hours of sobering testimony from more than 80 victims and other witnesses. They provided information of great specificity and detail, and the Commission has been deeply moved by their testimonies. The public hearings were attended by many observers and covered by scores of journalists whose reports appeared in hundreds of media outlets worldwide.

Videos and transcripts of all public hearings can be found here: <http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/PublicHearings.aspx> .

Invitations to the DPRK to attend the hearings received no reply. However, the DPRK's official news agency (Korean Central News Agency, KCNA) did react after the hearings began in Seoul, describing them as a slander and labeling the hearing participants as "human scum." The Commission challenged the DPRK to provide evidence to substantiate its claim of slander, but received no response.

In addition to its public hearings, the Commission conducted more than 240 confidential interviews with witnesses who were afraid to speak publicly due to the risk of reprisals against them or the family members who still live in the DPRK. Many of these witnesses were former officials of the DPRK and victims who recently fled the country.

The Commission also reviewed satellite images, internal documents brought out of the DPRK, videos, photographs and written materials, including 80 submissions from various sources.

In all cases, the Commission carefully assessed the credibility of the the source of information and only relied on information considered to be trustworthy. Patterns of violations described in the Commission's report are based on first-hand testimony from multiple witnesses, corroborated by other information. The detailed findings of the Commission provide hundreds of illustrative examples of many cases of human rights violations. Each of these cases is based on credible first-hand information, including public hearing testimony.

8. What standard of proof did the Commission of Inquiry apply to make its findings?

In line with the practice followed by other United Nations commissions of inquiry, the Commission bases its findings on a "reasonable grounds" standard of proof. It concluded that there are reasonable grounds establishing that an incident or pattern of conduct had occurred whenever it was satisfied that it had obtained a reliable body of information, consistent with other material, based on which a reasonable and ordinarily prudent person would have reason to believe that such an incident or pattern of conduct had occurred.

The Commission is neither a judicial body, nor a prosecutor. It cannot make final determinations of individual responsibility for crimes against humanity. The Commission made findings on crimes against humanity where the body of testimony and other information gathered by it established reasonable grounds that crimes against humanity have been committed so as to merit a criminal investigation by a competent national or international organ of justice.

9. What will happen after the Commission presents its report?

The Commission will present its findings to the United Nations Human Rights Council in Geneva (Switzerland). The presentation of the report is scheduled for 17 March 2013.

The Commission considers that it has fully implemented the inquiry it was asked to carry out and therefore does not seek an extension of its mandate. As emphasized by Michael Kirby, the Chair of the Commission: “The responsibility now lies with the Member States of the United Nations to provide follow up to its recommendations and protect the population of the DPRK from further human rights violations and crimes against humanity.”

In March 2013, the Human Rights Council already decided that it will transmit the Commission’s report to the Secretary-General and other relevant bodies of the United Nations for appropriate action. In this regard, the Commission has formulated a number of recommendations directly addressed to the United Nations Security Council, the General Assembly, the Secretary-General and the High Commissioner for Human Rights.

10. What recommendations does the Commission make to the DPRK?

According to the Commission’s findings and recommendations, the DPRK requires profound institutional reforms starting at the very top and centre of the nation’s institutions. The political prison camps and entire structures of surveillance, indoctrination and repression that serve the sole purpose of committing human rights violations must be dismantled. In this regard, reform of the security and justice sectors alone would not be enough. The decision-making process underpinning them must be made more transparent and subject to effective checks and balances including by establishing an independent and impartial judiciary, a multi-party political system and elected people’s assemblies at the local and central level that emerge from genuinely free and fair elections. The detailed recommendations of the Commission cover a number of specific matters, including:

- release of political prisoners,
- acknowledgment and dismantlement of the political prison camps,
- justice, penitentiary and security sector reform,
- moratorium on and abolition of the death penalty,
- independent media and access to information,
- human rights education and abolition of war propaganda and national hatred,
- freedom for Christians and other religious believers,
- abolition of discrimination on the basis of state-assigned social class and related surveillance,
- gender equality,
- access to the right to food, including through non-discriminatory policies, adjustment of public expenditure patterns and unimpeded international humanitarian access,
- lifting of the foreign and internal travel restrictions on ordinary citizens,
- clarification of the fate of victims of international enforced disappearances and their repatriation,
- reunification of separated families, and
- the prosecution of perpetrators of crimes against humanity as part of a comprehensive transitional justice process.

11. What recommendations does the Commission make to the international community? What action should the Security Council take?

The Commission underlines that the international community has the responsibility to protect the population of the DPRK from further crimes against humanity, because their own State manifestly fails to do so.

The Commission recommends a multi-faceted approach to implement this responsibility to protect. Urgent accountability measures should be combined with a reinforced human rights dialogue, the promotion of incremental change through more people-to-people contact and an inter-Korean agenda for reconciliation.

The United Nations must ensure that those most responsible for the crimes against humanity committed in the Democratic People's Republic of Korea are held accountable, because the DPRK is not willing to prosecute its own officials for carrying out State policy. The Commission recommends that the Security Council refer the situation in the Democratic People's Republic of Korea to the International Criminal Court so that those most responsible for crimes against humanity are brought to justice. The Commission also recommends that the Security Council impose targeted individual sanctions against those most responsible.

In addition, the world should continue to shine the spotlight on human rights violations in the DPRK. In this regard, the Commission recommends that the United Nations High Commissioner for Human Rights establish a field-based presence in the region to document human rights violations in the DPRK, in particular where they amount to crimes against humanity.

12. What is the view of the Commission on proposals to impose economic sanctions or to cut humanitarian aid to the DPRK?

In the light of the dire social and economic situation of the general population, the Commission does not support sanctions imposed by the Security Council or introduced bilaterally that would target the population or the economy as a whole.

States should also not use the provision of food and other essential humanitarian assistance to impose economic or political pressure on the Democratic People's Republic of Korea. Humanitarian assistance should be provided in accordance with humanitarian and human rights principles, including the principle of non-discrimination. Aid should only be curbed to the extent that unimpeded international humanitarian access and related monitoring is not adequately guaranteed. Bilateral and multilateral providers of assistance should coordinate their efforts to ensure that adequate conditions of humanitarian access and related monitoring are provided by the Democratic People's Republic of Korea.

13. Has the Commission engaged with China?

The Commission has continuously sought access to China in order to conduct inquiries, consult with relevant Government officials and visit parts of China bordering the Democratic People's Republic of Korea. On 20 November 2013, the Permanent Mission of China in Geneva informed the Secretariat that given the State's position on country-specific mandates, especially on the Korean peninsula, it would not be possible to extend an invitation to the Commission.

In a follow-up letter dated 16 December 2013, the Commission requested China to provide information on a number of issues of concern to the Commission, including the status of citizens of the Democratic People's Republic of Korea and their children in China, forced repatriations to and related information exchange with the Democratic People's Republic of Korea, trafficking in persons and abductions carried out by DPRK agents on Chinese territory. On 20 January 2014, the Commission shared its detailed findings with China and invited comments.

The Commission's letter of 16 December 2013 and subsequent correspondence received from China is reproduced in Annex II of the Commission's main report (A/HRC/25/63).

14. Do the findings of the Commission address concerns relating to China?

The Commission finds that officials from the Democratic People's Republic of Korea systematically subject persons repatriated by China to persecution, torture, prolonged arbitrary detention and, in some cases, sexual violence, including during invasive body searches. Repatriated women who are pregnant are subjected to forced abortions, and babies born to repatriated women are often killed. These practices are driven by racist attitudes towards inter-racial children of Koreans, and the intent to punish further women who have left the country and their assumed contact with Chinese men. Persons found to have been in contact with officials or nationals from the Republic of Korea or with Christian churches may be forcibly "disappeared" into political prison camps, imprisoned in ordinary prisons or even summarily executed.

Despite the gross human rights violations awaiting repatriated persons, China pursues a rigorous policy of forcibly repatriating citizens of the Democratic People's Republic of Korea who cross the border illegally. According to the Commission, many such DPRK nationals are entitled to international protection as refugees. Forced repatriations also violate China's international obligation to respect the principle of non-refoulement under international refugee and human rights law. In some cases, Chinese officials also appear to provide information on those apprehended to their counterparts in the DPRK. In its letter of 16 December 2013, the Commission urged the Government of China to caution relevant officials that such conduct could amount to the aiding and abetting of crimes against humanity where repatriations and information exchanges are specifically directed towards or have the purpose of facilitating the commission of crimes against humanity in the DPRK.

Discrimination against women in the DPRK, as well as the prospect of refoulement from China, make women extremely vulnerable being trafficked into forced marriages or prostitution under coercive circumstances in China. An estimated 20,000 children born to women from the

Democratic People's Republic of Korea are currently in China. These children are deprived of their rights to birth registration, nationality, education and health care because their birth cannot be registered without exposing the mother to the risk of refoulement by China.

The Commission recommends to China and other States not to repatriate any persons to the Democratic People's Republic of Korea, unless their treatment there, as verified by international human rights monitors, markedly improves.

15. Has the Commission investigated the execution of the uncle of Kim Jong-un, Mr. Jang Song-thaek?

The Commission finds that the circumstances of the trial and execution of Jang Song-thaek, according to the DPRK's own account of it, involved many elements that contravened international human rights law. If such violations could affect one of the highest officials in the land, it is not difficult to appreciate the standards of law and justice that are afforded to ordinary citizens.

The Commission also received credible reports about executions of close associates of Jang Song-thaek and disappearances of other associates and family members, who may have been taken to political prison camps. Further investigations are required, once more witnesses manage to flee the DPRK, to determine the full extent of violations related to the purge of Mr. Jang Song-thaek.

16. To whom should media inquiries relating to the Commission be directed?

- Until 31 March 2014, media enquiries should be directed to coidprkmedia@ohchr.org .
- From 1 April 2014, inquiries should be addressed to press-info@ohchr.org .