

# ***Human Rights Without Frontiers Int'l***

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## **North Korea**

# **Establishment of a UN Commission of Inquiry**

By Willy Fautré

Brussels, 6 June 2013

On 22 March 2013, the UN Human Rights Council decided at its 22nd session to establish a special, three-person UN Commission of Inquiry (CoI) to examine rights abuses in North Korea. This was the result of an 18-month campaign carried out by the International Coalition to Stop Crimes Against Humanity in North Korea (ICNK) which was created in Tokyo in September 2011. *Human Rights Without Frontiers Int'l* participated in the meeting that put in place the International Coalition. In the next few months, more than 40 human rights organizations from all the continents and a few experts on North Korea joined the International Coalition.

This is a historical step towards ensuring accountability for human rights abuses in North Korea. This initiative is in line with a number of resolutions adopted in the last few years by the UN General Assembly and the Human Rights Council as well as with the reports of the successive UN Special Rapporteurs on human rights in North Korea. The violations of the UN standards in this hermit state are described as “systematic”, “widespread” and “egregious”.

### **The EU and human rights violations in North Korea**

The European Union has sponsored several UN Resolutions at the Commission on Human Rights and the General Assembly since 2003. Entitled “Situation of human rights in the Democratic People’s Republic of Korea”, these resolutions articulate the fears regarding the worrying situation of human rights in North Korea.

In November 2009, the resolution – adopted with 99 votes in favour to 20 against and 63 abstentions – called North Korea to immediately put an end to the systematic, widespread and grave human rights violations in the country, to fully cooperate with the UN human rights system and to ensure full, safe and unhindered access to humanitarian aid on the basis of need in accordance with humanitarian principles.

The EU was also instrumental in securing UN Human Rights Council resolution on 25 March 2010 about the “Situation of human rights in the Democratic People’s Republic of Korea” prepared by the Special Rapporteur on Human Rights in North Korea, Vitit Muntarbhorn. Tabled by the EU and Japan, the resolution supporting the mandate of the UN Special

Rapporteur was passed by the 47-member council with 28 votes in favour, 5 against and 13 abstentions.

The European Parliament has also adopted a number of resolutions about North Korea and MEPs have always sponsored the conferences and other events we have organized to raise awareness about specific issues: the food crisis, the plight of North Korean refugees in neighbouring countries, the abduction of Japanese and other foreign citizens, and so on.

The European Union, Japan, South Korea and the USA played a crucial early role in persuading other key countries to support the creation of the Commission of Inquiry. A number of EU member states also played leading roles in making the UN Commission a reality. Consequently, North Korea's regime will now be under greater pressure than ever to account for its extensive human rights violations.

### **Why is a UN Commission of Inquiry needed for North Korea?**

First of all, the persisting deterioration of the human rights violation in North Korea, the systematic non-cooperation of Pyongyang with the UN human rights mechanisms – including with the UN Special Rapporteur – and the rejection of UN resolutions on North Korean human rights make the setting up of this new mechanism particularly timely.

Moreover, it must also be stressed that there is no domestic mechanism of complaint or redress for the victims of grave human rights crimes in North Korea. Therefore, the Commission of Inquiry will give them an opportunity to ensure their voices, and their experiences, reach decision-makers in the UN and the international arena. In this way, the Commission will serve as an entry point to ensure that North Korea's human rights record – and the issue of accountability for those abuses -- will be increasingly placed at the core of the international community's approach vis-à-vis North Korea. For families of foreign nationals abducted and forced to North Korea, the Commission will also offer an opportunity to demand the return of their loved ones.

The Commission of Inquiry will be put under the leadership of the current UN Special Rapporteur on human rights in North Korea, Marzuki Darusman, and the UN will appoint two additional independent experts of significant stature to join him in carrying out an in-depth investigation.

The resolution that established the Commission of Inquiry called for it to be “adequately resourced,” meaning it will have the means to carry out a serious investigation. Its mandate will be to “investigate all systematic, widespread and grave violations of human rights in the People’s Democratic Republic of Korea.” Particularly encouraging is the fact that the Commission’s mandate stipulates an investigation into the full range of regime abuses. Several areas are specified: violations of the right to food, treatment of prison camp inmates, torture and inhumane treatment, arbitrary detention, discrimination (among other things, the calibrated deprivation of families based on perceived degree of loyalty), violations of the right to life, restrictions on personal movement, and enforced disappearances, including of foreign nationals, with a view to ensuring full accountability, in particular where these violations may amount to crimes against humanity.

Part of the problem is not only the seriousness of the violations but the lack of information about them. The Commission is expected to provide more detailed figures showing the number of prisoners who are still in the political camps and the number of persons who have been released. By collecting the testimonies of victims, their families, survivors and witnesses and gathering all other available information, the Commission should produce a highly authoritative account on the patterns of abuse in North Korea that can inform further future actions towards accountability.

### **What are the available avenues of accountability?**

The International Criminal Court (ICC) has jurisdiction over crimes against humanity, war crimes, genocide and the crime of aggression committed AFTER entry into force of the ICC Rome Statute on 1 July 2002.

Unfortunately, North Korea is not a party to the Rome Statute, will not want to become one and will not accept its jurisdiction. The Security Council can refer the situation of North Korea to the ICC under its Chapter VII powers but a positive vote by 9 of the 15 Council

members would be required without any veto of none of the five permanent members. Obviously, at least China would object to it.

The “Universal Jurisdiction” might be another avenue of accountability. This mechanism allows the domestic judicial system of states or international organizations to investigate and prosecute a person accused of certain crimes - such as war crimes and torture, genocide and crimes against humanity - regardless of where the alleged crime was committed, and regardless of the accused's nationality, country of residence or any other relation with the prosecuting entity. Crimes prosecuted under the Universal Jurisdiction are considered crimes against all.

According to Amnesty International, a proponent of the universal jurisdiction, certain crimes pose so serious a threat to the international community as a whole that states have a logical and moral duty to prosecute an individual responsible for it; no place should be a safe haven for those who have committed genocide, crimes against humanity, extrajudicial executions, war crimes, torture and forced disappearances. The Geneva Conventions and the Convention Against Torture oblige state parties to extradite or prosecute alleged offenders who are under that state's jurisdiction.

A number of countries have passed a universal jurisdiction law or are entitled to exercise universal jurisdiction.

*Australia:* In 1991, the High Court of Australia confirmed the authority of the Australian Parliament, under the Australian Constitution, to exercise universal jurisdiction over war crimes in the “Polyukhovich v. Commonwealth” case.

*Belgium:* In 1993, it adopted such a law but it was amended in 2003 in order to reduce its scope.

*Canada:* To implement the Rome Statute, Canada passed the “Crimes Against Humanity and War Crimes Act”. According to Michael Byers, a law professor at the University of British Columbia, this law goes further than the Rome Statute, providing Canadian courts with jurisdiction over acts pre-dating the ICC and occurring in territories outside of ICC member-states. “As a result, anyone who is present in Canada and alleged to have committed genocide, torture [...] anywhere, at any time, can be prosecuted [in Canada],” he said.

*France*: The article 689 of the *Code of Criminal Procedure* states the infractions that can be judged in France when they were committed outside French territory either by French citizens or foreigners: torture, terrorism, nuclear smuggling, naval piracy and airplane hijacking.

Germany, Israel, Malaysia, Spain and UK also have similar mechanisms, though with limitations as well.

## **Conclusions**

In conclusion, the establishment of a UN Commission of Inquiry is not a magic rod that will allow the international community to put an end to the egregious violations of human rights in North Korea. International jurisdictions are still too weak and too fragmented to cope with the problems posed by North Korea, which is a *sui generis* case, but the universal jurisdiction avenue deserves to be further explored by experts in international law as a credible and complementary alternative.

Brussels, 6 June 2013

Willy Fautré, director of *Human Rights Without Frontiers* (<http://www.hrwf.org>)

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## **PUBLICATIONS OF HUMAN RIGHTS WITHOUT FRONTIERS ON NORTH KOREA**

### **[HRWF database of news about North Korea \(2008-2013\)](#)**

**<http://www.hrwf.net/democracy-rule-of-law-and-human-rights/95-east-asia-and-the-pacific>**

**<http://www.hrwf.net/democracy-rule-of-law-and-human-rights/95-east-asia-and-the-pacific?start=10>**

### **[HRWF Reports](#)**

#### **"North Korea: The Refugee Issue"**

**<http://www.hrwf.net/images/reports/2012/2012%200508%20north%20korea%20refugees.pdf>**

#### **"EU Policy on North Korea"**

**<http://www.hrwf.net/images/reports/2012/2012%200508%20north%20korea%20refugees.pdf>**

#### **Abduction of Japanese Citizens by North Korea**

<http://www.hrwf.org/images/reports/2010/2010%20abduction%20japanese%20citizens%20nk.pdf>

### **Some Media Coverage of HRWF Activities**

#### **Interview TV ZDF & 3Sat : Pyongyang Restaurant in Amsterdam**

<http://www.3sat.de/mediathek/?display=1&mode=play&obj=30347>

<http://www.zdf.de/ZDFmediathek/hauptnavigation/sendung-verpasst/#/beitrag/video/1616600/ZDF-heute-journal-vom-11-April-2012>

#### **Interview about North Korean refugees with the Romanian Television TVR**

<http://www.tvr.ro/articol.php?id=125670&c=8097>

#### **NGOs demand official inquiry into North Korea's crimes against humanity**

<http://www.theparliament.com/policy-focus/foreign-affairs/foreign-affairs-article/newsarticle/ngos-demand-official-inquiry-into-north-koreas-crimes-against-humanity>

#### **EU urged to help bring North Korea 'back into fold'**

<http://www.theparliament.com/latest-news/article/newsarticle/eu-urged-to-help-bring-north-korea-back-into-fold/>

#### **EU urged to continue restrictive sanctions against North Korea**

<http://www.theparliament.com/latest-news/article/newsarticle/eu-urged-to-continue-restrictive-sanctions-against-north-korea/>

<http://blog.chosun.com/blog.log.view.screen?blogId=73049&logId=5822056>

#### **MEP calls for renewed talks to resolve Korean conflict**

<http://www.theparliament.com/latest-news/article/newsarticle/mep-calls-for-renewed-talks-to-resolve-korean-conflict/>

#### **North Koreans talk of baby killings**

<http://www.nytimes.com/2002/06/10/world/n-koreans-talk-of-baby-killings.html?pagewanted=all&src=pm>

#### **Don't deport North Korean women**

<http://www.asiafinest.com/forum/lofiversion/index.php/t107869.html>

#### **North Korean refugees face forced abortion and infanticide**

[http://findarticles.com/p/articles/mi\\_6899/is\\_7\\_29/ai\\_n28129955/](http://findarticles.com/p/articles/mi_6899/is_7_29/ai_n28129955/)

**N. Korea killing prison babies, defectors say**

[http://articles.chicagotribune.com/2002-06-12/news/0206120259\\_1\\_women-prisoners-defectors-north-korea](http://articles.chicagotribune.com/2002-06-12/news/0206120259_1_women-prisoners-defectors-north-korea)

**North Korean babies**

[http://www.bbc.co.uk/radio4/womanshour/2002\\_33\\_tue\\_05.shtml](http://www.bbc.co.uk/radio4/womanshour/2002_33_tue_05.shtml)

**North Korea engages in forced abortion, infanticide**

<http://www.catholicculture.org/news/features/index.cfm?recnum=18323>

**2008 North Korean Human Rights Campaign**

<http://www.dailynk.com/english/read.php?cataId=nk00100&num=4029>

**North Korean in Czech jobs: Slave Labor?**

<http://www.nytimes.com/2006/11/08/world/asia/08iht-czech.3455560.html>

**Forum focuses on N. Korea's rights abuses**

<http://articles.latimes.com/2002/feb/10/news/mn-27313>

**Le cauchemar des prisons nord-coréennes**

<http://www.radicalparty.org/fr/content/le-cauchemar-des-prisons-cor%C3%A9ennes>

["Non, La Corée du Nord n'est pas un Paradis!" \(Télépro 2003\)](#)