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## Chapter 15

### The High Commissioner for Human Rights and North Korea

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The Democratic People's Republic of Korea (DPRK or North Korea), is best known internationally for its development of nuclear weapons and for the chronic hunger and malnutrition endured by much of its population. Less publicized have been its widespread and grave human rights violations, which North Korea has taken great pains to conceal. The country is by far the world's most inaccessible and 'most secretive,' with its population often described as 'the hidden people.'<sup>2</sup> Since 1948, the Kim dynasty has ruled North Korea with an ideology of nationalistic self-reliance (*juche*) effectively minimizing ties with much of the rest of the world. While there have been recent inroads into this closed society, North Koreans cannot exit their country freely, are not allowed to telephone outside the country or listen to radio broadcasts from abroad, and only a small number are allowed access to the internet.<sup>3</sup> Between North and South Korea today, "there is no telephone service...no postal service, no email."<sup>4</sup> Foreigners allowed entry are limited in their ability to communicate with North Koreans. Even during the great famine of the mid 1990s when North Korea invited in international food agencies to counter starvation (at least one million reportedly died), it restricted the access and involvement of aid workers with the North Korean people.<sup>5</sup> Kim Jong Il, who in 1994 inherited the leadership of North Korea from his father Kim Il Sung, is quoted as saying, "We must envelop our environment in a dense fog to prevent our enemies from learning anything about us."<sup>6</sup>

#### Origin of concern about human rights in North Korea

Largely because of the restrictions, inaccessibility and resulting lack of hard information, the first in-depth human rights report about North Korea was not published until 1988, 40 years after Kim Il Sung first assumed power. Two non-governmental organizations

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<sup>1</sup> The author wishes to thank JBI Associate Director Christen Broecker for her valuable research assistance and editorial suggestions.

<sup>2</sup> See Ralph Hassig and Kongdan Oh, *The Hidden People of North Korea: Everyday Life in the Hermit Kingdom* (Lanham, MD: Rowman & Littlefield, 2009), 3-5.

<sup>3</sup> See UN General Assembly, *Report of the UN Secretary-General, Situation of human rights in the DPRK*, UN Doc. A/65/391, September 24, 2010, para.19; Hassig & Oh, *The Hidden People*; and Melanie Kirkpatrick, *Escape from North Korea: The Untold Story of Asia's Underground Railroad* (New York: Encounter Books, 2012), 275-279.

<sup>4</sup> Barbara Demick, *Nothing to Envy: Ordinary Lives in North Korea* (New York: Spiegel & Grau, 2010), 10.

<sup>5</sup> See Andrew S. Natsios, *The Great North Korean Famine* (Washington, DC: US Institute of Peace Press, 2001), 5, 48-9, 140, 174-5, 215, 224.

<sup>6</sup> Demick, *Nothing to Envy*, opening page.

(NGOs) in the United States – the Minnesota Lawyers International Human Rights Committee and Asia Watch decided to bring to light whatever information they could find even though they could not visit and had to rely on unverified interviews and second hand reports. Their findings described draconian controls imposed on the population reinforced by regularized torture and summary executions.<sup>7</sup> Earlier in 1979, Amnesty International published the accounts of a Venezuelan and Frenchman detained in the North on political grounds from 1967 to 1974 and introduced North Korea’s political prison camp system to an international audience.<sup>8</sup> By 1991, Amnesty reported that, “Tens of thousands of people, including prisoners of conscience, appear to have been detained since the 1960s under various forms of arbitrary detention.... Thousands more appear to have been victims of ‘disappearances,’ torture or summary execution.”<sup>9</sup>

Neither the United Nations Division of Human Rights nor the UN Centre for Human Rights – the predecessors to the Office of the High Commissioner for Human Rights (OHCHR) – played a significant role in bringing to light the situation in the DPRK. To be sure, an expert body of the Commission – the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution on human rights in North Korea in 1997,<sup>10</sup> and the following year called on the Commission to take up the situation.<sup>11</sup> But it was not the High Commissioner or her staff that flagged the situation even though that Office took initiatives on other countries.<sup>12</sup> Rather, the Sub-Commission’s resolutions originated with the author of the 1988 Minnesota Lawyers Committee report, David Weissbrodt, who became an expert member of the Sub-Commission from 1996 to 2003.

In 2003, the Commission on Human Rights for the first time adopted a resolution on North Korea and in 2004 appointed a Special Rapporteur to investigate and report on the human rights situation.<sup>13</sup> The 2003 resolution was the result of the efforts of NGOs and Western states, especially France, which was influenced by the publication in French in 2000

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<sup>7</sup> Minnesota Lawyers International Human Rights Committee and Asia Watch, *Human Rights in the Democratic People’s Republic of Korea*, 1988.

<sup>8</sup> David Hawk, *The Hidden Gulag: The Lives and Voices of “Those Who are Sent to the Mountains,”* 2<sup>nd</sup> ed. (Washington, DC: Committee for Human Rights in North Korea, 2012), 42-3.

<sup>9</sup> Amnesty International, “North Korea: Summary of Amnesty International’s concerns,” October 13, 1993. Amnesty International was allowed to pay a visit in 1991, the only time an international human rights NGO was allowed entry to North Korea.

<sup>10</sup> UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1997/3, “Situation of human rights in the Democratic People’s Republic of Korea,” UN Doc. E/CN.4/1998/2, August 21, 1997, 18.

<sup>11</sup> UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1998/2, August 19, 1998. The 1997 and 1998 resolutions cited reports of “mass internments” in detention centers, the deaths of “many” political prisoners, “frequent reports of extrajudicial execution and disappearances,” and “serious restrictions” on free movement. They expressed concern about the “virtual impossibility of obtaining information or visiting that country” and urged greater international attention to the problem so as to help North Korea’s population emerge “from the isolation in which it is maintained.”

<sup>12</sup> See Bertrand Ramcharan, *A UN High Commissioner in Defense of Human Rights* (Leiden: Brill, 2004), 12. The author reports initiatives that he undertook as Acting High Commissioner (August 2003- July 2004) on countries such as Liberia, Sudan (Darfur), Iraq and Ivory Coast.

<sup>13</sup> See UN Commission on Human Rights, Resolution 2003/10, “Situation of human rights in the Democratic People’s Republic of Korea,” UN Doc. E/CN.4/RES/2003/10, April 16, 2003; and UN Commission on Human Rights, Resolution 2004/13, “Situation of human rights in the Democratic People’s Republic of Korea,” E/CN.4/RES/2004/13, April 15, 2004.

of a first-hand account by a North Korean survivor of a prison labor camp.<sup>14</sup> The resolution in 2004 appointing a Special Rapporteur was in part the initiative of the United States and its head of delegation Richard Williamson<sup>15</sup> as well as of the EU. Reinforcing the effort was a report submitted to the Commission by the OHCHR Secretariat summarizing UN activities on human rights in North Korea.<sup>16</sup> But the overall effort came from the outside, and even then these Commission resolutions were adopted more than 50 years after the Kim dynasty assumed power and 15 years after the first NGO report on the human rights situation.

UN treaty bodies, composed of independent experts and serviced by the Office of the High Commissioner, provided some help. As a result of its accession to four international human rights treaties,<sup>17</sup> the DPRK was obliged to submit reports every few years on its compliance to the expert bodies set up to monitor their implementation. Its reports, however, were mostly sparse and sometimes not forthcoming at all.<sup>18</sup> In fact, the Human Rights Committee observed in 2001 that 17 years had lapsed since the last dialogue with the DPRK and that the lack of information provided by North Korea made it difficult to address effectively “credible and substantiated allegations” brought to its attention by other sources.<sup>19</sup> The Committee nonetheless made extensive recommendations as did other treaty bodies and provided an information base that helped states draft the Sub-Commission and Commission resolutions.<sup>20</sup>

Notwithstanding this supporting role, the impetus for unearthing and publishing information about the human rights situation in North Korea and pressing states to take action came from non-governmental organizations, not the United Nations.

### **Role of the High Commissioner**

In looking at the role played by the High Commissioner prior to the adoption of the 2003 resolution, two questions arise. When grave human rights violations are *suspected* in a country and verifiable information is difficult to come by, what role should the High Commissioner or her Office play in unearthing that information and trying to publicize it?

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<sup>14</sup> See Kang Chol-hwan and Pierre Rigoulot, *The Aquariums of Pyongyang: Ten Years in the North Korean Gulag* (Paris: Editions Robert Laffont, 2000) [in French], English trans. Yair Reiner (New York: Basic Books, 2001).

<sup>15</sup> Conversation of February 8, 2012 with Ambassador Richard Williamson, head of the US Delegation to the Commission on Human Rights in 2004. He pointed out that President George W. Bush read *The Aquariums of Pyongyang*, met with former North Korean prisoner Kang Chol-hwan and supported strong UN action on human rights in North Korea.

<sup>16</sup> See UN Commission on Human Rights, “Situation of human rights in the Democratic People’s Republic of Korea,” Note by the Secretariat, UN Doc. E/CN.4/2004/31, February 17, 2004; and Ramcharan, *A UN High Commissioner*, 100-101.

<sup>17</sup> North Korea is a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. See UN Treaties Collection, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

<sup>18</sup> See UN Commission on Human Rights, “Situation of human rights in the Democratic People’s Republic of Korea,” para.11.

<sup>19</sup> UN Human Rights Committee, “Concluding Observations of the Human Rights Committee: Democratic People’s Republic of Korea,” UN Doc. CCPR/CO/72/PRK, August 27, 2001, para.2.

<sup>20</sup> See UN Commission on Human Rights, “Situation of human rights in the Democratic People’s Republic of Korea,” para.11.

And second, what role should the High Commissioner or her Office be expected to play in a situation where no official intergovernmental UN body (i.e. a body of states as opposed to independent experts) calls for an investigation of the human rights situation?

Appointed in 1994, the High Commissioner for Human Rights is intended to be ‘the conscience for the world’ and the UN authority expected to play an active role in responding to and preventing the continuation of human rights violations internationally. According to the resolution creating this post, the High Commissioner’s mandate is to “promote and protect the effective enjoyment *by all* of all civil, cultural, economic, political and social rights” [emphasis added].<sup>21</sup> The High Commissioner therefore has a scope of action far wider than countries on which UN human rights bodies take action. Despite many political and resource constraints, the Office can and does take initiatives.<sup>22</sup> Yet in the case of North Korea, the High Commissioner’s Office did not begin to act on human rights in North Korea until nine years after the creation of the position; and even then it acted only because the 2003 resolution of the Commission on Human Rights directly requested the High Commissioner to engage in “a comprehensive dialogue” with North Korea with a view to establishing “technical cooperation programs in the field of human rights.”<sup>23</sup>

### *Establishing dialogue and technical cooperation with North Korea*

It was Acting High Commissioner Bertrand Ramcharan who carried out the Commission request for a dialogue with North Korea in 2003. At the time, the High Commissioner’s Office already had technical cooperation agreements with more than 50 countries,<sup>24</sup> but unlike most other countries, the DPRK refused “to identify potential areas of cooperation.”<sup>25</sup> It charged that the 2003 resolution was “adopted under pressure by the EU” and was “the product of political collusion with the anti-DPRK policy of the United States.”<sup>26</sup> Subsequent High Commissioners were similarly unsuccessful in establishing a dialogue. In 2006, Louise Arbour reported to the Human Rights Council (which replaced the Commission on Human Rights) that although her Office had been “actively trying to encourage the Government to avail itself of our [technical] assistance,” to date “our efforts have yielded no result.” “I have been unsuccessful,” she told the Council, “in engaging in dialogue with the Government.”<sup>27</sup> Navi Pillay also made no progress in her efforts from 2008 to 2012.<sup>28</sup>

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<sup>21</sup> UN General Assembly, Resolution 48/141, “High Commissioner for the promotion and protection of all human rights,” UN Doc. A/RES/48/141, December 20, 1993.

<sup>22</sup> See Ramcharan, *A UN High Commissioner*, 12.

<sup>23</sup> UN Commission on Human Rights, Resolution 2003/10.

<sup>24</sup> UN Commission on Human Rights, “Situation of human rights in the Democratic People’s Republic of Korea,” para.3.

<sup>25</sup> *Ibid.* 2-3.

<sup>26</sup> Note Verbale dated 4 February 2004 from the Permanent Representative of the Democratic People’s Republic of Korea addressed to the Office of the United Nations High Commissioner for Human Rights, contained in Commission on Human Rights, Note by the Secretariat, 9-10.

<sup>27</sup> Louise Arbour, “Statement of Ms. Louise Arbour, United Nations High Commissioner for Human Rights, to the Human Rights Council,” (UN Human Rights Council, Geneva, June 23, 2006).

<sup>28</sup> See UN General Assembly, *Report of the UN Secretary-General / Situation of human rights in the DPRK*, UN Doc. A/64/319, August 24, 2009, paras.24-27.

The UN Secretary-General backed the dialogue and urged North Korea to allow entry to the High Commissioner.<sup>29</sup> When Ban Ki Moon dispatched a Special Envoy to Pyongyang in 2010, one of the items on that envoy's agenda was to press the government to cooperate with OHCHR and set up a technical assistance program.<sup>30</sup> Many governments also called upon North Korea to establish a dialogue with the High Commissioner and cooperate on technical assistance programs, whether in the Universal Periodic Review<sup>31</sup> or the General Assembly.<sup>32</sup>

North Korea, in recent years, hinted at a *quid pro quo*: an end to UN resolutions and mandates criticizing North Korea's human rights record in exchange for a visit by the High Commissioner and technical assistance programs.<sup>33</sup> In early 2012, High Commissioner Pillay privately raised the possibility of setting aside country specific mandates and resolutions in order to gain access to North Korea.<sup>34</sup> But the resolutions in the General Assembly and Human Rights Council were the work of UN Member States, not the High Commissioner, and it was unlikely these states would forego their detailed resolutions on North Korea in exchange for a dialogue that could yield few results. NGOs objected to such an arrangement, pointing out it would *reward* North Korea for a dialogue, making it an exception among governments that agreed to hold dialogues.<sup>35</sup> Later that year, Pillay moved away from this approach, especially as it became clear that North Korea's new leader Kim Jong Un, who in 2012 took over from his father, intended to continue the same policies of non-cooperation with the UN.<sup>36</sup>

### *Issuance of public statements*

From 1994-2012, no High Commissioner issued a public statement devoted entirely to North Korea. High Commissioner Mary Robinson in 1999 expressed concern at a press conference in Seoul that North Koreans fleeing to China for food were being "forced to return" and faced "extremely serious" consequences in North Korea, but it was not a formal

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<sup>29</sup> Ibid. para.58(a).

<sup>30</sup> UN General Assembly, *Report of the UN Secretary-General / Situation of human rights in the DPRK*, UN Doc. A/65/391, September 24, 2010, paras. 2-5, 86.

<sup>31</sup> See Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review: DPRK*, UN Doc. A/HRC/WG.6/6/L.12, December 9, 2009, paras.25, 42, 51, 53, 55, 110 and 111.

<sup>32</sup> UN General Assembly, Resolution 66/174, "Situation of human rights in the Democratic People's Republic of Korea," UN Doc. A/RES/66/174, December 19, 2011, para. 5(e).

<sup>33</sup> *Report of the UN Secretary-General, Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/64/319, para.26. See also UN Human Rights Council, "Note Verbale dated 1 February 2012 from the Permanent Mission of the Democratic People's Republic of Korea to the United Nations Office at Geneva addressed to the President of the Human Rights Council," UN Doc. A/HRC/19/G/1, February 14, 2012. According to the Note, "The position on country-specific mandates will therefore remain a criterion for determining whether or not one aspires to genuine dialogue and cooperation."

<sup>34</sup> Discussions at the Conference on the United Nations High Commissioner for Human Rights: Conscience for the World, The Jacob Blaustein Institute for the Advancement of Human Rights, February 7-8, 2012.

<sup>35</sup> Ibid.

<sup>36</sup> "Pillay urges more attention to human rights abuses in North Korea, calls for international inquiry," OHCHR news release, January 14, 2013 [henceforth Pillay Statement 2013].

statement about North Korea.<sup>37</sup> High Commissioner Arbour, when reporting her lack of success in establishing a dialogue in 2006, mentioned “reports” from North Korean refugees describing “dire conditions in labour camps, grave food shortages and a lack of the most basic freedoms, such as freedom of expression, religion and assembly,”<sup>38</sup> but it was in the course of a much longer statement on human rights conditions in many countries. Pillay for nearly four years adopted the same strategy, saying very little publicly about North Korea’s human rights situation.<sup>39</sup> But by mid-2012, she directly expressed “serious concern” about its “political prison camps,” and “public executions” without linking these concerns to the reports received from refugees.<sup>40</sup> Further, she called on the North Korean authorities “to allow access to independent experts and organizations,” and urged China, albeit indirectly (“neighboring countries”), not to forcibly return North Koreans seeking international protection abroad. At the same time, Pillay’s 2012 statement, like Arbour’s before her, was but a small paragraph in a much longer statement encompassing sixteen countries.

This caution, even neglect, in large measure emanated from the assumption that the quest for a dialogue with North Korea (from 2003 to 2013) had to rule out strong public pronouncements about the country. Pillay and other High Commissioners for years had given weight to the fact that when the European Union introduced a public resolution at the UN critical of North Korea, the DPRK ended its human rights dialogue with the EU.<sup>41</sup>

A second impediment to speaking out was the belief that it was necessary to assess the situation directly first. For years, successive High Commissioners held the view that an on-site visit was essential to verify the reports of serious crimes coming out of the country. Pyongyang’s “closed door” policy, Arbour explained, “barred” the UN “from forming its own, independent diagnosis of the human rights situation.”<sup>42</sup> Pillay likewise in 2011 pointed to the “very little information” available from North Korea “due to the absence of independent media and suppression of the freedom of expression.”<sup>43</sup>

This changed dramatically on January 14, 2013 when Pillay issued a sweeping separate statement on the human rights situation in the country, describing it as having “no parallel anywhere else in the world.”<sup>44</sup> She recounted the details of “harrowing” testimony from two survivors of the prison camp system with whom she met in December 2012, and concluded that the “rampant” violations being perpetrated within the camps “may amount to crimes against humanity.” Expressing alarm that the international community had allowed its concern over North Korea’s nuclear program to overshadow its record of abuse, Pillay roundly condemned the Kim Jong Un regime for failing to improve the human rights situation in the country during its first year in power. Noting the persistent refusal of the North Korean

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<sup>37</sup> See Jacob Adelman, “Top U.N. Official Says N.K. Refugees Situation Serious,” *The Korea Herald*, 14 October 1999.

<sup>38</sup> Louise Arbour, June 23, 2006.

<sup>39</sup> See “Study: UN rights chief Navi Pillay turned blind eye to world’s worst abusers,” UN Watch, June 7, 2011.

<sup>40</sup> Navi Pillay, “Opening Statement by Navi Pillay, High Commissioner for Human Rights,” (UN Human Rights Council, Geneva, June 18, 2012).

<sup>41</sup> Note Verbale 2004, 9-10.

<sup>42</sup> Louise Arbour, June 23, 2006.

<sup>43</sup> Navi Pillay, “Statement of Navi Pillay, United Nations High Commissioner for Human Rights” (UN Human Rights Council, Geneva, May 30, 2011).

<sup>44</sup> Pillay Statement 2013.

government to cooperate with successive Special Rapporteurs on the country and with her Office, Pillay called on the international community to authorize an independent international inquiry into the human rights situation in North Korea, a step she said was “long overdue.”

Meetings with camp survivors helped shift Pillay’s position. She became the first High Commissioner to directly meet with survivors and was reportedly deeply “moved” by the experience.<sup>45</sup> In her January 2013 statement, she gave credence to their testimony, saying that “what we do know should compel the international community to action.”<sup>46</sup> The mistreatment of North Korea’s citizens, she underscored, was “to a degree that should be unthinkable in the 21<sup>st</sup> century.” She apparently also realized that her Office’s constant calling attention to the lack of verifiable information on North Korea could have had the unintended effect of lending support to Pyongyang’s claims that reports of human rights abuses were based on “unfounded information” propagated by those who had betrayed their country.<sup>47</sup>

Another major factor in Pillay’s decision to break with previous practice was the failure of North Korea’s new leader Kim Jong Un to bring any “positive change to his country.” Although there were “initial hopes” internationally when he first took over from his father,<sup>48</sup> she saw that the DPRK’s persistent refusal to meet with her Office was not about to change and that “a much firmer step” was required.<sup>49</sup> She also saw that the Council could act more forcefully in 2013 because China, Russia and Cuba would not be members.<sup>50</sup>

Growing international publicity in 2012 mustered by NGOs and former prisoners about “crimes against humanity” in the country also influenced Pillay. The new book *Escape from Camp 14*, David Hawk’s updated *Hidden Gulag* and a well-attended conference organized in Washington, DC on the North Korea gulag brought worldwide attention to the crimes in the camps.<sup>51</sup> Additionally, a coalition of 40 leading NGOs launched a campaign to set up an international inquiry.<sup>52</sup> And experts and NGOs directly began to call on Pillay to speak out.<sup>53</sup> The forced repatriation of North Koreans from China also made headlines in

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<sup>45</sup> Interviews with human rights advocates knowledgeable about the meeting, January 19, 2013.

<sup>46</sup> Pillay Statement 2013.

<sup>47</sup>“Human Rights Council adopts outcomes of Universal Periodic Review on Bhutan, Dominica and Democratic People’s Republic of Korea,” OHCHR news release, March 18, 2010.

<sup>48</sup> Pillay Statement 2013.

<sup>49</sup> Ibid; see also Roberta Cohen, “Human Rights Progress In North Korea; Is It Possible?” *38 North*, March 20, 2012.

<sup>50</sup> These three states had to go off the Council for a year because they had already served two terms.

<sup>51</sup> See Blaine Harden, *Escape from Camp 14*, Viking, 2012; Hawk, *Hidden Gulag*, Committee for Human Rights in North Korea. Hawk’s report, 7-24, also lists the many Seoul-based organizations collecting information, for example the Korea Institute for National Unification (KINU), the Citizen’s Alliance for North Korean Human Rights, the Network for North Korean Democracy and Human Right, the Database Center for North Korean Human Rights and the South Korean Commission on Human Rights. The Committee for Human Rights in North Korea and the Jacob Blaustein Institute for the Advancement of Human Rights held a widely attended and publicized conference in Washington DC on April 12, see “North Korea’s ‘hidden gulag,’” Editorial, *Washington Post*, April 13, 2012.

<sup>52</sup> See The International Coalition to Stop Crimes Against Humanity in North Korea, [http://www.stopnocrimes.org/about\\_01.php](http://www.stopnocrimes.org/about_01.php)

<sup>53</sup> See for example Statement of Roberta Cohen at the Conference on the United Nations High Commissioner for Human Rights, 8 February 2012, which called on the High Commissioner to make a stand alone statement on

2012 when South Korean parliamentarians and NGOs undertook demonstrations and hunger strikes in Seoul.<sup>54</sup> Even UN Secretary-General Ban Ki Moon made a public statement on the forced repatriations,<sup>55</sup> as did US Secretary of State Hillary Clinton, and US Congressional hearings were held.<sup>56</sup>

Of course, the reports of the UN Special Rapporteur appointed in 2004 to investigate and report on the human rights situation in North Korea<sup>57</sup> also contributed immensely to raising the profile of the human rights situation at the UN and internationally. Thai lawyer Vitit Muntarbhorn so well crafted his reports that they were regularly cited worldwide. In fact, the words “harrowing and horrific” will always be linked to the human rights situation in North Korea because of Muntarbhorn.<sup>58</sup> On the basis of his findings, the resolutions of the General Assembly became filled with strong and detailed language about the “systematic, widespread and grave violations” in North Korea.<sup>59</sup> By 2011, a total of 123 states in the General Assembly were voting in favor of such resolutions (with 16 opposed and 51 abstentions).<sup>60</sup> In 2012, the 193-member Assembly adopted its resolution on North Korea *by consensus* without the need to bring it to a vote.<sup>61</sup> That same year, Muntarbhorn’s successor Marzuki Darusman called on states to consider setting up “a more detailed mechanism of inquiry” because of North Korea’s “egregious human rights abuses.”<sup>62</sup> This paved the way

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North Korea and meet with survivors of the camps; Jared Genser and the International Coalition urged Pillay to endorse a commission of inquiry in meetings in Geneva in 2012.

<sup>54</sup> “Seoul, Parliament urges China to stop the forced repatriation of North Koreans,” *AsiaNews.it*, February 28, 2012.

<sup>55</sup> “UN chief voices concern over North Korean defectors in China,” *Yonhap News*, March 9, 2012; see also “Ban Ki-moon wants to visit N. Korea,” *Chosun Ilbo*, 30 October 2012; and “Clinton urges China to stop repatriation of N.Korean defectors,” *Korea Herald*, 10 March 2012.

<sup>56</sup> See *China’s Repatriation of North Korean Refugees*, Hearing before the Congressional-Executive Commission on China, March 5, 2012, Washington, D.C.

<sup>57</sup> UN Commission on Human Rights. Resolution 2004/13, “Situation of human rights in Democratic People’s Republic of Korea,” UN Doc. E/CN.4/RES/2004/13, April 15, 2004 (requesting the appointment of a Special Rapporteur).

<sup>58</sup> See UN Human Rights Council, *Report of the Special Rapporteur on Situation of human rights in the Democratic People’s Republic of Korea, Vitit Muntarbhorn*, UN Doc. A/HRC/13/47, February 17, 2010, summary and para.86.

<sup>59</sup> See for example, UN General Assembly, Resolutions on Situation of human rights in the Democratic People’s Republic of Korea, UN Doc. A/RES/63/190, December 18, 2008; UN Doc. A/RES/65/225, December 21, 2010; and UN Doc. A/RES/66/174, December 19, 2011.

<sup>60</sup> See “General Assembly Adopts More Than 60 Resolutions Recommended by Third Committee, Including Text Condemning Grave, Systematic Human Rights Violations in Syria, Also Adopts New Protocol to Child Rights Convention; Wide Range of Resolutions On Social, Humanitarian Issues; Texts on Iran, Democratic People’s Republic of Korea,” UN news release GA/11198, December 19, 2011.

<sup>61</sup> UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea*, UN Doc. A/67/370, September 13, 2012, para.13 (transmitting report of Marzuki Darusman). Earlier in the year, the Human Rights Council composed of 47 states also adopted its annual resolution on human rights in North Korea by consensus.

<sup>62</sup> *Ibid.*, para.13.

for Pillay's 2013 call for an international inquiry.<sup>63</sup> Darusman then skillfully collected the information that would form the basis for a determination of crimes against humanity.<sup>64</sup>

### **The role of other human rights mechanisms in addressing human rights in North Korea**

In addition to the role of the Special Rapporteur, other independent experts associated with the High Commissioner's Office have called on North Korea to provide information, in particular on individual cases. These include the Special Rapporteur on Torture, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances.<sup>65</sup> While in most instances, the DPRK has failed to provide the information requested, it did do so in 2012 to the Working Group on Arbitrary Detention about the imprisoned family of Oh Kil Nam,<sup>66</sup> which marked a breakthrough in the case.<sup>67</sup>

Rapporteurs who have requested entry to discuss human rights in North Korea have not been allowed in.<sup>68</sup> Only in one case was an independent expert from OHCHR's Special Procedures invited to visit North Korea – the Special Rapporteur on Violence against Women, Radhika Coomaraswamy. But the subject of the meeting was *not* human rights in North Korea but 'military sexual slavery' perpetrated by Japan during World War II against Asian women, and because her plane to the North was delayed Coomaraswamy actually did not reach Pyongyang. However, her staff held meetings with North Korean officials, academics and former 'comfort women' in 1995, and these enabled DPRK officials to become familiar with how the UN conducts human rights missions.<sup>69</sup>

Still another part of the UN human rights system that has been involved with North Korea is the treaty bodies. As of this writing, North Korea is notably delinquent in its reporting. It has owed a report to the Human Rights Committee since 2004, to the Committee on the Elimination of All Forms of Discrimination against Women since 2006, and to the

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<sup>63</sup> Pillay Statement 2013.

<sup>64</sup> See UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the DPRK*, UN Doc. A/HRC/22/57, February 1, 2013.

<sup>65</sup> See UN General Assembly, *Situation of human rights in the Democratic People's Republic of Korea / Report of the Secretary-General*, UN Doc. A/66/343, September 7, 2011, paras.33-35.

<sup>66</sup> North Korea reported that Oh Kil Nam's two daughters who had been imprisoned with their mother when he defected in 1986 are still alive, see "N.Korea Must Prove Its Claims About S.Korean's Death," *Chosun Ilbo*, May 9, 2012.

<sup>67</sup> As a result, UN Secretary-General Ban Ki Moon pledged to "keep pushing" for a reunion of the family, see "U.N. chief vows to seek release of 'abducted' S. Korean family in N. Korea," *Yonhap News Agency*, August 14, 2012.

<sup>68</sup> In addition to the Rapporteur on the situation of human rights in the DPRK, the Rapporteur on the Right to Food, the Rapporteur on religious freedom and the Rapporteur on freedom of opinion and expression have been denied entry. See UN General Assembly, *Situation of human rights in the Democratic People's Republic of Korea / Report of the UN Secretary-General*, UN Doc. A/63/332, August 26, 2008, para. 11.

<sup>69</sup> UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45 / Report on the mission to the Democratic People's Republic of Korea, the Republic Korea and Japan on the issue of military sexual slavery in wartime*, UN Doc. E/CN.4/1996/53/Add. 1, January 4, 1996.

Committee on Economic, Social and Cultural Rights since 2008.<sup>70</sup> It also tried to withdraw from its obligations under the International Covenant on Civil and Political Rights,<sup>71</sup> but the UN declared that international law did not permit it to do so.<sup>72</sup> At the same time, North Korea has cooperated to a limited extent with the Committee on the Rights of the Child, although the Committee has reported that its recommendations “have been insufficiently or only partly addressed.”<sup>73</sup>

## Conclusions and the way forward

North Korea is one of the most difficult countries confronting the High Commissioner. Its government has energetically kept itself and its country at a distance from her and from the special rapporteurs and treaty bodies associated with her Office. It has failed to invite the High Commissioner for a visit despite the many entreaties of governments and the Secretary-General. It is the only country where the Special Rapporteur for that country has never been allowed to visit or even have a dialogue about human rights with DPRK representatives at the UN. Nor has it allowed other rapporteurs to visit or made an effort to implement the recommendations contained in UN resolutions and reports.<sup>74</sup> At the same time, it has felt the need to add the words “respect for human rights” to its Constitution, make some cosmetic changes to its laws,<sup>75</sup> and on one or two occasions, provide information about individual prisoners to UN human rights bodies.<sup>76</sup> But this information has been sparse, and on some occasions misleading.<sup>77</sup>

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<sup>70</sup> See *Situation of human rights in the Democratic People's Republic of Korea / Report of the Secretary-General*, UN Doc. A/66/343, paras.37-8.

<sup>71</sup> See UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1999/5, August 25, 1999, preambular para.11 and operative para.4.

<sup>72</sup> *Ibid.*, preambular para.7.

<sup>73</sup> North Korea invited the Chair and one member of the Committee to visit in 2004, and has reported on changes it has made in its laws on families and disabilities. See UN Committee on the Rights of the Child, “Concluding Observations: Democratic People's Republic of Korea,” UN Doc. CRC/C/PRK/CO/4, March 27, 2009, para. 3; and *Situation of human rights in the Democratic People's Republic of Korea / Report of the Secretary-General*, UN Doc. A/66/343, paras.42-3.

<sup>74</sup> Of the 167 recommendations made to North Korea in the Universal Periodic Review in 2009, it has not implemented a single one. See Office of the High Commissioner for Human Rights, “Human Rights Council adopts outcomes of Universal Periodic Review on Bhutan, Dominica and DPRK,” March 18, 2010; and UN Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea*, UN Doc. A/HRC/WG.6/6/L.12, December 9, 2009, paras.90-92.

<sup>75</sup> It reformed its Criminal Procedure Code and reported that it shortened pre-trial detention, restricted nighttime interrogations and made reforms in laws on children, family law and disabilities. See Kim Yong Hun, “North Passes Showpiece HR Laws,” *Daily NK*, June 14, 2011; UN Human Rights Council, *Report of the Special Rapporteur on the Situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn*, UN Doc. A/HRC/10/18, February 24, 2009, para.3; and Choe Sang-Hun, “New Constitution Reinforces Kim Jong-il's Hold on Power,” *New York Times*, September 29, 2009. See also UN Human Rights Council, *Report of the Special Rapporteur on the Situation of human rights in the Democratic People's Republic of Korea, Marzuki Darusman*, UN Doc. A/HRC/19/65, February 13, 2012, paras.36-37.

<sup>76</sup> See, for example, “Arbitrary detention,” *Korea Herald* editorial, *Asia News Network*, 1 June 2012.

<sup>77</sup> For example, it reported that only six offenses carry the death penalty, whereas the Special Rapporteur unearthed an addendum to the Criminal Code that brings the number to 22. See *Report of the Special Rapporteur on the Situation of human rights in the Democratic People's Republic of Korea, Marzuki Darusman*, UN Doc. A/HRC/19/65, paras.36-37.

The paucity of information provided has been intended to obscure violations and prevent UN human rights bodies from addressing them. In fact, North Korea has predicated its willingness to cooperate with the UN on the discontinuation of critical resolutions and an end to the mandate of the Special Rapporteur, whom it depicts as “a marionette running here and there, representing the ill-minded purposes of string-pullers such as the United States, Japan and the States Members of the European Union.”<sup>78</sup>

Although High Commissioner Pillay at one time flirted with the idea of making a deal with North Korea, her January 2013 statement charted a new course. It condemned human rights violations in the country on the basis of testimony from survivors of the prison camps and families of abducted foreigners,<sup>79</sup> characterized the abuses perpetrated as possible crimes against humanity, and called for an international inquiry.

What is not yet clear at this writing is whether this statement is part of a new and broader strategy. If so, then several features need to be added.

First, a new approach for treating information coming from those who have escaped North Korea must be developed. As late as 2011, OHCHR’s Deputy High Commissioner was publicly lamenting in Seoul that the UN “cannot access information” directly about North Korea.<sup>80</sup> And Pillay in her 2013 statement even repeated: “We know *so little* about these camps and what we do know comes largely from the *relatively few refugees* who have managed to escape from the country” [emphasis added].<sup>81</sup>

But refugees providing information are not at all few in number. Hundreds of former prisoners and prison guards have fled to South Korea over the past decade and have been providing first-hand information about their experiences. Because their testimony often corroborates the testimony of other prisoners,<sup>82</sup> it is time such information was treated as factual by OHCHR. Moreover, satellite photographs of the camps have become much clearer and more detailed and have been verified by former prisoners and guards. It is estimated that some 150,000 to 200,000 political prisoners are incarcerated in the camps. The locking away of entire families and the high death rates because of forced labor, torture, and starvation must be carefully looked at as part of a strategy for dismantling the camps.

Since the testimony of Shin Dong Hyuk and Kim Hye Sook clearly affected Pillay, it is important that she meet with more camp survivors and issue regular statements about the carefully hidden crimes perpetrated against North Koreans. Her Office should also provide greater staff support and resources to Special Rapporteur Darusman so that he can glean increased information from survivors and include the findings in his reports.<sup>83</sup>

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<sup>78</sup> See “Note Verbale dated 1 February 2012 from the Permanent Mission of the Democratic People’s Republic of Korea.”

<sup>79</sup> For those abducted, see Committee for Human Rights in North Korea, *Taken: North Korea’s Criminal Abduction of Citizens of Other Countries*, 2011.

<sup>80</sup> See Kwon Eun Kyoung, “North Korea Must Cooperate with UN on Human Rights,” *Daily NK*, July 15, 2011.

<sup>81</sup> Pillay Statement 2013.

<sup>82</sup> See Hawk, *Hidden Gulag*, Second Edition.

<sup>83</sup> For the different kinds of support the High Commissioner can give Special Rapporteurs, see Felice Gaer, “The High Commissioner and Special Rapporteurs: Colleagues and Competitors,” in this volume.

OHCHR also should provide full backup for the work and recommendations of the ‘commission of inquiry’ established by the Human Rights Council on March 21, 2013. It will be composed of three experts, including Darusman, who will look into North Korea’s “systematic, widespread and grave violations of human rights,” and the extent to which these violations constitute crimes against humanity.<sup>84</sup> A significant amount of its work will have to be based on the testimony of survivors.

Second, now that the High Commissioner has chosen a more public course of action, she should consider whether the situation in North Korea might merit a special session of the Human Rights Council. And she should explore whether former prisoners can be invited to provide testimony at such a session.<sup>85</sup> Even at a regular session, the High Commissioner could encourage states to introduce an ‘interactive dialogue’ with the representative of North Korea.<sup>86</sup>

Third, should North Korea respond to increased pressure by offering to engage in a dialogue, the High Commissioner should identify what her Office’s priorities would be: access for independent human rights experts in camps and other facilities, legal reform, progress on human rights cases, the setting up of a national human rights commission or ratification of more human rights treaties? She also will have to decide how to reward progress without undermining international responses to ongoing abuses.

Fourth and most importantly, the High Commissioner should enlist the support of other parts of the UN so that the totality of the system is behind the human rights effort. Within OHCHR, other human rights mechanisms should be encouraged to lend support to the North Korea Special Rapporteur. In 2012, a group of special rapporteurs jointly sent a letter to the DPRK about the labor camps.<sup>87</sup> At the Human Rights Council in 2013 the group issued a joint press release in support of creating an international commission of inquiry.<sup>88</sup> These and other rapporteurs should be encouraged to continue to act jointly so as to strengthen the Special Rapporteur’s and the commission’s hand. The treaty bodies also could do more. When North Korea fails to send in information, these bodies should not move on to the next country but review the DPRK’s compliance in light of *other* available information and propose a dialogue with its representatives on the basis of that information. The High Commissioner should also propose stronger ways to deal with delinquent countries.

The Secretary-General, who reports each year to the General Assembly on the human rights situation in North Korea, should be encouraged on a regular basis to make private intercessions, issue public statements and take other initiatives. Engaging the Security

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<sup>84</sup> UN Human Rights Council, Resolution, “Situation of human rights in Democratic People’s Republic of Korea,” UN Doc. A/HRC/22/L.19, adopted March 21, 2013. See also Roberta Cohen, “North Korea Faces Heightened Human Rights Scrutiny,” *38 North*, March 21, 2013.

<sup>85</sup> For summary of Council special sessions, see International Service for Human Rights, “Special Sessions,” <http://www.ishr.ch/sessions/special-sessions>.

<sup>86</sup> For an example of such a dialogue, see International Service for Human Rights, “Belarus criticises politicisation of the Council during interactive dialogue on the country,” September 27, 2011, <http://www.ishr.ch/council/376-council/1150-belarus-criticises-politicisation-of-the-council-during-interactive-dialogue-on-the-country>.

<sup>87</sup> UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the DPRK, Marzuki Darusman*, UN Doc. A/HRC/22/57, February 1, 2013, para. 28.

<sup>88</sup> “UN experts call for an international inquiry into North Korea human rights abuses,” OHCHR news release, February 27, 2013.

Council should also be explored. In his last report to the Human Rights Council in 2010, Muntarhorn suggested the possible involvement of the Security Council and the International Criminal Court in taking up North Korea's systemic human rights violations.<sup>89</sup> Now that a commission of inquiry has been established, both bodies may become involved if crimes against humanity are determined.

A system wide strategy should further explore closer cooperation with humanitarian agencies like the World Food Program. Not only should greater access and enhanced monitoring of food distribution be promoted but an effort made to identify how the UN might provide food to the prisoners in labor camps who are deliberately kept on starvation rations. Humanitarian organizations after all are supposed to reach 'the most vulnerable' and in North Korea, these should include political prisoners. Not to speak of incarcerated children, whom UNICEF should be expected to try to reach. Promoting the engagement of the International Labor Organization with North Korea must also be examined, given the DPRK's reported practice of forced labor and other serious violations of workers' rights.

Fifth, the High Commissioner's Office should be more proactive about North Koreans' learning their rights set forth in agreements their government has endorsed. The UN Department of Public Information and UNESCO should be called in to find ways to promote the dissemination to schools, government offices and institutions in North Korea of a Korean translation of the Universal Declaration of Human Rights and human rights instruments to which North Korea has acceded. In North Korea today, there are a million cell phones (although North Koreans cannot call outside the country) and DVDs and CDs are making their way inside. Using new technology and social media to send in UN human rights standards and instruments should be explored by OHCHR.

Sixth, a strategy should be devised for dealing with China, from which most if not all North Korean asylum seekers are forcibly turned back and then subject to arrest, beatings, torture, forced abortions and even execution. UN reports and resolutions on North Korea, as well as public statements, have assiduously avoided mentioning China by name although some do now call on "neighboring countries" to respect the principle of *non-refoulement* and not forcibly repatriate North Koreans.<sup>90</sup> A dialogue is needed with China and also with UNHCR to bring this issue to the fore and to press for adherence to international refugee and human rights standards to protect North Koreans from being forcibly returned to conditions of danger.

In sum, a comprehensive strategy needs to be developed that brings in the entirety of the UN system, and what better Office than the High Commissioner's to coordinate this strategy in the human rights arena? In 1997, an American historian warned that "if and when the regime falls, we will probably learn of larger numbers [of people held in camps] and

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<sup>89</sup> *Report of the Special Rapporteur on Situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarhorn*, UN Doc. A/HRC/13/47, para.58.

<sup>90</sup> See for example *Situation of human rights in the Democratic People's Republic of Korea / Report of the Secretary-General*, UN Doc. A/66/343, para. 79. By contrast, UN treaty bodies, which monitor states' compliance with their obligations under international human rights treaties, do call on China by name to cease forcible repatriations of North Koreans, see Roberta Cohen, "Legal Grounds for Protection of North Korean Refugees," *Life & Human Rights in North Korea* 57 (Fall 2010), 12-14.

various unimaginable atrocities...”<sup>91</sup> When change does take place, the High Commissioner should not be among those who wonders why her Office didn’t do more.

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<sup>91</sup> Bruce Cumings, *Korea’s Place in the Sun* (New York: Norton, 1997), 398, as cited in Hawk, *The Hidden Gulag*, 41.