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Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

Summary

The present report covers the period from September 2011 to January 2012. During that period, the human rights and humanitarian situation continued to deteriorate in the country, and Kim Jong-Un succeeded his father as the new leader of the country.

The report includes information and findings from the two missions conducted by the Special Rapporteur during the year, to the Republic of Korea and Japan. It concludes with recommendations for the Government of the Democratic People's Republic of Korea, neighbouring countries and the international community.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea was established by the Commission on Human Rights pursuant to its resolution 2004/13, and has been renewed annually since. Also pursuant to that resolution, the Special Rapporteur submit two reports every year: one to the Human Rights Council,) at its main session in March, and another to the General Assembly. In his most recent report submitted to the General Assembly (A/66/322), the Special Rapporteur focused on human rights concerns such as the right to food, violence against women, prison camps, the right to health, to water and to sanitation, freedom of opinion and expression, issues concerning humanitarian space for United Nations entities to operate in the country, and the protection concerns of asylum-seekers from the Democratic People's Republic of Korea.

2. In the present report, besides providing an overview of the situation in the Democratic People's Republic of Korea, the Special Rapporteur proposes some key conclusions and recommendations for the State and the international community, particularly neighbouring countries.

II. Methodology

3. The Special Rapporteur relied on numerous sources of information in order to ensure that the report reflects diverse ideas. He also attempted to contact non-governmental organizations and individuals with which has did not interact during his previous visits to the region. Since his appointment in August 2010, the Special Rapporteur has made numerous requests to visit the Democratic People's Republic of Korea. In addition, he also requested meetings with officials of the Permanent Mission of the Democratic People's Republic of Korea, both in New York and in Geneva. None of his requests have received a favourable response. Most recently, since the succession of the leadership in the Democratic People's Republic of Korea, the Special Rapporteur has approached the State authorities both for a meeting and a visit to the country, in the hope of a change in approach to the mandate of the Special Rapporteur.

4. Since the presentation of his report to the General Assembly in October 2011, the Special Rapporteur has conducted two missions to the North-East Asia region: to the Republic of Korea, from 21 to 25 November 2011, and to Japan, from 14 to 20 January 2012. The objective of his missions was to assess the human rights situation in the Democratic People's Republic of Korea and its impact on neighbouring countries, such as the Republic of Korea and Japan. The report summarizes the Special Rapporteur's observations and the information that he gathered during the field missions, with reports, interviews, briefing papers and other documents gathered by non-governmental organizations, United Nations offices and numerous other reliable sources.

5. During the Special Rapporteur's mission to the Republic of Korea, he held meetings with the Deputy Minister for Multilateral Affairs of the Ministry of Foreign Affairs and Trade, members of the Inter-Parliamentarians' Coalition for North Korean Refugees and Human Rights, the Director-General of the International Organizations Bureau and the Senior Policy Coordination Officer for the Unification Policy of the Ministry of Unification. He also had the opportunity to interact with the National Human Rights Commission of Korea, national and international non-governmental organizations, diplomats and other relevant individuals.

6. In Japan, the Special Rapporteur held several meetings with the Minister for Foreign Affairs, the Minister in-charge of abduction issues, the Deputy Vice-Minister for Foreign Policy of the Ministry of Foreign Affairs, the Ambassador in charge of United Nations affairs and the Deputy Director General of Asian and Oceanian Affairs. He also interacted with national and international non-governmental organizations, diplomats and other relevant individuals working on the human rights and the humanitarian situation in the Democratic People's Republic of Korea. While in Japan, the Special Rapporteur ensured that he spent substantial time listening to the families of abducted Japanese nationals and visited the cities of Niigata and Kashiwazaki in Niigata prefecture, where five Japanese nationals were abducted in 1977 and 1978.

7. While the main focus of his visit to the Republic of Korea and to Japan was to gather information on human rights violations of the people of the Democratic People's Republic of Korea, the issue of abduction of foreign nationals by the agents of the Democratic People's Republic of Korea, family reunion of separated Korean families, the situation of asylum-seekers from the Democratic People's Republic of Korea and the humanitarian situation, in particular the food situation in that country, the Special Rapporteur was also briefed on the current status of the six-party talks, bilateral Japan-Democratic People's Republic of Korea and Republic of Korea-Democratic People's Republic of Korea meetings, and the situation in the Korean peninsula in general.

8. At the outset, the Special Rapporteur wishes to point out that there has not been much progress on most of the above-mentioned issues since his previous visits to the Republic of Korea and to Japan, in November 2010 and January 2011, respectively. Indeed, the Special Rapporteur believes that there has been a significant deterioration in the human rights situation in the country. In the Republic of Korea and in Japan, the Special Rapporteur's meetings seemed to substantiate the reports of the dire humanitarian situation and absence of civil, cultural, economic, political and social rights for the people of the Democratic People's Republic of Korea. The question of 17 identified cases of abduction of Japanese nationals by the agents of the Democratic People's Republic of Korea also remains unresolved.

III. Overview of the current situation

9. In early 2011, Kim Jong-Un was made a four-star general and appointed deputy chairman of the Central Military Commission of the Workers' Party, which was seen by many international observers as a part of the power transition from his father, Kim Jong-il. In December 2011, the death of Kim Jong-il led to the succession of Kim Jong-Un as the new leader of the Democratic People's Republic of Korea. Since his succession in December 2011, State media have bestowed on him a number of new titles, such as the "Great Successor", the "Supreme Leader" and the "Sagacious Leader". In the light of the succession, different views were shared with the Special Rapporteur on how the country might proceed in its approach to engaging with the international community and addressing human rights concerns. The Special Rapporteur is of the opinion that the ramifications of this change on the people of Democratic People's Republic of Korea and on the international community will only unfold in the coming months.

10. The Special Rapporteur hopes that the new leadership in the Democratic People's Republic of Korea will use the recent succession as an opportunity to engage with the international community and to secure global confidence. The Special Rapporteur believes that the current transition may be a window of opportunity for the country to adopt a reform process and address all questions and concerns in relation to human rights, which will be welcomed from all quarters.

11. The six-party talks on the denuclearization of the Korean peninsula involving the Democratic People's Republic of Korea, the Republic of Korea, China, Japan, the Russian Federation and the United States of America are at a standstill. The Special Rapporteur was briefed on this important topic during his missions to both the Republic of Korea and to Japan. The Special Rapporteur believes that, although human rights is not one of the topics for discussion at the six-party talks, progress made during them will assist discussions on other issues, such as the human rights situation of the people of the Democratic People's Republic of Korea.

12. With regard to the State's cooperation with United Nations human rights mechanisms, despite several calls made by the Secretary-General and the Special Rapporteur, including in their reports presented to the General Assembly at its sixty-sixth session, the Democratic People's Republic of Korea continues to be late in reporting to the treaty bodies or uncooperative with the special procedures, including with the thematic mandate holders. During the reporting period, the Democratic People's Republic of Korea took no new steps to report to the treaty bodies or to invite any thematic special procedures.

13. There were, however, small signs of cooperation with other United Nations entities, for instance with the World Food Programme (WFP) and the Office for the Coordination of Humanitarian Affairs. In late October 2011, the Emergency Relief Coordinator travelled to the Democratic People's Republic of Korea to assess the humanitarian situation in the country. The Coordinator's five-day mission included field visits to two hospitals, an orphanage, a local market and communal farm, and a Government public-distribution centre. After the visit, the Coordinator called on the international community to provide more financial support and for creative solutions to overcome the food shortages in the Democratic People's Republic of Korea. In her assessment, the crisis is caused primarily by a complex mix of chronic poverty and underdevelopment, in addition to natural disasters. Agricultural production is constrained by soil degradation, difficult weather conditions and very limited mechanization. She also highlighted the fact that the Democratic People's Republic of Korea does not have enough arable land to produce all the food it needs, and would not be self-sufficient for the foreseeable future. The Special Rapporteur notes that many other partners shared this assessment.

14. Following the Emergency Relief Coordinator's mission to the Democratic People's Republic of Korea, the Special Rapporteur exchanged views with her on the humanitarian situation in the country, and was in continual contact with her Office. The Special Rapporteur calls on the Democratic People's Republic of Korea to take the opportunity of the recent visit of the Emergency Relief Coordinator to engage more openly with her Office and with the United Nations in general.

15. In the coming months, the Democratic People's Republic of Korea will commemorate some key events, such as the birthday of Kim Jong-il on 16 February, the centennial birthday of Kim Il-Sung on 16 April, and the celebration of the anniversary of the founding of the Korean Workers' Party on 10 October. These are important dates that could provide the opportunity for general amnesties to be granted to certain categories of prisoners (see paragraphs 39 and 40 below).

A. Separated families and family reunions

16. The Special Rapporteur notes with regret that the talks between the Red Cross societies of the Republic of Korea and the Democratic People's Republic of Korea, which have taken the lead in facilitating family visits of separated Korean families, have been stalled since November 2010, in the wake of the artillery firing on Yeonpyeong Island.

17. The Special Rapporteur is concerned that, despite more than 150 rounds of talks between the Red Cross societies of the Republic of Korea and the Democratic People's Republic of Korea since 1971, the outcome of the talks has been minimal. To date, the two societies have managed to organize only 18 rounds of family reunions over a period of 12 years, the last one being held in October 2010. The number of families in the Republic of Korea who have benefitted from the family reunion programme stands at 1,800 out of a total 128,668 registered applicants.

18. According to the database of the Government of the Republic of Korea, in 2011, the number of elderly citizens of the Republic of Korea seeking to meet relatives in the Democratic People's Republic of Korea fell to 78,892, as against 82,447 in 2010. This state of affairs underscores the urgency of resuming the reunions of family members separated by the Korean War of 1950-1953. The drop in number of families seeking family visits is due to the death of separated family members, who are growing increasingly elderly.

19. Another survey carried out in December 2011 of more than 66,600 surviving separated family members showed that 43.8 per cent of them were aged 80 years or over, 37.3 per cent were in their seventies and 13.6 per cent were in their sixties. In the light of these developments, the Special Rapporteur urges that the two Red Cross societies to adopt a three-step approach of (a) tracing all separated families and notifying their counterparts; (b) facilitating the exchange of mail among separated Korean families whose whereabouts have been identified; and (c) arranging meetings and mutual visits among them. The Special Rapporteur believes that the International Committee of the Red Cross (ICRC), which has been involved in family tracing around the world, could be a valuable partner in sharing experiences with the Red Cross societies of the Democratic People's Republic of Korea and the Republic of Korea. This could not only be helpful in developing new ways of tracing families, but also to provide much needed attention to the subject of tracing Korean family members. The Special Rapporteur recognizes that an absolute replication of all forms of family tracing adopted by ICRC could be challenging in the context of separated families in the Korean peninsula, as certain modalities would require the affected families to have access to the Internet, which is lacking in the Democratic People's Republic of Korea.

20. In the interest of separated families, the Special Rapporteur urges the resumption of the family reunion process and calls for a more robust mechanism of family reunions in the months and years ahead.

B. Food and economic situation and its impact on the right to food

21. In recent years, chronic shortage of food has become one of the most pressing issues in the Democratic People's Republic of Korea, a topic that the previous and the current mandate holders have constantly focused on, in view of its impact on the people and the crucial importance that the right to adequate food has for the enjoyment of a number of other rights.

22. In March 2011, a United Nations survey found that, in the Democratic People's Republic of Korea, more than 6 million vulnerable people urgently required international food assistance. Following the survey, an assessment mission was jointly conducted by the Food and Agriculture Organization of the United Nations (FAO) and WFP in October 2011. On the basis of the mission, a report on the current food situation in the Democratic People's Republic of Korea was released in November 2011. In the country, the State-run public distribution system remains the primary source through which food is delivered. In 2011, given that for prolonged periods time the system only provided around one-third of daily energy requirements, households were forced to seek food from other sources.

Notably, relatives living on cooperative farms in rural areas gave up portions of their own food allocations to assist people dependent on the distribution system in urban areas.

23. The above-mentioned FAO/WFP report showed that many of the factors behind the shortage of food in the Democratic People's Republic of Korea remain the same in 2012, but have intensified; these include the adverse weather conditions, underdevelopment and structural problems, which have all had a serious impact on food and crop production in 2010/11.

24. In 2012, it is estimated that, while harvests in the Democratic People's Republic of Korea are expected to increase by about 8.5 per cent over the results of the previous year, the country would still have to import 739,000 tons of cereal. Considering the planned Government imports of 325,000 tons, the WFP/FAO mission estimates an uncovered food deficit of 414,000 tons. In the 2011/12 marketing year, substantial increases in commercial imports and/or external assistance will be needed to make up for the deficit. The alarming deterioration in the availability of food is also affected by the decline in bilateral and multilateral food aid from the international community. The country's planned commercial imports and recommended food assistance will not cover the food deficit, leaving an additional shortfall of 294,000 tons of cereals.

25. The Special Rapporteur is concerned that the current dire food shortage in the Democratic People's Republic of Korea will lead to serious health problems, especially in children, women and the elderly. In 2011, health officials in the country reported a 50 to 100 per cent increase over the total in 2010 in admissions of malnourished children into paediatric wards. In addition, a sharp rise in low birth weights, and several cases of oedema¹ were noted. Other vulnerable groups are pregnant and lactating women, who are at greater risk of acute malnutrition and micronutrient deficiencies.

26. The Special Rapporteur underscores the importance of meeting the food shortfall by ensuring that an adequate quantity of food of good quality is available through additional imports by the Government, supported by the international agencies and bilateral donors. The Special Rapporteur emphasizes that the primary obligation to feed people lies with the State, which must take all measures necessary to rectify existing flaws in the production and distribution system that have contributed for the shortage of food. He also calls on the Government to allocate more resources to agriculture rather than to its military sector.

27. The Special Rapporteur also wishes to highlight the fact that members of the international community have both a joint and individual responsibility to provide humanitarian assistance in times of emergency. States should refrain at all times from food embargoes or similar measures that endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure.² He calls on donor countries, including non-traditional donor countries, to provide humanitarian aid, such as food and medicines.

28. In October 2011, WFP distributed food, funded by an €8.5 million donation from the Humanitarian Aid Office of the European Commission, for its emergency operation to reach mainly young children and women threatened by rising malnutrition.³ More recently, China reportedly assisted the Democratic People's Republic of Korea with 500,000 tons of

¹ The presence of abnormally large amounts of fluid in the intercellular tissue spaces of the body. The condition is commonly characterized by an increase in weight, facial puffiness and swelling of other parts of the body

² E/C.12/1999/5, paras. 37-38.

³ "Arrival of EU food boosts WFP food distributions In DPRK", 21 September 2011. Available from www.wfp.org/news/news-release/arrival-eu-food-boosts-wfp-food-distributions-dprk.

food and 250,000 tons of crude oil,⁴ while eight representatives of the Seoul-based Korea Peace Foundation delivered 180 tons of flour to Kaesong on 27 January 2012.⁵ The Special Rapporteur welcomes these contributions and calls on other States to join the efforts to solve the food shortage in the Democratic People's Republic of Korea.

29. In order to recommend certain concrete steps to improve the situation of the right to food in the Democratic People's Republic of Korea, the Special Rapporteur urges the authorities of that country to invite the Special Rapporteur on the right to food for an official visit. Such an invitation to visit the country would, *inter alia*, help the Special Rapporteur on the right to food to make recommendations on how to rectify food production and distribution mechanisms and on ways to increase food production. A request to visit the country by the Special Rapporteur on the right to food was forwarded to the authorities in 2009.

C. Due process of law

30. A number of constitutional and legislative provisions seriously endanger the impartiality and independence of the judiciary in the Democratic People's Republic of Korea. The Human Rights Committee, during its review of the country in 2001, raised concerns with regard to article 10 of the Criminal Code, pursuant to which punishment for an offence not provided for in the Code could be imposed in accordance with those provisions of the Code punishing offences similar in nature and gravity. The Committee found that the article was incompatible with the concept of *nullum crimen sine lege*,⁶ enshrined in article 15 of the International Covenant on Civil and Political Rights.⁷

31. In 2004, the Democratic People's Republic of Korea revised its Criminal Code, deleting provisions that allowed for analogical interpretations, and accommodated the principle of *nullum crimen sine lege*. It also provided more clarity on a number of other crimes and removed terms such as "etc." and "like", which could have given scope for ambiguous interpretation. The revision instead described acts that would constitute various types of criminal behaviour and provided more clarity. The number of articles in the Criminal Code consequently increased from 118 to 245, with more specific definitions of the elements of crimes.⁸ The Special Rapporteur welcomes such initiatives.

32. As the court system currently stands in the Democratic People's Republic of Korea, the Central Court is accountable to the Supreme People's Assembly, pursuant to article 162 of the Criminal Code. Furthermore, article 129 of the Criminal Code subjects judges to criminal liability for handing down "unjust judgements". The Special Rapporteur is

⁴ "China decided on food, oil aid for N. Korea after Kim's death: report", Yonhap News, 30 January 2012. Available from <http://english.yonhapnews.co.kr/northkorea/2012/01/30/84/0401000000AEN20120130006800315F.HTML>.

⁵ Yonhap News, "S. Korea sends first flour aid to N. Korea since Kim Jong-il's death", 27 January 2012. Available from <http://english.yonhapnews.co.kr/news/2012/01/27/0200000000AEN20120127005600315.HTML>.

⁶ See the general principles of criminal law of the Rome Statute, article 22 (1) and (2). "A person shall not be criminally responsible unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court... The definition of a crime shall be strictly construed and shall not be extended by analogy."

⁷ CCPR/CO/72/PRK, para. 14.

⁸ See the White Paper on Human Rights in North Korea 2011, p. 177. Available from www.kinu.or.kr/eng/pub/pub_04_01.jsp?bid=DATA04&page=1&num=32&mode=view&category=2672.

concerned that such provisions have an adverse impact on the protection of human rights guaranteed under the International Covenant on Civil and Political Rights and endanger the independence of the judiciary. Furthermore, he believes that the need to maintain the separation of powers, as required by article 14.1 of the Covenant,⁹ is also compromised, seriously jeopardizing the rendering of independent and impartial justice. It is important to protect judges against conflicts of interests and intimidations in order to safeguard their independence.

33. In the Democratic People's Republic of Korea, both open court and closed court trials are practised. In general, there seems to be a lack of understanding among the people of why the open court principle is essential for the fairness of trials. In 2004, when the State revised its Criminal Procedure Code, it introduced a new provision requiring court trials to be open to the public (art. 271, sect. 1). The revised law contains, however, an exception, allowing certain trials to be conducted behind closed doors, if necessary to protect State secrets or if opening the trial to the public could have an adverse impact on society at large (art. 271, sect. 2). In practice, this means that ordinary citizens are tried in open courts and officials and party cadres are tried in closed ones. The Special Rapporteur recalls that article 14, paragraph 1, of the International Covenant on Civil and Political Rights proclaims that courts have the power to exclude all or part of the public for reasons of morals, public order or national security, or when the interest of the lives of the parties so required, or in special circumstances where publicity would be prejudicial to the interest of justice.¹⁰ Any other form of exception limiting open trials to a particular category of persons, such as in the case of the Democratic People's Republic of Korea, where officials and party cadres are tried in closed courts, is unacceptable. The Special Rapporteur furthermore points out that, even in cases where the public is excluded from the trial, the judgement, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons requires otherwise, or when the proceedings concern matrimonial disputes or the guardianship of children.¹¹

34. A number of other provisions in the Criminal Code fall below the standard required to ensure that due process of law is maintained and the rights of people are respected; for instance, the definition of "labour training" and "training detention facilities" remains unclear; the possibility of a broad interpretation of the category of "political crime" remains; and elements such as "crimes by association" are maintained in several parts of the Criminal Code. Similar vague terms, such as "extremely grave crime" and "reform through labour", are contained in an addendum to the Criminal Code, which was adopted on 19 December 2007 (see paragraphs 36 and 37 below).

D. Laws on the death penalty

35. In February 1987, the Democratic People's Republic of Korea made significant revisions to its Criminal Code, when it reduced the number of crimes punishable by death from 33 to five.¹² Additional partial revisions have since been made on at least seven occasions: in March 1995, on 19 April and 26 July 2005, on 4 April and 18 October 2006, and 26 June and 16 October 2007. In April 2009, the State made another important

⁹ See also CCPR/CO/72/PRK, paras. 8 and 14.

¹⁰ See also Human Rights Committee, general comment No. 13.

¹¹ Ibid.

¹² CCPR/C/PRK/2000/2.

amendment to its Criminal Code, when it expanded the list of crimes punishable by death from five to six by adding “treacherous (disloyal) destruction” (art. 64).¹³

36. On 19 December 2007, the Democratic People’s Republic of Korea adopted a unique form of law, referred to as an “addendum to the Criminal Code for ordinary crimes”, which has gone largely unnoticed by the international community. The addendum is a very significant legislative act, given that was formally adopted by the Presidium of the Supreme People’s Assembly as a Government directive. Since its adoption, the addendum has functioned as a complement to the Penal Code, and carried the same weight as other provisions of the Criminal Code. The addendum comprises a total of 23 articles, of which 16 stipulate the death penalty for a number of crimes,¹⁴ including smuggling and dealing in narcotics, seizing State property, currency counterfeiting and illicitly selling State resources. With the adoption of the addendum, the total number of crimes that carry the death penalty in the country stands at 22. Furthermore, the addendum contains a number of vague expressions, such as “the gravest cases” or “extremely serious cases”, which leave room for arbitrary decisions by the authorities. The addendum permits the application of capital punishment for various crimes as long as the authorities are able to establish that the crime in question was “extremely serious” and falls under one of the 16 listed crimes.

37. It is important to note that the above-mentioned addendum was not considered during the universal periodic review of the Democratic People’s Republic of Korea, and no reference was made to it in stakeholders’ submissions or the State party report. It is likely that the addendum was not known to stakeholders, which again highlights the need for the Democratic People’s Republic of Korea to interact more with international human rights organizations and their access to the country.

38. Reports of execution continued to be shared with the Special Rapporteur; as many as 20 such executions were reported to have been carried out in 2011 alone. Some of the reasons for executions include drug trafficking, murder, sexual assault, espionage and large-scale distribution of information material from overseas.

E. Provisions for amnesties

39. The Democratic People’s Republic of Korea has a system that envisages special and general amnesties: special amnesties may be granted to individual criminals, while general amnesties may be granted to all criminals serving a sentence for a certain category of crime. In 2009, when the Constitution was revised, the State included a section that authorized the Chairman of the National Defence Commission to grant special amnesties, while the power to grant general amnesties was conferred upon the Standing Committee (Presidium) of the

¹³ When the Democratic People’s Republic of Korea was reviewed in the context of the universal periodic review, in 2009, the Government stated that capital punishment was handed down only in the case of five categories of extremely serious crime; this would suggest the amendments made in 2009 were probably enacted after the submission of the State party report.

¹⁴ The crimes listed in the addendum that are punishable by death include “severe acts of wilful destruction of military facilities and technical combat equipment”, “severe acts of plundering of State property”, “severe acts of theft of State property”, “severe acts of wilful destruction or State property”, “severe acts of engraving or printing counterfeit currency”, “severe acts of smuggling or black market sales of precious metals or metals”, “severe acts of smuggling State resources”, “severe acts of smuggling or black market dealing in narcotics”, “extreme instances of prisoner escape”, “extreme instances of gangster-like behaviour”, “unlawful business operations”, “extreme instances of deliberate infliction of serious injury”, “severe acts of kidnapping”, “severe acts of rape”, “severe acts of theft of private property” and other exceptional crimes subject to an unlimited term of correctional labour or the death sentence.

Supreme People's Assembly (art. 103, sect. 5; art. 116, sect. 17; and Criminal Code art. 53). Past practices show that general amnesties are usually granted on special occasions, such as during the founding anniversary of the Korean Workers' Party. "Grand amnesties" are granted on predetermined dates, such as the birthdays of Kim Il-Sung and Kim Jong-il, the anniversary of the Party or of the founding of the Republic.

40. In 2008, in commemoration of the sixtieth anniversary of the founding of the Republic, the State announced a general amnesty and released or reduced the terms of imprisonment of inmates serving correctional punishments. Contrary to earlier expectations, however, the scope of amnesty was significantly reduced, and those serving sentences for attempting to leave the State by border-crossing were not included in the amnesty. In January 2011, as a part of the national festivities to celebrate the seventieth birthday of Kim Jong-il and the one-hundredth anniversary of the birth of Kim Il-sung, the State announced that a general amnesty would be granted; however, the announcement neither clarified the number of prisoners nor provided information on the profile of those who would benefit from the amnesty. The Special Rapporteur calls on the authorities of the Democratic People's Republic of Korea to make use of the important forthcoming anniversary to maximize amnesties, pardons and sentence reductions to include political prisoners among those released, and to be transparent about the number of such prisoners.

F. Abduction of foreign nationals

41. The Special Rapporteur notes with concern that there no progress has been made in resolving the question of abduction of foreign nationals by agents of the Democratic People's Republic of Korea. To date , some 500 unresolved cases of abduction of Koreans from the Republic of Korea have been reported. These abductions were carried out following the ceasefire at the end of the Korean War.

42. With regard to the abduction of Japanese nationals, the reinvestigation of 12 cases is still pending. During his mission to Japan, the Special Rapporteur visited Niigata and Kashiwazaki, where he was given a thorough briefing by the Niigata prefectural police on the abduction of Megumi Yokota, Kaoru Hasuike and Yukiko Hasuike. Detailed accounts of the abduction of the three Japanese nationals on 15 November 1977 and 31 July 1978 were provided to the Special Rapporteur. While Mr. Hasuike and Mr. Hasuike were returned to Japan in October 2002, there has been practically no progress made in relaunching a full-scale investigation into the abduction of Mr. Yokota and of 11 other Japanese nationals. The launch of a full-scale investigation was promised by the Democratic People's Republic of Korea during its working level talks with Japan on abductions held in August 2008. The Special Rapporteur wishes to reiterate his position that the Democratic People's Republic of Korea should stand by its commitment made to Japan to reinvestigate the 12 pending cases of abduction. The urgency of the matter is clear, the abductees are aging, as are their family members in Japan. In this regard, it is important that pressure be maintained on the Democratic People's Republic of Korea until such time as a satisfactory outcome has been achieved.

43. The cases of abduction of nationals of other countries, such as Thailand and Lebanon, remain unresolved.

G. Case of Oh Kil-nam

44. During his mission to the Republic of Korea, the Special Rapporteur was briefed about the case of Dr. Oh Kil-nam. Dr. Kil-nam and his family were persuaded by agents of the Democratic People's Republic of Korea to move to that country from West Germany,

where he resided, in December 1985. In 1986, Dr. Kil-nam left the Democratic People's Republic of Korea on the pretext of bringing more citizens of the Republic of Korea from West Germany. However, he left his wife and two daughters in the country, and they have since been held hostage by the State. In 1992, Dr. Kil-nam returned to the Republic of Korea and began to campaign for the return of his family to his country of origin.

45. Since his return to Republic of Korea, Dr. Kil-nam has met five asylum-seekers from the Democratic People's Republic of Korea who claim to have seen his wife and children in Yodok prison camp. The last available information on the whereabouts of his family dates from 1995. In 1994, his family's case was taken up by the Secretary-General of Amnesty International, who raised the issue with the authorities of the Democratic People's Republic of Korea. However, no progress has been made towards the release of the family or gaining access to the family members.

46. The Special Rapporteur is concerned that the case has been unresolved for a number of years. He calls on the authorities of the Democratic People's Republic of Korea to release Dr. Kil-nam's family members immediately and to facilitate their reunion with Dr. Kil-nam.

H. Protection of asylum-seekers

47. There has been a steady increase in the number of persons seeking refuge in the Republic of Korea. Until the late 1990s, fewer than 1,000 asylum-seekers from the Democratic People's Republic of Korea had made their way to the Republic of Korea. By the end of 2012, there were around 23,700 asylum-seekers in the Republic of Korea. Of these arrivals, around 75 per cent are women (which has been more or less the case for the past five or six years). One plausible explanation provided for proportionally high number of women asylum-seekers is that women have more mobility in the Democratic People's Republic of Korea, while men are expected to be at work or to look for work. In 2011, an increase of 17 per cent in the number of arrivals to the Republic of Korea was recorded over the figures for the previous year.

48. As in the previous year, the Special Rapporteur had the opportunity to visit the Hanawon centre, a Government-supported reception point for newly arrived asylum-seekers from the Democratic People's Republic of Korea. The increase in the number of asylum-seekers into the Republic of Korea has prompted the authorities in that country to build a new centre that could accommodate an additional 500 asylum-seekers at any given time. At Hanawon, the Special Rapporteur interacted with a number of asylum-seekers who had endured various types of harrowing experience in the Democratic People's Republic of Korea. Most of the asylum-seekers with whom he spoke had undergone harsh punishment in forced labour camps, had either witnessed or heard of torture being used on other inmates, and suffered punishment on the basis of "guilt by association". The Special Rapporteur also heard with concern the increase in the number of neighbourhood social squads or "minders", as they were commonly referred to. While some asylum-seekers manage to finally make their way to the Republic of Korea, numerous others are forcibly returned to the Democratic People's Republic of Korea by the neighbouring country.

49. During the visit, a number of non-governmental organizations and diplomats raised serious concerns about the refoulement of asylum-seekers. It was reported that border controls were tightened in 2011, making access to international protection more difficult. It was also reported that orders to shoot and kill those fleeing the Democratic People's Republic of Korea had been issued by the authorities. Some interlocutors also reported that fleeing asylum-seekers had been shot and killed by troops of the Democratic People's Republic of Korea. Such tightened border controls have forced asylum-seekers to take the sea route to Japan or the Republic of Korea. Statistics show that, in 2011, 47 people, on

seven boats, arrived by sea, compared with only nine people, on five boats, in 2010. The Special Rapporteur was informed that the Democratic People's Republic of Korea has increased coast patrols as a result of this development.

50. The Special Rapporteur shares deeply the concerns raised with him by civil society organizations and the diplomatic community, and calls on States to adhere to their obligation of providing international protection to such asylum-seekers.

51. In 2013, when the Special Rapporteur reports back to the Human Rights Council, the Democratic People's Republic of Korea will be preparing for its next review in the context of the universal periodic review. Although the Government did not clarify which universal periodic review recommendations it supported, the Democratic People's Republic of Korea will be expected to report on the implementation of some of the recommendations and conclusions. The Special Rapporteur hopes that the Government will use the time up until early 2014 to make a detailed assessment of the extent to which it has implemented the recommendations made. He again encourages the Government to engage with the Office of the United Nations High Commissioner for Human Rights in this process and to seek its technical expertise.

V. Conclusions and recommendations

52. **The Special Rapporteur wishes to emphasise the need for the Democratic People's Republic of Korea to ensure the overall protection and promotion of human rights in the country, as provided under international human rights instruments.**

53. **The Special Rapporteur calls on the Government of the Democratic People's Republic of Korea to cooperate with the various United Nations human rights mechanisms. He also calls on the Government to implement the recommendations made by various human rights mechanisms, as well as made in the reports of the Secretary-General and of the Special Rapporteur to the General Assembly and the Human Rights Council.**

54. **The Special Rapporteur urges the Government to repeal provisions in its legislation that are counter to the international standards. In particular, he draws the attention of the Government to the provisions to which he has referred in the present report.**

55. **The Special Rapporteur recognizes the paramount importance of resuming inter-Korean dialogue in order to create a conducive atmosphere, which could then lead to the resolution of a number of outstanding issues, such as the reunion of separated families and the repatriation of abducted Koreans.**

56. **With regard to the 12 abducted Japanese nationals, the Special Rapporteur stresses the need for the Democratic People's Republic of Korea to stand by its commitment made to Japan to re-investigate the 12 pending cases of abduction.**

57. **The Special Rapporteur calls on the governments of the Democratic People's Republic of Korea and the Republic of Korea to explore the possibility of setting up of an additional mechanism that could be more robust than the current process for addressing the problem of separated families.**

58. **While calling on the Democratic People's Republic of Korea to invest more resources in its agriculture sector and to take corrective measures to increase food production in the country, the Special Rapporteur stresses the need for the revival of effective humanitarian assistance by the international community to the people of the Democratic People's Republic of Korea. Provisions of such humanitarian aid,**

including food and medicine, while subject to “no access, no aid” policies, should not be made contingent upon any political requirements.

59. While commending the Republic of Korea and Japan for their integration of asylum-seekers from the Democratic People’s Republic of Korea, with scope for improvement, the Special Rapporteur calls on other neighbouring countries to protect and treat all people fleeing the Democratic People’s Republic of Korea humanely and to respect the principle of non-refoulement, as provided for under the Convention relating to the Status of Refugees.
