



General Assembly

Distr.
GENERAL

A/HRC/10/18
24 February 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Tenth session
Agenda item 4

**HUMAN RIGHTS SITUATIONS THAT REQUIRE
THE COUNCIL'S ATTENTION**

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

* The present report was submitted after the deadline in order to include the most recent information.

Summary

The miasma ensuing from the broad range of egregious human rights violations in the Democratic People's Republic of Korea requires urgent attention at all levels, from national to international. Of particular concern are the pervasive transgressions in relation to the right to food and other basic necessities, personal security, fundamental freedoms, and asylum and migration issues. Specific groups face great vulnerability. The tragedy of the country is that those at the top seek to survive at the expense and to the detriment of the majority of the population, and are behind the environment leading to these transgressions, with entrenched impunity. It is thus important that the challenge of human rights in the country be addressed more from the angle of how to prevent violations, protect human rights more effectively, ensure more efficacious provision of assistance, and enable more people's participation in relation to an omnipotent State and those who personify it.

The Special Rapporteur advocates for, in particular, short- and long-term measures, with regard to both the country concerned and the international community. Of special importance for the country, in the short term, is the need to ensure effective provision of and access to food and other basic necessities for those in need of assistance, and to enable people to undertake economic activities to satisfy their basic needs and supplement their livelihood without State interference; to end the punishment of those who seek asylum abroad and who are sent back to their country; to terminate public executions and abuses against the security of the person, and other violations of fundamental rights and freedoms; to cooperate effectively to resolve the issue of foreigners abducted by the country; and to respond constructively to the recommendations of the Special Rapporteur.

In the longer term, the Democratic People's Republic of Korea should seek to modernize its national system by instituting reforms to ensure greater participation of the people in the process and compliance with international human rights standards; institute equitable development measures based upon a "people first" policy and reallocate national budgets, including military budgets, to the social sector; take more extensive food security-related measures; and guarantee personal security and freedoms by dismantling the pervasive surveillance and intelligence system, reforming the justice and prison system, and abiding by the rule of law.

The international community is invited to take more proactive measures in relation to the above and to adopt an integrated approach to impel more protection for the inhabitants, with due regard for the responsibility of State authorities and their accountability for the widespread and systematic violence and violations that have led to the interminable sufferings of millions of innocent people.

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I. INTRODUCTION

1. The mandate of the Special Rapporteur was established by the Commission on Human Rights in 2004. It has since been renewed annually, and the Special Rapporteur currently submits two reports per annum: one to the Human Rights Council, the other to the General Assembly. The Special Rapporteur warmly thanks Governments, members of civil society, United Nations agencies and other entities that helped to provide information for the present report. It is regrettable that the authorities of the country in question have declined to cooperate with this mandate, despite efforts by the Special Rapporteur to engage with the country in a constructive manner. The report covers 2008 through to the beginning of 2009.

II. SITUATION

2. The Democratic People's Republic of Korea has a population of some 23 million people living under a non-democratic system of government.¹ In recent years, the authorities of the country have opened the door slightly to engage with the international community. It is party to four human rights treaties: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of the Child. Its relationship with the monitoring bodies and related reporting obligations is noted in the table annexed to the report. It is due to appear before the Committee on the Rights of the Child to review its latest report in 2009.

3. Since the devastating floods of 2006 and 2007, the country has become more accessible to international aid and has cooperated relatively well with the relevant United Nations agencies delivering aid (see section B below). In addition, it has undertaken some law reforms which may have been influenced by its relationship with the above-mentioned treaties. For example, in the period 2004-2007, it reformed the Criminal Code and Criminal Procedure Code. Furthermore, it has re-engaged with certain non-governmental organizations from outside the country to enable them to provide assistance for pressing matters, such as food aid, health and sanitation facilities, disaster relief and preparedness, and reform of institutions housing persons with disabilities, despite having forced some of these organizations to leave the country several years ago. It has opened the door to some seminar-related activities with European Union support.

¹ For recent literature on human rights in the country, see Kie-Duck Park and Sang-Jion Han (eds.), *Human Rights in North Korea: Towards a Comprehensive Understanding*, The Sejong Institute, Seoul, 2007; White Paper on Human Rights in North Korea, Korean Institute for National Unification, Seoul, 2008; Haksoon Paik and Seong-Chang Cheong (eds.), *North Korea in Distress: Confronting Domestic and External Challenges*, the Sejong Institute, Seoul, 2008; *International Perspectives and Challenges concerning North Korean Human Rights*, Proceedings of the International Symposium on North Korean Human Rights, National Human Rights Commission of Korea, Seoul, 2008; CRS Report for Congress: *The North Korean Economy: Leverage and Policy Analysis*, Congressional Research Service, Washington, 2008; Country report: North Korea, Economist Intelligence Unit, London, 2008.

4. The overall picture of human rights implementation in the country is nonetheless grim, and the situation remains dire and desperate. The country is under one-party rule, premised on the ideology of *juche* - nominally based on self-reliance, which is in reality a form of ruler-based nationalism, driven by a relentless propaganda machine. At the pinnacle there is an oppressive regime, bent on personal survival, under which the ordinary people of the land undergo intolerable and interminable suffering. People live in fear and are pressed to inform on each other. The State practises extensive surveillance of its inhabitants. Even officials, including diplomats, live daily with apprehension, since they are encouraged to “whistle-blow” on colleagues. Over the years, the authorities have bred a culture of pervasive mistrust and multilayered divide and rule, creating great insecurity for the general population.

5. Matters have been made more complicated by the fact that the regime posits a *songan* (military first) policy and has armed itself with nuclear weapons. The six-party talks involving the United States of America, China, the Russian Federation, Japan and the Republic of Korea have endeavoured to pressure the country to denuclearize in return for aid. In 2008, some constructive steps were made to disable the nuclear facilities at Yongbyong, including the demolition of the cooling tower there. However, at the end of 2008, these steps were suspended over the question of how the disablement process was to be verified. It is hoped that these talks will proceed in future, given that a positive atmosphere on that front might also offer space for the improvement of human rights in the country.

6. A number of issues deserving great attention are described in the paragraphs below.

A. Food and basic necessities

7. Food grants based on rations provided by the State to its people have been practised since the early days of the regime, through a public distribution system, as a means of State control over its inhabitants. The system failed drastically in the mid-1990s, when a critical food shortage led to rampant malnutrition and other tragedies, brought about by a combination of natural disasters, environmental degradation and mismanagement by the authorities. The regime then started to accept foreign food aid to alleviate the chronic situation. In 2005 and 2006, it tried to reduce that aid and the presence of international agencies working on the issue in an attempt to curb outside influence, but this was overtaken by other events, particularly the devastating floods of 2006 and 2007. These disasters pressured the authorities to reopen the country to outside aid. In 2006, the main United Nations agency dealing with the issue, the World Food Programme (WFP), began its two-year Protracted Relief and Recovery Operation, designed to provide food aid to 1.9 million people.

8. In 2008, a new agreement was reached between the authorities and WFP to assist some 6.5 million people. Both WFP and the Food and Agriculture Organization of the United Nations (FAO) carried out an important food security assessment in June 2008. The initial findings revealed very disquieting indicators of a serious decline in food availability, accessibility and consumption. Particularly worrying was the finding that the number of children affected by diarrhoea had increased markedly, namely, nearly twice the number recorded in the previous Government/United Nations nutritional survey conducted in 2005. Child malnutrition and illnesses have thus been on the rise.

9. WFP highlighted three groups as particularly food insecure: the socially vulnerable (children in child institutions, the elderly, and children in paediatric wards); the physiologically vulnerable (pregnant and lactating women, children under 5 years old and adolescents); and the geographically vulnerable (particularly in the north-eastern and southern parts of the country). Immediate food needs are closely related to the shortage of fertilizers and fuel. The overall situation of schools and hospitals has also been deteriorating owing to a lack of basic necessities, including food, textbooks, electricity and medicines.

10. A joint WFP/FAO report of 8 December 2008 revealed that, despite better climatic conditions in 2008, there would still be a severe food shortage, and the country would need international assistance. It is estimated that the total food production for the period 2008-09 will be 4.21 million tons, with a cereal deficit of 836,000 tons, despite possible commercial imports of 500,000 tons. Particularly at risk are the urban poor and remote food-deficit areas in the north-east. The needed food assistance is thus calculated to be some 800,000 tons until the next harvest in October 2009. The report indicated that agricultural growth has not been able to benefit from the favourable weather in 2008 owing to other factors, such as lack of fertilizers and fuel. Some 8.7 million people are food insecure and thus need help. Given these conditions, there is also a need for consistent nutritional assessment of the people at risk.

11. WFP is also targeting more extensive emergency operations for the period September 2008-November 2009.² They encompass 131 counties in 8 provinces, up from 50 counties supported under the Protracted Relief and Recovery Operation, to provide aid to 6,237,000 beneficiaries. The groups covered are mainly lactating women, primary school children, the elderly and persons with disabilities, complemented by food for work-related community development activities. However, at the beginning of 2009, only 1.8 million people were receiving food assistance because of severe resourcing shortfalls.

12. The Special Rapporteur was also informed that, based upon the principle of “no access, no food” - namely that food would not be given unless there was access to the targeted recipients - the monitoring of food distribution would be improved, with more random sampling for monitoring food distribution and prospected use of United Nations staff who are Korean speakers, rather than the previous practice of using Korean speakers seconded by the authorities to the operations. United Nations agencies are also moving beyond food aid to more food security-oriented activities, such as food for community development programmes, which cover elements such as disaster preparedness and sustainable agriculture.²

13. Despite the above-mentioned initiatives, there have been some unconscionable developments with regard to the negative attitude of the authorities towards the general population. Firstly, it might be recalled that, in 2002, the Government took various measures to open the door to quasi-market activities, thus enabling the population to engage in the market system at a limited level, to produce, buy and sell their goods. The public distribution system was seen as non-functional, and people were given additional wages to fend for themselves.

² See “Emergency Assistance to Population Groups Affected by Floods and Rising Food and Fuel Prices”, available on the WFP website (www.wfp.org).

In 2005, for fear of losing their grip on the population, the authorities started to impose the system again on the population and to prohibit market activities, despite the fact that the system was unable to respond effectively to the needs of the population.

14. Secondly, economic initiatives, particularly by women, were severely curtailed in the period 2007-2008, when the authorities prohibited women under 40 years of age from trading; the age was subsequently raised to 49. Thirdly, it was reported in 2008 that army personnel were forcing farmers to provide them with food, to the detriment of the latter's livelihood. The authorities were also reportedly subjecting markets to greater scrutiny and punishing traders in the pursuit of State control over the population.

15. Fourthly, at the end of 2008, the authorities planned to reduce the frequency of trade at open markets to once a month.³ This was all the more unjust in the light of two unprecedented mass protests by female traders in March 2008 against the crackdown on the market place and the negative impact on their livelihood, in Chungjin and North Hamgyong Province. Fifthly, it was reported that small-lot and small-patch farming would be prohibited in 2009.⁴ This "kitchen farming" has been very important for the survival of the general population, which lacks adequate food and undertakes this farming to supplement its food supply and intake. The authorities are also beginning to register such plots with a view to their curtailment.

16. Sixthly, at the end of 2008, the authorities were closing general markets and transforming them into farmers' markets, with a ban on rice sales. According to the directives issued, food would only be sold at local grain enterprises and manufactured goods would be exclusively sold in State-run stores.⁵ The sad irony is that the ruling elite still seeks to make the population dependent on the State, even in the face of increasing deprivations. Even the cost of making *kimchi*, the pickled cabbage which helps to sustain people throughout the year given the lack of meat and other staples, is now rising, threatening an essential nutrient of the local diet.⁶

17. On another front, the authorities were cooperating with the United Nations on a long-overdue national census.

B. Personal security

18. Some law reforms have been made to bring national security standards more into line with international ones. In 2004, reforms of the Criminal Code and Criminal Procedure Code, for example, introduced more detailed categorization of crimes on the basis of *nullum crimen sine*

³ *North Korea Today*, No. 248, November 2008.

⁴ *Ibid.*, No. 252, November 2008.

⁵ *Ibid.*, No. 254, November 2008; and No. 255, December 2008.

⁶ *Ibid.*, No. 255, December 2008.

lege (the principle that conduct does not constitute an offence unless declared to be so by a previously existing law) and related safeguards.⁷ Legislative progress includes shortened periods of detention pending trial and prohibition of night-time interrogation.⁸

19. The reform made in 2007 related to those who are sent to public education, particularly adolescents. A person subjected to this measure is considered to be innocent.⁹ Various discrepancies have however arisen in its implementation (see section E below).

20. In reality, there is a large gap between the more salutary nature of criminal law and the aberrations in its implementation process, which result in grave human rights violations. There is a plethora of crimes listed in the criminal law which help to bolster the regime and prolong the constraints imposed on ordinary people.¹⁰

21. The situation is aggravated by the discrimination practised by the regime in controlling its population. Although less explicit than in the past, the authorities divide the population into three groups: those close to the top; the middle level (usually the mass base of the urban and rural population); and those classified as hostile to the regime, such as political dissidents, those out of favour with the regime, and those with various links to the Republic of Korea and Japan. Collective punishments are also used against people; recent information confirms the practice of whole families being persecuted and sent into detention when a member falls foul of the authorities.¹¹

22. Public executions continue to take place, particularly in recent years, for people involved in human trafficking. A recent case that came to the Special Rapporteur's attention is that of seven people caught for human trafficking, four of whom were sent to re-education centres, and three (university students) executed in public.¹² Another case was that of five women reportedly publicly executed for human trafficking in late 2008.¹³

⁷ See Young-Hwan Lee, "Assessments of the situation of torture and recommendations to North Korea", in *Life and Human Rights in North Korea*, vol. 48, Summer 2008. See also *Human Rights in North Korea: Religious Freedom and Torture*, Proceedings of the Thirtieth Academic Seminar on North Korean Lives and Human Rights, 17 June 2008, Citizens' Alliance for North Korean Human Rights and Korea University, Seoul, 2008.

⁸ See Young-Hwan Lee, *ibid.*

⁹ See Young-Hwan Lee, *ibid.*

¹⁰ See White Paper on Human Rights in North Korea, Korean Institute for National Unification, Seoul, 2008.

¹¹ For example, see *North Korea Today*, No. 237, October 2008.

¹² See *North Korea Today*, No. 206, September 2008.

¹³ *Ibid.*, No. 237, October 2008.

23. Many punishments are totally unreasonable and abusive; for instance, students are reported to have been sent to labour training (re-education and forced labour) for watching South Korean dramas.¹⁴ Citizens who fail to turn up for work allocated to them by the State are sent to labour camps. There is a wide variety of detention facilities ranging from political detention camps (*kwanliso*) for political crimes to correctional labour punishment in labour camps (*kyohwaso*) for other crimes. There are reports of public executions and secret executions in political detention camps.¹⁰ In 2004, a new type of punishment was introduced in the form of labour training, with sentencing ranging from six months to two years. This has been used particularly for those caught leaving the country illegally.

24. Although torture is prohibited by law, it is extensively practised. Meanwhile, the abhorrent prison conditions, including lack of food, poor hygiene, freezing conditions in winter, forced labour and corporal punishment, result in a myriad of abuses and deprivations, ensuring that many prisons are a death trap for inmates, whose plight is sometimes mitigated by bribery.

25. The justice system leaves much to be desired; it lacks an independent judiciary, lawyers acting genuinely on behalf of accused persons, and juries, which would provide the checks and balances to deliver justice. Even though all three elements exist in the system, they are subservient to the State and do not uphold the internationally recognized notion of the rule of law. In fact, judges are appointed by the State and operate under the direction of the Supreme People's Assembly. The jury system is based on two people who work with the courts (usually one judge at first instance) - not to ensure that the rights of the accused are upheld but to confirm the list of crimes presented at the trials and to confirm the conviction of the alleged wrongdoer. Anomalously, lawyers protect the State rather than their defendants. On-site open trials are also held, ostensibly to educate the public; in reality, they are an instrument to intimidate the public, without any regard for the defendant's right to a fair trial and the right to privacy.¹⁰

26. On another front, the authorities have been involved in kidnapping a number of foreign nationals, usually with the aim of either using them to train others for espionage purposes or of stealing their identity with a view to later infiltrating the countries of origin. A number of cases concerning Japanese nationals abducted by the Democratic People's Republic of Korea remain unsolved and require an effective response from the latter to ensure transparency and accountability. The six-party talks have offered some room to address this issue at the bilateral level, but the talks are currently stalled. Over 10 countries have been affected by the conduct of the Democratic People's Republic of Korea, which has perpetrated these crimes extraterritorially - evidence of the pernicious range of its human rights violations with transnational implications.¹⁵

¹⁴ Ibid., No. 183, August 2008.

¹⁵ Proceedings of the fifth general meetings of the International Parliamentarians' Coalition for North Korean Refugees and Human Rights, Seoul, 23-26 November 2008.

C. Freedoms

27. Basic freedoms associated with human rights and democracy, such as the freedom to choose one's Government, freedom of association, freedom of expression, freedom of information, privacy and freedom of religion are infringed on a daily basis by the nature and practices of the regime.

28. Political dissent is heavily punished and has an intergenerational impact; where the parents are seen as antithetical to the regime, the child and the rest of the family are also discriminated against in their access to school, hospitals and other necessities. There are no genuine trade unions, apart from those that prop up the regime.

29. On a related front, the media are heavily controlled and censored, forming the backbone of a giganantuan propaganda machine. Books from China and the Republic of Korea are also prohibited; indeed, the reading of books from the latter country is punishable as a crime of espionage.¹⁰ There is extensive wiretapping of telephones; according to information received in 2008, the authorities have imposed restrictions on long-distance calls to block the spreading of news concerning the current food shortage.

30. Unless one belongs to the elite, it is forbidden to own computers and mobile phones, to use the Internet without official permission, and to watch foreign videos. Information received suggests that the authorities try to limit the use of fibre-optic cable telephones.¹⁰ There are reports of official clamp-downs on mobile phones and CDs, and there are surveillance teams of inspectors who raid homes to see whether families are illegally watching or listening to foreign films and radio or television programmes. These raids are particularly intense near the border with neighbouring countries. Radios and television sets are pretuned to Government channels and there are punishments against those who disobey, although leniency may come from the inspectors at a price; bribery and corruption is rife in the country.

31. Although punishments for disobedience are severe,¹⁰ an increasing number of people reportedly watch foreign programmes and have mobile phones. There is also a spread of USB and mobile hard disk technology, suggesting that there is clandestine access to computers. The rigidity imposed by the regime in the pursuit of social proscriptions versus individual self-expression is seen at its extreme in the ban on the wearing of jeans.

32. Given the extensive intelligence and informant system in the country, the right to privacy is continually infringed by the State apparatus. Neighbourhood groups are also used as an instrument of social control and surveillance, creating a system of fear and mistrust, with multiple layers of surveillance.¹⁰

33. There appear to be outward signs of religious practice, such as construction of church buildings. The following sites have been reported: 2,500 Christian family service sites; 12 Catholic assembly sites; 60 Buddhist temples; and 80 Chundokyo secret prayer sites.¹⁰ Some religious ceremonies seem to be allowed. The claim by authorities that freedom of religion is enjoyed in the country is contradicted by the evidence available. It has been reported that religious sites are limited to Pyongyang, and local citizens are still barred from using the

facilities available. There are indications that practising religion gives rise to persecution.¹⁰ The regime lauds people who give up their lives to save portraits of the country's leader.¹⁰ Recent reports indicate that security agents from the National Security Agency (*bowibu*) and the public security agency (*anjeobu*) have stepped up their surveillance and infiltration at borders in order to halt religious activities,¹⁶ even posing as pastors or setting up fake prayer meetings to entrap new converts. Those who seek refuge in other countries and who contact missionaries are liable to be punished severely if sent back.

D. Asylum and migration

34. Since its inception, the regime has followed a policy of strict control over the movement of its citizens. Internally, travel permits are required if people wish to travel across the country. For external travel, an exit visa is required.¹⁰

35. The situation however, is even more complex.¹⁷ For years there has been a constant flow of people persecuted by the authorities fleeing the country clandestinely, without travel permits. The food crisis of the mid-1990s and thereafter has led to increased migration of people in search of food and other necessities across the border. There has thus been a persistent flow of people into neighbouring countries at times in search of food, employment and livelihood, at times escaping from persecution and oppression, at times for both reasons.

36. There has been much discussion internationally on whether these flows amount to forced migration and the search for asylum, which would give rise to refugee status, coupled with the application of the international law principle of non-refoulement, the right of the refugee not to be pushed back to areas of danger. The Special Rapporteur has dealt extensively with this issue in previous reports, bearing in mind that the international definition of "refugee" is a person who leaves his or her country of origin owing to a well-founded fear of persecution.¹⁸ This fear factor may arise before the person actually leaves the country, and or after the person leaves the country, becoming in the latter case a refugee *sur place*.

37. The main United Nations agency with a mandate to deal with asylum-seekers, the United Nations High Commissioner for Refugees, must be supported so that it can reach those who seek asylum and provide assistance and protection to those falling into the category of refugees. Bilateral links with and support from possible destination countries may also help to loosen the strictures of first-asylum countries.

¹⁶ See also *A Prison Without Bars*, United States Commission on International Religious Freedom, Washington, D.C., 2008.

¹⁷ *North Korea New Approaches*, Proceedings of the eighth International Conference on North Korean Human Rights and Refugees, 22 January 2008, Chatham House, London, 2008.

¹⁸ See A/HRC/4/15, A/62/264, A/HRC/7/20 and A/63/322.

38. Over the past year, the situation facing asylum-seekers has become more stringent owing to the above-mentioned factors. More restrictions have been imposed on departures from the Democratic People's Republic of Korea and entry into neighbouring countries. There are reports of more severe sanctions imposed on those who seek to leave the country and also those who are forcibly returned to it, despite indications of a more lenient attitude on the part of the authorities several years ago. Some sources report a "shoot on sight" policy with regard to those who seek to leave the country clandestinely, and violence used against pregnant women forcibly returned to the country. Instead of the previous practice of imposing fines, prison sentences are now being applied.

39. Recent movements have been facilitated by human smugglers and traffickers, who often prey on asylum-seekers, who are predominantly women. The background of those on the move and the ensuing complications may also be different: on the one hand, there are those who stay for a long period in a neighbouring country and other first-asylum countries before moving to the Republic of Korea as the final destination; on the other, there are those who transit only briefly in first-asylum countries before reaching the final destination country. From information received, the former group is often more traumatized than the latter, as they have to endure a myriad of abuses for a long time before reaching the destination country, and may thus need long-term support. More consideration should also be given to the possibility of family reunions.

E. Specific groups

40. While women who belong to the elite are well provided for, the others are subjected to untold suffering owing to the stifling nature of the regime. While the Constitution guarantees equal rights for men and women, women's access to key decision-making positions lags behind that of men. It was recently reported that women hold only 4.5 per cent of key positions in the Central Committee of the ruling party.¹⁰

41. Women constitute a large proportion of those involved in the economic sector, particularly in commercial and informal activities. They have been particularly affected by the State's reassertion of control over its population in the economic sphere, such as prohibition of women under a certain age from trading and the closure of markets.

42. Violence, neglect, abuse and exploitation pose a continuing concern for women at home, outside the home, within the country and across borders. The issue of sexual violence at home has not been dealt with adequately, while women who are on the move are often abused and exploited for many purposes. There is rampant human smuggling and trafficking where women and other groups seek to leave the country. A high proportion uses the services of intermediaries to leave the country, with the promise of payment to the intermediaries upon arrival in the final asylum country. Some fall prey to human trafficking and end up in forced labour, prostitution and forced marriage.

43. Currently women constitute the majority of asylum-seekers. They are at times accompanied by children, and many seek to reunite with spouses and families in the final asylum country. Over the past year, in various South-East Asian countries, some were threatened with

detention and deportation, in breach of their rights and the principle of non-refoulement. The Special Rapporteur calls for improved measures from asylum countries, especially first-asylum countries, to offer shelter to these groups in adequate welfare centres, eschew detention in principle and in practice, abide by the principle of non-refoulement and expedite processes to enable these groups to resettle in the final destination country.

44. With regard to the implementation of children's rights, 2009 is a key year since the country is due to appear before the Committee on the Rights of the Child as part of its obligations under the Convention on the Rights of the Child. The Democratic People's Republic of Korea has already submitted its report on the implementation of the rights of the child in the country (CRC/C/PRK/4), on which the Special Rapporteur commented in his reports submitted to the United Nations in 2008. Suffice it to note that the State report is decidedly thin on special protection measures for children in difficulty.

45. A detailed report on this issue has also been submitted by civil society, based on interviews with children, and there are various elements deserving attention and analysis.¹⁹ The first of many concerns raised by the report is the fate of children left behind by those who exit the country in search of refuge elsewhere. According to the report, these children are likely to be kept under constant surveillance and discriminated as a consequence of the acts of others. The second is the fate of children who have left the country without permission and are subsequently sent back to the country. Third, there is the issue of children whose parents are charged with political crimes and/or sent to prison. Fourth, the challenge of children deprived of a family environment, who regrettably risk ending up in a substandard State institution.

46. The report also highlights various shortcomings in the national 11-year compulsory education system, such as lack of books and hidden school fees. The use of children in activities which are tantamount to forced labour deserves serious attention. The report notes that children are mobilized to cultivate and harvest opium poppy. Children between 14 and 16 have to undergo military training in the Red Young Guards, combined with ideological studies.¹⁹

47. Another area of concern is linked with the above-mentioned reforms of the criminal law, particularly the introduction of "public education" in order to rehabilitate those who have committed minor crimes. In this way, local authorities, such as schools, have leeway to "educate" the children concerned to improve their behaviour, but has also reportedly led to abuses committed by those same authorities.

48. With regard to people with disabilities, one constructive development was the adoption of a new law in recent years, reforming the antiquated system and the former practice of incarcerating people with disabilities. The Special Rapporteur is adamant that the damage caused

¹⁹ See Situation Report on the Rights of the Child in the Democratic People's Republic of Korea, Citizens' Alliance for North Korean Human Rights and the Asia Centre for Human Rights, Seoul, 2008.

by past State practices needs to be rectified. Those who were victims of inhumane conditions need to be assisted to recover and be reintegrated fully into society. Some abhorrent past practices requiring redress include the reported “neutering” of people with dwarfism to prevent them from reproducing.¹⁰

49. With regard to the elderly, one clear negative impact of the food crisis has been the rise in the deprivation suffered. United Nations agencies are increasingly aware of this, and are targeting food aid and allocations to this group. Basic needs requiring attention include access to medical and other care.

III. PREVENTION, PROTECTION, PROVISION AND PARTICIPATION

50. The above analysis offers a bleak picture of the state of human rights in the country concerned. There are widespread, systematic and reprehensible human rights violations of a long-standing and insidious nature, which demand attention and commitments nationally and internationally to improve the situation. Often the actions needed have been too little, or come too late.

51. The issues raised above should be addressed more from the angle of effective prevention, protection, provision and participation. The preventive approach - to prevent human rights violations in this context - is inevitably interwoven with the cloistered and self-centred regime, which refuses to abide by international human rights standards in real terms and is geared to perpetuating its power at any cost. Genuine prevention thus requires a more people-centred approach, with less emphasis on the “military first” policy and without the budgetary distortions caused by the nuclearization process practised to date and closely linked to the survival of the regime. Prevention with regard to the food situation would dictate that more attention should be paid to food security, beyond the traditional food aid provided to date.

52. With regard to personal security, it is evident that one key challenge is to prevent the abuses inflicted by the regime in the exercise of its overpowering control and manipulation of the population. The justice and prison system is in desperate need of revamping, despite the various legislative reforms of recent years. Opening the door to freedoms, such as the freedom to choose a Government or freedom of expression and association, invites reflection on ways to institute more democratization in the country, to ensure genuine self-determination. Meanwhile, the various refugee- and migration-related outflows call for more prevention by addressing the environment that forces people to leave, particularly the political, social, economic and cultural set-up in the country of origin which creates incessant insecurity.

53. With regard to protection, many violations have taken place over the years precisely because the authorities have had scant regard for any genuine implementation of human rights, since their priority has been to protect the interests of the regime and the elite surrounding it. Indeed, the protection of human rights requires responsive laws, policies, programmes, practices, mechanisms and personnel, resources, education, monitoring and related reforms based on international standards. The fact that the country is party to four human rights conventions requires the corresponding political will to meet the standards set by those treaties and effective follow-up on the recommendations from the various treaty bodies to improve human rights

implementation at the local level. Another issue needing a response is that of accountability and responsibility with regard to the impunity which has been enjoyed for so long by those at the top and related officialdom.

54. Of note is that non-governmental organizations have repeatedly advocated for more action, especially at the highest level from the General Assembly and the Security Council, to ensure the responsibility of the State and its power base. A recent report underlines the State's responsibility to protect its citizens, and calls on the United Nations to establish a group of experts to investigate into whether the egregious violations in the country are tantamount to a violation of the "responsibility to protect" doctrine.²⁰

55. The protection element can also be looked at from the angle of the need for a variety of checks and balances to prevent abuse of power. In the past, there have also been calls from outside the country for the setting up of a national human rights commission. Indeed, an array of mechanisms and processes are required to uphold international rule of law, and inevitably to democratize and ensure more people's voices and action in protecting their own rights.

56. With regard to food and other basic necessities from the perspective of protection, there are special concerns in relation to the vulnerability facing various groups, such as lactating women, children and the elderly. The plight of the urban poor also needs highlighting, as they are distant from the possibility of farming, which would otherwise supplement their income and food supplies. An important component of the right to life and the right to work that needs to be protected is the ability to undertake economic activities of one's own choice. Current developments preclude such an option.

57. As regards the issue of personal security and related freedoms, there is a clear call to undo the damage created by the culture of fear imposed on the population, such as through surveillance of people's conduct, the intimidating national security machinery and the extensive network of informants and related infiltration. In addition, there should be a reform of the national system of intelligence agencies, law enforcement and the justice/prison system. State policies and instructions must be clear to law enforcers, that they put an end to public executions and the use of torture and other forms of cruel, inhuman or degrading treatment. Protection of such basic rights as the freedoms of association, expression, religion and privacy demands the reform of practices that impede their realization, and this is closely linked with the need to overcome the repressive nature of the power base.

58. As part of the protection framework, the country should accede to the full range of human rights treaties. Of particular relevance are the two optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of Persons with Disabilities. The gamut of implementation measures needed requires actions to nurture a knowledge base, attitude, skills and behaviour conducive to respect for human rights. The

²⁰ *Failure to Protect: The Ongoing Challenge of North Korea*, Committee for Human Rights in North Korea and the Oslo Center, Washington, 2008.

universal periodic review process instituted by the Human Rights Council, under which the Democratic People's Republic of Korea will be reviewed on its human rights performance, can also be a way to address these issues and to encourage the State to revamp its national system and overcome past excesses, bearing in mind the Special Rapporteur's recommendations.

59. From the perspective of the provision of help and assistance, it is evident that the State has been failing to provide basic necessities for its people, particularly with regard to freedom from want and freedom from fear. To remedy the food situation, full access to needy groups and adequate monitoring are required, including periodic assessment of nutrition and other elements of personal welfare to ensure that adequate provisions are available and accessible to those in need.

60. Given that the State is unable to provide adequately for its people, it should not clamp down on people's activities which help to provide for their own basic needs. Furthermore, allocations from the national budget should be directed away from militarization to a more people-oriented policy.

61. Finally, one clear challenge is how to ensure greater participation of people so that they may enjoy the basics of life and respect for human rights. This pertains to the power base from top to bottom and bottom to top, and is interwoven with the call to democratize. Unless steps are taken for greater participation in the development process, the inhabitants of the country will continue to suffer because of the ailing state of affairs and the failing affairs of the State.

IV. COMMUNICATIONS

62. The Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right to food, addressed a joint communication to the Government of the Democratic People's Republic of Korea on 20 March 2008 concerning the alleged public executions of 15 nationals. The 13 women and 2 men were reportedly accused of planning to cross into a neighbouring country to receive economic assistance with the help of relatives living abroad. The Government did not reply to the communication.

63. The Government also failed to reply to a communication, sent by the Special Rapporteur on 7 April 2008, requesting clarification on the whereabouts and safety of 22 nationals. The group, comprising 14 women and 8 men, including 3 teenagers, were returned to the Democratic People's Republic of Korea after they reportedly drifted by accident to southern waters in the western sea near Yongpyong Island.

V. COUNTRY VISITS

A. Republic of Korea

64. The Special Rapporteur paid an official visit to the Republic of Korea from 27 to 31 October 2008. The purpose of the visit was to assess the impact of the human rights situation of the Democratic People's Republic of Korea on the Republic of Korea.

65. Of particular interest at the national level is the policy of the current administration of the Republic of Korea towards the Democratic People's Republic of Korea. The authorities of the Republic of Korea propound a policy of "mutual benefits and common prosperity", the humanitarian component of which relates to various human rights concerns with regard to the Democratic People's Republic. The policy aims to resolve the issue of families separated between the two States during the Korean war (1950-53); to address the question of prisoners of war of the Republic of Korea held by the Democratic People's Republic and missing persons and abductees; to approach the issue of human rights in the Democratic People's Republic of Korea as a matter of universal value and to press for substantial improvements there; and to provide humanitarian aid to the Democratic People's Republic in a spirit of humanitarianism. Other issues deserving attention include the possibility of family reunions between those who have arrived in the Republic of Korea and those left behind in other countries, and the need to address the plight of children of nationals of the Democratic People's Republic of Korea married to nationals of other countries, who live in hiding and are, in effect, stateless.

66. In past administrations, some issues, such as the question of family reunions and the consequences of the war, were dealt with through inter-Korean ministerial dialogues and the cooperation of the Red Cross. Currently, in practical terms, relations between the two States are in a transitional period. Interestingly, at the time of the Special Rapporteur's visit to the Republic of Korea, military talks between the two States at the technical level were being held with a view to improving communications between them.

67. With regard to humanitarian aid, 50,000 tons of corn have been offered by the Republic of Korea to the Democratic People's Republic of Korea. The Republic of Korea is waiting for the Democratic People's Republic of Korea to respond to the former's request for dialogue on the matter.

68. Since the 1990s, the Republic of Korea has offered shelter to nearly 15,000 people from the Democratic People's Republic of Korea. In 2007 alone, some 2,500 people arrived in the Republic of Korea. During his visit, the Special Rapporteur visited Hanawon, a Government-supported facility near Seoul that houses such people. The facility helps settlers from the Democratic People's Republic of Korea adapt to their new environment. He also interviewed a number of new arrivals to learn of their experiences in their country of origin, the harsh conditions there and their precarious journey to the Republic of Korea. The majority of current arrivals are women, most of whom were smuggled out of the Democratic People's Republic of Korea or other countries by "brokers" as part of the cross-border process that ultimately leads them to the final country of settlement.

69. A number of the above-mentioned people are victims of multiple abuses, including torture and other forms of violence. Their psychological scars, such as post-traumatic stress disorder, are deep. For this reason, they need long-term support for social recovery and reintegration. On a welcome note, Hanawon now provides the services of psychologists and psychiatrists to help those in need.

70. The Special Rapporteur also visited the Hangyoreh middle high school near Hanawon, a school for adolescents from the Democratic People's Republic of Korea, including a number of young persons in difficulties, such as those arriving in the Republic of Korea without their parents. He was particularly impressed with the open and flexible nature of the school, which

allows the students to receive education suited to their needs in an individualized manner, attuned to the culture and the educational system of the Republic of Korea. The school is like a home for these young people, with teachers and students living in a friendly, family-like environment.

71. As lessons learned from the visit, the Special Rapporteur:

(a) Emphasizes the need for constructive dialogue between the Democratic People's Republic of Korea and the Republic of Korea to promote an amicable atmosphere conducive to resolving outstanding issues, such as the consequences of the Korean war, including the question of family reunions and missing persons, on the basis of international law;

(b) Welcomes the possibility, from the Republic of Korea and other countries, of humanitarian aid, including food aid, medical aid and other aid, such as fertilizers, to the Democratic People's Republic of Korea on the basis of "no access, no aid", with adequate monitoring to ensure transparency and accountability;

(c) Underscores the need to encourage more measures to help prevent, prepare for and mitigate natural disasters and food-related deprivations by means of actions to promote food security through sustainable agriculture and environmental protection, with the broad-based participation of the people;

(d) Invites support from all countries to assist and protect those who seek refuge from the Democratic People's Republic of Korea, with due respect for the international law principle of non-refoulement and humane treatment of all who seek refuge, bearing in mind the need to address their psychological and other needs by means of providing effective support systems, complemented by constructive interactions with local communities, to enable asylum-seekers to adapt to the new social setting;

(e) Notes that the universal periodic review of the Democratic People's Republic of Korea will be held by the Human Rights Council in 2009 and invites stakeholders and other concerned entities to engage with that process by providing credible and balanced information, bearing in mind the recommendations of the Special Rapporteur;

(f) Calls upon the Democratic People's Republic of Korea to implement effectively the human rights obligations under the treaties to which it is a party, and encourages the State to cooperate with the Special Rapporteur, including by allowing him to enter the country, assess the human rights situation and provide advice for needed improvements.

B. Japan

72. The Special Rapporteur paid an official visit to Japan from 23 to 28 January 2009. The aim of his visit was to assess the impact of the Democratic People's Republic of Korea's human rights situation on Japan.

73. Key concerns remain with regard to the State's relations with Japan, particularly its denuclearization and accountability for abductions committed. A key entry point for this process has been the six-party talks, aimed at achieving verifiable denuclearization of the Korean Peninsula. While the talks are currently stalled over the concrete framework of verification of

nuclear programmes, it is hoped that more concrete progress will be made in the near future, as positive developments on this front can pave the way to improvements in human rights.

74. With regard to abductions, while the Democratic People's Republic of Korea has already admitted to committing a number of these crimes, some cases remain unsolved. Currently, there are 17 persons listed officially as abducted by the State. While five returned to Japan following the summit between the two States in 2002, other cases await an effective commitment from the Democratic People's Republic of Korea to clarify and settle the matter satisfactorily. The six-party talks have provided some space for dialogue on these matters, while bilateral tracks have complemented this avenue. Significantly, working-level consultations were held between the two States in August 2008, where both agreed on the concrete modality and related measures to ensure a comprehensive investigation of the abductions issue, to be conducted by the Democratic People's Republic of Korea, including that State's need to establish an investigation committee to undertake and conclude investigations effectively and expeditiously, and to cooperate with Japan so that the latter will be able to directly confirm the results of the investigation with relevant sources of information.

75. It should be recalled that despite various United Nations resolutions, the international community remains highly dissatisfied with the response of the Democratic People's Republic of Korea to the abductions issue. There is a need for the State to honour its commitments and to settle matters genuinely, transparently and credibly. Internationally, it is increasingly recognized that the Democratic People's Republic of Korea is also responsible for the abduction of nationals of other countries, thus globalizing the issue extensively.

76. Japan has taken a range of measures to influence the Democratic People's Republic of Korea to be more responsible in its actions, including prohibition of visits of vessels from the country, and various embargoes and restrictions on trade and exchanges. In 2006, an important law was adopted in Japan to address the issue of human rights violations, with amendments in 2007 to strengthen international cooperation on this front. The law provides for a number of measures, including awareness-raising activities for the Japanese public. The law also provides for the measures to protect and support defectors from the Democratic People's Republic of Korea, including the Japanese spouses of Koreans who migrated to Japan, Korean residents from Japan who later settled in the Democratic People's Republic but now wish to return to Japan, and nationals from the Democratic People's Republic seeking asylum in Japan. A welcome development is that Japan is now increasingly offering protection to a number of people in such categories, and is expected to be expanded by means of educational, occupational and psychological support systems. On humanitarian grounds, channels should be explored to enable those who have returned to Japan to reunite with the families left behind in their country of origin.

77. The Special Rapporteur paid a visit to the Niigata Prefecture, where a number of abductions had taken place, particularly in the 1970s, and consulted the authorities on the underlying circumstances. Geographically, Niigata faces the coastal area of the Democratic People's Republic of Korea, whose agents landed clandestinely to commit the above-mentioned crimes. Interestingly, a number of governors of prefectures came together in late 2008 to adopt a common position advocating for a prompt resolution of the problem, including measures to invite their sister cities in other countries to support efforts in this respect.

78. The Special Rapporteur calls upon the Democratic People's Republic of Korea to take action efficaciously based on the following, and invites international solidarity to impel the country to take effective measures in this regard:

(a) **Investigate.** The Democratic People's Republic of Korea should, as it agreed, establish a credible committee to investigate the abductions issue. The investigation should be of a comprehensive nature, with the aim of taking concrete action to settle the issue satisfactorily, namely to find survivors and return them to Japan;

(b) **Identify.** The above-mentioned investigation should cover the victims identified by the Government of Japan as well as other abductees;

(c) **Inform.** The State should inform Japan consistently of progress made and undertake discussions with Japan in a cooperative manner;

(d) **Initiate.** The State's authorities should initiate actions at home to ensure transparency and accountability, particularly to follow up the requests submitted by Japan to resolve the remaining cases;

(e) **Implement.** Genuine implementation of commitments, particularly those made by the State, is required, especially on the basis of and in the spirit of the Pyongyang Declaration of 2002, which opened the way for the peaceful settling of disputes between the two States, pending steps towards the normalization of relations between them;

(f) **Intensify.** The State's authorities should intensify measures to demonstrate genuine and substantive progress to address the crimes committed and to ensure the accountability of those who committed them;

(g) **Invigorate.** By means of effective measures to settle the above-mentioned issues, the two States will be able to invigorate relations, overcome impediments and chart the course towards confluence based on mutual respect, peaceful neighbourly relations and compliance with universal human rights standards.

VI. CONCLUSIONS AND RECOMMENDATIONS

79. **The predicament ensuing from the broad range of systematic and widespread human rights violations in the Democratic People's Republic of Korea requires urgent attention at all levels, from national to international. Of particular concern are the pervasive transgressions in relation to food and other basic necessities, personal security, freedoms, asylum and migration, and specific groups, such as women and children.**

80. **The Democratic People's Republic of Korea should take the following measures:**

(a) **Immediately (short-term):**

(i) **Ensure effective provision of and access to food and other basic necessities for those in need of assistance, cooperate constructively with United Nations agencies and other humanitarian actors on the issue, and allow people to undertake economic activities to satisfy their basic needs and supplement their livelihood without State interference;**

- (ii) **End the punishment of those who seek asylum abroad and who are sent back to the country, and instruct officials clearly to avoid detention and inhumane treatment of such persons;**
 - (iii) **Put an end to public executions and abuses against the security of the person, and other violations of rights and freedoms, by means of law reforms and implementation measures, clearer instructions to law enforcers to respect human rights, related capacity-building and monitoring of their work to ensure accountability;**
 - (iv) **Cooperate effectively to resolve the issue of abducted foreigners;**
 - (v) **Respond constructively to the recommendations of the Special Rapporteur, reply effectively to his communications, and invite the Special Rapporteur to visit the country to take stock of the situation and recommend needed actions;**
- (b) **Progressively (longer-term):**
 - (i) **Modernize the national system by instituting reforms to ensure greater participation of the people in the process and compliance with international human rights standards;**
 - (ii) **Institute equitable development measures based upon a “people first” policy, and reallocate national budgets, including military budgets, to the social sector;**
 - (iii) **Introduce more extensive food security-related measures, such as sound agricultural practices, environment conservation, disaster preparedness and people’s participation and mobilization in planning , programming and benefit-sharing;**
 - (iv) **Guarantee personal security and freedoms by dismantling the pervasive surveillance and informant/intelligence system, reforming the justice/prison system and abiding by the rule of law, with safeguards for accused persons, fair trials, the development of an independent judiciary, and checks and balances against abuses of power;**
 - (v) **Become a party to core human rights treaties and take measures to implement them effectively;**
 - (vi) **Address the vulnerability facing specific groups, such as women, children, persons with disabilities and the elderly, by eliminating discrimination and highlighting human rights protection against neglect, abuse, exploitation and violence;**
 - (vii) **Address the root causes of refugee outflows; criminalize those who exploit them through human smuggling and trafficking, while not criminalizing the victims;**

- (viii) Act against the impunity of those responsible for violence and violations by permitting means of effective redress at the national and local levels;**
- (ix) Engage with the Human Rights Council and its universal periodic review to ensure transparency and reforms, and request technical assistance from the Office of the United Nations High Commissioner for Human Rights to help promote and protect human rights comprehensively;**
- (x) Initiate constructive dialogue with the treaty bodies that monitor the conventions to which the country is a party, and cooperate with all United Nations mechanisms, including the special procedures, to ensure effective follow-up of their recommendations and access to the country.**

81. The Special Rapporteur invites the international community:

(a) To emphasize the need for an integrated approach that includes the prevention of violations, effective protection of human rights, the provision of care and assistance in an accessible and accountable manner, participation of people in the enjoyment of their rights and freedoms and ensuring the country's development in a democratic setting;

(b) To advocate for the need for a "people first" rather than the current "military first" policy, complemented by an equitable development process, food aid and food security, with due respect for the principle of "no access, no food", coupled with adequate monitoring;

(c) To respect the rights of refugees, particularly the principle of non-refoulement, and the human rights of migrants, and to mitigate the strictures of national immigration laws that might otherwise lead to the detention or forced return of refugees or asylum-seekers;

(d) To maximize dialogue with the Government of the Democratic People's Republic of Korea to enlarge the space for human rights discourse and action, offering relevant incentives and graduated measures, and to use the State's refusal to cooperate with the Special Rapporteur as a key indicator or benchmark for the forthcoming universal periodic review of its human rights record;

(e) To address impunity from different viewpoints, whether in terms of State responsibility and/or individual criminal responsibility, and enable the totality of the United Nations system, especially the Security Council, to take measures to prevent egregious violations, protect people from victimization and provide them with effective redress, with due regard for the call for broad-based participation of people in governance and government.

Appendix**REPORTING STATUS OF THE DEMOCRATIC PEOPLE'S REPUBLIC
OF KOREA TO HUMAN RIGHTS TREATY BODIES**

Reporting round	Due	Submitted
International Covenant on Civil and Political Rights		
3	1 January 2004	
2	13 October 1987	20 March 2000
1	13 December 1982	2 April 1984
Convention on the Elimination of All Forms of Discrimination against Women		
2	27 March 2006	
1	27 March 2002	11 September 2002
International Covenant on Economic, Social and Cultural Rights		
3	30 June 2008	
2	30 June 1992	12 April 2002
1	1 September 1987	14 January 1989
1	1 September 1983	18 December 1984
Convention on the Rights of the Child		
3, 4	20 October 2007	10 December 2007
2	20 October 1997	16 May 2002
1	20 October 1992	13 February 1996
