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مجلس حقوق الإنسان  
الدورة الثانية والعشرون  
البند ٤ من جدول الأعمال  
حالات حقوق الإنسان التي تتطلب اهتمام المجلس بها

## تقرير المقرر الخاص المعني بحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية، السيد مرزوقي داروسمان\*

موجز

قدّم المقرر الخاص المعني بحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية بياناً إلى اللجنة الثالثة للجمعية العامة في تشرين الثاني/نوفمبر ٢٠١٢، ناشد فيه الدول الأعضاء والمجتمع الدولي إجراء استعراض شامل للتقارير العديدة المتعلقة بحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية والمقدمة من المقرر الخاص في إطار ولايته ومن الأمين العام على امتداد السنوات الثماني الماضية، وذلك بهدف تقييم الأنماط والاتجاهات الأساسية في هذا الصدد، والنظر في وضع آلية تحقيق أكثر تفصيلاً. ويقدم هذا التقرير استعراضاً شاملاً لوثائق الأمم المتحدة وقراراتها المتعلقة بحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية منذ عام ٢٠٠٤.

وإلى جانب رصد محصلة تقارير الأمين العام والمقرر الخاص بشأن حالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية، البالغ عددها ٢٢ تقريراً، و١٦ قراراً اعتمدها الجمعية العامة وهيئاتها الفرعية في هذا الصدد، يتوخى من هذا التقرير الوقوف أيضاً على محصلة وثائق الاستعراض الدوري الشامل، والملاحظات الختامية لهيئات معاهدات حقوق الإنسان، وآراء الفريق العامل المعني بالاحتجاز التعسفي والفريق العامل

\* تعمم مرفقات هذا التقرير مثلما وردت، وباللغة التي قدمت بها فقط.

المعني بحالات الاختفاء القسري بشأن الحالات التي سُجِّلت منذئذ في جمهورية كوريا الشعبية الديمقراطية. وخلص الاستعراض إلى أن مختلف هذه الوثائق تركز على تسعة أنماط أساسية من الانتهاكات. ويجلِّل المرفق الأول للتقرير هذه الأنماط على نحو أكثر تفصيلاً.

وفي الختام، يقدِّم التقرير توصيات إلى المجتمع الدولي تتضمن اقتراحات بشأن الخطوات المستقبلية ومجالات التركيز الممكنة في عمل الأمم المتحدة بشأن حالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية. ويدعو التقرير إلى إنشاء آلية تحقيق مزوَّدة بموارد كافية لتقصي انتهاكات حقوق الإنسان الجسيمة والمنهجية والواسعة النطاق في جمهورية كوريا الشعبية الديمقراطية وتوثيق هذه الانتهاكات، وتقديم تقارير في هذا الصدد إلى مجلس حقوق الإنسان والجمعية العامة، وبحث موضوع المساءلة عن هذه الانتهاكات والجرائم في حق الإنسانية.

## المحتويات

الصفحة	الفقرات		
٤	٢-١	.....	مقدمة - أولاً
٥	٧-٥	.....	أنماط الانتهاكات التي وثقتها الأمم المتحدة - ثانياً
٧	١٦-٨	.....	تقييم الأمم المتحدة لانتهاكات حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية . - ثالثاً
٩	٣٠-١٧	.....	الإفلات من العقاب وعدم التعاون مع الأمم المتحدة - رابعاً
١٥	٣٢-٣١	.....	الاستنتاجات والتوصيات - خامساً

## Annexes

I.	Analysis of patterns of human rights violations in the Democratic People's Republic of Korea, documented by the United Nations through its reports and resolutions since 2004.....	16
A.	Violation of the right to food.....	16
B.	Torture and inhuman treatment .....	19
C.	Arbitrary detention .....	21
D.	Prison camps .....	23
E.	Discrimination .....	26
F.	Violations of freedom of expression .....	29
G.	Violations of the right to life .....	32
H.	Violations of freedom of movement .....	33
I.	Enforced disappearances, including abduction of foreign nationals .....	35
II.	List of United Nations documents reviewed .....	38

## أولاً - مقدمة

١ - أنشئت ولاية المقرر الخاص المعني بحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية بموجب قرار لجنة حقوق الإنسان ١٣/٢٠٠٤، ويجري تمديدها سنوياً منذ ذلك الحين. ويقدم المقرر الخاص، عملاً بذلك القرار وبما تلاه من قرارات الجمعية العامة، تقريرين كل سنة، أحدهما إلى مجلس حقوق الإنسان، والآخر إلى الجمعية العامة. وقد قدم المقرر الخاص، في تقريره الأخير إلى الجمعية العامة (A/67/370) نبذة عن الحالة الراهنة لحقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية وعن الشواغل المتعلقة بحقوق الإنسان، مثل فرض قيود صارمة على حرية الرأي والتعبير، والوضع الاقتصادي وتأثيره على الحقوق الاقتصادية والاجتماعية والثقافية، والشواغل المتعلقة بحماية ملتزمي اللجوء الوافدين من جمهورية كوريا الشعبية الديمقراطية، ومسألة الاتجار. وفي ٢ تشرين الثاني/نوفمبر ٢٠١٢، قدم المقرر الخاص بياناً إلى اللجنة الثالثة للجمعية العامة سلط فيه الضوء على قلقه المستمر إزاء مسألة اختطاف الرعايا الأجانب واليابانيين وأبدى أسفه لعدم تسجيل أي تحسن في هذا الصدد.

٢ - ودعا المقرر الخاص في هذا البيان الدول الأعضاء والمجتمع الدولي إلى إجراء استعراض شامل للتقارير العديدة المتعلقة بحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية والمقدمة من المقرر الخاص في إطار ولايته ومن الأمين العام على امتداد سنوات، وذلك بهدف تقييم الأنماط والاتجاهات الأساسية في هذا الصدد، والنظر في وضع آلية تحقيق أكثر تفصيلاً. ويقدم هذا التقرير استعراضاً شاملاً لوثائق الأمم المتحدة وقراراتها المتعلقة بحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية منذ عام ٢٠٠٤. ويتوخى من التقرير رصد وتقييم مدى توثيق هيئات الأمم المتحدة انتهاكات حقوق الإنسان المرتكبة في جمهورية كوريا الشعبية الديمقراطية منذ إنشاء ولاية المقرر الخاص في عام ٢٠٠٤<sup>(١)</sup>. ويقترح التقرير بعض الخطوات المستقبلية ومجالات التركيز الممكنة في عمل الأمم المتحدة المتعلق بحالة حقوق الإنسان في هذا البلد.

٣ - ويشمل الاستعراض ما لا يقل عن ٦٠ وثيقة متعلقة بحقوق الإنسان منها تقارير الأمين العام المقدمة إلى الجمعية العامة؛ وتقارير المقرر الخاص المقدمة إلى الجمعية العامة

(١) عمل فينتيت مونتارهورن مقررراً خاصاً معنياً بحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية لمدة ست سنوات وذلك ابتداءً من ١٥ حزيران/يونيه ٢٠٠٤. وفي ١ آب/أغسطس ٢٠١٠، عُيّن مرزوقي داروسمان مقررراً خاصاً في هذا الشأن. ولأغراض عملية، يستعمل هذا التقرير عبارة "المقرر الخاص" للإشارة إلى صاحبي الولاية دون تمييز. بيد أن التقرير يشير من باب الحرص على الدقة إلى رمز الوثيقة أو السنة التي قدم فيها المقرر الخاص تعليقاته، ما يسمح للقارئ بتحديد المقرر الخاص الذي تنسب إليه المعلومات المقدمة في هذا التقرير.

ومجلس حقوق الإنسان وسلفه لجنة حقوق الإنسان؛ وقرارات هذه الهيئات الحكومية الدولية؛ ومختلف التقارير المتصلة بالاستعراض الدوري الشامل لجمهورية كوريا الشعبية الديمقراطية؛ والملاحظات الختامية والتقارير الحكومية المقدّمة إلى مختلف الهيئات المنشأة بموجب معاهدات، لا سيما اللجنة المعنية بحقوق الإنسان، ولجنة الحقوق الاقتصادية والاجتماعية والثقافية، واللجنة المعنية بالقضاء على التمييز ضد المرأة، ولجنة حقوق الطفل؛ ووثائق القضايا التي يظطلع بها المكلفون بولايات في إطار الإجراءات الخاصة لمجلس حقوق الإنسان، مثل الفريق العامل المعني بالاحتجاز التعسفي، والفريق العامل المعني بحالات الاختفاء القسري أو غير الطوعي؛ والفريق العامل المعني بحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية<sup>(٢)</sup>.

٤ - ويتضمّن المرفق الأول تحليلاً أكثر تفصيلاً لأنماط انتهاكات حقوق الإنسان الموثقة في تقارير الأمم المتحدة وقراراتها منذ عام ٢٠٠٤.

## ثانياً - أنماط الانتهاكات التي وثقتها الأمم المتحدة

٥ - اعتمدت الجمعية العامة وهيئتها الفرعية ١٦ قراراً منذ عام ٢٠٠٣<sup>(٣)</sup>. ومنذ عام ٢٠٠٤، قدّم الأمين العام والمقرّر الخاص ٢٢ تقريراً إلى الدول الأعضاء في الأمم المتحدة. وتسلّط هذه الوثائق الضوء على النمط الطويل الأمد والواسع النطاق لما تشهده جمهورية كوريا الشعبية الديمقراطية من انتهاكات جسيمة لحقوق الإنسان، وعلى وعي الأمم المتحدة ودورها الأعضاء بهذه الحالة.

٦ - ويفضي استعراض هذه الوثائق إلى تحديد تسعة أنماط أو مسائل مترابطة رئيسية بشأن انتهاكات حقوق الإنسان ركّز عليها عمل الأمم المتحدة، وهي كما يلي:

(أ) انتهاك الحق في الغذاء، وبخاصة تأثير تحكّم الدولة في سياسات توزيع الأغذية على حالة السكان التغذوية والصحية وتقييد دخول المساعدات الإنسانية الرامية إلى معالجة الأزمة الغذائية المزمنة؛

(ب) التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة، بما يشمل ظروف الاحتجاز اللاإنسانية؛

(٢) يستثني الاستعراض تقارير مكاتب الأمم المتحدة والوكالات المتخصصة، مثل مكتب تنسيق الشؤون الإنسانية، وبرنامج الأغذية العالمي، ومنظمة الأمم المتحدة للأغذية والزراعة، وما إلى ذلك.

(٣) تشمل ثلاثة قرارات اعتمدها لجنة حقوق الإنسان في الفترة من عام ٢٠٠٣ إلى عام ٢٠٠٥؛ وخمسة قرارات اعتمدها مجلس حقوق الإنسان منذ عام ٢٠٠٨، وثمانية قرارات اعتمدها الجمعية العامة منذ عام ٢٠٠٦.

(ج) الاحتجاز التعسفي، باعتباره شكلاً من أشكال الاضطهاد، وتجريم أي سلوك يهدد الإيديولوجية الحكومية الرسمية أو يعارضها، وانعدام سيادة القانون، وعدم مراعاة الأصول القانونية أو عدم استقلالية القضاء؛

(د) انتهاكات حقوق الإنسان في معسكرات الاعتقال؛

(هـ) التمييز وتأثير انتهاكات حقوق الإنسان بصورة مفرطة أو بصفة خاصة على الفئات الضعيفة، سيما النساء والأطفال والأشخاص ذوو الإعاقة والعائدون. ويتمثل أحد الشواغل على الخصوص في أن المجتمع ينقسم إلى ثلاث مجموعات مصنفة بحسب ولائها السياسي للحكومة. ويحدّد موقع الشخص في هذا التصنيف الهرمي مستوى تمتعه بحقوق الإنسان الأساسية، بما في ذلك الحصول على الغذاء والصحة والتعليم وحرية التنقل؛

(و) الانتهاك الجسيم لحرية التعبير وغيرها من الحريات ذات الصلة؛

(ز) انتهاك الحق في الحياة، لا سيما التطبيق التعسفي لعقوبة الإعدام وممارسة الإعدام العلني؛

(ح) تقييد حرية تنقل المواطنين العائدين قسراً وإساءة معاملتهم؛

(ط) الاختفاء القسري، بما يشمل اختطاف الرعايا الأجانب.

٧- و تدلّ هذه الأصناف التسعة، التي حُدّدت من خلال استعراض المسائل التي استأثرت بقلق الأمم المتحدة، على وجود نمط انتهاكات منهجي وواسع النطاق. ويتضمن المرفق الأول لهذا التقرير توصيفاً كاملاً يستند إلى الوثائق المتعلقة بهذه الأنماط التسعة. ويتفاوت عدد الوثائق المتاحة بشأن كل فئة من هذه الانتهاكات نظراً لصعوبة الحصول على المعلومات في ظل غياب مرصد ووسائل إعلام وطنية مستقلة، وتقييد سفر المواطنين إلى الخارج، وعدم سماح حكومة البلد بدخول آليات الأمم المتحدة لحقوق الإنسان إلى أراضيها أو حتى بالتعاون معها. كما أن خوف الضحايا من انتقام السلطات، بما في ذلك انتقامها من أفراد أسرهم الباقين في البلد، يجعلهم يترددون في تقديم المعلومات أو الموافقة على نشر بعض التفاصيل. بيد أن ما ورد من معلومات منتظمة ومتسقة وموثوق بها - وما تشير إليه هذه المعلومات من أنماط - يبرز ضرورة إنشاء آلية تحقيق مزودة بموارد كافية تكون أحسن قدرة على العمل بصورة شاملة ومنهجية مقارنة بما يمكن توحيه من الاعتماد على المقرّر الخاص الحالي والدعم الذي يتلقاه من مفوضية الأمم المتحدة لحقوق الإنسان. ويمكن أن يفضي وضع آلية للتحقيق إلى تكوين صورة أشمل عن الانتهاكات، وتحديد حجم انتهاكات القانون الدولي ونوعيتها، وإسناد مسؤولية هذه الانتهاكات إلى الجهات المحددة التي ارتكبت هذه الانتهاكات أو شاركت فيها، واقتراح سبل فعالة لعمل المجتمع الدولي في هذا الصدد.

## ثالثاً - تقييم الأمم المتحدة لانتهاكات حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية

- ٨- وصفت الأمم المتحدة اعتداءات عديدة مرتكبة في جمهورية كوريا الشعبية الديمقراطية بأنها انتهاكات جسيمة ومنهجية وواسعة النطاق لحقوق الإنسان.
- ٩- وأعربت الجمعية العامة مراراً في قراراتها المعتمدة في الفترة الممتدة من عام ٢٠٠٦ إلى عام ٢٠١٢ بشأن جمهورية كوريا الشعبية الديمقراطية عن قلقها البالغ إزاء استمرار ورود تقارير بشأن وقوع انتهاكات جسيمة ومنهجية وواسعة النطاق للحقوق المدنية والسياسية والاقتصادية والاجتماعية والثقافية في جمهورية كوريا الشعبية الديمقراطية، تشمل التعذيب، والإعدام العلني، والاحتجاز التعسفي، وعدم مراعاة الأصول القانونية، وانعدام سيادة القانون، وفرض عقوبة الإعدام لأسباب سياسية ودينية، والعقوبات الجماعية، ووجود عدد كبير من معسكرات الاعتقال، واستخدام السخرة على نطاق واسع. ومنذ عام ٢٠٠٨، عززت الجمعية العامة نهجها وأعربت عن قلقها البالغ إزاء هذه الانتهاكات.
- ١٠- وأعربت الجمعية العامة في قراراتها أيضاً عن قلقها البالغ إزاء انتهاكات الحقوق الاقتصادية والاجتماعية والثقافية التي أدت إلى مشاكل اعتبرتها منتظمة وواسعة النطاق تتمثل في سوء التغذية الحاد ومشاكل صحية أخرى وفي تقييد حرية التنقل. وعلاوة على ذلك، ندّدت الجمعية العامة بانتهاكات حقوق الإنسان للفئات الضعيفة، سيما النساء والأطفال والأشخاص ذوو الإعاقة ومواطنو البلد العائدون إلى وطنهم. كما أدرجت لجنة حقوق الإنسان هذه الشواغل في قراراتها المعتمدة منذ عام ٢٠٠٤<sup>(٤)</sup>.
- ١١- ومنذ عام ٢٠٠٩، يندّد مجلس حقوق الإنسان بالانتهاكات الجسيمة والمنهجية والواسعة النطاق في جمهورية كوريا الشعبية الديمقراطية، وبخاصة تعذيب السجناء السياسيين والمواطنين المعادين إلى جمهورية كوريا الشعبية الديمقراطية وإيداعهم في معسكرات العمل. وفي عام ٢٠١٢، أعرب المجلس عن قلقه الشديد إزاء "استمرار تدهور" حالة حقوق الإنسان في البلد<sup>(٥)</sup>.
- ١٢- وفي عام ٢٠١٢، اعتمد مجلس حقوق الإنسان للمرة الأولى منذ إنشاء ولاية المقرر الخاص قراراً بشأن جمهورية كوريا الشعبية الديمقراطية دون اللجوء إلى التصويت، ما يعكس

(٤) قرارا لجنة حقوق الإنسان ١٣/٢٠٠٤ و ١١/٢٠٠٥.

(٥) قرار مجلس حقوق الإنسان ١٣/١٩.

وجود عدد هائل ما فتى يتضخم من البلدان التي يساورها قلق إزاء حالة حقوق الإنسان في البلد<sup>(٦)</sup>. واعتمدت الجمعية العامة أيضاً للمرة الأولى في ٢٠ كانون الأول/ديسمبر ٢٠١٢ قراراً بشأن جمهورية كوريا الشعبية الديمقراطية، دون اللجوء إلى تصويت، وأعربت فيه عن قلقها إزاء استمرار التدهور الشديد لحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية على الرغم من تعبير قيادتها<sup>(٧)</sup>.

١٣- وأقرّ كلا المقررين الخاصين اللذين كُلفا بهذه الولاية بالطابع المنهجي لانتهاكات حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية. وفي عام ٢٠١٢، أعرب المقرر الخاص في تقريره المقدم إلى الجمعية العامة "عن قلقه إزاء الإعلان الأخير الصادر عن كيم جونج أون بأن أولوياته الأولى والثانية والثالثة هي تعزيز الجيش"، وأشار إلى أن "بطء النمو الاقتصادي المقترن بسياسة "الجيش أولاً" سيكون ضاراً برفاه شعب جمهورية كوريا الشعبية الديمقراطية"<sup>(٨)</sup>. وكان المقرر الخاص السابق قد أعرب عن قلق مشابه. وأكد في عام ٢٠٠٥ أن "الطابع غير الديمقراطي لقاعدة السلطة في جمهورية كوريا الشعبية الديمقراطية يحول دون التمتع الحقيقي بحقوق الإنسان، في حين أن تركيز السلطات الوطنية على الدولة بهدف كفالة بقاء النظام في القمة، تحت مظلة الحقوق التي تسمى "جماعية" والسيادة الوطنية، يعيق أعمال حقوق الإنسان"<sup>(٩)</sup>. وأشار في عام ٢٠١٠ إلى أنه "يمكن وصف حالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية بأنها نسيج وحده (أي فئة مستقلة بذاتها)، نظراً لتعدد الخصائص وأوجه الشذوذ فيها. وببساطة، هناك حالات كثيرة من انتهاكات حقوق الإنسان تعتبر مرعبة ورهيبية"<sup>(١٠)</sup>.

١٤- وتساءل كلا المقررين الخاصين عما إذا كانت جمهورية كوريا الشعبية الديمقراطية ترتكب جرائم في حق الإنسانية. وفي عام ٢٠٠٧، أورد المقرر الخاص ذكر دراسة تشير إلى أن "الأعمال التي ترتكبها السلطات تعادل الجرائم المرتكبة ضد الإنسانية وتستوفي أركان

(٦) في عام ٢٠٠٨، اعتمد مجلس حقوق الإنسان القرار ١٥/٧ بأغلبية ٢٢ صوتاً مقابل ٧ أصوات مع امتناع ١٨ عضواً عن التصويت؛ وفي عام ٢٠٠٩، اعتمد مجلس حقوق الإنسان القرار ١٦/١٠ بأغلبية ٢٦ صوتاً مقابل ٦ أصوات مع امتناع ١٥ عضواً عن التصويت؛ وفي عام ٢٠١٠، اعتمد مجلس حقوق الإنسان القرار ١٤/١٣ بأغلبية ٢٨ صوتاً مقابل ٥ أصوات مع امتناع ١٣ عضواً عن التصويت؛ وفي عام ٢٠١١، اعتمد مجلس حقوق الإنسان القرار ٨/١٦ بأغلبية ٣٠ صوتاً مقابل ٣ أصوات مع امتناع ١١ عضواً عن التصويت.

(٧) قرار الجمعية العامة ١٨١/٦٧.

(٨) A/67/370، الفقرة ٥٠.

(٩) A/60/306، الفقرة ٩.

(١٠) A/HRC/13/47، الفقرة ٨٦.



العمد والاعتداءات الواسعة النطاق أو المنتظمة على السكان المدنيين"<sup>(١١)</sup>. واعتبر أيضاً أنه إلى جانب مسؤولية الدولة قد تنشأ مسؤولية جنائية للأفراد "نتيجة لارتكابهم جرائم ضد الإنسانية"<sup>(١٢)</sup>. وفي عام ٢٠٠٨، أشار المقرر الخاص إلى أنه "قد تكون هناك أيضاً مجالات لاستحثات العمل من أجل تحميل الأفراد المسؤولية الجنائية، باستلهم [من] وجود المحكمة الجنائية الدولية، حيث يكون النظام المحلي عاجزاً أو غير راغب في اتخاذ الإجراءات اللازمة لمساءلة الأفراد" عن الجرائم الخطيرة"<sup>(١٣)</sup>. وأكد المقرر الخاص في الختام على أنه في حين يتوقف الأمر "في جانب كبير منه على الإرادة السياسية العالمية - المحلية لاختبار الرغبة في الشفافية والمسؤولية ... من المهم التأكيد على الصبغة المنهجية والطويلة المدى لانتهاكات حقوق الإنسان في البلد، وهي انتهاكات جلية وجسيمة ومتصاعدة تصاعداً شديداً"<sup>(١٤)</sup>.

١٥ - وفي عام ٢٠١٠، أكد المقرر الخاص أن فئة الجرائم الدولية الأقرب فيما يبدو إلى "ما يحدث في البلد موضع البحث هي" الجرائم ضد الإنسانية"<sup>(١٥)</sup>. وأشار إلى أنه "من الواضح بعد ست سنوات من ملاحظة حالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية أن حالات التعسف ضد مجموع السكان الذين من المفترض أن تكون السلطات مسؤولة عنهم هي حالات فاضحة ومتأصلة في وقت واحد"<sup>(١٦)</sup>.

١٦ - وفي عام ٢٠١٢، أكد المقرر الخاص "أنه في إطار ظروف معينة، يمكن أن يشكل السجن الواسع الانتشار أو المنهجي، أو غير ذلك من الحرمان الشديد من الحرية في انتهاك للقانون الدولي، جرائم ضد الإنسانية"<sup>(١٧)</sup>.

## رابعاً - الإفلات من العقاب وعدم التعاون مع الأمم المتحدة

١٧ - على امتداد عشر سنوات تقريباً، وجّه الأمين العام، والجمعية العامة، ولجنة حقوق الإنسان سابقاً، ومجلس حقوق الإنسان، والمقرر الخاص، وهيئات معاهدات حقوق الإنسان دعوات منتظمة ومتكررة إلى سلطات جمهورية كوريا الشعبية الديمقراطية من أجل وقف هذه

(١١) A/HRC/4/15، الفقرة ٤٠ التي تورد ذكر الدراسة التالية "Failure to Protect: A Call for the UN Security Council to Act in North Korea"، United States Committee for Human Rights in North Korea، Washington، 2006.

(١٢) A/HRC/4/15، الفقرة ٤١.

(١٣) A/HRC/7/20، الفقرة ٤٥.

(١٤) A/HRC/7/20، الفقرة ٤٨.

(١٥) A/HRC/13/47، الفقرة ٦٠.

(١٦) A/HRC/13/47، الفقرة ٨.

(١٧) A/67/370، الفقرة ٣٨.

الانتهاكات واحترام حقوق الإنسان لجميع المواطنين. وفي عام ٢٠٠٩، أشار الأمين العام إلى أن حكومة جمهورية كوريا الشعبية الديمقراطية لم تتخذ "خطوات ذات بال للاهتمام المتابعة عن الانتهاكات المنتظمة والواسعة النطاق لحقوق الإنسان، أو لتوفير ضمانات لحقوق الإنسان"<sup>(١٨)</sup>.

١٨- وأكدت قرارات الأمم المتحدة، لا سيما قرارات الجمعية العامة، ضرورة المساءلة ونصّت عليها. ومنذ عام ٢٠٠٩، حثّت الجمعية العامة بقوة حكومة جمهورية كوريا الشعبية الديمقراطية على "معالجة مسألة الإفلات من العقاب وكفالة تقديم المسؤولين عن انتهاك حقوق الإنسان إلى المحاكمة أمام هيئة قضائية مستقلة"<sup>(١٩)</sup>.

١٩- وزادت الشواغل المتعلقة بالإفلات من العقاب بسبب تذبذب التعاون بين حكومة جمهورية كوريا الشعبية الديمقراطية وآلية الأمم المتحدة لحقوق الإنسان. وخير دليل على ذلك إرسال حكومة جمهورية كوريا الشعبية الديمقراطية في ٢٣ آب/أغسطس ١٩٩٧ إخطاراً إلى الأمين العام لإبلاغه بانسحابها من العهد الدولي الخاص بالحقوق المدنية والسياسية الذي انضمت إليه في ١٤ أيلول/سبتمبر ١٩٨١<sup>(٢٠)</sup>. وفي ٢٣ أيلول/سبتمبر ١٩٩٧، أرسل الأمين العام مذكرة إلى حكومة جمهورية كوريا الشعبية الديمقراطية مفادها أن الانسحاب من العهد ينبغي أن يحظى بموافقة جميع الدول الأطراف في العهد<sup>(٢١)</sup>. وفي ٨ كانون الأول/ديسمبر ١٩٩٧، اعتمدت اللجنة المعنية بحقوق الإنسان التعليق العام رقم ٢٦ بشأن استمرارية الالتزامات المترتبة على العهد الدولي الخاص بالحقوق المدنية والسياسية. وتعتقد اللجنة اعتقاداً جازماً أن القانون الدولي لا يجوز لدولة صدقت على العهد أو انضمت إليه أو خلفت دولة أخرى فيه أن تنقض هذا العهد أو تنسحب منه<sup>(٢٢)</sup>. وفي النهاية، قدمت جمهورية كوريا الشعبية الديمقراطية في كانون الأول/ديسمبر ١٩٩٩ تقريرها الدوري الثاني<sup>(٢٣)</sup> إلى اللجنة المعنية بحقوق الإنسان الذي يفترض أنه يشمل الفترة من عام ١٩٨٤ إلى عام ١٩٩٧، ونظرت اللجنة في هذا التقرير في تموز/يوليه ٢٠٠١<sup>(٢٤)</sup>.

(١٨) A/64/319، الفقرة ٤.

(١٩) قرارات الجمعية العامة ١٩٠/٦٣ و ١٧٥/٦٤ و ١٧٤/٦٦.

(٢٠) مجموعة معاهدات الأمم المتحدة. انظر:

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en#8](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#8)

(٢١) عُيّن الإخطار والمذكرة وفق الأصول المرعية على جميع الدول الأطراف بموجب الرسالة C.N.467.1997.TREATIES-10 المؤرخة ١٢ تشرين الثاني/نوفمبر ١٩٩٧.

(٢٢) الوثيقة CCPR/C/21/Rev.1/Add.8/Rev.1: التعليق العام رقم ٢٦ للجنة المعنية بحقوق الإنسان: استمرارية الالتزامات، المعتمد خلال الدورة الحادية والستين للجنة المعقودة في ٨ كانون الأول/ديسمبر ١٩٩٧.

(٢٣) CCPR/C/PRK/2000/2، الفقرة ٢.

(٢٤) CCPR/CO/72/PRK، الفقرة ١.

٢٠- وعلاوة على ذلك، رفضت حكومة جمهورية كوريا الشعبية الديمقراطية الاعتراف بالمقرّر الخاص أو التعاون معه، واعتادت أيضاً على إبداء رفضها القاطع للقرارات التي اعتمدها لجنة حقوق الإنسان سابقاً، ومجلس حقوق الإنسان، والجمعية العامة بشأن حالة حقوق الإنسان في البلد منذ إنشاء ولاية المقرر الخاص في عام ٢٠٠٤. ومؤخراً، أعلن ممثل جمهورية كوريا الشعبية الديمقراطية أمام الجمعية العامة في ٢٠ كانون الأول/ديسمبر ٢٠١٢ عن أمور من بينها رفض حكومة بلده القاطع للقرار المتعلق بحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية، معتبراً ألا علاقة له بحالة حقوق الإنسان في البلد. وقال إنه يُمنع ارتكاب الانتهاكات المشار إليها في نص القرار. وورد أنه قال أيضاً إن نص القرار يتضمن افتراء صريحاً بشأن حالة حقوق الإنسان ويتسبب في ضغوطات على النظام الاجتماعي للبلد، وهو ما يعدّ تدخلاً في الشؤون الداخلية. واعتبر القرار عملاً سياسياً إرهابياً يقوم على مبدأ الكيل بمكيالين، وارتأى أنه ينبغي النظر بموضوعية في مسائل حقوق الإنسان في إطار الاستعراض الدوري الشامل. وقال إن الرعاية الأساسية لهذا القرار يحاولون زعزعة استقرار البلد من خلال إثارة مسائل حقوق الإنسان. وأضاف أن اعتماد القرار دون تصويت لا يعني أنه حظي بالإجماع<sup>(٢٥)</sup>.

٢١- ورفضت حكومة جمهورية كوريا الشعبية الديمقراطية كذلك جميع عروض المساعدة التقنية المقدمة إليها منذ عام ٢٠٠٣ من مفوضية الأمم المتحدة لحقوق الإنسان<sup>(٢٦)</sup>.

٢٢- وعلاوة على ذلك، لم تحدّد الحكومة، خلال اعتماد تقرير الاستعراض الدوري الشامل<sup>(٢٧)</sup> في كانون الأول/ديسمبر ٢٠٠٩، التوصيات التي حظيت بدعمها. وهي أول دولة لم تقبل أي توصية من التوصيات المقدمة إليها ومجموعها ١٦٧ توصية. فقد رفض الوفد ٥٠ توصية مقدمة في تقرير الفريق العامل ولم يردّ على ١١٧ توصية. ولهذا السبب، أعربت الجمعية العامة عن قلقها الشديد إزاء "رفض حكومة جمهورية كوريا الشعبية الديمقراطية تحديد التوصيات التي وافقت عليها في ختام الاستعراض الدوري الشامل الذي أجراه مجلس حقوق الإنسان"، وعن أسفها "لعدم اتخاذ إجراءات من أجل تنفيذ التوصيات الواردة في الوثيقة الختامية حتى الآن"<sup>(٢٨)</sup>.

(٢٥) A/67/PV.60، انظر النشرة الإخبارية الواردة في الموقع الإلكتروني التالي:

<http://www.un.org/News/Press/docs/2012/ga11331.doc.htm>. انظر أيضاً المحاضر الموجزة للجنة الثالثة ومنها مثلاً A/C.3/67/SR/38؛ A/C.3/67/SR/45؛ A/C.3/67/SR/46؛ انظر أيضاً المذكرات الموجهة من البعثة الدائمة لجمهورية كوريا الشعبية الديمقراطية إلى رئيس مجلس حقوق الإنسان A/HRC/19/G/1؛ A/HRC/16/G/2؛ A/HRC/13/G/7؛ A/HRC/10/G/6؛ A/HRC/7/G/3؛ A/HRC/5/G/5.

(٢٦) انظر مثلاً الوثيقة E/CN.4/2005/G/13: رسالة موجهة في ٢٨ شباط/فبراير ٢٠٠٥ من الممثل الدائم لجمهورية كوريا الشعبية الديمقراطية إلى المفوض السامي لحقوق الإنسان لرفض عرض المساعدة التقنية.

(٢٧) A/HRC/13/13، تقرير الفريق العامل المعني بالاستعراض الدوري الشامل: جمهورية كوريا الشعبية الديمقراطية.

(٢٨) قرار الجمعية العامة ٦٥/٢٢٥، الفقرة ١(ج).

٢٣- وفي عام ٢٠٠٨، أشار المقرر الخاص إلى تحمل "السلطات الوطنية والمجتمع الدولي مسؤولية معالجة عامل الإفلات من العقاب الذي سمح بوجود هذه الانتهاكات و/أو باستمرارها لمدة طويلة"<sup>(٢٩)</sup>. وصرّح قائلاً في عام ٢٠١٠ إن السلطات الوطنية ما دامت "غير قادة أو غير راغبة في [...] هذه المسألة"<sup>(٣٠)</sup>، فللمجتمع أن يضغط من أجل المزيد من المساءلة، سواء من حيث مسؤولية الدولة و/أو المسؤولية الجنائية الفردية. وأفاد المقرر الخاص في عام ٢٠١١ بأن المحكمة الجنائية الدولية شرعت في "بحث ما إذا كان هناك ما يمثل جريمة مشمولة باختصاصها تكمن في إغراق "تشيونان"، وهي سفينة حربية تابعة لجمهورية كوريا، أصابها توريب يدعي أنه أُطلق عليها في ٢٦ آذار/مارس ٢٠١٠ من غواصة تابعة لجمهورية كوريا الشعبية الديمقراطية، ما تسبب في موت ٤٦ شخصاً، وكذلك عند قصف جزيرة ييونبيونغ في ٢٣ تشرين الثاني/نوفمبر ٢٠١٠، ما أدى إلى مقتل مدنيين وجرح أشخاص آخرين كثيرين. ويفسح نظر المحكمة في الحادثين المجال لبحث قضية المساءلة عن جرائم أخرى زعم أن جمهورية كوريا الشعبية الديمقراطية ارتكبتها، ومنها مسألة الاختطاف"<sup>(٣١)</sup>.

٢٤- وضمن الخيارات المتاحة لمعالجة موضوع المساءلة والإفلات من العقاب، تساءل المقرر الخاص في عام ٢٠١٠، "إلى أي مدى يمكن التقدم إلى المحكمة الجنائية الدولية لهذا الغرض، على أساس مسؤولية جنائية فردية وما يتصل بها من أن البلد المعني ليس طرفاً في نظام روما الأساسي للمحكمة الجنائية الدولية"<sup>(٣٢)</sup>. وفي عام ٢٠١٠، أشار المقرر الخاص إلى وجود خيارات أخرى تتمثل في "إمكانية النظر في الموضوع من جانب مجلس الأمن بصفة مباشرة وتشكيل لجنة تحقيق في الجرائم ضد الإنسانية"<sup>(٣٣)</sup>. ودعا أيضاً المجتمع الدولي إلى "أن يُعالج مسألة الإفلات من العقاب من عدة زوايا، سواء من حيث مسؤولية الدولة و/أو المسؤولية الجنائية الفردية، وتمكين مجموع منظومة الأمم المتحدة، وخصوصاً مجلس الأمن، وفروعها، مثل المحكمة الجنائية الدولية، في اتخاذ تدابير لمنع الانتهاكات الصارخة، وحماية الشعب من الوقوع ضحية وتوفير الإنصاف الفعال"<sup>(٣٤)</sup>.

٢٥- ويرى المقرر الخاص أن أنماط الانتهاكات التسعة المذكورة في التقرير يمكن اعتبار جملها، إن لم يكن كلها، جرائم في حق الإنسانية مرتكبة في إطار اعتداءات منهجية و/أو واسعة النطاق على المدنيين، وذلك بموجب الفقرة ١ من المادة ٧ من نظام روما الأساسي

(٢٩) A/HRC/7/20، الفقرة ٤٣.

(٣٠) A/HRC/13/47، الفقرة ٥٨.

(٣١) A/HRC/16/58 الفقرة ١٤. انظر أيضاً تقرير المحكمة الجنائية الدولية بشأن أنشطة البحث الأولية، ٢٠١٢، الفقرات من ٦٤ إلى ٧٤ - ٧٤- C433C462-7C4E-4358-8A72- (http://www.icc-cpi.int/NR/rdonlyres/C433C462-7C4E-4358-8A72-8D99FD00E8CD/285209/OTP2012ReportonPreliminaryExaminations22Nov2012.pdf)

(٣٢) A/HRC/13/47، الفقرة ٥٩.

(٣٣) A/HRC/13/47، الفقرة ٥٨.

(٣٤) A/HRC/13/47، الفقرة ٨٩(هـ).

للمحكمة الجنائية الدولية، وبخاصة (أ) القتل؛ و(ج) الاسترقاق؛ و(هـ) السجن أو الحرمان الشديد على أي نحو آخر من الحرية البدنية بما يخالف القواعد الأساسية للقانون الدولي؛ و(و) التعذيب؛ و(ح) اضطهاد أية جماعة محددة أو مجموعة بعينها من السكان لأسباب سياسية أو دينية؛ و(ط) الاختفاء القسري للأشخاص؛ و(ك) الأفعال اللاإنسانية الأخرى ذات الطابع المماثل التي تتسبب عمداً في معاناة شديدة أو في أذى خطير يلحق بالجسم أو بالصحة العقلية أو البدنية.

٢٦- ويعدّ الحق في عدم التعرض للتعذيب حقاً غير قابل للتقييد بموجب المادة ٧ من العهد الدولي الخاص بالحقوق المدنية والسياسية الذي تعدّه جمهورية كوريا الشعبية الديمقراطية من أطرافه.

٢٧- وبالمثل، تساوي القواعد القطعية للقانون الدولي بين الاختفاء القسري والتعذيب. ويلاحظ المقرر الخاص أن الاختفاء القسري قد ينطوي على انتهاكات عديدة ومختلفة لحقوق الإنسان مثل حرية التنقل، أو حرية الشخص وأمنه، أو عدم التعرض للتعذيب أو للمعاملة القاسية أو اللاإنسانية أو المهينة، أو حتى الحق في الحياة، وهو ينتهك من ثم العديد من أحكام العهد الدولي الخاص بالحقوق المدنية والسياسية. ويشير أيضاً إلى أن الاختفاء القسري، بما فيه اختطاف رعايا بلدان أجنبية مثل جمهورية كوريا واليابان على يد أفراد تابعين لجمهورية كوريا الشعبية الديمقراطية، قد يعادل جرائم في حق الإنسانية طبقاً للفقرتين (١) و(٢) من المادة ٧ من نظام روما الأساسي، بما أنه يجري ضمن اعتداء منهجي أو واسع النطاق على مجموعة من السكان المدنيين. وفي هذا الصدد، يجدر التشديد على أن الاختفاء القسري (سواء أكان يعادل جريمة في حق الإنسانية أم لا) يظل قائماً إلى حين الحصول على توضيحات بشأن مصير الضحية، فلا يسري عليه أصلاً حكم التقادم.

٢٨- ويرى المقرر الخاص أن من الممكن وصف الانتهاكات الجسيمة لحقوق الإنسان في معسكرات الاعتقال، (أو) حتى مجرد وجود هذه المعسكرات، حيث يعيش السجناء السياسيون في ظروف تشبه الاسترقاق، بأنها جرائم في حق الإنسانية، وذلك بموجب الفقرتين الفرعيتين (ج) الاسترقاق، و(هـ) السجن أو الحرمان الشديد على أي نحو آخر من الحرية البدنية، وهو ما يعدّ انتهاكاً للقواعد الأساسية للقانون الدولي المنصوص عليها في الفقرة ١ من المادة ٧ من نظام روما الأساسي. وهو يشير أيضاً إلى أن الطابع اللاإنساني البالغ القسوة لظروف عيش المحتجزين في معسكرات الاعتقال السياسي ولعاملتهم قد تترتب عليه جرائم في حق الإنسانية، بما في ذلك على أساس جميع الأفعال المحددة المنصوص عليها في الفقرة ٢٥ أعلاه.

٢٩- وفي ٣ نيسان/أبريل ٢٠١٢ قدّم التحالف الدولي لإيقاف جرائم الحرب في كوريا الشمالية<sup>(٣٥)</sup>، وهو تحالف يضم ٤٠ منظمة غير حكومية دولية، التماساً<sup>(٣٦)</sup> إلى المكلفين

(٣٥) انظر [http://www.stopnocrimes.org/about\\_01.php](http://www.stopnocrimes.org/about_01.php)

(٣٦) انظر <http://www.fidh.org/The-International-Coalition-to>

بولايات في إطار الإجراءات الخاصة لمجلس حقوق الإنسان فيما يتعلق بإيداع السجناء السياسيين في معسكرات العمل ونمط انتهاكات حقوق الإنسان المرتكبة في هذه المعسكرات. ونوقشت هذه الانتهاكات باستفاضة في مذكرة معنونة "وضع المحتجزين في نظام معسكرات العمل بجمهورية كوريا الشعبية الديمقراطية". وقدّم التحالف حملة من التوصيات شملت اتخاذ المجتمع الدولي تدابير فعالة لتخفيف معاناة معتقلي هذه المعسكرات الذين يتراوح عددهم بين ١٥٠.٠٠٠ و ٢٠٠.٠٠٠ معتقل؛ وقيام الأمم المتحدة، من خلال الجمعية العامة أو مجلس حقوق الإنسان، بإنشاء لجنة للتحقيق في الجرائم المرتكبة في حق الإنسانية في جمهورية كوريا الشعبية الديمقراطية بغرض مساءلة الدولة والأفراد المذنبين عن الجرائم المستمرة. وبناءً على هذا الالتماس، قام خمسة مكلفين بولايات في إطار الإجراءات الخاصة، هم المقرر الخاص المعني بحقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية، والمقرر الخاص المعني بحالات الإعدام خارج القضاء أو بإجراءات موجزة أو تعسفاً، والمقرر الخاص المعني بمسألة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة، والفريق العامل المعني بالاحتجاز التعسفي، والفريق العامل المعني بحالات الاختفاء القسري أو غير الطوعي، بتوجيه رسالة ادّعاء إلى حكومة جمهورية كوريا الشعبية الديمقراطية في ٣ تشرين الأول/أكتوبر ٢٠١٢ بشأن مزاعم إيداع السجناء السياسيين في معسكرات العمل. وإلى حين كتابة هذا التقرير، لم يستلم المكلفون بولايات أي ردّ من الحكومة بهذا الشأن.

٣٠- ويرى المقرر الخاص أنه يتعين على المجتمع الدولي بموجب التزاماته في مؤتمر قمة عام ٢٠٠٥ أن يستخدم ما تتيحه الأمم المتحدة من السبل السلمية اللازمة للمساعدة على حماية السكان في جمهورية كوريا الشعبية الديمقراطية من الجرائم في حق الإنسانية<sup>(٣٧)</sup>. وهو يرى أنه يتعين على المجتمع الدولي أن يقوم، كحد أدنى ووفقاً لممارسة ناشئة في حالات بلدان أخرى ترتكب فيها انتهاكات جسيمة ومنهجية وواسعة النطاق، بتحمل مسؤولية إجراء تحقيق دولي مستقل ومحايّد في الحالات التي توحى بحدوث جرائم في حق الإنسانية في بلد ما، وبأن هذا البلد لا يجري تحقيقات فعالة ومستقلة ومحايّدة. وفي العادة، يصعب على البلد أن يضع بمفرده حداً للجرائم المرتكبة في حق الإنسانية ولهذا يتيح التدقيق الإضافي من خلال إجراء تحقيق دولي تديراً حمائياً، خاصة عندما يقترن بتوقعات إجراء تحقيقات جنائية في المستقبل وما قد تنطوي عليه هذه التوقعات من تأثير زجري على الجناة الأفراد.

(٣٧) قرار الجمعية العامة ١/٦٠، الفقرة ١٣٩.

## خامساً - الاستنتاجات والتوصيات

٣١- يشير استعراض وثائق الأمم المتحدة المتعلق بحالة حقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية منذ عام ٢٠٠٤ إلى ضرورة إنشاء آلية تحقيق وتزويدها بما يكفي من الموارد لتقصي الانتهاكات الجسيمة والمنهجية والواسعة النطاق لحقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية وتوثيقها على نحو أكمل، وتقديم تقارير بشأنها إلى مجلس حقوق الإنسان والجمعية العامة. وينبغي أن يشمل التحقيق بحث قضايا المساءلة المؤسسية والشخصية عن هذه الانتهاكات، لا سيما عندما تعادل جرائم في حق الإنسانية، وأن يُفضي إلى تقديم التوصيات المناسبة إلى سلطات جمهورية كوريا الشعبية الديمقراطية والمجتمع الدولي من أجل اتخاذ المزيد من الإجراءات في ضوءها. ويمكن أن يشمل التحقيق ما يلي:

(أ) إجراء تحليل أكثر تفصيلاً لما يورده هذا التقرير من انتهاكات جسيمة ومنهجية وواسعة النطاق لحقوق الإنسان في جمهورية كوريا الشعبية الديمقراطية، من خلال جمع وتوثيق شهادات الضحايا وروايات الناجين والشهود والجناة؛

(ب) إعداد وثائق أكثر تفصيلاً بشأن أوسع انتهاكات حقوق الإنسان الصارخة المرتكبة في جمهورية كوريا الشعبية الديمقراطية، وبخاصة تعميق البحث في ممارسة التعذيب والاحتجاز التعسفي بصورة منهجية وعلى نطاق واسع، وبشأن جميع الانتهاكات المرتكبة في معسكرات الاعتقال وحالات اختطاف رعايا البلدان الأجنبية؛

(ج) تعميق البحث في مسألة التمييز الممارس في سياق الحرمان العام من حقوق الإنسان والحريات الأساسية وانتهاكها، بما يشمل قضايا الحصول على الغذاء وتقييد حرية التنقل وحرية التعبير والاعتقال التعسفي والتعذيب؛

(د) إجراء بحث مفصل وتحليل قانوني بشأن ارتكاب جرائم في حق الإنسانية في جمهورية كوريا الشعبية الديمقراطية وتنفيذ اعتداءات على الرعايا الأجانب من قبيل المختطفين؛

(هـ) تعميق البحث في موضوع مساءلة جمهورية كوريا الشعبية الديمقراطية بالنظر إلى تفشي الإفلات من العقاب وغياب التعاون بين الحكومة وآليات الأمم المتحدة لحقوق الإنسان على امتداد عشر سنوات.

٣٢- ويؤكد المقرر الخاص أيضاً جميع التوصيات المقدمة إلى حكومة جمهورية كوريا الشعبية الديمقراطية في تقاريره المقدمة إلى مجلس حقوق الإنسان والجمعية العامة.

## Annexes

### Annex I

[English only]

## Analysis of patterns of human rights violations in the Democratic People's Republic of Korea, documented by the United Nations through its reports and resolutions since 2004

### A. Violation of the right to food

1. The right to food in the Democratic People's Republic of Korea is the human rights issue that has been extensively documented by the United Nations. The question of access to food, food distribution and humanitarian food assistance is dealt with in all resolutions of the Human Rights Council and the General Assembly and all reports by the Special Rapporteur and the Secretary-General.

2. The Secretary-General has consistently highlighted his particular concern about the severity of the food situation the country is facing and its impact on the economic, social and cultural rights of the population.<sup>1</sup> A number of actors within the United Nations system have highlighted that even if the food shortage was caused by natural disasters, the root causes are due to the mismanagement on the part of the authorities. The Special Rapporteur noted, "Even where there are natural disasters afflicting the general population, the root causes are often man-made, and it is the regime in power which shares responsibility for this."<sup>2</sup> The Human Rights Council has expressed deep concern "at the continuing reports of systematic, widespread and grave violations of...economic, social and cultural rights in the Democratic People's Republic of Korea."<sup>3</sup>

3. The Special Rapporteur stressed that the issue is not simply lack of food for the population, but rather the **manipulative control of food distribution by the regime**. He noted, "The authorities seek to control the food distribution process as a means of controlling the population and making them dependent on the regime."<sup>4</sup>

4. In 2002, the Government took various measures to open the door to quasi-market activities (the new Economics Management Improvement Measures Policy), 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 (PDS) was seen as non-functional, and people were given additional wages to fend for themselves. In 2005, for fear of losing their grip on the population, the authorities started to impose the PDS 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.<sup>5</sup>

<sup>1</sup> A/63/332, para 6

<sup>2</sup> A/64/224, para 66

<sup>3</sup> A/HRC/RES/7/15

<sup>4</sup> A/64/224, para 66

<sup>5</sup> A/64/224, para 16



5. Economic activities, particularly by women, were severely curtailed in the period of 2007-2008, when the authorities prohibited women under 40 years of age from trading; the age was subsequently raised to 49.<sup>6</sup>

6. In 2008, it was reported 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.<sup>7</sup>

7. At the end of 2008, the authorities planned to reduce the frequency of the trade at open markets to once a month. The authorities were also reportedly closing general markets and transforming them into farmers' markets, with a ban on rice sales.<sup>8</sup>

8. In 2009, it was reported that small-lot and small-patch farming would be prohibited.<sup>9</sup>

9. Moreover, the Special Rapporteur has stressed the discriminatory nature of food policies, noting the great disparity between access by the elite to food and other necessities and access by the rest of the population to the wherewithal of life. He has concluded that food aid is provided by the Government in violation of the principle of non-discrimination.<sup>10</sup> He has also stressed that the **excessive expenditure by the authorities on its defence sector**, based upon the country's "military-first" policy causes serious distortions in the national budget and its use of national resources. The Special Rapporteur considers this a key impediment to the country's development process as well as the right to food and life and other rights.

10. The Special Rapporteur has expressed particular concern **about those most vulnerable** to food insecurity, like children, pregnant and lactating women, the elderly and people with disabilities. In 2004 an extensive food and nutrition survey carried out by United Nations agencies in cooperation with the Democratic People's Republic of Korea revealed that while the situation of children had improved on some fronts in regard to malnutrition, the situation of women had not improved: some one third of mothers were found to be malnourished and anaemic, which obviously affected children's malnutrition.<sup>11</sup>

11. The United Nations has also consistently highlighted the problem of **access of humanitarian assistance**.<sup>12</sup> In 2004, the Government started to accept foreign food aid to alleviate the chronic situation. However, 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<sup>13</sup>. There was a further obstacle in July 2006 due to the missile tests launched by the Government in the face of global opposition. This event had a negative impact on the food situation of the country, since it caused various contributors of humanitarian aid to discontinue providing that aid.<sup>14</sup>

12. Concurrently, matters became more complicated due to devastating floods that caused substantial damage and loss of lives in July and August 2006. These disasters

<sup>6</sup> A/64/224, para 17

<sup>7</sup> A/64/224, para 17

<sup>8</sup> A/HRC/10/18, para 15; A/64/224, para 18

<sup>9</sup> A/HRC/10/18, para 15

<sup>10</sup> A/HRC/7/20, paras 15-23

<sup>11</sup> A/60/306, para 38

<sup>12</sup> See General Assembly Resolutions: A/RES/61/174, A/RES/62/167, A/RES/63/190, A/RES/64/175, A/RES/66/174; see also Human Rights Council resolutions: A/HRC/RES/10/16, A/HRC/RES/13/14, A/HRC/RES/16/8, A/HRC/RES/19/13

<sup>13</sup> E/CN.4/2006/35 paras 4-5; A/61/349

<sup>14</sup> A/61/349

pressured the authorities to reopen the country to outside aid.<sup>15</sup> Owing to this humanitarian crisis, some of the contributors of humanitarian aid changed their position and resumed provision of aid, particularly at the bilateral level. However, the Special Rapporteur noted that the World Food Programme (WFP) monitoring showed that progressive cuts had led to rations of 150 grams of cereals per person per day in June 2008, down from 450 grams in early 2008.<sup>16</sup>

13. According to the Special Rapporteur, in 2009 the aid situation became more desperate.<sup>17</sup> Although in 2008, the offer by the United States of America of some 500,000 tons of food aid over a 12-month period was accepted by the country, and a group of United States (US) non-governmental organizations (NGOs) were permitted access to the country to help with the delivery, at the beginning of 2009, the country stopped accepting US aid and asked all the NGOs to leave. The Special Rapporteur noted that this was the result of “the authority’s unease with the monitoring of the food aid process and the use of Korean interpreters from outside the country.”<sup>18</sup>

14. In 2009, the Secretary-General took note of a range of reports indicated that the authorities had blocked access to alternative sources of food by forbidding kitchen farming in private households and closing down markets where food items were traded. In 2009, the Secretary-General concluded that the Democratic People’s Republic of Korea was **failing to fulfil its obligations under international human rights law to protect the right to adequate food.**<sup>19</sup>

15. In March 2011, a United Nations survey found that more than six million vulnerable people urgently required international food assistance. In a report, released in November 2011, by the Food and Agriculture Organization (FAO) and WFP showed that many of the factors behind the shortage of food, including the adverse weather conditions, underdevelopment and structural problems, in the Democratic People’s Republic of Korea had intensified.<sup>20</sup>

16. Moreover, in December 2011, the General Assembly noted a deterioration of the situation and expressed its “very deep concern at the precarious humanitarian situation including a serious deterioration in the availability of and access to food, in the country, partly as a result of frequent natural disasters, compounded by structural weakness in agricultural production resulting in significant shortages of food, and the increasing State restrictions on the cultivation and trade in foodstuffs, as well as the prevalence of chronic and acute malnutrition, particularly among the most vulnerable groups, pregnant women, infants and the elderly, which, despite some progress, continues to affect the physical and mental development of a significant proportion of children.”<sup>21</sup>

### **Recommendations on the right to food**

17. Since 2008, the Human Rights Council in its various resolutions has urged “the Government of the Democratic People’s Republic of Korea to ensure safe and unhindered

<sup>15</sup> E/CN.4/2006/35 paras 4-5; A/61/349.

<sup>16</sup> A/63/332, para 30

<sup>17</sup> A/64/224

<sup>18</sup> A/64/224, para 13

<sup>19</sup> A/64/319, para 8

<sup>20</sup> A/HRC/19/65, para 23

<sup>21</sup> A/RES/66/174, para 3

access of humanitarian assistance that is delivered impartially on the basis of need, in accordance with humanitarian principles.”<sup>22</sup>

18. The Special Rapporteur emphasized 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 [to] the shortage of food.” He also called on the Government to reduce military/defence expenditure and ensure equitable re-allocation of resources to respond effectively to the food crisis and other areas needing development.<sup>23</sup>

19. The Special Rapporteur stressed that the human rights obligations of the Democratic People’s Republic of Korea are in no sense contingent on the provisions of external humanitarian assistance by the international community, but merely an impetus for emergency response.<sup>24</sup>

20. Finally, he further recognized that it is important to ensure such aid distribution reaches the neediest population and in line with the long-standing United Nations policy of “no access, no aid,” which needs to be respected by all States receiving aid.<sup>25</sup>

## B. Torture and inhuman treatment

21. General Assembly resolutions adopted between 2006 and 2012 highlighted “torture and other cruel, inhuman or degrading treatment or punishment” among several systemic, widespread and grave violations of human rights in the Democratic People’s Republic of Korea. Moreover, the General Assembly made specific reference to punishments inflicted on citizens of the Democratic People’s Republic of Korea who have been repatriated from abroad, “such as treating their departure as treason, **leading to punishments of internment, torture, cruel, inhuman or degrading treatment** or the death penalty” (emphasis added).<sup>26</sup> The Human Rights Council deplored “the use of torture...against political prisoners and repatriated citizens of the Democratic People’s Republic of Korea”.<sup>27</sup>

22. In 2007, the Special Rapporteur stressed that there are continuing reports of violence against the human person committed by State authorities, such as torture, public executions, and persecution of political dissidents.<sup>28</sup>

23. In 2008, the Secretary-General expressed his serious concern at the fact that reports emanating from the country “continue to indicate trends of torture, inhumane conditions of detention, public execution, ill-treatment of refugees or asylum-seekers repatriated from abroad.”<sup>29</sup> The same year, in his report to the General Assembly, the Special Rapporteur stated that an “overhaul of the prison system is long overdue, and the harsh conditions imposed by the criminal justice system and related detention give rise to a plethora of abuses, including torture and cruel, inhuman and degrading treatment. The abuses are ubiquitous, and include degrading treatment of deceased persons.”<sup>30</sup>

<sup>22</sup> A/HRC/RES/10/16, A/HRC/RES/13/14, A/HRC/RES/16/8, A/HRC/RES/19/13

<sup>23</sup> A/HRC/19/65, para 26

<sup>24</sup> A/HRC/19/65, para 58

<sup>25</sup> A/HRC/19/65, para 58

<sup>26</sup> A/RES/60/173; A/RES/61/174; A/RES/62/167; A/RES/63/190; A/RES/64/175; A/RES/66/174

<sup>27</sup> A/HRC/RES/10/16; A/HRC/RES/13/14; A/HRC/RES/16/8; A/HRC/RES/19/1

<sup>28</sup> A/HRC/4/15

<sup>29</sup> A/63/332; A/65/391.

<sup>30</sup> A/63/322, para 31

24. In 2009, the Special Rapporteur highlighted that although torture is prohibited by law, it is extensively practised in the Democratic People's Republic of Korea.<sup>31</sup> He quoted from the White Paper on Human Rights in North Korea, a document<sup>32</sup> produced by the Korean Bar Association that documents violations, including cases of torture practised against women who are returned to the Democratic People's Republic of Korea: "Female repatriates suffer what is called 'pumping' torture, which is a common sexual torture to find money hidden inside a woman's vagina. Women who face this torture are stripped of their clothing, and their arms are tied behind their backs. Then they squat and stand repeatedly until they lose consciousness. It maximizes the sense of shame in women ... Assault against pregnant women is also routinized, and wrapping the forcibly aborted baby's face with plastic to [induce] death is known [in] frequent occurrences."<sup>33</sup>

25. In 2011, in his report to the Human Rights Council<sup>34</sup>, the Special Rapporteur analysed the situation of human rights in detention and correctional facilities. He noted he had learned from various sources that human rights violations are committed in all correctional centres: "Correctional officers sometimes beat inmates, but it is understood that more often it is the inmates who would beat up other inmates upon instruction from the officers."<sup>35</sup>

26. While in Japan on 25-28 January 2011 and the Republic of Korea on 22-26 November 2010, the Special Rapporteur heard some graphic stories of the conditions and treatment of the detainees in various camps in the Democratic People's Republic of Korea. He noted that "some of the most flagrant human rights violations, such as torture and detention without due process of law, are reported to be perpetrated in these camps."<sup>36</sup>

27. The Secretary-General noted in 2012 that some reports also indicate the existence of prison camps where torture and execution are widespread.<sup>37</sup>

28. A joint urgent appeal was sent on 24 February 2012 by 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 Working Group on Arbitrary Detention, raising concerns about the arrest of a group of 31 citizens of the Democratic People's Republic of Korea in a neighbouring country and fears regarding their possible refoulement to the Democratic People's Republic of Korea. It had been alleged that, if repatriated, the individuals would be subjected to detention, torture and execution as illegal border crossers.<sup>38</sup>

### **Recommendations on torture and inhuman treatment**

29. During the Universal Periodic Review of the Democratic People's Republic of Korea in December 2009, several Member States recommended that the Government of the ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.<sup>39</sup> Moreover, in several of his reports, the Special

<sup>31</sup> A/HRC/10/18, para 24

<sup>32</sup> Kim Tae-Hoon, "Human rights for the socially marginalized class", in White Paper on Human Rights in North Korea, Korean Bar Association, p. 431

<sup>33</sup> A/64/224, para 58

<sup>34</sup> A/HRC/16/58

<sup>35</sup> A/HRC/16/58, para 53

<sup>36</sup> A/HRC/16/58, para 56

<sup>37</sup> A/67/362, para 14

<sup>38</sup> A/67/362, para 25

<sup>39</sup> See for example A/65/391, para 43; and Universal Periodic Review documents [<http://www.ohchr.org/EN/HRBodies/UPR/Pages/KPSession6.aspx>]

Rapporteur called upon the Government to reform the prison system in order to prevent torture and to end public executions.<sup>40</sup>

### C. Arbitrary detention

30. In 2004 and 2005, the Commission on Human Rights identified arbitrary detention as part of a continuing pattern of “systemic, widespread and grave violations of human rights in the Democratic People’s Republic of Korea.”<sup>41</sup> General Assembly resolutions adopted between 2006 and 2012 highlighted, among several systemic, widespread and grave violations of human rights, “extrajudicial and arbitrary detention; the absence of due process and the rule of law, including fair trial guarantees and an independent judiciary,” expressing its serious concern.

31. In 2006, the Special Rapporteur stressed that the judicial system lacks independence and is heavily influenced by the regime in power. In addition to the opaque nature of the ordinary courts, there is a parallel quasi-penal regime which does not comply with rule of law guarantees such as judicial independence, natural justice, respect for the rights of the accused and access to lawyers.<sup>42</sup>

32. Moreover, in 2009 the Special Rapporteur highlighted that “...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.”<sup>43</sup>

33. In his 2009 report to the Human Rights Council, the Special Rapporteur qualified many punishments applied in the Democratic People’s Republic of Korea as “totally unreasonable and abusive”<sup>44</sup>. The Special Rapporteur noted, for instance, “students are reported to have been sent to labour training (re-education and forced labour) for watching South Korean dramas. 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.”<sup>45</sup>

34. The United Nations documentation has highlighted that a number of constitutional and legislative provisions seriously endanger the impartiality and independence of the judiciary in the Democratic People’s Republic of Korea. Moreover, some articles in the Criminal Code are either not in line with international standards or contain terms that are not defined or are vague, thus allowing scope for misinterpretation and abuse by the State.

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<sup>40</sup> A/62/264; A/64/224; A/HRC/10/18; A/HRC/13/47

<sup>41</sup> E/CN.4/RES/2004/13, para 13; E/CN.4/RES/2005/11, para 1

<sup>42</sup> A/61/349, para 15

<sup>43</sup> A/HRC/10/18, para 25

<sup>44</sup> A/HRC/10/18, para 23

<sup>45</sup> A/HRC/10/18, para 23

35. In his 2007 report to the Human Rights Council,<sup>46</sup> the Special Rapporteur had noted that there are a large number of provisions concerning anti-State activities that give rise to concern due to their excessively broad scope and the way that the authorities might use such provisions to repress political dissent. He noted for instance that there are “14 types of anti-State, anti-people crimes; 16 types of crimes of disturbing the national defence system; 104 types of crimes of injuring the socialist economy; 26 types of crimes of injuring the socialist culture; 39 types of crimes of injuring administrative systems; and 20 types of crimes of harming socialist collective life. Several may be punished with the death sentence.”<sup>47</sup>

36. In 2012, the Special Rapporteur stressed that a number of 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.<sup>48</sup> A number of provisions of the Criminal Code also stipulate punishment for acts that would not normally warrant criminal liability.<sup>49</sup> All these provisions can be the basis for arbitrary.

37. One particularly worrying practice, widely documented by the United Nations, is detention due to **guilt by association**: when a person is punished for a political or ideological crime, members of his or her family are also punished. As early as 2005, the Special Rapporteur had denounced forms of collective punishment based upon ‘guilt by association.’ The Special Rapporteur noted that this practice “has both horizontal and vertical impact – horizontal in that it leads to the persecution of immediate family members and vertical in that it may lead to the stigmatization of subsequent generations, given that the authorities keep records of families as part of the iron grip on the population.”<sup>50</sup>

38. Political prison camps are another issue of serious concern. In 2011, the Special Rapporteur stated that in Kwalinso 15 and Yodok camps, thousands of people are believed to be held by reason of “guilt by association.” The majority of such people reportedly do not seem to know the reasons for their imprisonment or what crimes they are accused of.<sup>51</sup>

39. Several United Nations reports also document the detention of the citizens of the Democratic People’s Republic of Korea, who return to their country after deportation, including victims of trafficking, in violation of their rights. In a joint urgent appeal by several Special Rapporteurs, it was stated that according to the information received, nationals of the Democratic People’s Republic of Korea commit a criminal offence if they leave the country without official permission, punishable by up to two years in a labour training camp (*nodongdanryundae*) or a detention centre (*jipkyulso*), in grave cases up to three years. Defection to a foreign country or to the enemy in betrayal of the country and the people is also a criminal offence punishable by no less than five years of detention in a political labour camp (*kwanliso*) or a re-education labour camp (*kyohwaso*).<sup>52</sup> The 2012 report of the Special Rapporteur to the General Assembly notes that article 233 of the

<sup>46</sup> A/HRC/4/15

<sup>47</sup> A/HRC/4/15, para 12

<sup>48</sup> A/HRC/19/65, para 34

<sup>49</sup> A/67/370, para 29

<sup>50</sup> A/60/306, para 19

<sup>51</sup> A/66/322, paras 60-63

<sup>52</sup> E/CN.4/2006/52/Add.1, paras 62-65, joint urgent appeal sent by the Special Rapporteurs on the Independence of judges and lawyers; Freedom of religion or belief; Torture; Trafficking; Violence Against Women; and the Democratic People’s Republic of Korea

Criminal Code foresees up to five years of labour for anyone illegally crossing the border of the Democratic People's Republic of Korea, which is in contravention to the right to freedom of movement.<sup>53</sup>

40. The United Nations has clearly identified arbitrary detention as a widespread, systematic and grave form of abuse occurring in the Democratic People's Republic of Korea. Political prison camps are said to have as many as 200,000 prisoners and citizens are routinely imprisoned for acts that should not be punishable by law, including for leaving their own country.

#### **Recommendations on arbitrary detention**

41. The Special Rapporteur has consistently called on the Government to release political prisoners, particularly those imprisoned for guilt by association.<sup>54</sup>

42. The Special Rapporteur has called on the Democratic People's Republic of Korea to repeal provisions in its legislation that run counter to international standards, in particular within the Criminal Code.<sup>55</sup>

43. The Special Rapporteur has recommended that the Democratic People's Republic of Korea guarantee personal security and freedoms by, among others, reforming the justice 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.<sup>56</sup>

44. The General Assembly and the Human Rights Council have made repeated calls for the authorities of the Democratic People's Republic of Korea to stop subjecting returnees to the country to any kind of punishment, including detention.<sup>57</sup>

### **D. Prison camps**

45. Many United Nations entities have decried the use of prison camps in the Democratic People's Republic of Korea, ranging from the General Assembly and the Human Rights Council to the Secretary-General and the Special Rapporteur.

46. The General Assembly, in its resolutions adopted between 2006 and 2012 on the Democratic People's Republic of Korea highlighted, among several **systemic, widespread and grave violations** of human rights, "the existence of a large number of prison camps and the extensive use of forced labour," expressing its serious concern.<sup>58</sup>

47. The Commission on Human Rights and the Human Rights Council "expressed very serious concern" at the use of prison camps in their annual resolutions from 2003 to 2012.<sup>59</sup> In 2009, the Human Rights Council deplored the grave, widespread and systematic human rights abuses in the country and in particular the use of torture and labour camps for

<sup>53</sup> A/67/370

<sup>54</sup> A/66/322, paras 62, 71

<sup>55</sup> A/67/370, para 68

<sup>56</sup> A/HRC/13/47, para 88 (b) (iv)

<sup>57</sup> A/RES/66/174; A/RES/65/225; A/RES/64/175; A/64/224, para 73(a) (ii); A/63/322, para 62(a) (ii); A/HRC/13/47, para. 88 (a) (iii)

<sup>58</sup> For example, A/RES/67/181; A/RES/66/174

<sup>59</sup> E/CN.4/RES/2003/10

“political prisoners and repatriated citizens of the Democratic People’s Republic of Korea.”<sup>60</sup>

48. In 2007, the Special Rapporteur referred to the existence of a large variety of detention centres ranging from those for political dissidents to those for criminals, as well as re-education camps and forced labour camps. He noted the various denominations of these centres including gwanliso (political labour camp), gyohwaso (long-term prison labour camp), jipgyulso (detention facility) and rodongdanryundae (labour facility).<sup>61</sup>

49. In 2009, the Special Rapporteur underlined his concern at the use of unreasonable and abusive punishments, and noted in his reports to the Human Rights Council and the General Assembly that there are allegations of public and secret executions in political detention camps.<sup>62</sup> In February 2010, the Special Rapporteur indicated that “different sources indicate a conglomeration of huge camps for political prisoners and their families, who are often held there in perpetuity.” These included Kaecheon, Yodok, Hwasong, Bukchang, Hoeryong, Chonjin are some of the camps of infamy.<sup>63</sup>

50. In March 2010, the Special Rapporteur sent a letter to the Government of the Democratic People’s Republic of Korea regarding conditions in six prison camps and detention centres for political detainees, raising concerns about allegations of forced labour and limited access to basic necessities, such food, shelter, clothing, sanitation and medical treatment. He noted the allegation that the camps hold a large number of persons who have been detained for expressing political opinions, defecting or engaging in acts against the Government, or who are family members of accused persons. In a letter dated 31 March 2010, the Government responded to the Special Rapporteur’s communication by simply stating that it did not recognize his mandate. The Government also stated that since it believed that the communication was based on fabricated information, it saw no need to comment on its substance.<sup>64</sup>

51. In his report to the Human Rights Council in 2011, the Special Rapporteur dealt with the question of detention centres and political prisons in the Democratic People’s Republic of Korea.<sup>65</sup> In this report, he noted that apart from the official correctional centres, North Korea is reported to have been operating a number of “political concentration camps”, collection centres and labour training camps. Political prisoners are incarcerated in what is known as “Kwanliso”, operated by the Farm Guidance Bureau of the State Security Agency. He noted that these facilities are also often called “control districts” or “special district for dictatorial control” and that some of the most flagrant human rights violations, such as torture and detention without due process of law are reported to be perpetrated there.

52. The Special Rapporteur further noted that references to such labour training camps can be found in some of legal instruments of the Democratic People’s Republic of Korea (Article 18 of the Sentences and Decisions Enforcement Law, as amended on 9 November 1998, the revised Penal Code of 2004). This reinforced the Special Rapporteur’s view that reforms need to take place both to end the use of such labour training camps and amend legislation to ensure it is aligned with international standards.<sup>66</sup>

<sup>60</sup> A/HRC/RES/10/16

<sup>61</sup> A/HRC/4/15, para 13

<sup>62</sup> A/HRC/10/18, para 23; A/63/322, para 5; See also A/HRC/WG.6/6/PRK/2.

<sup>63</sup> A/HRC/13/47, para 31

<sup>64</sup> A/65/391, paras 33-34

<sup>65</sup> A/HRC/16/58

<sup>66</sup> A/HRC/16/58, para 55



53. In his 2011 report to the General Assembly<sup>67</sup> the Special Rapporteur highlighted the fact that human rights groups have published satellite images of alleged political prison camps in the Democratic People's Republic of Korea. He noted that these images show four of the six camps occupying large land areas within vast wildernesses of the provinces of South Pyongan, South Hamkyung and North Hamkyung. He also explained that a comparison of the latest pictures with satellite imagery from 2001 reportedly indicates a significant increase in the scale of the camps. He stated that it is estimated that the network of political prisons in the Democratic People's Republic of Korea, some of which are believed to be in operation since 1950s, hold up to 200,000 people.

54. The Special Rapporteur's report described some of the conditions under which prisoners are reportedly held: "Reports indicate that a room of about 50 square metres houses about 30-40 political prisoners under harsh conditions. It is alleged that in most camps, no clothing is provided and prisoners face harsh winters. Inmates are also expected to work long hours performing manual labour."<sup>68</sup>

55. He further noted that in Kwanliso 15 and Yodok prison camps, thousands of people are believed to be held by reason of "guilt by association." The majority of such people reportedly do not seem to know the reasons for their imprisonment or what crimes they are accused of.<sup>69</sup> The Special Rapporteur had already noted in 2005 that "A very disconcerting practice is documented by various sources – collective punishment based upon 'guilt by association.' This means that if a person is punished for a political or ideological crime, members of his or her family are also punished."<sup>70</sup>

56. At its sixty-third session in 2012, the Working Group on Arbitrary Detention adopted an opinion in the case of Shin SookJa, Oh Hae Won and Oh Kyu Won.<sup>71</sup> The three were allegedly detained in 1987 solely in response to the defection of Oh Kil Nam (husband of the former and father of the latter two). The three were allegedly held in Yodok political prison camp and later transferred to a camp near Pyongyang. In its opinion the Working Group stated that under certain circumstances "widespread or systematic imprisonment or other severe deprivation of liberty in violation of the fundamental rules of international law may constitute crimes against humanity."<sup>72</sup> The Working Group concluded that the continued detention of Shin SookJa, Oh Hae Won and Oh Kyu Won is in contravention to international law and arbitrary. It requested the Government to take the necessary steps to remedy the situation, which in its view, includes the immediate release from detention and an enforceable right to compensation for the prisoners.<sup>73</sup>

57. In 2012, the Special Rapporteur mentioned the case of Shin SookJa, Oh Hae Won and Oh Kyu Won in his report to the General Assembly<sup>74</sup> stating that this is an example of citizens of the Democratic People's Republic of Korea held in prison camps for guilt by association. He noted several disturbing reports from non-governmental organizations and other sources of widespread arbitrary detention and forced labour, without specific charges or due process and with gross violations of human rights. He also observed that "under certain circumstances, widespread or systematic imprisonment or other severe deprivation

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<sup>67</sup> A/66/322, paras 60-63

<sup>68</sup> A/66/322, para 60

<sup>69</sup> A/66/322, para 60

<sup>70</sup> A/60/306, para 19

<sup>71</sup> A/HRC/WGAD/2012/4

<sup>72</sup> A/HRC/WGAD/2012/4, para 26

<sup>73</sup> A/HRC/WGAD/2012/4, para 28

<sup>74</sup> A/67/370, paras 31-38

of liberty in violation of international law **may constitute crimes against humanity**” (emphasis added).<sup>75</sup>

### Recommendations on prison camps

58. In 2011, the Secretary-General urged the Democratic People’s Republic of Korea to improve conditions in prisons and detention centres, and release political prisoners.<sup>76</sup> The Special Rapporteur also made similar calls and proposed “that the authorities begin the release of political prisoners starting with certain categories of prisoners, such as the elderly, those having medical conditions, long serving prisoners, women who have children and persons imprisoned due to guilt by association.”<sup>77</sup>

## E. Discrimination

59. The United Nations reports and resolutions have documented several patterns of discrimination in the Democratic People’s Republic of Korea, in particular:

(a) Division of society into three different groups of allegiance to the regime, which affects the citizen’s level of enjoyment of human rights and fundamental freedoms, including access to food;

(b) Discrimination against women, children, the elderly and persons with disabilities, including the disproportionate effect of malnutrition on these populations and specific violations that individuals in each of these categories suffer; and

(c) Violations specifically affecting those who have been repatriated to the Democratic People’s Republic of Korea and their families.

60. Since 2005, the Special Rapporteur has highlighted that while the Constitution and other laws in the Democratic People’s Republic of Korea enshrine the principle of non-discrimination, the practice is defective.<sup>78</sup> The Special Rapporteur notes that the Government **divides the population into three different groups**: those close to the regime (the core mass), the group in the middle (the basic mass), and those considered hostile to the regime (the complex mass).<sup>79</sup> He describes the way in which these divisions affect **people’s access to basic rights and services**: “The first group is the ruling elite, which is well endowed with privileges, such as access to special schools and hospitals. They are allowed to own private phones and read foreign publications. The second is the majority of the population, such as farmers and workers. They are provided with food rations, although dwindling in recent years due to the Government’s experimentation with the market economy and a reduction in the State-sponsored public distribution system. The third group is considered to be the enemies of the State and is persecuted accordingly. They include the landed class before the communist takeover of the country, public officials under Japanese rule, religious groups, and those who assisted South Korean forces during the Korean War (1950-1953). They are denied access to college education and are discriminated against in their access to basic necessities such as housing, medical care and education. Many land up in the prisons referred to below. While this practice may have been abolished in law, it

<sup>75</sup> A/67/370, para 38

<sup>76</sup> A/66/343, para 74

<sup>77</sup> A/66/322, para 62

<sup>78</sup> A/60/306, para 20

<sup>79</sup> A/60/306; A/HRC/7/20; A/HRC/10/18; A/64/224

seems to persist and is implied by the testimonies of those who leave the country in search of refuge elsewhere.”<sup>80</sup>

61. Another particularity of this division identified by the Special Rapporteur is the application of the policy of “**crime by association**” which also provides a basis for discrimination: “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.”<sup>81</sup>

62. The 2008 reports of the Special Rapporteur to the Human Rights Council and the General Assembly specifically analyse patterns of **discrimination that affect development, access to food and other necessities, and particular sectors of society**. With reference to the right to food, the Special Rapporteur has stressed that “beyond the elite, the people are faced with a painful paradox: on the one hand, the social safety nets which the State offered in the past are now no longer reliable and they must seek other ways to fend for themselves; on the other hand, when they undertake various livelihood initiatives to supplement their income, the authorities clamp down on them for fear of losing their grip on the population.”<sup>82</sup>

63. In 2009, the Special Rapporteur dedicated part of his report to the General Assembly to the issue of “freedom from discrimination”. He noted that the discrimination that results from the stratification of society can be seen through the plight of several groups, and that food and other shortages have particularly taken their toll on women, with high malnutrition rates particularly recorded in pregnant women.<sup>83</sup>

64. The General Assembly resolutions have reflected the concerns raised in these reports. For instance, resolution 66/174 expressed concern at the precarious humanitarian situation which is compounded by the “prevalence of chronic and acute malnutrition, particularly among the most vulnerable groups, pregnant women, infants and the elderly.”<sup>84</sup>

65. In its consideration of the State report of the Democratic People’s Republic of Korea in 2005, the Committee on the Elimination of Discrimination Against Women (CEDAW) underscored that there is a difference between de jure and de facto **equality between men and women**. The Committee noted with concern the persistence of traditional and stereotyped assumptions and attitudes in respect of the roles and responsibilities of women and men, which are discriminatory against women and have a pronounced impact, particularly in the areas of education and employment as well as in other areas of their lives. There is only limited access by women to key decision-making positions at the top, particularly in politics, the judiciary and the civil service. It is also concerned that in times of economic crisis, as in the current situation of the country, women’s prescribed roles and lesser entitlement intensifies their hardship and amounts to compounded discrimination.<sup>85</sup>

66. The concerns of CEDAW have been echoed by the Secretary-General and the Special Rapporteur in all their reports and have been reflected in numerous United Nations resolutions. Several resolutions express deep concern at the “continued violation of the human rights and fundamental freedoms of women, in particular the **trafficking of women**

<sup>80</sup> A/HRC/7/20, para 24

<sup>81</sup> A/HRC/10/18, para 28

<sup>82</sup> A/HRC/7/20, para 13; A/63/322, paras 9, 29, 45, 50

<sup>83</sup> A/64/224, paras 39-52

<sup>84</sup> A/RES/66/174, para 3; See also A/RES/63/190; A/RES/64/175; A/RES/65/225; A/RES/66/174.

<sup>85</sup> CEDAW/C/PRK/CO/1, paras 35, 45, 57; See also documents available at <http://www.un.org/womenwatch/daw/cedaw/33sess.htm>

for prostitution or forced marriage,” as well as forced abortions and gender based discrimination.<sup>86</sup>

67. In 2005, the Commission on Human Rights expressed deep concern about the continued violation of the women’s rights, in particular the trafficking of women for prostitution or forced marriage, ethnically motivated forced abortions, including by labour-inducing injection or natural delivery, as well as infanticide of children of repatriated mothers, including in police detention centres and labour-training camps.<sup>87</sup>

68. In its 2006 and 2007 resolutions, the General Assembly expressed serious concerns at the “continuing violation of the human rights and fundamental freedoms of women, in particular the trafficking of women for the purpose of prostitution or forced marriage, forced abortions, and infanticide of children of repatriated mothers, including in police detention centres and camps.”<sup>88</sup>

69. Both CEDAW and the Special Rapporteur highlighted the impact that discrimination has on the issue of **violence against women**.<sup>89</sup> Both domestic and institutional violence, particularly in prisons and other closed institutions, is widespread in the Democratic People’s Republic of Korea. This affects in particular women who do not belong to the ruling elite and who are marginalized by the cloistered political system. As the Special Rapporteur stressed, the Penal Code, amended in 2004, contains certain provisions that deal with sexual violence. However, what is lacking in the Democratic People’s Republic of Korea is specific legislation to deal with all forms of violence against women and accompanying prevention and protection measures for victims.<sup>90</sup>

70. The Special Rapporteur has further added that there are prevailing cultural assumptions in the Democratic People’s Republic of Korea that women are dependent on men, and it is expected that women will be obedient and passive. As a result, women are more directly exposed to various types of cultural practices in the family that result in violence towards them. **There is also a perception that domestic violence is not a crime and that the State should not intervene in such private family matters.** Even when a witness or a victim of domestic violence presents a case of violence to the police, reportedly, it is often not acted upon.<sup>91</sup> The Special Rapporteur also reflects concerns about reports of public security agents and patrols physically assaulting women in marketplaces; but since these agents are Government personnel, victims are not in a position to appropriately report their abuses. In the absence of a proper complaint and accountability mechanism, women continue to be exposed to acts of violence which they have little choice but to endure.<sup>92</sup>

71. The Secretary General, the Special Rapporteur, and the Committee on the Rights of the Child (CRC) noted that the principle of non-discrimination is not fully respected in practice, vis-à-vis children with disabilities, children living in institutions, and children who are in conflict with the law. Moreover, it has been highlighted that children also face discrimination on the basis of political or other opinion, social origin or other status, either

<sup>86</sup> E/CN.4/RES/2004/13, para 1(d); E/CN.4/RES/2005/11; A/RES/60/173; A/RES/61/174; A/RES/62/167; A/RES/63/190; A/RES/64/175; A/RES/66/174; A/HRC/RES/13/14

<sup>87</sup> E/CN.4/RES/2005/11

<sup>88</sup> A/RES/60/173, paras 1(b) (i), 1 (b) (iv); A/RES/61/174, paras 1(b) (i), 1 (b) (iv), 1(b) (vii)

<sup>89</sup> A/60/306; E/CN.4/2006/35; A/61/349; A/HRC/7/20; A/HRC/10/18, A/66/322

<sup>90</sup> A/66/322, paras 52-59

<sup>91</sup> A/66/322, paras 52-59

<sup>92</sup> A/66/322, paras 52-59

of themselves or because of their parents.<sup>93</sup> The General Assembly in its 2011 and 2012 resolutions addressed the specific **vulnerability of children**, in particular the continued lack of access to basic economic, social and cultural rights. These resolutions point to the particular vulnerability of repatriated children, street children, children with disabilities, children whose parents are detained, children living in detention or in institutions or in conflict with the law.<sup>94</sup> Several United Nations documents also point to discrimination against children of non-ethnic Korean origin and their mothers.<sup>95</sup>

72. As early as 2003 the Commission on Human Rights expressed deep concern at the “mistreatment of and discrimination against disabled children”. Since 2006 the General Assembly has consistently decried “continuing reports of violations of the human rights and fundamental freedoms of persons with disabilities, especially on the use of collective camps and of coercive measures that target the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children.”<sup>96</sup> Whereas in 2006 the Special Rapporteur noted “to date, the situation facing those with disabilities has presented a very disconcerting picture. It is reported that those with disabilities are sent away from the capital city, and particularly those with mental disabilities are detained in areas or camps known as ‘Ward 49’ with harsh and subhuman conditions.”<sup>97</sup>

73. Another group regularly referred to by the Special Rapporteur, the Secretary-General and numerous resolutions of the Commission on Human Rights, Human Rights Council and General Assembly are those **returned or repatriated to the Democratic People’s Republic Korea and their families**. All reports and resolutions refer to the harsh punishments they suffer, the violations of their rights and the lack of respect for the principle of non-refoulement by neighbouring states.

#### **Recommendations on discrimination**

74. During the Universal Periodic Review in 2009, several States recommended that the Democratic People’s Republic of Korea ratify the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of Persons with Disabilities (CPRD).<sup>98</sup>

75. Several Human Rights Council resolutions reaffirm the responsibility of the Government of the Democratic People’s Republic of Korea to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population.<sup>99</sup>

## **F. Violations of freedom of expression**

76. The United Nations has called upon the Democratic People’s Republic of Korea to respect the right to freedom of opinion, expression and assembly of its citizens.

<sup>93</sup> A/64/319; CRC/C/PRK/CO/4, para 19; E/CN.4/2006/35, para 29. See also A/RES/64/175 and CRC documents at <http://www2.ohchr.org/english/bodies/crc/crcs50.htm>

<sup>94</sup> A/RES/64/175; A/RES/65/225

<sup>95</sup> E/CN.4/2006/35, para 25; A/HRC/7/20, para 31; A/ 61/349, para 47

<sup>96</sup> See for example A/RES/62/167.

<sup>97</sup> E/CN.4/2006/35, para 33

<sup>98</sup> A/HRC/13/13; Universal Periodic Review documents [<http://www.ohchr.org/EN/HRBodies/UPR/Pages/KPSession6.aspx>]

<sup>99</sup> A/HRC/RES/13/14; A/HRC/RES/16/8; A/HRC/RES/19/13

77. Since 2006, the General Assembly has expressed “its very serious concern at ...all pervasive and severe restrictions on the freedoms of thought, conscience, religion, opinion and expression, peaceful assembly and association, and on equal access to information, by such means as the persecution of individuals exercising their freedom of opinion and expression, and their families.”<sup>100</sup>

78. The Commission on Human Rights also echoed its concern about the same reported violations.<sup>101</sup>

79. With regard to freedom of expression, the Special Rapporteur noted, in 2006, that there was no ostensible improvement during the year. The opaque and non-democratic nature of the State militates against the right to self-determination and the need for democracy in the country. Although the advent of technology and globalization has meant that some Democratic People’s Republic of Korea nationals have more access to foreign information, there is still no genuine free access to information, since media and related information are State-controlled and it is illegal to listen to foreign radio, watch foreign TV or to own computers without official permission.<sup>102</sup>

80. According to information received, in October 2006, the authorities threatened independent radio stations run by exiles and operated from another country. Another source indicates that the local police monitor sales of radios so as to ensure that they are pre-tuned to government stations and are sealed before they go on sale.<sup>103</sup>

81. In 2009, the Special Rapporteur highlighted that the media is heavily controlled and censored, and forms the backbone of an enormous propaganda machine. Reading of books from the Republic of Korea is punishable as a crime of espionage. Chinese books are also prohibited. There is extensive wiretapping of telephones. Unless one belongs to the elite, it is forbidden to own computers and to use the Internet without official permission and it is prohibited to watch foreign videos. There are reports of official clamp-downs on compact discs, and surveillance teams of inspectors raid homes to see whether families are (illegally) watching or listening to foreign films and radio or television broadcasts. Such raids are particularly intense near the border with neighbouring countries. Radio and television sets are pre-tuned to Government programmes. People who were caught listening to foreign broadcasts were detained by the State authorities and sentenced to long prison terms.<sup>104</sup>

82. In 2011, the Special Rapporteur underlined that the authorities in the country continue to impose severe restrictions on freedom of opinion, expression and assembly, despite constitutional guarantees of these rights.<sup>105</sup> He stressed that the provisions of the Press Law of the Democratic People’s Republic of Korea are not in line with a State party’s obligation under article 19 of the International Covenant on Civil and Political Rights. Article 48 of the Press Law, for instance, empowers the State to criminalize any statement, publication, news or article that is critical of the State or its organs. Furthermore, article 103 of the Penal Code of the Democratic People’s Republic of Korea, as amended in 1999, stipulates that anyone seriously disturbing the social order shall be punished with up to 5 years of correctional labour and, in serious cases, their leaders shall be punished with up to 10 years of correctional labour. When the Democratic People’s Republic of Korea further amended the Penal Code in April 2004, with the aim of including specific acts that would

<sup>100</sup> A/RES/60/173; A/RES/61/174; A/RES/62/167; A/RES/63/190; A/RES/64/175; A/RES/66/174

<sup>101</sup> E/CN.4/RES/2004/13; E/CN.4/RES/2005/11

<sup>102</sup> E/CN.4/2006/35; A/60/306.

<sup>103</sup> A/HRC/4/15, para 14

<sup>104</sup> A/64/224, para 31

<sup>105</sup> A/66/322, paras 48-51

constitute such crimes, it included listening to broadcasts from the Republic of Korea; collecting, possessing and circulating printed matter from the Republic of Korea; and spreading unfounded rumours.<sup>106</sup>

83. In 2011, the Special Rapporteur highlighted the fact that the availability of foreign newspapers to the public is highly restricted with independent national media, and severe restrictions on journalists' travel within the country and abroad. Restrictions placed on journalists and others who seek to exercise their freedom of expression and opinion are incompatible with provisions under paragraph 3 of article 19 of the International Covenant on Civil and Political Rights. State-controlled media have also been used to defame independent reporting through allegations attacking the integrity, morals and independence of journalists and media outlets. Complaints have been fabricated to discredit independent non-governmental organizations and journalists.<sup>107</sup>

84. The Secretary-General also highlighted that the Government's control over the flow of information is strict and pervasive. The Democratic People's Republic of Korea's state news agency, the Korean Central News Agency, is the only source of information for all media outlets in the country.<sup>108</sup>

85. In 2012, the Special Rapporteur underlined that due to ambiguous terms in the Criminal Code of the Democratic People's Republic of Korea, the State can impose severe restrictions on the enjoyment of freedom of opinion and expression. For instance, article 166 of the Code refers to punishment of a worker in the communications and broadcasting service sector who makes "irresponsible" communications or does not conduct broadcasting in a "normal manner", resulting in "serious consequences". The use of terms such as "normal manner", "serious consequences" and "irresponsible" leaves scope for the Government to suppress freedom of opinion and expression. It should be noted that the universal right to freedom of expression includes the right to receive and impart information. "Article 195 of the Code provides for punishments, including short-term labour, for a person who listens to broadcasts that are hostile to the Republic or collects, keeps or distributes enemy propaganda, which can be broadly interpreted to restrict people in the exercise of their right to freedom of opinion and expression or to allow the Government to place severe restrictions on independent media in the country."<sup>109</sup>

### **Recommendations on freedom of expression**

86. The Secretary-General urged the Government of the Democratic People's Republic of Korea to "to take decisive measures to respect the rights to freedom of thought, conscience and religion; assembly; and opinion and expression."<sup>110</sup> Furthermore, the Special Rapporteur, in concert with the statements made by the Secretary-General, also noted that "freedom of opinion and expression is an indispensable condition for the full development of society, and the realization of a number of rights. To this end, he calls on the Government to provide greater space for independent media, free access to the Internet."<sup>111</sup>

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<sup>106</sup> A/66/322, para 49

<sup>107</sup> A/66/322, para 50

<sup>108</sup> A/66/343, para 13

<sup>109</sup> A/67/370, para 26

<sup>110</sup> A/67/362, para 57

<sup>111</sup> A/66/322, para 65

## G. Violations of the right to life

87. Over many years the General Assembly and the Commission on Human Rights have expressed their serious concern at the use of public executions and “imposition of the death penalty for political or religious reasons.”<sup>112</sup> In 2001, the Human Rights Committee recommended that the Democratic People’s Republic of Korea refrain from public executions and work towards abolishing capital punishment.<sup>113</sup>

88. In 2008, the Secretary-General informed the General Assembly that although their veracity could not be independently confirmed, “reports from a range of sources continue to cite a high number of public executions.”<sup>114</sup> The same year the Special Rapporteur noted that he found the continuing use of public executions to intimidate the public particularly disquieting. In his 2009 report to the Human Rights Council he noted reports of public and secret executions in political detention camps. In 2010 in relation to political prisoners, the Special Rapporteur noted that the lives of inmates are lost too easily to hunger and slave labour, brutality and atrocity. There is, however, little detail in United Nations documentation describing instances of death in custody or as a consequence of torture.

89. In relation to capital punishment, the Secretary-General noted in 2011 that the number of offences carrying the death penalty had been reduced from 33 to 5. However, he expressed concern at the fact that, of those five offences, four are essentially political offences (articles 44, 45, 47 and 52 of the Criminal Code) couched in terms so broad that the imposition of the death penalty may be subjective and arbitrary.<sup>115</sup>

90. Moreover in 2012, the Special Rapporteur highlighted that 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 and which expands the “crimes” for which the death penalty is applied. The Special Rapporteur notes that 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.<sup>116</sup>

### Recommendations on the right to life

91. The General Assembly and Human Rights Council resolutions have consistently treated public executions and the application of the death penalty for political and religious

<sup>112</sup> E/CN.4/RES/2005/11; E/CN.4/RES/2004/13; E/CN.4/RES/2003/10; A/RES/66/174; A/RES/65/225; A/RES/64/175

<sup>113</sup> CCPR/CO/72/PRK, 27 August 2001, Concluding Observations of the Human Rights Committee, Democratic People’s Republic of Korea.

<sup>114</sup> A/63/332, para 5

<sup>115</sup> A/66/343, para 17

<sup>116</sup> A/HRC/19/65, para 36



reasons as a systematic, grave and widespread form of violation of human rights in the Democratic People's Republic of Korea.

92. The Secretary-General and the Special Rapporteur have reiterated recommendations by the Human Rights Committee that the Democratic People's Republic of Korea end public executions and adopt a moratorium on the death penalty.<sup>117</sup>

93. In 2011 the Special Rapporteur recommended that the Democratic People's Republic of Korea repeal provisions of law that run counter to international standards, particularly drawing the attention to the provisions of the Criminal code and its addendum.<sup>118</sup>

## H. Violations of freedom of movement

94. The United Nations has consistently addressed reported violations of the right to freedom of movement occurring across the Democratic People's Republic of Korea, as well as of persons who cross or try to cross the border without a permit.

95. Since 2006, the General Assembly has expressed "its very serious concern at ... limitations imposed on every person who wishes to move freely within the country and travel abroad, including the punishment of those who leave or try to leave the country without permission, or their families as well as punishment of persons who are returned and at the "sanctions imposed on citizens of the Democratic People's Republic of Korea who have been repatriated from abroad, such as treating their departure as treason, leading to punishments of internment, torture, cruel, inhuman or degrading treatment or the death penalty."<sup>119</sup>

96. The Democratic People's Republic of Korea has always had a strict policy on the movements of its people both internally and externally. Since its inception, the authorities have regulated migration stringently as an instrument of State control. Generally the population is not allowed to move freely within the country and people are only able to travel abroad with official permission.<sup>120</sup>

97. In 2012 the Special Rapporteur summarized how the classification of the population on the basis of their loyalty to the Government affects the enjoyment of human rights, including freedom of movement. He noted that members of the "hostile" class face "the greatest number of restrictions and cannot live in Pyongyang or other major cities."<sup>121</sup>

98. The Special Rapporteur noted that, for years, there has been a constant flow of people persecuted by the authorities fleeing the country clandestinely, without travel permits.<sup>122</sup> The food crisis of the mid-1990s and thereafter has also 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.<sup>123</sup>

<sup>117</sup> A/HRC/10/18, para 80 (a) (iii); A/HRC/13/47, para 88 (a)(iii); A/66/343 para 74

<sup>118</sup> A/HRC/19/65; A/67/370

<sup>119</sup> A/RES/60/173; A/RES/61/174; A/RES/62/167; A/RES/63/190; A/RES/64/175; A/RES/66/174

<sup>120</sup> A/HRC/7/20, para 20

<sup>121</sup> A/67/370, para 51

<sup>122</sup> A/HRC/10/18, paras 34-35; A/61/349, paras 36, 61

<sup>123</sup> A/HRC/10/18, para 35

99. In 2012 the Special Rapporteur recognized, that while some people flee the country due to persecution, others leave for economic reasons.<sup>124</sup> However, he noted that whatever their motivation it is necessary to provide all individuals leaving the Democratic People's Republic of Korea with protection. The Special Rapporteur observed that many of those leaving the Democratic People's Republic of Korea belong to what the Government considers the "hostile" class. "In such cases, there are strong grounds for arguing that their departure is motivated by political persecution or due to their membership in a particular social group, two of the five conditions established by the Convention relating to the Status of Refugees."<sup>125</sup>

100. The Special Rapporteur further argues that even if certain persons may not fit the definition of refugee when they leave the Democratic People's Republic of Korea, because the sole circumstance motivating their movement is economic hardship, they may become refugees *sur place* – because they have a valid fear of persecution upon return, given that leaving the country without authorization is a criminal offense.<sup>126</sup>

101. In the Democratic People's republic of Korea, it is a criminal offence for citizens to leave the country without permission. Therefore, punishment facing citizens of the Democratic People's Republic of Korea who have been repatriated from abroad raises serious concern.

102. On 18 November 2005, the Special Rapporteur sent a communication in connection with two groups of the Democratic People's Republic of Korea nationals who were deported back to their country by a neighbouring country against their will. The first group consisted of five women and two men who were deported on 29 September 2005, after having sought asylum in a foreign school in a neighbouring country. The second case related to a group of four women and one man who also sought asylum in a foreign school in a neighbouring country, who were returned to the Democratic People's Republic of Korea against their will in October 2005. The Special Rapporteur requested the Government of the Democratic People's Republic of Korea to provide him with information on the current whereabouts and status of the above-mentioned groups and expressed concern about their safety. He further urged the Government to abstain from punishing the returnees for having left without an exit visa and to ensure their safety. In its reply, the Government reiterated its position that it did not recognize the mandate of the Special Rapporteur and therefore did not wish to meet or communicate with the Special Rapporteur regarding human rights issues.<sup>127</sup>

103. Several persons interviewed by the Special Rapporteur have had experience with forced return to the country of origin and the punishments inflicted. If those who had left the country were "first-timers" without political affiliations, they would be questioned upon return without necessarily being punished. If they had left several times and subsequently returned, punishments would be increased accordingly, beginning with re-education and forced labour. If they had had access to religious groups or non-governmental organizations in neighbouring countries, they would be punished severely, with long-term incarceration in political prisons for those seen as being antithetical to the regime in the country of origin.<sup>128</sup>

104. The Special Rapporteur noted in his 2007 report that during certain periods, there has been a slight relaxation of the control imposed on migrants. Article 233 of the revised

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<sup>124</sup> A/67/370, para 59

<sup>125</sup> A/67/370, para 61

<sup>126</sup> A/67/370, para 62

<sup>127</sup> E/CN.4/2006/35, paras 36-40

<sup>128</sup> A/HRC/4/15, para 23

2004 Penal Code defines ‘border crossing’ broadly as ‘those going and coming across the border’ instead of ‘simple crossing’ in the old Penal Code. Furthermore, the level of the mandatory sentence for the crime of ‘illegal going and coming across the border’ was reduced from three years to two years of ‘labour training’ punishment. Since two years of ‘labour training’ is equivalent to one year of ‘correctional labour’, the level of punishment was reduced from three years to one year of ‘correctional labour.’”<sup>129</sup>

105. However, the threat of punishment facing the repatriated citizens is ever-present. In March 2008, the Special Rapporteur on extrajudicial, summary or arbitrary executions together with the special Rapporteur on the right to food and the Special Rapporteur on the question of torture, sent a joint allegation letter regarding information received on the alleged public execution of 13 women and 2 men, who were reportedly accused of planning to cross over to a neighbouring country. It was alleged that this execution was designed to dissuade people from crossing illegally. The Government did not reply to this communication.<sup>130</sup>

106. In each of his reports to the General Assembly the Secretary-General notes the concerns of the United Nations High Commissioner for Refugees (UNHCR) relating to the flow of Democratic People’s Republic of Korea nationals seeking protection, including reports that women are being subjected to human trafficking and forced marriages and in some instances children born in such conditions have been deprived of the care of their mothers.<sup>131</sup>

### **Recommendations on freedom of movement**

107. Since 2005, the Special Rapporteur has called upon the Government to address the root causes of displacement, prevent persecution and victimization of those who are displaced, including when they return to their country of origin, and guarantee the right to freedom of movement without imposing sanctions on those who move without permission.<sup>132</sup>

108. The General Assembly called upon the Government to ensure that citizens of the Democratic People’s Republic of Korea expelled or returned to the Democratic People’s Republic of Korea are able to “return in safety and dignity, are humanely treated and are not subjected to any kind of punishment.”<sup>133</sup>

109. As the Special Rapporteur underlined in 2007, “the preferred position is that those who left the country in search of refuge elsewhere should not be punished at all for having left the country without an exit visa. This would also help to fulfil the spirit of the country’s 1998 Constitution whose article 75 states that “citizens shall have freedom of residence and travel.”<sup>134</sup>

## **I. Enforced disappearances, including abduction of foreign nationals**

110. The United Nations, through many of its human rights mechanisms, has consistently documented and decried the crime of enforced disappearances in the Democratic People’s

<sup>129</sup> A/HRC/4/15, para 21

<sup>130</sup> A/HRC/WG.6/6/PRK/2, para 20

<sup>131</sup> A/67/362; A/66/343; A/65/391

<sup>132</sup> See for example A/60/306.

<sup>133</sup> A/RES/63/190; A/RES/64/175; A/RES/66/174

<sup>134</sup> A/HRC/4/15, para 22

Republic of Korea. Reports by the Secretary-General and the Special Rapporteur highlight the presence of long-existing cases of enforced disappearances, particularly in the form of abduction of foreign nationals, dating back to the Korean War. Since 2003, the Commission on Human Rights, followed by the Human Rights Council have repeatedly noted the existence and unresolved nature of the abduction of foreign nationals in each of their resolutions concerning North Korea. In a comprehensive list of widespread, systematic and grave human rights violations, the General Assembly's first resolution on North Korea in December 2005 (and those that followed) expressed its concern at the "unresolved questions relating to the abduction of foreigners in the form of enforced disappearance."<sup>135</sup> From 2006 onwards the General Assembly qualified these abductions noting that they violated "the human rights of the nationals of other sovereign countries."<sup>136</sup>

111. The Working Group on Enforced or Involuntary Disappearances (WGEID) was the first United Nations mechanism to address the issue of abduction of foreigners by the Government of the Democratic People's Republic of Korea, in particular cases of Japanese and Korean nationals. In total the Working Group on Enforced or Involuntary Disappearances has transmitted twelve cases to the Democratic People's Republic of Korea, all of which remain outstanding.<sup>137</sup> In addition to eight cases of disappeared Japanese nationals abducted in the 1970s and 1980s, another case of disappearance of a female national of the Republic of Korea on the border between China and the Democratic People's Republic of Korea was reported to have occurred in 2004. The remaining three cases were received by the WGEID during its November 2010-2011 reporting period and concern Korean nationals who allegedly disappeared on December 1969 after their Korean Airlines flight YS-11 was hijacked and diverted to Democratic People's Republic of Korea.<sup>138</sup>

112. Regarding the cases of abduction of Japanese nationals, the government of the Democratic People's Republic of Korea responded to the WGEID by stating that it "had already provided the Government of Japan with detailed information on those persons."<sup>139</sup> In regards to the female national of South Korea, the Democratic People's Republic of Korea stated that after conducting an investigation into the matter, they had found that "neither that incident nor any similar act had occurred in the border area."<sup>140</sup> The WGEID responded that, because of unsatisfactory reports from the Democratic People's Republic of Korea, these cases would remain outstanding and hoped that the Democratic People's Republic of Korea would clarify them.<sup>141</sup>

113. The greatest number of enforced disappearances possibly happened during and after the Korean War, which took place from 1950-1953. In his 2011 report to the Human Rights Council, the Special Rapporteur noted that the exact number of persons from the Republic of Korea by the Democratic People's Republic of Korea during the Korean War is not known.<sup>142</sup> However he noted that in March 2002, the Korean War Abductees Family Union (KWAUFU) began compiling the existing "List of Korean War Abducted Persons." The list contains around 94,700 names of people abducted. As the Special Rapporteur noted in his report, "some 80.3 per cent of those abducted were either taken away from their home or

<sup>135</sup> A/RES/60/173, para 1(b)(v)

<sup>136</sup> A/RES/61/174, para 1(b)(v)

<sup>137</sup> A/64/319, para 20

<sup>138</sup> A/HRC/19/58/Rev.1, paras 143-146

<sup>139</sup> A/62/318, para 18

<sup>140</sup> A/62/318, para 18

<sup>141</sup> A/62/318, para 20

<sup>142</sup> A/HRC/16/58, paras 18-25

near their homes, which indicates that these abductions were “carried out intentionally and in an organized manner”.<sup>143</sup>

114. The Special Rapporteur noted that since the war, 3,824 people have been reportedly abducted from the Republic of Korea, of which 3,310 have been returned after having been held for 6 months to a year. He has gathered information that an estimated 500 civilians abducted and 500 prisoners of war are currently being detained in the Democratic People’s Republic of Korea, which denies the existence of such abductees. Countries such as Japan, Lebanon, and Thailand have reported such abductions. The Special Rapporteur noted that of 17 identified abductees from Japan only 5 have been returned, with 12 cases still pending (some of which are being examined by the Working Group on Enforced and Involuntary Disappearances).<sup>144</sup> In relation to the abduction issue the Special Rapporteur argues that **“international criminal liability of those responsible for abduction cannot be ruled out** (emphasis added).”<sup>145</sup>

115. As documented by the WGEID, the Secretary-General and the Special Rapporteur, the Government of the Democratic People’s Republic of Korea has failed to investigate enforced disappearances sufficiently, transparently, or independently, resulting in unsatisfactory results that have not clarified the cases of abducted persons.

### **Recommendations on enforced disappearances**

116. In its resolutions, the General Assembly has repeatedly called on the Democratic People’s Republic of Korea to “urgently resolve these questions, including through existing channels in a transparent manner.”<sup>146</sup> However, reiterated calls for the return of abductees by the Secretary-General, the Special Rapporteur and the General Assembly have been ignored by the Government of the Democratic People’s Republic of Korea.<sup>147</sup>

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<sup>143</sup> A/HRC/16/58, para 19

<sup>144</sup> A/HRC/16/58, para 20

<sup>145</sup> A/HRC/16/58, para 25

<sup>146</sup> A/RES/66/174, para 2; A/RES/65/225; A/RES/64/175; A/RES/63/190

<sup>147</sup> A/HRC/7/20; A/62/264; A/63/322; A/HRC/10/18; A/64/224; A/HRC/13/47; A/HRC/16/58; A/HRC/19/65, para 8

## Annex II

*[English only]*

### List of United Nations documents reviewed<sup>a</sup>

#### Core documents

##### General Assembly resolutions

A/RES/67/181:	adopted without a vote on 20 December 2012
A/RES/66/174:	adopted with 123 votes in favour, 16 against, 51 abstentions and 3 non-votes, on 19 December 2011
A/RES/65/225:	adopted with 106 votes in favour, 20 against, 57 abstentions and 9 non-votes, on 21 December 2010
A/RES/64/175:	adopted with 99 votes in favour, 20 against, 63 abstentions and 10 non-votes, on 18 December 2009
A/RES/63/190:	adopted with 94 votes in favour, 22 against, 63 abstentions and 13 non-votes, on 18 December 2008
A/RES/62/167:	adopted with 101 votes in favour, 22 against, 59 abstentions and 10 non-votes, on 18 December 2007
A/RES/61/174:	adopted with 99 votes in favour, 21 against, 56 abstentions and 16 non-votes, on 19 December 2006
A/RES/60/173:	adopted with 88 votes in favour, 21 against, 60 abstentions and 22 non-votes, on 16 December 2005

##### Human Rights Council resolutions

A/HRC/RES/19/13:	adopted without a vote on 22 March 2012
A/HRC/RES/16/8:	adopted with 30 votes in favour, 3 against, and 11 abstentions, on 24 March 2011
A/HRC/RES/13/14:	adopted with 28 votes in favour, 5 against, and 13 abstentions, on 25 March 2010
A/HRC/RES/10/16:	adopted with 26 votes in favour, 6 against, and 15 abstentions, on 26 March 2009
A/HRC/RES/7/15:	adopted with 22 votes in favour, 7 against, and 18 abstentions, on 27 March 2008

<sup>a</sup> This may not be an exhaustive list of all United Nations documents that address the human rights situation in the Democratic People's Republic of Korea.

**Commission on Human Rights resolutions**

- E/CN.4/RES/2005/11: adopted with 13 votes in favour, 9 against, and 14 abstentions, on 14 April 2005
- E/CN.4/RES/2004/13: adopted with 29 votes in favour, 8 against, and 16 abstentions, on 15 April 2004
- E/CN.4/RES/2003/10: adopted with 28 votes in favour, 10 against, and 14 abstentions, on 16 April 2003

**Reports of the Secretary-General to the General Assembly**

- A/67/362: dated 13 September 2012
- A/66/343: dated 7 September 2011
- A/65/391: dated 24 September 2010
- A/64/319: dated 24 August 2009
- A/64/319/Corr.1: dated 15 October 2009
- A/63/332: dated 26 August 2008
- A/62/318: dated 4 September 2007

**Reports of the Special Rapporteur to the General Assembly**

- A/67/370: dated 13 September 2012, by Marzuki Darusman
- A/66/322: dated 24 August 2011, by Marzuki Darusman
- A/65/364: dated 14 September 2010, by Marzuki Darusman
- A/64/224: dated 4 August 2009, by Vitit Muntarbhorn
- A/63/322: dated 22 August 2008, by Vitit Muntarbhorn
- A/62/264: dated 15 August 2007, by Vitit Muntarbhorn
- A/61/349: dated 15 September 2006, by Vitit Muntarbhorn
- A/60/306: dated 29 August 2005, by Vitit Muntarbhorn

**Reports of the Special Rapporteur to the Human Rights Council**

- A/HRC/19/65: dated 13 February 2012, by Marzuki Darusman
- A/HRC/16/58: dated 21 February 2011, by Marzuki Darusman
- A/HRC/13/47: dated 17 February 2010, by Vitit Muntarbhorn
- A/HRC/10/18: dated 24 February 2009, by Vitit Muntarbhorn
- A/HRC/7/20: dated 15 February 2008, by Vitit Muntarbhorn
- A/HRC/4/15: dated 7 February 2007, by Vitit Muntarbhorn

### Reports of the Special Rapporteur to the Commission on Human Rights

E/CN.4/2006/35: dated 23 January 2006, by Vitit Muntarbhorn

E/CN.4/2005/34: dated 10 January 2005, by Vitit Muntarbhorn

### Universal Periodic Review

A/HRC/13/13: Report of the Working Group, dated 4 January 2010

A/HRC/WG.6/6/PRK/1: National Report, dated 27 August 2009

A/HRC/WG.6/6/PRK/2: Compilation Report, dated 18 September 2009

A/HRC/WG.6/6/PRK/3: Summary of stakeholders' submissions, dated 28 August 2009

A/HRC/WG.6/6/PRK/3/Corr.1: Summary corrigendum, dated 23 November 2009

### Supplementary documents

#### Treaty Bodies: Concluding Observations, State Reports and related documents

##### *Human Rights Committee (CCPR)*

CCPR/CO/72/PRK: Concluding Observations, 27 August 2001

CCPR/CO/72/PRK/Add.1: Replies submitted by the Government, 5 August 2002

CCPR/C/PRK/2000/2: State Party Report, 4 May 2000

CCPR/C/21/Rev.1/Add.8/Rev.1: General Comment 26 adopted on 8 December 1997

##### *Committee on Economic, Social and Cultural Rights (CESCR)*

E/C.12/1/Add.95: Concluding Observations, 12 December 2003

E/1990/6/Add.35: State Party Report, 15 May 2002

##### *Committee on the Rights of the Child (CRC)*

CRC/C/PRK/CO/4: Concluding Observations, 27 March 2009

CRC/C/PRK/Q/4/Add.1: Written replies by the Government to the list of issues, 22 December 2008

CRC/C/PRK/Q/4: List of issues to be taken up in connection with the fourth periodic report, 20 October 2008

CRC/C/PRK/4: Consideration of State Party Report, 15 January 2008

CRC/C/15/Add.239: Concluding Observations, 1 July 2004

CRC/C/Q/PRK/2: List of issues to be taken up in connection with the consideration of the second periodic report, 13 February 2004

CRC/C/65/Add.24: State Party Report, 5 November 2003



*Committee on the Elimination of Discrimination against Women (CEDAW)*

CEDAW/C/PRK/CO/1:	Concluding comments, 22 July 2005
CEDAW/PSWG/2005/II/CRP.2/Add.3:	Responses to the list of issues and questions for consideration of the initial report, 15 April 2005
CEDAW/PSWG/2005/II/CRP.1/Add.3:	List of issues and questions with regard to the consideration of periodic reports, 9 February 2005
A/60/38 (SUPP):	CEDAW Report on 32nd and 33rd sessions, 2005
CEDAW/C/PRK/1:	Initial Report of State Parties, 11 September 2002

**Special Procedures of the Human Rights Council**

*Working Group on Arbitrary Detention (WGAD)*

A/HRC/WGAD/2012/4: Opinion No. 4/2012 adopted on 2 May 2012

*Working Group on Enforced and Involuntary Disappearances (WGEID)*

A/HRC/19/58/Rev.1:	Annual Report 2011, 2 March 2012
A/HRC/16/48:	Annual Report 2010, 26 January 2011
A/HRC/13/31:	Annual Report 2009, 21 December 2009
A/HRC/10/19:	Annual Report 2008, 25 February 2009
A/HRC/7/2:	Annual Report 2007, 10 January 2008
A/HRC/4/41:	Annual Report 2006, 25 January 2007
E/CN.4/2006/56:	Annual Report 2005, 27 December 2005
E/CN.4/2005/65:	Annual Report 2004, 23 December 2004
E/CN.4/2004/58:	Annual Report 2003, 21 January 2004
E/CN.4/2003/70:	Annual Report 2002, 21 January 2003

*Notes Verbales or letters from the Permanent Mission of the Democratic People's Republic of Korea addressed to the President of the Human Rights Council*

A/HRC/19/G/1:	dated 1 February 2012
A/HRC/16/G/2:	dated 20 January 2011
A/HRC/13/G/7/Rev.1:	dated 21 January 2010
A/HRC/10/G/6:	dated 29 January 2009
A/HRC/7/G/3:	dated 30 January 2008
A/HRC/5/G/11:	dated 18 June 2007
A/HRC/5/G/5:	dated 8 June 2007

**Letter from the Permanent Representative of the Democratic People's Republic of Korea addressed to the High Commissioner for Human Rights**

E/CN.4/2005/G/13: dated 28 February 2005

**Notes by the Secretariat**

E/CN.4/2006/32: dated 25 January 2006

E/CN.4/2005/32: dated 22 December 2004

A/59/316: dated 1 September 2004

E/CN.4/2004/31: dated 17 February 2004

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