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

Summary

In his statement to the Third Committee of the General Assembly in November 2012, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea called on Member States and the international community to undertake a comprehensive review of the many reports on the human rights situation in the Democratic People's Republic of Korea submitted under his mandate and by the Secretary-General over the past eight years to assess the underlying patterns and trends, and consider setting up a more detailed mechanism of inquiry. The present report provides a comprehensive review of United Nations documentation and resolutions on the situation of human rights in the Democratic People's Republic of Korea since 2004.

In addition to a total of 22 reports by the Secretary-General and the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea since 2004, and 16 resolutions adopted by the General Assembly and its subsidiary organs, the report seeks to take stock of the documentation in connection to the Universal Periodic Review, the concluding observations of the human rights treaty bodies, and the opinions adopted by the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances in cases relating to the Democratic People's Republic of Korea in that time. The review has identified nine underlying patterns of violations that these various documents have focused on. A more detailed analysis of these patterns is presented in annex I to the report.

* The annexes to the present report are being circulated as received, in their language of submission only.

The report concludes with recommendations for the international community, including suggestions on some possible next steps and areas of focus for United Nations action on the situation of human rights in the Democratic People's Republic of Korea. The report calls for the establishment of an inquiry mechanism with adequate resources to investigate and document grave, systematic and widespread violations of human rights in the Democratic People's Republic of Korea and to report to the Human Rights Council and the General Assembly, to examine the issue of accountability for such violations as well as crimes against humanity.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea was established by the Commission on Human Rights pursuant to its resolution 2004/13, and has since been renewed annually. Pursuant to that resolution and subsequent resolutions of the General Assembly, the Special Rapporteur has submitted two reports every year: one to the Human Rights Council, and another to the General Assembly. In his most recent report to the General Assembly (A/67/370), the Special Rapporteur gave an overview of the current human rights situation in the Democratic People's Republic of Korea and human rights concerns such as severe restrictions on freedom of opinion and expression, the economic situation and its impact on economic, social and cultural rights, protection concerns for asylum seekers from the Democratic People's Republic of Korea, and trafficking. On 2 November 2012, in his statement to the Third Committee of the General Assembly, the Special Rapporteur also highlighted his continuing concern over the abduction of foreign and Japanese nationals, on which there had unfortunately been no new developments.

2. In that statement, the Special Rapporteur called on Member States and the international community to undertake a comprehensive review of the many reports on the human rights situation in the Democratic People's Republic of Korea submitted by his mandate and the Secretary-General over the years, to assess the underlying patterns and trends, and to consider setting up a more detailed mechanism of inquiry. The present report provides a comprehensive review of United Nations documentation and resolutions on the situation of human rights in the Democratic People's Republic of Korea since 2004. The report seeks to take stock of and evaluate the extent to which the United Nations entities have documented human rights violations occurring in the Democratic People's Republic of Korea since the inception of the mandate of the Special Rapporteur in 2004.¹ The report suggests some possible next steps and areas of focus for the United Nations action on human rights in the country.

3. The review includes no fewer than 60 human rights-related documents including reports of the Secretary-General to the General Assembly; reports of the Special Rapporteur to the General Assembly and the Human Rights Council and its predecessor the Commission on Human Rights; resolutions adopted by these intergovernmental bodies; various reports associated with the universal periodic review of the Democratic People's Republic of Korea by the Human Rights Council; concluding observations and State reports to various treaty bodies, namely the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child; and documentation of cases taken up by the special-procedures mandate holders of the Human Rights Council such as the Working Group on Arbitrary Detention and the Working Group on Enforced and

¹ Vitit Muntarbhorn served as Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea for six years, from 15 June 2004. Marzuki Darusman took on the Special Rapporteur's mandate from 1 August 2010. For practical purposes, this report uses the term Special Rapporteur to refer to both mandate holders without distinction. However, for the sake of accuracy, the report indicates the document symbol or year of the Special Rapporteur's comments to allow the reader to identify to which mandate holder the information should be attributed.

Involuntary Disappearances; on the situation of human rights in the Democratic People's Republic of Korea.²

4. A more detailed analysis of patterns of human rights violations documented by the United Nations through its reports and resolutions since 2004 is presented in annex I.

II. Patterns of violations documented by the United Nations

5. The General Assembly and its subsidiary organs have adopted 16 resolutions since 2003.³ A total of 22 reports by the Secretary-General and Special Rapporteur have been presented to the United Nations Member States since 2004. These documents underscore the long-term nature and broad pattern of grave human rights violations throughout the Democratic People's Republic of Korea, as well as the awareness of the situation by the United Nations and its Member States.

6. A review of this documentation leads to the identification of nine key inter-linked issues or patterns of violations of human rights that the United Nations has focused on:

(a) Violation of the right to food, in particular the effect of State-controlled food distribution policies on the nutritional status and health of the population and the restricted entry of international humanitarian aid to deal with the endemic food crisis;

(b) Torture and other cruel, inhuman and degrading treatment or punishment, including inhuman conditions of detention;

(c) Arbitrary detention, as a form of persecution and the criminalization of any behaviour deemed threatening or contrary to the official ideology of the Government, the lack of rule of law and the absence of due process or an independent judiciary;

(d) Violations of human rights associated with prison camps;

(e) Discrimination and the disproportionate or specific effect of human rights violations on vulnerable groups, in particular women, children, people living with disabilities and returnees. Of particular concern is the fact that society is divided into three distinct groups classified according to their political allegiance to the Government. A person's place in this hierarchy determines the level of access that he or she will have to basic human rights, including access to food, health, education and freedom of movement;

(f) Extensive violation of freedom of expression and other related freedoms;

(g) Violation of the right to life, in particular the abusive application of the death penalty and the use of public executions;

(h) Restrictions on freedom of movement and abusive treatment of citizens forcibly returned;

(i) Enforced disappearances, including in the form of abductions of foreign nationals.

7. These nine areas were identified by reviewing the issues on which the United Nations had expressed the most concern, and point to the existence of a systematic and

² The review does not include the reports of the United Nations offices and specialized agencies, such as the Office for the Coordination of Humanitarian Affairs (OCHA), the World Food Programme (WFP), and the Food and Agricultural Organization (FAO), etc.

³ This includes three resolutions by the Commission on Human Rights from 2003 to 2005; five resolutions by the Human Rights Council from 2008 and eight resolutions by the General Assembly from 2006 to date.

widespread pattern of violations. A full description of the documentation of these nine patterns is presented in annex I to this report. A varying amount of documentation is available on each of these violations, as information is difficult to obtain, due to the absence of independent monitors and media in the country, the restrictions on citizens leaving the country, and the refusal of the Government of the Democratic People's Republic of Korea to provide access or otherwise cooperate with the United Nations human rights mechanisms. Concerns about reprisals, including against family members who remain in the country, also make it difficult for individual victims to come forward or agree to the publication of certain details. Nevertheless, the regular, credible and consistent information which has been received – and the patterns to which they point – highlight the need for a more systematic, comprehensive and well-resourced investigative mechanism than can be achieved by the current Special Rapporteur and his mandated support from the Office of the High Commissioner for Human Rights. An inquiry mechanism could produce a more complete picture, quantify and qualify the violations in terms of international law, attribute responsibility to particular actors or perpetrators of these violations, and suggest effective courses of international action.

III. United Nations assessment of human rights violations in the Democratic People's Republic of Korea

8. The United Nations has characterized many of the abuses committed in the Democratic People's Republic of Korea as grave violations of human rights, committed in a systematic and widespread manner.

9. The General Assembly resolutions adopted between 2006 and 2012 on the Democratic People's Republic of Korea repeatedly expressed serious concern at the persisting reports of systematic, widespread and grave violations of civil, political, economic, social and cultural rights in the Democratic People's Republic of Korea, including torture, public executions, arbitrary detention, absence of due process and the rule of law, imposition of the death penalty for political and religious reasons, collective punishments and the existence of a large number of prison camps and extensive use of forced labour. From 2008 onwards, the General Assembly has strengthened its approach and expressed very serious concern about these violations.

10. In its resolutions, the General Assembly also expressed its very serious concern at violations of economic and social rights leading to severe malnutrition and other health problems, as well as restriction on freedom of movement, as systematic and widespread. Moreover, the General Assembly decried violations affecting vulnerable groups, in particular women, children, persons living with disabilities and the citizens repatriated back to the Democratic People's Republic of Korea. The Commission on Human Rights also reflected these concerns in the resolutions it adopted from 2004.⁴

11. Since 2009, the Human Rights Council has deplored the grave, widespread and systematic abuses in the Democratic People's Republic of Korea, in particular the use of torture and labour camps against political prisoners and repatriated citizens. In 2012, the Human Rights Council went a step further, expressing deep concern about a “persisting deterioration” in the human rights situation in the country.⁵

12. In 2012, for the first time, since the inception of the mandate of the Special Rapporteur, the Human Rights Council adopted its resolution on the Democratic People's

⁴ Commission on Human Rights resolutions 2004/13 and 2005/11

⁵ Human Rights Council resolution 19/13

Republic of Korea, without a vote, reflecting the overwhelming and the steadily growing number of countries concerned about the human rights situation in the country.⁶ Also for the first time, on 20 December 2012, the General Assembly adopted its resolution on the Democratic People's Republic of Korea, without a vote, expressing its deep concern at the significant persistent deterioration of the human rights situation in the Democratic People's Republic of Korea despite the succession of leadership.⁷

13. Both Special Rapporteurs who have held this mandate have recognized the systematic nature of the violations inflicted upon the population in the Democratic People's Republic of Korea. In 2012, in his report to the General Assembly, the Special Rapporteur was "disconcerted by the recent declaration by Kim Jong Un that his first, second and third priorities were to strengthen the military" and noted that "slow economic growth coupled with a "military first" policy will be detrimental to the welfare of the people of the Democratic People's Republic of Korea".⁸ The former Special Rapporteur had expressed similar concerns. In 2005, he underlined that "the non-democratic nature of the power base in the Democratic People's Republic of Korea impedes the enjoyment of human rights substantially, while the State-centric focus of the national authorities aimed at ensuring survival of the regime at the top under the umbrella of the so-called "collective" rights and national sovereignty, hampers the realization of human rights".⁹ In 2010, he noted, "the human rights situation in the Democratic People's Republic of Korea can be described as *sui generis* (in its own category), given the multiple particularities and anomalies that abound. Simply put, there are many instances of human rights violations which are both harrowing and horrific".¹⁰

14. Both Special Rapporteurs have also raised the question of whether crimes against humanity are being committed in the Democratic People's Republic of Korea. In 2007, the Special Rapporteur flagged a study that claimed that the "misdeeds of the authorities are tantamount to crimes against humanity, fulfilling the conditions of intent and widespread systematic attacks on civilian population".¹¹ He went on to suggest that beyond State responsibility, individual criminal responsibility "may ensue from the commission of crimes against humanity".¹² In 2008, the Special Rapporteur stated that "there may also be avenues for mobilizing action for individual criminal responsibility, inspired by the presence of the International Criminal Court, where the local system is unable or unwilling to act to make individuals accountable for individual crimes".¹³ The Special Rapporteur concluded by affirming that "while much depends upon global-local political will to test the desire for transparency and responsibility ... it is important to underline the long-standing systematic natures of human rights transgressions in the country which are highly visible, substantial and exponential".¹⁴

⁶ In 2008 Human Rights Council resolution 7/15 was adopted with 22 votes in favour, 7 against and 18 abstentions; in 2009 resolution 10/16 was adopted with 26 votes in favour, 6 against and 15 abstentions; in 2010 resolution 13/14 was adopted with 28 votes in favour, 5 against and 13 abstentions; in 2011 resolution 16/8 was adopted with 30 votes in favour, 3 against and 11 abstentions.

⁷ General Assembly resolution 67/181.

⁸ A/67/370, para. 50.

⁹ A/60/306, para. 9.

¹⁰ A/HRC/13/47, para. 86.

¹¹ A/HRC/4/15, para. 40 flagged a study entitled, "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.

¹² A/HRC/4/15, para. 41.

¹³ A/HRC/7/20, para. 45.

¹⁴ A/HRC/7/20, para 48.

15. In 2010, the Special Rapporteur stressed that “the international crime that would seem to be most closely related to the happenings in the country in question is “crimes against humanity”.¹⁵ He noted, “it is clear from six years of observing the human rights situation in the Democratic People’s Republic of Korea that the abuses against the general population for which the authorities should be responsible are both egregious and endemic”.¹⁶

16. In 2012, the Special Rapporteur stressed that “under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of international law may constitute crimes against humanity”.¹⁷

IV. Impunity and non-cooperation with the United Nations

17. For almost a decade, the General Assembly, the Secretary-General, the former Commission on Human Rights, the Human Rights Council, the Special Rapporteur and the human rights treaty bodies have consistently and repeatedly called on the authorities of the Democratic People’s Republic of Korea to put an end to these violations and respect the human rights of all its citizens. In 2009, the Secretary-General noted that the Government of the Democratic People’s Republic of Korea had not taken “significant steps to address persistent reports of systematic and widespread human rights violations or to provide safeguards for human rights”.¹⁸

18. The need for accountability has been reiterated and advanced by resolutions adopted by the United Nations, particularly those by the General Assembly. Since 2009, the General Assembly has strongly urged “the Government to address the issue of impunity and ensure that those responsible for violations of human rights are brought to justice before an independent judiciary”.¹⁹

19. Concerns about impunity have been exacerbated by intermittent cooperation of the Government of the Democratic People’s Republic of Korea with the United Nations human rights machinery. A notable example is that, on 23 August 1997, the Government of the Democratic People’s Republic of Korea sent the Secretary-General a notification of withdrawal from the International Covenant on Civil and Political Rights, which the country acceded to on 14 September 1981.²⁰ On 23 September 1997, in an aide-mémoire to the Government of the Democratic People’s Republic of Korea, the Secretary-General stated his opinion that a withdrawal from the Covenant would not appear possible unless all States Parties to the Covenant agree with such a withdrawal.²¹ On 8 December 1997, the Human Rights Committee adopted the General Comment No. 26 on Continuity of Obligations under the International Covenant on Civil and Political Rights. The Committee is firmly of the view that international law does not permit a State which has ratified or acceded or succeeded to the Covenant to denounce or withdraw from it.²² Eventually, on 25

¹⁵ A/HRC/13/47, para. 60.

¹⁶ A/HRC/13/47, para. 8.

¹⁷ A/67/370, para. 38.

¹⁸ A/64/319, para. 4.

¹⁹ General Assembly resolutions 63/190, 64/175 and 66/174

²⁰ United Nations Treaty Collection. See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#8

²¹ The notification of withdrawal and the aide-mémoire were duly circulated to all States Parties under cover of C.N.467.1997.TREATIES-10 of 12 November 1997.

²² CCPR/C/21/Rev.1/Add.8/Rev.1: CCPR General Comment No. 26: Continuity of Obligations adopted at the Sixty-first Session of the Human Rights Committee, on 8 December 1997

December 1999, the Democratic People's Republic of Korea submitted its second periodic report²³ to the Human Rights Committee covering in principle the period from 1984 to 1997, which was later considered by the Committee in July 2001.²⁴

20. Further, the Government of the Democratic People's Republic of Korea has refused to acknowledge or cooperate with the Special Rapporteur and has also consistently and categorically rejected the resolutions adopted by the former Commission on Human Rights, the Human Rights Council and the General Assembly on the situation of human rights in the country, since the establishment of the Special Rapporteur's mandate in 2004. Most recently, on 20 December 2012, at the General Assembly, the representative of the Democratic People's Republic of Korea reportedly said, *inter alia*, that the Government had categorically rejected the resolution on the human rights situation in the Democratic People's Republic of Korea, as it had nothing to do with human rights in the country. Violations mentioned in the text had not been allowed to exist. He reportedly also said the text was clearly propaganda for a fabricated human right situation and created pressure on the country's social system, which constituted interference in its internal affairs. It was an act of political terrorism and showed double standards, and that any consideration of human rights must be carried out with the principles of objectivity under the Universal Periodic Review. The main sponsors had worked to destabilize the country by picking on human rights issues. While it had been adopted without a vote, it could not be interpreted as by consensus.²⁵

21. Also, since 2003 the Government of the Democratic People's Republic of Korea has rejected all offers for technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR).²⁶

22. Moreover, in December 2009, during the adoption of the universal periodic review (UPR) report²⁷ on the Democratic People's Republic of Korea, the Government failed to identify the recommendations that enjoyed its support. It is the first State to not accept any recommendation out of the 167 received. The delegation rejected 50 recommendations in the report of the Working Group and left 117 pending. For this reason, on 21 December 2010, the General Assembly expressed its serious concern at "the refusal of the Government of the Democratic People's Republic of Korea to articulate which recommendations enjoyed its support following its universal periodic review by the Human Rights Council, and regrets the lack of actions taken to date to implement the recommendations contained in the final outcome".²⁸

23. In 2008, the Special Rapporteur noted that "it is incumbent upon the national authorities and the international community to address the impunity factor which has enabled such violations to exist and persist for a long time".²⁹ In 2010, he expressly noted

²³ CCPR/C/PRK/2000/2, para. 2.

²⁴ CCPR/CO/72/PRK, para. 1.

²⁵ A/67/PV.60; see news release at <http://www.un.org/News/Press/docs/2012/ga11331.doc.htm>. See also summary records of the Third Committee, for example, A/C.3/67/SR/38; A/C.3/67/SR/45; A/C.3/67/SR/46. See also notes verbales 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; 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).

²⁶ See for example E/CN.4/2005/G/13: letter dated 28 February 2005 from the Permanent Representative of the Democratic People's Republic of Korea addressed to the High Commissioner for Human Rights rejecting offer of technical assistance

²⁷ A/HRC/13/13, report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea.

²⁸ General Assembly resolution 65/225, para. 1 (c).

²⁹ A/HRC/7/20, para. 43.

that since the national authorities are “unable or unwilling to press for such accountability”,³⁰ the international community could press for further accountability, whether in terms of State responsibility and/or individual criminal responsibility. In 2011, the Special Rapporteur reported, “the International Criminal Court began to examine whether the sinking of *Cheonan*, a Republic of Korea warship hit by a torpedo allegedly fired from a Democratic People’s Republic of Korea submarine on 26 March 2010, resulting in the death of 46 persons, and the shelling of Yeonpyeong Island on the 23 November 2010, resulting in the killing of two civilians and injuring many others, would constitute war crimes under the jurisdiction of the court. The Court’s consideration of the two incidents opens questions of accountability for other alleged crimes committed by the Democratic People’s Republic of Korea, including the issue of abduction”.³¹

24. Of the options available to address the issue of impunity and accountability, the Special Rapporteur asked in 2010 “to what extent the International Criminal Court can be accessed for this purpose, on the basis of individual criminal responsibility and interrelated with the fact that the country in question is not a party to the Rome Statute of the International Criminal Court”.³² In 2010, the Special Rapporteur noted that the options also included “the possibility of the Security Council taking up the issue directly and of establishing a Commission of Inquiry on crimes against humanity”.³³ He also invited the international community “to address impunity from different viewpoints, whether in terms of State responsibility and/or criminal responsibility, and to enable the totality of the United Nations system, especially the Security Council, and its affiliates, such as the International Criminal Court, to take measures to prevent egregious violations, protect people from victimization and provide effective redress”.³⁴

25. The Special Rapporteur is of the view that many, if not all, of the nine patterns of violation, identified in this report may amount to crimes against humanity, committed as part of systematic and/or widespread attacks against civilian populations, under Article 7, paragraph 1, of the Rome Statute of the International Criminal Court, in particular, subparagraphs (a) murder; (c) enslavement; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (h) persecution against any identifiable group or collectivity on political and religious grounds; (i) enforced disappearance of persons; and (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

26. The right to be free from torture is a non-derogable right under article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which the Democratic People’s Republic of Korea is a State party.

27. Similarly, peremptory international law places, enforced disappearance on the same legal footing as torture. The Special Rapporteur notes that as enforced disappearance may constitute several different human rights violations such as freedom of movement; liberty and security of person; freedom from torture or cruel, inhuman, or degrading treatment; or even the right to life, the act contravenes several provisions of the ICCPR. He also notes that enforced disappearances, including through the abduction of foreign nationals such as

³⁰ A/HRC/13/47, para. 58.

³¹ A/HRC/16/58, para. 14. See also the International Criminal Court’s Report on Preliminary Examination Activities, 2012, paras. 64-74 (<http://www.icc-cpi.int/NR/rdonlyres/C433C462-7C4E-4358-8A72-8D99FD00E8CD/285209/OTP2012ReportonPreliminaryExaminations22Nov2012.pdf>).

³² A/HRC/13/47, para. 59.

³³ A/HRC/13/47, para. 58.

³⁴ A/HRC/13/47, para. 89 (e).

the citizens of the Republic of Korea and Japan by the agents of the Democratic People's Republic of Korea, may amount to crimes against humanity under Article 7, paragraphs (1) (i) and (2) (i) of the Rome Statute to the extent that they form part of a systematic or widespread attack against a civilian population. In this regard, it is worth emphasizing that enforced disappearances (whether they amount to crimes against humanity or not) constitute continuous acts that are ongoing as long as the fate of the victim is not clarified and on this ground already not affected by prescription.

28. The Special Rapporteur is of the opinion that grave human rights violations in the prison camps (or) even the mere existence of such camps, with slave-like conditions for political prisoners, may qualify as crimes against humanity under Article 7, paragraph 1, of the Rome Statute, subparagraphs (c) enslavement, and (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law. He also notes that the particularly inhumane conditions and treatment to which detainees in political prison camps are exposed on an intentional basis could give rise to crimes against humanity, including on the basis of all of the specific acts cited in paragraph 25 above.

29. On 3 April 2012, the International Coalition to Stop Crimes Against Humanity in North Korea (ICNK),³⁵ a coalition of some 40 international non-governmental organizations, submitted a petition³⁶ to the special-procedures mandate holders of the Human Rights Council on the use of labour camps for political prisoners and the pattern of human rights violation committed in these prison camps. These were detailed extensively in a memorandum "The situation of detainees in Gulag System (*Kwan-li-so*) of the Democratic People's Republic of Korea". The Coalition recommended, inter alia, that the international community take effective measures to ameliorate the suffering of those 150,000 to 200,000 people imprisoned in those camps; and that the United Nations, acting through the General Assembly or Human Rights Council, initiate a commission of inquiry into the crimes against humanity being committed in the Democratic People's Republic of Korea for the purpose of holding the State and individual perpetrators to account for the ongoing commission of these crimes. Based on that petition, on 3 October 2012, five mandate holders, namely the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; and the Working Group on Enforced and Involuntary Disappearances sent a joint allegation letter to the Government of the Democratic People's Republic of Korea on the alleged use of labour camps for political prisoners. At the time of writing, the mandate holders have not received any response from the Government.

30. The Special Rapporteur is of the view that, in line with its commitment at the 2005 World Summit, the international community, through the United Nations, has the responsibility to use appropriate peaceful means to help to protect the population in the Democratic People's Republic of Korea from crimes against humanity.³⁷ As one of the minimum steps, and in line with the emerging practice with regard to other country situations where serious violations are being committed on a systematic or widespread basis, he considers that the international community has the responsibility to launch an independent and impartial international inquiry into a situation, where there are grounds to believe that crimes against humanity are being committed and the country concerned fails to carry out effective independent and impartial inquiries itself. While usually not sufficient in and by itself to end crimes against humanity, increased scrutiny by

³⁵ See http://www.stopnkcrcimes.org/about_01.php.

³⁶ See <http://www.fidh.org/The-International-Coalition-to>

³⁷ General Assembly resolution 60/1, para. 139.

international inquiry affords a measure of protection, especially when coupled with the prospect of future criminal investigations and the deterrent effect such a prospect may have on individual perpetrators.

V. Conclusions and recommendations

31. This review of United Nations documentation on the situation human rights in the Democratic People's Republic of Korea since 2004 points to the need for the establishment of an inquiry mechanism with adequate resources to investigate and more fully document the grave, systematic and widespread violations of human rights in the Democratic People's Republic of Korea and report to the Human Rights Council and the General Assembly. The inquiry should examine the issues of institutional and personal accountability for such violations, in particular where they amount to crimes against humanity, and make appropriate recommendations to the authorities of the Democratic People's Republic of Korea and international community for further action. The inquiry would include:

(a) More detailed analysis of the grave, widespread and systematic violations of human rights in the Democratic People's Republic of Korea identified in this report, through the collection and documentation of victims' testimonies and the accounts of survivors, witnesses and perpetrators;

(b) More detailed documentation of the most egregious violations of human rights committed in the Democratic People's Republic of Korea, in particular closer examination of the widespread and systematic practice of torture and arbitrary detention, and the full range of violations committed in the prison camps, as well as the abduction of foreign nationals;

(c) Closer examination of the issue of discrimination in the systemic denial and violation of basic human rights and fundamental freedoms, including access to food, restrictions on freedom of movement, freedom of expression, arbitrary arrest and torture;

(d) A detailed examination and legal analysis of whether crimes against humanity are being perpetrated in the Democratic People's Republic of Korea, as well as violation against foreign national such as abductees; and

(e) A closer examination of the issue of accountability in the Democratic People's Republic of Korea given the problem of pervasive impunity and almost a decade of non-cooperation by the Government with the United Nations human rights mechanisms.

32. The Special Rapporteur also reiterates all recommendations previously made to the Government of the Democratic People's Republic of Korea in his reports to the Human Rights Council and the General Assembly.

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.¹ 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."² 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."³

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."⁴

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.⁵

¹ A/63/332, para 6

² A/64/224, para 66

³ A/HRC/RES/7/15

⁴ A/64/224, para 66

⁵ 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 49.⁶

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.⁷

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.⁸

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

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.¹⁰ 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.¹¹

11. The United Nations has also consistently highlighted the problem of **access of humanitarian assistance**.¹² 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 influence¹³. 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.¹⁴

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

⁶ A/64/224, para 17

⁷ A/64/224, para 17

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

⁹ A/HRC/10/18, para 15

¹⁰ A/HRC/7/20, paras 15-23

¹¹ A/60/306, para 38

¹² 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

¹³ E/CN.4/2006/35 paras 4-5; A/61/349

¹⁴ A/61/349

pressured the authorities to reopen the country to outside aid.¹⁵ 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 2008.¹⁶

13. According to the Special Rapporteur, in 2009 the aid situation became more desperate.¹⁷ 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.”¹⁸

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**.¹⁹

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.²⁰

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.”²¹

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

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

¹⁶ A/63/332, para 30

¹⁷ A/64/224

¹⁸ A/64/224, para 13

¹⁹ A/64/319, para 8

²⁰ A/HRC/19/65, para 23

²¹ A/RES/66/174, para 3

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

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.²³

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.²⁴

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.²⁵

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).²⁶ The Human Rights Council deplored “the use of torture...against political prisoners and repatriated citizens of the Democratic People’s Republic of Korea”.²⁷

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.²⁸

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.”²⁹ 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.”³⁰

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

²³ A/HRC/19/65, para 26

²⁴ A/HRC/19/65, para 58

²⁵ A/HRC/19/65, para 58

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

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

²⁸ A/HRC/4/15

²⁹ A/63/332; A/65/391.

³⁰ 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.³¹ He quoted from the White Paper on Human Rights in North Korea, a document³² 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."³³

25. In 2011, in his report to the Human Rights Council³⁴, 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."³⁵

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."³⁶

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

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.³⁸

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.³⁹ Moreover, in several of his reports, the Special

³¹ A/HRC/10/18, para 24

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

³³ A/64/224, para 58

³⁴ A/HRC/16/58

³⁵ A/HRC/16/58, para 53

³⁶ A/HRC/16/58, para 56

³⁷ A/67/362, para 14

³⁸ A/67/362, para 25

³⁹ 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.⁴⁰

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.”⁴¹ 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.⁴²

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.”⁴³

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”⁴⁴. 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.”⁴⁵

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.

35. In his 2007 report to the Human Rights Council,⁴⁶ the Special Rapporteur had noted that there are a large number of provisions concerning anti-State activities that give rise to

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

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

⁴² A/61/349, para 15

⁴³ A/HRC/10/18, para 25

⁴⁴ A/HRC/10/18, para 23

⁴⁵ A/HRC/10/18, para 23

⁴⁶ A/HRC/4/15

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.”⁴⁷

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 2007.⁴⁸ A number of provisions of the Criminal Code also stipulate punishment for acts that would not normally warrant criminal liability.⁴⁹ 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.”⁵⁰

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.⁵¹

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*).⁵² The 2012 report of the Special Rapporteur to the General Assembly notes that article 233 of the Criminal Code foresees up to five years of labour for anyone illegally crossing the border of

⁴⁷ A/HRC/4/15, para 12

⁴⁸ A/HRC/19/65, para 34

⁴⁹ A/67/370, para 29

⁵⁰ A/60/306, para 19

⁵¹ A/66/322, paras 60-63

⁵² 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

the Democratic People's Republic of Korea, which is in contravention to the right to freedom of movement.⁵³

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.⁵⁴

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.⁵⁵

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.⁵⁶

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.⁵⁷

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.⁵⁸

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 2012.⁵⁹ 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 "political prisoners and repatriated citizens of the Democratic People's Republic of Korea."⁶⁰

⁵³ A/67/370

⁵⁴ A/66/322, paras 62, 71

⁵⁵ A/67/370, para 68

⁵⁶ A/HRC/13/47, para 88 (b) (iv)

⁵⁷ 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)

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

⁵⁹ E/CN.4/RES/2003/10

⁶⁰ A/HRC/RES/10/16

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).⁶¹

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.⁶² 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 Kaechon, Yodok, Hwasong, Bukchang, Hoeryong, Chonjin are some of the camps of infamy.⁶³

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.⁶⁴

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.⁶⁵ 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.⁶⁶

53. In his 2011 report to the General Assembly⁶⁷ 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

⁶¹ A/HRC/4/15, para 13

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

⁶³ A/HRC/13/47, para 31

⁶⁴ A/65/391, paras 33-34

⁶⁵ A/HRC/16/58

⁶⁶ A/HRC/16/58, para 55

⁶⁷ A/66/322, paras 60-63

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."⁶⁸

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.⁶⁹ 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."⁷⁰

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.⁷¹ 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."⁷² 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.⁷³

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 Assembly⁷⁴ 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 of liberty in violation of international law **may constitute crimes against humanity**" (emphasis added).⁷⁵

⁶⁸ A/66/322, para 60

⁶⁹ A/66/322, para 60

⁷⁰ A/60/306, para 19

⁷¹ A/HRC/WGAD/2012/4

⁷² A/HRC/WGAD/2012/4, para 26

⁷³ A/HRC/WGAD/2012/4, para 28

⁷⁴ A/67/370, paras 31-38

⁷⁵ A/67/370, para 38

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.⁷⁶ 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."⁷⁷

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.⁷⁸ 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).⁷⁹ 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 seems to persist and is implied by the testimonies of those who leave the country in search of refuge elsewhere."⁸⁰

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;

⁷⁶ A/66/343, para 74

⁷⁷ A/66/322, para 62

⁷⁸ A/60/306, para 20

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

⁸⁰ A/HRC/7/20, para 24

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.”⁸¹

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.”⁸²

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.⁸³

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.”⁸⁴

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.⁸⁵

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 for prostitution or forced marriage**,” as well as **forced abortions and gender based discrimination**.⁸⁶

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

⁸¹ A/HRC/10/18, para 28

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

⁸³ A/64/224, paras 39-52

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

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

⁸⁶ 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

labour-inducing injection or natural delivery, as well as infanticide of children of repatriated mothers, including in police detention centres and labour-training camps.”⁸⁷

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.”⁸⁸

69. Both CEDAW and the Special Rapporteur highlighted the impact that discrimination has on the issue of **violence against women**.⁸⁹ 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.⁹⁰

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.⁹¹ 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.⁹²

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 of themselves or because of their parents.⁹³ 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

⁸⁷ E/CN.4/RES/2005/11

⁸⁸ 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)

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

⁹⁰ A/66/322, paras 52-59

⁹¹ A/66/322, paras 52-59

⁹² A/66/322, paras 52-59

⁹³ 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>

conflict with the law.⁹⁴ Several United Nations documents also point to discrimination against children of non-ethnic Korean origin and their mothers.⁹⁵

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.”⁹⁶ 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.”⁹⁷

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).⁹⁸

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.⁹⁹

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.

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.”¹⁰⁰

⁹⁴ A/RES/64/175; A/RES/65/225

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

⁹⁶ See for example A/RES/62/167.

⁹⁷ E/CN.4/2006/35, para 33

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

⁹⁹ A/HRC/RES/13/14; A/HRC/RES/16/8; A/HRC/RES/19/13

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

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

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.¹⁰²

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.¹⁰³

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.¹⁰⁴

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.¹⁰⁵ 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 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.¹⁰⁶

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

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

¹⁰² E/CN.4/2006/35; A/60/306.

¹⁰³ A/HRC/4/15, para 14

¹⁰⁴ A/64/224, para 31

¹⁰⁵ A/66/322, paras 48-51

¹⁰⁶ A/66/322, para 49

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.¹⁰⁷

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.¹⁰⁸

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."¹⁰⁹

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."¹¹⁰ 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."¹¹¹

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."¹¹² In 2001, the Human Rights Committee

¹⁰⁷ A/66/322, para 50

¹⁰⁸ A/66/343, para 13

¹⁰⁹ A/67/370, para 26

¹¹⁰ A/67/362, para 57

¹¹¹ A/66/322, para 65

¹¹² 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

recommended that the Democratic People's Republic of Korea refrain from public executions and work towards abolishing capital punishment.¹¹³

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."¹¹⁴ 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.¹¹⁵

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.¹¹⁶

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 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.¹¹⁷

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,

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

¹¹⁴ A/63/332, para 5

¹¹⁵ A/66/343, para 17

¹¹⁶ A/HRC/19/65, para 36

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

particularly drawing the attention to the provisions of the Criminal code and its addendum.¹¹⁸

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."¹¹⁹

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.¹²⁰

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."¹²¹

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.¹²² 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.¹²³

99. In 2012 the Special Rapporteur recognized, that while some people flee the country due to persecution, others leave for economic reasons.¹²⁴ 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

¹¹⁸ A/HRC/19/65; A/67/370

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

¹²⁰ A/HRC/7/20, para 20

¹²¹ A/67/370, para 51

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

¹²³ A/HRC/10/18, para 35

¹²⁴ A/67/370, para 59

social group, two of the five conditions established by the Convention relating to the Status of Refugees.”¹²⁵

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.¹²⁶

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.¹²⁷

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.¹²⁸

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 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’.”¹²⁹

¹²⁵ A/67/370, para 61

¹²⁶ A/67/370, para 62

¹²⁷ E/CN.4/2006/35, paras 36-40

¹²⁸ A/HRC/4/15, para 23

¹²⁹ A/HRC/4/15, para 21

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.¹³⁰

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.¹³¹

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.¹³²

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."¹³³

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."¹³⁴

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 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

¹³⁰ A/HRC/WG.6/6/PRK/2, para 20

¹³¹ A/67/362; A/66/343; A/65/391

¹³² See for example A/60/306.

¹³³ A/RES/63/190; A/RES/64/175; A/RES/66/174

¹³⁴ A/HRC/4/15, para 22

questions relating to the abduction of foreigners in the form of enforced disappearance.”¹³⁵ From 2006 onwards the General Assembly qualified these abductions noting that they violated “the human rights of the nationals of other sovereign countries.”¹³⁶

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.¹³⁷ 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.¹³⁸

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.”¹³⁹ 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.”¹⁴⁰ 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.¹⁴¹

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.¹⁴² 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 near their homes, which indicates that these abductions were “carried out intentionally and in an organized manner”.”¹⁴³

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

¹³⁵ A/RES/60/173, para 1(b)(v)

¹³⁶ A/RES/61/174, para 1(b)(v)

¹³⁷ A/64/319, para 20

¹³⁸ A/HRC/19/58/Rev.1, paras 143-146

¹³⁹ A/62/318, para 18

¹⁴⁰ A/62/318, para 18

¹⁴¹ A/62/318, para 20

¹⁴² A/HRC/16/58, paras 18-25

¹⁴³ A/HRC/16/58, para 19

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).¹⁴⁴ 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).”¹⁴⁵

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.”¹⁴⁶ 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.¹⁴⁷

¹⁴⁴ A/HRC/16/58, para 20

¹⁴⁵ A/HRC/16/58, para 25

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

¹⁴⁷ 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^a

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

^a 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
