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

Summary

The current situation of human rights in the Democratic People's Republic of Korea reveals a number of key violations in a variety of fields. This report has analysed them particularly from the perspective of sustenance: rights pertaining to food, nutrition and related matters; freedoms: rights pertaining to security of the person, humane treatment and justice; asylum: rights pertaining to refugees/those seeking refuge; vulnerability: rights concerning specific groups; and responsibility: rights concerning the responsibility of the State authorities to protect human rights and fundamental freedoms, and related accountability.

The environment for the promotion and protection of human rights in the Democratic People's Republic of Korea was further undermined in 2006 by the various missile and nuclear tests carried out by the country in the face of global condemnation and subsequent Security Council resolutions imposing sanctions on the country. Regrettably, it is the ordinary people of the Democratic People's Republic of Korea who suffer at the hands of the authorities and who bear the brunt of the myriad of abuses which are both systematic and pervasive. It is also regrettable that to date the authorities of the country have declined to cooperate with the Special Rapporteur.

The report also provides an update on field visits to Japan, the Republic of Korea and Mongolia. It ends by addressing recommendations to both the Democratic People's Republic of Korea and the international community.

The report is submitted in accordance with Human Rights Council decision 1/102.

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I. INTRODUCTION

1. The Special Rapporteur thanks warmly all Governments, non-governmental organizations and international organizations that assisted him in carrying out his functions during the year. The mandate of the Special Rapporteur was established in 2004 by the Commission on Human Rights. It was extended by the Human Rights Council in 2006 for one year, and the Special Rapporteur is tasked with preparing and submitting reports to both the General Assembly and the Council. The mandate of his work encompasses a variety of questions relating to civil, political, economic, social and cultural rights, ranging from humanitarian aid (especially food aid) to asylum, abductions of foreigners and related transgressions. In late 2006, he also carried out a field visit to Japan, the Republic of Korea and Mongolia to assess the impact of the human rights situation in the Democratic People's Republic of Korea on these countries. The current report covers the situation until the beginning of 2007. It is submitted in accordance with Council decision 1/102.

2. On the constructive side, it will first be recalled that the country is a party to four human rights treaties - the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention for the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It has also submitted reports under these treaties and has appeared before the respective monitoring bodies. Notably, on one occasion, it invited the Committee on the Rights of the Child to visit the country. Second, the authorities have allowed the presence of a number of United Nations agencies in the country and continue to work with them on various aspects of human development. For instance, it cooperates with the United Nations Children's Fund (UNICEF) on child-related programming. A recent UNICEF report entitled *Analysis of the Situation of Children and Women in the Democratic People's Republic of Korea* notes that “[t]he particular strength of the [country's] policy framework lies in its comprehensiveness, integration and consistency in addressing the interests of children and women. It has been aligned with the collective production system. The government has proactively broadened and updated its laws and policies on an ongoing basis also making an effort to harmonize with international innovations and standards”.¹ Third, partly as a follow-up to the various recommendations of the international monitoring bodies, the country has undertaken some key law reforms such as revision of the Criminal and Criminal Procedure Codes in 2004 and 2005. The authorities also published a legal compendium for public use in 2004. Yet, there remain major challenges concerning the implementation of human rights, as will be seen below.

3. The approach of the Special Rapporteur continues to be to invite the country to respond to the mandate as a window of opportunity to engage with the United Nations. It is thus regrettable that to date, the authorities of the country have declined to cooperate with the Special Rapporteur.

¹ Analysis of the Situation of Children and Women in the Democratic People's Republic of Korea, UNICEF, Pyongyang, 2006, p. 22.

II. ANALYSIS OF KEY CONCERNS

A. Situation

4. Despite the country's formal commitment to human rights in various national laws and under the human rights treaties mentioned, the human rights situation remains grave in a number of key areas. It will be recalled that the country has a non-democratic regime which adheres to a "military first" policy; this depletes the resources of the country and creates budgetary distortions in favour of the ruling elite and militarization, in the face of many shortages and deprivations suffered by the population. In 2006 that situation was aggravated by missile and nuclear tests carried out by the authorities of the country, in the face of global condemnation. These irresponsible acts undermined the possibility of aid from other countries, which reconsidered their contributions in view of the provocative nature of the regime. Many violations of civil, political, economic, social and cultural rights persist in the country. They can be seen through the perspectives described below.

B. Sustenance: rights pertaining to food, nutrition and related matters

5. As noted in the previous reports of the Special Rapporteur, the country has been suffering from a severe food shortage since the 1990s.² That shortage was caused by both natural disasters and mismanagement on the part of the authorities, aggravated by the overemphasis on militarization and failure to generate food security due to unsustainable agricultural development. In the 1990s, the country started to accept food aid from outside the country, particularly through the World Food Programme (WFP). In 2002 the authorities moved away from the age-old Public Distribution System whereby the State provided rations to the people, to a more market-oriented experiment whereby people were to be paid higher wages and were expected to fend for themselves by accessing food through the market system. This led to major disparities due to a substantial rise in food prices, with various vulnerable groups marginalized in the process. However, in 2005, the authorities started to clamp down on the various markets by banning cereal trading for fear of losing a grip on the population and have since reimposed the Public Distribution System.

6. In 2005-2006, the authorities also demanded from the international presence a shift from humanitarian aid to a more development-oriented framework, and in the process scaled down the presence of various foreign humanitarian agencies in the country. One implied consequence was to reduce the monitoring of the aid coming into the country. While the 2005 harvest was a welcome improvement over the harvests of previous years, in the middle of 2006 major floods wreaked havoc on the harvest, resulting in a severe food shortfall. In 2006, WFP began its two-year Protracted Relief and Recovery Operation aiming to deliver food aid to 1.9 million people, at a cost of US\$ 102 million and requiring 150,000 tons of commodities.

² See further, Human Rights Watch, "A Matter of Survival: the North Korean government's control of food and the risk of hunger", Human Rights Watch, New York, vol. 18, No. 3 (C), 2006. A consistently balanced local source of information is the organization known as Good Friends. See further for the political impact of the nuclear test: International Crisis Group, "North Korea's Nuclear Test", Asia briefing No. 56, Seoul/Brussels, 13 November 2006.

Actual operations started in June 2006 on the basis of a letter of understanding with the authorities of the country, principally targeting for aid to women and young children. A number of factories are now being supported to produce fortified biscuits and blended foods.

7. Yet, outside aid has been less than forthcoming, as a reaction to the missile and nuclear tests carried out by the country. By the end of 2006, WFP was able to reach 29 counties out of the projected 50 and was able to cover only some 740,000 beneficiaries. It had received only 12 per cent of the required funding, and available food stocks were expected to be exhausted by the second quarter of 2007. On a related front, the Public Distribution System was only able to fulfil part of the food and nutritional needs of the population. As observed by the WFP executive brief on the country (4 January 2007):

“Sharply lower purchasing power compounds the long standing inability of the Government-run Public Distribution System (PDS) to provide enough subsidized cereals to those it supposedly serves: the 70 per cent of the population living in urban areas. An ostensible revitalization of the PDS last October to provide an average of 500 grams a day appears to have had very limited success. While it may be the case that some areas are receiving some rations, such distribution is not felt to be uniform throughout the country.”

8. The Food and Agricultural Organization of the United Nations (FAO) also highlighted the food shortage in a 2006 publication.³

9. The above should be seen in the light of the continuing prevalence of malnutrition in the country. It can be recalled that a 2004 survey carried out by United Nations agencies found that 37 per cent of young children suffered from malnutrition, while one third of mothers were both anaemic and malnourished. The shortage of food will thus have a major impact on the needy population. This is compounded by the decline of medical services and shortage of medicines, fertilizers and electricity. There is also widespread tuberculosis.

10. It is important to underline the need to generate food security in the country, for which no foreign aid could be a substitute. Of relevance is the recent draft country programme proposed by the United Nations Development Programme and the United Nations Population Fund. It highlights five priorities for 2007-2009: enhanced economic management, sustainable food security to improve the quality of life, sufficient energy supply for economic development, social development to improve the quality of life of the people, and improved environment for sustainable development (see DP/DCP/PRK/1, September 2006). Examples of projected activities include a sustainable rural energy development programme; establishment of an agricultural databank; an agricultural seed development programme; reduction of pre- and post-harvest losses; a demonstration project for an integrated mountain and watershed management system; an integrated environmental and early warning system for preventing environmental degradation and natural disasters; and a policy and technical base for small-scale generation of wind energy. However, supportive responses from the international community have been dampened by the furore caused by the arms tests in 2006.

³ FAO, “Crop Prospects and Food Situation”, No. 3, October 2006, pp. 15-16.

C. Freedoms: rights pertaining to security of the person, humane treatment and justice

11. In recent years, there have been some legislative improvements impacting upon the security of the human person. For instance, reforms of the criminal law noted earlier provide more certainty in the application of the law, at least in principle, and in response to the country's international obligations, as observed by a recent document.⁴

12. Yet, there are a large number of provisions concerning anti-State activities that give rise to concern due to their excessively broad scope and the way that the regime might use such provisions to repress political dissent. For instance, 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.⁵ Several may be punished with the death sentence.

13. Given the repressive nature of the State and the Government's cult-based system of governing by fiat, basic freedoms are markedly constrained. There are continuing reports of violence against the human person committed by State authorities, such as torture, public executions, persecution of political dissidents and substandard prison conditions, despite the legislative improvements noted above. There are 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. They have various names, such as *gwanliso* (political labour camp), *gyohwaso* (long-term prison labour camp), *jipgyulso* (detention facility) and *rodongdanryundae* (labour facility). Those who have left the country report various forms of torture and inhuman and degrading treatment.⁶ This has also been confirmed by a number of interviews which the Special Rapporteur had with refugees whom he met during the year.

14. Freedom of expression and association and access to information are impeded by the closed nature of the State and rigid State control over the information flow and media. 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. However, despite prohibitions against listening to foreign programmes, the increasing number of radio sets available due to nearby border trade opens the

⁴ White Paper on Human Rights in North Korea 2006, Korean Institute for National Unification, Seoul, 2006, pp. 67-68.

⁵ Ibid., p. 55.

⁶ Citizens Alliance for North Korean Human Rights, North Korea: Republic of Torture, December 2006 draft; Amnesty International Report 2006: The State of the World's Human Rights, Amnesty International, London, 2006, pp. 160-161.

door to more access to foreign broadcasts. Those who have left the country also note that mobile phones are increasingly available in the border areas, providing opportunities for calls across the border.

15. In relation to freedom of association/assembly, an interesting incident should be noted as a manifestation of the people's desire to express themselves and to seek accountability. A mass protest took place in December 2006 in Hoiryong, North Hamkyong. One source reported on 17 December 2006 that a riot by market traders took place when they were forced to vacate market premises, even though they had paid the authorities for reconstruction expenses.⁷ Calm returned after the market authorities negotiated a settlement.

16. Despite official claims that religious freedom is allowed, reports indicate the contrary. Indeed, any purported liberalization on this front tends to be due to the lure of money. As noted in a recent document:

“The reason North Korea is changing its religious policy in terms of legal and institutional arrangements is to maintain religious repression internally amidst deteriorating food shortage ... and the unruly social environment, while expanding contacts with the international community through various religious channels. In short, North Korea is utilizing religion as a means of gaining foreign currency.”⁸

17. On another front, human rights violations have particularly impacted upon foreigners in the form of abductions. As will be seen below, a number of Japanese nationals were abducted from the 1970s, probably with the aim of using them to train spies or to use their identity for espionage purposes. While five individuals have returned to Japan, other cases remain unsolved, particularly due to inadequate cooperation and follow-up on the part of the Democratic People's Republic of Korea. In a similar vein, there are long-standing cases of missing persons from the Republic of Korea who might have been abducted, as well as more recent claims of abductions of other nationals, including those of Thailand, Lebanon and some European countries. It is incumbent upon the authorities of the Democratic People's Republic of Korea to ensure transparency and provide redress as expeditiously as possible.

D. Asylum: rights pertaining to refugees/those seeking refuge

18. The Special Rapporteur was apprised of a key message in regard to the asylum situation during the year: “it is a major business”. There are many intermediaries exploiting those who seek refuge in other countries, and this is interlinked with rampant human smuggling, trafficking and extortion. The exploiters range from criminals to public officials in various countries, given that asylum by its very nature concerns several countries and is a transfrontier phenomenon. There is another resonant message in this scenario: those who seek refuge should not be

⁷ The Daily NK, 17 December 2006, www.dailynk.com/english/sub_list.php?catald=nk01500.

⁸ White Paper on Human Rights in North Korea 2006, see note 4 above, p. 139.

criminalized or penalized, because they are victims whose rights need to be respected accordingly. Often they have no choice but to leave their country of origin by paying intermediaries, at times ending up in dire situations.

19. With more literature now available on the subject,⁹ a number of points deserve attention. First, the issue of characterization and definition. There have for a long time been debates on the status of those seeking refuge from the country, and the earlier reports of the Special Rapporteur have already addressed this issue to a large extent. A “refugee” is defined internationally as a person who has left his/her country of origin owing to a “well-founded fear of persecution”. A key principle of international law is that they must not be pushed back to areas of danger - the principle of “non-refoulement”. Even where they did not leave the country of origin for fear of persecution but fear persecution subsequently, e.g. fear of being punished if they are sent back to the country of origin, they may also be characterized as refugees - or more precisely, “refugees *sur place*”. The underlying rationale behind refugee status is that the refugee is not protected by the country of origin and is thus entitled to international protection.

20. On analysis, many of those who have sought refuge from the Democratic People’s Republic of Korea are refugees or refugees *sur place* under international protection. In the interviews which the Special Rapporteur has had throughout the years with scores of those who had sought refuge in neighbouring countries, a number of the interviewees described situations of persecution in the country of origin, e.g. a relative who fell out of favour with the authorities, with subsequent persecution of the whole family. A large number of the interviewees also indicated that they had left the country because of hunger and other deprivations. Generally these hunger cases would not be “refugees”, unless the above criteria are fulfilled. In reality, many of the hunger cases can be seen as refugees *sur place*, because there is a threat of persecution/punishment if they are sent back to the country of origin, on the basis of their having left the country without the required exit visa. It is well known that in that country, there is strict control over migration - people are not allowed to move without permission and they need an exit visa to leave the country, with resultant sanctions in the case of failure to abide by the national law on this matter.

21. Recent reports indicate that the punishments meted out to those forced back to the country of origin may have been reduced partly because of the reform of the criminal law in 2004. The progression of the law has been observed as follows in a recent document:

“Article 47 of the 1987 Penal Code stipulated that anyone caught fleeing the country would be deemed as committing treason against the fatherland and be punished with a seven-year or heavier correctional labour punishment. But the revised 1999 Penal

⁹ See further: International Crisis Group, “Perilous Journeys: The Plight of North Koreans in China and Beyond”, Asia Report No. 122, 26 October 2006; Stephen Haggard and Marcus Noland (eds.), *The North Korean Refugee Crisis: Human Rights and International Response*, United States Committee for Human Rights in North Korea, Washington, 2006; “Life and Human Rights in North Korea”, The Society to Help Returnees to North Korea and Citizens’ Alliance for North Korean Human Rights, Tokyo/Seoul, vol. 42 (2006).

Code distinguished the act of border crossing into two categories. Simple acts of crossing of ‘those crossing the border illegally’ would be punished with correctional labour for up to three years (art. 17). Crossing the border ‘to flee from the country to another country or with the aim of toppling the Republic’ would be sentenced to correctional labour for 5 to 10 years. In more serious cases, correctional labour punishment for over 10 years or death sentences would be handed down, along with confiscation of all properties. Also, 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’.”¹⁰

22. If the sanctions are being reduced, this is a constructive development, but it needs to be monitored further to assess whether there is genuine, systematic mitigation rather than ad hoc reductions of sentencing. 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”.

23. 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.

24. Second, there is the issue of the responses on the part of first asylum countries. At the national level, such asylum countries have the tendency to shun the term “refugees” for national policy reasons so as to ensure that they have broad discretion in their treatment of the influxes. While the euphemism “humanitarian cases” is relatively acceptable when applied to those seeking refuge, the rubric “illegal immigrants” should be avoided since not only does it stigmatize the persons seeking refuge, but also it criminalizes the victim and creates an injustice.

25. The practices towards refugees vary by country and geographical area. Some countries forcibly return them, while others offer temporary refuge. Some countries do not prosecute them for illegal entry, while others do. Some countries keep them in detention in immigration jails or prisons, while others keep them in closed facilities under the supervision of military or intelligence personnel, although not prosecuting them as illegal immigrants. In the opinion of the Special Rapporteur, those who seek refuge should not be treated as illegal immigrants and

¹⁰ White Paper on Human Rights in North Korea 2006, see note 4 above, p. 273.

they should not be placed in detention; they should preferably be kept in open facilities and placed in closed facilities only as a matter of last resort. The latter should be set up in accordance with international standards, indefinite incarceration should be avoided and the facilities should be open to some outside monitors such as the Office of the United Nations High Commissioner for Refugees (UNHCR). The Office should be permitted to enter all areas where those who seek refuge may be present. Interestingly, some sources indicate that the number of forced returns may have declined slightly after the missile and nuclear tests in 2006, perhaps to show disapproval of the country of origin. However, the preferred approach based on international law is for all countries to adhere strictly to the principle of non-refoulement and treat those who seek refuge humanely.

26. Third, there is the issue of international burden-sharing. On the one hand, it is incumbent upon the international community to exert effective influence on the country of origin to address the root causes leading to outflows. On the other hand, the international community should help the first asylum countries in finding durable solutions for the refugee problem. This may entail policy and resource supports and resettlement places in other countries as appropriate. Some countries are already opening the door wider to resettle refugees from the Democratic People's Republic of Korea, at times directly from first asylum countries and at times via other channels.

27. Fourth, the pattern of arrivals is changing precisely because of the elasticity of the different practices of neighbouring countries. There is a kind of "push-down, pop-up" phenomenon whereby if one country takes a stringent approach towards those seeking refuge, the refugees, usually by promising to pay intermediaries, seek access to other countries with a more lenient approach. From the interviews which the Special Rapporteur has carried out with arrivals in various neighbouring countries, two patterns have emerged. On the one hand, a number of people spend quite a long time - a period of years - in an asylum country before leaving for other countries. Some are smuggled into the various countries, while others end up in various types of human trafficking such as forced marriage, prostitution, or forced labour. Second, a more recent caseload comprises those who transit briefly - a period of weeks - in a neighbouring first asylum country before leaving for other countries. This is currently the situation facing South-East Asia where some countries are witnessing a larger influx of refugees who merely transit briefly in a neighbouring country. Nearly all cases interviewed by the Special Rapporteur indicated that they or their relatives had either paid various intermediaries to help them flee the country of origin or that they or their relatives had promised to pay upon arrival in the final resettlement country.

28. Along the way, some public officials also profiteer from the situation through extortion; they refuse to release from detention those who have sought refuge unless they are paid. This also poses a dilemma to non-governmental organizations that seek to rescue detainees. Should they pay up, or desist from doing so? It is regrettable that at times these organizations are also classified as criminals when they are merely acting as human rights defenders. There is thus a need to distinguish between them and genuine criminal elements. It is also regrettable that there is a "market value" attached to refugees, who are exploited in a "chain-enchained" manner: at every step of the way from the borders of the country of origin to the final destination country, there is a chain of elements that seek to exploit the needs of refugees and their "worth" in a manner tantamount to slavery. The situation is all the more disquieting since the majority of those seeking refuge are currently women and some children. This is elaborated below in relation to the vulnerability factor.

E. Vulnerability: rights concerning specific groups

29. The previous reports of the Special Rapporteur dealt with the concerns of various groups which may be especially vulnerable in particular situations. This is the case of the women and children who are not part of the elite in the country of origin, bearing in mind the cross-cutting nature of women's rights.

30. A key dilemma is that the proportion of those seeking refuge are women and many have been subjected to human smuggling and/or human trafficking. There may be various reasons for this phenomenon. First, smugglers and traffickers are deliberately targeting women. Some male refugees interviewed by the Special Rapporteur indicated that the exploiters prefer to smuggle women rather than men, thus making it difficult for male refugees to seek the help of intermediaries. Second, it is believed that neighbouring countries are less likely to punish women for illegal entry. Third, the intermediaries feel that women are more likely to fulfil their "contractual obligation" to pay for the services rendered upon arrival in the destination country. Fourth, while the earlier caseloads were men, the current caseload may partly be the wives or families of the men who left some time ago and who seek family reunification. (In one case recounted to the Special Rapporteur in 2006, the wife worked in a cemetery in the first asylum country before following her husband to the final destination country.) Fifth, the shortage of women for marriage in some areas exerts a pull factor for the trafficking of women, and this may also imply more lax law enforcement against the women in question. However, there are a number of ensuing complications such as whether the local authorities are willing to register the children of the marriage.

31. On another front, one final destination country is now facing the issue of whether women refugees should be allowed to remarry after a period of time in the country, in the event that reunification with their husbands who remain in the country of origin becomes unlikely.

32. With regard to children, a recent situation analysis of the situation of women and children in the country recognizes some constructive features of State policies, such as 11 years' compulsory and free education.¹¹

33. However, the problem lies in the quality of education, which is further hampered by the decline in school facilities. Education is also a key instrument of indoctrination of the population, with children utilized for political ends from a young age, including through rigid control over nurseries and kindergartens through extensive State involvement in childcare.

34. Various issues concerning child survival, development, protection and participation still need more effective responses from the authorities in the country of origin. Access to food remains a key concern, as highlighted in the above section on sustenance. Child protection and participation are tested greatly where the children face situations of violence, deprivation, neglect and abuse, especially where the children do not belong to the elite. This is linked with

¹¹ *Analysis of the Situation of Children and Women in the Democratic People's Republic of Korea*, see note 1 above, p. 54.

the situation of children with disabilities and street children who might be subjected to substandard institutionalization. The current critical food shortage is also likely to be severe for adults who do not have access to the Public Distribution System and/or outside aid. The decline of the latter has made elderly persons more vulnerable to deprivation.

F. Responsibility: rights concerning the responsibility of the State authorities to protect human rights and freedoms, and related accountability

35. A key issue raised by many sources during 2006 was that of the responsibility of the authorities of the Democratic People's Republic of Korea for egregious human rights violations. The scenario was rendered more volatile by the missile and nuclear tests carried by the country which led to the adoption by consensus of Security Council resolutions imposing a variety of sanctions on the country. Interestingly, in the preamble to Council resolution 1718 (2006) imposing such sanctions, the issue of human rights is referred to indirectly by the emphasis on "other security and humanitarian concerns of the international community". The end of 2006 also witnessed the adoption of resolutions on the country by the General Assembly. In its resolution 61/174 the Assembly expressed its very serious concern at continuing reports of human rights violations including torture and cruel, inhuman and degrading treatment and public executions; extrajudicial and arbitrary detention; the absence of due process of law and rule of law; forced labour; punishment of refugees forcibly returned from abroad; severe restrictions on the freedoms of thought, conscience, religion, opinion, expression, peaceful assembly and association and on the access to information; violations of women's rights such as human trafficking; abductions of foreigners; and violations of the rights of persons with disabilities including the use of detention.

36. The Assembly castigated the country for not cooperating with the Special Rapporteur and requested reports from both the Secretary-General and the Special Rapporteur at its next session. This may be an opportunity not only to provide the human rights situation analysis which the Special Rapporteur has undertaken to date, but also to open the door to other policy options in a broader United Nations context based on the totality of the United Nations system.

37. On another front, while welcoming the resumption of the six-party talks (between six countries including the Democratic People's Republic of Korea) aimed at denuclearizing the Korean peninsula, the Special Rapporteur notes that the latest session was convened and then suspended in December 2006. It will be recalled that in their September 2005 joint statement the parties stated that the Democratic People's Republic of Korea was committed to abandoning all nuclear weapons and existing nuclear programmes and returning, at an early date, to the Treaty on the Non-Proliferation of Nuclear Weapons and to International Atomic Energy Agency safeguards, possibly to be complemented by economic development and security-related incentives. A positive atmosphere on that front would open the door to more humanitarian space with a constructive impact on human rights.

38. The non-governmental sector has put forward a number of ideas for addressing the responsibility of the country of origin. Some prefer the softer approach of engagement based on continuing humanitarian aid, while others are advocating a harder approach of responsibility and accountability. An example of the latter is based upon the notion of State responsibility to protect its people from egregious violations; this was introduced in the Outcome Document of the 2005 World Summit (General Assembly resolution 60/1):

“138. Each individual State has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity ...”

“139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity ...”

39. This “responsibility to protect” was confirmed in subsequent Security Council resolution 1674 (2004).

40. One study claims that the misdeeds of the authorities are tantamount to crimes against humanity, fulfilling the conditions of intent and widespread or systematic attacks on the civilian population.¹² The evidence includes persecution and starvation as the basis for accusations of crimes against humanity. The study thus advocates that the Security Council should adopt a non-punitive resolution under Chapter VI of the Charter to call for the authorities to be held accountable, given that their misdeeds amount to a non-traditional threat to international peace and security, as exemplified by a wide array of human rights violations, refugee outflows and various acts of criminality. Should the country fail to comply with such a resolution, further action may be needed under Chapter VII.

41. While the perspective of that study is primarily that of State responsibility vis-à-vis its people, there is another perspective linked with the individual criminal responsibility that may ensue from the commission of crimes against humanity. This is elaborated on extensively in the Rome Statute of the International Criminal Court and there is already copious jurisprudence on the issue from various ad hoc international criminal tribunals, such as the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Of relevance is article 7 of the Rome Statute which defines a number of acts as crimes against humanity, including murder, deportation or forcible transfer of populations, torture, enforced prostitution, persecution against any identifiable group or collectivity on political and other grounds, and enforced disappearance of persons. It remains to be seen how that advocacy will gather momentum.

III. COMMUNICATIONS

42. The Special Rapporteur sent a communication to the Government of the Democratic People’s Republic of Korea on 20 December 2005.

¹² 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.

43. On 4 January 2006, the Government of the Democratic People's Republic of Korea replied to the communication. In its reply, the Government rejected the content of the communication and reiterated its position that it does not recognize the mandate of the Special Rapporteur regarding human rights issues.

44. On 24 March 2006, a communication was sent to the Government of the Democratic People's Republic of Korea jointly with the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the sale of children, child prostitution and child pornography in connection with the forced repatriation of a female national of the Democratic People's Republic of Korea by a neighbouring country on 28 February 2006. The woman and her 1-year-old daughter were sold to a national of a neighbouring country, whom she was forced to marry. The woman gave birth to a second daughter soon thereafter. Concern was expressed that the woman might face harsh punishment since she had already been deported on two previous occasions, but managed each time to return to her children in the neighbouring country. The Special Rapporteurs appealed to the Government of the Democratic People's Republic of Korea to guarantee its citizens the human right to leave their own country. They furthermore urged the Government to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person.

45. On 12 April 2006, the Government of the Democratic People's Republic of Korea replied to the communication. In the reply, the Government rejected the content of the communication and reiterated its position that it does not recognize the mandate of the Special Rapporteur.

46. On 26 April 2006, a communication was sent to the Government of the Democratic People's Republic of Korea jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the question of torture. The communication raised the case of a male national of the Democratic People's Republic of Korea who was being held in a critical health condition after he was reportedly tortured. The authors appealed to the Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, and furthermore urged the Government to suspend the sentence of capital punishment pronounced against him until all allegations relating to the absence of trial and the recourse to torture had been thoroughly investigated.

47. On 5 May 2006, the Government of the Democratic People's Republic of Korea replied to the communication, rejecting the content of the communication. The Government reiterated its position that it does not recognize the mandate of the Special Rapporteur.

48. On 18 August 2006, the Special Rapporteur sent a communication to the Government of the Democratic People's Republic of Korea concerning the case of a male national of the Republic of Korea who had reportedly been abducted by a patrol boat of the Government of the Democratic People's Republic of Korea with 11 other crewmen of a fishing boat in June 1987. He reportedly attempted to escape the Democratic People's Republic of Korea three times and was consequently detained despite several requests to return to his country. The Special Rapporteur appealed to the Government not to detain, torture or otherwise punish a national of the Republic of Korea for exercising his right to return to his country.

49. The Government of the Democratic People's Republic of Korea did not reply to this communication sent by the Special Rapporteur.

IV. COUNTRY VISITS

50. The Special Rapporteur carried official visits to Japan, the Republic of Korea and Mongolia in 2005. The details of his earlier visits can be found in previous reports. It is not the intention here to repeat the background information, and related laws, policies and practices already discussed. His visits in 2006 were thus aimed at updating the information as a follow-up to his earlier trips. He warmly thanks the relevant Governments, United Nations agencies and members of civil society for facilitating his visits. It was particularly important for him to meet with victims, including refugees and the families of those affected by violations.

A. Visit to Japan, 10-14 December 2006

51. In 2006 there were three main issues facing Japan with respect to the Democratic People's Republic of Korea: the abductions of Japanese nationals, the missile tests and the nuclear test carried out by the Democratic People's Republic of Korea. The abductions of Japanese nationals by that country are a major concern to the mandate of the Special Rapporteur. A number of Japanese nationals were abducted by agents of that country in past decades, particularly in the 1970s. In 2002, at the first summit meeting between the leaders of Japan and the Democratic People's Republic of Korea in Pyongyang, the latter admitted that his country had been involved in a number of abductions and apologized accordingly. The two sides adopted the Pyongyang Declaration of 2002, premised upon peaceful dialogue and resolution of outstanding disputes on the basis of international law, in particular to help settle the abductions issue.

52. A number of other meetings have followed, but various uncertainties remain. Currently, Japan claims that 17 individuals have been abducted by the Democratic People's Republic of Korea. Five of these individuals have now returned to Japan, but the other cases have not yet been solved, mainly because of intransigence on the part of the Democratic People's Republic of Korea.¹³ Many sources in Japan, particularly the families of the abductees, believe that a number of abducted Japanese nationals are still alive in the Democratic People's Republic of Korea. The feeling is that they should be returned to Japan expeditiously. During the past year, other cases have come to light in regard to the nationals of several other countries abducted by agents of the country in question.

53. The issue of abductions has had enormous impact both nationally and internationally and is interrelated with the call for clarification and responsibility to be assumed by the People's Democratic Republic of Korea. In addition to the work of the Special Rapporteur on the cases,

¹³ See pamphlet in a number of languages: "Abductions of Japanese Citizens by North Korea", Ministry of Foreign Affairs, Tokyo, April 2006. See further: International Crisis Group, "Japan and North Korea: Bones of Contention", Asia Report No. 100, Seoul/Brussels, 27 June 2005.

a number of the cases mentioned are being addressed by the Working Group on Enforced or Involuntary Disappearances. Significant United Nations resolutions have been adopted on the issue, most recently by the General Assembly which in resolution 61/174 expressed its concern at the continuing reports of grave violations including “unresolved questions of international concern relating to the abduction of foreigners in the form of enforced disappearance, which violates the human rights of the nationals of other sovereign countries” (para. 1 (b) (v)).

54. In 2006 matters were made more complicated by the various missile and nuclear tests carried out by the Democratic People’s Republic of Korea in the face of global condemnation, especially through the adoption by consensus of Security Council resolutions imposing sanctions on the country.

55. A number of Japanese laws are related to the issues concerning the Democratic People’s Republic of Korea, in particular the 2002 law concerning support for the victims of abduction by that country. Other laws which cover not only the country in question but also other countries include the Foreign Exchange and Foreign Trade Control Law as amended in 2004; the law on liability for oil pollution as amended in 2004; and the 2004 special measures law prohibiting the entry into Japanese ports of specific ships. Major developments in 2006 in response to the abduction issue included the setting up of the Headquarters for the Abduction Issue, the identification of the seventeenth victim, and the new identification of agents responsible for one of the abductions. In 2006 the “Law concerning measures on the issues of abductions and other human rights violations by North Korean authorities” came into force, underlining Japan’s commitment to resolve the abductions issue. The Law provided for highlighting the issue through a national week to deepen awareness of human rights violations in the Democratic People’s Republic of Korea, the issuing of an annual report on the subject, the promotion of an international association between Japanese nationals and other nationalities, and measures to support “North Korean defectors”. The question of defectors affects at least two groups: Japanese spouses of nationals of the Democratic People’s Republic of Korea, and former Korean residents of Japan who went to live in the Democratic People’s Republic of Korea and who now wish to return to Japan. Japanese spouses of former Korean residents in Japan who went to live in the country in question are also considered to be cases of concern. In addition, there may be channels for sheltering others who seek refuge from the Democratic People’s Republic of Korea. During his visit to Japan, the Special Rapporteur also participated in one of the events launched under the said Law: the International Conference on Realities of North Korean International Abduction and its Solution, where he met not only the families of Japanese abductees but also those of other nationalities, including the nephew of a Thai national affected by abduction.

56. It will be recalled that at the end of the Special Rapporteur’s first visit to Japan in 2005 in connection with his mandate, he issued a humanitarian call based on five key principles (see A/60/306, para. 51). They deserve re-emphasis as follows:

“(a) Responsibility: I call upon the Democratic People’s Republic of Korea to respond effectively and expeditiously to Japan’s claim that there are a number of Japanese nationals abducted by the Democratic People’s Republic of Korea who are still alive [there] and that they should be returned to Japan immediately and in safety;

“(b) Transparency: I call upon the Democratic People’s Republic of Korea to ensure reliable and objective verification of its claim concerning the alleged deaths of various Japanese nationals abducted by [its agents], to clarify related ambiguities and discrepancies, and to ascertain whether other Japanese nationals have been abducted by [its agents];

“(c) Family unity: I call upon the Democratic People’s Republic of Korea to respect and guarantee family unity/reunification, particularly for those who have suffered from the abductions;

“(d) Accountability: I call upon the Democratic People’s Republic of Korea to rectify the discrepancies and enable the victims of abductions and their families to access justice and seek redress effectively and expeditiously from those responsible for the abductions, including bringing to justice those responsible for the acts;

“(e) Sustainability: I call upon the Democratic People’s Republic of Korea to resume and sustain dialogue and actions with Japan to solve peacefully the problem of abductions of Japanese nationals by [its agents], to ensure satisfactory resolution of the issue, and to prevent abductions from happening again.”

57. This humanitarian call should be reinforced by the following preferred orientations:

(a) Pro-active dialogue: to take steps more expeditiously for satisfactory settlement of the outstanding issue of abductions;

(b) Substantive progress: to show tangible results based on the universal responsibility to protect human rights in compliance with international law;

(c) International solidarity: to support the two countries in their bilateral and multilateral relations to solve the problem peacefully, with the backing of the totality of the United Nations system.

B. Visit to the Republic of Korea, 14-18 December 2006

58. Significantly, the Republic of Korea voted in favour of the draft resolution on the situation of human rights in the Democratic People’s Republic of Korea adopted by the Third Committee of the General Assembly in November 2006, which was subsequently adopted by the plenary to become resolution 61/174. The resolution expresses very serious concern at a variety of human rights violations in the Democratic People’s Republic of Korea and strongly urges the latter to respect fully all human rights and fundamental freedoms, as well as to cooperate with the Special Rapporteur. It also requests the Secretary-General and the Special Rapporteur to report to the Assembly at its next session on the situation. The Special Rapporteur is of the view that there is a related need to enable the negotiations known as the six-party talks to resume in order to solve key issues, focusing primarily on the nuclear problem facing the Korean peninsula which may also have an impact on the human rights situation; a positive development on that front will contribute to the space for progressive humanitarian action.

59. While the Republic of Korea has become more assertive by voting for the resolution mentioned, national policy leaves the door open for possible opportunities to engage with the Democratic People's Republic of Korea when the time is ripe. To date, the Republic of Korea's policy towards its northern neighbour has been a special policy influenced by the particular history of the Korean peninsula with a shared destiny for the Republic of Korea and the Democratic People's Republic of Korea.¹⁴ The human rights issues covered by national policy include the following. There remain various consequences of the Korean war of 1950-1953 which have an impact on human rights, for instance the issue of missing persons and the reunification of families separated by that war. These are being dealt with by various inter-Korean ministerial talks and meetings of the International Committee of the Red Cross. The latest inter-Korean ministerial talks were held in Pyongyang in April 2006 and the resultant joint press statement noted that "The South and the North agreed to work together to actually resolve issues of those whose whereabouts and fates have been unknown during and after the Korean War". The latest ICRC talks between the two countries took place in February 2006 and the agreement reached at that meeting stated that "the two parties will include an issue of confirmation of the fates of those missing during and after the Korean War in a broader category of separated families, consult on and resolve the issue".

60. While a number of separated families from the North and the South have already met, this needs to be maximized so as to enable sustained family reunions to take place; it is important to enable family members to remain in touch once they have returned to their respective residences. There is also pending before parliament a bill to provide relief and assistance to those abducted by the Democratic People's Republic.

61. Another part of the Republic of Korea's human rights policy towards the Democratic People's Republic is that the country has provided substantial humanitarian aid to its northern neighbour, both bilaterally and multilaterally. While aid is currently suspended as a reaction to the missile and nuclear tests, it may be resumed at an appropriate time. The Republic of Korea has also been supportive of the work of the Special Rapporteur.

62. It will be recalled that at the end of the Special Rapporteur's visit to the Republic of Korea in 2005 for the first time in connection with his mandate, he issued a six-point human rights formula. Elements of the six points deserve to be underlined, together with other emphases as follows (see E/CN.4/2006/35, para. 78):

The Special Rapporteur:

Encourages the Republic of Korea and the Democratic People's Republic of Korea, in the spirit of inter-Korean dialogue, reconciliation and cooperation, to maximize family reunion opportunities, and urges the Democratic People's Republic of Korea to clarify and resolve effectively the long-standing problem of missing persons, bearing in mind the importance of resuming inter-Korean ministerial talks in future as part of the process to support the improvement of human rights in the country;

¹⁴ See further: International Symposium on Human Rights in North Korea (Proceedings), National Human Rights Commission of Korea, Seoul, 2006.

Supports the Republic of Korea and the international community to improve the human rights situation in the Democratic People's Republic of Korea, in particular the right to food; provide humanitarian aid, including food aid, to the latter, which, although currently suspended on the part of the former, might be resumed at the appropriate time on the ground of humanitarianism, with adequate monitoring to access the target group of beneficiaries; and urges the Democratic People's Republic of Korea to build food security through sustainable agricultural techniques, good governance, broad-based people's participation in decision-making processes, and equitable allocation of resources to respond to the development needs of the country;

Encourages the Republic of Korea to continue its humanitarian policy of accepting those who have sought refuge from the Democratic People's Republic of Korea and to facilitate their social recovery and reintegration, with more opportunities for vocational training and other supports with a view to accessing a variety of employment and livelihood options sustainably;

Calls upon the Democratic People's Republic of Korea to end the various discrepancies and transgressions concerning respect for human rights in the civil, political, economic, social and cultural fields in the country, and to implement effectively the human rights treaties to which it is a party and the various recommendations addressed to the country by a variety of United Nations human rights mechanisms, including the recommendations of the United Nations Special Rapporteur in his reports to the United Nations;

Urges the Democratic People's Republic of Korea to invite the Special Rapporteur and other United Nations human rights mechanisms to visit the country to take stock of the human rights situation and recommend reforms and related follow-up;

Invites the Democratic People's Republic of Korea progressively to engage in cooperative activities with the international community to improve the implementation of human rights in the country, such as through human rights dialogue(s) supported by technical assistance, economic programmes with a human rights component, and rule of law programmes (e.g. training and education to build the capacity of law enforcers, to respect civil liberties, and to reform the prison system), with greater space for civil society participation.

63. The above should be complemented by active and practical steps to ensure progress and achieve substantive improvements in human rights implementation in the Democratic People's Republic of Korea.

C. Visit to Mongolia, 18-23 December 2006

64. Given the strategic position of Mongolia in North-East Asia, the country has adopted a policy of friendly relations with its neighbours, including those of the Korean peninsula. The main impact of the human rights situation in the Democratic People's Republic of Korea on Mongolia in recent years has been the issue of those who have fled from the former to seek the

protection of the latter. This is influenced by both humanitarian concerns and national security considerations. It will be recalled that the 1992 Mongolian Constitution provides an avenue for the grant of asylum for those seeking refuge as follows (art. 18):

“(4) Aliens or stateless persons persecuted for their convictions or for political or other activities pursuing justice, may be granted asylum in Mongolia on the basis of their well-founded requests.” This was further elaborated in the 1993 Mongolian law on the legal status of foreign citizens. There is a delicate balance to be established with national security concerns.

65. UNHCR has been present in the country since 2001. While the collaboration between that Office and the national authorities has been developing concretely, some sources met by the Special Rapporteur felt that there was more room for the national authorities to cooperate with that agency, especially in the sharing of information to ensure transparency. Recent indications of logistical and technical support to be given by the Office to Mongolia are also welcome.

66. The current position of the Mongolian authorities is to treat those escaping from the Democratic People’s Republic of Korea as humanitarian cases, although the national law tends to refer to them as “border-crossers”. The policy abides by the international principle of non-refoulement which prohibits the sending back of refugees (or deportation) to their country of origin or other territories where there is a threat of persecution. In reality, these persons are in transit in Mongolia, as they later depart for another country for long-term settlement. That position on the part of the Mongolian authorities should be commended and supported for its humanitarian stance which bodes well for the country’s commitment to democracy and human rights. The country also has various mechanisms, such as the National Human Rights Commission of Mongolia, which help to provide checks and balances to promote and protect human rights, in addition to a vibrant civil society and a variety of media.

67. There is the question of accession to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The authorities in Mongolia are in the process of consulting various agencies on the issue. A positive consequence of accession would be that it would help to set clear benchmarks for dealing with those who seek refuge, and this would result in a system providing greater clarity and transparency in relation to refugee status. It would need to be enhanced by international support to shoulder the task together in the quest for durable solutions, including resettlement in other countries where appropriate, bearing in mind the limited resources which Mongolia may be able to provide as a developing country.

68. For the future, key directions for Mongolia include the following:

- (a) Sustain its humanitarian policy and practice towards those who seek refuge in the country;
- (b) Protect and assist refugees, bearing in mind various vulnerable groups such as women and children and the need to cooperate closely with UNHCR;
- (c) Ensure that the conditions under which those who seek refuge are temporarily maintained are transparent and open to access by that United Nations agency;

(d) Continue to abide by international human rights law and international law concerning refugees, ensure effective implementation measures and build capacity among law enforcers, including by means of training on human rights and refugee law for border officials, and raise awareness among the public to nurture sympathy and understanding for those who seek refuge;

(e) Accede to the 1957 Convention and its 1967 Protocol, and adjust the country's laws, policies and mechanisms accordingly, with key support from and in cooperation with UNHCR and other United Nations agencies, coupled with effective implementation measures.

69. The international community should complement the above by providing relevant support as part of international solidarity, bearing in mind the responsibility of the State of origin (of those who seek refuge elsewhere) to address the root causes of outflows and the need for all countries to abide by international human rights and refugee law, whether as source, transit or destination countries.

V. ORIENTATIONS

70. The current situation of human rights in the Democratic People's Republic of Korea reveals a number of key violations in a variety of fields. This report has analysed them particularly from the angle of sustenance: rights pertaining to food, nutrition and related matters; freedoms: right pertaining to security of the person, humane treatment and justice; asylum: rights pertaining to refugees/those seeking refuge; vulnerability: rights concerning specific groups; and responsibility: rights concerning the responsibility of the State authorities to protect human rights and fundamental freedoms, and related accountability. The environment for the promotion and protection of human rights was further undermined in 2006 by the missile and nuclear tests carried out by the country in the face of global condemnation and the adoption of subsequent Security Council resolutions imposing sanctions on the country. Regrettably, it is the ordinary people of the Democratic People's Republic of Korea who suffer at the hands of the authorities and who bear the brunt of the myriad of abuses, which are both systematic and pervasive.

71. For the future, the Democratic People's Republic of Korea should take the following measures:

(a) Abide by its international obligations under the various human rights treaties to which it is a party as well as international law, and shift military expenditure to the human development sector and reallocate national resources to protect human rights and promote human security;

(b) Facilitate access to humanitarian aid, respect the need for monitoring to ensure that the aid reaches the target groups, and build food security through sustainable agricultural development with broad-based people's participation;

(c) Reform its prison system, eliminate violence against the human person, and promote due process of law and the rule of law, such as safeguards for accused persons, fair trial and the building of an independent judiciary;

(d) Enunciate a clear policy not to punish those who leave the country without permission, desist from punishing returnees, and amend the law and train its officials accordingly;

(e) Tackle the root causes leading to refugee outflows and criminalize those who exploit refugees by human smuggling, trafficking and extortion, while not criminalizing the victims;

(f) Protect the rights of women, children and other groups, particularly by addressing their vulnerable positions and ending discrimination;

(g) Act responsibly and accountably towards its population to prevent and curb human rights violations not only by means of law reform but also through substantive implementation of human rights in practice;

(h) Enable the Special Rapporteur to enter the country to assess the human rights situation on the ground and to advise on needed improvements;

(i) Engage sustainably with the various human rights monitoring bodies under the treaties to which it is a party by following up their recommendations and inviting them to visit the country to support improvements;

(j) Seek technical assistance from the Office of the United Nations High Commissioner for Human Rights to help promote and protect human rights in the country.

72. The international community is invited to take the following measures:

(a) Continue to provide humanitarian aid, especially food aid, on the basis that the aid must reach the target groups (“no access, no aid”), coupled with relevant monitoring;

(b) Respect the rights of refugees, particularly the principle of non-refoulement, desist from forcibly returning them to their country of origin, and exempt them from the strictures of national immigration laws which might otherwise lead to the detention of refugees/those seeking refuge;

(c) Utilize dialogues and other interactions to engage with the Democratic People’s Republic of Korea, with relevant incentives, graduated influence, and economic and security guarantees where appropriate;

(d) Mobilize the totality of the United Nations to promote and protect human rights in the country;

(e) Support processes which concretize responsibility and accountability for human rights violations, and an end to impunity.
