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Address of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, Professor Vitit Muntarbhorn, United Nations Human Rights Council
22 March 2007

The Special Rapporteur thanks warmly all governments, non-governmental organizations and international organizations which assisted him in carrying out his functions during the year. The current report covers the human rights situation in the Democratic People's Republic of Korea (DPRK) until the beginning of 2007. In late 2006, he also carried out field visits to Japan, the Republic of Korea and Mongolia to assess the impact of the human rights situation in the DPRK on those countries, the details of which are found in his published report. The approach of the Special Rapporteur continues to invite the DPRK to respond to the mandate as a window of opportunity to engage with the United Nations (UN). It is thus regrettable that to date, the authorities of the country have declined to cooperate with the Special Rapporteur.

On the constructive side, it can first be recalled that the DPRK 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 submitted reports under these treaties and has appeared before the various monitoring bodies established there under. 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 UN agencies in the country and continue to work with them on various aspects of human development. Third, partly as a follow-up to the various recommendations from 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.

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 can be recalled that the country is under 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 quagmire was aggravated by various missile and nuclear tests carried out by the authorities of the country which led to global condemnation. These acts undermined the possibility of aid from other countries which reconsidered their contributions. Many violations in the field of civil, political, economic social and cultural rights persist in the country. They can be seen through the following perspectives:

1) Sustenance: rights pertaining to food, nutrition and related matters

As noted in the previous reports of the Special Rapporteur, the country has been suffering from a severe food shortage since the 1990s. 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 2005-6, the authorities 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 from the harvest of previous years, in the middle of 2006 major floods wreaked havoc on the year's harvest, resulting in severe food shortfall. In 2006, the WFP began its two year Protracted Relief and Recovery Operation aiming to access 1.9 million people in food aid delivery at a cost of 102 million USD, needing 150,000 tons of commodities. Actual operations started in June 2006 on the basis of a letter of understanding with the authorities of the country, principally targeting for aid women and young children. A number of factories are now being supported to produce fortified biscuits and blended foods.

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, the WFP was able to reach 29 counties out of the projected 50 counties and was able to cover only some 740,000 beneficiaries. The shortage of food will thus have a major impact on the needy population. This is compounded by the decline of medical services, shortage of medicines, fertilisers and electricity. There is also widespread tuberculosis. It is important to underline the need to generate food security in the country, for which no foreign aid could be a substitute.

2) Freedoms: rights pertaining to security of the person, humane treatment and justice

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. Yet, there are a large number of provisions concerning anti-State activities which 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 disturbing the national defence system; 104 types of crimes injurious to socialist economy; 26 types of crimes injurious to socialist culture; 39 types of crimes injurious to administrative systems, and 20 types of crimes harmful to socialist collective life. Several give rise to the possibility of death sentence.

Given the repressive nature of the State and the government's cult-based fiat, basic freedoms are constrained markedly. There are continuing reports of violence against the human person committed by State authorities, such as torture, public executions, persecution of political dissidents and sub-standard prison conditions, despite the legislative improvements noted above. There is a large variety of detention centres ranging from those for political dissidents to those for criminals, as well as re-education camps and related forced labour. Freedom of expression, association and access to information are impeded by the closed nature of the State and rigid State control over the information flow and media. Despite official claims that religious

freedom is allowed, reports indicate the contrary. Indeed, any imputed liberalization on this front tends to be due to the lure of money.

On another front, human rights violations have particularly impacted upon foreigners in the form of abductions. From the 1970s, a number of Japanese nationals were abducted by DPRK agents, 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 DPRK. In a similar vein, there are longstanding cases of missing persons from the other countries who might have been abducted by the DPRK.

3) Asylum: rights pertaining to refugees/ those seeking refuge

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. 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. In international law, the "refugee" is classified as a person who has left his/her country of origin for a "well-founded fear of persecution". A key principle is that refugees 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 if they fear persecution subsequently, e.g. fear being punished if they are to be 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.

On analysis, many of those who have sought refuge from the DPRK are refugees or refugees sur place. In reality, many of those who leave the DPRK due to hunger or economic reasons can also be seen as refugees sur place, because there is the threat of persecution/punishment if they are to be 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.

Second, there is the issue of the responses on the part of first asylum countries. The practices towards refugees vary per country and geography. 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 jail or prison, while others keep them in closed facilities under the 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 they should not be in detention; preferably they should be in open facilities and if they are to be kept in closed facilities, this should be a matter of last resort, comply with international standards, including the need to avoid indefinite incarceration, and be open to some outside monitors such as

the Office of the United Nations High Commissioner for Refugees. The latter should be permitted to all areas where those who seek refuge may be present.

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 increasingly to resettle refugees from the DPRK, at times directly from first asylum countries and at times via other channels.

Fourth, the pattern of arrivals is changing precisely because of the cross-elasticity between the different practices of the 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 latter, usually by promising to pay their 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 are emerging. On the one hand, a number of cases spend quite a long time – a period of years - in a key asylum country before exiting to other countries. Some are smuggled into various countries while others land up in human trafficking situations such as forced marriage, prostitution or forced labour. Second, a more recent caseload is those who transited briefly - a period of weeks – in a neighbouring first asylum country before exiting to other countries. This is currently the situation facing South-east Asia where some countries are witnessing a larger influx of refugees who merely transited briefly in another neighbouring country.

4) Vulnerability: rights concerning specific groups

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 – the latter concerns all groups.

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 deliberating 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 fulfill their "contractual obligation" of paying up for the services 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 exited some time ago and who seek family reunification.

With regard to children, a recent situation analysis from the UN recognizes some constructive features of State policies, such as compulsory primary education.

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 child care. 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, and 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 the situation of children with disabilities and street-children who might be subjected to sub-standard institutionalization.

Elderly persons are also increasingly vulnerable to the mounting deprivations.

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

A key issue raised by many sources during 2006 was that of the responsibility of the authorities of the DPRK for egregious human rights violations. The scenario was rendered more volatile by the various missile and nuclear tests carried by the country which led to unanimously adopted UN Security Council Resolutions imposing a variety of sanctions on the country. Interestingly, in the Preamble of Security Council Resolution 1718 imposing such sanctions, the issue of human rights is referred to impliedly by the emphasis on "other security and humanitarian concerns of the international community". The end of 2006 also witnessed the passage of resolutions on the country adopted by the General Assembly. That body castigated the country for not cooperating with the Special Rapporteur and has called for reports from both the new UN Secretary-General and the Special Rapporteur in the next session.

On another front, the progress of the Six-Party Talks (between six countries including the DPRK aimed at denuclearizing the Korean peninsula), particularly the February 2007 agreement to disable the controversial nuclear plant in the DPRK, should be welcomed and be further consolidated. In this regard, there is room for more humanitarian space with constructive impact on human rights, particularly with various bilateral talks under the Six-Party umbrella.

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- "the responsibility to protect" - from egregious violations, as voiced by the Outcome Document of the World Summit 2005. 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. The evidence includes persecution and starvation as the basis for crimes against humanity. The study thus advocates that the Security Council should adopt a non-punitive resolution under Chapter VI of the UN Charter to call for accountability on the part of those authorities,

given that the 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. Where the country fails to comply with such resolution, further action may be needed under Chapter VII of the UN Charter.

While the angle posited by that study is aimed primarily at State responsibility towards its people, there is another angle linked with the individual criminal responsibility which may ensue from crimes against humanity. This is elaborated upon extensively in the Statute of the International Criminal Court. Of relevance is Article 7 of the Rome Statute which lists a number of acts classified as crimes against humanity, including murder, deportation or forcible transfer of population, 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.

On another front, during the past year, the Special Rapporteur sent a number of communications to the DPRK asking for leniency of treatment concerning a variety of persons, with due regard to human rights protection. The authorities were uncooperative in their responses.

For the future, the DPRK should take the following measures:

- **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;**
- **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;**
- **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;**
- **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;**
- **tackle the root causes leading to refugee outflows and criminalise those who exploit them in the process of human smuggling, trafficking and extortion, while not criminalising the victims;**
- **protect the rights of women, children and other groups, particularly by addressing their vulnerable positions and ending discrimination;**
- **act responsibly and accountably towards its population to prevent and curb human rights violations not only by means of law reform but also though substantive implementation of human rights in practice;**
- **enable the Special Rapporteur to enter the country to assess the human rights situation at the ground level and to advise on needed improvements;**

- **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 the visit the country to support improvements;**
- **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.**

The international community is invited to take the following measures:

- **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;**
- **respect the rights of refugees, particularly the principle of non-refoulement, desist from forcibly returning them to the 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;**
- **utilise 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;**
- **mobilise the totality of the United Nations to promote and protect human rights promotion and protection in the country;**
- **support processes which concretise the responsibility and accountability for human rights violations, and an end to impunity.**