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**STATEMENT BY THE SPECIAL RAPPORTEUR  
ON THE SITUATION OF HUMAN RIGHTS IN  
THE DEMOCRATIC PEOPLE'S REPUBLIC OF  
KOREA**

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To date, while I have sought access into the DPRK, I have not yet been invited into the country and the Government of the DPRK has not cooperated with the mandate. I have thus based my report on information from a variety of sources – governmental, non-governmental and inter-governmental. I wish to thank all governments, inter-governmental organizations, non-governmental organizations, other entities, and staff of the Office of the UN High Commissioner for Human Rights (OHCHR) for their kind assistance which is greatly appreciated. The message that I am conveying to all concerned is to urge the DPRK to see this mandate as a window of opportunity to engage with the world, particularly with the UN to improve the human rights situation in the country.

### **Situation:**

First, on the constructive side, the DPRK is a party to four key human rights treaties – the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It has already submitted various reports on the country situation and has engaged with the human rights bodies established under the four treaties mentioned. In 2005 its report on women's rights was considered by the CEDAW Committee.

Second, the DPRK has cooperated with various UN agencies. In 2005 it launched with the UNICEF the first National Child Health Day which enabled some 2 million children to receive Vitamin A supplements and other health services. One human rights treaty body has been allowed into the country - in 2004 members of the Committee on the Rights of the Child were invited to visit the country.

Third, like many countries, the country already has some legal and operational infrastructures which can help to promote and protect human rights. For example, the most recent national Constitution, adopted in 1972 and amended in 1992 and 1998, and other national laws and policies provide some guarantees for human rights. However, there are key challenges concerning implementation.

Fourth, in recent years the country has undertaken some reforms, particularly in the legal field. In 2004 the Penal Code was revised to reflect the international principle of *nullum crimen sine lege* (no crime without a law). This is an improvement from the past position which conferred powers on the authorities to criminalize acts not covered by the Criminal Code by means of "analogous interpretation" of the law. The authorities have also published a compendium of laws for general distribution. Yet, there are still major gaps between principles and practices.

Fifth, before 1995, there were various safety nets to help the population, ranging from State-provided health care to extensive social security and educational access. These declined due the crisis of the mid-1990s – caused by a variety of factors, including the food crisis, natural disasters, reduction of support from other countries, and mismanagement at the national level. Since then, there have been improvements on

some fronts, particularly the country's experimentation with liberalizing the economy, but the economic and social situation remains disconcerting.

### **Specific Challenges:**

No assessment of the human rights situation in the DPRK would be complete unless its interrelationship with international human rights standards, democracy, peace, human security, demilitarization/disarmament and sustainable development is also taken into account. The non-democratic nature of the power base in the DPRK 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 so-called "collective" rights and national sovereignty, hampers the realization of human rights and their interrelationship with the other factors mentioned. Moreover, the problem of (de-)nuclearization of the country poses a longstanding, intricate challenge for the Korean peninsular and the international community as a whole. The resumption of talks on the issue between the various key parties in 2005 should be welcomed; not only is that dialogue essential to resolve a sensitive issue with global implications, but also positive developments in this regard would help to create an atmosphere conducive to the promotion and protection of human rights in the country.

There are specific challenges including the following:

**First, the right to food and the right to life.** In the mid-1990s there were catastrophic food shortages brought about by floods and drought, compounded by power imbalances and inadequate response from the power structure. The general sentiment is that the situation in 2005 remains critical - there is still a drastic shortage of food produced in the country and possible humanitarian aid from outside. In 2004 the DPRK indicated that it was no longer willing to continue with the Consolidated Appeals Process through which UN agencies had collaborated to raise support for aid to the country.

In reality, UN aid operates on the basis of "no access, no food" - if there is no access to the target group needing the food aid, the food aid will not be handed out. There are continuing debates concerning how much of the food aid provided from abroad actually reaches the target population and to what extent it is diverted for other (clandestine) uses. One source interviewed by me claimed that there are no major diversions for other uses. Other sources disagree with that viewpoint.

The monitoring process is now changing, with potentially more qualitative monitoring. In my opinion, what is needed is not reduction of monitoring of the implementation process, but rather, more effective monitoring aimed at ensuring maximum transparency and accountability. Yet, while some checks to monitor the distribution of food aid are in place, random checks by foreign humanitarian organizations are still not permitted by the national authorities in the DPRK.

On another front, while there is a need to advocate continuation of food aid, the distortions caused by the high military budget should not be overlooked. To focus on the issue of food aid alone is incomplete; the DPRK authorities are also under a responsibility to reduce the military/defence expenditure and ensure equitable re-

allocation of resources to respond to the food crisis and other areas needing development effectively.

I also wish to express my concern over reports that the authorities are planning to stop food aid from international humanitarian organizations by the end of 2005 (partly based on the authorities' claim that the harvest will improve towards the end of the year) and that they aim to end the presence of several humanitarian organizations in the country.

**Second, the right to security of the person, humane treatment, non-discrimination and access to justice.** There are many reports from a variety of sources concerning alleged transgressions in this field, often linked with laws and institutions, especially prisons and detention centres, that are below international standards, aggravated by poor law enforcement and malpractices, including preventive/administrative detention without access to credible courts. 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.

On another front, while the Constitution and other laws advocate the principle of non-discrimination, the practice is defective. There are a number of reports that in the past, the population was divided into various groups ranging from those favoured by the authorities, to those seen as borderline or “wavering”, and at bottom of the ladder, those considered as enemies of the authorities. While this practice may have been abolished in law, the practice seems to persist and is implied by the testimonies of those who leave the country in search of refuge elsewhere.

There were reforms of the Penal Code in 2004 with various negative elements, such as increased penalties for anti-State crimes. There are new categories of crimes such as crimes involving national defence management (Chapter 4) and crimes damaging socialist culture (Chapter 6). There are mandatory death sentences for “conspiracy to overturn the State”, “terrorism”, “treason against the fatherland”, “treason against the people” and “premeditated murders”.

Several malpractices have also had impact on other nationals. For instance, the DPRK authorities have already admitted to abducting a number of Japanese nationals. According to information received, other nationals have also been abducted.

Given the number of reports already received on transgressions in the DPRK affecting the right to security of the person, humane treatment and non-discrimination, there are serious grounds for concern. There are also reports that there is no independent judiciary as part of access to justice for the population, thus indicating an absence of the Rule of Law. While the Special Rapporteur is not in a position to verify all these reports and allegations, initial impressions suggest that the mass of reports and related allegations cannot be seen as merely coincidental, as they seem to raise a pattern of malpractices calling for immediate redress and checks-and-balances against abuse of power.

**Third, the right to freedom of movement, asylum, and protection of persons linked with displacement.** Generally, the DPRK authorities impose strict controls over the movement of people, although these have been relaxed recently to a limited extent. To move from one area of the country to another, the prospective migrant needs to obtain a traveller's certificate from the authorities, a highly cumbersome procedure. To travel across national boundaries into other countries, the person needs to obtain an exit visa or the equivalent. There are punishments for failing to obey the national law on this front; in principle, some of the penalties were reduced by the law reform in 2004. These constraints are inconsistent with the right to freedom of movement guaranteed by human rights.

DPRK nationals have been on the move crossing the boundaries into other countries for at least two main reasons. First, political constraints and persecution act as a push factor pressuring a number of persons to seek asylum in other countries. The 2002-2005 period witnessed many DPRK nationals seeking asylum in a number of ways such as entering embassies and schools in other countries, and this also led to a clamp-down such as arrests and push-back or "refoulement" to their country of origin. Recently it has been reported that more people are leaving the country of origin for the purpose of family reunion in other countries. In general, where they have left the country of origin for political reasons, the group of those seeking asylum mentioned fits into the traditional international law definition of "refugee", namely persons fleeing their country of origin for well-founded fear of persecution.

Second, the food crisis of the mid-1990s has forced many people to search for livelihoods elsewhere, at times crossing the border into other countries. As persons in this category may also be punished upon return to the DPRK for having left without an exit visa, they may also be classified as refugees "sur place", namely those who did not leave the country of origin for fear of persecution but who may fear persecution upon return to the country of origin.

The backbone principle behind the issue of asylum and refugee protection is non-refoulement, namely refugees must not be pushed back to areas of danger. Currently, there are lapses in compliance with this principle in some countries which are receiving those seeking asylum from the DPRK, and the principle needs to be complied with effectively by all countries.

On a related front, there is still a debate concerning whether those seeking asylum are "illegal immigrants" (often linked with economic migration/economic migrants) or refugees. The former classification implies that they can be pushed back to their country of origin, while the latter classification is backed by the principle of non-refoulement which prohibits such push-back. I would submit that a key test is to see whether they are protected by the country of origin. If they are not protected by the country of origin as above, this should open the door to international protection and legitimizes their classification as refugees. According to information received, recent trends indicate a disquieting picture: there is an increasing proportion of women among the new arrivals in many countries.

On another front, the plight of countries receiving asylum-seekers should not be overlooked especially where there are mass influxes. It is incumbent upon

international solidarity and responsibility-sharing to help shoulder the load of those countries.

**Fourth, the right to self-determination/political participation, access to information, freedom of expression/belief/opinion, association and religion.** The right to political participation is an inherent component of the right to self-determination which should be based upon the will of the people rather than that of the national authorities claiming to personify the State. Yet, in the setting of the power polity in the DPRK, it is the latter which prevails.

While it is claimed by the national authorities that there are rights in regard to access to information, expression/belief/opinion, association, and religion, the reality often indicates the contrary. This is exemplified by the fact that it is still illegal to listen to foreign radio without official permission. The very nature of the State impedes various freedoms such as expression/belief/opinion, since political dissidents are not tolerated and are punished severely. While a workers' union exists in the country, it is State-controlled, and a multi-party political system does not exist – in effect, the State's monopolistic power base does not allow it. It is also impossible to set up and run genuine non-governmental organizations free from State interference.

In regard to freedom of religion, despite claims of liberalization by the national authorities, many sources indicate the contrary – there is repression of not only religious personnel but also those who seek to associate with them. According to information received, various worshippers and members of religious personnel are persecuted, at times to the extent of being abducted.

**Fifth, the rights of specific persons/groups: women and children.** The DPRK witnessed various achievements concerning aspects of women's rights, particularly guarantees for gender equality in various laws, including the Constitution, before the food shortage crisis which began in 1995. There was/is broad participation of women in the workforce at the middle and lower levels. Yet, those achievements should not obscure various difficulties permeating the system since its inception, particularly de facto discrimination. There is only limited access of women to key decision-making positions at the top, particularly in politics, the judiciary and the civil service.

There are other disconcerting developments. First, a large number of mothers have suffered from the food shortage since the mid-1990s and their nutritional status has not improved. In 2004 an extensive food and nutrition survey carried out by UN agencies in cooperation with the DPRK 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 and this obviously affected the child's malnutrition – there was no improvement between the situation in the previous survey executed in 2002 and the most recent survey in 2004.

Second, there is a major concern in regard to human smugglers and traffickers exploiting women who seek asylum or livelihoods in other countries. It seems that the smugglers and traffickers are currently targeting women directly. Moreover, the smugglers and traffickers believe that women tend to fulfill their promise to pay their smugglers and traffickers - better than men do. It is also reported that some

neighbouring asylum countries are less likely to punish women than men on grounds of illegal entry.

Third, there is the issue of violence against women. This has a domestic feature in the form of violence at home and in the family. The other feature is institutional violence, particularly in prisons and other closed institutions which are sub-standard. This affects particularly women who do not belong to the ruling elite and who are marginalized by the cloistered political system.

With regard to child development, the 2004 food and nutrition survey mentioned indicates a decline of child malnutrition as compared with the findings of the 2002 UN-supported survey, although the malnutrition rates are still high. Stunting is reported at 37%, underweight 23% and wasting 7% of the children covered by the survey, with a significant improvement among the 1-3 year age group.

Behind this, there has always been a sense of ambivalence: the implementation of child rights has to be seen from the angle of discrimination against those who do not fit into the power base.

### **Country Visits:**

**1) Japan.** I paid a visit to Japan between 24 February and 4 March 2005 to examine the impact of the human rights situation in the DPRK on Japan, particularly the reported abductions of Japanese nationals by the DPRK. A number of Japanese nationals were abducted by agents of the DPRK in past decades, particularly in the 1970s and 1980s. In 2002 at the first Summit between the leaders of Japan and the DPRK in Pyongyang, the latter admitted that the DPRK had been involved in a number of abductions and apologized accordingly

While a number of abducted persons have now returned to Japan, a number of cases remain unresolved. The circumstances concerning the alleged deaths of a number of Japanese nationals abducted by the DPRK remain ambivalent and equivocal. The authenticity of the remains of two of the abducted persons has also been contested by Japan, while many sources in the country, including the families of the abductees, believe that various Japanese nationals abducted by the DPRK are still alive and should be returned to Japan expeditiously .

It should be recalled that the abductions of persons ( "enforced disappearances") is generally forbidden in both national law and international law. Abductions are considered a continuing offence as long the perpetrators continue to conceal the whereabouts of the victims and these facts remain unclarified.

**I wish to express my deep concern over the issue and wish to call upon the DPRK to respond effectively and expeditiously to Japan's claim that there are a number of Japanese nationals abducted by the DPRK who are still alive in the DPRK and that they should be returned to Japan immediately and in safety. The DPRK should 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.**

**2) Mongolia.** I paid a visit to Mongolia between 4 and 11 March 2005 . The main purpose of this visit was to examine the consequences of the human rights situation in the DPRK, particularly the displacement of people across borders and its relationship with the refugee phenomenon.

Since 1999 Mongolia has been witnessing an influx of persons seeking refuge - who originated in the DPRK. On average, annually several hundred persons manage to cross the border into Mongolia on its eastern frontier, at times in groups and at times as individuals who seek refuge. Recent flows suggest the arrival of more young women seeking refuge, at times with children. The influx into Mongolia appears to be “organized,” in that the persons seeking refuge have been assisted by various entities working clandestinely prior to the entry of these persons into Mongolia.

The current position of the Mongolian authorities is to provide temporary shelter to these people and to treat them as humanitarian cases. The position of the Mongolian authorities should be commended and supported for its humanitarian stance.

**For the future, Mongolia should continue to sustain its humanitarian policy and practice in sheltering those who seek refuge in the country; accede to the Refugee Convention and its Protocol, and adjust the country’s laws, policies and mechanisms accordingly; and continue to treat persons who are trafficked or smuggled as victims.**

**Recommendations:**

**In retrospect, while there have been some constructive developments in the DPRK in recent decades, there are a variety of discrepancies and transgressions – several of an egregious nature - in the implementation of human rights in the country, calling for immediate action to prevent abuses and to provide redress. To promote and protect human rights in the DPRK, the following recommendations are imperative, but non-exhaustive:**

**The DPRK should:**

- abide by international human rights standards, including the four human rights treaties to which it is a party, follow-up the recommendations from the monitoring committees set up by these treaties, and accede to and implement other relevant treaties;
- uphold human rights together with democracy, peace, sustainable development and demilitarization, with greater space for civil society participation at all levels of decision-making and implementation;
- respect the Rule of Law, particularly the promotion of an independent and transparent judiciary, safeguards for the accused/detainees, access to justice, civil society participation, and checks-and-balances against abuse of power;
- reform the administration of justice, particularly to improve the prison system, abolish capital and corporal punishment, and forced labour, and end preventive or administrative detention as well as the detention of political prisoners;



- address the root causes of displacement, prevent persecution and victimization of those who are displaced, including when they return to the country of origin, and guarantee the right to freedom of movement without imposing sanctions on those who move without permission;
- provide redress through expeditious and effective processes in the case of transgressions, such as in relation to the abductions of foreign nationals;
- capacity-build law enforcers and the public to protect human rights through pro-active programmes of human rights education with gender-and-child sensibility and critical analysis;
- ensure that humanitarian assistance, including food aid, is sustained and reaches the target groups, with unimpeded access and transparent monitoring and accountability;
- invite the Special Rapporteur and other mechanisms, as appropriate, to visit the DPRK to take stock of the human rights situation and recommend reforms;
- seek technical assistance from the Office of the UN High Commissioner for Human Rights and other agencies, as appropriate, to support activities to promote and protect human rights.

**Other members of the international community should:**

- influence the DPRK constructively to follow the directions noted above;
- uphold the protection of refugees and other persons displaced from the DPRK, including the principle of non-refoulement and the grant of at least temporary refuge/protection, and end bilateral and other arrangements which jeopardize the lives of those who seek asylum;
- promote orderly and safe channels of migration with the country of origin to reduce clandestine channels and promote inter-country cooperation to counter human smuggling and trafficking, while treating the victims humanely;
- provide space for long-term solutions to help refugees, including local settlement in the first asylum country, resettlement in third countries, and safe and voluntary repatriation with adequate follow-up, and strengthen international solidarity in sharing the responsibility to care for refugees and migrants;
- ensure that aid and assistance are sustained and reach vulnerable groups with transparent monitoring and accountability, supported by unimpeded access by humanitarian organizations.