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

Summary

The present report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea covers the second half of the 2010 and the beginning of 2011. That period saw some of the most volatile situations in the Korean Peninsula since the inter-Korean war and attempts made to change the leadership in the Democratic People's Republic of Korea.

The report touches upon economic, social, cultural, civil and political rights, and highlights the continued deterioration of the human rights situation in the country. The report might not have captured all violations of the human rights, but certainly provides an idea about the prevailing human rights and humanitarian situation in the country. A number of other issues that might not have been reflected in the report will be addressed in the Special Rapporteur's future reports to the General Assembly and the Human Rights Council.

* Late submission.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea was first established by the Commission on Human Rights in 2004, under resolution 2004/13. Since then, it has been extended annually. As requested under the resolution, the Special Rapporteur submits two reports, one to the Human Rights Council and another to the General Assembly. This is the current Special Rapporteur's first substantial report to the Human Rights Council since his appointment in August 2010. It draws on his first visits to the region. His first report to the General Assembly mainly presented the broad methodology that he wished to adopt in carrying out his mandate.

2. Besides providing an overview of the current situation in the Democratic People's Republic of Korea, the Special Rapporteur has also given key conclusions and recommendations for the Democratic People's Republic of Korea and the international community.

II. Methodology

3. The Special Rapporteur relied on a number of sources in gathering information in order to prepare a report that was as inclusive as possible and capturing diverse ideas. The Special Rapporteur conducted two missions to the region, the first to the Republic of Korea (22–26 November 2010) and the second to Japan (25–28 January 2011). The purpose of his visits was to assess the human rights situation in the Democratic People's Republic of Korea as it impacts on the Republic of Korea and Japan. The Special Rapporteur has combined the observations and information he gathered during the field missions with reports, interviews, briefing papers gathered by non-governmental organizations (NGOs), United Nations offices and numerous other reliable sources. In both these countries, the Special Rapporteur met with the Government officials, NGOs, United Nations offices and victims of human rights abuses from the Democratic People's Republic of Korea.

4. The Special Rapporteur's decision to travel to the Republic of Korea and Japan was in lieu of his request for access to the Democratic People's Republic of Korea. Between his appointment and his mission to the Republic of Korea and Japan, the Special Rapporteur has requested for meetings with Democratic People's Republic of Korea officials based in New York and Geneva. He has written to the Democratic People's Republic of Korea authorities requesting access to the country, which was denied. However, this negative response will not deter the Special Rapporteur from attempting to gain access to the Democratic People's Republic of Korea or engaging with the authorities in the future.

5. During his mission to the Republic of Korea, the Special Rapporteur held meetings with the Minister of Foreign Affairs, the Deputy Minister for Unification Policy, members of the Inter-Parliamentarians' Coalition for North Korean Refugees and Human Rights and the Director General of the Human Rights Bureau of the Ministry of Justice. He also met with representatives of the National Human Rights Commission of Korea and national and international NGOs, diplomats and other relevant individuals.

6. He was briefed on a number of issues, such as abductions, separated families, violations of human rights in the Democratic People's Republic of Korea, trafficking of persons and the abuses that asylum-seekers experience en route to the Republic of Korea, the situation of refugees and the current state of multiparty meetings, which have implications for the situation in the Democratic People's Republic of Korea.

7. During his mission to Japan, the Special Rapporteur met with the Minister for Foreign Affairs, the Minister of Justice, the Minister in charge of Abduction Issues, the Senior Vice-Minister of Cabinet Office in-charge of abduction issue, Ambassador in charge of Human Rights and Humanitarian Affairs, the Deputy Vice-Minister for Foreign Policy, the Director General of Asian and Oceanian Affairs of the Ministry of Foreign Affairs. He also interacted with national and international NGOs, diplomats, United Nations agencies and other relevant individuals working on the human rights and the humanitarian situation in the Democratic People's Republic of Korea.

8. The Special Rapporteur's meetings reinforced reports of the dire humanitarian situation and absence of civil, cultural, economic, political and social rights for the people of the Democratic People's Republic of Korea. The question of 17 identified cases of abduction of Japanese nationals by the agents of the Democratic People's Republic of Korea was the major focus of several discussions with Government officials and civil society representatives in Japan.

III. Overview of the current situation in the Democratic People's Republic of Korea

9. In August 2010, the north-western area of the Democratic People's Republic of Korea was hit by the torrential rainfall and floods caused by unprecedented downpours in the north-eastern area of China. These floods and their effects have also compounded the prevailing food scarcity in the country. The Democratic People's Republic of Korea has experienced severe damages and losses that have affected 6 out of 12 provinces.

10. Besides food availability, school structures were also badly affected. Some 316 school buildings were completely or partially damaged, hampering the normal continuation of the school year after the summer break.¹ At the reopening of the schools in September 2010, many children found their school either completely washed away or badly damaged. It was estimated that some 28,000 children, from kindergarten to secondary school, had no classroom to which to return to and had to study in the open air or in rotation in other classrooms or schools.²

11. In recent months, one of the major developments in the political arena of the Democratic People's Republic of Korea has been the preparations for the succession of Kim Jong-il by Kim Jong-un. On 25 June 2010, the official Korean Central News Agency reported that the Korean Workers' Party would convene a meeting in early September 2010 to elect its "highest leading body". This was widely viewed as a step toward holding a Party Congress,³ which could herald a transfer of power. After much speculation, in September 2010, Kim Jong-un, the youngest son of Kim Jong-il, was promoted to the Workers' Party Central Committee and the Party's Central Military Commission, and to the rank of four-star general of the Korean People's Army, putting him in line to succeed his father, Kim Jong-il. The selection of Kim Jong-un as one of the two Vice-Chairmen of the National Defence Commission of the State and the Party's Central Military Commission places him in a position of heir apparent to succeed Kim Jong-il as the head of the Democratic People's Republic of Korea.

¹ United Nations Children's Fund (UNICEF), "Back to school after the floods". Available from www.unicef.org/dprk/reallives_7371.html.

² Ibid.

³ The Party Congress had not been convened since 1980.

12. Recent months have also seen unprecedented tension in the region. In November 2010, the Democratic People's Republic of Korea fired artillery on Yeonpyeong Island in the Republic of Korea, which resulted in the death of two civilians and two Republic of Korea military staff members. The Special Rapporteur recognizes the gravity of the military actions, which escalated tensions between the Republic of Korea and the Democratic People's Republic of Korea, and expressed his sympathy to the victims and called for restraint and to adopt measures that would ease the tension. These developments underscore the importance and need for resumption of multilateral meetings involving the Democratic People's Republic of Korea. The Special Rapporteur wishes to reiterate that the Democratic People's Republic of Korea should not find itself in isolation at a juncture when it needs the support and cooperation of the international community the most, both to address the human rights situation and to meet humanitarian needs.

13. The Yeonpyeong shelling has also resulted in negative repercussions on the provision by the Republic of Korea of humanitarian aid to the Democratic People's Republic of Korea and issues such as the family reunion. The Special Rapporteur will deal with these concerns later in this report.

14. The International Criminal Court began to examine whether the sinking of *Cheonan*, a Republic of Korea warship hit by a torpedo allegedly fired from a Democratic People's Republic of Korea submarine on 26 March 2010, resulting in the death of 46 persons, and the shelling of Yeonpyeong Island on the 23 November 2010, resulting in the killing of 2 civilians and injuring many others, would constitute war crimes under the jurisdiction of the court. The Court's consideration of the two incidents opens questions of accountability for other alleged crimes committed by the Democratic People's Republic of Korea, including the issue of abduction, which the Special Rapporteur has discussed later in this report.

A. Separated families and family reunion

15. The facilitation of the family reunion of separated families on 30 October 2010 through an inter-Korean temporary family reunion process was a welcome development. The families concerned had been separated for six decades. The reunion was the eighteenth cross-border family reunion event since the two countries held their historic first summit in 2000. Each cross-border family reunion brings together some 100 families from each side, which is meagre when compared with the number of persons affected by separation of families. Although the family reunification is temporary in nature, with members of the families having to return back to the country from which they came after their brief meeting, it provides some respite to families who have not seen their loved ones for decades. The Special Rapporteur reiterates that there is an urgent need for more frequent and regular family reunions. He stresses the urgency of such measures given that separated members are now either very old or dead. Since the 1950–1953 Korean War around 128,000 Koreans from the Republic of Korea requested to meet their family members in the Democratic People's Republic of Korea, out of which an estimated 40,000 are now dead, leaving another 83,000 or so on the waiting list for reunions. For those who have managed to meet their family members in one of the cross-border family reunion so far, it may have been the last time that they will have such a chance, as priority will be now be given to those remaining who have not had their turn for reunification.

16. On several occasions in the past, prior to the family reunion, the Democratic People's Republic of Korea has demanded that the Republic of Korea donate hundreds of thousands of tons of rice and fertilizer as a prerequisite for family reunions to resume on a regular basis. The Special Rapporteur strongly urges that such demands should not be imposed a prerequisite for family reunions.

17. The Special Rapporteur notes with regret that the talks between the Red Cross organizations of the two sides on further reunions have been on hold since November 2010, in the wake of the artillery firing on Yeonpyeong Island. In the interest of the separated families, he urges the resumption of the family reunion process and calls for more regular and frequent reunions in the months and years ahead.

B. Cases of abduction immediately after the war and post-ceasefire

18. The exact number of persons from the Republic of Korea abducted by the Democratic People's Republic of Korea during the Korean War is not known at this time.⁴ In March 2002, the Korean War Abductees Family Union (KWAFU) began compiling the existing "List of Korean War Abducted Persons". The list contains around 94,700 names with eight items of detail, including the name, sex, age, job, company and position, date and place of abduction, and address at the time of abduction.⁵

19. It is reported that around 88.2 per cent of all abductions were carried out during the first three months of the war (July, August and September of 1950).⁶ Furthermore, some 80.3 per cent of those abducted were either taken away from their home or near their homes,⁷ which indicates that these abductions were carried out intentionally and in an organized manner. Most of the abducted persons were men, but their jobs seemed to vary. Some of them were intellectuals, Government officials, policemen, soldiers, lawyers, prosecutors, national assemblymen, journalists, students, professors and teachers.

20. During the meetings with the Government of the Republic of Korea, NGO representatives and the families of the abductees, the Special Rapporteur's attention was drawn to the fact that abductions of persons from the Republic of Korea did not end following the ceasefire. Several people continued to be abducted after the war: a total of 3,824 persons, a number of whom are fishermen, are reported to have been abducted and taken to the Democratic People's Republic of Korea since the ceasefire of the Korean War. They have allegedly been involuntarily held in the Democratic People's Republic of Korea as a result of their usefulness. A total of 3,310 of them have been returned to the Republic of Korea after being held for a period between six months and a year.⁸ In his interactions with NGOs, the Special Rapporteur has gathered information that an estimated 500 prisoners of war and another 500 persons abducted are currently in the Democratic People's Republic of Korea. Similar accounts are provided by close to 80 prisoners of war and 8 abducted persons who have managed to escape from the Democratic People's Republic of Korea and return to the Republic of Korea. In a turnaround of events, however, the Democratic People's Republic of Korea is currently denying the existence of any such abductees.

21. A number of initiatives have been taken by various actors since the compilation of the list by KWAFU in March 2002. On 23 July 2008, the National Human Rights Commission of Korea called on the Government of the Republic of Korea to enact a special law for the investigation into cases of abduction and compensation and relief for the

⁴ See Korea Institute for National Unification (KINU), *White Paper on Human Rights in North Korea 2009*, chap. V, sect. 1, "South Koreans Abducted and Detained in North Korea" (Seoul, 2009, KINU), p. 452.

⁵ *Ibid.*, p. 458.

⁶ *Ibid.*, p. 455.

⁷ *Ibid.*, p. 456.

⁸ *Ibid.*, p. 460.

families of persons abducted and taken to the Democratic People's Republic of Korea.⁹ In June 2005, KWAFU revised and updated its list. KWAFU has demanded speedier results regarding the status of the persons abducted during the Korean War and their early return. As it stands now, apart from raising the question of abductions in a number of inter-Korean Red Cross meetings and providing details of abductees to the Democratic People's Republic of Korea authorities, results in resolving the problem are still awaited. During the 15th Inter-Korean Ministerial Meeting (21–24 June 2005) the Republic of Korea and the Democratic People's Republic of Korea agreed to "consult on humanitarian issues", including the confirmation of status of those who went missing during the war. This continued during 6th Inter-Korean Red Cross meeting and the 16th Inter-Korean Ministerial Meeting in 2005. During the thirteenth family reunion meeting held in March 2006, an attempt was made to include the families of abducted persons and, for this purpose, a request was made to confirm the whereabouts of four abducted persons, but none was confirmed.

22. The Special Rapporteur also heard with great interest the desire on the part of the Government of the Republic of Korea and its people to address the situation of abductees and look at the issue of human rights in the Democratic People's Republic of Korea. In this regard the Special Rapporteur appeals to the authorities of the Democratic People's Republic of Korea to cooperate with the Republic of Korea with the aim of effectively resolving the long-standing problem of abductees.

23. In Japan, the question of abduction was also an important issue in several meetings and briefings. As of today, only 5 of 17 indentified abductees have returned to Japan, with another 12 cases still pending. In this regard, the international community saw a glimmer of hope between 2002 – when the Japan-Democratic People's Republic of Korea summit showed indications that the Democratic People's Republic of Korea was willing to admit the abductions it carried out – and 2008 – when the Democratic People's Republic of Korea agreed to establish an investigation committee with adequate authority to look into the matter. Since then, however, much to the regret of the international community, there has been no positive outcome and the agreement stands unimplemented.

24. The urgency of the matter is clear. The abductees are getting old and so are their family members in Japan. During his mission to Japan, the Special Rapporteur had the opportunity to meet with the families of a few abductees and hear their grievances. Sharing his sympathies with the abductees and their families, the Special Rapporteur pledges that he will follow this matter closely and do everything possible to highlight their case, along with the wider human rights situation in the Democratic People's Republic of Korea, at various international forums.

25. It is pertinent to note that a number of other countries, such as Lebanon, and Thailand have also reportedly seen such abductions by the Democratic People's Republic of Korea authorities. The Special Rapporteur stresses that the question of abductions is not only a bilateral issue between the Democratic People's Republic of Korea and Japan or the Republic of Korea, but one that concerns the international community at large and has strong and direct links to the human rights situation in the Democratic People's Republic of Korea. It is thus incumbent upon the authorities of the Democratic People's Republic of Korea to settle this long-standing question of abduction and look at wider issues of the human rights and humanitarian situation of the people in the Democratic People's Republic of Korea. With regards to abductions of Japanese nationals, the Special Rapporteur urges the Democratic People's Republic of Korea to return to the promises made during August

⁹ Ibid.

2008 to reinvestigate pending cases. For an effective resolution of the abduction issues, international criminal liability of those responsible for abduction cannot be ruled out.

C. Food and the economic situation impacting the right to food

26. Various sources refer to food insecurity in the Democratic People's Republic of Korea, which includes information gathered by interacting with a number of asylum-seekers and NGOs working on the situation in the Democratic People's Republic of Korea. Another important source of information on the situation of food in the Democratic People's Republic of Korea is the recently concluded Food and Agriculture Organization/World Food Programme (FAO/WFP) Crop and Food Security Assessment Mission, which was conducted in a very systematic manner.

27. The Special Rapporteur notes that the country continues to suffer from chronic food insecurity, high malnutrition rates and economic problems, and has great difficulties meeting the needs of its population of some 24 million.¹⁰ The FAO/WFP mission conducted late in 2008 confirmed a significant deterioration in food security in most parts of the country in recent years.¹¹ This deterioration was corroborated by a number of NGOs, both in the Republic of Korea and Japan, with small, but insignificant differences with regards to statistics on food security.

28. The Special Rapporteur is of the view that a number of factors have contributed to the current food insecurity in the Democratic People's Republic of Korea, which include the economic structure of the country, misallocation of resources, food distribution system, natural disasters, climatic conditions and shortages of agricultural inputs such as seeds, fertilizers and pesticides.

29. The winter of 2009/10 was unusually severe and prolonged, resulting in a low survival rate of winter wheat and delays in planting spring crops and transplanting main-season paddy. Furthermore, as mentioned in the introduction to this report, unusually intense rainstorms hit most of the country causing localized flooding, crop loss and structural damage to irrigation canals and dams.¹²

30. The situation concerning food shortages in 2009 (with its impact on 2010) remains severe. The total gross production of cereal equivalent came to only 4.21 million metric tons unmilled (3.3 million tons milled), as agricultural production was severely constrained by lack of fertilizer and fuel, declining soil fertility and structural factors. The most food insecure part of the country remains the north-east.

31. The FAO/WFP mission to the Democratic People's Republic of Korea concluded that, in 2009/10, a large number of low-income non-farming households faced a significant food consumption gap, as the cereals received from the public distribution system (PDS) provided on average only about half the daily calorific requirement. The population group assisted by PDS consists of persons conducting all economic activities other than military and cooperative farmers. The working population in this group receives a cash income and is allowed to purchase cereals at subsidized prices. The recommended cereal ration for purchase per family member per day is 573 g, amounting to about 209 kg/person per year.

¹⁰ FAO, "GIEWS Country Brief on Democratic People's Republic of Korea" (September 2010). Available from www.fao.org/giews/countrybrief/country.jsp?code=PRK.

¹¹ Ibid.

¹² FAO/WFP, "Special Report: FAO/WFP Crop and Food Security Assessment Mission to the Democratic People's Republic of Korea" (Economic and Social Development Department, November 2010).

In practice, the amount of cereals received by this group depends on the level of production nationally in a given year and is planned in September/October at the time of the harvest. In 2009/10, households received a reduced ration on average of about 375 g per day or approximately 136 kg per person, as there was a cereal deficit at the national level.¹³

32. The deficit was unlikely to have been fully covered by other foods, owing to low purchasing power of these households.¹⁴ The PDS system has not proven to be effective over the last several years and the Special Rapporteur calls on the Government of the Democratic People's Republic of Korea to rethink the policy in light of the challenges, with the view to ensuring that the population of the Democratic People's Republic of Korea is not deprived of its right to food.

33. The availability of seed, fertilizer, pesticide and herbicide continues to be a problem, but there was some improvement in 2010 as compared to 2009. Mechanization on the farms perhaps represents the biggest challenge to agricultural production and biggest potential for development in the Democratic People's Republic of Korea. With the recent rehabilitation of old tractors and acquisition of some new tractors, the operational rate on farm tractors has improved to 73 percent this year, up from 72 percent in 2009 and 57 percent in 2004.¹⁵ The Special Rapporteur would like to encourage the Government of the Democratic People's Republic of Korea to continue engaging with the United Nations agencies such as FAO, which has the needed technical expertise in addressing some of the concerns raised on input to agriculture.

34. The supply of electricity, important for irrigation on those farms that depend on pumps, was reported as being generally better in 2010. In 2009/10, cereal rations distributed to non-farming households represented on the average 65 per cent of the target ration, providing about 50 per cent of the energy requirement.¹⁶

35. The price of rice, which wavered between 400 and 500 won between March and June 2010, drastically rose to 900 won in mid-July 2010 and has maintained such levels since. Prices in the Democratic People's Republic of Korea have soared since currency reform in 2010, starting from 100 won and reaching 1,500 won this May 2010.¹⁷ The currency reform is seen by most observers as a failure and has caused more harm than good.

36. On the basis a reported per capita cereal consumption of about 140 kg per year in recent years and a population of about 24 million, the country requires about 3.36 million tonnes of cereal for human consumption. Considering other uses such as seed, feed, post-harvest losses and some stock changes, FAO estimated import requirements of 1.10 million tonnes for the marketing year 2009/10 (November/October). However, given the ongoing economic constraints it is unlikely that this deficit can be covered by commercial imports.¹⁸

37. The Special Rapporteur notes that a growing number of college students in Kangwon Province are leaving school in 2011. Although incidents of dropouts have been sporadic in the past, they are currently rampant in every Kangwon Province College. This problem relates to the economic situation, in particular with the Currency Reform Act,

¹³ See *ibid.*, p. 11.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Jenny Kang, "Smuggling stabilizes rice price" (Open Radio for North Korea, August 2010). Available from <http://english.nkradio.org/news/273>.

¹⁸ "GIEUWS Country Brief".

which severely devalued money overnight and left many households, particularly those engaging in business, in economic difficulties.¹⁹

38. The poor, especially those living in urban areas, continue to be affected by soaring food prices. It is very likely that the financial and economic situation of most households has worsened after recent monetary measures taken by the Government to replace the devalued currency with a new legal tender for all transactions.²⁰

39. The Special Rapporteur continues his call to the international community to provide humanitarian aid to the Democratic People's Republic of Korea, which should nevertheless not be contingent on political conditions. The humanitarian efforts should of course be coupled with the Democratic People's Republic of Korea taking strong measures to reform some of its national policies, including giving greater emphasis to humanitarian needs in its annual budget allocation and reforming the legal structure that is necessary to uphold human rights in the country. The human rights obligations of the Democratic People's Republic of Korea are in no sense contingent on the provisions of external humanitarian assistance by the international community, but merely an impetus for emergency response. The Special Rapporteur further recognizes that it is important to ensure such aid distribution reaches the neediest population and in line with the long-standing United Nations policy of "no access, no aid", which needs to be respected by all States receiving aid.

40. During his mission, the Special Rapporteur had noted some positive aspects at the national level in the Republic of Korea in relation to its policies with the Democratic People's Republic of Korea. He was encouraged to see the Republic of Korea's provision of humanitarian aid to the people of the Democratic People's Republic of Korea most recently during the floods in August 2010. The Republic of Korea's offer of some 5,000 tons of rice and 250,000 bags of cement for victims of August 2010 floods in the Democratic People's Republic of Korea was a good example of the support from Republic of Korea during the humanitarian crisis in the Democratic People's Republic of Korea. However, this support was put on hold due to the firing of artillery at Yeonpyeong in November 2010.

D. Cooperation by the Democratic People's Republic of Korea with international human rights mechanisms

41. As mentioned by the Special Rapporteur in his first report and his statement to the General Assembly in October 2010, it is important to bear in mind some of the positive elements with regards to cooperation with the United Nations, for instance, the fact that the country is party to a number of human rights instruments, such as the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. However, these positive steps are not an end in themselves and require further action in implementation of rights guaranteed under these instruments.

42. In 2009, Democratic People's Republic of Korea underwent the universal periodic review of the Human Rights Council. The Government of the Democratic People's Republic of Korea will need to make it clear which recommendations they accept, to avoid questions being raised as to the State party's commitment and the purpose of the universal periodic review being undermined. By failing to explicitly express its support for any of the

¹⁹ Good Friends: Center for Peace, Human Rights and Refugees, *North Korea Today* No. 369, October 2010.

²⁰ "GIEWS Country Brief".

117 recommendations, the Democratic People's Republic of Korea will inevitably be seen as failing to use the opportunity of the universal periodic review to address the serious human rights violations occurring in the country. Irrespective of the stance of the Democratic People's Republic of Korea, the Special Rapporteur will continue to look into some of the key recommendations and conclusions of the universal periodic review and the possibilities for follow-up.

43. The Special Rapporteur joins a number of actors in calling on the Democratic People's Republic of Korea to become a signatory to the Convention on the Elimination of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.

E. Legal reforms within the Democratic People's Republic of Korea

44. With regards to reform of the country's legal framework, the Special Rapporteur suggests that a good way forward would be to begin identifying some of the provisions in the legal instruments of the Democratic People's Republic of Korea that need to be aligned with the international human rights instruments. For instance, the legal provision under the Penal Code allowing capital punishment for many ordinary criminal offences, in addition to the previous five major categories in the Penal Code, is one such area where the legal reform process could begin. Currently, after the revision of the Penal Code in 2007, there are 28 articles that stipulate capital punishment for crimes, many of which are ordinary crimes.²¹ In addition to this, the Government should abolish public execution in the Democratic People's Republic of Korea. The Special Rapporteur has read with interest the Democratic People's Republic of Korea's response to concerns raised during the universal periodic review regarding public execution. The Democratic People's Republic of Korea has tried to justify public execution by stating that such executions are carried out upon request from family members. The Special Rapporteur would like to make it clear at the outset that there is no justification for public execution, be it with or without request from families concerned.

45. The conclusions and recommendations of the universal periodic review have pointed to different provisions of the law that need amendment to meet international standards. These are some of the measures that the Democratic People's Republic of Korea could commence by adopting, which would demonstrate genuine interest on its part to address the human rights situation in the country. It is also an apt opportunity for the Democratic People's Republic of Korea to allow both the Special Rapporteur and the Office of the High Commissioner for Human Rights to engage and provide expert assistance and advice in the reform process.

F. Freedom of opinion and expression

46. The Special Rapporteur notes with concern that there seems to be continued Government imposition of restrictions on the media and punishment of any form of association and expression that is deemed hostile towards the Government. There are no known independent opposition political parties or NGOs in the country. Independent media, the liberty to run NGOs and access to international reporters, which are currently non-existent in the Democratic People's Republic of Korea, are all essential in an open society.

²¹ *White Paper on Human Rights in North Korea*, p. 72.

47. Furthermore, Internet access is restricted to a few thousand people and, currently, the international Internet network is accessible only by a small minority, a few high-ranking officials and foreign diplomats via a satellite link with servers based abroad.²² The Intranet is accessible only by academics, businessmen and high-ranking civil servants with special clearance.

48. It is dismal that the Democratic People's Republic of Korea ranks 177 out of 178 countries in one NGO 2010 press freedom index,²³ which shows the scope for improvement on freedom of opinion and expression. The extent of restriction on the freedom of opinion and expression is demonstrated by the nature of punishment placed on journalists. In the last few months, it has been reported that two North Korean journalists died in 2001 in Yoduk "Kwan-li-so" No. 15, a prison camp located in the east of the country. This has only come to light in the recent days through a former political prisoner.²⁴

49. In speaking to the asylum-seekers in the Republic of Korea, the Special Rapporteur was also made aware of the risks some of the asylum-seekers undertake by using mobile phones, especially while trying to liaise with traffickers in order to leave the Democratic People's Republic of Korea. The defectors in Japan who met with the Special Rapporteur expressed similar concerns regarding restrictions on and, in many cases, the total absence of freedom of opinion and expression. Some of them claimed they were not even in a position to express their worsening living standards and that the only manner in which they learnt about the outside world was from smuggled DVDs and video CDs.

50. The Special Rapporteur calls upon the Democratic People's Republic of Korea to allow space for participation in Government, freedom of expression, access to information, freedom of association, as provided and recognized in the Constitution and related laws of the Democratic People's Republic of Korea and international standards.

G. Detention and correctional facilities

51. The Democratic People's Republic of Korea operates two types of prison: prisons designed to detain political criminals and detention facilities for non-political, ordinary criminals.

52. Punishments under the Democratic People's Republic of Korea Penal Code are classified as "basic punishment" or "additional punishment". There are four types of basic punishment: the death penalty, unlimited term of correctional labour, limited term of correctional labour and labour training (Penal Code, art. 28). The unlimited term of correctional labour and labour training were added during the 2004 revision of the Penal Code. The unlimited terms of correctional labour are 15 years and longer, while the limited term sentences range from 1 to 15 years. Convicts sentenced to unlimited or limited correctional labour are detained in correctional centres (Kyohwaso) and undergo "corrections" through labour (art. 30). The criminals sentenced to correctional punishment are typically "economic or violent, rather than political criminals", and would be detained in the Correctional Bureau of the Ministry of People's Security.²⁵

²² Reporters Without Borders, "Internet Enemies 2010 – North Korea", 18 March 2010. Available from <http://www.unhcr.org/refworld/docid/4c21f6708.html>.

²³ See Reporters Without Borders, "Press Freedom Index 2010". Available from <http://en.rsf.org/press-freedom-index-2010,1034.html>.

²⁴ See Reporters Without Borders, "Two journalists died in prison camp", September 2010. Available from <http://en.rsf.org/north-korea-two-journalists-died-in-prison-14-09-2010,38355.html>.

²⁵ See *White Paper on Human Rights in North Korea*, p. 107.

53. The Special Rapporteur has learned from various sources that human rights violations are committed in all correctional centres. Correctional officers sometimes beat inmates, but it is understood that more often it is the inmates who would beat up other inmates upon instruction from the officers.²⁶ It is further claimed that human rights abuses, including deaths, are rampant inside correctional centres.²⁷ In addition, the Special Rapporteur has noted reports of dire living conditions inside these correctional centres. For example, the Kaechun Kyohwaso – built to house over 600 persons (approximately 20 persons per prison cell) – currently holds around 6,000 prisoners, 2,000 of whom are female inmates.²⁸ These are serious allegations of issues that need to be investigated and rectified immediately.

54. Apart from the official correctional centres, North Korea is reported to have been operating a number of “political concentration camps”, collection centres and labour training camps. Political prisoners are incarcerated in what is known as “Kwanliso”, operated by the Farm Guidance Bureau of the State Security Agency. These facilities are also often called “control districts” or “special district for dictatorial control”.²⁹

55. References to such labour training camps can be found in some of the Democratic People’s Republic of Korea legal instruments. Article 18 of the Democratic People’s Republic of Korea Sentences and Decisions Enforcement Law, as amended on 9 November 1998, specifies one of the reasons for suspended sentence as “any gravely ill person serving correctional labour, labour training, or unpaid labour punishment and a pregnant woman three months before, and within seven months after the delivery of a baby”. Again, references to labour training camps can be found in the revised Penal Code of 2004 (for example, article 31)³⁰. This reinforces the Special Rapporteur’s view that reforms need to take place both to end the use of such labour training camps and amend legislation to ensure it is aligned with international standards.

56. While in Japan and the Republic of Korea, the Special Rapporteur heard some graphic stories of the conditions and treatment of the detainees in various camps in the Democratic People’s Republic of Korea. Some of the most flagrant human rights violations, such as torture and detention without due process of law, are reported to be perpetrated in these camps. Under the revised Penal Code of 2004, those being punished as a political prisoner include anyone involved in conspiracy to topple the State, treason against the State, espionage, terrorism, anti-State propaganda and agitation, destruction and murder, armed intervention, and agitation to serve foreign relations and hostile actions against foreigners. Although the Penal Code is less vague on who a political prisoner is, what needs to be borne in mind is that – irrespective of the nature of crime – administering torture, cruel inhuman or degrading treatment can never be justified. Similarly, it is of paramount importance that due process of law be followed by the State at all times for all trials.

57. In the Special Rapporteur’s following reports, he will continue to focus on correctional centres and other forms of detention facilities in the Democratic People’s Republic of Korea, with the hope that this will ultimately prompt the Democratic People’s Republic of Korea to take measures to improve the situation in various detention centres and prisons.

²⁶ Ibid., p. 124.

²⁷ Ibid., p. 125.

²⁸ *White Paper on Human Rights in North Korea*.

²⁹ Ibid., p. 108.

³⁰ Ibid., p. 113.

H. Asylum-seekers and trafficking

58. The number of asylum-seekers from the Democratic People's Republic of Korea seeking refuge in the Republic of Korea has been steadily increasing. Up until the late 1990s, fewer than 1,000 asylum seekers from the Democratic People's Republic of Korea had made their way to the Republic of Korea. Today, however, there are 20,000 of them sheltering in the Republic of Korea, with a record number of 2,927 arriving in 2009 alone. It is important to note that some of them have spent a number of years in third countries before finally arriving in the Republic of Korea. Hence, the quoted numbers do not fully reflect the number of persons currently leaving the Democratic People's Republic of Korea. Of these arrivals, around 77 per cent are women.

59. During his mission to the Republic of Korea, the Special Rapporteur had the opportunity to visit the Hanawon Centre, a Government-supported facility housing such asylum-seekers outside Seoul, and interview some of the new arrivals. These persons have left the Democratic People's Republic of Korea either owing to severe human rights violations or food shortages. These interviews allowed him to gather first-hand information on the harrowing experiences the asylum-seekers have gone through, both while in the Democratic People's Republic of Korea and en route to the Republic of Korea, often falling victim to people traffickers and sexual abuse. While interacting with them, the Special Rapporteur could see that the scars, such as post-traumatic stress disorders, run deep. While they are happy to be in the Republic of Korea or Japan, they worry for the safety of their loved ones back at home, fearing that the families of those who flee the country face harsh punishments.

60. The Special Rapporteur learned that several traffickers are often involved in ensuring the asylum-seekers' entry into the Republic of Korea and Japan from the Democratic People's Republic of Korea. Women and children seeking asylum are particularly vulnerable. In several cases, before finally managing to make their way to the Republic of Korea and Japan, women end up getting married to unknown persons and having children in third countries in order to continue staying safely without being deported back to the Democratic People's Republic of Korea. Such a situation has exposed women asylum-seekers to exploitation and domestic violence. Often they are too scared to approach the authorities in other, still unfamiliar countries.

61. On a positive note, on arrival to the Republic of Korea, Hanawon – a centre to assist newcomers adapt to society which has excellent facilities – now provides the services, counselling, vocational training and the education that is needed for a new arrival to adjust the society in the Republic of Korea. The Special Rapporteur is impressed with the management and facilities that are offered to the new arrivals. He recognizes that adjusting to a new society takes time and is never easy, but he is optimistic that the asylum-seekers will succeed therein. The follow-up support provided to new arrivals after they move out of Hanawon is extremely important in ensuring proper integration into society and the Special Rapporteur welcomes this support mechanism.

62. The Special Rapporteur also visited the Hangyoreh Middle High School, for adolescents from the Democratic People's Republic of Korea, which opened in 2006. Like Hanawon, Hangyoreh is an excellent facility to cater to the schooling needs of adolescents from the Democratic People's Republic of Korea. It was disheartening to learn that a number of these students are orphans. Some of them have had little or no education in the Democratic People's Republic of Korea and hence take time to settle at the school and start learning. In addition, numerous students still suffer psychological problems, which invariably affect their studies. There is hope, however, as teachers are trained in dealing with such challenges, and their commitment reassures the Special Rapporteur that these children have a bright future.

63. In the case of Japan, the country adopted an important law in 2006 aimed at addressing elements of the human rights situation in the Democratic People's Republic of Korea. The law provides, inter alia, measures for protection for Japanese spouses of Koreans who migrated to Japan, Korean residents from Japan who later settled in the Democratic People's Republic of Korea but wish to return to Japan, and asylum-seekers from the Democratic People's Republic of Korea. Japan has taken some steps in implementing some of the provisions of the law, but the Special Rapporteur would encourage Japan to provide more support to the above category of persons, which would help them achieve quicker and better integration into the country. The Special Rapporteur notes that there are also currently Japanese NGOs that provide on the basis of voluntary contributions from individuals in Japan.

64. The Special Rapporteur is aware that, while some persons flee the Democratic People's Republic of Korea due to persecution, others leave for economic reasons. With regards to those leaving the country for economic reasons, it is important to provide them with protection for various reasons. Persons leaving a country for reasons of economic hardship may be entitled for refugee status if they have been compelled to leave because of a government's economic policies. There are good grounds for arguing that their departure was motivated by political persecution, one of the five grounds established by the Convention relating to the Status of Refugees.

65. It is important to recognize the principle of refugees *sur place*. Refugee *sur place* may not fit the definition of persons who are refugees when they leave their country, but become refugees at a later date because of a valid fear of persecution upon return. Persons from the Democratic People's Republic of Korea who leave their country for economic reasons can become refugees *sur place* if they have valid fears of persecution upon return. In the case of persons from the Democratic People's Republic of Korea, their Government deems it a criminal offence to leave the country without permission. For instance, article 62 of the Criminal Code bans citizens from travelling to another country without State permission, which is in clear violation of Democratic People's Republic of Korea's obligation under article 12 of the International Covenant on Civil and Political Rights.³¹ Beyond the legal provision itself, allegations of stricter control of people's movement, especially of those leaving the country, continue to be recorded. It is widely reported, as the Special Rapporteur also gathered during the interviews he conducted, that when persons from the Democratic People's Republic of Korea are returned, they can expect to face arrest, detention and undergo beatings, sexual violence, forced labour, forced abortion, torture and, in some cases, death.

66. The Special Rapporteur is of the opinion that protection, including shelter, should continue to be provided to persons leaving the Democratic People's Republic of Korea and all States should abstain from forcibly returning them to the Democratic People's Republic of Korea.

IV. Conclusions and recommendations

67. The Special Rapporteur wishes to emphasize the need for the Democratic People's Republic of Korea to ensure the overall protection and promotion of human rights in the country as provided under the international human rights instruments, with particular focus on, but not confined to, freedom of movement, freedom of

³¹ Article 12 of the Covenant provides that everyone shall be free to leave any country, including his own.

expression and opinion, the death penalty, torture, and cruel inhuman or degrading treatment.

68. The Special Rapporteur strongly urges all parties to reconvene the Six-Party Talks in an effort to comprehensively address a wide range of issues, including regional peace and stability, and create an environment for progress on human rights.

69. The Special Rapporteur stresses the need for the international community to provide continued humanitarian support to the people of the Democratic People's Republic of Korea. Provisions of humanitarian aid, including for food, medical and other urgent humanitarian needs subject to "no access, no aid", should not be contingent upon any political conditions.

70. The Special Rapporteur calls on the Democratic People's Republic of Korea authorities to address continued food scarcity in the country by taking effective measures such as revisiting the public distribution system, channelling or reallocating financial resources to sectors that benefit the standard of living of the people in general.

71. While commending the Republic of Korea and Japan for integration of asylum-seekers from the Democratic People's Republic of Korea, the Special Rapporteur calls on all other countries in which people of the Democratic People's Republic of Korea are seeking refuge or through which they transit, to protect such people, treat them humanely and respect the principle of non-refoulement, as provided under the 1951 Convention relating to the Status of Refugees.

72. The Special Rapporteur encourages quick resumption of dialogue between the Republic of Korea and the Democratic People's Republic of Korea to create an atmosphere conducive to resolving a number of issues, such as the reunion of separated families.

73. The Democratic People's Republic of Korea authorities should address the unresolved cases of abduction comprehensively, including accountability for the agents responsible for such abductions.

74. The Special Rapporteur is concerned that the Democratic People's Republic of Korea has so far not shown any commitments to implement the recommendations and conclusions of the universal periodic review, urges that the Democratic People's Republic of Korea grasp this opportunity to improve its human rights record and identify those recommendations of the universal periodic review that they are willing to accept.

75. The Special Rapporteur would like to call on the Government of the Democratic People's Republic of Korea to recognize the need to cooperate with the Office of the High Commissioner for Human Rights so as to advance human rights in policies and programmes.

76. Finally, the Special Rapporteur would like to extend his sincere appreciation to the Government of the Republic of Korea and Japan for their warm reception. He was exposed to the full range of diverse views on human rights in the Democratic People's Republic of Korea and has established contacts for future interactions.
