



Sixty-ninth session

Agenda item 68 (c)

Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Democratic People's Republic of Korea*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Marzuki Darusman, in accordance with Assembly resolution 68/183.

* Late submission in order to take into account the outcome of the second universal periodic review of the Democratic People's Republic of Korea, which was adopted by the Human Rights Council on 19 September 2014 at its twenty-seventh session.



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

I. Introduction

1. The present report is submitted by the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea pursuant to General Assembly resolution 68/183 and builds on his report to the Human Rights Council in June 2014 (A/HRC/26/43 and Corr.1). In that report, the Special Rapporteur shared his initial thoughts about the direction that he intended to take in fulfilling his mandate,¹ building on the findings and recommendations of the commission of inquiry on human rights in the Democratic People's Republic of Korea, which completed its work in March 2014. He stressed the international law implications of the commission's findings and the ways that they engaged the responsibility of the international community to protect. He also discussed the qualitative differences in responses required of Member States, in particular neighbouring States and other States concerned, and the United Nations system, involving also the realignment and strengthening of civil society work and people-to-people contacts.

2. The Special Rapporteur elaborates herein on the strategic engagement required of bodies based in New York, including the Security Council and the General Assembly, and a United Nations system-wide "human rights up front" response, as recommended by the commission of inquiry. He also updates the Assembly on the latest developments in the human rights situation in the Democratic People's Republic of Korea and provides further analysis and recommendations, taking into account the outcome of the second universal periodic review of the country, adopted by the Human Rights Council on 19 September 2014 at its twenty-seventh session.

3. The international community must seize the unique opportunity and momentum created by the commission of inquiry to help to make a difference in the lives of the people of the Democratic People's Republic of Korea, including victims, and to ensure the accountability of those responsible for serious violations of human rights, including crimes against humanity. The Special Rapporteur firmly believes that efforts to ease the continuing suffering of the people, promote legal and institutional changes and ensure accountability, justice and reconciliation must go hand in hand. The efforts must be calibrated strategically, requiring close collaboration among players at the international and regional levels and those on the Korean Peninsula, so that they are complementary. This also necessitates the involvement of all United Nations human rights mechanisms and all United Nations agencies and programmes. The Special Rapporteur is ready to assist and facilitate the efforts to fully use all available mechanisms to achieve tangible results.

¹ The mandate was established by the Commission on Human Rights in 2004 (resolution 2004/13). Since then, it has been extended annually by the Commission and, subsequently, by the Human Rights Council. It was extended for another year by resolution 25/25. Each year, the Special Rapporteur submits two reports, one to the Council and one to the General Assembly.

II. Follow-up to the findings and recommendations of the commission of inquiry

A. Pursuing the track of international law

4. The Special Rapporteur, in his report to the Human Rights Council, stressed that the post-commission era presented a new phase for the human rights of the people of the Democratic People's Republic of Korea. He cannot emphasize more this same important message to the General Assembly. For more than 50 years, the question of the Democratic People's Republic of Korea has always been regarded as mainly a political issue by Member States and addressed in a political manner. This would reflect and fluctuate in accordance with the international political situation. The report of the commission has placed the human rights situation in the Democratic People's Republic of Korea decisively on the track of international law. This is not to say that the issue has been completely moved away from the political arena, where its security dimension remains of great concern; the commission's report has, however, demonstrated the linkage between the internal situation with regard to the almost total denial of human rights and the security dimensions which, from time to time, manifest themselves in terms of aggressive behaviour by the State. The political and security issues can be settled or closed only if the human rights violations are dealt with decisively. The Assembly and the Security Council have a key role to play in this regard.

5. The commission categorized the systematic, widespread and gross human rights violations that had been and continued to be committed into six categories: arbitrary detention, torture, executions and enforced disappearance to political prison camps; violations of the freedoms of thought, expression and religion; discrimination on the basis of State-assigned social class (*songbun*), gender and disability; violations of the freedom of movement and residence, including the right to leave one's own country; violations of the right to food and related aspects of the right to life; and enforced disappearance of persons from other countries, including through international abductions.

6. The evidence collected persuaded the commission that crimes against humanity had been and continued to be committed by the institutions and officials of the Democratic People's Republic of Korea, pursuant to policies established at the highest level of the State. It was evident that they were not mere excesses of State officials, but essential components of the political system. The commission found that the crimes against humanity entailed extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of populations, the enforced disappearance of persons and the inhumane act of knowingly causing prolonged starvation. This is the first time that an investigation mandated by the highest intergovernmental body within the United Nations system responsible for human rights — the Human Rights Council — has documented and concluded that a number of long-standing and ongoing patterns of systematic and widespread violations met the high threshold required for proof of crimes against humanity in international law ([A/HRC/25/63](#), para. 85). The crimes listed and evidence gathered therefore clearly merit a criminal investigation by a competent national or international organ of justice. Given the lack of any independent justice institution in the Democratic People's Republic of Korea, a core element in moving forward

will be to pursue the matter from the perspective of international criminal justice and human rights law.

B. Ensuring institutional and individual accountability

7. In the following sections, the Special Rapporteur emphasizes the commission's findings in relation to institutional and individual responsibility, in addition to the responsibility of the international community. He further underlines the key factors essential to ensuring accountability in such contexts.

8. The findings of the commission indicated that grave human rights violations and crimes against humanity were ingrained into the institutional framework of the Democratic People's Republic of Korea. Ensuring institutional accountability would require profound reforms starting at the very top and centre of the institutions of the State. The commission noted the need to dismantle entire structures of surveillance, indoctrination and repression, as well as fundamentally reform the security and justice sector. Such efforts must also be accompanied by reform of the decision-making process, which must be made more transparent, subject to effective checks and balances and ensure the participation of citizens. The commission also found that, to ensure the effectiveness of any structural reforms, the economic system must be restructured to ensure the provision of the basic needs of the population on a non-discriminatory basis. The State must take active measures to ensure the enjoyment of economic, social and cultural rights of all the people. In that regard, special measures must be taken to address the severe socioeconomic disparities and the related discriminatory socioeconomic structures that have benefitted a small elite, many of whom are directly implicated in the organization of crimes against humanity.

9. The Special Rapporteur notes that the content of recommendations of the commission aimed at ensuring institutional accountability and fostering structural reforms were reflected in a number of recommendations advanced to the Democratic People's Republic of Korea during its first and second universal periodic reviews. He urges United Nations bodies, Member States and the international community as a whole to raise the urgent need for such reforms in their engagement with the Democratic People's Republic of Korea, whether multilaterally or bilaterally.

10. Concerning individual criminal accountability, the Special Rapporteur wishes to remind all parties that the prohibition of crimes against humanity forms part of the body of peremptory norms (*jus cogens*) that bind the entirety of the international community as a matter of international customary law.² That the Democratic People's Republic of Korea has not yet included crimes against humanity in its national criminal law and is not a State party to the Rome Statute of the International Criminal Court does not allow individuals who commit crimes against humanity in that country to escape criminal responsibility. Perpetrators of crimes against humanity can be held responsible on the basis of international customary

² See International Law Commission, draft articles on responsibility of States for internationally wrongful acts, with commentaries, *Yearbook of the International Law Commission, 2001*, vol. II, Part Two (United Nations publication, Sales No. E.04.V.17 (Part 2)), p. 85; M. Cherif Bassiouni, *Crimes against Humanity: Historical Evolution and Contemporary Application* (New York, Cambridge University Press, 2011), pp. 263 ff.

law. The commission also recalled the established principle of international law that perpetrators of crimes against humanity are not relieved of criminal responsibility on the basis that they have acted on superior orders, because orders to commit crimes of such gravity are manifestly unlawful.

11. The Special Rapporteur wishes to bring to the attention of the Government of the Democratic People's Republic of Korea, and in particular the Supreme Leader, the principle of command and superior responsibility under international criminal law, according to which military commanders and civilian superiors can incur personal criminal responsibility for failing to prevent and repress crimes against humanity committed by persons under their effective control. The evidence collected by the commission indicates that the State Security Department, the Ministry of People's Security, the Korean People's Army, the Office of the Public Prosecutor, the Special Military Court and other courts and the Workers' Party of Korea are committing crimes against humanity, acting under the effective control of the central organs of the Workers' Party of Korea, the National Defence Commission and, ultimately, the Supreme Leader. The Supreme Leader and many of his aides may therefore be held accountable for crimes against humanity.

12. In the light of the failure of the Democratic People's Republic of Korea to acknowledge the violations and its unwillingness to implement its international obligation to prosecute the perpetrators and bring them to justice,³ the Special Rapporteur strongly urges that those responsible for crimes against humanity in the country be prosecuted before a competent organ of justice with a mandate provided by the international community. Such an organ must be given jurisdiction to tackle the long-standing and continuing commission of crimes against humanity. He encourages the international community to consider the options proposed by the commission of inquiry and any further options to that end, whether at the international or regional level. He urges the General Assembly to take the lead in triggering the process through appropriate recommendations and action contained in any resolution on the human rights situation in the Democratic People's Republic of Korea to be considered at the current session.

13. Noting the immediate need to bring to justice those responsible for crimes against humanity and the key role that the Security Council plays in this regard, the Special Rapporteur strongly urges the General Assembly to take the matter forward by formally referring the report of the commission of inquiry to the Council for its consideration and appropriate action, including a referral of the situation to the International Criminal Court. The commission recommended that the Council should refer the situation to the Court, acting under article 13 (b) of the Rome Statute and Chapter VII of the Charter of the United Nations. That would allow the Court to initiate proceedings against those responsible for crimes against humanity without delay by taking advantage of the institutional framework, rule of procedure and professional staff already in place.

14. The Special Rapporteur also invites Member States to make use of the principle of universal jurisdiction to realize and, and indeed to maximize, the potential deterrent effect of the findings of the commission and help to protect the people trapped within the Democratic People's Republic of Korea from further crimes against humanity. In this regard, he encourages Member States to exercise

³ Statement by the head of the delegation of the Democratic People's Republic of Korea, So Se Pyong, during the interactive dialogue with the commission of inquiry on 17 March 2014.

universal jurisdiction, should any relevant individuals fall under their jurisdiction, and in accordance with their national legal provisions, to investigate and prosecute perpetrators of crimes against humanity in the Democratic People's Republic of Korea.

15. While reiterating the need for an international justice mechanism to ensure accountability for crimes against humanity in the Democratic People's Republic of Korea, the Special Rapporteur is aware that this may bring to justice only a limited number of main perpetrators. Far-reaching national efforts to ensure accountability will require a parallel transitional justice process and vetting measures, led by the Democratic People's Republic of Korea, to expose and disempower perpetrators at the middle and lower levels, accompanied by comprehensive human rights education campaigns to change the mindsets of an entire generation of ordinary citizens who have been kept in the dark about what human rights they are entitled to enjoy and in how many ways their own State has violated them.

C. Responsibility of the international community

16. As demonstrated above, the findings of the commission clearly warrant a criminal investigation by a competent organ of justice to ensure accountability. In its response to the report to date, however, the Democratic People's Republic of Korea has clearly demonstrated its failure to acknowledge the violations and its unwillingness to implement its international obligations to prosecute the perpetrators and bring them to justice. The perpetrators currently enjoy impunity because they act in accordance with State policy and "the policies, institutions and patterns of impunity that lie at their heart remain in place" (A/HRC/25/63, para. 76). This therefore places the responsibility to ensure accountability on the international community. The Special Rapporteur recalls paragraph 139 of the 2005 World Summit Outcome, in which world leaders committed themselves to upholding the complementary responsibility to protect held by the international community. In the light of the manifest failure of the Democratic People's Republic of Korea to protect its population from crimes against humanity, the international community, through the United Nations, bears the responsibility to protect the population from such crimes.

17. The Special Rapporteur emphasizes that this responsibility also derives from the role played by the international community (and by the great Powers in particular) in the division of the Korean Peninsula. The unresolved legacy of the Korean War and related factors are central to understanding the intractability of the current human rights situation. The responsibility of the international community is also engaged by the impact that the crimes against humanity of the Democratic People's Republic of Korea have had on many persons from other States, who have been systematically abducted and who continue to suffer enforced disappearance, along with the families that they have left behind. In several such cases, the abductions involved blatant violations of the territorial sovereignty of other States and international peace and security.

18. In the light of the responses and lack of cooperation of the Democratic People's Republic of Korea with regard to addressing the human rights concerns raised by the General Assembly and the Human Rights Council, and considering the gravity of the findings of the commission of inquiry, the Special Rapporteur

believes that the international community should adopt a common and effective strategy that should include carefully targeted action by all relevant mechanisms, including the Security Council.

III. Specific action needed by all parties concerned

19. The Human Rights Council, in its resolution 25/25, called upon all parties concerned, including United Nations bodies, to consider the implementation of the recommendations made by the commission of inquiry in its report. The Special Rapporteur interprets “all parties concerned” as all-encompassing: it includes Member States, the United Nations system and its relevant bodies, neighbouring States and other States concerned, relevant international, regional and national bodies, civil society, individuals and, possibly, other stakeholders.

A. Member States

20. The Special Rapporteur observes that, both during the interactive dialogue with the commission of inquiry and when resolution 25/25 was adopted on 28 March 2014, no member of the Human Rights Council, with the exception of the Democratic People’s Republic of Korea, denied that the dire human rights situation had to be addressed. Of the countries that did not vote in favour of the resolution, most — if not all — cited procedural reasons or differences in approach. They reiterated their reservations about country-specific mandates, expressed a preference for other mechanisms, in particular the universal periodic review, and urged engagement, dialogue and cooperation.

21. The Special Rapporteur looks forward to his interactive dialogue with Member States during the current session of the General Assembly. While he fully understands that Member States can have differing views on how best to address the grave human rights situation in the Democratic People’s Republic of Korea, the Special Rapporteur stresses that such differences must not be allowed to justify inaction. He urges all parties concerned, in particular the Member States that favour the universal periodic review, to seize the opportunity provided by the results of the second review of the Democratic People’s Republic of Korea, which was completed in September 2014. Many of the 113 recommendations accepted by the country overlap with or build upon those from the first review, in 2009, which the Government belatedly accepted in April 2014. It is now important to show that the process can yield results, not only on paper but also in action. The Special Rapporteur calls upon all Member States to engage with the Democratic People’s Republic of Korea to take specific steps to facilitate and verify the implementation of the recommendations. To that end, he urges the Assembly to request the Democratic People’s Republic of Korea to grant access to the United Nations human rights mechanisms to assist and assess the implementation of the two cycles of recommendations made during the universal periodic review. The Special Rapporteur includes his observations, categorized thematically, in the universal periodic review section of the present report to help to facilitate the process.

B. Human Rights Up Front

22. The Special Rapporteur looks forward to specific action by the United Nations system as a whole to follow up on the recommendation of the commission of inquiry that the Secretariat and agencies urgently adopt and implement a common “human rights up front” strategy to ensure that all engagement with the Democratic People’s Republic of Korea effectively takes into account and addresses human rights concerns. In this regard, the Special Rapporteur appreciates the commitment expressed by the Secretary-General to supporting such a response when he met the three commissioners in April 2014. He hopes that all parts of the United Nations system will rise to the challenge and work and deliver in a coordinated and unified manner, as envisaged in the Human Rights Up Front initiative of the Secretary-General, in tackling the grave human rights situation.

23. The Special Rapporteur believes that such a system-wide strategy should ensure effective coordination and information-sharing among all United Nations bodies, with the aim of significantly improving the United Nations response to the grave human rights situation. Particular attention should be devoted to engagement with civil society actors, whom the Special Rapporteur has found to be valuable interlocutors and sources of information on the situation on the ground.

24. The Special Rapporteur recommends that United Nations agencies establish clear rules of engagement based on international standards with regard to access to data and beneficiaries and a human rights-based approach to development. The programming of such activities should also build upon the areas of engagement identified through the two cycles of the universal periodic review. In this context, he encourages the General Assembly to request all the relevant parts of the United Nations system, through the report of the Secretary-General on the human rights situation in the Democratic People’s Republic of Korea to the General Assembly at its seventieth session, to report on their efforts to alleviate specific areas of suffering, as relevant to their mandates, in relation to the wide-ranging human rights violations documented by the commission of inquiry.

25. In supporting a system-wide “human rights up front” response, the Special Rapporteur is fully aware of the important humanitarian work that the United Nations and other entities are performing in the country. He reiterates that States should not use the provision of food or other essential humanitarian assistance to impose economic or political pressure on the Democratic People’s Republic of Korea. Humanitarian assistance should be provided in accordance with humanitarian and human rights principles, including the principle of non-discrimination, and aid should be restricted only to the extent that unimpaired international humanitarian access and related monitoring is not adequately guaranteed.

C. General Assembly and Security Council engagement

26. The Human Rights Council, in its resolution 25/25, recommended that the General Assembly should submit the report of the commission of inquiry to the Security Council for its consideration and appropriate action in order that those responsible for human rights violations, including those that might amount to crimes against humanity, would be held to account, including through consideration of referral of the situation in the Democratic People’s Republic of Korea to the

appropriate international criminal justice mechanism, and consideration of the scope for effective targeted sanctions against those who appeared to be most responsible for crimes against humanity, taking into account the relevant conclusions and recommendations of the commission.

27. The Special Rapporteur, together with his two fellow commissioners, provided a briefing on and discussed the findings and recommendations of the commission at a side event of the sixty-eighth session of the General Assembly, on 16 April 2014. He makes herein further recommendations to the Assembly and encourages it to send an unequivocal signal, including through guidance and specific action to be included in any resolution on the human rights situation in the Democratic People's Republic of Korea at the current session, that the international community is prepared to take the follow-up to the work of the commission and Human Rights Council resolution 25/25 to a new level.

28. The Special Rapporteur was pleased to participate in the Arria-formula meeting between the members of the Security Council and the commission of inquiry held on 17 April 2014. During the meeting, an initiative of Australia, France and the United States of America, Council members also heard directly from two witnesses, Shin Donghyuk and Hyongseo Lee, who had testified before the commission. The outcome of the meeting is summarized in a letter and a non-paper circulated to the Council at the request of the three sponsors (S/2014/501). Of the 13 members present (China and the Russian Federation did not take part), the 11 members who spoke all suggested, to varying degrees, that the situation of human rights in the Democratic People's Republic of Korea should be formally incorporated into the Council's agenda. Six of the members explicitly called for a referral of the situation to the International Criminal Court for action in accordance with that court's jurisdiction, as recommended by the commission of inquiry (A/HRC/25/63, para. 94 (a)). The other five indicated that it was incumbent upon the Council to at least consider the matter and referral to the Court. Several members also called for regular briefings on the situation by the United Nations High Commissioner for Human Rights and the Special Rapporteur. Most members urged the Democratic People's Republic of Korea to comply with the commission's recommendations and to engage with the United Nations human rights system, including at its forthcoming universal periodic review.

29. The Special Rapporteur welcomes the initiative and notes that any meaningful improvement in the internal human rights situation would also help to reduce the bellicose external stance of the Democratic People's Republic of Korea. Considering the intrinsic links between peace and security, human rights and development in the country, the Special Rapporteur strongly supports the suggestions by Security Council members to add an item to the Council's agenda to address the human rights situation in the country and hold regular briefings with the Council on the subject. The Special Rapporteur encourages the General Assembly to consider formalizing the suggestions by including them in any resolution at the current session and will avail himself to provide regular updates to the Council as required.

30. During the meeting, members of the Security Council also discussed the recommendation by the commission of inquiry that targeted sanctions be adopted against those individuals most responsible for crimes against humanity. The Special Rapporteur is of the view that the Council should adopt targeted sanctions against

those who appear to be most responsible for crimes against humanity. In this context, and considering the dire social and economic situation of the general population, the Special Rapporteur does not support sanctions imposed by the Council or introduced bilaterally that are targeted against the population or the economy as a whole. Any sanction measure imposed by the Council should therefore be targeted against specific individuals and care should be taken not to worsen the social and economic situation on the ground.

31. The Special Rapporteur encourages the General Assembly to respond positively to the recommendation made in Human Rights Council resolution 25/25 and formally submit the report of the commission of inquiry to the Security Council for its consideration and appropriate action, including referral to the International Criminal Court and adoption of targeted sanctions.

D. Field-based structure

32. In its resolution 25/25, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to follow up urgently on the recommendations made by the commission of inquiry in its report, to provide the Special Rapporteur with increased support, including through the establishment of a field-based structure to strengthen monitoring and documentation of the situation of human rights in the Democratic People's Republic of Korea, to ensure accountability, to enhance engagement and capacity-building with the Governments of all States concerned, civil society and other stakeholders and to maintain visibility of the situation of human rights in the Democratic People's Republic of Korea, including through sustained communications, advocacy and outreach initiatives.

33. The Special Rapporteur welcomes the efforts made to date, especially for the establishment of the field-based structure. He considers it important for the structure to be as near as possible to the main source of information and that its presence must be felt in the Korean Peninsula, the region and beyond in order to maximize its impact. He therefore welcomes the agreement by the Republic of Korea to host the structure. He looks forward to working closely with the structure, all Governments concerned, civil society, victims, witnesses and other stakeholders to implement resolution 25/25. The Special Rapporteur strongly encourages all Member States and other actors concerned to facilitate and provide the structure with timely access to relevant information and potential witnesses, especially those escapees who may have information crucial to ensuring institutional and individual accountability. He encourages the General Assembly to fully support the structure and ensure that it has sufficient resources to implement its challenging mandate.

IV. Latest developments

A. Non-refoulement and treatment of escapees

34. As mentioned above, the human rights situation in the Democratic People's Republic of Korea engages the responsibility of the wider international community. In particular, Member States to whom defectors appeal for refuge and protection are under an international obligation not to return such individuals where the return

would give rise to a real risk of irreparable harm,⁴ such as a threat to the right to life or a violation of the prohibition of torture.

35. According to the Ministry of Unification of the Republic of Korea, 1,516 individuals from the Democratic People's Republic of Korea arrived in the Republic of Korea in 2013. Reports indicate that, as at June 2014, 760 refugees from the Democratic People's Republic of Korea had reached the Republic of Korea in 2014.⁵ The Special Rapporteur welcomes the interministerial structure set up to coordinate and handle various aspects of issues relating to refugees from the Democratic People's Republic of Korea, which could help to ensure their protection and full reintegration into society upon their arrival in the Republic of Korea.

36. The Special Rapporteur acknowledges that China in particular is in a challenging and unenviable situation. Most of the nationals of the Democratic People's Republic of Korea who manage to flee the country cross the border with China and will continue to do so. The current handling of the movement of people across the borders is far from ideal and can easily lead to abuses. This situation harms all concerned, including the people of China, and must not continue. The Special Rapporteur reiterates his availability to engage in a constructive dialogue with China to help to find a way forward. Cooperation with China is essential, both in this context and towards the wider objective of bringing meaningful change to the situation of human rights in the Democratic People's Republic of Korea.

B. Death penalty

37. The Special Rapporteur expresses his serious concern over the executions reported in 2013-2014. In December 2013, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions, warned that the high-profile execution of a senior official and uncle of the Supreme Leader, Jang Song Thaek, was only one of multiple executions reported in the country since August 2013. The Special Rapporteur is further concerned about the practice of guilt by association, under which associates and relatives of a person punished for a political or ideological crime are also at risk of retaliation, either by being sent to prison camps or by being executed.

38. The Special Rapporteur recommends that the Democratic People's Republic of Korea draw on the experience of countries that have taken progressive steps to restrict or abolish the death penalty. A first step would be to amend national legislation to ensure compliance with international law, specifically to restrict the application of the death penalty to crimes of intentional killing only and to ensure that all trials meet the highest standards of fairness.

⁴ General comment No. 31 of the Human Rights Committee on the nature of the general legal obligation on States parties to the International Covenant on Civil and Political Rights, para. 12.

⁵ Norimitsu Onishi, "North Korea denounces Seoul for welcoming defectors", *New York Times*, 30 June 2014. Available from www.nytimes.com/2004/07/30/international/asia/30korea.html.

C. Abductions and enforced disappearances from other countries

39. The Special Rapporteur is encouraged by the most recent consultations between the Democratic People's Republic of Korea and Japan on the issue of abductions. He acknowledges the efforts made by both States to settle pending issues and normalize relations according to the Pyongyang Declaration.

40. In May 2014, the Democratic People's Republic of Korea agreed to conduct a comprehensive, full-scale survey of all Japanese, including the remains and graves of the Japanese who died in its territory before and after 1945 and the remaining Japanese, spouses, victims of abduction and the missing. It also agreed to keep Japan constantly updated of the results of the survey, in particular with regard to findings relating to remains and graves, as well as remaining persons and spouses, so as to develop a common strategy to handle the remains and the repatriation of survivors. The agreement also allows for the establishment of contacts with relevant persons and visits to relevant places to allow the Japanese authorities to confirm the findings of the survey.⁶ A special investigation committee will be invested with a special mandate from the National Defence Commission to investigate all institutions and mobilize relevant institutions and persons concerned for the investigation when needed. It will carry out its work by holding interviews, hearing testimonies and touring the relevant fields and will include panels for the remains of Japanese, remaining Japanese and Japanese spouses, abducted Japanese and missing Japanese.⁷

41. The Special Rapporteur hopes that rapid progress will be made through this bilateral process and that it will be conducted transparently in the interests of the families concerned and the international community as a whole. He encourages both parties to request any international assistance with the investigative and verification process that may be required.

42. The findings of the commission of inquiry have highlighted that the abduction issue is not only a bilateral issue between Japan and the Democratic People's Republic of Korea, but also one that concerns other countries and the international community at large. The strategy that the Special Rapporteur proposes therefore requires the collaboration of the Member States concerned and the international community as a whole.

43. In that light, the Special Rapporteur has been engaged in discussions with representatives of Governments affected by the issue. On 10 September 2014, he attended an event entitled "International Symposium on Human Rights Violations, including Abductions by North Korea", hosted by the Government of Japan in Geneva. In his remarks, he noted that he had invited the United Nations human rights mechanisms to work with all parties involved towards the resolution of the issue. In particular, he noted that the new field-based structure of OHCHR could act as a focal point in the collection of information available on missing individuals, facilitating effective coordination between all parties involved. He also stressed the need for the participation of the family members of abductees, civil society and the general public, whom he encouraged to share any claims of, and information on, abductions that have not been reported to date.

⁶ "Details of DPRK-Japan accord released", *Pyongyang Times*, Saturday, 7 June 2014.

⁷ "DRPK to conduct all-inclusive and comprehensive probe into all Japanese in country", Korean Central News Agency of the Democratic People's Republic of Korea, 4 July 2014.

D. Second universal periodic review

44. The second universal periodic review of the Democratic People's Republic of Korea was held on 1 May 2014. A few days before, the Government belatedly accepted 81 recommendations from the first round. In its immediate response to the second review, it rejected 83 of the 268 new recommendations made. Later, at the twenty-seventh session of the Human Rights Council, in September 2014, it announced that it had accepted 113 of the 268 recommendations. The Special Rapporteur welcomes the active engagement of the Government during the second cycle, which constitutes an improvement on the lack of collaboration extended during and after its first review. He will continue to seek engagement with the Democratic People's Republic of Korea to ensure the implementation of the recommendations accepted during both cycles. He believes that they present tangible opportunities for engagement by Member States and all parties concerned, including United Nations agencies and civil society. He notes the willingness of the Democratic People's Republic of Korea to accept technical assistance in this regard.

45. To facilitate this engagement, the Special Rapporteur wishes to highlight the main recommendations accepted by the Democratic People's Republic of Korea (see [A/HRC/27/10](#)), the implementation of which is easily measurable. He also highlights several recommendations that regrettably have not received support. It is critical that the international community, while supporting the efforts of the Democratic People's Republic of Korea to implement the recommendations that it has accepted, continue its efforts towards ensuring accountability, the rejection of recommendations by the Democratic People's Republic of Korea on those issues notwithstanding.

46. In this context, the Special Rapporteur notes the publication in September 2014 of the report by the Association of the Democratic People's Republic of Korea for Human Rights Studies (see [A/69/383-S/2014/668](#)), which can assist in further understanding the administrative and legislative framework in the country.

1. Cooperation with United Nations human rights mechanisms

47. The Democratic People's Republic of Korea committed itself, during the second universal periodic review, to further fulfilling its international law obligations and to considering the ratification of human rights international instruments (recommendations 1-3). In particular, it agreed to take further steps to expedite the ratification of the Convention on the Rights of Persons with Disabilities, signed in July 2013 (recommendation 15). It also agreed to cooperate with treaty bodies, mechanisms of the Human Rights Council, including special procedures, and OHCHR (recommendations 17, 61, 62, 65 and 66). It did not, however, accept several recommendations pertaining to cooperation with special procedures, including the country mandate, a situation that contradicts the positive commitments above.

2. Rights of vulnerable groups

48. The Democratic People's Republic of Korea committed itself to eradicating all forms of discrimination against women and to taking measures to ensure gender equality (recommendations 69-71). It accepted recommendations in relation to increasing the participation of women in public life and in decision-making

institutions (72 and 74) and to ensuring equal treatment for women with regard to the rights to food, education and work (75 and 76). It also committed itself to addressing the issue of trafficking in women and children, including through human rights education and training for law enforcement officials (recommendation 110). The Special Rapporteur is of the opinion that such measures should be calibrated carefully to avoid restricting freedom of movement and the right to leave the country. In relation to the rights of children, the Democratic People's Republic of Korea committed itself to ensuring adequate living conditions for children without parents (recommendation 122), enhancing the quality of, and access to, education (recommendations 171-177) and guaranteeing the rights to health, education and other economic, social and cultural rights to children with disabilities and those without parents (recommendation 178).

3. Economic, social and cultural rights

49. The Democratic People's Republic of Korea agreed to ensure the right to food and other economic, social and cultural rights without any kind of discrimination (recommendation 141), prioritize the fulfilment of the right to food in its public spending and adopt more effective measures to increase food production, including by increasing budgetary allocations to the agricultural sector (recommendations 146-149). It also committed itself to continuing its efforts to minimize the gap between rural and urban areas and intensifying its efforts to develop poverty alleviation programmes (recommendations 150, 153 and 154). It similarly accepted recommendations relating to improving access to drinking water and sanitation for all persons and enhancing efforts to ensure the right to adequate housing, including in rural areas (156-160). It further committed itself to, among other things, considering an increase in State expenditure on the health sector with a view to meeting the demand for medical supplies, providing better training to medical personnel, in particular in remote rural areas, and carrying out a reproductive health strategy and other programmes for women with a view to reducing the maternal mortality (recommendations 164-170). In relation to the right to education, the Democratic People's Republic of Korea accepted several recommendations pertaining to an increase in the resources allocated to education programmes and modernizing and improving educational facilities (172-177). The Special Rapporteur regrets, however, that it failed to accept some recommendations pertaining to access to food, health care and health services in a non-discriminatory manner. More generally, he regrets that all recommendations pertaining to discriminatory practices based on the *songbun* system were not accepted.

4. Other issues

50. The Democratic People's Republic of Korea accepted several recommendations relating to the promotion and protection of the rights to freedom of thought, conscience and religion, freedom of movement abroad, expression, access to information, peaceful assembly and association (125, 126, 128 and 130). It committed itself to further strengthening the independence of the judiciary, enshrining fully the right to a fair trial and due process guarantees and creating a national mechanism to review complaints from the public of human rights violations (recommendations 113, 114 and 116). Also significant is its acceptance of the recommendations to promote training and human rights education for public officials and provide law enforcement officials with more information on international human rights instruments (42-44).

51. The Special Rapporteur notes with concern, however, that the Democratic People's Republic of Korea failed to fully endorse several recommendations regarding, among other things, the independence of newspapers, free access to the Internet, free access to information and a favourable environment for human rights defenders, journalists and other civil society actors, a situation that considerably weakens the impact of the other recommendations accepted. In addition, it regrettably rejected all recommendations relating to the conditions of detention of prisoners, in particular refusing to acknowledge the existence of political prison camps and to grant international humanitarian organizations access to such camps. It also failed to acknowledge the multiple cases of international abductions and enforced disappearances. Most importantly, the Special Rapporteur remains deeply concerned by the failure to accept any recommendations relating to the findings of the commission of inquiry. This sadly reflects its continued state of denial of the widespread, grave and systematic human rights violations and crimes against humanity reported by the commission, and the need for fundamental change.

V. Recommendations

52. The Special Rapporteur calls upon the General Assembly to send an unequivocal signal that the international community is determined to take the follow-up work to the findings and recommendations of the commission of inquiry and Human Rights Council resolution 25/25 to a new level through specific action.

53. To achieve the above, the Special Rapporteur makes the following recommendations and calls upon the General Assembly:

(a) To submit the report of the commission of inquiry to the Security Council for its consideration and appropriate action in order that those responsible for human rights violations, including those that may amount to crimes against humanity, are held to account. This should include referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court and consideration of effective targeted sanctions against those who appear to be most responsible for crimes against humanity;

(b) To recommend that the Security Council place the human rights situation in the Democratic People's Republic of Korea on its agenda and hold regular briefings with the Special Rapporteur and other relevant experts to address the intrinsic links between peace and security and human rights in the Korean Peninsula;

(c) To reaffirm the responsibility of the international community to protect the people of the Democratic People's Republic of Korea and victims abroad from crimes against humanity, in view of the manifest failure of the Democratic People's Republic of Korea to protect its own population from such crimes, in accordance with the commitments stipulated in the 2005 World Summit Outcome;

(d) To ensure that the field-based structure of OHCHR to follow up on the commission's work can function with independence, has sufficient resources and is not subjected to reprisals or threats;

(e) To request all Member States and other actors concerned to facilitate and provide the field-based structure and the Special Rapporteur with timely access to relevant information and potential witnesses, especially those escapees who may have information crucial to ensuring institutional and individual accountability;

(f) To request the Secretary-General and the United Nations system as a whole to address the grave human rights situation in the Democratic People's Republic of Korea in a coordinated and unified manner, as envisaged in the Human Rights Up Front initiative of the Secretary-General. To this end, it should request all relevant parts of the United Nations system to report on efforts made to help to alleviate specific areas of suffering, as relevant to their mandates, in relation to the wide-ranging human rights violations documented by the commission of inquiry and the recommendations accepted during the universal periodic review;

(g) To request the Democratic People's Republic of Korea to implement Human Rights Council resolution 25/25, in particular those aspects requiring specific steps to ensure fundamental freedoms, end all forms of discrimination, including those based on the *songbun* system, and ensure economic and social rights, including access to food;

(h) To request the Democratic People's Republic of Korea to allow all persons who have been abducted or otherwise forcibly disappeared, as well as their descendants, to return immediately to their countries of origin and to expedite investigations into the fate of those missing in a transparent and verifiable manner;

(i) To express serious concern about the increased number of executions in the past year and to request the Democratic People's Republic of Korea to immediately halt all executions pending the necessary reforms to the criminal law and procedure;

(j) To request the Democratic People's Republic of Korea to immediately halt all human rights violations relating to prison camps, including the practice of forced labour, to dismantle all political prison camps and to release and rehabilitate all political prisoners, with appropriate international verification and assistance;

(k) To request the Government to allow access for independent agencies to verify the implementation of its accepted recommendation during the universal periodic review to give all in detention a fair trial and to treat all persons deprived of their liberty with humanity, including those the Government described as being detained as reformed "through labour", serving their terms in "reform institutions";

(l) To request the Democratic People's Republic of Korea to grant access to the United Nations human rights mechanisms to assist in and assess the implementation of the recommendations that it voluntarily accepted made during the two cycles of the universal periodic review.

54. The Special Rapporteur encourages Member States, in accordance with international law and their national legal provisions, to make use of the principle of universal jurisdiction to realize and maximize the potential

deterrent effect of the findings and recommendations of the commission of inquiry and hence help to protect the population of the Democratic People's Republic of Korea from further crimes against humanity.

55. The Special Rapporteur calls upon all countries where persons from the Democratic People's Republic of Korea have sought refuge or are transiting to protect such persons, to treat them humanely and to adhere to the principle of non-refoulement.

56. The Special Rapporteur welcomes the recent acceptance by the Democratic People's Republic of Korea of some recommendations made during the two cycles of the universal periodic review. He calls upon all Member States, the United Nations and other actors to engage with the Government to take specific steps to facilitate and verify the implementation of the recommendations.

57. The Special Rapporteur will avail himself to assist Member States in forming a contact group, as recommended by the commission of inquiry, to raise concerns about and provide support for initiatives to improve the situation of human rights in the Democratic People's Republic of Korea, fully using all available mechanisms to achieve tangible results.
