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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

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

Summary

This report by the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn, is submitted pursuant to Commission resolution 2005/11, and covers in particular the second half of 2005.

While welcoming the fact that the Democratic People's Republic of Korea is a party to various human rights treaties and that it has engaged with the monitoring bodies under those treaties, as well as adopting some key reforms of the domestic law such as its criminal law, there is still a huge gap between formal recognition of human rights and substantive implementation of human rights in the country. The situation in the country provides a continuing cause for concern - there are still many transgressions and discrepancies of an egregious nature which require effective redress.

There are major challenges in regard to the rights to food and to life, the rights to security of the person and to humane treatment, the rights to freedom of movement, asylum and refugee protection, and various political and other rights such as self-determination and freedom of expression, association and religion. Specific concerns raised in this report include women's rights, in particular violence against women, children's rights, particularly to protection and participation, the rights of older persons/the elderly, the rights of those with disabilities and ethnic issues.

The report describes the impressions of the Special Rapporteur following his visit to the Republic of Korea to assess the impact of the human rights situation in the Democratic People's Republic of Korea on the former. Conclusions are provided at the end of the report, with key recommendations addressed to the Democratic People's Republic of Korea, complemented by other recommendations addressed to the international community.

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Introduction

1. The present report, submitted pursuant to Commission resolution 2005/11, covers the situation of human rights in the Democratic People's Republic of Korea, in particular during the second half of 2005. The Special Rapporteur wishes to thank all governmental, non-governmental, intergovernmental and other entities for their assistance in providing some of the information used in this report.
2. In late 2005 the Special Rapporteur carried out a visit to the Republic of Korea and a mission report is included in this report. It is regrettable that, to date, the Democratic People's Republic of Korea has declined to invite him to the country. His approach remains constructive, thus inviting the Democratic People's Republic of Korea to view this mandate as a window of opportunity to engage with the United Nations system.
3. The Special Rapporteur welcomes the fact that the Democratic People's Republic of Korea is a party to four key human rights treaties - the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child - which offer a platform for the country to promote and protect human rights. It is also hoped that the negotiations between the various international players to denuclearize the Korean peninsula will provide a key opportunity to build the trust and confidence which will provide additional space for the improvement of the human rights situation.

I. SITUATION

A. General concerns

4. First, with regard to the right to food and life, it can be recalled that the country has been hampered very severely by food shortages since the mid-1990s, mainly due to natural disasters and mismanagement on the part of the authorities. Traditionally, the people of the Democratic People's Republic of Korea were accustomed to a public distribution system (PDS) of food being handed out by the State as part of social welfare. However, this collapsed in the 1990s, and in 2002 the rations started to be suspended due to the new Economic Management Improvement Measures policy of the authorities. The new policy presumed that the people would have to buy food for themselves directly on the basis of higher wages and a move towards a market system whereby agricultural and other produce would be traded. However, this led to very substantial rise in prices, particularly with negative impact on many members of the urban population who were/are unable to fend for themselves.
5. In recent years, the country has had to depend upon food and other humanitarian aid provided by multilateral and bilateral donors. In 2005 the authorities indicated that it no longer wished to accept (multilateral) food aid from outside the country and to end the presence of foreign humanitarian agencies, particularly those from civil society. While negotiations in the latter part of 2005 indicated that the main United Nations agency dealing with food aid - the World Food Programme - would be able to stay, but not non-governmental organizations.

6. This tenuous situation should be placed in context.¹ Despite an improved harvest in 2005, the country is still short of food. There is a need for continuing food and other aid from outside the country, and sustaining the presence of foreign aid agencies to carry out the task of helping with the distribution, with adequate monitoring to ensure that the aid reaches the target groups.²

7. In late 2005, the World Food Programme had access to 160 counties/districts out of a total of 203 counties. On average, the intended beneficiaries were some 6.5 million people. In 2005 already some 2 million people were affected by cereal reductions and shortages in food donations from the outside.

8. The Democratic People's Republic of Korea shows a preference for bilateral aid from countries in the vicinity and there is a need to ensure complementarity between bilateral and multilateral aid, to guarantee access to the intended beneficiaries and effective monitoring to preventing leakages. The Democratic People's Republic of Korea's shift from accepting humanitarian relief to its current call for a development framework of a broader nature also invites reflection. This should be coupled with a strategy to incorporate human rights comprehensively into the programming process - a rights-based approach.

9. On a disquieting note, in late 2005 the authorities were no longer permitting the various markets to operate, banning sales of cereals, partly through the authorities' fear that they were losing their grip on the economy, and partly as a means of reasserting their grip over the population, thereby reverting to the public distribution system. There was a doubling of average cereal rations from 250 grams per person. From information received, those at work or who were involved in food-for-work programmes were likely to receive more food than those not falling into the category, thus increasing the latter's vulnerability - particularly children, pregnant women, older persons/the elderly and those with disabilities.

10. To guarantee food security, there is also a need to move towards more sustainable agricultural techniques which are environment-friendly, given that the country suffers from limited arable land and overexploitation of such land. In addition, it cannot be overstated that the excessive expenditure by the authorities on its defence sector, based upon the country's "military-first" policy causes serious distortions in the national budget and its use of national resources. This is a key impediment to the country's development process as well as the right to food and life and other rights.

11. Second, with regard to the right to security of the person, humane treatment, non-discrimination and access to justice, given the non-democratic and repressive nature of the regime in power, there continue to be many reports of transgressions by the authorities on this front, despite reforms of the Criminal Code and Criminal Procedure Code in 2004. The treatment of prisoners, particularly political prisoners, gives rise to continuing concern, with reports of a wide range of detention centres and prisons with appalling conditions and use of torture, inhuman and degrading treatment, despite a ban on such practices under the country's criminal law. The incarceration system has been described as follows:

The criminals sentenced to correctional punishment are typically economic or violent criminals, rather than political criminals, and would be detained in the correctional centres managed by the correctional bureau of the People's Security Agency. In addition

to official correctional facilities, North Korea has been criticized for operating political concentration camps, collection points and labour training camps. Political criminals are incarcerated in *kwanliso* operated by the “farm guidance bureau” of the State Security Agency ... At the People’s Security Agency the camps that hold former high-ranking officials are also called *kwanliso* ... *Kyohwaso* are among the facilities that the Ministry for Public Security manages, and they can be likened to correctional institutions or prisons. These institutions hold persons found guilty of the most serious crimes. People who have been sentenced by a court to death or penal servitude are held in these facilities, and each North Korean province contains one or more of these facilities.³

12. The issue of abductions of foreigners carried out by Democratic People’s Republic of Korea agents has affected several countries. A number of Japanese cases have yet to be resolved and require effective measures and political will on the part of the Democratic People’s Republic of Korea, to ensure that there is peaceful resolution of the issue, coupled with transparency and action against impunity. In 2005, there were reports of nationals of other countries affected, such as Thailand. The Special Rapporteur’s visit to the Republic of Korea also revealed large numbers of missing persons from the Republic of Korea who may have been abducted by Democratic People’s Republic of Korea agents, and this is dealt with below in the section of the report on the Republic of Korea.

13. Third, there is the question of freedom of movement, asylum and refugee protection. Throughout 2005, there were reports of potential or actual forced return (“refoulement”) of Democratic People’s Republic of Korea nationals who had sought asylum in neighbouring countries - without adequate guarantees of safety. While the Constitution of the Democratic People’s Republic of Korea provides for freedom of movement of its people, the reality is the contrary since there is rigid control over migration; generally it is not possible to move internally or externally without official permission - without the impending threat of penal sanctions. While its criminal law was improved in 2004 to reduce sentences on those who leave the Democratic People’s Republic of Korea without permission, the menace of punishment facing those who do and who are then forcibly returned to the Democratic People’s Republic of Korea is ever-present and gives rise to potential or actual fear of persecution caused by the authorities.

14. This is interlinked with the issue of refugee protection, the refugee being understood internationally as a person who has left his/her country of origin for a well-founded fear of persecution. A key principle in international law in this regard is the right of non-refoulement. While those entitled to refugee status are often those who have left the country of origin with a fear of persecution, even those who did not originally leave the country of origin with a fear of persecution but who later fear persecution can also be classified as refugees (in technical terms: refugees *sur place*). Many of those who have left the Democratic People’s Republic of Korea in search of food and economic opportunities in neighbouring countries fall into the latter category, since there is the threat of interrogation and penal sanctions awaiting them for having left the country without permission.

15. The communications which the Special Rapporteur sent to the Democratic People’s Republic of Korea (reproduced below), exemplify the need for refugee protection and humane treatment upon return to the Democratic People’s Republic of Korea. There is a key challenge in regard to the need to work with neighbouring countries so as to ensure that they abide by international law, especially the principle of non-refoulement and to enable the United Nations

High Commissioner for Refugees to have access to those who have sought asylum. This is closely linked to immigration law and related bilateral arrangements between those countries.

16. As asylum-seekers and/or refugees are unlikely to have immigration documents such as passports, visas and exit or entry permits, the following type of bilateral arrangement may, regrettably, undermine their protection and should be critically analysed to ensure that it abides by international law - highlighting the need to avoid criminalizing innocent people who need protection and humane treatment:

Both sides shall mutually cooperate on the work of preventing the illegal border crossing of residents.

In the case of crossing the border without possession of a legal certificate or without passing through screening agencies or the passage placed stated on the possessed certificate, the individual shall be treated as an illegal border-crosser. However, any person of the other side who enters the boundaries of one side due to any kind of calamity or unavoidable factors shall not be considered an illegal border-crosser. A person possessing a border-resident pass who comes into a non-border area with permission of public security and an entry/exit bureau shall not be considered an illegal border-crosser.

Regarding individuals who illegally cross the border, depending on the situation, a name list or relevant materials shall be turned over to the other side. However, in case of there being a criminal act after the border is crossed, it shall be handled according to the laws of the individual's country, and the other side shall be notified of the situation.

17. Various clauses of the type of bilateral arrangement shown above may need to be adjusted to ensure their consistency with international law, as they might lead to refoulement of those who seek asylum. As importantly, in practice, the law enforcers, especially immigration officials and border guards, need to be instructed and trained to respect international law on the issue of refugee protection and asylum.

18. Fourth, with regard to the right to self-determination/political participation, access to information, freedom of expression/belief/opinion, association, conscience and religion, there was no ostensible improvement during the year. The opaque and non-democratic nature of the State militates against the right to self-determination and the need for democracy in the country. Although the advent of technology and globalization has meant that some Democratic People's Republic of Korea nationals have more access to foreign information, there is still no genuine free access to information, since media and related information are State-controlled and it is illegal to listen to foreign radio, watch foreign TV or to own computers without official permission. Political dissent is repressed, with a pervasive security network and detention camps for political prisoners. Interestingly, at the end of 2005, with various media speculation on the issue of succession in regard to the leadership of the country, it was reported that the authorities had issued an instruction forbidding discussion of the subject, with the threat of life imprisonment for those who failed to follow the instruction.⁴

19. While there are official claims that freedom of religion is allowed, the reality suggests otherwise, as seen in a recent report on the issue, based upon many interviews, which highlights a myriad of threats not only to religious freedom but also to the right to life and humane treatment:

Ownership of a Bible or other religious materials is illegal, with sentences ranging from imprisonment to execution. One other interviewee, while imprisoned following repatriation to North Korea, met a fellow prisoner who was imprisoned because a Bible had been found in his home. Another interviewee reported that while detained following repatriation ..., six other detainees were sent to prison camp for political prisoners after confessing that they were followers of Jesus ... In 2002, the North Korean Government formally notified the United Nations that State and religion are separated from each other and the State neither interferes in nor discriminates against any religion. This statement is disingenuous at best. All legally sanctioned religious activity in North Korea takes place under the auspices of Government-controlled federations corresponding to the religions recognized by the Korean Workers Party, including and limited to Protestantism, Catholicism, Chondokyo and Orthodox. The religious federations of North Korea are members of, and subservient to, the National United Front for the Unification of the Fatherland.⁵

20. The above should be placed in context. The regime's emphasis is to inculcate religiously upon the people from a young age belief in and total adherence to the past and current political leadership, coupled with massive ideological mobilization akin to cult worship.

B. Specific concerns

21. The rights pertaining to various groups have been affected greatly by the situation in the Democratic People's Republic of Korea and deserve more specific focus. First, women's rights, which cut across all the other issues dealt with below including child rights, the rights of older persons and the rights of those with disabilities.

22. In principle, women's rights and non-discrimination were part and parcel of the first Constitution propounded by the regime. Thus, in a manner, there have been for a long time formal equality between men and women. In reality, substantive equality and related implementation are the missing link. While women are a large base of the workforce, their access to high decision-making positions is limited and they are often relegated to stereotyped roles, as noted by these observations by the CEDAW Committee in July 2005:

The Committee notes with concern the persistence of traditional and stereotyped assumptions and attitudes in respect of roles and responsibilities of women and men, which are discriminatory against women and have a pronounced impact, particularly in the areas of education and employment as well in other areas of their lives. For example, the Committee is concerned at the stereotyping of women, which perceives them exclusively as caregivers and homemakers and assigns them to areas such as education and employment on the basis of spheres suitable to their "characteristics". The Committee is concerned that such expectations of women have serious consequences, preventing them from accessing rights and entitlements on an equal basis with men and creating a dependency on men, husbands and family for housing, food and other services.

It is also concerned that in times of economic crisis, as in the current situation of the country, women's prescribed roles and lesser entitlement intensifies their hardship and amounts to multiple discrimination (CEDAW/C/PRK/CO/1, para. 35).

23. Second, the economic decline of the country has been particularly severe for women: they have to bear the brunt of not only the housework, child-rearing and work outside the home but also the task of gathering food and other necessities in times of great deprivation. This has also had a huge impact on their health which has not improved in recent years. The lack of improvement in their health/nutritional state was noted in my earlier report to the General Assembly, in 2005 (A/60/306).
24. Third, as noted in earlier reports of the Special Rapporteur, more women have become victims of violence both in the home and on the outside. There are reports of human trafficking and sexual exploitation which have severely affected women. Recently, more women than men have been seeking refuge in neighbouring countries and many are smuggled in, or trafficked into exploitative situations. This is seen in some of the testimonies in the report on the Republic of Korea below.
25. Fourth, the application of women's rights in the country should not be generalized. Women close to the elite at the top are in a privileged position. However, women who fall outside that group are often marginalized and discriminated against, given that the regime has divided people into three categories: those in the elite group, the wavering class in the middle, and those seen as enemies of the regime. A particular concern is the plight of the third group who are at times punished for being associated with relatives seen as hostile to the regime, on the basis of guilt by association, and find themselves banished or sent to political detention camps with the rest of their family.
26. In regard to child rights, social services and access to education for children were commendable from a quantitative angle before the economic crisis of the mid-1990s. There are laws which support assistance for children such as the Law on Nursery and Upbringing of the Child, which recognizes the State's responsibility towards the child. The authorities have emphasized the importance of 11 years of compulsory education and have been open to working with United Nations agencies dealing with child rights, including a visit by the Committee on the Rights of the Child.
27. The disastrous food shortage of the mid-1990s took a toll on many children through malnutrition. As noted in my report in 2005 for the General Assembly, while recently the situation has improved in regard to chronic malnutrition, malnutrition rates and their impact, e.g. stunting, are still a major cause for concern. There are other chronic shortages such as electricity at school and medicines in general.
28. Still, the situation of child rights should not be overgeneralized. Children are also subject to the political stratification noted above in relation to women. Those with the elite do well, while the wavering class and those deemed enemies of the regime are marginalized. There is also a qualitative angle in regard to the social services offered to children - as these services are part of a mass mobilization campaign to make people subservient from a young age to the political leadership, merely quantitative assessment of their coverage is inadequate and should be balanced with a more qualitative assessment. This affects particularly the content of the

curriculum, which uses children as objects of indoctrination to justify the presence of the political system and its concomitant ideology rather than as subjects of human rights.

29. Particular attention should be paid to children who are deprived of a family environment, are beyond the scope of social services, and/or are seen as part of families classified as hostile to the regime. These include abandoned children, children born out of wedlock, children who have to face the juvenile justice system, children in prisons, children of dissident families, and children who are seeking asylum with their families or are themselves unaccompanied minors. Children are also the victims of the guilt-by-association practice by which the regime punishes or discriminates against whole families for being associated with a political dissident or a person deemed hostile to the regime - the discrimination is intergenerational. There is a challenge for international and national agencies dealing with children, particularly those with access to the localities, to act more proactively and accessibly to address not only the issue of child survival and child development but also the issue of child protection and child participation in these situations.

30. Interestingly, there is a lesson learned from the use of children in cultural activities. As noted by an observer:

Despite the numerous social activities of the child, this social participation is not by spontaneity and creativity of social participation, but is compulsory. Even in the mass games performed by 100,000 at the Arirang festival, the testimonies of defectors show how wearisome the training for the group gymnastics is. The defectors said that during the mass game practice, the trainees were prohibited from going to the restroom and taking a rest so that it was frequently witnessed that numerous students fell ill with diseases such as nephritis ... If the child is forcibly mobilized to collective events, or is forced to live in the predetermined structure, this is not the true meaning of the right to participation.⁶

31. With regard to the rights of older persons, the elderly were generally well cared for before 1995. Many lived in communities with their families as part of the traditional Asian practice of having several generations under one roof. The State offered social security through extensive pensions. However, the crisis of the mid-1990s has taken a toll among the elderly. They have been affected by the food shortage, and declining social security, social services and medical care. Increasingly, they have had to fend for themselves to survive. It is presumed that a large proportion of the deaths through starvation in the late 1990s were of these older persons. This has been mitigated to some extent by the food aid from outside the country. As noted by the World Food Programme project document cited above:

Food security analyses undertaken by World Food Programme in 2004 confirm that PDS-dependent elderly people constitute the most food-insecure socio-economic group, in particular those living alone. While in 2004 World Food Programme supported 50 per cent of the elderly PDS-dependents, analysis now shows 65 per cent of them to be very vulnerable and the assistance in 2005 will therefore be adjusted accordingly.²

32. With regard to the rights of those with disabilities, the new law adopted on this issue is welcome: the 2003 Law of the Democratic People's Republic of Korea on the Protection of the Person with Disability. In principle, it should help to counter discrimination and to offer services

to help those with disabilities. Article 3 states that it is the consistent policy of the Democratic People's Republic of Korea to protect persons with a disability. The State shall systematically increase investments in the field of the protection of persons with a disability in order to modernize its material and technical means.

33. It remains to be seen how the law will be implemented. To date, the situation facing those with disabilities has presented a very disconcerting picture. It is reported that those with disabilities are sent away from the capital city, and particularly those with mental disabilities are detained in areas or camps known as "Ward 49" with harsh and subhuman conditions. As observed by the *White Paper on Human Rights in North Korea*:

North Korean authorities are practising merciless discrimination against handicapped persons by setting up collective camps for them where they are designated according to their physical deformity or disability. Defectors from North Korea testify without exception that there exist collective camps for midgets in North Korea. According to (a testimony), ... midgets (are) not allowed to reproduce and they (are) rounded up and relocated ... Marriages at these camps are permitted but having children is not.⁷

34. Like all the rights of the various groups noted above, there is the challenge of not only effective implementation of human rights in quantitative terms but also in qualitative terms.

35. Finally, given the fact that the country is a very homogeneous society, it is interesting to inquire about the issue of ethnicity, particularly the presence of minorities and how they are treated. Discussions which the Special Rapporteur had recently on this issue suggest that there is a small group of ethnic Chinese living in the Democratic People's Republic of Korea and many are involved in the commercial sector. There is one area where there may be a human rights concern - when Korean women have a sexual relationship with those of the Chinese ethnic group. On a related front, there have been reports that, when Korean women were returned forcibly from neighbouring countries, if they carried the child of those of non-Korean ethnicity, they might be subjected to discrimination and/or violence with dire impact on the babies or children of the relationship.

II. COMMUNICATIONS

36. During the reporting period, the Special Rapporteur sent two communications to the Government of the Democratic People's Republic of Korea. On 18 November 2005 he sent a communication in connection with two groups of Democratic People's Republic of Korea nationals who were deported back to their country by a neighbouring country against their will. The first group consisted of five women and two men who were deported on 29 September 2005, after having sought asylum in a foreign school in a neighbouring country. The second case related to a group of four women and one man who also sought asylum in a foreign school in a neighbouring country, who were returned to the Democratic People's Republic of Korea against their will in October 2005.

37. The Special Rapporteur requested the Government of the Democratic People's Republic of Korea to provide him with information on the current whereabouts and status of the above-mentioned groups and expressed concern about their safety. He further urged the Government to abstain from punishing the returnees for having left without an exit visa and to ensure their safety.

38. On 1 December 2005, the Government of the Democratic People's Republic of Korea replied to the communication. In the reply, the Government reiterated its position that it did not recognize the mandate of the Special Rapporteur and therefore did not wish to meet or communicate with the Special Rapporteur regarding human rights issues.

39. The second communication was sent on 20 December 2005, jointly with the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture, the Special Rapporteur on trafficking in persons, especially women and children, and the Special Rapporteur on violence against women, its causes and consequences. In the communication, they raised a series of human rights concerns, including the punishment of those who left without an exit visa, the harsh treatment of prisoners in political and re-education labour camps and the absence of judicial process. They appealed to the Government of the Democratic People's Republic of Korea not to torture, punish, summarily execute or otherwise punish its citizens for exercising their human right to leave their own country. They further appealed to the Government of the Democratic People's Republic of Korea to take all necessary measures to guarantee the right of all women and girls in its territory to be free from any gender-based violence, discrimination and abuse, to ensure freedom of religion and belief and to ensure a proper judicial process.

40. Information regarding any reply from the Democratic People's Republic of Korea Government in response to this communication will be contained in the next report of the Special Rapporteur.

III. REPORT OF THE MISSION TO THE REPUBLIC OF KOREA

41. The Special Rapporteur visited the Republic of Korea from 3 to 10 November 2005 to assess the impact of the human rights situation in the Democratic People's Republic of Korea on the Republic of Korea. The visit began with the Special Rapporteur's participation at the "International Symposium on North Korean Human Rights" organized by the National Human Rights Commission of the Republic of Korea. While the Special Rapporteur wishes strongly to visit the Democratic People's Republic of Korea and has sought access several times, its Government has, to date, declined to invite him into the country.

IV. CONTEXT

42. No analysis of the impact of the human rights situation in the Democratic People's Republic of Korea on the Republic of Korea would be complete unless the history of the Korean peninsula is taken into account, giving rise to a special relationship between "the North" (Democratic People's Republic of Korea) and "the South" (Republic of Korea). In the aftermath of the Second World War, the peninsula was partitioned into two countries and this fait accompli was imposed on the people of the peninsula. There emerged two States with different political systems; today they are each Member States of the United Nations and are known as the

Democratic People's Republic of Korea and the Republic of Korea. While the system of the Democratic People's Republic of Korea is basically non-democratic, since the late 1980s the Republic of Korea has progressed towards a democratic system with a pluralist, multiparty base.

43. In 1950, the Korean peninsula was mired in a devastating war between the North and the South which ended with intervention from the United Nations and an armistice between the various parties in 1953, although to date, no peace treaty has been signed. The war and its consequences are still felt today with key implications for human rights, as seen below in regard to a multitude of separated families, missing persons, refugee flows, and animosity between key protagonists. The situation has become more complicated in recent years owing to the Democratic People's Republic of Korea's nuclearization process. The quest for human rights is inextricably interwoven with the search for peace and security in the region.

44. There has been a warming of relations between the Democratic People's Republic of Korea and the Republic of Korea, particularly since 2000 with the adoption of the two sides of the "June 15 Joint Declaration" (the "Sunshine Policy"). The various provisions of that declaration represent a linchpin for the human rights discourse between the two countries, opening the door to peace and reunification.

45. Since then, there has been a progressive increase of inter-Korean dialogues and cooperation at various levels, ranging from ministerial meetings to meetings between the Red Cross societies of both sides and meetings between other catalysts. The South has provided aid to the North on many fronts, and joint economic and commercial cooperation has been developed in several fields, such as investment by the South in the Gaesong industrial zone in the North and the promotion of tourism in the Mount Geumgang area in the North, in addition to using the latter as a venue for reuniting families from both sides.

46. There have been more than 15 inter-Korean ministerial talks between the Democratic People's Republic of Korea and the Republic of Korea, thus providing a platform for promoting cooperation and settling problems. Although these talks were stalled in 2004, the latest talks were held in 2005, resulting in an agreement with implications for peace and human rights.

47. The sixteenth talks in September progressed by highlighting the search for peace and reduction of military tensions, steps towards co-prosperity, humanitarian projects, including family reunions, and inter-Korean Red Cross talks on the fate of persons missing since the Korean war. The next talks were due to take place in December 2005.

48. These events have been bolstered by the convening of the six-party talks (Republic of Korea, Democratic People's Republic of Korea, United States of America, China, the Russian Federation and Japan) to help resolve the nuclear issue affecting the Korean peninsula. Some progress was witnessed in September 2005 when the talks yielded a joint statement - the Joint Statement of the Fourth Round of the Six-Party Talks. While the main aim of the six-party talks is the denuclearization of the peninsula, it has a bearing on the interrelationship between peace, security and human rights and the nexus between the Democratic People's Republic of Korea and the Republic of Korea. Positive developments on that front will contribute to a constructive atmosphere for the promotion and protection of human rights on the peninsula.

V. HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA AND ITS IMPACT ON THE REPUBLIC OF KOREA

49. As the country next door, the position of the Republic of Korea with regard to human rights in the Democratic People's Republic of Korea is understandably extremely delicate, in view of the historical background, geographical propinquity, political/security concerns and sociocultural ties between the two countries, interwoven as a shared destiny.

50. The official position of the Republic of Korea towards the Democratic People's Republic of Korea can be seen from the following statement, linked with its current Policy of Peace and Prosperity to achieve peace and co-prosperity on the Korean peninsula, provided by the Ministry of Unification in November 2005:

... 3. The Government of the Republic of Korea, while pursuing the easing of tension, reconciliation and cooperation between the South and the North through the Policy of Peace and Prosperity, maintains a policy of facilitating substantial improvement in the situation of human rights in North Korea.

(a) The Government of the Republic of Korea, taking into account the reality on the Korean peninsula and the unique nature of South-North relations, strives in the first place to provide humanitarian assistance with the aim of improving the quality of life of North Korean citizens;

(b) The Government of the Republic of Korea spares no effort in protecting the human rights of North Korean defectors who are facing difficulties;

(c) The Government of the Republic of Korea engages in dialogue with North Korea to resolve such issues at hand as separated families, prisoners of war and abductees to the North, and will continue to exert its best efforts to bear fruit in these endeavours.

4. The Government of the Republic of Korea will continue to work closely with the international community to ensure that the interest and efforts of the international community contribute to substantial gains for human rights in North Korea:

(a) The Government of the Republic of Korea, while appreciating the manifold efforts of the international community, will continue to play its own part so that such endeavours can be pursued in harmony with our endeavours for peace and stability on the Korean peninsula;

(b) The Government of the Republic of Korea urges the North Korean authorities to improve the human rights of their citizens through dialogue and cooperation with the international community to international standards;

(c) The Government of the Republic of Korea engages in dialogue with North Korea to resolve such issues at hand as separated families, prisoners of war and abductees to the North, and will continue to exert its best efforts to bear fruit in these endeavours.

51. In reality, a number of key human rights issues deserve attention.

A. Aftermath of the Korean war: family reunification and the missing

52. The impact of the Korean war is, in a sense, still felt today in the quest to reunite the millions of families separated by the war. The Red Cross movement has played a key role in this process and the latest round of family reunions was taking place at the time of the Special Rapporteur's visit to the Republic of Korea. An important stepping stone in this process was the 2002 Agreement at the fourth inter-Korean Red Cross meeting, which paved the way for more family reunions for those separated between the North and the South and the building of a reunion centre at Mount Geumgang. Exchange of correspondence between separated families would also be expanded, while the two parties would help to resolve the problem of ascertaining the status of those reported missing in the course of the Korean war.

53. On another front, the issue of the missing has many faces. There is the issue of civilians missing during the war, as well as prisoners of war. Since the war, there have also been allegations of abductions carried out by the Democratic People's Republic of Korea in relation to persons from the South. One document, entitled the *White Paper on Korean Reunification*, describes the dilemma as follows:

As of December 2004, the number of South Korean abductees held in the North since the military truce in 1953 is estimated to be 486. According to a statistical yearbook at the time, about 80,000 were recorded to have been abducted during the Korean war, but according to a 1956 Red Cross Survey, 7,034 people were recorded as abductees.

The Ministry of Defence estimates the number of those missing during the Korean war to be 19,000 and believes that a large number of unreturned prisoners of war are included in the number. According to recent testimonies of prisoners of war and North Korean refugees who recently entered the South, about 500 prisoners of war are still alive in North Korea and among them, 48 people have left the North and returned to the South ... Because North Korea has been denying the existence of abductees and prisoners of war on its territory, the South Korean Government has been trying to resolve the issue through a more realistic approach of including the abductees and prisoners of war in the category of separated families. As a result of these efforts, including the 21 people of 5 families united during the ninth and tenth rounds of family reunion in 2004, a total of 19 families of abductees and prisoners of war were able to meet, and the fates of 88 people were confirmed.⁸

54. This is a key area where cooperation between the two sides needs to be maximized to clarify the issue and settle the problem peacefully and constructively, bearing in mind the pain of those affected by the separation and disappearances of their loved ones.

B. Food security

55. The policy of the Republic of Korea in providing food aid without conditionality to the North, in view of the North's critical food shortage, is welcome and is generally in line with the international practice of providing humanitarian aid.

56. In the middle of 2005, the Republic of Korea offered 500,000 tons of rice in the form of a loan on a bilateral basis. In addition to food aid, the Republic of Korea has also provided large grants of fertilizers and other support. On this front, several issues are pertinent. First, the Democratic People's Republic of Korea was indicating in 2005 that it wished to end the presence of various humanitarian agencies in the country and to terminate food aid from outside the country - principally multilateral aid rather than bilateral aid. This invites reflection on the interrelationship between multilateral aid and bilateral aid and their complementarity, granted that each has a particular value-added.

57. Second, since 2004 the Democratic People's Republic of Korea has been pressing for development aid rather than humanitarian aid/emergency relief. Given that any movement towards development aid cannot neglect the challenge of human rights implementation, to what extent can this quantum shift take place in real terms? Moreover, development aid should not imply less accountability in the recipient country; rather, it should be premised upon a more holistic approach based upon effective realization of international human rights standards.

58. Third, while the food aid from the Republic of Korea has some monitoring elements attached to it, with inspections at distribution sites, there is a question of how to ensure that their operationalization parallels the monitoring already carried out by United Nations agencies in the Democratic People's Republic of Korea. United Nations agencies have based themselves on the premise of "no access (to the beneficiaries), no food". However, even United Nations agencies have not been able to carry out unannounced or random visits to monitor distribution in the North.

59. Fourth, there is the challenge of placing food aid in perspective; it is not a substitute for the need for sustainable agricultural policies on the home front, which require political commitment, people-based decision-making, environment-friendly methods, and internal resources to ensure food security.

C. Asylum, refugee protection and assistance

60. The Republic of Korea has been receiving those who have sought asylum from the Democratic People's Republic of Korea for a number of years, and the policy is to settle them in the country. In recent years, a number of them have sought asylum "en masse" in neighbouring countries, under often tragic circumstances, with the Republic of Korea offering places as the final destination country. As explained by the *White Paper on Korean Unification 2005*:

The emphasis of the Government's settlement support for North Korean refugees has been on facilitating their adjustment in becoming independent, self-confident, and responsible citizens of South Korea. The Government is providing institutional support, while private organizations are also engaged in activities in assisting them towards this goal. After conducting a public survey, the Ministry of Unification created a new term, *Saetomin* (literally, new settlers), to replace the Korean legal term *Talbkja* (refugees), which had a negative connotation in 2004 ...

In the early 1990s, about 10 North Korean refugees entered South Korea every year, but since 1999, the number has increased dramatically, until 2003 when the number showed a slight decrease. In 2004, 1,894 refugees entered the South, an increase of 47.5 per cent from the previous year. There are now more than 7,000 North Korean refugees living in South Korea.⁹

61. The Republic of Korea is a party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, but the application of these treaties has been to offer asylum to those who have sought asylum from countries other than the Democratic People's Republic of Korea. One reason for this differentiation is that those who have sought refuge from the North are, in principle, accorded refuge automatically by the South, as they are regarded as nationals under the 1948 Constitution of the Republic of Korea and the related 1984 nationality law. The Supreme Court confirmed this in the Young Soon Lee case, where a national of the Democratic People's Republic of Korea was deemed to be a Republic of Korea national (96 Nu 1221, Supreme Court, 12 November 1996).

62. In practical terms, access of those who have sought asylum from the North in the South is conditioned by the 1997 Protection and Settlement Support of North Korean Refugees Act, with implications as follows as noted by the *White Paper on Korean Unification*:

In the case of North Korean refugees residing in a third country who file an application for protection, the South Korean Government will provide temporary protection through its consulate in the third country and assist them in entering South Korea. Upon entry into South Korea, the Government will decide on his/her protection based on the results of a joint investigation by relevant government agencies.

Under the protection of the Government, North Korean refugees receive training at Hanawon for social adjustment. They also receive initial support necessary in the early stages of settlement, including a permanent residency status, monetary assistance, housing recommendations and more to ensure their independence and self-sufficiency.

Post-settlement protection, which is divided into two categories of settlement support and personal protection, begins after refugees enter the South Korean society. The central and local governments, Association of Supporters for the Settlement of Refugees, and civic and religious groups work in cooperation to provide various types of settlement support such as job training, connection to job opportunities, school admission, as well as introduction to various social and support organizations. The police are put in charge of providing personal protection for the refugees.¹⁰

63. The Special Rapporteur visited the well-maintained Hanawon centre during his mission, and talked directly with a number of those who had sought asylum from the North. Poignantly, the discussions started with a memorable comment from a member of the group who noted that the best feeling about being in the South was "the freedom from the fear of arrest".

64. One of the newly arrived related her traumatic life story. Her husband - a government official in the North - was killed by the authorities there as he had been caught planning to escape to the South. He was subjected to torture, such as being beaten upside down and being forced to crouch on his knees and then beaten. Fearing for her own safety, she escaped to a

neighbouring country with one of her daughters. She carried poison on her - to be used by her, in case she was caught in the process of trying to escape. While she was in that country, she sought asylum in the embassy of the Republic of Korea with her daughter, and this was how she ultimately gained access to the Republic of Korea. She wanted to protect her own identity as she was afraid that if this became known, the remaining members of her family in the North would be subjected to persecution by the authorities there.

65. Her daughter related how children were treated in the North. At school, there was much indoctrination such as learning (by rote) the national history based on the supreme leader and patriotism against foreign occupation and threats. As she was in a privileged position, she did not starve and was involved in various mass activities such as sports competitions.

66. Another member of the group recounted that there was great shortage of food there; she had seen people starving, including abandoned children, although the military there were well catered to. She was from a rural area, and at harvest time, farmers were kept away from the crops; the military came to guard the harvest. She escaped to a neighbouring country to seek asylum and was the victim of human trafficking; she had to pay the equivalent of several thousand dollars to intermediaries who exploited her en route to the Republic of Korea.

67. Another woman in the group was also a victim of human trafficking; in wishing to escape from the North to find a sibling in a neighbouring country, she was misled by a man who then took her to a neighbouring country and sold her into marriage. Eventually, she made her way to the Republic of Korea via another country.

68. An older woman - a grandmother - in her seventies gave account of her escape and claimed that there was no freedom of conscience/religion in the North. Her son had sought asylum in a neighbouring country, was sent back to the North, and then “disappeared” because of the authorities. The child of that son was discriminated against at school because of the father’s fate, which was a major reason why the grandmother wanted to escape with the grandson to the Republic of Korea. On one occasion when she tried to escape to a neighbouring country, she was arrested there and was sent back to the North. Because of her old age, she was not punished but she noted that it was customary for the authorities of the North to ask returnees questions such as “Did you meet someone from South Korea? Did you meet any missionaries?” She added “If you denied the charges, then they beat you”. While some of the returnees were released, others were subjected to long prison terms. With regard to the mass mobilization to increase food production in the North, she added that the authorities took young people from the streets and forced them to work on the farms. Eventually she escaped; she came via one country while the grandson came via another. She was now waiting to be reunited with her grandson at the Hanawon centre.

69. One of the men in the group related that he had been in the military service, and after leaving that service, he was engaged in selling CDs and literature. He was caught in a trap set by the authorities and was apprehended by security agents for selling CDs from the South - an illegal activity - as part of the authorities’ “social purification” campaign. Once arrested, he was hung upside down and beaten. He later escaped to a neighbouring country.

70. Another member of the group stated that he had promised to pay a smuggler US\$ 5,000 for a passage to the South. He wanted to escape because he had been subjected to discrimination in the North, since he was the son of a man who had defected to the South during the Korean war.

71. A religious organization organized the escape of one of the others in the group who had been stigmatized for not attending the birthday celebrations of the leader of the North. There was also a girl under 18 years of age who, with her younger brother, trekked a very long way in a group via a South-east Asian country before finding refuge.

72. Clearly, in view of the harrowing experiences of those who have sought asylum, in addition to the discrimination suffered by families across generations based on guilt by association, and torture and other forms of violence used against them, the psychological scars run deep, needing long-term psychological and other support. The Republic of Korea authorities are aware of this, but there is room for more sustained services to respond to this problem. Given the traumatic past of many of those who have sought refuge, more support in the psychological, occupational and other fields, with community-based inputs, is required to assist them once they leave the centre and enter the competitive world beyond. There is also a need to underline the protection and assistance of refugees and human rights in all countries and to tackle the root causes of their displacement in the country of origin.

D. A variety of perspectives in the Republic of Korea

73. In the various discussions which the Special Rapporteur had with a wide range of groups, including officials from ministries, parliamentarians, non-governmental organizations, aid agencies and academics, it was evident that there was/is a broad array of perceptions and approaches in the South on the promotion and protection of human rights in the North.¹¹ Some advocated the right to peace as primordial, even before other human rights. Others underlined that threats to human rights in the North are more external than internal. Some noted that there is too much emphasis on political rights to the neglect of economic rights and the right to development. Others asked about the possibility of using the International Criminal Court to apprehend key individuals for crimes against humanity. Several sectors emphasized that there is a need for a package of actions/baskets linking human rights, security, peace and development for the Korean peninsula, paralleling experiences in the European context under the Helsinki process, which in the 1970s brought together the various countries of different political ideologies in the search for peaceful coexistence.

74. While some preferred the approach of engagement and dialogue without too much pressure on the North, others preferred more stringent actions, even to the extent of adopting new legislation along this line. While the various interlocutors had different opinions on United Nations resolutions in regard to the human rights situation in the North, the Special Rapporteur very much welcomed the rich spirit of the discourse; they all talked openly and constructively with the Special Rapporteur on the importance of nurturing respect for human rights in the North with a multiplicity of options.

75. It should be recalled that the Democratic People's Republic of Korea is already a party to four key human rights treaties. The monitoring bodies under these treaties have already dialogued with authorities there and have made a range of recommendations which need to be

followed up. These provide a common platform for action which invites the effective realization and enjoyment of human rights, particularly at the national level, at times with a helping hand from neighbours, bearing in mind the truism that no country is ever too poor to implement human rights.

VI. DIRECTIONS

76. The United Nations Special Rapporteur understands the delicate nature of the relationship between the Republic of Korea and the Democratic People's Republic of Korea, given the special features of the Korean peninsula based on a politically sensitive and volatile history. There is the overarching challenge of a shared destiny and its interface with human rights, peace, democracy, human security, de-nuclearization and sustainable development. A number of positive developments have taken place in recent years, including a variety of inter-Korean talks and cooperative activities in the economic and other fields, which help to create a greater sense of mutual self-confidence and more amicable relations conducive to reconciliation.

77. As lessons learned from his visit, the Special Rapporteur wishes to address a Six-Points Human Rights Formula to all concerned parties - as constructive and principled recommendations for them to reflect in their policies and practices.

VII. RECOMMENDATIONS IN REGARD TO THE VISIT TO THE REPUBLIC OF KOREA

78. **The Special Rapporteur:**

(a) Welcomes the warming of relations between the Republic of Korea and the Democratic People's Republic of Korea in the spirit of inter-Korean dialogue, reconciliation and cooperation; encourages the Republic of Korea and the Democratic People's Republic of Korea to maximize family reunification opportunities; and urges the Democratic People's Republic of Korea to clarify and resolve effectively the longstanding problem of missing persons;

(b) Supports the Republic of Korea and the international community in sustaining humanitarian aid, including food aid, to the Democratic People's Republic of Korea, due to the current food and other shortages in the country; urges the Democratic People's Republic of Korea to facilitate access to such aid and ensure the transparency of its distribution to ensure that it reaches the target groups in the country; and underlines the need to build food security through sustainable agricultural techniques, good governance, broad-based people's participation in decision-making processes, and equitable allocation of resources by the Democratic People's Republic of Korea to respond to the development needs of the country;

(c) Encourages the Republic of Korea to continue its humanitarian policy of accepting those who have sought refuge from the Democratic People's Republic of Korea and to facilitate their social recovery and reintegration, including by means of adequate health care and other services, in response to their psychological, occupational and other needs, on a longer-term basis;

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

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

(f) Invites the Democratic People's Republic of Korea progressively to engage in cooperative activities with the international community to improve the implementation of human rights in the country, such as through economic programmes with a human rights component (e.g. labour rights in the industrial zone), rule of law programmes (e.g. training and education to capacity-build law enforcers, to respect civil liberties, and to reform the prison system), and legal literacy programmes (e.g. dissemination of international human rights standards and the relationship between international law and national laws, policies and practices), with greater space for civil society participation.

VIII. CONCLUSIONS

79. In retrospect, the situation of human rights concerning the Democratic People's Republic of Korea identified by the analysis above provides a continuing cause for concern. There are still many transgressions and discrepancies of an egregious nature which require effective redress. While welcoming the fact that the Democratic People's Republic of Korea is a party to four human rights treaties and that it has engaged with the monitoring bodies under those treaties, as well as adopting some key reforms of the domestic law such as its criminal law, there is still a huge gap between formal recognition of human rights and substantive implementation.

80. There are major concerns in regard to the right to food and life, the right to security of the person and humane treatment, the right to freedom of movement, asylum and refugee protection, and various political rights such as self-determination, freedom of expression, association and religion. Specific concerns raised in this report include women's rights, particularly violence against women, child rights, child protection and participation, the rights of older persons/the elderly, the rights of those with disabilities and the ethnic issue.

IX. RECOMMENDATIONS

81. **The Democratic People's Republic of Korea should take the following measures/actions:**

(a) Abide effectively by human rights, particularly by implementing the four human rights treaties to which it is a party, in addition to acceding to and implementing the totality of human rights instruments, and accord adequate resources to ensure their implementation, especially to reallocate military budgets for this purpose;

- (b) Allow humanitarian agencies to stay in the country to ensure food distribution to target groups with effective monitoring, and promote sustainable agricultural development to ensure food security;**
- (c) Reform the national law in order to not require travel permits and prohibit punishment of those who leave the country without permission;**
- (d) Initiate reform of its prison system under the concept of the rule of law, with improvement of the criminal justice system, due safeguards for the accused, independent judiciary and access to justice, and abolish sanctions for political dissent;**
- (e) Liberalize its laws, policies and practices to ensure respect for the totality of civil, political, economic, social and cultural rights;**
- (f) Address the specific concerns of women, children, older persons, those with disabilities and the ethnic dimension by substantively promoting non-discrimination;**
- (g) Direct its law enforcers to respect human rights and ensure capacity-building through training and education for human rights promotion and protection;**
- (h) Seek assistance from the Office of the United Nations High Commissioner for Human Rights for programmes to enhance human rights promotion and protection;**
- (i) Enable the Special Rapporteur and other mechanisms, as appropriate, to visit the country and assist in human rights' promotion and protection; and**
- (j) Invite the various human rights monitoring bodies under the four treaties to which the Democratic People's Republic of Korea is a party to visit the country consistently to help monitor the situation and follow-up progress in regard to needed reforms, given that the Democratic People's Republic of Korea has been willing to engage with those bodies at a certain level.**

82. **The rest of the international community should:**

- (a) Support the various recommendations of the Special Rapporteur submitted above, as well as in his earlier reports for the United Nations;**
- (b) Continue to provide food aid as necessary, while ensuring complementarity between the different types of aid, access to the target groups and relevant monitoring;**
- (c) Respect the principle of asylum, particularly non-refoulement, to protect refugees, and discard those arrangements or practices which undermine this principle, while promoting international solidarity to burden-share and address the root causes of the outflows;**
- (d) Assist the Democratic People's Republic of Korea to reform its prison system and to abide by the rule of law;**

(e) Respond in a balanced manner to the Democratic People's Republic of Korea's concerns about "security" by packaging human rights initiatives with security guarantees and incentives for economic and other development, reflective of a comprehensive approach to human rights with practical implementation measures.

Notes

¹ For recent analysis, see: "DPRK Korea: Situation Bulletin", Office for the Coordination of Humanitarian Affairs (OCHA) office in the Democratic People's Republic of Korea, August-September 2005; *Time* magazine, 31 October 2005, pp. 12-19; Christine Ahn, "Famine and the future of food security in North Korea", FoodFirst Institute for Food and Development Policy, Oakland, Calif.; 2005; Kim Young-yoon and Choi Soo-Young, "Understanding North Korea's economic reforms" Centre for the North Korean Economy, Korea Institute for National Unification, Seoul, 2005.

² The analysis provided by project document of the World Food Programme for 2005 (project No. EMOP10141.3) is informative (see pp. 1-4).

³ *White Paper on Human Rights in North Korea 2005*, Korean Institute for National Unification, Seoul, 2005, pp. 69-70.

⁴ *Bangkok Post*, 12 December 2004, p. 6.

⁵ *Thank You, Father Kim Il Sung: Eyewitness Accounts of Severe Violations of Freedom of Thought, Conscience, and Religion in North Korea*, United States Commission on International Religious Freedom, Washington (pp. 14-16).

⁶ Soon Hyung Yi, "Human rights of the child in North Korea", International Seminar on North Korean Human Rights 2005, National Human Rights Commission of Korea, Seoul; 2005, pp. 407-441 and 421-423.

⁷ *Op. cit.*, pp. 124-125.

⁸ *Peace and Prosperity: White Paper on Korean Unification 2005*, Ministry of Unification, Seoul, 2005, pp. 100-101.

⁹ *Ibid.*, pp. 106-7.

¹⁰ *Ibid.*, p. 101.

¹¹ See for instance: International Seminar on North Korean Human Rights 2005, *op. cit.*; *Peace and Cooperation: White Paper on Korean Unification 2001*, Seoul: Ministry of Unification, 2001; "North Korean human rights: trends and issues", National Human Rights Commission of Korea, Seoul, 2005.
