
**ADVANCE EDITED
VERSION**Distr.
GENERALE/CN.4/2005/34
10 January 2005Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 9 of the provisional agenda

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOM IN ANY PART OF THE WORLD****Situation of human rights in the Democratic People's Republic of Korea****Report submitted by the Special Rapporteur,
Vitit Muntarbhorn***

* The endnotes are circulated in the language of submission only and consequently have not been edited by the United Nations services.

Summary

In its resolution 2004/13, the Commission on Human Rights decided to appoint a Special Rapporteur to establish direct contact with the Government and with the people of the Democratic People's Republic of Korea and to investigate and report on the situation of human rights there. Vitit Muntarbhorn was appointed Special Rapporteur in July 2004.

The current situation can be summarized as follows. First, on the constructive side, 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 Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women. It has submitted a number of reports to the relevant monitoring committees. Second, the Democratic People's Republic has intermittently allowed human rights actors from outside to enter the country to assess the human rights situation there: in 2004 members of the Committee on the Rights of the Child were invited to visit the country. Third, a variety of United Nations agencies are working on a number of issues in the country and their presence is appreciated, internationally and nationally. Fourth, on some fronts, there has been a warming of relations between the Democratic People's Republic and a range of other countries, both within and outside the region. Fifth, like many countries, the Democratic People's Republic has some legal and operational infrastructure which can help to promote and protect human rights, e.g. the national Constitution. However, there is the key issue of implementation.

Various critical challenges need to be addressed: the right to food and the right to life; the right to security of the person, humane treatment, non-discrimination and access to justice; the right to freedom of movement and protection of persons linked with displacement; the right to the highest attainable standard of health and the right to education; the right to self-determination/political participation, access to information, freedom of expression/belief/opinion, association and religion; and the rights of specific persons/groups, including women and children. These issues are explored in the present report.

In sum, while there have been some constructive developments in the Democratic People's Republic in recent decades, there have been a variety of discrepancies and transgressions - several of an egregious nature - in the implementation of human rights in the country calling for immediate action to prevent abuses and provide redress. Various recommendations are offered at the end of the report addressed to the Democratic People's Republic of Korea, on the one hand, and to other members of the international community, on the other hand.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 8	4
I. SITUATION OF HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA	9 - 66	5
A. Constructive elements	9 - 18	5
B. Underlying context	19 - 26	7
C. Specific challenges	27	9
1. The right to food and the right to life	28 - 31	9
2. The right to security of the person, humane treatment, non-discrimination and access to justice	32 - 42	10
3. The right to freedom of movement and protection of persons linked with displacement	43 - 50	13
4. The right to the highest attainable standard of health and the right to education	51 - 55	14
5. The right to self-determination/political participation, access to information, and freedom of expression/ belief/opinion, association and religion	56 - 59	16
6. The rights of specific persons/groups: women and children	60 - 66	17
II. RECOMMENDATIONS	67 - 69	19

Introduction

1. The Commission on Human Rights, in resolution 2004/13 expressed deep concern over the human rights situation in the Democratic People's Republic of Korea and requested its Chairman to appoint a Special Rapporteur to establish direct contact with the Government and people of the country and to investigate and report on the situation and on the Government's compliance with its obligations under international human rights instruments. It requested the Special Rapporteur to "seek and receive credible and reliable information, including through visits to the country, from all relevant actors, including Governments, non-governmental organizations and any other parties who have knowledge of these matters". It also requested the Special Rapporteur to report to the General Assembly and the Commission. The present report is submitted in accordance with that request.

2. I was invited by the Chairperson of the Commission to take up the post of Special Rapporteur in July 2004 and I accepted accordingly.

Method of work

3. In endeavouring to fulfil the terms of the resolution establishing the mandate, the present report aims to provide an initial insight into the method I have adopted and my impressions concerning the substance relating to the human rights situation in the country.

4. In the first few months of this work, I have begun to collect relevant information from a variety of sources - governmental, non-governmental and intergovernmental. I have held meetings with a variety of key representatives from the governmental, non-governmental and intergovernmental sectors. While acting as the Rapporteur of the Seminar on good governance practices for the promotion of human rights held in September 2004 in Seoul - a task requested of me before my appointment as Special Rapporteur - I took the opportunity to meet informally with a variety of persons and organizations concerned with the human rights situation in the Democratic People's Republic of Korea. Later in September 2004, I spent one week in Geneva, meeting with key actors, and I was pleased to be received by the representatives of the Democratic People's Republic in Geneva, although in my capacity as an academic rather than as Special Rapporteur. The meeting was cordial and constructive, and I look forward to further meetings in future.

5. Towards the end of October 2004, I delivered my initial statement concerning the mandate to the Third Committee of the General Assembly. The findings in that statement are further elaborated in this report. I was also invited to Seoul for a conference on human rights concerning the Democratic People's Republic of Korea at the beginning of December 2004. Regrettably, for health reasons, I was unable to attend. However, I sent a statement to the conference and a staff member of the Office of the High Commissioner for Human Rights (OHCHR) represented me, delivering the statement to the conference and meeting with a variety of governmental, intergovernmental and non-governmental actors.

6. I wish to thank all Governments, intergovernmental organizations, non-governmental organizations, other entities, and OHCHR staff for their kind assistance, which is greatly appreciated. The message that I am conveying to all concerned is to urge the Democratic People's Republic of Korea to see this mandate as a window of opportunity to engage with the

world, particularly with the United Nations, to improve the human rights situation in the country. The process adopted by this Special Rapporteur is based upon a constructive step-by-step approach, working progressively to promote and protect human rights in the country in a fair, balanced and independent manner.

7. While preparing reports will be an important component of this mandate, I envision the mandate to be a humble "change agent" - interlinking with a variety of concerned individuals and organizations - as a proactive catalyst for change. I also look forward to visiting the country, although to date, no invitation has been forthcoming. I wish to request the authorities of the Democratic People's Republic of Korea to enable me to visit the country as soon as possible in an open and accessible manner. I also look forward to visiting some of the neighbouring countries to learn of their experiences in responding to the situation in the Democratic People's Republic of Korea. Gradually, I hope to contact the Democratic People's Republic of Korea concerning concrete cases that need the attention of the authorities and effective action.

8. At this juncture, I would like to provide my initial impressions concerning the situation of human rights in the Democratic People's Republic of Korea.

I. SITUATION OF HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

A. Constructive elements

9. First, on the constructive side, it should be noted 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 Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women. It has already submitted various reports on the country situation with respect to those treaties and has engaged with the human rights bodies established under the first three, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child. Importantly, in the near future its initial report on women's rights (CEDAW/C/PRK/1) will be considered by the Committee on the Elimination of Discrimination against Women.

10. Second, the Democratic People's Republic of Korea has intermittently allowed human rights actors from outside to enter the country to assess the human rights situation there. In the middle of the 1990s, Amnesty International was able to gain access to the country, and in 2004 members of the Committee on the Rights of the Child were invited to visit. This was preceded by an earlier invitation to the Special Rapporteur on violence against women.

11. Third, the country participates in various global undertakings such as the Millennium Development Goals and the global plan of action concerning children entitled "A world fit for children", adopted by the General Assembly Special Session on Children. In the Democratic People's Republic of Korea, a variety of United Nations agencies are working on a number of issues, and their presence is appreciated internationally and nationally.

12. Fourth, on some fronts, there has been a warming of relations between the Democratic People's Republic of Korea and a range of countries, both in the region and outside it. The Democratic People's Republic of Korea has also shown a readiness to deal with some bilateral issues with its neighbours, while other issues remain to be resolved.

13. Fifth, like many countries, the Democratic People's Republic of Korea already has some legal and operational infrastructure that can help to promote and protect human rights. For example, the most recent national Constitution, adopted in 1972 and amended in 1992 and 1998, and other national laws provide some guarantees for human rights. However, there are key challenges concerning implementation.

14. Sixth, before 1995, the country witnessed notable progress in some areas, particularly in the economic, social and cultural fields concerning women and children. In 1999, a new education law was passed to provide free compulsory education for 11 years, and a law on the protection of persons with disabilities was passed in 2003 to ensure equal access for persons with disabilities to public services. The country also enjoys quite high vaccination rates among children. However, the achievements have been blunted by the food shortage crisis and natural disasters in the mid-1990s, whose consequences continue to be felt.

15. Seventh, the status of women is guaranteed by the national Constitution and is reflected in a number of national programmes/activities. Article 77 of the 1992 Constitution states as follows:

“Women are accorded equal status and rights as men. The State provides special protection to mothers and children through maternity leave, shortened working hours for mothers of large families, increasing the network of maternity hospitals, pre-schools and kindergartens and other measures. The State creates various conditions for the advancement of women in society” (unofficial translation).

However, there remains the key challenge of implementation of women's rights in practice.

16. Eighth, before 1995, there were various safety nets to help the population, ranging from State-provided health care to social security. As a centrally planned economy, the system had a developed medical infrastructure with a high ratio of doctors to population, as well as State-supported provisions to help workers. The State also provided food on the basis of rations through an extensive public distribution system. These declined owing to the crisis of the mid-1990s.

17. The draft country programme document for the Democratic People's Republic of Korea submitted to the Executive Board of the United Nations Development Programme and the United Nations Population Fund (DP/DCP/PRK/1) in July 2004 notes that the economic and social situation has improved on some fronts, albeit with a degree of ambivalence. Since 2002, there have been key economic changes with the following elements:

“(a) *Price and wage adjustment.* The public distribution system (PDS) has been adjusted sharply, the aim of which is no longer to provide uniform access to commodities. While a core basic ration is available to all citizens to meet their minimum needs, consumers can now also buy goods and services from different distribution

channels, including the new 'consumers' markets'. Small-scale producers may also sell in markets. On the consumption side, recent adjustment measures have increased wages of miners and soldiers more than other workers, leading to differences in purchasing power. Food prices have increased by 400 per cent. Housing and fuel subsidies have been reduced. The won has been devalued sharply, making exports more viable. A key adjustment has been the removal of subsidies to urban consumers. Recent price adjustments enable the farmer to obtain a better return from crop sales;

“(b) *Expansion of marketing channels.* The country has for some time accepted the existence of farmers' markets, which trade in limited garden produce. The range of goods exchanged has expanded in recent years and 'consumers' markets' have now replaced farmers' markets, indicative of greater autonomy in economic decision-making;

“(c) *Allowing foreign direct investment (FDI).* The country has sought to attract FDI for many years, establishing special economic zones for foreign investment. But while the Government has received FDI to support tourism infrastructure in Mount Kumgang, FDI remains insignificant;

“(d) *Supply-side adjustments.* The Government has signalled its intention to discontinue subsidies and allow greater enterprise autonomy in taking decisions on inputs and outputs. As a result, the demand for training in international management practices has emerged, and a relatively young cadre of managers - ages thirties and forties - has been appointed. A few have been sent for management training overseas.

“These adjustments, initiated in 2002, are undergoing continuous review to assess ongoing adjustments and take further measures to improve supply and demand conditions. The key to the future is to develop a viable economy that does not require extensive, permanent subsidies, except for the maintenance of social safety nets.”

18. The changes noted above would seem to be part of the authorities' survival strategy, influenced by both internal and external factors/pressures. In reality, the economic plight of the urban population is still serious, since they face continued difficulties in accessing the "market" system and in responding to rising prices, including of food and agricultural products. There also remains the issue of (non-)discrimination, particularly concerning constraints on access to food faced by those who are not favoured by the authorities.

B. Underlying context

19. The constructive elements identified above need to be seen in perspective. The following context is particularly instructive.

20. First, the perception of those in power in the country concerning human rights is primarily based upon the protection of national sovereignty and "collective" (State-centric) rights, with a preference for economic and social rights over political rights and for the rights of the authorities rather than the rights of individuals and groups with divergent views. A variation of this is the authorities' emphasis on the principle of non-interference in the internal affairs of the State and on the right to survival, implying survival of the State and the existing power

structure. That perception underlines the context of the realization of human rights in the country. It gives rise to major discrepancies when tested against international human rights standards, as it tends to repudiate the international community's claims on behalf of those individuals and groups whose rights are infringed by the national authorities. Any attempt to understand the human rights situation in the Democratic People's Republic of Korea is thus contingent upon the challenge of advocating and promoting the universality and indivisibility of human rights in their totality, linked with the need to promote a comprehensive approach to human rights in the country - civil, political, economic, social and cultural rights - in tandem.

21. Second, the country is unique in the world community since power is concentrated absolutely at the top, with total, pervasive control exercised by the State over the population. This is both a cause and a consequence of the sense of isolation felt by the country in its relations with the external world. In this regard, no attempt to understand the human rights situation in the Democratic People's Republic of Korea can be totally separated from the challenge of democratization in the country.

22. Third, the effects of war on the Korean peninsula (1950-1953) are still felt today and have a key impact on human rights. Notably, there remains the issue of families separated before, during and after the war. While there have been some welcome efforts to unite families in recent years, these need to become more systematic. No attempt to understand the human rights situation in the Democratic People's Republic of Korea can be totally separated from the challenge of peace and human security in the region.

23. Fourth, while the issue of demilitarization is distinct from the issue of human rights, the one inevitably has an impact on the other. The fact that the Democratic People's Republic of Korea is heavily militarized raises a question concerning equitable allocation of resources - the need to reallocate those resources to promote and protect human rights. No attempt to understand the human rights situation in the Democratic People's Republic of Korea can be totally separated from the challenge of demilitarization and disarmament in the region.

24. Fifth, the Democratic People's Republic of Korea has for a long time had a centrally planned economy and followed the *juche* (self-reliance) ideology. In recent years, there has been some experimentation with a market economy, diversifying from the former State-backed system to more consumer-based mechanisms, propelled by the food-shortage crisis. However, the decision-making process is still top-down without adequate participation from the general population, and the decline of the economy in the 1990s took its toll particularly among vulnerable groups. No attempt to understand the human rights situation in the Democratic People's Republic of Korea can be totally separated from the challenge of sustainable development and the need for broad-based popular participation, with attention to the protection of vulnerable groups.

25. Sixth is the critical backdrop of the crisis that affected the country in the mid-1990s with manifold consequences which are still being felt today. The draft country programme document of the United Nations Children's Fund (E/ICEF/2003/P/L.10) noted:

"3. The economy of the country suffered significantly from the dissolution of the socialist bloc that provided a market for its industrial goods and was a source of cheap and subsidized raw materials, including fuel. Combined with widespread natural

disasters in the mid-1990s and limited interaction with the world economy, this led to a sharp economic downturn seriously constraining the Government's ability to feed and care for its people. Following an appeal to the international community in 1995, the country has benefited from much-needed large-scale humanitarian relief.

“4. According to government figures, from 1993 to 1998, per capita income declined from \$991 to \$457; the infant mortality rate increased from 14 to 24 per 1,000 live births and the under-five mortality rate from 27 to 50 per 1,000 live births. This increase in child mortality resulted from acute food shortages, combined with heightened morbidity and reduced capacity of the health system to manage childhood illness caused by a severe shortage of essential drugs and general degradation of health infrastructure and water and sanitation systems. The main causes of child deaths are diarrhoea and acute respiratory infections (ARI), with malnutrition presumed to underlie around one half of these deaths.”

26. While the economic and social situation has improved recently, any attempt to address the human rights situation in the Democratic People's Republic of Korea should be acutely aware of the traumatic developments facing the country since the mid-1990s, at times linked with internal factors, at times linked with external factors, and not forgetting the historical antecedents and consequences and unresolved issues facing the Korean peninsula.

C. Specific challenges

27. The following challenges are underlined as indicative of the situation facing the Democratic People's Republic of Korea; they are not exhaustive.

1. The right to food and the right to life

28. As already mentioned, in the mid-1990s there were catastrophic food shortages brought about by floods and drought, compounded by power imbalances and an inadequate response from the power structure. These factors have had a huge impact on the country's development and have endangered many lives and livelihoods. The issue of the right to food is also being dealt with by another special procedure of the Commission.¹ I wish to support and complement the work of that procedure.

29. In my consultations with key humanitarian agencies, the general sentiment that emerged is that the food situation has improved, but the country still needs humanitarian (emergency) assistance, as there is still a shortfall. A recent operational assessment by the World Food Programme (WFP) noted the following:

“There were some variations in the Public Distribution System (PDS) cereal rations between counties in August (2004); while most counties were able to increase the ration to 350 gr./p/day from 300 in July (2004), others had to keep it at 300 or decrease it to 250. The composition was mainly potatoes, wheat and barley from local production, although some counties began to distribute rice from a bilateral Republic of Korea loan. Rice is highly valuable to the households at a time when rice prices in the markets have

tripled in the last two months, from 240 won/kg (USD 1.50) to more than 700 won/kg (USD 4.30). Furthermore, as rice is the preferred staple for Koreans, food insecure families can barter their rice rations for larger quantities of maize - less popular staple - and thus obtain more food for the family.

“One of the factors leading to low rations in August was the loss of early crops of wheat and barley caused by heavy floods. The floods also caused shortages of vegetables in the State shops. This has direct impact on household food access since crop failure at county level is not automatically covered by transfers between counties, and cereals are normally not transferred for immediate shortages.

“The humidity from the heavy rains in combination with high temperatures during the month led to an increase in cases of diarrhoea, mainly because children were swimming in polluted rivers and irrigation canals. On the positive side, the heavy rains increased water levels in reservoirs and many counties were therefore enjoying better power generation and more hours of power supplies.”²

30. Several members of humanitarian agencies whom I met indicated that this period should still be seen as the phase of humanitarian assistance and that there is a continuing need for food aid to help the population. Some 6.4 million people, particularly women, children and the elderly, benefit from the aid. There are now reports that the Democratic People’s Republic of Korea is no longer willing to continue with the existing Consolidated Appeals Process through which United Nations agencies have, to date, collaborated to raise support for aid to the country and that the authorities prefer to move towards longer-term development aid with fewer guarantees for monitoring. In my view, what is needed is not a reduction of monitoring of the implementation process, but rather more effective monitoring aimed at ensuring maximum transparency.

31. There are continuing debates concerning how much of the food aid provided from abroad actually reaches the target population and to what extent it is diverted for other (clandestine) uses. One source whom I interviewed claimed that there are no major diversions for other uses. Other sources disagree. According to information received, one United Nations agency providing food aid to the country suspended supplies to one province in the country towards the end of 2004, as the authorities had refused to allow it access to monitor the distribution of rations. Therefore, it is clear that there is a need to improve and maximize transparency and accountability. At present, while some checks to monitor the distribution of food aid are in place, random checks by foreign humanitarian organizations are still not permitted by the national authorities.

2. The right to security of the person, humane treatment, non-discrimination and access to justice

32. There are many reports from a variety of sources concerning alleged transgressions in this field, often linked with laws and institutions, especially prisons and detention centres, where conditions are below international standards aggravated by poor law enforcement and malpractice, including preventive/administrative detention without access to credible courts.³

There are a myriad of publications concerning violence against the person,⁴ and several of these sources provided the backdrop for the resolution establishing the mandate of the Special Rapporteur, in which the Commission:

“1. Express[ed] its deep concern about continuing reports of ...

“(a) Torture and other cruel, inhuman or degrading treatment or punishment, public executions, extrajudicial and arbitrary detention, imposition of the death penalty for political reasons, the existence of a large number of prison camps and the extensive use of forced labour, and lack of respect for the rights of persons deprived of liberty;

“(b) Sanctions on citizens of the Democratic People’s Republic of Korea who have been repatriated from abroad, such as treating their departure as treason leading to punishments of internment, torture, inhuman or degrading treatment or the death penalty, and infanticide in prison and labour camps;

“(c) All-pervasive and severe restrictions on the freedoms of thought, conscience, religion, opinion and expression, peaceful assembly and association and on access of everyone to information, and limitations imposed on every person who wishes to move freely within the country and travel abroad;

“(d) Continued violation of the human rights and fundamental freedoms of women, in particular the trafficking of women for prostitution or forced marriage, ethnically motivated forced abortions and infanticide, including by labour inducing injection, or natural delivery, by repatriated mothers, including in police detention centres and labour-training camps.”

33. Several of the issues raised in the resolution confirm the concerns expressed by the Human Rights Committee in its 2001 concluding observations (CCPR/CO/72/PRK) regarding the Democratic People’s Republic of Korea’s second periodic report under the Covenant on Civil and Political Rights.

34. A very disconcerting practice is documented by various sources - collective punishment based upon “guilt by association”.⁵ This means that if a person is punished for a political or ideological crime, members of his or her family are also punished. This has both horizontal and vertical impacts - horizontal in that it leads to the persecution of immediate family members and vertical in that it may lead to the stigmatization of subsequent generations, given that the authorities keep records of families as part of their iron grip on the population.

35. On another front, while the Constitution and other laws advocate the principle of non-discrimination, the practice is not respected. There are a number of reports that in the past, the population was divided into various groups ranging from those favoured by the authorities, to those seen as borderline or “wavering”, and, at the bottom of the ladder, those considered as enemies of the authorities. While this practice may have been abolished in law, it seems to persist and is implied by the testimonies of those who have left the country in search of refuge.

36. Great concern should be expressed over the situation whereby those arrested are classified into different groups, depending upon the gravity of the "crime", and a significant number sent to a variety of prisons without due process of law or access to justice, and under appalling conditions compounded by wide-ranging allegations of torture, forced labour and lack of access to legal help.⁶ It is disturbing that under the country's Criminal Code, in addition to murder, various crimes against the State, such as treason, sedition and terrorism, are punishable by death.

37. According to information received at the end of 2004, there were various reforms to the Criminal Code in April 2004, which doubled the number of clauses in the Code and increased the penalties for anti-State crimes. Possession of anti-State broadcast material or sharing them with others is now criminalized, perhaps to retaliate against external pressures/media. These developments are regressive.

38. On another front, the revised Code reportedly reduces penalties for those leaving the country for non-political reasons, such as to seek economic opportunities in neighbouring countries. There is a new policy to enable them to return to the Democratic People's Republic of Korea with the promise of a pardon. Yet, the key challenge is implementation of the law, in particular the need to treat returnees humanely.

39. Several practices have also had an adverse impact on nationals of other States. For instance, the Democratic People's Republic of Korea authorities have admitted to having abducted a number of Japanese nationals, and some cases have been resolved through bilateral negotiations. However, other cases await clarification and resolution. In regard to one case, where the authorities claimed that the abductee had died in the Democratic People's Republic of Korea, the "bones" that were returned to Japan were subjected to DNA tests and found to belong to a number of other people, causing further consternation towards the end of 2004.

40. There is an urgent need for the Democratic People's Republic of Korea to address, expeditiously and effectively, the issue of abductions committed by agents of that country. According to information received, a number of persons from various countries have been abducted by agents of the Democratic People's Republic of Korea for political purposes. The question is also being dealt with by another special procedure of the Commission,⁷ and I wish to support and complement the work of that procedure.

41. Given the number of reports already received of transgressions in the Democratic People's Republic of Korea affecting the right to security of the person, humane treatment and non-discrimination, there are serious grounds for concern. There are also reports that there is no independent judiciary as part of access to justice for the population. While I am not in a position to verify all these reports and allegations, initial impressions suggest that the great number of reports and related allegations cannot be seen as merely coincidental, as they seem to indicate a pattern of misdeeds that call for immediate redress. The authorities are urged to address this scenario in a transparent and efficacious manner.

42. There is evidently a need to promote human rights-sensitive law, to reform national laws and practices in accordance with international standards and to build the capacity of law enforcement bodies and other relevant actors to comply with human rights. This is an area where a clear directive from the national authorities is required: all concerned in the Democratic

People's Republic of Korea must respect human rights and avoid victimization. This is also an area where capacity-building through technical cooperation with the United Nations may be explored, particularly in the areas of prison reform and the promotion of the rule of law, a functioning and independent judiciary and checks and balances to prevent the abuse of power.

3. The right to freedom of movement and protection of persons linked with displacement

43. Generally, the authorities impose strict controls over the movement of people. To move from one area of the country to another, the prospective migrant needs to obtain a traveller's certificate from the authorities, a highly cumbersome procedure. To travel to another country, the person needs to obtain an exit visa or the equivalent. There are punishments for failing to obey the national laws on this front. These constraints are inconsistent with the right to freedom of movement. In its concluding observations (CCPR/CO/72/PRK), the Human Rights Committee expressed its opinion on this matter as follows:

"19. The Committee has noted the State party's justification of the 'traveller's certificate' which citizens of the Democratic People's Republic of Korea are required to obtain for travel within the country, but considers that such restrictions on domestic travel raise serious questions about their compatibility with article 12, paragraph 1, of the [International Covenant on Civil and Political Rights]

"...

"20. In the Committee's opinion, the requirement, under the Immigration Law of the Democratic People's Republic of Korea, of administrative permission to travel abroad, and the requirement, for foreigners in the Democratic People's Republic of Korea, to obtain exit visas to leave the country, are incompatible with the provision of article 12, paragraph 2, of the Covenant."

44. Nationals of the Democratic People's Republic of Korea have been on the move, crossing the border into other countries for two main reasons. First, political constraints and persecution act as a push factor pressuring a number of persons to seek asylum in other countries. In the period 2002-2004 many nationals of the Democratic People's Republic of Korea sought asylum in a number of ways such as entering embassies and schools in other countries; this led to a clampdown by the authorities of certain of those countries, including arrests and refoulement. In general, those leaving the Democratic People's Republic of Korea for political reasons fit into the traditional international law definition of "refugee", namely persons fleeing their country of origin for a well-founded fear of persecution.

45. Second, the food crisis of the mid-1990s forced many people to search for livelihoods elsewhere, at times crossing the border into other countries. As these persons could expect to be persecuted should they return to the Democratic People's Republic of Korea, they may also be classified as refugees. In international law, they would be known as "refugee(s) sur place", i.e. those who find themselves outside their country of origin - who did not leave their country of origin for fear of persecution, but who fear persecution upon return.

46. A key international principle in refugee protection is non-refoulement. Currently, there are lapses in compliance with this principle in some countries that are receiving those seeking asylum from the Democratic People's Republic of Korea, and the principle needs to be adhered to by all countries.

47. On a related front, there is still debate on whether those seeking asylum are "illegal immigrants" or refugees. The former implies that they can be sent back to their country of origin, while the latter are protected by the principle of non-refoulement. I submit that a key test is whether they are protected by their country of origin. If they are not, this should open the door to international protection and legitimize their classification as refugee. Even if some countries are not ready to classify them openly as refugee, these persons should at least be treated as persons in need of international protection, and basic international law principles, such as non-refoulement, should be applied.

48. There is also a need to ensure that those seeking asylum have access to the Office of the United Nations High Commissioner for Refugees (UNHCR) and to procedures for determining their status; if they fall into the category of refugees, they should be allowed to stay in the asylum country, at least temporarily, and should be treated humanely.

49. According to information received, recent trends paint a disquieting picture: there is an increasing proportion of women from the Democratic People's Republic of Korea among the new arrivals in many countries. This is a major concern because human smugglers and traffickers often prey on women seeking asylum or livelihoods in other countries. While national law in the Democratic People's Republic of Korea, as in other countries, outlaws human smuggling and trafficking, there is a need for more effective measures to counter the crime of smuggling and trafficking, both in the country of origin and in the destination country.

50. On another front, the plight of countries receiving asylum-seekers should not be overlooked, especially where there are mass influxes. It is incumbent upon international solidarity and responsibility-sharing to help shoulder the load of those countries. If the first asylum country is not able or willing to grant refuge to the asylum-seekers, other countries should offer resettlement places. This is already happening to some extent in regard to asylum-seekers from the Democratic People's Republic of Korea and it needs to be well supported. It is also worth reiterating that the granting of asylum in international law should not be regarded as an unfriendly act. Rather, source countries such as the Democratic People's Republic of Korea should respect that process while helping to address the root causes that give rise to outflows of people and enabling the safe return without penalties of those who wish to do so.

4. The right to the highest attainable standard of health and the right to education

51. Before the mid-1990s, as already mentioned, the economic and social situation was generally constructive, particularly with regard to access to social services such as health care and education. For example, the 2003 UNICEF-supported situation analysis on women and children makes the following observation:

“The DPRK has made impressive gains in education since 1945. Boasting universal literacy and 100 per cent official enrolment, the DPRK has successfully established an extensive primary and secondary school system as well as institutions for higher learning. The priority placed on education during the reconstruction effort resulted in the development of an extensive infrastructure. The establishment of some 1,600 primary and 26 secondary branch schools for children in the most remote areas, including island communities, is indicative of this commitment. No child in the DPRK seems to have a great distance to travel to reach a school. The National Report on Education for all (EFA), 2000, reported that the mean teacher-student ratio in primary schools was 1:23 and in secondary schools was 1:12.”⁸

52. However, despite official sources claiming such developments as universal access to education and full employment, it has always been difficult to verify the real scope of the coverage of social security. Moreover, there were/are always practical challenges, linked with the fact that access to services were/are easier for those favoured by the authorities, while those in the margins, such as the politically/economically/socially deprived and those in prison, suffer from a degree of exclusion owing to lack of or inadequate access to the social security system. This worrying scenario is implied by the concluding observations of the Committee on Economic, Social and Cultural Rights (see E/C.12/1/Add.95, paras. 17-20) after examining the second report submitted by the Democratic People’s Republic of Korea on the issue in 2003.⁹

53. The situation was aggravated by the crisis of the mid-1990s, having an enormous impact on the provision of basic social services, related budgets and access by the general population. Since the mid-1990s, there has been a rise in the incidence of various diseases such as pneumonia, compounded by malnutrition, while access to schools has been severely impeded by lack of electricity and other facilities. The Committee on Economic, Social and Cultural Rights added these concerns in 2003 (ibid.).

“21. The Committee is concerned about the consequences of the widespread famine suffered by the country from the mid-1990s and that certain sectors, in particular women, children and older persons, have been more severely affected than others and have not received proper assistance in order to alleviate their plight.

“22. The Committee expresses its deep concern about the high rate of children under 5 that are chronically malnourished (45 per cent according to government statistics), as well as the high incidence of poverty-related diseases.

“23. The Committee is concerned about the alarming increase in [the] maternal mortality rate.

“24. The Committee remains concerned about the dropping attendance rate in schools, from 99 to 85 per cent according to the State party, as a consequence of national disasters.

“25. The Committee remains concerned that children with disabilities, whenever possible, are not included in the regular school system.”

54. Currently, the economic and social situation has improved on some fronts, and more information reflecting this development is given below in the section concerning women and children. Yet, in qualitative terms, the situation in the country has always been precarious. Health services tend to be more accessible to those close to the authorities, while the educational system is heavily controlled by the State. There is a high degree of indoctrination, whereby the children are trained from a young age to be subservient to the State and its ideology, in addition to pervasive instrumentalization of the young population by the authorities in order to legitimize and perpetuate the political modus vivendi. This is compounded by lack of access to a variety of sources of information and of a participatory methodology to nurture critical, analytical thinking so as to provide space for a plurality of choices and voices.

55. I underline my support for the various United Nations procedures that deal with these issues and wish to complement their work.

5. The right to self-determination/political participation, access to information, and freedom of expression/belief/opinion, association and religion

56. The right to political participation is an inherent component of the right to self-determination and should be based upon the will of the people rather than that of the national authorities claiming to personify the State. Yet, in the setting of the power polity in the Democratic People's Republic of Korea, it is the latter which prevails.

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

58. In regard to freedom of religion, while there are some reports of liberalization to the effect that the national authorities are allowing various religions to operate more freely, it is uncertain to what extent that liberalization is genuine. According to information received, worshippers and members of various religious associations are persecuted, at times to the extent of being abducted.

59. The concluding observations of the Human Rights Committee (CCPR/CO/72/PRK) on the second report of the Democratic People's Republic of Korea under the International Covenant on Civil and Political Rights illustrate various concerns, as follows:

"22. ... in the light of information available to the Committee that religious practice is repressed or strongly discouraged in the Democratic People's Republic of Korea, the Committee is seriously concerned that the State party's practice in this respect does not meet the requirements of article 18 of the Covenant.

"...

“23. The Committee is concerned that various provisions of the Press Law, and their frequent invocations, are difficult to reconcile with the provisions of article 19 of the Covenant. The Committee is concerned that the notion of ‘threat to the State security’ may be used in such ways as to restrict freedom of expression ...

“24. ... The Committee remains concerned, however, about restrictions on public meetings and demonstrations, including possible abuse of the requirements of the laws governing assembly.

“... ”

“25. The provisions of article 25 include the right of every citizen of a State party to have the right and opportunity, without the restrictions mentioned in article 2 and without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives (art. 25 (a)), and to vote or be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the wish of the electors. The Committee has taken note of the delegation’s explanation that, as there has been no popular manifestation of any desire to create new political parties, no regulation or legislation governing the creation and registration of political parties is currently envisaged. The Committee considers that this situation runs counter to the provisions of article 25 of the Covenant, as it may adversely affect the rights of citizens to participate in the conduct of public affairs through freely chosen representatives, as required by article 25.”

6. The rights of specific persons/groups: women and children

60. The Democratic People’s Republic of Korea had witnessed various achievements in various aspects of women’s rights before the food shortage crisis which began in 1995:

“Progress towards promoting gender equality has been significant since 1946, when the equality of the sexes was first promulgated in the DPRK. This notable success might be attributed to the consistency of the national approach to gender equality. Gender equality has been proactively facilitated by reducing women’s individual reproductive responsibilities for childcare, thereby enabling their effective participation in the productive and public spheres. Women are accorded equal social status and rights with men in the Constitution (art. 77) ... The DPRK made substantial gains in bringing women into the labour force; by 1998 women accounted for 48.4 per cent. This country is also one of the rare examples of complete pay equality between men and women. The Government’s deliberate attempt to feminize sectors, such as public health (67.3 per cent) and education, demonstrates the success of its effort, though there does still exist some gender hierarchy with men occupying higher skilled (and thus more lucrative) positions than women.”¹⁰

61. Those achievements in the economic and social fields should not obscure various difficulties that have permeated the system since its inception. There is inherently a difference between de jure guarantees and de facto implementation. There were/are still prejudicial stereotypes - particularly the belief that the woman's place is in the home - which traditionally undermine women's rights.

62. With regard to child development, the constructive aspects of the actions of the Democratic People's Republic of Korea are seen in this analysis:

"The DPRK has a longstanding State policy of collectively supporting children's care, upbringing, education and overall socialization. The codification of standards for the care of children began as early as 1947 with the Rules of Childcare, in which the State assumed responsibility for providing childcare. Subsequent legislation in 1949 - the Rules of Childcare Centres - further developed regulatory standards."¹¹

63. Behind this, there has always been a sense of ambivalence, implied by the following observation:

"The DPRK's policy framework related to children is extremely comprehensive. However, its realisation is contingent on intensive investment in multiple sectors and layers of institutions. Economic constraints have, in effect, led to under-investment raising questions about institutional capacity to deliver on children's entitlements."¹²

64. In reality, there has been a marked decline in child development since 1995, with a disquieting rise in infant mortality, stunting and malnutrition. There are also various discrepancies affecting both women and children, as seen below.

65. Since the mid-1990s, women and children have become much more vulnerable for a variety of reasons. First, the crisis has pushed many women and children to leave their homes in search of employment and food elsewhere. There has also been a rise in the number of abandoned or street children. Second, the fact that they have left home without seeking a traveller's certificate subjects them to various sanctions owing to the pervasive State control over people's movements. Third, many have crossed borders in search of basic necessities in other countries; in the process, they may also become victims of smuggling and trafficking. Fourth, they may also suffer multiple victimization, as many may be classified as illegal immigrants subject to deportation, on the one hand, and are subjected to punishment upon return, on the other hand. Fifth, there is little official information on the issue of violence against women and children. However, non-governmental sources have reported many instances of violence.

66. The concluding observations of the Committee on the Rights of the Child (see CRC/C/15/Add.239), adopted after consideration of the second periodic report of the Democratic People's Republic of Korea under the Convention on the Rights of the Child, reaffirm many of these concerns. On a more positive note, the situation has improved slightly in relation to the health and nutritional status of women and children since the food crisis has abated, e.g. in regard to the reduction of acute malnutrition (wasting), and the more inclusive policies towards children with disabilities owing to recent law reform are welcome. A new inter-agency food/nutrition survey is due to take place in the near future in the country; this

should help to provide an updated assessment, with an impact on the question of how much food provided by foreign humanitarian aid has in fact reached women and children in recent years.

II. RECOMMENDATIONS

67. In retrospect, it appears that while there have been some constructive developments in the Democratic People's Republic of Korea in recent decades, there are a variety of discrepancies and transgressions - several of an egregious nature - in the implementation of human rights in the country, calling for immediate action to prevent further abuses and provide redress. To promote and protect human rights in the country, the following recommendations are imperative, but non-exhaustive.

68. The Democratic People's Republic of Korea should:

- (a) Abide by international human rights standards, including the four human rights treaties to which it is a party, follow up the recommendations of the monitoring committees set up by these treaties, and accede to and implement other relevant treaties;
- (b) Reform laws and practices that are inconsistent with those standards;
- (c) Uphold human rights together with democracy, peace, sustainable development and demilitarization, with greater space for civil society participation at all levels of decision-making and implementation;
- (d) Respect the rule of law, particularly the promotion of an independent and transparent judiciary, safeguards for the accused/detainees, access to justice and civil society participation, and checks and balances against abuse of power, e.g. through the establishment of a national human rights commission or equivalent, genuine non-governmental organizations, and active and independent media;
- (e) Reform the administration of justice, particularly to improve the prison system, abolish capital and corporal punishment and forced labour, and end preventive or administrative detention as well as the detention of political prisoners;
- (f) Address the root causes of displacement, prevent persecution and victimization of those who are displaced, including when they return to their place of origin, treat those who are displaced, smuggled and/or trafficked humanely, and foster social reintegration of returnees;
- (g) Provide redress for transgressions, such as those in relation to the abduction of foreign nationals, through expeditious and effective processes;
- (h) Build the capacity of law enforcement bodies and the public to protect human rights through proactive programmes of human rights education that are gender- and child-sensitive and promote a critical analysis;
- (i) Issue a clear directive, perhaps in the form of a national human rights action plan prepared with broad public participation, to law enforcement bodies and other authorities to respect human rights;

(j) **Ensure that humanitarian assistance, including food aid, reaches the target groups, with unimpeded access and transparent monitoring and accountability;**

(k) **Invite the Special Rapporteur and other mechanisms, as appropriate, to visit the Democratic People's Republic of Korea to take stock of the human rights situation and recommend reforms;**

(l) **Seek technical assistance from the Office of the High Commissioner for Human Rights and other agencies, as appropriate, to support activities to promote and protect human rights.**

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

(a) **Influence the Democratic People's Republic of Korea constructively to follow the directions noted above;**

(b) **Uphold the protection of refugees and other persons who have fled from the Democratic People's Republic of Korea, including the principle of non-refoulement and the grant of at least temporary refuge/protection, and end bilateral and other arrangements that jeopardize the lives of those who seek asylum;**

(c) **Promote orderly and safe channels of migration with the Democratic People's Republic of Korea in order to reduce clandestine channels and promote intercountry cooperation to counter human smuggling and trafficking, while treating the victims humanely;**

(d) **Provide space for long-term solutions to help refugees, including local settlement in the first-asylum country, resettlement in third countries, and safe and voluntary repatriation with adequate follow-up, and strengthen international solidarity in sharing the responsibility to care for refugees and migrants;**

(e) **Ensure that aid and assistance reach vulnerable groups by means of transparent monitoring and accountability, supported by unimpeded access by humanitarian organizations.**

Notes

¹ See further the work of the Special Rapporteur on the right to food, e.g. E/CN.4/2004/10.

² World Food Programme, "DPRKorea Monthly Update", No. 67 (August 2004). See also United Nations Consolidated Appeals Process: Democratic People's Republic of Korea 2004, Office for the Coordination of Humanitarian Affairs, 2004.

³ See, for example: Human Rights Watch, "The Invisible Exodus: North Koreans in the People's Republic of China", Human Rights Watch, vol. 14, No. 8 (c) (November 2002), pp. 1-36; Amnesty International, "Starved of Rights: Human Rights and the Food Crisis in the Democratic People's Republic of Korea (North Korea)", ASA/24/003/2004 (January 2004); D. Hawk, *The Hidden Gulag: Exposing North Korea's Prison Camps* (Washington:

US Committee for Human Rights in North Korea, 2003); Korean Institute for National Unification, White Paper on Human Rights in North Korea 2004 (Seoul: Korean Institute for National Unification, 2004); Good Friends, Human Rights in North Korea and the Food Crisis (Seoul: Good Friends, 2004). The question of humane treatment is closely linked with the refugee issue: see further: The Commission to Help North Korean Refugees, The Reality of Forced Repatriation of North Korean Refugees (Seoul: The Commission to Help North Korean Refugees, 2000); Citizens' Alliance for North Korean Human Rights and Helsinki Foundation for Human Rights, The 5th International Conference on North Korean Human Rights and Refugees (Seoul: Citizens' Alliance for North Korean Human Rights, 2004). With regard to the various non-governmental sources listed, it should be noted that a number of non-governmental organizations working on the issue of human rights and the DPRK diverge on the strategies to address the problem. For a more policy-oriented and political approach, see: International Crisis Group (ICG), North Korea: Where Next for the Nuclear Talks? Asia Report No. 87 (Brussels: ICG, 2004).

⁴ Ibid.

⁵ Ibid.

⁶ Human Rights Watch, Country Summary January 2005 (DPRK): <http://www.hrw.org>.

⁷ See further the work of the Working Group on Enforced or Involuntary Disappearances, e.g. E/CN.4/2004/58.

⁸ UNICEF, Analysis of the Situation of Children and Women in the Democratic People's Republic of Korea (Pyongyang: UNICEF DPRK, 2003), pp. 40-41.

⁹ See further: International Federation for Human Rights (FIDH), Misery and Terror: Systematic Violations of Economic, Social and Cultural Rights in North Korea (Geneva: FIDH, 2003).

¹⁰ UNICEF, op. cit., pp. 45-46.

¹¹ Ibid., p. 17.

¹² Ibid., p. 18.

비제: 인권위원회

세계 어디에서나 인권과 기본적 자유의 침해 문제

-조선민주주의인민공화국의 인권상황-

유엔특별보고관 Vitit Muntarbhorn의 보고서(E/CN.4/2005/34, 2005년 1월 10일)

요약

유엔인권위원회는 그 결의안 2004/13에서 북한정부와 북한인민과 직접 접촉하고, 북한의 인권상황에 대해 조사하고 보고하도록 특별보고관을 임명할 것을 결정했다. Vitit Muntarbhorn이 2004년 7월 특별보고관으로 임명되었다.

현재의 상황은 아래와 같이 요약될 수 있다. 첫째, 건설적인 측면에서, 북한은 4개의 주요인권조약-시민·정치적 권리규약, 경제·사회·문화적 권리규약, 아동권리협약, 여성차별철폐협약-의 당사국이다. 북한은 이들 조약 관련 위원회에 다수의 보고서를 제출해왔다. 둘째, 북한은 외부의 인권행위자들이 북한의 인권상황을 평가하기 위해 입국할 것을 간헐적으로 허락해왔다: 2004년에 아동권리위원회의 위원이 방문초청을 받았다. 셋째, 다양한 유엔전문기관이 북한의 상당수 이슈에 대해 활동하고 있으며, 그들의 존재는 국제적으로나 국내적으로나 높이 평가받고 있다. 넷째, 몇가지 방면에서, 북한과 일련의 타국간에 지역내외적으로 모두 우호적 관계가 있어왔다. 다섯째, 많은 국가들처럼, 북한은 인권을 증진하고 보호하기에 도움이 될 수 있는 법적으로 운영되는 기법-예를 들어 국가 헌법-을 갖추고 있다. 하지만, 그 이행에 있어 핵심적인 문제점이 있다.

다양한 비판적 도전이 다뤄질 필요가 있다: 식량권과 생명권; 인간의 안전에 대한 권리, 인간적 처우, 비차별, 사법에 대한 접근, 이동의 자유에 대한 권리, 탈북과 관련된 사람의 보호; 도달가능한 최상의 건강기준과 교육에 대한 권리; 자결권/정치적 참여, 정보접근, 표현/신념/의견의 자유, 결사와 종교의 자유에 대한 권리; 여성과 아동을 포함한 특수한 개인/집단의 권리. 이런 문제들이 이 보고서에서 다뤄진다.

요약하면, 최근 십여년동안 북한에는 일부 건설적인 발전이 있어온 반면, 침해를 예방하고 구제를 제공하기 위해 즉각적인 행동이 요구되는 국가의 인권 이행에 있어서는 갓가지 모순과 위반-몇몇은 지독한 성격-이 있어왔다. 이 보고서의 끝부분에는 한편으론 북한에 다른 한편으론 국제사회의 다른 구성원들에게 전달하는 다양한 권고가 제시돼 있다.

도입

1. 인권위원회는 결의안 2004/13에서 북한의 인권상황에 대한 깊은 우려를 표명하고, 의장에 특별보고관을 임명할 것을 요청했다. 특별보고관은 북한정부와 인민을 직접 접촉하고, 그 상황과 국제인권법에서의 의무를 정부가 따르고 있는지에 대한 조사와 보고서를 제출할 것을 목적으로 했다. 인권위원회는 특별보고관에게 "북한 방문을 포함하여, 그리고 정부들·민간단체 및 이 사안에 관한 지식을 갖고 있는 기타 관계자들을 포함하여 신뢰할 만한 정보를 구할 것"을 요청했다. 인권위원회는 또한 특별보고관에게 유엔총회와 유엔인권위에 보고할 것을 요청했다. 이 보고서는 그 요청에 따라 제출된 것이다.

2. 나는 유엔인권위 의장에게서 2004년 7월 특별보고관의 직위를 수행할 것을 요청받았고 수락했다.

작업 방법

3. 수임사항을 정하고 있는 결의안을 이행하려는 노력 속에서, 이 보고서는 내가 채택한 방법과 북한의 인권과 관련된 내용에 관한 나의 생각에 대한 고찰을 우선 제시하려 한다.

4. 이 일을 하면서 처음 몇 달 동안, 나는 다양한 -정부, 비정부, 정부간-출처에서 관련 정보를 수집하기 시작했다. 나는 다양한 정부, 비정부, 정부간 부문의 대표자들과 회의를 가졌다. 내가 특별보고관으로 임명되기 전에 요청 받았던 과제인 2004년 9월 서울에서 열린 인권증진을 위한 진정한 공치(good governance)에 관한 세미나의 보고자로서 활동하는 동안, 나는 북한의 인권상황에 관심을 가진 다양한 개인과 단체들을 비공식적으로 만날 기회가 있었다. 이후 2004년 9월에, 나는 제네바에서 일주일 동안 핵심 행위자들과 만났고, 특별보고관으로서가 아니라 학자로서 이기는 했으나 제네바의 북한 대표부와 만날 수 있어서 기뻐했다. 그 만남은 성의있고 건설적인 것이었고, 나는 앞으로 더 만날 수 있기를 고대한다.

5. 2004년 10월 말, 나는 유엔총회 제3위원회에 수임사항에 관한 나의 최초의 성명을 전했다. 그 성명에서 다루진 내용이 이 보고서에서 좀더 다뤄졌다. 나는 또한 2004년 12월 초, 북한인권상황에 대한 서울 국제회의에 초청받았다. 유감스럽게도 건강문제 때문에 참석할 수 없었다. 하지만, 나는 그 회의에 성명을 보냈고, 유엔인권고등판무관실의 요원이 나를 대리하여 그 성명을 회의에 전달했고, 다양한 정부·정부간·비정부 행위자들을 만났다.

6. 모든 정부들, 정부간 조직들, 민간단체들, 유엔인권고등판무관실의 직원들에게 친절한 지원에 대해 감사드린다. 내가 모든 관련자에게 전달하는 메시지는 북한이 특별보고관을 세계와 특히 유엔과 관여할 수 있는 기회의 창으로 보고 인권상황을 증진할 것을 촉구하는 것이다. 특별보고관이 취하고 있는 과정은 건설적인 단계적(step-by-step) 접근에 기초해있으며, 공정하고, 균형있고, 독립적인 태도로 그 국가의 인권을 보호하고 증진하기 위해 점진적으로 활동하는 것이다.

7. 보고서 준비가 이러한 수임사항의 중요한 구성요소가 될 것인 동시에, 나는 이 수임사항이 변화를 위한 혁신적인 촉매제로서, 소박한 "변화의 기관"-다양한 관련 개인과 조직들을 상호연결하는-이 될 것을 구상한다. 지금까지 아무런 초대도 없었으나, 나는 또한 북한을 방문하길 고대한다. 가능한 빠른 시일에 개방적이고 접근하기 쉬운 방식으로 북한방문을 가능케 해줄 것을 북한 당국에 요청하고 싶다. 나는 또한 북한의 상황에 대응한 경험을 알고자 인접국가들을 방문하고 싶다. 점차로, 당국의 관심과 효과적인 행동이 요구되는 구체적인 사례들에 관해 북한을 접촉하고 싶다.

8. 이러한 선상에서, 북한의 인권상황에 관한 나의 최초의 생각을 제시하고 싶다.

I. 북한의 인권상황

A. 건설적인 요소들

9. 첫째, 건실적인 측면에서, 주목돼야만 하는 점은 북한이 4개의 주요 인권조약(앞에서 언급했기에 이름 생략)의 당사국이라는 것이다. 북한은 이미 관련조약에 대한 국가상황보고서를 여러번 제출해왔고, 유엔자유권위원회(인권이사회), 경제·사회·문화적 권리위원회, 아동권리위원회와 같은 위 세 개의 인권조약하에 설립된 인권기구에 참여해왔다. 중요한 것은 가까운 장래에 여성의 권리에 관한 최초보고서(CEDAW/C/PRK/1)가 여성차별철폐위원회에서 다뤄질 것이라는 점이다.

10. 둘째, 북한은 간헐적으로 외부의 인권행위자들이 인권상황을 평가하기 위해 입국할 것을 허용해왔다. 90년대 중반에 국제엠네스티가 접근할 수 있었고, 유엔아동권리위원회 위원이 2004년에 방문초청을 받았다. 이에 앞서 여성폭력에 관한 특별보고관이 초청을 받은 바 있다.

11. 셋째, 밀레니엄 발전 목표와 아동에 관한 유엔총회특별세션이 채택한 "아동에게 적합한 세계"라는 제목의 아동관련 지구행동계획 등과 같은 다양한 세계적 사업에 북한은 참여하고 있다. 북한에서는 다양한 유엔기관이 상당수 이슈에 관해 활동하고 있으며, 그들의 존재는 국제적으로나 국내적으로나 높이 평가받고 있다.

12. 넷째, 몇가지 방면에서, 북한과 지역내외 바깥의 일련의 국가들간에 우호적 관계가 있어 왔다. 여타의 문제들이 해결돼야 할 것으로 남아있기는 하지만, 북한은 또한 일부 쌍무적 이슈에 관해 이웃국들과 거꺼이 문제를 다뤄왔다.

13. 다섯째, 많은 국가들과 마찬가지로, 북한은 이미 인권의 증진과 보호를 도울 수 있는 법적으로 운영되는 기반을 갖고 있다. 예를 들어, 1972년에 채택되고 92년과 98년에 개정된 가장 최근의 국가 헌법과 기타의 국내법들이 인권에 대한 보호를 제공하고 있다. 하지만, 이행에 관해서는 핵심적 문제들이 있다.

14. 여섯째, 95년 이전에 북한은 일부 영역, 특히 여성과 아동과 관련된 경제·사회·문화적 영역에서 상당한 발전을 보였다. 99년에, 새로운 교육법이 통과되어 11년간 무상의무교육을 제공하게 됐고, 장애인 보호를 위한 법률이 2003년에 통과되어 공적 서비스에 대한 장애인의 평등한 접근을 보장했다. 북한은 또한 아동에 대한 상당히 높은 예방접종률을 보인다. 그러나, 이러한 성취는 90년대 중반의 식량부족위기와 자연재해로 인해 훼손됐고, 그 결과가 지속적으로 감지된다.

15. 일곱째, 여성의 지위는 국가헌법에 의해 보장되고 다수의 국가 프로그램/활동들에 반영돼 있다. 92년 헌법의 77조는 다음과 같다:
"여성에게는 남성과 동등한 지위와 권리가 인정된다. 국가는 출산휴가, 대가족의 어머니들을 위한 노동시간 단축, 산과병원·탁아소·유치원과 기타의 조치들의 네트워크 강화를 통해 어머니와 아동에 대한 특별한 보호를 제공한다. 국가는 사회에서의 여성의 발전을 위한 다양한 조건을 창조한다"(비공식 번역)
그러나, 여전히 여성권리의 현실 이행에 관한 핵심적 문제가 남아있다.

16. 여덟째, 95년 이전에는 국가가 제공하는 건강보호에서부터 사회보장에 이르기까지 국민을 지원하기 위한 다양한 안전망이 있었다. 중앙계획경제로서, 인구대비 높은 의사 비율 뿐만 아니라 노동자 식원을 위한 국가 지원 설비를 갖춘 발전된 의료 기반이 있었다. 국가는 또한 포괄적인 공식 분배 시스템을 통해 배급량에 기초해 식량을 제공했다. 이런 시스템들은 90년대 중반의 위기 때문에 쇠퇴했다.

17. 북한이 유엔개발프로그램(UNDP) 집행위원회와 유엔인구기금(UNPF)에 2004년 7월 제출한 국가프로그램초고(DP/DCP/PRK/1)는 일부 방면에서, 상당한 모순이 있기는 하지만, 경제·사회적 상황이 진전됐다는 점을 주목하고 있다. 2002년 이래, 아래 요소와 같은 핵심적인 경제적 변화가 있어왔다.

"(a) 가격과 임금 조정. 공공분배시스템(PDS)이 급격하게 조정되었고, 그 목적은 더 이상 생필품에 대한 단일한 접근을 제공하는 것이 아니다. 모든 시민이 최소한의 필요를 충족하기에 이용할 수 있는 핵심적인 기본 할당량이 있기는 하지만, 소비자들은 이제 상품과 서비스를 새로운 '소비자' 시장을 포함한 다양한 분배 경로를 통해 살 수 있다. 소규모 생산자도 또한 시장에서 판매를 할 수 있다. 소비 측면에서, 최근의 조정조치로 인해 다른 노동자들보다는 광부와 군인들의 임금이 향상됐고, 이것은 구매력의 차이를 초래하고 있다. 식량가격은 400%까지 인상됐다. 주택과 연료 보조금은 삭감됐다. 원(won)의 가치는 급격하게 떨어져 수출이 보다 성장할만하다. 핵심적인 조정은 도시 소비자에 대한 보조금을 없앤 것이다. 최근의 가격조정으로 인해 농부들이 작물 판매에서 더 나은 보상을 얻고 있다.;

"(b) 시장 체널의 확대. 북한은 한동안 농민 시장의 존재를 수용해왔고, 여기서는 제한적인 뒷발생산물이 거래된다. 최근 몇 년간 교환되는 상품의 범주가 확대됐고, '소비자' 시장은 이제 농민 시장으로 바뀌어 경제적 의사결정에서 더 커진 자율성을 보여준다.

"(c) 외국 직접투자(FDI)의 허용. 북한은 외국인 투자를 위한 특별경제구역을 설립하면서 여러해 동안 FDI를 끌어들이기 위해 노력했다. 하지만 금강산에 관광인프라를 지원하기 위한 FDI를 받은 반면 FDI는 변변치 못한 채이다.

"(d) 공급 측면의 조정. 정부는 보조금을 중단할 의도를 표시해왔고, 투입과 산출에 관한 의사결정에서 기업의 더 큰 자율성을 허용하고 있다. 그 결과, 국제적 경영 관행에 대한 훈련 요구가 생겼으며, 상대적으로 젊은 증견간부-30대와 40대-이 임명됐다. 소수가 해외로 경영훈련을 위해 파견됐다.

"2002년에 개시된 이러한 조정들은 지속적인 조정을 평가하기 위해 계속 평가되고 있으며 수요와 공급조건을 향상하기 위한 더 많은 조치들을 택하고 있다. 미래의 열쇠는 사회안전망의 유지와 제외하고는, 포괄적이고 영구적인 보조금이 필요치 않은 생존가능한 경제를 발전시키는 것이다."

18. 위에서 주목된 변화들은 국내외적 요인/압력 둘다에 영향받은 당국의 생존전략의 일환으로 보인다. 현실적으로, 도시 인구의 경제적 곤경은 여전히 심각하다. 왜냐하면 도시민은 "시장"체계에 대한 접근과 식량과 농업생산물을 포함한 물가상승에 대응하는데 지속적인 곤란에 직면해 있기 때문이다. 또한 특히 당국이 호의적이지 않은 사람들이 직면한 식량에 대

한 접근 제한과 관련하여 (비)차별의 문제가 남아있다.

B. 기본적 맥락

19. 위에서 언급한 건설적 요소들은 균형있는 시각에서 볼 필요가 있다. 다음의 맥락이 특히 유익하다.

20. 첫째, 인권에 관한 국가 권력자들의 인식은 우선적으로 국가주권의 보호에 기초해 있고, 정치적 권리보다는 경제·사회적 권리를 우선하는 "집단적인"(국가-중심적) 권리와 다양한 견해를 가진 개인들과 집단들의 권리보다는 당국의 권리에 대한 보호에 기반해 있다. 이러한 태도의 변종은 국가의 내부 문제에 대한 불간섭 원칙에 대한 당국의 강조이고, 국가와 기존권력구조의 생존을 의미하는 생존권의 강조이다. 이런 인식이 북한 인권실현의 맥락에 깔려있다. 이런 인식은 그 권리가 국가 당국에 의해 침해당했다는 개인과 집단들 편에 선 국제사회의 주장을 부인하는 경향이 있기 때문에, 국제인권기준에 대해 시험될 때 주요한 모순을 일으킨다. 그래서 북한의 인권상황을 이해하려는 어떠한 시도도 인권의 전체성 속에서 보편성과 불가분성을 옹호하고 증진하려는 문제를 조건으로 한다. 이는 북한의 인권에 대해 -시민적, 정치적, 경제적, 사회적 및 문화적 권리-를 연결하여 포괄적인 접근을 해야 할 필요성과 연관된다.

21. 둘째, 국가가 국민에 대해 절대적이며, 총체적으로 스며드는 통제를 행사하는 권력이 절대적으로 정상에 집중돼 있기 때문에 북한은 국제 공동체에서 독특하다. 이점은 북한이 외부 세계와의 관계에서 느끼는 고립감의 원인이자 결과이다. 이점과 관련하여, 북한의 인권상황을 이해하려는 어떠한 시도도 북한의 민주화 문제와 전적으로 분리될 수 없다.

22. 셋째, 한반도 전쟁(1950-53)의 영향은 여전히 오늘날에도 감지되며 인권에 핵심적인 영향을 끼치고 있다. 그중에서도, 전쟁중과 전쟁 전후의 이산가족의 문제가 여전히 중요하다. 최근 몇 년동안 가족 재결합을 위한 환원할만한 노력들이 있어왔지만 이런 노력이 보다 체계화될 필요가 있다. 북한의 인권상황을 이해하려는 어떠한 시도도 한반도의 평화와 인간안보의 문제와 전적으로 분리될 수 없다.

23. 넷째, 비군사화의 문제가 인권문제와 구별되는 반면에 하나가 다른 하나에 불가피하게 영향을 끼치고 있다. 북한이 매우 군사화되어 있다는 사실은 공평한 자원할당-자원을 인권보호와 증진을 위해 재할당할 필요-에 관한 문제를 일으킨다. 북한의 인권상황을 이해하려는 어떠한 시도도 이 지역의 탈군사화와 군비축소문제와 전적으로 분리될 수 없다.

24. 다섯째, 북한은 오랫동안 중앙계획경제를 취해왔고, 주체(자조) 이데올로기를 따라왔다. 최근 몇 년 동안, 식량부족 위기에 의해 추진된 것으로, 이전의 국가 지원 체계에서 보다 소비자 중심적인 메커니즘으로 다각화하는 시장경제에 대한 몇몇 실험이 있어왔다. 그러나, 의사결정과정의 전체 국민의 적절한 참여 없이 여전히 상의하달식이며, 90년대의 경제퇴보는 특히 취약집단들의 희생을 불렀다. 북한의 인권상황을 이해하려는 어떠한 시도도 취약집단을 보호하려는 의도의 지속가능한 발전문제와 광범위한 인구의 참여의 필요성과 전적으로 분리될 수 없다.

25. 여섯째는 오늘날에도 여전히 다방면에 끼친 영향이 감지되고 있는, 90년대 중반 북한에 영향을 끼친 위기의 중대한 배경이다. 유엔아동기금의 국가프로그램 초고(E/ICEF/2003/P/L10)는 다음과 같이 주목했다:

"3. 북한의 경제는 그 공산품에 대한 시장을 제공하고, 연료를 포함하여 싼값에 보조되던 원자재의 원천이던 사회주의 블록의 해체로 인해 중대한 고통을 받았다. 이런 문제는 90년대 중반의 광범위한 자연재해와 세계경제와의 제한적인 상호작용과 결합되어, 그 국민을 먹고 보살필 수 있는 정부의 능력을 심각하게 제약하는 급격한 경제적 하강을 초래했다. 95년에 낙제사회에 대한 호소에 이어, 북한은 상당히 요구되는 대규모 인도주의적 원조의 수혜를 받았다.

"4. 정부 통계에 따르면, 93년부터 98년까지 일인당 소득이 991\$에서 457\$로 쇠퇴했다. 유아사망률은 출생 1,000명당 14에서 24명으로 늘었고, 5세 미만 사망률은 출생 1,000명당 27에서 50명으로 늘었다. 아동사망률의 이러한 증가는 심각한 식량부족에 기인한 것이며, 유행병의 상승, 필수적인 약품의 부족, 보건인프라와 물과 위생시설의 전반적인 후퇴로 인해 아동의 질병을 감당할 수 있는 보건 시스템의 능력이 떨어진 것과 결합되어 나타났다. 아동사망의 주요 요인은 설사와 급성호흡기감염(ARI)이며, 영양실조가 이들 사망 원인의 절반쯤으로 추정된다."

26. 경제적, 사회적 상황이 최근 호전되었다고는 하지만, 북한의 인권상황을 다루려는 어떠한 시도도 북한이 90년대 중반 이래로 직면한 충격적인 발전의 문제-때로는 내부적 요인과 때로는 외부적 요인과 연결되는-를 심각하게 알고 있어야 하며 한반도가 직면한 역사적 전례와 결과와 해결되지 않은 문제들을 잊지 말아야 한다.

C. 구체적 문제들

27. 아래의 문제들은 북한이 직면한 상황을 알려주는 것으로서 강조된다. 이것이 전부를 포괄하는 것은 아니다.

1. 식량권과 생명권

28. 이미 언급했듯이, 90년대 중반에 권력의 불균형과 권력구조의 부적절한 대응이 복합된 파국적인 식량부족이 홍수와 가뭄에 의해 발생했다. 이러한 요인들은 북한의 발전에 엄청난 영향을 줬고, 많은 생명과 생계를 위기에 빠뜨렸다. 식량권의 문제는 또한 유엔인권위의 또 다른 특별절차에서 다루어지고 있다.¹⁾ 나는 식량권에 관한 특별절차의 작업을 지원하고 보충하고 싶다.

29. 핵심적인 인도주의 기관과의 협의 속에서 느낀 일반적 정서는 식량상황이 개선되었지만, 여전히 부족하기 때문에 여전히 인도주의적(긴급) 원조가 필요하다는 것이다. 세계식량프로그램(WFP)의 최근 평가는 다음을 주목했다:

"8월에(2004년) 공적분배시스템(PDS)의 행정구역간 곡물비율에 일부 변화가 있었다. 대부분 지역이 2004년 7월의 1일 300g에서 350g으로 비율을 증가시킬 수 있던 반면,

1) 식량권에 관한 특별보고관의 작업을 보라. e.g. E/CN.4/2004/10.

일부 지역은 300g을 유지해야 했거나 250g으로 줄어야 했다. 일부 지역은 한국의 쌀부 대부분에서 온 쌀을 분배하기 시작했지만, 구성물은 주로 지역에서 생산되는 감자, 밀, 보리이다. 시장 쌀가격이 kg당 240원(1.5달러)에서 700원 이상으로(4.3달러), 지난 두 달 동안에 세배가 됐기에, 쌀은 가구에 매우 귀중한 것이다. 더욱이, 쌀은 조선인에게 선호되는 기본식료품이기 때문에 식량이 불안한 가족은 쌀을 더 큰 양의 옥수수-인기가 적은 식료품-와 맛바꾸기 위해 팔 수 있어서 가족을 위해 더 많은 식량을 얻을 수 있다.

8월의 낮은 비율이 초래된 주요 원인 중 하나는 심한 홍수로 인해 밀과 보리라는 조기 작물이 상실된 것이다. 홍수는 또한 국영상점의 채소 부족을 야기했다. 이는 가구의 식량 접근에 직접적인 영향을 줬다. 왜냐하면 한 지역에서의 작물 실패가 자동적으로 지역간의 이전으로 인해 보완되지 않기 때문이고, 곡물은 정상적으로는 당장 부족하다고 해서 이전되지 않기 때문이다.

폭우로 인한 습기는 높은 기온과 결합되어 설사의 증가를 초래했다. 주로 어린이들이 오염된 강과 관개수로에서 헤엄쳤기 때문이다. 긍정적인 면에서 보면, 폭우는 저수지의 수위를 증가시켜서 많은 지역이 더 나은 동력을 발생시키고 더 많은 시간 전기 공급을 받을 수 있었다.”2)

30. 내가 만났던 인도주의 기관의 몇몇 구성원들은 이 기간이 여전히 인도주의적 원조 국면으로 보이며, 북한인민을 돕기 위해 식량원조의 지속적인 필요성이 있다고 지적했다. 약 640만명의 사람들, 특히 여성, 아동, 노인이 원조의 혜택을 보고 있다. 북한은 지금까지 유엔기관들이 원조지원 향상을 위해 협력해온 기존의 Consolidated Appeals Process를 더 이상 지속하지 원하지 않고, 모니터링이 더 적은 장기적인 발전 원조를 향해 이동할 것을 선호하고 있다는 새로운 보고가 있다. 나의 견해로는, 필요한 것은 이행과정에 대한 모니터링의 축소가 아니라 오히려 최대한의 투명성을 보장하는데 목적을 둔 보다 효과적인 모니터링이다.

31. 외국에서 제공된 식량원조의 일만큼이 실제로 목표하고 있는 인구에 도달했고, 어느 정도가 다르게(은밀한) 이용됐는지에 대한 지속적인 논쟁이 있다. 내가 면담한 한가지 출처는 다른 목적을 위한 주요한 변용은 전혀 없다고 주장했다. 다른 출처는 동의하지 않았다. 내가 받은 정보에 따르면, 북한에 식량원조를 제공하는 한 유엔기관은 당국이 배분을 모니터링하기 위한 접근을 거부했기 때문에 2004년 말 북한의 한 지역에 대한 공급을 중단했다. 따라서, 투명성과 책임성을 증진하고 최대화할 필요가 있다는 것이 분명하다. 현재, 식량원조 배분에 대한 모니터가 적소에서 일부 되어지지만, 외국의 인도주의 단체에 의한 무작위 검사는 여전히 허용하고 있지 않다.

2. 인간의 안전, 인간적인 처우, 비차별, 사법접근에 대한 권리

32.

2) World Food Programme, "DPRKorea Monthly Update", No.67(August 2004). See also United Nations Consolidated Appeals Process: Democratic People's Republic of Korea 2004, Office for the Coordination of Humanitarian Affairs, 2004.

중략

II. 권고

67. 되돌아보면, 최근 십여년동안 북한에는 일부 건설적인 발전이 있어온 반면, 침해를 예방하고 구제를 제공하기 위해 즉각적인 행동이 요구되는 국가의 인권 이행에 있어서는 갖가지 모순과 위반-몇몇은 지독한 성격-이 있다. 북한에서 인권의 증진과 보호를 위해 다음의 권고가 중요하나, 이것이 전부인 것은 아니다.

68. 북한은

- (a) 북한이 당사국인 4개의 인권조약을 포함하여 국제인권기준을 준수하고, 이들 조약에 의해 수립된 모니터링 위원회의 권고를 따르고, 기타 다른 조약들에 가입하고 이행해야 한다.
- (b) 이들 국제기준에 부합하지 않는 법규와 관행을 개혁해야 한다.
- (c) 민주주의, 평화, 지속가능한 발전, 탈군사회, 의사결정과 이행의 모든 수준에서의 시민사회의 참여를 위한 공간의 확대와 더불어 인권을 지지해야 한다.
- (d) 법의 지배, 특히 독립적이고 투명한 사법제도의 증진, 피고인/구금자 보호, 사법부에 대한 접근과 시민사회의 참여를 존중해야 한다. 그리고 권력의 남용을 규제하고 균형을 잡아야 한다. 예를 들어, 국가인권위원회 또는 그에 필적하는 기관의 설치, 진정한 민간단체, 능동적이고 독립적인 미디어를 통해.
- (e) 사법행정을 특히 감옥제도를 개선해야 한다. 사형과 체벌과 강제노동을 폐지해야 한다. 정치범의 구금 뿐 아니라 예방적 또는 행정적 구금을 끝내야 한다.
- (f) 탈북의 근본 원인을 다뤄야 한다. 그들이 귀향했을 때를 포함하여 난민이 된 사람들에게 대한 처벌과 괴롭히는 것을 예방해야 한다. 난민이 되거나, 밀수하거나 인신매매된 사람들을 인간적으로 대우해야 한다. 귀환자들의 사회 재통합을 촉진해야 한다.
- (g) 범죄, 예를 들어 외국인 유괴에 대한 보상을 신속하고 효과적인 과정을 통해 제공해야 한다.
- (h) 성인지적이고 아동인지적이며 비판적 분석을 증진시키는 혁신적인 인권교육프로그램을 통해 인권보호를 위한 법집행기관과 대중의 능력을 건설해야 한다.
- (i) 광범위한 대중의 참여속에 준비된 국가인권행동계획의 형태로 법집행기관과 기타의 당국에 인권존중을 위한 분명한 지침을 발행해야 한다.
- (j) 방해받지 않는 접근과 투명한 모니터링과 책임성과 더불어, 식량원조를 포함하여 인도주의적 원조가 목표집단에 도달할 수 있도록 보장해야 한다.
- (k) 인권상황과 권고된 개혁의 정보를 얻을 수 있도록 특별보고관과 기타의 메커니즘이 적절하게 북한을 방문할 수 있도록 초청해야 한다.
- (l) 인권증진과 보호를 위한 활동을 지원할 수 있도록, 적절하게, 유엔인권고등판무관실과 기타 기관에게 기술원조를 추구해야 한다.

69. 국제사회의 여타 구성원들은

- (a) 위에서 언급된 방향을 따라 북한에 건설적으로 영향을 끼쳐야 한다.
- (b) 위협한 곳으로의 비송환원칙(non-refoulement)과 적어도 임시적인 난민/보호 부여를 포함하여 난민과 북한에서 도망친 기타의 사람들의 보호를 지지해야 한다. 그리고 난민지위를 구하는 사람들의 생명을 위협에 빠뜨릴 쌍무적인 협정과 기타의 협정을 그만둬야 한다.

(c) 피해자들을 인간적으로 치우하는 동시에, 은밀한 채널을 감소시키고, 인간 민수와 인신 매매와는 반대로 국가간 협력을 증진하기 위해 규칙적이고 안전한 이주 채널을 복원과 증진해야 한다.

(d) 1차 피난국에 지역 정착지, 제3국에 재정착, 충분한 후속조치가 있는 안전하고 자발적인 귀환을 포함하여 난민을 돕기 위한 장기적인 해결책을 위한 여지를 제공해야 한다. 그리고 난민과 이주민의 돌봄 책임을 공유하는 국제연대를 강화해야 한다.

(e) 인도주의적 기관의 방해받지 않는 접근에 의해 지원되는 투명한 모니터링과 책임성에 의해 취약집단에 원조와 지원이 도달할 수 있도록 보장해야 한다.