
Advance unedited versionDistr.: General
13 February 2017

Original: English

Human Rights Council**Thirty-fourth session**

27 February-24 March 2017

Agenda item 4

Human rights situations that require the Council's attention**Report of the Special Rapporteur on the situation of
human rights in the Democratic People's Republic of
Korea*****Note by the Secretariat***Summary*

The present report, submitted to the Human Rights Council pursuant to Council resolution 28/22, is the first to be submitted by the current mandate holder since his appointment in August 2016. The report includes in annex the outcome of the work of the Group of Independent Experts who were appointed pursuant to Council resolution 31/18 to outline options for accountability for human rights violations in the Democratic People's Republic of Korea, in particular where such violations amount to crimes against humanity as found by the commission of inquiry in 2014.

During the reporting period, two nuclear tests and repeated missile launches by the Democratic People's Republic of Korea deepened its international isolation. At the same time, the country took some positive steps to engage with some United Nations human rights mechanisms.

The Special Rapporteur continues to build on the two-track approach advocated by his predecessor. The approach combines the demand to situate responsibility for human rights violations with the need to pursue dialogue with the authorities and other actors to improve the human rights situation in the country. The Special Rapporteur appreciates measures taken by different actors to protect human rights in the Democratic People's Republic of Korea.

* The report was submitted after the deadline in order to reflect recent developments.

Contents

	<i>Page</i>
I. Introduction	3
II. Mandate and methodology	3
A. Political and security situation	3
B. Impact of the August 2016 flood	5
C. Engagement of the Democratic People's Republic of Korea with United Nations human rights mechanisms	7
III. Issues of particular concern.....	8
IV. The way forward	12
A. Efforts to engage by the Special Rapporteur	13
B. The Group of Independent Experts on accountability	14
C. The OHCHR field-based structure in Seoul	15
D. Civil society organizations.....	16
V. Conclusion and recommendations.....	16

I. Introduction

1. Two seemingly contradictory developments characterized the situation of human rights in the Democratic People's Republic of Korea in 2016. On the one hand, the country's repeated nuclear and missile tests deepened its international isolation, halting international dialogue on key human rights issues and hindering the delivery of humanitarian aid. On the other hand, the Democratic People's Republic of Korea took a few important steps to fulfill some of its international human rights obligations, including the ratification of the Convention on the Rights of Persons with Disabilities on 6 December 2016 and the submission of treaty reports to the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. Nevertheless, access to the country by United Nations human rights mechanisms, including the Special Rapporteur, to assess the impact of these steps on the ground, has not been granted.

2. In this report, the Special Rapporteur will briefly review key developments concerning the human rights situation in the country, including political and security developments, the impact of the August 2016 flood in the north-eastern provinces, and the Government's engagement with some of the United Nations human rights mechanisms. The Special Rapporteur will then discuss human rights issues which were brought to his attention during his first mission to North-East Asia. Finally, the Special Rapporteur will discuss the value of the two-track approach in addressing the human rights situation in the Democratic People's Republic of Korea with reference to diverse efforts by a range of actors¹.

II. Latest developments

A. Political and security situation

Pursuance of simultaneous economic and nuclear development

3. In 2016, the authorities in the Democratic People's Republic of Korea continued to consolidate domestic political power around Mr. Kim Jong Un as the Supreme Leader. In May 2016, the Workers' Party of Korea held its seventh Congress, the first to be held since 1980. Mr. Kim Jong Un, elected as the Chairperson of the Party, outlined policies of simultaneously advancing economic development and nuclear capability.² The Congress also led to the adoption of a five-year strategy for economic development. Notably, in his presentation of the five-year strategy, Mr. Kim Jong Un did not acknowledge the increasing trend of marketization throughout the country, nor did he reflect on the potential impact of sanctions imposed by the United Nations Security Council. In June 2016, the 13th Supreme People's Assembly held its fourth session. The Assembly replaced the National Defence Commission, the highest military decision making body, with the Commission of State Affairs. Mr. Kim Jong Un was also elected as the Chairperson

¹ The report of the Special Rapporteur as well as the report of the Group of Independent Experts on accountability in annex were shared with the Democratic People's Republic of Korea for factual comments prior to publication

² "Kim Jong Un Makes Report on Work of WPK Central Committee at Its 7th Congress", Korea Central News Agency (Pyongyang), 7 May 2016.

of the new Commission. These political events were held against the backdrop of two nuclear tests in one year (the country's fourth nuclear test was conducted on 6 January 2016 and its fifth on 9 September 2016) and several launches of missiles of various ranges.

4. Mr. Kim Jong Un reflected again on the policy of simultaneous development of the economy and of nuclear weapons in his 2017 New Year Address. First, he emphasized the importance of concentrating national efforts on the implementation of the five-year strategy for economic development. He described the areas to be developed in some detail, making repeated references to the improvement of people's livelihood and the importance of education, public health and culture. At the same time, he stressed that the country would "continue [to] build up [its] self-defence capability, the pivot of which is the nuclear forces, and the capability for pre-emptive strike", stating that the country had "entered the final stage of preparation for the test launch of intercontinental ballistic missile".³

Increased tensions and isolation

5. The repeated nuclear tests and missile launches in 2016 contributed to further isolating the country from the international community. The tests violated United Nations Security Council resolutions and significantly raised tensions on the Korean peninsula and in the North-East Asian region more broadly. Following each nuclear test, the Security Council adopted a resolution to further tighten sanctions against the Democratic People's Republic of Korea (S/RES/2270(2016), S/RES/2321(2016)). These sanctions expanded arms embargo and non-proliferation measures, including some dual-use items. The sanctions also aimed to restrict the country's capacity to earn foreign currency, including by imposing an annual cap on coal exports. Security Council Resolution 2321 adopted in November 2016 reduced possibilities for the exception for livelihood purpose, for example, by adding further requirements to apply it to coal export. Some States also adopted unilateral measures, increasingly restricting contact between people and exchange of goods between the Democratic People's Republic of Korea and other countries. In February 2016, the Republic of Korea closed the Kaesong Industrial Complex, a joint industrial complex in which citizens of the Democratic People's Republic of Korea worked for companies from the Republic of Korea. The Special Rapporteur notes that the sanctions imposed by the United Nations Security Council are not intended to affect the livelihood of ordinary people and the international community should closely monitor the sanctions' potential negative impact.

Impact on human rights dialogue

6. Rising tensions and increased isolation hindered the advancement of the human rights dialogue between the Democratic People's Republic of Korea and other countries. Reunion events to allow meetings between family members who are separated across the Armistice line between the two Koreas have not been held since October 2015. In reaction to unilateral sanctions adopted by Japan after the January 2016 nuclear test, the Democratic People's Republic of Korea dissolved the special investigation committee established under the 2014 Stockholm Agreement in which the country had committed to conduct comprehensive investigations into four issues related to Japanese nationals, including those who were allegedly abducted.

³ Democratic People's Republic of Korea, the Permanent Mission of the Democratic People's Republic of Korea to the United Nations in New York, "Press Release: Kim Jong Un's New Year Address" (No.1/01/17) (2 January 2017).

7. Notably, in his 2017 New Year remarks, Mr. Kim Jong Un referred to unification of the two Koreas. He stated that “all countrymen in the north, in the south and abroad should do something to make this year a meaningful year of a new phase in independent reunification.”⁴ He further noted the 45th anniversary of the 4 July 1972 Joint Statement and the 10th anniversary of the 4 October 2007 Declaration by the two Koreas. The Special Rapporteur hopes that these anniversaries could offer an opportunity for productive dialogue to address outstanding human rights issues.

B. Impact of the August 2016 flood

8. In late August 2016, Typhoon Lion-rock caused heavy rains over the north-eastern part of the Democratic People’s Republic of Korea. The Central Committee of the Workers’ Party of Korea described the storm as ‘strongest... and heaviest downpour in meteorological observation since the liberation of Korea in 1945’.⁵ The storm resulted in large-scale flooding and landslides that hit residential areas and farmland in North Hamgyong and Ryanggang provinces. Failure of river embankments and discharge from Sodusu Power Plant possibly aggravated the impact of the natural disaster.⁶

9. As a result of the flooding 138 people were killed and 400 remained missing as of October 2016.⁷ It is estimated that 600,000 people were affected, with 140,000 of these severely affected and 70,000 displaced. Around 30,000 houses were reportedly damaged.⁸ Over 180 road sections and more than 60 bridges were destroyed. More than 27,400 hectares of cultivated land were reportedly washed away or submerged.⁹

10. The Government of the Democratic People’s Republic of Korea requested international humanitarian agencies in the country to assist in responding to the humanitarian situation. The Government also invited United Nations agencies to participate in a joint assessment mission to the affected areas from 6 to 9 September

⁴ *Ibid.*

⁵ “WPK Central Committee Calls All People to Turn Out in Operations to Recover from Flood Damage in Northern Area”, Korea Central News Agency (Pyongyang), 11 September 2016; “People-First Principle Is Life and Soul of WPK”, Korea Central News Agency (Pyongyang), 12 September 2016.

⁶ United Nations Office of the Resident Coordinator in the Democratic People’s Republic of Korea, “North Hamgyong Floods – joint assessment team report”(Pyongyang, 11 September 2016), available at http://reliefweb.int/sites/reliefweb.int/files/resources/20160916%20DPRK_North%20Hamgyong%20Floods%20Joint%20Assessment%20Report.pdf (hereinafter ‘UN Office of the Resident Coordinator, September 2016 report’); “Flood caused by a discharge from Sodusu hydroelectric power plant without proper notice”, Radio Free Asia, 21 September 2016, available at www.rfa.org/korean/in_focus/food_international_org/nkflood-09212016161854.html [Korean]; “[Photos] Severe flooding sweeps across Namyang”, Daily NK, 1 September 2016, available at www.dailynk.com/korean/read.php?catId=nk04505&num=109176 [Korean].

⁷ United Nations Office of the Resident Coordinator in the Democratic People’s Republic of Korea. “Press release: Torrential rains and flooding bring devastation to DPRK”(Pyongyang, 14 October 2016).

⁸ United Nations Office of the Resident Coordinator in the Democratic People’s Republic of Korea. “Joint Review Mission to Flood-Affected Areas in North Hamgyong”(Pyongyang, 23 November 2016)(hereinafter ‘UN Office of the Resident Coordinator, November 2016 report’).

⁹ “Korean Army and People All out for Flood Recovery Campaign in North Hamgyong Province”, Korea Central News Agency (Pyongyang), 14 September 2016.

2016.¹⁰ Another mission was undertaken from 18 to 22 November 2016. While these missions visited three (Yonsa, Musan and Hoeyryong) of the six most affected areas, they were not able to visit the rest (Onsong, Kyongwon and Kyonghung).¹¹ The Special Rapporteur reiterates his call on the Government of the Democratic People's Republic of Korea to ensure full access for humanitarian workers to those in need, including persons in detention facilities and prisons.¹²

11. On 10 September, the Central Committee of the Workers' Party of Korea sent an appeal to all party members, service personnel of the Korean People's Army and others, urging them to participate in recovery operations.¹³ Reportedly 230,000 civilians and 140,000 soldiers were mobilized to support reconstruction efforts. As of late November 2016, over 3,000 buildings for almost 12,000 families were reportedly constructed.¹⁴

12. The damage from the flood had an impact on the human rights of people in the affected area in multiple ways. Access to water and sanitation, which is critical for the right to an adequate standard of health, was severely limited with affected communities reportedly continuing to depend on hand pumps, dug wells and water purification tablets as of December 2016.¹⁵ Forty-five health facilities were damaged with serious implications for the availability of health care for the local population.¹⁶ Damage to arable land with the destruction of crops and kitchen gardens had serious implications, especially for the right to food of those relying on agriculture for their livelihood.¹⁷

13. With the destruction of 107 primary/middle schools, kindergartens and nurseries, 8,360 students were placed out of school.¹⁸ The authorities prioritized the rehabilitation of nurseries, kindergartens and schools damaged by the flood and undertook a campaign to supply consumer goods to flood-hit areas.¹⁹ The continuation of food provision to nurseries and kindergartens were among the needs highlighted by provincial authorities during a joint United Nations – Government review mission in November 2016.²⁰

¹⁰ UN Office of the Resident Coordinator, September 2016 report, *supra*.

¹¹ UN Office of the Resident Coordinator, November 2016 report, *supra*.

¹² OHCHR, "North Korea: UN rights expert calls for increased support for the victims of Typhoon Lionrock" (Geneva, 21 September 2016), available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20543&LangID=E

¹³ "WPK Central Committee Calls All People to Turn Out in Operations to Recover from Flood Damage in Northern Area", Korea Central News Agency (Pyongyang), 11 September 2016; "People-First Principle Is Life and Soul of WPK", Korea Central News Agency (Pyongyang), 12 September 2016.

¹⁴ UN Office of the Resident Coordinator, November 2016 report, *supra*, p.5.

¹⁵ United Nations Office of the Resident Coordinator in the Democratic People's Republic of Korea, "DPRK Floods: Humanitarian Dashboard" (Pyongyang, 10 December 2016), available at <http://reliefweb.int/report/democratic-peoples-republic-korea/dprk-floods-humanitarian-dashboard-10-december-2016> (hereinafter 'UN Office of the Resident Coordinator, Humanitarian Dashboard').

¹⁶ UNICEF, "Situation Update: Democratic People's Republic of Korea North Hamgyong Floods Response" (28 October 2016).

¹⁷ Food and Agriculture Organization, "GIEWS Country Brief: Democratic People's Republic of Korea" (16 December 2016), available at www.fao.org/giews/countrybrief/country/PRK/pdf/PRK.pdf

¹⁸ UNICEF, *supra*.

¹⁹ "Priority Given to Educational Work in Disaster Areas of DPRK", Korea Central News Agency (Pyongyang), 5 October 2016; "More Consumer Goods Sent to Disaster Areas of DPRK", Korea Central News Agency (Pyongyang), 5 October 2016.

²⁰ UN Office of the Resident Coordinator, November 2016 report, *supra*, p.5.

14. Significant efforts have been made to respond to the natural disaster. Nevertheless, it is not clear whether sufficient humanitarian assistance has reached all those in need. Infrastructure and roads remain inadequate in the affected area, which is geographically mountainous and home to several remote communities.²¹ The deployment of a large number of personnel for the reconstruction efforts allegedly burdened already-limited local food supply and health facilities.²²

15. The situation of detainees at various law enforcement detention centers and correction facilities is also of concern. There exists at least one prison camp (Prison Camp No. 12) in Hoeryong city which was among the most severely affected areas by the flood.²³ No information is available concerning the impact of the flood on political prison camp No. 25 which is reportedly located in Chongjin city, North Hamgyong province.²⁴

16. The Special Rapporteur notes with concern that international funding for emergency relief remains inadequate. As of 10 December 2016, the United Nations Country Team has mobilized only 38 per cent of the 28 million United States Dollars funds required to respond to the emergency.²⁵ Similarly, the International Federation of the Red Cross and Red Crescent Societies had reportedly secured only 25 per cent of its September 2016 emergency appeal for 15 million Swiss Francs.²⁶ Multiple factors could be at work to render raising of funds for the emergency in the Democratic People's Republic of Korea challenging, including the crises in other parts of the world as well as increased tensions on the Korean Peninsula. Notwithstanding this, the Special Rapporteur stresses that political or security concerns should not prevent the provision of life-saving humanitarian aid.

C. Engagement of the Democratic People's Republic of Korea with United Nations human rights mechanisms

17. The Special Rapporteur has been encouraged by increasing engagement with the United Nations human rights mechanisms by the Government of the Democratic People's Republic of Korea. In line with commitments made during the second cycle of the Universal Periodic Review, the Democratic People's Republic of Korea submitted national reports to the Committee on the Elimination of Discrimination against Women and the

²¹ UNICEF, *supra*.

²² UN Office of the Resident Coordinator, Humanitarian Dashboard, *supra*; "Food price skyrocketed; the authorities warned against crimes committed by North Koreans mobilized for flood restoration; and some flood victims commit suicide", *Asia Press*, (22 September 2016), available at www.asiapress.org/korean/all/nk-kore-flood-damage-02/ [Korean].

²³ Korea Institute for National Unification, *White Paper on Human Rights in North Korea: 2016* (KINU, Seoul, 2016)(hereinafter 'KINU, White Paper 2016') at 105. The Committee for Human Rights in North Korea, a non-governmental organization based in Washington DC, reported that Prison Camp No. 12 was affected by the flood which cut the roads to the camp off and destroyed crops, based on analysis of satellite images. See The Committee for Human Rights in North Korea, "North Korea: Flooding at *Kyo-wa-so* No. 12, *Jongo-ri*" (16 September 2016), available at www.hrnk.org/publications/hrnk-publications.php.

²⁴ The Committee for Human Rights in North Korea, "North Korea: Camp No. 25-Update 2" (29 November 2016), available at www.hrnk.org/publications/hrnk-publications.php.

²⁵ UN Office of the Resident Coordinator, Humanitarian Dashboard, *supra*.

²⁶ International Federation of Red Cross, "IFRC President Konoé highlights continued humanitarian needs of flood survivors following DPRK visit" (Beijing, 13 December 2016), available at www.ifrc.org/en/news-and-media/press-releases/asia-pacific/korea-democratic-peoples-republic-of/ifrc-president-kono-e-highlights-continued-humanitarian-needs-of-flood-survivors-following-dprk-visit/

Committee on the Rights of the Child in April and May 2016 respectively. The Committee on the Rights of the Child will review the report in September 2017, and the Committee on the Elimination of Discrimination Against Women will do so in October 2017. Both occasions will provide an important opportunity to move the human rights agenda forward with the Government of the Democratic People's Republic of Korea. These processes also provide a significant opportunity for civil society organizations to push for effective progress on the ground.

18. On 6 December 2016, the Democratic People's Republic of Korea ratified the Convention on the Rights of Persons with Disabilities. The Special Rapporteur welcomed the ratification as a useful step forward to implement accepted recommendations from the 2014 Universal Periodic Review.²⁷ The Special Rapporteur on the rights of persons with disabilities similarly congratulated the country on the ratification, reiterating her offer to provide technical advice in the course of implementation of the treaty. The ratification of the Convention on the Rights of Persons with Disabilities brought the number of core human rights treaties ratified by the Democratic People's Republic of Korea to five.

19. The Special Rapporteur also welcomes the integration of the human rights based approach in the United Nations Strategic Assistance Framework (2017 to 2021) – agreed priorities of the United Nations agencies operating in the Democratic People's Republic of Korea and co-signed with the Government²⁸. The Rapporteur further welcomes the work, referred in the Framework, by the United Nations Country Team to support the implementation of recommendations accepted during the 2014 Universal Periodic Review and obligations under international human rights treaties. The Special Rapporteur is ready to work closely with the United Nations Country Team together with the Office of United Nations High Commissioner for Human Rights to follow up on the implementations of the recommendations accepted during the Universal Periodic Review and other human rights treaty obligations.

III. Issues of particular concern

20. During his first visit to the Republic of Korea and Japan in November 2016, the Special Rapporteur met with individuals who had recently left the Democratic People's Republic of Korea and who provided first hand descriptions of their experiences in the country.²⁹ The Special Rapporteur also received information concerning the human rights situation in the Democratic People's Republic of Korea from various non-governmental organizations, government agencies and the field-based structure of the Office of the United Nations High Commissioner for Human Rights in Seoul. The Special Rapporteur thanks the Office of the United Nations High Commissioner for Human Rights for preparing and supporting the mission. This section highlights some of the human rights issues raised during the visit.

²⁷ OHCHR, "Use disability convention to boost human rights in North Korea – UN expert" (Geneva, 20 December 2016), available at

www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21051&LangID=E

²⁸ <http://kp.one.un.org/content/unct/dprk/en/home/news/UNSF-launch2017.html>

²⁹ During this mission, the Special Rapporteur was informed that persons who left the Democratic People's of Republic of Korea and arrived at the Republic of Korea are held in government-run facilities for a period of time.

Political prison camps

21. The Special Rapporteur received information about the human rights situation in political prison camps (*kwanliso*). Although the Government of the Democratic People's Republic of Korea has denied the existence of these facilities, large-scale prison camps where people accused of serious crimes of a political nature are detained have been extensively documented by the commission of inquiry (A/HRC/25/63, paras 59-61) and other sources. At least four camps reportedly remain in operation (political prison camps No. 14, 15, 16 and 25) and another camp (No. 18) is possibly still operational.³⁰ Families are not informed of the whereabouts or fate of relatives who are sent to these prisons. The lack of information about the situation of individuals imprisoned in political prison camps, whose number is estimated to be between 80,000 and 120,000 (A/HRC/25/63, para. 61), means that their detention in many cases may amount to an 'enforced disappearance' under international law.³¹ The Government has stated in the past that "political prison camps" did not exist and were a complete fabrication. Those persons sentenced to the penalty of reform through labour under the country's Criminal Law served their terms in reform institutions."³² The Special Rapporteur stresses the importance of access to these "reform institutions" by the United Nations human rights mechanisms and relevant international civil society organizations. He also emphasizes the need to receive substantive information from the Government on the number, structure, and conditions of detention in these prison camps.³³ There is an imperative need to elaborate and implement new strategies to tackle this very serious and alarming human rights issue.

³⁰ KINU, White Paper 2016, *supra*, at 400; Database Center for North Korean Human Rights, List of officers, detainees, missing persons of political prison camps in the DPRK (NKDB, Seoul, 2016) at 11; The Committee for Human Rights in North Korea, "North Korea: Camp No. 25-Update 2" (29 November 2016), available at www.hrnk.org/publications/hrnk-publications.php.

³¹ The Declaration on the Protection of All Persons from Enforced Disappearance (A/RES/47/133)(1992) provides "enforced disappearance" as "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law"(preamble).

³² Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea"(A/HRC/27/10)(2 July 2014), para. 60, available at www.ohchr.org/EN/HRBodies/UPR/Pages/KPSession19.aspx

³³ The Democratic People's Republic of Korea is a state party to four legally binding 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, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. These instruments protect a wide range of rights related to the condition of detention. The United Nations has also adopted standards that outline specific measures for the protection of rights of persons in detention. While these standards are not legally binding, they provide authoritative guidance on the treatment of detainees. These standards include: United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2015), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1978), the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982), United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)(2010), and United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)(1985).

Abductions and separated families

22. During his visit the Special Rapporteur was also informed about the alleged abduction in the past of individuals from the Republic of Korea and Japan by the Democratic People's Republic of Korea. Although the alleged abductions occurred decades ago, the lack of reliable information about the fate of those abducted continues to have a serious impact on their relatives. In the case of Japan, under the Stockholm Agreement reached in May 2014, the Democratic People's Republic of Korea committed to establish a special committee to investigate four issues concerning to Japan, including the whereabouts of Japanese individuals who were allegedly abducted and Japanese nationals who accompanied their Korean spouses to the Democratic People's Republic of Korea. Nevertheless, in response to the bilateral sanctions adopted by Japan in protest of the January nuclear test, the Democratic People's Republic of Korea announced that "the comprehensive investigation into all the Japanese that had been under way under the... Stockholm agreement will be totally stopped and the 'Special Investigation Committee' be dissolved from February 12, 2016."³⁴ The Special Rapporteur urges the authorities in the Democratic People's Republic of Korea to resume the investigation and clarify the fate of abductees and the Government of Japan to resume dialogue with a view to reaching a prompt resolution to this issue.

23. The Special Rapporteur also talked to individuals who had been separated from their relatives as a result of the Korean War. He noted that involuntarily separated family members on both sides of the Armistice line have reached old age, and urged both Governments to make urgent and genuine efforts to enable them to learn the fate of their relatives. Such efforts should not be delayed or subjected to political developments, but should take place on humanitarian and human rights grounds.

Access to information

24. The Special Rapporteur was informed that the authorities of the Democratic People's Republic of Korea maintained or increased restrictions on access to information from outside the country in the last few years. At the same time, the Rapporteur was also informed that compared to a decade ago, more people are reportedly able to access information from abroad and to communicate with those abroad despite the stringent restrictions. Some reportedly use USBs or memory cards to share audio-visual materials smuggled into the Democratic People's Republic of Korea or listen to radio stations broadcasting from China and the Republic of Korea. Brokers in the border area reportedly mediate international telephone calls, including to relatives in the Republic of Korea. The cost of these communications reportedly remains very high and conversation for longer than a few minutes is increasingly difficult due to the fear of being detected by the authorities. Still, these communication channels reportedly allow some members of separated families to stay in touch and enable some individuals in the Republic of Korea to send remittances to their relatives in the Democratic People's Republic of Korea. The Special Rapporteur encourages the Government of the Democratic People's Republic of Korea to regard these important dynamics as opportunities to engage with its own people and to pursue greater integration and cooperation with the rest of the world.

Right to food

25. The commission of inquiry documented the devastating consequences of the famine that occurred in the Democratic People's Republic of Korea in the mid-1990s. Despite reports

³⁴ "Japan Assailed for Scrapping DPRK-Japan Inter-governmental Agreement", Rodong Shinmun (Pyongyang), 15 February 2016.

of an improvement in food availability in recent years, natural and human-made conditions that render a large part of the population food insecure reportedly persist. The Food and Agriculture Organization maintains the Democratic People's Republic of Korea on the list of 37 countries that require external assistance for food, mainly due to the overall tight food supply and the August 2016 flood which affected arable land.³⁵ The Special Rapporteur was informed that many households now reportedly rely on private commercial transactions to secure their food. Nevertheless, the ambiguous legal status of these transactions contributes to food insecurity as the ability to pursue commercial activities often depends on *ad hoc* decisions by local officials and on the amount of bribes those conducting the activities are able to pay. In 2016, compulsory labour mobilization by the Workers' Party of Korea, including during the 70-day campaign and the 200-day campaign undertaken before and after the Seventh Party Congress, allegedly limited the capacity of residents to engage in commercial activities critical for their food security.³⁶ Given that many people do not receive food rations, or receive an insufficient amount of rations,³⁷ the restrictions on trading activities have direct impact on their food security. The lack of reference in the five-year strategy for economic development adopted during the May 2016 Party Congress to private commercial and market activities, which are increasingly essential for food security of residents in the country, may have a negative implication on their enjoyment of this fundamental right.

Overseas workers

26. Most of the stakeholders whom the Special Rapporteur met during his visit to North-East Asia raised the issue of overseas workers. These workers reportedly constitute a significant source of foreign currency for the Government of the Democratic People's Republic of Korea as a substantial portion (60 to 90 per cent) of their salary is reportedly deducted by the State in the form of loyalty funds and operation costs of the North Korean companies deploying the workers.³⁸ At least 45 countries have reportedly hosted workers from the Democratic People's Republic of Korea at one point.³⁹ While working abroad, workers reportedly remain under tight supervision of officials from the Democratic People's Republic of Korea without freedom of movement, expression and association. Workers are allegedly subjected to serious violations of international labour standards, including long work hours, delayed and below-minimum payments, and lack of safety measures. Despite these violations, the Special Rapporteur was also informed that being sent abroad is perceived as a unique opportunity in the Democratic People's Republic of Korea to earn foreign currency and people reportedly continue to bribe officials to enroll in the overseas workers scheme.⁴⁰ The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to ensure that workers are allowed to receive adequate wages reasonable for the labour they provide, and that they are not subjected to violations of the rights to freedom of movement, expression and association. The Special Rapporteur also calls on Member States who host workers from the Democratic People's

³⁵ Food and Agriculture Organization, "Countries Requiring External Assistance for Food" (December 2016), available at www.fao.org/giews/country-analysis/external-assistance/en/

³⁶ Asia Press, discussion with OHCHR (Seoul), 11 May 2016, note on file with OHCHR (Seoul); Kang Mi Jin, "Anger Mounts As Police Crush Street Sales", *NK Daily* (Seoul), 9 March 2016, available at www.dailynk.com/english/read.php?num=13789&cataId=nk01500.

³⁷ KINU, White Paper 2016, *supra*, at 261.

³⁸ KINU, White Paper 2016, *supra*, at 477-80.

³⁹ Shin Chang-Hoon and Go Myong-Hyun, *ASAN Report: Beyond the UN COI Report on Human Rights in DPRK* (The ASAN Institute for Policy Studies, Seoul, 2014), available at <http://en.asaninst.org/contents/asan-report-beyond-the-coi-dprk-human-rights-report/>

⁴⁰ See also KINU, White Paper 2016, *supra* at 472.

Republic of Korea, as well as companies that employ them,⁴¹ to exercise due diligence and put in place specific measures to ensure that international labour and human right standards are upheld.

Persons who have left the Democratic People's Republic of Korea

27. Talking to persons who have left the Democratic People's Republic of Korea allowed the Special Rapporteur to understand some of the human rights violations that motivated their decision to leave. The Special Rapporteur also learnt about the challenges that these individuals went through as they braved restrictions on the right to freedom of movement and made the journey out of the country. The Rapporteur was impressed that they were well aware of their rights and that despite all the challenges that they faced, they looked forward to the future. Most women who spoke to the Special Rapporteur were victims of human trafficking. The commission of inquiry estimated that a large percentage of women and girls who cross the border from the Democratic People's Republic of Korea to China unaccompanied become victims of trafficking in persons, mainly for purposes of exploitation in forced marriage (A/HRC/25/CRP.1 at para 457). The risk of forced repatriation to and detention in the Democratic People's Republic of Korea during their journey remains high. The Special Rapporteur met with women escapees in the Republic of Korea who had to leave behind in China their children born to Chinese fathers. During the interviews with the Special Rapporteur, these women shared their hope to be reunited with their children. Despite the lack of accurate information concerning the number and location of these children, they remain particularly vulnerable because of their stateless status. In this respect, the Special Rapporteur recalls the conclusion of the report by the Office of the United Nations High Commissioner for Human Rights on the issue of involuntary separation of Korean families, which stresses that "there is no formal tracing mechanisms that may help [women escapees] locate their children in China or advocate for reunion."⁴² This is a very serious issue that warrants urgent attention.

VI. The way forward

28. The Special Rapporteur continues to pursue the two-track strategy advocated by his predecessor, with a focus on engagement with the authorities in order to promote human rights compliance. Furthermore, addressing human rights violations, particularly allegations of crimes against humanity, requires that perpetrators be held accountable. These two tracks are mutually reinforcing and a dual approach is necessary to produce tangible and sustainable improvement in the situation of human rights.

29. The Special Rapporteur acknowledges that pursuing this approach entails a significant challenge. The successive adoption of sanctions by the United Nations Security Council has led to increased isolation of the country. Similarly, the push for accountability, including the call to refer the country to the Office of the Prosecutor of the International Criminal Court, has been met by a confrontational stance by the authorities of the Democratic People's Republic of Korea.

30. Nevertheless, the Special Rapporteur believes that there is a space for implementing the dual approach. In this section, he briefly reviews his own efforts to date and those of

⁴¹ United Nations, *Guiding Principles on Business and Human Rights* (HR/PUB/11/04)(OHCHR, Geneva, 2011), principle 12, available at www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁴² OHCHR, *Torn Apart: The Human Rights Dimension of the Involuntary Separation of Korean Families* (OHCHR, Geneva, 2016), para. 73.

some key actors who are working to improve the human rights situation in the Democratic People's Republic of Korea.

A. Efforts to engage by the Special Rapporteur

31. Since his appointment on 1 August 2016, the Special Rapporteur has exchanged correspondence with the Permanent Missions of the Democratic People's Republic of Korea in Geneva and New York, inviting them to start a conversation on the human rights situation in the country. The Special Rapporteur submitted an official request to the Permanent Mission in Geneva to conduct a country visit as part of preparations for his field trip to North-East Asia in November 2016. Unfortunately, the Democratic People's Republic of Korea did not grant the request, citing the country's longstanding position against the country mandate which it perceives as politically motivated. The Special Rapporteur responded by recalling his mandate as an independent expert and urging the Government to consider a possible visit as an opening for better engagement with United Nations human rights mechanisms to promote and protect the rights of all in the country. Notably, at the side of the Third Committee session of the General Assembly in November 2016, a representative of the Democratic People's Republic of Korea reportedly stated that the Special Rapporteur could visit the country in his personal capacity as a law professor, but not in his official capacity as the Rapporteur.⁴³ The Special Rapporteur is ready to continue the conversation on ways to facilitate a country visit in his official capacity. In the past, as one of the reasons to reject cooperation with this mandate, the Government stated that the Rapporteur's reports "decry the Democratic People's Republic of Korea system and policies, based on distorted information".⁴⁴ The Special Rapporteur, as a new mandate holder, stresses that the best way to overcome allegedly distorted information is through engagement, including by providing access to the country to allow the Rapporteur to receive first-hand information from various stakeholders, including Government agencies.

32. While the Democratic People's Republic of Korea has rejected the specific country mandate as selective and politicized, several thematic mandates under the Special Procedures mechanism of the Human Rights Council also remain relevant to the country situation. These mandates can provide meaningful assistance to the country in improving the human rights situation. In this respect, and in accordance with a number of recommendations that the Democratic People's Republic of Korea accepted during the second Universal Periodical Review, the Special Rapporteur encourages the Government to establish cooperation with the Special Rapporteurs on the rights of persons with disabilities; extreme poverty and human rights; the negative impact of unilateral coercive measures on the enjoyment of human rights; the right to education; the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the right to food; adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; in the field of cultural rights; the right to development; trafficking in persons, especially women and children; the promotion and protection of the right to freedom of opinion and expression; the rights to freedom of peaceful assembly and of association; the independence of judges and lawyers; torture and other cruel, inhuman or degrading treatment or punishment; freedom of religion or belief;

⁴³ Democratic People's Republic of Korea, Press briefing by Ambassador Kim In Ryong (New York), 15 November 2016, available at <http://webtv.un.org/media/watch/kim-in-ryong-dprk-press-conference-15-november-2016/5211267770001>.

⁴⁴ Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea"(A/HRC/13/13)(4 January 2010), para. 49, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KP/A_HRC_13_13_PRK_E.pdf

the promotion of truth, justice, reparation and guarantees of non-recurrence, and the Working Group on the issue of discrimination against women in law and in practice, among others.

33. The Special Rapporteur also urges the Democratic People's Republic of Korea to continue to engage with the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. The Rapporteur also calls on the Government to initiate dialogue with the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Committee on the Rights of Persons with Disabilities, reflecting its international obligations as a State party to the respective treaties

34. Since his appointment in August 2016, the Special Rapporteur has also liaised with Governments that have diplomatic relations with the Democratic People's Republic of Korea and various organizations that provide humanitarian and technical assistance to the country. The aim of these exchanges is to increase the much-needed space for dialogue with the authorities on the implementation of international human rights obligations, particularly the recommendations that the Democratic People's Republic of Korea has accepted as part of the Universal Periodic Review.

35. The Special Rapporteur believes that the time is ripe for the Democratic People's Republic of Korea to take a new approach towards the United Nations human rights mechanisms. The Government should seriously consider granting access to these mechanisms, even if gradually. Such a change would be a step-by-step process, based on dialogue, trust-building, and mutual confidence. The approach will broaden possibilities for engagement at the international level, including by expanding the space for technical cooperation and increasing opportunities to improve the situation of human rights in the country.

B. The Group of Independent Experts on accountability

36. Based on resolution 31/18 adopted by the Human Rights Council on 23 March 2016, the United Nations High Commissioner for Human Rights designated two independent experts, Ms. Sonja Biserko (Serbia) and Ms. Sara Hossain (Bangladesh), to support the work of the Special Rapporteur on the issue of accountability for human rights violations in the Democratic People's Republic of Korea. The Council mandated the group of experts (a) to explore appropriate approaches to seeking accountability for human rights violations in the Democratic People's Republic of Korea, in particular where such violations amounted to crimes against humanity, as found by the commission of inquiry; and (b) to recommend practical mechanisms of accountability to secure truth and justice for the victims of possible crimes against humanity in the Democratic People's of Republic of Korea, including the International Criminal Court.

37. Since their appointment by the High Commissioner in September 2016, the independent experts have visited Geneva, The Hague, Seoul, Tokyo and New York to conduct research and consult with various stakeholders, including scholars in international criminal justice and persons who left the Democratic People's Republic of Korea. Part of the missions to Geneva and Seoul was conducted jointly with the Special Rapporteur.

38. In its recommendations, presented in annex to this report (A/HRC/34/66/Add.1), the Group of Independent Experts stresses that the approach to pursuing accountability for human rights violations in the DPRK must be multi-pronged and comprehensive, and in line with international norms and standards. The group calls on the international community to continue efforts to seek accountability

for crimes against humanity through the International Criminal Court. It highlights that investigation and prosecution of serious crimes are indispensable, as are measures to ensure the right of victims and societies to know the truth about violations, the right of victims to reparations, and guarantees of non-recurrence of violations. The Group of Independent Experts specifically suggests the need to explore the possible establishment of an ad-hoc international tribunal. Additionally, it recommends undertaking coordinated and comprehensive consultations with victims and other relevant stakeholders, starting with those living outside the Democratic People's Republic of Korea. Such consultations are aimed at seeking their views on accountability for human rights violations in the country, while taking measures to ensure the safety of participants and minimize the risk of re-traumatization. The group further calls on the Human Rights Council to strengthen the Office of the United Nations High Commissioner for Human Rights through additional resources, to increase its contribution towards accountability for human rights violations in the DPRK, including by concurrently strengthening current monitoring and documentation efforts, in line with international norms and standards; and supporting an assessment by international criminal justice experts of available information and evidence to identify gaps and develop possible investigation and prosecution strategies as well as blueprints of suitable international or internationally-assisted court models. The Special Rapporteur agrees with this approach and invites all relevant stakeholders, including Member States of the United Nations, the Human Rights Council, the United Nations, and civil society organizations, to act on the recommendations contained in the report of the group of independent experts and ensure that serious human rights violations, especially those amounting to crimes against humanity, do not go unpunished.

C. The OHCHR field-based structure in Seoul

39. The field-based structure of the Office of the United Nations High Commissioner for Human Rights in Seoul (hereinafter OHCHR(Seoul)) continued its activities since its inauguration in on 23 June 2015, including providing support to the mandate of the Special Rapporteur. OHCHR(Seoul) is mandated(a) to monitor and document the human rights situation in the Democratic People's Republic of Korea with a view to ensuring accountability, (b) to enhance engagement and capacity-building with the Governments of all States concerned, civil society and other stakeholders, and (c) to maintain visibility of the situation of human rights in the Democratic People's Republic of Korea, including through sustained communications, advocacy and outreach initiatives (A/HRC/RES/25/25, para. 10).

40. OHCHR(Seoul) has conducted a wide range of activities, including collecting information through interviews with persons who left the Democratic People's Republic of Korea and other sources. The office has also undertaken advocacy activities through various platforms, such as social and mainstream media, public events and publications. A thematic report by OHCHR on the involuntary separation of Korean families provides concrete recommendations to States concerned, civil society organizations and the international community to remedy the situation using a victim- and rights-centred approach.⁴⁵ The lack of access to the Democratic People's Republic of Korea continues to be a key challenge in the comprehensive

⁴⁵ OHCHR, *Torn Apart: The Human Rights Dimension of the Involuntary Separation of Korean Families* (OHCHR, Geneva, 2016).
http://www.ohchr.org/Documents/Publications/Report_TORN_APART.pdf

gathering of information. In this regard, the Special Rapporteur stresses the importance of engagement by the Government of the Democratic People's Republic of Korea with the office. The Rapporteur encourages the authorities to begin exploring areas in which discussion with OHCHR(Seoul) could be initiated, such as human rights education.

D. Civil society organizations

41. During visits to Geneva (September 2016), New York (October 2016) and the Republic of Korea and Japan (November 2016), the Special Rapporteur met with a large number of civil society organizations that are dedicated to improving the human rights and humanitarian situation in the Democratic People's Republic of Korea. The Special Rapporteur was impressed by the diverse methods applied by these organizations to address the complex situation in the Democratic People's Republic of Korea. Some of these groups continue to document cases of violations and explore accountability for gross and systematic human rights violations. Other groups focus on providing humanitarian assistance, in ways that may enhance the fulfilment of economic and social rights, particularly for the most vulnerable groups. Notably, these organizations have been able to work with the authorities at the national and local levels to implement programmes that contribute to the realisation of some rights. The collaboration between national and international actors on issues concerning persons with disabilities and the joint assessments by the Government and humanitarian agencies after the August 2016 flood were cited as examples of how such work could have a positive impact.

42. The reports by the Government submitted to the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child refer to a number of institutions and organizations with different levels of association with the authorities. Nevertheless, there is reportedly no space for independent civil society organizations. As provided by the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), individuals and non-governmental organizations have an important role to play and a responsibility to promote human rights and fundamental freedoms (A/RES/53/144, article 18(2)). The Special Rapporteur stresses that providing an enabling space for independent civil society organizations in the country is indispensable for the Democratic People's Republic of Korea to fulfil its international human rights obligations.

V. Conclusions and recommendations

43. **The Special Rapporteur continues to pursue the two-track strategy with respect to the human rights situation in the Democratic People's Republic of Korea. The Rapporteur places a special focus on encouraging engagement between the authorities of the Democratic People's Republic of Korea and his mandate, as well as every other United Nations human rights mechanism. Such engagement is aimed to increase access to the country, receive more accurate and comprehensive information, and improve treaty compliance by the Government. At the same time, addressing human rights violations, particularly allegations of crimes against humanity, requires that perpetrators be held accountable in the interest of justice and to deter further human rights abuses. In this regard, possible measures for accountability elaborated by the Group of**

Independent Experts provide important guidance. These two tracks are mutually reinforcing and a dual approach is necessary to improve the human rights situation. The situation deserves the same level of attention that the continuing escalation of tensions on the Korean peninsula and in North-East Asia has received from the international community, especially from the United Nations Security Council, given the close connection between peace, security and human rights.

44. The Special Rapporteur is encouraged by the contributions made by multiple actors who are concerned with the situation of human rights in the Democratic People's Republic of Korea. He emphasizes that these initiatives should be conducted as part of a common vision for the promotion and protection of human rights in the country. The overall aim should be to build national understanding of international human rights standards and strengthen national capacity to ensure that the authorities take steps to end on-going violations, address past violations and prevent their recurrence. For this reason, it is important that state institutions in the Democratic People's Republic of Korea, in particular the Workers' Party of Korea, take ownership of the recommended policy changes while creating a space for meaningful participation in decision-making by the population.

45. The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea urges the Government of the Democratic People's Republic of Korea:

(a) To take immediate and effective steps to end gross human rights violations, including the operation of political prison camps;

(b) To continue to follow up on accepted recommendations from the Universal Periodic Review, and to cooperate with the United Nations and other relevant actors to facilitate their implementation. The Special Rapporteur believes that a common strategy on effective implementation of these recommendations should be developed with prioritization of more feasible or relevant recommendations. For example, a large number of States recommended that the Democratic People's Republic of Korea ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, join the International Labour Organization as a State party, and establish an independent human rights institution;

(c) To engage in effective cooperation with United Nations human rights mechanisms, including this mandate holder and thematic mandate holders, and facilitate country visits;

(d) To accept all offers for technical cooperation by the international community that may help to promote and protect human rights, including from the Office of the United Nations High Commissioner for Human Rights and its field-based presence in Seoul;

(e) To resume dialogue with neighbouring countries to resolve outstanding human rights issues of an urgent nature, including those relating to the situation of separated families and people allegedly abducted by the Democratic People's Republic of Korea; and

(f) To implement without delay the recommendations of the Group of Independent Experts.

46. The Special Rapporteur calls upon the Human Rights Council:

(a) To implement the recommendations of the Group of Independent Experts on accountability without delay, ensuring that perpetrators of gross violations are held responsible and supporting all victims in their quest for truth and justice;

(b) To continue to support the work of OHCHR, including its field-based structure in Seoul, ensuring that the latter can function with independence, has sufficient financial resources and enjoys full cooperation with relevant Member States; and

(c) To urge the Government of the Democratic People's Republic of Korea to constructively engage with the Special Rapporteur and invite him to undertake a visit to the country as soon as possible, without preconditions, in accordance with the terms of reference for country visits by special procedure mandate holders.

47. The Special Rapporteur calls upon Member States:

(a) To continue to engage with the Democratic People's Republic of Korea both in bilateral and in multilateral fora to ensure that measures are taken to protect and promote human rights;

(b) To facilitate monitoring efforts including by the Special Rapporteur and the OHCHR field presence in Seoul by providing information and access to victims and witnesses of human rights violations in the Democratic People's Republic of Korea;

(c) To abstain from forcibly repatriating persons who left the Democratic People's Republic of Korea, including women and children, and to protect them from human trafficking and other abuses;

(d) To implement without delay relevant recommendations of the Group of Independent Experts;

(e) To integrate the protection and promotion of human rights in all social, economic, cultural and political partnership projects with the Democratic People's Republic of Korea; and

(f) To ensure that a human rights-based approach underpins all cooperation with the Democratic People's Republic of Korea, including in the area of humanitarian assistance and that political and security considerations do not hinder humanitarian assistance.

48. The Special Rapporteur calls upon the United Nations as a whole to address the grave human rights situation in the Democratic People's Republic of Korea in a coordinated and unified manner, in accordance with the Secretary General's Human Rights Up Front initiative. The Rapporteur particularly calls upon those agencies that run humanitarian programmes inside the Democratic People's Republic of Korea to ensure that vulnerable groups, including those who are in detention facilities, prison camps and political prison camps, are able to benefit from their programmes.

49. The Special Rapporteur recognizes the key role of civil society actors in protecting human rights in the Democratic People's Republic of Korea and encourages them to continue developing a balanced, comprehensive and people-centered approach.