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**Promotion and protection of human rights: human rights situation and reports of Special Rapporteur and Representatives**

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

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Elizabeth Salmón, submitted in accordance with Assembly resolution [76/177](#).

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\* A/77/150.

\*\* The present report was submitted after the deadline so as to include the most recent information.

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

### *Summary*

The present report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea is submitted pursuant to General Assembly resolution 756/177. This is the first report of the current mandate holder to the General Assembly. She provides a brief update on the current human rights situation in the country, an overview of the achievements and challenges during the first 18 years of the mandates, and lays out the focus areas and approaches she will be undertaking to implement the mandate.

## I Introduction

1. This is the first report of the new mandate holder, Ms. Elizabeth Salmón, to the United Nations General Assembly. The new mandate holder was appointed at the 50<sup>th</sup> session of the Human Rights Council in July 2022 and assumed her functions on 1 August 2022. This report provides updates on the current situation of human rights, including in the context of the first reported outbreak of COVID-19 in the country since April 2022.<sup>1</sup> In this report, she also outlines the focus areas and approaches she will be undertaking to implement the mandate.

2. On 2 August, the Special Rapporteur wrote a letter to the Democratic People's Republic of Korea requesting a visit to the country, prior to the presentation of her first report to the General Assembly in October 2022. In the letter, the Special Rapporteur highlighted that country visits to the Democratic People's Republic of Korea will be essential to the fulfilment of her mandate provided by the Human Rights Council as it would provide her with a more comprehensive understanding of the situation of human rights in the country, and an opportunity to engage directly with Government officials on finding solutions to the human rights challenges there. She communicated in the letter that she would prefer to undertake at least two country visits per year to the Democratic People's Republic of Korea during the course of her mandate. The Special Rapporteur did not receive any response from the Government. On 18 August, the Ministry of Foreign Affairs of the Democratic People's Republic of Korea posted an English article entitled "Better Draw Lessons from Predecessors"<sup>2</sup> as a response to the first statement issued by the Special Rapporteur upon the assumption of the mandate.<sup>3</sup> In the article, the Government repeated its position that they do not recognize the Special Rapporteur's mandate.

3. The Special Rapporteur undertook an official visit to the Republic of Korea from 29 August to 3 September 2022. This was her first opportunity to meet with escapees from the Democratic People's Republic of Korea living in the Republic of Korea and listen to the first-hand accounts of their experiences inside the Democratic People's Republic of Korea. The Special Rapporteur also met with family members of victims of human rights violations in and by the Democratic People's Republic of Korea, Government officials of the Republic of Korea and civil society organizations. On 14 September, the Ministry of Foreign Affairs of the Democratic People's Republic of Korea posted another article entitled "Cooperation chanted by one devoid of discernment" criticizing the Special Rapporteur's visit to the Republic of Korea.

## II. Overview of the current situation of human rights

### COVID-19 quarantine restrictions

4. The Democratic People's Republic of Korea has remained isolated from the outside world since the country's self-imposed COVID-19 restrictions in January 2020, which have included border closures and led to the departure of all international humanitarian staff from the country. In May 2022, the Government first acknowledged an outbreak of COVID-19, which was identified at the end of April. According to Government figures, between the end of April and the end of July, 4,772, 458 persons had fever, as a potential symptom of COVID-19, 64,207 people were tested for COVID-19, and 168 persons tested positive for COVID-19. Of the total deaths, 74 were reported to have died due to fever and 1 due to COVID-19. In August, the country announced "victory" over the virus and reportedly lifted many of its COVID-19 restrictions, including the mask mandate and social distancing rules. In September, the Democratic People's Republic of Korea announced that it will be officially administering COVID-19 vaccines starting in November this year due to concerns of

<sup>1</sup> In May 2022, the Democratic People's Republic of Korea officially announced the outbreak of COVID-19 in the country since April 2022.

<sup>2</sup> <http://www.mfa.gov.kp/view/article/15621>

<sup>3</sup> <https://www.ohchr.org/sites/default/files/documents/issues/srkorea/2022-08-04/SALMON-Statement-1August2022-EN.docx>

decreasing immunity levels in the winter.<sup>4</sup> The Government had previously joined the COVID-19 Vaccine Global Access (COVAX) program. However, it has not accepted any vaccines under the COVAX facility.<sup>5</sup> In June 2022, Gavi, the vaccine alliance, reported that the Democratic People's Republic of Korea had accepted an offer of vaccines from China.<sup>6</sup>

5. There has been a lack of reliable and verifiable information coming out of the country on the extent of the pandemic and its impact on the people. This may be, in part, due to the capacity of the State to test people and provide reliable data. It is also due to the impact of new domestic measures on freedom of expression, including access to information, strict restrictions on freedom of movement and the sharp fall in the number of escapees leaving the country. The Special Rapporteur has great sympathy for the sacrifice and hardships people have had to endure during the COVID-19 health crisis and under complete isolation. Without access to the country and no reliable data coming out, it is currently impossible to verify the number of deaths caused by COVID-19, including associated deaths such as death from starvation. Although the Democratic People's Republic of Korea has announced the pandemic has been contained, some reports of cases of people with fever are still managing to get out.<sup>7</sup> In the context of limited vaccination and widespread malnutrition, it is reasonable to assume that people in the Democratic People's Republic of Korea, in particular children and the elderly, remain vulnerable to COVID-19.<sup>8</sup> The Special Rapporteur is also seriously concerned about people's access to food in the wake of COVID-19 restrictions.<sup>9</sup> Over the past three years, the price of rice and other food have increased sharply, and people have lost their access to livelihoods. The Special Rapporteur received information during her recent mission to the Republic of Korea that rice from the emergency military reserve had been released to soldiers. Reportedly, small farmers and persons with COVID-19 received emergency rations from the Government in some provinces. She is concerned, however, about people's access to healthcare given the fragile state of the health system with unreliable electricity supply, lack of equipment, and lack of access to basic medicine which has reportedly been further limited during the prolonged border shutdown.

6. The Special Rapporteur is concerned about the impact of the COVID-19 prevention and response measures on women and girls in particular. In the Democratic People's Republic of Korea, every institution, including women's associations and schools, is given a quota to fulfil, which women and children have to contribute to by providing material and labour. Many children were suffering from malnutrition and stunted growth even before the COVID-19 pandemic. Women must also be under further pressures during the COVID-19 pandemic as market activities, which many women relied on for their income, were greatly reduced due to the prolonged closure of the borders and increased restrictions on freedom of movement. With no alternative source of income, they are still required to feed their families and look after sick family members – including potentially those with COVID-19 – while also providing contributions to the State.

7. This situation further highlights the importance of reopening the country to humanitarian assistance to alleviate some of the impact of the pandemic on the general public. The Special Rapporteur highlights the importance of developing a clear road map for the

<sup>4</sup> <https://kcnawatch.app/newstream/1662693061-914494644/%EC%A1%B0%EC%84%A0%EB%AF%BC%EC%A3%BC%EC%A3%BC%EC%9D%98%EC%9D%B8%EB%AF%BC%EA%B3%B5%ED%99%94%EA%B5%AD-%EC%B5%9C%EA%B3%A0%EC%9D%B8%EB%AF%BC%ED%9A%8C%EC%9D%98-%EC%A0%9C%EF%BC%91%EF%BC%94%EA%B8%B0/>

<sup>5</sup> N. Korea Rejects COVID Vaccines, Saying Hard-hit Nations Have Greater Need | Voice of America - English (voanews.com)

<sup>6</sup> Gavi 'understands' North Korea administering COVID-19 vaccines from China | NK News

<sup>7</sup> Local Interview > Is N. Korea's "victory of COVID-19" legit? (3) As Kim Yo-jong's claim that COVID-19 was imported by defectors whips up hatred against the South (asiapress.org)

<sup>8</sup> FAO, United Nations Children's Fund, World Food Programme and WHO, Asia and the Pacific Regional Overview of Food Security and Nutrition 2020: Maternal and Child Diets at the Heart of Improving Nutrition (Bangkok, FAO, 2021).

<sup>9</sup> See President Kim Jong Un's policy speech at the Seventh Session of the 14th Supreme People's Assembly on 8 September 2022, <https://kcnawatch.app/newstream/1662798021-472078843/respected-comrade-kim-jong-un-makes-policy-speech-at-seventh-session-of-the-14th-spa-of-dprk/>

return of United Nations staff, including humanitarian actors, with the freedom of movement needed to carry out their life-saving work. The impact of isolation on international cooperation, including the return of UN staff and embassy staff, will be an area of particular focus for the future reports of the Special Rapporteur.

8. The Special Rapporteur is concerned about a reported decree issued by the Ministry of Public Security in May 2022 following the State's acknowledgement of the country's first COVID-19 outbreak, warning government officials, authorities and others that they face harsh punishment including death penalty for stealing or tampering with medical supplies.<sup>10</sup> Under the decree, the family members of the violators would also be punished. Such an arbitrary and disproportionate measure in violation of international human rights standards also demonstrates the dire situation regarding availability of medical supplies and medicines in the country. These reports are consistent with other reported disproportionate measures introduced since 2020 that violate human rights, including a reported shoot-to-kill policy for those attempting to cross international borders without permission, and the Law on the Elimination of Reactionary Thought and Culture, enacted in December 2020, which contains punishments including the death penalty for accessing foreign information.

### Escapees detained in a third country

9. During the first half of 2022, only 19 escapees (16 women and 3 men) from the Democratic People's Republic of Korea arrived in the Republic of Korea.<sup>11</sup> The Special Rapporteur has received information that as many as 2,000 escapees from the Democratic People's Republic of Korea are currently detained in China as "illegal migrants" and are at risk of being repatriated to their country once the border reopens. She has also received information about two individuals from the Democratic People's Republic of Korea who had requested asylum in a third country, who are being held at the Democratic People's Republic of Korea's consulate in Vladivostok, the Russian Federation. In August 2021, the former Special Rapporteur Tomás Ojea Quintana - together with the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - sent a communication to China about 1,117 escapees detained in several detention facilities in China, expressing their concern over the risk of forcible repatriation faced by these individuals in violation of the principle of *non-refoulement* and urging the authorities to take all necessary interim measures to halt repatriations while clarifying the situation.<sup>12</sup> In response to the communication, the Government of China replied on 21 September 2021 stating that the "[i]ndividuals in question are persons from the Democratic People's Republic of Korea who have entered China for economic reasons using illegal channels. The illegal immigrants from the Democratic People's Republic of Korea are illegal immigrants, not refugees... The principle of *non-refoulement*' does not apply to persons from the Democratic People's Republic of Korea who enter China illegally."<sup>13</sup>

10. The Special Rapporteur would like to remind that the principle of *non-refoulement* under international human rights law guarantees that no one will be returned to a country where they are likely to face torture, regardless of whether they qualify for refugee status or not. Both China and the Russian Federation are State parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as to the Convention relating to the Status of Refugees and its Protocol, which explicitly prohibit *refoulement*. OHCHR continues to document serious human rights violations upon repatriation to the Democratic People's Republic of Korea, including torture and other forms of cruel, inhuman or degrading treatment. There is an urgent need to find a solution to ensure protection in accordance with international standards and to provide safe passage to escapees before the border reopens.

<sup>10</sup> FULL TEXT: North Korea's death penalty decree for illegal COVID medicine sales | NK PRO (nknews.org)

<sup>11</sup> The Republic of Korea, Ministry of Unification, "Policy on North Korean defectors". Available at [https://www.unikorea.go.kr/eng\\_unikorea/relation/statistics/defectors/](https://www.unikorea.go.kr/eng_unikorea/relation/statistics/defectors/)

<sup>12</sup> DownloadPublicCommunicationFile (ohchr.org)

<sup>13</sup> HRC/NONE/2021/SP/76 (ohchr.org)

## **Abductions and enforced disappearances from outside of the Democratic People's Republic of Korea, and prisoners of war not returned**

11. Enforced disappearance, including in the form of abductions, is a serious crime that continues until the fate and whereabouts of the disappeared person has been clarified. As of 31 May 2022, 385 cases transmitted by the Working Group on Enforced or Involuntary Disappearances to the Democratic People's Republic of Korea were outstanding. During the Korean War from 1950 to 1953, between 80,000 and 100,000 people from the Republic of Korea were estimated to have been kidnapped and relocated to the Democratic People's Republic of Korea. Since the end of the Korean War, at least 50,000 prisoners of war from the armed forces of the Republic of Korea have not been repatriated and approximately 500 survivors are still being held in the Democratic People's Republic of Korea. During the "Paradise on Earth" campaign, 93,340 people "returned" from Japan to the Democratic People's Republic of Korea. Hundreds of people from the Republic of Korea, Japan and other nations were also abducted and disappeared between the 1960s and the 1980s. The Government of the Republic of Korea officially recognizes 516 of its citizens as post-war abductees. Eleven people (4 crew members and 7 passengers) who were on Korean Air Lines flight YS-11 hijacked on 13 December 1969 have never been returned. According to the Government of Japan, 12 abductees from Japan remain unaccounted for. Some other foreign nationals have also been abducted, including one from Thailand and one from Romania. The Special Rapporteur calls on the Democratic People's Republic of Korea to provide information on the investigations undertaken and the fate and whereabouts of disappeared persons.

12. During the visit to the Republic of Korea, the Special Rapporteur listened to the sufferings of separated family members. In early September, prior to the *Chuseok* (thanksgiving) holiday, the Government of the Republic of Korea offered a meeting to discuss the resumption of reunions of families separated since the Korean War. The Special Rapporteur was encouraged by the Republic of Korea's willingness to engage with the Democratic People's Republic of Korea on this issue. Securing the reunion of separated families should be the priority for both governments, regardless of their political relationship. The Special Rapporteur urges the Democratic People's Republic of Korea to engage with the Republic of Korea on resuming reunions, online or offline, at the very least on humanitarian grounds. The pain and trauma of separation from family is also experienced by escapees from the Democratic People's Republic of Korea now living in the Republic of Korea. This is the second cycle of separated families. The Special Rapporteur received information that some escapees' families who were left behind in the Democratic People's Republic of Korea have been relocated from border areas to further inland and have been put under harsher surveillance.

### **III. Overview of the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea**

13. It has been nearly ten years since the Commission of Inquiry on human rights in the Democratic People's Republic of Korea released its report. The Special Rapporteur sees this as an opportune time to take stock of the achievements and shortcomings of the United Nations and Member States in their engagement on human rights with the Democratic People's Republic of Korea. This will enable reflection on what has and has not worked, and inform the development of a strategy on how to move the human rights agenda forward. The Special Rapporteur takes on this mandate as part of a history of engagement by the United Nations Human Rights system on the human rights situation in the Democratic People's Republic of Korea and she looks forward to collaboration with other human rights mechanisms and thematic mandate holders. Throughout, the work of this mandate has been supported by the work of civil society organizations through advocacy, engagement, awareness-raising and the submission of information and analysis to the United Nations, including in the form of shadow reports to treaty bodies, stakeholder submissions to the

Universal Periodic Review, and allegations of violations that form the basis of confidential communications issued by Special Procedures.

14. The Special Rapporteur recalls that in 2003 the European Union first sponsored a resolution, at the United Nations Commission on Human Rights, on the human rights situation in the Democratic People's Republic of Korea and that, in 2004, the resolution included the appointment of a Special Rapporteur. This mandate has been maintained ever since, signifying the longstanding human rights concerns of the international community and the ongoing urgency of the human rights situation. The subsequent mandate holders - Mr. Vitit Muntarbhorn (Thailand), Mr. Marzuki Darusman (Indonesia) and Mr. Tomás Ojea Quintana (Argentina) – have played key roles in monitoring and documenting the human rights situation and providing the international community with an objective assessment. This has included analyses of the structural elements behind the widespread human rights violations occurring, such as the State's institutional and legal architecture. The mandate holders have made insightful recommendations to the Democratic People's Republic of Korea on steps needed to improve the human rights situation. These reports have also raised awareness of the obligations of other Member States in relation to human rights in the Democratic People's Republic of Korea, including referral of the situation to the International Criminal Court and steps to mitigate the adverse impact of sanctions on the economic, social and cultural rights of the people. The mandate holders have promoted more informed public discourse, including by placing the human rights situation in the Democratic People's Republic of Korea in its broader historical and geopolitical context.

15. The first mandate holder, Vitit Muntarbhorn, made clear that no attempt to understand the human rights situation in the Democratic People's Republic of Korea can be separated from the challenges of: 1) Democratization in the country; 2) Peace and human security in the region; 3) Demilitarization and disarmament in the region; and 4) Sustainable development and the need for broad-based popular participation, with attention to the protection of vulnerable groups.<sup>14</sup> Furthermore, he highlighted that “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”.<sup>15</sup> The human rights issues highlighted included “the need for 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”.

16. In 2013 former Special Rapporteur, Marzuki Darusman, took stock of the work done on the human rights situation in the Democratic People's Republic of Korea by the United Nations from 2004 to 2012.<sup>16</sup> He concluded that a Commission of Inquiry was necessary to better respond to scale and gravity of human rights violations.<sup>17</sup> The same year, the Human Rights Council established a Commission of Inquiry on human rights in the Democratic People's Republic of Korea. The subsequent report of the detailed findings of the Commission of Inquiry brought a new level of understanding of the situation and the profound reforms that were required. The Commission of Inquiry's report, presented to the Human Rights Council in 2014, concluded that “systematic, widespread and gross human rights violations have been, and are being, committed by the Democratic People's Republic of Korea, its institutions and officials. In many instances, the violations of human rights found by the Commission constitute crimes against humanity”, which “are not mere excesses of the state. They are essential components of a political system...”. Furthermore, it stated that “[t]he fact that the Democratic People's Republic of Korea, as a State Member of the United Nations, has for decades pursued policies involving crimes that shock the conscience of humanity raises questions about the inadequacy of the response of the international community.”<sup>18</sup>

<sup>14</sup> E/CN.4/2005/34, 10 January 2005, paras. 21-26.

<sup>15</sup> *Ibid.*, para. 26

<sup>16</sup> A/HRC/22/57

<sup>17</sup> *Ibid.*, paras. 13, 15, 21

<sup>18</sup> A/HRC/25/CRP.1, paras 1211 & 1217.

17. Following the release of the Commission of Inquiry report, the Special Rapporteur advocated for the Human Rights Council to appoint independent experts to explore appropriate approaches to seek accountability for human rights violations in the Democratic People's Republic of Korea, in particular where such violations amount to crimes against humanity.<sup>19</sup> Throughout his mandate, he advocated “the pursuance of a two-track strategy” to both “ensure the accountability of those responsible for human rights violations, including through referral by the Security Council of the situation in the country to the International Criminal Court, while continuously seeking engagement with the authorities to bring relief to the people of the Democratic People's Republic of Korea.”<sup>20</sup>

18. The previous Special Rapporteur, Tomás Ojea Quintana, highlighted the lack of any meaningful progress in addressing the longstanding human rights violations taking place in the Democratic People's Republic of Korea throughout his six years on the mandate. In his final report, he concluded that during this time he had “witnessed a further deterioration of the human rights situation” in the country, primarily due to the failure of the Government to instigate any meaningful reform. He noted some possible progress, including unverified information on improvements in the treatment of detainees, such as reported guidelines issued to prohibit the beating of prisoners, a complaints system to deal with the misconduct of guards and other officials, and some improvements in conditions following prison visits by state prosecutors.<sup>21</sup> In other areas, he cited data from 2017 that indicated some improvements in primary health care, including vaccination coverage for more than 97 per cent of children, and improvements in maternal health care, including antenatal and postnatal care.<sup>22</sup> However, he also highlighted numerous witness accounts that described access to treatment and medicine as increasingly dependent on the ability of the patient to pay money or make other in-kind payments, as well as the most recent information that nine million people had only limited access to quality health services.<sup>23</sup>

19. The previous Special Rapporteur, throughout his mandate, expressed serious concerns about the coercive system of governance that deprives the fundamental freedoms of people. This included arbitrary arrest and detention, the operation of large political prison camps, torture and ill-treatment, restrictions on freedom of expression, religion and thought, access to information, freedom of movement and the practice of forced labour. Furthermore, he highlighted that chronic food insecurity remained, with the numbers of food insecure people consistently above 10 million, representing over 41 per cent of the country's population. The Special Rapporteur had made persistent calls to the international community to maintain its attention to the gross human rights violations, including those that may constitute crimes against humanity, and the centrality of victims in ensuring accountability for human rights violations. He reiterated the called for referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court or the establishment of an ad hoc tribunal or other comparable mechanism. He urged the Democratic People's Republic of Korea to cease ongoing crimes against humanity, including through the system of *kwanliso* (political prison camps), and to undertake a process of meaningful reform.<sup>24</sup> He also highlighted the imperative of the international community as well as individual Member States to “pursue leverage on human rights in a consistent, principled and effective manner”, which included mainstreaming human rights into peace and security diplomacy and addressing any detrimental impact of multilateral and unilateral sanctions on human rights. Although the Government of the Democratic People's Republic of Korea has consistently refused to engage with any of the country rapporteurs, Mr. Ojea Quintana continuously promoted the need for constructive engagement with the authorities. This included, in his final report to the Human Rights Council in March 2022, a list of ideas to be taken up by the international community with the aim of engaging the State in finding solutions to the human rights challenges the country faces. He also continued to advocate, including through

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<sup>19</sup> The resultant report of the group of independent experts on accountability was presented to the Human Rights Council in 2017, A/HRC/34/66/Add.1

<sup>20</sup> A/70/362, para. 78.

<sup>21</sup> A/HRC/49/74, para. 35.

<sup>22</sup> Ibid., para. 22.

<sup>23</sup> Ibid.

<sup>24</sup> A/HRC/49/74, para. 18.

confidential communications and private meetings,<sup>25</sup> for countries bordering the Democratic People's Republic of Korea, such as China, not to forcibly repatriate persons to the Democratic People's Republic of Korea.

#### **IV. Engagement on human rights by other parts of the United Nations**

20. The Special Rapporteur wishes to take stock of the engagement of other parts of the United Nations on the human rights situation in the country. Pursuant to the recommendations of the Commission of Inquiry, the Human Rights Council in resolution 25/25 requested the Office of the High Commissioner for Human Rights to establish a field-based structure on the Democratic People's Republic of Korea. The aim was to 1) Strengthen monitoring and documentation of the situation of human rights in the Democratic People's Republic of Korea; 2) Move forward efforts to secure accountability for victims of human rights violations; 3) Maintain the visibility of the situation of human rights in the international community; and 4) Enhance engagement with relevant actors, including to develop capacities to engage effectively with the UN human rights system.

21. In follow up to the 2016 report of the group of independent experts that explored practical steps to secure truth and justice for victims, the Human Rights Council adopted resolution 34/24 to further strengthen the work of the field-based structure based in Seoul, on accountability. This supported the monitoring, documentation and analysis work of the Office, and the establishment of a central information and evidence repository. Each March, the United Nations High Commissioner for Human Rights provides updates to the Human Rights Council on the activities of the Office in promoting accountability for human rights violations in the Democratic People's Republic of Korea. Since its establishment in June 2015, the field-based structure on the Democratic People's Republic of Korea in Seoul has published five thematic reports and papers: "Torn Apart: The Human Rights Dimension of the Involuntary Separation of Korean Families", "The price is rights: The violation of the right to an adequate standard of living in the Democratic People's Republic of Korea", "I Still Feel The Pain": Human rights violations against women detained in the Democratic People's Republic of Korea", "Laying the human rights foundations for peace", and "Implications of the Right to Development for the Democratic People's Republic of Korea and other United Nations Member States". These reports have helped improve understanding and maintain awareness of the human rights situation in the country and provided recommendations for action to the Democratic People's Republic of Korea and the international community. The reports featured many accounts shared by victims of human rights violations during interviews with the Office, providing an important platform for North Korean voices.

22. In addition to resolutions from the Human Rights Council, the seriousness of the human rights situation has, since 2005, led the General Assembly to also adopt annual country specific resolutions on the Democratic People's Republic of Korea. These resolutions include a request to the UN Secretary-General to report annually to the General Assembly on the human rights situation. These reports provide another valuable source of information and analysis on the situation of human rights in the Democratic People's Republic of Korea, along with relevant recommendations to the Democratic People's Republic of Korea and the international community on the steps needed to address the situation.<sup>26</sup> Other United Nations' human rights mechanisms have also played a significant role in engaging on human rights concerns with the Democratic People's Republic of Korea. While consistently denouncing the politicization of human rights, the Democratic People's Republic of Korea has a long history of engaging with the United Nations human rights system, and accepting a range of obligations and recommendations. The role of the United

<sup>25</sup> Now publically available together with state replies: see OHCHR's Communication Search webpage.

<sup>26</sup> A/77/247

Nations human rights system has been acknowledged in the UN Strategic Framework<sup>27</sup>, co-signed by both the Government and the UN's Country Team.

23. The Democratic People's Republic of Korea has ratified five core international human rights instruments: the International Covenant on Civil and Political Rights (ICCPR) (1981), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1981), the Convention on the Rights of the Child (CRC) (1990) as well as its Optional Protocol on the sale of children, child prostitution and child pornography (2014), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (2001), and the Convention on the Rights of Persons with Disabilities (CRPD) (2016). Subsequent reviews by the Human Rights Committee (latest in 2001),<sup>28</sup> the Committee on Economic, Social and Cultural Rights (latest in 2003),<sup>29</sup> the Committee on the Rights of the Child (latest in 2017),<sup>30</sup> and the Committee on the Elimination of All Forms of Discrimination Against Women (latest in 2017),<sup>31</sup> with the participation of the state officials and the submission of eleven country reports, has produced substantive analysis on the implementation of these treaties, and provided targeted recommendations on how to improve implementation.<sup>32</sup> There have also been reports of some modest reforms to domestic legislation as a consequence of this engagement with treaty bodies.<sup>33</sup>

24. The Democratic People's Republic of Korea has participated in three cycles of the Human Rights Council's universal periodic review process, providing an opportunity for members of the Human Rights Council to engage directly with the state delegation attending the review in Geneva. Following its latest review in May 2019, the Government supported 132 recommendations to improve the situation of human rights in the country out of the 262 it received.<sup>34</sup> Members of the State delegation who attended the review also participated in a human rights workshop organized by OHCHR and the Department of Political and Peacebuilding Affairs held in Geneva. With regards to the Special Procedures of the UN Human Rights Council, the Government has not cooperated with any of the three previous country mandate holders on the human rights situation in the Democratic People's Republic of Korea. However, from 3-8 May 2017, the Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas Aguilar, conducted the first ever country visit by a special procedures thematic mandate holder. Her subsequent country report contained important analysis and recommendations to the Government,<sup>35</sup> which were referred to in the State's subsequent report to the Committee on the Rights of Persons with Disabilities.<sup>36</sup> The Special Rapporteur will advocate for further country visits by other thematic mandate holders.

25. From 2015 to 2017 the Security Council held briefings on the situation of human rights in the Democratic People's Republic of Korea, which were open and public, enabling the participation of the United Nations High Commissioner for Human Rights and which highlighted linkages between peace, security and human rights.<sup>37</sup> In the 2017 briefing, the Assistant Secretary-General for Political Affairs stated that, "The international community has a collective responsibility to protect the population of the DPRK if the State does not protect its own citizens," and that it must also consider the wider implications of the reported grave human rights violations for the wider region's stability. However, since 2017 the required 9 procedural votes for public briefings have not been secured. Nevertheless,

<sup>27</sup> The UN Strategic Framework 2017 - 2021 | United Nations in DPR Korea

<sup>28</sup> Two state party reports submitted: in 1983 CCPR/C/22/Add.3, and in 1999 CCPR/C/PRK/2000/2.

<sup>29</sup> Two state party reports submitted: in 1984 E/1984/6/Add.7, and in 2002 E/1990/6/Add.35.

<sup>30</sup> Four state party reports submitted: in 1996 CRC/C/3/Add.41, in 2003 CRC/C/65/Add.24, in 2007 CRC/C/PRK/4, and in 2016 CRC/C/PRK/5.

<sup>31</sup> Two state party reports submitted: in 2002 CEDAW/C/PRK/1, and in 2016 CEDAW/C/PRK/2-4.

<sup>32</sup> The state party report has also been submitted to the Committee on the Rights of Persons with Disabilities in 2018 (CRPD/C/PRK/1); the date for the review of this report has not yet been scheduled by the Committee.

<sup>33</sup> David Hawk, "Human Rights in the Democratic People's Republic of Korea", *The Role of the United Nations*, pp. 44-7.

<sup>34</sup> The matrix of accepted recommendations can be found here.

<sup>35</sup> A/HRC/37/56/Add.1.

<sup>36</sup> CRPD/C/PRK/1, paras. 28 and 203.

<sup>37</sup> <https://press.un.org/en/2017/sc13115.doc.htm>

meetings of the Secretary Council under “Any Other Business” were held in December 2020 and 2021, meaning the meetings were held behind closed doors and no briefings were given by the United Nations High Commissioner for Human Rights. Nevertheless, statements were issued by some members following these meetings, with the 2020 statement highlighting the “serious threat posed to international peace and security by the Democratic People’s Republic of Korea’s long-standing, systematic, widespread and gross violations of human rights”.<sup>38</sup> The Special Rapporteur will advocate for the revival of the public meetings, highlighting the importance of the Security Council engaging with human rights concerns in carrying out its mandate under the United Nations Charter. The Security Council’s 1718 Sanctions Committee has also instituted a process of regular briefings on the humanitarian impact of sanctions, and improved procedures for exemptions for humanitarian activities.<sup>39</sup>

26. Regarding engagement by the United Nations led by the Secretary-General, the Special Rapporteur highlights the importance of utilizing the good offices of the United Nations, particularly in the context of the increased military tensions on the Peninsula and in the wider North-East Asia region.<sup>40</sup> The leadership of the Secretary-General, involving the principals of the United Nations, and the implementation of up to date and coordinated plans of action are needed to systematically respond to the peace, security and human rights situation in the Democratic People’s Republic of Korea.

## V. Taking the mandate forward

27. Reviewing the history of human rights engagement by the United Nations and Member States on the Democratic People’s Republic of Korea, the Special Rapporteur is clear that the underlying human rights issues in the country remain unaddressed. While there have been some periods of increased engagement by the State with the United Nations human rights system, this has not resulted in any meaningful, transparent or sustained progress in implementing the recommendations made by the treaty bodies, universal periodic review or special procedures. The Special Rapporteur will take lessons from the previous mandate holders’ work and plans to implement this mandate with the determination to: 1) Explore new ways of seeking to engage the State that supports the implementation of recommendations made by the United Nation’s human rights bodies; 2) Given the absence of any accountability for victims of human rights violations in the Democratic People’s Republic of Korea, including crimes against humanity, promote and support new and effective ways of securing truth and justice for victims;<sup>41</sup> and 3) Further develop an understanding of the current situation of human rights in the country, including in the context of prolonged isolation due to COVID-19 and with a focus on certain groups and situations, and provide recommendations to effectively address the situation. In acknowledging the reality that human rights violations in the country are ongoing and likely worsening of the situation, the Special Rapporteur is determined to explore fresh perspectives and look into different ways to help bring about improvements.

### Mission of the mandate

28. The mission of this mandate is to investigate and report on the human rights situation in the Democratic People’s Republic of Korea and its compliance with obligations under international human rights law and, where applicable, international humanitarian law and international criminal law. In carrying out this mandate, the Special Rapporteur will seek credible and reliable information, including through visits to relevant countries, with the

<sup>38</sup> Statement by Germany, Belgium, the Dominican Republic, Estonia, France, the UK, the USA and Japan on the Human Rights Situation in DPRK, December 11 2020). 2021 statement. See also 2021 statement issued.

<sup>39</sup> See Panel of Experts latest report S/2022/132, pp. 80-84,

<sup>40</sup> These mechanisms include those introduced under the “Human Rights Up Front” initiative of the previous Secretary-General Ban Ki Moon and under the current Secretary-General’s “Prevention Platform”.

<sup>41</sup> For the growth in the avenue of Universal Jurisdiction for justice for victims of gross human rights violations, see TRIAL International’s Universal Jurisdiction Annual Review 2022

intention of exploring all opportunities to visit the Democratic People's Republic of Korea and to meet government officials either in the country or in third countries. She will also regularly engage with all relevant actors and stakeholders, including Governments, non-governmental organizations, victims and their families, and any other parties with information on these matters.

29. To pre-empt accusations of politicization in pursuing this mission, the Special Rapporteur highlights that the legal basis of the mandate of the Special Rapporteur is found in the Charter of the United Nations itself and in the specific provisions of the Human Rights Council that regulate the activity of independent experts (Resolutions 5/1 and 5/2). The mandate was created in 2004 under a resolution adopted by the former UN Human Rights Commission (resolution 2004/13) and has since been renewed annually. The Commission requested the Special Rapporteur to "establish direct contact with the Government and with the people of the Democratic People's Republic of Korea" (para. 6), and Human Rights Council Resolution 49/22 is the basis for the current renewal. The Democratic People's Republic of Korea is a member of the United Nations, and in the spirit of the United Nations Charter, is expected to engage and cooperate with the United Nations human rights mechanisms, including the Special Rapporteur. In fulfilling its human rights obligations, the State, as the primary duty bearer, is required to engage with and provide adequate and credible information to the United Nations human rights system. Direct engagement also helps design interventions and strategies for improving the human rights situation. While there may have been limited improvements in human rights in some areas, non-cooperation with the previous mandate holders by the Government has made it harder to accurately establish what the situation of human rights is in the country and to help secure the necessary reforms to effectively address the situation. However, in the last eighteen years of work of the previous mandate holders seeking to engage with the Government of the Democratic People's Republic of Korea, it has become clear that, notwithstanding evident limitations due to lack of cooperation, certain achievements have been made. For instance, reliable and critical information has been gathered and presented to the international community, the mandate contributed to the work of the Commission of Inquiry, and the overall work of the mandate has introduced human rights discussions to the imposition of sanctions on the Democratic People's Republic of Korea and the peace process in the Korean Peninsula.

### **Vision of the mandate**

30. In her forthcoming reports, the Special Rapporteur will examine a set of specific topics concerning the human rights situation in the Democratic People's Republic of Korea. The aim is to provide a deeper analysis of certain areas and facilitate and amplify the voices of victims of human rights violations. This approach will also help analyze specific human rights issues and integrate a human rights-based approach into the peace and security agenda.

### **Scope of the mandate: Three layers of work**

31. The Special Rapporteur views the scope of her work as spanning three layers. The first one aims to urge the Democratic People's Republic of Korea to change the practices that violate human rights. The Special Rapporteur recognizes the opening of channels of dialogue with the Government as a fundamental requirement and will promote engagement based on thematic issues or topics related to international commitments and obligations on human rights of the State. The objectives of this work include 1) to multiply communication channels with the Government of the Democratic People's Republic of Korea and neighbouring countries; and 2) to advocate to other Member States to engage with the Democratic People's Republic of Korea in encouraging it to fulfil its international obligations in order to prevent the deepening of the human rights and humanitarian crisis in the country.

32. Second, the accountability agenda will be prioritized. The Special Rapporteur will continue to monitor and document the existence of serious human rights violations including those that may amount to crimes against humanity. She will continue to advocate for the need to end impunity and achieve accountability including through criminal prosecutions. To achieve this objective, the Special Rapporteur will engage with relevant stakeholders

including governments and advocate for exploring and using all existing avenues such as universal jurisdiction, domestic courts and others to prosecute those who have allegedly committed serious human rights violations. The Special Rapporteur will continue to advocate with the Security Council to refer the situation to the International Criminal Court and for the General Assembly to establish an ad-hoc tribunal or other comparable mechanism. The Special Rapporteur will give equal importance to the need for exploring options for non-judicial accountability avenues and how the international community and relevant member states can support efforts such as truth, reparations and memorialization processes. The objectives of this work include 1) To multiply spaces for dialogue with victims and organizations working on the human rights and humanitarian situation in the Democratic People's Republic of Korea, and strengthen the documentation of patterns of human rights violations, many of which fall under the category of crimes against humanity; and 2) To shed light on the situation of groups or sectors of the population particularly vulnerable to human rights violations, such as women and girls or detained persons.

33. The third layer of work involves raising awareness of the grave human rights violations committed by and ongoing in the Democratic People's Republic of Korea. For this task, the previous work of the former Special Rapporteurs will be taken as the starting point, but the emphasis will be placed on a more detailed analysis of the human rights situation of specific groups. This will be done to improve understanding of the current situation of the rights of these groups and to explore ways to better protect and promote their human rights. The specific groups will be identified according to two criteria. First, according to the Democratic People's Republic of Korea's international obligations, which are duly interpreted by both the treaty body mechanisms, for instance by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, and different Charter-based mechanisms of the Human Rights Council (Universal Periodic Review, Special Rapporteurs, Working Group on Disappearances). Second, groups whose situation needs urgent attention, based on the information gathered by the previous mandate holders and civil society organizations. Under this criterion, the Special Rapporteur has identified women and girls, persons with disabilities, detainees, people subjected to forced labour, and overseas workers as particular subjects of concern. The objectives of this layer of work include: 1) to strengthen the visibility of the issues handled by the Special Rapporteur through collaborative work with different actors who work on similar issues; and 2) to promote coordination, information sharing and joint efforts amongst agencies, mandates, and human rights mechanisms of the United Nations and civil society organizations, academia, and government entities that work on human rights issues in the Democratic People's Republic of Korea.

### **Pursuing the mandate through the two-track approach**

34. The Special Rapporteur endorses the two-track approach to addressing the human rights situation in the Democratic People's Republic of Korea. She will advocate for mechanisms of accountability, including possible criminal prosecutions, to address crimes under international criminal law. However, she emphasises that this approach alone is insufficient. The Special Rapporteur's approach will therefore also prioritize the need for an active policy of expanding spaces for dialogue and cooperation between the Government of the Democratic People's Republic of Korea and the international community, seeking to generate trust and secure commitment to progress in improving the situation of human rights. The Special Rapporteur acknowledges that while there may be some perceived tensions in pursuing these two tracks in parallel, she will help to raise awareness of the complementarity of these two tracks. She is clear at the start of her mandate that giving up on either of these tracks is the equivalent of abandoning the population from international support.

35. The Special Rapporteur will try to create new synergies by working with other stakeholders in an integrated manner, assisted by focusing on more specific situations and groups. For instance, a deeper focus on issues such as the right to health, forced labour, corruption, and human trafficking will help to engage a new range of stakeholders, with opportunities for new collaborations. This will involve working with other human rights mechanisms, including expanding on previous efforts to extend collaboration with thematic

special procedures mandate holders, relevant treaty body mechanisms, and different thematic sections of the Office of the High Commissioner for Human Rights. It will involve engaging with a wider range of civil society organisations, as well as a broader range of relevant agencies and programmes within the United Nations.

36. Additionally, this approach will contribute to developing a deeper understanding of the human rights situation faced by specific groups and the steps needed to address their particular needs, including through humanitarian support and long-term development initiatives. The Special Rapporteur is planning to dedicate her next report to the Human Rights Council in March 2023 to the situation of women and girls. United Nations agencies, human rights mechanisms, civil society organizations, and academia have over the years undertaken ground-breaking research as well as supported progressive programmes on the rights of women and girls in the Democratic People's Republic of Korea. The Special Rapporteur will seek opportunities to consolidate these initiatives and explore ways to promote and protect the rights of women and girls in the Democratic People's Republic of Korea, giving visibility to both the Democratic People's Republic of Korea's achievements on gender equality and women's rights but also the specific gaps in the human rights situation women and girls face in the country, including in the context of COVID-19 quarantine measures. This includes human rights concerns when women and girls attempt to leave the country, including threats of human trafficking, treatment and conditions in detention facilities, sexual and gender-based violence, political representation and access to gender specific healthcare.

37. In 2024, to mark the tenth anniversary of the report of the Commission of Inquiry on the human rights situation in the Democratic People's Republic of Korea, the Special Rapporteur will review the implementation of the recommendations made by the Commission of Inquiry and address grave human rights violations that could amount to crimes against humanity including within the detention system.

### **Victim-centered approach**

38. The Special Rapporteur will prioritize a victim-centered approach in all her work. This entails using her mandate to provide voice and visibility to the victims and to mobilize relevant actors to respond to their concerns and aspirations. It includes exploring ways of acknowledging and preserving the truth of what has happened, and exploring the full range of accountability options that can bring some satisfaction to the victims. The Special Rapporteur will also continue to emphasize that any diplomatic engagement with the Democratic People's Republic of Korea aimed towards addressing political and security situations should always ultimately be aimed at addressing the human rights violations experienced by the people in the Democratic People's Republic of Korea as well as abductees. It is the people of the Democratic People's Republic of Korea and abductees who need to benefit from international solidarity. The respect and protection of human rights is a shared goal and a shared responsibility for all of us.

## **VI. Conclusion**

39. The Special Rapporteur will take the work of previous Special Rapporteurs, the Commission of Inquiry, the group of independent experts on accountability and others, as her starting point. In order to build upon the work of predecessors and seek new avenues for engagement on improving the human rights situation in the country, the Special Rapporteur will take a victim-centered approach and continue with the two-track approach that seeks both engagement and accountability. To this end she will follow three layers of work: encouraging changes in practices that violate human rights in the Democratic People's Republic of Korea; monitor and document the existence of serious human rights violations with a view to supporting both judicial and non-judicial accountability processes; and increasing awareness of the human rights violations and possibilities to improve the situation for specific groups, beginning with women and girls in her report to the 52<sup>nd</sup> session of the Human Rights Council.

## VII. Recommendations

40. The Special Rapporteur recommends that the Democratic People's Republic of Korea:

(a) Gradually open its borders and urgently allow for the return of United Nations agencies, other international organizations and the diplomatic community, and for economic activity and the movement of people;

(b) Initiate a process of dialogue with the Special Rapporteur and special procedure thematic mandate holders and invite them to carry out official country visits;

(c) Review its COVID-19 quarantine measures in line with international law and ensure that they are necessary, proportionate, non-discriminatory, time-bound and transparent;

(d) Recognize the fundamental right to leave and enter the country, both in law and in practice, and ensure that those who are repatriated are not subjected to punishment upon repatriation;

(e) Take concrete steps to implement the recommendations that the Government accepted during the universal periodic reviews and a series of recommendations made by the treaty bodies and the special procedures;

(f) Engage with the Republic of Korea to resume reunions of separated families, and initiate reunions for the second cycle of separated families, including through virtual platforms;

41. The Special Rapporteur recommends that the Republic of Korea:

(a) Develop concrete plans to integrate human rights into negotiations with the Democratic People's Republic of Korea;

(b) Continue to engage with the Democratic People's Republic of Korea to resume reunions of separated families including the second cycle of separated families, taking into due consideration the risk of possible reprisals against escapees' families in the Democratic People's Republic of Korea;

(c) Engage with civil society organizations, with a view to enabling victims, families, escapees and civil society organizations to continue their efforts on fighting impunity and supporting peacebuilding and access to information;

42. The Special Rapporteur recommends that Member States, in particular China and the Russian Federation, apply the principle of *non-refoulement* to individuals from the Democratic People's Republic of Korea, who are at risk of serious human rights violations upon repatriation.

43. The Special Rapporteur recommends that Member States:

(a) Use any available opportunity for dialogue with the Democratic People's Republic of Korea to create an environment conducive to advancing a peace agreement and seek progress with respect to the situation of human rights in the country;

(b) Continue to provide support to the efforts of civil society actors, in particular those who promote women's rights, to address the situation of human rights in the Democratic People's Republic of Korea.

44. The Special Rapporteur makes the following recommendations to the United Nations Secretariat:

(a) The new High Commissioner for Human Rights should prioritise the human rights situation in the Democratic People's Republic of Korea and build

**momentum to engage with the Democratic People's Republic of Korea with new and creative approaches;**

**(b) The United Nations Secretary-General and the Office of the High Commissioner for Human Rights should continue to explore and support technical cooperation activities on human rights with the Democratic People's Republic of Korea;**

**(c) The Secretary-General should revitalize the United Nations engagement efforts with the Democratic People's Republic of Korea, building on the 2017 visit by the Under-Secretary-General for Political Affairs.**

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