

(CHECK AGAINST DELIVERY)

Address of the UN Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, Professor Vitit Muntarbhorn, to the UN Human Rights Council 2010

The mandate of the Special Rapporteur was established in 2004 to report on the situation of human rights in the Democratic People's Republic of Korea (DPRK). Since the maximum term of a Special Rapporteur is six years – and this Rapporteur's term is now in its sixth year, this report is the last to be submitted to the UN Human Rights Council. I thank warmly all governments, members of civil society, international organizations and other concerned entities which have facilitated and supported my work. This final report partly takes stock of the progression of the work in the past six years. It also provides an update of the most recent situation covering the last half of 2009 until the very beginning of 2010. The structure of the report is thus as follows: RETROSPECT, ASPECTS and PROSPECTS.

Retrospect: The Work of the Special Rapporteur

Throughout the six years, in my endeavour to be fair, independent and objective, I have written all my reports myself (and typed them also), and the work is done pro bono. I have based my findings on a variety of sources of information – some governmental, some intergovernmental, some non-governmental. These are supplemented by country visits, particularly to neighbouring countries affected by the human rights situation in the country in question, so as to assess the impact on these countries. Importantly, I have had access to scores of refugees and asylum-seekers, as well as other sources, to learn directly from them about the conditions in the country of origin and the reasons why they left their homesteads. I have been briefed consistently by UN agencies with a field presence in the country. Regrettably, throughout the mandate, the country concerned has declined to cooperate with me.

Ultimately, the work of a Special Rapporteur matters most as a voice for those who do not have a voice, in exposing the truth and in the face of grave human rights violations.

Aspects: The situation in the DPRK

From witnessing the human rights situation in the country for the past six years, one finding is glaring: the abuses against the general population, for which the authorities should be responsible, are both egregious and endemic.

This is not to deny that there have been some constructive developments throughout the years in regard to the country's development and engagement with the international community. As has been recognized consistently by me, the country is a party to four key human rights treaties (on civil and political rights, economic, social and cultural rights, women's rights and child rights). At the end of 2009, the country sent representatives to participate in the Universal Periodic Review (UPR) of its human rights record in Geneva and expressed its willingness to cooperate with this new UN procedure. In the 2009 reform of the national Constitution, the words "human rights" were inserted into the text.

However, the general scenario is bleak for a variety of reasons. The non-democratic nature of the power base has created a pervasive 'State of Fear' for the mass base who are not part of the elite, with inordinate constraints imposed on the rights and freedoms of the people. The national resources are distorted in favour of militarization and the ruling elite. This is most evident in regard to the expenditure on the nuclearization process, a development castigated by the international community through various UN resolutions and sanctions. On the home front, the mention of human rights in the Constitution is illusory, as the Constitution also now entrenches a "military first" policy, when the preferred orientation should be a "people first" policy – of which the text and the factual reality are oblivious. The litany of anomalies and abuses interrelates with these aspects.

A) Food and Livelihood

The original relationship between the authorities and the general population from the inception of the regime, half a century ago, was based upon control of the population through a dependency system, whereby the people were given food rations by the State, exemplified by the Public Distribution System (PDS).

However, the system collapsed in the 1990s, especially with huge food shortages in the face of natural disasters coupled with mismanagement on the part of the authorities. The regime then started to accept international aid, in the form of food aid, and between 2000 and 2004 it cautiously experimented with a market system whereby people were allowed to trade and earn their own keep.

The World Food Programme (WFP) has been a major conduit for multilateral food aid to this country, while there has also been periodically bilateral aid from neighbouring and other countries. The situation concerning food shortages in 2009/2010 remains very serious. Although there was a slightly better harvest on some fronts in 2008 due to more favourable weather conditions, the harvests in 2009 were less satisfactory due to drought in some parts and shortage of fertilizers. In 2008, the WFP initiated an emergency relief programme targeted to cover 6.2 million people, mainly children, pregnant and lactating women and the elderly. However, due to a shortfall of aid – influenced most probably by the world community's disapproval of the country's nuclealization process – in 2009, the organization was only able to help less than two million people.

Logically, it would seem that if the authorities are not able to satisfy the basic needs of the people, the people should be able to participate in activities which can help generate income so as to enable them to produce or buy their own food as well sustain their livelihood. Yet, despite the development of a market system on this front between 2000-4, 2005 started to see a clamp down on such system and the re-imposition of State control over the population as well as reversion to the dysfunctional PDS .

2009 witnessed other draconian measures with negative impact on the general population seeking to make ends meet. The authorities started to prohibit small plot farming and closed markets where people had previously traded their wares. Farmers were also reported to be suffering from the military pilfering or extorting a share of the farm produce. At the end of the year, the authorities imposed currency revaluation – redenominating the won: 1 (new) won is equivalent to 100 old won, lobbing off two zeroes automatically on all financial holdings and savings, much to the distress of the population. This was a push to curb the

market system, to compel those holding on to the old currency to exchange for the new, and to control the circulation of money in the process. There are also measures to punish those who try to dispose of the old cash clandestinely. There is now huge inflation, particularly affecting the price of food, with widespread suffering as a consequence of the misconceived currency revaluation. It is reported that some markets are being reopened as a palliative, but food shortages and the deprivations of the people are pervasive.

Throughout the past six years, I have emphasised that while food aid is important, another important consideration is food security, at times under the rubric of disaster preparedness/mitigation/management, and this is much linked with sustainable agriculture, environmental conservation, and people's participation in generating and benefiting from the food.

B) Other basic necessities and related development

With regard to health care and education, there has been a general decline of the infrastructure behind the health and education systems. Hospitals are short of medicines and electricity. Schools are short of textbooks and electricity. Despite the universal access to basic education claimed by the authorities, the realities at school are often stark for the children. The end of 2009 revealed the worrying arrival of HINI flu compounded by the shortage of medicines.

On another front, the results of a national census carried out under the auspices of the UN Population Fund (UNFPA) in 2008 were available at the beginning of 2010. It is now known that the population numbers just over 24 million people, with more women than men. The census provides demographic statistics which will enable the authorities to ensure that national development planning is more consonant with current realities. Subject to further analysis, it remains to be seen to what extent the military were covered substantively and comprehensively by the census. At the end of 2009, the UN Children's Fund (UNICEF) completed its multi-cluster survey which will provide information on women and children in such areas as nutrition and shelter; the survey will appear shortly.

C) Personal Security and Freedoms

now more difficult to leave the country of origin and to access neighbouring areas for asylum, the exodus of nationals from the country in question has declined (at least momentarily) on several fronts. More severe sanctions are now being implemented against those trying to leave without an exit visa and or those who are forced to return from abroad. Collective punishment is also used against their families as a deterrent measure.

Whatever the characterization of persons who seek asylum in other countries, I underline the need for humane treatment. They should not be kept in detention and they should have access to the basics of life, such as access to education, health care and protection from violence. The tendency of some countries to classify them as "illegal immigrants" should be modulated by a more flexible approach to treat them as humanitarian cases, without negative labeling, and access to international protection and assistance should be ensured. I note another area deserving more analysis in future: DPRK migrant workers who work in other countries.

E) Impunity and Responsibility

There is the systemic issue of human rights violations caused by the power base in the name of the State. Various sources have suggested a number of ways of making the powers-that-be accountable internationally, given that the national setting is unable or unwilling to press for such accountability. They include the possibility of the UN Security Council taking up the issue directly and of establishing a Commission of Inquiry on crimes against humanity.

An intriguing question is to what extent the International Criminal Court can be accessed for this purpose, on the basis of individual criminal responsibility, and this is interrelated with the fact that the country in question is not a party to the Rome Statute of the International Criminal Court. There may be some openings as follows. Article 13 of the Statute enables the Court to exercise its jurisdiction with regard to 4 key crimes (genocide, war crimes, crimes against humanity, and crime of aggression) in three situations: where a State Party refers a case to the Court's Prosecutor; where a case is referred to the Prosecutor by the Security Council; or where the Prosecutor has initiated an investigation in respect of such

Given the oppressive nature of the power base, it is not difficult to surmise the range of abuses which happen on a daily basis and which threaten the personal security of individuals and families, compounded by other infringements of their rights and freedoms.

While the authorities claimed at the UPR that human rights are respected in the country, different sources indicate a conglomeration of huge camps for political prisoners and their families – often held there in perpetuity. Death awaits easily the inmates through hunger and slave labour, through brutality and atrocity. Even the country's statement to the UPR admitted openly that public executions take place in the country.

The justice system is subservient to the State, and judges, prosecutors, lawyers and juries are part of the State machinery, far removed from the international Rule of Law, thus lacking in independence of action and safeguards for the accused. Capital punishment ensues from a broad range of crimes against the State as listed and extended periodically by the Criminal Code. At times, there are public trials to teach the general population a lesson.

Participation in government, freedom of expression, access to information, freedom of association, freedom of religion are all constrained by the nature of the State, despite their nominal recognition in the Constitution and related laws. A number of malpractices, such as kidnapping and abduction, have affected the lives of foreigners and have at times taken place outside the country, through the placement of agents to perpetrate crimes abroad on behalf of the authorities.

D) Asylum and Migration

The issue of asylum and migration has probably been the most sensitive issue under this mandate, because it has a cross-border dimension and touches upon the practices of other countries as well as those of the DPRK. The country in question has always had a strict policy on the movements of its people both internally and externally. During some periods, there has been a slight relaxation of the control imposed on migrants. However, 2009-10 suggests the contrary: sanctions on the border(s) have become more stringent. Precisely because it is

crime in accordance with Article 15 of the Statute. Will the Security Council act on this matter to help overcome the longstanding pain and suffering of the people of the DPRK?

My report also examines the specific concerns of various groups, including women and children, deserving special attention from the international community and striking at the heart of the world's conscience.

Prospects: Conclusions and Recommendations

The human rights situation in this country can be described as *sui generis* ("in its own category"), given the multiple particularities and anomalies that abound. Simply put, there are very many instances of human rights violations which are both harrowing and horrific.

While the prospects seem dim at one level, a beacon of light can be offered at both the national and international levels if certain measures are concretised and well implemented. In conclusion, it is thus incumbent on both the national and international environments to propel constructive and tangible actions based on international standards to address the human situation in the country. The DPRK should take the following measures: immediately (short-term):

- Ensure effective provision of and access to food and other basic necessities for those in need of assistance; rectify the distorted pattern of food distribution; cooperate constructively with UN agencies and other humanitarian actors on the issue; and enable people to undertake economic activities to satisfy their basic needs and supplement their livelihood without State interference;
- Adopt a moratorium on capital punishment and terminate public executions and abuses against the security of the person, and other violations of rights and freedoms;
- End the punishment of those who seek asylum abroad and who are sent back to the country, and instruct officials clearly to avoid detention and inhumane treatment of such persons;
- Cooperate effectively to resolve the issue of foreigners abducted by the country and to address well the consequences of the Korean war 1950-53 ;

- Respond constructively to the recommendations of the Special Rapporteur and open the door to country visits by this mandate.

The longer-term measures needed in relation to the DPRK include actions: to modernize the national system by instituting reforms to ensure greater people's participation in the process and compliance with international human rights standards; to institute equitable development policies based upon "people first" policy and re-allocate national budgets to this end; to guarantee personal security and freedoms by dismantling the pervasive surveillance and informant/intelligence system, and abiding by the international Rule of Law; and to request technical assistance from the Office of the UN High Commissioner for Human Rights accordingly.

The international community is also invited to take into account the various recommendations from my report for effective follow-up. Indeed, there is the special challenge of the role of the UN system to impel constructive changes and accountability: to ensure that the people of the DPRK are protected from the violence and violations – latent, patent and blatant - which have been so widespread and systematic for so long.

Thank you.