

CHECK AGAINST DELIVERY

**Address of Mr. Vitit Muntarbhorn,
Special Rapporteur on the situation of human rights
in the Democratic People's Republic of Korea
29 March 2005**

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

**Address of Vitit Muntarbhorn, Special Rapporteur (of the United Nations
Commission on Human Rights) on the Situation of Human Rights in the
Democratic People's Republic of Korea, to the United Nations Commission on
Human Rights, March 2005**

In April 2004 the United Nations (UN) Commission on Human Rights in Geneva passed Resolution 2004/13 on the Situation of Human Rights in the Democratic People's Republic of Korea (DPRK). It expressed deep concern over the human rights situation in the country and requested the Chairman of the Commission to appoint a Special Rapporteur on the situation of human rights in the DPRK. In July 2004, I was invited by the Chairperson of the UN Human Rights Commission to take up the post of Special Rapporteur, and I accepted accordingly.

I wish to thank all governments, inter-governmental organizations, non-governmental organizations, other entities, and staff of the OHCHR for their kind assistance which is greatly appreciated. The message that I am conveying to all concerned is to urge the DPRK to see this mandate as a window of opportunity to engage with the world, particularly with the UN to improve the human rights situation in the country. The process adopted by me is based upon a constructive step-by-step approach working progressively to promote and protect human rights in the country in a fair, balanced and independent manner.

While I have not yet been invited by the DPRK to visit the country, in early 2005 I visited Japan and Mongolia to witness some of the consequences of the human rights situation in the DPRK, and these are referred to in this address. Details of the two visits are provided in separate reports.

Constructive Elements:

First, the DPRK is a party to four key human rights treaties – the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.

Second, intermittently, the DPRK has allowed human rights actors from outside to enter the country to assess the human rights situation there. On the part of the UN, in 2004 members of the Committee on the Rights of the Child were invited to visit the country.

Third, in the DPRK, a variety of UN agencies are working on a number of issues, and their presence is appreciated internationally and nationally.

Fourth, on some fronts, there has been a warming of relations between the DPRK and a range of countries both in the vicinity and beyond. The DPRK has also shown a readiness to deal with some bilateral issues linked with its neighbours, while other issues remain to be resolved.

Fifth, like many countries, the country already has some legal and operational infrastructures which can help to promote and protect human rights. For example, the most recent national Constitution, adopted in 1972 and amended in 1992 and 1998, and other national laws provide some guarantees for human rights. However, there are key challenges concerning implementation.

In recent years, the authorities have been experimenting with an incipient market system as part of the survival strategy, while reducing State provision to its citizens through the public distribution system. In reality, the economic plight of various groups, such as the urban population, is still serious, since they face continued difficulties in accessing the "market" system and in responding to rising, inflation-prone prices, including in regard to food and agricultural products.

While the economic and social situation has been improving on some fronts, any attempt to address the human rights situation in the DPRK should be acutely aware of the traumatic developments facing the DPRK from the mid-1990s, at times linked with internal factors, at times linked with external factors, while not forgetting the historical antecedents and consequences, and unresolved issues facing the Korean peninsula.

Specific Challenges:

i) the right to food and the right to life.

In the mid-1990s there were catastrophic food shortages brought about by floods and drought, compounded by power imbalances and inadequate response from the power structure. These factors have had a huge impact on the country's development and have endangered many lives and livelihood. In my consultations with key humanitarian agencies, the general sentiment is that the situation concerning the food crisis has improved, but the country still needs humanitarian (emergency) assistance, especially as there is still a shortfall concerning food.

Several members of humanitarian agencies met by me indicated that this period should still be seen as the phase of humanitarian assistance and there is a continuing need for food aid to help the population. Some 6.4 million members of the population, particularly women, children and the elderly benefit from the aid. There are now reports that the DPRK is no longer willing to continue with the existing Consolidated Appeals Process through which UN agencies have, to date, collaborated to raise support for aid to the country and that the DPRK authorities prefer to move towards longer-term development aid with fewer guarantees for monitoring. What is needed is not reduction of monitoring of the implementation process, but rather, more effective monitoring aimed at ensuring maximum transparency. Currently food aid does not yet reach all who need help, and access to all should be promoted. The presence of humanitarian organizations in the country should also be continued.

There are debates concerning how much of the food aid provided from abroad actually reaches the target population and to what extent it is diverted for other (clandestine) uses. One source interviewed by me claimed that there are no major diversions for other uses. Other sources disagree with that viewpoint. According to information received, one UN agency providing food aid to the country suspended

supplies to one province in the DPRK towards the end of 2004, as the authorities had refused to allow it access to monitor the distribution of rations. Therefore, what is clear is the need to improve and maximise transparency and accountability. At present, while some checks to monitor the distribution of food aid are in place, unannounced (random) checks by foreign humanitarian organizations are still not permitted by the national authorities in the DPRK.

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

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

A very disconcerting practice is documented by various sources – collective punishment based upon “guilt by association”. This means that if a person is punished for a political or ideological crime, members of his or her family are also punished.

On another front, while the Constitution and other laws advocate the principle of non-discrimination, the practice is defective. There are a number of reports that in the past, the population was divided into various groups ranging from those favoured by the authorities, to those seen as borderline or “wavering”, and at bottom of the ladder, those considered as enemies of the authorities. While this practice may have been abolished in law, the practice seems to persist and is implied by the testimonies of those who leave the country in search of refuge elsewhere.

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

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

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

Several malpractices have also had impact on other nationals. For instance, the DPRK authorities have already admitted to abducting a number of Japanese nationals, and some cases have been resolved through bilateral negotiations. However, other cases await clarification and resolution. In regard to one case where the DPRK claimed that the abductee had died in the DPRK, the “remains” that were returned to Japan were subjected to DNA tests and found to belong to a number of other people, causing further consternation towards the end of 2004.

There is an urgent need for the DPRK to address expeditiously and effectively the issue of abductions committed by the country. According to information received, a number of persons from various countries have been abducted by DPRK agents for political purposes.

Given the number of reports already received on transgressions in the DPRK affecting the right to security of the person, humane treatment and non-discrimination, there are serious grounds for concern. While I am not in a position to verify all these reports and allegations, initial impressions suggest that the mass of reports and related allegations cannot be seen as merely coincidental, as they seem to raise a pattern of malpractices calling for immediate redress.

iii) the right to freedom of movement and protection of persons linked with displacement.

Generally, the DPRK authorities impose strict controls over the movement of people. To move from one area of the country to another, the prospective migrant needs to obtain a traveller’s certificate from the authorities, a highly cumbersome procedure. To travel across national boundaries into other countries, the person needs to obtain an exit visa or the equivalent. There are punishments for failing to obey the national law on this front. These constraints are inconsistent with the right to freedom of movement guaranteed by human rights

DPRK nationals have been on the move crossing the boundaries into other countries for two main reasons. First, political constraints and persecution act as a push factor pressuring a number of persons to seek asylum in other countries. The 2002-2004 period witnessed many DPRK nationals seeking asylum in a number of ways such as entering embassies and schools in other countries, and this also led to a clamp-down such as arrests and push-back or “refoulement” to their country of origin. In general, where they have left the country of origin for political reasons, the group of those seeking asylum mentioned fits into the traditional international law definition of “refugee”, namely persons fleeing their country of origin for well-founded fear of persecution.

Second, the food crisis of the mid-1990s has forced many people to search for livelihoods elsewhere, at times crossing the border into other countries. As persons in this category may also be punished upon return to the DPRK for having left without an exit visa, they may also be classified as refugees “sur place”, namely those who did not leave the country of origin for fear of persecution but who may fear persecution upon return to the country of origin.

A key international principle for refugee protection is non-refoulement, namely refugees must not be pushed back to areas of danger. Currently, there are lapses in compliance with this principle in some countries which are receiving those seeking asylum from the DPRK, and the principle needs to be complied with effectively by all countries.

On a related front, there is still a debate concerning whether those seeking asylum are “illegal immigrants” or refugees. The former classification implies that they can be pushed back to their country of origin, while the latter classification is backed by the principle of non-refoulement which prohibits such push-back. I submit that a key test is to see whether they are protected by the country of origin. If they are not protected by the country of origin as above, this should open the door to international protection and legitimise their classification as refugees. Even if some countries are not ready to classify them openly as refugees, these persons should at least be treated as persons in need of international protection, and basic international law principles, such as non-refoulement, should be upheld for their protection.

There is also a need to ensure that those seeking asylum have access to the Office of the UN High Commissioner for Refugees (UNHCR) and to procedures to determine their status; if they fall into the category of refugees, they should be allowed to stay in the asylum country at least temporarily and should be treated humanely with due regard to the principle of non-refoulement.

According to information received, recent trends indicate a disquieting picture: there is an increasing proportion of women among the new arrivals in many countries. This is a major concern because human smuggling and trafficking often prey on women who seek asylum or livelihoods in other countries. While national law in the DPRK, like other countries, already outlaws human smuggling and trafficking, there is a need for more effective measures to counter the crime of smuggling and trafficking both in the country of origin and in the destination country.

On another front, the plight of countries receiving asylum-seekers should not be overlooked especially where there are mass influxes. This is contingent upon international solidarity and responsibility-sharing to help shoulder the load of those countries. This is an area where, if the first asylum country is not able or willing to grant refuge to the asylum-seekers, other countries should offer a helping hand through such modalities as resettlement places. This is already happening to some extent in regard to asylum-seekers from the DPRK and it needs to be well supported.

iv) the right to the highest attainable standard of health and the right to education

Before the mid-1990s, as already mentioned, the economic and social situation was generally constructive, particularly with regard to access to social services such as health care and education. However, despite official sources claiming such developments as universal access to education and no unemployment, it has always been difficult to verify the real scope of the coverage. Moreover, there were/are always practical challenges, linked with the fact that access to services were/are easier for those favoured by the authorities, while those in the margins, such as the

politically/economically/socially deprived and those in prison, suffer from a degree of exclusion due to lack of or inadequate access to the social security system.

The situation was aggravated by the crisis of the mid-1990s, having enormous impact on the provision of basic social services, related budgets and access by the general population. From the mid-1990s, there was a rise in various diseases, such as pneumonia, compounded by malnutrition and mortality, while access to schools was severely impeded by lack of electricity and other facilities.

In qualitative terms, the situation in the country has always been ambivalent. Health services tend to be more accessible to those close to the authorities, while qualitatively, the educational system is heavily controlled by the State. There is a high degree of indoctrination whereby the children are trained from a young age to be subservient to the State and its ideology, in addition to pervasive instrumentalization of the young population by the authorities to legitimize and perpetuate the political modus vivendi. This is compounded by lack of access to a variety of sources of information and participatory methodology to nurture critical, analytical thinking so as to provide space for a plurality of choices and voices.

Today, the economic situation is improving on some fronts, but the qualitative challenges posed above remain relevant.

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

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

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

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

vi) the rights of specific persons/groups: women and children.

The DPRK witnessed various achievements concerning various aspects of women's rights before the food shortage crisis which began in 1995. Those achievements in the economic and social fields should not obscure various difficulties permeating the system since its inception.

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

A recent food/nutrition survey carried out by UN agencies indicates a welcome decline in malnutrition among children, but the rate of malnutrition is high.

Directions/Recommendations:

In retrospect, it is ostensible that while there have been some constructive developments in the DPRK in recent decades, there are a variety of discrepancies and transgressions – several of an egregious nature - in the implementation of human rights in the country, calling for immediate action to prevent abuses and to provide redress.

The DPRK should:

- abide by international human rights standards, including the four human rights treaties to which it is a party, follow-up the recommendations from the monitoring committees set up by these treaties, and accede to and implement other relevant treaties;
- reform laws and practices which are inconsistent with those standards;
- uphold human rights together with democracy, peace, sustainable development and demilitarization, with greater space for civil society participation at all levels of decision-making and implementation;
- respect the Rule of Law, particularly the promotion of an independent and transparent judiciary, safeguards for the accused/detainees, access to justice and civil society participation, and checks-and-balances against abuse of power, e.g. through the establishment of a national human rights commission or equivalent, genuine non-governmental organizations, and active and independent media;

- reform the administration of justice, particularly to improve the prison system, abolish capital and corporal punishment, and forced labour, and end preventive or administrative detention as well as the detention of political prisoners;
- address the root causes of displacement, prevent persecution and victimisation of those who are displaced, including when they return to the country of origin, treat those who are displaced, smuggled and/or trafficked humanely, and foster social re-integration of returnees;
- provide redress through expeditious and effective processes in the case of transgressions, such as in relation to the abductions of foreign nationals;
- capacity-build law enforcers and the public to protect human rights through pro-active programmes of human rights education with gender-and-child sensibility and critical analysis;
- issue a clear directive, perhaps in the form of a national human rights action plan prepared with broad public participation, to law enforcers and other power bases to respect human rights;
- ensure that humanitarian assistance, including food aid, reaches the target groups, with unimpeded access and transparent monitoring and accountability;
- invite the Special Rapporteur and other mechanisms, as appropriate, to visit the DPRK to take stock of the human rights situation and recommend reforms;
- seek technical assistance from the Office of the UN High Commissioner for Human Rights and other agencies, as appropriate, to support activities to promote and protect human rights.

Other members of the international community should:

- influence the DPRK constructively to follow the directions noted above;
- uphold the protection of refugees and other persons displaced from the DPRK, including the principle of non-refoulement and the grant of at least temporary refuge/protection, and end bilateral and other arrangements which jeopardize the lives of those who seek asylum; promote orderly and safe channels of migration with the country of origin to reduce clandestine channels and promote inter-country cooperation to counter human smuggling and trafficking, while treating the victims humanely;
- provide space for long-term solutions to help refugees, including local settlement in the first asylum country, resettlement in third countries, and safe and voluntary repatriation with adequate follow-up, and strengthen international solidarity in sharing the responsibility to care for refugees and migrants;
- ensure that aid and assistance reach vulnerable groups with transparent monitoring and accountability, supported by unimpeded access by humanitarian organizations.

Country Visits:

JAPAN

In 2005 I visited Japan to examine the consequences of the human rights situation in the DPRK in relation to Japan, particularly the reported abductions of Japanese nationals by the DPRK. My visit to Japan took place between 24 February and 4 March 2005. I wish to thank very warmly the Government and people of Japan for the hospitality and for the frank and open dialogue throughout the visit to the country. I wish to convey my sincerest thanks to the UN University for coordinating the visit and to various non-governmental organizations, inter-governmental organizations, embassies, and concerned individuals for their cooperation. I was particularly pleased to meet the families of those affected by the abductions and convey my deepest thanks and heartfelt sympathies to them in regard to their pain and suffering due to the abductions.

A number of Japanese nationals were abducted by agents of the DPRK in past decades. In 2002 at a summit between Japan and the DPRK, the latter admitted that it had been involved in a number of abductions and apologized accordingly. Several of these cases have also been brought to the attention of the UN Working Group on Enforced or Involuntary Disappearances, which is still considering them.

Various uncertainties remain and they need to be dealt with satisfactorily on the basis of constructive dialogue and related follow-up. Currently, Japan claims that fifteen individuals were abducted by the DPRK. Five of these individuals have now returned to Japan. Of the remaining ten individuals listed, the DPRK claims that only eight individuals were taken into the DPRK, while the other two never entered the DPRK. The DPRK also claims that the eight individuals mentioned have died, and that it has returned the remains of two of those individuals to Japan. However, the authenticity of those remains has been contested by Japan, and the circumstances concerning the alleged deaths of the eight individuals mentioned, and concerning the two individuals of whom the DPRK denies knowledge, remain ambivalent and equivocal.

I wish to express my deep concern over the issue and convey five key messages as a HUMANITARIAN CALL:

1. Responsibility:

- **call upon the DPRK to respond effectively and expeditiously to Japan's claim that there are a number of Japanese nationals abducted by the DPRK who are still alive in the DPRK and that they should be returned to Japan immediately and in safety;**

2. Transparency:

- **call upon the DPRK to ensure reliable and objective verification of the DPRK's claim concerning the alleged deaths of various Japanese nationals abducted by the DPRK, clarify related ambiguities and discrepancies, and ascertain whether other Japanese nationals have been abducted by the DPRK.**

3. Family unity:

- **Call upon the DPRK to respect and guarantee family unity/reunification, particularly for those who have suffered from the abductions.**

4. Accountability:

- **Call upon the DPRK to rectify the discrepancies and enable the victims of abductions and their families to access justice and seek redress effectively and expeditiously from those responsible for the abductions, including bringing to justice those responsible for the acts.**

5. Sustainability:

- **Call upon the DPRK to resume and sustain dialogue and actions with Japan to solve peacefully the problem of abductions of Japanese nationals by the DPRK , to ensure satisfactory resolution of the issue , and to prevent abductions from happening again.**

These messages should be seen in the light of the call for international solidarity to support the two countries in their bilateral dialogue/relations to solve the problem constructively, reflecting the need to promote and protect human rights comprehensively on the basis of international law and the international human rights framework.

MONGOLIA

I visited Mongolia between 4 and 11 March 2005. I wish to express my warmest thanks to the Government and people of Mongolia for the hospitality and the frank and open dialogue throughout the stay. I was very pleased to meet a variety of inter-governmental organisations, non-governmental organizations, embassies and other entities during the visit and thank them sincerely for their cooperation. I was profoundly moved by a meeting with a number of those seeking refuge from the DPRK and endeavour to reflect their concerns in this study from the angle of human rights. In particular, I wish to convey my gratitude to them for key insights and to the UN Development Programme and the Office of the UN High Commissioner for Refugees (UNHCR) for coordinating the trip.

The main purpose of this visit was to examine the consequences of the human rights situation in the DPRK, particularly the displacement of people across borders and its relationship with the refugee phenomenon. Since 1999 Mongolia has been witnessing an influx of persons seeking refuge - who originated in the DPRK. On average, annually several hundred persons manage to cross the border into Mongolia on its eastern frontier, at times in groups and at times as individuals who seek refuge. Recent flows suggest the arrival of more young women seeking refuge, at times with children. The influx into Mongolia appears to be "organized" in that the persons seeking refuge have been assisted by various entities working clandestinely prior to the entry of these persons into Mongolia.

Once they gain access to Mongolian territory, there are interviewed by border personnel and other concerned authorities before being taken to the capital city for more in depth interviews and medical assistance. The current position of the Mongolian authorities is to provide temporary shelter to these people and to treat them as humanitarian cases. The policy abides by the international principle of non-refoulement, which prohibits the sending back of refugees (or deportation) to their country of origin where there is a threat of persecution. In reality, these persons are in transit, as they later depart for another country for long-term settlement. Official sources indicate that pending their exit, those seeking refuge in Mongolia are cared for in Ulaanbaator, and there are no plans on the part of the Mongolian Government to set up a refugee camp to house them. The UNHCR is present in the country.

The position of the Mongolian authorities should be commended and supported for its humanitarian stance which bodes well for the country's commitment to democracy and human rights. It proffers a "good practice" in times of political precariousness in the North-east Asian region, interfacing with the aspirations of peace, democracy, sustainable development, human rights and demilitarization/denuclearization. The country also has various mechanisms, such as the National Human Rights Commission of Mongolia, which help to provide checks and balances to promote and protect human rights. Yet, it should not be forgotten that there are various economic pressures at home, since Mongolia is still a developing country with limited resources and poverty.

For the future, key directions for Mongolia include the following:

- **Sustain its humanitarian policy and practice in sheltering those who seek refuge in the country ;**
- **Protect and assist refugees, bearing in mind various vulnerable groups such as women and children and the need to cooperate closely with the UNHCR;**
- **Continue to abide by international human rights law and international law concerning refugees, ensure effective implementation measures, and build capacity among law enforcers, including by means of training on human rights and refugee law (particularly "non-refoulement") for border officials, and raise awareness among the public to nurture sympathy and understanding for those who seek refuge;**
- **In the case where persons are trafficked or smuggled, treat them as victims, ensure non-penalization of these persons, and use victim-sensitive procedures;**
- **Accede to the 1951 Convention relating to the Status of Refugees and its Protocol, and adjust the country's laws, policies and mechanisms accordingly, with key support from and in cooperation with the UNHCR and other UN agencies;**
- **Utilize independent mechanisms, such as the National Human Rights Commission of Mongolia, to help monitor the situation, and support non-governmental organizations and civil society to help those who seek refuge in the country, in addition to building a network between key actors and computerizing the data on refugees and other non-nationals.**

The international community should complement the above with action to:

- **Support Mongolia in regard to the country's humanitarian stance, including on the provision of relevant resources and capacity-building;**
- **Protect and assist refugees, particularly by upholding "non-refoulement", and responsibility-share with temporary asylum countries by assuring a variety of humane options for refugees, including resettlement in other countries;**
- **Respect the grant of asylum and assert that it should not be seen as an unfriendly act;**
- **Call for measures in the country of origin to address the root causes of outflows of its people and to respect human rights comprehensively.**

Vitit Muntarbhorn. March 2005.