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

In the present report, the Special Rapporteur reflects on the latest developments in relation to the situation in the Democratic People's Republic of Korea in the past year. While initially the authorities of the Democratic People's Republic of Korea made a number of welcome gestures towards increased cooperation with the United Nation human rights system and bilateral partners, these openings have not been sustained, not borne fruits.

The main focus of the Special Rapporteur's report is the development of a multi-track strategy aimed at addressing the issue of international abductions, enforced disappearances and related matters, as recommended by the commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea. It seeks to maintain the momentum on, and visibility of, the issue in the international arena, and thereby sustaining continuous and targeted pressure on the authorities of the Democratic People's Republic of Korea to resolve such issue to the satisfaction of victims, their families and the international community. The support of all relevant stakeholders in the implementation of this strategy will be paramount.

* Late submission.

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I. Introduction

1. The present report is submitted by the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea to the Human Rights Council pursuant to Council resolution 25/25.

2. Retrospectively, 2014 has been a landmark year for the international community's collective engagement on human rights in the Democratic People's Republic of Korea and its efforts to bring relief and justice to its long-suffering people. The report of the commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea, presented to the Council in March 2014, enabled the revelation of the truth as to the magnitude and gravity of the human rights violations committed by the Democratic People's Republic of Korea for several decades.

3. Sadly the situation on the ground has not changed since the release of this report. Rather than responding seriously and substantively to the findings and recommendations of the commission of inquiry, the Government of the Democratic People's Republic of Korea has spared no effort in seeking to undermine the credibility of the report. While initially the authorities of the Democratic People's Republic of Korea made a number of welcome gestures towards increased cooperation with the United Nations human rights system and bilateral partners, including meeting with the Special Rapporteur for the first time in New York and conditionally inviting him to visit the country, these openings have not been sustained, not borne fruits.

4. The main focus of this year's report is the development of a strategy aimed at addressing the issue of international abductions, enforced disappearances and related matters, as recommended by the commission of inquiry. The Special Rapporteur hopes that it will contribute to solving this painful issue. The support of all Member States and other relevant stakeholders in the implementation of this strategy will be paramount.

II. Latest major developments

5. Since the Special Rapporteur's last report to the Human Rights Council in June 2014, there have been several important and unprecedented developments pertaining to the human rights situation in the Democratic People's Republic of Korea.

A. Temporary engagement with the international community

6. In the second half of 2014, the Democratic People's Republic of Korea showed the beginnings of a welcome disposition towards engagement with the international community on human rights, most likely prompted by the findings of the commission of inquiry and the then upcoming debate at the General Assembly on the situation of human rights in the Democratic People's Republic of Korea.

7. During this period, the Government of the Democratic People's Republic of Korea, for the first time, invited the High Commissioner for Human Rights to visit the country and indicated its interest in receiving technical assistance from his Office (see section II. C.). In addition, it resumed dialogue with the European Union after several years of interruption, and extended an invitation to the Special Representative for Human Rights to visit the country. The Government also released three American nationals detained on its territory.

8. In September 2014, during the twenty-seventh session of the Human Rights Council, the Government of the Democratic People's Republic of Korea announced that it had

accepted 113 recommendations out of the 268 made in the context of its second universal periodic review held in May 2014. Most of the recommendations accepted pertained to the fulfilment of economic and social rights (rights to food, water and sanitation, health and education), and the rights of vulnerable groups (women, children, and people with disabilities).¹ This was a notable improvement over the lack of collaboration extended during and after the first cycle. As with the recommendations accepted under this first cycle, the Special Rapporteur believes that these new recommendations present tangible opportunities for engagement by Member States and all parties concerned, including the United Nations agencies and civil society, to facilitate and verify their implementation. The Government, however, failed to accept any recommendations relating to the findings of the commission of inquiry, which the Special Rapporteur suggests is indicative of the “reality gap” in the Democratic People’s Republic of Korea’s engagement with the Human Rights Council.

9. On 27 October 2014, on the eve of the presentation of his annual report to the Third Committee of the General Assembly, the Special Rapporteur met, at his request, a delegation of senior officials from the Democratic People’s Republic of Korea. This was the first time that officials from the Democratic People’s Republic of Korea agreed to meet the mandate holder since the establishment of the mandate a decade ago. During this meeting, the senior officials invited the Special Rapporteur to undertake a country visit in the near future, however under the condition that two operative paragraphs contained in the draft resolution on the situation of human rights in the Democratic People’s Republic of Korea be removed. The first operative paragraph (OP7) related to the accountability for crime against humanity of the highest authorities in the country. The second operative paragraph (OP8) pertained to a possible referral of the situation in the Democratic People’s Republic of Korea by the Security Council to the International Criminal Court. The Special Rapporteur, who has repeatedly requested to be invited to visit the country, responded that he should be invited irrespective of the adoption of the resolution.

10. On 18 November 2014, the Third Committee of the General Assembly adopted a resolution on the situation of human rights in the Democratic People’s Republic of Korea with an overwhelming large majority: 111 Member States voted in favour, 19 against and 55 abstained. An amendment introduced to remove the aforementioned operative paragraphs 7 and 8 was rejected by a majority of 77 votes, with 40 votes in favour and 50 abstentions.

11. In two letters dated 24 and 28 November addressed to the Secretary-General, the Government of the Democratic People’s Republic of Korea firmly denounced the adoption of the resolution.²

12. In a letter dated 5 December 2014, 10 Member States of the Security Council requested the President of the Council that the situation in the Democratic People’s Republic of Korea be formally placed on the Council’s agenda, and in this regard further requested a meeting on this situation. They stated that they were “particularly concerned by the scale and gravity of human rights violations in the comprehensive report undertaken by the Human rights Council commission of inquiry... [stressing that] these violations threaten to have a destabilizing impact on the region and the maintenance of international peace and

¹ Report of the commission of inquiry on human rights in the Democratic People’s Republic of Korea, A/HRC/25/63.

² Annexes to the letters dated 24 and 28 November 2014 from the Permanent Representative of the Democratic People’s Republic of Korea to the United Nations addressed to the Secretary-General, A/69/616-S/2014/849 and A/69/623-S/2014/855.

security”.³ The Government of the Democratic People’s Republic of Korea strongly rejected such requests in a letter dated 15 December addressed to the President of the Security Council.⁴

13. On 18 December 2014, the General Assembly adopted resolution A/RES/69/188 on the situation of human rights in the Democratic People’s Republic of Korea in its plenary session, with an increased majority (116 Member States voted in favour, 20 against and 53 abstained).

14. On 22 December 2014, the Security Council held a meeting to discuss the situation in the Democratic People’s Republic of Korea. On behalf of the High Commissioner for Human Rights, the Assistant to the Secretary-General for Human Rights briefed the Council on the findings of the commission of inquiry, stressing that “[r]arely has such an extensive charge-sheet of international crimes been brought to the Council’s attention”.⁵ The Security Council voted to include the issue on its agenda (11 in favour; 2 against; 2 abstentions), paving the way for regular meetings on the issue. Member States refrained at this stage from making explicit calls for a referral of the situation in the Democratic People’s Republic of Korea to the International Criminal Court.

15. In the aftermath of these two key developments at the General Assembly and Security Council, the Government of the Democratic People’s Republic of Korea indicated that it would suspend dialogue with the High Commissioner and the Special Rapporteur, and that the respective invitations to visit to the country extended would no longer be fulfilled. The Special Rapporteur finds this stance deeply regrettable. He urges the Government to revisit its decision without delay, and remains ready to visit the Democratic People’s Republic of Korea as soon as possible to engage in further constructive dialogue on issues of concern.

B. Main recent developments in affected neighbouring countries

1. Republic of Korea

16. The Special Rapporteur carried a visit to the Republic of Korea from 10 to 14 November 2014. During his visit, he met with senior officials from the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Unification, the Office for National Security, and the National Intelligence Service, and members of the Human Rights Forum and of the Foreign Affairs and Unification Committee of the National Assembly. He further met with the Mayor of Seoul, and representatives of the National Human Rights Commission of Korea, non-governmental organizations and the diplomatic community.

17. The Special Rapporteur observed during his visit that the national aspirations for reunification of the two Koreas into one single nation continue to be as strong as ever. In this context, he was briefed on the establishment of the Presidential Committee for Unification Preparation in July 2014. This body is tasked with proposing ways to improve inter-Korean cooperation and prepare for peaceful unification. It recently proposed to the

³ Letter dated 5 December 2014 from the representatives of Australia, Chile, France, Jordan, Lithuania, Luxembourg, the Republic of Korea, Rwanda, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council, S/2014/872.

⁴ Letter dated 15 December 2014 from the Permanent Representative of the Democratic People’s Republic of Korea to the United Nations addressed to the President of the Security Council, S/2014/896.

⁵ Verbatim records of Security Council meeting of 22 December 2014, S/PV.7353, page 5.

Democratic People's Republic of Korea to hold inter-Korean dialogue to discuss issues of mutual interest, which the Special Rapporteur welcomes.⁶ He similarly welcomes the announcement made in January 2015 by the Supreme Leader of the Democratic People's Republic of Korea to hold talks with the President of the Republic of Korea. This is an encouraging development as dialogue between the two countries and increased contact between people of both Koreas is of the utmost importance, in line with what the commission of inquiry recommended in its report.⁷

18. During his visit, the Special Rapporteur was informed that dialogue between the Republic of Korea and the Democratic People's Republic of Korea on the reunion of separated families had been interrupted once again by the latter. He hopes that the forthcoming talks between the two countries will enable progress on this key issue to resume in the interest of those families. He welcomes the Republic of Korea's continuation of humanitarian assistance prior to the announcement of the resumption of talks.

19. While on mission in the Republic of Korea, the Special Rapporteur's attention was drawn to the issue of North Korean nationals being sent abroad by the Government of the Democratic People's Republic of Korea to work under conditions that reportedly amount to forced labour. This is a serious issue of concern which the Special Rapporteur will examine in future reports.

2. Japan

20. The Special Rapporteur visited Japan from 19 to 23 January 2015. During his visit, he met with senior officials from the Ministry of Foreign Affairs, the Ministry for the Abduction Issue, the National Police, the Cabinet Intelligence and Research Office, and the Association of Members of Parliament dealing with abductions. He also met with members of the Association of Families of Abductees, and other representatives of civil society, as well as members of the diplomatic community.

21. The Special Rapporteur was informed by the Japanese authorities that, in addition to the 12 known cases of abductees remaining to be returned to Japan, the national police agency is currently looking into 881 possible abduction cases attributable to the Government of the Democratic People's Republic of Korea over the years. These represent 21 additional possible cases compared to the previous figure given in April 2014 by the Japanese authorities.

22. The Special Rapporteur was briefed on the latest developments in relation to the bilateral dialogue started in 2014 between the Governments of Japan and the Democratic People's Republic of Korea. In May 2014, the Democratic People's Republic of Korea agreed to conduct a comprehensive, full-scale survey of all Japanese in the country, including the remains and graves of the Japanese who died in its territory before and after 1945 and the remaining Japanese, spouses, victims of abduction and the missing. It also agreed to keep Japan constantly updated of the results of the investigation. In return, Japan agreed to ease a number of sanctions it had bilaterally imposed on the Democratic People's Republic of Korea. In October 2014, a delegation of senior Japanese officials went to Pyongyang to be apprised of the latest information in relation to the survey undertaken. However, the meeting was reportedly unsatisfactory. While welcoming the dialogue between both countries, the Special Rapporteur regrets that it has been stalled for several

⁶ See press release from Ministry of Unification 'New Year Plans on Foundation Building For Unification by Presidential Committee for Unification Preparation', 30 December 2014 : <http://eng.unikorea.go.kr/content.do?cmsid=1834&cid=42033&mode=view>

⁷ Ibid., para. 91.

months on the part of the Democratic People's Republic of Korea, which is due to present a report on the outcome of its survey by July 2015. The Special Rapporteur calls on the Government of the Democratic People's Republic of Korea to genuinely abide by the terms of the bilateral agreement with Japan.

23. The Special Rapporteur looks forward to the forthcoming international symposium on the issue of abductions, organized by the Government of Japan, in May in New York. This will be similar to the event held in the margins of the 27th session of the Human Rights Council in September 2014. Such events contribute to maintaining the visibility and international understanding of the issue of international abductions committed by the Government of the Democratic People's Republic of Korea and are important elements of the strategy developed by the Special Rapporteur (see section III).

3. China

24. In the margins of the 69th session of the General Assembly, the Special Rapporteur met with Chinese officials to discuss the issue of nationals of the Democratic People's Republic of Korea who, in their attempt to flee the country, have crossed the border with China, and how to prevent instances in which they are sent back to their country of origin, in breach of the provisions of international law on non-refoulement. He remains keen to engage in a constructive dialogue with the Government of China to seek a sustainable solution to this on-going serious problem, and achieve the overall objective of bringing concrete meaningful change to the human rights situation in the Democratic People's Republic of Korea.

C. Efforts by the Office of the High Commissioner for Human Rights

1. Dialogue on technical cooperation with the Government of the Democratic People's Republic of Korea

25. In September 2014, for the first time the Government of the Democratic People's Republic of Korea expressed interest in receiving technical assistance from the Office of the High Commissioner for Human Rights. Subsequent discussions were held between the Government and the Office on the possible scope of such assistance. While the Special Rapporteur welcomes this positive development, he regrets that the Government of the Democratic People's Republic of Korea decided to suspend its dialogue with the Office on the eve of the Security Council meeting of 22 December 2014.

26. He calls on the Democratic People's Republic of Korea to resume dialogue with the Office of the High Commissioner for Human Rights on technical cooperation as soon as possible. He stresses that such dialogue should not be linked to any political considerations, but be undertaken with the view to implementing the Democratic People's Republic of Korea's international human rights obligations, including the commitments made during the universal periodic review. He hopes that the Government will change its position and grant the Office access to the country to assess the needs on the ground and explore with the Government possible avenues for substantive and meaningful cooperation.

2. Establishment of the field-based structure

27. Resolution 25/25 of the Human Rights Council provided for the establishment by the Office of the High Commissioner for Human Rights of a field-based structure tasked with strengthening monitoring and documentation of the situation of human rights in the Democratic People's Republic of Korea, enhancing engagement and capacity-building of various stakeholders and maintaining visibility of this situation. The Special Rapporteur welcomes all the efforts made by the Office and partners towards the establishment of this

structure. At the time of this report, the Office of the High Commissioner for Human Rights is finalising administrative matters on the establishment of the field-based structure with the Government of the Republic of Korea. He welcomes the progress on this initiative, and looks forward to collaborating with the field-based structure in the very near future.

28. The Special Rapporteur was pleased to hear during his meetings with officials and civil society in both the Republic of Korea and Japan about their eagerness to collaborate with the field-based structure. He calls again all stakeholders to extend their full cooperation to the structure in the accomplishment of its important work. In addition, he encourages the Human Rights Council to fully support the structure and ensure that it can fulfil its challenging mandate adequately.

III. Draft strategy on addressing international abductions, enforced disappearances and related matters

A. Background

29. The commission of inquiry on human rights in the Democratic People's Republic of Korea, following a thorough and careful investigation, found that "since 1950, the Democratic People's Republic of Korea has engaged in the systematic abduction, denial of repatriation and subsequent enforced disappearance of persons from other countries on a large scale and as a matter of State policy".⁸

30. It estimated that well over 200,000 persons, including children, have been taken from other countries to the Democratic People's Republic of Korea, and many were never heard of again. This figure includes mostly those who left for the Democratic People's Republic of Korea in the context of the Korean War.⁹ However, agents of the Democratic People's Republic of Korea abducted and disappeared hundreds of nationals from the Republic of Korea, Japan and other countries between the 1960s and 1980s.¹⁰ Since the 1990s, they are believed to have abducted several individuals from Chinese territory, including nationals of China, the Republic of Korea and a former Japanese national.¹¹ In addition to victims from China, Japan and the Republic of Korea, the commission of inquiry recorded cases of abductions and enforced disappearances of nationals of Lebanon, Malaysia, Romania, Singapore, and Thailand, and possibly others.¹²

31. The commission of inquiry found that such violations amount to crimes against humanity under international criminal law.¹³ It further found that these cases constitute ongoing violations "because the policies, institutions and patterns of impunity that lie at their heart remain in place".¹⁴ Such findings have important international justice implications, including through the possible application of the jurisdiction of the International Criminal Court.

⁸ Ibid., para. 64.

⁹ Ibid., para. 64.

¹⁰ Ibid., para. 66.

¹¹ Ibid., para. 72.

¹² The commission of inquiry considered it possible that other foreigners, especially foreign women, from France, Italy, the Netherlands and other unspecified European countries, and the Middle East, were among the abductees : see the report of the detailed findings of the commission of inquiry, A/HRC/25/CPR.1, para. 975.

¹³ Ibid., para. 76 and 79.

¹⁴ Ibid., para. 76.

32. The commission of inquiry subsequently recommended that the Special Rapporteur develop a strategy, involving all concerned United Nations human rights mechanisms, to address the issue of international abductions, enforced disappearances and related matters coherently and without delay. It also recommended that Member States afford full cooperation to ensure the implementation of such a strategy.¹⁵

33. In light of the number of countries whose nationals have been abducted and disappeared, the Special Rapporteur believes that an international approach to the issue is now required. He welcomes the various bilateral efforts undertaken by various countries so far, which should be sustained. However, he stresses that it is fundamental to also generate broad support from the international community to address the issue of international abductions, enforced disappearances and related matters more robustly and comprehensively.

34. The Special Rapporteur pays his deepest respect to the families of abductees and enforced disappearances he met in the Republic of Korea and Japan over the years. He has been greatly impressed and moved by their dignified composure and unflinching courage in their search for truth, justice and the return from their loved ones over several decades. There is a real sense of urgency to solve this matter once and for all as the victims –those who have survived– and their families are, for the most part, well advanced in the years.

35. In this context, the Special Rapporteur would like to propose the following elements of a strategy aimed at addressing the issue of international abductions and enforced disappearances committed by the Government of the Democratic People's Republic of Korea, and related matters.

B. Purpose

36. The present strategy builds on the recent major developments at the United Nations Human Rights Council, General Assembly and Security Council on the situation in the Democratic People's Republic of Korea, with significantly increased scrutiny by the international community of the actions of the Government of the Democratic People's Republic of Korea. It seeks to maintain the momentum on, and visibility of, the issue of international abductions, enforced disappearances and related matters in the international arena, and thereby sustaining continuous and targeted pressure on the authorities of the Democratic People's Republic of Korea to resolve this issue to the satisfaction of victims, their families and the international community.

37. The strategy aims at eventually shedding light on all cases of abductions and enforced disappearances allegedly committed by agents from the Democratic People's Republic of Korea; securing the immediate return of those who are still alive, together with their descendants, to their respective countries of origin; facilitating separated families to unite without delay; identifying and repatriating the physical remains of those who perished, in close cooperation with their families and nations of origin; ensuring that victims of abductions and enforced disappearances, as well as their families, obtain redress and can enjoy their right to adequate compensation; and holding accountable the alleged perpetrators, bearing in mind the principle of command and superior responsibility under international criminal law.

38. To this end, the Special Rapporteur proposes a multi-track strategy which combines outreach to the Democratic People's Republic of Korea at the bilateral level on different fronts, while maintaining pressure at the international level. It is not intended to be

¹⁵ Ibid., para. 94(d).

exhaustive and the Special Rapporteur welcomes further constructive initiatives in the pursuit of these goals.

39. The Special Rapporteur makes himself available to support the strategy, with the support of the field-based structure of the Office of the High Commissioner for Human Rights being established in Seoul, Republic of Korea. This structure will play a pivotal role in ensuring the implementation of several elements of the strategy, in accordance with its mandate given by the Human Rights Council in its resolution 25/25.

C. Multi-track strategy

1. Comprehensive mapping of international abductions and enforced disappearances

40. Despite tight time constraints, the commission of inquiry recorded a significant number of cases of abductions and enforced disappearances of nationals from several countries. It did not rule out cases from a number of other countries. In this regard, the Special Rapporteur believes that a comprehensive mapping of international abductions and enforced disappearances believed to have been committed by agents from the Democratic People's Republic of Korea should be undertaken in the long term to grasp the full scale and gravity of the issue and contribute to achieving accountability for such violations. To this end, the Special Rapporteur encourages all Member States affected by the issue, as well as civil society organizations and other stakeholders, to share with the Office of the High Commissioner for Human Rights detailed information on cases of abductions, enforced disappearances and related matters, including detailed lists of confirmed and potential victims. These submissions can be treated confidentially whenever requested.

41. The Special Rapporteur also requests the Member States concerned to grant him and the Office of the High Commissioner for Human Rights access to potential witnesses of abductions and enforced disappearances, especially those escapees who may have information relevant to this issue.

2. Sustained action by the Security Council

42. The Special Rapporteur welcomes the fact that the human rights situation in the Democratic People's Republic of Korea is now firmly placed on the Security Council's agenda, pursuant to rule 2 of the Council's provisional rules of procedure.¹⁶ Already in the discussion held by the Security Council on 22 December 2014, the Assistant Secretary-General for Human Rights and several Council members highlighted the importance of the abduction issue. Regular action by the single most powerful United Nations entity will be of paramount importance in maintaining momentum on the issue and pressure on the authorities of the Democratic People's Republic of Korea. In this context, the Special Rapporteur calls on the President and members of the Security Council to bring the issue forward to the Council's agenda on a regular basis, preferably at least twice per year. He believes the issue of international abductions, enforced disappearances and related matters should be an important focus for the Security Council given its international peace and security dimensions.

43. Likewise, the Special Rapporteur hopes the Security Council can bring focus to this issue in its thematic discussions on other issues, for instance in the framework of Security Council resolution 2122 (2013) on women, peace and security.¹⁷

¹⁶ S/2014/872.

¹⁷ S/RES/2122 (2013), para. 2(a)(b) and (d).

44. Importantly, the Special Rapporteur sees future meetings at the Security Council as a key platform for relatives of victims of abductions and enforced disappearances, in particular female ones, to amplify their calls for justice and accountability. This would also be in line with Security Council resolution 2122 which highlights the “importance of interaction of civil society, including women’s organizations, with members of the Council at headquarters and during Council field missions”.¹⁸

45. Finally, the Special Rapporteur avails himself to brief the Security Council himself on human rights developments in the Democratic People’s Republic of Korea, including the issue of international abductions, enforced disappearances and related matters.

3. Sustained action by the Human Rights Council and General Assembly

46. In conjunction with action at the Security Council level, the Special Rapporteur firmly believes that the Human Rights Council and General Assembly can also continue to add dimensions to international understanding and advocacy on the issue of international abductions, enforced disappearances and related matters.

47. In this endeavour, for instance, a panel discussion held during a future Human Rights Council session could serve as a prominent platform bringing together independent experts, family representatives and other civil society actors, to discuss this issue. Furthermore, the Special Rapporteur has always found useful the holding of side-events on the margins of sessions of the Human Rights Council and the General Assembly on a specific issue. He encourages Member States and civil society to continue organizing such events on a regular basis. These events contribute to informing the international community and media on the dire situation in the Democratic People’s Republic of Korea at strategic times.

4. Targeted action by the future human rights contact group

48. The commission of inquiry on the Democratic People’s Republic of Korea recommended in its report that “States that have historically friendly ties with the Democratic People’s Republic of Korea, major donors and potential donors, as well as those States already engaged with the Democratic People’s Republic of Korea in the framework of the six-party talks, should form a human rights contact group to raise concerns about the situation of human rights in the Democratic People’s Republic of Korea and to provide support for initiatives to improve it”.¹⁹

49. The Special Rapporteur notes the wide range of Member States that have been highlighting the issue of abductions and enforced disappearances in their statements during Human Rights Council and General Assembly debates, including some that do not traditionally support the resolutions. He believes that concerted action by a committed group of Member States to engage the Democratic People’s Republic of Korea on the issue of international abductions, enforced disappearances and related matters could make a significant difference.

50. The Special Rapporteur stands ready to brief interested and concerned Member States in this regard.

¹⁸ Ibid., para. 6.

¹⁹ Ibid., para. 94(h).

5. International conference on missing persons

51. In order to maintain the momentum and visibility given by the latest General Assembly resolution and action at the Security Council level, the Special Rapporteur encourages Member States to consider sponsoring an international conference on the issue of missing persons at large, which would include the issue of international abductions and enforced disappearances committed by agents of the Democratic People's Republic of Korea, and separated families. The Government of the Democratic People's Republic of Korea could be invited to attend this conference so it is given another opportunity to engage meaningfully on the issue.

52. The Special Rapporteur suggests that the event take place on the margins of a future General Assembly session, preferably during the high level segment, with the participation of, inter alia, victims and relatives of abductees and disappeared, Member States concerned by the issue, senior United Nations officials, relevant United Nations human rights mechanisms, and representatives of civil society, including members of non-governmental organizations and academics focusing on the issue. The objective of this conference would be to produce a common declaration of concern as well as an action-oriented framework for information-sharing, coordination of investigative efforts and engagement with the Democratic People's Republic of Korea.

6. Active role of an international civil society coalition

53. The important role of civil society in articulating concerns and mobilizing attention on the issue of abductions, enforced disappearances and related matters cannot be emphasized enough. In this regard, the Special Rapporteur welcomes the dedicated work undertaken by families of victims and non-governmental organizations from all countries concerned by the issue and in many regions of the world. He strongly encourages them to actively join forces in a common campaign, both domestically and internationally, to seek truth and justice and decisively bring closure to this tragedy.

54. Families of victims and non-governmental organizations have a lot of information and experiences to share with each other, and therefore learn from each other on how to cope with, and strategize on, the issue. The Special Rapporteur is mindful that in a number of countries families of victims and non-governmental organizations are divided on how to approach the issue. Some have adopted a conservative approach, aligning themselves with the position of their respective Government. Others favour a more proactive approach on the issue. While the Special Rapporteur respects the positions of one and another, he nevertheless wishes to stress the utmost importance of all civil society actors speaking with one voice with a view to amplifying their message across the board. This will have a ricochet effect in mobilizing Member States and other stakeholders to take action on this issue.

55. In this process, it is important to include regional coalitions and international organizations working on the issue of abductions, enforced disappearances and related matters which bring years of expertise and experience in dealing with this issue.

56. Mindful of the specificities of each region, the Special Rapporteur thinks that non-governmental organizations from countries in other regions which have been dealing with disappearance issues could be consulted in this endeavour. They could also share their own experiences and strategies, and inspire and offer solidarity to one another.

57. In this endeavour, the field-based structure of the Office of the High Commissioner for Human Rights can hopefully play a key role in facilitating exchanges among all networks. It will also contribute to enhancing the capacity of the organizations working on the issue, in accordance with its mandate.

7. Communication, advocacy and outreach initiatives

58. Sustained communications, advocacy and outreach initiatives are required to maintain visibility of the situation of human rights in the Democratic People's Republic of Korea. They can help keep the momentum of the ongoing efforts, further engage all stakeholders and raise awareness among the wider public about the plight and sufferings of the victims. The field-based structure of the Office of the High Commissioner for Human Rights, as mandated by Human Rights Council resolution 25/25, will be instrumental in piloting such initiatives.

59. In particular, the Special Rapporteur sees this new communication capacity as a key tool in raising and maintaining the visibility of the issue of international abductions, enforced disappearances and related matters at the international, regional and local levels. It will be very important to reach out to, and mobilize, the general public in the countries affected by the issue and beyond. Furthermore, affected families, if they choose to, can utilize online platforms to share information, organize joint advocacy efforts from different locations and engage with human rights mechanisms on the issue in a more strategic and effective manner in order to maximize the impact of their efforts. To this end, communications, advocacy and outreach initiatives should be made in relevant languages, in particular in Korean and Japanese.

60. The use of social media and new communication technologies will give further prominence to the issue and reach out to the youth who may not be aware or feel concerned by such issue and mobilize netizens worldwide. Should the issue not be solved in the near future, new generations will at least be informed and mobilized to continue the struggle. It is therefore crucial to particularly target youth networks from all affected countries in addressing the issue.

61. Importantly, this new communication capacity should allow victims in the Democratic People's Republic of Korea and their relatives to continue to hold up hopes that sustained concern of the international community will eventually lead to relief of their suffering.

8. Active role of regional mechanisms

62. The Asia and Pacific region unfortunately does not have a regional human rights arrangement that covers the situation in the Democratic People's Republic of Korea, although the Democratic People's Republic of Korea previously participated in some regional human rights dialogues organised by the Office of the High Commissioner for Human Rights. There are, however, a number of important platforms for dialogue on regional issues in which Democratic People's Republic of Korea regularly participates, or in which issues relating to the Democratic People's Republic of Korea and security on the Korean peninsula are discussed.

63. These include the Association of Southeast Asian Nations (ASEAN) Regional Forum which has met annually since 1994 and has the goal of fostering constructive dialogue and consultation on political and security issues of common interest and concern, and contributing to efforts towards confidence-building and preventive diplomacy in the Asia and Pacific region. The ASEAN Regional Forum's current participants include the Democratic People's Republic of Korea, along with Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, the European Union, India, Indonesia, Japan, Lao People's Democratic Republic, Malaysia, Mongolia, Myanmar, New Zealand, Pakistan, Papua New Guinea, the Philippines, Republic of Korea, the Russian Federation, Singapore, Sri Lanka, Thailand, Timor-Leste, the United States, and Viet Nam. In addition to the ASEAN Regional Forum, there are a number of other inter-governmental dialogues and

summits in the region, in particular the East Asian Summit and ASEAN's dialogue arrangements.

64. These would be important venues to discuss and develop common actions on human rights issues in the Democratic People's Republic of Korea, such as international abductions, enforced disappearances and related matters, which have had a negative impact on the regional security situation.

9. Continuous use of United Nations human rights mechanisms

65. Another avenue of exerting pressure on the Government of the Democratic People's Republic of Korea to shed light on cases of abductions, enforced disappearances and related matters is through the use of relevant United Nations human rights mechanisms, both chartered and treaty-based.

Chartered-based mechanisms

a) Special procedures mandate holders

66. The Special Rapporteur cautions against seeing his mandate in isolation when looking at the human rights situation in the Democratic People's Republic of Korea. In his view, country and thematic special procedures mandates are mutually reinforcing, creating positive synergies between mandates and complementing each other. By the broad range of issues they cover, and the different tools available in the fulfilment of their functions (e.g. communications, press statements, country visits, thematic reporting), thematic special procedures mandates can add substantive leverage in seeking responses from the authorities of the Democratic People's Republic of Korea on cases brought to their attention.

67. The most relevant thematic special procedure mechanism to the issue of international abductions, enforced disappearances and related matters is the Working Group on Enforced and Involuntary Disappearances. It was entrusted with a double mandate to (1) "assist families in determining the fate or whereabouts of their disappeared relatives who are placed outside the protection of the law... [and (2)] monitor States' compliance with their obligations deriving from the Declaration and existing international rules, and to provide States with assistance in the implementation of these norms".²⁰ The Special Rapporteur welcomes the numerous communications issued by the Working Group to the Government of the Democratic People's Republic of Korea²¹, as well as the public advocacy. He further welcomes the letters sent by the Working Group to the President of the Human Rights Council, the President of the General Assembly, the President of the Security Council and the Secretary-General "to request the adoption of any appropriate action that they may deem appropriate [in relation to the issue of abductions and enforced disappearances committed by the Democratic People's Republic of Korea]".²² He encourages the Working Group to request an invitation to visit the Democratic People's Republic of Korea and affected countries in the pursuit of its important efforts.

68. Other thematic special procedures mandates are particularly relevant to the issue of international abductions, enforced disappearances and related matters, as illustrated by the report of the commission of inquiry,²³ in particular the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the violence against women, its causes and consequences, the Special Rapporteur on trafficking

²⁰ A/HRC/WGEID/102/2, para. 2-4.

²¹ 47 communications as the time of drafting the present report: see A/HRC/27/49, p. 29.

²² Ibid, para. 32.

²³ Ibid., para. 64-73.

in persons, especially in women and children, and the Working Group on arbitrary detention. The Special Rapporteur encourages these mandate holders to raise, or continue to raise, the issue with the Government of the Democratic People's Republic of Korea within the scope of their respective mandates, including by seeking invitations to visit the country.

69. The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to respond promptly and thoroughly to all the concerns raised by special procedures mandate holders over the years on the issue of abductions, enforced disappearances and related matters. In this regard, he reminds the Government of its commitment made under the second universal periodic review cycle to cooperate with the special procedures of the Human Rights Council.²⁴

b) Universal periodic review

70. During the twenty-seventh session of the Human Rights Council, in September 2014, the Government of the Democratic Republic of Korea announced that it had accepted 113 of the 268 recommendations made in the framework of its second universal periodic review. This is a notable improvement on the lack of collaboration extended during and after its first review. However, the Government very regrettably rejected all recommendations relating to the findings of the commission of inquiry, including those pertaining to international abductions and enforced disappearances. The Special Rapporteur finds this continuous state of denial deeply disconcerting. He urges Member States, in their bilateral efforts to follow up the universal periodic review of the Democratic People's Republic of Korea, not to lose sight of these rejected recommendations and to continue to raise the matter.

71. In relation to the issue of separated families, prior to the second cycle of the universal periodic review, the Government of the Democratic People's Republic of Korea indicated its position to accept a number of recommendations pertaining to this issue which were made during the first review in December 2009: “[g]uarantee separated families’ fundamental right to know the fate of their family members across the border and to communicate and regularly meet together; [d]o everything possible, in cooperation with the Republic of Korea, to ensure that the maximum number of meetings of separated families is organized; [t]ake concrete steps to continue the process of family reunification, because for the elder generation even a delay of one or two years means that their chance of seeing their relatives may be lost forever; and [a]dopt measures to facilitate family reunification as recommended by the Special Rapporteur on [the situation of human rights in the Democratic People's Republic of Korea]”.²⁵

72. The Special Rapporteur welcomes this commitment and calls on Member States and other stakeholders to seek to engage the Government of the Democratic People's Republic of Korea to follow up on these recommendations which to date have not been implemented. As recommended by the commission of inquiry, separated families should be allowed to unite, “including by allowing citizens to travel or emigrate where they choose; and immediately provide such persons with facilities for unmonitored communications by way of mail, telephone, email and any other means of communication”.²⁶

Treaty-based mechanisms

73. The Democratic People's Republic of Korea is party to several international human rights instruments. Three of them are of particular relevance to the issue of international

²⁴ A/HRC/27/10, para. 124.17, 124.52, 124.61, 124.65, and 124.66.

²⁵ A/HRC/13/13, para. 90.75-78.

²⁶ *Ibid.*, para. 89(o).

abductions, enforced disappearances and related matters: the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

74. The Government accepted a series of recommendations made in the context of the first and second cycles of the universal periodic review to submit reports to United Nations human rights treaty bodies, notably the Committee on the Rights of the Child and the Committee on the Elimination of All Forms of Discrimination against Women.²⁷ It further accepted a number of other recommendations under the universal periodic review concerning the rights of children, women and persons with disabilities.²⁸

75. However, the reports of the Democratic People's Republic of Korea to the Human Rights Committee, the Committee on the Rights of the Child and Committee on the Elimination of All Forms of Discrimination against Women are all overdue.²⁹ The Government should be reminded of its obligation to submit timely reports and encouraged to seek international assistance in this regard.

76. In addition, the Special Rapporteur calls on the treaty bodies to challenge the Democratic People's Republic of Korea on the issue of abductions, enforced disappearances and related matters through the scope of their respective mandates.

77. Finally, the international community should also urge the Democratic People's Republic of Korea to sign and ratify the most relevant international human rights treaty relating to the present issue: the International Convention for the Protection of All Persons from Enforced Disappearances.

10. Closure and accountability

78. Achieving closure and accountability for the abductions and enforced disappearances committed by the Government of the Democratic People's Republic of Korea is the ultimate goal of this strategy. Soon or later, the Government of the Democratic Republic of Korea will have to answer for its actions, in particular the cases of abductions and enforced disappearances, which have caused unspeakable suffering to the victims and their families.

79. The commission of inquiry found that these cases constitute crimes against humanity under international criminal law. Although the Democratic People's Republic of Korea has not included crimes against humanity in its national criminal law and is not a State party to the Rome Statute of the International Criminal Court, perpetrators of such crimes can be held responsible on the basis on international customary law. Since the cases of abduction and enforced disappearances constitute on-going violations, the International Criminal Court is competent for prosecuting these perpetrators.

80. The Special Rapporteur remains convinced that the Security Council should refer the situation in the Democratic People's Republic of Korea to the International Criminal Court, as recommended by the commission of inquiry and subsequently encouraged by the General Assembly.³⁰ In this event, the evidence and documentation gathered by the commission of inquiry on abductions and enforced disappearances, and the future investigations of the field-based structure of the Office of the High Commissioner for Human Rights, will be of great relevance and value to the Prosecutor's work.

²⁷ First cycle: paras. 90.3 and 90.41. Second cycle: para. 124.64.

²⁸ First cycle: para. 90.98. Second cycle: paras. 124.30, 124.31, 124.34, 124.36, 124.178, and 124.179.

²⁹ Last report due to HRC in 2004; last report due to CRC in 2012; last report to CEDAW due in 2006.

³⁰ *Ibid.*, para. 94(a); A/RES/69/188, OP8.

81. The General Assembly further encouraged the Security Council, as recommended again by the commission of inquiry, to consider the scope for effective targeted sanctions against those who appear to be most responsible for acts that the commission deemed constituting crimes against humanity. The Special Rapporteur welcomes the steps some Member States have begun to take in this direction on a bilateral basis.

82. In this context, the Special Rapporteur wishes to recall the principle of command and superior responsibility under international criminal law, under which military commanders and civil superiors can incur personal criminal responsibility for failing to prevent and repress crimes against humanity committed by persons under their effective control.

83. Furthermore, the Special Rapporteur calls on Member States to exercise universal jurisdiction in the event any relevant individuals fall under their jurisdiction and, in accordance with their national legal provisions, to investigate and prosecute the perpetrators behind the cases of abductions and enforced disappearances.

84. Finally, should the two Koreas reunite one day, the importance of justice and accountability for the cases of abductions and enforced disappearances should not be overlooked in the peace and reconciliation process that would ensue. Any transitional justice process should seek the truth and ensure accountability and redress for victims. In this regard, the evidence and documentation gathered by the commission of inquiry and the field-based structure will again prove most pertinent.

IV. Conclusion and recommendations

85. **The commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea brought the focus on the human rights situation in the country to an unprecedented new level. It triggered a welcome, though temporary, engagement by the Government of the Democratic People's Republic of Korea with the international community. It is highly regrettable that the Government subsequently decided to suspend such dialogue. This posture of isolation is no longer sustainable.**

86. **In this context, the Special Rapporteur reiterates that a two-track strategy should be pursued when addressing the human rights situation in the Democratic People's Republic of Korea, by combining efforts to ensure accountability for those responsible for serious human rights violations, while continuously seeking engagement with the authorities to bring relief to the people of the Democratic People's Republic of Korea.**

87. **It is more than ever essential at the present juncture that the international community redouble its efforts to effect meaningful changes in the Democratic People's Republic of Korea in addressing the deeply concerning human rights situation in the country, in particular with regard to the issue of international abductions, enforced disappearances and related matters. The international community owes it to all the victims and their relatives who have endured enough suffering, and for the people of both Koreas in their hopes for a peaceful future.**

88. **In this regard, the Special Rapporteur wishes to make the following series of recommendations.**

89. **The Special Rapporteur calls upon the Human Rights Council to:**

(a) Reiterate its absolute condemnation of the long-standing and ongoing systematic, widespread and gross human rights violations and other human rights abuses committed in the Democratic People's Republic of Korea;

(b) Affirm the responsibility of the international community to protect the people of the Democratic People's Republic of Korea and victims abroad from crimes against humanity in view of the manifest failure of the Democratic People's Republic of Korea to protect its own population from such crimes;

(c) Ensure that the field-based structure of the Office of the High Commissioner for Human Rights tasked with following up on the commission's work can function with independence and sufficient resources, and is not subjected to reprisals or threats;

(d) Urge the Government of the Democratic People's Republic of Korea to invite his mandate to undertake a full-fledged visit to the country as soon as possible and without any preconditions, in accordance with the terms of reference for country visits by special procedures mandate holders,³¹ and more generally to cooperate with his mandate.

90. The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to:

(a) Immediately halt all the human rights violations identified by the commission of inquiry in its report;

(b) Resume dialogue with, and reconsider the invitations extended to, all the stakeholders concerned, including his mandate and the Office of the High Commissioner for Human Rights;

(c) Engage genuinely in bilateral talks with the Republic of Korea and Japan, and abide by the terms of the bilateral agreements concluded, first and foremost in the interest of victims and their families;

(d) Cooperate with the United Nations human rights mechanisms, including his mandate, notably by granting them access to the country with a view to, inter alia, assisting and assessing the implementation of the recommendations accepted during the second universal periodic review.

91. The Special Rapporteur calls on Member States to:

(a) Ensure that the Security Council hold regular briefings on the situation in the Democratic People's Republic of Korea, with the participation of the High Commissioner and other relevant experts, including the Special Rapporteur;

(b) Take further steps towards achieving accountability for those responsible for serious human rights violations in the Democratic People's Republic of Korea, including through a referral by the Security Council of the situation in the country to the International Criminal Court;

(c) Facilitate and provide the field-based structure and the Special Rapporteur with timely access to relevant information and potential witnesses, especially those escapees who may have information crucial to ensuring institutional and individual accountability;

³¹ E/CN.4/1998/45.

(d) Engage with the Government of the Democratic People's Republic of Korea to take specific steps to facilitate and verify the implementation of the recommendations accepted during the first and second cycles of the universal periodic review;

(e) Fully involve civil society actors in Member States' efforts to address the situation in the Democratic People's Republic of Korea;

(f) Establish and activate the human rights contact group recommended by the commission of inquiry, with a view to improving the situation of human rights in the Democratic People's Republic of Korea;

(g) Protect the people from the Democratic People's Republic of Korea who have sought refuge in, or are transiting through, a Member State's territory by abiding to the principle of non-refoulement;

(h) Make use of the principle of universal jurisdiction to realize and maximize the potential deterrent effect of the findings and recommendations of the commission of inquiry and hence help to protect the population of the Democratic People's Republic of Korea from further crimes against humanity.

92. The Special Rapporteur calls on the United Nations system as a whole to address the grave human rights situation in the Democratic People's Republic of Korea in a coordinated and unified manner, in line with the Secretary-General's Human Rights Up Front strategy.

93. The Special Rapporteur calls on civil society to continue its important work in raising awareness on the human rights situation in the Democratic People's Republic of Korea, including by reporting on human rights violations committed by the Government of the Democratic People's Republic of Korea.

94. Finally, the Special Rapporteur looks forward to sustained and resolute action by all stakeholders in the implementation of his proposed strategy to address the issue of international abductions, enforced disappearances and related matters, as detailed in the present report.
