

## **The 19<sup>th</sup> Universal Periodic Review (UPR) Session of UN Human Rights Council**

### **The NGO Reports on the Human Rights in Democratic People's Republic of Korea May / June, 2014**

The Lawyers for human rights and unification of Korea (“**LHUK**”) submits this report on the human rights in North Korea to the UN Human Rights Council’s UPR.<sup>1</sup>

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#### **ABSTRACT**

Democratic People's Republic of Korea (“DPRK”) has extensively, systematically and severely been infringing the right to life from 1950 until now. DPRK seemed to have interest in the improvement of the human rights by completely revising its Criminal Code (“**NKCC**”) in 2004, but they increased the number of capital offences by enacting the supplementary provisions (Regular crime) of NKCC in 2007.

And DPRK has also been carrying out arbitrary public executions and secret executions not complying with process provided in NKCC and its Criminal Procedure Code (“**NKCPC**”), etc. Gruesome secret executions which shall constitute crimes against humanity have been carried out in the DPRK’s prisons as specifically revealed in this report for the first time in the world.

DPRK must immediately stop all types of illegal executions including public and secret executions. The UN Commission of Inquiry (COI) for human rights in DPRK in operation should investigate the actual conditions of the public and secret executions which shall constitute crimes against humanity, and penalize officials in charge and seek ways to root out such executions.

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<sup>1</sup> Except for several personal names, the system of romanizing the Korean alphabet is consistent with the Notification of the Ministry of Culture and Tourism of the Republic of Korea dated on July 7, 2000. Korean names in this submission are all written with the family name first, followed by the given name.

*Key words: Right to life, Death penalty provision, Public execution, Secret execution, Fear, Criminal Code, Criminal Procedure Code, Supplementary provisions of Criminal Code, Prison camp, Illegal murder, Crimes against humanity, Stop execution of capital punishment, Commission of Inquiry*

To find the reality of the human rights violations in DPRK, it is important to secure testimonies of North Korean who have escaped from DPRK and settled in the Republic of Korea or third countries. LHUK have interviewed a large number of residents escaping from DPRK in 2013. This report has been prepared based on interviews performed by LHUK and other relevant documents, and focuses on the infringement of the right to life in DPRK in order to eliminate the terror reign and ultimately to improve the human rights in DPRK.

### **Right to Life**

1. The gravity of a violation of the right to life in DPRK.
  - A. The right to life is fundamental and basic human rights. The Universal Declaration of Human Rights (the “**UDHR**”) recognizes the inherent dignity and the equal and inalienable rights of all members of the human family, and according to Article 3 of the UDHR, everyone has the right to life, liberty and security of person.
  - B. Article 6(1) of International Covenant on Civil and Political Rights (“**Covenant**”) to which DPRK is one of States party provides, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” The Article 6(2) of the Covenant also expressly provides, “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.”

- C. However, DPRK has been violating the right to life seriously for decades from 1950 till now. Death penalty provision in NKCC is widely applicable and obscure, and as the independence of the judiciary is not guaranteed in DPRK, a fair trial is not possible. Accordingly, summary or arbitrary public and secret executions which are extrajudicial and ignore due process are often committed. The DPRK regime has been maintained by controlling information and playing fear politics infringing the right to life.
  - D. Therefore, on March 21, 2013, the 22<sup>nd</sup> session of the U.N. Human Rights Council was held and resolved to establish the Commission of Inquiry for human rights in DPRK. The violation of right to life was designated as an object of COI's investigation and included in one of 9 types of human rights infringement carried out systematically, extensively and seriously by DPRK.
2. Death penalty provision in NKCC
- A. On April 29, 2004, DPRK completely revised NKCC and newly enacted the Article 6 of NKCC that provided "Criminal liability shall be imposed on an action defined as a crime under NKCC.", and deleted the Article 10 of NKCC, which had allowed analogical interpretation. In addition, just like the revision of NKCC in 1999, DPRK seemed to pursue improvement of human rights by revising NKCC to limit capital offences to 5 crimes such as plotting against the state, treason against the nation, terror, treason against the people and willful felony murder. However, as 4 crimes among the 5 capital offences were political crimes and also relevant provisions were obscure, there were still fears that the right to life would be infringed arbitrarily by DPRK government.
  - B. However, DPRK enacted the supplementary provisions (Regular crime) of NKCC in 2007, which are unique and consists of 23 articles. The supplementary provisions provide that death penalty may be imposed as a maximum sentence in 16 articles including drug smuggling and trafficking. In sum, by establishing the supplementary provision of NKCC in 2007, DPRK increased the number of capital offences provided in NKCC revised in 2004. DPRK enacted the supplementary provision in order to control North Korean and to preserve its regime. Therefore, the enactment of the supplementary provisions (Regular

crime) of NKCC shall be regarded as a big retreat from the perspective of human rights. Furthermore, as DPRK commonly used abstract terms such as “especially serious” or “extremely serious” in the above 16 articles, death penalty under the 16 articles may be imposed based on arbitrary interpretation of such provisions by DPRK. In addition, the supplementary provisions provided that if a criminal commits several crimes, death penalty may be imposed in case such crimes are especially serious or the criminal is impenitent. It means that criminals would be sentenced to death based on DPRK government’s discretion, although they did not commit capital offences (Article 23).

- C. After that, DPRK revised NKCC in 2009 in order to increase the number of capital offences. As a result, a criminal who commits act of destruction (“**Destruction**”) of buildings or facilities for anti-national purpose can be sentenced to death. (Article 64)<sup>2</sup>
- D. DPRK declared in the report<sup>3</sup> (submitted to UN Human Rights Council’s UPR in 2009) that the death penalty could be imposed on only 5 extremely serious crimes provided in NKCC revised in 2004 (Please refer to Clause 34 of the report). They intentionally did not mention the supplementary provisions (Regular crime) of NKCC enacted in 2007 and the Destruction provided in NKCC of 2009 in order to avoid criticism of international community regarding extension of capital offences.

### 3. Public Execution and Secret Execution in DPRK

- A. As previously stated, the capital offences are provided in NKCC and the supplementary provisions (Regular crime) of NKCC. And procedures for death penalty are provided in NKCCP and the Act on Execution of Judgment. According to the Act on Execution of Judgment, death penalty has to be

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<sup>2</sup> Korean Bar Association, 『2012 White paper on White paper on Human Rights in North Korean』 page 104, Korea Institute for National Unification, 『2013 White paper on Human Rights in North Korean』 page #69.

<sup>3</sup> UN Human Rights Council, Working Group on the Universal Periodic Review, Sixth session, Geneva, 30 November-11 December 2009, “National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1 Democratic People’s Republic of Korea” UN Doc. A/HRC/WG.6/6/PRK/1 (August 27, 2009).

executed by firing squad (Article 32). Especially, the judgment of a criminal case is executed after finalizing the sentence, and execution of death penalty requires approval of the permanent committee of the Supreme People's Assembly (Article 419 of NKCCPC).

- B. However, arbitrary public and secret execution not complying with contents and procedures provided in NKCC etc., have been carried out frequently. The public execution is being implemented by mere a declaration or an instruction (without proper trial). According to Article 1 of UDHR, all human beings are born free and equal in dignity and rights. Therefore, the Public execution infringes the right to die in dignity of human being.
- C. On December 7<sup>th</sup>, 2009, DPRK exceptionally admitted at UN Human Rights Council's UPR on DPRK that it carried out public executions. At that time, DPRK delegation answered "In principle, the death penalty shall be executed secretly. However, in case a criminal commits brutal crimes and the victim or his/her family requests to confirm the execution, public executions have been carried out once or twice." However, most of DPRK refugees ("**Refugee**") settling in South Korea are testifying that they had often seen public executions.
- D. Although the secret execution is an illegal murder committed by DPRK, it could not be proved due to lack of evidences. However, LHUK could find the Refugee A, who witnessed directly the systematical secret execution scenes in a regular prison of DPRK. Based on the testimony of Refugee A, the horrible scenes shall be described as follows<sup>4</sup>:
  - (i) Refugee A was sentenced to 9 years of hard labor in July, 1997 and he served in a fagot prison (the 12<sup>th</sup> prison of Ministry of Public Security) as a chief of farming team. In May, 1998, he and a prisoner B (a foreman of logging team) took a duty of handling and disposal of dead bodies executed secretly at the same prison. Before starting the duty, C, Vice President and D, Security Manager of the prison showed Refugee A and the prisoner B a written instruction from Kim Jong-il, in which he ordered to kill peoples those who have impure ideologies regardless of

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<sup>4</sup> The writer of this report interviewed the refugee A (on July 8th and August 12th, 2013) and G (who gave supportive statement to A, on August 5th, 2013) respectively.

their positions and achievements. Further, they made Refugee A and the prisoner B sign with their thumbprint on a written pledge which said “if I reveal this secret, I will receive harder penalty than the dead.”

- (ii) Immediately after that, Refugee A was call to be at a special room which was next to the jail at about 2:00 a.m. The special room looked like a court and C (Vice President), D (Security Manager) and F (Security team member, Captain) were sitting on the judge’s seats of the special room. And E (Security team member in charge of logging part, Senior Lieutenant) was sitting next to them. On opposite and lower part of the judge’s seats, there was a chair and well-built 2 soldiers (private) were standing on both side of the chair. One of them had a fighting wood which was approx. 1.5m long and 5 cm diameter. In the middle of the fighting wood, there was a chain with round leather grip.
- (iii) For a while later, one of the prisoners was called by E (Security team member in charge of logging part, Senior Lieutenant). He made a prisoner sit on the chair between two privates with his head down. And then, C (Vice President) interrogated the prisoner with groundless questions as follows:
- “You have committed a crime that you did not confess. Have you ever rape and kill a twelve-year-old girl, haven’t you?”; or
  - “Have you stolen bullets from a troop and buried them under the fence to hide, haven’t you?”

At that moment when the prisoner suddenly raised his head in order to deny those suspicions, the two (2) soldiers who were standing on the both sides of the prisoner suddenly hang the chains on the prisoner’s neck and each soldier pulls the chain with all their strength to choke the prisoner. The prisoner could not resist and even breathe for about 5 minutes, and finally was suffocated to death with his drooped neck and leg, and with his lolled out tongue and urinating.

- (iv) Refugee A and the prisoner B were watching this scene behind a curtain. After the prisoner totally died, they came out and moved the

dead body to a death house and cleaned his excreta. And then, E (Security team member in charge of logging part, Senior Lieutenant) called another prisoner and executed him in the same way.

(v) Refugee A saw the same kinds of executions from May, 1998 to the end of 1999. During this period, these secret executions have carried out 3 times a month at maximum and once in three months at minimum, and as 5 ~ 7 prisoners were executed in average at one time, at least 200 prisoners in total were executed. Refugee A served in the fagot camp for 3 years and released early in July 2000. He could not see secret executions from 2000 to his disimprisonment.

(vi) The targets of the secret executions were prisoners those who have impure ideologies and complaints on the current regime. Security members of the fagot prison have selected the targets who may harm the current political system and reported to the correction bureau of the Ministry of Public Security (Currently, People's Safety Agency). And then the correction bureau gave list of prisoners to be secretly executed to the prison camp. After that, D (Security Manager) took the list and called the prisoners who were on the list between 12:00 -1:00 a.m. at night. After opening the door of the prisoner's room, He made other prisoners believe that the prisoner will be moved to another prison and made the prisoners pack his bag and go out.

E. Meanwhile, it is reported that considerable number of the public executions are replaced with secret executions after inauguration of Kim Jong Un in 2011.<sup>5</sup> In addition, it is also reported that many DPRK defectors were often shot to death at the border area when they tried to escape from DPRK. For example, it was witnessed that near Hye-san city, Yang-gang-do in DPRK, a North Korean defector who arrived at territory of China by crossing the Amnokgang (i.e the Yalu River) was shot to death by a DPRK guard on October 22, 2011.<sup>6</sup>

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<sup>5</sup> National Human Rights Commission of the Republic of Korea, 『2013 Seoul International Symposium to improve North Korean's Human Rights held on April 30, 2013』 page #12 ~#13 / Korea Institute for National Unification, 2013 White paper on Human Rights in North Korean』 page #89 and #92

<sup>6</sup> [http://news.sbs.co.kr/section\\_news/news\\_read.jsp?news\\_id=N1001020673](http://news.sbs.co.kr/section_news/news_read.jsp?news_id=N1001020673)

#### 4. Evaluation

- A. The facts that North Korea has increase the number of capital offences by revising NKCC and the supplementary provisions (Regular crime) of NKCC and imposed death penalty with a mere declaration (without proper trials), and carried out public and secret executions shall be the infringements of the right to life due to illegal murders as well as in violation of Article 6 of the Covenant. Moreover, these are serious problems and concerns that some of the public executions have been replaced with the secret executions after inauguration of Kim Jong Un, and North Korean is committing acts of brutality by shooting North Korean defectors to death on the border area.
- B. Therefore, the following measures shall be taken:
- (i) As Ministry of Justice of DPRK cannot guarantee a fair trial, DPRK has to stop all executions of capital punishment including public and secret executions which are crimes against humanity. And DPRK has to improve its execution system in accordance with international human rights norms;
  - (ii) The Republic of Korea's government, by enacting North Korean Human Rights Act, has to deeply investigate cases of infringement of the right to life in DPRK and find the way to eradicate such infringements in solidarity with international community with legal base; and
  - (iii) International society, especially the UN Commission of Inquiry (COI) for human rights in DPRK has to investigate the real conditions of the willful violation on the right to life including public and secret execution, and find and punish those who are responsible for such crimes against humanity under Article 7 of Rome Statute of the International Criminal Court.

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