



The application of the death penalty in the Democratic People's Republic of Korea

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I. Summary

The Democratic People's Republic of Korea (DPRK) is among the 58 countries in the world that retain the death penalty, and one of the only 21 countries still reportedly carrying out executions in 2012. Estimates place the DPRK among the top 10 countries in the world for the number of executions carried out on an annual basis.

However, the DPRK has never allowed any UN mechanism nor any other international organization to investigate the matter. Information derived from witness observations and the few existing reliable reports, reveal thousands of executions since the 1950s, with the largest numbers in the 1990s and the 2000s. Since DPRK's first UPR cycle in 2010, dozens of people have been executed. The DPRK's intense secrecy justifies the conclusion that these large numbers are lower than the actual figures in reality.

Executions in the DPRK are reportedly carried out with only a semblance of judicial process and in clear denial of the right to a fair trial. The judiciary is regularly bypassed and executions frequently occur in an arbitrary manner, including inside the DPRK's vast prison camp system (see annex). Public and secret executions are carried out and the death penalty is applied to non-serious crimes and against vulnerable groups. The use of the death penalty in the DPRK is therefore tantamount to an arbitrary deprivation of life, in addition to being a violation to the right to life. In many cases, the distinction between capital punishment cases and extra-judicial, summary or arbitrary executions is extremely blurry.

II. Observations

a) Applicable international human rights norms

1. The DPRK became a party to the International Covenant on Civil and Political Rights (ICCPR) on 14 September 1981. The ICCPR strictly protects the right to life². Furthermore, General Comment n. 6 of the Human Rights Committee stipulates that "the right to life enunciated in article 6 of the Covenant [...] is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation."
2. Following growing international criticism, the DPRK sent notification of its withdrawal from the ICCPR to the UN Secretary General on 25 August 1997. The UN Secretary General objected to this notification on the basis that withdrawal from the treaty requires the consent of all other signatory States. While the DPRK continues to argue that it is no longer obliged to adhere to the ICCPR, it nevertheless remains bound by the treaty's language and principles under

² ICCPR, Article 6: "1. 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. 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes [...]. This penalty can only be carried out pursuant to a final judgment rendered by a competent court. [...]. 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant".

international treaty law.

3. The global trend is towards universal abolition of the death penalty. In the last five years, Uzbekistan, Argentina, Burundi, Togo, Gabon and Latvia have all abolished the death penalty for all crimes. Since 2007, the UN General Assembly has adopted several resolutions calling all states to adopt a moratorium on the death penalty. In December 2012, a resolution (the fourth time in 6 years) was adopted by a record vote of 110 in favor to 39 against, with 36 abstention.
4. Customary international law includes the prohibition of arbitrary deprivation of life, defined as the violation of specific legal requirements, which include a procedural component, centered on the right to a fair trial and the legality of the execution; and a substantive component that entails, among others, the imposition of the death penalty for only the most serious crimes and minimum standards of protection for vulnerable groups. Arbitrary deprivation of life was recognized by the Human Rights Committee in 1994 in its General Comment No. 24 as a peremptory norm (*jus cogens*), signaling that it cannot be overridden by other norms. States that retain the death penalty therefore not only violate the right to life, but also the prohibition of arbitrary deprivation of life.
5. Transparency is among the fundamental due process safeguards that prevent the arbitrary deprivation of life. These safeguards help to prevent errors or abuses, and ensure fair and just procedures at all stages. Secrecy, by contrast, denies the human dignity of those sentenced, many of whom are still eligible to appeal. It also denies the right of family members to know the fate of their closest relatives and its limitation is essential to ensuring respect for the right to freedom from cruel, inhuman or degrading treatment or punishment.
6. Any State must therefore disclose information on the number of persons sentenced to death, the number of executions actually carried out, the number of death sentences reversed or commuted on appeal, and the number of instances in which clemency has been granted; all broken down according to the offense for which the condemned person have been convicted. Condemned persons, their families, and their lawyers should be provided with timely and reliable information on the procedures and timing of appeals, clemency petitions, and executions. Respect for privacy cannot offset transparency obligations where a prisoner does not want their experience on death row or the fact of their execution to be made public.
7. Finally, the Human Rights Committee has observed that carrying out executions before the public is a practice that is “incompatible with human dignity”³

b) The scale of death penalty in the DPRK

8. The DPRK’s current constitution, first adopted in 1972 and revised in 1992, 1998

³ Concluding observations of the Human Rights Committee: Nigeria, CCPR/C/79/Add.65, 24 July 1996, para. 282, available at: <http://www.unhcr.ch/tbs/doc.nsf/0/4e0517e23534f9088025648a004b6354?Opendocument>

and most recently in April 2009, does not guarantee the right to life nor restrict the use of the death penalty. The closest reference to the right to life is in Article 64: “the State shall effectively guarantee the genuine democratic rights and freedoms as well as the material and cultural well-being of all its citizens”, and Article 79: “Citizens are guaranteed inviolability of the person.”

9. In February 1987, the DPRK made significant revisions to its Criminal Code, reducing the number of crimes punishable by death from 33 to 5; 4 of these are however essentially political offenses couched in terms so broad that the imposition of the death penalty may be subjective and arbitrary.
10. From then on, additional partial revisions have been made on at least seven occasions: in March 1995, on 19 April and 26 July 2005, on 4 April and 18 October 2006, and 26 June and 16 October 2007. In April 2009, the DPRK made another important amendment to its Criminal Code, when it expanded the list of crimes punishable by death from five to six by adding “treacherous (disloyal) destruction” (Art. 64). It added a prescription period of 20 years for those crimes punishable with the death penalty. On 19 December 2007, the DPRK adopted, by Decision No. 2483 of the Standing Committee of the Supreme People’s Assembly (SPA), a unique form of law, referred to as an “addendum to the Criminal Code for ordinary crimes”, which expanded the “crimes” for which the death penalty is applied. The addendum was a very significant legislative act, given that it was formally adopted by the SPA Presidium as a Government directive. Since its adoption, the addendum has functioned as a complement to the Penal Code, and carried the same weight as other provisions of the Criminal Code. It comprises a total of 23 articles, of which 16 stipulate the death penalty for a number of crimes, including smuggling and dealing in narcotics, seizing State property, currency counterfeiting and illicitly selling State resources. The addendum permits the application of capital punishment as long as the authorities are able to establish that the crime in question was “extremely serious”.
11. The scope of crimes punishable by the death sentence has further increased following the announcement in September 2012 of two public decrees called “circulation of forex punishable by execution” (by the Department of People’s Security) and “execution by gun squad for divulging classified information via cell phone” (by the State Security Department, SSD).
12. As a result, the total number of crimes that carry the death penalty in the country stands at 24. Of these, at least 9 have a mandatory death sentence requirement, including crimes like kidnapping, theft, damaging or destruction of state or military property, currency counterfeiting, smuggling and introducing narcotics or jewels and colored metals into the black market. Such legislation that leaves courts with no choice but to impose death sentences for specific crimes violates various human rights standards.
13. The 2004 Criminal Procedure Law sets out strict provisions regarding the execution of death sentences. The executing agency, after receipt of a copy of the court

decision and the execution order, may only carry out the execution in the presence of a prosecutor and with the approval of the SPA Presidium (Articles 419, 421 and 422). In addition, the executing agency must notify the sentencing court of the implementation of the death sentence within three days of execution (Article 423). Article 24 of Court Sentence and Decision Implementation Law, revised in 1998, stipulates that the agency in receipt of the death sentence execution order is responsible for the execution of the death sentence. This contradicts Article 179 of the 1999 Criminal Procedure Law allowing “on-site public trials”.

14. According to the NGO Database on Human Rights Violations in North Korea (NKDB), 86.7% of past executions were public executions, with a ratio higher in the 1990s (91.8%) than in the 2000s (80.7%). While it appears that public executions were predominantly carried during the Arduous March (period of famine during the 1990s), evidence remains unclear as to whether public executions are still performed today. The NKDB further estimates that 12.1% of executions were secret executions. The judicial character of secret executions remains unclear; their evidence is naturally difficult to come by and often requires second or third hand accounts.

c) The death penalty as an "arbitrary deprivation of life"

15. In applying the death penalty, the DPRK violates, among other international human rights obligations, the right to a fair trial, the prohibition of public and secret executions, as well as the prohibition of the death penalty for non-serious crimes and the imposition of minimum standards of protection for vulnerable groups.

16. On paper, the revision of the Criminal Procedure Code in 2004 allowed for some progress in the definition of criminal charges. Some provisions that used to allow for broad interpretations were deleted, and more clarity was provided on a number of other crimes. The number of articles consequently increased from 118 to 245. The revision also introduced a new provision requiring court trials to be open to the public (Art. 271, Sect.1). However, only ordinary citizens have since then been tried in open courts while officials and party cadres continue to be tried in closed courts.

17. Some articles of the Criminal Procedure Code are still not in line with international standards or contain terms that are undefined or vague, thus creating scope for misinterpretation or abuse by the State. For instance, the definition of “labour training” and “training detention facilities” remains unclear; the broad interpretation of the category of “political crime” remains possible and elements such as “crimes by association” are maintained. Similarly vague terms, like “extremely grave crime” and “reform through labour”, are contained in the addendum to the Criminal Code adopted on 19 December 2007. A number of provisions also stipulate punishment for acts that would not normally warrant criminal liability. All of these can provide the basis for arbitrary.

18. The DPRK’s judicial system is heavily influenced by the regime in power. In addition to the opaque nature of the ordinary courts, there is a parallel quasi-penal regime

which does not comply with rule of law guarantees such as judicial independence, respect for the rights of the accused and access to a lawyer. Moreover, in the absence of an independent judiciary, the right to a fair trial can not be applied. The “Ten Principles” guiding the Korean Workers' Party (KWP) are, actually, often above the judicial system. The KWP is reportedly informed in advance of trials, and may pronounce sentence alternatives before an actual trial takes place. The party not only determines whether or not to detain a suspect, but also systematically influence the trial process.

19. Article 160 of the Constitution and Article 272 of the Criminal Procedure Law guarantee the independence of courts. However, the KWP has the power to remove judges. Moreover, while trials are legally “open to the public”, no one not specifically invited would consider attending a trial for risk of being viewed by the authorities with great suspicion or as a trouble maker.

20. Investigation and preliminary examinations for ordinary crimes fall under the jurisdiction of the Ministry of People’s Security. However, treason, any anti-State crime and political prisoners fall under the jurisdiction of the State Security Department (SSD). The latter intervenes even in crimes such as rape or robbery in order to identify any possible political ramifications. For example, citizens forcibly repatriated from China are treated as political prisoners and undergo interrogation by the SSD for “treason against the fatherland”. In such cases, there is no formal trial and SSD prosecutors routinely usurp the role of the courts.

21. While investigators and police remain the principle agents for the detection of violators of the DPRK’s laws, there is also a substantial culture of citizen informants, meaning that every citizen has the duty to report to the political hierarchy, especially if having responsibilities in the *ban* (smallest administrative unit). Any suspicion of wrong doing must be reported immediately, even by family members, who will otherwise suffer the same punishment. Citizen informants try to collect information on illegal and unlawful activities but work on a merit basis. They must therefore amass any and all information on the daily routine of all local residents. This frequently results in false confessions by scared citizen.

III. Conclusion and recommendations to the DPRK

The number of executions in the Democratic People’s Republic of Korea (DPRK) reached a peak in the 1990s and the 2000s. However, the death penalty continues to be applied, and several persistent patterns are in operation. These include the use of public and secret executions; the arbitrary character of judicial processes; the application of the death penalty to non-serious crimes and most probably against vulnerable groups. Besides, in spite of legal reforms, the scope of crimes attracting the death penalty in the DPRK has increased over the past few years, including following the recent adoption of two new decrees in July 2012.

The death penalty in the DPRK is applied in total opacity. It corresponds, in addition to being a violation of the right to life, to an arbitrary deprivation of life. The systematic use of

extra-judicial mechanisms, summary processes and arbitrary applications, frequently create some confusion on whether executions result from the death penalty, or should be categorized as extra-judicial killings. While DPRK's authorities are notorious for their carrying out of extra-judicial, summary or arbitrary executions outwith the legal framework of the death penalty, secrecy and lack of information make these incidents impossible to verify.

The Democratic People's Republic of Korea should therefore:

- Immediately put an end to all executions, both inside and outside the prison camp system (see annex), and including public and secret executions;
- Establish an immediate moratorium on the death penalty as a first step towards abolition, and take steps to reduce the scope of this penalty to the most serious crimes only, as defined under international human rights law; suppress its mandatory character;
- Publish detailed statistics on death sentences and executions, ventilated by gender and by crime;
- Revise the Criminal Procedure Code so as to erase criminal offenses that are essentially political or too broadly defined as per international human rights standards;
- Immediately improve conditions of detention in all detention facilities so as to ensure that no detainee is subject to torture or cruel, inhuman or degrading treatment or punishment;
- Guarantee the independence of the judiciary and the right to a fair trial as per international human rights standards;
- Report back on progress achieved to relevant international human rights mechanism.

Annex: DPRK's prison camp system

The DPRK's prison camp system (*kwalliso*) is a unique detention facility, sometimes referred to as a gulag system, where up to 200,000 people are detained. Thousands of these - most of whom unaware of the reasons for their imprisonment or of the crimes they are accused of – are reportedly held by reason of “guilt by association”. No domestic legal instrument refers to the existence of these camps, which is denied by the DPRK. The prison camp system is characterized by routine executions, torture, forced labor, and denials of the right to health. The majority of prisoners are expected to remain in the camps until their death; they have no access to a lawyer and no right to a trial.

In his 2013 report to the Human Rights Council (A/HRC/22/57), the Special Rapporteur on the human rights situation in the DPRK stated that: “Grave human rights violations in the prison camps (or) even the mere existence of such camps, with slave-like conditions for political prisoners, may qualify as crimes against humanity under Article 7, paragraph 1, of the Rome Statute, sub-paragraphs (c) enslavement, and (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law. He also notes that the particularly inhumane conditions and treatment to which detainees in political prison camps are exposed on an intentional basis could give raise to crimes against humanity”.

In March 2010, the Special Rapporteur sent a letter to the DPRK, “raising concerns about allegations of forced labour and limited access to basic necessities, such as food, shelter, clothing, sanitation and medical treatment in the prison camp system. He [the Special Rapporteur] noted the allegation that the camps hold a large number of persons who have been detained for expressing political opinions, defecting or engaging in acts against the Government, or who are family members of accused persons”. On 3 October 2012, five mandate holders sent a joint letter to the DPRK on the alleged use of labor camps for political prisoners. To date, they have received no response.