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The Permanent Mission of the Republic of Korea to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and has the honor to transmit herewith the response of the Government of the Republic of Korea to the Joint Communication from Special Procedures (JOL KOR 3/2021).

The Permanent Mission of the Republic of Korea to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (OHCHR) the assurances of its highest consideration.

Geneva, 9 July 2021



Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations, CH-1211 Geneva 10, Switzerland

The Government of the Republic of Korea's Response
to the Joint Communication from UN Human Rights Council
Special Procedures, dated April 19, 2021

(July 8, 2021)

The Korean War ended in 1953. However, in technical terms, the war is yet to come to an end, which has been a source of great insecurity for the Korean people in the ensuing decades. Under such unique circumstances, approximately 700,000 troops (300,000 from the South and 400,000 from the North) and 15,000 artillery systems are deployed, along the Demilitarized Zone (DMZ). Within the DMZ and its adjacent areas, approximately 1.12 million civilians, counting only those on the South side, still reside. In these areas, where there is such a high-density mix of military and civilian populations, inter-Korean tensions naturally have a direct and immediate impact on their lives, particularly those of civilians.

To alleviate such military tension and build confidence on the Korean Peninsula, the two Koreas have agreed on multiple occasions to halt slander and defamation against each other. In 2018, through the Panmunjom Declaration, the two Koreas pledged to stop all hostile acts, including the loudspeaker broadcasting and scattering of leaflets, in the areas along the Military Demarcation Line. In accordance with the Declaration, the Democratic People's Republic of Korea (DPRK) has also fully ceased all loudspeaker broadcasting against the Republic of Korea (ROK). It is through such inter-Korean efforts that the momentum for dialogue to establish peace on the Korean Peninsula has been maintained.

Above all, the two Koreas have recently been striving to ease military tension and prevent accidental military clashes. Through the Comprehensive Military Agreement (CMA) signed on September 19, 2018, the two sides agreed to completely cease all hostile acts against each other in every domain including the border area. To this day, the CMA concretely and effectively contributes to reducing military tension, including the prevention of accidental clashes, in the border area. The ROK government has no choice but to take into account such a unique inter-Korean situation – in which it has the responsibility to protect the lives and ensure the safety of border residents, through continuous efforts to ease military tension and foster conditions for dialogue between the two sides.

The ROK Government's responses to the questions by the Special Procedures are presented below.

1. Additional information and comments on the information mentioned in the communication

Border residents of the ROK, on the grounds of threat to life and property, have persistently called for legislation and made pleas for restrictions on the scattering of leaflets to the DPRK, which heighten the risks of accidental military clashes between the South and the North. In response to such requests, the ROK National Assembly, including members representing the border area, has proposed 14 bills since 2008 to restrict the scattering of leaflets to the DPRK.

On October 10, 2014, the DPRK military responded with approximately ten firings of an anti-aircraft gun to leaflet drops by an ROK non-governmental organization. In turn, the ROK military fired back. This is a concrete example of the escalated risks of an accidental military clash due to the scattering of leaflets, resulting in direct and immediate danger to the life and security of the border residents.

In its ruling in 2015 on the scattering of leaflets to the DPRK, an ROK court acknowledged that the act of sending leaflets (to the DPRK) via balloons could cause imminent and serious danger to the lives and bodies of border residents (Uijeongbu District Court, 2014GaDan109976, January 6, 2015). The court also acknowledged the possibility of a causal relationship between sending leaflets and the provocative actions by the DPRK, which cause imminent danger to the lives and bodies of border residents (Uijeongbu District Court, 2015Na50546, October 8, 2015). The ROK Supreme Court upheld the judgments in its ruling (2015Da247394, February 25, 2016).

As stated above, the amendment to the Development of Inter-Korean Relations Act (the Amendment) of last December is an outcome of multifaceted efforts by the executive, legislative, and judicial branches as well as civil society to protect and ensure the rights of border residents who are under the direct and immediate influence of inter-Korean military tensions. Despite the ROK government's repeated recommendations and administrative control measures, the scattering of leaflets and other items to the North is causing continued threats to the lives and bodies of border residents, necessitating legislative restriction.

2. Information on the compliance of the legislative amendment with international human rights law

The Amendment stipulates that no one shall cause harm or serious danger to a person's life or body through the acts of (1) loudspeaker broadcasting in the Military Demarcation Line (MDL) area (2) posting visual materials in the MDL area or (3) scattering leaflets or other items.

Such a prohibition is permitted under Article 19 (3) of the International Covenant on Civil and Political Rights (ICCPR), to which the ROK is a party. The freedom of expression under Article 19 (2) of the ICCPR may be subject to limitations if necessary to respect the rights of others or protect national security or public order, and through legislation which clearly defines the scope of the limitations and which has been passed by the ROK National Assembly.

As elaborated in Item 1 above, the ROK government stresses that the Amendment has a legitimate purpose: to protect border residents and ensure their rights. The United Nations Human Rights Committee has observed that every effort of States to avert the danger of war and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life (General Comment No.6: Article 6(Right to Life), 1982).

Furthermore, as stated in Item 3 below, the Amendment imposes minimum limitations necessary to address the need to protect the lives of border residents and ensure their safety. It imposes minimum restrictions on specific *means* of expression, not on the essential *content* of

the freedom of expression, and thus meets the requirement of necessity under Article 19 (3) of the ICCPR.

3. Clarification on the extent of the range of activities criminalized by Article 4 of the amended law and how it is in compliance with Article 19 of the ICCPR

Article 24 (1) of the Amendment criminalizes causing harm or serious danger to a person's life or body through the acts of loudspeaker broadcasting in the MDL area, posting visual materials in the MDL area, or scattering leaflets or other items. Accordingly, the Amendment does not restrict all acts of scattering leaflets but only those that cause harm or serious danger to a person's life or body - a minimum limitation necessary to fulfill its legislative purpose. Furthermore, the Amendment is supposed to be applied to the extent that freedoms of expression, assembly and association - guaranteed by the ROK Constitution - are not excessively limited. Therefore, concerns that the Amendment may be interpreted broadly and lead to disproportionate punishments are groundless.

Furthermore, the ROK government has established an interpretation guideline (enforced on March 30, 2021) regarding Article 4 (6) (the definition of "scattering") to clarify the scope of application of Article 24 (1) 3 ("scattering leaflets and other items"). The government has been making efforts to enhance the predictability, stability, and consistency of the Amendment's application and enforcement, for example by clarifying through the interpretation guideline that the Amendment does not apply to acts in a third country.

Concerning the question of proportionality of punishment that the special procedures raised in the joint communication, we note that the Amendment sets out a penalty of imprisonment with labor for not more than three years *or* a fine not exceeding 30 million won for violating Article 24 (1). Considering the serious consequences of violating Article 24 (1) (*i.e.*, harm or serious danger to a person's life or body), and the fact that threats to the lives or bodies of border residents have persisted due to the continued scattering of leaflets and other items despite the government's repeated recommendations against such actions and administrative control measures, the degree of penalty is not disproportionate to the consequences of violation.

Moreover, it should be noted that the provision sets out the maximum level of penalty; the National Assembly as a legislative branch has set the statutory punishment that defines the type and scope of punishment. The judge will decide on a specific sentence (degree of penalty) within the boundaries of the statutory punishment and in proportion to the liability of each violation. In addition, the Amendment ensures flexible imposition of penalty depending on the gravity of liability by including different types of punishment (imprisonment with labor as well as fines). That is, the actual degree of penalty will be determined by the court's comprehensive evaluation of the specific acts in each circumstance and the resulting harm or serious danger to a person's life or body.

In light of the above factors, the Amendment does not impose limitations on an excessively broad range of activities, nor does it violate the principle of proportionality in punishment.

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