

Mandates of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 43/25, 41/12 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged targeted inspection of 25 civil society organizations related to their work on human rights in Democratic People's Republic of Korea (DPRK) and on the resettlement of escapees in the Republic of Korea, as well as a request for documentations to 64 other civil society organizations announced by the Ministry of Unification for a review of non-profit licenses.

According to the information received:

On 16 July 2020, the Ministry of Unification (MOU) of your Excellency's Government announced that it planned to undertake the first round of business inspections of 25 civil society organizations registered with them in order to verify that they complied with transparency regulations and that the audit will be expanded to cover other areas of work. The MOU stated that it selected these 25 organizations out of 95 non-profit organizations working on human rights issues in DPRK or providing supports for settlement of North Korean escapees, in cases where: 1) a non-profit corporation had not submitted its annual operation report; 2) the annual operation report submitted by a non-profit corporation was not sufficient; or 3) there was a need for an additional fact-checking based on an annual operation report submitted by a non-profit organizations.

Reportedly the MOU justified its measure by explaining that there were high public demands for greater scrutiny of these organizations following a series of recent events, including: the annulation of registration of two organizations who were sending anti-DPRK's regime leaflets by balloons to the DPRK; allegations of corruption faced by an organization supporting comfort women; allegations of embezzlement against a civil society organization working with DPRK escapees. It also explained that anti-DPRK leaflets were used in DPRK to escalate the tension with the Republic of Korea.

On 21 July 2020, the MOU requested 64 non-profit corporations that worked on the human rights issues in the DPRK or the settlement support for North Korean escapees to provide all materials to prove the legitimacy of them maintaining their registration license under the MOU by 30 July. The email notified them that representatives of the MOU may visit their premises for inspection.

The majority of organizations working on human rights in the DPRK are registered with the MOU as a juristic person (corporation) in order to be able to raise funds domestically from private donors and private corporations, and issue tax refund certificates for the Year-end Tax Settlement. Under the Civil Act which governs the establishment of juristic persons and under Ministry's own regulations these organizations are required to submit an extensive yearly report on their operations to the Ministry. There is also a smaller number of organizations registered under the Non-Profit Act with the MOU that only possess a non-profit organization status. For 25 of the 433 juristic persons, the proposed process is the office inspection under Article 37 of Civil Act¹ & Article 8 of Regulations for Incorporation and Supervision for Registered Non-Profit, Non-Governmental Organizations within the Ministry of Unification.

A separate procedure is concerning 64 of 180 registered non-profit organizations, and requests a checklist of documents, but the legal basis of this request is unclear and the MOU itself orally admitted to the concerned organizations that it is not compulsory. The MOU indicated in its letter to these NGOs that Article II of Assistance for Non-Profit, Non-Governmental Organizations Act and Article III of Enforcement Decree of the Aforementioned Act are the legal basis. Documents requested for submission are: all data proving that your organization conforms to the requirements in each of the following numerals: 1) That the direct beneficiaries of your projects are a large number of unspecified persons; 2) That no profit is distributed among its members; 3) That it has not actually been established or operated primarily to back, support or oppose any specific political party or candidate in election, or to spread a creed of any specific religion; 4) That the number of its regular members is more than 100; 5) That it has actual results from public interest activities for the preceding year or longer; 6) That the scope of its business extends to more than two states/cities, and it has set up and operate offices in more than two states/cities". However, the Article II of 'Assistance for Non-Profit, Non-Governmental Organizations Act' and Art. III of the 'Enforcement Decree' list conditions only for the registration of the nonprofit organizations. There is no clause that stipulates, in express terms, that the supervising authority shall demand submission of a checklist called 'Registration Requirements Checklist for Maintaining Status as Accredited NGO' after the permit has already been granted to organizations.

¹ Article 37 (Inspection and Supervision over Business of Juristic Person)
The business of a juristic person shall be inspected and supervised by the competent authorities.

According to information received, the concerned organizations refer to organizations in only two of the Ministry's divisions – the Human Rights Division and the Resettlement Division of the Humanitarian Cooperation Bureau. There are two other divisions in that same Bureau - Separated Families and Humanitarian Aid (Humanitarian Cooperation Planning) – but no organizations in these divisions received notices². Information received also suggests that since 1998, only four organizations in total had been subject to business inspection by the MOU in the last 22 years. On 22 July 2020, some civil society organizations announced that they would not cooperate with the MOU's inspections as they consider they have been arbitrarily targeted.

While we do not wish to prejudge the accuracy of the information received, we express our concern at inspections of selected civil society organizations working on the human rights situation in the DPRK and resettlement support of escapees from the DPRK without clear explanations as to why such inspections and requests for documentations were necessary for these organizations. In absence of such explanations, such inspections may be arbitrary and may be intimidating to civil society organizations.

It is also concerning that the MOU reportedly requested some of the civil society organizations to submit documentations in order to “determine the maintenance of the organization's status as an NGO accredited by the Ministry of Unification”. When a civil society organization loses its status as a legal entity, it will be no longer entitled to tax exemption, subsidies, and other financial supports for public interest business, therefore it will have a great impact on the organization. The Assistance for Non-Profit, Non-Governmental Organizations Act which is the basis for the inspection process on the issue, proclaims that the purpose of the Act is to promote, guarantee, support, and respect NGOs' public interest activities not undermine the civic space. As a result, we are concerned that the Government's actions might fall short of the law's objectives to empower and assist the civil society organizations to function. We are also concerned at the situation of the civil society organizations that have decided not to cooperate on the inspections.

We appreciate the announcement made on 1 September by your Excellency's Government to postpone its inspections because of the COVID-19 spike, however we learned with regrets that the MOU has backtracked on this commitment by launching an inspection on two organizations on 10 September.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

² On 12 August, the MOU announced that the same notice would eventually be distributed to cover other areas of work.

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on legal grounds for revoking the permits of the two DPRK-escapees' organizations mentioned above.
3. Please provide information on reasons for inspecting the 25 civil society organizations and on the procedures of the selection of these organizations.
4. Please provide information on reasons and legal basis for requesting 64 other civil society organizations to provide documents.
5. Please provide information on the procedures of office inspections as well as the procedures when the organizations do not cooperate.
6. Please provide information on how the privacy and confidentiality of the documents and witnesses contained in requested documents will be handled.
7. Please provide explanations how these measures comply with international human rights law, the human rights provisions in the Constitution and with the North Korean Human Rights Act passed by the National Assembly in 2016 and what the status of the establishment of the North Korean Human Rights Foundation is.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all the inspections and reviews of licenses be suspended and that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Tomás Ojea Quintana
Special Rapporteur on the situation of human rights in the Democratic People's Republic
of Korea

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 19 and 22 of the International Covenant on Civil and Political Rights, acceded by the Republic of Korea on 10 April 1990, guaranteeing the rights to freedom of opinion and expression and freedom of association, respectively.

We would also like to refer to Human Rights Council Resolution 22/6, which calls upon States to ensure that procedures governing the registration of civil society organizations are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration and are in conformity with international human rights law.

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

Article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;

Article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;

Article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

We wish to refer to Human Rights Council Resolution 22/6, which calls upon States to ensure that procedures governing the registration of civil society organizations are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration and are in conformity with international human rights law.

Furthermore, the Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasizes in his thematic report A/HRC/20/27 (paragraph

75) that “[t]he suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law.”