

**Mandates of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

REFERENCE:  
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23 August 2021

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 extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 46/17, 44/5 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the Proclamation regarding the prohibition of acts that impede the northern border closure operation, issued by the Ministry of Social Security on 25 August 2020, and the Reactionary Thought and Culture Denunciation Law, issued by the Supreme People's Assembly, in December 2020.

According to the information received:

The Proclamation provides for a 1-2 km wide buffer zone along the country's northern border, mostly with China, and stipulates that any person who makes unauthorized entry "shall be shot unconditionally" and that trespassers from neighbouring countries found on the Democratic People's Republic of Korea's side of the Yalu and Tumen riverbank "shall be shot without prior warning".

The Reactionary Thought and Culture Denunciation Law, issued by the Supreme People's Assembly, prohibits citizens from speaking or writing in South Korean style, singing songs in South Korean signing style or making a publication in a South Korean font. It further prohibits the distribution and viewing of movies, video recordings, compilations, books, songs, drawings, photos and the like, or the import or distribution of songs, drawings, photos and designs from the Republic of Korea and other "hostile nations", such as the United States and Japan, as well as of any sexual video recordings, books, photos, drawings and the like. The law prescribes the death penalty for import or distribution of such contents. In the case of "organizing or inciting the collective viewing or reading" of material from the Republic of Korea or sexual video recordings or books, photos, drawings, the death sentence is the only prescribed punishment.

We are concerned over shoot-on-sight policy for unauthorized entry into the buffer zone along the northern border, as well as over the death penalty, without judicial guarantees, imposed on acts that appear to be guaranteed by international human rights law relating to the rights to freedom of opinion and expression and the right to take part in cultural life.

We would like to refer your Excellency's Government to article 6 and article 19 of the International Covenant on Civil and Political Rights (ICCPR) and article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded by the Democratic People's Republic of Korea on 14 September 1981, that guarantee the rights to life, to freedom of opinion and expression and the right to take part in cultural life.

In relation to the Proclamation, we would like to highlight that the use of potentially lethal force for law enforcement purposes and intentional taking of life by any means is an extreme measure, which should be resorted to only when strictly necessary, in order to protect life or prevent serious injury from an imminent threat (Human Rights Committee, General Comment 36, paragraph 12). Where firearms are used to protect life, law enforcement officials should identify themselves and give a clear warning of their intent to use firearms, with sufficient time awarded for the warning to be observed, unless doing so would put them or others at risk of death or serious harm or be clearly inappropriate or pointless in the circumstances (Basic Principles on the Use of Force and Firearms by Law Enforcement Officials). States should take all necessary measures to prevent arbitrary deprivations of life by their law enforcement officials, including soldiers charged with law enforcement missions, including by having appropriate legislation controlling the use of lethal force by law enforcement officials (General Comment 36, paragraph 13). The Proclamation appears to allow resort to use of force in situations which do not comply with these standards.

With regards to the Reactionary Thought and Culture Denunciation Law, we would like to highlight that the death penalty may only be applied to the "most serious crimes" which involve intentional killing (Ibid, paragraph 35). Furthermore, we note that under no circumstances can the death penalty ever be applied as a sanction against conduct whose very criminalization violates the Covenant.

The right to freedom of opinion and expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on one's own and on public affairs, cultural and artistic expression and discussion of human rights (Paragraph 11); all forms of expression and the means of their dissemination are protected, including audio-visual modes of expression (Paragraph 12). The right of everyone to take part in cultural life includes the right to seek and develop cultural knowledge and expressions and to share them with others, as well as to act creatively and take part in creative activity. States Parties to the Covenant must take steps to achieve the full realization of the right to take part in cultural life, including through the conservation, the development and the diffusion of science and culture (Article 15 (2)), respect for the freedom indispensable for scientific research and creative activity (Article 15 (3)), and through the encouragement and development of international contacts and co-operation in the scientific and cultural fields (article 15 (4)).

We would also like to remind your Excellency's Government that any restrictions to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 19 (3) and article 20 of the ICCPR. Under these standards, restrictions must be provided for by law and conform

to the strict tests of necessity and proportionality. According to the General Comment No. 21 of the Committee on Economic, Social and Cultural Rights (E/C.12/GC/21), any limitations to the right to take part in cultural life must pursue a legitimate aim, be compatible with the nature of this right, strictly necessary for the promotion of general welfare in a democratic society, and proportionate (Paragraph 19). In this regard, we note that the Law poses impermissible restrictions on freedom of opinion and expression and on the right to take part in cultural life and is thus contrary to the international obligations of your Government to the Covenants.

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:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide further information about the compliance of the above-mentioned law and the Proclamation with international human rights law, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
3. Please explain how the prohibition to import, distribute and view movies, video recordings, compilations, books, songs, drawings, photos and the like from the Republic of Korea and other “hostile nations” is compatible with the obligations towards the rights to freedom of opinion and expression and to take part in cultural life, which include the rights to share cultural expressions and to access that of others.
4. Please provide information about how the death penalty for importing, distributing and viewing such contents is compatible with international human rights law and with the limitation of application of the death penalty to crimes which involve intentional killing.
5. Please provide information on the application of the law until now particularly the number of executions that have been carried out under this law.
6. Please provide information on the legislation controlling the use of lethal force by law enforcement officials and soldiers charged with law enforcement missions and how it ensures compliance with international standards on the use of force and firearms.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

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