

**Mandates of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and the Special Rapporteur on extrajudicial, summary or arbitrary executions**

REFERENCE:  
AL KOR 7/2020

17 November 2020

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 and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 43/25 and 44/5.

In this connection, we would like to bring to the attention of Your Excellency's Government the request for access to sufficient and accurate information on the capture, interrogation and killing of Mr. Lee Dae-jun in the sea by military personnel of the Democratic People's Republic of Korea, made by his family members represented by Mr. Lee Rae-jin.

According to the information received:

On 15 September 2020, Mr. Lee Dae-jun, an official of the Ministry of Maritime Affairs and Fisheries of the Republic of Korea (RoK), left for the sea on a government-owned fishery inspection boat to patrol.

On 21 September 2020, at around 1.30 a.m., he left the steering house of the fishery inspection boat the Mugunghwa No. 10. He told his colleagues that he would take care of some paperwork as he left. He is believed to have gone missing at around 2 to 3 a.m. according to the Government and to Mr. Lee's brother, Mr. Lee Rae-jin. At that time, the inspection boat was approximately 1.9 kilometers (1.2 miles) south of the Yeonpyeong Islands in the South Korean waters.

At around 11.30 a.m. on the same day, Mr. Lee's colleagues noticed his absence and began searching the boat and the waters in the vicinity but failed to find him. At 12.51 p.m., the crew reported his missing to the Coast Guard Office. In the afternoon, the RoK's Navy and coast guard began searching the area.

On 22 September, Mr. Lee Rae-jin, the brother of Mr. Lee Dae-jun, boarded the search ship and joined the search team until 23 September. On 22 September between 6 p.m. and 6.30 p.m., the captain and crew conducted life jackets counts on the boat in order to establish if any were missing, and explained to Mr. Lee Rae-jin that the Navy told them to report the number of the life jacket. Mr. Lee also overheard that a high-level Navy official called and told the captain to report the number of life jackets as soon as possible and not to reveal it to outside parties since it is a military secret.

*Mr. Lee Dae-jun's capture, interrogation and killing in the sea by the DPRK forces*

On 22 September, at around 3.30 p.m., the RoK military acquired information that a Democratic People's Republic of Korea (DPRK) vessel spotted Mr. Lee Dae-jun in waters of the DPRK near the Deungsan cape and reported the information to the Ministry of Defense. This implies that Mr. Lee had drifted 38 kilometers from where he went missing in a west-northwest direction for 26 hours. According to the military report given to the RoK National Assembly Defense Committee, the DPRK soldiers threw a rope for him to hold on, and interrogated and closely supervised him for about three hours, before losing hold of him and searching for him for about two hours. The DPRK soldiers then found Mr. Lee again, and kept him in the water while the soldiers waited for higher-level orders for another hour.

According to the Ministry of National Defense of the RoK, at around 9.40 p.m. on the same day, the soldiers of the DPRK shot Mr. Lee Dae-jun ten times in the water. At a little past 10 p.m., they poured oil on his remains and set them a light.

On 24 September, the Ministry of National Defense of the RoK held a press conference to report the case as described above, based on the communication between the DPRK crew and their land-based command that the RoK had intercepted.

*Letter from the DPRK dated 25 September 2020*

On 25 September, the Director of the National Security Office at the RoK Presidential Executive Office announced the receipt of a letter from the United Front Department of the Central Committee of the Workers' Party of Korea addressed to the President.

According to the letter, on 22 September, a DPRK Navy vessel approached Mr. Lee Dae-Jun, described as "illegal trespasser", up to 80 meters away, and asked him to identify himself, but he initially fudged the answer by saying that he is from RoK once or twice but did not give further answers. Because of Mr. Lee's continued silence, the DPRK forces approached him further and fired two shots. Surprised Mr. Lee ducked and appeared as if he was bending down to put something on his body.

Following policies approved by the Maritime Patrol Duty Station Regulations of the Coastal Security Bureau, the DPRK forces fired about 10 bullets towards Mr. Lee under the captain's decision. At the time, the distance was 40-50 meters.

After the shooting, there was no movement or sound. The DPRK forces approached to about 10 meters to search but found only the floating material and a large amount of blood. They determined that Mr. Lee had been killed and set fire to his floating material in accordance with the state emergency preventative regulation.

The United Front Department stated that it had ordered the strengthening of maritime patrol duty, as well as the creation of a system containing the entire process of maritime enforcement to avoid recurrence of such unfortunate event.

### *Police Investigation*

The RoK authorities stated that the victim, Mr. Lee Dae-jun, had tried to defect to the DPRK, as an interim finding. According to the RoK law, defection to the DPRK is a crime.

According to Mr. Lee Rae-jin, the brother of the victim, the Incheon Coast Guard under the Supervision of the Central Regional Coast Guard is carrying out a criminal investigation. The police called the victim's sister, his niece and his wife to record their statements. Mr. Lee Rae-jin requested the police to interview the family members at one go and not to call several times to record the statements. The family have also requested to record the statements at a place of their choice and not at the police station. The police recorded the Mr. Lee Rae-jin's statement on 23 September and the sister's on 13 October at her house.

The family members feel that the investigation is focused on finding information to prove that Mr. Lee Dae-jun intended to defect to the DPRK. The family is deeply unsatisfied with the current investigation focusing on framing the victim as a defector just because it was assumed that he left the boat with a life jacket and a floating object, and that he was a trained navigator. According to the family, the RoK authorities have been raising the fact that the victim had a large amount of debt as a motivation to defect.

### *Family members' right to information*

On 21 September at 2.20 p.m., the West Seas Fisheries Management Service, where Mr. Lee Dae-jun worked, first informed his brother, Mr. Lee Rae-jin that Mr. Lee Dae-jun was missing. The West Seas Fisheries Management Service formed a Committee to deal with this incident, and has been providing the family with information about the search.

After the incident, the President of the RoK publicly expressed his condolences to the family. On 8 October, he sent a reply to the victim's son to assure him of the Government's support. On 21 October, the Minister of Foreign Affairs met with the brother, Mr. Lee Rae-jin, and later sent a reply to the questions he asked during the meeting.

However, the authorities have not provided any details about the capture, interrogation and killing of Mr. Lee Dae-jun and about his remains to the family. They have also not shared the details of their findings on investigations as to whether Mr. Lee Dae-jun's intended to defect. The family members learn news through media and have to repeatedly approach the Government to receive any information.

According to the brother, Mr. Lee Rae-jin, most of the family's interaction with the police has not been about the investigation on the incident. It has rather been

about Mr. Lee Dae-jun's personal life to determine if he had an intention to defect to the DPRK.

On 6 November, the brother Mr. Lee Rae-jin met with the Minister of National Defense. The family had requested that the Ministry of National Defense share the information on 1) the coordinates where Mr. Lee Dae-jun was found by the DPRK soldiers around 3.30 p.m. on 22 September 2020; and 2) the DPRK's communications through the VHF · SSB · NAVTEX communication network and the communications by affiliates of the RoK Ministry of National Defense (including the Navy, etc.) from 12.51 p.m. on 21 September 2020 until 10.51 p.m. on 22 September 2020 (including the 'one-sided, unjustified communications' by the DPRK) through the VHF 16).

In the meeting, the Minister delivered the military's position to the family that they "deem the public official to have been discovered 'in the coastal area of Kumdong-ri, Kangryong County, South Hwanghae,' but the exact coordinates could not be disclosed as per the Military Secret Protection Act."

Regarding the second question, the Minister of National Defense explained to Mr. Lee Rae-jin that the content of the communications sent out through the VHF · SSB · NAVTEX communications network would not be disclosed. Mr. Lee then asked if the Ministry of National Defense had made a 'rescue request' to the DPRK, and the Minister of National Defense said that they did not send a rescue request to the DPRK. When Mr. Lee asked why a rescue request was not made, the Minister explained that a rescue request was not made to the DPRK because there is no rescue response manual. Mr. Lee further inquired if an international distress signal should have been transmitted to the DPRK to enable a rescue, to which the Minister of National Defense replied that a rescue request was not made by transmitting an international distress signal because the DPRK waters are not part of ROK territory.

While we do not wish to prejudge the accuracy of the information received, we express our concern at the family members' lack of access to sufficient and accurate information on the capture, interrogation and killing of Mr. Lee Dae-jun in the sea by the DPRK and his remains as well as on the measures that Your Excellency's Government took to rescue Mr. Lee after it learned that he was being captured by the DPRK. We would also like to convey the family members' concern that the police investigation appears to be focused on establishing that Mr. Lee had intended to defect to the DPRK, while the intention to defect should not make any difference to the human rights obligations of the DPRK Government or the RoK Government.

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:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide reasons why information on the findings of the investigation into the capture, interrogation and killing of Mr. Lee Dae-jun in the sea and information on where his remains are have not been shared with the family members.
3. Please provide information on the measures taken by your Government to rescue Mr. Lee Dae-jun after learning that he was seized by the DPRK.
4. Please provide information on the measures taken or to be taken to prevent the recurrence of such incident.

This communication and any response received from Your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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 your Government keeps sharing detailed information, including confidential one, and updates with the family members as much as possible.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with Your Excellency's Government's to clarify the issue/s in question.

Please be informed that an allegation letter on the same case has been sent to the Government of the Democratic People's Republic of Korea.

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

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we wish to draw Your Excellency's Government's attention to Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights, which Your Excellency's Government acceded to on 10 April 1990, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life.

With regard to the **obligation to investigate** we note that in its General Comment No. 31, the Human Rights Committee recalls the responsibility of State parties to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice or redress the harm caused by non- state actors (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). A failure to investigate violations of the Covenant and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 15). We further refer to the Committee's General Comment 36 which states "The duty to investigate ...is implicit in the obligation to protect and is reinforced by the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2, paragraph 1, when read in conjunction with article 6, paragraph 1, and the duty to provide an effective remedy to victims of human rights violations and their relatives, which is articulated in article 2, paragraph 3 of the Covenant, when read in conjunction with article 6, paragraph 1. Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations.

With regard to the **participation of family members in investigations**, general comment 36 of the Human Rights Committee further notes that "states parties should also disclose relevant details about the investigation to the victim's next of kin, allow them to present new evidence, afford them with legal standing in the investigation, and make public information about the investigative steps taken and the investigation's findings, conclusions and recommendations, subject to absolutely necessary redactions justified by a compelling need to protect the public interest or the privacy and other legal rights of directly affected individuals." We also refer to the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (the Minnesota Protocol). In particular that "the participation of the family members or other close relatives of a deceased or disappeared person is an important element of an effective investigation. The State must enable all close relatives to participate effectively in the investigation, though without compromising its integrity. The relatives of a deceased person must be sought, and informed of the investigation. Family members should be granted legal standing, and the investigative mechanisms or authorities should keep them informed of the progress of the investigation, during all its phases, in a timely manner. Family members must be enabled by the investigating authorities to make suggestions and arguments as to what investigative steps are necessary, provide evidence, and assert their interests and rights

throughout the process. They should be informed of, and have access to, any hearing relevant to the investigation, and they should be provided with information relevant to the investigation in advance,” (paragraph 35).

Regarding the **right to truth**, we note that “family members have the right to seek and obtain information on the causes of a killing and to learn the truth about the circumstances, events and causes that led to it.<sup>33</sup> In cases of potentially unlawful death, families have the right, at a minimum, to information about the circumstances, location and condition of the remains and, insofar as it has been determined, the cause and manner of death (Minnesota Protocol paragraph 11).