

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 PRK 3/2020

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 information we received on the capture, interrogation and killing of Mr. Lee Dae-jun in the sea by military personnel of your Excellency's Government.

According to the information received:

On 21 September 2020, at around 1.30 a.m., Mr. Lee Dae-jun, an official of the Ministry of Maritime Affairs and Fisheries of the Republic of Korea (RoK), left the steering house of the Government's owned fishery inspection boat. He is believed to have gone missing at around 2 to 3 a.m. according to the RoK Government. 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 him missing to the Coast Guard Office. In the afternoon, the RoK's Navy and coast guard began searching the area.

On 22 September, at around 3.30 p.m., the RoK military acquired an information that a vessel of the Democratic People's Republic of Korea (DPRK) 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 10.00 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.

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 information on the detailed findings of the investigation into the capture, interrogation and killing of Mr. Lee Dae-jun in the sea and why his remains were not returned to the family members. If no investigation has taken place, please explain why.

3. Please provide information on how those who are responsible for the incident have been or will be held accountable.
4. Please provide information on measures you have taken to prevent recurrence of such incident including the revision of the COVID-19 preventative measures to ensure they are compatible with human rights standards including on the right to life.

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 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.

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 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 14 September 1981, 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.

We remind that Article 6 is included in the list of non-derogable rights of Article 4, paragraph 2 of the Covenant. Hence, the guarantees against arbitrary deprivation of life contained in Article 6 continue to apply **in all circumstances**, including in situations of armed conflict and other public emergencies (Human Rights Committee, General Comment No. 36).

With regards to the use of lethal force by law enforcement officials, States parties are expected to take all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials, including soldiers charged with law enforcement missions. These measures include appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life, mandatory reporting, review, and investigation of lethal incidents and other life-threatening incidents, and the supplying of forces responsible for crowd control with effective "less-lethal" means and adequate protective equipment in order to obviate their need to resort to lethal force. In particular, all operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169)(1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) (General Comment No. 36). According to these instruments, **intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life**. Law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. Medical assistance should be provided as soon as possible when necessary.

With regards to the **obligation to investigate and bring perpetrators to justice**, we refer to Human Rights Committee, General Comment No. 31 which states that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by its agents. 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)