

Democratic People's Republic of Korea, Nuclear Weapons Policy, and the Right to Life

List of Issues Prior to Reporting | Submission to the United Nations Human Rights Committee During its Periodic Review of the DPRK

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Founded in 1981, LCNP is a nonprofit educational association of lawyers and legal scholars that engages in research and advocacy in support of the global elimination of nuclear weapons and a more just and peaceful world through respect for domestic and international law. LCNP serves as the United Nations office of the International Association of Lawyers Against Nuclear Arms.

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Founded in 1982, WSLF is a nonprofit organization that seeks to abolish nuclear weapons as an essential step in making possible a more secure, just, and environmentally sustainable world. Grounded in commitments to nonviolence and international law, WSLF provides independent information and analysis to a wide range of audiences. WSLF is an affiliate of the International Association of Lawyers Against Nuclear Arms.

Introduction

The use and threat of use of nuclear weapons is incompatible with multiple rights enshrined in the International Covenant on Civil and Political Rights (ICCPR). For practical reasons, however, this submission concentrates on the non-derogable right to life (Article 6)—the most fundamental human right.

Article 6 of the ICCPR defines the right to life in its paragraph 1 in the following terms: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” In 2018, in a general comment discussed below, the United Nations Human Rights Committee addressed nuclear weapons, finding among other things that the use or threat of use of nuclear weapons “is incompatible with respect for the right to life.” In this submission, Lawyers Committee on Nuclear Policy (LCNP) and Western States Legal Foundation (WSLF), drawing on the general comment, hold that the policy and practice of the Democratic People’s Republic of Korea (DPRK) in relation to nuclear weapons contravenes the right to life under the ICCPR in multiple ways. At the end, we suggest questions to be included in the list of issues.

LCNP and WSLF have previously submitted a comment to the Committee concerning the Russian Federation’s nuclear weapons policy¹ and have also made a submission to the Human Rights Council concerning the nuclear weapons policy of the United States of America.² We are fully aware that the geopolitical situation of the DPRK is far different than that of major powers whose projection of power worldwide relies in part on nuclear arms. In particular, the DPRK for decades, even before it acquired nuclear weapons, has faced possible US use of nuclear weapons in certain circumstances. In 2017, the United States and the DPRK each made unmistakable and belligerent threats of use of nuclear arms, with President Trump making reference to “fire and fury” and the DPRK referring to its “rockets’ visit to the entire U.S. mainland.” Nonetheless, international human rights law and other relevant international law apply universally, regardless of a country’s particular circumstances, and each country must comply with the law.

¹ [Russian Nuclear Weapons Policy and the Right to Life](#), List of Issues Submission to the United Nations Human Rights Committee During its Periodic Review of the Russian Federation, LCNP and Western States Legal Foundation, June 1, 2020.

² [US Nuclear Weapons Policy Violates the Right to Life](#), Submission to the UN Human Rights Council Universal Periodic Review by LCNP, Western States Legal Foundation, and Swiss Lawyers for Nuclear Disarmament, October 3, 2019.

In paragraph 66 of General Comment No. 36³ on the right to life set out in Article 6 of the ICCPR, this Committee found (endnotes omitted):

The threat or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and are of a nature to cause destruction of human life on a catastrophic scale, is incompatible with respect for the right to life and may amount to a crime under international law. States parties must take all necessary measures to stop the proliferation of weapons of mass destruction, including measures to prevent their acquisition by non-state actors, to refrain from developing, producing, testing, acquiring, stockpiling, selling, transferring and using them, to destroy existing stockpiles, and to take adequate measures of protection against accidental use, all in accordance with their international obligations. They must also respect their international obligations to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control and to afford adequate reparation to victims whose right to life has been or is being adversely affected by the testing or use of weapons of mass destruction, in accordance with principles of international responsibility.

Under the ICCPR, Article 4(2), the right to life is non-derogable, to be observed in all circumstances, even in the event of a “public emergency which threatens the life of the nation.” The Democratic People’s Republic of Korea (DPRK) is a state party to the ICCPR and as a result is obligated to implement its provisions in good faith according to Article 26 of the 1969 Vienna Convention on the Law of Treaties (*pacta sunt servanda*). Even though the jurisdiction of the Human Rights Committee is limited to the ICCPR, it must take into account, for its interpretation, other relevant sources of international law.⁴ As such, we will refer to different treaties in the field of arms control further below. The general comment is considered the Committee’s authentic interpretation of Article 6 and the relevant practice thereto.

The last submission by the Democratic People’s Republic of Korea to the Human Rights Committee was in 2001. In that submission, the DPRK noted that it considers “an aggressive war, especially thermonuclear war, as the most serious threat to the life of mankind and resolutely rejects it,” and cited Article 17 of its constitution, which states that the DPRK “shall

³ Human Rights Committee, General Comment No. 36, released 30 October 2018, final edited version CCPR/C/GC/36, 3 November 2019. For commentary, see in particular contributions of Professor Roger Clark and Dr. Daniel Rietiker in *Human Rights Versus Nuclear Weapons: New Dimensions*, Lawyers Committee on Nuclear Policy, January 2021, <http://lcnp.org/Human-Rights-Versus-Nuclear-Weapons-New-Dimensions-LCNP-January-2021.pdf>.

⁴ Vienna Convention on the Law of Treaties, Art. 31 § 3 (1969).

oppose all forms of aggression.”⁵ The DPRK emphasized the importance of environmental protections, citing Article 7 of the Law on the Protection of the Environment which stipulates “prohibiting the development, testing and use of nuclear and chemical weapons and preventing any damage to the environment are the unanimous aspiration and desire of the people throughout the world.” The DPRK asserted that it would fight “against the devastation and pollution of the environment through the development, testing, and use of nuclear and chemical weapons on the Korean peninsula and in the surrounding areas.”

The actions of the DPRK do not align with any of these commitments and statements made in 2001.

A. DPRK’s Nuclear Arsenal

The size of the DPRK’s nuclear arsenal is not known precisely, but based in part on its estimated production of fissile material it is thought to be in the low tens. In 2018, the well-regarded researchers Hans Kristensen and Robert Norris, writing in the Bulletin of the Atomic Scientists, “cautiously” estimated that the DPRK has produced enough fissile material for 30-60 nuclear weapons and may have assembled 10-20 warheads.⁶ They further noted that the DPRK has close range and medium range ballistic missiles, a number of which are operational. It is also known that the DPRK is developing inter-continental ballistic missiles (ICBMs) which so far have limited operational capacity.⁷ These ICBMs, the Hwasong-14 and the Hwasong-15, were tested in 2017. Some experts believe that this gives the DPRK the capability to deliver a nuclear bomb to the United States.⁸

Despite the uncertainty about the exact size of the arsenal, the six tests conducted by the DPRK since 2003 show that there is no doubt that the state possesses these weapons and seeks to further expand and strengthen its arsenal. At the 2020 session of the UN General Assembly

⁵ Second Periodic report of the Democratic People’s Republic of Korea on its implementation of the International Covenant on Civil and Political Rights [25 December 1999], CCPR/C/PRK/2000/2 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshYSuxMUifRly90VnAxQecGhxfJKelMAzAkLft1uOXhGeBht5SJtjFEI1CImh%2biiwttFuX2IZChO%2ftx94JceVO%2f%2bFY5yYFr2e1TD2nXQYyWb>.

⁶ Hans M. Kristensen & Robert S. Norris (2018) North Korean nuclear capabilities, 2018, Bulletin of the Atomic Scientists, 74:1, 41-51. As of September 2020, in “Status of World Nuclear Forces,” a Federation of American Scientists resource, Kristensen and co-author Matt Korda estimated that the DPRK has assembled 35 warheads. <https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/>. See also Arms Control Association, “Arms Control and Proliferation Profile: North Korea,” <https://www.armscontrol.org/factsheets/northkoreaprofile> (June 2018) (citing SIPRI estimate of 20-30 warheads as of June 2019).

⁷ Kristensen and Norris.

⁸ See Nuclear Threat Initiative, North Korea profile prepared by the James Martin Center for Nonproliferation Studies at the Middlebury Institute of International Studies, <https://www.nti.org/learn/countries/north-korea/>.

(UNGA) First Committee, the DPRK stated: “We will not pause for even a moment on the road to building up most powerful defense capabilities which no one would dare to challenge.”⁹

B. The Illegality of Threat or Use of Nuclear Weapons

Nuclear weapons cannot be used in compliance with the law of armed conflict, including international humanitarian law, nor with the right to life, above all because their massive indiscriminate effects make it impossible to distinguish between military targets and civilian populations and infrastructure. Furthermore, nuclear weapons use implicates devastating, long-lasting, environmental radiation affecting all forms of life, including and especially human life. The illegality of use of nuclear arms applies in all circumstances, including response to a prior nuclear attack. This truth was recognized by the Committee in its General Comment No. 36. It was also recognized by the Treaty on the Prohibition of Nuclear Weapons (TPNW), adopted at the United Nations by 122 states on 7 July 2017. The TPNW will enter into force on 22 January 2021 for the fifty-plus states that have so far signed and ratified it. The TPNW’s preamble reaffirms the need for *all* states to comply with applicable international law, including international humanitarian law and international human rights law. It recites rules and principles of international humanitarian law, and states “that any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law.” The preamble further reaffirms that “any use of nuclear weapons would also be abhorrent to the principles of humanity and the dictates of public conscience”—factors with legal as well as moral value.

The possession of nuclear weapons coupled with the implication that the weapons will be used in certain circumstances beyond the control of the vast number of their potential victims, impedes the full exercise of the right of life. Referring to the threat to the right to life posed by the designing, testing, manufacture, possession, and deployment of nuclear weapons, the Committee observed already in its 1984 General Comment No. 14 that “the very existence and gravity of this threat generates a climate of suspicion and fear between States, which is in itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms....”¹⁰ That observation is acutely relevant to the situation in Northeast Asia.

⁹ Statement of Ambassador Kim Song to the First Committee of the United Nations General Assembly on behalf of the DPRK , 9 October 2020, p. 3, https://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com20/statements/9Oct_DPRK.pdf.

¹⁰ Human Rights Committee, General comment No. 14, Right to Life, “Nuclear Weapons and the Right to Life,” 9 November 1984, para. 5.

The DPRK's apparent readiness to use nuclear arms in certain circumstances is incompatible with respect for the Article 6 right to life. The DPRK has a stated reliance on a nuclear arsenal as a basis for its security, noting repeatedly that it needs its arsenal for purposes of self-defense. Most recently, the DPRK told the UNGA First Committee that: "We possess a self-defensive deterrent to reliably defend ourselves against any form of high intensity pressure, military threats or blackmail by hostile forces."¹¹ The DPRK does not have a publicly known doctrine regarding use of nuclear weapons, with the exception of the Nuclear Weapons State Law. It conveys that North Korea will generally not use nuclear weapons against a non-nuclear weapon state unless that state aligns itself with and joins a nuclear weapon state in invading the DPRK.¹² It appears that the DPRK has not ruled out first use of nuclear weapons. Its National Defense Commission has stated that if under threat, the DPRK may feel compelled to use nuclear weapons preemptively.¹³ A European Council on Foreign Relations publication describes DPRK doctrinal thinking as oriented to the preemption of decapitation—"threatening to use nuclear weapons first if it detects the preparation of a preventive attack, whether conventional or nuclear, to decapitate the regime."¹⁴

Whatever the DPRK's true intentions regarding the circumstances in which it would use nuclear weapons, it remains the case that any use—and any threat of use—is contrary to the right to life. More broadly, with respect to ensuring non-use of nuclear weapons and fulfilling the obligation to negotiate their elimination, the DPRK, the United States, the Republic of Korea, China, and other concerned parties must bear in mind that, as the Committee said in General Comment No. 36, para. 69: "Efforts to avert the risks of war and any other armed conflict, and to strengthen international peace and security, are among the most important safeguards of the right to life."

C. Obligation to Negotiate to Achieve Nuclear Disarmament

General Comment No. 36 states in its para. 66 that states parties to the ICCPR must respect their international obligation "to pursue in good faith negotiations in order to achieve the aim

¹¹ Statement of Ambassador Kim Song to the First Committee of United Nations General Assembly on behalf of the DPRK, 9 October 2020, https://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com20/statements/9Oct_DPRK.pdf.

¹² See Peterson Institute for International Economics, "Nuclear Doctrine: What the North Koreans are Actually Saying," <https://www.piie.com/blogs/north-korea-witness-transformation/nuclear-doctrine-what-north-koreans-are-actually-saying> (August 16, 2017).

¹³ CNN, "North Korea threatens nuclear strike over U.S.-south Korean exercise," <https://www.cnn.com/2016/03/06/asia/north-korea-preemptive-nuclear-strike-threat/index.html> (March 7, 2016).

¹⁴ European Council on Foreign Relations, "Preempting defeat: In Search of North Korea's Nuclear Doctrine," https://ecfr.eu/wp-content/uploads/ECFR-237-In_search_of_North_Koreas_nuclear_doctrine.pdf (November, 2017).

of nuclear disarmament under strict and effective international control.”¹⁵ The Committee has previously affirmed this legal obligation in more general terms.¹⁶

Historically, the DPRK has voted for General Assembly resolutions calling for negotiation of complete nuclear disarmament, and in 2020 it voted for *Follow-up to the 2013 high-level meeting of the General Assembly on nuclear disarmament* (A/RES/75/45). That resolution “[c]alls for the urgent commencement of negotiations in the Conference on Disarmament on effective nuclear disarmament measures to achieve the total elimination of nuclear weapons, including, in particular, on a comprehensive convention on nuclear weapons.” Like other nuclear-armed states, the DPRK did not participate in the 2017 negotiation of the Treaty on the Prohibition of Nuclear Weapons and has since voted against General Assembly resolutions welcoming the adoption of the treaty (in 2020, A/RES/75/40). Prior to 2017, the DPRK voted for the resolution *Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons*,” but it has abstained since then, perhaps because the resolution (in 2020, A/RES/75/66) has been modified to refer to the TPNW. It now “[c]alls once again upon all States to immediately engage in multilateral negotiations leading to nuclear disarmament in all its aspects under strict and effective international control, including under the Treaty on the Prohibition of Nuclear Weapons.” The DPRK votes against other resolutions concerning various measures relating to nuclear disarmament. Thus it was one of a handful of states to vote against the resolution *Comprehensive Nuclear-Test-Ban Treaty* (CTBT) (A/RES/75/87) and *Joint courses of action and future-oriented dialogue towards a world without nuclear weapons* (A/RES/75/71).

Overall, the DPRK over the years has accepted the principle of negotiation of global nuclear disarmament, but has not accepted instruments and measures relating to that goal, including the Nuclear Non-Proliferation Treaty (NPT), Comprehensive Nuclear-Test-Ban Treaty, and the TPNW. The same can be said of its approach to discussions regarding denuclearization of the Korean Peninsula. In the 2018 Panmunjom Declaration¹⁷ and the Singapore Summit joint

¹⁵ Human Rights Committee, General Comment No. 36, 30 October 2018, para. 66, CCPR/C/GC/36.

¹⁶ Human Rights Committee, General comment No. 14, Right to Life, “Nuclear Weapons and the Right to Life,” 9 November 1984, para. 7; *see also Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, International Court of Justice (8 July 1996), in which the Court unanimously concluded that “[t]here exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.” The Committee cited General Comment No. 14 and the ICJ’s opinion in endnote 274 to General Comment No. 36.

¹⁷ *Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula*, adopted on 27 April 2018 by Kim Jong Un, Chairman of the State Affairs Commission of the Democratic People’s Republic of Korea and Moon Jae-in, President of the Republic of Korea. Submitted to the UN General Assembly and Security Council in a *Letter dated 6 September 2018 from the representatives of the Democratic People’s Republic of Korea and the Republic of Korea to the United Nations addressed to the Secretary-General*. UN Doc A/72/109–S/2018/820.

statement,¹⁸ the DPRK committed to that objective. The DPRK has suspended nuclear explosive and long-range missile tests, but otherwise no progress has been made. We will not attempt here to allocate responsibility between the US and the DPRK. Undoubtedly, though, it is the case that the disarmament enterprise has been undermined by the DPRK's ongoing nuclear weapons program, which itself is contrary to the right to life regardless of the state of global and regional disarmament discussions and negotiations.

D. Obligation to Refrain from Testing Nuclear Weapons

Under the ICCPR right to life as interpreted by the Committee, states parties must refrain from testing nuclear weapons. The DPRK conducted six tests between 2003 and 2017. Each of these tests has been publicly announced and celebrated as a success. Furthermore, the DPRK has neither signed nor ratified the Comprehensive Nuclear-Test-Ban Treaty and continues to consistently vote against the annual General Assembly resolution on the CTBT (in 2020, A/RES/75/87). The DPRK is one of eight remaining hold-out states whose ratification is necessary for the treaty's entry into force. While the DPRK announced a moratorium on nuclear testing in 2018, in 2020 it stated that it is no longer bound by the self-imposed moratorium and is free to resume testing.

By threatening to resume testing and refusing to sign or ratify the CTBT, the DPRK is not fulfilling its obligation to refrain from testing nuclear weapons.

E. Obligation to Destroy Existing Stockpile

Under the ICCPR right to life as interpreted by the Committee, states parties must take all necessary measures to destroy their existing stockpiles of nuclear arms. The DPRK continues to violate the right to life by making no effort to destroy its existing stockpile. It instead continues to develop the effectiveness, efficiency, and size of its arsenal. The DPRK, however, stated at the 2020 UNGA First Committee session that it will not roll back from building up defense capabilities in order to contain sustained nuclear threats from hostile forces.¹⁹ The duty to destroy nuclear weapon stockpiles is not alleviated by the existence of other states' arsenals.

The DPRK's refusal to rejoin the Nuclear Non-Proliferation Treaty further evidences its violation of the obligation under the ICCPR right to life to destroy its stockpile of nuclear arms. The DPRK is one of only five states not party to the NPT; the others are India, Pakistan, and Israel—all nuclear-armed—and

¹⁸ Joint Statement of President Donald J. Trump of the United States of America and Chairman Kim Jong Un of the Democratic People's Republic of Korea at the Singapore Summit," Official Statement, The White House, 12 June 2018, <https://www.whitehouse.gov/briefings-statements/joint-statement-president-donald-j-trump-united-states-america-chairman-kim-jong-un-democratic-peoples-republic-korea-singapore-summit/>

¹⁹ Statement of Ambassador Kim Song to the First Committee of the United Nations General Assembly on behalf of the DPRK, 9 October 2020, https://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com20/statements/9Oct_DPRK.pdf.

South Sudan. The DPRK was a party to the NPT but then withdrew in 2003.²⁰ Under the terms of that treaty, the DPRK would have to rejoin as a non-nuclear weapon state party. Thus, it would have to verifiably dismantle its nuclear arsenal to rejoin the treaty, as South Africa did following the end of apartheid. The DPRK could additionally fulfill its obligation to destroy its stockpile by joining the Treaty on the Prohibition of Nuclear Weapons, which it should do as well as rejoining the NPT.

F. Adequate Reparation to Victims of Nuclear Testing and Use; Environmental Remediation

General Comment No. 36, para. 66, provides that ICCPR states parties are obligated “to afford adequate reparation to victims whose right to life has been or is being adversely affected by the testing or use of weapons of mass destruction, in accordance with principles of international responsibility.” “Weapons of mass destruction” includes biological and chemical weapons as well as nuclear weapons. We have no information about whether the DPRK has provided reparation to such victims. Inclusion of such information in the DPRK’s report would be appropriate.

The Treaty on the Prohibition of Nuclear Weapons, Article 6.1, supports the Committee’s interpretation of the right to life as applied to victim assistance. In Article 6.2, the treaty also imposes an environmental remediation obligation, often directly relevant to victim assistance, on states parties to the TPNW, as follows: “Each State Party, with respect to areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons or other nuclear explosive devices, shall take necessary and appropriate measures towards the environmental remediation of areas so contaminated.” While the DPRK will not be a state party to the TPNW when it enters into force on 22 January 2021, such environmental remediation is relevant to protection of the right to life and other human rights of affected persons. Inclusion of information about environmental remediation efforts in the DPRK’s report would be appropriate.

G. The Least Diversion of Resources

In para. 26 of General Comment No. 36, the Committee observed: “The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.” Among those general conditions are “degradation of the environment,” “the prevalence of life-threatening diseases, such as AIDS, tuberculosis and malaria,” and “widespread hunger and malnutrition and extreme poverty and homelessness.”

²⁰ Some states dispute the legality of this withdrawal.

Action to alleviate such conditions requires resources, as the present Covid-19 pandemic has demonstrated all too well. UN Secretary-General António Guterres has called for a global ceasefire so that humanity can defeat its common enemy, the virus.²¹ Similarly, the vast human and financial investment in nuclear arms can and should be devoted to public health, reducing inequality and poverty, protecting the climate and the environment, and other beneficial ends.

Under the United Nations Charter the “establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world’s human and economic resources.” Ending the diversion of resources to nuclear arms could greatly promote the protection of life in accordance with Article 6 of the ICCPR.

Based on an assumption that the DPRK spends six percent of its annual military spending on nuclear weapons, the International Campaign to Abolish Nuclear Weapons estimates that the DPRK would have spent close to 753 billion Korean Won on its nuclear program in 2018, or \$620 million USD.²²

H. Suggested Questions

Lawyers Committee on Nuclear Policy and Western States Legal Foundation suggest that the Committee pose the following questions to the DPRK as part of the list of issues:

- What steps will be taken to bring policy and doctrine regarding threat or use and testing of nuclear weapons into conformity with the right to life?
- What steps will be taken to fulfill the international obligation to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control?
- What steps will be taken to achieve the denuclearization of the Korean Peninsula?
- What steps have been and will be taken to afford adequate reparation to victims whose right to life has been or is being adversely affected by the testing or use of weapons of mass destruction?
- What steps have been and will be taken to environmentally remediate areas affected by nuclear explosive testing?

²¹ Secretary-General’s Appeal for Global Ceasefire, 23 March 2020, <https://www.un.org/sg/en/content/sg/statement/2020-03-23/secretary-generals-appeal-for-global-ceasefire>.

²² International Campaign to Abolish Nuclear Weapons, *Enough is Enough: 2019 Global Nuclear Weapons Spending*, p. 7, <https://d3n8a8pro7vhmx.cloudfront.net/ican/pages/1549/attachments/original/1589365383/ICAN-Enough-is-Enough-Global-Nuclear-Weapons-Spending-2020-published-13052020.pdf?1589365383>, citing Reuters “North Korea spends about a third of income on military: group” (18 January 2011).