DPRK’s Nuclear Weapons Policy and Practice with respect to the Right to Life (Article 6 of the International Covenant on Civil and Political Rights)

List of Issues Submission to the United Nations Human Rights Committee During its Periodic Review of the Democratic Peoples’ Republic of Korea

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1. Summary

The civil society organizations making this submission contend that the policy and practice of the Democratic Peoples’ Republic of Korea (DPRK) with regard to nuclear weapons is not in conformity with the right to life as enshrined in Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and as interpreted by the Committee in General Comment 36 of October 30, 2018.

In this, the DPRK is not alone. However, the fact that every other nuclear-armed State is also acting in violation of the ICCPR with respect to their nuclear weapons policies does not relieve the DPRK of its responsibilities.

The DPRK announced its desire to withdraw from the ICCPR in 1997. However, the authors of this submission concur with the decision of the UN Secretary-General that the DPRK remains a member of the ICCPR as there is no option in the covenant for withdrawal.

It is recognised that there are genuine national security concerns that underscore the nuclear weapons policies of the DPRK. However, the applicable human rights standards and other relevant international law require these states to meet their security needs by other means, and to negotiate for the complete elimination of nuclear weapons.

In signing the 2018 Panmunjom Declaration1 and the 2018 Singapore Summit joint statement2 the DPRK has indicated a willingness to eliminate their nuclear weapons. However, the lack of implementation of these agreements, along with the DPRK’s continuing development and testing of nuclear weapons and policies of threatening to use them, constitute a violation of the Right to Life as outlined in General Comment 36 of the Human Rights Committee.

The DPRK is requested to take specific action and provide additional information with regard to its nuclear weapons policy that could help bring them into conformity with the ICCPR. Similar requests are being made in separate submissions with regard to the policies of the other nuclear-armed States.3

2. Nuclear weapons and the Right to Life – Article 6 of the ICCPR

Under the ICCPR, Article 6 (1) reads as follows:

“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.”

As indicated by Article 4(2), under the ICCPR, 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 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).

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3 In this regard, the civil society organisations making this submission express their support for Russian Nuclear 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 (see http://www.lcnp.org/RussiaListissuesCLNPWSLF.pdf) and US Nuclear Weapons Policy Violates the Right to Life, Submission to the UN Human Rights Council Universal Periodic Review, LCNP, Western States Legal Foundation, and Swiss Lawyers for Nuclear Disarmament, October 3, 2019 (see http://www.lcnp.org-USUPRLCNPPdf).
In paragraph 66 of General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life⁴, the Committee stated:

*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.*

This paragraph updates CCPR General Comment No. 14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life, adopted by the Human Rights Committee on 9 November 1984.⁵

### 3. Additional legal obligations

In 1996, the International Court of Justice (ICJ) affirmed that the threat or use of nuclear weapons is generally illegal under existing international law, and that there exists an obligation to “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.”⁶

The DPRK participated in the ICJ case, submitting that “the threat or use of nuclear weapons in any case is a violation of the UN Charter and the existing international laws, and therefore should not be allowed on any account.”⁷ In addition, the DPRK demonstrated their agreement with the decision of the ICJ and the obligations arising from it by voting in favour of the UNGA resolution *Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons* every year until 2017.⁸

The fact that the DPRK declared their withdrawal from the Non-Proliferation Treaty (NPT) in 2003 does not relieve them from their nuclear disarmament obligation, which the ICJ affirmed as universal and not restricted to only States Parties of the NPT.

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⁸ See for example, Res A/C.1/71/L.42. Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons. Adopted 27 October 2016. Voting record at [https://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/votes/L42.pdf](https://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/votes/L42.pdf). The DPRK stopped voting in favour of the annual UNGA resolution from 2017 when the resolution was amended to drop its support for a Nuclear Weapons Convention, a treaty that includes the nuclear armed states and advances a multilateral approach to eliminating nuclear stockpiles under effective international control. The amended UN resolution, which none of the nuclear armed or allied countries support, calls instead for countries to join the Treaty on the Prohibition of Nuclear Weapons which is a treaty negotiated by non-nuclear states requiring unilateral disarmament by any nuclear armed State that accedes.
With respect to the Security Council, we refer to resolutions 1718 (2006), 1874 (2009), 2094 (2013), 2270 (2016), 2321 (2016) and 2375 (2017) adopted in response to nuclear tests conducted by the DPRK. Under these resolutions the Security Council affirms that such tests "represent a clear threat to international peace and security", "demands that the DPRK not conduct any further nuclear tests", and "decides that the DPRK shall abandon all nuclear weapons and existing nuclear programmes in a complete, verifiable and irreversible manner, shall act strictly in accordance with the obligations applicable to parties under the Treaty on the Non-Proliferation of Nuclear Weapons and the terms and conditions of its International Atomic Energy Agency (IAEA) Safeguards Agreement."

4. Policy and practice of the DPRK

4.1. Threat or use of nuclear weapons

According to the above-mentioned General Comment No. 36,

“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.”

We argue that the DPRK’s policy and recent statements are at odds with this paragraph.

DPRK has a declared policy of threatening to use nuclear weapons, and maintains the option and technical capability to use nuclear weapons in a regional or global conflict.

The DPRK government has made numerous statements affirming that it possesses nuclear weapons and missiles that can deliver such weapons, that these weapons are part of a policy of nuclear deterrence which includes the option of using the weapons in response to a nuclear attack, and has backed up these statements with nuclear weapons detonations (tests) and ballistic missile flight tests to demonstrate its capacity to undertake nuclear attacks.

In January 2016, for example, the DPRK government undertook its first nuclear weapons detonation (test) and accompanied this with a statement affirming its policy of nuclear threat and use.

“The picture-perfect test will place the DPRK on a par with nuclear-weapons states that possess H-bombs as well, and it will also help the Korean people to raise their profile as a dignified nation boasting the most powerful nuclear deterrent.

It is the legitimate right of a sovereign state and an indisputably fair measure that the DPRK has developed the H-bomb of justice to confront the US, ringleader of aggression which keeps aiming a great deal of nuclear weapons at the DPRK.

Genuine peace and security do not come from any humiliating request nor at the negotiating table. The current stark reality illustrates again that you should defend your destiny by yourself. Nothing will be more foolish than to lay down a hunting gun as a herd of wolves are attacking."

DPRK Leader Kim Jong Un reaffirmed the country’s nuclear deterrence policy in July 2020 in an official statement delivered at reception for DPRK veterans marking the 67th anniversary of the end of the 1950-53 Korean War.

“We have become able to reliably defend ourselves against any form of high-intensity pressure and military threat by imperialist reactionaries and other hostile forces. Thanks to our reliable

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9 DPRK govt declares H-bomb test successful, KCNA Watch, citing Pyongyang Times, July 1, 2016.
https://kcnawatch.org/newstream/1452082634-481698390/dprk-govt-declares-h-bomb-test-successful/
This policy and practice is not in conformity with the ICCPR right to life as interpreted by the Committee, in particular its finding that threat or use of nuclear weapons is incompatible with respect for the right to life.

To its credit the DPRK has affirmed a policy of not using nuclear weapons first in an armed conflict, i.e. to only use nuclear weapons in response to the use of nuclear weapons being used against them. China and India have adopted similar policies. Such a policy is a step in the right direction. If adopted by all nuclear armed States, it would open the door to negotiations for comprehensive nuclear disarmament.\textsuperscript{11}

However, the no-first-use policy is manifestly insufficient to bring the DPRK into compliance with the law on nuclear weapons threat and use. General comment 36 affirmed that any use of nuclear weapons would be incompatible the Right to Life, and this includes retaliatory (second) use. In order to comply with the law, the DPRK would need to relinquish the option of any use of nuclear weapons.

In addition, perceived rationales of security and military necessity for nuclear weapons do not over-ride the legal obligations under Article 6 ICCPR, which as noted above is non-derogable, to be observed in all circumstances. In other words, the DPRK has an obligation, as do all nuclear-armed States, to abandon their reliance on the illegal doctrine of nuclear deterrence and replace this with alternative, legal approaches to ensuring national security.

4.2. Testing of nuclear weapons

The above-mentioned paragraph 66 of General Comment No. 36 indicates that „States parties must take all necessary measures to stop the proliferation of weapons of mass destruction, including measures to (...) refrain from (...) testing (...) them (...)”

The DPRK has undertaken six rounds of nuclear detonations since their first nuclear test in 2016. These tests are incompatible with the Right to Life as affirmed in para 66 of General Comment 36.

The DPRK has asserted that the tests are ‘safe’ and have ‘no negative effect on the surrounding ecosystem.” However, there are unsubstantiated reports of negative health impacts from the nuclear testing on populations near the DPRK tests-sites indicating the possibility of radiation leakage.\textsuperscript{12} In addition, the radionuclides formed in nuclear detonations can be dangerous for tens of thousands of years, with high potential of radiation from underground tests leaching into the environment over time\textsuperscript{13}.

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and effective self-defense nuclear deterrence, the word war would no longer exist on this land, and the security and future of our state will be guaranteed forever.”\textsuperscript{10}
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\textsuperscript{11} A number of the nuclear armed states currently have policies to threaten and use nuclear weapons in a wide range of circumstances, including to prevent agression with conventional weapons, the development of chemical and biological weapons, and even cyber attacks. As such, they are not willing to negotiate for the elimination of nuclear weapons. If all the nuclear armed States adopted no-first-use policies, it means that the only purpose of their arsenals is to prevent the use of nuclear weapons against them (or their allies). As such, they could engage in negotiations for the complete elimination of nuclear weapons as long as the negotiated agreement included verification and enforcement measures to ensure that everyone was eliminating their weapons. In line with this reasoning, the three nuclear armed States that have adopted no-first-use policies (China, India and DPRK) all support negotiations for a nuclear weapons convention, where-as most of the nuclear armed States that maintain first-use policies are currently opposed to such negotiations.


Finally, the condemnation of nuclear testing by the UN Security Council in the resolutions against DPRK nuclear tests was based primarily on the contribution that nuclear tests play in the development of nuclear weapons and the threat this poses to peace and humanity. Such concerns remain valid even if it can be proven that the tests generate no short, medium or long-term risk to human health and the environment.

4.3. Diversion of resources from social and economic need

In CCPR General Comment No. 14: Nuclear Weapons and the Right to Life, the Committee noted that:

“... during successive sessions of the General Assembly, representatives from all geographical regions have expressed their growing concern at the development and proliferation of increasingly awesome weapons of mass destruction, which not only threaten human life but also absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all.”

Indeed, Article 26 of the UN Charter establishes a duty ‘to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources.’

In paragraph 26 of General Comment 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.” Paragraph 26 notes that these conditions include “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.”

Action to alleviate such conditions requires resources, as the present Covid-19 pandemic has demonstrated all too well.

With an estimated GDP per capita of $1700, the DPRK ranks amongst the 20 poorest countries in the world. Diversion by the government of substantial human and financial resources to support the development of nuclear weapons and their delivery vehicles is likely to be having significant impact on the government’s capacity to address poverty and other social and economic need.

Ending the diversion of resources to nuclear arms would greatly promote the protection of life in accordance with Article 6 of the ICCPR.

4.4. Obligation to pursue negotiations for nuclear disarmament

General Comment 36, para. 66, states that states parties to the ICPPR must respect their international obligation “to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control.”

The DPRK is to be commended for taking a number of actions to implement this obligation. These include:

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• Supporting UN General Assembly resolutions calling for negotiations on a nuclear weapons convention to prohibit and eliminate nuclear weapons globally;\(^{16}\)
• Committing, in the 2018 Panmunjom Declaration\(^ {17}\) and in the 2018 Singapore Summit joint statement\(^ {18}\) to the total denuclearization of the Korean Peninsula.

However, there are concerns about the lack of implementation of these commitments. Despite supporting the UN resolutions on negotiations for a nuclear weapons convention, DPRK has taken no action to advance this with other nuclear-armed States, including those that also support the resolutions (India, Pakistan and China).

Indeed, there are doubts that the DPRK is acting in good faith with regard to their disarmament commitments. No process or timeline has been developed - in follow-up to the Panmunjom Declaration and Singapore Summit statement - for denuclearizing the Korean peninsula. And DPRK has reversed previous commitments and agreements, including withdrawing from the Nuclear Non-Proliferation Treaty in 2003 and voiding the 1992 Joint Declaration on the Denuclearization of the Korean Peninsula, with a formal renunciation of it in 2013.\(^ {19}\)

4.5. Security without nuclear weapons

Every nation has the right to security, political independence and territorial integrity, and the right of self-defence to protect their nation from armed attack. However, these rights must be exercised in accordance with international law including the UN Charter, human rights law and international humanitarian law. In light of the illegality of the threat or use of nuclear weapons under international law, we call on the DPRK, and all nuclear armed States, to replace their reliance on nuclear deterrence for national security with increased reliance on common security mechanisms, including, but not limited to, the range of legal and political approaches highlighted in Chapter VI of the UN Charter. The support and promotion by the DPRK for a comprehensive Peace Treaty to replace the 1950-53 Korean War Armistice Agreement\(^ {20}\) is a step in the right direction.

5. Questions to DPRK

• What measures will be taken by the DPRK to achieve denuclearization of the Korean peninsula and to bring its policy and doctrine regarding threat or use of nuclear weapons into conformity with the right to life?
• What measures will be taken by DPRK to encourage other nuclear-armed states to adopt no-first-use policies, as DPRK has done, in order to open the door to negotiations on the elimination of nuclear weapons?

\(^{16}\) DPRK, for example, votes in favour of the annual UNGA resolution entitled ‘Follow-up to the 2013 high-level meeting of the General Assembly on nuclear disarmament’, which, inter alia, calls 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;’. See UN A/C.1/75/L.17, adopted 3 November 2020. Voting record at https://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com20/votes/L17.pdf

\(^{17}\) The DPRK and Republic of Korea agreed in Paragraph 3(4) of the Panmunjom Declaration to “the common goal of realizing, through complete denuclearization, a nuclear-free Korean peninsula.” See footnote 1.

\(^{18}\) Under item 3 of the Singapore Summit Statement, “the DPRK commits to work toward complete denuclearization of the Korean Peninsula.” See footnote 2.


\(^{20}\) The Korean Armistice Agreement brought about a cessation of hostilities of the Korean War. It was signed on 27 July 1953 by the United States (on behalf on behalf of the United Nations Command), North Korea and China. The armistice was designed to "ensure a complete cessation of hostilities and of all acts of armed force in Korea until a final peaceful settlement is achieved.” To date, a Korean Peace Treaty to establish a final peaceful settlement has not been negotiated.
• What additional measures will be taken by DPRK to advance good faith negotiations for the global prohibition and elimination of nuclear weapons under strict and effective international control as called for in the ICJ Advisory Opinion of 1996?

• What measures will be taken by the DPRK to reduce human and financial resources dedicated to nuclear weapons and their delivery systems and utilize these resources to meeting human and social need in the DPRK?

• What measures will be taken over short, medium and long-term to adequately assess the impact of nuclear tests on human health and the environment and to ensure treatment and reparation to those impacted?

6. Recommendations

We recommend that DPRK:

• Affirm the understandings that any use of nuclear weapons would have catastrophic humanitarian consequences, could not comply with the right to life within the meaning of Article 6 ICCPR, and that a nuclear war cannot be won and must never be fought;

• Undertake the confidence-building measures outlined in the Panmunjom Declaration;

• Indicate its willingness to continue the Singapore Summit process with the incoming US Administration;

• Re-engage in a Six-Party process to achieve regional security without nuclear weapons, including the possibility of a North-East Asian Nuclear Weapon Free Zone;

• Accept the compulsory jurisdiction of the International Court of Justice for legal disputes with other UN members that have also accepted such jurisdiction according to Art. 36, para. 2, of the ICJ Statute;

• Support the call for the global elimination of nuclear weapons by 2045, the 100th anniversary of the United Nations and the birth of the nuclear-weapons age;

• Accede to the Comprehensive Nuclear Test Ban Treaty and consider re-joining the Non-Proliferation Treaty.

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About the submitting organizations:

Aotearoa Lawyers for Peace:
Aotearoa Lawyers for Peace (ALP) is an organization of lawyers and law students from Aotearoa (New Zealand) working to abolish nuclear weapons, increase respect for international law and abolish war. ALP is the New Zealand affiliate of the International Association of Lawyers Against Nuclear Arms, and is a founding partner of UNFOLD ZERO, which promotes United Nations initiatives for nuclear disarmament.


Basel Peace Office:
Basel Peace Office is a coalition established by five Swiss and four international organizations to advance the peace and security of a nuclear-weapon-free world. Basel Peace Office makes connections between inter-related issues - including peace, the climate, nuclear disarmament, human rights and sustainable development - and builds cooperation amongst key constituencies including mayors, parliamentarians, religious leaders, academics, youth/students, women, lawyers, medical professionals, government officials and UN entities.

Basel Peace Office is a member of the EU Non-proliferation Consortium. The partner organizations are the Basel-Stadt Canton (a member of Mayors for Peace), Global Security Institute, International Physicians for the Prevention of Nuclear War Switzerland, Middle Powers Initiative, Parliamentarians for Nuclear Non-proliferation and Disarmament, Schweizer Anwälte für Nukleare Abrüstung (the Association of Swiss Lawyers for Nuclear Abrüstung).
Swisspeace, University of Basel Sociology Seminary of the Department of Social Sciences and the World Future Council.

Schweizer Anwälte für Nukleare Abrüstung (Association of Swiss Lawyers for Nuclear Disarmament),
Schweizer Anwälte für Nukleare Abrüstung (SAFNA) is an organization of lawyers, jurists and law students to support general and complete disarmament, in particular nuclear disarmament. SAFNA raises awareness among the larger public, including legal circles, of the dangers of nuclear weapons through publications, seminars, conferences etc. The approach the association takes is above all a legal one. SAFNA is politically and religiously neutral and places the humanitarian aspect and the victims of nuclear weapons at the center of its activities. It respects gender diversity and equality. SAFNA supports all efforts towards the fortification of international humanitarian law, friendly settlement of disputes and the regulation of international arms trade.
https://safna.org/

World Future Council
The World Future Council (WFC) was established to promote effective policies to ensure a peaceful and sustainable future. WFC consists of 50 eminent global change-makers from governments, parliaments, civil society, academia, the arts and business who have already successfully created change. They are supported by a staff of experts that work with the concillors to identify, develop, highlight and spreading effective, future-just solutions for current challenges humanity is facing.
www.worldfuturecouncil.org www.facebook.com/wfc.goodpolicies

Youth Fusion
Youth Fusion is a world-wide networking platform for young individuals and organizations in the field of nuclear disarmament, risk-reduction and non-proliferation. Youth Fusion focuses on youth action and intergenerational dialogue, building on the links between disarmament, peace, climate action, human rights, sustainable development and building back better from the pandemic. Youth Fusion serves as the youth section of Abolition 2000, the global civil society network to eliminate nuclear weapons.
www.instagram.com/youthfusion2000/