

Democratic Republic of North Korea

List of crimes punishable with the death penalty in the DPRK's domestic legislation

Criminal Procedure Law (last revised in 2007)

Article 60 – Plots against National Sovereignty: “In cases of extremely grave offenses, he or she shall be committed to lifetime reform through labor or subjected to death penalty” (discretionary)

Article 61 – Terrorism: “In cases of extremely grave offenses, he or she shall be committed to lifetime reform through labor or subjected to death penalty and confiscation of his or her property.” (discretionary)

Article 63 – Treason: “In cases of extremely grave offenses, he or she shall be committed to lifetime reform through labor or subjected to death penalty and confiscation of his or her property.” (discretionary)

Article 64 – Damage or destruction: “In cases of extremely grave offenses, he or she shall be committed to lifetime reform through labor or subjected to death penalty and confiscation of his or her property.” (discretionary)

Article 68 – Perfidy against the People: “In cases of extremely grave offenses, he or she shall be committed to lifetime reform through labor or subjected to death penalty and confiscation of his or her property.” (discretionary)

Article 266 – Intentional murder. While this article does not specifically include the death penalty, it specifies a minimum sentence of 10 year hard labour, with the assumption that the absence of upper limit leaves open the use of capital punishment. (discretionary)

2007 addendum to the Criminal Code for ordinary crimes

Disrupting Preparations for War:

Article 1 – Extremely grave crime of deliberate damage or destruction of resources reserved for purposes of combat and military facilities. (mandatory)

Theft of Government or Public Property:

Article 2 & 3 – Extremely grave crime of seizing state property (mandatory)

Article 4 – Extremely grave crime of the deliberate damage or destruction of state property (mandatory)
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Violating Socialist Economic Order

Article 5 – Extremely grave crime of currency counterfeiting. (mandatory)

Article 6 – Extremely grave crime of smuggling and introducing jewels and colored metal onto the black market. (mandatory)

Article 8 – Crime of illicitly selling the State’s resources. (discretionary)

Violating Socialist Culture:

Article 11 – Extremely grave crime of smuggling and introducing narcotics onto the black market. (mandatory)

Article 17 – Extraordinarily grave act of delinquency. (discretionary)

Article 18 – Crime of illegal business operations. (discretionary)

Article 19 – Extremely grave crime of deliberately inflicting aggravated bodily injuries. (discretionary)

Article 20 – Extremely grave crime of kidnapping. (mandatory)

Article 21 – Extraordinarily grave crime of rape. (discretionary)

Article 22 – Extremely grave crime of theft of private property. (mandatory)

Article 14 – Extraordinarily grave crime of escape from prison. (discretionary)

Article 23 – Crimes punishable by lifetime reform through labor or death penalty in exceptional circumstances. (discretionary)

Public decrees of September 2012

“Circulation of forex punishable by execution” (by the Department of People’s Security)

“Execution by gun squad for divulging classified information via cell phone” (by the State Security Department).²² / The death penalty in North Korea: In the machinery of a totalitarian State - FIDH

2. Facts and figures on the death penalty

The scale of the application of the death penalty cannot be verified due to intense State secrecy. The only available sources are testimonies from witnesses who escaped abroad, reports by human rights NGOs and data from the government of the Republic of Korea, which has created specific bodies to monitor the human rights situation in the DPRK.

Estimates place the DPRK among the top 10 countries in the world for the number of executions carried out on an annual basis. Indeed, the DPRK was among the 21 countries to have carried out executions in 2012.⁴³ According to a South Korean NGO called the Database Center for North Korean Human Rights (NKDB), close to 3,000 executions have been carried since the establishment of the DPRK in 1948. While there is no clear data for the period running up to the late 1980s, the number of executions has significantly increased in the 1990s, as an attempt to maintain public order during the Arduous March. The NKDB has itself recorded 1559 executions during that decade, and 910 cases in the 2000s.⁴⁴

According to the Anti Death Penalty Asia Network (ADPAN), an Asian network of NGOs campaigning for the abolition of the death penalty, there were more than 60 reported cases of executions in 2010 and 30 cases in 2011.⁴⁵ The only confirmed cases relate to high-ranking officials, whose execution infiltrated the media. In March 2010, former director of planning and finance Pak Nam-Hŭi and Deputy Director Ri T'ae-Il were executed for treason as scapegoats of the failed currency reform in December 2009.⁴⁶ In 2011, officials of the State Security Department including Deputy Director Ryu Kyong, were executed for espionage, probably as part of a purge in the army.⁴⁷ In 2012, executions have continued with at least 15 reported executions, including the one of Kim Chol, a high-ranking military official who was publicly executed for merrymaking during Kim Jong-il's mourning period.⁴⁸

According to the NKDB, 86.7% of past executions were public executions, with a ratio higher in the 1990s (91.8%) than in the 2000s (80.7%). While it appears that public executions were predominantly carried during the Arduous March, evidence remains unclear as to whether public executions are still performed today.

Example of execution during the 'Arduous March' famine - Witness 6 recalls seeing the execution of a woman in her mid-thirties, probably from the suburbs of Pyŏngyang. She was already close to death when she was taken to the execution poll in the backyard of a market place, and had probably been tortured. A judge

43. Countries where execution were reported in 2012: Afghanistan (14), Bangladesh (1), Belarus (3+), Botswana (2), DPRK (6+), Gambia (9), India (1), Iran (314+), Iraq (129+), Japan (7), Pakistan (1), Palestinian Authority (6, Hamas de facto administration in Gaza), People's Republic of China (+), Saudi Arabia (79+), Somalia (6+; 5+ by the Transitional Federal Government, and 1 in Puntland), South Sudan (5+), Sudan (19+), Taiwan (6), United Arab Emirates (EAU) (1), United States of America (43), Yemen (28+). Nb: "+" indicates an unknown number of (further) executions. (source: 'Death sentences and executions 2012', Amnesty International, 2013, <http://www.amnesty.org/sites/impact.amnesty.org/files/PUBLIC/2012DeathPenaltyAI.pdf>)

44. NKDB, White Paper on North Korean Human Rights 2012, page 112.

45. 'North Korea', Anti-Death Penalty Asia Network, available at: <http://adpan.net/facts-figures/retentionist-2/north-korea/>

46. FIDH interview with officials from the Government of the Republic of Korea, December 2012, Seoul.
 47. '2011: Ryu Kyong, Kim Jong-un rival', 4 January 2012, ExecutedToday.com, available at: <http://www.executedtoday.com/2012/01/04/2011-ryu-kyong-kim-jong-un/>
 48. Julian Ryall, 'North Korean army minister executed with mortar round', The telegraph, 24 October 2012, available at: <http://www.telegraph.co.uk/news/worldnews/asia/northkorea/9630509/North-Korean-army-minister-executed-with-mortar-round.html>
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came and read a document detailing the reasons for her execution. The woman accidentally killed her son's friend. While the two boys were arguing for a pencil, her son accidentally killed his friend by pushing him. The woman buried the body in her yard, but because it was during the time of the famine, she boiled one of the boy's arms to eat it. When the agents eventually found the body, they found a bone as evidence.

The NKDB further estimates that 12.1% of executions were secret executions. The judicial character of secret executions remains unclear; their evidence is naturally difficult to come by and often requires second or third hand accounts.

Executions have reportedly been carried out to punish crimes of murder, cannibalism, human and drug trafficking. Executions are particularly frequent inside the prison camp system. Here prisoners are punished for breaking the camp's rules, or for attempting to escape. Executions are reported in higher frequency along the northern part of the DPRK, especially in the provinces of North Hamgyong, South Hamgyong, Ryanggang, South Pyongyan as well as in Pyongyang. Apart from Pyongyang, these regions have been particularly affected by food shortage and are the main routes for escapees attempting to cross the border.

Article 32 of the Court Sentence and Decision Implementation Law stipulates that death sentences shall be carried out by firing squad, with nine shots normally fired. However, hanging is also practiced. There are also unverified reports of cruel, inhuman or degrading practices;⁴⁹ however FIDH was not able to confirm these.

In brief, the death penalty in the DPRK is not only applied on a large scale, but it is also closely inter-linked with the other systematic and widespread human rights violations in the country.

49. The Hidden Gulag, a Report by the Committee for Human Rights in North Korea, second edition', 2012, page 55-56, available at: http://www.hrnk.org/uploads/pdfs/HRNK_HiddenGulag2_Web_5-18.pdf²⁴ / The death penalty in North Korea: In the machinery of a totalitarian State - FIDH

IV: DEATH PENALTY AS AN “ARBITRARY DEPRIVATION OF LIFE”

In applying the death penalty, the DPRK violates, among other international human rights obligations, the right to a fair trial, the prohibition of public and secret executions, as well as the prohibition of the death penalty for non-serious crimes and the imposition of minimum standards of protection for vulnerable groups.

1. Denial of the right to a fair trial

On paper, the revision of the Criminal Procedure Code in 2004 allowed for some progress in the definition of criminal charges. Some provisions that used to allow for broad interpretations were deleted, and more clarity was provided on a number of other crimes. The number of articles consequently increased from 118 to 245. The revision also introduced a new provision requiring court trials to be open to the public (Art. 271, Sect.1). However, only ordinary citizens have since then been tried in open courts while officials and party cadres continue to be tried in closed courts.⁵⁰

Some articles are still not in line with international standards or contain terms that are undefined or are vague, thus creating scope for misinterpretation or abuse by the State. For instance, the definition of “labour training” and “training detention facilities” remains unclear; the broad interpretation of the category of “political crime” remains possible and elements such as “crimes by association” are maintained. Similarly vague terms, like “extremely grave crime” and “reform through labour”, are contained in the addendum to the Criminal Code adopted on 19 December 2007.⁵¹ A number of provisions also stipulate punishment for acts that would not normally warrant criminal liability. All of these can provide the basis for arbitrary.

The DPRK’s judicial system is heavily influenced by the regime in power. In addition to the opaque nature of the ordinary courts, there is a parallel quasi-penal regime which does not comply with rule of law guarantees such as judicial independence, respect for the rights of the accused and access to a lawyer.⁵² Moreover, in the absence of an independent judiciary, the right to a fair trial can not be applied. The above-mentioned “Ten Principles” guiding the KWP are, actually, often above the judicial system. The KWP is reportedly informed in advance of trials, and may pronounce sentence alternatives before an actual trial takes place. The party not only determines whether or not to detain a suspect, but also systematically influence the trial process.

50. Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, A/HRC/19/65, para 31, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-65_en.pdf

51. Ibid. para. 34.

52. Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, Vitit Muntarbhorn, A/61/349, 15 September 2006, para. 15, available at: http://ap.ohchr.org/documents/dpage_e.aspx?c=50&su=59 FIDH - The death penalty in North Korea: In the machinery of a totalitarian State / 25

FIDH was told that no execution actually takes place without the agreement of the authority of the highest levels of the KWP. A number of witnesses met by the FIDH even claimed that during different periods of socio-economic unrest, such as the Arduous March, the KWP would set arbitrary quotas for a certain number of executions per community to maintain public control.

***Executions based on forced confessions** - Witness 12 recalls an execution in 2000 or 2001. The defendant had been invited for a drink by a friend, and had taken his shaving knife with him hoping to shave later in the day. In the market place, the two had met another friend, the son of a member of the security service. The defendant had a fight with the latter and the knife accidentally wounded him. He was accused of attempted murder. Although he claimed it was an accident, he was arrested. In the 70's, his own father had been accused of spying and sentenced to death. Therefore, the defendant had a bad rating for ideological purity, *sŏngbun*, and was accused of seeking revenge. He was detained and interrogated for about 6 months. Witness 12 does not know if the defendant was tortured because nobody had access to him. The defendant was denied visitors and was said to have been starved. Under the law the defendant had to confess his guilt, which was why there were 6 months between the defendant's arrest and execution. However, he refused to confess. One month before the execution, the defendant was tried and sentenced. Only the relatives of the prisoner were able to attend. On the day of the execution, an official read out a statement and asked the defendant if he had a last word to say. He said he was innocent and that it was an accident. He was not gagged, but he had no strength left so it was hard to hear him. The authorities did not return the body to the family for burial.*

While defense attorneys may plead their case by elaborating a defendant's motives, purposes, the genuineness of his/her penitence, and request due consideration of these factors in the final verdict, the Criminal Procedure Law defines these lawyers as government employees who must strive to safeguard KWP's various policies. As such defense attorneys have the duty to enlighten the people and justify the KWP's policies throughout the trial process. Their duty is therefore limited to "pointing out the seriousness of the crime committed and make the offender (defendant) deeply remorseful of his/her acts before the people and the fatherland by analyzing and clearly proving the offender's motives for the crime."⁵³ The underlying idea is that defense attorneys do not necessarily stand for the protection of defendants' rights. Furthermore, the law rejects the concept of defense against prosecution and promotes the protection of the State's ideals, emphasizing the court's power and authority to sanctions, and denying the status of the defendant as a party other than to be proven guilty.

Article 160 of Constitution and Article 272 of the Criminal Procedure Law guarantee the independence of courts. However, the KWP has the power to remove judges. Moreover, while trials are legally "open to the public", FIDH found that no one not specifically invited would consider attending a trial for risk of being viewed by the authorities with great suspicion or as a trouble maker.

Investigation and preliminary examinations for ordinary crimes fall under the jurisdiction of the
 53. Kim Soo-Am, 'The North Korean Penal Code, Criminal Procedures, and their Actual Applications' (Korea Institute for National Unification, 2006).²⁶ / The death penalty in North Korea: In the machinery of a totalitarian State - FIDH

Ministry of People's Security. However, treason, any anti-State crime and political prisoners fall under the jurisdiction of the State Security Department (SSD). The latter intervenes even in crimes such as rape or robbery in order to identify any possible political ramifications. For example, citizens forcibly repatriated from China are treated as political prisoners and undergo interrogation by the SSD for "treason against the fatherland". In such cases, there is no formal trial and SSD prosecutors routinely usurp the role of the courts.

Summary execution for treason - Witness 6 recalled that in June 1999, Kim Jong Il released a decree to crack down on drugs and other subversive activities. Inspections began and denunciation was encouraged. However, few people came forward and therefore the military intervened in Witness 6's locality. A few days later, nine people were sentenced to death. When witness 6 was studying in class, they were told to go to the airport, which was no longer used. Everyone was told to come and watch, except those who could not walk. They went with kindergarten children. At the back of the crowd, they were surrounded by military vehicles, with troops ready to shoot if anyone attempted to leave the area. Witness 6 remembers the details of only seven of the nine executed that day: a woman doing business with Chinese nationals; a woman manager of a beer factory; the chief of a shoe factory (who was also a local secretary of the KWP); an SSD agent; another SSD agent in charge of the security in a local mine; a university student; and a woman chief of the Ban (the peoples' unit), who was over 50. They were each tied to individual poles. The identity and charges for each prisoner was read. The first woman was accused of earning a certain amount of money and of possessing a mobile phone. The money had been found in her house, and she was therefore accused of spying for South Korea. The director of the shoe factory was accused of receiving money from a foreign bank and the chief of the Ban was accused of traveling back and forth to China; both were accused of earning "black money". In outlining the accusations against the SSD agent, an insult for "Japanese" was used. It was also announced that these persons were sentenced to death without appeal. The prisoners were gagged without being allowed to speak first. The machine guns used by the firing squad had a tripod, and a single volley had sufficient force to kill the victims instantly.

While investigators and police remain the principle agents for the detection of violators of the DPRK's laws, there is also a substantial culture of citizen informants, meaning that every citizen has the duty to report to the political hierarchy, especially if having responsibilities in the Ban. Any suspicion of wrong doing must be reported immediately, even by family members, who will otherwise suffer the same punishment. Citizen informants try to collect information on illegal and unlawful activities but work on a merit basis. They must therefore amass any and all information on the daily routine of all local residents. According to testimonies collected by FIDH, this frequently results in false confessions by scared citizens. Moreover, preliminary examination is reportedly frequently undertaken by agents from the Ministry of People's Security or the SSD, separately from investigators and prosecutors.

In short, the DPRK is characterized by the systemic denial of the right to a fair trial, leaving the door open to the systematic arbitrary application of the death penalty. FIDH - The death penalty in North Korea: In the machinery of a totalitarian State / 27

2. On-site public executions and secret executions

Public executions and secret executions, though unverified, are steadily accounted for. Meanwhile, the DPRK has persistently continued to deny their existence. As detailed above, both types of executions are strictly prohibited under international human rights law. Public executions also violate some provisions of the DPRK's own 2004 Criminal Procedure Law.

There is presently no source that can confirm how frequently public executions are carried out in public areas, and inside or outside political prison camps; nor whether the public is always summoned and forced to attend or whether onlookers are composed merely of passers-by. Nevertheless, there have been many reports of public executions in front of large crowds drawn from schools, businesses, and farms that were notified in advance. Some prisoners have reportedly even been executed in front of their families. Executions have also reportedly been carried out in areas such as vacant lots next to a river stream, markets, stadium or public squares. Other locations mentioned by several witnesses interviewed by FIDH have included SSD detention facilities, political prison camps and military camps. However, the extent to which these executions were based on judicial decisions or are extra-judicial remains unclear. 54

54. The NKDB reports 143 cases of summary executions, including 42 in the 1990s and 68 in the 2000s (source: NKDB, White Paper on North Korean Human Rights 2012, page 102).

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*Drawing representing a public execution*²⁸ / The death penalty in North Korea: In the machinery of a totalitarian State - FIDH

Some reports have detailed the following procedures preceding public execution:

“The Republic’s flag is draped in the background, and people from the Central Prosecutors’ Office will come down to the site. Also participating will be the director of Provincial Safety, the director of the Provincial Security Agency, a court official, and others. The trial is conducted openly. A court official will read out criminal charges and then hand down the sentence.” 55

However, several testimonies speak of executions carried out without a trial and solely for public intimidation. In the 1990s, the death penalty also appeared to be frequently imposed for crimes resulting from economic hardship.

Public executions are used to serve as examples (known as “*Sibŏm game*”). Witnesses 1, 3, 5, 7, 9, 10 and 12 all stated that children sometimes younger than 10 are made to watch public executions by their schools in order for them to learn by example. However, it seems that children from higher class are not asked to attend public executions. In the late 1990s announcements of public executions by loudspeaker were common. Agents from the Ministry of People’s Security would reportedly sit at a table near the execution pole acting like judges in a courtroom, and read the charges, accusing the defendant of “damaging the reputation of the Party”. Before their execution, the defendants would be asked to make a final speech in which they were made to repent such as: “Although I am loved by the Party, my actions were wrong”, etc.

High-ranking officials have also been publicly executed. In 1997, at the peak of the *Arduous March*, Mr. Seo Kwan-Hee, the Central Secretary of the Agriculture division was executed in Pyŏngyang by firing squad. He was made responsible for the great famine. At the public execution site, the Pyŏngyang Regional Court’s justice sentenced him to death for “working as an American spy for more than 30 years and deliberately failing the Party’s agricultural policy, such as implementing inappropriate seeds...”⁵⁶

Public executions are reportedly widespread in the prison camp system, but FIDH was not able to collect first-hand information in that regard.

Testimonies on public executions

Witness 2 saw in 1997 the public execution of a man by firing squad for selling human flesh, in a vacant lot near the market place of Ch’ilgol in the district of Mangyŏngdae (Mangyŏngdae kuyŏk), on the outskirts of Pyŏngyang. During the summer of the same year, in the municipality of P’yŏngsŏng (P’yŏngsŏng-si), in the area of Hach’a (Hach’a-dong), in a valley (kol), witness 2 saw the public execution by firing squad of a 26 years old man for murder, two men for burglary, and a women for prostitution. A week later, witness 2 saw the public execution by firing squad of two men for murder, on the road after Ponghak, in P’yŏngsŏng, South P’yŏng’an. In the summer of 2000, a demobilized soldier was publicly shot for the murder of a

55. NKDB, White Paper on North Korean Human Rights 2009.

56. Shin Joo Hyun, ‘Local Agriculture Officials Prosecuted’, Daily NK, 6 December 2006, available from North Korea Economy Watch at: <http://www.nkeconwatch.com/category/agriculture/page/33/FIDH> - The death penalty in North Korea: In the machinery of a totalitarian State / 29

woman and her daughter. The witness recalls the soldier had broken into the house of one of his friends, a returnee from Japan, to rob him, in the area of Victory N°3 (Sŭngni 3 dong), Unification street (T'ong'il kōri) in the district of Rangnang (Rak Rang kuyōk or Rangnang kuyōk), Pyōngyang.

***Witness 3** saw the execution of a man in his thirties by firing squad in 2003, accused of cutting electric lines to sell them. Witness 3 was told to attend the execution by the Party secretary working in his factory, in order to dissuade other workers from stealing electric lines. It happened in the South P'yŏng'an province, Sunchŏn city.*

***Witness 9** saw a women executed in a stadium in 2006 for human trafficking and smuggling. Later, witness 9 saw the execution of a man who had stolen a cow to feed his family. He was publicly executed by firing squad in the market place.*

3. Death penalty applied to non-serious crimes

The notion of “most serious crimes”, under international law, includes crimes requiring an intention to kill and resulting in the loss of life.⁵⁷ The Special Rapporteur on extra-judicial, summary or arbitrary executions has stated that:

“With respect to particular offences, the Commission on Human Rights and the Human Rights Committee have determined that a wide range of specific offences fall outside the scope of the “most serious crimes” for which the death penalty may be imposed. These include: abduction not resulting in death, abetting suicide, adultery, apostasy, corruption, drug-related offences, economic crimes, the expression of conscience, financial crimes, embezzlement by officials, evasion of military service, homosexual acts, illicit sex, sexual relations between consenting adults, theft or robbery by force, religious practice, and political offences.”⁵⁸

The last of these has presented particular complexities, inasmuch as offences against the State or the political order are often drawn broadly and ambiguously so as to encompass both non-serious and very serious crimes and leave the Government discretion in defining the offence.

Some of the crimes carrying the death penalty in the DPRK's Criminal Code could be considered to be among the “most serious” crimes. Moreover, some crimes, being only pronounced in general terms, allow discretion in determining when offences such as murder or treason would fall into the “most serious” category. In specifying terrorism (Article 61) and treason (Article 63), the Criminal Procedure Law requires an “extremely grave offense”, leaving open the option of lifetime reform in a prison camp or the death penalty. Article 266 relating to intentional murder, does not specifically call for the death penalty but specifies a minimum of 10 years hard labor with an assumption that the lack of an upper limit leaves open the use of the death penalty.