

March 27, 2023

Yoon Suk-yeol
President of the Republic of Korea

CC. Speaker of the National Assembly Kim Jin-Pyo;
President of the Constitutional Court Yoo Nam-seok;
Prime Minister Han Duck-soo;
Foreign Minister Park Jin; and
Justice Minister Han Dong-hoon

Re: South Korea's abolition of the death penalty

Dear Mr. President,

During South Korea's fourth cycle Universal Periodic Review (UPR) on January 26, 2023, 31 countries¹ made recommendations concerning the abolition of the death penalty and/or the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. This again shows the international community's growing consensus as previously expressed in the recommendations made by 26 countries during South Korea's previous third cycle UPR cycle on November 9, 2017.² We therefore renew our call for South Korea to abolish the death penalty, which it has not carried out in the past 25 years since December 30, 1997, for all crimes.

We also note and welcome South Korea's vote in favor of the UN General Assembly's resolution 77/222 on December 15, 2022, which called upon states that maintain the death penalty to establish a moratorium on executions with a view to abolishing capital punishment and to consider acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

The global trend towards the abolition of the death penalty is clear.³ At the end of 1997, when South Korea carried out its last execution, there were 102 countries that had abolished the death penalty in law or practice (abolitionist for all crimes in 61).⁴ By the end of 2007, when South Korea became an abolitionist country in practice, the number of countries that had abolished the death penalty in law or practice jumped to 134 (abolitionist for all crimes in 91).⁵ By the end of 2021, that number further increased to 144 (abolitionist for all crimes in 108).⁶

This global trend is reflected in the voting patterns at the UN General Assembly. In December 2007, the UN General Assembly adopted resolution 62/149, the first ever resolution on the moratorium on the use of the death penalty by a 106-46 vote with 34 abstentions.⁷ In December 2020, South Korea for the first time joined the growing number of countries that supported the biennial resolutions with its vote in favor of resolution 75/183, adopted by a 123-38 vote with 24

¹ Australia, France, Panama, Portugal, Spain, Iceland, Uruguay, Côte d'Ivoire, Mexico, Belgium, Chile, Estonia, Finland, Germany, Lithuania, Switzerland, United Kingdom, Luxembourg, Colombia, Paraguay, Kazakhstan, Marshall Islands, New Zealand, Norway, Slovakia, Timor-Leste, Uzbekistan, Canada, Costa Rica, Cyprus and Italy.

² Report of the Working Group on the Universal Periodic Review: Republic of Korea, A/HRC/37/11, 27 December 2017, <https://undocs.org/A/HRC/37/11>

³ With respect to the death penalty, countries around the world can be divided into the four categories of: (1) completely abolitionist for all crimes, (2) abolitionist for ordinary crimes only to the exclusion of exceptional crimes such as crimes committed in wartime, (3) abolitionist in practice as no execution has taken place for over 10 years, and (4) retentionist. The countries in the first three categories are collectively called abolitionist in law or practice.

⁴ Amnesty International, The death penalty worldwide: Developments in 1997, 31 March 1998, Index Number: ACT 50/004/1998, pp. 3 and 23, <https://www.amnesty.org/en/documents/act50/004/1998/en>

⁵ Amnesty International, The death penalty worldwide: Developments in 2007, 15 April 2008, Index Number: ACT 50/002/2008, APPENDIX 1- LIST OF ABOLITIONIST AND RETENTIONIST COUNTRIES AS OF 1 JANUARY 2008; <https://www.amnesty.org/en/documents/act50/002/2008/en>

abstentions.⁸ In December 2022, resolution 77/222 was adopted by an all-time high of 125 votes in favor with 37 against and 22 abstentions.⁹

We recall that the use of the death penalty is inconsistent with South Korea's international legal obligation to respect fundamental human rights, including the right to life. With 59 persons still on the death row, including Won Eon-shik who has been under the death sentence for almost 30 years since November 23, 1993, South Korea may also be in breach of its international legal obligation to prevent torture and other cruel, inhuman or degrading treatment or punishment. UN human rights experts have recently reiterated that the "death row phenomenon" (the psychological effects on prisoners of being on the death row for a prolonged period while awaiting an imminent execution under harsh conditions of confinement) has long been characterized as a form of inhuman treatment.¹⁰ Earlier in 1989, the European Court of Human Rights in *Soering v. United Kingdom* blocked an unconditional extradition request from the United States on this ground.¹¹

It is important to note that no criminal justice system is perfect. The police, prosecutors and judges failed to prevent miscarriage of justice in the cases such as the murder of a taxi driver at the Yakchon five-way crossing in Iksan and the eighth of the ten Hwaseong serial murders. While an exonerated person can always be released from prison, bringing him or her from death is impossible. If it is better that ten guilty persons escape than that one innocent suffer, as Blackstone famously said, it must indeed be better that ten guilty persons escape the death penalty than that one innocent suffer the deprivation of life.

We also note that lawmakers have proposed a total of nine bills to abolish the death penalty in every session of the National Assembly, including the current one, since 1999¹² as well as a resolution supporting the accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

⁶ Amnesty International, Death sentences and executions 2021, 24 May 2022, Index Number: ACT 50/5418/2022, ANNEX II: ABOLITIONIST AND RETENTIONIST COUNTRIES AS OF 31 DECEMBER 2021;

<https://www.amnesty.org/en/documents/act50/5418/2022/en> Death penalty: Support for UN call for moratorium on executions continues to grow, 19 December 2022, Index Number: ACT 50/6323/2022,

<https://www.amnesty.org/en/documents/act50/6323/2022/en>

⁷ Resolution adopted by the General Assembly on 18 December 2007: 62/149. Moratorium on the use of the death penalty, A/RES/62/149, 26 February 2008, <https://undocs.org/A/RES/62/149>

⁸ Resolution adopted by the General Assembly on 16 December 2020: 75/183. Moratorium on the use of the death penalty, A/RES/75/183, 28 December 2020, <https://undocs.org/A/RES/75/183>

⁹ Resolution adopted by the General Assembly on 15 December 2022: 77/222. Moratorium on the use of the death penalty, A/RES/77/222, 6 January 2023, <https://undocs.org/A/RES/77/222>

¹⁰ OHCHR, UN experts warn of associated torture and cruel punishment: World Day Against the Death Penalty (10 October 2022); <https://www.ohchr.org/en/press-releases/2022/10/un-experts-warn-associated-torture-and-cruel-punishment>

¹¹ ECtHR, *Soering v. United Kingdom* (Application no. 14038/88), Judgment, (7 July 1989), <https://hudoc.echr.coe.int/eng?i=001-57619>

¹² ROK National Assembly, Bill for the "Special act to abolish the death penalty" (Bill no. 152463) proposed by 90 members including Yoo Jae-geon on 7 December 1999, <https://likms.assembly.go.kr/bill/billDetail.do?billId=016007>; Bill for the "Special act to abolish the death penalty" (Bill no. 161085) proposed by 63 members including Chung Dae-chul on 30 October 2001 and supported by 92 others, <https://likms.assembly.go.kr/bill/billDetail.do?billId=017199>; Bill for the "Special act to abolish the death penalty" (Bill no. 171129) proposed by 175 members including Yoo Ihn-tae on 9 December 2004, <https://likms.assembly.go.kr/bill/billDetail.do?billId=029510>; Bill for the "Special act to abolish the death penalty" (Bill no. 1800928) proposed by 39 members including Park Sun-young on 12 September 2008, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_V0K8H0P9L1U211O0R4A9K3S6X2M7O8; Bill for the "Special act to abolish the death penalty" (Bill no. 1806259) proposed by 53 members including Kim Boo-kyum on 8 October 2009, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_G0V9B1C0R0A8Y1S1F1H4F0Z3F6D2N9; Bill for the "Special act to abolish the death penalty" (Bill no. 1809976) proposed by 10 members including Joo Sun-young on 22 November 2010, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_11U0M1X1C2V2X1M3G3J2E0B5X4N4B1; Bill for the "Special act to abolish the death penalty" (Bill no. 1915958) proposed by 172 members including Yoo Ihn-tae on 6 July 2015, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_K1M5Z0N7F0G6S1T3Z5Q5K1F1J4T3H0; Bill for the "Special act to abolish the death penalty" (Bill no. 2022856) proposed by 75 members including Lee Sang-min on 10 October 2019; https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_G1U9L1S0W1C0J1I4P3W7Q1J6R9C9T6; Bill for the "Special act to abolish the death penalty" (Bill no. 2112795) proposed by 30 members including Lee Sang-min on October 7, 2021; https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_P2K1H1I0C0B7F0V9D2D4H5N7Z1V2N6

in 2018.¹³ The Constitutional Court twice upheld the constitutionality of capital punishment by a 7-2 vote in 1996 (95 Hun-Ba 1) and by a 5-4 vote in 2010 (2008 Hun-Ga 23). However, it now can declare the death penalty unconstitutional in a case pending before it (2019 Hun-Ba 59) to pave the way for its abolition.

We respectfully call on South Korea to immediately take the following steps to make progress towards the abolition of capital punishment, in keeping with its support for the UN General Assembly's resolutions on the moratorium on the use of the death penalty:

- Declare an official moratorium on executions
- Commute all death sentences to prison terms
- Repeal or amend all laws that prescribe the death penalty for various criminal offenses, with a view to abolishing capital punishment for all crimes
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

We also urge South Korea to stop the deportation and extradition of persons to countries that retain the death penalty, including the United States¹⁴, Japan, China¹⁵ and North Korea¹⁶, in violation of the principle of non-*refoulement* including where they would be in danger of being given a death sentence. We note the Human Rights Committee's dictum in *Roger Judge v. Canada* in 2002 that "only States parties that "have not abolished the death penalty" can avail themselves of the exceptions created in paragraphs 2 to 6 [of article 6 of the International Covenant on Civil and Political Rights concerning the death penalty]. For countries that have abolished the death penalty, there is an obligation not to expose a person to the real risk of its application. Thus, they may not remove, either by deportation or extradition, individuals from their jurisdiction if it may be reasonably anticipated that they will be sentenced to death, without ensuring that the death sentence would not be carried out".¹⁷

Sincerely,

Signature organizations (as of March 27, 2023)

Groups

ACAT - Belgique (Action des Chrétiens pour l'Abolition de la Torture)

ACAT - France (Action des chrétiens pour l'abolition de la torture)

ACAT Germany (Action by Christians for the Abolition of Torture)

Anti-Death Penalty Asia Network (ADPAN)

Arakan Rohingya National Organisation (ARNO)

¹³ ROK National Assembly, Bill for the "Resolution urging the accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights" (Bill no. 2015870) proposed by 32 members including Keum Tae-sup on 4 October 2018, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_Y1J8L1W0U0B4E1W8N0L1P5C1Q0W9N1

¹⁴ Kang Ji-nam, "Death sentence if sent to the US; Please save my son", Weekly Donga, 2 April 2008, <https://weekly.donga.com/List/3/all/11/84713/1>

¹⁵ Kim Ki-Yoon, "The killer of a Chinese Public Security officer from 30 years ago who had laundered his identity repatriated", Donga Ilbo, 18 May 2022, <https://www.donga.com/news/Society/article/all/20220518/113468246/1>

¹⁶ HRW, "South Korea Investigates Forcible Return of Two North Koreans: Inquiry Should be Credible, Impartial, Independent", 22 July 2022, <https://www.hrw.org/news/2022/07/22/south-korea-investigates-forcible-return-two-north-koreans>

¹⁷ HRC, *Roger Judge v. Canada*, Views, Communication No. 829/1998, para. 10.4, <https://undocs.org/CCPR/C/78/D/829/1998>

Asia Democracy Network (ADN)

Balay Alternative Legal Advocates for Development in Mindanaw, Inc. (BALAOD Mindanaw)

Centro para la Apertura y el Desarrollo de América Latina (CADAL)

Citizens' Alliance for North Korean Human Rights (NKHR)

Commission for Disappeared and Victims of Violence (KontraS)

Cornell Center on the Death Penalty Worldwide

Death Penalty Focus

Federal Association of Vietnamese Refugees in the Federal Republic of Germany

Forum marocain pour la vérité et la justice (FMVJ)

German Coalition to Abolish the Death Penalty (GCADP)

Human Rights Watch

Human Asia

Instituto de Derecho Penal Europeo e Internacional de la Universidad de Castilla-La Mancha (UCLM)

International CURE

Italian Federation for Human Rights (FIDU - Federazione Italiana Diritti Umani)

Judicial Reform Foundation (JRF)

Legal Awareness Watch Pakistan (LAW)

Lifespark

Nessuno tocchi Caino (Hands Off Cain)

Norwegian Helsinki Committee (NHC)

Regroupement des Jeunes Africains pour la Démocratie et le Développement section Togo (REJADD- TOGO)

SALAM for Democracy and Human Rights (SALAM DHR)

Southern African Centre for the Constructive Resolution of Disputes (SACCORD)

Taiwan Alliance to End the Death Penalty

Transitional Justice Working Group (TJWG)

Witness to Innocence (WTI)

World Coalition Against the Death Penalty (WCADP)

Individuals

Lord Alton of Liverpool / Independent Crossbench Member of the House of Lords & Co-chair of the All Party Parliamentary Group on North Korea

Marzuki Darusman / Former UN Special Rapporteur/Commission on Inquiry (COI) member on the situation of human rights in the DPRK

Sonja Biserko / Former Commission of Inquiry (COI) member on the situation of human rights in the DPRK & current chair at the Helsinki Human Rights Committee in Serbia

Tomás Ojea-Quintana / Former UN Special Rapporteur on the situation of human rights in the DPRK