

August 16, 2023

President Yoon Suk-yeol

CC. Prime Minister Han Duck-soo
Minister of Foreign Affairs Park Jin
Minister of Unification Kim Yung-ho
Minister of Justice Han Dong-hoon
Minister of National Defense Lee Jong-sup

Re: Discussion of the issues of South Korean POWs, abductees and detainees in North Korea as well as the issue of China's forcible repatriation of North Korean refugees at a meeting of the UN Security Council on August 17, 2023 and sponsorship of a draft Security Council resolution on the referral of the North Korean situation to the International Criminal Court (ICC) with a view to a debate at the General Assembly pursuant to resolution 76/262 in case of China and Russia's vetoes

Dear President Yoon Suk-yeol,

We welcome the request for the first open briefing since 2017 on North Korea's human rights situation at the UN Security Council on August 17, 2023,¹ and the reported securing of at least 9 votes needed to convene a Security Council meeting to this end.² During this Security Council meeting, we ask that you discuss the issues of South Korean POWs, abductees and detainees in North Korea as well as China's policy and practice of forcible repatriation of North Korean refugees. Moreover, we urge South Korea to lead the diplomatic efforts for the sponsorship of a draft Security Council resolution on the North Korean situation to the International Criminal Court (ICC) with a view to a debate at the General Assembly pursuant to resolution 76/262 if China and Russia exercise vetoes.

1. The issues of South Korean POWs, abductees and detainees in North Korea

For the past 70 years, North Korea has refused to repatriate an estimated 50,000 South Korean POWs (prisoners of war) and 100,000 civilian abductees in clear violation of the 1953 Armistice Agreement as well as the 1949 Geneva Conventions relative to the Treatment of Prisoners of War and relative to the Protection of Civilian Persons in Time of War. Even after 1953, North Korea has denied the repatriation of at least 516 South Korean POWs and civilian abductees including from the Vietnam War and the 1970 seizure of the ROK Navy broadcast ship I-2, over 60 seizures of fishing vessels in 1955-1987 and the 1969 Korean Air Lines YS-11 hijacking. Recently, North Korea continues to detain at least 6 South Korean citizens (Kim Kuk-gi, Choi Chun-gil; Kim Jeong-wook; Kim Won-ho, Ko Hyon-chol and another individual whose name is not known).

We urge South Korea to demonstrate the shared values of advancing human rights, democracy, the rule of law and accountability by addressing the issues of South Korean POWs, abductees (including Japanese and other foreign nationals) and detainees in North Korea at the Security Council meeting on August 17, 2023.

We note that in the Phnom Penh Statement of November 13, 2022, you "reaffirm[ed] a shared commitment to the immediate resolution of the abductions issue" with US President Biden and Japanese Prime Minister Kishida while the latter two "also express[ed] their support for the immediate release of the ROK citizens detained in the DPRK".³

¹ United States Mission to the United Nations, "Joint Statement Announcing Plans for a UNSC Open Briefing on the Human Rights Situation in the Democratic People's Republic of Korea" (August 10, 2023), <https://usun.usmission.gov/joint-statement-announcing-plans-for-a-unsc-open-briefing-on-the-human-rights-situation-in-the-democratic-peoples-republic-of-korea>

² Michelle Nichols, "UN Security Council to meet on rights abuses in North Korea", Reuters (August 10, 2023), <https://www.reuters.com/world/asia-pacific/un-security-council-meet-rights-abuses-north-korea-2023-08-10>

³ Phnom Penh Statement on US – Japan – Republic of Korea Trilateral Partnership for the Indo-Pacific (November 13, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/13/phnom-penh-statement-on-trilateral-partnership-for-the-indo-pacific>

This was followed by a joint statement by 31 states at the United Nations on December 9, 2022 which expressed “concern with the human rights situation of citizens of the Republic of Korea detained in the DPRK, abductions and enforced disappearances of Japanese and Republic of Korea citizens, and other nationals who are kept against their will in the DPRK, and unrepatriated prisoners of war” and strongly urged “the DPRK to resolve all outstanding issues with detainees, abductees, and disappeared and immediately return them to their homes”.⁴

In the Leaders’ Joint Statement in Commemoration of the 70th Anniversary of the Alliance between the United States of America and the Republic of Korea of April 26, 2023, South Korea and the United States stated that they “will strengthen cooperation to promote human rights in the DPRK as well as to resolve the issues of abductions, detainees, and unrepatriated prisoners of war”.⁵

However, it is important to maintain a consistent message on these issues. At the UN Security Council’s Arria-formula meeting on the situation of human rights in the DPRK on March 17, 2023, South Korea made no mention of them. Likewise, they were absent in the joint statement with Canadian Prime Minister Trudeau on May 17, 2023 despite both countries committing to strengthen cooperation “to protect and promote human rights in North Korea, seek accountability, and improve the living conditions of the North Korean people”.⁶

At the Security Council meeting on August 17, 2023 and other international meetings, we urge you to continue to discuss these issues and to lead the international diplomatic efforts afterwards to resolve immediately all issues related to all POWs, abductees and detainees, in particular the realization of their immediate return and accountability, including the repatriation of the remains of the deceased persons.

In this regard, we note that past diplomatic efforts have resulted in the release of the last three US citizens (Kim Dong Chul, Tony Kim and Kim Hak Song) detained in North Korea on May 9, 2018 and North Korea’s commitment to recovering US POW/MIA remains including the immediate repatriation of those already identified in the joint statement following the Singapore US-North Korean summit on June 12, 2018.

2. China’s policy and practice of forcible repatriation of North Korean refugees

The UN Commission of Inquiry on human rights in the DPRK (DPRK COI) found that: “The gravity, scale and nature of [systematic, widespread and gross human rights violations in North Korea] reveal a state that does not have any parallel in the contemporary world”.⁷ According to the DPRK COI, North Koreans who flee their country can be subjected to torture, sexual and gender-based violence, arbitrary detention, enforced disappearance and even execution and forced abortion and infanticide upon their forcible repatriation.⁸ However, China, which is a party to the UN Refugee Convention and Protocol and Torture Convention that codify the principle of non-refoulement as well as the Palermo Protocol on trafficking, continues to arbitrarily detain and forcibly repatriate North Korean escapees.⁹ The DPRK COI recommended “China and other States” to “respect the principle of non-refoulement” and “abstain from forcibly repatriating any persons to the

⁴ Joint Statement Delivered by Ambassador Linda Thomas-Greenfield on the Human Rights Situation in the Democratic People’s Republic of Korea (December 9, 2022), <https://usun.usmission.gov/joint-statement-delivered-by-ambassador-linda-thomas-greenfield-on-the-human-rights-situation-in-the-democratic-peoples-republic-of-korea>

⁵ Leaders’ Joint Statement in Commemoration of the 70th Anniversary of the Alliance between the United States of America and the Republic of Korea (April 26, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/26/leaders-joint-statement-in-commemoration-of-the-70th-anniversary-of-the-alliance-between-the-united-states-of-america-and-the-republic-of-korea>

⁶ Leaders’ Joint Statement in Commemoration of the 60th Anniversary of Diplomatic Relations Between the Republic of Korea and Canada: Stronger Together for the Next 60 years (May 17, 2023), <https://www.pm.gc.ca/en/news/statements/2023/05/17/leaders-joint-statement-commemoration-60th-anniversary-diplomatic>

⁷ Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea (7 February 2014), A/HRC/25/CRP.1, para. 1211, <https://undocs.org/A/HRC/25/CRP.1>

⁸ Id., paras. 380-434.

⁹ Id., paras. 435-477.

Democratic People's Republic of Korea, unless the treatment there, as verified by international human rights monitors, markedly improves".¹⁰ No such marked improvement of treatment in North Korea has yet to take place.

According to the DPRK COI, "crimes against humanity have been and, are still being committed, against persons who try to flee the DPRK, including against persons forcibly repatriated from China".¹¹ On 16 December 2013, the DPRK COI wrote a letter to Beijing, "in which it summarized its concerns relating to China's policy and practice of forced repatriation of DPRK citizens [including] particular concern about Chinese officials providing specific information on such persons to DPRK authorities" and urged Beijing to "caution relevant officials that such conduct could amount to the aiding and abetting of crimes against humanity where repatriations and information exchanges are specifically directed towards or have the purpose of facilitating the commission of crimes against humanity in the DPRK".¹²

The UN special procedures, including the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and the Working Group on Enforced or Involuntary Disappearances (WGEID), and treaty bodies, especially the Committee against Torture (CAT) and Committee on the Elimination of Discrimination against Women (CEDAW), have repeatedly called upon China to respect the principle of non-refoulement with respect to North Korean escapees. Various countries have made the same recommendations to China during its Universal Periodic Reviews (UPRs).

The international community must use the opportunity presented by the Security Council meeting on August 17 to urge China to end the arbitrary detention and forcible repatriation of North Korean escapees and to implement the procedure for the individualized determination of the refugee status.

The issue is particularly urgent as North Korea may lift the self-imposed COVID border lockdown ahead of the 2023 Hangzhou Asian Games (September 23 to October 8) which will enable the resumption of the forcible repatriation of reportedly as many as 2,000 North Koreans detained as "illegal migrants" in China.¹³

3. Sponsorship of a draft Security Council resolution on the referral of the North Korean situation to the International Criminal Court (ICC) with a view to a debate at the General Assembly pursuant to resolution 76/262 in case of China and Russia's vetoes

The DPRK COI recommended that: "The Security Council should refer the situation in the Democratic People's Republic of Korea to the International Criminal Court for action in accordance with that court's jurisdiction".¹⁴ Accordingly, the UN General Assembly in its resolution 69/188 of 18 December 2014 encouraged "the [Security] Council to consider the relevant conclusions and recommendations of the commission and take appropriate action to ensure accountability, including through consideration of referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court".¹⁵ The General Assembly has repeated this recommendation for the ICC referral to the Security Council in its annual North Korean human rights. However, the UN Security Council has failed to refer the North Korean situation to the ICC because of the threat of China and Russia's vetoes.

On 26 April 2022, the UN General Assembly in resolution 76/262 decided that: "the President of the General Assembly shall convene a formal meeting of the General Assembly within 10 working days of the casting of a veto by one or more

¹⁰ Id., para. 1221 (a).

¹¹ Id., paras. 1098-1114.

¹² Id., para. 1197.

¹³ Report of the UN Special Rapporteur on the situation of human rights in the DPRK to the General Assembly (13 October 2022), A/77/522, para. 9 ("The Special Rapporteur has received information that as many as 2,000 escapees from the Democratic People's Republic of Korea are currently detained in China as "illegal migrants" and are at risk of being repatriated to their country once the border reopens."), <https://undocs.org/A/77/522>

¹⁴ Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea (7 February 2014), A/HRC/25/CRP.1, para. 1225 (a), <https://undocs.org/A/HRC/25/CRP.1>

¹⁵ General Assembly resolution 69/188 of 18 December 2014 on Situation of human rights in the Democratic People's Republic of Korea, <https://undocs.org/A/RES/69/188>

permanent members of the Security Council, to hold a debate on the situation as to which the veto was cast, provided that the Assembly does not meet in an emergency special session on the same situation".¹⁶ Resolution 76/262 was adopted after a resolution condemning Russia's invasion of Ukraine was vetoed by Russia at the Security Council. We note that, after China and Russia vetoed a draft resolution in the Security Council on 26 May 2022 aimed at tightening the sanctions regime against North Korea, the General Assembly on 8 June 2022 held a debate on the issue per resolution 76/262.¹⁷

We therefore urge South Korea to lead the diplomatic efforts for the sponsorship of a draft Security Council resolution on the North Korean situation to the International Criminal Court (ICC) with a view to a debate at the General Assembly pursuant to resolution 76/262 if China and Russia cast vetoes. Such a debate at the General Assembly will send a clear message to North Korea that the possibility of the ICC referral will continue to be discussed by all 193 Member States of the United Nations.

Thank you.

Sincerely,

Signature organizations and individuals (as of August 16, 2023)

Kim Jeong-sam (elder brother of missionary Kim Jeong-wook who has been held in detention in North Korea since 2013)

1969 KAL Abductees' Families Association

Association of North Korean Defectors (NKD)

Citizens' Alliance for North Korean Human Rights (NKHR)

Committee for Human Rights in North Korea (HRNK)

Improving North Korean Human Rights Center

Justice for North Korea

Korean War POW Family Association

Mulmangcho

No Chain

North Korea Strategy Center (NKSC)

Save North Korea

Stepping Stone

THINK

Transitional Justice Working Group (TJWG)

¹⁶ General Assembly resolution 76/262 of 26 April 2022 on Standing mandate for a General Assembly debate when a veto is cast in the Security Council, <https://undocs.org/A/RES/76/262>

¹⁷ General Assembly Holds Landmark Debate on Security Council's Veto of Draft Text Aimed at Tightening Sanctions against Democratic People's Republic of Korea (8 JUNE 2022), GA/12423, <https://press.un.org/en/2022/ga12423.doc.htm>