

January 23, 2025

President Volodymyr Zelenskyy
11 Bankova Street
01220, Kyiv
Ukraine

Re: Non-*refoulement* of captured North Korean soldiers, non-disclosure of their individual identity and criminal investigation and prosecution of Russian and North Korean atrocities against North Korean soldiers

Dear President Zelenskyy

In your people's valiant struggle for democracy and freedom, we urge Ukraine to (1) respect the principle of non-*refoulement* for captured North Korean soldiers who do not wish to be returned, (2) refrain from disclosing the identity of individual captured soldiers and (3) investigate and prosecute the atrocities committed by Russia and North Korea against the North Korean soldiers as possible war crimes and crimes against humanity.

On 11 January 2025, you announced that two North Korean soldiers were captured alive in Kursk, offering the most concrete proof yet of the North Korean military intervention despite Russia and North Korea's denial. Since October 2024, an estimated 12,000 North Korean troops have been deployed in support of Russia's war of aggression against Ukraine. According to the South Korean government, around 300 of them have been killed and some 2,700 wounded.

As you precisely explained, Russia and North Korea execute wounded North Korean soldiers to erase any evidence of North Korea's involvement, but it is only a matter of time before more are captured. Russia continues to be dependent on North Korea's military assistance, exploiting its soldiers, "who grew up in a complete information vacuum, utterly unaware of Ukraine, and who are being used by Russia solely to prolong and escalate this war".

North Korea is indeed a totalitarian state and the gravity, scale and nature of North Korea's systematic, widespread and gross human rights violations reveal "a state that does not have any parallel in the contemporary world" according to the UN Commission of Inquiry on Human Rights in the DPRK.

We therefore ask Ukraine to respect the principle of non-*refoulement* by not returning captured North Korean soldiers to Russia or North Korea against their will.

Parties to armed conflict may conclude agreements with a view to the repatriation of prisoners of war who have undergone a long period of captivity under article 109 of the Geneva Convention relative to the Treatment of Prisoners of War. But the Geneva Convention was drafted in a humanitarian spirit and under the premise that the country of origin would protect, not persecute, its own POWs. This is not the case with North Korea, which is more likely to mete out draconian punishment to the soldiers who surrender and their families as traitors.

The International Committee of the Red Cross (ICRC)'s commentary states that "Where the repatriation of a prisoner of war would be manifestly contrary to the general principles of international law for the protection of the human being, the Detaining Power may, so to speak, grant him asylum". In practice, the ICRC delegates interview the POWs individually to make sure that they are being repatriated of their own free will.

While not directly applicable to the North Korean combatants in an international armed conflict, article 45 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War provides that civilians shall not be "transferred to a country where they may have reason to fear persecution for their political opinions or religious beliefs" and article 5 (4) of the Additional Protocol II on Victims of Non-International Armed Conflicts stipulates that "If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those so deciding".

An important precedent was also set by the 1953 Korean War armistice agreement which provided that only the POWs "who insist[ed] on repatriation to the side to which they belonged at the time of capture" will be repatriated. This allowed countless Koreans and Chinese who were forced to serve in the Communist forces to avoid forcible repatriation.

We therefore welcome your statement that: “For those North Korean soldiers who do not wish to return, there may be other options available. In particular, those who express a desire to bring peace closer by spreading the truth about this war in Korean will be given that opportunity”.

This will also encourage North Korean soldiers to surrender without fear of repatriation and punishment at the hands of their own government instead of fighting to the death.

For the same reason, we ask Ukraine to refrain from disclosing the identity of individual North Korean prisoners of war. Concerns have already been raised about the public exposure of the two captured North Korean soldiers, including their face and fake ID card.

Article 13 of the Geneva Convention relative to the Treatment of Prisoners of War provides that “Prisoners of war must at all times be humanely treated. ... prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity”. The provision does not explicitly ban the publication of interview footage or fake ID, but it cannot be in line with spirit, if not the letter, of the law.

We believe that the Ukrainian authorities did not have the malicious intent to intimidate or humiliate the captured North Koreans, but were trying to show proof of North Korea’s military deployment, which is still denied by Russia. However, we would assert that it is possible to do so without exposing the identity of the individual captured soldiers by hiding their face or other information that could be used to identify them.

We also know from our past experience that North Korean escapees who have resettled in South Korea become reluctant to share information after their face or name becomes known, especially due to the well-founded fear of reprisals against their families remaining in North Korea. The captured North Korean soldiers are likely to have similar concerns about their remaining families.

Lastly, we ask the Ukrainian authorities to collect, consolidate, analyze and preserve information and evidence about the atrocities committed by Russia and North Korea against the North Korean soldiers in preparation of future prosecution as war crimes and crimes against humanity.

As you aptly noted, there have already been reports of Russians and North Koreans executing or shelling their wounded or desecrating the face of their dead to erase any evidence of North Korea’s involvement in the war against Ukraine.

Although war crimes are traditionally applicable only for atrocities committed against enemy persons or property, the International Criminal Court (ICC) held in *Ntaganda* that rape and sexual slavery of child soldiers by fellow soldiers of the same armed group can be punished as war crimes and this logic can be extended to apply to other atrocities committed against their own soldiers.

It is also possible to make the case that these atrocities may amount to crimes against humanity committed as part of a widespread or systematic attack, which would be applicable regardless of the nationality of the victims.

North Korea has perpetrated various crimes and atrocities against its own people for decades without holding the perpetrators accountable. The word of criminal investigation and prosecution of the atrocities perpetrated against North Korean soldiers will eventually trickle back into North Korea and bring hope for change to its people.

Investigating not only crimes against Ukrainians but also against North Koreans will send a clear message that the Ukrainian people are the friends of the North Korean people and help counter the new alliance of tyranny between Putin and Kim Jong Un.

Thank you.

Sincerely,

Signature organizations and individuals (as of January 23, 2025)

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

Citizens' Alliance for North Korean Human Rights (NKHR)

HanVoice

Justice For North Korea

Korean War POW Family Association

Mulmangcho

No Chain

Stepping Stones

THINK

Transitional Justice Working Group (TJWG)