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About Contributing Organizations:

Main Contributing Organization: **Transitional Justice Working Group (TJWG)**

Established after the landmark report of the UN Commission of Inquiry on Human Rights in the DPRK, the TJWG long-term focus is on mapping crimes against humanity in North Korea. The group has published numerous reports and created database system of crimes, including the crimes of enforced disappearance, called Footprints. It has hosted international and domestic workshops, seminars, and an international conferences to raise awareness for and to develop the transitional justice approach for North Korean human rights abuses. 84 Yulgok-ro, Jongno-gu, Seoul 03131, Republic of Korea, <https://en.tjwg.org> / Contact person: Hubert Y. Lee hubert.lee@tjwg.org Tel: +82-2-722-1162

Citizens' Alliance for North Korean Human Rights (NKHR) is a non-partisan, non-religious and non-profit organization founded in Seoul, ROK in 1996. NKHR's work focuses on international advocacy and research, as well as on the assistance for North Korean refugees and education programs for North Korean youth and college students resettling in South Korea. 131 Tongil-ro, Sodaemun-gu, Seoul 03735, Republic of Korea www.nkhr.or.kr / Contact person: Jiyeon Lee j.lee@nkhr.or.kr Tel: +82-2-723-1672.

Introduction

This submission concerns (1) the death penalty and the Second Optional Protocol to the International Covenant on Civil and Political Rights; (2) the International Convention for the Protection of All Persons from Enforced Disappearance and its domestic implementing legislation; (3) South Korea’s treatment of newly arriving North Korean escapees, including the “joint interrogation center”; (4) the amendments to the Rome Statute of the International Criminal Court and its domestic implementing legislation and enforcement mechanism; and (5) the North Korean Human Rights Act.

1. The death penalty and the Second Optional Protocol to the International Covenant on Civil and Political Rights

In the third cycle UPR (A/HRC/37/11), the Republic of Korea noted the recommendations 132.4-132.6 and 132.70-132.89 to abolish the death penalty and to ratify/accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights (A/HRC/37/11/Add.1, para. 9).

President Moon Jae-In (10 May 2017 – 9 May 2022), a former human-rights lawyer, publicly pledged to abolish the death penalty during his presidential campaign, emphasizing that there is no conclusive evidence of the deterrent value of the death penalty. However, the Moon government introduced no legislation to that effect while in power.

On 4 October 2018, lawmaker Keum Tae-Sup of Moon’s progressive Democratic Party (DP) introduced a resolution, signed by 32 members including Keum, urging the accession to the Optional Protocol in the National Assembly, but it died with the end of the session on 29 May 2020 and no lawmaker has revived it in the present session.¹

On 10 October 2019, lawmaker Lee Sang-Min of the Democratic Party (DP) introduced a legislative bill to abolish the death penalty, signed by 75 members including Lee, but it died with the end of the session on 29 May 2020²; on 7 October 2021, Lee again introduced a legislative bill to abolish the death penalty, signed by 30 members including Lee, but it has made little

¹ Resolution urging the accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights [시민적 및 정치적 권리에 관한 국제규약 제2선택의정서 가입 촉구 결의안] (Bill no. 2015870), <https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_Y1J8L1W0U0B4E1W8N0L1P5C1Q0W9N1> [in Korean].

² Special act (bill) on the abolition of the death penalty [사형 폐지에 관한 특별법안] (Bill no. 2022856), <https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_G1U9L1S0W1C0J1I4P3W7Q1J6R9C9T6> [in Korean].

progress.³ The parliamentary election on 15 April 2020 returned a 180-seat supermajority for the DP in the 300-seat National Assembly so the DP can still in theory pass any bills.

Moon's government did, for the first time, vote in favour of General Assembly resolution 75/183 of 16 December 2020 on the question of a moratorium on the use of the death penalty and Human Rights Council resolution 48/9 of 8 October 2021 on the question of the death penalty.

However, on 18 November 2020, a day after the Republic of Korea first voted in favour of the draft resolution in the Third Committee of the General Assembly, the Ministry of Justice issued a press release stating that, while the government voted in favour to take part in the international community's effort to protect the absolute fundamental right to life, General Assembly resolutions are in principle advisory in nature and does not entail the responsibility to abolish the death penalty.⁴

Moreover, on 14 February 2021, the government's 83-page brief submitted in the name of the justice minister, the Moon government's political appointee, to the Constitutional Court in the third death-penalty case (2019 Hun-Ba 59) argued for the retention of the death penalty.⁵ Ironically, Ministers Choo Mi-Ae (2 January 2020 – 27 January 2021) and Park Beom-Kye (28 January 2021 – 9 May 2022) at the time, both former judges before entering politics, had previously championed bills to abolish the death penalty as members of the National Assembly.

Incumbent conservative President Yoon Suk-Yeol, a former Prosecutor General who began his 5-year term in office on 9 May 2022, objected to abolition, citing the necessity for “a mature social consensus”. On 16 June 2022, Justice Minister Han Dong-Hoon, a career prosecutor and Yoon's protégé, submitted a brief to the Constitutional Court, ahead of the oral hearing scheduled for 14 July 2022, again calling for the retention of the death penalty.⁶

³ Special act (bill) on the abolition of the death penalty [사형 폐지에 관한 특별법안] (Bill no. 2112795), <https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_P2K1H1I0C0B7F0V9D2D4H5N7Z1V2N6> [in Korean].

⁴ Ministry of Justice, Press Release 2020.11.18., “A vote in favour of the resolution on the moratorium on the use of the death penalty [“사형집행 모라토리움”결의안 찬성 표결]”, <<https://www.moj.go.kr/moj/221/subview.do?enc=Zm5jdDF8QEB8JTJGYmJzJTJGbW9qJTJGMTgyJTJGNTMzOTg3JTJGYXJ0Y2xWaWV3LmRvJTNGcGFzc3dvcmlM0QIMjZyZ3NCZ25kZVN0ciUzRCUyNmJic0NsU2VxJTNEJTl2cmdzRW5kZGVtdHlM0QIMjZpc1ZpZXdNaW5lJTNEZmFsc2UIMjZwYWdlJTNEMSUyNmJic09wZW5XcmRTZXElM0QIMjZzcmNoQ29sdW1uJTNEc2oIMjZzcmNoV3JkJTNEJUVDJTgyJUFdJUVEJTk4JTk1JTI2>> [in Korean].

⁵ Park Sang-Jin [박상진], “Government opinion against the abolition of the death penalty claiming that “It is the strongest deterrence against crime” [사형제 폐지 반대] 정부 의견서... "가장 강력한 범죄억지력 있다"”, SBS, 2021. 2. 17., <https://news.sbs.co.kr/news/endPage.do?news_id=N1006212338> [a news report in Korean].

⁶ Lim Ju-Eon [임주언], “Han Dong-Hoon's Justice Ministry replies that “The death penalty is no barbaric revenge” [“사형은 야만적 복수 아니다” 한동훈 법무부 답변], Kookmin Ilbo, 2022. 6. 29., <<https://news.kmib.co.kr/article/view.asp?arcid=0017227896&code=61121211>> [a news report in Korean].

On 14 July 2022, the Constitutional Court will hold a public hearing in the third case challenging the constitutionality of the death penalty filed by a death row inmate on 12 February 2019 (2019 Hun-Ba 59). The Constitutional Court previously upheld the constitutionality of the death penalty on 28 November 1996 by a vote of 7-2 (95 Hun-Ba 1) and on 25 February 2010 by a vote of 5-4 (2008 Hun-Ga 23). However, the margin of votes has narrowed and currently the justices appointed by former President Moon, the progressive Democratic Party (DP) and incumbent Supreme Court Chief Justice Kim Myeong-Su, who in turn was appointed by former President Moon on 25 September 2017, still form a majority in the 9-member Constitutional Court. 5 of the 9 sitting justices (Chief Justice Yoo Namseok, Justice Lee Suk-Tae, Justice Lee Eun-Ae, Justice Moon Hyung-Bae and Justice Lee Mi-Son) have expressed their support for abolition. The Constitutional Court can strike down the death penalty as unconstitutional if more than 6 of the 9 justices so decide.

While the last execution was carried out on 30 December 1997, there are, as of 2 June 2022, 55 men (all women who had been sentenced to death had their sentences commuted) on the death row, according to the ministry of justice (see the chart below). The earliest date of the sentencing among the death row inmates was 23 November 1993 and the most recent was 27 August 2015. It is noted that living under the sentence of death for almost three decades can in and of itself constitute a serious human rights violation.

No.	Facility	Name	Male/Female	Sentencing Date
1	Seoul Detention Center	Kang XX	Male	2009.07.31.
2	Seoul Detention Center	Chung XX	Male	2009.05.20.
3	Seoul Detention Center	Chung XX	Male	2009.02.26.
4	Seoul Detention Center	Ra XX	Male	2004.09.03.
5	Seoul Detention Center	Kim XX	Male	2004.06.24.
6	Seoul Detention Center	Do XX	Male	2003.11.13.
7	Seoul Detention Center	Chung XX	Male	2003.08.22.
8	Seoul Detention Center	Lee XX	Male	2001.07.13.
9	Seoul Detention Center	Chun XX	Male	2001.05.29.
10	Seoul Detention Center	Lee XX	Male	2000.10.13.
11	Seoul Detention Center	Go XX	Male	2001.02.23.
12	Seoul Detention Center	Chung XX	Male	2000.12.08.
13	Seoul Detention Center	Lee XX	Male	2000.05.18.
14	Seoul Detention Center	Lim XX	Male	1997.05.08.
15	Seoul Detention Center	Chun XX	Male	1995.07.28.
16	Seoul Detention Center	Chung XX	Male	1996.06.11.
17	Busan Detention Center	Kim XX	Male	2006.03.24.
18	Busan Detention Center	Chun XX	Male	2005.09.28.
19	Busan Detention Center	Park XX	Male	2000.01.14.
20	Busan Detention Center	Chun XX	Male	1995.05.23.
21	Daejeon Prison	Chang XX	Male	2006.09.08.
22	Daejeon Prison	Park XX	Male	2003.10.09.

23	Daejeon Prison	Kim XX	Male	2003.02.26.
24	Daejeon Prison	Kim XX	Male	2002.08.23.
25	Daejeon Prison	Wang XXX	Male	2001.09.14.
26	Daejeon Prison	Kang XX	Male	2001.05.08.
27	Daejeon Prison	Hwang XX	Male	2001.02.09.
28	Daejeon Prison	Ko XX	Male	1999.09.21.
29	Daejeon Prison	Hong XX	Male	1997.05.30.
30	Daejeon Prison	Chung XX	Male	1996.06.11
31	Daegu Prison	Cho XX	Male	2007.06.15.
32	Daegu Prison	Yoo XX	Male	2004.12.21.
33	Daegu Prison	Heo XX	Male	2003.03.28.
34	Daegu Prison	Roh XX	Male	2000.09.05.
35	Daegu Prison	Park XX	Male	2000.07.07.
36	Daegu Prison	Chung XX	Male	2000.07.28.
37	Daegu Prison	Chung XX	Male	1998.06.03.
38	Daegu Prison	Lee XX	Male	1998.09.04.
39	Daegu Prison	Lee XX	Male	1997.12.31.
40	Daegu Prison	Park X	Male	1997.07.22.
41	Daegu Prison	Park XX	Male	1995.08.22.
42	Daegu Prison	Chang XX	Male	2015.08.27.
43	Gwangju Prison	Lee XX	Male	2010.04.02.
44	Gwangju Prison	Oh XX	Male	2010.06.10.
45	Gwangju Prison	Lee XX	Male	2005.08.25.
46	Gwangju Prison	Cho XX	Male	2002.07.09.
47	Gwangju Prison	Kim XX	Male	2001.12.24.
48	Gwangju Prison	Baek XX	Male	2001.04.10.
49	Gwangju Prison	Kang XX	Male	2000.11.28.
50	Gwangju Prison	Choi XX	Male	1997.11.28.
51	Gwangju Prison	Kang XX	Male	1996.12.23.
52	Gwangju Prison	Lee XX	Male	1996.06.11.
53	Gwangju Prison	Sung XX	Male	1996.04.26.
54	Gwangju Prison	Sung XX	Male	1995.08.25.
55	Gwangju Prison	Won XX	Male	1993.11.23.

Moreover, the Republic of Korea has no restrictions on the expulsion, return, surrender or extradition of a person to a jurisdiction where that person may face the risk of being sentenced to death. Most recently, on 28 April 2022, the Republic of Korea deported a Chinese national of Korean ethnicity, known only by his surname Kim, who was wanted for the alleged murder of a Public Security officer in Harbin in 1993, to China.⁷ The South Korean authorities arrested Kim who had fled to South Korea in April 2012 at the Chinese request in November 2019 and sought

⁷ Kim Ki-Yoon [김기윤], “The killer of a Chinese Public Security officer from 30 years ago who had laundered his identity repatriated (조선족→한족→한국인 신분 세탁한 30년 전 중국 공안 살해범 송환)”, Donga Ilbo, 2022. 5. 18., <<https://www.donga.com/news/Society/article/all/20220518/113468246/1>> [a news report in Korean].

his deportation to China for using false documents. The Supreme Court dismissed Kim's final appeal against the deportation order on 27 January 2022. The South Korean government and courts did not require any assurance from China that Kim would not be subjected to the death sentence.

If the death penalty is abolished, the Republic of Korea should speedily accede to the Optional Protocol, stop the expulsion/extradition of a person without the assurance against the death penalty and urge other countries, especially in the Asia-Pacific region, to follow its lead.

2. International Convention for the Protection of All Persons from Enforced Disappearance and its domestic implementing legislation

In the third cycle UPR (A/HRC/37/11), the Republic of Korea accepted the recommendations 132.1, 132.2 and 132.3 to ratify/accede to the International Convention for the Protection of All Persons from Enforced Disappearance (A/HRC/37/11/Add.1, para. 8). On 29 June 2021, the National Assembly unanimously adopted a resolution introduced by lawmaker Jeon Yong-Gi of the Democratic Party (DP) urging the government to submit a bill to ratify the Convention to the National Assembly.

On 21 June 2022, the State Council (cabinet) passed the bill to accede to the Convention, but as of 14 July 2022, the government has yet to submit the bill to the National Assembly for the latter's consent, which is necessary before the Republic of Korea's final accession to the Convention by the President.

From November 2020 to September 2021, the ministry of justice convened a committee for the Convention's implementing legislation, composed of experts and officials from the relevant ministries (the justice ministry, the foreign ministry and the defense ministry). In the National Assembly, lawmaker Jeon Yong-Gi of the Democratic Party (DP) on 14 January 2021 and Kim Gi-Hyeon of the People's Power Party (PPP) on 30 May 2022, representing the two main political parties, respectively introduced legislative bills to implement the Convention.

It is regrettable that the Republic of Korea has not implemented yet the accession to the Convention. Moreover, the accession will have limited effect without the enactment of the domestic implementing legislation.

There have been countless unresolved cases of enforced disappearances arising from the Japanese colonial occupation (1910-1945), the Korean War (1950-1953), the decades-long authoritarian rule and North Korea's abduction/internment of South Korean prisoners of war (POWs) and civilians.

The Working Group on Enforced or Involuntary Disappearances (WGEID) has transmitted four cases of enforced disappearances to the Republic of Korea, including those of three North Korean nationals who were reportedly detained by the South Korean maritime police on 5 July

2015 during its 109th session (9 – 18 May 2016) (A/HRC/WGEID/109/1, para. 84) and that of a student activist allegedly arrested by government agents on 22 May 1982 during its 118th session (13–22 May 2019) (A/HRC/WGEID/118/1, para. 87).

The WGEID has also transmitted 25 cases of enforced disappearances of Sakhalin Koreans who were taken to Sakhalin as forced laborers by Imperial Japan during World War II but were interned by the Soviet occupation force afterwards and lost contact with their family members in the Republic of Korea with the outbreak of the Korean War in its 121st session (11–15 May 2020) (A/HRC/WGEID/121/1, para. 109) and 122nd session (21–30 September 2020) (A/HRC/WGEID/122/1, paras. 131-132 and Annex I, paras. 9).

Moreover, the Democratic People’s Republic of Korea (North Korea) has over 330 outstanding WGEID cases (A/HRC/48/57, p. 8) and the vast majority of them were filed on behalf of disappeared North Korean citizens and South Korean abductees by their family members who were born or have become citizens of the Republic of Korea (South Korea).

There are also cases transmitted to China by the WGEID concerning disappeared North Korean escapees filed on their behalf by their family members who have permanently resettled and acquired the citizenship in South Korea.

Therefore, the Republic of Korea’s speedy accession to the Convention and enactment of the domestic implementing legislation may contribute to realizing justice and accountability for these cases.

3. South Korea’s treatment of newly arriving North Korean escapees, including the “joint interrogation center”

In 2014, the UN Commission of Inquiry on human rights in the Democratic People’s Republic of Korea found that the gravity, scale and nature of human rights violations in North Korea reveal “a state that does not have any parallel in the contemporary world”.

Over 33,000 North Korean refugees have made their way to South Korea, mostly since the late 1990s. However, the North Korean escapees are not safe from serious human rights violations such as prolonged administrative detention and torture as well as outright forced repatriation to North Korea after their initial arrival in South Korea.

From October 2012 to April 2013, Yu Ga-Ryeo (유가려), a Chinese national of Korean ethnicity, was detained for six months and coerced to testify that her brother, Yu Woo-Sung (유우성), is a North Korean spy. Since then, Mr. Yu has been acquitted of the espionage charges against him while the intelligence officers and prosecutors who made the false accusation have been tried and convicted for abuse of power while the government has been ordered to pay compensation to Mr. Yu’s family.

In a more recent incident, the South Korean government abused the system to repatriate two North Korean escapees back to North Korea where there are substantial grounds for believing that they would be in danger of being subjected to death, torture or enforced disappearance in blatant violation of the principle of *non-refoulement*.

The forced repatriation of two North Korean escapees on 7 November 2019

In the morning of 7 November 2019, a news camera caught the text message from Lieutenant Colonel Lim Euy-Jin (임의진), deputy commander of the UN Command security battalion at the Joint Security Area (JSA) in Panmunjeom along the North-South frontier, to Kim You-Geun (김유근), deputy director of the national security directorate in the presidential office, reporting that two North Koreans who came down to the South on 2 November will be returned to the North through Panmunjeom, escorted by the police instead of the Red Cross because of the suicide risk.⁸ The text message also mentioned disagreements between the ministry of unification, which handles inter-Korean affairs, and the National Intelligence Service about the repatriation, that should be resolved during the morning.

In response to the media uproar, the government announced that two North Korean fishermen had been deported to North Korea around 3:10 pm through Panmunjeom, having notified Pyongyang of the removal decision earlier on November 5, because they were murderous mutineers who had killed 16 crew mates before sailing south. However, the government provided no evidence other than their alleged confessions; questions were immediately raised as to how they managed to slay 16 hardened seamen without being noticed aboard such a small vessel.

On November 8, Kim Yeon-Chul, the minister of unification, stated at the National Assembly that the two fishermen demanded their return to North Korea, but on November 12, the ministry retracted this claim. In fact, they had expressed the intent to defect in writing. It was reported that the two fishermen, who were bound, blindfolded and unaware of their destination as they were moved to Panmunjeom under the escort by police anti-terrorism squad, only learnt of their fate as their blindfolds were taken off before the waiting North Korean guards, a sight which led one of them to collapse on the ground as his legs gave out in terror, on November 7.

⁸ Kim Myeong-Seob [김명섭], “The North Koreans who came down to Samcheok on November 2 to be repatriated today” (‘지난 11월 2일 삼척으로 내려왔던 북한 주민, 오늘 송환’), News 1, 2019. 11. 7., <<http://news1.kr/photos/details/?3906112>> [a news report in Korean].

However, the government maintained that, as confessed murderers on the run, the two fishermen's intent to defect could not be considered "genuine" and that they were not eligible for protection under article 9 (1) of the North Korean Refugees Protection and Settlement Support Act. However, given their professed will to defect, they should have been tried by a South Korean court as South Korean nationals based on available evidence under due process of the law, and ineligibility for protection under the said Act cannot be grounds for deportation to North Korea.

On November 15, at a hearing of the National Assembly's Foreign Affairs and Unification Committee, the lawmakers questioned Minister Park about the incident. Asked who made the decision to deport the two fishermen defectors, the unification minister replied that the control tower was the national security directorate in the presidential office.

On November 21, the DPRK's Korea Central News Agency (KCNA) in a commentary entitled "There is a time and place for everything (모든 일에는 때와 장소가 있는 법이다)" revealed that, North Korean leader Kim Jong-Un had rejected South Korean president Moon Jae-In's confidential invitation of November 5 to the 2019 ASEAN-ROK Commemorative Summit to be held in Busan on November 25-26.

The bombshell news immediately raised speculation that the South Korean government's November 5 notification to North Korea of its decision to deport the two fishermen defectors was offered as a sweetener to appease Kim Jong-Un into attending the summit. Had Kim You-Geun's phone screen not been captured by camera, even the fact of deportation would not have come to light.

According to the 2014 detailed findings of the UN Commission of Inquiry on human rights in the DPRK, North Korea executes a large number of persons, and the strict conditions and safeguards that article 6 of the ICCPR requires in relation to the death penalty are not observed in the vast majority of cases (A/HRC/25/CRP.1, paragraph 823). For the repatriated persons, those who had left with the intention of reaching the ROK were sent to an ordinary prison camp (*kyohwaso*) after an unfair trial and those who received help from Christian groups or the ROK intelligence network to this end were sent to a political prison camp (*kwanliso*) without trial, while aggravating factors such as contact with ROK intelligence officers may result in execution (A/HRC/25/CRP.1, paragraphs 409, 410 and 1102).

During the Human Rights Council's Universal Periodic Review (Third Cycle) on 9 May 2019, the DPRK delegation also admitted in no uncertain terms that public executions occur in their country under the vague, arbitrary and conveniently malleable condition of "strong requests by the victim's family and other concerned persons" (A/HRC/42/10, 25 June 2019, para. 75).

The legal status of the newly arriving North Korean escapees in South Korea

There are two interrelated legal issues that make possible such egregious human rights violations against the North Korean escapees in South Korea.

First, while the South Korean courts have consistently held that North Koreans are entitled to the South Korean citizenship despite the absence of any mention in South Korean's nationality law, the North Koreans in practice have at best an uncertain legal status under the South Korean law.

Contrary to the popular belief, the North Korean escapees who express the will to be protected by South Korea are not automatically given the South Korean citizenship upon their arrival in South Korea. To be a full-fledged citizen in South Korea, one needs a family registrar. For an average South Korean, a family registrar is created upon birth, but for a North Korean escapee, a family registrar is created only for a "protected person" with the recommendation of the minister of unification.

By law, such protection can be denied to North Korean escapees if they are felons, spies or pose serious threats to national security. If the South Korean authorities deny the protected status for any of these reasons, the North Korean escapee in effect becomes a stateless person in a legal limbo.

Ironically, their legal status can be worse than that of foreign nationals who are entitled to the due process rights, consular protection as well as the right to seek asylum and the principle of *non-refoulement*.

The second issue concerns the legal basis and oversight of the interrogation/detention process for North Korean escapees. Because North Korean escapees are essentially beyond the pale of the law until they are granted the protective status, they are not afforded the minimum due process like the right to an attorney, the right to remain silent and the *habeas corpus* right to be brought before a judge.

It does not help that the interrogation facilities and process were first developed in the early post-armistice period since 1953 as counter-espionage measures overseen first by the military intelligence and later by the civilian intelligence. To this date, the National Intelligence Service not only oversees the interrogation of the North Korean escapees but also determines the length of their detention and runs the physical facility for the interrogation and detention.

Until the mid-1990s, the detention and interrogation of North Korean escapees relied on administrative decrees without any statutory basis. Even now, it is in essence an immigration process overseen by intelligence agents. Because it is not a formal criminal process, the North Korean escapees lack the rights accorded to criminal suspects and can be removed without lengthy refugee or extradition proceedings.

Such prolonged administrative detention of North Korean escapees without judicial control is a blatant violation of the right to personal liberty. The condition of secret and *incommunicado* detention may even arise to enforced disappearance and the ill-treatment amount to torture under international law. And the forced repatriation of North Korean escapees to North Korea where

they face torture, enforced disappearance and executions violates South Korea's obligations under international law.

The political use of the newly arriving North Korean escapees in South Korea

While the ambiguous legal status of the North Korean escapees in South Korea's domestic legal order and the extralegal nature of their initial detention/interrogation by the intelligence services enable various human rights violations and abuses, there are specific political reasons that such violations and abuses occur.

Under the past authoritarian regimes and even under the post-democratization governments, the intelligence services have been notorious for accusing, sometimes knowingly and deliberately, innocent persons, including South Korean citizens as well as North Korean defectors, of being communist spies.

The intelligence officers, either out of personal ambition, professional zeal or unscrupulousness, have incentives to wrongly accuse North Korean escapees of being Pyongyang's agents and the escapees with little legal protection during the initial interrogation and detention in South Korea are particularly vulnerable.

The forced repatriation of 7 November 2019 illustrates a new kind of danger whereby the politicians eager to appease North Korea sacrifice the lives and human rights of the North Korean escapees.

The proposal for legal reform

The existing legal system for North Korean escapees arriving in South Korea is in need of fundamental repair. This is necessary to prevent future human rights violations against North Korean defectors by the South Korean authorities. It requires a rethink of North Korean escapees as people fleeing persecution who are entitled to full South Korean citizenship rather than pawns in the political game with North Korea.

First, with respect to the legal status of the North Korean escapees arriving in South Korea, the law must clarify that North Korean escapees are entitled to South Korean citizenship as a matter of right, provided that they freely express a permanent allegiance to the Republic of Korea (South Korea).

While attempts to infiltrate South Korea as agents of the North Korean state would be grounds for disqualification, alleged past criminal activities prior to entering South Korea should not be. Previous criminal offenses must be addressed in South Korean courts as would be the case for any other South Korean citizens.

North Koreans who arrive in South Korea by sea must be allowed to freely express in writing and before an independent judicial authority their desire either to be returned to North Korea if they had drifted to South Korea by accident or to settle in South Korea if that is what they intend. In the latter case, the expression of a permanent allegiance to the Republic of Korea must be respected. Independent judicial oversight is necessary for such important decisions.

Second, the primary authority for the interrogation of North Korean escapees as well as their detention facility should be transferred from the intelligence service to the ministry of justice. While it may be necessary for the intelligence agents to be involved in the interrogations, there is little justification for the intelligence service to oversee the entire process. The intelligence agents may take part in the interviews and play a more proactive role when there is probable cause to suspect espionage. The justice ministry already handles the processing of foreign migrants and asylum-seekers and their detention centers.

Third, the process for the interrogation and detention of North Korean escapees should be clearly defined in law. The existing law detailing the processing of foreign migrants and asylum-seekers can be incorporated in the law for North Korean escapees. In particular, due process guarantees accorded to criminal suspects, the duration and judicial review of prolonged administrative detention and the principle of *non-refoulement* must be codified by an act of the National Assembly.

4. The amendments to the Rome Statute of the International Criminal Court and its domestic implementing legislation and enforcement mechanism

In the third cycle UPR (A/HRC/37/11), the Republic of Korea stated with respect to the recommendation 132.17 to ratify the Amendments to the Rome Statute of the International Criminal Court on the crime of aggression (the Kampala amendments) that “a thorough review needs to be carried out with regard to the legal effect of the most recent resolution adopted at the Assembly of State Parties and the scope of the ICC jurisdiction” (A/HRC/37/11/Add.1, para. 12). The Assembly of States Parties have also adopted amendments to article 8, paragraph 2 (b) and (e) of the Rome Statute to expand the scope of war crimes in armed conflicts under customary law as well as deletion of article 124 that allows the states parties to defer the acceptance of the ICC’s jurisdiction over war crimes for 7 years.

The Republic of Korea participated in the adoption of all the amendments in the Kampala Review Conference (2010), the Assembly of States Parties in 2015, 2017 and 2019, but it has not accepted/ratified yet any of the amendments. The government has been cautious in about the amendments on the crime of aggression citing objections from certain states and the security environment as well as the amendment to ban “[e]mploying laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness

to unenhanced vision”. It has also expressed its concern that the addition of new acts of war crimes may result in a fragmented and confusing regime, leading to the situation where different crimes apply in different situations to different individuals.

The government has not fully explained why the adoption/ratification of the crime of aggression would be detrimental to the security environment. While the government, the ministry of defense in particular, appears to be mindful of the reservations that its main ally, the United States, has about the crime of aggression, the Republic of Korea has the most gain from the criminalization of aggression as a middle power surrounded by neighbors such as Russia, China and Japan.

While the addition of new acts of war crimes may result in differing applicable laws, it would also provide greater legal protection for the combatants and civilians at risk of being harmed by such acts. Such fragmentation was indeed contemplated by the drafters of the Rome Statute explicitly through Article 121(5) and the State parties did not raise any substantive pushback at that point in 1998.

Lastly, the government has never explained why it has not adopted/ratified the amendment to delete article 124 which is problematic from the perspective of consistent application of the Rome Statute and the goal of realizing justice and accountability for war crimes.

If South Korea proceeds to accept/ratify the amendments, corresponding revisions should be made to the Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court which was enacted in 2007.

For the effective enforcement of the amendments, as well as the existing provisions, it would be advisable to create a dedicated office for the investigation and prosecution of the crime of genocide, crimes against humanity, war crimes and the crime of aggression as there have never been trials for such crimes in South Korea. Germany’s Central Unit for the Fight against War Crimes and further Offences pursuant to the Code of Crimes against International Law (ZBKV: *Zentralstelle für die Bekämpfung von Kriegsverbrechen*), established in 2003 as part of the Federal Criminal Police Office (BKA: *Bundeskriminalamt*), may serve as a good model.

5. The North Korean Human Rights Act

In 2016, South Korea enacted the North Korean Human Rights Act, which among other things, provides for the appointment of a North Korean human rights ambassador (article 9) and the creation of a North Korean human rights documentation center in the Ministry of Unification (article 13).⁹

⁹ North Korean Human Rights Act [Enforcement Date 04. Sep, 2016.] [Act No.14070, 03. Mar, 2016., New Enactment], <<https://www.law.go.kr/lsInfoP.do?lsiSeq=181623&viewCls=engLsInfoR>>.

However, the Moon Jae-In government (10 May 2017 – 9 May 2022) failed to appoint a North Korean human rights ambassador and the post remains vacant as of 14 July 2022. It is important for the incumbent Yoon Suk-Yeol government to speedily appoint a North Korean human rights ambassador to highlight its commitment to improving the situation in North Korea.

It is also recommended that the task of documenting human rights violations in North Korea be transferred from the Ministry of Unification to the Ministry of Justice for two reasons: (1) the task requires not only a factual survey but also a legal analysis based on international human rights law and international criminal law with a view to justice and accountability measures in the future that can be better performed by the lawyers at the Ministry of Justice and (2) it is awkward for the Ministry of Unification that oversees inter-Korean talks and exchange with the North Korean officials to record their human rights violations at the same time.