



Citizens' Alliance for North Korean Human Rights (NKHR)

Gonghwa Building, 131 Tongil-ro, Seodaemun-gu, Seoul 03735, Korea

Tel: +82-2-723-1672, 2671 Fax: +82-2-723-1671

<http://www.nkhumanrights.or.kr> e-mail: citizens.nkhr@gmail.com

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Stakeholder's Submission

In preparation for the Fourth Cycle of the Universal Periodic Review of the Republic of Korea (ROK) 42nd Session (January - February 2023)

This submission contains:

1. Information on the lack of action by the government of the ROK to assist its citizens in providing access to truth, accountability, reparation, and memorialization of the harm suffered by serious human rights violations and violations of humanitarian law committed with the direct involvement of the Democratic People's Republic of Korea (DPRK), such as those against South Korean abductees and Prisoners of War (POWs) who are still detained in the DPRK
2. Recommendations for the fourth cycle of UPR (Session 42)

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.

About this submission:

During the First, Second and Third Cycle of the Universal Periodic review, the ROK Government has received repeated recommendations to ratify the Convention on Enforced Disappearances and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The ROK has not yet ratified these Conventions.

Almost 100,000 civilians were forcibly taken from their homes in ROK as victims of enforced disappearance by the DPRK during and after the Korean War, as well as over 90,000 South Korean prisoners of war who were not repatriated in violation of the Armistice Treaty and were forcibly detained, subjected to forced labor in mines and exposed to denigrating treatment. It is important to note that ratification of the Conventions by the ROK, and taking other measures including responsibility for the harm that occurred to its own citizens, is of utmost importance and timeliness. Many of the victims and their families are of advanced age and are often of low socio-economic background resulting from the violations committed against them, preventing many from seeking access to truth, justice, and reparations. In addition, administrative procedures are often too complicated for the victims to seek truth, while recent court cases by prisoners of war and victims of disappearance were futile victories. The court recognized the harm perpetrated but did not permit compensation from frozen funds in the ROK, de facto belonging to DPRK leadership, as a result of differences in interpretation between the Courts.

Background: South Korean Abductees and POWs Still Detained in the DPRK and Social Stigma Attached to the Victims' Family Members Remaining in the ROK until the Late 1990s

There are numerous South Korean victims of enforced disappearance still detained in the DPRK. The North Korean government's intelligence agencies have systematically engaged in the abduction, forced displacement and subsequent enforced disappearance of nationals from South Korea and other countries on a large scale and as a part of State policy since 1950.¹ Among them are almost 100,000 South Korean civilians abducted by the North Korean government during the Korean War (1950-53) alone and at least 516 unreturned South Korean civilians abducted by North Korea after the War. Approximately 90,000 South Korean POWs, whose repatriation was denied by the North Korean government despite the obligations under the Armistice Agreement and Geneva Conventions, have systematically been enslaved in various mining zones through multiple generations; that is, their children and grandchildren have become victims in the same system. These victims, deprived of freedom of movement in the North, barely manage to escape the country and return to South Korea.

Between the 1960s and the 1980s, imputed or actual association with North Korea has been of negative consequences for the victims' families due to security policies of the ROK focusing on constant suspicion of having links with the enemy state (DPRK), even if that association was a result of an illegal act of abduction or forced detention of unreturned prisoners of war by the DPRK. Those abductees and POWs detained in the DPRK were easily framed as possible future North Korean spies and their families in South Korea were imputed to have links with such undesirable individuals. As a result, the families have been under constant surveillance by the police and security forces of ROK. They reported having been ostracized, losing jobs and education opportunities, being unable to pass identity screening for traveling abroad, and being refused stable jobs in both private corporations and government, entrenching them in poverty. They were also exposed to repeated interrogation and surveillance by police, resulting in many cases in mental harm. The consequences of these policies last among these families to the present

¹ "Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea" (The United Nations Human Rights Council, February 7, 2014), <http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx>.

day in terms of poverty, lack of psychosocial support, lack of recognition of harm, and lack of restoration of honor of the victims and their families.

Another consequence of such policies was that the ROK government and society have never acknowledged the serious crimes committed on South Korean nationals by the DPRK. The state has also made little efforts to actively engage with the DPRK and demand the return of South Korean abductees, prisoners of war, or their remains. For a long time, it also prevented the families from seeking justice at the national level or in the courts. The ROK government must take responsibility for group processes as the victims are often unable to individually seek access to truth, justice and reparations due to their advanced age and poverty.

Truth Seeking

The indifference and discrimination against remaining family members of the South Korean POWs and abductees to the DPRK has changed since the first inter-Korean summit in 2000. As 63 unconverted long-term North Korean POWs were repatriated to the DPRK following the summit, family members of South Korean POWs and abductees started to request that the South Korean government take proper steps to verify the fates and whereabouts of their loved ones detained in North Korea and to bring them back to South Korea.²

Acknowledging the growing demand in the ROK, various bills were enacted to support the South Korean victims in the DPRK and their family members such as Act On The Repatriation, Treatment Of The Republic Of Korea Armed Forces Prisoners Of War (hereinafter referred to as “Act for POWs”) in 2006, the Act On Finding The Truth Of The Damage From North Korea’s Abduction During The Korean War And Restoring Honor Of The Victims (hereinafter referred to as “Act for Wartime Abductees”) in 2010, and the Act on Compensation and Assistance for Victims Abducted to North Korea since the Conclusion of the Armistice Agreement (hereinafter referred to as “Act for Post-war Abductees”) in 2007.

It is concerning that there is not even an investigation or truth-seeking initiatives adopted by the South Korean government to identify the POWs still detained in the DPRK, their living situations including whether they are detained, and methods for treatment and support. This undermines Article 3 of the Act for POWs, which specifies that the State shall formulate and implement basic policies on understanding the actual status of POWs, their repatriation (including the repatriation of their remains), and the treatment and support necessary for the POWs and their family members from the place of detention. Despite the existence of the “POW Planning Committee” under the order of Prime Minister, its insufficient manpower and budget and limited investigative mandates have restricted the capacity of the Committee to pursue its mandate.

There were various truth-seeking initiatives to find out the truth about South Koreans’ abduction by the DPRK by establishing the “Committee to Find the Truth of the Damage from North Korea’s Abduction during the Korean War and Recover Honor of the Victims” and “The Abducted Victim Compensation and Support Committee of ROK.” However, the South Korean government’s efforts remain incomplete as the North Korean government did not participate in the process and refuses to admit its involvement. Furthermore, even victims’ family members have limited access to information and documentation already revealed. Although they know that their family members are acknowledged as abductees through notices from the Committees or the Ministry of Unification, the victims’ family members do not have access to the raw resources from the documentation and archives of the

² “Ministry of Unification: South Korean Abductees after the Korean War,” accessed March 4, 2021, <https://reunion.unikorea.go.kr/abduct/html/supportSummary.html>.

governmental entities (such as the National Intelligence Service, the National Police Agency, and the Ministry of Interior) which were collected and used in the process of the Committees’ investigation to confirm the abduction cases. There is no official policy or procedure specifically for victims and their family members to request such information. The procedure for information disclosure does not result in much information because of governmental restrictions on disclosure of information based on national security or privacy.

Verification of Fates and Whereabouts of South Korean Victims in the DPRK and Re-establishment of Their Communication with Family Members in ROK Based on Proper Recognition of the Crime

The South Korean government's attempts to resolve the abduction issue through inter-Korean dialogues have been tentative.

Seoul neither asked for repatriation of its citizens, nor has used the term “abductees” at the negotiation table to avoid confrontation with the North Korean government.³ The vague descriptors chosen by the South Korean government blurs the factual and legal nature of victims’ disappearances as the result of the enforced disappearance crimes committed by the DPRK.

According to the Ministry of Unification of South Korea, the fates of 133 specially categorized separated family members (South Korean POWs and abductees detained in the DPRK) were verified by the North Korean government as of March 11, 2021. 64 of them are post-war South Korean abductees to North Korea, and 21 families in South Korea had opportunities to meet with their abducted family members or their descendants in North Korea.

Classification	# of Life and Death Confirmation	# of Family Reunions
South Korean abductees to North Korea during the Korean War	13	11
South Korean abductees to North Korea after the Korean War	64	21
Prisoners of war	56	28
Total	133	60

Ministry of Unification, 2021

Considering the total number of victims amounting to over 200,000, the number of life and death confirmation and family reunions remain minimal.

The South Korean government has classified the South Korean victims of abduction and their families as separated families, not victims of enforced disappearances. Proper classification is a significant issue because enforced disappearances, unlike family separation, is considered an international crime. It would also allow the victims’ family members to enjoy the specific rights and entitlements to

³ “Ministry of Unification: South Korean Abductees after the Korean War,” Endeavors through Inter-Korean Relations, accessed March 5, 2021, <https://reunion.unikorea.go.kr/abduct/html/supportSummary.html>.

acquire information on the fates and whereabouts of the disappeared and restore communication with the abductees detained in North Korea based on international norms.

Accountability

The ROK has not embarked on an accountability process or prosecutorial strategy to investigate, prosecute and sanction the perpetrators of the aforementioned serious human rights violations. Many governments in analogous situations have specialized units established for identifying and locating disappeared persons, including organizations similar to a prosecutorial body, or truth commission tasked with figuring out what happened to these people, whether there may or may not be accountability processes available. The South Korean Truth and Reconciliation Commission accepted cases of abductees who were returned by North Korea, but it declined to look into other post-war disappearances on behalf of these people on the basis that their families had received compensation for their losses based on existing domestic laws. This creates unnecessary divisions among categories of victims of disappearance, prevents those who still have relatives disappeared in the DPRK from locating these persons, and excludes categories of victims from taking part in and owning the accountability process from the beginning.

We recommend that such work should be conducted by a separate unit and the ROK Government should establish a specialized serious crime unit within the Ministry of Justice, the Prosecutor's Office, or the Police, comprised of prosecutors and investigators who have experience on related crimes.

Furthermore, the separation of the processes and institutions dealing with various categories of victims makes it difficult for the one independent central archive and information system to exist and to investigate the crimes in a coordinated manner while also enabling victims access to information.

To establish accountability for South Korean victims detained in the DPRK, an independent unit needs to be established. The issue of POWs is currently managed by the Arms Control Division under the Ministry of Defense, which does not have proper expertise and makes it difficult for the victims and their family members to pursue the truth. This Division is unable to provide reliable statistics of how many South Korean POWs are still detained or have been detained and died in the DPRK. As such, the numbers vary greatly and create situations denigrating for the prisoners of war and their families who experienced harm in North Korea. For example, the victims have to go through difficult processes on their own to prove that they are descendants of the prisoners of Korean War and that their parents were actually POWs. Some have even resorted to individually smuggle the remains out of DPRK to have their parents buried in ROK and to provide necessary evidence for the governmental institutions in ROK. Such processes should not be the burden of the victims as it is the state responsibility to initiate such processes and to provide dignity to victims and their families without exposing them to unnecessary secondary trauma.

Ratification of International Convention for the Protection of All Persons from Enforced Disappearance

The South Korean government has yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, which could be a valuable channel to seek cooperation from the international community to address and resolve North Korean abductions. It would be also beneficial to entitle victims with specific rights to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end.

Reparations

In cases of abductions occurring after the Korean War, compensation was given to the victims' family members based on the domestic law. However, the amount was minimal, not enough to remedy financial, social and emotional damage caused by the North Korean abduction and the social discrimination prevailing in the South Korea by the late 1990s in addition to the South Korean government's inability to protect its own citizens. The whole family of a victim received less than \$30,000 on average as compensation, and the amount was divided by the number of eligible family members such as parents, children, spouse and siblings.⁴ Also, none of the family members of the South Korean abductions during the Korean War have received individual compensation from the South Korean government. Other forms of reparation, such as medical subsidies, are only provided to some and are limited in scale.

Although family members of the South Korean POWs and abductees to the DPRK had suffered for a long time from the trauma, social stigma and economic difficulties caused from the disappearance of victims, they were unable to receive proper psychological support as there is no national program to provide psychosocial services. The South Korean government must adopt without further delay a comprehensive legal framework, and concomitant national program, to provide full, prompt and effective reparation, encompassing measures of compensation, rehabilitation, restitution and satisfaction.

Recommendations to ROK Government for the Fourth Cycle of UPR (Session 42)

1. To sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance
2. To regulate duties and other matters through adoption of the domestic legislation that corresponds to the purposes of the International Convention for the Protection of All Persons from Enforced Disappearance
3. To sign and ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity
4. To establish a specialized serious crime unit within the Ministry of Justice, the Prosecutor's Office, or the Police, comprised of prosecutors and investigators who have experience on related crimes
5. To establish an independent unit with the centralized information system to assist ROK citizens in providing access to truth (including full access to national records and archives), accountability, reparation, and memorialization of the harm suffered by serious human rights violations and violations of humanitarian law committed with the direct involvement of the DPRK

⁴ *White Paper on Supporting South Korean Victims Abducted by North Korea after the Korean War* (the Abducted Victim Compensation and Support Committee of Republic of Korea, Committee to Support Victims of North Korea's Abduction, 2011).