

Seoul, August 28, 2018

Ms. Signe Poulsen

Representative, UN Human Rights Office (Seoul),

Mr. Tomas Ojea Quintana

UN Special Rapporteur on the Situation of Human Rights in the DPRK,

Mr. Bernard Duhaime

Chair of the UN Working Group on Enforced and Involuntary Disappearances,

Mr. Fabian Salvioli

UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Dear Representative Poulsen, Special Rapporteur Quintana, Chair Duhaime, Special Rapporteur Salvioli,

The co-signatories of this letter would like to draw your urgent attention to the proposal of the Bill No. 14846 “Partial Amendments to the Act of Finding the Truth and the Damage from North Korea’s Abduction During the Korean War and Restoring the Honor of the Victims” and Bill No. 14847 “Partial Amendments to the Law on Compensation and Assistance for Victims Abducted to North Korea since the Conclusion of the Armistice Agreement”, both introduced in the National Assembly of the Republic of Korea (ROK) by 12 lawmakers on August 13, 2018. The proposed amendments aim to remove the terms “abductee” in relation to the acts committed on ROK nationals by the Democratic People’s Republic of Korea (DPRK) during the Korean War and in the post-Korean War period, and replace them with the term “missing persons”. The proposed changes, if adopted by the ROK Parliament, will allow abductees to be redefined under this law and will create a difficult situation for South Korean families seeking justice and truth in the future, as stated in the recommendations of the UN Commission of Inquiry for DPRK and the UN Panel of Experts on Accountability for DPRK¹.

We would like to kindly request your written opinion to the Speaker of the ROK National Assembly, the ROK Minister of Foreign Affairs, the ROK Minister of Unification, the ROK Minister of Interior and Safety and the Chairperson of the ROK National Human Rights Commission reminding the ROK that the proposed amendments are contrary to the internationally accepted human rights standards referring to the crime of abduction and enforced disappearance, defined also in the international treaties adopted by the ROK National Assembly (International Covenant on Civil and Political Rights, Convention Against Torture and Rome Statute of the International Criminal Court).

¹ Following the UN COI for DPRK findings, the experts addressed the concern that many Korean victims “underscored the importance of receiving acknowledgment and recognition of the wrongs done and the suffering caused to them.” Report of the Group of Independent Experts on Accountability, February 24, 2017, A/HRC/34/66/Add.1, para. 24.

Such legislative intent is also contradictory to the findings of the international community; namely the UN Commission of Inquiry for DPRK, which lists these abductions as one of the categories of crimes against humanity that the DPRK is responsible for, the reports of the UN Special Rapporteur for DPRK, as well as UN Resolutions on the Situation of Human Rights in the DPRK. In no relevant international human rights document referring to the North Korean abductions is there mention of a legally protected category of “missing persons”.

According to the international law, enforced disappearance is an international crime, but the proposed amendments rather seek to obtrude international human rights standards by replacing the legally specific term “person abducted to North Korea in wartime,” and “abductee to North Korea” to “missing person during wartime” and “missing person in a postwar time” respectively. The term “missing person” is not defined to explicitly include abductees.

In the justification section which explains the rationale for the amendments, it is stated that the “term ‘a person abducted to North Korea’ draws resistance from North Korea” and further argues that the “legal basis for the conflict should be rearranged.” The amendment Bill No. 14846 also argues that different terminology is already used by ROK representatives in the Ministerial-level and Working-level meetings between DPRK and ROK.

While diplomatic negotiations are of a different nature and may involve using different terminology during such meetings, this hardly justifies the need to amend domestic law, unless it was specifically requested by the North Korean side. This indicates a legislative intent to remove responsibility for abductions by changing the language of the law. Moreover, such an approach is contradictory to what has been recommended by the UN Panel of Experts on Accountability for DPRK, which recommended to “firmly integrate human rights and accountability into any political process for the Korean peninsula, acknowledging that peace and justice are mutually reinforcing imperatives.”²

As much as resolving inter-Korean relations is an important and noble cause, seeking to remove responsibility of one of the sides for the international crimes committed is setting an undesirable precedent which removes possibility of addressing and properly resolving the issue of abductions with the DPRK. Instead of bringing North Korea further into the realm of internationally accepted human rights standards, many of which the DPRK also ratified, these legislative proposals are seeking to lower international and domestic standards to North Korean ones.

As the Special Rapporteur on the Situation of Human Rights in the DPRK, Tomas Ojea Quintana, emphasized in his recent report, “enforced disappearance is a continuous crime until the fate and whereabouts of every disappeared person are clarified.”³ The UN Commission of Inquiry has detailed the crimes of targeted abductions of civilians during the Korean War (estimates vary between 80,000 and 100,000 cases) and post war abductions, out of which 516 abductees are still unaccounted for⁴. The UN Working Group on Enforced and Involuntary Disappearances received communications on these cases: thus far, 74 cases concerning post-war abduction from the Citizens’ Alliance for North Korean Human Rights and 150 cases concerning Korean War-era abduction from Korean War Abductees’ Family

² Report of the Group of Independent Experts on Accountability, February 24, 2017, para. 83b.

³ Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, 9 March 2018, A/HRC/37/69, para. 20.

⁴ 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. 849 and para. 884.

Union, majority of which have been communicated to the DPRK.

The abductees and their families have already been victimized twice: once through the pain of abduction and loss, a second time when they were socially stigmatized and constantly surveilled by the ROK authorities for having family in the North. Thus far, these policies have prevented many abductees from seeking truth and justice. These amendments represent a third victimization by proposing to remove hard-won protections under international and domestic law for the recognition of the crime that has been committed against them.

Sincerely,

Advocacy Forum (Nepal)

Asian Federation Against Involuntary Disappearances (Philippines)

Citizens' Alliance for North Korean Human Rights (Republic of Korea)

Conflict Victims' Society for Justice (Nepal)

Defence of Human Rights (Pakistan)

Families of Victims of Involuntary Disappearance (Philippines)

HAK Association (Timor-Leste)

KontraS (Indonesia)

Korean War Abductees' Family Union (Republic of Korea)

ODHIKAR (Bangladesh)

Transitional Justice Working Group (Republic of Korea)

1969 KAL Abductees Families Association (Republic of Korea)