

## **[Joint Letter to the United Nations Human Rights Office (Seoul): Two North Korean Fishermen Repatriated without Trial Puts Them at Risk of Torture and Execution]**

Date: 18<sup>th</sup> November, 2019

To the United Nations Human Rights Office (Seoul),

We, as NGOs promoting North Korean human rights, are writing to you regarding the forced repatriation of two fishermen from the Democratic People's Republic of Korea (DPRK) by the South Korean government where they will be put at risk of torture and execution without going through a due process of law.

We call upon the United Nations Human Rights Office (Seoul) to join in expressing deep concern with regards to this deportation.

On November 2nd, two fishermen, whose names are unknown, left a North Korean port and entered the territorial waters of South Korea. They were captured by the South Korean Navy and subsequently investigated. What caused controversy is that this incident was not officially reported to the Defense Minister, but was instead sent through a text message from a military official at the Joint Security Area directly to the office of National Security at the Presidential Office. This could have caused to rush their deportation, without going through a proper trial before a decision could be made. It is reported in the media that the DPRK demanded their return by describing them as criminals. This issue wouldn't have been revealed to the public if the media had not posted the picture.

On November 7th, the South Korean Ministry of Unification (MOU) told the press about their decision to return them to the DPRK, even though they expressed their wish to defect to South Korea. They were brought to the truce village of Panmunjom in the Demilitarized Zone on the same day, unaware of their destination, and gags were prepared by the South Korean SWAT team in charge in case of resistance from them until they were returned to North Korean authorities. It has been reported that the two had their hands tied and head covered while being moved. It is reported in the media that they were shocked and cried for help when they realized that they were being returned to the DPRK.

Articles 3 and 12 of the Constitution of the Republic of Korea state that "the territory of the Republic of Korea shall consist of the Korean peninsula" and that "any person who is arrested or detained shall have the right to prompt assistance of counsel". This means that any North Korean individual coming to the South Korean territory should be welcomed and treated as a regular citizen. Moreover, this implies that these two fishermen should have been granted the right to a fair trial in South Korea, which was not respected. Thus the constitutional protection they should have been granted has not been applied, which represents a violation of the very basis of South Korean law.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Adopted on December 10 1984 and ratified on February 8 1985 by South Korea) Article 3 stipulates that:

1. No State Party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

The MOU justified their deportation by revealing that their joint investigation with the government found enough evidence to prove that they murdered 16 of their crew members on a fishing boat in the East Sea. However, their decision to return the two fishermen without a proper trial within five days was unexpected and shocked many human rights NGOs.

We hope that the South Korean government will urge to take specific measures to prevent recurrence of this kind of action by ensuring efficient investigations and conformity to international human rights conventions. In addition to this, relevant laws and regulations should be amended and supplemented so that refugees, including North Koreans, are not forcibly repatriated to a country where they can surely fear persecution.

According to Article 10 of the Universal Declaration of Human Rights “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”, and Article 11 (1) “Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

In 2014, the Commission of Inquiry on Human Rights in the DPRK established by the UN Human Rights Council reported that “there is a rule by law in the DPRK, but no rule of law, upheld by an independent and impartial judiciary”. Furthermore, the 2014 survey results conducted by the Korean Bar Association (KBA) shows that the DPRK rarely applies the procedural rules regarding detention of a criminal during the investigation and pre-trial stage.

It is important to remember that Article 7 of the International Covenant on Civil and Political Rights states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. As it has been demonstrated in the “Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea” published in 2014, the DPRK has a disastrous record when it comes to torture and executions, as well as other inhumane treatments against their prisoners. It has been shown that the DPRK has held public executions in the past, which represents a violation of human dignity and must be prevented.

The DPRK must take action to ensure the safety of the deported fishermen and inform the international community of the current circumstances and future plans for the deported. It must be transparent in its treatment of the deported and allow the international community to identify whether it is treating them in compliance with international human rights standards. The DPRK must be discouraged from inflicting any

type of cruelty on the deported such as torture, beating, and other degrading treatment. The DPRK must make sure no one shall be subject to harsh punishment such as a death sentence. The DPRK must remind itself of the worldwide concerns regarding the human rights situation in its territory and the duties it is subject to, according to the international human rights treaties the state has signed.

We call for immediate action from the international community to communicate with the DPRK and report on the conditions under which they are being treated to make sure that they will not be tortured and/or executed without going through a due process of law.

Commonly signed by,

1969 KAL Abductees' Families Association	1969년 KAL 기 납치피해가족회
Center for Liberty & Reunification	자유통일문화원
Citizens' Alliance for North Korean Human Rights (NKHR)	북한인권시민연합
Coalition for the North Korean Refugees	자유와 인권을 위한 탈북민연대
Committee for Human Rights in North Korea (HRNK)	북한인권위원회(미국)
Committee for the Democratization of North Korea	북한민주화위원회
Cultural Freedom Unified Korea	자유통일문화연대
Design Association North Korean	NK 디자인협회
Improving North Korean Human Rights Center (INKHR)	북한인권증진센터
Justice For North Korea (JFNK)	북한정의연대
Korea Development Center	남북하나개발원
Korean War Abductees' Family Union (KWAFU)	6.25 전쟁납북인사가족협의회
Lawyers for Human Rights and Unification of Korea	한반도 인권과 통일을 위한 변호사모임
Network for North Korean Human Rights and Democracy (NKnet)	북한민주화네트워크
New Korea Women's Union	뉴코리아여성연합
NK Watch	엔케이워치
No Chain for North Korea	노체인
North Korea Freedom Coalition	북한자유연합
North Korea Strategy Center (NKSC)	북한전략센터
North Korean Refugees Culture & Welfare Foundation	북한이탈주민 문화복지진흥원
North Korean Writers in Exile PEN Center	국제펜클럽 망명북한펜센터
Now Action & Unity for Human Rights (NAUH)	나우
Open North Korea (ONK)	열린북한
People for Successful COrean REunification (PSCORE)	성공적인 통일을 만들어가는 사람들

Stepping Stones

Transitional Justice Working Group (TJWG)

Unification Academy

Unification Media Group (UMG)

Unification Strategy Institution (USI)

Worldwide Coalition to Stop Genocide in North Korea

징검다리

전환기정의워킹그룹

통일아카데미

국민통일방송

통일전략연구소

북한의 대량학살을 멈추기위한 세계연대