

1. URGENT PETITION TO:

- Ms. **Monica PINTO**, Special Rapporteur on independence of judges and lawyers
- Mr. **Michel FORST**, Special Rapporteur on the situation of the human rights defenders

2. I. INFORMATION CONCERNING THE PETITION

Petitioners **Kyunguk JANG et al:**

Victims Petitioners

State Party KOREA, Republic of

3. Representation

Name **Mr. Kinam KIM, esq.**

Relationship Legal Counsel

Organization Minbyun-Lawyers for a Democratic Society

Address 23 Beobwonro 4-gil, # Yanggi Bldg. 2F.

Seocho-gu Seoul 06596

KOREA, Republic of

E-mail asparte1997@gmail.com

4. SUMMARY

The parents whose daughters have been in *incommunicado* under the National Intelligence Service(NIS) since last April have appointed the petitioners as legal counsel to represent them for release. Although the petitioners demanded for interview with the daughters many times the NIS rejected such demands. And in the habeas corpus action against the NIS the court failed to try in a fair and impartial manner. In this regard, the ROK government violated the rights of the petitioners pursuant to international human rights standard and the petitioners urge the mandate holders to pay attention to this ongoing infringement of the fundamental human rights.

5. II. THE CIRCUMSTANCE OF FACTS

The petitioners are citizens of the Republic of Korea (hereinafter, the "ROK").

The petitioners are lawyers licensed to practice law in the ROK and are currently affiliated with the Minbyun-Lawyers for a Democratic Society (hereinafter, the "Minbyun").

On 18 May 2016, the petitioner Kyunguk JANG was solely given the power of attorney from the parents whose daughters were known to escape the

Democratic People's Republic of Korea (hereinafter, the "DPRK") and to enter into the ROK before being taken into custody by the Center for North Korean Defectors (hereinafter, the "Center") under the National Intelligence Services (hereinafter, the "NIS").

The power of attorney was delivered to the petitioners through Mr. Gi-yeol JUNG, the professor from the Tsinghua University, China who stayed in Pyongyang since last May to lecture at the Kim Il-sung University and managed to receive them before he returned to China. The professor sent them to the Minbyun via both email on 19 May 2016 and registered mail later. The petitioners agreed to represent the parents in *pro bono*.

In the power of attorneys, the parents granted the petitioners to represent them in the matters with and relating to release of their daughters from the custody under which they believe their daughters were not on the voluntary nature.

On 9 June 2016, the updated power of attorneys appointing the petitioners and the Minbyun as legal counsel of the parents to represent with respect to release of their daughters from custody of the NIS was delivered with help of the professor Gi-yeol JUNG. To prove family relations between the parents and daughters as well as validity of the power of attorney, such additional materials as the photos of the citizenship cards, photos and video clips containing the scene of the parents signing on the power of attorney, family photos and the photos of the parents holding the power of attorney were delivered to the petitioners.

The daughters of the parents include twelve:

The daughters had worked as waitresses in Ryukyeong restaurant located in Ningbo, Zhejiang Province, China when they were believed to escape on 5 April 2016. The daughters were believed to be transferred to Malaysia before they entered in Seoul, ROK on 7 April 2016. On 8 April 2016, the Ministry of Unification of the ROK (hereinafter, the "Ministry") announced in the press conference that the daughters escaped or defected to the ROK.

According to the North Korean Refugees Protection and Settlement Support Act, the daughters were in confinement in the Center.

It remains controversial over whether escape of the daughters was voluntary or masterminded by the NIS. In normal circumstances, it takes about one month for escapees to enter the ROK after they applied for protection to the ROK embassies; escapes are attempted by individuals because of the safety issue. However, in this particular case it only took one week for the daughters to enter the ROK, which is almost impossible to be taken place without the NIS's involvement and prior arrangement. And this was an unusual collective escape. Many experts said this escape of the daughters cannot be done without the NIS's prior engagement.

The parents and the DPRK government accused the ROK of kidnapping the daughters and called for help in bringing the daughters back in the letter, dated on 18 April 2016, to the UN Human Rights Council and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The parents and the DPRK demanded to immediately repatriate the daughters.

On 20 April 2016, several colleagues who worked with the daughters interviewed with CNN that they were tricked.

On 21 April 2016, the red cross of the DPRK requested officially that the ROK government allow the parents to meet their daughters face to face, which was rejected by the Ministry on the following day.

On 9 May 2016, NK Today in a news article speculated that one of the daughters died in the Center during hunger strike based on the unidentified source.

On 12 May 2016 prior to be appointed as legal counsel for the parents, given the serious nature of the case the petitioners—Mr. Kyunguk JANG and Ms. Yoonkyoung SHIN decided to visit the Visitor's room of the NIS and demanded in a written form for interview with the daughters.

On 16 May 2016, the Ministry announced that the daughters were in the process of settlement in the ROK and thus it was inappropriate for them to meet the outsiders. The Ministry furthered that the rumor that one of the daughters died was groundless.

On the same day, the NIS rejected the written demand of the petitioners for interview with the daughters. On the same day, the petitioners requested the NIS to deliver the letter written by the petitioners to the daughters. The NIS rejected.

On 24 May 2016, the petitioners were rejected to interview the daughters by the NIS and filed a habeas corpus petition to the Seoul Central District Court (hereinafter, the "Court").

6. On 27 May 2016, the NIS rejected petitioners' demand for interview with the daughters.

On 31 May 2016, the Court (the presiding judge Young-jea LEE) ordered the petitioners to attest the family relationship between the parents and the daughters due on 13 June 2016.

On 3 June 2016, the NIS rejected the petitioners' request to interview the daughters and to deliver the letter addressed to the daughters.

On 10 June 2016, the petitioners submitted documents attesting the family relationship to the Court. On the same day, the Court ordered the NIS to make the daughters appear in the hearing and such notice was served a few days later.

On 15 June 2016, the NIS rejected the request of the petitioners to interview the daughters as legal counsel.

On 21 June 2016, the first hearing of the habeas corpus petition filed on 24 May 2016 was held. When the petitioners arrived at the door of the court room 40 minutes before the hearing was held, no one was allowed to enter the court room except the petitioners. The security guard at the door of the

court room said that the judge ordered so. The press correspondences and those who wished to watch the hearing were stopped from entering into the court room. On 20 June 2016, there were news articles to report that the daughters were not going to appear before the Court and the presiding judge Young-jea LEE notified the press that the hearing would be held in closed door.

When the petitioners argued with the judge about his decision of having the hearing in closed door in violation of due process—procedural and substantive, the judge allowed those who were waiting outside to get inside the court room and then the hearing began. Immediately after, the judge decided the hearing to be closed again and ordered the audience to leave the court room. This particular decision of the presiding judge amounts to the violation of article 57 of the Court Organization Act that requires the judge to decide whether to have open hearings or closed ones after the hearing officially begins and to give proper explanation to either side.

The presiding judge mentioned that he made such decision based on article 12 of the Habeas Corpus Act (hereinafter, the “Act”) that allow the court to decide the hearing to be closed when it is necessary to protect detainees. However, the judge knew that the daughters were not going to appear in the hearing. It means there was no risk of revealing their identity to the extent of jeopardizing safety of the daughters.

In addition, the presiding judge did not allow the petitioners to take time enough to review the written reply of the defendant NIS. According to article 10 of the Act, the defendant should submit its written reply to the court the day before the first hearing. The NIS submitted it to the Court on 20 June 2016, one day before the first hearing and the Court served it to the petitioners in the court on the day of the first hearing. The presiding judge did not give the petitioners time enough to review and prepare for the hearing. When the petitioners asked for the brief recess the presiding judge showed his intention that he was going to close the interrogation process by court on that day.

Plus, although the petitioners asked to the Court to record the hearing based on article 18 of the Act, which allows the Court to apply civil procedures unless such application is not in contravention of the nature of the Act, the Court declined to allow to record the hearing. Article 159 of the Civil Procedural Act stipulates that the court shall allow the recording unless there exists a special reason(s) not to allow. The presiding judge indicated that he decided not to allow the recording to protect the daughters. However, there was no risk whatsoever of jeopardizing security of the daughters because they did not appear before the Court. When the petitioners asked for brief recess to discuss strategies against the decision of not allowing the recording, the presiding judge warned, "just for your reference, if you (petitioners) decide not to continue the hearing due to my rejection for the recording then I will close the interrogation by court today. I am telling you this for your consideration."

Furthermore, the presiding judge failed to comply with article 10 (3) of the Act, which requires the judge to summon detainees for questioning in order to assure their intent. Although the presiding judge order to summon the daughters on 10 June 2016, he declared that he no longer summon the daughters without reasonable grounds when the counsel for the NIS reported to the Court that the daughters in fact said earlier that they were not going to appear before the Court. Such decision not only violates the law but is wrong because the court simply believed and recognized statements of the NIS whose interest is in conflict with the detainee-daughters without direct verification from the daughters.

In the previous habeas corpus case (2013) of the same nature to the current case that the NIS gave statements under oath before the court that the detainee was confined in the Center voluntarily and refused to meet legal counsel. However, the court discovered that such statements of the NIS were not true. The truth was that the detainee gave such statement without realizing the meaning of the statement because the detainee was under detention of the NIS for a long time with no access to legal counsel.

On the same day, at the end of the first hearing the petitioners filed a motion for recusal because they believed that the presiding judge Young-jea LEE had no intention or failed to provide a fair trial.

On 11 July 2016, the petitioners submitted the petition to the National Human Rights Commission of Korea to urge proper investigation to determine whether the detention was voluntary and lawful after interviewing the daughters.

On 10 August 2016, the Court issued order of correction to the petitioners. The Court ordered the petitioners to submit original copy of the power of attorney and supporting evidences—video clip containing the parents signing the power of attorney that was delivered to the petitioners by the professor Gi-yeol JUNG in order to prove validity thereof.

On 12 August 2016, the petitioners filed a lawsuit to the Seoul Administrative Court against the NIS to seek cancelation of the NIS decision of not allowing the petitioners to interview the daughters on numerous occasions.

On 16 August 2016, the Ministry announced that the daughters were released from the Center and resettled in safe places that the Ministry cannot reveal for the purpose of the daughters' security. Many suspect that the daughters may be staying in secret places of the NIS under control of the NIS.

7. III. VIOLATED INTERNATIONAL HUMAN RIGHTS STANDARD

8. **A. Human Rights Committee:** Concluding Observation on the fourth periodic report of the ROK

9. Detention of DPRK “defectors” by the National Intelligence Service

The Committee notes with concern that “defectors” from the Democratic People’s Republic of Korea are detained in the “Centre for North Korean Defectors” upon their arrival, and may be held in the centre for up to 6 months. While noting the information by the delegation that detainees have access to human rights protection officers, the Committee is concerned that they do not have access to counsel. It is further concerned about reports suggesting that DPRK “defectors” may be deported to third countries without independent review, if it is determined that they do not qualify for protection (arts. 9, 10, and 13).

The State party should ensure that DPRK “defectors” are detained for the shortest possible period, and that detainees are given access to counsel during the entire length of their detention, that counsel be available during interrogations, and that the duration and methods of interrogation are subject to strict limits which comply with international human rights standards. It should also adopt clear and transparent procedures allowing review with suspensive effect by adequate independent mechanisms before individuals are deported to third countries

B. The Basic Principles on Roles of Lawyers

10. Special safeguards in criminal justice matters

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7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

...

11. Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

C. Declaration on human rights defenders

12. Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe

that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

13. Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

14. IV. RECOMMENDATION

Therefore, the petitioners respectfully request that the mandate holders:

- Immediately engage in communication with the ROK government to investigate the circumstances of facts;
- demand the ROK government to comply with the obligations under international human rights standard;
- issue press release on the seriousness of human rights violations in this incident urging the ROK government to take appropriate actions necessary to fulfil the international human rights obligations; and
- issue the *amicus curiae* addressed to the Seoul Administrative Court for the case that the petitioners filed against the NIS to seek cancelation of the NIS decisions that have not allowed the petitioners to interview as legal counsel detainee-daughters who were detained in the Center under the NIS.

[ANNEX 1] THE COPIES OF THE PETITIONERS' IDENTIFICATION CARDS

The petitioners did not know the professor until he contacted the Minbyun with this matter.

Article 7 of the Act provides that "(1) [a]ny person escaping from North Korea who intends to be protected under this Act, shall apply for protection," and "(3) [t]he Director of the NIS...shall take provisional protective measures or other necessary steps," in order to decide on eligibility for protection. "Provisional protective measures or other necessary steps" are defined in Article 12(1) of the Enforcement Decree of the Act to provide interim personal security measures and to conduct interrogation necessary to decide on eligibility for protection, of which duration shall not exceed 180 days from the date of applicant's arrival in Seoul (Article 12(2)). Article 12(3) grants plenary

power to the Director General of the NIS over the contents and method it takes and over the establishment and operation of facilities for the measures.

<http://edition.cnn.com/2016/04/20/asia/north-korea-restaurant-defectors/>

<http://www.mediatoday.co.kr/?mod=news&act=articleView&idxno=129935>

The Seoul Central District Court, Case No. 2016In2

The Seoul Central District Court, Case no. 2013In2

It is commonly known that escapees from the DPRK are not familiar with the legal system of the ROK including their rights guaranteed under the Constitution, laws and the international human rights treaties. As some relevant cases revealed, the NIS often abuses this and tries manipulates the detainees at the Center.