



中华人民共和国常驻联合国日内瓦办事处和瑞士其他国际组织代表团

PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA

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The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the latter's communication [AL CHN9/2023], has the honor to transmit herewith the reply of the Chinese Government.

The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 13 September 2023



Office of the High Commissioner for Human Rights
GENEVA

Receipt is hereby acknowledged of the communication addressed by the United Nations Human Rights Council (ref. AL CHN 9.2023). The Chinese Government wishes to make the following reply:

With regard to the concerns of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, the Special Rapporteur on violence against women and girls and the Working Group on Arbitrary Detention regarding the alleged "forced repatriation" of persons illegally entering from the Democratic People's Republic of Korea, the following is intended to provide correct information so that the experts of the special mechanisms are not misled into making mistaken comments.

A. Human rights guarantees for illegal entrants from the Democratic People's Republic of Korea

In accordance with the law, China consistently upholds a responsible approach and guarantees the rights of the persons involved, including providing for their needs with regard to living conditions, diet, medical treatment, outdoor activities and translation, and fully respects their personal dignity. In addressing the issue of illegal entrants from the Democratic People's Republic of Korea, China will continue to adhere to the principle of a combination of domestic law, international law and humanitarianism.

China is a country governed by the rule of law. In accordance with the Law of the People's Republic of China on the Administration of the Control of the Exit and Entry of Aliens, there is no such thing as "arbitrary detention". The allegation that "China has arbitrarily detained 2,000 illegal entrants from the Democratic People's Republic of Korea" is utterly groundless.

B. Application of the principle of non-refoulement

China is a party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the "Convention against Torture") and the 1951 Convention relating to the Status of Refugees (hereinafter referred to as the "1951 Convention"), and has been conscientiously fulfilling its obligations under those Conventions. The following differences between those two instruments with regard to the scope of application of the "non-refoulement" principle should be noted:

Article 33 of the 1951 Convention requires States parties not to "return refugees in any manner whatsoever to the frontiers of territories where their lives or freedoms would be threatened", and thus the principle of "non-refoulement" in the context of that Convention applies only to refugees. Persons from the Democratic People's Republic of Korea who come to China illegally for economic reasons are illegal migrants, not refugees, and the principle of "non-refoulement" under that Convention does not apply to them.

Article 1 of the Convention against Torture limits the subject of torture to that inflicted by a public official or other person acting in an official capacity. Moreover, pain or suffering arising only from, inherent in or incidental to lawful sanctions is not included. Thus, injuries arising between private individuals and penalties imposed in accordance with the law do not fall within the scope of "torture" as provided for under the Convention. China believes that expanded interpretation of the provisions of the Convention should be avoided and new obligations should not be imposed on States parties.

Article 3 of the Convention against Torture provides that "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." At the same time, however, it stipulates the need to determine whether "such grounds exist" and "whether there is a consistent pattern of gross, flagrant or mass violations of human rights in the countries concerned." As there is currently no evidence of torture or so-called "massive human rights violations" in the Democratic People's Republic of Korea, the constituent elements for the application of the principle of non-refoulement are not satisfied. Furthermore, under the principle of sovereign equality, a State cannot judge whether the judicial system of another State would expose the person concerned to the risk of torture. The Chinese side has not yet

encountered situations in which persons being repatriated to the Democratic People's Republic of Korea have raised objections to repatriation on the grounds that they will be subjected to torture.

联合国人权理事会特别机制发送的 AL CHN 9/2023 号来文确认收悉，中国政府答复如下：

对于朝鲜人权状况特别报告员、暴力侵害妇女和女童问题特别报告员、任意拘留问题工作组对所谓“强制遣返”非法入境朝鲜人事宜的关注，下文旨在提供正确的信息，以免特别机制专家受误导而作出错误的评论。

一、关于非法入境朝鲜人的人权保障情况

中国始终秉持负责任态度，依法保障相关人员权利，包括提供必要的生活环境、饮食、医疗、室外活动及翻译等，充分尊重其人格尊严。中方将继续坚持国内法、国际法和人道主义相结合的原则，处理非法入境朝鲜人问题。

中国是法治国家，根据《中华人民共和国出境入境管理法》依法查处非法入境外国人，不存在“任意拘留”问题。所谓“中国任意拘留 2000 名非法入境朝鲜人”纯属子虚乌有。

二、关于“不推回”原则适用情况

中国是联合国《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》（以下简称《禁止酷刑公约》）、1951 年《关于难民地位的公约》缔约国，一直认真履行公约规定的义务。需要注意的是，二者对“不推回”原则的适用范围规定有所不同：

《关于难民地位的公约》第三十三条要求缔约国“不得以任何方式将难民推回至其生命或自由受威胁的领土边界”，因此在该公约框架下“不推回”原则仅适用于难民。因经济原因通过非法入境方式来华的朝鲜人员是非法移民，不是难民，不适用该公约的“不推回”原则。

《禁止酷刑公约》第一条规定，“酷刑”实施主体限于公职人员或以官方身份行使职权的其他人，此外纯因法律制裁而引起或法律制裁所固有或随附的疼痛或痛苦不包括在内，因此私人间的加害、依法实施的刑罚并不在公约规定的“酷刑”范围内。中方认为，应避免对《公约》条款做扩大解释，避免为缔约国增设新的义务。

《禁止酷刑公约》第三条规定，“如有充分理由相信任何人在另一国家将有遭受酷刑的风险，任何缔约国不得将该人驱逐、遣返或引渡至该国”，但同时也要求确定“这种理由是否存在”、“有关国家境内是否存在一贯严重、公然、大规模侵犯人权的情况”。目前，没有证据表明朝鲜存在酷刑或所谓“大规模侵犯人权情况”，不满足适用“不推回”原则的构成要件。此外，根据主权平等原则，一国无法评判另一国的司法体系是否会导致相关被遣返人员面临酷刑风险。中方在依法遣返非法入境朝鲜人工作中，尚未遇到被遣返的朝鲜人以会遭受酷刑为由反对遣返的情况。