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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 218/2 G/SO 214 (53-24) G/SO 214 (33-27)
CHN 3/2012

24 February 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/5 and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the situation of a group of citizens from the Democratic People's Republic of Korea (DPRK), currently held in Tuman Center, near Tumen river in Changchun, China (People's Republic of) who are facing imminent repatriation to the DPRK.

According to the information received:

On 8 February 2012, an estimated group of 31 Korean citizens from the DPRK were arrested by the members of Chinese police in separate locations in the city of Shenyang for being in the country illegally en route to the Republic of Korea where they were traveling to unite with their families. It is reported that if repatriated to the DPRK, they will be at risk of detention, torture and execution as illegal border-crossers.

In view of the allegation that the above mentioned individuals remain detained in an unknown location, concern is expressed about their physical and mental integrity. Serious concern is also expressed about the reported forthcoming repatriation of the above mentioned group of individuals to the DPRK where there are substantial grounds to believe that they would be in danger of being subjected to torture and execution.

Without expressing at this stage an opinion on the facts of the case or on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights.

We should also like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the forementioned persons. We

would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would further like to draw your Excellency's Government's attention to article 3 of the Convention against Torture, which provides that no State party shall expel, return ("refouler"), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this regard, paragraph 9 of General Comment 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in which the Human Rights Committee states that State parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement". Furthermore, paragraph 9 of the Resolution A/RES/61/253 of the UN General Assembly urges States "not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture".

Furthermore, paragraph 6d of Human Rights Council Resolution 8/8 urges States not to expel, return (refouler), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture and; the Council recognizes in this respect that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement;

The mandate of the Special Rapporteur on summary executions has submitted to the General Assembly against the expulsion, return of persons to a country or place where their lives are in danger (refoulement), stressing that that the right to life applies to all human beings, and that Governments have a responsibility to protect this right in all territories under their jurisdiction, regardless of the citizenship of the persons concerned (A/59/319 para 62).

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for

your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please indicate the legal basis for the arrest and detention of the citizens of the DPRK and how these measures are compatible with applicable international human rights norms and standards as stipulated, inter alia, in the Universal Declaration of Human Rights.
3. Please provide information on the fate and whereabouts of the citizens of the DPRK. Please provide the details on any investigation or other queries which may have been carried out. If no queries have taken place, or if they have been inconclusive, please explain why.
4. Please indicate whether the mentioned citizens of the DPRK have had access to judicial remedies and refugee status determination procedures regarding their detention and their possible return to the DPRK. Do they have access to legal counsel?
5. Please provide details on whether any risk assessment of the above mentioned group of individuals' repatriation to the DPRK was carried out.
6. How does the repatriation conform to the principle of non-refoulement as provided for in international law and how these measures are compatible with international obligations of China as stated in the 1951 Convention Relating to the Status of Refugees.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment