

Mandates of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA CHN 4/2017

13 April 2017

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 28/22, 27/1, 26/19 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the impending forced repatriation of 31 individuals from the Democratic People's Republic of Korea, who are currently under the custody of Chinese authorities in different prisons throughout the country. It is feared that, if returned to the Democratic People's Republic of Korea, these individuals would be at risk of suffering gross human rights violations, including imprisonment, forced labour, and possibly torture and other forms of cruel, inhumane and degrading treatment or punishment. Under these circumstances, the repatriation of the 31 individuals would result in a violation of the principle of non-refoulement, which is prohibited in international law – humanitarian law, human rights law and refugee law

According to the information received:

The following individuals were detained in China, between September 2016 and March 2017. While some of the men and women were detained in transit while attempting to reach the Republic of Korea, others had reportedly sought asylum informally and settled in China as undocumented migrants.

Ms. [REDACTED], reportedly detained in Antu County in Jilin province, on 25 March 2017.

Ms. [REDACTED], born on 30 September 1988, and living in China since 2012, was allegedly detained by the police on Saturday 25 March 2017, near the Yido bus station in Antu County, Jilin province. Persons associated with Ms. [REDACTED] confirmed that she was at Liangjianjing local police station, but were informed

that she was going to be moved to a larger prison in Yanji city, and closer to the border. On Monday 27 March 2017, a person associated with Ms. [REDACTED] was informed by the police that she will be passed to the military authorities and sent back to the Democratic People's Republic of Korea.

A group of eight persons, reportedly detained in Liaoning province, on 12 March 2017.

A group of eight persons were reportedly detained in China on Sunday 12 March 2017 in the southwest of Liaoning province, together with three ethnic Korean Chinese nationals. It is reported that the escapees prepared fake names/pseudonyms to give to Chinese authorities in case of questioning, and to make it harder for authorities of the Democratic People's Republic of Korea to identify them.

The group of eight reportedly left Shenyang city on Saturday 11 March 2017 at approximately 8 pm, in a rented 15 seater minivan. At 1.27 a.m. they reached the border with Hebei province, where they were stopped by four traffic policemen at a traffic checkpoint.

The eight persons were reportedly sent to the local police station in Suizhong County, in the southwest of Liaoning province:

1. [REDACTED] (no pseudonym), from Gapsun, Ryanggang province, born on 9 February 1955.
2. [REDACTED] (real name: [REDACTED]), from Hoeryung, North Hamkyung province, born on 21 January 1994.
3. [REDACTED] (real name: [REDACTED]) from Hyesan, Ryanggang province, born on 7 August 1970.
4. [REDACTED] (real name unknown), born on 2 April 1986.
5. [REDACTED] (real name: [REDACTED]), a 45 year old from Sinpo, South Hamkyung province.
6. [REDACTED] (real name: [REDACTED]) from Hyesan, Ryanggang province, born on 16 November 1986.
7. [REDACTED] (no pseudonym), from Chongjin, North Hamkyung province, born on 21 February 1993.

8. [REDACTED] (real name: [REDACTED]), from Wonsan, Kangwon province, born on 25 September 1983.

Two relatives, reportedly detained around Guiyang City, on 19 February 2017.

1. Ms. [REDACTED] (pseudonym [REDACTED]), from Chongjin in North Hamgyung province, born on 24 July 2000.
2. Mr. [REDACTED] (pseudonym [REDACTED]), from Onsong, North Hamkyung province, born on 7 July 1958.

Ms. [REDACTED] and her uncle Mr. [REDACTED], were detained by Chinese officials in the border between Guizhou province and Sichuan province, together with two South Korean passport holders (former escapees of the Democratic People's Republic of Korea), who had gone to China to try to help them.

On 23 February 2017, persons associated with Ms. [REDACTED] received confirmation that they were in a prison in Guiyang city.

On 21 March 2017, persons associated with Ms. [REDACTED] and Mr. [REDACTED] visited the Chinese embassy in Seoul to request the release of their family members, yet they were instructed to call to make an appointment. They therefore sent a certified letter to the Chinese embassy reiterating their claim to have their relatives released, and alerting of the terrible treatment they'd face if sent back to the Democratic People's Republic of Korea.

A group of 8 persons, reportedly detained in Shijiazhuang, Hebei Province, on 25 November 2016.

A group of eight persons were allegedly detained in Shijiazhuang, Hebei Province on 25 November 2016, together with their Chinese broker, and taken to a local prison in the Yuhua district:

1. Ms. [REDACTED], from Chongjin, born on 25 August 1977.
2. [REDACTED], a 10 year old girl from Chongjin, born on 14 October 2007.
3. Ms. [REDACTED], a 31 year old woman.
4. Ms. [REDACTED], a 23 year old woman who's pregnant since September 2016.
5. Mr. [REDACTED], a 26 year old man (father of Ms. [REDACTED] baby).

6. Mr. [REDACTED], a 28 year old man.
7. Mr. [REDACTED], a 26 year old man.
8. Mr. [REDACTED], a 33 year old man.

A group of three women, reportedly detained in Mengla County, near Kunming in Yunnan Province, on 28 September 2016.

It is reported that on Wednesday 28 September 2016, four women and 2 children were arrested in Mengla County, Yunnan Province, China, whilst heading to Laos on their way to the Republic of Korea. They were detained in a prison in Jinghong (adjacent to Mengla) before being transferred to an unknown location on 28 September 2016. One of the women was eventually released with the two children, but three women reportedly remain in custody in China:

1. Ms. [REDACTED], born on 26 May 1969.
2. Ms. [REDACTED], born on 1 June 1984.
3. Ms. [REDACTED], born on 28 July 1987.

A group of 5 persons reportedly detained near Tsingdao, on 6 September 2016.

It is reported that on 6 September 2016, the two women and three men took a bus headed towards Yunnan, and were detained during a random check near Yinghai Toll gate, South of Tsingdao. During the first week of October information was received indicating that the group was moved to the Tsingdao administrative prison.

1. Ms. [REDACTED], from Hyesan, born on 23 November 1968.
2. Ms. [REDACTED], from Hyesan, born on 19 April 1964, and who reportedly lived in Jinan, Shandong Province for 4 years.
3. Mr. [REDACTED], born on 23 April 1994.
4. Mr. [REDACTED], born on 9 August 1972.
5. Mr. [REDACTED], born on 8 March 1980.

A group of four women detained near Nanning, Guangxi, on 11 September 2016.

It is reported that on 11 September 2016 a group of four women and three children were detained near Nanning Guangxi, by the Chinese police, while attempting to travel to the Republic of Korea. It is reported that Ms. [REDACTED], was detained with her 2 year old child ([REDACTED], born on 15 December 2014); Ms. [REDACTED], was detained with her 4 year old child ([REDACTED]); and Ms. [REDACTED], was detained with her 2 year old child ([REDACTED], born on 31 January 2015).

The children have reportedly been released to their Chinese relatives, but the women remain in custody, and are to be repatriated to the Democratic People's Republic of Korea. On 23 March 2017, persons associated with one of the detainees confirmed the group was still detained in Nanning:

1. Ms. [REDACTED], born on 25 April 1983.
2. Ms. [REDACTED], a 30 year old woman.
3. Ms. [REDACTED], born on 11 February 1989.
4. Ms. [REDACTED], born on 8 January 1982.

It is feared that if returned to the Democratic People's Republic of Korea, the abovementioned individuals would be at risk of enduring gross human rights violations, as documented by a number of United Nations Human Rights mechanisms.

It has been reported that nationals of the Democratic People's Republic of Korea who are forcibly repatriated, are systematically subjected to persecution, torture, prolonged arbitrary detention and, in some cases, sexual violence, including during invasive body searches. Repatriated women who are pregnant, reportedly remain at risk of forced abortions, and babies born to repatriated women may reportedly be killed. Furthermore, persons found to have been in contact with officials or nationals from the Republic of Korea or with Christian churches may be forcibly disappeared, sent to political prison camps, imprisoned in ordinary prisons, or even summarily executed (see A/HRC/25/63, paras. 42-43 and 84 and A/HRC/34/L.23, para. 4).

While we do not wish to prejudge the accuracy of these allegations, we wish to express our concern over the possible human rights violations implications of a decision by your Excellency's Government to return the abovementioned individuals to the Democratic People's Republic of Korea, taking into consideration the reported human rights violations committed against repatriated citizens of that country.

We wish to bring to the attention of your Excellency's Government, Article 8 of the Declaration on the Protection of All Persons from Enforced Disappearance which states that no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he or she would be in danger of enforced disappearance (para.1). 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 (para. 2).

The Working Group on Enforced or Involuntary Disappearances has already expressed particular concern about the extent and scale of enforced disappearance in the Democratic People's Republic of Korea, including of persons who have disappeared upon their repatriation from China (see A/HRC/WGEID/110/1, para. 32; A/HRC/WGEID/109/1, para. 23, or A/HRC/WGEID/108/1, para. 38) in the context of an extensive labour camp system for political prisoners (A/HRC/27/49, para.72).

Furthermore, as a State party to the 1951 Convention relating to the status of refugees and its 1967 Protocol, China is bound to protect and preserve the rights and freedoms of refugees in its territory, including their entitlement to administrative assistance (art. 25), their freedom of movement (art. 26), and the right to be protected from expulsion (art. 32). China has also ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires that "No State Party shall expel, return ("refouler") 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" (art. 3). The lack of individual assessment and possibility for each migrant to state his or her claim outlying the risk he or she may face when returned to the Democratic People's Republic of Korea and thereby the potential violation of the international principle of non-refoulement.

We further wish to stress that the principle of non-refoulement under the absolute prohibition of torture and other ill-treatment as codified in the Convention against Torture, is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylee status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide updated information on the current legal status of the above-mentioned detainees.
3. Please explain what measures are in place to ensure an individual assessment is conducted in every return decision to ensure the principle of non-refoulement?
4. Please provide information regarding how the proper identification of all potential protection needs and respect for international and human rights law – particularly with regard to the principle of non-refoulement – are taken into account when carrying out the repatriation of foreign nationals, including from the Democratic People's Republic of Korea.

While awaiting a reply, we urge that all necessary interim measures be taken to halt repatriations and that consultations are made with the United Nations including human rights mechanisms, the Office of the High Commissioner for Human Rights and the Office of the High Commissioner for Refugees to prevent their re-occurrence.

Given the seriousness of the violations that the persons repatriated may face upon return, we reserve the right to express our concerns in a public manner.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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of Korea

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