

Mandates of the Working Group on Arbitrary Detention; and the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention and Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, pursuant to Human Rights Council resolutions 33/30 and 28/22.

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 six individuals to the Democratic People's Republic of Korea, who are currently reported to be under the custody of the Chinese authorities. 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 torture and other forms of cruel, inhumane and degrading treatment or punishment. Under these circumstances, the repatriation of the six 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:

Mr. [REDACTED], born in [REDACTED], was reportedly detained by the Chinese authorities in Hunnan District of Shenyang City, Liaoning Province on [REDACTED] while in transit, attempting to reach the Republic of Korea. He was reportedly detained along with an unnamed male cousin.

The following four individuals were detained by the Chinese authorities in Hunchun City, Jilin Province [REDACTED]. They had reportedly crossed the border into China shortly prior to their arrest.

Mr. [REDACTED] from North Hamgyong Province, born on [REDACTED]
Mrs. [REDACTED] from North Hamgyong Province, born on [REDACTED]
Mr. [REDACTED] from North Hamgyong Province, born in [REDACTED]
Ms. [REDACTED] from North Hamgyong Province, born on [REDACTED]
(daughter of [REDACTED] and [REDACTED])

The abovementioned four individuals were reportedly moved closer to the border in recent days. It is feared that if returned to the Democratic People's Republic of

Korea, these 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. They also risk imprisonment in ordinary prisons or political prison camps. Persons found to have been in contact with officials or national from the Republic of Korea or with Christian churches are at particular risk of severe punishment and human rights violations.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concern about the reported arrest and detention of abovementioned individuals, which appear to be contrary to international human rights law. We also wish to express 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 that the individuals would be at threat of arrest for the legitimate exercise of their rights to leave country, which thus would render arrest arbitrary. We furthermore express concern at the reported human rights violations committed against repatriated citizens of that country.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the concerned individuals 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 (UDHR).

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 Disappearance 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). There is concern about the lack of individual assessment and possibility for each migrant to state his or her claim outlining 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 the legal grounds for the arrest and detention of abovementioned individuals and the charges brought against them.

3. Please provide updated information on the current legal status of the above-mentioned detainees.
4. 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.
5. 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. We also request that access be granted to the United Nations bodies to these detainees, including in coordination with third parties such as the International Committee of the Red Cross.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. Your Excellency's Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Tomás Ojea Quintana
Special Rapporteur on the situation of human rights in the Democratic People's Republic
of Korea