

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

REFERENCE:  
UA CHN 19/2018

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the human rights of migrants; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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, 34/21, 34/19 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 arrest, detention and threat of repatriation of five citizens of the Democratic People's Republic of Korea (DPRK), as well as one baby born in China, who are currently in detention in Kaiyuan City, Liaoning Province.

According to the information received:

The group of five citizens from the Democratic People's Republic of Korea were arrested at Kaiyuan City train station in Liaoning Province on Saturday 1st September 2018, where they are currently being detained in a police station. These individuals are:

1. [REDACTED] (DOB: 21 Oct 1990) Female, with a 1-year-old son who was born in China
2. [REDACTED] (DOB: 29 March 1989) Male
3. [REDACTED] (DOB: 5 December 1982) Male
4. [REDACTED] (DOB: 28 February 1987) Female
5. [REDACTED] (DOB: 6 July 1988) Female

We wish to express our concern for the safety of this group and other DPRK citizens who are held in detention in China, including the risk of forcible repatriation to DPRK. It has been well documented that those forcibly repatriated to DPRK face prosecution for leaving the country, and subsequent torture and ill-treatment during interrogation, detention in inhumane conditions that may amount to torture, and long sentences in a labour camp following the denial of due process and fair trial rights. We are also very concerned about the situation of the 1-year old baby son of [REDACTED], who will require special protection given his age.

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 the country and to seek asylum, 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 have made a number of appeals to your Government to halt the refoulement of DPRK citizens who arrive in China. This practice puts people's lives at risk, breaks their family ties, and aggravates the already dire situation of human rights in the DPRK. We hereby appeal again to the Government of the People's Republic of China to ensure against the repatriation of this group, and uphold the following international legal provisions, which include treaties to which the People's Republic of China is a State party:

- Articles 25, 26 and 32 of the 1951 Convention relating to the status of refugees and its 1967 Protocol, which entitles refugees to protection, including in the form of administrative assistance, freedom of movement, and the right not to be expelled.
- Article 37 of the Convention on the Rights of the Child, which states that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment", "no child shall be deprived of his or her liberty unlawfully or arbitrarily", and "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age".
- 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.
- Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires 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".

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 abovementioned detainees.
4. Please explain what measures are in place to ensure the human rights of the detainees are upheld and that an individual assessment is conducted to ensure the principle of non-refoulement

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 these detainees for these United Nations bodies, including in coordination with third parties such as the International Committee of the Red Cross.

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

We would also 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 a 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. The 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

Felipe González Morales  
Special Rapporteur on the human rights of migrants

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

Tomás Ojea Quintana  
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