

Mandate of the Working Group on Arbitrary Detention; 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 23/2018

30 November 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 28/22 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 arrest, detention and threat of repatriation of five citizens of the Democratic People's Republic of Korea (DPRK), who are currently in detention in Song Ming police station.

According to the information received:

Late on 24 November 2018, five DPRK refugees who were trying to get to the Republic of Korea were arrested in Songming Fuwuqu, near Kunming in Yunnan Province and are currently detained in Song Ming police station. A local Chinese person helping them was also reportedly arrested. These individuals are:

- 1.
- 2.
- 3.
- 4.
- 5.



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 the abovementioned individuals, which appear to be contrary to international human rights law. We also wish to express concern over the possible human rights 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.

_____, _____ and _____ reportedly left DPRK most recently, in November 2018, and are therefore in more immediate danger of

repatriation. We are also particularly concerned about the situation of the 9-year-old and 17-year-old children, who require special protection from the authorities given their age.

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).

These allegations appear to be similar to those examined in the Opinion 81/2017 adopted by the Working Group on Arbitrary Detention during its 80th session. On that instance, the Working Group has concluded, with regard to China, that the deprivation of liberty of the two individuals arrested by Chinese police officials and then repatriated to the Democratic People's Republic of Korea, being in contravention of articles 7, 9 and 14 (1) of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and II. We invite the Chinese government to note this opinion when considering the present allegations.

Mandate holders have made a number of appeals to your Government to halt the refoulement of DPRK citizens who arrive in China, and we note some positive outcomes in this regard. 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 decrees 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 " and that "[f]or 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".

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 mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to my 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.

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. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my 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
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