

Mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

REFERENCE:
UA CHN 7/2019

30 April 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, pursuant to Human Rights Council resolution 40/20.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the arrest, detention and threat of repatriation of seven citizens of the Democratic People's Republic of Korea (DPRK), who are currently in detention in a police station in Shenyang city of Liaoning province, and that of another citizen of DPRK who was arrested in Mu Song Dao, Jilin province.

According to the information received:

On 28 April 2019, seven DPRK refugees who were trying to reach the Republic of Korea were reportedly arrested in Tongiljido, Tiedong District, Anshan City, Liaoning province and are currently detained in a police station in Shenyang city. Four of the seven individuals whose names have been shared with me are:

1. [REDACTED], female, born on [REDACTED] from [REDACTED]
2. [REDACTED], male, born on [REDACTED] from [REDACTED]
3. [REDACTED], female, born in [REDACTED], from [REDACTED]
4. [REDACTED], female, born on [REDACTED] from [REDACTED]

The four individuals named above reportedly left DPRK on 21 April 2019, and are in immediate danger of repatriation. I am also particularly concerned about the situation of the [REDACTED], who requires special protection from the authorities given her age. The three un-named individuals have reportedly been living in China for some time.

In addition, on 26 April 2019, another DPRK refugee who was trying to reach the Republic of Korea was reportedly arrested in Mu Song Dao, Jilin province. She had been staying in China for three to four months prior to the arrest.

1. [REDACTED], female, born on [REDACTED] from [REDACTED] (formerly known as [REDACTED]), [REDACTED].

While I do not wish to prejudice the accuracy of these allegations, I 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. I 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. I furthermore express deep 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, I 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).

Mandate holders 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 DPRK. I 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 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 of 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 exercise in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”.

- Article 37 of the Convention of 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.

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, I 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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 measure 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, I 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. I 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.

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.

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