

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

REFERENCE:
UA CHN 13/2019

17 July 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 eight citizens of the Democratic People's Republic of Korea (DPRK), including two children, who were arrested and detained in China.

According to the information received,

On 10 July 2019, eight DPRK refugees were reportedly arrested in Wanjiazhen, Liaoning province and are currently detained in the police station. Two of them are:

[REDACTED]

The eight escapees are in immediate danger of forcible repatriation in violation of the principle of non-refoulement. I am also particularly concerned that two of the eight who are children require special protection from the authorities given their ages.

While I appreciate two responses received from your Excellency's Government on previous similar cases, I am concerned that I continue to receive cases of arrest and detention of DPRK refugees in Liaoning province.

I also wish to express concern over the possible human rights implications of a decision by your Excellency's Government to repatriate 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).

Special Procedures mandate holders have made a number of appeals to your Government to halt the refoulement of DPRK citizens from China. This practice puts people's lives at risk, breaks their family ties, and aggravates the already dire situation of human rights in the Democratic People's Republic of Korea. I hereby appeal again to the Government of the People's Republic of China to ensure that this group of refugees are not repatriated, and to 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.

Your Excellency's Government has stated that, among others legal sources, humanitarian principles are applied to the situation of escapees. Pursuant General Assembly Resolutions No. 46/182 (adopted in 1991) and No. 58/114 (2004), these Principles encompass: Humanity, Neutrality, Impartiality and Independence. Two of these principles demand special consideration, i.e, Principle of Humanity which is defined by the International Committee of the Red Cross (ICRC): "*Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for human beings*", and Principle of Neutrality which states: "*Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature*". The former applies to avoid the serious human rights abuses that escapees may face if sent back to North Korea; the latter neutralizes any political relations or interests amongst stakeholders that compromises humanitarian treatment of individuals.

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 person(s) 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