

Mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL KOR 3/2019

28 January 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 40/20, 36/6, 35/15 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 decision that your Excellency's Government took on 7 November 2019¹ to deport two North Korean individuals who were reportedly seized in the East Sea on 2 November 2019, to the Democratic People's Republic of Korea. This decision was reportedly taken based on their alleged confession of having killed 16 persons on the boat they were spotted on by the Republic of Korea Navy.

We are deeply concerned about the decision made by your Excellency's Government of repatriating both individuals to the Democratic People's Republic of Korea where citizens often face serious human rights violations upon return according to our well-documented cases, including enforced disappearance, arbitrary execution, torture and ill-treatment, and trials that do not conform to international standards for fairness.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of 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". Please refer to the **Annex on Reference to international**

¹ Press release by the Ministry of Unification on 7 November 2019:
https://unikorea.go.kr/eng_unikorea/news/releases/?boardId=bbs_000000000000034&mode=view&cntId=54222&category=&pageIdx=

human rights law attached to this letter which cites other relevant international human rights instruments and standards.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the two men who were allegedly repatriated to the Democratic People's Republic of Korea, including their identity (name, age, occupation, address of origin).
3. What were the factual and legal grounds for the decision to repatriate the two men?
4. Please provide information about the procedure followed to arrest, detain, investigate and decide the repatriation of these two persons. Was due process guaranteed for the two individuals including the provision of legal counsel, the presumption of innocence, and the possibility of trial for alleged murder under the jurisdiction of the Republic of Korea?
5. In particular, was an assessment of the risks faced by these two persons made, in particular in relation to the principle of non-refoulement under international human rights law, should they be returned to the Democratic People's Republic of Korea?
6. Please identify precisely which authorities of the Democratic People's Republic of Korea were the two individuals handed over to?
7. Was the human rights adviser at the National Intelligence Services, the National Human Rights Commission of Korea or any other human rights expert consulted during the decision process? If so, how?
8. What human rights considerations were made - especially with regard to the Convention on the Elimination on Torture and other Cruel, Inhuman and degrading punishment or treatment, and the International Covenant on Civil and Political Rights?
9. Has the Government of the Republic of Korea sought to ascertain the fate and whereabouts of the two men following their hand over to the authorities of the Democratic People's Republic of Korea?
10. Were assurances sought from the Democratic People's Republic of Korea that the two individuals would be treated in accordance with international

human rights standards, and if so, did the Democratic People's Republic of Korea provide any assurances? Please provide detailed information in this regard.

11. As any thorough investigation been conducted into the allegation that the two men were accused to be responsible for killing 16 persons who were reportedly onboard the boat on which they were arrested? We would be grateful for information about the results of any such investigation and about what has happened to the remains of those who were allegedly killed.

We would be grateful for a prompt response to this communication. We may publicly express our concerns in the near future about this case, as we believe that the wider public should be alerted to the potential human rights implications of these allegations. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Please note that a letter with a similar content has been sent to the Government of the Democratic People's Republic of Korea.

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 our highest consideration.

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

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We wish to recall that 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". We would also like to refer to paragraph 9 of the General Comment No. 20 of the Human Rights Committee in which it states that State parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement." As well, paragraph 7 of the Resolution A/RES/70/146 of the UN General Assembly states that even, "...where there are substantial grounds for believing that the person would be in danger of being subjected to torture, stresses the importance of effective legal and procedural safeguards in this regard, and recognizes that diplomatic assurances, where given, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement."

Further, in the 2015 report to the General Assembly, (A/70/303), the Special Rapporteur on Torture recalls that the absolute prohibition of non-refoulement applies at all times, even when States are operating or holding individuals extraterritorially, including border control operations on the high seas. The procurement of diplomatic assurances, which are inherently unreliable and ineffective, cannot be used by States to escape the absolute obligation to refrain from refoulement.

We wish to further recall that article 9.3 of the International Covenant on Civil and Political Rights prescribes that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

Article 14.1 of the International Covenant on Civil and Political Rights provides that "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." Article 14.2 provides that "Everyone charged with a

criminal offence shall have the right to be presumed innocent until proved guilty according to law”. Article 14.3 further provides that “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- c) To be tried without undue delay;
- d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- g) Not to be compelled to testify against himself or to confess guilt.

We would like to remind your Excellency’s Government Principle 5 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which establishes that no one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

We would also like to refer your Excellency’s Government to the 1992 Declaration on the Protection of all Persons from Enforced Disappearance, in particular that any act of enforced disappearance is an offence to human dignity (article 1) and that no State shall practise, permit or tolerate enforced disappearance (article 2.1). In addition, article 8 of the Declaration states that no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance. 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.