

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

REFERENCE:
UA CHN 19/2020

27 October 2020

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 42/22, 43/25 and 43/20.

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 [REDACTED] citizens of the Democratic People's Republic of Korea (DPRK) in China.

According to the information received:

[REDACTED] in an attempt to reach the Republic of Korea, [REDACTED] DPRK citizens [REDACTED] departed from [REDACTED] city. [REDACTED], these individuals were arrested [REDACTED] and have been detained in the police station [REDACTED]. It is alleged that they are at risk of repatriation to DPRK.

According to information made available to us, the details [REDACTED] are listed below:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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. We are seriously concerned that according to the information made

available, the [REDACTED] persons imminently face forcible repatriation in violation of the principle of non-refoulement codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). We are also particularly concerned that [REDACTED], and therefore require special protection and health attentions from the authorities. We would like to stress that non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

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 also wish to express concern over the possible human rights implications of any 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 risk of arrest for the legitimate exercise of their rights to leave the country and to seek asylum, which thus would render arbitrary their detention by the Democratic People's Republic of Korea. We furthermore express deep concern at the other reported human rights violations in the Democratic People's Republic of Korea, including ill treatment upon detention, committed against repatriated citizens of that country. In this regard, 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."

Special Procedures mandate holders have made a number of appeals to your Government to prevent 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. We hereby appeal again to the Government of the People's Republic of China to ensure that this group is 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:

- Article 9 of the Universal Declaration on Human Rights which prohibits in absolute terms arbitrary arrest. Furthermore, we would like to refer to Principle and corresponding Guideline 21 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. These provisions underpin the right of non-nationals, including migrants regardless of their status, asylum seekers, refugees and stateless persons, in any situation of deprivation of liberty, to bring proceedings before a court to challenge the arbitrariness and lawfulness and the necessity and

proportionality of their detention, and to receive without delay appropriate and accessible remedies. It also includes the right of the above-mentioned persons to legal assistance in accordance with the basic requirement of prompt and effective provision of legal assistance.

- Article 14 of the Universal Declaration on Human Rights protects the right to seek asylum. The deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights may be arbitrary.
- 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, we 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 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 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, 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 our mandates and 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 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 our 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 of Korea

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