

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

REFERENCE:
AL CHN 8/2021

23 August 2021

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 Arbitrary Detention and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/25, 42/22 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 at least 1,170 individuals of the Democratic People's Republic of Korea (DPRK) in China, who have been arrested and detained for over a year since the borders between the DPRK and China were shut in January 2020 due to COVID-19 concerns. We have received information that on 14 July 2021, your Excellency's Government repatriated over 50 individuals of the DPRK who had been detained over a year in Shenyang, and if that is the case, we are concerned that the other individuals may be facing the imminent risk of repatriation.

According to the information received:

- 450 male North Koreans are held in a prison in [REDACTED], serving sentences following trials for conducting serious criminal activities, mainly drug trafficking.
- 325 North Koreans are detained in [REDACTED].
- 47 North Koreans are detained in [REDACTED].
- 104 North Koreans are detained in [REDACTED].
- 180 North Koreans are detained in [REDACTED].
- 64 North Koreans are detained in [REDACTED].

Those detainees include:

The family of four North Koreans, including two children, who were arrested on 15 April 2021 around [REDACTED], are currently detained in [REDACTED] since early June.

1. [REDACTED]
2. [REDACTED]'s wife.
3. [REDACTED] male, son of [REDACTED]
4. [REDACTED], male, son of [REDACTED].

One North Korean man who was arrested on 9 May 2021 in [REDACTED] and has been detained in [REDACTED]

1. [REDACTED] male, from [REDACTED].

A family of three North Koreans who were arrested on 7 January 2021 nearby [REDACTED] and has been detained since then.

1. [REDACTED] male, born in [REDACTED]
2. [REDACTED] female, born in [REDACTED], [REDACTED] wife.
3. [REDACTED] male, born in [REDACTED], [REDACTED] and [REDACTED]'s son.

We are concerned that these 1,170 refugees are facing the risk of forcible repatriation in violation of the principle of non-refoulement. We are also particularly concerned that at least two of them are children who require special protection and health attentions from the authorities.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 that the human rights of the detainees are upheld and that an individual assessment is conducted to ensure the implementation of the principle of non-refoulement.

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.

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 may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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 cases 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.

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

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

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 wish to express serious concern about the reported arrest and detention of the abovementioned individuals.

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 human rights violations in detention, including torture, ill treatment and sexual violence, committed against repatriated citizens of that country for the legitimate exercise of their rights to leave the country and to seek asylum, which would thus render their arrest arbitrary.

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).

Special Procedures mandate holders have made a number of appeals to your Excellency's 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 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 22 of the Convention of the Rights of the Child, which provides that "a child who is seeking refugee status or who is considered a refugee

in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance” and Article 37, 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.