

Mandates of 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

Ref.: UA CHN 13/2021
(Please use this reference in your reply)

10 January 2022

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 and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 46/17 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 6 individuals of the Democratic People's Republic of Korea (DPRK) in China.

According to the information received:

The following six individuals from the DPRK were arrested at the checkpoint [REDACTED] and subsequently detained in [REDACTED] in [REDACTED].

(1) [REDACTED]

(2) [REDACTED]

(3) [REDACTED]

(4) [REDACTED]

(5) [REDACTED]

(6) [REDACTED]

In addition, the following individual also from the DPRK was arrested at her acquaintance's house [REDACTED]. She has been detained [REDACTED]

(7) [REDACTED]

We are concerned that these 7 refugees are facing the risk of forcible repatriation in violation of the principle of non-refoulement. We are also concerned about the information that [REDACTED] health condition is not good.

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

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 persons 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.
5. Please explain what exactly your Government does when it says the Government “has ensured the legitimate rights and interests of women and their minor children and unaccompanied children from the Democratic People’s Republic of Korea, to the maximum extent” in your

Government's reply (No. GJ/51/2021) dated on 27 September 2021 to our previous communication AL CHN 8/2021.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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

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