

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

Ref.: UA CHN 13/2022
(Please use this reference in your reply)

28 December 2022

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 49/22.

With regards to the urgent appeal UA CHN 13/2021 dated 10 January 2022, I would like to express my appreciation for your Excellency's Government's reply received on 4 April 2022. In this connection, I would like to bring to the attention of your Excellency's Government updated information I have received on one of the individuals.

According to the information received:

An individual from the Democratic People's Republic of Korea was arrested at an acquaintance's house in [REDACTED] on 18 or 19 June 2021, and has since been detained in the [REDACTED]

- [REDACTED] ([REDACTED], born on [REDACTED])

I am concerned about the information that [REDACTED] health condition is deteriorating. I am concerned that she is facing the risk of forcible repatriation in violation of the principle of non-refoulement.

While I do not wish to prejudice the accuracy of these allegations, I wish to express serious concern about the reported arrest and detention of the abovementioned individuals.

I 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.

In this regard, I would like to remind your Excellency's Government of the absolute and non-derogable principle of non-refoulement, as stated in article 3 of the Convention against Torture (CAT), which provides that "[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for 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 existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. This absolute prohibition on refoulement is also more expansive than the protections afforded under refugee law insofar as it applies to any form of removal or transfer of persons, regardless of the status or grounds for seeking protection, and does not apply any exception, even if persons do not qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Heightened consideration must also be given to children in the context of return, whereby actions of the State must be taken in accordance with the best interests of the child and States must also consider the particular needs and vulnerabilities of each child, in particular girls, which may give rise to irreparable harm in the country of return.

Furthermore, in any event, involuntary returns cannot be lawfully carried out without due process of law. In this connection, under international law, the decision to expel, remove or deport a non-national may only be taken after an examination of each individual’s circumstances and in accordance with the law and when procedural guarantees have been respected. In this connection, individuals facing deportation/repatriation are to have access to a fair, individualized examination of their particular circumstances, and to an independent mechanism with the authority to appeal negative decisions. Moreover, a risk assessment in the event of extradition should also be carried out to determine whether there is a risk of violation in the receiving State. In this context, an analysis of the general human rights situation in that State must be taken into consideration. In the absence of such procedures, the forced returns carried out by Chinese authorities may amount to arbitrary or collective expulsion, which are prohibited under international law. The Human Rights Committee stressed in paragraph 10 of General Comment No. 15 (1986) that article 13 of the International Covenant on Civil and Political Rights “would not be satisfied with laws or decisions providing for collective or mass expulsions”.

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, 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 the 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 our mandates and 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.

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