

Mandates of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and the Working Group on Arbitrary Detention

Ref.: UA CHN 7/2023
(Please use this reference in your reply)

7 June 2023

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 Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 49/22 and 51/8.

With regards to the urgent appeal UA CHN 13/2021 dated 10 January 2022, we would like to express our appreciation for your Excellency's Government's reply received on 4 April 2022.

In this connection, we would like to bring to the attention of your Excellency's Government updated information we have received on one of the individuals.

According to the information received:

(1) [REDACTED] ([REDACTED] born on [REDACTED]).

An individual from the Democratic People's Republic of Korea, she was arrested at an acquaintance's house in [REDACTED] on [REDACTED], and has since been detained by the [REDACTED].

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

In addition, we have also received information that other individuals from the Democratic People's Republic of Korea have been arrested and detained in China.

According to the information received:

(1) [REDACTED] ([REDACTED]) ([REDACTED] born on [REDACTED]).

An individual from the Democratic People's Republic of Korea, she was arrested on [REDACTED] in [REDACTED] san, [REDACTED] province and has been detained in [REDACTED] ([REDACTED]).

This individual has lived in China since 1998 and her Chinese family is willing to receive her if released.

In addition, on [REDACTED] between [REDACTED] a total of seven individuals were arrested at the China-Vietnam border in [REDACTED] in China and three of them were escapees from the Democratic People's Republic of Korea. These escapees have been reportedly transferred to [REDACTED] and have been detained in [REDACTED] detention facility ([REDACTED]). Two of these escapees are as follows:

- (2) [REDACTED] (also called [REDACTED]) ([REDACTED] born on [REDACTED], originally from [REDACTED] [REDACTED] province).
- (3) [REDACTED] ([REDACTED] born on [REDACTED]).

We are concerned that these individuals may face the risk of forcible repatriation in violation of the principle of *non-refoulement*. We were informed that the family of Ms. [REDACTED] is willing to receive her if released.

While we do not wish to prejudice 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.

In this regard, we 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 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 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 measures 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 appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also

subsequently be made available in the usual report to be presented to the Human Rights Council.

Finally, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

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

Matthew Gillett
Vice-Chair of the Working Group on Arbitrary Detention