

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; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls

Ref.: AL CHN 9/2023
(Please use this reference in your reply)

18 July 2023

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 51/8, 49/22, 45/3, 52/20, 50/7 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention of at least 2,000 individuals from the Democratic People's Republic of Korea (DPRK), among which approximately 70 percent are women, in China, and their risk of *refoulement* to the DPRK, which may put them at risk of serious human rights violations, including arbitrary detention, torture, enforced disappearance and extrajudicial killings.

Similar allegations were the subject of a previous communication, which was sent by Special Procedures' mandate-holders to your Excellency's Government on 23 August 2021 (CHN 8/2021). We thank your Excellency's Government for its reply, dated 27 September 2021, but we remain concerned also bearing in mind the allegations below.

According to the information received:

As of the beginning of July 2023, more than 2,000 individuals who fled the DPRK are estimated to be detained in China.

Reportedly, the DPRK may imminently reopen its border with China. These individuals are facing the risk of forcible repatriation in violation of the principle of *non-refoulement* once the DPRK reopens its border and we are concerned that this may put them at risk of serious human rights violations, including arbitrary detention, torture, enforced disappearance and extrajudicial killings.

We have been further informed that three detained individuals of the DPRK have been on hunger strike in fear of forcible repatriation. Allegedly, there are other detainees who are also on hunger strike or have attempted to commit suicide in fear of forcible repatriation.

While we do not wish to prejudge the accuracy of these allegations, we express our utmost concern for the physical and psychological integrity of the aforementioned individuals, their alleged arbitrary detention and the serious risk of *refoulement* to the DPRK in violation of international law. We wish to recall further the State's responsibility for the lives and physical and psychological integrity of persons deprived of liberty in its custody. Due to the heightened duty of care, States must take the necessary measures to protect the lives of all individuals deprived of their liberty.

We would like to remind your Excellency's Government that repatriated individuals would be considered as "traitors" by the authorities of the DPRK if their connection to the Republic of Korea or their intention to escape to the Republic of Korea are found. As it has been documented in the past, returnees deemed as "traitors" by the DPRK are detained in political prison camps (*kwanliso*),¹ held incommunicado in circumstances that may amount to enforced disappearance, and subjected to harsh punishment, including torture, other forms of ill treatment and, in certain cases, extrajudicial killings. We are deeply concerned about the specific violations to be suffered by repatriated women², which include strip searches, invasive body searches and other humiliating acts and gender-based violences.

In this regard, we wish to raise our alarm at the imminent risk of serious human rights violations facing the abovementioned individuals should Chinese authorities decide to forcibly return them to the DPRK. We recall that the principle of *non-refoulement* forms an essential protection under international human rights, refugee, humanitarian and customary law, which stipulate its absolute nature, applying to all persons, including all migrants, at all times, irrespective of their citizenship, nationality, statelessness, migration or other status. *Non-refoulement* prohibits all forms of removal and transfer of any individual, regardless of his/her status, when there are substantial grounds for believing that the individual would be at risk of irreparable harm, such as death, torture or cruel, inhuman or degrading treatment or punishment, persecution, enforced disappearance or other serious human rights violations.

If confirmed, these allegations would also amount to violations of several rights protected under international human rights treaties to which China is a State party, including; articles 5 and 12 of the International Covenant on Economic, Social and Cultural Rights, ratified on 27 March 2001; and articles 2.1, 3, 12, 13 and 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 4 October 1988. These allegations would also be inconsistent with articles 6.1, 7, 9, 10, 13, 16, 17, 19, 21 and 26, read alone and in conjunction with article 2.3 of the International Covenant on Civil and Political Rights, signed by China on 5 October 1998. Pursuant to article 18 of the Vienna Convention on the Law of the Treaties of 1969, signatory States are obliged to refrain from acts which would defeat the object and purpose of the treaty.

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.

¹ See A/HRC/52/64, para. 35,

² "I Still Feel The Pain": Human rights violations against women detained in the Democratic People's Republic of Korea | OHCHR Seoul

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the factual and legal grounds of the detention of the individuals concerned; and on any criminal charges imposed on them. Please provide detailed information on whether their due process rights and judicial safeguards have been respected, particularly their right to a legal defence of their own choosing.
3. Please provide information about any inquiry or investigation, judicial or otherwise - and on the conclusions of such inquiries, if any - that may have been undertaken in connection with the alleged violations concerning the aforementioned individuals; to assess the protection of their human rights, including their right to liberty, to be free from gender-based violence, to personal security, to recognition as a person before the law, to health and access to essential medicines, medical treatment and other basic services, and to physical and psychological integrity, and to fair trial.
4. Please provide detailed information clarifying how the forced return of the aforementioned individuals would be compatible with China's international obligations pursuant to peremptory norms of international law relating to the principle of *non-refoulement* and the absolute prohibition of torture, arbitrary detention and enforced disappearance, including the relevant provisions of the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration on the Protection of All Persons from Enforced Disappearance and the Convention on the Elimination of all Forms of Discrimination against Women.

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.

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.

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.

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

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

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Felipe González Morales
Special Rapporteur on the human rights of migrants

Reem Alsalem
Special Rapporteur on violence against women and girls, its causes and consequences

Dorothy Estrada-Tanck
Chair-Rapporteur of the Working Group on discrimination against women and girls

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 (DPRK), 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. They would equally face the risk of being subjected to enforced disappearance or extrajudicial killings.

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 the right of the individuals concerned 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 repatriation 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 DPRK. We hereby appeal again to the Government of the People's Republic of China to ensure that this group of persons 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”.

Additionally, pursuant to article 18 of the Vienna Convention on the Law of the Treaties of 1969, signatory States are obliged to refrain from acts which would defeat the object and purpose of the treaty. In this context, we would also like to reiterate the incompatibility of forced returns of persons at risk of refoulement with articles 6.1, 7, 9, 10, 13, 16, 17, 19, 21 and 26, read alone and in conjunction with article 2.3 of the International Covenant on Civil and Political Rights, signed by China on 5 October 1998.

In this regard, general comment no. 31 of the Human Rights Committee³ specifies that States’ undertakings under article 2 of the International Covenant on Civil and Political Rights, signed by China on 5 October 1998, entail “an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm” (para. 12). Similarly, general comment no. 4 of the Committee against Torture⁴ stipulates that the *non-refoulement* obligation exists whenever there are foreseeable, personal, present and real grounds for believing that the person concerned would be in danger of being subjected to torture in a State to which the person is facing deportation.

We would like to refer to article 2 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) ratified by China in 1980 requesting States to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

In its report to the Human Rights Council on Women deprived of liberty (A/HRC/41/33), the Working Group on discrimination against women and girls stressed that women’s deprivation of liberty is a significant concern and severely infringes their human rights. Against the backdrop of unequal power dynamics and systemic discrimination, women are deprived of their liberty, mostly arbitrarily and in a discriminatory fashion, as a practice in violation of the law and human rights standards, and this is often characterized by impunity. Depriving women of liberty also imposes great costs on society: not just the monetary costs of maintaining structures or institutions of confinement, but more importantly the human costs of missed opportunities and contributions and often intergenerational harm and negative impacts on families and communities.

In the same report, the Working Group also emphasized that deprivation of liberty involves human rights violations and has devastating consequences for

³ [CCPR/C/21/Rev.1/Add.13](#)

⁴ [CAT/C/GC/4](#)

women's lives, putting them at risk of torture, violence and abuse, unsafe and unsanitary conditions, lack of access to health services and further marginalization. It cuts women off from educational and economic opportunities, from their families and friends, and from the possibility of making their own choices and directing the course of their lives as they see fit. Women's deprivation of liberty is also frequently tied up with violence and with poverty, be it through lack of resources or lack of opportunity.

In her report to the sixty-eighth session of the United Nations General Assembly, the Special Rapporteur on violence against women and girls, its causes and consequences stressed that female prisoners are particularly susceptible to violence, including to rape, forced prostitution, sexual harassment (A/68/340). In the same report, the Special Rapporteur noted that women migrants held in immigration detention may be subject to similar conditions as incarcerated women, including physical and sexual violence, and that the administrative detention of migrants raises serious human rights concerns, such as a lack of legal protection and an absence of a limit on the length of detention.

In its study on Enforced Disappearances in the Context of Transnational Transfers,⁵ the Working Group on Enforced or Involuntary Disappearances regretted the increasing practice of international transfers in some Member States in violation of article 8 of the 1992 Declaration on the Protection of all Persons from Enforced Disappearance⁶ and the principle of *non-refoulement*. It further underlined the importance of preventing human rights violations by ensuring procedural safeguards upon detention and during the first hours of deprivation of liberty, including immediate registration, judicial oversight of the detention, prompt notification of family members, and the availability of a defence lawyer of one's choice.

Lastly, articles 9 to 12 of the 1992 Declaration spell out the rights of detained persons to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty. Access by competent national authorities to all places of detention must be ensured and any deprivation of liberty be held in officially recognized places of detention. Detainees have the right to be released also in a manner permitting verification of whether their human rights have been fully ensured. Article 13 further stipulates that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly, and impartially investigated by that authority.⁷

⁵ <https://undocs.org/A/HRC/48/57>

⁶ [Declaration on the Protection of all Persons from Enforced Disappearance | OHCHR](#)

⁷ For further reference, see the study of the Working Group on standards and public policies for an effective investigation of enforced disappearances: [A/HRC/39/46 | OHCHR](#)