

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

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(Please use this reference in your reply)

22 May 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; 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 52/28, 51/8, 54/14, 50/7 and 50/18.

We would like to bring to the attention of your Excellency's Government information we have received concerning serious human rights violations, including arbitrary detention, enforced disappearance, gender-based violence, and the risk of torture and extrajudicial killings of individuals that were forcibly repatriated by China to the Democratic People's Republic of Korea.

During its 131st session, the Working Group on Enforced or Involuntary Disappearances transmitted three urgent cases to your Excellency's Government, with a relevant copy to China, through its humanitarian procedure ([A/HRC/WGEID/1](#)). As summarized below, these cases concern the forced repatriation of alleged victims of human trafficking, forced pregnancy, and forced marriage, including [REDACTED] and [REDACTED]. The Working Group takes note of the Note Verbale transmitted by your Excellency's Government, dated 18 December 2023, and would like to thank you for the reply. However, it regrets the continued refusal of the authorities to acknowledge the cases and address the allegations contained therein, in accordance with international law.

According to information received:

In early October 2023, hundreds of escapees from the Democratic People's Republic of Korea, the vast majority of whom are women, including [REDACTED] and [REDACTED], were forcibly repatriated from China to the Democratic People's Republic of Korea. Hundreds of individuals reportedly remain in detention in China as well as other countries facing the same fate.

Pursuant to the information received, forcible repatriated individuals were initially detained in pre-trial detention centres by the Ministry of State Security, where they were searched, interrogated and beaten. In many cases, women face strip and invasive body searches, aimed at searching for money hidden in their body cavities and genitals, which constitutes gender-based violence, including torture in some cases. Female detainees were reportedly sometimes ordered to squat naked and jump repeatedly to check whether they

had hidden items in their body cavities. Allegedly, in some cases, some officials of the Ministry of State Security conduct invasive searches of body cavities including the vagina in an unhygienic manner with or without gloves. When there is no interrogation, repatriated people are forced to sit completely still in a kneeling or cross-legged position from early morning until evening. If they move, they are punished, including by being beaten or deprived of food.

Reportedly, the initial interrogation aims to establish the reasons why the individuals left the country, their activities abroad, the length of stay, their connections with the Republic of Korea and religious groups and identifying anyone who helped them leave the country. If repatriated individuals would be considered to have committed “a traitorous act”¹ by the Ministry of State Security or if their connection to the Republic of Korea or their intention to escape to the Republic of Korea is found, they will stay in the custody of the Ministry of State Security.

The decision to send the repatriated individuals to a *kwanliso* (political prison camp) seems to be made exclusively by the Ministry of State Security, which can either use the normal legal procedures or simply issue an administrative order. Reportedly, those who are sent to *kwanliso* will be held incommunicado in circumstances that may amount to enforced disappearance, will not be released, and will be subjected to harsh punishment, in certain cases, extrajudicial killings. The suspects’ families are never informed of the decisions or the whereabouts of their relatives, despite the guarantee of the notification of arrest and detention by article 182 of the Criminal Procedure Law. When a prisoner dies, his or her family does not receive the body and they are not informed of the burial site.

The cases of [REDACTED] *and* [REDACTED]

[REDACTED] from [REDACTED], was allegedly forcibly repatriated around mid-October 2023 from the Baishan Detention Center, Jilin Province of China to the [REDACTED].

In November 2019, [REDACTED] was held in captivity and sold to a Chinese family from a rural village outside of Tonghua city, Jilin Province of China. According to the source, she was forced to undergo a loop removal surgery and was forcibly impregnated. Suffering from extreme physical and psychological trauma, and being overmedicated with cold medicine, [REDACTED] was eventually hospitalized due to severe haemorrhage. She was later transferred to the Tonghua City Public Security Detention Centre, where she remained in detention thereafter. On 29 April 2023, she was transferred to the Baishan City Detention Centre, Jilin Province of China.

[REDACTED] (also known as [REDACTED]), from [REDACTED] was allegedly forcibly repatriated around September or October 2023 from the Baishan City Detention Centre, Jilin Province of China.

¹ Article 63 of the Criminal Law: (Treason to State) A citizen who defects to a foreign country in betrayal of the country, or commits such a traitorous act as betraying secret shall be committed to more than five years of reform through labour. In case of an extremely grave crime, he or she shall be given the penalty of reform through labour for an indefinite period or the death penalty and the penalty of confiscation of property.

legal representatives.

4. Please provide information on how the Democratic People's Republic of Korea ensures the fundamental freedom of movement, including the right to leave and enter the country both in law and in practice.
5. Please provide detailed information on how the Democratic People's Republic of Korea ensures the rights of women in detention and their freedom from torture and other forms of ill-treatment, including the supervision by female guards and the provision of gender-sensitive training to guards.
6. Please provide information about how the Democratic People's Republic of Korea guarantees that families of all detainees particularly in *kwanliso* are informed of their fate and whereabouts and are allowed to regularly communicate with their family members.
7. Please provide information on measures taken to ensure the prevention and punishment of enforced disappearance, arbitrary detention, torture and extrajudicial killing of women repatriated back to the Democratic People's Republic of Korea.
8. Please provide information on the measures taken to prevent sex and gender-based violence against detainees, including women, and on the mechanisms in place to hold perpetrators accountable for such acts.

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 prevent any irreparable harm to the life and personal integrity of the persons concerned, 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(s) responsible for the alleged violations.

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

Elizabeth Salmón
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Republic of Korea

Ganna Yudkivska
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Aua Baldé
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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 would like to bring to the attention of your Excellency's Government that the right to freedom of movement encompasses the right to leave the country of his or her own, as provided in article 12(2) of the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Democratic People's Republic of Korea on 14 September 1981. The Human Rights Committee has consistently stressed that any restrictions permitted under article 12(3) must not nullify the principle of freedom of movement and are governed by the requirement of necessity provided for in article 12, paragraph 3, and by the need for consistency with the other rights recognized in the Covenant (CCPR/C/21/Rev.1/Add.9).

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 of the ICCPR.

We would like to refer your Excellency's Government to articles 7 and 9 of the ICCPR, which provide for the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the right to liberty and security of person. As an international norm of jus cogens states have the obligation to protect the physical and mental integrity of all persons within their jurisdiction and, most notably, to prevent acts or omissions amounting to torture and other cruel, inhuman or degrading treatment or punishment. In this context, we would also like to draw the attention of your Excellency's Government to paragraph 1 of General Assembly resolution 68/156, which "[c]ondemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

International standards require that body searches be regulated by law without discrimination particularly against women. The United Nations Standard Minimum Rules for the Treatment of Prisoners adopted by the General Assembly in 1957, and revised and adopted as the Nelson Mandela Rules in 2015 stipulates that searches of prisoners shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity" (rule 50), and that "[i]ntrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary" and "[p]rison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches" (rule 52). Furthermore "[i]ntrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner". "Body cavity searches shall be conducted only by qualified health-care professionals other than those primarily responsible for the care of the prisoner or, at a minimum, by staff appropriately trained by a medical professional in standards of

hygiene, health and safety.” The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) adopted by the General Assembly in 2020 also stipulates that “[a]lternative screening methods, such as scans, shall be developed to replace stripe searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches” (rule 20).

The Bangkok Rules further acknowledges that women prisoners are particularly vulnerable and emphasizes that “health screening of women prisoners shall include comprehensive screening to determine primary health-care needs” (rule 6(a)). Moreover, The Bangkok Rules also stipulates that “women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation. Women prisoners who have been subjected to sexual abuse [...] shall receive appropriate medical advice and counselling and shall be provided with the requisite physical and mental health care, support and legal aid” (rule 25). Finally, “women prisoners’ contact with their families [...] and legal representatives shall be encouraged and facilitated by all reasonable means” (rule 26).

Article 1 of the United Nations Declaration on the Elimination of Violence against Women adopted by the General Assembly resolution 48/104 of 20 December 1993 provides that the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering of women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Article 4 of the Declaration further stipulates that States should implement policies that eliminate violence against women by all appropriate means and without delay.

We would also like to refer to the provisions in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), acceded to by the Democratic People’s Republic of Korea on 27 February 2001, which calls on States to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation. Article 2 of the Convention also calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

In addition, the CEDAW Committee general recommendation No. 19 (1992) on violence against women defines gender-based violence as “violence that is directed against a woman because she is a woman or that affects women disproportionately, [including] acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” Furthermore, in general recommendation No. 35 (2017) on gender-based violence against women updating the general recommendation No. 19 (1992), the CEDAW Committee clarifies that the due diligence obligation underpins the Convention as a whole and that States parties will be held responsible, should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women (CEDAW/C/GC/35).

We further wish to draw your attention to the report of the Working Group on discrimination against women and girls, which highlights the devastating consequences deprivation of liberty can have on women's lives and the heightened risk of human rights violations women face in detention (A/HRC/41/33). The Working Group noted that "deprivation of liberty ... puts [women] at risk of torture, violence and abuse, unsafe and unsanitary conditions, lack of access to health services and further marginalization," and "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" (para. 74). The Working Group also recognized that "State authorities ... detain and confine women in the service of their own cause," such as combatting terrorism and promoting national security, and it has recommended States to refrain from "instrumentaliz[ing] women's deprivation of liberty for the purposes of pursuing government aims" (para. 82(b)).

According to the Human Rights Committee, while the ICCPR does not explicitly use the term "enforced disappearance", it constitutes a unique and integrated series of acts and omissions representing a grave threat to life and a continuing violation of various rights recognized in the ICCPR. The deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. For the disappeared person, it thus results in a violation of article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), article 9 (liberty and security of person) and article 16 (right to recognition as a person before the law), read alone and in conjunction with article 2(3). As regards the family, the enforced disappearance constitutes a violation of article 7, read alone and in conjunction with article 2(3) of the ICCPR. The Committee also observed that the failure to respect the procedural guarantees found in article 9(3) and (4), designed inter alia to prevent disappearances, could also result in a violation of article 6 (CCPR/C/GC/36).

While reiterating our serious concern for the physical and psychological well-being of the aforementioned women, we would like to draw your attention to the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearances (A/RES/47/133), which establishes that all acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties, which shall take into account their extreme seriousness (article 4), and that no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance (article 6). Furthermore, the Declaration further stipulates that in no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7), and that the right to a prompt and effective judicial remedy must be guaranteed as a means of determining the whereabouts or state of health of persons deprived of their liberty, and that identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances (article 9).

The Declaration sets out the necessary protection relating to the rights to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available promptly to their family, counsel or

other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons (articles 10 and 12). It 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 (article 13). The Declaration also establishes that States should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (article 14), and that the persons responsible for these acts shall be tried only by ordinary courts and not by other special tribunal, notably military courts (article 16); not benefit from any amnesty law (article 18); and the victims or family relatives have the right to obtain redress, including adequate compensation (article 19).

Additionally, the Working Group on Enforced or Involuntary Disappearances has noted the increasing practice of forced returns by States in violation of article 8 of the Declaration on the Protection of all Persons from Enforced Disappearance, and the principle of *non-refoulement* (A/HRC/48/57). 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.

As regards allegations of sexual violence and human trafficking, including the forced marriage and forced impregnation and acts of ill-treatment, we would like to reiterate the State's obligation to act in due diligence to ensure that her detention does not constitute irreparable damage or a great risk to her life. In this regard, we recall the General Comment on women affected by enforced disappearances of the Working Group on Enforced or Involuntary Disappearances ([A/HRC/WGEID/98/2](#)), which establishes that States have a duty to recognize the particular types of harm that women suffer based on their gender, including sexual violence, and the resulting psychological damage and social stigma and the disruption of their family life. Due to their biological specificities and reproductive ability, sexual violence against disappeared women is often used as a repressive tool to achieve specific goals, resulting in undesired pregnancies and forced impregnation, which adds additional trauma and risk to their lives.

We would like to also reiterate that, under international law, the concealment of the fate or whereabouts of the disappeared person, or the failure to acknowledge a deprivation of liberty are constitutive of enforced disappearance, as it puts the person outside the protection of the law. By placing detainees under custody, including women defectors, the State assumes responsibility for their lives and their physical and psychological integrity. Due to this heightened duty of care, States are required to act in due diligence and take the necessary measures to protect the lives and well-being of all individuals deprived of their liberty. In this connection, in its General Comment on article 10 of the 1992 Declaration, the Working Group on Enforced or Involuntary Disappearances stipulated that any deprivation of liberty must be done in an officially recognized place of detention, and that in no circumstances a State interest may be invoked to justify or legitimize secret or unofficial places of detention ([E/CN.4/1997/34](#)).