

**AMNESTY INTERNATIONAL** Sektion der Bundesrepublik Deutschland e. V.  
Generalsekretariat . Zinnowitzer Straße 8 . 10115 Berlin  
T: +49 30 420248-0 . F: +49 30 420248-630 . E: info@amnesty.de . W: www.amnesty.de  
SPENDENKONTO 80 90 100 . Bank für Sozialwirtschaft . BLZ 370 205 00  
BIC-Nr. BFSWDE33XXX . IBAN-Code DE23370205000008090100

**AMNESTY INTERNATIONAL** . Zinnowitzer Straße 8 . 10115 Berlin

President Xi Jinping  
The State Council General Office  
2 Fuyoujie  
Xichengqu, Beijing 100017

People's Republic of China



Berlin, 24.04.2015

I am writing with regards to recent discussions of the human rights situation in the Democratic People's Republic of Korea (DPRK) at the General Assembly and the Security Council of the United Nations. Amnesty International is concerned about the systematic, widespread and gross human rights violations taking place in the country. As part of the effort to end these violations and prevent further ones, we urge your government to stop returning DPRK citizens who are fleeing their country and seeking refuge in China.

During the escalating food crisis in the 1990s, individuals in the DPRK desperately in need of food and work often had no choice but to cross the Sino-Korean border illegally. Some families also fled DPRK to escape persecution for political or religious reasons. Article 233 of the DPRK Criminal Code considers any illegal crossing of the border a serious offence, which is punishable by reform through labour.

The suffering of individuals forcibly repatriated to the DPRK was documented in the *Report of the detailed findings of the Commission of Inquiry on human rights in the Democratic People's Republic of Korea*, released last year by the United Nations. Forcibly repatriated individuals are often subject to arbitrary imprisonment, forced labour, torture or other ill-treatment, and possibly execution. Further, the Commission of inquiry reported that repatriated women were subject to degrading treatment, including reports of forced abortions at detention facilities.

Although the number of such crossings into China might have decreased in the last few years, they have not completely stopped. Amnesty International noted that a group of approximately 29 people, including a one-year-old baby, were forcibly returned to DPRK in early August 2014 after being detained in China. We are concerned about their current situation, given the fact that it has not been able to obtain further information on these individuals upon their return to DPRK.

Although Amnesty International is aware of the position of the Chinese government, which considers the DPRK citizens illegally entering China to be economic migrants, and recognizes states' power to manage migration, under the customary international law principle of *non-refoulement*, all states are obliged not to return any person in any manner whatsoever to a country where they would be at risk of serious human rights violations. This obligation includes not rejecting at the frontier people seeking international protection, such as asylum-seekers and refugees. Furthermore, international courts and the Committee against Torture had recognized that the application of *non-refoulement* protection to migrants also does not depend on their ability to gain or maintain status as a refugee.<sup>1</sup>

<sup>1</sup> European Court of Human Rights, *Ahmed v. Austria*, Application No. 25964/94, Judgment 17 December 1996, at 42, 47, stating that the applicant lost refugee status because of criminal conviction, but was granted *non-refoulement*. Inter-

Amnesty International would also like to reiterate the obligations of your government as a state party to relevant international treaties. Under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which China ratified on 4 Oct 1988, “[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”.

The principle of *non-refoulement* of refugees is inscribed in Article 33 of the Convention Relating to the Status of Refugees, and applies to individuals whose “life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group or political opinion”. The Human Rights Committee has also clarified that the rights under the *International Covenant on Civil and Political Rights*, including the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, must apply to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees. The state has 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.<sup>2</sup>

In 2008 the UN Committee against Torture called on your government to “establish an adequate screening process for status determination in order to determine whether persons subject to return may face a substantial risk of torture” and to “provide [the Office of the United Nations High Commissioner for Refugees] UNHCR with access to the border region and persons of concern”.<sup>3</sup> In its submission to China’s Universal Periodic Review dated March 2013, the UNHCR also named “citizens from the Democratic People’s Republic of Korea who are in China and who may be in need of international protection” as persons of concern.<sup>4</sup>

Amnesty International calls on the Chinese government to provide UNHCR with access to DPRK citizens seeking refuge in China, in order to determine their refugee status, if relevant. The organization also calls on your government to establish a policy that would allow these individuals to travel to South Korea or other countries, or alternatively to consider allowing them to reside in China with a refugee identity certificate issued by a public security organ, under the provisions in Article 46 of the Administration Law on Entry and Exit.

Your clear commitment to stop forced repatriation of DPRK citizens would be a crucial step for the Chinese government to show its concern as well as influence on the human rights situation in DPRK.

Yours sincerely,



Selmin Çalışkan  
Secretary General  
Amnesty International Germany

---

American Court of Human Rights, *Caso Familia Pacheco Tineo vs. Estado Plurinacional de Bolivia*, 25 November 2013, Series C No. 272, at 135, stating that the Inter-American system recognizes the right of every foreign person regardless of legal or migratory status, and not only of asylum seekers and re-fugees, not to be returned to a place where his/her life, integrity and/or liberty risk being violated. See also Convention Against Torture (CAT), *Mutombo v. Switzerland*, Communication No. 13/1993, 27 April 1994, U.N. Doc. A/49/44, at 2.5, 9.7; CCPR, *Hamida v. Canada*, Communication No. 1544/2007, 11 May 2010, U.N. Doc. CCPR/C/98/D/1544/2007, at 8.7, 9.

<sup>2</sup> International covenant on civil and political rights, General Comment No. 31, The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, 26 May 2004, U.N. Doc CCPR/C/21/Rev.1/Add. 13, para. 10; See also CCPR General Comment No. 15: The position of aliens under the Covenant, 11 April 1986, para. 1

<sup>3</sup> UN Committee Against Torture, Concluding Observations: China, CAT/C/CHN/CO/4, 12 December 2008, p.11. Available at: <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CHN.CO.4.pdf>

<sup>4</sup> UNHCR submission to China’s UPR, March 2013, p.1. Available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=621&file=EnglishTranslation>

