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Working Group on Arbitrary Detention

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No. 47/2012 (Democratic People's Republic of Korea)

Communication addressed to the Government on 6 July 2012

Concerning Kang Mi-ho, Kim Jeong-nam and Shin Kyung-seop

The Government replied to the communication on 3 September 2012.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Kang Mi-ho, born in 1970, usually resides in South Hamgyong Province, Democratic People's Republic of Korea. Around May 2011, Ms. Kang was arrested by the National Security Agency (NSA) of the Democratic People's Republic of Korea. She was allegedly taken with her 11-year-old son Kim Jeong-nam to Kwan-li-so No. 15 at Yodok, South Hamgyong Province, also known as Camp 15. Both Ms. Kang and her son used to live near the camp and Ms. Kang had previously been a prisoner there.

4. The source submits that the reason for Ms. Kang's and her son's detention is linked to the activities of Ms. Kang's brother since his defection, and to the fact that he was regularly sending money to assist Ms. Kang and her family. Ms. Kang's brother, who has left the Democratic People's Republic of Korea, is reportedly a famous dissident working as a reporter for *The Chosun Ilbo*, a major newspaper in the Republic of Korea. In early 2008, Ms. Kang's brother had allegedly sent her money through a Korean-Chinese broker. He then received a letter, handwritten by Ms. Kang, stating that she had safely received the money through the broker. Since then, Mr. Kang has been sending money to his sister through the same broker. However, in July 2011, the broker contacted Mr. Kang and explained that he had temporarily been imprisoned by the NSA and that he could not find Ms. Kang.

5. Shin Kyung-seop, born in 1946 in South Pyongan Province, was arrested in Oidong-ri, Kaecheon, South Pyongan Province in 1965 by the NSA. He was taken to Kwan-li-so Camp 14, Oidong-ri, Kaecheon, South Pyongan Province, together with his parents and two brothers. The source reports that Mr. Shin's detention is directly linked to the fact that his older brother, Shin Tae Seop, had fled to the Republic of Korea during the Korean War. It is alleged that because of his brother's associations and defection during the Korean War, Mr. Shin's entire family has spent over 40 years in Camp 14.

6. Remaining under strict surveillance of the camp's guards, Mr. Shin was allowed to marry a woman and they had two children. In April 1996, Mr. Shin's wife and their oldest son were caught while trying to escape from the camp. As a result, Mr. Shin and his younger son were taken to an underground prison, where they were allegedly tortured. Mr. Shin's legs were broken and his right leg has since faced outwards in an unnatural way. It is reported that Mr. Shin is currently in a critical health condition.

7. The source contends that the detention of Ms. Kang, Mr. Kim and Mr. Shin's family is solely linked to their blood relationship, as expressed by the guilt-by-association practice relating to offences prescribed in articles 44 to 55 of the Criminal Code of the Democratic People's Republic of Korea. In addition, the detention of Ms. Kang and her son is related to the peaceful exercise of the rights to freedom of opinion and expression and freedom of assembly and association by her brother in the Republic of Korea. The source maintains that their detention is a direct result of their next of kin's exercise of the rights guaranteed under articles 19 and 20, paragraph 1, of the Universal Declaration of Human Rights

(UDHR) and articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR).

8. Moreover, the detainees have allegedly not been informed of the charges or the reasons for their detention; they have had no access to a lawyer, no trial nor any possibility of contesting the legality of their deprivation of liberty. The source submits that such conduct by the authorities of the Democratic People's Republic of Korea constitutes violations of the international norms and standards set forth in articles 9 and 10 of the UDHR, articles 9 and 14 of the ICCPR, as well as in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex).

9. The source further states that these cases are part of a larger pattern of detainees being kept in prison camps, including No. 14 at Kaeachon, South Pyongan Province; No. 15 at Yodok, South Hamgyong Province; No. 16 at Hwasong, North Hamgyong Province; No. 18 at Bukchang, South Pyongan Province; No. 22 at Hoeryong, North Hamgyong Province; and No. 25 at Chongjin, North Hamgyong Province. It is reported that prisoners held in these camps are forced to work in harsh conditions, mountain logging, stone quarrying, farming and performing factory work while subsisting on meagre food rations. According to the information received, most of the prisoners kept in these camps are deprived of any possibility of communicating with the outside world and have no access to medical treatment.

Response from the Government

10. In its response of 3 September 2012, the Government notes that these alleged cases form part of a political plot against the People's Democratic Republic of Korea by the authorities in the Republic of Korea. The Government therefore "categorically rejects the cases … as one of the anti-DPRK attempts".

Further comments from the source

11. In its comments of 1 October 2012, the source submits that the Government has failed to respond to the facts that it had presented and requests the Working Group to proceed on the basis of such facts.

12. The source reiterates its position that Ms. Kang, Mr. Kim and Mr. Shin should be released from detention immediately. Their continued detention is arbitrary, in that it violates the rights and fundamental freedoms established in the UDHR, the ICCPR, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Discussion

13. According to the information provided by the source, Ms. Kang, Mr. Kim and Mr. Shin are in detention, without any legal basis justifying the deprivation of their liberty and in breach of the international norms relating to the right to a fair trial of such gravity as to give the deprivation of liberty an arbitrary character. The Government has not provided any information about the situation of the three individuals. The Government has not challenged or rebutted the claims by the source that Ms. Kang, Mr. Kim and Mr. Shin are arbitrarily detained beyond stating that it "categorically rejects the cases…as one of the anti-DPRK attempts". The Working Group has no other means of ascertaining their current situation than through the cooperation of the Government. According to the Working Group's methods of work, it has to rely on the source's information concerning the detention of Ms. Kang, Mr. Kim and Mr. Shin.

14. The Working Group recalls its Opinion No. 4/2012 (Democratic People's Republic of Korea) concerning Ms. Shin Sook Ja, Ms. Oh Hae Won and Ms. Oh Kyu Won in which the Working Group held that their detention was arbitrary. It requested that the Government take the necessary steps to remedy the situation, that is the immediate release of these individuals, and to accord them an enforceable right to compensation in accordance with article 9, paragraph 5, of the ICCPR.

15. The Working Group also takes note of Human Rights Council resolution 7/15 of 27 March 2008 on the situation of human rights in the Democratic People's Republic of Korea, and recalls all previous resolutions adopted by the Commission on Human Rights and the General Assembly on the situation of human rights in the Democratic People's Republic of Korea, including Commission resolutions 2004/13 and 2005/11 and Assembly resolution 62/167.

16. In addition, the Working Group refers to the concluding observations of a number of different treaty bodies in respect of the Democratic People's Republic of Korea, including by the Committee on the Rights of the Child (2009) (CRC/C/PRK/CO/4), the Committee on the Elimination of Discrimination against Women (2005) (CEDAW/C/PRK/CO/1), the Committee on Economic, Social and Cultural Rights (2003) (E/2004/22, paras. 510-558) and the Human Rights Committee (2001) (CCPR/CO/72/PRK). The Human Rights Committee expressed its serious concern at several issues related to detention, and the lack of compatibility of the legislation of the Democratic People's Republic of Korea with the prohibition of forced labour contained in article 8, paragraph 3 (a), of the ICCPR.[1]

17. The Working Group further notes the important work of other charter-based bodies of the United Nations, inter alia, Commission on Human Rights resolution 2004/13 by which it established the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, and the reporting by the special procedures mandate holders, including the 2011 Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (A/HRC/16/58) section G of which is entitled "Detention and correctional facilities", concluding that:

> In the Special Rapporteur's following reports, he will continue to focus on correctional centres and other forms of detention facilities in the Democratic People's Republic of Korea, with the hope that this will ultimately prompt the Democratic People's Republic of Korea to take measures to improve the situation in various detention centres and prisons.[2]

18. In his most recent report to the General Assembly (A/67/370), the Special Rapporteur declared that he had received reports of the extensive use of political prison camps, poor prison conditions and human rights violations. He mentioned that in April 2012, a coalition of some 40 non-governmental organizations had compiled information on some of the most horrific abuses committed in prison camps in the Democratic People's Republic of Korea and referred to the estimation that some 150,000 to 200,000 people had been imprisoned in six camps for alleged political crimes.

19. The Working Group recalls that it noted in its Opinion No. 4/2012 referred to above that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law, might constitute crimes against humanity. The current case makes it necessary to reaffirm this. The duty to comply with international human rights that are peremptory and erga omnes norms such as the prohibition of arbitrary detention, lies with all bodies and representatives of the State, and on all individuals.

[1] CCPR/CO/72/PRK, para. 17.
[2] A/HRC/16/58, para. 57.

20. The prohibition of arbitrary detention in articles 9 of the UDHR and of the ICCPR extends to all forms of detention, with the right to an effective remedy in article 8 of the UDHR and due process rights in article 10 of the UDHR and article 14 of the ICCPR. The Working Group holds that the detention of Ms. Kang Mi-ho, Mr. Kim Jeong-nam and Mr. Shin Kyung-seop is arbitrary and in violation of articles 9 of the UDHR and the ICCPR as well as of article 10 of the UDHR and article 14 of the ICCPR. Their detention thus falls within categories I and III of the categories applicable to the cases submitted to the Working Group.

21. As the detention of Ms. Kang Mi-ho, Mr. Kim Jeong-nam and Mr. Shin Kyung-seop constitutes a breach of international human rights obligations, the principal remedy is their immediate release. They also have an enforceable right to compensation under article 9, paragraph 5, of the ICCPR, which is an expression of general principles. The reasons that may be given for the detention of Ms. Kang Mi-ho, Mr. Kim Jeong-nam and Mr. Shin Kyung-seop cannot be used against a claim for compensation.

22. The Working Group reminds the Democratic People's Republic of Korea of its duties to comply with international human rights obligations, not to detain arbitrarily, to release persons who are arbitrarily detained, and to provide compensation to them. The Working Group has recalled above that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law, may constitute crimes against humanity. The duties to comply with international human rights that are peremptory and erga omnes norms such as the prohibition of arbitrary detention lie not only with the Government but with all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person should contribute to human rights violations.

Disposition

23. The Working Group on Arbitrary Detention renders the following opinion:

> The detention of Ms. Kang Mi-ho, Mr. Kim Jeong-nam and Mr. Shin Kyung-seop is arbitrary and in violation of articles 9 of the UDHR and of the ICCPR and article 10 of the UDHR and article 14 of the ICCPR. Their detention thus falls within categories I and III of the categories applicable to the cases submitted to the Working Group.

24. The Working Group requests the Government to take the necessary steps to remedy the situation, which are the immediate release of, and an enforceable right to compensation in accordance with article 9, paragraph 5, of the ICCPR for, Ms. Kang Mi-ho, Mr. Kim Jeong-nam and Mr. Shin Kyung-seop.

25. In accordance with article 33 (a) of its revised methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[*Adopted on 15 November 2012*]