



General Assembly

Distr.: General
2 November 2015

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-third session, 31 August-4 September 2015

Opinion No. 32/2015 concerning Hyang-sil Kwon (Democratic People's Republic of Korea)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.
2. In accordance with its methods of work (A/HRC/30/69), on 27 March 2015 the Working Group transmitted a communication to the Government of the Democratic People's Republic of Korea concerning Hyang-sil Kwon. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights
3. 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 sentence or despite an amnesty law applicable to him) (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, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. Ms. Kwon, born on 7 December 1971, is a national of the Democratic People's Republic of Korea. In 1998, Ms. Kwon fled to China and married an ethnic Korean man from China. Ms. Kwon and her husband lived together in China.

5. According to the source, the Government of China pursues a strict policy of forcibly repatriating citizens of the Democratic People's Republic of Korea who enter China illegally. The source indicates that, in the Democratic People's Republic of Korea, persons repatriated from China are treated as political criminals and are subjected to punishments, including imprisonment, torture and execution. For fear of being apprehended by the Chinese police and repatriated to the Democratic People's Republic of Korea, in 2004, Ms. Kwon decided to flee to the Republic of Korea to join her brother, who had just settled there.

6. On 31 March 2004, prior to her planned move to the Republic of Korea, Ms. Kwon was arrested by the Chinese Police at a hotel in Shenyang, China. Seven other nationals from the Democratic People's Republic of Korea were arrested with her. The police allegedly did not present any warrant at the time of the arrest. Ms. Kwon was then repatriated to the Democratic People's Republic of Korea.

7. In May 2004, Ms. Kwon was transferred from Sinuiju, China, to the Security Council in Hoeryong City, Democratic People's Republic of Korea, where she was detained and investigated until August 2004. During that period, her family was allowed to deliver food to her through the security agent there. However, she was never allowed to receive any visit by her family.

8. On 31 August 2004, Ms. Kwon's family was informed by a security agent from the Hoeryong City Security Council that she had been transferred to the North Hamgyong Provincial Security Agency in Chongjin. Since then, Ms. Kwon's family has received no information from the relevant authorities in the Democratic People's Republic of Korea concerning her whereabouts.

9. On the basis of the information collected by the source, it is believed that, in 2005, Ms. Kwon was transferred to Yodok Political Prison Camp.

10. The source reports that, in the Democratic People's Republic of Korea, no official notification is provided to the family of anyone sent to a political prison camp. Families of detained individuals often bribe personnel of the National Security Agency to disclose information on the whereabouts of persons detained in such camps. The source also reports that, in the Democratic People's Republic of Korea, there are no legal procedures to challenge the legality or arbitrariness of any detention of political prisoners. It is reported that anyone who attempts to establish the whereabouts of a detained person or challenge the legality of the detention by unofficial channels will be convicted and punished on the basis of the principle of guilt by association.

11. Ms. Kwon has been detained since 2004 without trial. Her family has never been informed of the reasons for her continued incommunicado detention.

12. The source submits that the detention of Ms. Kwon is arbitrary and falls under categories I, II and III of the Working Group's defined categories of arbitrary detention.

13. The source is of the view that the continued detention of Ms. Kwon could fall under category I given that there is no legal basis to justify her deprivation of liberty. The source further argues that Ms. Kwon has been detained merely because she left the Democratic People's Republic of Korea and tried to flee to the Republic of Korea, which is in violation of her right to freedom of movement, as guaranteed under article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights.

14. The source argues that Ms. Kwon has not been guaranteed the international norms of due process and guarantees to a fair trial, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. As mentioned above, Ms. Kwon has been detained without trial.

Response from the Government

15. The Government has not responded to the allegations transmitted by the Working Group on 27 March 2015.

Discussion¹

16. Despite the absence of any information from the Government, the Working Group considers it is in the position to render its opinion on the detentions of Ms. Kwon in conformity with paragraph 16 of its methods of work.

17. The Government choose not to challenge the prima facie reliable information of the violations of Ms. Kwon's rights provided by the source.

18. According to the information received by the Working Group, Ms. Kwon fled to China in 1998 and resided there until 2004. Due to the fear of being deported and repatriated back to the Democratic People's Republic of Korea, in 2004, Ms. Kwon decided to flee from China to the Republic of Korea. However, on 31 March 2004, she was arrested by the Chinese Police and repatriated to the Democratic People's Republic of Korea.

19. In May 2004, Ms. Kwon was transferred first to Hoeryong City Security Council and then, in August, to the North Hamgyong Provincial Security Agency in Chongjin. Since then, Ms. Kwon's family has received no information from the relevant authorities in the Democratic People's Republic of Korea concerning her whereabouts.

20. Ms. Kwon has been detained incommunicado as a political prisoner by the Democratic People's Republic of Korea authorities since 2004 without any legal basis justifying her deprivation of liberty. Thus, the deprivation of liberty of Ms. Kwon falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

21. Furthermore, Ms. Kwon has been deprived of liberty without trial, with no access to a lawyer and no possibility to challenge the lawfulness of the detention, in violation of

¹ In accordance with paragraph 5 of the methods of work, in order to avoid a perceived or real conflict of interest with respect to the State concerned, a member of the Working Group (Seong-Phil Hong) was not present during discussions and deliberations in this case.

articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant.

22. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial in this case is of such gravity as to give the deprivation of liberty of Ms. Kwon an arbitrary character. Thus, the deprivation of liberty of Ms. Kwon falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

23. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Ms. Kwon is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant; it falls within categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

24. Consequent upon the opinion rendered, the Working Group requests the Government to take the steps necessary to remedy the situation of Ms. Kwon and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

25. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release of Ms. Kwon and accord her an enforceable right to compensation in accordance with article 9 (5) of the Covenant.

[Adopted on 3 September 2015]
