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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-third session, 30 April–4 May 2012

No. 4/2012 (Democratic People's Republic of Korea)

Communication addressed to the Government on 1 March 2012

Concerning Shin Sook Ja, Oh Hae Won and Oh Kyu Won

The Government replied to the communication on 27 April 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 the 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, 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. The case summarized was reported to the Working Group on Arbitrary Detention as follows:

4. Shin Sook Ja, a national of the Republic of Korea, is a former nurse who left her country to work in the Federal Republic of Germany in 1970. In 1972, Ms. Shin met and married Oh Kil Nam, a national of the Republic of Korea who was studying Economics at the University of Tübingen, in West Germany. They had two daughters, Oh Hae Won and Oh Kyu Won.

5. During the 1980s, Mr. Oh was invited by agents from the Democratic People's Republic of Korea (DPRK) in Germany to move to DPRK. He was allegedly promised a stable job as an economist in DPRK, along with medical assistance for his wife, who was then suffering from hepatitis. Mr. Oh accepted the job offer and the family emigrated to DPRK in 1985.

6. For the first three months in DPRK, the family was placed in a remote mountainous region, where they were educated in the Juche ideology and the political theory of Kim Il-Sung. After this period, Mr. Oh was sent to the Mount Chilbo Liaison Office to work on a programme, entitled the Voice of National Salvation, to be broadcast to the Republic of Korea.

7. According to the source, Mr. Oh was then instructed by the agents who brought him to DPRK to bring in more students from Germany, with the nationality of the Republic of Korea. Ms. Shin allegedly objected to this activity and asked her husband to flee DPRK. Shortly thereafter, Mr. Oh was able to leave DPRK under the pretext that he was going to Germany to bring in more students holding the nationality of the Republic of Korea.

8. Ms. Shin and her two daughters were allegedly detained for the purpose of ensuring Mr. Oh's loyalty. On his way to Germany in 1986, Mr. Oh defected to Denmark, where he requested political asylum. The following year, Ms. Shin and her daughters were taken to Yodok Camp for political prisoners. She and her daughters were allegedly detained because her husband did not return to DPRK.

9. In 1986, 1988 and 1991, Mr. Oh received letters from Ms. Shin and their daughters along with audio tapes of their voices and their photos, reportedly taken in Yodok camp. The tapes and photos were delivered in 1988 by a Mr. Yun Isang. Mr. Isang had initially assisted in bringing Mr. Oh and his family to DPRK. Mr. Isang further informed Mr. Oh that his family was being detained to prevent them from returning to the Republic of Korea and also because Mr. Oh had betrayed DPRK. In 1992, Mr. Oh moved to the Republic of Korea.

10. The source alleges that to be classified as a political prisoner in DPRK, means that a warrant is not necessary to carry out an arrest. Furthermore, persons who are accused of political crimes are normally taken from their homes and detained in a camp.

11. The source also reports that Ms. Shin and her two daughters have been held in detention since 1987 and that DPRK's National Security Agency is responsible for overseeing their detention.

12. Ms. Shin and her daughters were initially detained in Yodok Camp, more specifically in an area called Daesuk-ri. Thereafter, they were moved to a camp near Pyongyang. Since the early 1990s, there has been no news of the whereabouts of Ms. Shin and her daughters.

13. The source reports that Ms. Shin and her daughters are ordinary civilians who have been detained solely because of Mr. Oh's defection. Reportedly, despite numerous attempts by Mr. Oh to obtain news of Ms. Shin and their daughters, the authorities of DPRK have ignored these requests. The source further asserts that there are no adequate or reasonable legal provisions that justify the detention of Ms. Shin and her two daughters, and that they are not remaining in DPRK of their own free will.

14. In 1995, the Working Group was seized of the case relating to Ms. Shin and her two daughters, but filed the case under paragraph 14 (b) of its former Methods of work (E/CN.4/1992/20, p. 6). Upon receipt of further information, the Working Group addressed a communication to the Government of DPRK on 1 March 2012. The Working Group requested the Government to provide detailed information about the current situation of Ms. Shin and her daughters, and to provide clarification about the legal provisions justifying their continued detention.

Response from the Government

15. The Government responded on 27 April 2012, and provided the following information:

“Ms Sin Suk Ja (Ms. Shin Sook Ja), the ex-wife of Oh, died of hepatitis that she suffered since the 1980s. Second, two daughters of Ms. Shin do not regard Oh as their father since he abandoned his family and drove their mother to her death. They strongly refuse to deal with Mr. Oh and ask him not to bother them anymore”.

16. In the response it is added that “the case mentioned in your letter has nothing to do with arbitrary detention.”

Comments from the source

17. In its comments of 2 May 2012 the source requests further verification of Shin Sook Ja's death and the situation of Oh Hae Won and Oh Kyu Won. According to the source, if the Government is claiming that Shin Sook Ja is not being arbitrarily detained and has died, it must provide precise information on the time and place of her death. The source also states that Shin Sook Ja was never divorced from her husband and therefore is not an “ex-wife” as mentioned in the Government's response. The source further requests the Working Group to consider the detention of Oh Hae Won and Oh Kyu Won as arbitrary and in violation of international law.

Discussion

18. As mentioned above, the Working Group had already considered a case relating to Ms. Shin and her two daughters in 1995. This was filed under paragraph 14 (b) of the Working Group's former Methods of work. Since the Working Group did not issue an opinion in 1995, the procedure for review of an opinion, as per paragraph 21 of the Working Group's revised Methods of work, do not apply. The detention in the period since 1995 also constitutes a new and different case under the Working Group's revised Methods of work.

19. Mr. Oh has attempted to obtain information about the family he left behind when he left DPRK in 1986. The Government responded on 27 April 2012 that Ms Shin Sook Ja had died and that Oh Hae Won and Oh Kyu Won “strongly refuse to deal with Mr. Oh and ask him not to bother them anymore.” However, the Government has not responded to the Working Group’s request to provide detailed information about the current situation of Oh Hae Won and Oh Kyu Won, and to provide clarification about the legal provisions justifying their continued detention.

20. The source has put forward a prima facie case that Shin Sook Ja, Oh Hae Won and Oh Kyu Won have been held in detention for many years, without any legal basis justifying their deprivation of liberty and in breach of the international norms relating to the right to a fair trial. Their detention is of such gravity as to give the deprivation of liberty an arbitrary character.

21. The Government has not provided information about their current situation, nor has it challenged or rebutted the claims by the source that Mr. Oh’s two daughters are arbitrarily detained beyond stating that “the case mentioned in your letter has nothing to do with arbitrary detention.” The Working Group has no other means of ascertaining Oh Hae Won and Oh Kyu Won’s current situation than through the cooperation of the Government; as must therefore rely on the source’s information concerning their long-term detention, and possibly ongoing detention.

22. The Working Group takes note of Human Rights Council resolution 7/15 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 General Assembly resolution 62/167.

23. The Working Group also notes the concluding observations of different treaty bodies relating to 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 noted serious concerns about several issues of detention and the compatibility of DPRK’s labour legislation with the prohibition of forced labour contained in article 8, paragraph 3 (a), of the International Covenant on Civil and Political Rights.

24. The Working Group further notes the important work of other charter bodies of the United Nations, including the Commission on Human Rights resolution 2004/13 on the Situation of human rights in the Democratic People’s Republic of Korea, and the reports by special procedures mandate holders, including the most recent report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea (A/HRC/16/58), in which he states (para. 57) that:

“[...] 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.”

25. The Working Group is aware of the disturbing reports from non-governmental organizations and other sources in the public domain alleging widespread arbitrary detention and links to forced labour. This includes factual situations that are similar to those of the present case before the Working Group, with extremely long terms of deprivation of

liberty, without specific charges or due process and gross violations of even the most basic rights.

26. The Working Group notes that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the fundamental rules of international law may constitute crimes against humanity.

Disposition

27. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The continued detention of Shin Sook Ja, Oh Hae Won and Oh Kyu Won, being in contravention of articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights is arbitrary. The detention falls within categories I and III of the categories applicable to the cases submitted for consideration to the Working Group.

28. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, which, in its view, include immediate release from detention and an enforceable right to compensation, in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 2 May 2012]