



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary
Detention at its sixty-fifth session, 14–23 November 2012****No. 51/2012 (China)****Communication addressed to the Government on 15 June 2012****Concerning Kim Young Hwan, Yoo Jae Kil , Kang Shin Sam and Lee Sang Yong****The State is not 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. Mr. Kim Young Hwan (hereinafter Mr. Kim), born on 7 April 1963, a citizen of the Republic of Korea, is a human rights activist. He has worked in defence of human rights and democracy in the Democratic People's Republic of Korea since the mid-1990s. He has published several books relating to the situation in that country. Mr. Kim has also written columns and opinion pieces as a member of the Research Committee of the Network for North Korean Democracy and Human Rights (NKnet) and as a member of the Editorial Board of the organization, Zeitgeist Research.

4. On 23 March 2012, Mr. Kim entered Dalian, China. On 29 March 2012, Mr. Kim's family lost contact with him and contacted the Ministry of Foreign Affairs and Trade of the Republic of Korea which was able to confirm Mr. Kim's arrest two days later.

5. On 29 March 2012, Mr. Kim and his colleagues Messrs. Yoo Jae Kil (hereinafter Mr. Yoo), Kang Shin Sam (hereinafter Mr. Kang) and Lee Sang Yong (hereinafter Mr. Lee), all citizens of the Republic of Korea, were arrested in Dalian, Liaoning Province, China. Specific details regarding their place of arrest were not disclosed by the Ministry of State Security of China. Their arrest was made by the Provincial National Security Division of the Ministry, Kaifaqu, Dalian. It is unknown whether Messrs. Kim, Yoo, Kang and Lee (referred together as petitioners) were presented with an arrest warrant upon the moment of their apprehension or thereafter.

6. On 2 April 2012, an official document from the Liaoning provincial office of the Ministry of State Security was sent to the Consulate General of the Republic of Korea in Shenyang, China. The letter allegedly stated that: "Kim Young Hwan and three other nationals of the Republic of Korea are in the custody of the Liaoning Province office of the Ministry of State Security (MSS)." It further stated that: "Only Mr. Kim Young Hwan has declared that he wishes to exercise his right to meet with Consulate officers. The other three waived their right to meet with Consulate officers." The letter did not reveal the reasoning for the detention of the four men.

7. On 16 April 2012, the Ministry of Foreign Affairs and Trade of the Republic of Korea instructed the Shenyang Consulate General to provide counsel to Mr. Kim and the other detainees as soon as possible. The MSS of Liaoning Province reportedly ignored the request of the Government of the Republic of Korea and provided no time at which such a meeting could be arranged. The MSS insisted that: "The detainees have refused to meet with Consulate officers and have written a letter stating that they will not meet with the Consulate of the Republic of Korea."

8. On 24 April 2012, the officers from the Consulate General of the Republic of Korea in Shenyang were able to meet Mr. Kim at the place of his detention.

9. On 3 May 2012, in response to the requests from the Consulate General of the Republic of Korea to meet the other three detainees, the officers of the MSS of Liaoning Province produced the letters they claimed had been written and signed by Messrs. Yoo, Kang and Lee indicating that they had waived their right to meet with Consulate officers of the Republic of Korea. The MSS refused to allow the Consulate General to meet with the detainees. The letters presented were dated 31 March, 1 and 5 April and had only been

signed with thumbprints. No evidence was provided that it was Messrs. Yoo, Kang and Lee who had written the letters of their own free will.

10. On 7 May 2012, the Consulate General of the Republic of Korea hired a lawyer for Mr. Kim. On 10 May 2012, the lawyer submitted an application for a meeting with Mr. Kim to the MSS in Liaoning Province. The Consulate General requested a telephone call from the MSS to corroborate that Messrs. Yoo, Kang and Lee had indeed written the letters themselves. The MSS allegedly ignored the request and did not notify the Consulate of a date for Mr. Kim to meet his lawyer. A subsequent communication from the Consulate dated 17 May 2012 requesting a meeting between a lawyer and Mr. Kim was allegedly ignored by the MSS.

11. The petitioners have been kept in detention at the Bureau of Investigation , Provincial National Security Division of the MSS, in Dandong, China. The petitioners have not been officially charged nor informed of the reasons for their detention, in alleged violation of article 9 of the Universal Declaration of Human Rights. They allegedly claimed that the detainees were arrested in Dalian for “crimes of endangering national security”, pursuant to chapter 1 of the Criminal Law of China.

12. The source declared that instead of being taken to the capital city of Liaoning Province, Shenyang, where the headquarters of the Provincial MSS are located, the petitioners were taken to the smaller rural city of Dandong. The source alleges that officials from the Democratic People’s Republic of Korea belonging to the National Security Agency and the General Bureau of Reconnaissance have free and frequent access to Dandong.

13. The source alleges that the arrest and detention may be linked to a request originating from the authorities of the Democratic People’s Republic of Korea to prosecute the suspects. Mr. Kim, in particular, has allegedly been targeted by the authorities of the Democratic People’s Republic of Korea since the mid-1990s when he began his work as a human rights defender. It is reported that the authorities of the Democratic People’s Republic of Korea have over the past decade been threatening Mr. Kim and his co-workers at NKnet, inter alia, through e-mails and letters sent on a regular basis.

Response from the Government

14. The Government of China responded on 3 September 2012 and set out the facts as follows.

15. On 29 March 2012, Chinese national security organs took compulsory measures to investigate Messrs. Kim Young Hwan, Yoo Jae Kil, Kang Shin Sam and Lee Sang Yong according to the Criminal Law, Criminal Procedure Law and State Security Law of the People’s Republic of China.

16. During the investigations the four suspects confessed their involvement in criminal activities. They were detained in Dandong City Prison, Liaoning Province, and the Consulate General of the Republic of Korea was informed. During their detention all four individuals were in good physical condition.

17. Following a request from the Government of the Republic of Korea, the four suspects were exempted from criminal responsibility and asked to leave China.

18. In summary, the authorities processed the cases in accordance with the domestic law of the People’s Republic of China, effectively implemented the relevant obligations of international law, and guaranteed the legitimate rights and interests of the suspects.

Further comments from the source

19. In a subsequent letter, the source informed the Working Group that Messrs. Kim, Yoo, Kang, and Lee had been released on 20 July 2012 and returned to the Republic of Korea.

Disposition

20. Having examined all the information available, taking into account that Messrs. Kim, Yoo, Kang, and Lee had been released, the Working Group, without prejudging the nature of the detention (the information provided by the source is not sufficient in this regard), decides to file the case in accordance with paragraph 17 (d) of its methods of work.

[Adopted on 19 November 2012]
