

No. 34/2013 (Democratic People's Republic of Korea)

Communication addressed to the Government on 29 August 2013

Concerning Kim Im Bok, Kim Bok Shil, Ann Gyung Shin, Ann Jung Chul, Ann Soon Hee, and Kwon Young Guen

The Government replied to the communication on 7 October 2013. 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 Commission on Human Rights, which extended and clarified the mandate of the Working Group 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 24/7 of 26 September 2013. 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. The case summarized below was reported to the Working Group on Arbitrary Detention as follows.

4. The case concerns five individuals (petitioners), all nationals of the Democratic People's Republic of Korea, who were arrested in 1994 by agents of the National Security Agency of the Democratic

People's Republic of Korea. No arrest warrant was presented and as they have been detained incommunicado since that time, family members have had to rely on information received informally regarding the reason for their detention, their whereabouts and status of well-being. The source believes the petitioners are detained in political prison camps but cannot confirm their location, citing the fact that the National Security Agency conducts activities pertaining to political prison camps in secret.

5. Kim Im Bok, female, born XX November XXXX, usually residing at 31-ban, Boeun-dong, Yoosun-gu, Hoiryeong, North Hamkyung, was 29 years old at the time of her arrest. In 1992, she fled to Helong, China, purportedly for economic reasons, and was accompanied by her mother, brother (Kim Kwang Ho) and son (Sung Il). Kim Im Bok resided apart from her family in Yanbian, where she was employed. In late February 1993, her family were arrested, repatriated and interrogated by the National Security Agency in North Hamkyung. As the reason for their defection was not considered political, the family was released from detention in June 1993 and sentenced to exile in a rural area.

6. At the end of July 1994, Kim Im Bok was arrested at the Yanbian Hospital where she was hospitalized for treatment of a stomach problem. The source is of the opinion that the hospital staff informed the authorities of her nationality. On 2 August 1994, she was repatriated to Hoiryeong and interrogated by the National Security Agency for three months. In mid-August 1994, Kim Im Bok's brother bribed the agent of the National Security Agency from North Hamkyung in charge of her interrogation for details of his sister's arrest and detention. He was informed that Kim Im Bok was considered a political prisoner for accepting help from a Korean church in Yanbian and had received a long prison sentence as a consequence.

7. In October 1994, the same agent delivered a letter from Kim Im Bok to her brother, conveying her belief that she might be sentenced to approximately 10 years imprisonment and indicating her impending transfer from the National Security Agency prison in North Hamkyung to Camp No. 15 in Yoduk or similar. In or around November 1994, the agent informed her family that Kim Im Bok had been transferred to a political prison camp, presumably Camp No. 15. The source reports that her family has enquired at prisons, including the Jeongeo-ri Prison in Hoiryeong, those in Hamheung and others in nearby cities to no avail, as her name does not appear on any of the prison registries.

8. Kim Bok Shil, female, born XX September XXXX, worked as the manager of the South Hamkyung Province Hongwon-gun commerce management office. Her son, Ann Jung Chul, born XX January XXXX, worked as a first class sergeant of the border garrison in Hyesan, North Hamkyung Province. Her daughter, Ann Soon Hee, born in March XXXX, was a student at the Hongwon Elementary School. Brother and sister were 22 and 13 years old, respectively, at the time of their arrest. The family usually resided together at Hongwon 1-ban, South Hamkyung Province.

9. Ann Gyung Shin, Kim Bok Shil's husband and the father of her children, committed suicide on 14 January 1994, whilst detained at a forced labour logging camp in Hongwon. Prior to his detention, Ann Gyung Shin worked as a party official in the Food Policy Department. He was charged with corruption and illegal accumulation of wealth, for allegedly embezzling rice and making statements against the policies of the Party. As a result of his suicide, which was considered an act of treason against the State, he was labelled a "reactionary" and an investigation into his family was opened.

10. On the morning of her husband's death, an agent of the National Security Agency abducted Kim Bok Shil from her home and interrogated her at a secret location. She was released, but three months later, in April 1994, was arrested by the Agency at her home and charged with illegally conducting trade outside the Democratic People's Republic of Korea with the Chongryon (the General Association of Korean Residents in Japan which has close links to the Democratic People's Republic of Korea). The source conjectures an additional reason for her arrest was guilt by association for the suicide of her husband. Following her arrest, she was detained at the National Security Agency prison in South Hamkyung and later in May 1994, transferred to the Hamheung National Security Agency in South Hamkyung. The source cites an eyewitness account of the brutal beatings and torture she had suffered in detention. In October 1994, she was transferred to political prison camp No. 15 or 16.

11. The source was informed by members of the border garrison that in June 1994, Ann Soon Hee was arrested in her home by the Hongwon National Security Agency of South Hamkyung. On the same date, Ann Jung Chul was arrested by the Agency while on duty at the border garrison of Hyesan in North Hamkyung. Ann Jung Chul was reportedly transferred to the Hamheung National Security Agency. The source believes brother and sister are imprisoned in political prison camp No. 15 or 16. The source argues the family's guilt by association with suicide of Ann Gyung Shin violates international human rights law.

12. Kwon Young Guen, male, born on XX May XXXX, worked at the Korean War Construction Company located in Musan, North Hamkyung. He usually resides at 70-ban, Musan-eup, Musan-gun. On 6 July 1994, he fled to China with the goal of sending remittances to his family. On 10 July 1994, he was arrested by the Yanji police near the Northeast Hotel on Henan Street, Yanji, Jilin-Sheng. According to the source, Kwon Young Guen was arrested and charged with having committed treason by defecting from the Democratic People's Republic of Korea to the Republic of Korea, from where his parents originate.

13. Immediately following his arrest, Kwon Young Guen was repatriated and detained at the Chilsung Custom House. The source cites an eyewitness account that Kwon Young Guen was tied to the rear part of a truck and dragged barefoot from the Custom House to the centre of Musan, an approximate distance of 16 kilometres. According to the source, Kwon Young Guen was to be an example of the punishment that would befall traitors to Kim Il Sung. Kwon Young Guen was detained for three months in a National Security Agency prison in Musan, during which time he was interrogated and forced to confess through torture. In October 1994, the Agency transferred him to a political prison camp.

14. The National Security Agency interrogated Kwon Young Guen's mother about her son's defection twice, in March 1996 and over a year later. It was during her interrogation that she learnt from agents of the Agency of her son's detention in a political prison camp. The source reports that Kwon Young Guen's mother died in or around 1998 from the shock and mistreatment she suffered as a result of an excessively harsh interrogation by the Agency.

15. The source reports that Chinese police regularly repatriate defectors pursuant to the following agreements between the Governments of China and the Democratic People's Republic of Korea: Mutual Agreement on Surrendering Refugees and Criminals (Democratic People's Republic of Korea and China Agreement on Repatriating Illegal Entrants), 1966; Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order and the Border Areas, 1986; Bilateral Agreement on Mutual Cooperation for the Maintenance of State Safety and Social Order, July 1998; Treaty on Cooperation between the Democratic People's Republic of Korea and China on Civil and Criminal Law, 2003. The source reports that no warrant is required when arresting a defector. The Chinese authorities immediately transfer defectors to the National Security Agency.

16. The source reports that defectors to the Republic of Korea are considered to have directly assaulted the authority of Kim Il Sung's leadership, which is tantamount to committing treason against the State. It conjectures that the petitioners are being detained according to article 62(3) of the Criminal Law of the Democratic People's Republic of Korea and pursuant to the "Party's ten principles for the establishment of the one-ideology system". The source notes as significant the fact that their period of arrest coincided with the mourning period for the death of Kim Il Sung, resulting in, according to the source, their particularly severe punishment.

17. The source reports that family members cannot petition the authorities for the release of detainees accused of political crimes, as advocating for political prisoners is considered an act of treason in itself. The source reports that no judicial remedies or appeal procedures are available to detainees of political prison camps. As such, the petitioners have not had the opportunity to seek redress for their sudden arrest, interrogation in a National Security Agency prison and indefinite detention in a political prison camp. The source argues that the deprivation of liberty of the petitioners falls within categories I and III of the arbitrary detention categories referred to by the Working Group.

Response from the Government

18. By a letter dated 29 August 2013, the Working Group transmitted the above allegations to the Government of the Democratic People's Republic of Korea, requesting detailed information about the current situation of the above-mentioned petitioners.

19. The Government, in its reply dated 7 October 2013, stated 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".

Discussion

20. Three different communications were transmitted to the Government and it is unfortunate that in all three (see also No. 35/2013 (Democratic People's Republic of Korea) and No. 36/2013 (Democratic People's Republic of Korea)), it responded in exactly the same way as above, by means of the same letter, without any concrete response and without any attempt to discuss the serious allegations made against it.

21. The allegations in this case basically comprise arrests without warrants; indefinite interrogation periods in the premises of the National Security Agency; incommunicado detention; prosecution based on political considerations, including as an act of reprisal for leaving the country, or on the basis of vague offences that are general and imprecise; a total absence of judicial mechanisms to challenge the legality of the detention or to launch an appeal against the decisions of conviction; and indefinite detention in political prison camps, often following completion of a prison sentence.

22. In view of these serious allegations, the Working Group considers that the communication from the Government, which does not address any of these violations of international law relating to the arrest, detention, judgment, sentencing and appeal procedures concerning persons deprived of their liberty, is unlikely to facilitate any constructive dialogue.

23. As the Government has not provided any information about the situation of the petitioners, the Working Group, according to its methods of work, has to rely exclusively on the information provided by the source concerning the detention of the petitioners.

24. The Working Group recalls its Opinions Nos. 4/2012 and 47/2012 (Democratic People's Republic of Korea), in which the Working Group held that the detention of the persons concerned was arbitrary. It requested that the Government take the necessary steps to remedy the situation, i.e. the immediate release of the individuals and according them an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

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

26. 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 those of 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 serious concern at several issues related to detention and the lack of compatibility of legislation in the Democratic People's Republic of Korea with the prohibition of forced labour contained in article 8, paragraph 3 (a), of the International Covenant on Civil and Political Rights.

27. The Working Group further notes the important work of other charter-based bodies of the United Nations, including resolution 2004/13 of the Commission on Human Rights on the appointment of a Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and reporting by the special procedures mandate holders.

28. In his most recent report to the General Assembly (A/68/319), the Special Rapporteur stated that:

"According to the information received, labour camps for political prisoners have been in operation since the 1950s in the Democratic People's Republic of Korea. It is reported that individuals who

have committed or are perceived to have committed a political crime are involuntarily or forcibly taken to an interrogation facility, detained and typically subjected to torture until a confession is obtained. After being declared guilty by the State Security Protection Agency, the detainee is either executed immediately or transferred to a prison camp. Throughout their detention, prisoners are reportedly not given a trial and are held incommunicado without any information concerning the charges against them or the length or place of detention. According to reports, detainees have been held in harsh conditions. It has been alleged that prisoners, including children, have been subjected to forced labour, and that torture and public executions are common within the camps. Reports also suggest that women have been subjected to sexual exploitation, rape, forced abortion and killing. In at least four camps, the majority of prisoners reportedly remain in custody until their death. Over the past few decades, it is estimated that at least 400,000 prisoners have perished in the camps."

29. The Working Group further takes note of the attention drawn by the Special Rapporteur to the particularly worrying practice, widely documented by the United Nations, of detention due to guilt by association, so that when a person is punished for a political or ideological crime, members of his or her family are also punished. Up to three generations of family members of detainees are sent on this basis to the camps in the Democratic People's Republic of Korea. Detainees are often not told the reasons for their detention or whether they will ever be released. No information regarding their whereabouts is provided to friends, neighbours, co-workers or more distant relatives who enquire about them.

30. The Working Group recalls that on 3 October 2012, it, together with the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Enforced or Involuntary Disappearances, sent a joint letter to the Government of the Democratic People's Republic of Korea on the alleged use of labour camps for political prisoners. Having received no response from the Government, the mandate holders issued a press release in February 2013 calling for an international inquiry into the human rights abuses in the Democratic People's Republic of Korea, which would shed light on the country's extensive political prison camp system.

31. The Working Group takes note of the recently established commission of inquiry on human rights in the Democratic People's Republic of Korea, mandated by the Human Rights Council in resolution 22/13 to investigate the systematic, widespread and grave reports of violations of human rights in the Democratic People's Republic of Korea, with a view to ensuring full accountability, in particular for violations which could amount to crimes against humanity. Among the violations to be investigated are those pertaining to the right to food, those associated with prison camps, torture and inhuman treatment, arbitrary detention, discrimination, freedom of expression, the right to life, freedom of movement and enforced disappearances, including in the form of abduction of nationals of other States.

32. In a statement made to the Third Committee of the sixty-eighth session of the General Assembly on 29 October 2013, the Chair noted that the "final conclusions and recommendations [of the commission of inquiry] must await the end of the investigation. However, the entire body of evidence gathered so far points to what appear to be large-scale patterns of systematic and gross human rights violations".

33. The Working Group recalls that it noted in its Opinions Nos. 4/2012 and 47/2012 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 may constitute crimes against humanity. The current case makes it necessary to reaffirm this. The duty to comply with international human rights standards that are peremptory and *erga omnes* norms, such as the prohibition of arbitrary detention, rests on all bodies and representatives of the State and on all individuals.

34. The Working Group holds that the detention of the petitioners in the present case is arbitrary and in violation of articles 8, 9, 10, 11, 13, 14, 18, 19 and 20 of the Universal Declaration of Human Rights and articles 8, 9, 12, 14, 18 and 19 of the International Covenant on Civil and Political Rights.

35. The Working Group will remind 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 duty to comply with international human rights that are peremptory and *erga omnes* norms, such as the prohibition of arbitrary detention, rests not only on the Government but on all officials, including judges, police and security officers and prison officers with relevant responsibilities. No person can contribute to human rights violations.

Disposition

36. In the light of the preceding, the Working Group on Arbitrary Detention renders the following Opinion:

"The detention of Kim Im Bok, Kim Bok Shil, Ann Gyung Shin, Ann Jung Chul, Ann Soon Hee and Kwon Young Guen is arbitrary and in violation of articles 8, 9, 10, 11, 13, 14, 18, 19 and 20 of the Universal Declaration of Human Rights, and Articles 8, 9, 12, 14, 18 and 19 of the International Covenant on Civil and Political Rights and falls within categories I, II and III of the categories referred to by the Working Group when considering the cases submitted to it."

37. 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. It recommends that the Government harmonize its legislation with the International Covenant on Civil and Political Rights.

38. Finally, the Working Group invites the Government to cooperate better with its procedures in the future, pursuant to the relevant resolutions of the Human Rights Council.

[Adopted on 13 November 2013]