

No. 35/2013 (Democratic People's Republic of Korea)

Communication addressed to the Government on 2 September 2013

Concerning Choi Seong Jai, Hong Won Ok, Kim Seong Do, Kim Seong Il, Lee Hak Cheol, Lee Gook Cheol, Kim Mi Rae and Lee Jee Hoon

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 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 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 eight individuals (hereinafter petitioners), all nationals of the Democratic People's Republic of Korea, residing in North Hamkyung, who were arrested between 2000 and

2012 by agents of the National Security Agency (NSA). No warrant was shown for their arrest and they have been detained incommunicado since. Family members have relied on information received informally regarding reasons for their detention, whereabouts and well-being.

5. Choi Seong Jae, born XX September XXXX, usually residing at 33-ban, Sungchun-dong in Hoiryeong, was 34 years old at the time of his arrest. He was the manager of a pine mushroom trading business in Sungchun-dong. For business reasons he frequently crossed the Chinese border with his guide, Hwang In Guk, who, according to the source, acted as a secret NSA agent from the Hoiryeong Crop-processing Factory. On 3 February 2000, Choi Seong Jae was arrested at his home by NSA agents from the Crop-processing Factory and held for approximately six months at the NSA facility in Chongjin, North Hamkyung. He was accused by Hwang In Guk of stealing and concealing a border guard's weapon (pistol). The source conveyed an NSA report that the individual responsible for stealing the border guard's pistol had been found and executed by the NSA. Choi Seong Jae nonetheless remains in detention at No. 25 Susong Reeducation Camp, a political prison. An eyewitness reports that Choi Seong Jae was tortured in detention to the point of unrecognizability.

6. The source reports that Choi Seong Jae is being detained pursuant to article 78(7) of the Criminal Code of the Democratic People's Republic of Korea, on illegal capture, possession or transference of weaponry, ammunition, and war technology, which states:

"A person who plunders combat technology equipment, illegally possesses weapons or ammunition or disposes of them shall be punished by reform through labour for less than two years. In cases where the person commits a grave offence, he or she shall be punished by reform through labour for less than three years. A person who plunders weapons, ammunition or a large amount of combat technology equipment shall be punished by reform through labour for more than three years and less than eight years. A person who plunders a large amount of weapons or ammunition or a particularly large amount of combat technology equipment shall be punished by reform through labour for more than eight years."

7. He is additionally charged with committing treason against the State for crossing the border into China.

8. Hong Won Ok, born on XX December XXXX, ordinarily residing at Nokya-ri, Eundeok-gun, was 68 years old at the time of her arrest. Neighbours reported that she had regularly and publicly complained about the living situation and political climate in the Democratic People's Republic of Korea. Such statements are considered "reactionary words" for being critical of the Party's Ten Principles for the Establishment of the One-Ideology System, which state:

"1. We must give our all in the struggle to unify the entire society with the revolutionary ideology of the Great Leader Kim Il Sung.

2. We must honor the Great Leader comrade Kim Il Sung with all our loyalty.

3. We must make absolute the authority of the Great Leader comrade Kim Il Sung.

4. We must make the Great Leader comrade Kim Il Sung's revolutionary ideology our faith and make his instructions our creed.

5. We must adhere strictly to the principle of unconditional obedience in carrying out the Great Leader comrade Kim Il Sung's instructions.

6. We must strengthen the entire party's ideology and willpower and revolutionary unity, centering on the Great Leader comrade Kim Il Sung.

7. We must learn from the Great Leader comrade Kim Il Sung and adopt the communist look, revolutionary work methods and people-oriented work style.

8. We must value the political life we were given by the Great Leader comrade Kim Il Sung, and loyally repay his great political trust and thoughtfulness with heightened political awareness and skill.

9. We must establish strong organizational regulations so that the entire party, nation and military move as one under the one and only leadership of the Great Leader comrade Kim Il Sung.

10. We must pass down the great achievement of the revolution by the Great Leader comrade Kim Il Sung from generation to generation, inheriting and completing it to the end."

9. Hong Won Ok was assumedly reported to the NSA and arrested in the summer of 2002. Three NSA agents from Eundeok-gun allegedly forcibly entered her house at night while she was sleeping, dragged her outside, beat her in front of her children and abducted her to a political prison camp.

The source reports that the change in Hong Won Ok's residency status to the region of a political prison camp, and the designation of her occupation as a worker of the NSA agriculture bureau, as registered with the party organization she belongs to, indicates that she was being detained in a political prison camp. The source adds that the severity of Hong Won Ok's punishment for committing treason against the State is compounded by the guilt by association she bears as a result of the accusation of espionage against her husband and his consequent indefinite detention since 1962.

10. Kim Seong Do, a.k.a. Sondo, born on X December XXXX, usually residing at 15-ban, Manghyang-dong, Hoiryeong, was reportedly a well-known smuggler in Hoiryeong. His brother, Kim Seong Il, born on X April XXXX, worked at the Hoiryeong Ceramics Factory. Their nephew, Lee Hak Cheol, born on X December XXXX, was unemployed. Lee Hak Cheol's brother, Lee Gook Cheol, was born on X July XXXX, and was enrolled in school but did not attend. Kim Seong Il, Lee Hak Cheol and Lee Gook Cheol usually resided together at 35-ban, Manghyang-dong.

11. Jeon Young Cheol, now deceased, was the father of Lee Hak Cheol and Lee Gook Cheol, and brother-in-law to Kim Seong Do and Kim Seong Il. He had defected to the Republic of Korea. He was a drug and general goods smuggler who also video-documented daily life in the Democratic People's Republic of Korea and sold the footage to Japanese filmmakers. Kim Seong Do often assisted Jeon Young Cheol and was requested on one occasion to deliver a camera and 5,000 yuan to a relative in Chongjin. Kim Seong Do thereafter instructed Lee Hak Cheol to make the delivery.

12. Lee Hak Cheol and Kim Seong Do were arrested by an NSA agent of the Hoiryeong Paper-mill on charges of espionage and treason, namely for: communicating with a defector to the Republic of Korea and helping him film in secret; delivering a camera and money; harbouring smuggled products - specifically, unregistered electronic equipment such as cameras, cell phones and mini-radios - as well as 90,000 yuan, which were all discovered by the NSA upon searching Kim Seong Do's house.

13. On 28 May 2012, Kim Seong Il and Lee Gook Cheol were arrested by the Hoiryeong NSA when agents entered their house by force and abducted them. The source alleges that Kim Seong Il and Lee Gook Cheol are being detained on account of their guilt by association with Kim Seong Do and Lee Hak Cheol. All four are reportedly being held in a political prison camp pursuant to Criminal Code articles 61, on propaganda against the country and demagoguery, 62, on treason, and 63, on espionage. Article 61 states:

"Those who spread propaganda against the country are sentenced to no less than five year-labour re-education camp. If it is serious, they are sentenced to over five year- and less than ten year-labour re-education camp."

Articles 62 and 63 also indicate that the accused shall be sentenced to five years or over ten years in a labour re-education camp and to a life sentence. The source observes that the Code does not refer to political prison camps.

14. According to the source, the family is being detained to ensure that they do not reveal the details of the fabricated allegations of the NSA against Jeon Young Cheol regarding his involvement with a dissident group, Dongkkamo, established to destroy statues of Kim Il Sung. The source reports that the NSA has banished 90 individuals to remote areas or detained them in political prison camps for conspiring with Kim Seong Do to communicate with persons outside the Democratic People's Republic of Korea, through producing films and for other suspicious acts.

15. Kim Mi Rae, born on X December XXXX, resided together with her husband, son and younger sister at 1, Mareum-dong, Sunam district, Chongjin. She was 27 years old at the time of her arrest. Her son, Lee Jee Hoon, was 4 years old at the time of his arrest. In August 2012, Kim Mi Rae's mother, who had earlier defected to the Republic of Korea, requested assistance from a defection broker, Kwon Oh Sook, for the defection of Kim Mi Rae and her family. On 27 November 2012, Kim Mi Rae, together with her husband, son and younger sister, defected to China. On 4 December 2012, they were all arrested at the Express Bus Terminal at Henan Street, in Yanji, Jilin, while attempting to board a bus to Dalian en route to the Republic of Korea. Kwon Oh Sook had informed the driver beforehand that eight defectors would be on board and bribed him to ensure that he did not inform the police. Upon learning that there were four more defectors on the bus, the driver reportedly alerted the Chinese police, hoping to receive a reward of 600,000 Republic of Korea won

per defector. The source cites a report from the Chinese defection broker connected to Kwon Oh Sook that the Chinese police border garrison inspected the bus passengers' identity documents, exposing twelve defectors from the Democratic People's Republic of Korea, including Kim Mi Rae and her family. They were all arrested.

16. 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: the Mutual Cooperation Agreement for the Extradition of Defectors and Criminals (Democratic People's Republic of Korea-People's Republic of China Agreement on Repatriation of Illegal Entrants) (1966); the Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas (1986); the Bilateral Agreement on Mutual Cooperation for the Maintenance of State Safety and Social Order (July 1998); and the Democratic People's Republic of Korea-People's Republic of China Civil and Criminal Law Cooperation Treaty (2003).

17. Upon arrest, Kim Mi Rae was repatriated and transferred to the Onsong County NSA detention facility in North Hamkyung for interrogation. She was later transferred to the Chongjin NSA detention facility and, in January 2013, was imprisoned in No. 16 political prison camp. On 4 February 2013, Kim Mi Rae's mother was informed by relatives with connections to an NSA agent about the details of her daughter's detention.

18. The source argues that Kim Mi Rae's family is being detained in accordance with article 62(3) of the Criminal Code and the Ten Principles for the Establishment of the One-Ideology System. Article 62(3) states:

"A citizen of the Republic who commits treason against the Fatherland by defection, surrender, betrayal; or disclosure of secrets shall be punished by reform through labour for more than five years. In cases where the person commits a grave offence, he or she shall be punished by reform through labour for more than five years and less than ten years."

19. The source alleges that the above-mentioned petitioners do not have the opportunity to challenge their sudden arrest and indefinite detention as no judicial remedies or appeal procedures are available to detainees of political prison camps. Further, family members cannot petition the authorities for the release of detainees accused of political crimes as such advocacy is considered an act of treason. The source submits that the deprivation of liberty of the petitioners falls within categories I and III of the categories referred to by the Working Group.

Response from the Government

20. By letter dated 2 September 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.

21. 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 Republic of Korea authorities. The Government therefore "categorically rejects the cases ... as one of the anti-DPRK attempts".

Discussion

22. Three different communications were transmitted to the Government and it is unfortunate that in the case of all three (see also No. 34/2013 and No. 36/2013, it responded in exactly the same way as above, in the same letter, without any attempt to discuss the serious allegations imputed against it.

23. The allegations in this case 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 the completion of the prison sentence.

24. In view of these serious allegations, the Working Group considers that the reply given by 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.

25. 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 on the source's information concerning the detention of the petitioners.

26. The Working Group recalls its opinions No. 4/2012 and No. 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, which were the immediate release of these individuals and to accord them an enforceable right to compensation in accordance with article 9, paragraph 5, of the Covenant.

27. The Working Group also 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 resolutions 2004/13 and 2005/11 of the Commission on Human Rights and General Assembly resolution 62/167.

28. 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 the Committee on the Rights of the Child (CRC/C/PRK/CO/4), the Committee on the Elimination of Discrimination against Women (CEDAW/C/PRK/CO/1), the Committee on Economic, Social and Cultural Rights (E/2004/22, paras. 510-558) and the Human Rights Committee (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 Covenant.

29. 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 the reporting by the special procedures mandate holders.

30. In his most recent report to the General Assembly (A/68/319), the Special Rapporteur stated: "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."¹

31. 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: 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."²

32. 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 allegation letter to the Government of the Democratic People's Republic of Korea on the alleged use of labour camps for political prisoners. After receiving 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, to shed light on the country's extensive political prison camp system.³

33. The Working Group takes note of the recently established Commission of Inquiry on human rights in the Democratic People's Republic of Korea, which has been mandated by the Human Rights Council 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.⁴ 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 abductions of nationals of other States.

34. In a statement made to the 68th session of the United Nations General Assembly Third Committee on 29 October 2013, the Chair noted that the "[Commission of Inquiry's] final conclusions and recommendations 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".

35. The Working Group noted in its opinions No. 4/2012 and No. 47/2012 (Democratic People's Republic of Korea) 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 duties to comply with international human rights that are peremptory and erga omnes norms such as the prohibition of arbitrary detention rest on all bodies and representatives of the State, and on all individuals.

36. 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 and 14, 18, 19 of the International Covenant on Civil and Political Rights.

37. 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 above recalled 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 rest 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

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

The detention of Choi Seong Jai, Hong Won Ok, Kim Seong Do, Kim Seong Il, Lee Hak Cheol, Lee Gook Cheol, Kim Mi Rae, and Lee Jee Hoon 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 and 14, 18, 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 cases submitted to it.

39. 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.

40. Finally, the Working Group invites the Government to better cooperate with it in the future, through the provision of substantive responses to the allegations transmitted.

[Adopted on 13 November 2013]

¹A/68/319, para. 21.

²Ibid., para. 24.

³"UN experts call for an international inquiry into North Korea human rights abuses", 28 February 2013. Available at

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13058&LangID=E>.

⁴A/HRC/RES/22/13.