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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. 29/2015 concerning Song Hyeok Kim (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 Council resolution 24/7 of 26 September 2013.
2. In accordance with its methods of work (A/HRC/30/69), on 25 March 2015 the Working Group transmitted a communication to the Government of the Democratic People's Republic of Korea concerning Song Hyeok Kim. The Government replied to the communication on 17 April 2015. 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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. Mr. Kim, born in 1979, is a national of the Democratic People's Republic of Korea.
5. In 1997, Mr. Kim went to China, where he met a Christian missionary and became interested in Christianity. He was involved in the work of promoting Christianity in the Democratic People's Republic of Korea and bringing religious texts to the country.
6. In 2001, Mr. Kim finished his training on Christianity and went back to his hometown in the Democratic People's Republic of Korea. After his return, a person associated with Mr. Kim reported on his religious interest to the National Security Agency. The source indicates that in the Democratic People's Republic of Korea, citizens are rewarded for reporting on fellow citizens suspected of committing political crimes. The source further reports that the spread of Christianity is considered by the State as a serious threat as it may challenge the established ideology of the country.
7. In March 2001, Mr. Kim was arrested without a warrant by personnel from the National Security Agency. The source reports that personnel from the Agency pressured Mr. Kim to confess and that his confession was allegedly falsified.
8. Consequently, Mr. Kim was falsely accused of having been trained by the intelligence agency of the Republic of Korea. He was reportedly tried in secret and denied access to a lawyer. Mr. Kim was alleged to have violated articles 61 (anti-State propaganda and agitation), 62 (treason against the fatherland) and 63 (espionage) of the Criminal Code. He was sentenced to 10 years of imprisonment. However, Mr. Kim was never informed about his date of release. According to the source, in the Democratic People's Republic of Korea, political prisoners are rarely released even after they have finished serving their sentence.
9. Since 2002, Mr. Kim has been detained in the Soosung re-education camp in Chongjin. He has been held incommunicado and has never been allowed to receive any family visits.
10. The source reports that in the Democratic People's Republic of Korea, no official notification is provided to the family when a person is 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 there are no legal procedures in the country to challenge the legality or arbitrariness of any detention. It is reported that anyone who attempts to establish the whereabouts of detained persons or challenge the legality of detention through unofficial channels will be convicted and punished on the basis of the principle of guilt by association.
11. The source submits that the detention of Mr. Kim is arbitrary and falls under categories I, II, III and V of the Working Group's defined categories of arbitrary detention.
12. The source is of the view that the arrest and detention of Mr. Kim result from his exercise of the right to freedom of religion, guaranteed in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights.

13. The source argues that Mr. Kim has not been guaranteed the international norms of due process and fair trial, in violation of articles 9 and 10 of the Declaration, and articles 9 and 14 of the Covenant. As mentioned above, Mr. Kim was arrested without a warrant. He was tried in secret and had no access to lawyer. Mr. Kim's confession was allegedly falsified by personnel from the National Security Agency.

14. The source asserts that the continued detention of Mr. Kim after he finished serving his sentence is in violation of his right to be free from arbitrary and unlawful detention, as guaranteed in article 9 of the Declaration and article 9 of the Covenant. Thus the detention of Mr. Kim after he finished his sentence, approximately in 2012, to the present could fall under category I of the Working Group's defined categories of arbitrary detention, given that there is no legal basis to justify the deprivation of liberty.

15. In addition, the source submits that the detention of Mr. Kim should be considered arbitrary, falling under category V, because the deprivation of liberty affecting Mr. Kim was motivated by discrimination based on religion.

Response from the Government

16. In its response dated 17 April 2015, the Government stated that Song Hyeok Kim does not exist in the Democratic People's Republic of Korea. Thus, according to the Government, the case was not worthy of consideration. The Government further stated: "Such communications are the extension of the stereotyped heinous anti-DPRK political plots by the forces hostile to the DPRK, including the south Korean regime, that resort to every conceivable scheme to intensify the anti-DPRK 'human rights' rackets."

17. Consequently, the Democratic People's Republic of Korea categorically rejects the cases mentioned in the Working Group's letters as "one of the anti-DPRK attempts".

Discussion¹

18. The Working Group regrets that the Government's response does not assist in assessing the allegations. As this type of response is often the case for communications addressed to the Democratic People's Republic of Korea, it does not affect the credibility and the reliability of the coherent and factually detailed information submitted by the source.

19. As in the current case, in its replies in previous cases the Government 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.² The Government merely stated in all its responses that it categorically rejected the cases mentioned in the Working Group's letters "as one of the anti-DPRK attempts".

20. As the Government chooses not to challenge the *prima facie* reliable information provided by the source on the violations of Mr. Kim's rights, the Working Group considers that Mr. Kim was deprived of liberty as a result of the peaceful exercise of his right to freedom of religion. Namely, Mr. Kim was arrested and convicted because of his involvement in the work of promoting Christianity in the Democratic People's Republic of Korea and bringing religious texts to the country.

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

² See Working Group opinions No. 2013/36, No. 2013/35 and No. 2013/34. The Working Group also notes that in 2013, the Working Group on Enforced or Involuntary Disappearances noted that, since its establishment, it had transmitted 20 cases to the Government and that all remained outstanding as the information provided by the Government was not considered sufficient to clarify those cases.

21. The Working Group concludes that Mr. Kim has been deprived of liberty in violation of article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights. Thus, the deprivation of liberty of Mr. Kim falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

22. The deprivation of liberty of Mr. Kim also falls within category V of the applicable categories, since his arrest and conviction were attributable to discrimination based on his religion.

23. In violation of the right to a fair trial, Mr. Kim was not provided with legal assistance at the pretrial stage and at trial. In a secret trial, and with no legal assistance, Mr. Kim was convicted to 10 years of imprisonment on charges of anti-State propaganda and agitation, treason against the fatherland and espionage.

24. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial established in article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights in the case of Mr. Kim is of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III of the categories applicable to the consideration of cases submitted to the Working Group.

25. Having been convicted in 2001 to 10 years of imprisonment and having served that sentence, Mr. Kim remains in detention without any legal basis justifying the deprivation of his liberty. Thus, his deprivation of liberty falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

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

The deprivation of liberty of Mr. Kim is arbitrary, being in contravention of articles 10 and 18 of the Universal Declaration of Human Rights and articles 14 and 18 of the International Covenant on Civil and Political Rights, and falls within categories I, II, III and V of the categories applicable to the consideration of the cases submitted to the Working Group.

27. Consequent upon the opinion rendered, the Working Group requests the Government to take the steps necessary to remedy the situation of Mr. Kim and to bring it into conformity with the standards and principles set forth in the Declaration and the Covenant.

28. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Mr. Kim and accord him an enforceable right to compensation in accordance with article 9 (5) of the Covenant.

29. In accordance with paragraph 33 (a) of its methods of work, the Working Group considers it appropriate to refer the allegations of torture and inhuman treatment to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 3 September 2015]