
**ADVANCE UNEDITED
VERSION**Distr.: General
17 September 2015

Original: English

**Human Rights Council
Working Group on Arbitrary Detention****ADVANCE UNEDITED VERSION****Opinions adopted by the Working Group on Arbitrary
Detention at its seventy-third session,
31 August– 4 September 2015****No.29/2015 (Democratic People's Republic of Korea)****Communication addressed to the Government on 25 March 2015****Concerning Mr. 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.**

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. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/30/69), 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. Song Hyeok Kim (hereinafter Mr. Kim), born in 1979, is a national of the Democratic People's Republic of Korea (DPRK).

4. 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 DPRK and bringing religious texts to the country.

5. In 2001, Mr. Kim finished his training on Christianity and went back to his hometown in the DPRK. After his return, a person associated with Mr. Kim reported on his religious interest to the National Security Agency (NSA). The source indicates that in the DPRK, 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.

6. In March 2001, Mr. Kim was arrested without a warrant by personnel from the NSA. The source reports that personnel from the NSA pressured Mr. Kim to confess and his confession was allegedly falsified.

7. Consequently, Mr. Kim was falsely accused of having been trained by the intelligence agency of the Republic of Korea. He was reportedly tried in a secret trial and denied access to lawyer. Mr. Kim was alleged to have violated article 61 (anti-State propaganda and agitation), article 62 (treason against the Fatherland), and article 63 (espionage) of the Criminal Law of the DPRK. He was sentenced to 10 years imprisonment. However, Mr. Kim was never informed about the date of release. According to the source, in the DPRK, political prisoners are rarely released even after they finish serving their sentences.

8. Since 2002, Mr. Kim has been detained in Soosung Reeducation Camp in Chongjin, DPRK. He has been held incommunicado and he has never been allowed to receive any family visits.

9. The source reports that in the DPRK, there is no official notification provided to the family when a person is sent to a political prison camp. Families of detained individuals often bribe personnel of the NSA to disclose information on the whereabouts of persons detained in political prison camps. The source further reports that in the DPRK, there are no legal procedures to challenge the legality or arbitrariness of any detention. It is reported that anyone who attempts to establish the whereabouts of the detained persons or challenge the legality of the detention by unofficial channels will be convicted and punished on the basis of the principle of guilt-by-association.

10. The source submits that the detention of Mr. Song Hyeok Kim is arbitrary and falls under category I, II, III and V of the Working Group's defined categories of arbitrary detention.

11. The source is of the view that the arrest and detention of Mr. Kim result from his exercise of his right to freedom of religion, as guaranteed by article 18 of the Universal Declaration of Human rights (UDHR), and article 18 of the International Covenant on Civil and Political Rights (ICCPR).

12. The source further argues that Mr. Kim has not been guaranteed the international norms of due process and guarantees to a fair trial, in violation of articles 9 and 10 of the UDHR, and articles 9 and 14 of the ICCPR. As mentioned above, Mr. Kim was arrested without a warrant. He was tried in a secret trial and he had no access to lawyer. Mr. Kim's confession was allegedly falsified by personnel from the NSA.

13. The source also 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 by article 9 of the UDHR and article 9 of the ICCPR. Thus the detention of Mr. Kim after he finished his sentence (approximately 2012) until this day 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".

14. 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

15. In its response of 17 April 2015, the Government stated that, Mr. Kim Song Hyeok does not exist in the DPRK. Thus, according to the Government, the case "is not worthy of consideration". The Government further stated that "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."

16. Consequently, the DPRK "categorically rejects the cases" mentioned in the Working Group's letters "as one of the anti-DPRK attempts".

Discussion¹

17. 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 DPRK, it does not affect the credibility and the reliability of the coherent and factually detailed information submitted by the source.

18. Like in the current case² in its replies in previous cases, the Government of the DPRK 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. Namely, the Government merely stated in all its responses that it "categorically rejects the cases" mentioned in the Working Group's letters "as one of the anti-DPRK attempts."

¹ In accordance with paragraph 5 of the Methods of Work, in order to avoid a perceived or real conflict of interest with respect to the State concerned, the member of the Working Group (Mr. Seong-Phil Hong) was not present during discussions and deliberations in this case.

² See Opinion s A/HRC/WGAD/2013/36; A/HRC/WGAD/2013/35; and A/HRC/WGAD/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.

19. As the Government choose not to challenge the *prima facie* reliable information of the violations of Mr. Kim's rights provided by the source, the Working Group considers, that Mr. Kim was deprived of liberty for 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 DPRK and bringing religious texts to the country.

20. The Working Group concludes that Mr. Kim has been deprived of liberty in violation of article 18 of the UDHR and Article 18 of the ICCPR. 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.

21. Furthermore, deprivation of liberty of Mr. Kim also falls within category V of the applicable categories as he was arrested and convicted for the reason of discrimination based on his religion.

22. In violation of the right to a fair trial, Mr. Kim has never been provided with a legal assistance at the pre-trial stage and at trial. Upon a secret trial with no legal assistance, Mr. Kim was convicted to 10 years imprisonment on charges of "anti-State propaganda and agitation", "treason against the Fatherland", and "espionage".

23. 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 UDHR and article 14 of the ICCPR in this case is of such gravity as to give the deprivation of liberty of Mr. Kim an arbitrary character. Thus, the deprivation of liberty of Mr. Kim falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

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

Disposition

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

The deprivation of liberty of Mr. Kim has been arbitrary, being in contravention of articles 10 and 18 of the UDHR, and articles 14 and 18 of the ICCPR; it falls within categories I, II, III, and V of the categories applicable to the consideration of the cases submitted to the Working Group.

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

27. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release of Mr. Kim and accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the ICCPR.

28. In accordance with Article 33(a) of its Revised Methods of Work, the Working Group considers it appropriate to refer the allegations of torture and inhuman treatment to the Special Rapporteur on torture for appropriate action.

[Adopted on 3 September 2015]