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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its sixty-eighth session, 13-22 November 2013

#### No. 36/2013 (Democratic People's Republic of Korea)

#### Communication addressed to the Government on 27 August 2013

Concerning Choi Sang Soo, Choi Seong II, Kim Hyeon Sun, Kim Gyeong II and  
Park Sung Ok

**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 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/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

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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 concerns five individuals, all nationals of the Democratic People's Republic of Korea, usually residing in Hoiryeong, North Hamkyung Province. These individuals attempted to defect and seek asylum in the Republic of Korea. In doing so, they crossed the border into China and were arrested by agents of the National Security Agency of the Democratic People's Republic of Korea. Following their repatriation, they were detained at the Hoiryeong National Security Agency before being transferred to Susung Kwanliso Political Prison Camp No. 25 in Chongjin, where they are believed to remain today. The petitioners have been kept incommunicado from the time of their arrest.

4. Choi Sang Soo, male, born in 1921, is a prisoner of war from the Republic of Korea, who failed to be repatriated after the Korean War. He was 78 years old at the time of his arrest. His son, Choi Seong Il, born in 1948, worked as a farmer at Wonsan 5-ban Work Unit in Hoiryeong. He was 51 years old at the time of his arrest.

5. In July 1999, Choi Sang Soo and Choi Seong Il fled from the Democratic People's Republic of Korea to China. On 18 September 1999, at approximately 9 pm, they were arrested by four agents of the National Security Agency in their hotel room in Yanji, Jilin. Following their repatriation, they were both detained in the Hoiryeong National Security Agency for a period of three months. The source cites an eyewitness account of the severe physical abuse they suffered whilst in detention there. On 12 December 1999, Choi Sang Soo and Choi Seong Il were transferred to Camp No. 25. Their former cellmate in the Hoiryeong detention centre and the wife of Choi Sang Soo report they were informed of this fact by agents of the National Security Agency.

6. The source alleges that the detention of Choi Sang Soo and Choi Seong Il was ordered by a branch of the National Security Agency in charge of the Hoiryeong crop-processing factory, the conspiracy research office of the National Security Agency in North Hamkyung Province and the National Security Agency in Pyongyang.

7. Kim Hyeon Sun, female, born on 6 February 1971, residing at 5-ban, Ohsanduck-dong, was 40 years old at the time of her arrest. Her son, Kim Gyeong Il, born on 10 May 1994, was a student at Dongmyung Middle School.

8. Kim Yong Sik, the husband of Kim Hyeon Sun and the father of Kim Gyeong Il, who resides in the Republic of Korea, commissioned two defection brokers in Hoiryeong, Kim Eung Guk and Kim Eung Chan, to assist his wife and son with crossing the border into China. In January 2011, Kim Hyeon Sun and Kim Gyeong Il were arrested by three agents of the Hoiryeong National Security Agency at the Tumen riverside, Manghyang-dong, Hoiryeong, whilst attempting to cross the border into China. They were thereafter repatriated to the Democratic People's Republic of Korea, where they were detained in the

Hoiryeong National Security Agency for six months and later in the North Hamkyung Provincial National Security Agency for three months, for purposes of interrogation. In September 2011, Kim Hyeon Sun and Kim Gyeong Il were transferred to Camp No. 25.

9. Kim Yong Sik speculates that the National Security Agency may have become aware of the defection plan of his wife and son through wire-tapping their telephone and thereafter employing the defection broker, Kim Eung Guk, in the plan to arrest them. The source cites conflicting reports as to whether Kim Gyeong Il is deceased.

10. Park Sung Ok, female, born 21 September 1989, ordinarily residing at 18-ban, Kangan, was a student at Kangan Senior Middle School. She was 19 years old at the time of her arrest. In January 2005, she defected from the Democratic People's Republic of Korea to Yanji, China, and was joined by her mother in May 2005. They worked together in restaurants.

11. On 9 July 2007, Park Sung Ok was part of a group of seven individuals who used the services of a defection broker to travel to Nei Mongol Autonomous Region with the objective of entering Mongolia to seek asylum at the embassy of the Republic of Korea there. On 11 July 2007, Park Sung Ok was arrested by the border garrison of the Chinese police at Erenhot, Xilin Gol. She was temporarily imprisoned in Tumen frontier detention house in China before being repatriated to the Democratic People's Republic of Korea.

12. In November 2007, Park Sung Ok was transferred to Onsung National Security Agency, North Hamkyung Province, where she was placed under investigation for a month. In December 2007, she was transferred to Hoiryeong National Security Agency. On 15 July 2008, Park Sung Ok was transferred to the National Security Agency of North Hamkyung Province and later that year was reportedly sentenced to three years' imprisonment in Camp No. 25.

13. The source does not know whether a warrant was presented for the arrest of the petitioners and whether the petitioners are aware of the reasons for their detention. It reports that family members, despite their efforts, have not been provided with any official communication from the National Security Agency or any other body justifying the legal basis on which the petitioners are being detained. Furthermore, the source reports that family members have been discouraged from seeking information about the well-being and whereabouts of the petitioners. The source submits that their detention is arbitrary pursuant to category I of the legal categories applied by the Working Group.

14. The source conjectures that the petitioners are being detained according to article 62(3) of the Criminal Law of the Democratic People's Republic of Korea which 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 5 years. In cases where the person commits a grave offence, he or she shall be punished by reform through labour for more than 5 years and less than 10 years."

15. The source notes that, contrary to the provisions of the law, the petitioners are being detained in a political prison camp, not a labour re-education camp. It understands this to be the customary procedure for defectors to the Republic of Korea, as they are considered to have directly assaulted the authority of the leadership, thereby committing an act of treason against the State. Furthermore, the source argues that the petitioners have received especially harsh treatment in detention due to the fact they have family members residing in the Republic of Korea.

16. The source adds that the petitioners may also be detained for violating the "Party's Ten Principles for the Establishment of the One-Ideology System", and in particular the following:

“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 honour the Great Leader comrade Kim Il-Sung with all our loyalty.

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

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.

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.”

17. The source was informed by a former guard of a political prison camp in the Democratic People’s Republic of Korea that it is very rare for a prisoner to be released from these camps. In the case of Park Sung Ok, the source observes that she continues to be detained following the termination of her sentence.

18. The source reports that no judicial remedies or appeal procedures are made available to detainees of political prison camps in the Democratic People’s Republic of Korea. 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 category III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

#### *Response from the Government*

19. By a letter dated 27 August 2013, the Working Group transmitted the allegations set out above to the Government of the Democratic People’s Republic of Korea, requesting detailed information about the current situation of the above-mentioned petitioners.

20. 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 of the Republic of Korea. The Government therefore “categorically rejects the cases ... as one of the anti-DPRK attempts”.

#### **Discussion**

21. Three different communications were transmitted to the Government and it is unfortunate that in all three instances (see also No. 34/2013 (Democratic People’s Republic of Korea) and No. 35/2013 (Democratic People’s Republic of Korea)), it responded in exactly the same way as above, by means of the same letter, without any attempt to discuss the serious allegations against it.

22. 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 allegations 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 conviction; and indefinite detention in political prison camps, often following the completion of the prison sentence.

23. 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.

24. 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 information provided by the source concerning the detention of the petitioners.

25. The Working Group recalls its Opinion No. 4/2012 (Democratic People's Republic of Korea) 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, i.e. the immediate release of these individuals, and accord them an enforceable right to compensation in accordance with article 9, paragraph 5 of the International Covenant on Civil and Political Rights.

26. 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 Assembly resolution 62/167.

27. In addition, the Working Group refers to the concluding observations of a number of 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 International Covenant on Civil and Political Rights.

28. 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.

29. In his most recent report to the General Assembly (A/68/319), the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea stated that, according to information received, labour camps have been in operation in the country since the 1950s and 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. Once declared guilty, detainees are either executed or transferred to a prison camp where they are held incommunicado and without trial in harsh conditions. Furthermore, it is alleged that prisoners, including children, have been subjected to forced labour and that torture and public executions are common within the camps. It is also reported that women are subject to rape, forced abortion and killing and that the majority of prisoners in at least four camps remain in custody until their death. At least 40,000 prisoners have reportedly perished in the camps.

30. 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, whereby when a person is punished for a political or ideological crime, members of his or her family are also punished, with up to three generations of family members sent on this basis to the camps. Detainees are often not

told the reasons for their detention or whether they will ever be released and no information regarding their whereabouts is provided to friends, neighbours, co-workers or more distant relatives who enquire about them (Ibid.).

31. The Working Group recalls that on 3 October 2012, 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, it 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.

32. The Working Group takes note of the recently established Commission of Inquiry on human rights in the Democratic People's Republic of Korea that was 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 abductions of nationals of other States.

33. In a statement made to the sixty-eighth session of the Third Committee of the General Assembly on 29 October 2013, the Chair of the Committee noted that the final conclusions and recommendations of the Commission of Inquiry would have to await the end of the investigation, but that the entire body of evidence gathered to date pointed to what appeared to be large-scale patterns of systematic and gross human rights violations.

34. The Working Group recalls that it noted in its Opinions No. 4/2012 and No. 47/2012 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, rests on all bodies and representatives of the State and on all individuals.

35. 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. Their detention thus falls within categories I, II and III of the categories applicable to the cases submitted to the Working Group.

36. 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 duties 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 with relevant responsibilities, including judges, police and security officers and prison officers. No person can contribute to human rights violations.

**Disposition**

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

The detention of Choi Sang Soo, Choi Seong II, Kim Hyeon Sun, Kim Gyeong II and Park Sung Ok 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 arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

38. 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 of the petitioners 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. 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]*

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