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PERMANENT MISSION OF THE REPUBLIC OF KOREA
GENEVA

KGV/172/2012

Reference: Communication From Special Procedures Joint Allegation Letter AL G/SO
214 (56-23) G/SO 214 (3-3-16) G/SO 214 (53-24) KOR 1/2012

The Permanent Mission of the Republic of Korea to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, and in response to the latter's note verbale dated 17 April 2012, has the honor to submit, as attached, the Republic of Korea's response to the letter of the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The Permanent Mission of the Republic of Korea to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurance of its highest consideration.

OHCHR REGISTRY

Encl.: as stated

31 AUG 2012

Geneva, 29 August 2012

Recipients :.....SPD.....
.....
.....

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**Response of the Government of the Republic of Korea
to the letter of the Special Rapporteur on freedom of religion or belief;
the Special Rapporteur on the independence of judges and lawyers;
and the Special Rapporteur on torture and other cruel, inhuman and
degrading treatment or punishment**

Ref.: AL G/SO 214(56-23) G/SO 214(2-2-16) G/SO 214(53-24) KOR 1/2012

1. The Government of the Republic of Korea submits its response to the information request of the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment made by the letter sent on April 17, 2012.
2. The case summarized by the Special Rapporteurs is related to the facts that occurred in the Republic of Korea and Uzbekistan. Among the facts alleged in the letter, it is difficult to verify whether the incidents said to have occurred in Uzbekistan are true. Thus, our government provides its conclusions drawn from facts such as Mr. [REDACTED]'s application for refugee status.

Facts about entry, exit, and deportation of Mr. [REDACTED]

Facts about entry and exit of Mr. [REDACTED]

3. In the joint letter of allegation by the Special Rapporteurs, Mr. [REDACTED] allegedly entered Korea to escape from religious persecution. This allegation, however, is not consistent with the facts.
4. He entered Korea in 2002 as an industrial trainee under the name [REDACTED] and stayed until 2008. He stayed in Korea illegally for approximately 4 years and 5 months after his visa was terminated in January 2004. He voluntarily reported to the Korean government on July 8, 2008 according to the illegal immigrant voluntary report policy and departed Korea after receiving an exit order. Since Mr. [REDACTED]'s

overstay had been in violation of the *Immigration Control Act* of Korea, he was notified of administrative measures that, according to the relevant laws, barred him from re-entry for 1 year. However, Mr. [REDACTED] changed his name twice following his exit and re-entered Korea on October 10, 2008 with a temporary business visa. On the visa application he submitted to the Korean Embassy in Uzbekistan on September 24, 2008, Mr. [REDACTED] had given false information regarding his change of name and his past visits to Korea. Upon entering Korea with the said visa, he applied for change of status to that of spouse of a student, his reason being that he intended to stay with his wife who was studying in Korea. With no knowledge of his past violations of Korean laws, our government approved his application.

5. Seoul Immigration Office personnel arrested Mr. [REDACTED] on February 7, 2012 on the basis of his illegal entry described above, and issued a deportation order on February 8. The basis for such measures was not the fact that he had entered Korea by changing his name, but rather the fact that he had entered while still under the entry ban that had been issued as a result of his previous illegal stay, with a visa obtained by concealing information.

Facts about Mr. [REDACTED]'s finger injury at the Seoul Immigration Office and subsequent medical treatment

6. Mr. [REDACTED] injured his finger when he used physical force to resist law enforcement at the Seoul Immigration Office. Our officials did not commit any action that could be classified as torture under international human rights law. The Korean government fully provided emergency care, surgery, and further medical treatment for his injury at government expense. Enforcement of the deportation was also suspended to allow for treatment.
7. His finger injury was caused as a result of his resistance during the process of legitimate efforts to carry out enforcement of his deportation. A Seoul Immigration Office official had ordered Mr. [REDACTED] to change his clothing in the protection room but he refused, resisting with actions such as holding onto a facility structure,

not coming out of the room, and lying on the floor refusing to get up. In accordance with Article 56(4) of the *Immigration Control Act*, four staff members were trying to remove him from the facility structure, when Mr. [REDACTED] who had been holding his two hands together, suddenly screamed and fell. The officials immediately discovered that something was wrong with his left little finger and transferred him to receive treatment at the nearby *Hong-ik Hospital*.

8. The attending physician stated that the bone on the tip of Mr. [REDACTED]'s finger was fractured. Thus, the enforcement of his deportation was suspended and he was sent to *Hwaseong Detention Center* on February 13. In accordance with the results of the examination at *East Suwon Namyang Hospital*, Mr. [REDACTED] was referred for surgery. After receiving outpatient care at *Woo Kyungjo Hospital* in *Ansan* on February 22, he received orthopedic surgery on February 23, followed by further outpatient care on February 29. Apart from the treatment he received outside the detention center, Mr. [REDACTED] received 14 treatments from physicians-in-residence at the *Hwaseong Detention Center* from February 13 to March 19. All accrued costs of treatment were paid by the Korean government.

Facts about cooperation with the Uzbekistan authorities

9. Our government received assistance from the Embassy of Uzbekistan in the Republic of Korea to obtain a travel document needed to enforce deportation, as Mr. [REDACTED] and his wife had failed to submit his passport. His travel document was issued two times. The first travel document was issued on February 10 and expired while he received medical treatment and underwent the refugee status determination process and the second travel document was issued on March 16, 2012.
10. The enforcement of deportation as generally carried out by immigration officials ends with the handover of deportees and their passports to flight attendants waiting in front of the gate for their respective flights. This procedure differs from the one of extraditing criminals or convicts to a respective government. In Mr. [REDACTED]'s case, immigration officials led him according to the standard deportation procedures. They

informed the flight attendants of the Uzbekistan airline company of the fact of his deportation and delivered him to the plane, watching the door close and the plane take off. The allegation by the complainant that he was escorted to the plane by Uzbek guards who boarded him and traveled with him to Uzbekistan is not consistent with these facts. However, it was found later that consular representatives from the Embassy of Uzbekistan in the Republic of Korea, who had learned of Mr. [REDACTED] deportation order in the process of preparing his travel documents, came to *Incheon* International Airport on the day of his departure. The representatives received a temporary entry pass from the *Incheon* International Airport Corporation and went to the boarding gate for Mr. [REDACTED] s flight, where they watched the deportation take place.

11. The only assistance the Korean government received from the Uzbekistan Embassy was with regards to arrangements for the travel documents needed for Mr. [REDACTED] s departure. No request was made for consular officials to come to the airport. We are unaware of the whereabouts of Mr. [REDACTED] after the deportation was enforced.

The decision of the Korean government with regards to the application for refugee status and the principle of non-refoulement

Facts concerning the allegations of Mr. [REDACTED] s application for refugee status process and threats to his wife

12. In order to allow Mr. [REDACTED] to receive treatment for the finger injury he sustained on February 10, the Korean government transferred him on February 13 to the *Hwaseong* Detention Center, where Mr. [REDACTED] was able to maintain a comfortable lifestyle under protection and receive care from the physicians-in-residence. At the time, Mr. [REDACTED] did not indicate his intention to apply for refugee status. It was Mr. [REDACTED] s wife, in search for ways to stop the deportation of her husband, who learned about the possibility of refugee status application and expressed through the UNHCR her desire to apply for refugee status on behalf of her

husband. The date of Mr. [REDACTED]'s wife submission of the application and necessary documents to immigration authorities was February 15. The application was accepted on the day it was submitted, which contradicts the allegation that receipt of application was denied. The application had been filled out by Mr. [REDACTED]'s wife.

13. The statement in the complaint alleging that Mr. [REDACTED]'s wife was threatened is not consistent with the facts. The Korean government contacted Mr. [REDACTED]'s wife to notify that he was to be deported and was under the protection of the government, and to request that she submit his passport. There were no threats made against Mr. [REDACTED]'s wife and she was not contacted for any other purpose.

Refugee status determination and the decision of the Korean government

14. An interview was held in the interview room at *Hwaseong* Detention Center on March 16 as part of the determination process for Mr. [REDACTED]'s application for refugee status. Translation during the interview was done by an Uzbek who had received refugee status and had completed studies as an international student at a university in Korea. The interpreter had ample experience interpreting for refugee status application interviews. After the interview, Mr. [REDACTED] went through the procedure of signing his name after verifying the details of his statement. At the time, Mr. [REDACTED] made no indication that he believed the translation to have been inadequate. Accordingly, the grounds for the allegation of poor translation services are insufficient.
15. During the interview, Mr. [REDACTED] stated with regards to persecution that he would be taken to prison by the secret police if he were to be repatriated to his country because the fact that his wife had worn the *hijab* in Korea had been reported to his home country and his mother and mother-in-law had been investigated by the secret police. The immigration officer conducting refugee status determination asked about the concrete circumstances of the alleged investigation of Mr. [REDACTED]'s mother and mother-in-law. Mr. [REDACTED] was asked where and from whom he had heard the

information about this investigation, but he could not give an answer.

16. During the interview, Mr. [REDACTED] said that before coming to Korea he had lived in Uzbekistan without any problems. He stated that the week before, he had talked on the telephone with his mother back home and that it was only then when she had told him that it was too dangerous for him to return to his country.

17. Mr. [REDACTED] alleges that he would receive persecution for his wife's wearing the *hijab*. In actuality, his wife has not applied herself for refugee status, and during her stay in Korea, she made extended trips to her home country in 2006 and 2008 and there was no indication of her having received persecution. When she returned to Korea, she continued her studies. After considering the overall objective circumstances and Mr. [REDACTED]'s statements, the Korean government assessed that he was not eligible to receive protection according to the UN Convention and Protocol Relating to the Status of Refugees on the basis that he was unable to explain consistently the circumstances of his claim that he would receive persecution.

18. The refugee status determination procedure is not a criminal procedure but rather an administrative procedure that assesses whether or not the applicant should be granted the benefits of protection for refugees. Nevertheless, in light of the fact that the determination procedure exists for the protection of the human rights of individuals, the law regulating the refugee status determination was passed to ensure the fairness and quasi-judicial nature of the procedure. Since refugee status determination law does not pertain to the criminal procedure, the legislation does not include a provision on the right to receive legal counsel or assistance, but in practice, refugee applicants are not prohibited from making use of legal counsel during the application or interview process. Mr. [REDACTED] received such legal assistance from an attorney experienced in refugee cases. The attorney informed Mr. [REDACTED]'s wife that a family member can lodge a refugee status application on behalf of the applicant, and he also assisted her with filing complaints with the UN Special Procedures and the National Human Rights Commission of the Republic of Korea. Thus, it is considered that the right to legal aid was sufficiently exercised.

The reasons of deportation and the decision of the Korean government

19. When applications for refugee status are received, the Korean government usually goes through related national organizations to determine whether or not the applicant is eligible to receive international protection as a refugee. During the process of determining the eligibility of Mr. [REDACTED], information was obtained indicating that Mr. [REDACTED] had been involved in specific activities with an international terrorist organization during his stay in Korea. In accordance with international refugee law and Article 62(4) of the *Immigration Control Act*, (see annex) in concern for the threat to public safety, Mr. [REDACTED]'s application for refugee status was denied and the deportation enforced.
20. During the process of refugee status determination, the Korean government considered that the objective facts of Mr. [REDACTED]'s case did not qualify him to receive protection based on the principle of non-refoulement that would have prevented him from being repatriated.

Investigation of Mr. [REDACTED]'s complaints

21. If a person believes that a government official violated human rights through torture or executed their duties unjustly, he or she can initiate a legal proceeding for remedial measures with the judiciary and file a complaint with the National Human Rights Commission of Korea (NHRCK) or the Anti-Corruption and Civil Rights Commission of Korea. Additionally, in case legal affairs administrative government officials violate human rights in their execution of their duties, complaints can be made with the Ministry of Justice. A total of two complaints alleging Mr. [REDACTED] as a victim were received by the NHRCK. At the moment, the investigation is underway and whether there was a human rights violation or not is yet to be decided.
22. Mr. [REDACTED]'s wife lodged a complaint with the NHRCK on February 22, 2012 against officials of the Seoul Immigration Office. It is alleged in the complaint that

the victim suffered from human rights violation during the process of arrest and investigation and received inappropriate medical treatment in the facility. The second complaint was lodged by Public Human Rights Law Center against the Chief of the Seoul Immigration Office. It is alleged that Mr. [REDACTED] was deported during the appeal period following the rejection of his refugee status application, no adequate translation was provided while a threatening atmosphere was created during the interview, and Mr. [REDACTED]'s wife was insulted, threatened and interfered during the process of applying for her husband's refugee status. Currently the NHRCK is investigating both complaints and the immigration authorities of the Ministry of Justice have faithfully submitted requested information to NHRCK.

Conclusion

23. Our government has been making efforts to interpret and implement the international human rights standards referred by the Special Rapporteurs in the allegation letter, and will continue to do so in the future. Reflecting the facts described above, there is no basis for the made allegations, such as the torture of Mr. [REDACTED] by our government officials or threats to his wife. Our government did not cooperate with the Uzbekistan authorities to arrest or deport him. Our government only received conventional assistance from them in obtaining travel document to enforce deportation.
24. Furthermore, Mr. [REDACTED] received sufficient assistance from a local attorney during the process of refugee status application and the deportation enforcement, and subsequently in lodging complaints to the Special Procedures of the UN Human Rights Council. Moreover, the government cooperated and provided information to the attorney who assisted Mr. [REDACTED]. However, the deportation was enforced in a speedy manner because it was found during the process of refugee status application that Mr. [REDACTED] was organizing specific activities that pose threats to the public order of the Republic of Korea. It is the understanding of the Korean government that Mr. [REDACTED] abused the refugee status recognition procedures to extend his stay in Korea and interfere with enforcement of deportation, while scheming activities that

endanger public safety. As provided above, his deportation order was already made before he applied for refugee status, and he did apply for refugee status during temporal stay in Korea for his medical treatment of his injury sustained from his resistance to lawful enforcement of the order.

25. It is regretful that the whereabouts of Mr. [REDACTED] are currently unknown in spite of such efforts made by our government. We will continue to endeavor to comply with international human rights norms and to cooperate with the Special Procedures of the Human Rights Council. /End/

Annex

Article 62 of the Immigration Control Act

Article 62(Execution of Deportation Orders)

- (1) A deportation order shall be executed by an immigration control official.
- (2) The head of the office or branch office, or the head of a foreigner detention facility may entrust any judicial police official to execute a deportation order.
- (3) In executing a deportation order, the deportation order shall be presented to the person in receipt of such order, and the person shall be repatriated without delay to the country of repatriation under Article 64: Provided that if the head of the ship, etc. or forwarding agent repatriates him/her under Article 76, an immigration control official may hand over such person to the head of the ship, etc. or forwarding agent.
- (4) Notwithstanding paragraph (3), no person in receipt of a deportation order may be repatriated where he/she falls under any of the following cases: Provided that this shall not apply where a person who has applied for recognition as a refugee endangers or is likely to endanger the security of the public in the Republic of Korea:
 1. Where he/she has applied for recognition as a refugee under Article 76-2 but the decision thereon has not yet made;
 2. Where he/she has filed an objection under Article 76-4, but the examination thereof has not yet finished.