



PERMANENT MISSION OF THE REPUBLIC OF KOREA
GENEVA

KGV/ 113 /2016

Reference: Joint Communication from Special Rapporteurs (AL KOR 3/2015)

The Permanent Mission of the Republic of Korea to the United Nations Office and other International Organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) and, with regard to the latter's note verbale dated 20 November 2015, has the honor to submit, as attached, the Republic of Korea's response to the joint communication from three Special Rapporteurs.

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 Secretariat of the United Nations (Office of the High Commissioner for Human Rights) the assurances of its highest consideration.

Encl.: as stated

Geneva, 20 May 2016

Special Procedures Branch (c/o Natacha Foucard)
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Response of the Republic of Korea on the Joint Communication from Special Rapporteur on Freedom of Expression, Special Rapporteur on Freedom of Assembly and Association, and Special Rapporteur on Human Rights Defenders

Reference: AL KOR/3/2015

1. With regard to the joint communication to the Government of the Republic of Korea on 20 November 2015 sent by Special Rapporteur on Freedom of Expression, Special Rapporteur on Freedom of Assembly and Association, and Special Rapporteur on Situation of Human Rights Defender, the Government of the Republic of Korea submits its response as follows.

Additional Information and Comments in Regard to the Allegations

2. Mr. Nshimirimana arrived at *Incheon* Airport in the Republic of Korea via Qatar Airways flight QR858 (departure from Doha, Qatar) on 31 October 2015. However, during the immigration process his passport was found to be recorded by INTERPOL as stolen and lost. Accordingly, the *Incheon* Airport Immigration Office denied his entry on the grounds of Mr. Nshimirimana not holding a valid passport, whereupon he was escorted to the port of departure to board Qatar Airways flight QR859 arriving at Doha, Qatar at 00:05 a.m. on 1 November 2015.

3. Contrary to his allegations, Mr. Nshimirimana did not show intentions to appeal against the decision of denial of entry by the immigration office. He stayed in the waiting room for deportees until he could board an available plane. He was not brought to a custody room. The waiting room Mr. Nshimirimana stayed in is operated by airline companies that allow a foreigner whose entry is denied to stay in until departure, upon his application to use the waiting room. Mr. Nshimirimana followed this exact procedure and stayed in the waiting room until his departure time. Further, the immigration authorities allowed him to contact the inviting organization, but could not get through to anyone.

Information on the Denial of Entry and Legal Grounds thereof

4. Article 7, Paragraph 1 of the *Immigration Control Act* of the Republic of Korea stipulates that “when a foreigner enters the Republic of Korea, he/she shall hold a valid passport and a visa issued by the Minister of Justice.” Accordingly, Article 12 of the Act stipulates that immigration

control officials at the port shall inspect the validity of the passport during the immigration inspection. Also, legal principles have been established in the customary international law that the States own the rights to deny a foreigner's application of entry when certain requirements are not fulfilled and the freedom of entry of foreigners is not recognized as a human right.

5. The term "valid passport" in the abovementioned Act refers to a passport that is issued by the competent governmental authority according to the legitimate procedures, and the title holder and the real holder of the passport are one and the same. As such, the Government of the Republic of Korea currently utilizes the information of stolen and lost passports offered by INTERPOL during the immigration inspection in order to counter entry attempts by a disqualified person holding an invalid passport. In fact, as each government provides information of stolen and lost passports to the Secretariat of INTERPOL, the Government of the Republic of Korea utilizes this information as credible reference in determining the validity of passports.

6. Therefore, as mentioned above, as long as Mr. Nshimirimana's passport is verified to be listed in the stolen and lost passport database of INTERPOL, the Immigration Office may deny his entry on the grounds that the passport is invalid, unless any proof or overriding information exists that could refute the invalidity of the passport.

7. This is not affected by the fact that Mr. Nshimirimana had been issued a valid visa from the Embassy of the Republic of Korea in Rwanda. Visa issuance is a mere precondition for entry while the actual entry requires the final permission of the Immigration Office after the immigration inspection process.

8. Article 12 of *the International Covenant on Civil and Political Rights* provides for the freedom of movement and residence. As approving or denying entry of a foreigner remains the due rights of the sovereign state, the right of a foreigner to enter a country is generally not recognized. This is also indicated in the General Comments 27 of the Human Rights Committee. Thus, the Government's denial of entry of Mr. Nshimirimana is a proper disposition following the relevant laws, which does not constitute a breach of the right to freedom of movement of Mr. Nshimirimana. If his freedom of movement or freedom of expression had been violated, such violations cannot be attributed to the Government of the Republic of Korea but rather to the Government of the Republic of Burundi, which provided INTERPOL with the information that his passport was "stolen and lost."

Reasons for the Government's Visa Issuance despite the INTERPOL's Alert

9. The Government utilized the database of INTERPOL to verify the passport as a general procedure for immigration inspection, as mentioned in the above Paragraph 5. INTERPOL did not alert the Government to take actions against a particular person. Moreover, there is no system for retrieval of the INTERPOL database during the process of visa issuance. Mr. Nshimirimana applied for a visa meeting the requirement of visa issuance and accordingly received a legitimately issued visa while the registration of his passport in the database of INTERPOL was unconfirmed. Internationally, it is an established practice of States that visa issuance does not guarantee entry into the country. Entry into the Republic of Korea is decided upon the immigration inspection according to the *Immigration Control Act*.

Information regarding Denial of Right to Appeal and the Alleged Refusal of contact the Inviting Organization

10. Generally, an individual may appeal to administrative disposition by raising formal objections, filing administrative appeals, filing administrative litigations, etc. Accordingly, Mr. Nshimirimana could have filed an administrative appeal or an administrative litigation, in order to challenge the denial of entry. However, he did not show any intention to take actions to object to the denial of entry in any particular way.

11. Further, the immigration authorities allowed him at that time to contact the inviting organization, the Korea Human Rights Foundation. He and the immigration officer made several phone calls to the Foundation, yet no one answered. After Mr. Nshimirimana returned to the port of departure, the Korea Human Rights Foundation called back, and the immigration officer provided a detailed explanation for the denial of entry.

Effort of the Government to Reconcile the INTERPOL's Requests and the Right to Peaceful Assembly and Association

12. The Government has denied the entry of Mr. Nshimirimana because the passport being used for entry into the country was listed in the lost and stolen passport database of INTERPOL during the immigration inspection, which has no association with any special request by INTERPOL. The Government did not evaluate his possible engagement in political activities in Korea nor his activities against his government. The decision to deny his entry into Korea has solely been made on whether or not it satisfies the requirements set forth in the *Immigration Control Act*.

Measures to Ensure the Activities of Foreign Human Rights Defenders in Korea

13. Through strict adherence to the Constitution and international human rights standards, the Government ensures the freedom of assembly and association, and the freedom of expression to all individuals subject to the jurisdiction of the Republic of Korea. These rights may be restricted by law when necessary for national security, maintenance of public order or for general welfare, and this applies to the foreigners as well. However, political engagements of foreigners are limited by the nature of the activities, under to the *Immigration Control Act*.¹

Conclusion

14. With all due respect and appreciation for the efforts of the Special Rapporteurs, the Government provides as above the information requested by the Special Rapporteurs. /End/

¹ Article 17 of the *Immigration Control Act* stipulates that foreigners shall not be permitted to participate in domestic political activities unless some conditions which the law explicitly permits. The Act also grants the Minister of Justice the authority to directly issue orders to foreigners who violated this Article to immediately cease their participation in political activities.