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The Permanent Mission of the Republic of Korea to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and has the honour to transmit herewith the response of the Government of the Republic of Korea to the Joint Communication from Special Procedures, dated 17 June 2022 (AL KOR 1/2022).

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

9 August 2022

Enclosed: as stated

Office of the United Nations High Commissioner for Human Rights (OHCHR)



**The Government of the Republic of Korea's Response**  
**to the Joint Communication from**  
**UN Human Rights Council Special Procedures**

(August, 2022)

**1. Please provide any additional information and/or comment(s) you may have on the above-mentioned (ill-treatment of migrants in the immigration detention facilities) allegations.**

The Ministry of Justice (MOJ) is to state in the clearest possible terms that the claims that there has been a generalized ill-treatment of detained migrants in immigration detention centres in the Republic of Korea — including verbal abuse, solitary confinement and excessive use of force, and lack of access to adequate health services — are simply not true.<sup>1</sup>

Also, allegations that detainees with mental health conditions do not have access to adequate healthcare and placed in solitary confinement are completely misleading.<sup>2</sup>

**2. Please include details of any steps taken by your Excellency's Government to investigate the alleged cruel, inhuman and degrading conditions of immigration detention in the Republic of Korea, to ensure personnel and institutional accountability for such abuse and to provide full redress and rehabilitation for the resulting harm.**

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<sup>1</sup> It is true that under relevant regulations, there could be a case where, for a certain period, a detained migrant can actually be moved to a solitary cell or ordered to wear protective gears. However, such measures are taken only when a detainee assaults officers or other detainees, causes damage to facilities, engages in self-harm or any other risky behaviors that compromise the safety of the detainee him/herself, others, or the entire detention facility.

<sup>2</sup> Solitary confinement may be an option in certain circumstances — when such a measure is required to ensure the safety of the detainee himself/herself and other individuals. However, if a detainee subject to solitary confinement has mental health conditions, he/she receives medical care and can get hospitalized if required.

With regards to the use of excessive physical means of restraint at the Hwaseong Immigration Detention Centre, the National Human Rights Commission of Korea (NHRCK) has issued recommendations to launch an investigation on the matter and come up with measures to prevent the recurrence of such incidents. (Oct 8, 2021 / Dec 3, 2021)

A fact-finding probe launched by the MOJ — including interviewing the detainee concerned, on-site investigations on five separate occasions, and meetings with human rights groups — confirmed that there was no legal basis to justify the use of the protective gears at issue and the way in which they were used. (Nov 1, 2021)

The MOJ also issued a stark warning to two officers who were on duty at the time and conducted on-the-job training for 12 others.

The detainee received counseling and constant medical care both inside and outside the Centre. An outside health provider conducted his health screening, which showed that sustained outpatient treatment was necessary. Acknowledging his situation, the MOJ temporarily released him from detention. (Feb 8, 2022)

**3. Please provide information on measures taken, or to be taken, to end solitary confinement and physical means of restraint against migrants detained in administrative detention for immigration reasons, in accordance with the non-punitive character of the detention in the course of migration proceedings.**

The MOJ is working to amend the Foreigner Detention Regulation in an attempt to better protect the human rights, lives, and physical safety of detained migrants.<sup>3</sup>

It has been pointed out that the current Foreigner Detention Regulation — which sets out most of

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<sup>3</sup> The proposed amendments include the following: i) Appointing ‘human rights protection officers,’ who will be responsible for handling reports of human rights violations and investigations, ii) Granting detained migrants ordered to be put in special custody the right to make a statement of opinion and/or file an objection, iii) Setting out detailed rules on the permissible protective gears and the ways they must be used on detainees

the rules for immigration detention — ensures the human rights of detained migrants but to a limited extent, since it is the ordinance of the MOJ. In consideration of this, the MOJ is seeking to enact the ‘Act on Treatment of Detained Foreigners’ to elevate the significance of protecting detainees.

**4. Please provide information on any measures taken, or envisaged to be taken, to provide adequate and appropriate access to medical services and medical care, including mental health care, to migrants detained in immigration detention centres in the Republic of Korea.**

Immigration detention centres in the Republic of Korea are staffed by medical professionals (doctors, nurses, etc) who provide adequate health services. Individuals whose conditions require external assistance are transferred to off-site healthcare institutions.<sup>4</sup>

To better protect the rights of detained migrants, mental health professionals provide psychological support to individuals under emotional distress.

The Foreigner Detention Regulation mandates that migrants who have been detained for one month or more undergo a health screening once every two months. Pregnant women and older persons are considered priority groups.

**5. Please provide information regarding alternative and less restrictive measures to deprivation of liberty that can be applied to migrants and asylum seekers in order to ensure that administrative detention for immigration reasons is used only as a measure of last resort and for the shortest possible time. Also, please provide detailed information on the existing legal procedures in the Republic of Korea ensuring the possibility for migrants, including asylum seekers, in detention, to challenge their detention and the safeguards applied in that regard. Please provide statistical information on migrants currently in immigration detention in the Republic of Korea, including the number of migrants in immigration detention facilities and the**

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<sup>4</sup> The centres have signed an MOU with nearby clinics to provide swift and proper treatment to emergency patients.

## **length of their detention.**

Measures in place to minimize the use of detention against migrants include the following:

- Migrants who violated the Immigration Act used to be held in detention instead of being given the chance to voluntarily leave Korea, considering the possibility of escape. The Immigration Act has been amended to introduce the ‘Departure Order Deposit Payment Scheme,’ under which a departure order is issued to immigration offenders, allowing them to voluntarily depart from Korea instead of facing detention.
- Also, under the previous Immigration Act, detained migrants in special circumstances — including, for example, when their human rights have been violated and measures to remedy the situation need to be taken — were able to be temporarily released, but only when they lodge a request. The Act has been amended to give chiefs of immigration offices the authority to order a temporary release of a detainee without the detainee’s request.

Migrants in detention under a detention order (or their legal representative) may file an objection to the order.<sup>5</sup> The objection is first submitted to the chief of the local immigration office, which is ultimately relayed to the Minister of Justice. Upon receiving the objection, the Minister promptly makes a decision after reviewing the relevant documents. If necessary, persons relevant to the issue may make a statement.

Detainees can protest the detention order also by requesting an administrative appeal or administrative litigation.

As of June 30, 2022, there were 1,047 migrants in detention. Their average period of detention was 29.8 days.

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<sup>5</sup> Chiefs of immigration offices post written information on how to file an objection at a conspicuous place within the detention facility.

**6. Please provide detailed information on existing mechanisms, if any, to oversee and review the legality, necessity, and conditions of detention of migrants held in immigration detention. Please also indicate any consideration to thoroughly review the law to provide a maximum period for immigration detention.**

The Immigration Act prescribes that detaining a migrant under a deportation order for over three months needs prior approval from the Minister of Justice, and when necessary, renewed approvals every three months thereafter. If the approval is not obtained, the detainee must be released immediately.

In deciding whether to continue the detention of a migrant who is under a deportation order, the MOJ hears and collects outside opinions by convening the ‘Deliberation Committee on Long-Term Detention of Foreigners’, aiming to ensure the migrant’s human rights.<sup>6</sup>

A legal case against Article 63 of the Immigration Act (where provisions on the maximum detention period are set out) has been filed, based on the claim that it is in violation of the Korean Constitution. The case is currently under review by the Constitutional Court of Korea. In addition, a bill<sup>7</sup> seeking to amend the provisions at issue was proposed on July 1, 2022. The MOJ will start gathering opinions on this matter and take follow-up measures in accordance with due process.

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<sup>6</sup> The Operational Guidelines on the Deliberation Committee were established and enforced on October 1, 2016, and since its first Committee meeting dated April 26, 2017, a total of 39 foreigners detained for a long period of time have been deliberated until the 7th Committee meeting on June 27, 2022, and 11 of them were granted a temporary release from detention.

- The Committee is composed of nine members: a Chair (the Commissioner of the Korea Immigration Service), four government delegates and four private-sector delegates; and the Committee meetings have been held on an irregular basis (seven times since 2017)
- When the Chair presents agenda among foreigners detained for one year or longer, the Committee deliberates a release or a temporary release from detention of them.

<sup>7</sup> If the amendment bill is passed, the detention period of migrants will be limited to 12 months. Any detention exceeding this period will require approval from the Minister of Justice, which can’t be issued more than twice. For each approval, the detention period can be extended up to three months.

**7. Concerning the request to take all necessary interim measures to halt the alleged violations and prevent their re-occurrence**

Once again, the claims that there have been generalized human rights violations in immigration detention centres in the Republic of Korea are based on inaccurate information.<sup>8 9</sup>

Going forward, the MOJ will provide training sessions for staff of immigration detention facilities to attune them to relevant laws and manuals and tighten monitoring and supervision.

**8. Concerning the request to ensure the accountability of any person(s) responsible for the alleged violations in the event that the investigations support or suggest the allegations to be correct**

When there are any allegations raised, proper measures will be taken after confirmation of the factual grounds through the fact-finding probe of the MOJ and the National Human Rights Commission of Korea. /END/

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<sup>8</sup> As explained above, the National Human Rights Commission of Korea (NHRCK) has issued recommendations to launch an investigation into the incident that took place at the Hwaseong Immigration Detention Centre and come up with preventive measures. The MOJ has launched a fact-finding probe, which confirmed that there was no legal basis to justify the use of the protective gears at issue and the way in which they were used. Two officers were given a stark warning and 12 others received on-the-job training.

<sup>9</sup> The Hwaseong Immigration Detention Centre is conducting a pilot trial of giving the detainees more open spaces inside the facility to freely move around. The Centre is also working in many other ways to ensure better treatment for detained migrants.