

Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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(Please use this reference in your reply)

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 43/6, 42/22 and 42/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **allegations of ill-treatment of migrants, including asylum seekers, held in immigration detention centres in the Republic of Korea, including the use of solitary confinement and excessive physical means of restraint, as well as the lack of access to adequate health services to individuals with mental health conditions.**

According to the information received:

In the Republic of Korea, the current immigration policy allows for the detention of any individual who has received a deportation order, including individuals whose asylum applications are still being processed, until the deportation order is executed. In practice, detention orders are systematically issued together with a deportation order. Migrants are held in closed detention facilities while appeals against the deportation order are ongoing. These procedures can reportedly extend over long periods. Reportedly, migrants with mental health needs and individuals with psychosocial disabilities are also subjected to immigration detention during these proceedings.

In this context, we have received information regarding the conditions and treatment of migrants during their detention in immigration detention facilities, particularly in the Immigration Detention Centres of Hwaseong and Cheongju. Reported abusive practices in these centres include verbal abuse against detained migrants, frequent use of solitary confinement and the excessive use of force by immigration detention officers.

According to the information received, individuals held at the Hwaseong Immigration Detention Centre have been placed in solitary confinement in small cells on repeated occasions. In one of the reported cases, a migrant with a recognized mental health condition was placed in solitary confinement on 12 separate occasions during the first three months of detention. In one of these occasions, the confinement lasted for 10 consecutive days.

In this regard, it has been reported that detained migrants with mental health conditions and migrants with psychosocial disabilities do not have access to

adequate healthcare while in detention. Instead, the staff at the detention centers allegedly resort to the use of solitary confinement as a means of managing the acute health crisis experienced by the detainees, rather than referring migrants with mental health conditions to healthcare practitioners with relevant expertise. Reportedly, the lack of appropriate medical measures, and the alleged frequent use of solitary confinement, have exacerbated the pre-existing mental health conditions of these individuals.

Furthermore, it has been alleged that immigration detention officers at Hwaseong have used harsh means of physical restraint against migrants placed in solitary confinement, by holding them in the so-called hog-tying position. This practice consists of holding the person's wrists with handcuffs and using a rope to tie their ankles. Their hands and feet are then linked together behind their back. Allegedly, officers at Hwaseong also placed a helmet on the detainees' head, and then climbed over them, pressuring their neck, chest, and legs. In addition, it has been alleged that, in some instances, authorities at the Hwaseong centre permitted officers to use packing tape and cable-ties to cover the person's head. At least in one of the reported cases, the affected individual was allegedly held in the "hog-tying" position for hours.

On 1 November 2021, following an internal fact-finding investigation of a reported case of abuse in immigration detention, the Ministry of Justice reportedly acknowledged the use of excessive force and the illegality of "hog tying" practices, but did not recognize any violation being committed in relation to the use of repeated solitary confinement for individuals held in administrative detention for immigration reasons. In addition, despite the findings of the investigation in regard to the reported case of abuse, no redress was reportedly provided to the affected individual, and no action was taken against alleged perpetrators.

According to the sources, the above-mentioned practices associated with systematic immigration detention constitute a generalized practice in immigration detention centres in the Republic of Korea. Concerns regarding the use of solitary confinement, physical means of restraint against detained migrants and the lack of appropriate health care provided to them have reportedly been raised on several occasions, as well as calls and recommendations for the improvement of conditions and treatment of detainees in immigration detention centres, including by the National Human Rights Commission of Korea (NHRCK)¹. Other concerns related to immigration detention include the absence of a maximum period for immigration detention established by law.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our concern regarding the alleged systematic use of immigration detention of migrants in the Republic of Korea, in some cases for potentially prolonged or indefinite periods of time. In this regard, we wish to remind that, according to international human rights standards, detention for immigration related purposes should

¹ NHRCK: "Repetitive Human Rights Violations in Immigration Detention Centers Need to be Prevented" <https://www.humanrights.go.kr/site/program/board/basicboard/view?menuid=002002005&pagesize=10&boardtypeid=7013&boardid=7607432>

be exceptional, only permissible for adults following an individualised assessment of the need to detain, for the shortest period of time, with the maximum permissible duration clearly set out in the law, and when no less restrictive measure is available after its necessity, proportionality, legality and legitimacy are assessed for each individual case and reviewed at clear intervals. Especially, immigration detention must be avoided for persons who have specific needs or who are in vulnerable situations, such as persons with disabilities and migrants with particular physical or mental health needs.

Taking note on the pledges made by the Republic of Korea in the International Migration Forum to further regulate the treatment of detained migrants, we wish to emphasize the commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through the adoption of the Global Compact for Safe, Orderly and Regular Migration (objective 13, A/RES/73/195). Moreover, in accordance with the provisions of international human rights law, irregular entries should not be treated as criminal offences: border crossing without authorization should be considered at most an administrative offense. In this regard, we continue to stress the need to prioritize non-custodial accommodation solutions and community-based care arrangements. Alternative measures to detention provide more protection of people's dignity, humanity, health and well-being, and they are significantly less costly to operate than detention facilities.

We would also like to express our grave concern regarding the physical and mental health of migrants held in immigration detention in the Republic of Korea, particularly in the immigration detention facilities of Hwaseong and Cheongju. In this connection, serious concern is expressed about the alleged use of solitary confinement and physical means of restraint against migrants held in administrative immigration detention, and we are especially concerned about the situation of migrants who are at particular risk in detention, such as individuals with mental health conditions.

We are deeply concerned by reports of mistreatment and abuse against detained migrants by Korean authorities, including the use of physical restraints. These allegations, if confirmed, would amount to cruel, inhuman or degrading treatment or punishment. We wish to stress that governments have the obligation to protect the right to physical and mental integrity without discrimination of all persons deprived of their liberty in their custody, as set forth, *inter alia*, in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT). In addition, we recall that all detained migrants must be treated humanely and with respect for their inherent dignity. The conditions of their detention must be humane, appropriate, and respectful, noting the non-punitive character of the detention in the course of migration proceedings.

The threshold of prohibited ill-treatment generally will be reached sooner with regard to migrants with an irregular status or with other vulnerabilities. In this connection, we wish to emphasize that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects on individuals, regardless of their specific conditions. The use of solitary confinement also increases the risk that acts of torture and other cruel, inhuman or degrading treatment or

punishment will go undetected and unchallenged. Therefore, in the context of administrative detention, the use of solitary confinement against detained migrants may itself amount to torture and ill-treatment, regardless of its duration, as it can exacerbate the physical and mental stress on the migrants detained.

Finally, we are deeply concerned at the heightened risks to the right to life of persons with psychosocial disabilities due to the lack of essential and adequate support and mental health care. Denying access to the necessary mental health care and to health care services to those who seek it and imposing solitary confinement, of any duration, when the adequate interventions are not available is incompatible with the right to health and may constitute torture and ill-treatment. The use of solitary confinement and physical restraints have no therapeutic objective; on the contrary, they create more harm and may amount to ill-treatment or even torture. It is essential, therefore, that an absolute ban on all coercive measures, including solitary confinement of people with mental health conditions and persons with psychosocial disabilities should apply in all places of deprivation of liberty, including in immigration detention facilities. The imposition of solitary confinement in the case of prisoners with mental or physical disabilities is explicitly prohibited under international law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
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.
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.
4. Please provide information on any measure 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.
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 length of their detention.

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.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Felipe González Morales
Special Rapporteur on the human rights of migrants

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government attention to article 3 of the Universal Declaration of Human Rights (UDHR) which states that "Everyone has the right to life, liberty and security of person". Article 9 of the UDHR establishes that "no one shall be subjected to arbitrary arrest, detention or exile". Similarly, we would like to recall articles 6 (1), 7, 9, 10, 16, and 24 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Korea on 10 April 1990, that guarantee the inherent right to life of every individual, the prohibition of torture, as well as the right to liberty and security of the person. In this regard, we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add. 13 (2004), para. 10).

We wish to stress the absolute and non-derogable prohibition of torture and ill-treatment codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which the Republic of Korea is a party since 9 January 1995. In this regard, we would also like to recall that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. In addition, we draw your Government's attention to article 12 of CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of CAT, which requires State parties to prosecute suspected perpetrators of torture.

According to international human rights standards, detention for immigration purposes should be a measure of last resort, only permissible for the shortest period of time following an individualised assessment of the need to detain, when no less restrictive measure is available and must be reviewed periodically with clear limits of the duration of detention set out in the legislation. If not justified as reasonable, necessary and proportional, the use of this measure may lead to arbitrary detention, prohibited by article 9 of the Universal Declaration of Human Rights (UDHR) and article 9.1 of the ICCPR. Furthermore, we recall that commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through the adoption of the Global Compact for Safe, Orderly and Regular Migration (objective 13, A/RES/73/195).

In addition, we would like to draw your government's attention to the Revised deliberation No. 5 on deprivation of liberty of migrants issued by the Working Group on Arbitrary Detention (Annex, A/HRC/39/45), where the Working Group stressed that in the context of migration proceedings, "alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure" in order to ensure that such detention is not arbitrary. The Working Group also underlined that such "[D]etention must be justified as reasonable, necessary and proportionate in the light of

the circumstances specific to the individual case” and that it “must not be punitive in nature and must be periodically reviewed as it extends in time” to ensure detention in the immigration context is not arbitrary. In addition, the need to detain should be assessed on an individual basis and not based on a formal assessment of the migrant’s current migration status, and a maximum detention period in the course of migration proceedings must be set by legislation, permissible only for the shortest period of time. Excessive detention in the course of migration proceedings is arbitrary.

We would also like to bring to the attention of your Excellency’s Government the report on return and reintegration of migrants of the Special Rapporteur on the human rights of migrants (A/HRC/38/4), in which the Special Rapporteur highlights that “experience has shown that detention does not deter irregular migration, nor does it increase the effectiveness of removal procedures; it only increases the suffering of migrants, and may have a long-term detrimental impact on their mental health” (para. 40).

Additional guidance on human rights standards in the context of immigration detention is available in the Office of the United Nations High Commissioner for Human Rights Principles and Guidelines on migrants in vulnerable situations. Particularly, we wish to highlight principle 5.2, by which States should ensure that no migrant is criminalized for crossing a border irregularly or with the help of a facilitator.

Regarding the conditions of detention, we wish to refer to article 10 of the ICCPR, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. We also wish to draw your attention to paragraph 25 of General Comment No. 36 of the Human Rights Committee on article 6 of the ICCPR, on the right to life (CCPR/C/GC/36), which establishes that States parties also have a heightened duty of care to take any necessary measures to protect the lives and bodily integrity of individuals deprived of their liberty by the State, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility.

We would like to also remind your Excellency’s Government article 12, coupled with article 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which the Republic of Korea acceded on 14 September 1981, which enshrines the right of everyone, including people prisoners and detainees, to the enjoyment of the highest attainable standard of physical and mental health. Accordingly, States have the obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health preventive, curative and palliative services (Committee on Economic, Social and Cultural Rights, General Comment No. 14, para. 34).

Furthermore, we would like to draw your Government’s attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). We further recall that detention conditions and treatment should always comply with international standards, in particular the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), taking into account any personal vulnerability due to factors such as migration status, age, gender, disability, medical condition, previous

trauma or membership in a minority group. In this regard, we wish to bring the attention of your Excellency's Government to rule 45.2, which explicitly prohibits the imposition of solitary confinement "in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures".

We wish to also remind rule 46 that stresses that health-care personnel shall "pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff" and that "[h]ealth-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons". Moreover, we wish to refer to the report of the previous Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which he makes reference to the fact that "[a]ctual and *de facto* deprivation of liberty has adverse effects on mental health, which may amount to violations of the right to health" and that "[s]olitary confinement and protracted or indefinite detention [...] negatively influence mental health and well-being"(A/HRC/38/36, para. 46). It also indicates that "[d]eprivation of liberty and confinement, when they are used as widespread forms of addressing various social, and often non-criminal issues, create an environment that is detrimental to the enjoyment of the right to physical and mental health" (para. 95). In this regard, the Special Rapporteur urges States to "[f]ully abide by, and implement, the Nelson Mandela Rules, in particular as regards the provision of health care in prisons" (para. 98 (a)).

Furthermore we would like to draw your Excellency's Government's attention to paragraphs 1 and 2 of article 15 of the Convention of the Rights of Persons with Disabilities (CRPD), ratified by the Republic of Korea on 11 December 2008, which respectively state that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and that "states Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment". We would also like to draw your Excellency's Government's attention to article 17 of the aforementioned Convention that states that "Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others".

We also wish to draw the attention of your Excellency's Government to the report on migration-related torture and other cruel, inhuman or degrading treatment, in which the Special Rapporteur on torture highlights that "any detention regime that, as a matter of deliberate policy or as a consequence of negligence, complacency or impunity, subjects or exposes migrants to treatment or conditions of detention grossly inconsistent with universally recognized standards, most notably the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), is incompatible with the prohibition of torture and ill-treatment" (A/HRC/37/50, para. 19). He also stressed that the threshold of prohibited ill-treatment generally will be reached sooner with regard to migrants with an irregular status or with other vulnerabilities.

On the other hand, the use of force by officers is strictly regulated under international human rights law. Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Moreover, principle 15 states that 'law enforcement officials, in their relations with persons in custody, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened'.

Finally, we would like to recall the Human Rights Council resolution 9/5, which addresses the issue of the human rights of migrants, "requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party". Resolution 9/5 also "reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants" and "urge States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international commitments, the principle of the best interest of the child and family reunification".