OMCT Secretary General
Secrétaire Général de l'OMCT
Secretario General de la OMCT
Gerald Staberock

Executive Council
Conseil Exécutif
Consejo Ejecutivo

President
Présidente
Presidenta

Hina Jilani

Vice Presidents
Vice-Président.e.s
Vicepresidentes

Claudia Samayoa
Mokhtar Trifi

Treasurer
Trésorier
Tesorero

Olivier Peter

Members
Membres
Miembros

Adam Bodnar
Stephanie Brewer
Sevan Doraisamy
Helen Keller
Samwel Mohochi
Olga Sadovskaya
Peter Zangl

Ministry of Justice
Building #1, Government Complex-Gwacheon
47, Gwanmun-ro, Gwacheon-si, Gyeonggi-do
Republic of Korea
Postal code 13809

Geneva, 16 December 2021

The World Organisation against Torture (OMCT) concerned regarding torture and arbitrary detention of a Moroccan refugee

Honorable Minister

The World Organisation against Torture (OMCT) works with 200 member organizations to end torture and ill-treatment, assist victims, and protect human rights defenders at risk wherever they are. Our SOS-torture Network makes up the largest global group actively standing up to torture in over 90 countries. We work to protect the most vulnerable members of our societies, including women, children, indigenous peoples, migrants and other marginalized communities. To achieve this, we advocate with governments to change or implement their laws and policies, we help victims seek justice and strive to hold perpetrators to account. Because torture can never be tolerated, and human dignity is not negotiable.

The OMCT was informed by its partner organization GongGam Human Rights Law Foundation about the continued arbitrary detention of a Moroccan refugee who was tortured in the Hwaseong Immigration Detention Centre on 9 June 2021 by tying his arms and legs behind his back (so called hog-tying). The Committee Against Torture (CAT) that monitors the Convention against Torture (CAT Convention), to which South Korea is a State party, has considered the tying of a person's arms and legs behind the back as a form of torture or other ill-treatment as it causes severe pain and suffering.[1] So-called "positional torture" or "stress positions" are severe forms of restraints that are per se prohibited. Therefore, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) clearly state in Rule 47 that "instruments of restraint which are inherently degrading or painful shall be prohibited".[2] The CAT, in its review of the Republic of Korea in 2017, has criticized the government on how restraint methods are applied in detention.[3] It recommended that the Republic of Korea ensures "that restraints are used only as a measure of last resort, for the shortest time possible and only when less intrusive alternatives for control have failed".[4]

Similar considerations apply to solitary confinement, which the victim has been subjected to as a form of punishment. The CAT has recommended that the Republic of Korea amend its "current legislation in order to ensure that solitary confinement remains an exceptional measure of last resort, applied for a duration that does not exceed 15 days, and that it is imposed in line with international standards". The CAT further stressed that "renewing and

[1] CAT, Concluding Observation on Uruguay, UN Doc. CAT/C/URY/CO/3, 10 June 2014, para. 13.
[2] GA, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc. A/RES/70/175, 8 January 2015, Rule 47.
[3] CAT, Concluding Observation on the Republic of Korea, UN Doc. CAT/C/KOR/CO/3-5, 30 May 2017, para. 21.
[4] Ibid para. 22.

prolonging disciplinary sanctions of solitary confinement is strictly prohibited".[5]

While welcoming your Ministry's position on qualifying the incident as a human rights violation, we regret that there have been no criminal investigations into the case, let alone prosecution or redress for the vicitm. Incidents of torture require prompt, thorough and impartial investigations that ensure that any official found responsible for torture or other forms of ill-treatment are subject to prosecution.[6] It is equally important that all persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation.[7] We would further like to stress that each State party to the CAT Convention is required under Article 14 to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible." Redress and rehabilitation also include medical, psychological, and social support.[8]

We are further concerned about reports of the continued arbitrary detention of the victim at the centre where the incident occurred and where the alleged perpetrators are still working. This is all the more worrying as the National Human Rights Committee recommended that the victim be released in order to get proper treatment.[9] Immigration detention has long been an issue in the Republic of Korea for which the country has already been condemned. Both the CAT and the UN Human Rights Committee have criticized the Republic of Korea for the absence of a legally prescribed maximum duration for immigration detention and has recommended that this be addressed.[10]

We regret that the Republic of Korea has not implemented the above mentioned recommendations from the CAT and the Human Rights Committee that raise serious concerns about the treatment of migrants, in particular their prolonged detention and detention conditions.

At the same time, we very much welcome the efforts of the Republic of Korea to eradicate torture, including at the international level through for instance the voluntary pledges before the Human Rights Council on "upholding the highest standards in the promotion and protection of human rights" and "implementing the provisions of the international human rights instruments at the national level".[11] We therefore trust that the Ministry of Justice will take all necessary steps to i) release the victim from detention, ii) provide him with redress, including compensation and medical and psychological assistance, and iii) investigate the case with a view of prosecution of those responsible.

I thank you very much for considering this submission.

Respectfully,

Gerald Staberock, Secretary General



[5] Ibid para. 24 c).
[6] CAT, Concluding Observation on Turkey, UN Doc. CAT/C/TUR/CO/4, 2 June 2016, para. 32.
[7] CAT, Concluding Observation on Turkmenistan, UN Doc. CAT/C/TKM/CO/2, 23 January 2017, para. 8.
[8] CAT, General Comment No. 3, UN Doc. CAT/C/GC/3, 13 December 2012, para. 11.
[9] National Human Rights Commission of the Republic of Korea, 21 진정 0451000, 3 December 2021.
[10] Para. 41 b. Human Rights Committee, Concluding Observation on the Republic of Korea, UN Doc. CCPR/C/KOR/CO/4, 3 December 2015, para. 38.
[11] HRC, Note verbal from the Permanent Mission of the Republic of Korea to the UN addressed tot eh President of the General Assembly, UN Doc. A/70/88, 27 May 2015, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/88.