



PERMANENT MISSION OF THE REPUBLIC OF KOREA  
GENEVA

KGV/17/2013

Reference: Communication From Special Procedures Joint Urgent Appeal  
UA G/SO 214(67-17) G/SO 214(107-9) G/SO 214(106-10) KOR 3/2012

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 21 June 2012, has the honor to submit, as attached, the Republic of Korea's response to the letter of the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders.

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.

Encl.: as stated

Geneva, 5 February 2013

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- 7 FEB. 2013

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**Response of the Government of the Republic of Korea to the letter of  
the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the  
promotion and protection of the right to freedom of opinion and expression; and the  
Special Rapporteur on the situation of human rights defenders**

Ref: UA G/SO 214(67-17) G/SO 214(107-9) G/SO 214(106-10)

1. The Government of the Republic of Korea submits herewith its response to the joint urgent appeal on 21 June 2012 by the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders.

**Mr. Catuira's entry, departure, and litigation procedures**

2. Mr. Michel Catuira initially entered the Republic of Korea on 29 February 2009 with non-professional employment qualifications (E-9). The Seoul Immigration Service granted permission for Mr. Catuira's change of workplace upon his application with a new one-year employment contract, signed on 5 March 2010, with the owner of a company by the name of 'Dream' located in Seoul. He was also allowed for an extension of the sojourn period until 7 March 2011, the date of termination of the employment contract.
3. The Seoul Immigration Service decided on 10 February 2011 that there were charges of false employment on the grounds that a company by the name of 'Dream' did not exist at the time of Mr. Catuira's application for extension of the sojourn period, contrary to his statement in the documents submitted by him, and that Mr. Catuira was not engaged in any working activities as a foreign worker. Consequently, departure by 7 March 2011 was ordered in accordance with Article 17 paragraph 1, Article 89 paragraph 1, and Article 68 paragraph 1 of the *Immigration Control Act*, and the permits described in the previous paragraph were revoked.
4. Meanwhile, Mr. Catuira applied for another extension of the sojourn period on 4 March 2011, but the request was denied and he was notified that he should leave the country by 31 March 2011 in accordance with Article 33 of the *Enforcement Decree of the Immigration Control Act*.
5. Hereafter Mr. Catuira brought the case to the Seoul Administrative Court against the departure order, denial of sojourn extension, and notification of leave, and won the first instance on 15 September 2011. However, the Seoul Immigration Service filed an appeal, while granting Mr. Catuira a G-1 visa valid until 7 May 2012 for the purposes of the litigation proceedings. Mr. Catuira left for the Philippines due to family matters in February 2012.
6. The Seoul High Court, the appellate court, overturned the ruling of the first instance court on 24 May 2012, and on 27 September of the same year, the Supreme Court confirmed the ruling of the Seoul High Court.

## **Denial of Mr. Catuira's re-entry and the situation at the time of Mr. Catuira's entry attempts**

7. On 30 April 2012, at around 21:30, Mr. Catuira was denied entry when he attempted to return to Korea through *Incheon* International Airport, and the situation at the time was as follows:
8. Mr. Catuira requested to stay until 2 May to file an appeal against the denial of entry, but the request was denied as denial of entry is not subject to appeal. In order to carry out the repatriation proceedings, police officers and airline personnel attempted to move him out of the holding area. Eventually after knowing that Mr. Catuira is a transgender and biologically female, three female police officers escorted him to the boarding gate. His passport was also handed to the flight staff, and Mr. Catuira was taken to the Philippine immigration authorities with his passport. It is known that the Philippine immigration authorities had a brief interview with Mr. Catuira and returned his passport to him.
9. Such procedure was taken according to article 76 of the *Immigration Control Act*<sup>1</sup>, which states that the captain or the operator of an airline a foreigner has been aboard shall repatriate the foreigner if his/her entry is banned or denied.
10. The entry of Mr. Catuira was denied due to his violations of legislations by obtaining a work permit with false information about his workplace, thereby causing damage to public order and national interest. The denial was in accordance with the *Immigration Control Act* Article 11 paragraph 1 subparagraphs 3 and 4<sup>2</sup>, in which case the possession of a valid visa by the subject does not affect the decision of entry. It is an established principle of international law that a country has sovereign rights to ban or deny the entry of a foreigner into its territory provided that the decision was made in due procedure. In our system there is no appeal process for the denial of entry.

## **The Employment Permit System and its effect on foreign workers**

11. The Employment Permit System for Foreigners is a system introduced since 2004 in order to allow businesses to hire foreign workers. As of the end of December 2012, the Government of the Republic of Korea has signed Memorandums of

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<sup>1</sup>*Immigration Control Act* Article 76 (Obligation of Repatriation) The head of a ship, etc. or forwarding agent any of the following foreigners has been aboard shall repatriate the foreigner without delay out of the Republic of Korea at his/her expense and responsibility:

1. (omitted)
2. A person whose entry is prohibited or declined under Article 11;
- 3-5. (omitted)

<sup>2</sup> *Immigration Control Act* Article 11 (Prohibition, etc. of Entry) (1) The Minister of Justice may prohibit any of the following foreigners from entering the Republic of Korea:

- 1-2. (omitted)
3. A person deemed highly likely to commit any act detrimental to the interests of the Republic of Korea or public safety;
4. A person deemed highly likely to commit any act detrimental to the economic or social order or the good morals;
- 5-8. (omitted)

Understanding with 15 countries, and 193,000 foreign workers who have entered Korea through the Employment Permit System are employed in the country.

12. While the Employment Permit System intends to prevent violations of the rights of foreign workers and protect their human rights, it is also a system that minimizes social costs by deterring illegal immigration of foreign workers. Foreign workers that have entered Korea under the Employment Permit System are equally entitled to the protection of related labor laws as domestic workers. Accordingly, they can establish labor unions without restriction under the *Trade Union and Labor Relations Adjustment Act*, and their unions are guaranteed rights without discrimination to carry out activities such as collective bargaining and collective actions against employers.
13. Furthermore, in cases of wage arrears, discrimination or dismissal due to unjust employment conditions, etc., as outlined under laws such as the *Labor Standards Act*, foreign workers have access to relief according to legal proceedings just as domestic workers, regardless of their legal or illegal status, by filing complaints through the 47 regional labor offices located nationwide. Relief proceedings through the Labor Relations Commission and the courts are also available.
14. The Government has also established Foreign Workers Support Centers in areas where foreign workers are concentrated. The centers provide counseling services for grievances, educational services for Korean language, Korean culture, computer, and laws for daily life as well as free medical services. Counseling centers for foreign workers are also in operation, which function as call centers for counseling with regard to work-related concerns and settlement of grievances.
15. Considering that foreign workers employed at small-sized companies often face unexpected wage arrears, delayed severance pay, and other difficulties, an insurance system for foreign workers has been introduced. The application rate for insurance policies against wage arrears and delayed severance pay reaches 90%.
16. In spite of all the benefits and protection afforded to foreign workers regardless of their legal or illegal status, the core labor-related rights such as the right to organize, the right to collective bargaining and the right to collective action for foreign workers without legal documents are not protected under the current labor laws. Meanwhile, there are pending cases related to the issue in courts.

## Conclusions

- ~~17. The denial of Mr. Catuira's entry was not intended to oppress the Migrants' Trade Union(MTU); it was due to Mr. Catuira's violations of the *Immigration Control Act*.~~
18. The case was dealt with full respect to due process. /end/