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HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates 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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 17/12, 16/4, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged denial of entry to the Republic of Korea of Philippines National Mr. **Michel Catuira**, former President of the Seoul-Gyeonggi-Incheon Migrants Trade Union (MTU), despite his valid travel documents.

According to the information received:

Mr. Michel Catuira is a Philippines national who has been residing in the Republic of Korea for a number of years. On 1 May 2012 Mr Catuira was denied re-entry into the Republic of Korea at Incheon Airport, and deported to the Philippines, despite holding a current and valid G-1 Visa. According to reports, the immigration officer informed Mr. Catuira that he was denied entry because he has been on a blacklist since February 2011.

Michael Catuira has served as the president of the Seoul-Gyeonggi Incheon Migrants Trade Union (MTU) for the last four years. MTU was founded in the Republic of Korea in 2005 to operate on behalf of documented and undocumented migrant workers. In 2007 the Seoul High Court ruled that MTU be recognized as a legal union. As president of MTU, Mr. Catuira has reported repeatedly criticized Korean treatment of migrant workers, and in particular the impact of the Employment Permit System on migrant workers.

In the summer of 2010, Mr. Catuira reportedly held a sit-in protest to the government's harsh treatment of undocumented workers. In November 2010 Mr. Catuira participated in MTU protests after a Vietnamese worker died during an immigration raid. During these protests, it is reported that Mr. Catuira visited the Immigration Services offices, where an immigration officer informed him that since he himself was a migrant worker he had no grounds to raise a complaint.

Mr. Catuira himself allegedly held a visa to work in the Republic of Korea under the Employment Permit System, which required that he be employed with a registered employer in the manufacturing sector. Although Mr. Catuira maintained employment with a company in Seoul, after his involvement in the protests the government reportedly questioned his employment status by calling and interrogating his employer, questioning the validity of their relationship, and requesting that Mr. Catuira's employer transfer him to a different company.

On 23 November 2010, Mr. Catuira received a summons to appear before the Immigration Service team on 3 December based on "suspicion of violations of the Immigration Control Law in the course of applying for a workplace transfer and with relation to actual performance of work duties at present." It is also reported that the immigration team intended to raise questions implying that Mr. Catuira was involved in political activities in violation of the Immigration Control Act.

On 10 February 2011, the Korean Immigration Service (KIS) ordered the revocation of Mr. Catuira's visa and demanded that he leave the country by 7 March 2011. A court granted Mr. Catuira an injunction to prevent the visa revocation, but the KIS refused to renew Mr. Catuira's visa. Mr. Catuira appealed, and applied for a G-1 visa, normally granted to individuals who need to remain in the country for legal proceedings, medical treatment, or other humanitarian reasons. This request was reportedly denied, though KIS verbally stated that they would not detain or deport Mr. Catuira until his court case had been resolved.

In September 2011 the Seoul Administrative Court ruled to restore Mr. Catuira's work visa. The court reportedly noted that the attempt to deport Mr. Catuira was a violation of both Korean and international human rights law. The court also acknowledged the importance of the right of association and right to collective action, and the importance of Mr. Catuira's work aiding migrant workers. The KIS appealed this decision and the case is still pending. Mr. Catuira was reportedly denied a renewal of his residence permit while the case was pending, but was granted a G-1 visa, valid until 7 May 2012, in November 2011.

In February 2012 Mr. Catuira reportedly left Korea for the Philippines due to family matters. Before leaving, he consulted immigration offices and was told that his G-1 visa allowed him to travel back and forth to Korea. He then returned to Korea to extend his visa on 30 April. When he attempted to re-enter the country, he was reportedly forced to wait in an immigration office for several hours before an immigration officer told him that his name was on a list of individuals barred

from entry since February 2011. He was told that he could not re-enter Korea for five years. Mr. Catuira requested permission to stay in Korea until 1 May 2012, to file an appeal with the government. He was allowed to make a phone call from a holding cell, and was able to contact a friend who notified his lawyer and the National Human Rights Commission.

On 1 May, Mr. Catuira reportedly again requested to stay until the next day to make his appeal. A different officer told him that his lawyer needed to contact the Ministry of Justice, but did not allow Mr. Catuira to use the phone. The officer later told him that he had the right to remain in the holding cell, but that this might cause forceful police intervention. Mr. Catuira was able to speak to an MTU volunteer by phone.

Mr. Catuira was then allegedly visited by police officers and airline personnel who reportedly intimidated and harassed him, and who stated that as he was not Korean, they did not care about his rights. The airline personnel, police and immigration officials reportedly discussed dragging Mr. Catuira onto the plane. Mr. Catuira stated that he would leave willingly if his appeal were denied. The officers were reluctant to forcibly remove Mr. Catuira, who is transgendered and biologically female, however eventually, Mr. Catuira was reportedly forcibly removed by three female police officers and dragged outside.

Mr. Catuira was removed to the boarding area. His passport was given to the flight staff. While he tried to write down the names of the officers involved, he reports that they took his pen, which he took back, and tried to hide their name tags. He was forced to depart on a plane back to Manila, where he was taken to the Philippine Immigration office. His passport was not returned to him until he wrote a statement about the immigration incident.

Since its founding, the Republic of Korea has reportedly arrested and deported several MTU leaders, despite the fact that the Seoul High Court ruled that MTU be recognized as a legal union. We thus fear that Mr. Catuira's denial of re-entry is due to his activities as former President of the MTU, and that his deportation is part of the continuing targeted crackdown by Korean authorities on the MTU leadership.

Without in any way making a determination on the accuracy of these allegations, we would like to recall your Excellency's Government obligations under international human rights treaties to respect and protect the human rights of all individuals within its territory and subject to its jurisdiction, regardless of citizenship, nationality or immigrant status.

In this connection, we refer your Excellency's Government to the principle of non-discrimination enshrined in article 2 of the Universal Declaration of Human Rights (UDHR), and Article 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) as well as in several other United Nations declarations and conventions which provide that every individual is entitled to the protection of their rights and freedoms

without discrimination or distinction of any kind, and that all persons shall be guaranteed equal and effective access to remedies for the vindication of those rights and freedoms.

In addition, we would like to refer to paragraph 33 of the General Recommendation XXX relating to Discrimination against non-citizens, in which the Committee on the Elimination of Racial Discrimination recommended that States “take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects” and paragraph 35 unambiguously states that “all individuals are entitled to the enjoyment of labour and employment rights...once an employment relationship has been initiated until it is terminated”.

We further recall the General Recommendation XXX relating to Discrimination against non-citizens, in which the Committee on the Elimination of Racial Discrimination recommends States “to ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens”.

In this connection, we refer to Article 13 of the ICCPR, which provides that “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.” In its General Comment XV, the Human Rights Committee reaffirms this principle (Paragraphs 9 and 10).

We further note the fundamental principles set forth in the Declaration on the Right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, and in particular article 1 and article 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national level and international levels” and that “ each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Finally, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- Article 5, points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form,

join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or inter-governmental organizations;

- Article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, treats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration, and in particular to the article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." In this connection, we wish also to draw the attention of your Excellency's Government to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns,

peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Catuira in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary accurate?
2. Please provide information on the current status of Mr. Michel Catuira, including any measures taken by your Excellency's Government on restoring his original E9 work visa status in accordance with the Seoul Administrative Court's ruling.
3. Please provide information on the Employment Permit System, and how this impacts on migrants in the Republic of Korea?
4. How will your Excellency's Government ensure the rights of everyone, regardless of their immigration status, to advocate for migrants rights, including the right to form trade unions and join a trade union of their choice?

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Catuira are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

François Crépeau
Special Rapporteur on the human rights of migrants

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders